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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LOUIS J. ALPINIERI et al.,

Plaintiffs, Cross-defendants and
Appellants,

v.

JAMES E. SKEEN et al.,

Defendants, Cross-complainants and
Respondents.

D060853

(Super. Ct. No. GIC879650)

APPEAL from orders of the Superior Court of San Diego County, Richard E. L. Strauss, Judge. Reversed.

This action arose out of a dispute between property owners in La Jolla Shores Heights (Heights). The superior court granted the motion of defendants and cross-complainants James Skeen, Lorena Skeen and Skeen Family Trust (together, the Skeens) for summary adjudication on the cause of action of plaintiffs and cross-defendants Louis J. Alpinieri and Brenda L. Alpinieri (together, the Alpinieris) for breach of contract. The court

also granted summary adjudication in the Skeens' favor on their cause of action for declaratory relief against the Alpinieris and other Heights property owners.

On October 28, 2011, the court granted in part the Skeens' motion for attorneys' fees. The court awarded the Skeens \$415,219.48 as prevailing parties (Civ. Code, § 1717), representing the fees they incurred in defending the Alpinieris' breach of contract cause of action and in prosecuting their own cause of action for declaratory relief. On the same date, the court granted in part the Alpinieris' motion to tax costs and awarded the Skeens \$16,944 in costs. On October 31, the Alpinieris filed a notice of appeal of the October 28 orders.

On March 8, 2012, while the appeal was pending, this court reversed the summary adjudication on the Alpinieris' breach of contract cause of action and the Skeens' declaratory relief cause of action.

The Alpinieris and the Skeens have filed a "stipulation for reversal of orders awarding respondents attorney fees and costs." They stipulate to the reversal of the October 28, 2011 orders, the Alpinieris' recovery of \$682 in costs on appeal from the Skeens, due when the remittitur issues, and immediate issuance of the remittitur. The reason for the stipulation is this court's reversal of the summary adjudication on which the October 28, 2011 orders were based. (*Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1053.) We accept the stipulation.

"An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal

outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).)

Our independent review of the record leads us to conclude we should accept the stipulation. First, there is no reasonable possibility that reversal will adversely affect the interests of anyone who is not a party to this appeal, including the other Heights property owners. Nor will reversal adversely affect any public interest. Second, the parties request reversal because the underlying judgment has been reversed, removing the basis for the orders that are the subject of this appeal. The nullification of those orders will not in any way erode public trust. On the contrary, this reasonable and expeditious solution to the appeal will enhance public trust. Finally, the stipulation will not lead to a risk of reducing any incentive for pretrial settlement, as the stipulation could not have been reached before this court's reversal of the underlying judgment.

DISPOSITION

The October 28, 2011 orders are reversed. The Alpinieris shall recover from the Skeens \$682 in costs on appeal, due when the remittitur issues. The remittitur is to issue forthwith.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.