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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WHISPERING RIDGE HOMEOWNERS ASSOCIATION, Plaintiff and Respondent, v. ABDUL WAHEED CHAUDRY, Defendant and Appellant.	D036167 (Super. Ct. No. 721719)

APPEAL from a judgment of the Superior Court of San Diego County, Thomas R. Murphy, Judge. Judgment affirmed.

Defendant Abdul Waheed Chaudry appeals the portion of a judgment after court trial awarding attorney fees to plaintiff Whispering Ridge Homeowners Association (Association) as the prevailing party in Association's lawsuit to enforce its recorded declaration of covenants, conditions and restrictions (CC&R's). Chaudry contends that in adjudicating Association's motion for attorney fees, the court erred in not considering

whether Association's counsel had engaged in materially misleading conduct during this litigation so as to warrant application of the equitable doctrine of unclean hands to deny the motion. Further, attacking the amount of attorney fees awarded, Chaudry contends Association's assertedly inflated demands for attorney fees were unreasonable. However, since Chaudry has not shown any reversible judicial error on this record, we do not disturb the portion of the judgment awarding Association attorney fees.

I

INTRODUCTION

As coowner with his brother of a lot in the common interest development managed by Association, Chaudry refused to landscape his yard as required by Association's controlling CC&R's and related rules.[1] In July 1999, after a court trial in this action for nuisance, injunction and declaratory relief, Association obtained a judgment against Chaudry and his brother requiring them to comply with Association's governing documents and landscape his lot (the underlying judgment). The underlying judgment also stated Association was entitled to attorney fees as the prevailing party in this lawsuit.

In June 2000, during the pendency of Chaudry's appeal of the underlying judgment favoring Association on the merits, the superior court entered a

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1 Chaudry's brother was also a defendant in the superior court but is not a party to this appeal.

subsequent judgment (the June 2000 judgment) that included an award of attorney fees and costs to Association as the prevailing party under Civil Code[2] section 1354, subdivision (f)[3] and Association's governing documents.[4] The June 2000 judgment is the subject of this appeal by Chaudry.

In September 2001 we reversed the portion of the underlying judgment on Association's nuisance claim but affirmed the remainder of the judgment. (*Whispering Ridge Homeowners Association v. Chaudry* (Sep. 25, 2001, D034624) [nonpub. opn.].) In doing so, we rejected Chaudry's claims of error involving discovery disputes;

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2 All further statutory references are to the Civil Code unless otherwise specified.

3 Section 1354, subdivision (a) provides: "The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both."

Section 1354, subdivision (f) provides: "In any action specified in subdivision (a) to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs. Upon motion by any party for attorney's fees and costs to be awarded to the prevailing party in these actions, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action."

4 At article XVI, section 10, Association's CC&R's contained an attorney fees clause providing: "In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing party shall be entitled, in addition to all expenses, costs and damages, to reasonable attorneys' fees, whether or not such controversy or claim is litigated and prosecuted to judgment."

Although Association's right to attorney fees is not dependent on section 1717, a "provision for attorney fees in a declaration of restrictions constituting a binding equitable servitude is a 'contract' within the meaning" of that statute. (*Mackinder v. OSCA Development Co.* (1984) 151 Cal.App.3d 728, 738.)

irregularities by Association with respect to its internal "'pre-suit'" procedures; Chaudry's equitable defenses of waiver, laches and estoppel; and Chaudry's limitations defense. (*Ibid*.) We also awarded attorney fees on appeal of the underlying judgment to Association as the prevailing party under section 1717, section 1354, subdivision (f), and the attorney fees clause of the CC&R's. (*Whispering Ridge*, *supra*.)

On this appeal challenging the portion of the June 2000 judgment awarding Association attorney fees as the prevailing party at trial, Chaudry faults the superior court for various errors he raised or could have raised in his appeal of the underlying judgment. Accordingly, those claims of error are barred under the doctrine of res judicata. (*Mueller v. J. C. Penney Co.* (1985) 173 Cal.App.3d 713, 719; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 896, p. 930.)[5] Further, the remainder of Chaudry's claim are meritless.

