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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CHERYL A. MESTLER

Plaintiff and Appellant,

v.

RICHARD JOHNSON et. al.,

Defendants and Respondents,

D058869

(Super. Ct. No. 37-2008-00089878-
CU-CO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County,

Ronald L. Styn, Judge. Affirmed.

Cheryl A. Mestler appeals from a judgment in favor of defendants RB Trails Homeowners Association (Association) and Richard and Erin Johnson (the Johnsons, together with the Association, Defendants) after the trial court granted Defendants' Code of Civil Procedure section 631.8 motions. She also appeals from a postjudgment order on Defendants' motions for attorney fees.

Defendants, in their respondent's briefs, and the Association in a separate motion, seek to dismiss Mestler's appeal from the granting of the Code of Civil

Procedure section 631.8 motions as untimely. We conclude the appeal was timely and, as we shall discuss, reject Mestler's arguments and affirm the judgment and attorney fee award.

FACTUAL AND PROCEDURAL BACKGROUND

The Association is a common interest development located in the Rancho Bernardo community of San Diego. The Association is governed by several documents including a "Corrected 'Second Amendment to and Restatement of Declaration of Restrictions for R. B. Trails Homeowners Association' " (CC&Rs), and the "Trails Guidelines include: Architectural, Landform & Landscape design criteria, special criteria for 'environmentally sensitive' lots, & highlighted C.C. & R.'s" (Architectural Guidelines). The CC&Rs and Architectural Guidelines govern the architectural review process for construction or modification of improvements on lots within the Association.

The Association is also governed by a board of directors that duly appointed an Architectural Review Board (ARC) to review proposed building plans to determine their compliance with the CC&Rs. If a homeowner disagrees with a decision by the ARC, the homeowner may appeal it to the board of directors.

Mestler and the Johnsons owned homes in the Association. In 2007, a fire destroyed many residences in the Association, including the Johnsons' home. The Association prepared and adopted a document entitled "Action by Unanimous Written Consent of Board of Directors: Reconstruction Process and Guidelines" (Reconstruction Guidelines) to provide a procedure by which the Association

reviewed applications and plans for home reconstruction following the fire. Paul Bishop, an architect, participated in the drafting of the Reconstruction Guidelines. The Association also retained Bishop as a consultant to aid the ARC in reviewing architectural applications.

The Johnsons submitted preliminary plans to the ARC for a single-story home. These plans were reviewed by the ARC and Bishop. Bishop recommended that the ARC approve the Johnsons' plans, finding that the proposed home was consistent with the CC&Rs, the Architectural Guidelines, and the Reconstruction Guidelines. After a public meeting, the ARC granted the Johnsons' plans preliminary approval.

Thereafter, Mestler wrote to the ARC complaining about the Johnsons' proposed home (the July Letter). In the July Letter, Mestler stated that her "fundamental objection" to the proposed design was that the home would substantially interfere with her view. She also complained about the grading done on the Johnsons' property and claimed that the proposed home had a larger footprint, a steeper roof slope and was moved substantially forward. At a special meeting, the ARC heard and considered Mestler's objections, but found that the Johnsons' plans did not violate the CC&Rs. At another public meeting, Mestler and her attorney made a presentation against the Johnsons' plans. The ARC again determined that the Johnsons' plans did not violate the CC&Rs and granted the plans final approval.

Mestler sued Defendants, seeking declaratory relief based on a dispute between the parties under the CC&Rs and the Reconstruction Guidelines. She also claimed breach of the CC&Rs by the Johnsons and breach of fiduciary duty by the Association. The ARC upheld its decision to approve the Johnsons' plans after another public meeting. Thereafter, the Association requested that Mestler provide a concise statement of issues and their bases for her appeal to the board of directors. Mestler responded in writing (the Appeal Letter). She claimed that she set forth the full nature of the dispute in her court documents, but that she was appealing the final approval of the Johnsons' home on the "fundamental grounds" that the new design violated the governing documents because it was "almost twice as large as the old residence," as she made clear in her July Letter.

