

Case 15-2-05069-0 10-30-15 Hearing, Welker v. Mt. Dallas Association

This is a partial transcription of the Oct 30, 2105 Court Hearing beginning just after Royce Meyerott spoke (approximately at the 2:13 time shown) and consists of Judge Eaton's response and the two counsels' responses.

2:13:57

Judge Eaton:

Well there - I think what you're raising are whether or not there're some equitable arguments to be made on some of or many of these issues and I'll address that in my decision here but the issues that's been presented today are purely legal issues which really don't have to do with fairness and I don't think anybody here, Mr Brain's made it as clear as he can that anybody's taking issue with the good job that's been done.

I think the issue that both sides recognize is that there needs to be a firmer footing as all of you go forward and Mr. Brain is trying to narrow down some issues with his motion so that as you go forward you all have at least have the benefit of at least some initial rulings from the court on some purely legal issues and again as I'll comment in my decision here, I think that there are some equitable issues that really what you are touching on that are not before me today.

So as I give my ruling don't think that I'm not aware that there's some equitable or fairness arguments out there that may need to be considered at some point.

All right? All right.

2:15:00

I really don't have a whole lot of extra time. I will – I don't want anybody to feel as though they were deprived but I – it's got to be focused on the legal issues that are before the court.

If not, I am prepared to make a decision. I haven't heard anything here in the argument today that causes me to feel any differently or to conclude any differently than I did based on the briefing that's here. And again as I just said, to this gentleman, please understand the plaintiffs have filed a motion that presents only very specific very limited issues. There are many issues that need to be resolved here and many of these issues may have uhh to be looked at not just from a legal point of view but from an equitable point of view. But this motion has not asked the court nor have the respondents filed a motion asking the court to weigh in on any of the equitable issues.

2:16:00

As a preliminary matter, I noted that the – in the response memorandum that Mr. Mann filed, it was a request that not only the Court deny the Plaintiff's motion but a request that the court order certain things and I will address that, but as a preliminary matter, would point out that those requests are not in front of the court as a formal motion. Those requests were contained in a response to the motion and I don't believe it puts the court in a position where I can properly rule on those requests unless they're put in a proper motion. And give the plaintiffs an opportunity to respond.

2:16:40

So here's where I think we're at. Um, all of these issues that you have are only going to get resolved one way or the other, either you're all going to agree – all of you literally – you're going to agree and sign some kind of a document that can be recorded and then it will be binding on all of you as well as your successors in interest as to the property. Otherwise you're going to be back here at the request of some one of you, some one or more of you asking the court to approve some kind of a formula by which some group or Association has authority to maintain the roads and assess for the roads and collect for the roads. And I think that both sides, Mr Mann and Mr Brain, recognize that you're likely to be back here asking the Court ultimately to approve probably one or the other sets of proposals – proposals as to how to do this.

A motion for summary judgment is only appropriate if there are no disputed facts on material issues. And I don't think that there're any disputes here on any material issues. It's not disputed that the Association exists. That it's a legal entity, that's not disputed. As a matter of fact, there's not a dispute that association has taken the lead for many years in providing the maintenance for the Mt Dallas Road. I know there's a dispute, perhaps, as to what the Mt Dallas Road is comprised of in terms of the side roads, but that's not before me today. The Association has been successful in collecting money from many, I don't think everybody, but as I understand it, many, many people for many years have contributed. And they have accomplished that maintenance but it has been on a voluntary basis.

But the question before the court is whether the Association has a legal authority to enforce any of the assessments that don't get paid at least as to any benefitted owner that may, that has not perhaps in some fashion signed something that would have given the Association authority over that particular owner.

Uh, what's before me then is the specific requests that have been made uh by the plaintiff's motion for declaratory summary judgment.

