

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

Plaintiffs/Counter-Defendants

v.

MAURICE B. TOSE', *et ux.*

Defendants/Counter-Plaintiffs

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

* * * * *

ANSWERS TO INTERROGATORIES

Comes now the Defendant/Counter-Plaintiff, Maurice B. Tose', by Barbara J. Palmer and Hyatt & Weber, P.A., in answer to the Interrogatories propounded by Plaintiff/Counter-Defendant, Property Owners Association of Arundel-on-the-Bay, Inc., states:

(a) The information supplied in these answers is not based solely upon the knowledge of the executing party but includes the knowledge of the party's agents, representatives and attorneys, unless privileged.

(b) The word usage and the sentence structure is that of the attorneys who in fact prepared these answers and said language does not purport to be the exact language of the executing party.

General Objections

The following General Objections are part of the response to each and every Interrogatory and are set forth here to avoid the duplication of restating each General Objection in each specific response. The General Objections may be specifically referred to in a response to certain Interrogatories for the purpose of clarity. However, the failure to specifically incorporate a General Objection into a response should not be construed as a waiver of any of the General Objections.

A. Privileges. Defendant objects to the Interrogatories to the extent that they call for disclosure of information protected by the attorney-client privilege, the work-product doctrine, or other applicable privileges.

B. Beyond the Scope of the Maryland Rules of Civil Procedure. Defendant objects to the Interrogatories to the extent that they: (1) seek information that is not within Plaintiff's knowledge; (2) seek discovery that is unreasonably cumulative or duplicative; (3) are unreasonable, unduly burdensome or expensive; (4) may otherwise be construed to require responses beyond those required by the Maryland Rules of Civil Procedure.

C. Relevance. Defendant objects to the Interrogatories to the extent that they seek information that is neither relevant to the issues raised in this lawsuit nor reasonably calculated to lead to the discovery of relevant, admissible evidence. Nothing herein shall be construed as an admission by Defendant respecting the admissibility or relevance of any fact or document, or as an admission of the truth or accuracy of any characterization, description or definition contained in Plaintiff's Interrogatories.

D. Unlimited in Time. Defendant objects to each Interrogatory which is not limited to the time period of the events at issue in this lawsuit on the ground that it is overly broad, unduly burdensome, oppressive, and seeks information and/or documentation neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

E. Vagueness. Defendant objects to the Interrogatories to the extent that they are vague, ambiguous or overly broad.

F. Premature. Defendant objects to the Interrogatories to the extent that they are premature and/or speculative. Defendant's investigation is ongoing, and Defendant therefore reserves the right to rely on any facts, documents or other evidence that may develop or come to her attention as this litigation proceeds.

ANSWERS TO INTERROGATORIES

Interrogatory No. 1: Identify each person, other than a person intended to be called an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, including any claim for damages, and state the subject matter of the information possessed by that person.

Answer No. 1. The Defendant intends to call the following individuals concerning this action: Maurice Tose' 1299 Magnolia Avenue and Asher Tose' 1290 Magnolia Avenue; the Tose's can testify to the limited presence of any individuals on the Disputed Street or Site Area over the past several years.

A representative of the Anne Arundel County Fire Department is anticipated to testify that the Disputed Street is not appropriate for, and would not be used as a drafting site in the event of a fire. The area is boggy and is not anticipated to support the weight of a fire truck. The fire department would rely upon previously designated drafting sites in the event of an emergency.

Interrogatory No. 2: Identify each person whom you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and, with respect to an expert whose findings and opinions were acquired in anticipation of litigation or for trial, summarize the qualifications of the expert, state the terms of the expert's compensation, and attach to your answers any available list of publications written by the expert, and any written report made by the expert concerning the expert's findings and opinions.

John J. Dowling, Esq.
115 Cathedral Street
Annapolis, Maryland 21401
410-269-1053
john.dowling@jdowlinglaw.com

Mr. Dowling's opinions, as they relate to his role as a title expert, title examiner and Maryland attorney, as well as his expertise in surveying, are set forth in the documentation that is being produced in response to the Request for Production of Documents. Mr. Dowling has searched the title of the Disputed Street, as it is referenced in the Complaint and is anticipated

to testify concerning the results of that research. In general, Mr. Dowling asserts that the Plaintiff, Property Owners Association of Arundel on the Bay do not have title to the bed of the paper road that is the subject of this action. Title to the road bed is owned by the Defendants, by virtue of the operation of law as set forth in the Real Property Art. § 2-114. Those that have an implied easement for use of the area are those individual that own adjacent property that require the use of the road to access the next public way.

Mr. Dowling has performed a survey of the areas that are the subject of this action and his survey has also been produced. Mr. Dowling has verified that the lots owned by the Defendants are waterfront lots, with no remaining fastland between the lot lines and the waters of Fishing Creek. The scope of Mr. Dowling's findings and opinions is set forth in the Defendants' expert witness designation.

Shepard Tullier
LandVisions, Inc.
614 Tayman Drive
Annapolis, Maryland 21403

Mr. Tullier is an expert in land planning and land use. He is anticipated to testify about the historic planning and development of water-privileged communities such as Arundel on the Bay, with the goal of providing all members with water access. He will testify that Arundel on the Bay provides these amenities to the community at large, however, based upon established planning and development concepts, the paper road that is the subject of this action is not a community park or riparian area for the community to use. It was originally platted as a road for access to the adjacent lots and areas between the lot lines and the waters of Fishing Creek, that is no longer available or accessible because of sea level rise.

Interrogatory No. 3: If you intend to rely upon any documents or other tangible things to support a position that you have taken or intend to take in the action, including any claim for damages, provide a brief description, by category and location, of all such documents and other

tangible things, and identify all persons having possession, custody, or control of them.

Answer No. 3. All documents upon which the Defendant will rely in the trial of this action are being produced in response to the Plaintiff's Request for Production of Documents.

Interrogatory No. 4: With respect to the Disputed Street, please provide the physical dimensions (length, width, and square footage) of that portion to which you claim ownership.

Answer No. 4. Please see the survey prepared by John Dowling for a description of the area of the Disputed Street to which the Defendant claims title.

Interrogatory No. 5: With respect to the Site Area, please provide the physical dimensions (length, width, and square footage) of that portion to which you claim ownership.

Answer No. 5. Please see the survey prepared by John Dowling for a description of the area of the Disputed Street to which the Defendant claims title.

Interrogatory No. 6: Please describe with specificity and in detail all discussions, agreements, writings, notes, or communications of any kind you have had with your predecessors in title or anyone else regarding the nature of the quality, ownership and rights of your claimed interest in any of the platted streets in Arundel on the Bay including exactly what rights of ownership and/or use you claim in any or all of the platted streets, including the Disputed Street and the Site Area. For each such communication, state who was a party to the communication, when it occurred, and who else was present when it occurred and the substance of the communication.

Answer No. 6. The Defendant did not have any communications with his predecessor in title regarding the nature of the quality, ownership and rights of my interest in the platted streets. The issue was discussed with Lori Strom. It was Ms. Strom's expressed opinion that the community had the right to use the street end of Magnolia between the Tose' lots for general purposes. Based upon the opinion of other community members who have been involved in previous litigation with the Association concerning other street ends, my counsel and my expert witness, the Defendant does not agree with that position.

Susan Cook also expressed the opinion that the property that is the subject of this action was held in title by the Association and available to all members of the Association and their guests for

general purposes. The Defendant did not agree with Ms. Cook's assertion of the Association's claim of ownership or rights of use.

John Moses and April Moses both served as officers and members of the Board of the Association along with the Defendant over 20 years ago. A survey of the waterfront areas was prepared during that time. John Moses informed the Defendant that they were the owners of the Disputed Street as a result of the operation of Md. Real Property Art. §2-114. It has been a subject of conversation with the Moses over the years that there have been other court cases brought by the Association that have led to the same conclusion that the adjoining property owners were the titleholders.

Sherry Bellamy informed the Defendant of the outcome of the litigation that she was involved in with the Association. The conclusion was clear that the adjacent lot owners are the owners of the street bed, to the centerline, and that the Association's claim of ownership was not valid. Judge Caroom provided the determining opinion confirming this.

The Defendant has also spoken with Kenneth Freeh who owns the property at 1301 Magnolia Avenue. The Defendant provided a copy of the court's decision in the Bellamy case. Mr. Freeh indicated that he did not object to a bench being on the part of the street-end that he owns. The Defendant does not have information concerning the dates or times of these communications.

The Defendant has also spoken with the owner of the waterfront property at the intersection of Magnolia Avenue and Rockway. The Bellamy decision was delivered to them as well. At the time, the Association was discussing placing a bench at that location as well. Subsequently, no further action was taken regarding a bench at that location.

It is the Defendant's position, that has been expressed in the course of these various communications, that because the owners of the adjacent lot own to the centerline of the roadbed

pursuant to the provisions of Md. Real Property Art. §2-114, that they are the owners of the Site Area (defined as those portions of the paper road and some area of macadam roadway on Magnolia Avenue and Saratoga Avenue that bind on the Tose' Property as shown on Exhibit D of the Counter-Complaint). The street end of Magnolia Avenue between the Tose' lots was initially platted as a road that led to land between the Tose' platted lots and the waters of Fishing Creek. There is no longer any community property or beach area between the Tose' lots and the waters of Fishing Creek as a result of sea-level rise. The Tose' property is now waterfront property, and to the knowledge of the Defendant, was waterfront at the time of the Defendant purchased the property, 27 years ago.

Therefore, it is the Defendant's position that the Site Area belongs to the Defendant, however, it is subject to a limited easement for use of the immediate lot owners to get to the next public way, as set forth in *Koch v. Strathmeyer*, 357 Md. 193 (1999). This position is confirmed in the Calvert County Circuit Court's decision in *Paterson v. Kester*, produced in response to the Request for Production of Documents. The Defendant's position is set forth in greater detail in the Counter-Complaint filed in this action on February 6, 2020.

Interrogatory No. 7: Please state whether you and/or anyone else has ever ordered any appraisal of Your Property as described in the Counter-Complaint, including at the time you purchased the property or otherwise, and if so, state when the appraisals were made, by whom, for what purpose and the conclusions reached by the appraisals. Please attach copies of any appraisals to your answers.

Answer No. 7: The Defendant objects to this Interrogatory as the information sought neither relevant to the issues raised in this lawsuit nor reasonably calculated to lead to the discovery of relevant, admissible evidence. In further responding to this Interrogatory, the Defendant states that he is in possession of an appraisal performed in the summer of 2020, which will be produced in response to the request for production of documents.

Interrogatory No. 8: Identify all persons other than your attorney, who have investigated on your behalf or others, any aspects of the subject matter of this litigation,

including the name, address and telephone number of each such person.

Answer No. 8: The Defendant's counsel and experts, who have been previously identified, have investigated the subject matter.

Interrogatory No. 9: Please identify and fully describe the substance of any and all documents, including, but not limited to, correspondence, surveys, deeds, plats, emails, photographs, videotapes, audiotapes, or diagrams that are in any way related to the subject matter of the Complaint and/or Counter-Complaint filed herein, Your Property, the Disputed Street and/or the Site Area, and identify all persons who have possession, custody or control of the above- described items.

Answer No. 9: The documents in the Defendant's possession related to the subject property are being produced in response to the Request for Production of Documents. Some of the documents are in the Land Records of Anne Arundel County.

Interrogatory No. 10: Please describe in detail, and identify all documents relating to, all improvements, repairs, and/or maintenance you have undertaken to the Disputed Street, the Site Area and Your Property in the past twenty (20) years, including, but not limited to, the adjoining bulkhead and revetment, including in your answer the nature of the improvement, repair, and/or maintenance, when it was undertaken, by whom, the cost of such improvement, repair, and/or maintenance, whether permits or other regulatory authorizations were obtained for any such improvements, maintenance or repairs and if so for such permit or regulatory authorization who sought and was granted such approval, and who paid for such improvements, repairs, and/or maintenance.

Answer No. 10: For more than twenty-five years, for as long as the Defendant has owned the property, the Defendant, and the Defendant's son, Asher Tose' who resides at 1290 Magnolia Avenue, have regularly maintained the Disputed Street as a part of their own property. The Defendant has obtained permits from MDE and Anne Arundel County for the reconstruction of the 1290, 1299 and 1300 Magnolia Avenue properties bulkhead and pier, beginning in 2009. Some of the work for the bulkhead at 1299 and 1300 Magnolia Avenue was completed in 2012.

In 2016, the bulkhead at 1290 Magnolia Avenue and the pier at 1299 Magnolia Avenue was built and the pier at 1300 Magnolia Avenue was replaced. An MDE permit is still active for

the boathouse at 1299 Magnolia Avenue. Permits and invoices are being supplied in response to the Request for Production of Documents.

The area which is not subject to regular flooding, has been mowed, weeded and generally cared for by the Defendant and Asher Tose'. The Defendant had allowed the grasses near the shoreline to establish in an effort to retain the fastland and slow the erosion. In 2019, in order to avoid a direct confrontation with the Association, the Defendant mowed and removed some of the established grasses in the area of the Disputed Street. Unfortunately, this has allowed increased water intrusion and washing out of the property. The Defendant regrets having taking that action as the area has become increasingly boggy as a result. Other than rock that was installed along the shoreline in various places in the community about 25 years ago, the Association has never taken any action in the area of the Disputed Street to mow, trim or otherwise maintain the area. The documents showing the work performed and for the improvements in this area that have been retained by the Defendant are being produced. The Association has not regularly mowed or otherwise maintained the area.

In 2017, at 1290 Magnolia Avenue, two wood-burning fireplaces were replaced with propane inserts and the furnace was converted from fuel oil to propane. The concrete driveway was installed over the previously impervious surface at 1290 Magnolia Avenue in 2018. Various other maintenance, repairs and improvements have been made to the residences at 1290 and 1299 Magnolia over the years, but this work is not relevant to this action regarding the street-ends. A birdhouse has been installed and the trees have been pruned in the area of the Disputed Street as well over the years.

Interrogatory No. 11: Please describe the nature of the use and/or access you assert the individual property owners in Arundel on the Bay are entitled to over the portions of the Disputed Street and the Site Area including the nature of, and/or any limitations on, the access allowed and whether you claim such rights of use and/or access are limited to any particular category or

group of property owner in Arundel on the Bay, or any particular time of day or year.

Answer No. 11: The Defendant asserts that the Association and its members do not have rights to use the Disputed Street and Site Area for riparian activities. The portion of Magnolia and Saratoga Avenues that have been improved for vehicular travel is available for community use as any improved road in the community. However, the waterfront areas at Magnolia and Saratoga, referred to as the Site Area in the Counter-Complaint, are not available for general use, gatherings or riparian activities by the Association or its members. The Association is not entitled to such rights by plat, and the Association and its members have not established a regular pattern of use of the Disputed Street and Site Area. There have been no regular activities, picnics, or gatherings for events such as the 4th of July or Blue Angels flyovers held on the property, so it is the Defendant's position that individual members of the Association, and the Association itself has not established any implied easement for the continued use of the Disputed Street or the Site Area.

The Defendant is the owner of the Disputed Street. To the extent that any adjacent property owner has regularly used a portion of the Disputed Street to access their own lot, the Defendant does not dispute the continuing right to do so. Over the 27+ years that the Defendant has owned the 1290, 1299 and 1300 Magnolia Avenue, on few occasions, the Defendant has observed other community residents on the subject property. On occasion, the Defendant has observed individuals whom he and his family members did not know or recognize, on the Site Area, the Disputed Street, and on the Defendant's own lot, who had been drinking and/or had drinks in their hands. The Defendant later learned that these individuals were renting Mark Apters' neighboring property through either Airbnb or VRBO. These individuals acted as though that they were allowed on this property. On a few occasions over the years, the Defendant has had to ask individuals who had wandered down and stayed on the undeveloped lot at 1300 Magnolia Avenue, swinging on the

swing-set and loitering on the piers and bulkhead, to leave the property. Recently, a vehicle with Pennsylvania license plates drove on to the street-end and got stuck in the soft ground and had to be towed off, doing damage to the property as a result. Photographs of this occurrence are being provided in response to the Request for Production of Documents.

The Defendant relies upon the advice of counsel and experts who have explained that the platted paper road is available to those adjacent lot owners, only, to get to the next public way. The paper road, as shown on the 1927 plat, appears to provide access to beach area on Fishing Creek beyond the lot lines of Defendant's lots. That beach area no longer exists because of the rise of sea level, so the road no longer serves as access to any area beyond the Defendant's property. The Defendant asserts that the Site Areas are not safe for any vehicular use, particularly closer to the water, as it is most often boggy and cannot support the weight of any vehicle.

The Defendant has observed a few individuals who reside in the community who walk the property on occasion. The Defendant has not objected to this, and generally has permitted this type of use by individuals who are recognized as residents of the community. This has been a permitted use, to which the Defendant does not object. However, some occasions, the Defendant has observed strangers on the Disputed Streets and Site Area, which have left the Defendant feeling concerned about the presence of trespassers from both a safety and a liability perspective.

So, to be clear, it is the Defendant's understanding, based upon the advice of counsel, their experts and the outcome of litigation involving the Association and other communities, that certain neighboring property owners that require the use of the area of the paper road to get to the next public way have an implied easement by plat. This right of use does not extend to the Association at large or to all of the individual members or their guests. If there was still a beach area beyond 1290 Magnolia Avenue, as shown on the 1927 plat, then the scope of the implied easement by plat

may be different. For decades, however, the Disputed Street has been only an undeveloped and unestablished roadbed, and does not provide a destination for the community.

Interrogatory No. 12: Describe with specificity and in detail all occasions when anyone has used any portion of the Disputed Street and/or the Site Area in a manner contrary to or beyond the scope of the nature of the use and/or access you described in your answer to Interrogatory No. 11, and for all such instances, what actions, if any, you took to alert the Association, the police, or any other regulatory authority of such uses.

Answer No. 12: Approximately 8-10 years ago, two elderly women came to the waterfront of the Disputed Street to fish on several occasions. The Defendant did not object to this use because it was limited in nature, and the Defendant permitted this without raising objections. This summer, the same woman came again to fish on one occasion with her grandson. She was given permission for that one occasion, and has not been back since. This individual acknowledged that permission was necessary, as she indicated that the Defendant had previously provided permission.

As stated in response to Interrogatory No. 11, any access or use by individuals beyond those few adjoining property owners, is beyond the scope of that allowed by Maryland law. The Defendant has not objected to recognized neighbors walking the Disputed Street. The Defendant has objected to plans to place benches or other amenities in the Disputed Street or Site Area that would promote the use of the area by the Association, community members, their guests, non-residents of the community, or trespassers, because the Disputed Street and Site Area is not a park or a riparian area for general use or access. The use and access of the Disputed Street and Site Area by members of the Association or their guests is beyond the scope of what is set forth in response to Interrogatory No. 11. The Defendants are entitled to protect their property and control the use of the Disputed Street and Site Area to which they hold title. There is no basis for the Association to assert that it has the right to use the property as a park or for riparian access.

Interrogatory No. 13: Describe with specificity and in detail the factual basis for your assertion that there is a “limited implied easement for adjacent lot owners in Arundel on the Bay to use the Site Area for pedestrian ingress and egress” and describe in detail the scope of activities you assert are allowed under the “limited implied easement.”

Answer No. 13: The Defendant objects to this Interrogatory as it seeks legal opinions and conclusions. Without waiving this objection, the Defendant refers to the responses to Interrogatory Nos. 11 and 12. The Defendant relies upon his retained expert, John Dowling, counsel and the relevant cases for the position on Maryland law.

Interrogatory No. 14: For each claim set forth in the Counter-Complaint, please identify each document, reproduction, recordation or anything written or recorded which you contend supports the allegations contained therein, or which relates to or refers to the allegations contained therein and for each such document, recordation or reproduction, please identify the person(s), including yourself, who has custody or control over each such document, recordation or reproduction, in accordance with the foregoing instructions.

Answer No. 14: The Defendant objects to this Interrogatory as it seeks legal opinions and conclusions. The Defendant relies upon his retained expert, John Dowling, and counsel as authorities on Maryland law. All documents upon which the Defendant intends to rely are being produced in response to the Request for Production of Documents, and are supportive of the positions set forth in the Counter-Complaint.

Interrogatory No. 15: For each defense set forth in your Answer to Plaintiffs’ Complaint, please identify each document, reproduction, recordation or anything written or recorded which you contend supports the allegations contained therein, or which relates to or refers to the allegations contained therein and for each such document, recordation or reproduction, please identify the person(s), including yourself, who has custody or control over each such document, recordation or reproduction, in accordance with the foregoing instructions.

Answer No. 15: The Defendant objects to this Interrogatory as it seeks legal opinions and conclusions. The Defendant relies upon his retained expert, John Dowling, and counsel as authorities on Maryland law. All documents upon which the Defendant intends to rely are being produced in response to the Request for Production of Documents, and are supportive of the positions set forth in the Answer.

Interrogatory No. 16: Please describe whether you have ever been elected to the Board of Directors and/or been elected to any office, or served on any committee for Plaintiff, and if so, please describe with specificity and in detail in what capacity you served, and for how long.

Answer No. 16: The Defendant served on the Board of Directors and as an officer for several terms more than twenty years ago. The Defendant did not maintain records of the years that he served or the title that held.

Interrogatory No. 17: State all facts and identify all documents that support any claim or defense you have made or intend to make in this action not otherwise set forth in your answers to these interrogatories, and identify all persons with knowledge of those claims or defenses.

Answer No. 17: The Defendant objects to this Interrogatory as it seeks legal opinions and conclusions. The Defendant relies upon his retained expert, John Dowling, and counsel as authorities on Maryland law. All documents upon which the Defendant intends to rely are being produced in response to the Request for Production of Documents, and are supportive of the Defendant's position. All individuals known to the Defendant, with knowledge of relevant information have been identified in these Answers to Interrogatories.


Interrogatory No. 18: Identify each person with whom you consulted, sought advice from, or discussed the preparation of your answers to these interrogatories and identify any document which you reviewed in preparing your answers to these interrogatories.

Answer No. 18: The Defendant has consulted extensively with his counsel. The documents reviewed have been supplied in response to the Requests for Production of Documents.

AFFIDAVIT

The information supplied in these Answers is not based solely on the knowledge of the executing party, but includes the knowledge of the party's agents, representative and attorneys, unless privileged. The word usage and sentence structure may be that of the attorneys assisting in the preparation of this Response and thus does not necessarily purport to be the precise language of the executing party.

I HEREBY CERTIFY and affirm under the penalties of perjury that the contents of the forgoing Answers to Interrogatories are true and correct to the best of my knowledge, information and belief presently recollected, subject to inadvertent errors, and thus far discovered in the course of the preparation of these answers.



Maurice Tose'