II

FACTUAL AND PROCEDURAL BACKGROUND

We state the facts in the light most favorable to Association as the party prevailing in the superior court. (*Huntington Landmark Adult Community Assn. v. Ross* (1989) 213 Cal.App.3d 1012, 1018.)

Association sent Chaudry various letters stating that his failure to landscape his lot constituted a violation of the CC&R's. In April 1998 Chaudry's brother was personally

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5 The principles of res judicata and collateral estoppel govern final decisions or rulings of a trial court "in various independent stages of a proceeding." (9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.) "To be final for purposes of collateral estoppel, [a] decision need only be immune, as a practical matter, to reversal or amendment." (*Mueller v. J. C. Penney Co*., *supra*, 173 Cal.App.3d at p. 719.)

served with a request for alternative dispute resolution (ADR) involving the matters later at issue in this lawsuit, but Chaudry's brother never responded to such request. (§ 1354, subd. (b).)

In June 1998 Association filed this lawsuit based upon Chaudry's refusal to landscape his yard. Association's complaint was accompanied by a certificate of service of Association's April 1998 ADR request, including a statement that Chaudry's brother never responded to the request.

During the course of this lawsuit, Chaudry was generally unwilling to cooperate with Association's counsel. Chaudry refused to stipulate that he owned a home in the development managed by Association. Chaudry also refused to stipulate to the authenticity of Association's CC&R's. Further, throughout the litigation, Association made several offers to settle, including an offer to waive more than $7,000 in attorney fees if Chaudry would plant grass on his lot.

In July 1999 the underlying judgment was entered favoring Association on all causes of action in its complaint. The underlying judgment also stated that under section 1354 and Association's governing documents, the court found Association to be the prevailing party and ordered Chaudry "to pay reasonable attorneys' fees and costs pursuant to Noticed Motion."

Consistent with the underlying judgment, Association proceeded to file a memorandum of costs and, over Chaudry's opposition, was awarded costs of $884.04.[6] Also consistent with the underlying judgment, Association moved for attorney fees. In May 2000, after protracted litigation involving ex parte hearings, continuances and Chaudry's challenges to three judges, Judge Murphy held a three-hour hearing on Association's request for attorney fees. Based upon that hearing, Judge Thomas entered the June 2000 judgment awarding Association $22,437.22 attorney fees and $884.04 costs against Chaudry and his brother.

III

DISCUSSION

Chaudry contends the portion of the June 2000 judgment awarding Association attorney fees as the prevailing party in the superior court should be reversed based upon numerous asserted judicial errors. As noted, in our opinion affirming the portion of the underlying judgment favoring Association on its claims for injunctive and declaratory relief, we concluded that for purposes of section 1717, section 1354, subdivision (f), and the attorney fees clause of the CC&R's, Association was "the prevailing party on appeal because notwithstanding Chaudry's success on the nuisance issue, [Association] preserved the objective of the litigation — an order requiring him to landscape his

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6 Contrary to Chaudry's suggestion, the issue of costs was properly before the trial court.

yard."[7] (*Whispering Ridge Homeowners Association v. Chaudry*, *supra*, D034624.) Thus, absent exceptional circumstances justifying departure from the doctrine of law of the case, Association would indisputably be the prevailing party in this lawsuit for purposes of entitlement to recovery of attorney fees. (9 Witkin, Cal. Procedure, *supra*, Appeal, §§ 896, 899, 914, pp. 930, 934-935, 950-951.)[8] Chaudry has not demonstrated the presence of any such exceptional circumstances warranting departure from the law of the case doctrine. Hence, as we shall explain, even if we were to make an independent determination on Association's entitlement to attorney fees as the prevailing party at trial, we would conclude the superior court acted within its discretion in ruling that Association was entitled to such fees. (*Heather Farms Homeowners Assn. v. Robinson*, *supra*, 21 Cal.App.4th at p. 1574.) Further, the court also acted within its discretion with respect to the amount of the challenged attorney fee award. (*Del Cerro Mobile Estates v. Proffer* (2001) 87 Cal.App.4th 943, 950.) As the Supreme Court has observed, the """experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed

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[7] In our opinion, we observed that under section 1717, subdivision (b)(1), "the prevailing party is 'the party who recovered a greater relief in the action on the contract.'" (*Whispering Ridge Homeowners Association v. Chaudry*, *supra*, D034624.) Citing *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574, we also observed that under section 1354, "the prevailing party is the party who 'prevailed on a practical level.'" (*Whispering Ridge*, *supra*.)

