

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

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

Plaintiffs,

v.

MAURICE B. TOSE, et ux.

Defendants

Case No. C-02-CV-19-003640

**OPPOSITION AND CROSS-MOTION TO DISMISS FOR FAILURE TO JOIN
NECESSARY PARTIES, AND REQUEST FOR HEARING**

Plaintiffs, Property Owners Association of Arundel on the Bay, Inc. (the “Association”), David Delia (“Delia”) and Lori Strum (“Strum”) (collectively, “Plaintiffs”), by and through their attorneys, Wayne T. Kosmerl, N. Tucker Meneely and Council, Baradel, Kosmerl and Nolan, P.A., files this Consent Motion to Extend Time to Respond to Motion, and state as follows:

1. Defendants filed a Motion to Dismiss for Failure to Join Necessary Parties on or about March 7, 2021, barely two months before trial in a case that has been ongoing for well over a year.
2. Plaintiffs have filed an action to quiet title as well as for declaratory and injunctive relief with respect to easement rights that they claim to have over streets that abut Defendants’ properties.
3. Defendants have filed a counterclaim seeking, among other things, declaratory and injunctive relief with respect to the title to the streets that abut their properties. Defendants also specifically seek an order from this Court which will block nearly all lot owners in Arundel on the Bay from accessing the streets that abut their properties. Defendants have not named any additional parties to their lawsuit.

4. Plaintiffs do not wish to join parties to their claim and do not believe it is necessary to join any further parties. To the extent that Plaintiffs' claims are deemed to seek relief that affects anyone other than Plaintiffs, Plaintiffs would request leave to amend their Complaint to narrow the relief sought rather than join additional parties to their suit.

5. Rule 2-211 provides that a person who is subject to service of process shall be joined as a party in the action if in the person's absence (1) complete relief cannot be accorded among those already parties, or (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.”

6. Complete relief *can* be accorded to Plaintiffs without joining additional parties. Furthermore, a disposition of Plaintiffs' claims would not impair or impede someone else's ability to protect a claimed interest because a judgment in favor or against Plaintiffs would not be binding on any non-parties. Lastly, in previous litigation involving a similar subject matter (and similar attorneys), this Court ordered that all lot owners be joined in the case as a result of the plaintiff in that case seeking similar relief to what Defendants seek here—blocking access to all lot owners. Although the joinder of those parties *was* necessary in that case under Rule 2-211(a)—because complete relief could not be accorded on the plaintiffs' request to block access to all lot owners—there was nearly a universal lack of interest among the lot owners to participate in the proceedings. Defendants cannot demonstrate that there is a “substantial risk of incurring multiple or inconsistent obligations” as a result of non-parties claimed interest in the subject matter of Plaintiffs' claims, where it has already been demonstrated that the community members are not interested in participating in such litigation.

7. Defendants' Motion references an email communication to the Arundel on the Bay

community in which the community was informed that Defendants sought an agreement that would affirmatively prohibit all lot owners in the community from accessing the streets that abut the Defendants' properties. The Association, indeed, sought input from lot owners with respect to a proposed agreement that would prohibit all people in the community from accessing those streets. What this email demonstrates however, is not that *Plaintiffs* have failed to join necessary parties. Rather, it shows that *Defendants*, who wish to cut off all access to these streets, have failed to join necessary parties.

8. In addition, Defendant seeks an Order declaring that it has title to streets over which Anne Arundel County¹ holds a utility easement, which it received from the Association. Defendants cannot challenge the Association's title to the streets and not joint the County whose own rights in the streets emanate from the Association.

9. How can Defendants be accorded complete relief in their quest to cut off their entire community from the streets that abut their properties if they do not make all lot owners parties to their Counterclaim? They cannot. To the extent that any party has failed to join necessary parties, it is the Defendants.

WHEREFORE, Plaintiffs request that this Court enter an Order:

- A. Denying Defendants' Motion to Dismiss for Failure to Join Necessary Parties;
- B. Granting Plaintiffs' Cross-Motion to Dismiss for Failure to Join Necessary Parties; and
- C. Granting such other relief as this Court deems just and proper.

¹ Both the Town of Arundel on the Bay upon its dissolution in the late 1940s, and the Association at various times from its incorporation into the 1970s have conveyed title to various streets to the Association and/or Anne Arundel County including those recorded in deeds in the Land Records for Anne Arundel County at Liber 613 at 485, L. 840 at f. 525, L. 1333 at f. 309, L. 1757 at f.371 and L. 8554 at f. 629.

Respectfully submitted,

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

/s/ N. Tucker Meneely

Wayne T. Kosmerl (CPF# 7302010002)

N. Tucker Meneely (CPF# 1012150249)

125 West Street, Fourth Floor

Annapolis, Maryland 21401

(410) 268-6600

(410) 269-8409 Fax

Kosmerl@CouncilBaradel.com

Meneely@CouncilBaradel.com

Attorneys for Plaintiffs/Counter-Defendants

REQUEST FOR HEARING

Plaintiffs, by and through their undersigned counsel, respectfully request a hearing on Defendants' Motion to Dismiss and Plaintiffs' Cross-Motion.

/s/ N. Tucker Meneely

N. Tucker Meneely (CPF# 1012150249)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of March, 2021, a copy of the foregoing paper was served electronically via MDEC upon:

Barbara J. Palmer
Hyatt & Weber, P.A.
200 Westgate Circle, Suite 500
Attorney for Defendant

/s/ N. Tucker Meneely

N. Tucker Meneely (CPF# 1012150249)

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

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

Plaintiffs,

v.

MAURICE B. TOSE, et ux.

Defendants

Case No. C-02-CV-19-003640

ORDER

Upon consideration of Defendants' Motion to Dismiss for Failure to Join Necessary Parties and Plaintiff's Opposition and Cross-Motion to Dismiss for Failure to Join Necessary Parties, it is this ____ day of _____, 2021, hereby

ORDERED, that Defendants' Motion is **DENIED**; and it is further,

ORDERED, that Plaintiffs' Motion is **GRANTED**; and it is further

ORDERED, that within sixty (60) days of the entry of this Order, Defendants shall file an Amended Counterclaim joining all property owners in Arundel on the Bay and Anne Arundel County as parties; and it is further,

ORDERED, that failure of Defendants to join the above-referenced parties as directed will result in the dismissal of this case.

Judge, Circuit Court for Anne Arundel County