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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

FEI ENTERPRISES, INC., et
al.,

Plaintiffs and
Respondents,

v.

MASSACHUSETTS BAY
INSURANCE COMPANY,

Defendant and Appellant.

B329502

(Los Angeles County
Super. Ct. No.
19STCV03238)

APPEAL from an order of the Superior Court of Los Angeles County, Thomas D. Long, Judge. Reversed and remanded.

Lewis Brisbois Bisgaard & Smith, Rebecca R. Weinreich, Jordon E. Harriman, Jeffrey A. Miller, Brittany B. Sutton and Ernest Slome for Defendant and Appellant.

Law Office of Robert G. Klein and Robert G. Klein for Plaintiffs and Respondents.

* * * * *

A general contractor sued its surety for contract-based claims for the surety declining to contribute to a settlement offer the contractor wanted to make in a lawsuit related to the surety bond. After the trial court granted summary judgment in the surety's favor, the surety moved to recover its attorney fees. The trial court denied the motion on the grounds that the general contractor alleged only a breach of a 2015 contract between the parties and that the contract lacked an attorney fees provision. This was error because the general contractor's claim necessarily required reference to a 2010 contract between the parties, and that 2010 contract has an attorney fees provision. We accordingly reverse and remand for the trial court to determine whether allocation of fees is necessary and to determine the reasonable amount of fees to award.

FACTS AND PROCEDURAL BACKGROUND

I. The 2010 Indemnity Agreement

As a requirement of being awarded a contract to complete electrical work as part of the construction of a new middle school for the Torrance Unified School District (the District), FEI Enterprises, Inc. (FEI) was obligated to obtain a performance bond guaranteeing its performance under that bid contract. (Pub. Contract Code, § 10224.) FEI obtained a performance bond

in the amount of its contract—namely, \$2,298,000—from Massachusetts Bay Insurance Company (the surety). In exchange, FEI (1) paid the surety a premium and (2) executed an Agreement of Indemnity (the 2010 Agreement) with the surety.

As pertinent here, the 2010 Agreement:

- Granted the surety the right, but not the obligation, to take over—and complete—the contract with the District. Specifically, the 2010 Agreement “appoint[ed] the [s]urety as [FEI’s] attorney-in-fact with the power, authority and right to exercise all of [FEI’s] rights” to complete the contract; granted the surety the “right, but not the obligation, to take possession of the work under the contract [with the District in order] to complete [it]”; and granted the surety, should it not take over the District project, the “sole discretion[] to make or guarantee advances or loans” to FEI and “the absolute right to cease making or guaranteeing advances or loans at any time and without notice to [FEI].”

- Granted the surety the power and discretion to resolve any litigation arising out of the District contract. Specifically, the 2010 Agreement granted the surety “the exclusive right to adjust, settle, or compromise any claim, demand, suit or any other proceeding arising out of [the] bond against the [s]urety and/or [FEI],” and provided that any resulting disposition would be “binding and conclusive” upon FEI.

- Obligated FEI to repay the surety for any and all money the surety paid pursuant to the 2010 Agreement. Specifically, FEI agreed to reimburse the surety for any money the surety expended to complete the District contract, any money the surety loaned FEI, and any amount the surety paid to settle

litigation *and* to make that payment “as soon as liability . . . is asserted against the [s]urety.”

- Obligated FEI to reimburse the surety for amounts the surety expended in enforcing the 2010 Agreement itself. Specifically, section 2 of the 2010 Agreement obligates FEI to “exonerate, indemnify, and save harmless the [s]urety from and against every claim, demand, liability, cost, charge, suit, judgment and expense which the [s]urety may pay or incur, including, but not limited to, loss, interest, court costs and consultant and *attorney fees* . . . in defending any suit, action, mediation, arbitration or any other proceeding to obtain release from liability . . . or . . . *in enforcing any of the covenants, terms and conditions of this Agreement.*” (Italics added.)

II. The District Sues FEI and the Surety

Although FEI’s work on the District project was completed in 2012, the District in August 2015 sued FEI and the surety for breach of contract, breach of warranty, and enforcement of the bond; the District alleged that FEI’s work was “defective.” Although the District’s complaint alleged approximately \$2 million in damages, the District subsequently released a more detailed assessment of damages that exceeded \$3 million.

