

SUMMARY STATEMENT

Kosmann v. Gilbride, Docket No. 43296

In a case arising out of Canyon County, the Idaho Supreme Court affirmed a district court's decision not to award attorney's fees to Leo Gilbride ("Gilbride"). This case arises from David Kosmann's ("Kosmann") short sale of real property to Gilbride and an oral agreement for Gilbride to re-convey the property back to Kosmann at a later time. After the sale, Gilbride refused to re-convey the property back to Kosmann in accordance with their agreement. Kosmann filed suit against Gilbride demanding specific enforcement. The district court held that the oral agreement was unenforceable because its terms were not sufficiently definite. Further, the district court held that Gilbride was not entitled to attorney's fees for two reasons: (1) Gilbride was not entitled to attorney's fees under Idaho Code section 12-120(3) because he did not establish that a commercial transaction was the gravamen of the action, and (2) Gilbride was not entitled to attorney's fees under the real estate purchase and sale agreement ("REPSA") because the central issue of litigation was entirely separate and distinct from the REPSA.

On appeal, the Idaho Supreme Court affirmed the district court's decision not to award attorney's fees to Gilbride, but did so on an alternate ground. The Idaho Supreme Court held that the transaction between Kosmann and Gilbride was fraudulent and violated public policy because it hinged on a misrepresentation to the lender, GMAC. Specifically, the Idaho Supreme Court found that both parties represented to GMAC that there was no underlying agreement or understanding between them to re-convey title back to Kosmann; however, an underlying agreement—albeit an unenforceable agreement—existed. The Idaho Supreme Court noted that parties who enter an agreement that is illegal or void against public policy are not permitted to benefit from a contractual attorney's fees provision or an attorney's fees statute. Accordingly, the Idaho Supreme Court affirmed the district court's decision not to award attorney's fees to Gilbride. Neither party was awarded attorney's fees on appeal.