The **first** thing that the motion asks the Court to rule on is the rule that the Association has no LEGAL rights or interests in the Mt. Dallas Road. To the extent that asks the Court to declare whether or not the title or any portion of the ownership interests in that road are vested in this nonprofit corporation. I see no facts that suggest this is the case. So I conclude as a matter of law that the Association does not have any LEGAL rights or LEGAL interests in the road – the physical roadbed itself. I don't know where the title of the road is. It may be in the abutting owners, I don't know where it is, it may still be with the developer. There were lots of situations where in the old days land was divided up here, lots were sold off and title to the roads was never included in the legal description as to the various owners, no association was created to which the title was transferred and as a technical matter, title remained in ahh in the original developers. I don't know where the title is, but nothing has been provided here today to indicate that the Association has any legally cognizable interest, right, or ownership interest in the roads themselves.

2:20:17

The **second** thing is that the Plaintiff's have asked that the Court declare that the Association lacks LEGAL authority to manage the roads on behalf of ALL of the benefitted owners. I would conclude, as a matter of law, that the Association does lack that authority. As noted above, the Association may have legal authority to manage the roads on behalf of some of the benefitted owners. There may be some documents out there which a group of you have agreed to give authority to the Association to manage the road on your behalf. Some of those documents, if they exist, may be enforceable. But the question presented by the motion was whether the Association has the authority to manage the road on behalf of ALL of the benefitted owners. And it's undisputed that there are at least some benefitted owners that have never agreed to be bound by anything that the Association has done. To the extent that there are that those owners are out there, the Association doesn't have any LEGAL authority. There may be - some EQUITABLE rights that we'll need to address. Again, Buck Mountain may be helpful in that regard. The uhh the point there is that while there may be some LEGAL basis on which the Association can demand and enforce payment from some owners if they have signed documents to give the Association that authority which I don't know if that exists. That's not what was asked here. The question was is there legal authority to bind all owners and there's not and that's why we're here because there needs to be legal authority in some fashion created so that some group can manage the road and have clear

LEGAL authority over ALL of the owners whether they want to join or not join. As I said, if you can't reach an agreement, the COURT will have to craft some kind of an arrangement that will be binding on everybody.

2:22:16

The **third** question is whether the Association uhh - the plaintiff's had asked the Court to rule that the Association lacks ANY authority to enter into contracts related to the management or maintenance of the road. I'm not going to grant Summary Judgment on THAT issue. The request is framed in terms of whether the Association has ANY authority and it's NOT disputed that the Association has been in fact very actively involved for many years in taking steps to maintain the road. While there may be no – there may well not be any LEGAL basis for the Association to enter into contracts and there may be or there may not be, there certainly could be some basis EQUITABLY for the Association to be entering into contracts on behalf of the owners. And in this regard, Mr. Brain, the way you phrased your request here is that the Court here is that Court – that the Association lacks ANY authority to enter into contracts to maintain the road.

Mr. Brain: I agree with that but I changed that in my order and it says Mt Dallas Association lacks legal authority to ahhh enter into contracts on behalf of benefitted owners who have access to their properties over the road. In other words, if I have invited you to consent to enter into a contract, you can't bind me (intelligible)

2:23:50

Judge Eaton: Well uhh

Mr. Brain: That's a very significant issue because it would allow them to enter into a contract and the improved property which is my property – I don't want to be subject to a lien. (note during this time, Judge Eaton attempts to interject with uhh's and ahhh's.)

Judge Eaton: Well, you may not be. All I'm saying at this point is that the way that the request is in your motion is that the – for the Court to rule that the Association lacks ANY authority to enter into contracts. I'm not prepared to rule on that. So that I, I, or I'm not prepared to rule on your favor on that.

Mr. Brain: Right

2:24:20

Judge Eaton: Again, there may be a LEGAL basis to act on behalf of some owners if they've agreed to be bound, there may be an EQUITABLE basis on which to enter into contracts which will be binding on ALL parties. I'm simply not ruling on that one way or the other and in that sense, I'm simply denying the plaintiffs' motion asking me to rule that the Association lacks ANY authority to enter into contracts. I'm leaving that open. I think again, the Buck Mountain decision may come into play on that.

2:24:52

Judge Eaton: The **fourth** issue is a request that the Court rules as a matter of law that the Association lacks ANY authority, any LEGAL authority to establish, assess or collect road maintenance expenses against ALL benefitted parties. So again, because they are asking me to declare that the Association lacks LEGAL authority to collect against ALL owners, I've got to agree that that's the case. There may be an EQUITABLE case to assess against ALL of the owners. There may be a LEGAL basis on which to assess against many of the owners.