The board of directors reviewed Mestler's appeal de novo at a recorded hearing. Because Mestler did not appear at the hearing, it used her Appeal Letter as the basis for the appeal. The board of directors sent Mestler a letter finding that the Johnsons' plans were consistent with the governing documents.

Following several amendments to the complaint, the court held a bench trial where it heard testimony and conducted a site visit of the Mestler and Johnson properties. Defendants brought motions to dismiss under Code of Civil Procedure section 631.8. After weighing the evidence and judging the credibility of the witnesses, the trial court ruled that Mestler failed to carry her burden of proof. It issued a written statement of decision and entered judgment in Defendants' favor.

DISCUSSION

I. Request for Partial Dismissal

A. Facts

On July 19, 2010, the court clerk filed and served on all parties its amended statement of decision. (All further date references are to 2010.) The amended statement of decision stated, "Any issues regarding attorney's fees will be deferred until Post-Judgment Motions." On September 9, the court entered an amended judgment in favor of Defendants that stated, "Pursuant to its application for award of attorneys fees as the prevailing parties, [Defendants] shall be entitled to attorneys fees in the sum of \$___." The following day, the court clerk served the amended judgment on all parties.

On October 8, the trial court awarded Defendants their costs and attorney fees of \$162,276.50 to the Association and \$243,294.40 to the Johnsons. On October 15, the Association served a notice of entry of judgment and the September 9 amended judgment, with the interlineated fee and cost awards. On December 14, Mestler filed a notice of appeal from the "10-15-2010" judgment.

B. Analysis

Defendants assert the notice of appeal is timely only as to the interlineation of the award of attorney fees and costs into the amended judgment dated October 8. Accordingly, they seek to dismiss the balance of the appeal. In support of its motion for a partial dismissal, the Association requests that we take judicial notice of Mestler's notice of appeal, the September 9 amended judgment and the October

15 notice of entry of judgment. The request is denied as these documents are already part of the record on appeal.

The timely filing of a notice of appeal is a jurisdictional prerequisite to the appellate court's power to entertain the appeal. (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.) If the appeal is untimely, this court has no jurisdiction to consider it, and it must be dismissed. (Cal. Rules of Court, rule 8.104(b).) A notice of appeal must be filed on or before the earliest of (1) 60 days after the superior court clerk serves the notice of entry of judgment or a file-stamped copy of the judgment, showing the date either was served, (2) 60 days after the date of service of the notice of entry of judgment or a file-stamped copy of the judgment, or (3) 180 days after the date of entry of the judgment. (Cal. Rules of Court, rule 8.104(a).) Under this rule, Mestler was obliged to notice her appeal from the date the amended judgment was served on September 10 within a 60-day period ending on November 9, but no notice of appeal was filed until December 14. (Cal. Rules of Court, rule 8.104(a)(1)(A).)

Accordingly, Mestler's appeal from the amended judgment entered on September 9 is untimely unless the October amended judgment "effect[ed] a substantial or material change or involve[d] the exercise of a judicial function or judicial discretion. [Citations.]" (*Nestlé Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1109.) For example, a judgment is final and appealable if all that remains is a determination of the amount of costs and attorney fees. (*Torres v. City of San Diego* (2007) 154 Cal.App.4th 214, 221–224.)

Here, Defendants sought an award of attorney fees under Civil Code section 1354 or as sanctions under Code of Civil Procedure section 128.7. (Undesignated statutory references are to the Civil Code.) The amended statement of decision issued July 19 makes clear that the trial court was not awarding attorney fees and that the decision on any attorney fee award would be made per postjudgment motion of the parties. While the September 9 amended judgment *appears* to award attorney fees to the Defendants, this language must be considered along with the announcement of the court in the amended statement of decision that it would decide the attorney fees issue after considering the parties' postjudgment motions.

