

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

* * * * *

**JOINT MOTION TO POSTPONE
THE TRIAL DATE PRESENTLY SET FOR MARCH 9 AND 10, 2022**

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., and Defendants, Maurice B. Tose’ and Teresa Layden (“Tose” or “Defendants”), by and through their counsel, Barbara J. Palmer and Hyatt & Weber, P.A., jointly file this Motion to Postpone the presently scheduled trial date of March 9 and 10, 2022, and as grounds therefor, state:

1. This matter involves the Plaintiffs claims for use of platted roads adjacent to residential lots owned by the Defendants. The Defendants filed a Counterclaim asserting that they held title to the property at issue and that the Plaintiffs are not entitled to the scope of the rights claimed.

2. On March 7, 2021, the Defendants filed a Motion to Dismiss for Failure to Join Parties pursuant to Maryland Rule 2-211, and Plaintiffs filed a Cross-Motion to Dismiss on March 25, 2021. A hearing was held before the Honorable Ronald A. Silkworth, wherein it was determined that the property owners in the community of Arundel on the Bay were necessary parties to this litigation.

3. At that time, trial was scheduled in this matter for May 12 and 13, 2021.

4. Upon Judge Silkworth's determination, the parties agreed to prepare and submit a Consent Order which would reflect the terms of that determination. Among other things, the Consent Order would require the parties to amend their pleadings to add necessary parties, after which time the new parties would have to be served with the papers filed in this action, a process that would take several months. In consideration of this, Judge Silkworth advised that it would be necessary for a new scheduling order to be issued as a result of the newly-added parties to the case.

5. In light of this, Plaintiffs and Defendants filed a Joint Motion to Postpone on May 4, 2021, requesting that the trial date set for May 12 and 13, 2021 be postponed. In an order entered on May 5, 2021, this Court granted the Joint Motion and reset the trial for March 9 and 10, 2022.

6. On June 14, 2021, a Consent Order was issued joining all property owners in the community of Arundel on the Bay as necessary parties to this action. As indicated, the Consent Order required the Plaintiffs and Defendants to file amended pleadings within 60 days of the entry of the Order.

7. On August 12, 2021 and August 13, 2021, respectively, Defendants and the Plaintiffs filed their amended pleadings.

8. As further contemplated by the Consent Order, Plaintiffs and Defendants, on September 7, 2021, filed a Joint Motion for Alternative Service, which addressed the manner in which the over 400 additional parties would be served in this lawsuit. Attached as Exhibit A to the Joint Motion was a Notification of Order of Court to Join Necessary Parties. Among other things, the Notification of Order of Court informed the parties that, if they did not wish to participate in this litigation, they could opt out of the case. An Order granting that Joint Motion was entered on September 10, 2021. In addition to addressing the method of service, it also directed that the new parties be served with the Notification of Order of Court to Join Necessary Parties along with an Opt-Out Form.

9. Thereafter, Plaintiffs and Defendants set about serving the over 400 newly-added parties in accordance with the Court's Order concerning alternative service.

10. On or about November 22, 2021, newly-added Counter-Defendants, Trustees of the John C. and Laverne C. Davis Family Trust and Trustees of the John and April Moses Irrevocable Trust, filed a Motion to Dismiss Plaintiffs' First Amended Complaint, asserting that 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."

11. In response to the Motion to Dismiss, Defendants filed a Response, noting that, as a result of issues raised in the Plaintiffs' Amended Complaint, the outcome of this litigation may determine title and use of other platted roads in the community of Arundel on the Bay. Defendants further raised an issue that the Notification of Order of Court Order provided to the newly-added parties may be inaccurate or misleading.

12. Plaintiffs filed a Response to the Motion to Dismiss and Defendants' Response on December 21, 2021. Plaintiffs disputed the allegation that their First Amended Complaint sets forth a claim of title to the platted streets that abut the Moses-Davis Counter-Defendants' properties, and further disputed the suggestion in Defendants' Response that the documents served upon the newly-added parties were inaccurate or misleading.

13. In addition to the Moses-Davis Counter-Defendants, counsel for other newly-added parties have entered their appearance in the case, and they have raised concerns about the scope of the litigation and the impact on their clients' property rights associated with their own residential lots.

14. A hearing on the pending Motion to Dismiss and the Responses thereto was initially scheduled to be heard on February 14, 2022, but it has been rescheduled for February 28, 2022, less than two weeks before trial is scheduled in this matter.

15. There is insufficient time prior to the presently scheduled trial date of March 9 and 10, 2022 to resolve the issues that are pending before the Court on February 28, 2022. Assuming the Court even rules on the pending matters before the presently scheduled trial date, at the very least, there will not be sufficient time for the Moses-Davis Counter-Defendants to file responsive pleadings or counter/cross claims as is their right pursuant to the Maryland Rules. In addition, if the Court determines that the newly-added parties were not provided adequate notice of these proceedings, there will not be enough time to rectify that issue before the trial date.

16. Although Plaintiffs and Defendants disagree about the issues raised in the Motion to Dismiss and the Responses thereto, they agree that there should be no question that all parties to this case be given proper due process and the opportunity to participate in this case if they wish to do so. To that end, Plaintiffs and Defendants are in agreement that, rather than the Court having to decide whether service and notice to the newly-added parties was sufficient, the proper approach would be to remove all doubt. Accordingly, Plaintiffs and Defendants propose that this Court issue an Order directing that all newly-added parties be provided notification of the potential preclusive effect this case may have as a result of the claims set forth in the Amended Complaint, on their rights and claims in future litigation as relating to the community's platted roads so they can consider that in determining whether or not to join this litigation and be given an additional 30-45 days to file a responsive pleading in this lawsuit.

17. Proceeding with a trial on the merits on March 9 and 10, 2022 will result in parties not being able to file pleadings that they are affirmatively allowed to file under the Maryland Rules

and may result in individual parties not having the opportunity to participate in the trial. Given the number of parties involved in this litigation, and the pending issues yet to be resolved, it is in the interest of justice to postpone the trial scheduled for March 9 and 10, 2022.

WHEREFORE, the undersigned counsel for the parties respectfully request that the trial on this matter be postponed. Because there are now a number of additional parties participating in the litigation, the undersigned respectfully request that the matter be reset at least six months from now, at the convenience of the Court.

Respectfully submitted,

COUNCIL, BARADEL,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 2022, a copy of the foregoing Joint Motion to Postpone the Trial Date was filed in accordance with the MDEC system and a copy will be electronically served upon:

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