[8] The doctrine of law of the case applies "to a decision of an *appellate court* in the *same case*." (9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.)

unless the appellate court is convinced that it is clearly wrong."'" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.)

A

Purported Misconduct by Association's Counsel

In contending the superior court erred in granting Association's motion for attorney fees, Chaudry argues that the court improperly failed to consider whether an attorney fees award should be precluded by Association's counsel's purported materially misleading and unethical conduct in prosecuting the underlying case, including false and fraudulent assertions that Association had complied with necessary prelawsuit procedures and statutory requirements designed to avoid the unnecessary expenditure of attorney fees. Further, Chaudry argues the trial court abused its discretion in "summarily" dismissing "these allegations as irrelevant to the question of an appropriate fees award, primarily on the ground that all such contentions were only relevant to an appeal from the underlying judgment." Chaudry concludes that in light of the various purported discrepancies and falsities uttered by Association's counsel "related to critical issues leading to the underlying judgment," the court should have applied the equitable doctrine of unclean hands as a defense to Association's underlying claims and to bar Association from receiving attorney fees "for a judgment obtained on fraudulent proof." However, Chaudry's assertion that the unclean hands doctrine constituted a defense invalidating Association's underlying claims is barred under principles of res judicata because any such claim should have been made in Chaudry's appeal of the underlying judgment. (*Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure,

supra, Appeal, § 896, p. 930.) Further, Chaudry has not demonstrated that Association's purported unclean hands required reversal of the award of attorney fees to Association.

Specifically, Chaudry contends that in a declaration filed in connection with Chaudry's motion for new trial, Association's counsel falsely characterized Chaudry's trial testimony involving receipt of the April 1998 ADR request. However, that contention is barred under principles of res judicata because any such contention should have been made in Chaudry's appeal of the underlying judgment. (*Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.)

Chaudry also contends a statement made by Association's counsel in the certificate of service of the April 1998 request for ADR purportedly conflicted with a statement about such service in a declaration filed by Association's counsel in connection with Association's "original" attorney fees motion in the superior court. However, that contention is barred under principles of res judicata because any such contention should have been made in Chaudry's appeal of the underlying judgment. (*Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.) Further, as an appellate court, we may not reassess the credibility of witnesses or reweigh the evidence presented to the trial court. (*Camarena v. State Personnel Bd.* (1997) 54 Cal.App.4th 698, 703.)

Chaudry challenges Association's compliance with the "pre-suit procedural requirement" to serve amended CC&R's upon Chaudry because Association's proof of service of such document assertedly "clearly described a recipient" not matching

Chaudry's description. However, that challenge is barred under principles of res judicata because in our opinion on Chaudry's appeal of the underlying judgment, we rejected Chaudry's claim of defective service assertedly violating Association's "internal 'pre-suit procedures.'" (*Whispering Ridge Homeowners Association v. Chaudry*, *supra*, D034624; *Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.) Specifically, we stated the "court did not abuse its discretion in relying on the proof of service even though it did not accurately describe Chaudry's physical appearance." (*Whispering Ridge*, *supra*.) We also stated that "Chaudry has shown no prejudice from any procedural irregularity of the Association, and indeed, the record shows he had actual notice of the landscaping requirement." (*Ibid*.)

Chaudry also challenges Association's compliance with the "procedural prerequisites to suit" requiring service of three noncompliance letters from Association because of a purported discrepancy involving dates on Association's proof of service of the final warning letter. However, that challenge is barred under principles of res judicata because in our opinion in Chaudry's appeal of the underlying judgment, we expressly concluded with respect to the three notices of violation that Chaudry had not demonstrated prejudice from any procedural irregularity of the Association. (*Whispering Ridge Homeowners Association v. Chaudry*, *supra*, D034624; *Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.)