III. The 2015 Collateral Security Agreement

After the District filed suit, the surety demanded that FEI post collateral for the full amount of the \$2,298,000 performance bond. When FEI refused, the surety sued FEI in federal court. FEI and the surety settled that lawsuit by executing a Collateral Security Agreement on November 20, 2015 (the 2015 Agreement).

As pertinent here, the 2015 Agreement:

- Resolved the immediate dispute about posting collateral. Specifically, it obligated FEI's president to grant the surety a deed of trust in a parcel of property he personally owned.
- Limited the surety's discretion in defending against the District's lawsuit in order to guard against unnecessary defense strategies that might drive up litigation costs, which the 2010 contract obligated FEI to repay. Specifically, the surety "agree[d] to collaborate and coordinate with FEI in defending against the [District a]ction. FEI shall be responsible for taking all necessary actions in its defense of the [District a]ction. Because [the surety's] liability is co-extensive with that of FEI, . . . [the surety] will not take any actions that are duplicative of the actions being taken by FEI in its defense unless [the surety] believes it may need to do so to further its own defense. In that event, [the surety] shall notify FEI of any and all actions it believes must be taken in its defense. FEI reserves the right to object to and dispute the attorneys' fees and costs associated with any action undertaken by [the surety] in its defense."
- Reaffirmed the 2010 Agreement's general requirement that FEI repay the surety for all funds the surety advanced for settlement purposes, but refined that requirement by obligating FEI to repay the surety at a rate of "at least \$10,000 per month."
- Otherwise reaffirmed the validity and continued vitality of the 2010 Agreement. Specifically, (1) the preamble and "Recitals" section of the 2015 Agreement refer to the 2010 Agreement and cuts and pastes sections 2 and 3 of that agreement; (2) FEI in the "Agreement" section of the 2015 Agreement "admit[s its] obligations under the [2010 Agreement]";

and (3) the parties in the “Agreement” section of the 2015 Agreement stipulate that “[e]xcept as herein set forth, th[e 2015] Agreement in no way waives, releases or modifies the rights and obligations of [FEI and the surety] under the terms of the [2010 Agreement] on any past, present or future claims against any bonds issued by [the surety] or any of the other named sureties in the [2010 Agreement] for FEI as Principal.”

IV. The District’s Lawsuit Settles

The District and FEI engaged in settlement negotiations. At the start of those talks in November 2016, the District demanded \$500,000 to settle the case. In January 2017, FEI made a \$300,000 settlement offer. While that offer was still pending, FEI tried to assemble a \$400,000 offer, and asked the surety to contribute \$150,000 to fund that offer; the surety refused. The District thereafter rejected FEI’s \$300,000 offer. FEI was ultimately able to make a \$400,000 offer in March 2017 using money from different sources, but the District refused that offer as well. The District’s decision maker indicated he would never have settled the case for \$400,000 because the District’s damages “far exceeded” that amount.

In December 2018, the District accepted a \$1.35 million settlement, with FEI contributing \$300,000; FEI’s liability insurer contributing \$400,000; and the surety contributing \$650,000. Under the terms of the 2010 Agreement and 2015 Agreement, FEI was required to repay the surety for its \$650,000 contribution.

V. This Lawsuit

A. *The merits*

In January 2019, FEI sued the surety.¹ In the operative fourth amended complaint, FEI alleged two claims against the surety²—namely, (1) breach of the implied covenant of good faith and fair dealing and (2) breach of an implied-in-fact contract.

In its allegations supporting its claim for breach of the implied covenant, FEI (1) referred solely to the 2015 Agreement; (2) alleged that the 2015 Agreement contained an “implied promise” by the surety “to collaborate and coordinate with FEI to attempt to resolve the [District] action on terms favorable to FEI” as well as an “implied promise of good faith and fair dealing which required [the surety] to refrain from taking any action to unfairly interfere with [FEI’s] rights to receive the benefits of the [2015 Agreement]”; (3) alleged that the surety breached these implied promises “by refusing to contribute *any* money toward the settlement of the [District] action” because it declined to contribute \$150,000 toward the \$400,000 offer FEI wanted to make in January 2017; and (4) alleged that, because FEI was unable to make the \$400,000 offer in January 2017, the District case settled for a far higher amount—namely, \$1.35 million.

¹ The lawsuit was also brought by FEI’s president (individually and as trustee of two trusts) and his wife, but we refer to those plaintiffs collectively as FEI for the sake of simplicity.

² FEI also sued The Hanover Insurance Company, of which the surety is a subsidiary, but the trial court dismissed that entity on summary judgment and FEI did not challenge that ruling. FEI also sued its attorneys for malpractice, but settled that claim.

In its allegations supporting its implied-in-fact contract claim, FEI (1) alleged that the surety's willingness to advance money in support of a settlement on a different performance bond in 2014 constituted a "course of conduct and a usage of trade" that superseded the plain terms of the subsequent 2015 Agreement and thereby obligated the surety to "advance" whatever "money" FEI demanded in support of whatever settlement offers FEI chose to make; and (2) alleged that the surety's failure to do so resulted in the more expensive \$1.35 million settlement.

In November 2021, the surety moved for summary judgment on the ground that FEI could not establish causation or damages as a matter of law because the undisputed facts established that the District never would have accepted a \$400,000 settlement offer, such that the surety's failure to advance \$150,000 in support of that offer did not harm FEI. After briefing and a hearing, the trial court in March 2022 granted summary judgment due to lack of any evidence of causation or damages. In the course of its ruling, the court noted that, according to the parties' undisputed facts, the 2015 Agreement had "incorporated the terms" of the 2010 Agreement.

We affirmed the judgment for the surety in a nonpublished opinion. (*FEI Enterprises, Inc. v. Massachusetts Bay Insurance Company* (Jan. 25, 2024, B323740) [nonpub. opn.] .)

B. Attorney fees

In November 2022, the surety filed a motion seeking \$413,556.51 in attorney fees on the grounds that FEI's claims were "based on" *both* the 2010 Agreement and 2015 Agreement, and that section 2 of the 2010 Agreement obligated FEI to "indemnify" the surety for the "attorney fees" it incurred in

“enforcing” the 2010 Agreement. After briefing and a hearing, the trial court in April 2023 denied the surety’s motion for two reasons. First, the court reasoned that FEI’s claims were based entirely on the 2015 Agreement (which does not contain an attorney fees provision that might apply here), and that it was inappropriate to look to the 2010 Agreement’s attorney fee provision because (1) the two agreements were *not* part of the “same transaction,” so Civil Code section 1642 provided no justification for reading the two agreements as a single contract; (2) the 2015 Agreement did not “expressly incorporate” the 2010 Agreement because the 2015 Agreement referred to the 2010 Agreement’s attorney fee clause only in the “Recitals” section, which just provided “factual background” (as opposed to binding obligations); and (3) the terms of the 2010 Agreement were not “material” to the “resolution” of FEI’s claims because FEI’s claims were resolved on the basis of lack of causation and damages, elements “premised entirely on the terms of the” 2015 Agreement. Second, the court reasoned that, even if the 2010 Agreement’s attorney fee provision *could be applied*, it *would not apply* to this dispute because “neither party was seeking to enforce the terms of the [2010] Agreement.”

VI. Appeal

The surety filed this timely appeal of the order denying its motion for attorney fees.

DISCUSSION

The surety argues that the trial court erred in denying its motion for attorney fees. Although the award of attorney fees is reviewed for an abuse of discretion, we independently review any subsidiary legal issues (including the meaning of statutes and contracts) as well as the subsidiary application of contractual or

statutory terms to undisputed facts. (*Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 751 (*Mountain Air*); *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 894; *Khan v. Shim* (2016) 7 Cal.App.5th 49, 55; *Reyes v. Beneficial State Bank* (2022) 76 Cal.App.5th 596, 604-605.)