So please understand that the Court's ruling is very narrow and is limited to the precise questions that are asked here. I recognize fully the Association's history of maintaining these roads and try to do so as best they can and as fairly as they can and to that end, uhh, I am, I want, as I mentioned the defendants have asked the court to rule on a number of things that I said I can't rule on because you've not presented them by a proper motion.

2:26:01

One of the things you asked the Court to on Mr. Mann is that uhh, that I authorize the Association to continue to conduct minimal necessary maintenance that would need – the need for which will arise during the lawsuit. I can't authorize you to do that because you've not presented it as your own motion and given the plaintiffs an opportunity to respond so I could answer that question. It probably would require an analysis of EQUITABLE interests of the parties.

2:26:32

But what I will say, and it shouldn't be in the order because it's not really before the Court, but what I will say is that nothing in the Court's order today precludes the Association to continue to operate and to continue to enter into contracts and to continue to maintain the road. The consequences of continuing to do that will be determined as we go down the road here. But there's no injunction here. There's nothing that says that the Association doesn't exist. There's nothing that says that the

Association can't continue to do what it's doing. I'm only ruling that you don't have LEGAL authority to collect these assessments, at least against anyone who has not agreed to be bound by whatever documents you may have presented to some of these benefitted owners.

2:27:16

I don't know what some of these owners may have signed, but I got the impression that some owners have signed documents in which they may have put themselves in a position where they're bound. I don't know. And I just – I'm trying to be clear that if there are some documents to that effect, they may be legally enforceable. There may not be. So the uhh the Association is not prohibited from doing what you've been doing. What we need to do is get either your Association or some group in a position where they have clear LEGAL authority over ALL benefitted owners in a written document suitable for recording, recorded in the land records so that its – so that those obligations are binding upon any successive owners who purchase these properties. That's what you ALL need. You need it for your title. You need it if you're going to sell. The difficult question will be how do you allocate that out. There's a lot of ways to allocate out what percentages different people should be paying. And in your case, you've got an issue about whether the SIDE ROADS should be included or not. And you have to come to an agreement which will have to be signed by 100% of everybody whose got an ownership interest which would probably include any mortgages that are out there, anybody who's got a lien on the property if they foreclose and take it back having not signed off on the agreement it's not going to be enforceable.

2:28:42

There might – may be some case law out there that I am unaware of. I think it's going to be extremely difficult and think that council would agree, you're not going to get all the necessary parties probably to sign off on an agreement which means that you should negotiate the best you can to have an agreement. You can ask the Court to uhhh – conform uhhh confirm as a Court order and then that would be binding. Or if you have different agreements that you want to propose, the Court can pick and choose. I don't know that it is relevant to where you're trying to go the next several months and I think it's going to take several months to get there. But for what it's worth in terms of things that have already been done or where you're trying to go, it seems to me that it is legally possible for less than 100% of the owners to sign an agreement, have it recorded, and have it be binding at least against those property owners. Then, those who haven't signed it would only be, you would only be able to collect

against them based on some EQUITABLE arguments of the Court. And the Mt Buck case makes it pretty clear that you have the right to go to people who have not joined your Association who use your road and at least get some equitable payment out of them based on a Court order. I'm not encouraging you to get into an agreement with less than 100% of you. But I do think if there are – if there is now or should become an agreement signed by all of the parties giving authority to this Association, it would be binding upon those parties but not against those who didn't sign.

2:30:22

So that's not the ruling, that's not an issue that's before the Court.

Mr. Mann, a question?

Mr. Mann: No, Your Honor.

Judge Eaton: Mr. Brain, a question?

Mr. Brain: No, Your Honor. I think

Judge Eaton: Ok, I want you to be very careful as the prevailing party when you draft this order to limit it very (Mr. Brain interrupted.)

Mr. Brain: It only says Legal.

Judge Eaton: Ok

Mr. Brain: And I (intelligible). The (intelligible) point I would make your Honor again, I understand what you have said. The point I think is so important, however, is that even if you grant that authority has to be (Judge Eaton interrupted.)

