

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  
\* Case No. C-02-CV-19-3640  
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**PLAINTIFFS' RESPONSE TO MOTION TO DISMISS FILED BY COUNTER-  
DEFENDANTS DAVIS AND MOSES AND TO RESPONSE FILED BY  
DEFENDANTS/COUNTER-PLAINTIFFS TOSE' AND LAYDEN, 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., file this Response to the Motion to Dismiss filed by Counter-Defendants John Davis and LaVerne Davis, Trustees of the John C. and LaVerne C. Davis Family Trust, and Melanie Moses and John R. Moses, Jr., Trustees of the John and April Moses Irrevocable Trust (collectively, "Davis-Moses") as well as to the Response filed by Defendants/Counter-Plaintiffs Maurice Tose' and Teresa Layden ("Tose' Defendants"), and state as follows:

1. This action involves the claims of the Association, Delia and Strum 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 title to the Subject Property and that use is restricted to only a limited number of neighboring property owners.

2. On or about March 7, 2021, the Tose' Defendants filed a motion to dismiss for failure to join necessary parties and urged this Court to require the joinder of all property owners

in the community of Arundel on the Bay. The Tose' Defendants had argued that the property owners were necessary parties because the Association had filed suit "asserting that the rights of the Association and the other two named Plaintiffs were adversely affected by the actions of the Defendant; it also asserted that the rights of all of the lot owners within Arundel on the Bay were impacted." In their response to the Tose' Defendants' motion, Plaintiffs contended that it was the *Tose' Defendants* that should be required to join all property owners because it was the *Tose' Defendants'* lawsuit that was seeking a declaration cutting off their entire community from the streets that abut the Tose' Defendants' properties. In an Order issued on June 14, 2021, this Court ordered that all property owners in the community of Arundel on the Bay were necessary parties to the proceedings. The parties were directed to file amended pleadings identifying all property owners in the community of Arundel on the Bay.

3. To that end, the Tose' Defendants, on August 12, 2021, filed a First-Amended Counter-Complaint to Quiet Title, For Declaratory Relief and For Injunctive Relief, which added all property owners in Arundel on the Bay as parties. On August 13, 2021, the Plaintiffs filed a First Amended Complaint to Quiet Title, for Declaratory Relief and for Injunctive Relief for Wrongful Interference with Easement Rights, which also added the property owners.

4. Pertinent here, Plaintiffs' First Amended Complaint accurately stated that "Defendants/Counter-Defendants have asserted that they hold fee simple title to the Disputed Street and the Site Area pursuant to Md. Code, Real Property § 2-114. The Association disputes Defendants/Counter-Defendants' claim of title." First Amended Complaint at ¶ 23. Plaintiffs further averred that, "[e]xcept with respect to platted streets in Arundel on the Bay or portions thereof which the Association has deeded to Anne Arundel County or other third parties, and specific platted streets in Arundel on the Bay the title of which has been previously determined by

Court order, the Association claims title to all platted streets in Arundel on the Bay, including the Disputed Street and the Site Area.” *Id.*

5. On September 7, 2021, nearly a month after the parties filed their respective amended pleadings, Plaintiffs and the Tose’ Defendants filed a Joint Motion for Alternative Service, requesting that the Court approve an alternative method of service for the hundreds of new parties added to the case.

6. Attached as Exhibit A to the Joint Motion was a Notification of Order of Court to Join Necessary Parties. The Notification briefly summarized the history of the case and specifically directed parties where they could obtain copies of pleadings filed in the case. It also notified the parties that the Court provided in its Order that parties who did not wish to participate in the action could opt out of the case. It also encouraged the parties to contact an attorney and expressly noted that the attorneys for the Plaintiffs and the Tose’ Defendants could not provide legal advice.

7. Attached as Exhibit B is a form Line that parties can fill out and file if they do not wish to participate in the case. The form expressly provides that the signer has “been given the opportunity to review the papers filed by the parties in this case.”

8. The Joint Motion was filed weeks after the parties filed their amended pleadings and had the opportunity to review each other’s filings, and it was jointly drafted by counsel for Plaintiffs and the Tose’ Defendants.

9. This Court granted the Joint Motion in an Order dated September 10, 2021. The Order provided for the method by which service could be made and the papers that were to be served on the new parties (i.e., the “Service Packet”). As far as method of service, the Order directed that “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.” The Service Packet to be served upon the new parties included a copy of the following documents: “1.) the Summons; 2.) the Amended Complaint (without exhibits); 3.) the Amended Counter-Complaint (without exhibits); 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.” Thereafter, the new parties to the case were served in accordance with this Court’s Order.