California follows the so-called “American rule” when it comes to attorney fees: Parties in civil litigation bear their own unless a contract or statute provides otherwise. (Code Civ. Proc., §§ 1021, 1032, subd. (b), 1033.5, subd. (a)(10); *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606 (*Santisas*); *Mountain Air, supra*, 3 Cal.5th at p. 751.) Thus, “[p]arties may validly agree [by contract] that the prevailing party will be awarded attorney fees incurred in any litigation between themselves, whether such litigation sounds in tort or in contract.” (*Santisas*, at p. 608; *Mountain Air*, at p. 751, quoting *Xuereb v. Marcus & Millichap, Inc.* (1992) 3 Cal.App.4th 1338, 1341.) In determining whether a contractual attorney fee provision applies, we start with the language of the provision, which typically controls but must be “understood with reference to the circumstances under which it was made and the matter to which it relates.” (*Mountain Air*, at pp. 752, 760; *Rideau v. Stewart Title of California, Inc.* (2015) 235 Cal.App.4th 1286, 1301.)

I. Analysis

Although FEI crafted the allegations in the operative complaint underlying its claim for breach of the implied covenant of good faith and fair dealing to refer *solely* to the 2015 Agreement, we conclude that the surety is entitled to pursue

relief under the attorney fee provision in *the 2010 Agreement*.³
We reach this conclusion for two reasons.

First, FEI’s claim for breach of the implied covenant implicates the 2010 Agreement containing the attorney fees provision. That claim alleges that the surety breached a duty to contribute funds toward the \$400,000 settlement offer FEI sought to make in January 2017. FEI alleges two bases for this duty—namely, (1) the language in the 2015 Agreement that obligates the surety to “collaborate and coordinate with FEI to attempt to resolve the [District] action on terms favorable to FEI,”⁴ and (2) an “implied promise” “to refrain from taking any action to unfairly interfere with [FEI’s] rights to receive the benefits of the

³ Because our analysis relies solely on the terms of the attorney fee provision itself, we have no occasion to analyze whether Civil Code section 1717 also provides a basis for a fee award. That statute constitutes an additional, supplemental basis for awarding “reasonable attorney fees” when a contract “specifically provides that attorney’s fees and costs . . . shall be awarded.” (*Ibid.*) The relief available under Civil Code section 1717 is simultaneously narrower and broader than the relief available pursuant solely to the terms of the parties’ contract: The statute is narrower because it only applies in “an[] action on a contract” and limits the recovery of fees to those “incurred to enforce that contract,” even when parties incur fees litigating other noncontract-based claims (*Id.*, subds. (a) & (c)), and it is broader because it can authorize an award to a litigant who is otherwise *not* entitled to attorney fees under the plain text of the contract (*Santisas, supra*, 17 Cal.4th at pp. 610-611).

⁴ We infer that FEI labels this duty “implied” because the only *express* duty to “collaborate and coordinate” in the 2015 Agreement pertains to avoiding unnecessary litigation costs—not resolving that litigation on terms favorable to FEI.

[2015 Agreement].” But the existence of any duty by the surety to contribute funds toward a settlement—and whether that duty has been breached by the surety’s conduct in the District’s action—can only be decided by reference to the 2010 Agreement, which explicitly grants the surety the “sole discretion[] to make or guarantee advances or loans,” “the absolute right to cease making or guaranteeing advances or loans at any time and without notice to [FEI],” and “the exclusive right to . . . settle . . . any claim.”

Where, as here, litigation of a plaintiff’s contract-based claim cannot be resolved by reference to one contract alone and hence “necessarily implicate[s]” the meaning of language in a different contract, *both* contracts apply—even if the plaintiff tries to dodge that reality by not citing the second contract. (*Mountain Air, supra*, 3 Cal.5th at pp. 758-759; *Aetna Casualty & Surety Co. v. Certain Underwriters* (1976) 56 Cal.App.3d 791, 799-800; *Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 54 (*Shaw*) [second contract implicated if first contract “guide[s] the reader” to it]; cf. *Brittalia Ventures v. Stuke Nursery Co., Inc.* (2007) 153 Cal.App.4th 17, 28-31 [where second contract is *not* implicated by plaintiff’s claim, fee provision in second contract not implicated]; accord, *Dell Merk, Inc. v. Franzia* (2005) 132 Cal.App.4th 443, 456 [when reference to second contract is “necessar[y]” to “interpret[]” alleged contract, the claim is “on the [second] contract” for purposes of Civil Code section 1717]; *Shadoan v. World Savings & Loan Assn.* (1990) 219 Cal.App.3d 97, 107-108 [same]; *Westwood Homes, Inc. v. AGCP II Villa Salerno Member, LLC* (2021) 65 Cal.App.5th 922, 927 [same].) Not only has FEI *implicitly* made the 2010 Agreement relevant by the very nature of its claim in this case, but FEI has gone a