Properly interpreted, the court's September 9 amended judgment put the parties on notice that Defendants were the prevailing parties and would be entitled to an attorney fee award of zero or some other amount, depending on what the court found when ruling on the attorney fee motions. This interpretation is supported by the fact the trial court analyzed Defendants' right to attorney fees under section 1354 for the first time when it ruled on Defendants' postjudgment motions for an award of attorney fees. We conclude that the October amended judgment deciding that Defendants were entitled to an award of attorney fees under section 1354 and then awarding over \$405,000 in attorney fees was a substantial modification to the September 9 amended judgment that triggered a new appeals period. Accordingly, Mestler's appeal from the granting of Defendants' Code of Civil Procedure section 631.8 motions is timely.

II. *Grant of Code of Civil Procedure section 631.8 Motions*

A. Standards of Review

In a nonjury trial, a party may move for judgment at the conclusion of the other party's presentation of evidence. (Code Civ. Proc., § 631.8.) The motion serves the same purpose as a motion for nonsuit, enabling the court to dispense with the need for a defendant to produce evidence if, after the court weighs the plaintiff's evidence, it is persuaded that the plaintiff has failed to sustain its burden of proof. (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 549–550.) In deciding the motion, the court may weigh the evidence, make findings of fact, and render judgment in favor of the moving party, or decline to render judgment until the close of all evidence. If the court renders judgment, a statement of decision is required. (Code Civ. Proc., § 631.8, subd. (a).)

We review a judgment entered pursuant to Code of Civil Procedure section 631.8 under the substantial evidence standard. (*Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1255.) "We resolve all evidentiary conflicts in favor of the prevailing parties, and indulge all reasonable inferences possible to uphold the trial court's findings. [Citation.]" (*Id.* at pp. 1254–1255.) We must affirm the judgment if there is substantial evidence, contradicted or uncontradicted, which supports it. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754.)

We interpret CC&Rs under contract principles. (*Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 380–381.) When interpreting a contract, a court must give effect to the mutual intention of the parties as it existed

at the time of contracting. (§ 1636.) That intent must be determined solely from the contract's written language if possible. (§ 1639.) "Where, as here, the trial court's interpretation of the CC&Rs does not turn on the credibility of extrinsic evidence, we independently interpret the meaning of the written instrument." (*Harvey v. The Landing Homeowners Assn.* (2008) 162 Cal.App.4th 809, 817.) Thus, "[t]he language of the CC&R's governs if it is clear and explicit, and we interpret the words in their ordinary and popular sense unless a contrary intent is shown. [Citations.] The parties' intent is to be ascertained from the writing alone if possible. [Citation.] If an instrument is capable of two different reasonable interpretations, the instrument is ambiguous. [Citation.] In that instance, we interpret the CC&Rs to make them lawful, operative, definite, reasonable and capable of being carried into effect, and must avoid an interpretation that would make them harsh, unjust or inequitable. [Citations.]" (*Id.* at pp. 817–818, fns. omitted; see § 1638.)

B. Preliminary Matters

Before we turn to the merits of Mestler's arguments, we note the trial court found that Mestler failed to exhaust her administrative remedies because her Appeal Letter did not include anything about the Johnsons' home interfering with her view. Solely for purposes of analysis, we will assume without deciding, that Mestler exhausted her administrative remedies and examine the merits regarding all of Mestler's contentions on appeal.

In her operative complaint, Mestler alleged five breaches of the CC&Rs. In its statement of decision, the trial court addressed four of the allegations after having found that Mestler withdrew one argument. Namely, the trial court rejected Mestler's contentions that Defendants failed to (a) involve her in the concept design stage (CC&Rs, § 4.11(b)), (b) obtain her signature on their application to the ARC, (c) conceive on the Johnsons' behalf a home that was substantially the same size and scope as the prior home (CC&Rs, § 6.4), and (d) comply with CC&Rs section 5.2(o) regarding view. Mestler does not challenge the trial court's findings regarding not involving her in the concept design stage or obtaining her signature on the application to the ARC; accordingly, we will not address these issues and limit our discussion to the trial court's findings that Defendants did not violate sections 6.4 and 5.2(o) of the CC&Rs.

