

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

LDS DEVELOPMENT, LLC,
substituted in place of Stonecrest Properties, LLC
and Stonecrest Properties, LLC,
Plaintiffs-Appellants,

v.

CITY OF EUGENE;
Developers Surety and Indemnity Company;
and The Real Estate Development Group, LLC,
Defendants-Respondents,
and

EUGENE WATER & ELECTRIC BOARD,
Defendant.

Lane County Circuit Court
161211098; A159608

Karsten H. Rasmussen, Judge.

Argued and submitted August 26, 2016.

Charles R. Markley argued the cause for appellant Stonecrest Properties, LLC. With him on the briefs were Ridgway K. Foley, Jr., and Green & Markley, P.C.

Christopher P. Koback and Hathaway Koback Connors LLP filed the briefs for appellant LDS Development, LLC.

Anne C. Davies argued the cause for respondent City of Eugene. With her on the brief was Ben Miller.

Julie A. Smith waived appearance for respondent Developers Surety and Indemnity Company.

No appearance for respondent The Real Estate Development Group, LLC.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Plaintiffs LDS Development, LLC (LDS), and Stonecrest Properties, LLC (Stonecrest), appeal from a supplemental judgment awarding attorney fees and costs to defendant City of Eugene. Both plaintiffs assign error to the trial court's determination that the city was entitled to attorney fees; Stonecrest also argues that the fees awarded were unreasonable. Our resolution of this appeal obviates the need to discuss those assignments of error in any detail.

The award of fees detailed in the supplemental judgment at issue in this appeal is premised on the trial court's resolution of plaintiffs' claims in a general judgment issued previously. In that general judgment, the trial court granted summary judgment in favor of the city on claims by LDS¹ against the city and two counterclaims by the city against LDS. The trial court also announced the city's entitlement to attorney fees, but did not then specify an amount. LDS appealed from the general judgment, and both LDS and Stonecrest appealed from the supplemental judgment. While the present appeal was pending, we reversed the general judgment on which the supplemental judgment was based, concluding that the trial court had erred in granting summary judgment in favor of the city on the city's counterclaims, but otherwise affirming. [*LDS Development, LLC v. City of Eugene*](#), 280 Or App 611, ___ P3d ___ (2016). Oral arguments in the present appeal were held before that opinion issued. At oral arguments, Stonecrest and the city agreed that a reversal of the general judgment would require a reversal of the supplemental judgment as well. We agree.

The general judgment reversed in *LDS Development, LLC*, 280 Or App at 614, granted summary judgment to the city on all remaining claims and counterclaims, and was the basis for the attorney fees awarded in the supplemental judgment. Our reversal of that general judgment requires the reversal and remand of the supplemental judgment

¹ Stonecrest initiated the action against the city, but was later substituted by LDS as plaintiff. The award of attorney fees was assessed against both LDS and Stonecrest in the supplemental judgment. Both LDS and Stonecrest appealed from the supplemental judgment and filed briefs assigning error to the award of attorney fees.

for any further proceedings regarding any prevailing party's entitlement to attorney fees. "When an appeal is taken from a judgment under ORS 19.205 to which an award of attorney fees or costs and disbursements relates[,] *** [i]f the appellate court reverses the judgment, the award of attorney fees or costs and disbursements shall be deemed reversed[.]" ORS 20.220(3)(a).

Reversed and remanded.