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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CURRENCY CORPORATION,

Plaintiff and Appellant,

v.

WERTHEIM, LLC, et al.,

Defendants and Respondents.

B244988

(Los Angeles County  
Super. Ct. No. BC417798)

APPEAL from an order of the Superior Court of Los Angeles County. Michael P. Linfield, Judge. Reversed.

Mayer Brown, Michael L. Resch and Donald M. Falk for Plaintiff and Appellant.

Law Offices of Robert S. Besser, Robert S. Besser; Lauren M. Greene for  
Defendants and Respondents.

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Appellant Currency Corporation made scores of small loans to a borrower over the course of a dozen years, each memorialized by a note and secured by the borrower's income. One note, in the amount of \$6,500 and dated June 2, 2006 (the June 2006 note), contained an arbitration provision and a broad release of all claims the borrower might have against Currency on any other note. The borrower and her assignee, respondents here, instituted arbitration proceedings against Currency pursuant to the terms of the June 2006 note. After determining that the arbitration provision in the June 2006 note constituted an agreement to arbitrate any dispute relating to any of the notes, the arbitrators awarded respondents \$672,122. On April 3, 2012, the superior court confirmed the award, and Currency appealed.

During the pendency of the appeal respondents filed a motion in the trial court seeking attorney's fees as the prevailing parties under a contractual provision in the June 2006 note and Civil Code section 1717. The trial court granted the motion and awarded respondents \$123,713.75 in fees, incorporating the award in the amended judgment confirming the arbitration award.

April 26, 2013, Currency filed the instant appeal, separately challenging the attorney fee award under Code of Civil Procedure section 904.1, subdivision (a)(2).

On September 30, 2013, we reversed the trial court's order confirming the \$672,122 arbitration award, holding the arbitration provision in the June 2006 note pertained only to that note. (*Currency Corp. v. Wertheim* (Sept. 30, 2013, B240444) [nonpub. opn.] )

All briefs in this appeal were filed before our prior ruling. Currency's only pertinent argument now is that if the order confirming the arbitration award is reversed in Case No. B240444, the attorney fee award should be reversed too, as respondents would not then be prevailing parties under Civil Code section 1717. Respondents do not disagree, but argue this appeal is moot in any case, and frivolous and deserving of sanctions, because our ruling in Case No. B240444 will determine the fate of the attorney fees.

We assume, with respondents, that our ruling in Case No. B240444 reversing the arbitration award resulted in reversal of the judgment against Currency, including the incorporated attorney fee award. But no party has contacted us to take this appeal off calendar or otherwise informed us of the status of the fee award, so in an abundance of caution we will deal with Currency's appeal of the award on its merits.

Civil Code section 1717 provides that where a contract term provides one party may obtain attorney fees if it prevails in litigation on the contract, the provision is reciprocal, and the other party may obtain fees if it prevails. We agree with the parties that because we reversed the arbitration award in Case No. B240444, respondents are no longer prevailing parties, and the attorney fee award must be reversed as well.

### **DISPOSITION**

The trial court order granting respondents attorney fees is reversed. Each side is to bear its own costs.

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CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

MILLER, J.<sup>\*</sup>

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<sup>\*</sup> Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.