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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

BRIAN DRISCOLL et al.,

Plaintiffs and Appellants,

v.

GRANITE ROCK COMPANY,

Defendant and Appellant.

H038272

(Santa Clara County

Super. Ct. No. CV103426)

Appellants Brian Driscoll, et al. were employees of respondent Granite Rock Company. The parties became embroiled in a wage and hour dispute. In 2011, the trial court entered a judgment in favor of respondent. Both parties filed an appeal from this judgment, appeal No. H037662. Thereafter, the trial court entered an order on respondent's motion for attorney fees, granting it in part, and denying it in part. On May 1, 2012, the trial court entered an amended judgment encompassing the attorney fees award. Appellants filed another appeal in this court from the order awarding attorney fees and the amended judgment, appeal No. H038272.

While the appeals were pending, the parties filed a joint "Application to Vacate Orders and Modify Amended Judgment Awarding Attorney's Fees." The parties jointly request that this court vacate the trial court's order awarding attorney fees, modify the portion of the amended judgment entered on May 1, 2012 to delete reference to attorney fees, modify the portion of the amended judgment entered on May 1, 2012 to delete

references to attorney fees and Labor Code section 218.5, dismiss the attorney fees appeal and related cross-appeal in appeal number H038272 as moot with each party to bear its own costs, and to affirm that appeals from the original judgment, H037662, are the operative notices of appeal going forward.

In effect, the parties have entered into a settlement which resolves the issues raised in appeal H038272, and are asking this court to grant a stipulated reversal of the amended judgment awarding attorney fees. The reason that the parties seek a stipulated reversal, as outlined in their motion, is that after the entry of the amended judgment, the California Supreme Court recently decided *Kirby v. Immoos Fire Protection Services* (2012) 53 Cal.4th 1244 (*Kirby*), which conclusively resolved the issues raised in appeal No. H038272. Both parties agree that the trial court's order is expressly contrary to the decision in *Kirby* and would be reversed should the appeal be fully heard. A stipulated reversal, they contend, will promote judicial economy.

The parties' motion supports the conclusion that a stipulated reversal is appropriate under the facts of this case and the law. (See Code Civ. Proc., § 128, subd. (a)(8).) For the reasons stated in the joint motion, including promoting judicial economy by deleting portions of the judgment which are now contrary to newly developed California Supreme Court precedent, the court finds that there is no possibility that the interests of nonparties or the public will be adversely affected by the reversal.

This court further finds that the parties grounds for requesting reversal are reasonable. Those grounds outweigh the erosion of public trust that may result from the nullification of a judgment, and outweigh the risk that the availability of a stipulated reversal will reduce the incentive for pretrial settlement. The parties do not seek reversal of the trial court's orders because they disagree with its decision, but rather because our Supreme Court resolved the issue contrary to the Superior Court's decision.

DISPOSITION

The orders awarding attorney fees dated March 26, 2012 and April 19, 2012 are reversed pursuant to the stipulation of the parties. The amended judgment entered on May 1, 2012 is amended to delete all references to the award of attorney fees and Labor Code section 218.5. Each party to bear its own attorney fees and costs on appeal.

The notices of appeal and cross-appeal filed from the original judgment in appeal number H037662 shall be the operative notices of appeal going forward.

The remittitur shall issue forthwith.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.