

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

* * * * *

**ANSWER TO FIRST AMENDED COMPLAINT TO QUIET TITLE, FOR
DECLARATORY RELIEF AND FOR INJUNCTIVE RELIEF FOR WRONGFUL
INTERFERENCE WITH EASEMENT RIGHTS**

Defendants, Maurice B. Tose' and Teresa M. Layden, by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., respond to the Complaint filed against them and state:

1. Defendants admit that the Association was formed in 1949. The Defendants deny the remainder of the statements contained in Paragraph 1.

2. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 2 and therefore deny same.

3. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 3 and therefore deny same.

4. Defendants generally admit the statements contained in Paragraph 4 but deny that Defendant Layden resides in Maryland.

5. Defendants admit that statements contained in Paragraph 5.

6. Defendants generally admit the statements contained in Paragraph 6, but deny that Layden is an Anne Arundel County resident.

7. Defendants admit that they are the owners of 1290, 1299 and 1300 Magnolia Avenue, the Disputed Street and the Site Area referenced in Paragraph 7. Defendants deny that the Plaintiffs have any right, title or interest in the area of the Disputed Street or Site Area.

8. Defendants are without sufficient knowledge to admit or deny the statements contained in Paragraph 8 and therefore deny same. Further, Defendants assert that the referenced deed is irrelevant to the Defendants' rights in the Disputed Street or the Site Area.

9. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 9 and therefore deny same.

10. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 10 and therefore deny same.

11. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 11 and therefore deny same.

12. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 12 and therefore deny same.

13. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 13 and therefore deny same.

14. Defendants deny that the Association has maintained and/or improved the Disputed Street as stated in Paragraph 14.

15. Defendants deny that the Association has exercised dominion and control over the Disputed Street or Site Area as stated in Paragraph 15. Defendants are without sufficient knowledge to admit or deny other portions of the statements set forth in this Paragraph and therefore deny same.

16. Defendants deny the statements set forth in Paragraph 16 as they pertain to the Disputed Street and the Site Area. Defendants are aware of certain projects in various areas of the community addressed by the Association, but deny that the actions set forth have been for the benefit of all property owners. Defendants are without sufficient knowledge to admit or deny other aspects and statements set forth in this Paragraph and therefore deny same.

17. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 17 and therefore deny same.

18. Defendants deny the statements contained in Paragraph 18.

19. Defendants deny that Plaintiffs and all lot owners have easement rights in the Disputed Street and therefore deny the statements contained in Paragraph 19.

20. Defendants deny the statements contained in Paragraph 20.

21. Defendants admit the statements contained in Paragraph 21.

22. Defendants admit that the driveway markers have not been moved, as stated in Paragraph 22, but deny the remainder of the statements contained in Paragraph 22.

23. Defendants admit that they hold title to the Disputed Street and Site Area as set forth in Paragraph 23. The Defendants deny the remaining statements contain in Paragraph 23 related to the Plaintiffs' assertion that they have any right, title or interest to the Disputed Street or Site Area.

24. Paragraph 24 is a statement of incorporation. Defendants incorporate their responses to the preceding paragraphs in response thereto.

25. Paragraph 25 is a claim for relief and is not a statement requiring an admission or denial; to the extent such a response is required, Defendants deny same.

26. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 26 and therefore deny same.

27. Defendants are without sufficient knowledge to admit or deny the statements set forth in Paragraph 27 as it pertains to the general areas of Arundel on the Bay; and therefore deny said statements. With regard to the Disputed Street or Site Area, Defendants deny the statements contained in Paragraph 27.

28. Defendants deny the statement contained in Paragraph 28.

29. Defendants deny the statements contained in Paragraph 29.

30. Defendants deny the statements contained in Paragraph 30 as they deny that the Plaintiffs and other lot owners have rights in the Disputed Street or Site Area, as claimed by the Plaintiffs.

31. Defendants deny the statements contained in Paragraph 31.

32. Paragraph 32 is a claim for relief and is not a statement requiring an admission or denial; to the extent such a response is required, Defendants deny same.

33. Paragraph 33 is a statement of incorporation. Defendants incorporate their responses to the preceding paragraphs in response thereto.

34. Defendants deny the statements contained in Paragraph 34 as they relate to Plaintiffs' claims of right to use or access to the Disputed Street or Site Area.

35. Defendants deny the statements contained in Paragraph 35 as they relate to Plaintiffs' claim of any right, title or interest in the Disputed Street or Site Area.