C. Alleged Violation of CC&Rs Section 6.4

1. Facts

Section 6.4 of the CC&Rs states that an owner has a duty to rebuild any dwelling destroyed by fire "in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty *or as otherwise approved by the ARC*. . . . The Board shall apply these rules liberally in favor of the Owner where fire or casualty causes the dwelling to become uninhabitable." (Italics added.) The Reconstruction Guidelines provide that "to minimize disputes between affected homeowners, it is strongly recommended that the structures described in the application be substantially in conformance with the pre-fire design with respect

to building footprint, siting, massing, building envelope and roof slope." (Bolding deleted.)

Mestler argued that the Johnsons' home violated section 6.4 because it was not substantially the same size and scope as the home they lost in the fire. The trial court rejected this contention, finding that Defendants complied with section 6.4 because the ARC approved the Johnsons' plans. It also noted that while the single-story home was more than 25 percent larger, most of the homes rebuilt after the fire were larger than the prior homes.

The court commented that it weighed the evidence and "based on the entire record including the testimony and exhibits," the ARC and board of directors conducted a reasonable investigation by reviewing the plans, holding hearings, hiring an architect to review the plans and requiring a grading plan. It found that the ARC and board of directors did not act arbitrarily, that the design of the Johnsons' home did not violate the CC&Rs and that "any decision as to design [was] entitled to judicial deference."

2. Analysis

Mestler asserts the trial court misapplied the standard of review by giving the decisions of the ARC and the board of directors judicial deference rather than by weighing the evidence. She claims that had the trial court applied the substantial evidence rule, the evidence would show that Defendants violated section 6.4 because the Johnsons did not rebuild their home to substantially the same condition. We reject her assertions.

In ruling on Defendants' motions, the trial court was required to weigh the evidence. (Code Civ. Proc., § 631.8, subd. (a).) "Evidence Code section 664 provides that '[i]t is presumed that official duty has been regularly performed' and scores of appellate decisions, relying on this provision, have held that 'in the absence of any contrary evidence, we are entitled to presume that the trial court . . . properly followed established law.' [Citations]." (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.)

Here, while the trial court remarked that "any decision as to design [was] entitled to judicial deference," it also stated that it weighed the evidence and based its finding that the ARC and board of directors did not act arbitrarily on the entire record. Thus, the court's statement of decision shows that it properly weighed the evidence and Mestler has not cited any evidence in the record to the contrary. Accordingly, we turn to whether substantial evidence supported the trial court finding that Defendants did not violate section 6.4 of the CC&Rs because the Johnsons rebuilt their home "in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the ARC."

First, the evidence shows that Defendants did not violate section 6.4 of the CC&Rs because the Johnsons rebuilt their home in a manner approved by the ARC. Additionally, the evidence supported a conclusion that the Johnsons' rebuilt home was substantially similar in appearance and condition to their prior home. Namely, regarding the size of the home, Bishop testified that he had reviewed between 45 to

50 sets of construction plans following the fire and almost every proposed plan was for a home larger than the prefire home "by about the same percentage" as the Johnsons' or even more. As to the roof ridge height, Bishop found that the new home was "within, I think, less than twelve inches of the [roof] ridge height of the preexisting residence." Bishop also compared the Johnsons' prefire home with the new home and concluded that "the massing was similar in the height, number of stories, roof pitch and general siting on the lot." Bishop recommended that the ARC approve the Johnsons' plans because he found that the new home was consistent with the CC&Rs, Architectural Guidelines, and Reconstruction Guidelines.

While Mestler presented conflicting testimony from her own expert, the relative weight to be given this conflicting testimony was for the determination of the trial court as the trier of fact. (*Francis v. Sauve* (1963) 222 Cal.App.2d 102, 119–120.) Finally, Mestler's reliance on the Reconstruction Guidelines is misplaced because the guidelines provided a recommendation that did not control over the provisions in the CC&Rs.

