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6 Arbitrator
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF TUOLUMNE

11 ODD FELLOWS ,

12 Plaintiff,

13 v.

14 FREDDIE GLEN COLEMAN et al,

15 Defendant.

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17 FREDDIE GLEN COLEMAN et al,

18 Cross-Complainant,

19 v.

20 ODD FELLOWS SIERRA RECREATION
ASSOCIATION et al,

21 Cross-Defendant.
22

23 AND RELATED CROSS-ACTIONS
24

Case No. CV 58100

**NON- BINDING ARBITRATION
DECISION**

25 A Civil Code Section 845 non-binding arbitration, by order of the Tuolumne Superior Court,
26 took place May 31, 2017. Multiple witnesses testified, including most of the individually named
27 defendants and multiple exhibits were received. At the completion of the arbitration the parties
28 decided to see if they could resolve the matter amongst themselves before submitting for decision,

1 unfortunately they were unable to reach agreement and this decision follows. The Arbitrator wishes to
2 express his appreciation to all participants for their courtesy and cooperative attitudes throughout the
3 arbitration and to acknowledge the excellent lawyering skills of all counsel.

4 History of the Development

5 The I.O.O.F. Odd Fellows Sierra Camp Subdivision Number One Final Subdivision Map was
6 approved by the Tuolumne Board of Supervisors June 15, 1949 and Subdivision Number Two April 1,
7 1959. (Exhibits Numbers 12 and 13). Exhibits 12 and 13 show the various roads and streets of the
8 subdivisions , the vesting tentative map was not offered into evidence.

9 The “ Bylaws of Odd Fellows Sierra Homeowners’ Association (HOA) were filed with the
10 office of the Recorder of the County of Tuolumne August 29, 1986 setting forth the Covenants,
11 Conditions and Restrictions (CC&Rs) applicable to Subdivision Number One and Number Two. In
12 particular the CC&Rs, Article II c. gave the HOA the right to collect and levy charges set forth in the
13 “Declaration” a copy of the “Declaration” was not received. The CC&Rs also provided for the HOA
14 Board to issue “Certificates of Memberships” but were not required to do so. (Section 3.05).

15 The Odd Fellows Sierra Recreation Association was incorporated October 10, 1986 and on
16 May 9, 1996 filed a “Declaration Relating to the Roads and Streets ...” of Subdivision Number One
17 and Two.(Exhibit 11). The Declaration states Odd Fellows is the owner of all streets and roadways ,
18 the lot owners have no ownership rights but do have the use of the roads and streets for ingress and
19 egress and provided for a non-exclusive easement for all roads and streets within the subdivisions.

20 Plaintiffs Coleman purchased their lot in 1989, Vaughs in 1988, Wallace in 1987, Nelson in
21 1997 , Schultz’s in 1994 Giacomino in 1992. The parties stipulated that the various deeds of the
22 plaintiffs do not contain any language dealing with road/street easements or ownership.

23 The Odd Fellows Sierra Recreation Association provided road/street maintenances for the
24 subdivisions prior to 1986 and thereafter until Sierra Park Services began providing road/street
25 maintenance in June 2013. The Sierra Recreation Association was formed because the HOA was no
26 longer viable. The Odd Fellows Sierra Recreation Association and Sierra Park Associations would
27 determine budgets for roads/streets , send notice to all property owners and approval of the budgets
28 would occur during voting at annual meetings. Plaintiffs Fred Coleman, Larry Vaughn, Steve Wallace

1 were officers and/or directors of the HOA and were aware of the budgets and voting of budgets and
2 either would not attend budget approval meetings and, if they did attend , voted against the
3 road/streets budgets.

