

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

Plaintiffs

v.

MAURICE B. TOSE', *et ux*

Defendants

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

* * * * *

MAURICE B. TOSE'
TERESA M. LAYDEN

Counter-Plaintiffs

v.

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

and

All Property Owners in Arundel on the Bay

Counter-Defendants

* * * * *

JOINT MOTION FOR ALTERNATE SERVICE

The Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, by and through their attorneys, Wayne Kosmerl, N. Tucker Meneely and Council, Baradel, Kosmerl & Nolan, and Defendants and Counter-Plaintiffs, Maurice B. Tose' and Teresa M. Layden, by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., files this Joint Motion for Alternate Service of Process on the approximately Four Hundred (400) additional parties that are being added to this action as a result of the Consent Order of this Court dated June 14, 2021, and in support thereof, state:

1. This action involves the claims of the Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum's claims for use and possession of an area of a paper road (the "Subject Property") in the vicinity of property owned by the Defendants, Maurice Tose' and Teresa Layden. The Defendants filed a Counter-Complaint asserting possession of the Subject Property and that use is restricted to only a limited number of neighboring property owners.

2. In order to finally resolve the rights of the parties to the use and the possession of the Subject Property, the Court ordered, with the consent of the parties, that all property owners in the community of Arundel on the Bay were necessary parties to the proceedings, and that Order was issued on June 14, 2021.

3. The Order contemplated that, because of the volume of additional parties being added to the case, there would need to be a subsequent Order entered regarding service of process. To that end, the parties were directed to cooperate on the terms and manner of service of process on all of the property owners.

4. Counsel for Plaintiffs and Defendants were both involved in the case of *Atterbeary, et al. v. Property Owners Association of Arundel on the Bay, Inc.* Case No. C-02-CV-15-003736, wherein the Court provided for a simplified service of process on all community members who were determined to be necessary parties; provided for those individuals to access all pleadings through the community website instead of delivery of all papers; and provided for a simple manner for those property owners to elect against participating in the litigation in the event that they acknowledged and agreed to be bound by the outcome.

5. With this background, counsel for the Plaintiffs and Defendants have reached an agreement on the following terms and method of service:

A. A full packet of all pleadings and other filings need not be delivered to all property owners in Arundel on the Bay. Instead, the Service Packet shall include a copy of the Summons, a copy of the Amended Complaint (without exhibits), the Amended Counter-Complaint (without exhibits), the June 14, 2021 Consent Order and the Notification of the Order of Court to Join Necessary Parties (“Notification”) informing them that all pleadings and other filings are accessible on the Arundel on the Bay website, along with a copy of a Line which can be completed by the property owner allowing them to elect to participate in, or opt out of the litigation (“Line Opting Out”). A copy of the proposed Notification is attached hereto as Exhibit A. A copy of the proposed Line Opting Out is attached hereto as Exhibit B.

B. For all property owners in the community of Arundel on the Bay, service shall be deemed effective by either: (a) personal delivery of the Service Packet to the door of the residence, and where no individual is available to accept service, service would be deemed effective by affixing the Service Packet to the front door of the residence; or (b) by certified mail delivery of the Service Packet to the primary address as noted in the records of the State Department of Assessments and Taxation.

C. In addition to the aforementioned methods of service, electronic copies of the Service Packet will be emailed to all property owners for whom the parties have current email addresses.

D. In addition to the aforementioned methods of service, a copy of the Notification and Line Opting Out will be made available on the website for Arundel on the Bay and referenced in the next issue of *The Pier*, which is the newsletter of Arundel on the Bay.

Certificate of Service

I HEREBY CERTIFY that on this 7th day of September, 2021, a copy of the foregoing Amended Counter-Complaint was filed in accordance with the MDEC system and a copy will be served upon:

Wayne T. Kosmerl
N. Tucker Meneely
125 West Street, 4th Floor
Annapolis, Maryland 21401
Attorneys for the Plaintiffs and Counter-Defendants

/s/
Barbara J. Palmer

Notification of Order of Court to Join Necessary Parties

To: The Property Owners of Arundel on the Bay

From: N. Tucker Meneely, Esquire
Attorney for Plaintiffs, Property Owners Association of Arundel on the Bay, Inc.,
David Delia and Lori Strom

And Barbara J. Palmer, Esquire
Attorney for Defendants, Maurice Tose' and Teresa Layden

RE: Property Owners Association of Arundel on the Bay, Inc., et al. v. Tose' et ux.
Circuit Court for Anne Arundel County, MD Case No. C-02-19-003640

On November 8, 2019, the Plaintiffs filed an action to Quiet Title against Defendants, to address issues related to the paper road located on Magnolia Avenue, near its intersection with Saratoga Avenue. Plaintiffs sought an order declaring that the Plaintiffs and all lot owners within Arundel on the Bay have an implied easement to use this Disputed Street. On February 6, 2020, Defendants filed a Counter-Complaint to Quiet Title, seeking a declaration of title to the paper road and a limitation on the rights of use. Copies of the pleadings filed by the parties are available on the Association website. You may also request copies of pleadings by contacting the attorneys for the parties at the emails and phone numbers listed below.

On June 14, 2021, the Circuit Court for Anne Arundel County entered the attached Order, finding that *all property owners in the community of Arundel on the Bay are necessary parties in the litigation*. The Order also provides that if you do not wish to individually participate in the action, but instead are willing to be bound by the resolution of the action through a decision rendered by the Court or by the negotiated agreement of the participating parties, you are entitled to do so. The Plaintiffs and Defendants have each filed amended pleadings adding all property owners in the community of Arundel on the Bay as additional parties to the case.

If you would prefer NOT to be involved in the lawsuit, please review and complete the attached form and return it via mail to either address listed below or via e-mail to: Meneely@CouncilBaradel.com and/or bpalmer@hwlaw.com. If you do wish to participate in the lawsuit, or if you do not promptly complete and return the attached form to opt out of the lawsuit, you will need to file an answer to the amended pleadings filed by Plaintiffs and Defendants within the time set forth on the enclosed Summons.

If you have any questions, we encourage you to contact an attorney. You may also contact either Mr. Meneely, at 410-268-6600 or Ms. Palmer, at 410-266-0626, but please note that they may not give you legal advice.

N. Tucker Meneely
Council, Baradel, Kosmerl & Nolan
125 West Street, Fourth Floor
Annapolis, Maryland 21401

Barbara J. Palmer
Hyatt & Weber, P.A.
200 Westgate Cir. Suite 500
Annapolis, Maryland 21401

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* CIRCUIT COURT

Plaintiffs/Counter-Defendants

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* FOR

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* ANNE ARUNDEL COUNTY

Defendants/Counter-Plaintiffs

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

* * * * *

LINE

Mr. Clerk:

The undersigned individual is a property owner in the community of Arundel on the Bay. I have been informed that the Court entered an Order on June 14, 2021 in this action, finding that the individual property owners in the community of Arundel on the Bay are necessary parties to the litigation. I am also aware that the Order provides that I have a right to opt out of participating in the litigation, as long as I provide my consent to be bound by the outcome of this action. I have been given the opportunity to review the papers filed by the parties in this case.

By my signature, below I indicate my assent to opt out of this litigation and I affirmatively agree to be bound by, and not offer any objection to, its outcome.

Signature: _____

Printed Name: _____

Address: _____

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All Property Owners in Arundel on the Bay
(Attachment "A")

Counter-Defendants

* * * * *

ORDER

UPON CONSIDERATION OF the Parties' Joint Motion for Alternative Service, there being no objection thereto, it is this _____ day of September 2021

ORDERED that the Joint Motion for Alternate Service is GRANTED. For the purposes of this action, service of process will be deemed effective by the delivery of a Service Packet to each named party Counter-Defendant, which shall include a copy of: 1.) the Summons; 2.) the Amended Complaint (without exhibits); 3.) the Amended Counter-Complaint (without exhibits);

4.) the June 14, 2021 Consent Order; 5.) the Notification of the Order of Court to Join Necessary Parties (“Notification”); and 6.) the Line Opting Out; and it is further

ORDERED that for all property owners in the community of Arundel on the Bay, service shall be deemed effective by either: (a) personal delivery of the Service Packet to the door of the residence; where no individual is available to accept service, service is deemed effective by affixing the Service Packet to the front door of the residence; or (b) by certified mail delivery of the Service Packet to the primary address as noted in the records of the State Department of Assessments and Taxation; and it is further

ORDERED that electronic copies of the Service Packet shall be emailed to all property owners for whom the Plaintiff, Property Owners Association of Arundel on the Bay, or any other party, has a current email address; and it is further

ORDERED that a copy of the Notification and Line Opting Out shall be made available on the website for Arundel on the Bay and referenced in the next issue of the newsletter for the community of Arundel on the Bay; and it is further

ORDERED that any individual party who files an Answer to the Amended Complaint and/or the Amended Counter-Complaint, shall be included on the Certificate of Service and copies of any future pleadings and other filings will be served upon them. For all other named parties who elect to Opt Out of the Litigation or fail to respond to the suit, service of future filings will be deemed sufficient by providing copies through the Arundel on the Bay website.

Judge, Circuit Court for Anne Arundel County