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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GEORG LINGENBRINK, as Trustee etc.,

Plaintiff and Respondent,

v.

DEL RAYO ESTATES HOMEOWNERS  
ASSOCIATION etc.,

Defendant and Appellant.

D070966

(Super. Ct. No. 37-2013-00078036-  
CU-OR-NC)

APPEAL from a postjudgment order of the Superior Court of San Diego County,  
Timothy M. Casserly, Judge. Affirmed.

Limandri & Jonna, Charles S. LiMandri and Teresa Mendoza for Defendant and  
Appellant.

Law Offices of Rodney L. Donohoo, Rodney L. Donohoo and Kevin T. Rhine for  
Plaintiff and Respondent.

Defendant Del Rayo Estates Homeowners Association (Association) is a nonprofit mutual benefit corporation that manages the Del Rayo Estates common interest development in Rancho Santa Fe. The Del Rayo Estates is governed by an Amended Declaration of Covenants, Conditions and Restrictions (Declaration) of the Association. Plaintiff Georg Lingenbrink, Trustee of the Petra Krismer Living Trust dated April 7, 2011, is the trustee of a trust that owns property within the Del Rayo Estates.

In the underlying complaint in this action, Lingenbrink sued the Association to compel it to enforce a landscaping restriction in the Declaration that precludes one property owner's trees (and other vegetation) from interfering with the view of any other property owner. Following a court trial, judgment was filed in favor of Lingenbrink and against the Association. That judgment is on appeal in *Lingenbrink v. Del Rayo Estates Homeowners Assn.*, case No. D070194 (*Lingenbrink I*).

In a postjudgment order, the superior court determined Lingenbrink to be the prevailing party and ruled that he was entitled to recover \$200,000 in attorney fees and \$20,621.15 in costs from the Association (Order). In the present appeal, the Association seeks appellate review of the Order.<sup>1</sup>

In its notice of appeal here and in its opening briefs in both *Lingenbrink I* and this appeal, the Association unequivocally states that it is seeking a reversal of the Order *only*

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<sup>1</sup> For purposes of establishing the record on appeal in this appeal, we grant the Association's unopposed motion to take judicial notice of our file in *Lingenbrink I, supra*, D070194. (Evid. Code, §§ 452, subd. (d)(1), 459; *Stephenson v. Drever* (1997) 16 Cal.4th 1167, 1170, fn. 1; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 155.2, p. 5-54.)

in the event we reverse the judgment in *Lingenbrink I, supra*, D070194. The Association raises no issue or argument in this appeal either as to the prevailing party's entitlement to fees and costs or as to the amount of fees and costs awarded by the trial court. In its brief in both *Lingenbrink I* and this appeal, Lingenbrink repeated the Association's position and relied on it.

In our opinion in *Lingenbrink I*, filed concurrently with this opinion, we affirm the judgment in full. (*Lingenbrink I, supra*, D070194.) Since the only argument that the Association raised in its opening brief is premised on a reversal of the judgment, the Association has not raised an issue or argument that potentially entitles it to relief in this appeal. Stated differently, we presume that the Order is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) The Association (as the appellant) has the burden of establishing reversible error (*id.* at p. 564), and the Association has not met its burden here.

Accordingly, the Order is affirmed. Lingenbrink is entitled to costs on appeal.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.