Citing trial testimony by witness Paul Benold, Chaudry contends Association's counsel told Benold he did not have to tell the truth and threatened Benold if he did not follow the position of Association's board in this controversy. However, any contention of error involving Benold's testimony or Association's counsel's comments is barred under principles of res judicata since such contention should have been raised in Chaudry's appeal of the underlying judgment. (*Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.) Further, as an appellate court, we may not reassess the credibility of witnesses or reweigh the evidence presented to the trial court. (*Camarena v. State Personnel Bd.*, *supra*, 54 Cal.App.4th at p. 703.)

Chaudry contends that in support of Association's "renewed" motion for attorney fees, Association's counsel filed a declaration containing statements involving Chaudry's unwillingness to cooperate with Association's counsel that conflicted with statements in other declarations previously submitted by Association's counsel. However, as an appellate court, we may not reassess the credibility of witnesses or reweigh the evidence presented to the trial court. (*Camarena v. State Personnel Bd.*, *supra*, 54 Cal.App.4th at p. 703.)

Chaudry also contends that in two declarations supporting Association's attorney fees motion and in testifying at the hearing on such motion, Association's counsel assertedly made false statements involving whether challenged language in the proposed interlocutory judgment was taken "verbatim" from a transcript. However, as an appellate

court, we may not reassess the credibility of witnesses or reweigh the evidence presented to the trial court. (*Camarena v. State Personnel Bd.*, *supra*, 54 Cal.App.4th at p. 703.)

Further, Chaudry contends that in response to Chaudry's demand for production of documents, Association's counsel assertedly misrepresented the state of available discovery by initially claiming privilege and later asserting the demanded documents did not exist. However, that contention bearing on Association's compliance with discovery requirements is barred under principles of res judicata because any such contention should have been made in Chaudry's appeal of the underlying judgment. (*Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.) Indeed, in our opinion in that appeal, we expressly stated that "Chaudry was not improperly denied discovery." (*Whispering Ridge Homeowners Association v. Chaudry*, *supra*, D034624.)

Moreover, Chaudry contends that immediately before trial began, Association's counsel willfully misled the court in describing the parties' agreements involving production of witness lists and exhibits by falsely stating Chaudry had failed to provide the required information, a misrepresentation that assertedly caused the court to issue a minute order essentially barring Chaudry from producing evidence at trial. However, that contention is barred under principles of res judicata because any such contention should have been made in Chaudry's appeal of the underlying judgment. (*Mueller v. J. C. Penney Co.*, *supra*, 173 Cal.App.3d at p. 719; 9 Witkin, Cal. Procedure, *supra*, Appeal, § 896, p. 930.)

Finally, Chaudry contends that despite two earlier court rulings denying Association attorney fees as discovery sanctions, Association's counsel sought and was awarded more than $1,900 attorney fees assertedly for those "very fee sanctions." However, on this record Chaudry has not demonstrated judicial error with respect to those $1,900 attorney fees. Manifestly, the legal standards for an award of attorney fees as a discovery sanction differ from those for an award of attorney fees as the prevailing party in a lawsuit.

In sum, since on this record Chaudry has not demonstrated any reversible judicial error involving his claims of Association's counsel's purported materially misleading conduct, the superior court's determination that Association was the prevailing party at trial must be upheld. (*Heather Farms Homeowners Assn. v. Robinson*, *supra*, 21 Cal.App.4th at p. 1574.)[9]

B

Attorney Fees Award Was Reasonable in Amount

Attacking the $22.437.22 amount of the attorney fees award, Chaudry meritlessly contends Association's assertedly inflated demands for attorney fees were not reasonable within the meaning of section 1354, subdivision (f).

Specifically, Chaudry contends the award improperly included $5,760 for fees incurred by Association between January 23, 1998, and December 4, 1998. However,

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9 Chaudry's reliance on case law involving fee disputes between attorneys and their clients is misplaced.

