STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 627-11-16 Cnsc

Plaintiff(s)		*Defendant(s)*
THE SANCTUARY AT PERRY FARM HOA, INC.	vs.	RUSSELL BLODGETT and SUSAN HULING

DECISION ON THE MERITS

The plaintiff homeowners' association in this small claim proceeding alleges that the owners of a neighboring farm are responsible for a pro rata share of the cost of paving the association's right-of-way across their farm. The plaintiff asserts that the alleged debt is supported by a provision in the defendants' deed, reserving the right-of-way and obligating them to pay a pro rata share of the expenses for "maintenance, repair, and replacement" of the right-of-way, based on the portion the farm uses in common with the association's membership. In the alternative, the plaintiff asserts that common law principles of contract or the equitable doctrine of unjust enrichment support liability. The defendants deny liability, contending that paving the road constituted a capital improvement, not maintenance, repair, or replacement, and that in consenting to the paving, subject to two conditions requiring additional expenditures on the part of the plaintiff, they preserved their right to contest liability.

The matter came on for a hearing on the merits before the undersigned on May 5, 2017. The plaintiff appeared through the person of its treasurer, R. Prescott Jaunich, an experienced real estate attorney, and the defendants were represented by Attorney Matthew T. Daly, an experienced litigation attorney. Having heard the evidence and arguments of the parties, and having taken the matter under advisement, the Court now issues the following findings of fact and conclusions of law and enters judgment in accordance therewith.

FINDINGS OF FACT

1. The plaintiff corporation is a homeowners' association ("HOA"), the members of which are owners of residential real estate located in Charlotte, Vermont.

2. The defendants are individuals that own and maintain their home on more than 31 acres of agricultural land in Charlotte adjacent to Route 7. An easement located on their land is maintained as a road known as Sanctuary Lane to provide access from Route 7 to the residences of HOA members. The defendants are not members of the plaintiff HOA, nor do not have any voting rights therein. By deed, however, they are responsible for a share of "the pro rata expenses of maintenance, repair and replacement of that portion of the road used in common from the point of entrance from U.S. Route 7 to the northerly most drive exclusively serving [the defendants' land]." Defendants' Exhibit 1 (admitted by agreement) ¶ 18(a). The defendants' share is determined by dividing "the length of the road used in common" by "the lengths of the road utilized by all other parcels using said road." *Id.* For the period at issue, this calculation results in a figure of 29.7 percent.

3. The defendants took title to their property in May of 2012. Shortly thereafter they learned that the prior owner of the farm had an outstanding balance with the plaintiff HOA in the amount of $2,200.00 or $2,300.00. Defendant Russell Blodgett testified that the outstanding balance was for expenses incurred in paving the apron at the junction of Sanctuary Lane and Route 7, and that he and Ms. Huling decided to pay the outstanding balance in full because they wanted their new relationship with the plaintiff HOA "to get off on the right foot."

4. From time to time the defendants' share of expenses associated with Sanctuary Lane were a matter of some contention that was resolved by the parties through discussion and/or compromise.

5. In or about January of 2016 the directors and other members of the plaintiff HOA began to discuss paving Sanctuary Lane to reduce dust, dirt and annual maintenance expenses. When the defendants learned of these discussions, Susan Huling contacted a member of the plaintiff's board of directors by email dated January 24, 2016 (a copy of which was admitted in evidence without objection together with several other emails as Plaintiff's Exhibit C), and requested that she and Mr. Blodgett be kept "in the loop." Ms. Huling noted the defendants' interest in the proposed project notwithstanding their lack of voting rights "since the road is also used and partially paid by us." She also noted the defendants' proximity to and resulting insight in the road, as well as their interest "in paving the drive through the farm at the same time as the road, so it would be good to coordinate if that is happening." *Id.*

6. By email dated April 23, 2016 (included in Plaintiff's Exhibit C), a member of the plaintiff's board of directors provided the members of the plaintiff HOA and Ms. Huling with a proposed five-year budget. Numerous documents concerning a variety of related topics were included as attachments. Among these were "two paving/road bids" and "one gravel/road bid." April 23, 2016, email at p. 2. The email noted that "this budget assumes that we pave the road up to the Y by the third set of monuments" and asserted, "[i]f we don't pave the road the ongoing maintenance costs for a gravel road will be higher." *Id.*

