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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

WINIFRED CUMMINGS et al.,

Plaintiffs and Respondents,

v.

CAPISTRANO TERRACE, LTD.,

Defendant and Appellant.

G045247

(Super. Ct. No. 07CC11632)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nancy Wieben Stock, Judge. Motion to vacate judgment denied.

Hart, King & Coldren, Robert S. Coldren, Daniel T. Rudderow and Rhonda H. Mehlman for Defendant and Appellant.

Endeman, Lincoln, Turek & Heater, Kenneth C. Turek, David Semelsberger and Linda B. Reich for Plaintiffs and Respondents.

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THE COURT:\*

The parties have filed a joint motion to vacate the judgment entered in the superior court. This is the parties' second motion to vacate the judgment. We initially denied the motion without prejudice because of the parties' failure to make more than a pro forma request. The renewed motion is less perfunctory, but still fails to provide enough information to allow us to make an informed judgment to justify reversing or vacating a judgment. (Code Civ. Proc., § 128, subd. (a)(8).) Accordingly, we deny the motion and inform the parties of our intent to dismiss the appeal, which appear to have been rendered moot based on the parties' settlement agreement and the ensuing dismissal of the underlying action.

I

The parties have not told us anything about the legal or factual issues involved in the underlying action other than that it involves an action for damages by 17 current and former homeowners in a mobilehome park. "The factual issues presented at trial were alleged sewage overflows and backups, electrical outages and utility problems, geological conditions and other problems with the facilities at the Park suffered by the Plaintiffs; and the legal issues presented at trial were whether Defendant failed to provide and maintain physical improvements in the common facilities under the Mobilehome Residency Law (Civil Code § 798 et seq.), as well as under contract and tort law. The jury entered a verdict finding Defendant liable for nuisance, breach of contract, negligence, and breach of the covenant of good faith and fair dealing, resulting in an award of both compensatory and punitive damages."

That is pretty much what we know about the case. Apparently, the charges against defendant are serious enough to result in a verdict of some \$891,582 in compensatory damages and \$250,000 in punitive damages in favor of the 17 plaintiffs

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\* Before Rylaarsdam, Acting P. J., Bedsworth, J., and Thompson, J.

and against defendant. Left unresolved are damage claims by an additional 109 plaintiffs.

Defendant filed the instant appeal to this court from the judgment on the jury verdict, and a second appeal (G045568) from a postjudgment order issued in May 2011. Both appeals have been stayed during the record preparation stage when defendant filed for bankruptcy. We do not know any of the issues which would have been raised during the appeals had they not been stayed by the bankruptcy. The parties have made no attempt to show that judicial error may have been committed below other than the following conclusory statement: “Defendant denies any exposure or liability as is evidenced by the filing of this appeal.”

The parties have engaged in mediation during the bankruptcy proceedings and have reached a settlement, by which terms the defendant’s insurer will pay the sum of \$4,855,000 in exchange for a settlement and release by all plaintiffs. The settlement calls for defendant to sell the mobilehome park to a new entity, and to be released of all further liabilities or obligations with respect to the mobilehome park.

The settlement agreement and plan term sheet require plaintiffs to file a motion to vacate the underlying judgment for compensatory and punitive damages, although it apparently is not conditioned upon court approval of such a motion. The settlement agreement and plan term sheet further provide that plaintiffs shall each execute a request for dismissal with prejudice of the underlying action “[w]ithin 10 days after the ruling by the Court on the Motion to Vacate the Judgment . . . .” The plan term sheet additionally requires defendant to file a request for dismissal of the appeals after the ruling on the motion to vacate and upon entry of the judgment of dismissal.

On October 3, 2012, the bankruptcy court confirmed the plan, finding it to have been proposed in good faith and in accordance with the law. On October 29, 2012, we denied without prejudice the parties’ initial application because of their failure to

show good cause to satisfy the statutory criteria in Code of Civil Procedure section 128, subdivision (a)(8), including the filing of a joint declaration. (See Ct. App., Fourth Dist., Div. Three, Internal Practices and Proc., V C, Stipulated Requests for Reversal.)

In the interim, on November 8, 2012, plaintiff filed a request in the superior court for dismissal with prejudice of the entire action of all parties and all causes of action. The clerk of the superior court entered the dismissal on the same day.<sup>1</sup>

On December 5, 2012, the parties renewed their motion to vacate the judgment below. They included a joint declaration of counsel, a four-page memorandum of points and authorities, and five exhibits.

## II

Code of Civil Procedure section 128, subdivision (a)(8) places the burden on the parties to convince us of the merits of their request. They have failed to do so.

Notwithstanding the strong public policy favoring settlements and party autonomy, there is a statutory presumption *against* stipulated reversals. After the enactment in 1999 of Code of Civil Procedure section 128, subdivision (a)(8), civil judgments “now belongs to the public-not the parties-and the public indisputably has an interest in [their] continuing existence.” (*Muccianti v. Willow Creek Care Center* (2003) 108 Cal.App.4th 13, 15 (*Muccianti*)). The judgment is a “public product fashioned at the cost of public resources,” here including the time and efforts of a civil jury. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 295 (dis. opn. of Kennard, J.))

As *Muccianti* makes clear, parties no longer can assume that a joint request “unquestionably will be granted” and that the judgment belongs “solely to them to use in a manner that is in their best interests.” (*Ibid.*) “The judicial inquiry is no longer whether

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<sup>1</sup> On January 9, 2013, plaintiffs filed a “Notice re Status of Bankruptcy Case” in the related appeal in G045568 informing us that they filed a dismissal of the underlying action, which was filed and entered on November 8, 2012.

‘extraordinary circumstances’ warrant denial of a request for stipulated reversal, an enterprise not likely to receive much enthusiastic assistance from the parties, but whether the parties have satisfactorily demonstrated that reversal would not adversely affect the interests of nonparties or the public, erode the public trust, or reduce the incentive for pretrial settlement. (*Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1006 (*Hardisty*) [denying stipulated request to reverse judgment].)

The statute requires that this court find *both* “[t]here is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal” *and* that the parties’ reasons for requesting reversal outweigh the detrimental impact caused by reversing a judgment resulting from a jury verdict following trial. (Code Civ. Proc., §128, subd. (a)(8).)<sup>2</sup>

Here, we cannot engage in the balancing process because the parties have not provided us with any explanation why they need to vacate the judgment. In *Hardisty, supra*, 124 Cal.App.4th at p. 1008, the Court of Appeal denied a similarly unexplained stipulated request. “But though we have [the trial court’s] rulings, . . . we cannot determine from the rulings alone whether those are the only consequences, and, as we discuss presently, the nature of some of [the trial court’s] findings suggest other possible consequences. Nor do we know the reason or reasons the parties request stipulated reversal, and we are therefore in no position to determine whether, as the parties claim, those reasons outweigh the erosion of public trust that may result from nullification of [the] judgment.” (*Id.* at p. 1009.)

The parties offer but one reason why their joint application complies with Code of Civil Procedure section 128(a)(8): “[B]ecause [defendant] will no longer own,

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<sup>2</sup> The parties request us to vacate rather than reverse the judgment. We prefer the latter term since that is the only relief to which defendant would have been entitled had it prevailed on appeal. (See *Hardisty, supra*, 124 Cal.App.4th at p. 1002, fn. 1.) The question is moot in light of the parties’ failure to make the requisite statutory showing.

manage, or operate the Park after closing of escrow, nonparties or the public should not have concerns about how the [defendant] will operate or staff the Park. In addition, because of the change in ownership, there is no likelihood that future licensing and/or disciplinary proceedings will arise against [defendant] which would adversely affect nonparties or the public.”

But why vacate the judgment? About this, the joint request is silent. It makes no effort to show that the trial court possibly or probably committed judicial error — in which case, a stipulated reversal may save time and money for the parties and the taxpayers. (See, e.g. *In re Rashad H.* (2000) 78 Cal.App.4th 376.) Lacking a legal or factual tether, we cannot engage in a merit-based evaluation of the appeal. (See *Hardisty*, *supra*, 124 Cal.App.4th 999.)

Moreover, the change in ownership alone is not sufficient to void any conceivable interest of nonparties or the public in the judgment. Indeed, the parties caution us: “The judgment may or may not have collateral estoppel in potential future litigation by other residents or homeowners, who were not judgment creditors, to the extent the judgment involved common areas of the Park. These potential third parties have not received notice of the motion, but there are no pending claims.” To us, this seems to be a reason to deny, rather than grant, the motion to vacate.

The parties assure us that vacatur will have no regulatory impact because of the change in ownership. “Plaintiffs contend that, as a State permit holder, Defendant may have been exposed to a State of California Housing and Community Development proceeding if the case had continued, but will not now because under the settlement, Defendant is no longer the Park owner or operator.”

Again, this assertion fails to assuage. Does defendant own or operate other mobilehome parks in the state? Will the same management structure remain in place?

We are left in the dark. Without any understanding of the nature of defendant's conduct which so despicable as to give rise to a punitive award, we cannot assess the impact on the type of misconduct the jury was resolved to deter. "A judgment should not be vacated if it would deny a licensing agency or the public the ability to discover bad acts involving matters of public concern." (*Hardisty, supra*, 124 Cal.App.4th at p. 1011.) "[B]ecause the parties have not explained the reason they seek reversal, they are in effect asking us to ignore the possibility that their purpose is to protect some of them from professional discipline or legal claims from persons who may have been injured by their conduct, reasons that certainly would not outweigh the erosion of public trust that may result from nullification of the judgment. The statutory presumption against stipulated reversal or vacation of judgments bars judicial indifference to such a possibility." (*Id.* at p. 1012.)

We have no reason to conclude that our denial of the motion will undo the parties' settlement agreement. The supporting documents in the record belie any concern that the settlement is contingent upon our court's assent to a reversal or vacatur of the judgment.

### III

Ordinarily, our decision to deny the joint request leaves the appeal unresolved. However, as we have noted, the parties' settlement provides for the settlement to go forward after the parties have jointly requested that the judgment be vacated; it does not impose a further condition that our court grants the request. In fact, the parties have jumped the gun and already secured a dismissal of the action in its entirety with prejudice.

Under these circumstances, it is this court's current intent, subject to further briefing, to dismiss the appeal as moot. (See *Rancho Solano Master Assn. v. Amos & Andrews, Inc.* (2002) 97 Cal.App.4th 681, 688 ["settlement terminate[s] all issues relating

to litigation”]; see also *Giles v. Horn* (2002) 100 Cal.App.4th 206, 226-227 [appeal dismissed where subsequent events render appeal moot].)

#### DISPOSITION

The parties’ motion to vacate the judgment is denied. The parties shall have 10 days from the date of this opinion to file letter briefs to explain why the appeal should not be dismissed in light of the settlement and the trial court’s dismissal of the action in its entirety on November 8, 2012.