Chaudry has not shown error with respect to that component of the award. In September 1999 Association filed its original attorney fees motion and sought $12,882.25 fees. In October 1999, after Chaudry had filed opposition and Association had filed a reply, the court (Judge Robert J. O'Neill) issued a tentative telephonic ruling that would have awarded Association $6,672.25 attorney fees. In doing so, Judge O'Neill stated that since the issue of ADR had "apparently" not been raised with Chaudry until the case management conference on December 4, 1998, any failure of Chaudry to consent to ADR or other resolution sought by Association before that date should not be construed against Chaudry in determining the amount of attorney fees to be awarded to Association as the prevailing party. In claiming error with respect to the $5,760 fees incurred by Association between January and December 1998, Chaudry relies on the finding in Judge O'Neill's October 1999 tentative telephonic ruling that Association had not raised the issue of ADR until December 1998. However, after Judge O'Neill issued that tentative telephonic ruling, Chaudry responded by filing a declaration asserting Judge O'Neill was biased against him. In November 1999 Judge O'Neill recused himself and withdrew his tentative telephonic ruling. Hence, the finding in Judge O'Neill's tentative telephonic ruling involving the ADR issue was no longer operative when, after additional litigation, Judge Murphy eventually made his award that included the challenged $5,760 for fees incurred by Association between January and December 1998. Accordingly, on this record Chaudry has not demonstrated any judicial error with respect to inclusion of those fees in the ultimate award.

Chaudry also contends the attorney fees award improperly included $1,900 for fees assertedly constituting discovery sanctions despite two earlier rulings denying such sanctions. However, as discussed, the legal standards for an award of attorney fees as a discovery sanction differ from those for an award of attorney fees to the prevailing party in a lawsuit.

Further, Chaudry contends the attorney fees award improperly included $2,327 for fees incurred by Association in opposing Chaudry's motion for new trial. Specifically, Chaudry contends Association's counsel's work product with respect to such opposition consisted of only four written pages. However, the record indicates Association's counsel also attended hearings related to Chaudry's motion for new trial.

Chaudry also contends Association's counsel charged more than $4,000 for Association's attorney fees motion itself. However, Chaudry has not identified any specific assertedly improper item included in that amount. (*Stoll v. Shuff* (1994) 22 Cal.App.4th 22, 25, fn. 1.)

Finally, Chaudry contends the attorney fees award improperly included between $8,100 and $9,000 fees incurred by Association between the September "1998" filing of its original attorney fees motion that sought only $12,882.25 fees and the March "2001" filing of Association's renewed motion that sought $21,069.72 fees, an interval characterized by Chaudry as a period when "nothing happened" in this case "remotely

supporting the inflated request in the renewed motion."[10] However, review of this lawsuit's procedural history relevant to the award of attorney fees to Association reveals ample litigation occurred in this case from September 1999 until March 2000.

Specifically, on September 23, 1999 Association filed its original attorney fees motion and sought $12,882.25 fees. The next day, Association filed its reply to Chaudry's motion to tax costs claimed by Association in its memorandum of costs. In October 1999 Chaudry filed opposition to Association's attorney fees motion. Association filed a reply to Chaudry's opposition. Judge O'Neill issued a tentative telephonic ruling awarding Association $6,672.25 attorney fees. Chaudry responded by filing a declaration asserting Judge O'Neill was biased against him. In November 1999 Judge O'Neill recused himself and withdrew his tentative telephonic ruling. In February 2000 Association filed a new attorney fees motion that sought $21,069.72 and was calendared for hearing before Judge Sammartino. In March 2000 Chaudry filed a peremptory challenge to Judge Sammartino and requested continuance of the hearing on Association's new attorney fees motion. Chaudry also filed opposition to Association's motion and a renewed request for continuance. Judge Sammartino granted Chaudry's peremptory challenge.

The record also indicates that after Association in March 2000 filed by amended notice its renewed motion for attorney fees, ample litigation ensued before Judge

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10 The record indicates Association actually filed its original attorney fees motion in September 1999 and its renewed motion in March 2000.