7. This email also discussed the inclusion in the budget of special assessments, including a special assessment (in the amount of $4,055.00, *see* Plaintiff's Exhibit B, admitted in evidence without objection) to be imposed on the defendants for their "allocated portion of the paving and front entrance capital improvements as well as reimbursing the Association for the removal of the dead tree on their property." *Id.* The email further stated that the budget had received the approval from a majority of the board of directors "with a recommendation that we submit the five year

operating budget to the members for any advisory vote." *Id.* The email continued, "[t]he advisory vote is a mechanism for the Lot 3 owner's proxy (Susan Huling) to get all the relevant materials and submit a vote on their behalf." *Id.*

8. Ms. Huling responded by email dated May 5, 2016 (included in Plaintiff's Exhibit C). She thanked the directors and other members of the plaintiff HOA for their patience and indicated that she and Mr. Blodgett went through the plans and estimates and "discussed the paving of the road." May 5, 2016, email at p. 1. Ms. Huling then stated, "The paving of Sanctuary Lane is, by all definitions, a capital improvement. Even if the improvement is set with the goal to mitigate maintenance costs, it is still an improvement. Improvements are not addressed in the HOA Covenants." *Id.*

9. Ms. Huling acknowledged in her email that "the argument for the expenditure makes partial sense. If the road is going to continually erode and the ongoing maintenance as is continues to be messy and more costly, then an improvement is logical." *Id.* But, she wrote, she and Mr. Blodgett had "a couple of concerns." *Id.* The first was "the apron where the farm adjoins Sanctuary Lane at the second set of pillars." Ms. Huling and Mr. Blodgett felt that this apron also should be paved to reduce erosion problems that would impact their farm, and that "any resulting damage or erosion problems should be addressed by funds from the HOA." *Id.* The second concern was that "[t]he new road should be constructed with integrity that accounts for weight and traffic" as "farm equipment will be running up and down Sanctuary Lane." *Id.*

10. Ms. Huling concluded her email as follows:

> Russ and I agree to the improvements with that both the apron, and road integrity accommodated. However, we do not agree to the precedent that improvements outside of the covenants are voted on by the HOA only, and we must just write a check if sent a bill. We also want to state for the record that it's excessive for a neighborhood to use a majority only vote (as opposed to unanimity) to impose improvements and associated increased costs at the levels that are occurring here.

> This is a big project, which results in the depletion of the HOA cash reserves, and forces a resulting significant capital call.
>
> So please go ahead with the project pursuant to our requirements. We're interested in timing, and would like to be kept in the loop. We have a wedding here in early September.
>
> Thanks again for all your work and research.

11. By email dated May 9, 2016 (included in Plaintiff's Exhibit C), a member of the board of directors circulated the final five year budget to fellow directors and others, including Ms. Huling. The email noted that the defendants' allocation percentage had been too high in the draft budget and had been corrected. The email also noted that the final budget had dropped the preliminary budget characterization of expenses as either operating or capital, noting that this characterization had been "inaccurate since all [three] of the expenses are simply for maintenance of the existing improvements on the property." May 9, 2016, email at p. 1. Acknowledging that "there has been a debate over capital versus maintenance," the email asserted that "none of the three constitute a new capital improvement." *Id.*

12. The email elaborated on the road, recounting that the board had solicited bids both to rebuild the existing gravel road and, in the alternative, "to pave the road assuming the base was adequate to support a paved road." *Id.* It continued, "We received bids for both alternatives and clearly the cost to pave the road was more economical not only in terms of the initial repairs but also in relation to ongoing annual maintenance. According to the multiple bids that we received the existing roadbed is adequate to support a paved road. Based on this information the Board determined that the most appropriate course of action was to pave the road." *Id.*

13. With respect to the defendants' two concerns, the email addressed both and confirmed that these had been accommodated. First, it stated, the road contractors had reported that the requested apron could be paved at minimal cost, so it would be included in the paving project.

Regarding "concerns on erosion near this driveway the road will be graded and paved so that the water will be directed to the culvert." *Id.* at p. 2. Second, the email said it had been determined that "the paved road as bid will be suitable for normal use including agricultural vehicles, propane trucks, septic trucks, garbage trucks etc." *Id.*

14. The paving project was completed in July 2016, and the defendants were immediately invoiced for an allocated share of the cost. *See* Plaintiff's Exhibit A (admitted in evidence without "huge objections"). By email dated September 8, 2016, board member Jaunich sent a past due notice to which Mr. Blodgett responded, "With regard to the capital expenditures incurred by your association I refer you to our attorney, Marc Weiner. I see nothing in the 'Warranty Deed' that addresses such capital expenditures referenced in your invoices and subsequent notices. Any discussions, questions, comments, etc. should be directed to him." September 8-9, 2016, email string (included in Plaintiff's Exhibit C) at p. 2.