D. Alleged Violation of CC&Rs Section 5.2(o)

1. Facts

Section 5.2(o) of the CC&Rs addresses "[v]iew [o]bstructions" and provides in part the following: "Subject to the provisions of Section 8.8 herein, no fence, structure or improvement shall be constructed or vegetation shall be planted anywhere on a Lot, if to do so may interfere with the view from any adjacent or

nearby Lot." In turn, section 8.8 of the CC&Rs addresses the "[h]eight [l]imit of [d]wellings" and provides in part the following: "Except as provided by Section 6.4, no dwelling of more than two (2) stories nor more than thirty (30) feet in height (as measured from the bottom of the foundation to the top of the highest point of the roof), whichever is less, may be constructed or maintained on any Lot without the prior written approval of the ARC."

The Reconstruction Guidelines contain "[v]iew [g]uidelines" to address recurring concerns pertaining to reconstruction proposals. This provision states, ". . . Section 5.2(o) of the CC&Rs provide that no structure shall be constructed anywhere on a Lot if to do so might interfere with the view from an adjacent or nearby Lot. In order to fairly apply this provision, the Board and the ARC have agreed that the following terms and conditions will be employed in determining whether proposed reconstruction will interfere with a protected view." The provision then defines the term "primary view corridor" as the "best and most important long range view from a lot," stating that each lot is entitled to only one primary view corridor to be determined by the ARC and that "[o]bstructions of one-third or less of the primary view corridor will generally be considered to be acceptable view framing."

The trial court considered these sections and held "[t]he Johnson residence is not greater than 30 feet in height. Therefore the Johnson residence does not violate the height restrictions. Since the restrictions on view are subject to [section] 8.8, they apply only to houses in excess of 30 feet. [Mestler] [has] also relied on Exhibit

3, the [R]econstruction [G]uidelines that were enacted after the [fire] by the [Association]. These guidelines are not amendments to the CC&R's As such the guidelines cannot change the CC&R's. Therefore since the Johnsons' home was not greater than 30 feet in height none of the guidelines dealing with primary view corridors apply to this case and there is no violation of the CC&R's."

2. Analysis

Mestler asserts the trial court misinterpreted sections 5.2(o) and 8.8 of the CC&Rs as permitting any structure not more than 30 feet in height, no matter what its effect on existing views. She claims this interpretation is unreasonable because it does not give meaning to the provisions protecting views in the Reconstruction Guidelines. We disagree.

"As a general rule, a landowner has no natural right to air, light or an unobstructed view and the law is reluctant to imply such a right. [Citations.] Such a right may be created by private parties through the granting of an easement [citations] or through the adoption of [CC&Rs] . . . or by the Legislature [citations]." (*Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1152.) Here, section 5.2(o) of the CC&Rs clearly provides that no improvement can be constructed anywhere on a lot if it interferes with the view from an adjacent lot. This statement, however, is "[s]ubject to" or dependent on the provisions of section 8.8. In turn, section 8.8 sets the maximum height of a dwelling at 30 feet. Read together, sections 5.2(o) and 8.8 provide that a dwelling can be built up to 30 feet before its impact on a view will be considered.

We regard this as a common sense interpretation. If this were not the case, then conceivably the Johnsons could not build any dwelling on their property if it interfered with Mestler's view.

As the trial court noted, the Reconstruction Guidelines do not have the force and effect of the CC&Rs. (§ 1357.110, subd. (c) [an operating rule is enforceable and valid only if it is "not inconsistent with governing law and the declaration, articles of incorporation or association, and bylaws of the association."].) Because the evidence showed that the Johnsons' home was just under 22 feet high, the trial court correctly ruled that it did not violate section 5.2(o) of the CC&Rs.

III. *Award of Attorney Fees and Costs*

Mestler contends the trial court erred in awarding Defendants their attorney fees under section 1354 because her action was not brought to enforce the governing documents. We reject this assertion.

