

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 COUNTER-DEFENDANTS DAVIS AND MOSES'S**  
**MOTION TO DISMISS**  
**AND**  
**REQUEST FOR A HEARING**

The Defendants/Counter-Plaintiffs, Maurice Tose' and Teresa Layden (hereinafter "Tose" or "Defendants"), by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., file this Response to Counter-Defendants' Motion to Dismiss and as grounds therefor, state:

1. The Trustees of the John C. and LaVerne C. Davis Family Trust and the Trustees of the John and April Moses Irrevocable Trust (hereinafter "Davis and Moses") filed a Motion to Dismiss themselves as necessary parties to this litigation and asserted that their interests were resolved in 2008 in prior litigation against Plaintiffs in the matter of *Sherry Bellamy, et al. v. Property Owners Association of Arundel on the Bay, Inc.*, Case No. C-06-115184, in the Circuit Court for Anne Arundel County.

2. In their Motion, Davis and Moses assert that because their interests in Chesapeake Walk—the paper road adjacent to their residential lots—were resolved in the 2006 litigation, they are not necessary parties in this present action.

3. Tose' raises no dispute over the determination reached by J. Caroom in the Order dated February 6, 2008, appended as Attachment B to the Counter-Defendant's Motion.

4. Tose' concurs with the statements contained in that Order—that the adjacent property owners to Chesapeake Walk (referred to in the Cross-Defendants' Motion as "Chesapeake Walk Owners"), "*have absolute ownership and the right of disposition*" of the roadbeds adjacent to their lots.<sup>1</sup>

5. Further, Tose' concurs with the other statements contained in the Davis and Moses Motion, including that:

A.) the Property Owners Association of Arundel on the Bay, Inc. *does not have an ownership interest in the roadbeds of the streets in the community of Arundel on the Bay*; and

B.) in accordance with MARYLAND CODE REAL PROPERTY ARTICLE § 2-114, the adjacent lot owners hold title to the center of the adjoining streets; and

C.) the Property Owners Association of Arundel on the Bay, Inc.'s *claim to title to the roadbeds* based upon the September 11, 1951 deed from certain Trustees of the Commissioners of Arundel-on-the-Bay, Inc *fails because the Trustees never owned anything to convey*<sup>2</sup>.

6. While it is Tose's perspective and understanding this instant case pertains only to the paper road located adjacent to the Tose' properties on Magnolia Avenue and Saratoga Avenue; the Davis and Moses Motion suggests that the outcome of this litigation may have an impact upon other platted roads in the community of Arundel on the Bay.

7. The Davis and Moses Motion to Dismiss highlights a significant concern, which has been expressed to the undersigned counsel for the Defendants by other residents of Arundel

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<sup>1</sup> See the Corrected Amended Order dated January 8, 2008; Attachment B to the Davis and Moses Motion

<sup>2</sup> See the January 18, 1994 Opinion of Arundel on the Bay's own title expert, Edward J. Albert, which is Attachment D to the Davis and Moses Motion

on the Bay, who believe that the outcome of the instant litigation could affect their own property interests in the platted roads adjacent to their individual properties.

8. While the undersigned originally offered assurances that the pending litigation would have no impact upon any other property other than the property adjacent to the Tose' property—referred to in this action as the “Disputed Street” and the “Site Area”—when the undersigned requested clarification from Plaintiffs’ counsel, the response received was that the Plaintiffs were unwilling to restrict the potential scope of this action.

9. In the event that the Plaintiffs seek a determination from this Honorable Court regarding the ownership of, or rights of use to other platted property in the community of Arundel on the Bay—other than the Disputed Street and Site Area—then the information conveyed to the community property owners in the Notification of Order of Court to Join Necessary Parties is inaccurate and misleading.

10. The Notification states:

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*. (Emphasis added.)

11. If the outcome of this case could be construed to impact property other than the Disputed Street and Site Area as it has been defined in this action, then the modified service of process used in this case would be insufficient to protect the property interests of the Counter-Defendants named in this action whose own property rights in their own property, or their interests in the platted roadbeds adjacent to their own property, may in fact be adversely impacted by a decision in this action—without their participation in the action.