Judge Eaton: Grant what authority?

Mr. Brain: (intelligible). If somebody signs something that grants authority, you still have to have a system under which everybody understands.

2:31:05

Judge Eaton: Well I, my point is that less than 100% of these people could come up with a very comprehensive agreement that they all want to be bound on and they could record it and they could be bound on it – by it. And those who didn't sign would not be bound by it. So when I said 100% I'm just

pointing out that less than 100% can form – have an Association, can have an agreement and can record it and it will be binding but only on those who sign it. And you're still going to be stuck for those who don't sign it coming to the Court asking for the Court to exercise its EQUITABLE power to force them to pay their fair share or whatever that may be which is exactly what the Buck Mountain case was about.

2:31:43

Do you approve the form of the order Mr. Mann?

Mr. Mann: I'd like the Court to read it to make sure it conforms to the Court's decision. And I'll sign it.

Judge Eaton: Ok, I want to be very careful too because I'm trying to keep this ruling as narrow as I can in light of the way these issues were presented. I will trust that the recitation of the documents the Court reviewed is correct.

Mr. Brain: Your Honor, I don't know if they are correct as to what you reviewed. Those were the ones that we received. There could be a difference there.

Judge Eaton: Well, I got the plaintiff's motion, your declaration, Welker's declaration, the memorandum that Mr. Mann submitted, Susan Allen had 2, Ballenger, Boyd, Carlson, McAlary, Guard, Hawley, Kaufman, Liebman, Meyerott, Tauscher, the reply, and your declaration in support of the reply. So I think that's it.

Mr. Mann: Widdoes

Judge Eaton: Uhhh, Widdoes. Widdoes wasn't – did I mention Widdoes yeah? That didn't get filed until the very end. And that - I didn't have (intelligible).

Derek Mann: It was a declaration of Mr. Widdoes.

Judge Eaton: Curtis Widdoes, wasn't it? I'm going to add that.

2:32:59

Mr. Brain: I didn't (intelligible)

Judge Eaton: So I've just added the declaration of Curtis Widdoes. And then we have the reply declaration from Mr. Brain which is in support of his reply document.

Uhhm, on number **three**, Mt Dallas Association lacks Legal authority to manage maintenance and other aspects of the Mt. Dallas Road – the request was “on behalf of ALL of the benefitted properties”. I want to have that.

Mr. Brain: That’s fine.

Judge Eaton: They may have authority to manage it on behalf of SOME owners.

Mr. Brain: Hmmm.

Judge Eaton: And the same with number **five**. Mt Dallas Association lacks legal authority to establish, assess or collect maintenance expenses from ALL of the benefitted owners. They may have authority over SOME.

With that I would be prepared to sign it. I’ve made those changes, initialed those and I’ll just hand it back down to Mr. Brain.

Mr. Brain: You deleted number **four**. Correct?

Judge Eaton: I deleted number **four**. I’ll change this from Proposed and I need your signature Mr. Brain and as well, although there’s no space for it approve as to form for Mr. Mann.

(Sound of rustling paper)

Mr. Brain: Initial here

Mr. Brain: (directly to Judge Eaton). So I don’t get to see you then next Friday, right?

Judge Eaton: No.

Mr. Brain: (chuckles) (intelligible)

Judge Eaton: (speaking to Mr. Brain). Do you have (intelligible) a date yet?

Mr. Brain: (chatting) (intelligible)

Judge Eaton: I need to sign off now that counsel has signed.

All right, I have entered the order on the very very limited issues that were presented by the motion hopefully that – whether you like the ruling or not, it will hopefully narrow the issues and help focus on what needs to be done next to go forward. Because you’ve got to get this done somehow, either with benefit of the Court or on your own. But if you can’t get there, bring it back and we’ll do something and

you'll end up with legally enforceable rights to – somebody will end up with legally enforceable rights to manage the road, assess and collect for the expenses somehow, one way or another. I know that's what everybody wants to have happen.

Mr. Brain: That's what everybody wants.

Judge Eaton: I know. All right, I do have a 2 o'clock matter which we will address. I just want to take a short recess and then I'll be prepared to go on then.

Court Clerk: All rise