***Davis-Moses’ Motion to Dismiss***

10. On November 22, 2021, Davis-Moses filed a motion to be dismissed as Counter-Defendants. The basis for their motion is succinctly stated as follows: “The rights of the Counter-Defendants were resolved in prior litigation against Plaintiffs in the matter of *Sherry Bellamy et al. v. Property Owner Association of Arundel on the Bay*, Case No. C-06-115184 by order if [sic] Philip T. Caroom issued February 6, 2008, and by the terms of a partial Settlement Agreement among the parties dated September 19, 2007.” Motion to Dismiss at ¶ 1. Davis-Moses appear to be arguing that, because title and access to the platted streets that abut *their properties* were resolved in prior litigation or by settlement agreement, they should be dismissed from *this litigation*.

11. As set forth above, the Association disputes the Tose’ Defendants’ claim to title to the streets that abut the Tose’-Defendants’ properties. The Association claims title to the platted streets in Arundel on the Bay “*except . . .* platted streets in Arundel on the Bay or portions thereof which the Association has deeded to Anne Arundel County or other third parties, and *specific platted streets in Arundel on the Bay the title of which has been previously determined*

*by Court order.*” First Amended Complaint at ¶ 23 (emphasis added). Davis-Moses’ concern that the Association is claiming title to the streets that abut their properties, which were at issue in the prior *Bellamy* litigation is unfounded and expressly contradicted by the averments in Plaintiffs’ First Amended Complaint. *Id.* The crux of the above-captioned case involves the Tose’-Defendants’ attempt to cut off access to platted streets that abut their properties to *the entire community*, which obviously includes Davis-Moses. Because the resolution of the dispute between the Plaintiffs and the Counter-Defendants involved rights of community members is expressly why each party argued to this Court that the community members were necessary parties (and presumably why the Court agreed).

12. The question of access for community members to the streets that abut the Tose’ Defendants’ properties was not resolved in any prior case. If Davis-Moses do not wish to participate in this case, they may submit the opt out form approved by the Court, but they have not presented this Court with any basis to be dismissed as parties on the merits.<sup>1</sup>

### ***The Tose’ Defendants’ Response***

13. In response to Davis-Moses’ Motion to Dismiss, the Tose’ Defendants filed a response which goes well beyond the subject matter of the Motion to Dismiss, raising issues regarding the propriety of service, among other things.

14. The Tose’ Defendants specifically raise an issue about a purported suggestion in Davis- Moses’ Motion to Dismiss that the outcome of this litigation may have an impact upon other platted roads in the community of Arundel on the Bay. Counsel for Tose’ Defendants, despite

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<sup>1</sup> Because the Tose’ Defendants’ Response to Davis-Moses’ Motion to Dismiss requested a hearing, and because this Court would be required to hold a hearing before granting Davis-Moses any relief, Plaintiffs intended to note at a hearing, if one was held, that the Plaintiffs’ First Amended Complaint expressly disclaimed title to any streets where title had already been adjudicated. *See Adams v. Offender Aid & Restoration of Baltimore, Inc.*, 114 Md. App. 512, 515 (1997) (holding that a court must hold a hearing before rendering a decision that is dispositive of a claim or defense regardless of who requests a hearing). The Response is being filed pursuant to the Directive issued by Judge Wachs on December 9, 2021.

issuing a Notice that said counsel could not provide legal advice, apparently “offered assurances that the pending litigation would have no impact upon any other property other than the property adjacent to the Tose’ property.”

15. The Tose’ Defendants go on to claim that the information conveyed to the community property owners could be inaccurate and misleading. This argument is nonsensical. The information provided to the parties in this case include, among other things, the amended pleadings filed by Plaintiffs and the Tose’ Defendants. Those pleadings speak for themselves. Further, the notification provided to the parties completely and accurately reflects the claims in this case. Nothing in the notification encourages parties not to participate in the case nor makes any assurances regarding the impact of the litigation.

16. Moreover, the entire purpose of the Joint Motion for Alternative Service was to simplify service of process on over 400 parties while ensuring that they received proper due process. To that end, the Court’s Order, which Plaintiffs and the Tose’ Defendants *jointly requested*, ensured that all new parties would receive copies of the summons, the Plaintiffs’ Amended Complaint, the Tose’ Defendants’ Amended Counter-Complaint, the Notification of the Order of Court to Join Necessary Parties, and the Line Opting Out. The information served upon the parties also gave them instructions regarding how to access all other filings in this case. The purpose of the Joint Motion for Alternative Service and the Order granting same was to provide for a reasonable method of accomplishing service upon the hundreds of new parties in the case and directing what papers needed to be served upon them. The Tose’ Defendants’ Response makes no claim that the new parties in this case were not properly served or that they were not provided with the materials to fully apprise themselves of this case.

