

PROPERTY OWNERS ASSOCIATION OF ARUNDEL ON THE BAY, INC., et al. Plaintiffs	*	IN THE
	*	CIRCUIT COURT
v.	*	FOR
MAURICE TOSE, et al. Defendants	*	ANNE ARUNDEL COUNTY Case No.: C-02-CV-19-3640

PLAINTIFFS' PRETRIAL STATEMENT

Plaintiffs/Counter-Complaint Defendants, Property Owners Association of Arundel on the Bay, Inc. (the "Association"), David Delia ("Delia") and Lori Strum ("Strum" and together with the Association and Delia, the "Plaintiffs"), by and through their attorneys, Wayne T. Kosmerl, N. Tucker Meneely and Council, Baradel, Kosmerl and Nolan, P.A., respectfully submit their Pretrial Statement, and state as follows:

1. Brief Statement of Facts and Defenses

The Association is a corporation that was formed under the laws of the State of Maryland in 1949. The Association, among other things, provides maintenance and preservation benefit to the residential lots and property owned by the Association and platted streets within the subdivision known as Arundel on the Bay. Plaintiffs David Delia and Lori Strum are lot owners in Arundel on the Bay and are each active in the Association, serving as President and Chairman of the Board, respectively.

Defendants, Maurice Tose and Teresa Layden are adult individuals who are married and together own real property in Arundel on the Bay known as 1290 Magnolia Avenue, 1299 Magnolia Avenue and 1300 Magnolia Avenue, Annapolis, Maryland 21403 (collectively, the "Tose-Layden Properties"). Tose and Layden reside at 1299 Magnolia Avenue, Annapolis, Maryland 21403.

This case pertains to a dispute between Plaintiffs and Defendants regarding the title and access to the streets that abut the Tose-Layden Properties, specifically the portion of Magnolia Avenue that abuts the Tose-Layden Properties and is located between Saratoga Avenue and the waters of Fishing Creek (“Disputed Street”) and one-half of the portion of Saratoga Avenue that abuts 1299 Magnolia Avenue.

This case was initiated by Plaintiffs as a result of Defendants’ conduct in obstructing Plaintiffs’ easement rights and those of the property owners within the community of Arundel on the Bay, which includes the Association, to use the Disputed Street. Defendants have interfered with the Plaintiffs’ and other property owners’ easement rights by parking automobiles on and placing wooden pillars within the Disputed Street. In this lawsuit, Defendants have taken the position that only a “limited implied easement” exists for the benefit of only immediately adjacent properties to the Defendants to use and access the Disputed Street and the Site Area, and that such access is strictly limited to ingress and egress only.

Defendants have also taken the position that, pursuant to Md Code, Real Property § 2-114, they are the absolute owner of that portion of Magnolia Avenue and Saratoga Avenue, which abuts the Tose-Layden Properties. The Association, which holds a deed to the Disputed Streets from 1951, disputes the Defendants’ claim to title.

The parties have filed competing claims for declaratory and injunctive relief. The Plaintiffs have raised the affirmative defenses of, *inter alia*:

- Estoppel – Defendants and/or their predecessors in title voluntarily conducted themselves in a manner recognizing the Association’s title to the streets in question, and the Association relied on that conduct to its detriment.

- Laches – Defendants and their predecessors’ failure to assert a right with respect to the streets in question constitutes an unreasonable and inexcusable delay, which has worked to the disadvantage of the Association, in that approximately 70 years has passed since the Association took title to the streets in question, as well as since Plaintiffs’ lot owners enjoyed use and access of the streets in question, and witnesses and documents that could shed light on the Plaintiffs’ claims and defenses are no longer available. This delay has thus caused prejudice to the Plaintiffs.
- Statute of limitations – Defendants’ claim as to title to the streets in question is barred by the statute of limitations in that Defendants’ predecessors in title failed to bring a claim within the statutory period of 20 years as to the streets in question and the Association, at the very least, claims title to the streets in question under adverse possession by color of title pursuant to a deed or by prescriptive easement. The statutory period to bring a claim passed in the 1970s.

2. Counterclaims, Cross-Claims, and Third Party Claims:

Defendants have filed a Counterclaim seeking declaratory and injunctive relief.

3. Amendments to the Pleadings:

None.

4. Pre-Trial Motions:

None at this time.

5. Limitation of Issues:

None at this time.

6. Stipulations/Admissions Requested:

Plaintiffs may request stipulations to the authenticity to certain documents to be used as exhibits at trial and will cooperate with Defendants regarding their request for same.

7. Damages Claimed/Relief Sought:

Plaintiffs and Defendants seek declaratory and injunctive relief.

8. Documentary Evidence/Exhibits

At this time, trial has not been set in this matter, and Plaintiffs and their counsel have not made a final determination regarding what documentary evidence Plaintiffs intend to use as exhibits in this matter. With that caveat, and reserving the right to utilize additional exhibits at trial which are not identified herein, Plaintiffs identify the following documents as potential exhibits at trial:

