

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-18-00837-CV**

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**City of Lakeway, Texas, Appellant**

**v.**

**Cherry Knoll, LLC, Appellee**

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**FROM THE 353RD DISTRICT COURT OF TRAVIS COUNTY  
NO. D-1-GN-17-002896, THE HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

We previously abated this appeal pending resolution of parallel federal litigation. *See City of Lakeway v. Cherry Knoll, LLC*, No. 03-18-00837-CV, 2019 WL 3807873, at \*1 (Tex. App.—Austin Aug. 14, 2019, no pet.) (mem. op.) (per curiam). Cherry Knoll subsequently filed a status report advising us that the parties have settled their differences and agreed to dismiss their respective claims “if and when the case is remanded.” The settlement agreement does not affect Cherry Knoll’s crossclaims against HDR Engineering.

This Court subsequently received a motion from HDR Engineering, a party to the litigation below but not to this appeal, asking us to dismiss this appeal as moot. At our request, both parties filed supplemental briefing. The City of Lakeway agrees with HDR that the appeal is moot and “should therefore be dismissed.” Cherry Knoll responds that we should retain the appeal on the docket pending resolution of its federal claims against HDR. In the alternative,

Cherry Knoll has filed an unopposed motion to dismiss and remand to the district court with instructions to stay further proceedings pending resolution of the federal litigation.

We will treat the City's supplemental brief as a motion to dismiss. *See* Tex. R. App. P. 42.1(a)(1) (providing that appellate courts may dismiss on appellant's motion). We grant the motion and dismiss the appeal. We deny Cherry Knoll's alternative motion. Any request to stay further proceedings should be presented first to the district court.

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Edward Smith, Justice

Before Chief Justice Rose, Justices Kelly and Smith

Dismissed on Appellant's Motion

Filed: July 10, 2020