

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC., *et al.*

Plaintiffs

v.

MAURICE B. TOSE', *et ux*

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* MARYLAND
* Case No. C-02-CV-19-003640

* * * * *

ANSWER

Defendants, Maurice B. Tose' and Teresa M. Layden, by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., respond to the Complaint filed against them and state:

1. Defendants admit that the Association was formed in 1949. The Defendants deny the remainder of the statements contained in Paragraph 1.
2. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 2 and therefore deny same.
3. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 3 and therefore deny same.
4. Defendants generally admit the statements contained in Paragraph 4 but deny that Defendant Layden resides in Maryland.
5. Defendants admit that statements contained in Paragraph 5.
6. Defendants generally admit the statements contained in Paragraph 6, but deny that Layden is an Anne Arundel County resident.

7. Defendants admit that they are the owners of 1290, 1299 and 1300 Magnolia Avenue, and the Disputed Street as set forth in Paragraph 7. Defendants deny that the Plaintiffs have any right, title or interest in the area of the Disputed Street.

8. Defendants are without sufficient knowledge to admit or deny the statements contained in Paragraph 8 and therefore deny same. Further, Defendants assert that the referenced deed is irrelevant to the Defendants' rights in the Disputed Street.

9. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 9 and therefore deny same.

10. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 10 and therefore deny same.

11. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 11 and therefore deny same.

12. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 12 and therefore deny same.

13. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 13 and therefore deny same.

14. Defendants deny that the Association has maintained and/or improved the Disputed Street as stated in Paragraph 14.

15. Defendants deny that the Association has exercised dominion and control over the Disputed Street as stated in Paragraph 15. Defendants are without sufficient knowledge to admit or deny other portions of the statements set forth in this Paragraph and therefore deny same.

16. Defendants deny the statements set forth in Paragraph 16 as they pertain to the Disputed Street. Defendants are aware of certain projects in various areas of the community

addressed by the Association, but deny that the actions set forth have been for the benefit of all property owners. Defendants are without sufficient knowledge to admit or deny other aspects and statements set forth in this Paragraph and therefore deny same.

17. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 17 and therefore deny same.

18. Defendants deny the statements contained in Paragraph 18.

19. Defendants deny that Plaintiffs and all lot owners have easement rights in the Disputed Street and therefore deny the statements contained in Paragraph 19.

20. Defendants deny the statements contained in Paragraph 20.

21. Defendants admit the statements contained in Paragraph 21.

22. Defendants admit that the driveway markers have not been moved, as stated in Paragraph 22.

23. Paragraph 23 is a statement of incorporation. Defendants incorporate their responses to the preceding paragraphs in response thereto.

24. Paragraph 24 is a claim for relief and is not a statement requiring an admission or denial; to the extent such a response is required, Defendants deny same.

25. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 25 and therefore deny same.

26. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 26 as it pertains to the general areas of Arundel on the Bay; and therefore deny said statements. With regard to the Disputed Street, Defendants deny the statements contained in Paragraph 26.

27. Defendants deny the statement contained in Paragraph 27.

28. Defendants deny the statements contained in Paragraph 28.

29. Defendants deny the statements contained in Paragraph 29 as they deny that the Plaintiffs and other lot owners have rights claimed by the Plaintiffs.

30. Defendants deny the statements contained in Paragraph 30.

31. Paragraph 31 is a claim for relief and is not a statement requiring an admission or denial; to the extent such a response is required, Defendants deny same.

32. Paragraph 32 is a statement of incorporation. Defendants incorporate their responses to the preceding paragraphs in response thereto.

33. Defendants deny the statements contained in Paragraph 33 as they relate to Plaintiff's claim of right.

34. Defendants admit that a controversy exists as set forth in Paragraph 34.

35-54. Plaintiffs have not included Paragraphs 35-54 in the Complaint. To the extent that any counts or claims were intended, the Defendants deny the Plaintiffs' claims and demand strict proof thereof.

55. Paragraph 55 is a statement of incorporation. Defendants incorporate their responses to the preceding paragraphs in response thereto.

56. Defendants deny that the Plaintiffs or others have the rights claimed in Paragraph 56, and therefore deny same.

57. Defendants deny the statements contained in Paragraph 57.

58. Defendants deny the Plaintiffs have the right to unfettered access and admit that they have not agreed to remove posts in the area, as asserted in Paragraph 58.

