

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SHAPELL INDUSTRIES, INC., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

ALLAN STARK,

Real Party in Interest.

B181881

(Los Angeles County  
Super Ct. No. BC310102)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:\*

It is ordered that the opinion filed herein on September 19, 2005, be modified as follows:

On page 6, the first full paragraph, a footnote is added at the end of the sentence, “Shapell filed a reply to the return on August 3, 2005.” The footnote reads:

Petitioners notified us *for the first time* by letter dated September 30, 2005, and filed on October 3, 2005, that *on July 22, 2005*, the respondent trial court vacated its order of February 18, 2005, thus complying with the alternative writ issued by this court on June 10, 2005. Petitioners’ lengthy delay in notifying this court of that significant development was in direct

contravention of the portion of the alternative writ ordering that “In the event that respondent complies with alternative (a) of this writ at any time prior to September 15, 2005, petitioner shall *immediately* so advise this court by letter and file a certified copy of the order constituting such compliance as soon as one can be obtained.” (Italics added.)

We strongly caution petitioners against engaging in such conduct in the future, which would justify an award of sanctions against them were we inclined to impose them.

Ordinarily, we would dismiss a petition as moot if the trial court complies with the terms of the alternative writ. However, when a pending case involves a question of public interest that is likely to recur between the parties or others, “the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.” (*In re William M.* (1970) 3 Cal.3d 16, 23.) We find the issues in this case warrant our consideration. Further, given the conclusion that we reach, our failure to resolve the issue would result in a miscarriage of justice, since the outcome would be inconsistent with the conclusion we reach on the specified legal issue before us.

The new footnote will require the renumbering of all subsequent footnotes.

This modification does not constitute a change in the judgment.

The petition for rehearing is denied.

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\*EPSTEIN, P.J.

HASTINGS, J.

CURRY, J.