

GARY A. KOHLI
CLERK OF COURTS
OTTAWA COUNTY OHIO

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IN THE COMMON PLEAS COURT OF OTTAWA COUNTY, OHIO

Johnson's Island Property Owners' Assoc.)	Case No. 18CV382
Plaintiffs,)	Judge Bruce Winters
v.)	<u>DECISION AND JUDGMENT</u>
Anthony Cianciola, et al.)	<u>ENTRY</u>
Defendants.)	

This cause comes before this Court for hearing on Plaintiff's Complaint and Defendants' Counterclaim. At the conclusion of the Plaintiff's case, the Defendant moved for a directed verdict.

Facts

Plaintiff Johnson's Island Property Owners' Association ("JIPOA") is comprised of members who own property in Bay Haven Estates and Shiloh Estates, both of which are subdivisions on Johnson's Island in Marblehead, Ohio. Defendants Anthony and Elizabeth Cianciola ("the Cianciolas") are owners of lots in Bay Haven Estates, were once members of JIPOA but as of August 28, 2008, decided they no longer wanted to be member of JIPOA.

Johnson Island Investment Group ("JIIG") is the titled owner of the roadways and causeway in Johnson's Island. Baycliffs Homeowners' Association ("BHOA") is a

homeowner's association consisting of lot owners in Baycliffs Estates Subdivision on Johnson's Island.

By Judgment Entry dated June 7, 2007, this Court with agreement from JIPOA, JIIG, BHOA and individual owners who are not members of either association, created the Johnson's Island Road Commission ("Road Commission") which operated according to the "Operating Agreement." The Road Commission was charged with oversight of the planning, budgeting, administration, maintenance and repair of Johnson's Island roads, causeway and toll gate under the terms of the Operating Agreement. The Road Commission consists of individuals from JIPOA, JIIG, BHOA and the non-member group. The Road Commission hired experts who created a plan for repair and maintenance of the roads and causeway of Johnson's Island. The Road Commission has open meetings and votes on proposed annual budgets. The cost of the repairs and maintenance are apportioned between the approximately 300 homeowners on the island.

The proportionate share was determined by the Road Commission, JIPOA, BHOA, JIIG and the non-members as an equal share for each property owner. JIPOA is responsible for billing and collecting the assessments from owners in Bay Haven and Shiloh subdivisions and BHOA is responsible for billing and collecting the assessments from owners in Baycliffs subdivision.

For years 2010 through 2018, the Defendants the Cianciolas were billed \$3,109.00 of which they paid \$150.00. Any amounts that are unpaid by Bay Haven or Shiloh subdivision lot owners, is paid by JIPOA.

The Defendants filed a Counterclaim alleging that JIPOA is prohibited from enforcing the Operating Agreement.

Analysis

An easement is the interest in the land of another, created by prescription or express or implied grant, that entitles the owners of the easement, the dominant estate, to a limited use of the land in which the interest exists, the servient estate. Crane Hollow, Inc. v. Marathon Ashland Pipe Line, LLC (2000), 138 Ohio App.3d 57. The grant of an easement includes the grant of all things necessary for the dominant estate to use and enjoy the easement. Day, Williams & Co. v. RR. Co. (1884), 41 Ohio St. 392. Generally, whoever has an easement, like a right-of-way for instance, in or over another's premises, is the one to keep it in repair. National Exchange Bank v. Cunningham (1889), 46 Ohio St. 575. Further, every grantee of a right-of-way, to be exercised and enjoyed over or through the land of the grantor, must himself repair the way, if he desires to have it repaired and kept in repair for his use, or if repairs are necessary to prevent the enjoyment of the right becoming an annoyance and nuisance to the owner of the servient tenement, unless the grantor himself has expressly undertaken the performance of that duty. Id.

In the present case, the Court finds that the Defendants have an easement to use the roads and causeway on Johnson's Island and that easement grantees, including Defendants, have a common law obligation to contribute to the maintenance and repair of those easements. The Court finds that the Road Commissions has undertaken only the appropriate and necessary repairs and maintenance on those roads and causeway. The Court finds the Operating Agreement to be enforceable and further finds that the "proportionate share" is properly defined as an equal share (1/300) for each property owner on Johnson's Island. The Court finds that Defendants have been unjustly enriched by filing to pay the invoices from JIPOA for the repairs and maintenance from 2010 – 2018.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff is granted judgment in the amount of \$3,109.00 less the \$150 already paid.

It is ORDERED, ADJUDGED and DECREED that the Operating Agreement is enforceable and that the "proportionate share" is properly defined as an equal share (1/300) for each property owner on Johnson's Island.

Defendant's motion for directed verdict is DENIED. Defendant's counterclaim is DISMISSED.

Clerk of Courts shall send copies of this Decision and Judgment Entry to all counsel of record and pro se parties by regular U.S. Mail forthwith.

Bruce Winters

Judge