4 Ownership of the Roads and Streets

5 Civil Code Section 831 provides for a rebuttable presumption that an owner of land bounded
6 by a road or street is presumed to own to the center of the roadway but the contrary may be shown.
7 See also California Civil Code Section 1112. Plaintiffs cite Pierson v Bradfield (1941) 43 Cal. App. 2d
8 519 to support their position they are the owners of the land. The court in Pierson dealt with survey
9 issues and the history of how the portion of the land had been used in the past and noted a rebuttable
10 presumption does exist but the particular facts presented, and equity, will determine if the
11 presumption applies or has been rebutted. Subdivision Number One and Two have always been
12 maintained as private roads , Wheeler Road, the main road, is gated to keep the general public out.
13 The County of Tuolumne on two occasions had voted not to accept the roads as public roads , the
14 Odd Fellows Sierra Recreation Association has always treated the roads as being privately owned and
15 the association has billed and collected maintenance costs from the lot owners for decades. The 1996
16 Declaration mentioned above affirms private ownership while granting an easement for ingress/egress
17 for all property owners. The subdivisions have approximately six miles of paved roads with roads
18 branching off Wheeler Road to Rebekah Road, lot owners are able to reach their property by these
19 two main roads. In addition there are other paved roadways lot owners can use to travel through the
20 Lower and Upper Meadows, etc.

21 Based upon the evidence presented during this hearing the Civil Code Section 810
22 presumption has been rebutted, and the arbitrator finds the history supports a finding on ownership in
23 favor of Odd Fellows Sierra Recreation Association. At trial additional evidence such as surveys,
24 receipt of the vesting subdivision maps, may result in the trial court reaching a different decision but
25 Civil Code Section 845 will be the determining factor as to proportionate of costs for road
26 maintenance.

27 It should be noted the “Judgment After Prove-Up Hearing” dated September 17, 2012 by the
28 Honorable Donald Segrestrom is not binding upon the parties to these actions. The evidence showed

1 Mr. Coleman, among others received notice (and apparently were served) on behalf of the HOA and
2 choose to ignore the complaint resulting in a default being taken against the HOA. Neither Mr.
3 Coleman nor any other defendant were served as individual defendants. As noted by Mr. Yonano
4 there is no privity of interests for collateral estoppel to apply.

5 Civil Code Section 845:

6 Having found Odd Fellows Sierra Recreation Association is the owner of the roads/streets the
7 decision will now turn to the proper apportionment per the owners of the easement of the cost of such
8 maintenance and repair per Civil Code Section 845 (b) which states in relevant part

9 *“... the cost shall be shared proportionately to the use made of the easement by the owner.”*

10 Mr. Coleman testified that it was his belief, as a lot owner, he should not be required to pay
11 more than one-half of the cost of his property abutting the roadway and Sierra Recreation Association
12 should be required to pay the rest. The testimony presented showed the roads/streets have been
13 maintained and costs passed onto to 364 lot owners, the evidence also showed the roads/streets not
14 abutting individual owners were used by them for their benefit of ingress and egress to various parts of
15 the subdivision. The evidence also showed Odd Fellows Sierra Recreation Association also used the
16 private roads for access to logging trucks, every three to four years, for logging on property owned by
17 the Recreation Association not located within the subdivision. Sierra Recreation association owns one
18 lot. The plaintiffs are seeking payment for road/street maintenance fees for the year 2012-2013 for
19 \$387.49 per lot for a total of 364 lots, counsel for plaintiff agreed in closing arguments the
20 apportionment should be made based upon 365 lots. Mr. Lechner, President of Sierra Recreation in
21 2013 testified there are 349 lot owners. Sierra Recreation is seeking \$1,891.00 for road maintenance
22 costs from defendants lot owners.

23 The allocation of costs for road maintenance, and other services such as water, tree needle
24 disposal, dog park, water, recreational hall, etc. had historically been “bundled” together, separate
25 costs for each service had not been provided. Mr. Coleman and Mr. Wallace, in particular, as former
26 board members of the HOA had experience with the costs for services as property owners and HOA
27 members and found the costs to be excessive. Mr. Coleman, Mr. Wallace and other property owners
28 got together and determined what they felt were appropriate costs for roads/street maintenance and

1 paid that amount leaving the balances sought to be recovered by Odd Fellows and Sierra Recreation
2 and requested an accounting of costs . The evidence was sparse, as to how the defendants
3 calculations were made other than based upon their experience and what they believed to be fair
4 payment. In response to discovery Plaintiff Odd Fellows “Response to Demand For Bill of
5 Particulars” for the budget year ending May 31, 2013 (Exhibit 14) and the amounts set forth were
6 subject to strong objection by the individual defendants during their testimony

7 Sierra Recreation budget for years 2014, 2015 and 2016 were received as Exhibit 15. Mr.
8 Lechner, president of Sierra Recreation, agreed Sierra Recreation needed to do a better job of
9 accounting and provide transparency of costs. On one particular matter dealing with a foot bridge,
10 Sierra shareholders were assessed for \$50.00 for the years 2014 and 2015 as well as non-
11 shareholders and he agreed non-shareholders (such as the individual defendants) should not be
12 obligated to pay those assessment costs and should be deducted from the \$1891.00 billing.

13 As noted above there are over six miles of paved roads/streets in the subdivisions, Wheeler
14 Road is used by every owner in order to enter the subdivisions, alternate roads/streets are available for
15 all owners to use the private property. The majority of the individual defendants make the
16 subdivisions their primary residence and use the roads on a daily basis, albeit the primary roads used
17 would probably be a direct route exiting the subdivisions on Wheeler Road to the public highway.

18 Civil Code section 845 does not direct how a proportionate share is to be determined, Healey
19 v Onstott (1987) 192 Cal. App. 3d 612 in discussing the “proportionate share” language noted:

20 *“In the interest of speed and economy of proceedings, the arbitrator must be free to paint with*
21 *a broad brush.”*

22 The apportionment of maintenance costs divided by the number of lot owners has been the
23 norm for decades. The individual defendants rely on the next sentence of Healy to support their
24 position that a more thorough apportionment of use is required rather than a division by the number of
25 lot owners:

26 *“Obviously, a property owner may be asked to contribute only to the maintenance of*
27 *that segment of the right of way between his driveway and the **public road.**”*
(emphasis added).

28 The facts of this case are distinguishable from Healy , this case deals with over six miles of

1 private roads in a private subdivision, controlled by a gate and not open to the general public ; not a
2 12 lot subdivision where only three lots are improved and the other nine lots are vacant and having
3 no prior agreement as to maintenance costs between the lot owners. Here the evidence has shown for
4 many decades the private character of the subdivisions has been maintained and their amenities
5 maintained (albeit not to the satisfaction of the individual defendants) with the great majority of the
6 property owners not objecting to the method of assessments.

7 There has to be some rational way to determine how to allocate maintenance costs and
8 allocation by number of lots has shown to be a rational approach . In order to be found viable under
9 Section 845 Odd Fellows and Sierra Recreation have purchased lots which would change the
10 denominator of 364 to 365. A large portion of the subdivisions is unimproved property identified as
11 the “Lower Meadow” and “Upper Meadow” (Exhibit 1) which benefits the entire subdivision for
12 remaining in its natural state. An additional undeveloped property is identified on Exhibit 1 that was
13 sold in the 1990s to a third party, presumably this is part of total number of lots.

14 To attempt to determine a proportionate share based upon the length of a lot owner’s property
15 next to a private road versus the total length of the roadway would be illogical. A lot owner could
16 argue he/she does not use the other roadways, for example never goes on Jordan Way West, etc. or
17 avail themselves of the amenities of the subdivision or that their lot is not improved or only used as a
18 vacation home and therefore should be less cost to them defies logic and common sense.

19 The arbitrator finds the proper apportionment of costs under Civil Code Section 845 shall be
20 determined by taking the costs of maintenance as the numerator divided by the number of lots as the
21 denominator to determine each lot owners proportionate share. One witness testified that in addition
22 to owning lots either Odd Fellows or Sierra Recreation, or perhaps both, also owned separate parcels
23 within the subdivision. If such parcels are owned, that do not contain individual lots, such parcels
24 should be added to the denominator

25 The arbitrator is not making any decision regarding damages, the limited amount of time and
26 differing evidence on what are properly incurred costs cannot be made based upon the limited time
27 for evidence to be presented on the issue of damages.

28 The arbitrator does encourage the parties to continue to attempt to resolve these issues to

1 avoid further litigation and expense.

2 Dated: June 20, 2017

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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Hurl W. Johnson
By: _____
Hon. Hurl W. Johnson (Ret.)
Arbitrator

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