36. Defendants admit that a controversy exists as set forth in Paragraph 36.

37-54. Plaintiffs have not included Paragraphs 37-54 in the Complaint. To the extent that any counts or claims were intended, the Defendants deny the Plaintiffs' claims and demand strict proof thereof.

55. Paragraph 55 is a statement of incorporation. Defendants incorporate their responses to the preceding paragraphs in response thereto.

56. Defendants deny that the Plaintiffs or others have the rights claimed in Paragraph 56, and therefore deny that the Defendants have interfered with any of the Plaintiffs' rights.

57. Defendants deny the statements contained in Paragraph 57.

58. Defendants deny the Plaintiffs have the right to unfettered access and admit that they have not agreed to remove posts in the area, as asserted in Paragraph 58.

59. Defendants deny the statements contained in Paragraph 59.

60. Defendants deny the statements contained in Paragraph 60.

Defenses

61. In further answering the Complaint, and in accordance with MD CODE REAL PROP. §14-607, Defendants assert the following facts:

A. The Plaintiffs, the Property Owners of Arundel on the Bay, David Delia and Lori Strum, do not have an easement to or a right to use and access the Disputed Street by virtue of the fact that they own property in the community of Arundel on the Bay. As will be more clearly set forth in the Motion for Summary Judgment filed on behalf of Defendants, those property owners that, require access to the Disputed Street for the purpose of reaching the next public way, have an implied easement to the use of the platted paper road. See *Koch v. Strathmeyer*, 357 Md. 193 (1999)

B. Defendants are the owners and titleholders of all of the property referred to herein as the Disputed Street as a result of the application of MD CODE REAL PROP. §2-114.

C. Areas included in or adjacent to the Disputed Street serve as a driveway or access to the properties owned by James C. Schryver (Lots A and B, Block 67) and Marc. L. Apter (Lot K1 Block 67), who may have implied rights.

D. To the extent that the 1927 plat of Arundel on the Bay shows unplatted property between Defendants' property line and Fishing Creek, that property has been eliminated as a result of sea level rise and erosion. With the elimination of this fastland, there is no property for community riparian use.

E. The Disputed Street is not a designated fire drafting site. Based upon interviews with Fire Department officials, Defendants have learned that the Disputed Street is not suitable for use by the Fire Department for such purposes because it is topographically unsuitable. The Fire Department reports that it would use the reliable, tested and familiar areas of the designated drafting sites. As a result, the Fire Department is not in need of access to the Disputed Street, and the safety and well-being of the community is not compromised as a result.

F. In the 28 years since Defendants have owned property in the vicinity of the Disputed Street, the Plaintiffs and members of the community have never used the Disputed Street for vehicular use, watching fireworks, or community activities. The limited use by others observed by Defendants has been with the Defendants' permission, acquiesces or tolerance.

G. Defendants have done all regular maintenance of the Disputed Street for the 28 years they have owned the property.

H. Arundel on the Bay is a waterfront community with designated community beach areas, piers and launching ramps available for the use of all property owners. The purpose of the platted roads is for property owners to use them to access their lots and the public ways.

62. In further answering the Complaint, Defendants assert the following defenses:

A. Plaintiffs have failed to join necessary parties under Maryland Rule 2-211.

B. The Complaint should be dismissed for failure to state a claim as the Complaint fails to comply with MD CODE REAL PROP. §14-606, which requires that the complaint include “a description of the property which is the subject of the action, including both its legal description and its street address or common designation, if any.”

63. Defendants preserve the following affirmative defenses:

A. Collateral Estoppel;

B. Estoppel;

C. Fraud;

D. Laches;

E. Res Judicata;

F. Statute of Frauds;

G. Waiver;

H. Privilege;

WHEREFORE, Defendants requests this Court issues an order for declaratory judgment that:

A. Defendants are the fee simple owners and titleholders of the Disputed Street between the platted lots owned by Defendants to the waters of Fishing Creek and the Site Area as

described in the Amended Counter-Complaint adjacent to the Defendants' lot to the centerline of Saratoga Avenue;

B. The community area that may have historically existed between the Defendants property and Fishing Creek as shown on the 1927 plat is no longer in existence; leaving the Defendants' lots as waterfront lots; and

C. The use of the Disputed Street is restricted to that of the adjacent property owners to access the next public way, only; and

D. For such other and further relief as the nature of the action may require

Respectfully submitted,

/s/

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Certificate of Service

I HEREBY CERTIFY that on this 16th day of December 2021, a copy of the foregoing Answer was filed in accordance with the MDEC system and a copy will be electronically served upon:

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Attorneys for the Plaintiff and Counter-Defendants

And a copy of this Answer to Amended Complaint was mailed to:

