

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

\* \* \* \* \*

**RESPONSE TO PLAINTIFFS' CROSS-MOTION  
TO DISMISS FOR FAILURE TO JOIN NECESSARY PARTIES**

The Defendant/Counter-Plaintiff, Maurice Tose' and Teresa Layden ("Tose"), by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., files this Response to the Plaintiffs/Counter-Defendants' Cross-Motion to Dismiss for Failure to Join Necessary Parties and as grounds therefor, state:

1. The Plaintiffs, the Property Owners Association of Arundel on the Bay, Inc. (the "Association") David Delia and Lori Strum ("Delia" and "Strum") responded to the Defendant's Motion to Dismiss for Failure to Join Necessary Parties by stating that the issues raised in their Complaint to Quiet Title (Implied Easement) Declaratory Relief and Injunctive Relief do not require that all property owners in the community need to be joined as necessary parties, but that the Defendant's Counter-Complaint triggers such a requirement. The Plaintiffs do not cite any support for this assertion.

2. As stated in Defendant's Motion, the controlling provision in the Code is MD. CODE, CTS. AND JUD. PROC. ART. § 3-405 (a)(1), which requires joinder of a person who has or claims any interest which would be affected by the declaration shall be made a party. There is no dispute that the Plaintiffs' claims affect the interests of the lot owners, as the Complaint itself

references the rights of the lot owners, and seeks relief for their individual benefit in the ad damnum clauses of the Complaint.

3. The cases of *Rounds v. Maryland National Capital Park and Planning Comm.* 441 Md. 621 (2015) and *Williams v. Moore*, 215 Md. 181, (1957) cited in the Defendants' Motion support the Defendant's position that the determination of easement rights require the joinder of those property owners whose rights may be affected by the outcome.

4. The Defendant has informed the Court in its Motion why it did not previously raise the issue of the Plaintiffs' failure to join necessary parties, as it only became known on March 4, 2021 that the Plaintiffs did not speak for the individual property owners of the community in the handling of this action.

5. The Plaintiffs have not cited any rule, statute or other authority for their assertion that the Defendant should be burdened with joining all of the property owners, when it did not initiate the action, however, the Plaintiffs, in their Motion, appear to concede that the property owners are in fact necessary.

6. And while the Plaintiffs argue that joinder is not necessary, as the property owners are not interested in participating in litigation (Plaintiffs' Opposition ¶ 6), the issue is whether the rights of the individuals could be affected by the outcome, as held in *Rounds*, not the interest of the individuals in participating in the litigation process. The March 4, 2021 email (Ex. A to Defendant's Motion) indicates that community residents *do* have a position on the issues and the outcome, and that position is contrary to that of the Plaintiffs.

WHEREFORE, for all of the reasons set forth herein, as well as the support set forth in the Defendant's Memorandum of Law in Support of its Motion, the Defendant respectfully requests:

A. that the matter be dismissed without prejudice for failure to join all necessary parties, unless the Plaintiffs join all property owners in the community of Arundel on the Bay as necessary parties in this action pursuant to Maryland Rule 2-211(a)(1), as complete relief cannot be accorded among those already parties; and

B. that the pending trial date be postponed to allow for the joinder of these necessary parties; and

C. For such other and further relief as the nature of the cause may require.

/s/  
Barbara J. Palmer (CPF # 8501010468)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of March, 2021, a copy of the foregoing Response to the Plaintiffs; Cross-Motion to Dismiss for Failure to Join Necessary Parties was filed in accordance with the MDEC system and a copy will be electronically served upon:

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/s/  
Barbara J. Palmer (CPF # 8501010468)

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\* \* \* \* \*

**ORDER**

UPON CONSIDERATION of Defendant's/Counter-Plaintiff's Motion to Dismiss for Failure to Join Necessary Parties pursuant to Maryland Rule 2-211 and the Plaintiffs'/Counter-Defendants' Response and Cross-Motion, and Defendant's Response thereto, it is this \_\_\_\_\_ day of \_\_\_\_\_ 2021 by the Circuit Court for Anne Arundel County:

ORDERED, that the Defendants' Motion is hereby GRANTED; and it is further

ORDERED, that the Plaintiffs' Motion is hereby DENIED; and it is further

ORDERED, that the Plaintiffs shall have sixty (60) days from the date of the entry of this Order to file an Amended Complaint joining all property owners in the community of Arundel on the Bay as parties in this action; and it is further

ORDERED, that the failure of the Plaintiffs to join the property owners in the community of Arundel on the Bay as required by this Order shall result in the dismissal of this action; and it is further

ORDERED, that the presently scheduled trial date of May 12 and 13, 2021 be removed from the Court's docket.

\_\_\_\_\_  
Judge, Circuit Court for Anne Arundel County