step further by *explicitly* “admit[ting its] obligations under the [2010] Agreement” in the 2015 Agreement and *explicitly* providing in the 2015 Agreement that the parties have not “waive[d], release[d] or modifie[d]” their “rights and obligations” under the 2010 Agreement “[e]xcept as” set forth in the 2015 Agreement. Because the express “collaborate and coordinate” language does not explicitly override the surety’s discretion to loan funds or settle claims and because an “implied promise” cannot override an express promise (*Falkowski v. Imation Corp.* (2005) 132 Cal.App.4th 499, 518), litigation of FEI’s implied covenant claim necessarily implicates—and renders applicable—the 2010 Agreement no matter how that ambiguity is resolved. (*Mountain Air*, at p. 759 [potentially conflicting agreements are both implicated where “it is unclear how a court could determine the parties’ obligations . . . without construing . . . inherently conflicting agreements together”].)

Second, the surety’s demand for attorney fees fits within the scope of the attorney fee provision in the 2010 Agreement. That provision obligates FEI to “indemnify[] and save harmless” the surety “from and against every . . . cost . . . and expense which the [s]urety may pay or incur, including . . . attorney fees . . . in enforcing any of the covenants, terms and conditions of” the 2010 Agreement. In asserting its breach of implied covenant claim against the surety, FEI sought to avoid repaying the surety for its \$650,000 contribution to the \$1.35 million settlement with the District, which FEI was otherwise obligated to repay under the 2010 Agreement as part of its duty to repay all amounts the surety expended to resolve litigation arising out of the performance bond. By *opposing* FEI’s claim, the surety necessarily sought to “enforc[e]” the “covenants, terms and

conditions” of the 2010 Agreement. (See *Yoon v. CAM IX Trust* (2021) 60 Cal.App.5th 388, 392 [where a party seeks to “avoid” its contractual obligations, the opposing party is “enforcing” those obligations].)

II. Contrary Arguments

A. *Trial court’s further reasons*

In its order denying the surety’s attorney fees motion, the trial court asserted two further arguments that we have not already addressed in support of its ruling that the 2010 Agreement was inapplicable.

First, the trial court reasoned that the 2010 Agreement was not relevant because the 2015 Agreement did not “expressly incorporate” the earlier agreement. We disagree for two reasons. For starters, the 2015 Agreement *did* expressly incorporate the 2010 Agreement because, in the “Agreement” section of the 2015 Agreement, (1) FEI “admit[ted]” its “obligations” under the 2010 Agreement; and (2) the parties stipulated that their new agreement did not “waive[], release[] or modif[y]” the 2010 Agreement “[e]xcept as herein set forth”—which would be nonsensical unless the 2010 Agreement remained in force. More to the point, *express* incorporation of a prior agreement is not required if reference to the prior agreement is necessary to interpret a claim made under a current agreement. (*R.W.L. Enterprises v. Oldcastle, Inc.* (2017) 17 Cal.App.5th 1019, 1027-1028 [express incorporation not required if the current document ““guide[s] the reader to the incorporated documented””]); *Shaw, supra*, 58 Cal.App.4th at p. 54 [same]; accord, *Cadigan v. American Trust Co.* (1955) 131 Cal.App.2d 780, 786-787 [same, when assessing whether two agreements should be read together under Civil Code section 1642].)

