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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PARK PLAZA II, LTD.,

Cross-complainant and Appellant,

v.

AMERICAN BANKERS INSURANCE  
COMPANY,

Cross-defendant and Respondent.

G049334

(Super. Ct. No. 30-2012-00587659)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gail Andrea Andler, Judge. Reversed pursuant to Code of Civil Procedure section 128, subdivision (a)(8).

David B. Dimitruk for Appellant.

Frank J. Coughlin, Kim-Thao Le; Carlton Fields Jordan Burt and Frank G. Burt for Respondent.

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Cross-complainant and appellant Park Plaza II, Ltd. (Park Plaza) appeals from the trial court's order awarding attorney fees to cross-defendant and respondent American Bankers Insurance Company (American Bankers). The trial court found American Bankers was the prevailing party under a contractual attorney fee provision because the court previously granted American Bankers' motion to dismiss Park Plaza's cross-complaint based on a forum selection clause included in the same contract. On an earlier appeal, we reversed the trial court's order dismissing Park Plaza's cross-complaint because we concluded the forum selection clause did not apply to Park Plaza's claims against American Bankers. (*Park Plaza II, Ltd. v. American Bankers Insurance Company* (Oct. 31, 2014, G048916) [nonpub. opn.]) Based on that earlier appeal, Park Plaza and American Bankers have filed a stipulated request to reverse the trial court's order awarding attorney fees.

Code of Civil Procedure section 128, subdivision (a)(8), prohibits us from reversing a trial court judgment or order based on the parties' stipulation *unless* we make the following findings: (1) "There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal"; (2) "The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment"; and (3) "The reasons of the parties for requesting reversal outweigh . . . the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).) Whether the facts support each of these findings must be determined on a "case-by-case basis." (*Union Bank of California v. Braille Inst. of America, Inc.* (2001) 92 Cal.App.4th 1324, 1329.)

We find the facts support each of these findings because our previous decision reversing the order dismissing Park Plaza's cross-complaint means American Bankers is no longer the prevailing party in this action and the order awarding attorney fees therefore is no longer effective. (*C9 Ventures v. SVC-West, L.P.* (2012)

202 Cal.App.4th 1483, 1488-1489 [order awarding attorney fees must be reversed when underlying judgment supporting award is reversed]; *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 613, fn. 4 [“the appellate court’s reversal of the judgment on the merits extinguishes the order on fees” even if the losing party failed to appeal fee award (original italics)].)

First, there is no reasonable possibility the interests of nonparties or the public will be adversely affected by the reversal. This appeal involves an attorney fee award between private parties. There are no nonparties who have an interest in the outcome of this appeal. As for the public, its interests are served by this court accepting the stipulated reversal. As explained above, a reversal is the required outcome on this appeal based on our earlier decision reversing the trial court’s order dismissing Park Plaza’s cross-complaint. Accepting the stipulated reversal will serve the public interest by preserving public resources that otherwise would have been expended on hearing oral argument and preparing a full opinion.

Second, there is no erosion of public trust based on the nullification of the trial court’s underlying attorney fee award because the law requires reversal of the award. The parties’ stipulation merely allows the reversal to occur on an expedited basis. (*In re Rashad H.* (2000) 78 Cal.App.4th 376, 381 (*Rashad H.*))

Third, the stipulated reversal has no impact on the incentive for pretrial settlements. The parties merely are agreeing to an outcome on this appeal that the law clearly mandates regarding an issue that has no impact on the merits of their underlying dispute. (See *Rashad H.*, *supra*, 78 Cal.App.4th at p. 381 [stipulated reversal does not reduce incentive for pretrial settlement because judgment would have been reversed based on judicial error].) If anything, accepting this stipulated reversal has a positive impact on the potential for a pretrial settlement because it encourages the parties to continue working together.

In closing, we note the parties request for a stipulated reversal does not comply with our “Internal Operating Practices and Procedures,” which requires the parties to make the request through a joint declaration of counsel providing all information necessary to approve a stipulated reversal and a certification that a copy of the stipulation for reversal and joint declaration have been delivered to the parties themselves. (Ct. App., Fourth Dist., Div. Three, Internal Operating Practices & Proc. § V, ¶ C, Stipulated Requests for Reversal.) We nonetheless grant the request and reverse the trial court’s fee award because the law mandates a reversal on the facts of this case.

DISPOSITION

Pursuant to the parties’ stipulation, the trial court’s order awarding attorney fees to American Bankers is reversed. The parties shall bear their own costs on appeal.

ARONSON, J.

WE CONCUR:

O’LEARY, P. J.

IKOLA, J.