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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WOLFGANG REILE,

Plaintiff and Appellant,

v.

LIVE STORES, INC. et al.,

Defendants and Respondents.

D067638

(Super. Ct. Nos.

37-2011-00097722-CU-BC-CTL;

37-2013-00072527-CU-BC-CTL)

APPEAL from an order of the Superior Court of San Diego County, John S.

Meyer, Judge. Affirmed.

Sandler, Lasry, Laube, Byer & Valdez and Thomas R. Laube for Plaintiff and Appellant.

The Law Office of Geoffrey C. Chackel and Geoffrey C. Chackel; Duckor Spradling Metzger & Wynne and Robert M. Shaughnessy, for Defendants and Respondents.

Wolfgang Reile appeals the trial court's order awarding \$20,070 in attorney fees to respondents Live Stores, Inc, Mega Super Stores, Inc. and Christopher Williams in a

previous case in which respondents prevailed on their demurrer, and we affirmed on appeal. Reile's contention is that "if [he] prevails in the companion appeal (D066758)<sup>1</sup> the order awarding attorneys' fees and costs should also be reversed." We affirm.

#### DISCUSSION

Reile does not dispute the amount of the attorney fees award or its legal basis; therefore, we have no occasion to address those issues. He relies on this court's opinion in *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1284, in which we reiterated that an order awarding costs falls with a reversal of the judgment. (*Id.* at p. 1284.) In light of the fact that we did not reverse the trial court's decision to sustain the demurrer in Reile's previous appeal, we have no basis for reversing the attorney fees award here.

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<sup>1</sup> On our own motion we take judicial notice of the files in the companion case. (*Reile v. Live Stores, Inc.* (Oct. 23, 2015, D066758) [nonpub. opn.].) (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).) Although that opinion was not published, and thus has no precedential value, we mention it because it states reasons for a decision affecting the same defendant in another action (Cal. Rules of Court, rule 8.1115(b)(2)), and involves the same facts.

DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

McINTYRE, Acting P. J.

AARON, J.