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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SKYWALKER 1979, LLC et al.,

Plaintiffs and Respondents,

v.

COACHILLIN HOLDINGS, LLC et al.,

Defendants and Appellants.

E080554

(Super.Ct.No. PSC1901476)

OPINION

APPEAL from the Superior Court of Riverside County. Kira L. Klatchko, Judge.

Reversed.

LiMandri & Jonna, Charles S. Limandri, Paul M. Jonna, Joshua A. Youngkin, and Jeffrey M. Trissell, for Defendants and Appellants.

Law Offices of Edward W. Freedman and Edward W. Freedman, for Plaintiffs and Respondents.

INTRODUCTION

Real estate developers, defendants and appellants Coachillin Holdings, LLC, (Coachillin) and Kenneth Dickerson (Dickerson) (collectively appellants) appeal from a judgment entered December 12, 2022, confirming an arbitration award. The underlying action concerned a commercial real estate transaction for vacant land that went awry when the anticipated electricity service to the property could not be provided in a timely manner. The arbitrator awarded the land purchasers, plaintiffs and respondents Skywalker 1979, LLC (Skywalker) and Victoria Crandall (collectively respondents) nearly \$1.6 million against Coachillin and Dickerson, jointly and severally. Before briefing was completed, the parties to this appeal filed a joint stipulated motion to reverse and vacate the judgment, which this court grants. For the reasons discussed below, the judgment is reversed, and the trial court is directed to dismiss the underlying action with prejudice.

PROCEDURAL HISTORY AND FACTS

In 2016, Coachillin purchased 150 plus acres in Desert Hot Springs. Dickerson is an owner and managing member of Coachillin. That same year, Coachillin began subdividing, selling vacant lots, and developing 150 plus acres into a cooperative master-planned business park. The lots were marketed by real estate brokers Desert Pacific Properties, and its real estate agents Paula Turner and Bruce Hutchison (collectively, Realtor DPP or nonparty defendants).

In July 2016, Skywalker and its principal owners and managing members Lawrence Crandall and his daughter, plaintiff and respondent Victoria Crandall, made a written offer to purchase “Lot 27” in the development for use in a cannabis business. Coachillin accepted the offer and the parties entered into a purchase agreement. Several addenda were signed over the next several years.

During the escrow that extended into January 2018, Coachillin provided Skywalker and other land purchasers with updates from Southern California Edison (SCE) that the purchasers interpreted to mean that the land would soon be provided with electricity. In March 2018, SCE determined that the existing electrical infrastructure was insufficient to electrify the development, and the earliest Lot 27 could receive power was June 2020. When Lot 27 was not electrified by June 2021, Skywalker allowed Coachillin to foreclose on Lot 27.

In February 2019, Skywalker and Crandall filed the original complaint naming Coachillin and Dickerson as defendants, along with Realtor DPP. The causes of action against Coachillin and Dickerson included allegations of fraud, misrepresentation, and breach of contract. The two causes of action against Realtor DPP alone were for breach of fiduciary duty and negligence and included a claim for punitive damages.

The purchase agreement between appellants and respondents, which did not include Realtor DPP, provided for arbitration. Following respondent's successful motion to compel arbitration, the parties entered into a stipulation for arbitration. The trial court issued a stay of the litigation, including against Realtor DPP, who was not a party to the arbitration.¹ In July 2022, the arbitrator issued its final award, finding that respondents were "overly optimistic" about their efforts to bring electricity to Lot 27 and the other parcels, but there was no "intent to deceive." However, the arbitrator found appellants had established negligent representation and breach of contract, and thus awarded damages, attorney fees, costs, and interest in the amount of \$1,552,760.83 against respondents jointly and severally.

On December 12, 2022, the trial court entered judgment confirming the arbitration award. This appeal followed.

On November 24, 2023, the parties entered into a confidential settlement of this action and appeal. A material term of that conditional settlement is the parties' joint motion, filed December 5, 2023, to vacate the judgment of December 12, 2022, pursuant to Code of Civil Procedure, section 128, subdivision (a)(8). The parties further filed a letter brief on February 9, 2023, in response to this court's order of January 31, 2024, discussing the interests of the nonparty defendants in the event the judgment were to be reversed or vacated.

¹ The trial court later granted Skywalker's motion to sever the claims against Realtor DPP so a final judgment could be entered against Coachillin on the final arbitration award. For that reason, Realtor DPP is referred to herein as "nonparty defendants."

DISCUSSION

This court cannot both dismiss an appeal and make an order reversing the trial court's judgment. A dismissal in any court terminates the court's jurisdiction to make any further order, and the effect of a dismissal of an appeal is to affirm the judgment or order appealed. (See *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134-135; *Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 387.)

In order to approve the parties' stipulated reversal, this court must find the following (Code Civ. Proc., § 128, subd. (a)(8)):

1. Is there a "reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal"? (Code Civ. Proc., § 128, subd. (a)(8)(A).)

2. Do the parties' reasons "for requesting reversal outweigh the erosion of public trust that may result from the nullification of [the] judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement"? (Code Civ. Proc., § 128, subd. (a)(8)(B).)

The parties represent in their joint letter brief that they provided to the nonparty defendants a copy of this court's order and, in a meet-and-confer call conducted on February 7, 2024, the nonparty defendants "clarified that they do not oppose vacatur of the underlying arbitration judgment." In addition, the interests of the public would not be adversely affected by reversing the trial court's confirmation of the arbitration award because this was a private arbitration conducted under the terms of a contract between the parties.

Further, the parties represent that Coachillin’s opening brief raised “substantial issues going to the justice of [the arbitrator’s] order such that a stipulated reversal without the incurrence of more attorneys’ fees is appropriate.” Any erosion of public trust is minimized because, again, this was a private arbitration under a contract between the parties only, and the public has little incentive to punish either party in a case where the arbitrator determined liability based on Coachillin’s “overly optimistic” projections about the capabilities of the third party electric utility that did not amount to “intent to deceive.” Further, stipulated reversal in this case does not reduce the incentive for pretrial settlement because the parties determined only in the midst of briefing on appeal that, given the amount of the arbitration award in relation to the found lack of “intent to deceive,” they might come to a mutually acceptable outcome without further litigation.

Thus, there is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal, and the reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of the judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement. (Code Civ. Proc., § 128, subd. (a)(8).)

DISPOSITION

The judgment is reversed. The trial court is directed to dismiss the underlying action with prejudice. The parties shall bear their own costs on appeal.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.