59. Defendants deny the statements contained in Paragraph 59.

60. Defendants deny the statements contained in Paragraph 60.

Defenses

61. In further answering the Complaint, and in accordance with MD CODE REAL PROP. §14-607, Defendants assert the following facts:

A. The Plaintiffs, the Property Owners of Arundel on the Bay, David Delia and Lori Strum, do not have an easement to or a right to use and access the Disputed Street by virtue of the fact that they own property in the community of Arundel on the Bay. As will be more clearly set forth in the Motion for Summary Judgment filed on behalf of Defendants, those property owners that, require access to the Disputed Street for the purpose of reaching the next public way, have an implied easement to the use of the platted paper road. See *Koch v. Strathmeyer*, 357 Md. 193 (1999)

B. Defendants are the owners and titleholders of all of the property referred to herein as the Disputed Street as a result of the application of MD CODE REAL PROP. §2-114.

C. Areas included in or adjacent to the Disputed Street serve as a driveway or access to the properties owned by James C. Schryver (Lots A and B, Block 67) and Marc. L. Apter (Lot K1 Block 67), who may have implied rights.

D. To the extent that the 1927 plat of Arundel on the Bay shows unplatted property between Defendants' property line and Fishing Creek, that property has been eliminated as a result of sea level rise and erosion. With the elimination of this fastland, there is no property for community riparian use.

E. The Disputed Street is not a designated fire drafting site. Based upon interviews with Fire Department officials, Defendants have learned that the Disputed Street is not suitable for use by the Fire Department for such purposes because it is topographically unsuitable. The Fire Department reports that it would use the reliable, tested and familiar areas of the designated

drafting sites. As a result, the Fire Department is not in need of access to the Disputed Street, and the safety and well-being of the community is not compromised as a result.

F. In the 27 years since Defendants have owned property in the vicinity of the Disputed Street, the Plaintiffs and members of the community have never used the Disputed Street for vehicular use, watching fireworks, or community activities. The limited use by others observed by Defendants has been with the Defendants' permission, acquiesces or tolerance.

G. Defendants have done all regular maintenance of the Disputed Street for the 27 years they have owned the property.

H. Arundel on the Bay is a waterfront community with designated community beach areas, piers and launching ramps available for the use of all property owners. The purpose of the platted roads is for property owners to use them to access their lots and the public ways.

63. In further answering the Complaint, Defendants assert the following defenses:

A. Plaintiffs have failed to join necessary parties under Maryland Rule 2-211.

B. The Complaint should be dismissed for failure to state a claim as the Complaint fails to comply with MD CODE REAL PROP. §14-606, which requires that the complaint include "a description of the property which is the subject of the action, including both its legal description and its street address or common designation, if any."

64. Defendants preserve the following affirmative defenses:

A. Collateral Estoppel;

B. Estoppel;

C. Fraud;

D. Laches;

E. Res Judicata;

- F. Statute of Frauds;
- G. Waiver;
- H. Privilege;

WHEREFORE, Defendants this Court issues an order for declaratory judgment that:

A. Defendants are the fee simple owners and titleholders of the Disputed Street between the platted lots owned by Defendants;

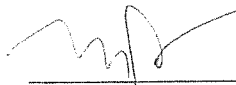
B. The community area that may have historically existed between the Defendants property and Fishing Creek as shown on the 1927 plat is no longer in existence; leaving the Defendants' lots as waterfront; and

C. The use of the Disputed Street is restricted to that of the adjacent property owners to access the next public way, only; and

D. For such other and further relief as the nature of the action may require.

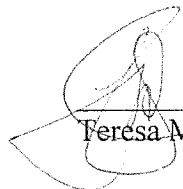
Verification

I, Maurice B. Tose', hereby swear and affirm under the penalties of perjury that the matters and facts contained herein are true and correct to the best of my personal knowledge, information and belief.



Maurice B. Tose'

I, Teresa M. Layden, hereby swear and affirm under the penalties of perjury that the matters and facts contained herein are true and correct to the best of my personal knowledge, information and belief.