Section 1354 is part of the Davis-Stirling Common Interest Development Act, which governs common interest developments in California. (§ 1350 et seq.) This statute allows the prevailing party in an action to "enforce the governing documents" to recover its reasonable attorney fees and costs. (§ 1354, subd. (c).) The term "governing documents" is defined as "the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association." (§ 1351, subd. (j).) "Operating rules" are regulations adopted by the board of directors that apply to the management and

operation of the common interest development or to the business and affairs of the association. (§ 1357.100, subd. (a).) Operating rules include architectural standards governing alterations to an owner's separate interest. (§ 1357.120, subd. (a)(2).)

Here, Mestler's operative complaint alleged that a dispute existed between the parties concerning their rights and duties under the CC&Rs and Architectural Guidelines. Namely, she claimed that she was entitled to (1) notice under the Architectural Guidelines, an opportunity to present evidence and the right to confront adverse evidence before the ARC could approve an applicant's design, and (2) to a written decision from the ARC under the Architectural Guidelines and the CC&Rs regarding approval on preliminary review and a right of appeal. She also argued that where there is a conflict between the Architectural Guidelines and CC&Rs, the CC&Rs prevail. She asserted that Defendants disagreed with each of her contentions and that the trial court needed to resolve the issues. Mestler's declaratory relief claim to interpret the CC&Rs in relation to the Architectural Guidelines as well as her cause of action for breach of the CC&Rs against the Johnsons qualified her action as one to enforce the governing documents. Notably, in its statement of decision, the trial court ruled on the alleged breaches of the CC&Rs and concluded that the Reconstruction Guidelines adopted by the board of directors did not amend the CC&Rs.

We reject Mestler's argument that her action was not an enforcement action within the meaning of section 1354 because she did not seek an award of damages or to enforce specific rights. The type of remedy Mestler sought under the CC&Rs

is not dispositive regarding her entitlement to fees under section 1354 because CC&Rs may be enforced by proceedings in equity or law. (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1380; *Farber v. Bay View Terrace Homeowners Assn.* (2006) 141 Cal.App.4th 1007, 1010, 1014 [attorney fees awarded under section 1354 where complaint alleged a single cause of action for declaratory relief].) Mestler's reliance on *Salawy v. Ocean Towers Housing Corp.* (2004) 121 Cal.App.4th 664 (*Salawy*), *Gil v. Mansano* (2004) 121 Cal.App.4th 739 (*Gil*), and *Blue Lagoon Community Assn. v. Mitchell* (1997) 55 Cal.App.4th 472 (*Blue Lagoon*) is misplaced as these cases did not concern the enforcement of a governing document. (*Salawy, supra*, at p. 671 [action based on a breach of promise, not the governing documents]; *Gil, supra*, at p. 741 [action based on attorney fee provision in written agreement]; *Blue Lagoon, supra*, at p. 477 [petition under section 1356 to amend a declaration is not an action to enforce a governing document].) Accordingly, the trial court properly concluded that Defendants were entitled to their attorney fees under section 1354 because Mestler sought to enforce the CC&Rs against Defendants and Defendants prevailed on Mestler's claims.

IV. Reasonableness of Attorney Fee Award

A. General Legal Principles

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. 'California courts have consistently held that a computation of time spent on a

case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' [Citation.]" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) We review the amount of a fee award for abuse of discretion. (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 832.) In exercising its discretion, the trial court may consider the nature of the litigation, the complexity of the issues, the experience and expertise of counsel, and the amount of time involved. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659, overruled on another ground in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68.) "We must affirm an award of attorney fees absent a showing that the trial court clearly abused its discretion. [Citation.] An abuse of discretion is shown when the award shocks the conscience or is not supported by the evidence. [Citations.]" (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 549–550.)

B. Award to the Association

In support of the Association's attorney fee request, counsel submitted a declaration generally explaining his experience and qualifications and why the litigation required a significant amount of time. Attached to the declaration were 60 pages of billing statements that described the services rendered, the time expended and the hourly rate charged. The trial court granted the Association \$162,276.50 in attorney fees, the full amount it had requested.

The trial court found that the hourly rates charged by counsel for the Association were reasonable as they were commensurate with counsel's skill and

experience, and within the range of market rates charged by attorneys of equivalent experience, skill and expertise. It concluded that the number of hours expended by counsel to defend the Association was reasonable based on Mestler's "aggressive prosecution" of the action, including "extensive motion practice and court appearances." The court also noted that Mestler failed to participate in alternative dispute resolution prior to filing the action. (§ 1369.580 [in determining amount of an attorney award under section 1354, the court may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable].) Finally, the court pointed out that Mestler failed to specifically object to any of the billing fee entries as unreasonable.

On appeal, Mestler challenges the attorney fee award arguing it was unreasonable because (1) the action only sought declaratory relief, (2) the CC&Rs were drafted by the firm defending the Association, and (3) the Association's counsel billed for communications with Johnsons' attorney. We reject her contentions.

Mestler claims that the fee award was excessive because her litigation did not seek monetary damages and thus did not place the Association at risk. While it is true that Mestler did not seek monetary damages against the Association, counsel was obligated to defend the Association against her "aggressive prosecution" of the action. A party's aggressive litigation tactics may cause the opponent's attorney's fees to rapidly escalate. (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 168.)

Although Mestler complains about counsel billing for communicating with the Johnsons' attorney, she has not cited us to any specific services provided by counsel that were unnecessary to the defense of this action. Finally, Mestler points out that the firm defending the Association drafted the 1998 CC&Rs at issue in this action. Mestler has not explained how this fact has any relevance to counsel's defense of this unique action 10 years later. The attorney fee award to the Association is affirmed as Mestler has failed to show the trial court abused its discretion in determining the amount of the award.

C. Award to the Johnsons

Counsel for the Johnsons requested an attorney fee award in the total amount of \$304,118. She explained that the litigation was very time-consuming based on, among other things, Mestler's conduct in bringing numerous motions and not complying with discovery requests. She supported her request with 146 pages of billing statements.

The trial court rejected Mestler's argument that apportionment of the fee award was necessary because Erin Johnson was not a homeowner. It also concluded that Mestler failed to show good cause for adjustment of the fee award based on financial hardship. Despite Mestler's aggressive prosecution of this action, the court concluded that the litigation was not difficult and did not require exceptional skill. It found that the Johnsons failed to establish why a second attorney was necessary and that several billing entries were unrelated to Mestler's claims. Accordingly, the trial court found that the fees sought by the Johnsons were

excessive and reduced the fees by 20 percent, finding that an award of \$243,294.40 was reasonable.

On appeal, Mestler asserts that the fees for Erin Johnson, or one-half of the fees, should be deleted because Erin Johnson was not a homeowner. She also contends that the fees should have been apportioned between the declaratory relief claim and the breach of covenant claim, for a net reduction of 52 percent.

As a threshold matter, Mestler failed to cite any evidence in the record showing Erin Johnson was not a homeowner. Even assuming the truth of this assertion, Mestler has not provided any authority establishing that a person must be a homeowner to recover fees under section 1354. Section 1354 broadly allows the prevailing party in an action to enforce governing documents to recover reasonable attorney fees. (§ 1354, subd. (c).)

Similarly, Mestler has not provided any authority showing how the trial court erred in refusing to apportion the fees between the causes of action. The declaratory relief claim sought a declaration of rights and duties of the parties under the CC&Rs and the Architectural Guidelines. The breach of covenant claim alleged five breaches of the CC&R's by the Johnsons. Assuming, without deciding, that the Johnsons were not entitled to a fee award on one of these claims, the trial court could have reasonably concluded that these claims were so closely related that apportionment was impossible or impracticable. (See *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 423–424; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

We conclude that Mestler did not meet her burden of showing that the trial court abused its discretion in making the attorney fees award to the Johnsons.

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

MCINTYRE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.