Second, the trial court reasoned that the 2010 Agreement was not relevant because the surety's summary judgment motion was ultimately *resolved* on the elements of causation and damages. Because the 2010 Agreement was only relevant to interpret the other elements of the scope of the surety's duty to make loans and whether the surety breached that duty, the trial court further reasoned, interpreting the 2010 Agreement in order to understand the 2015 Agreement was ultimately unnecessary. Again, we disagree. What matters is which contracts are necessary for the plaintiff to prevail on its claim, not the happenstance of the rationale the trial court ultimately uses to rule on that claim. (*Mountain Air, supra*, 3 Cal.5th at pp. 760-761 [looking to "the pleaded theories of recovery" and "the theories asserted"]; *Mepco Services, Inc. v. Saddleback Valley Unified School Dist.* (2010) 189 Cal.App.4th 1027, 1047 [looking to "the pleadings" to assess whether a party was trying to enforce a bond "[r]ather than look[ing] to the jury's verdict".) Here, FEI could prevail on its breach of implied covenant claim only if it established that the surety had a duty to loan it money, which could only be established by reference to *both* the 2010 Agreement and 2015 Agreement.

Because our analysis does not turn on the application of Civil Code section 1642 or a finding that FEI is estopped from denying the relevance of the 2010 Agreement, we need not confront the trial court's rationales grounded in those arguments as they are independent of our analysis. (See *U.S. Bank National Assn. v. Yashouafar* (2014) 232 Cal.App.4th 639, 645-646 [in conducting de novo review, appellate court not bound by trial court's construction of contract]; *Rodas v. Spiegel* (2001) 87

Cal.App.4th 513, 517 [in conducting de novo review, appellate court not bound by trial court's construction of complaint].)

B. FEI's further arguments

FEI makes what boils down to three further arguments.

First, it argues that its operative complaint only cites the 2015 Agreement. This is true but, as we have explained above, not dispositive.

Second, FEI argues the 2010 Agreement is not implicated because the surety is asserting that agreement solely as a “defense” to FEI’s breach of implied covenant claim. *Mountain Air, supra*, 3 Cal.5th at pp. 753-754, FEI continues, holds that a litigant’s act in raising a different contract as a defense does not entitle a litigant to fees under that contract. We reject this argument because the 2010 Agreement is not being raised solely as a defense; instead, it is necessary to refer to the 2010 Agreement to interpret and understand the duties at issue under the 2015 Agreement—and *Mountain Air* upheld the propriety of fees under the prior agreement in this exact context. (*Id.* at pp. 757-758.)

Third and lastly, FEI argues that the surety’s demand for attorney fees falls outside the scope of the attorney fee provision in the 2010 Agreement because that provision uses words like “indemnify” and “save harmless,” language that typically authorizes only those attorney fees incurred when litigating against *third parties*—not litigation between the parties to the contract containing the provision. (See *Carr Enterprises, Inc. v. City of Chowchilla* (2008) 166 Cal.App.4th 14, 20; *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 600-602.) We reject this argument. Although the provision here uses the words “indemnify” and “save harmless,” the provision also

explicitly states that the surety may obtain its “attorney fees” when seeking to “enforce[]” “the covenants, terms, and conditions of this Agreement.” Because the 2010 Agreement can only be enforced *against parties to that agreement*, the Agreement on its face refutes FEI’s argument that the provision applies only to fees incurred when litigating against third parties. (Cf. *Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 970 [attorney fee provision “deal[ing]” solely “with tort claims of third parties” provides no basis for attorney fee award between the parties].)

III. Remedy on Remand

In light of our conclusion that the attorney fee provision in the 2010 Agreement provides a legal basis for an award of attorney fees to the surety because it prevailed on the breach of implied covenant claim, two issues remain for the trial court on remand:⁵ (1) deciding whether to allocate attorney fees the surety incurred when enforcing the 2010 Agreement against FEI’s claim for breach of an implied-in-fact contract and (2) fixing the amount of reasonable fees to be awarded. Although the surety invites *us* to fix fees here, these are tasks best presented to the trial court in the first instance. (*Cruz v. Fusion Buffet, Inc.* (2020) 57 Cal.App.5th 221, 235 [allocation]; *In re Marriage of Morton* (2018) 27 Cal.App.5th 1025, 1054 [amount].)

⁵ Because the parties do not on appeal renew many of the other arguments addressed below, we consider them waived.

DISPOSITION

The order denying the surety's motion for attorney fees is reversed. The matter is remanded to the trial court to assess whether allocation is necessary and to fix the amount of fees. The surety is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST