

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, Teresa Layden, 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
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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 her predecessor in title regarding the nature of the quality, ownership and rights of my interest in the platted streets. The Defendant relies upon the information provided by Maurice Tose', in his Answers to Interrogatories.

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 she relies upon the information provided by Maurice Tose', in his Answers

to Interrogatories.

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 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 will be 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: The area referred to in the action as the Disputed Street and Site Area, along with our residential lots have been maintained by the Defendants and Asher Tose'. This Defendant does not have records of the regular maintenance work performed.

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 undersigned relies upon the information contained in the Answers

to Interrogatories provided by her co-Defendant, Maurice Tose' in responding to this Interrogatory.

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: Please see the Answer to this Interrogatory provided by my co-Defendant, Maurice Tose'.

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. The Defendant relies upon her retained expert, John Dowling, and her counsel for their 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 her retained expert, John Dowling, and her counsel for their position on Maryland law. All documents upon which the Defendant intends to rely are being produced in response to the Request for Production of Documents.

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 her retained expert, John Dowling, and her counsel for their position on Maryland law. All documents upon which the Defendant intends to rely are being produced in response to the Request for Production of Documents.

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 has never been elected to or served on any committee for the Property Owners Association of Arundel on the Bay, Inc.

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 her retained expert, John Dowling, and her counsel for their position on Maryland law. All documents upon which the Defendant intends to rely are being produced in response to the Request for Production of Documents.

All individuals known to the Defendant, with knowledge of relevant information have been identified in these Answers to Interrogatories, or in the Answers provided by Maurice Tose'.

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 relied upon her co-Defendant, Maurice Tose', and his work with our retained counsel and experts. I have not relied upon any documents, other than my co-Defendant's Answers to Interrogatories, in preparing these answers.

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.



Teresa Layden