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RMA

5 messages

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To: James Biddick <jimsyled01@gmail.com>

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Jim:

Apologies for the delay. This work is gratis – meaning no charge.

Question presented – does the Raccoon Point Road Maintenance Association (“RMA”) have the legal authority to perform maintenance inside the road easement area. The answer is yes pursuant to the rationale below.

As an initial point, I understand why you have asked the question. Your Road Easement (“Original Easement”) does not specifically state the right of ingress and egress includes the right to perform maintenance. See attached easement. In general, the rights granted in an easement are contained in the easement itself. The Original Easement is silent on that point.

The Court found in *Raccoon Point Road Maintenance Association v. Figler et al.*, in response to the RMA’s Motion for Partial Summary Judgment that the RMA has the right to charge for maintenance, which implies that the RMA has a right to perform maintenance. It says:

“The Court concludes as a matter of law that as an owner of real estate, title to which is benefitted by an appurtenant easement of record that grants to the owner of that parcel the right to use a private access roadway or certain portions thereof in common with the owners of other similarly benefitted parcels, but is silent on the issue of financial responsibility for the costs of repair and maintenance, Defendant Figler has an equitable obligation, enforceable in a court of competent jurisdiction, to contribute a fair and appropriate amount to the costs required to repair and maintain said access roadway or certain portions thereof in a reasonable condition.”

The RMA would not have the ability to charge for its maintenance if it did not have the authority to perform the maintenance. While the order does not say the RMA has the authority to perform maintenance, that is implied in what the Court decided. If the RMA did not have authority to perform maintenance, the order would be non-sensical.

The reason the RMA initially formed and proceeded with litigation was to address what, as the Court noted, the easement was silent on – which was financial responsibility for the costs of repair and maintenance. I went back into the litigation file from 2011 and have attached the Motion for Partial Summary Judgment that was filed by litigation counsel, Will Honea. This motion articulates at least in part what influenced the rationale for the Court’s decision. See attached Motion for Partial Summary Judgment. While we do not know exactly what the Court relied on to make its decision, it is fair to say our Motion for Partial Summary Judgment was part of its rationale. As an aside, I have the Exhibits attached to the Motion for Partial Summary Judgment if you would like to see those. It is a very large file.

Jim, you will recall the Buck Mountain decision came out after we filed the Motion for Partial Summary Judgment and before the Court made its decision. While not cited in the Order from the Court, I am confident the Court had this decision

and it influenced the Court in our case. My recollection is that the judge was provided a copy of the Buck decision at oral argument. I have attached the Buck Mountain decision for each of access. The RMA case and the Buck Mountain case are a different – in Buck Mountain the court had testimony from the original developers that they intended owners who used the road share in the costs; and some evidence of intent around maintenance. The RMA case relied on equitable concepts such as unjust enrichment to Figler if he did not pay and cases decided in other jurisdictions that owners who use a private right away are required to pay for its maintenance. While these cases were decided under different rationale, I suspect the Buck Mountain decision influenced the Court in the RMA case.

The Road Maintenance Agreement (“Agreement”) is very clear the “Association is responsible for the maintenance of the Road and regulation of its use.” See Section 5 of the Agreement. Of course, this applies just to those owners who signed the Agreement. The Agreement is clear on the authority for the FMA to maintain the easement.

In conclusion, reading the RMA Court Order to not include the authority to maintain the road is inconsistent with the clear language in the order – the RMA has the authority to maintain and charge for the maintenance of the road. I note that another court could always make another decision. I have been at this long enough to know that judges can surprise us.

You have asked whether the Association has the ability to lien for unpaid assessments. The Agreement grants a lien right for those lots subject to the Agreement. However, I was unable to find any common law or statutory right to lien property in this circumstance. This is not my area of expertise, so I confirmed my findings with my partner Sallye Quinn, who does this kind of work. The authority to file a lien must be statutory, common law or contractual. Based on what I know, the RMA does not have any statutory, common law or contractual authority to file a lien for unpaid assessments against those who have not signed the Agreement. The RMA would need to file a lawsuit for payment of the amounts owed. Once you get a judgment, there are Washington Statutes that grant an automatic lien against a judgement debtor. RCW 4.56.190 and RCW 4.56.200. Small claims court (which is a department of the district court) – where there are no attorneys – may be an easy way to do this for owners who owe less than \$5,000 – otherwise you will need to proceed in district court (up to \$50,000). If you are interested in pursuing defaults in payment through small claims court, please let me know and I will do some additional research to confirm what I have found regarding judgment liens against real estate in the County in which the judgment is entered.

Thanks for your patience on this – you will get a bill, but it will be discounted in its entirety. I am embarrassed to say this is a record in how long it has taken me to put this together. Please let me know if you have any questions.

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