- 1889 Leg. Act incorporating AOTB
- 1890-09-17 Deed SH 37/507 Richard M. Chase to Chesapeake and Columbia Investment Co.
- 1890-09-17 Subdivision plat MSA C130 470
- 1892 USGS Map showing Arundel on the Bay
- 1893 Deed Lot G, Bl. 12 from Chesapeake and Col. To Matthews SH 43 F. 536
- 1898-04-09 An Act to Incorporate the town of Arundel on the Bay in Anne Arundel County Md, Chap. 349, Laws of Maryland
- 1904 USGS Map of Arundel on the Bay
- 1914 Deed from Lot F, Bl. 12 from Chesapeake and Col. to Harris GW 114, f. 71
- 1914 Deed Lot G, Bl. 12 from Matthews to Harris GW 114 f. 2
- 1915 Deed Lot E Bl. 12 from Chesap. and Col. to Harris GW 122 f. 136
- 1916 Deed Lot D Bl. 12 from Chesap. and Col. to Harris GW f. 155
- 1926-07-23 Deed WMB 34/154 Receivers of Chesapeake & Columbia Co to Meredith Lumber Co
- 1927 Deed Lot N and part of O, Bl. 12 from Meredith to Maley FSR 12 f. 123

- 1927 revised Plat of AOTB
- 1928-01-31 Deed FSR 32/20 Receivers of Chesapeake & Columbia Investment Co. to Meredith Lumber Co.
- 1933-06-15 Revised Plat filed MSA C2259 849
- 1933 Deed of numerous lots from Meredith Company to Tiger and Hill
- 1933 Deed of numerous lots from Hill and Tiger to Arundel on the Bay properties, Inc. FSR 111 f. 261
- 1935 Deed lots C D E F G H I Bl. 13 to Comm. of AOTB FAM 137 at 530
- 1949-02-03 Maryland Gazette article re AOTB: Town petitioning County Commissioners to be “de-incorporated”
- 1949 Deed of numerous lots from Hopkins, trustee to Steuart 513 at 241
- 1949-04-29 House Bill 191, Chapter 527, Acts of 1949, approving dissolution of AOTB effective 1949-06-01
- 1949 Deed of streets from Comm. of AOTB to Gallagher, Terrell, and Gosnell 523 at 598
- 1949-06-03 Certificate of Incorporation of Property Owners Association of Arundel on the Bay
- 1950-03-28 Chapter 101, House Bill 147, Acts of 1950
- 1951 Deed from Gallagher et. al. to Property owners Association of AOTB, Inc. 825 at 32
- 1951 Deed to streets from Gallagher et al to AA Co. 613 at 485
- 1954 Deed of streets from Property Owners Association to AA Co. 840 at 525
- 1959 Deed of streets from Property Owners Association to AA Co. 1333 at 309
- 1964 Deed of streets from Property Owners Association to AA co. 1757 at 371
- 1966 Deed of easement on Hollywood Ave. from Property Owners Association to AA Co.
- 1975 Deed of sewer easement from Property owners Association to AA Co. 2810 at 214
- 1979-05-24 County Council Bill 32-79 establishing Arundel on the Bay as a Special Community Benefit District
- 1985 Deed of easement from Property Owners Association to AA Co. 3847 at 817
- 1998 Deed to Newport Ave. from Property owners Association to AA Co. 8554 at 629
- AA Co. Code Incorporation of AOTB
- AOTB Plat Rec. SH 37 at F. 509
- Chapter 101 of 1950 Laws. authorizing AA Co. to take over streets of AOTB

- Historical Photographs of AOTB
- Historical Newspaper Articles re: AOTB
- Historical records of the Association
- Historical Public Records re: Establishment of Special Community Benefit Tax District
- Historical Minutes of the Property Owners Association of Arundel on the Bay, Inc. July 26, 1953 to 1980, including but not limited to: July 26, 1951, August 9, 1953, August 16, 1953, July 24, 1954, August 22, 1954, September 8, 1955, June 24, 1956, July 15, 1956, August 5, 1956, May 19, 1957, June 30, 1957, 1956-1957 Report, August 9, 1966, August 20, 1967, March 17, 1967, March 19, 1967, August 17, 1967
- Historical Association Records re: Special Community Benefit Tax District
- Land Records - Title History re: Defendants' Properties
- Surveys Prepared Concerning the Disputed Streets
- Correspondence Produced by Parties Concerning Disputed Streets
- Documents Authored by or Signed by Defendants Concerning the Disputed Streets
- Any documents filed by the parties in this action
- Any transcripts from depositions taken in this case and related exhibits
- Any discovery responses provided in this case
- Photographs, diagrams, drawings and other demonstrative exhibits concerning the subject matter of this litigation
- Copies of historical land records concerning the land at issue as well as surrounding properties
- Any documents produced or obtained during discovery
- Any exhibits listed by Defendants in their Pretrial Statement
- Documents received from third parties
- Impeachment or rebuttal evidence

Defendants reserve the right to supplement this response in accordance with the deadline to exchange exhibits prior to trial.

9. Expert Witnesses

- Anne Ogletree

10. Other Witnesses

- Plaintiffs reserve the right to call any parties to the above-captioned action as witnesses as trial.
- Plaintiffs reserve the right to call as witnesses any individuals identified by the parties during the course of discovery, including during depositions, including the following:
 - Bill Keyes
 - Lori Strum
 - Kathleen McLean
 - Susan Cook
 - Frank Florentine
 - Tim Hamilton
 - Mike Lord
 - David Zeman
 - Marc Apter
 - Pam Duncan
 - Aris T. Allen, Jr.

11. Additional Matters

None at this time.

Respectfully submitted,

COUNCIL, BARADEL,
KOSMERL & NOLAN, P.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2020, a copy of the foregoing paper was served on all parties registered to receive electronic service via MDEC, including upon:

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Attorney for Defendants

 /s/ N. Tucker Meneely
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