

Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.

Court of Appeal of California, First Appellate District, Division One

December 17, 2014, Opinion Filed

A135938, A136740

Reporter

2014 Cal. App. LEXIS 1155 *

STEPHENS & STEPHENS XII, LLC, Plaintiff and Appellant, v. FIREMAN'S FUND INSURANCE CO., et al., Defendants and Respondents.

Notice: Modification of opinion ([231 Cal.App.4th 1131](#); ___ Cal.Rptr.3d ___), upon denial of rehearing.

Prior History: [*1] Superior Court of San Francisco County, Nos. CGC10502891 and CGC10502891, Curtis E.A. Karnow, Judge.

[Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.](#), [231 Cal. App. 4th 1131](#), [180 Cal. Rptr. 3d 683](#), [2014 Cal. App. LEXIS 1073 \(Cal. App. 1st Dist., Nov. 24, 2014\)](#)

Opinion

THE COURT.—the opinion filed November 24, 2014, is modified by deleting footnote 12 [[231 Cal.App.4th 1146](#), advance report, footnote 12] and replacing it with the following and the petition for rehearing is DENIED:

We asked the parties for supplemental briefing on the propriety of a conditional judgment. In the supplemental briefing, both parties argue that such a judgment would be improper because Stephens XII recently sold the property. We disagree. Fireman's Fund's potential liability in the event of any such sale was not litigated below and, as a reviewing court, we must generally

disregard matters occurring after the entry of the appealed judgment. ([Truong v. Nguyen \(2007\) 156 Cal.App.4th 865, 882 \[67 Cal.Rptr. 3d 675\]](#).) Nor would any such sale moot the issues before us as Fireman's Fund contends. Regardless of any sale, the validity of the JNOV and the form of judgment remain live issues between the parties, [*2] and entry of a conditional judgment in favor of Stephens XII may affect other relief available to the parties, such as costs.

The modification does not change the appellate judgment. (*Cal Rules of Court, rule 8.264(c)(2)*.) Appellant's petition for rehearing is denied.

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