Murphy. In April 2000 Association filed a reply to Chaudry's opposition to Association's renewed attorney fees motion. On April 17, 2000, Chaudry filed a peremptory challenge to Judge Murphy that was denied. Chaudry also filed a request for an ex parte hearing to seek a 45-day continuance of Association's renewed attorney fees motion. Three days later, Chaudry noticed another ex parte hearing involving production of a letter believed by Chaudry to constitute an ex parte communication with the court. Chaudry also requested a continuance on Association's renewed attorney fees motion. After Chaudry filed additional opposition to Association's renewed attorney fees motion, Association filed a declaration seeking additional attorney fees incurred in attending the ex parte hearings noticed by Chaudry. Association also filed a reply to Chaudry's request to unseal the letter he believed to be an ex parte communication with the court. A hearing on Association's renewed attorney fees motion was held before Judge Murphy but was continued upon Chaudry's objection that certain witnesses were absent.

Finally, in May 2000 Judge Murphy held a three-hour hearing on Association's renewed attorney fees motion. At the hearing, Chaudry challenged the amount of attorney fees sought by Association and also claimed Association had not requested ADR. The court heard testimony from Association's counsel and its property manager. The declarations of Association's counsel were also before the court. Further, Association submitted billing statements indicating the work performed by its counsel in this case. After hearing, the court concluded Association was entitled to $22,437.22 attorney fees, including the requested $21,069.72 in fees plus $905 fees incurred in attending the ex parte hearings and $500 fees incurred in attending the hearing on

Association's renewed attorney fees motion.[11] The court then entered the June 2000 judgment awarding Association $22,437.22 attorney fees.

In sum, Association incurred attorney fees for its counsel's services through trial, including various attempts to resolve the case through settlement or ADR. Association also incurred posttrial attorney fees for its counsel's attendance at hearings on the language of the underlying judgment and hearings related to Chaudry's motion for new trial. Further, contrary to Chaudry's contention that nothing happened between September 1999 and March 2000, the record indicates that during such period Association's counsel filed opposition to Chaudry's motion to tax costs; filed a reply to Chaudry's opposition to Association's original attorney fees motion; attended a hearing on such motion; and attended two hearings before Judge Sammartino. Later, Association's counsel filed a reply to Chaudry's opposition to Association's renewed attorney fees motion; attended three ex parte hearings before Judge Thomas; and attended two hearings on Association's renewed attorney fees motion.

In sum, on this record the superior court acted in its discretion in awarding Association attorney fees in the amount of $22.437.22. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at pp. 1132; *Del Cerro Mobile Estates v. Proffer*, *supra*, 87 Cal.App.4th at p. 950.) Since Chaudry has not demonstrated any reversible judicial error with respect to

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11 The court "removed" $37.50 from Association's request for fees charged for the letter believed by Chaudry to be part of "some conspiracy."

that amount, we do not disturb the portion of June 2000 judgment that included such attorney fees award.

C

Attorney Fees on Appeal

Association seeks attorney fees on appeal. Since we have affirmed the entirety of the portion of the June 2000 judgment awarding attorney fees to Association, Association is the prevailing party on this appeal. As the prevailing party, Association is entitled to attorney fees on appeal under section 1354, subdivision (f) and the CC&R's attorney fees clause. "'[I]t is established that fees, if recoverable at all — pursuant either to statute or [the] parties' agreement — are available for services at trial *and on appeal*.'" (*Morcos v. Board of Retirement* (1990) 51 Cal.3d 924, 927; *Del Cerro Mobile Estates v. Proffer*, *supra*, 87 Cal.App.4th at p. 951.)

Following oral argument, we asked the parties to submit letter briefs on the issue of Association's request for attorney fees on this appeal. Association then filed a letter brief seeking $7,184 attorney fees on appeal. Supporting its request, Association presented its counsel's declaration and billing statements indicating the work its counsel performed in responding to this appeal. Although Chaudry filed opposition to Association's letter brief, his opposition did not identify any specific assertedly improper item included in the amount of attorney fees sought by Association or otherwise substantively challenge such claimed amount. Instead, Chaudry's opposition simply repeated his contentions on the merits of this appeal that we have rejected. Accordingly, Association is entitled to $7,184 attorney fees on appeal.

IV

DISPOSITION

The judgment is affirmed. Respondent is awarded $7,184 attorney fees on appeal.

KREMER, P. J.

WE CONCUR:

HUFFMAN, J.

O'ROURKE, J.