17. The issue raised by the Tose’ Defendants in this case regarding the potential impact

that legal and factual findings of this Court may have on other platted streets is completely speculative. The dispute in this case involves the Plaintiffs' claim that Plaintiffs and the other property owners in Arundel on the Bay have the right to access and use the platted streets that abut the Tose' Defendants' properties and the Tose' Defendants' counter-claim that Plaintiffs and a majority of the property owners in Arundel on the Bay do not have the right to use and access those streets. This case also involves the Tose' Defendants' counterclaim that they own title to the streets that abut their properties, and the Association's opposition to that claim on the obvious basis that *it* holds title to the platted streets<sup>2</sup> in Arundel on the Bay including those that abut the Tose' Defendants' properties. The factual and legal arguments of the Plaintiffs and the Association may very well be applicable to other platted streets in Arundel on the Bay, which have yet to be adjudicated or resolved by agreement. But this obviously depends on findings of fact and conclusions of law of this Court, *which have yet to be rendered*. It also depends on a whole host of other factors that are not for this Court to decide.

18. The competing claims and defenses in this case present the possibility of certain outcomes that are apparent from the pleadings and other materials served upon the parties. To argue otherwise is simply disingenuous. With respect to the issue of title, this Court could declare that (1) the Tose' Defendants hold title to those streets or (2) the Association holds title to those streets. With respect to the issue of use and access, this Court could declare that (1) all property owners in Arundel on the Bay have the right to use and access the Disputed Streets or (2) that use and access to the Disputed Streets is limited to the immediately adjacent property owners who require use of those streets to reach some other street or public way. The impact that the findings and conclusions underpinning these decisions may have on other property owners in this case is

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<sup>2</sup> Excepting platted streets where title has previously been adjudicated, conveyed or otherwise resolved by agreement. *See* First Amended Complaint at ¶ 23.

for another court to decide, if at all. But it is ludicrous to suggest that service of process in this case would have required an explanation of the speculative impact yet-to-be-made findings of fact and conclusions of law could have on other, unknown matters.

19. If any parties are concerned how the outcome of this case could affect them or their property, *then they should file answers in the case*. That is why they were given copies of the parties' amended pleadings. Moreover, they were made necessary parties because the *Plaintiffs* and *Tose' Defendants* argued that the claims in this case affected the rights of others.

20. The Tose' Defendants' Response proves that the process in this case served its intended purpose. Indeed, Counsel for the Tose' Defendants claims that "other residents of Arundel on the Bay . . . believe the outcome of the instant litigation could affect their own property interests in the platted roads adjacent to their individual properties." If that's the case, then those persons should file answers, as is their right to do.

21. It is completely improper for counsel for the Tose' Defendants to offer any assurance to unrepresented parties regarding the scope or impact of this litigation. It is also improper for counsel for the Tose' Defendants to demand that the Plaintiffs agree to limit the scope of this case, which the undersigned rightfully refused to do. The Association's claims and defenses in this case have been out in the open for well over a year. Plaintiffs, the Tose' Defendants and this Court all agreed as to the proper method of service, as well as the materials to be served upon the new parties, which included the party's amended pleadings. Said service enabled each party to make an informed decision regarding whether to participate in or opt out of this case. Nothing about the Tose' Defendants' Response makes a compelling argument otherwise.

**WHEREFORE**, the Plaintiffs request that this Court grant the following relief:

A. Deny Davis-Moses' Motion to Dismiss;



B. Grant the Plaintiffs such other and further relief as the interests of justice require.

Respectfully submitted,

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

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of December, 2021, a copy of the foregoing paper was served on all parties registered to receive electronic service via MDEC, including upon:

Barbara J. Palmer, Esq.  
Hyatt & Weber, P.A.  
200 Westgate Circle, Suite 500  
Annapolis, MD 21401  
[bpalmer@hwlaw.com](mailto:bpalmer@hwlaw.com)  
*Attorney for Tose' Defendants*

A copy of this paper 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

/s/ N. Tucker Meneely  
N. Tucker Meneely (AIS# 1012150249)

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**ORDER**

**UPON CONSIDERATION** of the Motion to Dismiss filed by Counter-Defendants, John Davis and LaVerne Davis, Trustees of the John C. and LaVerne C. Davis Family Trust, and Melanie Moses and John R. Moses, Jr., Trustees of the John and April Moses Irrevocable Trust, and any Responses thereto, it is this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by the Circuit Court for Anne Arundel County, hereby:

**ORDERED**, that Counter-Defendants' Motion to Dismiss is **DENIED**.

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JUDGE  
Circuit Court for Anne Arundel County