12. The basis for Tose's opinion that the instant case involves the paper roads adjacent to the Tose' properties, only and no other roadbeds within the community is as follows:

A. Statements contained within the Plaintiffs' Amended Complaint referencing specifically, and limiting this action to the paper roads adjacent to the Tose' properties includes, but is not limited to:

i. "This case pertains to a dispute between Plaintiffs and Defendants over the Defendants' conduct in obstructing its easement right...*to use the street end of Magnolia.*" (See Para. 7)

ii. "The street at issue is described to be the portion of the platted street known as Magnolia Avenue that abuts the Tose'-Layden Properties and is located between Saratoga Avenue and the waters of Fishing Creek ("Disputed Street"). Specifically, 1299 Magnolia Avenue and 1300 Magnolia Avenue abut the southern side of the Disputed Street and 1290 Magnolia Avenue abuts the northern side of the Disputed Street. Also at issue is one half of Saratoga Avenue which abuts 1299 Magnolia Avenue, which is referred to as the "Site Area" in Defendants/Counter-Plaintiffs' pleadings..." (See Para. 7)

iii.. "There clearly exists an implied easement for the benefit of the Plaintiffs and all of the lot owners within Arundel on the Bay to use the Disputed Street and the Site Area..." (See Para. 29)

iv. "Plaintiffs thus seek to remove any cloud from their title caused by Defendants actions and affirm their right to use the Disputed Street and the Site Area. (See Para. 32)

B. The claims for relief requested by the Plaintiffs are limited to the roadbeds adjacent to the Tose' properties.

In Count I:

i. Determine the rights and responsibilities of the Plaintiffs and the Defendants arising under the implied easement described herein; (referring to Para. 29)

ii. Enter an Order declaring that the Plaintiffs and all lot owners within Arundel on the Bay have an implied easement to use the Disputed Street and the Site Area for the uses currently and/or historically made of the subject areas including pedestrian and/or vehicular use; maintenance and regulation of the Disputed Street and the Site Area and the waterfront areas and/or passive recreation

such as walking, watching fireworks or generally enjoying the maritime and marine life of Fishing Creek;

In Count II:

iii. Enter a declaratory judgment determining the rights and responsibilities of the Plaintiffs and the Defendants arising under the implied easement described herein;

iv. Find and declare that the Plaintiffs and all lot owners within Arundel on the Bay have an implied easement to use the Disputed Street and the Site Area for the uses currently and/or historically made of the subject areas including pedestrian and/or vehicular use; maintenance and regulation of the Disputed Street and the Site Area and the waterfront areas and/or passive recreation such as walking, watching fireworks or generally enjoying the maritime and marine life of Fishing Creek;

v. Find and declare that the Association holds fee simple title to the Disputed Street and the Site Area pursuant to the 1951 Deed or under adverse possession by color of title pursuant to the 1951 Deed and that Defendants/Counter-Plaintiffs (or their predecessors-in-title) failed to bring a claim within the 20 year statutory period, which passed in the 1970s.

In Count III:

vi. Enjoin Defendant from interfering with the Plaintiffs' and the other lot owners' use of the Disputed Street and the Site Area;

vii. Enjoin Defendants from altering the physical appearance or condition of the Disputed Street and the Site Area;

viii. Enjoin Defendants from controlling access and use to the Disputed Street by placing any obstructions within the Disputed Street and the Site Area;

ix. Ordering Defendants to remove any obstructions placed by Defendants on the Disputed Street and the Site Area, including, but not limited to, the wooden pillars and any automobiles on the Disputed Street;

x. If Defendants fail to remove such obstructions from the Disputed Street within 30 days of the issuance of a permanent injunction, grant the Plaintiffs the right to remove any obstructions from the Disputed Street with Defendants bearing the costs of removal;

13. Tose' seeks a determination of the scope of this action through this Motion



**REQUEST FOR A HEARING**

The Defendant/Counter-Plaintiff respectfully requests a Hearing on the Davis and Moses Motion to Dismiss.

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of December 2021, a copy of the foregoing Response to Counter-Defendant Davis and Moses's Motion to Dismiss and Request for a Hearing was filed in accordance with the MDEC system and a copy will be electronically served upon:

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Attorneys for the Plaintiffs

A copy of this Response was mailed to:

John Davis and LaVerne Davis  
Trustees of the John C. and LaVerne C. Davis Family Trust  
3406 Chesapeake Walk  
Annapolis, Maryland 21403

And

Melanie Moses and John R. Moses, Jr.  
Trustees of the John and April Moses Irrevocable Trust  
3440 Chesapeake Walk  
Annapolis, Maryland 21401

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