Teresa M. Layden

Respectfully submitted,

/s/

Barbara J. Palmer CPF # 8501010468
Hyatt & Weber, P.A.
200 Westgate Circle, Suite 500
Annapolis, Maryland 21401
(410) 266-0626
bpalmer@hwlaw.com

Certificate of Service

I HEREBY CERTIFY that on this 19th day of December 2019, a copy of the foregoing Answer was filed in accordance with the MDEC system and a copy will be electronically served upon:

Wayne T. Kosmerl
N. Tucker Meneely
125 West Street, 4th Floor
Annapolis, Maryland 21401
(410) 268-6600
kosmerl@councilbaradel.com
meneely@councilbaradel.com
Attorneys for the Defendant

/s/

Barbara J. Palmer



CIVIL - NON-DOMESTIC CASE INFORMATION REPORT

DIRECTIONS

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a).

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING

FORM FILED BY: PLAINTIFF DEFENDANT CASE NUMBER C02CV19003640
(Clerk to insert)

CASE NAME: Property Owners of Arundel on the Bay vs. Maurice B. Tose' et ux.
Plaintiff Defendant

PARTY'S NAME: Maurice B. Tose' and Teresa Layden

PARTY'S ADDRESS: 1299 Magnolia Avenue, Annapolis, Maryland 21403

If represented by an attorney:

PARTY'S ATTORNEY'S NAME: Barbara J. Palmer PHONE: 410-266-0626
(Daytime phone)

PARTY'S ATTORNEY'S ADDRESS: Hyatt & Weber, P.A., 200 Westgate Circle, Suite 500 Annapolis, MD 21401

JURY DEMAND? Yes No

RELATED CASE PENDING? Yes No If yes, Case #(s), if known: _____

PLEADING TYPE

New Case: Original Administrative Appeal Appeal
 Existing Case: Post-Judgment Amendment

If filing in an existing case, skip Case Category/ Subcategory section - go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)

TORTS

- Asbestos
- Assault
- Battery
- Commercial
- Conspiracy
- Conversion
- Defamation
- False Arrest/Imprisonment
- Fraud
- Lead Paint - DOB of Youngest Plt: _____
- Loss of Consortium
- Malicious Prosecution
- Malpractice-Medical
- Malpractice-Professional
- Misrepresentation
- Motor Tort
- Negligence
- Nuisance
- Premises Liability
- Product Liability
- Toxic Tort
- Trespass
- Wrongful Death

CONTRACT

- Asbestos
- Breach
- Commercial
- Confessed Judgment (Cont'd)

- Construction
- Debt
- Fraud
- Government
- Insurance
- Product Liability

PROPERTY

- Adverse Possession
- Breach of Lease
- Detinue
- Distress/Distrain
- Ejectment
- Forcible Entry/Detainer
- Foreclosure
 - Commercial
 - Residential
- Forfeiture
- Landlord-Tenant
- Lis Pendens
- Mechanic's Lien
- Ownership
- Partition/Sale
- Quiet Title
- Rent Escrow
- Replevin
- Return of Seized Property
- Right of Redemption
- Tenant Holding Over

PUBLIC LAW

- Attorney Grievance
- Bond Forfeiture Remission
- Civil Rights
- County/Mncpl Code/Ord
- Election Law
- Eminent Domain/Condemn.
- Environment
- Error Coram Nobis
- Habeas Corpus
- Mandamus
- Prisoner Rights
- Public Info. Act Records
- Quarantine/Isolation
- Writ of Certiorari

EMPLOYMENT

- ADA
- Conspiracy
- EEO/HR
- FLSA
- FMLA
- Workers' Compensation
- Wrongful Termination

INDEPENDENT PROCEEDINGS

- Attorney Appointment
- Body Attachment Issuance
- Commission Issuance
- Contempt (Cont'd)

- Deposition Notice
- Dist Ct Mtn Appeal
- Financial
- Grand Jury/Petit Jury
- Miscellaneous
- Perpetuate Testimony/Evidence
- Prod. of Documents Req.
- Sentence Transfer
- Special Adm. - Atty
- Subpoena Issue/Quash
- Trustee Substitution
- Witness Appearance-Compel

PEACE ORDER

- Peace Order

OTHER

- Friendly Suit
- Grantor in Possession
- Maryland Issuance Administration
- Miscellaneous

IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Abatement | <input type="checkbox"/> Earnings Withholding | <input type="checkbox"/> Judgment-Interest | <input type="checkbox"/> Return of Property |
| <input type="checkbox"/> Administrative Action | <input type="checkbox"/> Enrollment | <input type="checkbox"/> Judgment-Summary | <input type="checkbox"/> Sale of Property |
| <input type="checkbox"/> Appointment of Receiver | <input type="checkbox"/> Expungement | <input type="checkbox"/> Liability | <input type="checkbox"/> Specific Performance |
| <input type="checkbox"/> Arbitration | <input type="checkbox"/> Findings of Fact | <input type="checkbox"/> Oral Examination | <input type="checkbox"/> Writ-Error Coram Nobis |
| <input type="checkbox"/> Asset Determination | <input type="checkbox"/> Foreclosure | <input type="checkbox"/> Order | <input type="checkbox"/> Writ-Execution |
| <input type="checkbox"/> Attachment b/f Judgment | <input checked="" type="checkbox"/> Injunction | <input type="checkbox"/> Ownership of Property | <input type="checkbox"/> Writ-Garnish Property |
| <input type="checkbox"/> Cease & Desist Order | <input type="checkbox"/> Judgment-Affidavit | <input type="checkbox"/> Partition of Property | <input type="checkbox"/> Writ-Garnish Wages |
| <input type="checkbox"/> Condemn Bldg | <input type="checkbox"/> Judgment-Attorney Fees | <input type="checkbox"/> Peace Order | <input type="checkbox"/> Writ-Habeas Corpus |
| <input type="checkbox"/> Contempt | <input type="checkbox"/> Judgment-Confessed | <input type="checkbox"/> Possession | <input type="checkbox"/> Writ-Mandamus |
| <input type="checkbox"/> Court Costs/Fees | <input type="checkbox"/> Judgment-Consent | <input type="checkbox"/> Production of Records | <input type="checkbox"/> Writ-Possession |
| <input type="checkbox"/> Damages-Compensatory | <input checked="" type="checkbox"/> Judgment-Declaratory | <input type="checkbox"/> Quarantine/Isolation Order | |
| <input type="checkbox"/> Damages-Punitive | <input type="checkbox"/> Judgment-Default | <input type="checkbox"/> Reinstmt of Emplymnt | |

If you indicated **Liability** above, mark one of the following. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded. Liability is not conceded, but is not seriously in dispute. Liability is seriously in dispute.

MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)

- Under \$10,000 \$10,000 - \$30,000 \$30,000 - \$100,000 Over \$100,000

- Medical Bills \$ _____ Wages \$ _____ Property Damages \$ _____

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

- | | | | | | |
|----------------|------------------------------|-----------------------------|--------------------------|------------------------------|-----------------------------|
| A. Mediation | <input type="checkbox"/> Yes | <input type="checkbox"/> No | C. Settlement Conference | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| B. Arbitration | <input type="checkbox"/> Yes | <input type="checkbox"/> No | D. Neutral Evaluation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

SPECIAL REQUIREMENTS

- If a Spoken Language Interpreter is needed, check here and attach form CC-DC-041
- If you require an accommodation for a disability under the Americans with Disabilities Act, check here and attach form CC-DC-049

ESTIMATED LENGTH OF TRIAL

(Case will be tracked accordingly)

- | | |
|---|---|
| <input type="checkbox"/> 1/2 day of trial or less | <input type="checkbox"/> 3 days of trial time |
| <input checked="" type="checkbox"/> 1 day of trial time | <input type="checkbox"/> More than 3 days of trial time |
| <input type="checkbox"/> 2 days of trial time | |

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.

Expected - Trial within 7 months
of Defendant's response

Standard - Trial within 18 months of
Defendant's response

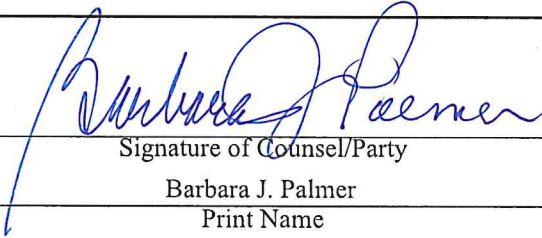
EMERGENCY RELIEF REQUESTED

**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE
MANAGEMENT PROGRAM (ASTAR)**

FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under Md. Rule 16-202 is requested, attach a duplicate copy of complaint and check whether assignment to an ASTAR

Expected - Trial within 7 months
of Defendant's response

Standard - Trial within 18 months of
Defendant's response



Signature of Counsel/Party

Barbara J. Palmer

Print Name

200 Westgate Circle, Suite 500

Street Address

Annapolis, Maryland 21401

City/State/Zip

December 19, 2019

Date