15. Thereafter, Attorney Weiner requested and was provided with certain relevant information, including board of directors' minutes and the emails discussed above. *Id.* Attorney Jaunich, by email reply dated September 9, 2016, reviewed what he considered to be the relevant facts. These included Susan Huling's May 5 email, which he characterized as the defendants' "agreement and direction . . . to proceed," and the defendants' asserted failure to give any indication prior to the paving that they would not pay their allocated portion as shown of the final budget. He concluded by stating that the defendants' "objection to payment at this late date seems unfounded." *Id.* at p. 1.

16. There is no evidence of further communications between the parties and/or their attorneys prior to the filing of this proceeding. The parties were in full agreement at the merits hearing that the unpaid sum in dispute is $4,331.14, and the Court so finds.

CONCLUSIONS OF LAW

1. The defendants' deed does not obligate them to pay a pro rata share of the cost of paving Sanctuary Lane.

The plaintiff HOA argues that the defendants are obligated to pay a pro rata share of the cost of paving Sanctuary Lane by language in subparagraph 18(a) of their deed that obligates them to "share the pro rata expenses of maintenance, repair and replacement of" that portion of Sanctuary Lane used in common with other parcels. Defendants' Exhibit 1. The Court does not agree. Subparagraph 18(c) of the defendants' deed states that "maintenance, repair and replacement expenses shall include top dressing of road with gravel or stone, grading or smoothing, plowing of snow and the mowing of grass." Paving is not listed and is not of the same character as the items that are listed. The Court concludes that this language is unambiguous, does not include paving, and must be enforced according to its plain meaning.

If this conclusion needed reinforcing, and the Court does not believe it does, construction of the deed instrument "as a whole" provides further support. *Kipp v. Chips Estate*, 169 V. 102, 107, 732 A.2d 127, 131 (Vt. 1999) (particular deed language that is clear and unambiguous must be enforced according to its plain terms; if particular language is ambiguous, then the court must examine the whole instrument to determine whether that ambiguity must be resolved as a question of fact or as a matter of law). The defendants are expressly obligated by language in their deed to pay for "improvements such as widening, ditching or paving" of another right-of-way across their farm used by them for commercial traffic if "such improvements are necessitated by [their] usage." Defendants' Exhibit 1 ¶ 13(c). Thus, if there was any ambiguity, and there is not, construction of the instrument as a whole would remove it.

2. The defendants are not contractually obligated to pay a pro rata share of the cost of paving Sanctuary Lane.

The plaintiff HOA argues, in the alternative, that the defendants are contractually obligated to pay a pro rata share of the cost of paving Sanctuary Lane. The Court does not agree. While the email correspondence between the parties discloses a contract, subject to conditions, in the nature of license to pave the gravel right-of-way, that contract does not include any promise that the defendants would pay any share of the associated expenses.

3. The unjust enrichment doctrine does not obligate the defendants to pay a pro rata share of the cost of paving Sanctuary Lane.

To recover on a claim for unjust enrichment the plaintiff must show (1) that a benefit was conferred on defendant, (2) defendant accepted the benefit, and (3) defendant retained the benefit under such circumstances that it would be inequitable for defendant not to compensate plaintiff for its value. *Reed v. Zurn* , 2010 VT 14, ¶ 11, 187 Vt. 613, 992 A.2d 1061. The measure of damages is the amount of the benefit received. *JW, LLC v. Ayer, et al.*, 2014 VT 71, ¶ 22, 197 Vt. 118, 101 A.3d 906. There is nothing in the circumstances of this case that would make it inequitable for the defendants not to compensate the plaintiff. The defendants were very clear in disputing their asserted obligation to pay a pro rata share. Moreover, they consented, on conditions, to the paving of that portion of the gravel road on their farm, something the Court believes they had no enforceable obligation to do. That they ultimately may enjoy a benefit in common with the plaintiff's membership of reduced annual maintenance costs (projected but not yet to be proved) does not render the circumstances inequitable.

The Court has prepared and entered a Small Claims Judgment consistent with this decision.

Dated at Burlington, Vermont, this 3rd day of July 2017.

Gregory S. Mertz
Acting Judge