

SUMMARY STATEMENT
Litster Frost v. Idaho Injury Law Group
Dkt. No. 48359

This appeal involved a dispute over the division of a personal injury settlement between a predecessor law firm (“Litster”), a successor law firm (“IILG”), and a client who was subjected to unfair and deceptive trade practices in violation of the Idaho Consumer Protection Act (“ICPA”). Litster represented Melissa Gryder for approximately three years before IILG took over representation and settled Gryder’s case roughly two months later. Gryder had followed her attorney, Seth Diviney, from Litster to his new firm, IILG. After Gryder’s case was settled, Litster sued IILG and Gryder, claiming a portion of the settlement fund for its incurred attorney fees and costs. Gryder, through Diviney as her attorney, counterclaimed that Litster had violated the ICPA and could not recover from the fund.

The district court granted Gryder summary judgment on the liability portion of her ICPA counterclaim but reserved the mechanics of her elected ICPA remedy (rescission) for trial. By the time of the bench trial, the district court understood, based on representations by Diviney, that only IILG and Litster claimed a stake in the disputed fund—not Gryder. From this, the district court balanced the equities and divided the disputed fund between only IILG and Litster while reducing Litster’s share to account for its ICPA violation. IILG and Gryder appealed the district court’s division of the fund and Litster cross-appealed the grant of partial summary judgment to Gryder.

On appeal, the Idaho Supreme Court vacated the judgment of the district court and reversed the court’s division of the fund but affirmed the grant of partial summary judgment to Gryder. The Court explained that summary judgment to Gryder on the liability portion of her ICPA counterclaim was correct. However, the district court erred in balancing the equities and deciding the mechanics of rescission under the ICPA to divide the fund. Part of this error was, by no fault of its own, the district court’s omission of Gryder from the equitable balance. On remand, the Court instructed the district court to re-weigh the overall equities between all three parties.

Next, the Court concluded, *sua sponte*, that Diviney had engaged in an unwaivable concurrent conflict of interest on appeal—and throughout this case below. The Court explained that Litster, IILG, and Gryder have competing claims on how to distribute the fund. Yet, at all times, Diviney represented both Gryder’s and IILG’s directly adverse claims in the same litigation. To ensure procedural due process, the Court declined to, on appeal, determine the appropriate sanction for Diviney’s ethical violation. Instead, the Court remanded the matter for the district court to determine the appropriate sanction after a hearing.

Finally, the Court affirmed the district court’s denial of attorney fees to IILG below because, on appeal, IILG failed to argue how the district court had abused its discretion.

*****This summary constitutes no part of the opinion of the Court but has been prepared by court staff for the convenience of the public.*****