

RESOLUTION 02-03-2011

DIGEST

Easement Maintenance - Deletion of Arbitration Requirement in Small Claims cases

Amends Civil Code section 845 to remove the requirement for arbitration of apportionment of easement maintenance costs where the amount in controversy is within the small claims jurisdictional limit.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 12-03-2010, which was withdrawn.

Reasons:

This resolution amends Civil Code section 845 to remove the requirement for arbitration of apportionment of easement maintenance costs where the amount in controversy is within the small claims jurisdictional limit. This resolution should be approved in principle because it avoids the delay and added complexity of arbitration in matters where the amount in controversy can be resolved in small claims.

Unlike prior Resolution 12-03-2010 which sought to completely eliminate the provisions for non-binding judicial arbitration in easement maintenance cost cases, this resolution strikes an appropriate balance by allowing cases with small amounts in controversy to be resolved in the more expedient small claims forum. While judicial arbitration of the apportionment of easement maintenance costs makes sense in terms of providing a rapid means of resolving these types of disputes without overburdening the superior court, it makes imminently more sense to provide the parties with the option of the simpler and speedier resolution of small claims court where the amount in controversy is within that court's jurisdictional limits. Indeed, under the current system, the cost to the parties in terms of litigation and delay and the cost to the court of determining the dispute likely exceeds the amount in controversy when it is within the small claims jurisdiction.

This resolution would also codify and legitimize the reality that these types of claims, often times, are already filed in small claims court. The small claims court should be given clear authority to resolve these claims.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 845 to read as follows:

- 1 § 845
- 2 (a) The owner of any easement in the nature of a private right-of-way, or of any
- 3 land to which any such easement is attached, shall maintain it in repair.
- 4 (b) If the easement is owned by more than one person, or is attached to parcels of

5 land under different ownership, the cost of maintaining it in repair shall be shared by each
6 owner of the easement or the owners of the parcels of land, as the case may be, pursuant
7 to the terms of any agreement entered into by the parties for that purpose. If any owner
8 who is a party to the agreement refuses to perform or fails after demand in writing to pay
9 the owner's proportion of the cost, an action for specific performance or contribution may
10 be brought against that owner in a court of competent jurisdiction by the other owners,
11 either jointly or severally.

12 (c) In the absence of an agreement, the cost shall be shared proportionately to the
13 use made of the easement by each owner.

14 Any owner of the easement, or any owner of land to which the easement is
15 attached, may apply to any court where the right-of-way is located and that has
16 jurisdiction over the amount in controversy for a judgment determining the proportionate
17 liability of each owner ~~the appointment of an impartial arbitrator to apportion the cost.~~
18 The application may be made before, during, or after performance of the maintenance
19 work. If the amount in controversy is more than the jurisdictional limit of the small
20 claims court, then the application shall be for the appointment of an impartial arbitrator to
21 apportion the cost. If the arbitration award is not accepted by all of the owners, the court
22 may enter a judgment determining the proportionate liability of each owner. The
23 judgment may be enforced as a money judgment by any party against any other party to
24 the action.

25 (d) In the event that snow removal is not required under subdivision (a) or under
26 any independent contractual or statutory duty, an agreement entered into pursuant to
27 subdivision (b) to maintain the easement in repair shall be construed to include snow
28 removal within the maintenance obligations of the agreement if all of the following exist:

29 (1) Snow removal is not expressly precluded by the terms of the agreement.

30 (2) Snow removal is necessary to provide access to the properties served by the
31 easement.

32 (3) Snow removal is approved in advance by the property owners or their elected
33 representatives in the same manner as provided by the agreement for repairs to the
34 easement.

35 (e) The provisions of this section do not apply to rights-of-way held or used by
36 railroad common carriers subject to the jurisdiction of the Public Utilities Commission.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

Existing Law: Civil Code section 845 provides that if there is a dispute over the apportionment of maintenance costs between holders of easement rights over the same right-of-way, a party may apply to the Court for the appointment of an impartial arbitrator, and that if the arbitrator's determination is not acceptable to all owners, the Court may enter a judgment apportioning the liability. Even though the section does not so specify, this arbitration process is non-binding. (*Healy v. Onstott* (1987) 192 Cal.App.3d 612, 616.)

This Resolution: This Resolution would eliminate the arbitration aspect of the apportionment proceeding in cases where the amount in controversy is less than the jurisdictional limit for Small Claims Court.

The Problem: Although the language is permissive, some Courts have interpreted this code section to mean that the only way someone can get reimbursement for repair to a common easement is to engage in this non-binding arbitration process, even where the plaintiff files in Small Claims Court. We submit that a case within the Small Claims jurisdictional limit should not require the effort and expense of a formal non-binding third party arbitration/trial de novo process.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: John Crawford (Contact Martin White, PO BOX 1826, Carlsbad CA, 92018-1826; Phone (760) 930-9033; Fax (760)930-9063; email marnew@sbcglobal.net)

RESPONSIBLE FLOOR DELEGATE: Martin White

Resolution 02-03-11- Deletion of Arbitration Requirement in Small Claims Cases

The State Bar of California's Committee on Alternative Dispute Resolution RECOMMENDATION: DISAPPROVE

The statement of the problem in this resolution notes that the current statutory language is permissive, but that some courts have interpreted the code section to mean that the only way someone can get reimbursement for repair to a common easement is to engage in the non-binding arbitration process. The State Bar's Committee on Alternative Dispute Resolution (ADR Committee) agrees that under Civil Code section 845 a court may not, on its own motion, order a case to non-binding arbitration. Non-binding arbitration for apportionment of repair costs in the absence of a written agreement is available, however, upon the application of an owner of the easement. The ADR Committee does not believe the reported misinterpretation of the statute warrants the proposed statutory amendment. The ability of an owner of an easement to apply to the court to send the matter to non-binding arbitration is a valuable option that should remain available, regardless of the amount in controversy. This resolution would remove that option from Civil Code section 845 in cases that are within the small claims jurisdictional limit.

Disclaimer

This position is only that of the State Bar of California's Committee on Alternative Dispute Resolution. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position

of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.