

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

*

*

PLAINTIFFS' REQUEST TO VACATE ORDERS OF DEFAULT

Plaintiffs, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, by and through their attorneys, Wayne T. Kosmerl, N. Tucker Meneely and Council, Baradel, Kosmerl and Nolan, P.A., pursuant to Rule 2-311, request that this Court vacate Orders of Default entered on December 28, 2021, and for cause state as follows:

1. On December 28, 2021, the undersigned filed a Line attaching 156 opt-out forms signed by property owners of Arundel on the Bay who were added as parties to this litigation. The opt-out forms were approved by this Court specifically to allow parties to forego participating in this litigation without having default judgments entered against them by expressly agreeing to be bound by the judgment entered in this matter.

2. After those opt-out forms were filed and docketed, this Court entered an Order of Default against several property owners listed in Defendants' Request for Order of Default. Of the property owners against whom this Court issued Orders of Default, 126 executed opt-out forms, which were docketed¹ on December 28, 2021, prior to the Orders of Default being issued. Those property owners are as follows:

¹ Defendants' counsel filed a batch of opt-out forms six days prior on December 22, 2021. The undersigned's office received considerably more opt-out forms, which it processed and filed on December 28, 2021.

Abner, Jennifer	Freeh, Ken	Mintz, Linda
Adams, Gail F.	Garton, Thomas	Mitchell, Jean
Adams, Michael W.	Gordon, Allison Lott	Moschell, Elena
Adams, Yomphana	Gordon, John H.	Moschell, Richard
Allen, Aris T. Jr.	Goroff, David	Neale, Karen
Allen, Philip	Grannell, Andrew Jr.	Niller, Jaclyn
Allen, Susan	Grimes, Colleen	O'Brien, Kathryn
Anderson, Robin	Grimes, Ximena	O'Malley, Josefa
Anello, Anthony	Hames, Nancy	Paret, Jessica
Appleby, Linda	Hames, Ronald	Paret, Russell
Binneweg, Janis	Hamilton, Kathy	Peyton, Margaret
Bleeke, Mary Ann	Hamilton, Tim	Peyton, Richard
Bryan, William	Haragan, M. Brigid	Reiser, Renee
Budimir, Daniel	Hazelbaker, Mary	Rivenburg, Joseph
Bush, Cecily	Hoggard, Abdul	Rubin, Neil
Cassidy, Edward	Jereza, Katie	Ruegg, Daniel
Cassidy, Elizabeth	Kayea, Corey	Ruegg, Diane
Clapham, Stephen	Kayea, David	Rutledge, Scott G.
Cogburn, Derrick	Kennedy, Michael	Saman, Isam
Colbert, Phillip	Kennedy, Socorro	Sarelas, Peter
Colbert, Velma	Kirkpatrick, Jeffrey	Sarelas, Sallie
Conaway, Jane	Kirkpatrick, Zara	Schiavone, Josie
Cook, Helen	Kliewer, Randy	Schmoke, Kurt
Cook, Susan	Krevor, June	Schmoke, Patricia
Cooksey, S.M.	Krevor, Lynne	Scott, Delante
Cooksey, Valerie	Lashar, J. David	Shabazz, Bayinnah
Cummings, J W	Lashar, Margaret	Stein, Marcia
Davis, Nigel	Leach, Hugh J.	Stout, Lorie
Davis, Dawn	Leggett, Aldena	Stout, William
Dixon, Gary	Leggett, Vincent	Suggs, Anthony
Dolberg, Charles	Lichtenstein, Andrea	Suggs, Sharon
Dolberg, Edie	Lichtenstein, Jack	Taylor, Catharine
Donohue, Mark	Lynch, Mary Kathleen	Thomas, Arend J., III
Donohue, Maureen	MacDonald, Janine	Thomas, Carmita
Doucette, Sarah	MacDonald, Michael	Turner, Jayne
Duncan, Pamela	Madden, Barbara	Umber, Sharon
Enchautegui-de-Jesus, Noemi	Marshall, Teresa	Vaccariello, Monico
Fernandes, Agnetha	McConnell, H. Rodriguez	Vaccariello, Richard
Fleming, Carla	McDowell, Randall	Van Horn, Juha
Florentine, Frank	McGill, David	Veal, Roxanne
Fontanesi, Diane	Mcintosh, Jocelyn	Wien, Hans
Fontanesi, Kenneth	McLean, Kathy	Wood, Wendelin

3. Plaintiffs further note that Defendants' Request for Order of Default contained no Affidavit regarding the military status of the property owners against whom they were seeking Orders of Default, a requirement that must be fulfilled under Rule 2-613. *See* Rule 2-613 Cross-Reference (noting that Section 521 of the Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 501 et seq., imposes specific requirements that must be fulfilled before a default judgment may be entered). Ordinarily, this Court denies requests for orders of default that do not contain affidavits confirming the non-military status of the defendants alleged to be in default. To the undersigned's knowledge, this Court employs a checklist which requires Clerks to confirm that requests for order of default contain an affidavit containing such information. If that is still the case, the Orders of Default entered on December 28, 2021 should be vacated. And, to the extent this Court is no longer following that practice, the Servicemembers Civil Relief Act still requires compliance before any judgment can be entered. Plaintiffs request that this Court note the file to ensure that no default judgment is entered against any parties unless and until satisfactory proof of their military status is supplied to the Court.

4. Plaintiffs request that this Court rescind all the Orders of Default that were issued on December 28, 2021 or, at the very least, those that were issued against the above-listed property owners, whose opt-out forms are on file with the Court. Orders of Default are interlocutory orders, over which this Court maintains broad discretion. *See Holly Hall Publications, Inc. v. Cty. Banking & Tr. Co.*, 147 Md. App. 251, 261 (2002) (observing that an order of default is "an interlocutory order subject to broad general discretion of the court"). The Court's "discretion should be exercised so as to ensure that justice is done" and "[s]uch a determination requires consideration of all relevant circumstances in any given case." *Id.* Plaintiffs submit that, in the interests of justice—and judicial economy—this Court should review the Orders of Default issued on December 28,

2021 and either: (1) vacate all of them due to the lack of military affidavits included in Defendants' Request for Orders of Default; or (2) vacate the Orders of Default issued against the above-listed property owners who have already opted-out of this litigation and agreed to be bound by this Court's judgment. It would be an unnecessary burden on the Court and these property owners to require all of these property owners to have to prepare and file, and for this Court to have process and review, well over a hundred motions to vacate orders of default. The information in the Court's file should be sufficient for this Court to exercise its broad discretion over its order.

5. Plaintiffs are submitting two alternative orders herewith.

WHEREFORE, for the foregoing reasons, Plaintiffs request that this Court exercise its broad discretion over interlocutory Orders of Default and vacate the Orders of Default that were issued on December 28, 2021.

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

By: /s/ N. Tucker Meneely
Wayne T. Kosmerl (AIS# 7302010002)
N. Tucker Meneely (AIS# 1012150249)
125 West Street, 4th Floor
Annapolis, MD 21401
(410) 268-6600
(410) 269-8409 fax
Kosmerl@CouncilBaradel.com
Meneely@CouncilBaradel.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th 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
Attorney for Tose' Defendants

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