

ROSALYNNE R. ATTERBEARY
REVOCABLE TRUST, et al.

Plaintiffs/Counter-Defendants,

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC., et
al.

Defendants/Counter-Plaintiff.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No: C-02-CV-15-003736
*
*

* * * * *

AFFIDAVIT OF N. TUCKER MENEELY

I, N. Tucker Meneely, being over the age of 18 years and competent to testify to the facts set forth herein, which are within my personal knowledge, hereby state as follows:

1. I am an associate of the law firm Council, Baradel, Kosmerl & Nolan, P.A. and am co-counsel for Defendant/Counter-Plaintiff Property Owners Association of Arundel on the Bay, Inc. (the “Association”).

2. On or about December 1, 2015, Plaintiffs filed a Complaint in the above-captioned matter. Plaintiffs filed a Motion for Summary Judgment on that Complaint on January 26, 2016. In response to Plaintiffs’ Complaint, the Association filed a Motion to Dismiss on April 1, 2016, seeking dismissal for the Plaintiffs’ failure to join necessary parties, including all property owners in Arundel on the Bay and their mortgagees, and Anne Arundel County. Plaintiffs filed an Amended Complaint on June 27, 2016 in response, and the Association renewed it Motion to Dismiss on July 12, 2016. This Court held a hearing on the Association’s Motion to Dismiss on August 22, 2016, and held the matter sub curia.

3. During this time, the parties engaged in discovery. In addition to written discovery, the Association noted and scheduled the depositions of Plaintiffs and their respective agents. *See* Deposition Notices and Discovery Certificate, attached hereto collectively as Exhibit 1. The depositions were scheduled for early October, prior to the discovery deadline in this case. *Id.* Communicating regarding the pending motions, counsel for the Association made the reasonable request that the Association have the ability to depose Plaintiffs in order to respond to Plaintiffs' then-pending motion for summary judgment.

4. Counsel for Plaintiffs requested the Association's consent to a motion to extend the discovery deadline until at least 45 days after a ruling on the Association's then-pending motion to dismiss. *See* Eileen Powers Email dated September 19, 2016, attached hereto as Exhibit 2. Plaintiff's counsel also indicated a wish to avoid the time and expense of taking depositions if a motion extending discovery could be granted, presumably because the Court was considering a motion to dismiss the case at that time. *Id.* Plaintiffs' counsel stated as follows:

I understand you want my clients' depositions in order to respond to our motion for summary judgment. I explained that I intend to amend the motion as soon as we get a ruling on your motion, provided we go forward with the case. You want additional time to respond to our summary judgment motion in order to get the depositions done. I have no objection to that request, if you can let me know how much time you need.

Id.

5. Accordingly, the Association consented to a Motion to Amend Scheduling Order, which sought to extend discovery by 60 days after the Court ruled on the Association's Motion to Dismiss. The Association's consent was based in part on the fact that depositions had been noted, such that the Association would have the benefit of those depositions in responding to Plaintiffs' Motion for Summary Judgment in the event that the Court denied the Association's Motion to

Dismiss, or if the Plaintiffs filed an Amended Motion for Summary Judgment as indicated by Plaintiffs' Counsel.

6. Prior to the depositions taking place, however, this Court entered an Order staying its ruling on Plaintiffs' Motion to Amend the Scheduling Order until after the Court ruled on the Association's Motion to Dismiss, during which time discovery would also be stayed. *See* September 23, 2016 Order (entered 9/28/16). As a result, the Association was unable to conduct the noted depositions. This Court did not enter a ruling on the Association's Motion to Dismiss until after the discovery deadline in this case had passed. A final ruling on the Association's Motion to Dismiss was not entered until February 8, 2017.

7. On January 13, Plaintiffs filed a Second Amended Complaint, adding all lot owners of Arundel on the Bay as Defendants. Plaintiffs did not and have not renewed or otherwise filed an amended Motion for Summary Judgment, which is now moot.

8. On March 1, 2017, the Association filed a Seven-Count Counterclaim against Plaintiffs. The Counterclaim and the allegations therein, which also serve as the Association's defenses to Plaintiffs' Second Amended Complaint, assert claims for quiet title and for declaratory relief based. On March 31, 2017, Plaintiffs filed a Motion to Dismiss, or in the Alternative, for Summary Judgment, asserting that the Association's Counterclaim was barred by the doctrine of collateral estoppel.

9. The Association's claims and defenses in this case necessarily involve a specific factual inquiry into the conduct of Plaintiffs and/or their predecessors in title. Accordingly, depositions of Plaintiffs and their agents (which were previously noted but cancelled due to this Court's Order staying discovery) are absolutely necessary. The Association diligently engaged in discovery and, in fact, scheduled and noted the depositions of Plaintiffs and their agents. The

inability of the Association to conduct said depositions is not due to any delay or inaction by the parties, but rather, this Court's order staying discovery, which was reasonable in light of a pending motion to dismiss at the time.

10. Because the Court has not ruled on the Consent Motion to Modify Scheduling Order, Plaintiffs have filed a Motion for Status and Scheduling Conference. The Association generally agrees with Plaintiffs' Motion and will be filing a response shortly.

11. Given the stay of discovery and the discovery deadline passing during the Court's consideration of the Association's Motion to Dismiss, the Association has not had the benefit of full discovery in this case. The Association submits that the Opposition to Plaintiffs' Motion to Dismiss, or in the Alternative, for Summary Judgment, sets forth arguments and supporting papers that warrant this Court denying Plaintiffs' Motion. Nevertheless, all facts essential to justify the Association's Opposition cannot be set forth without the previously-noted depositions of Plaintiffs and their agents. Exhibit 1.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.


N. Tucker Meneely

EXHIBIT 1

THE REVOCABLE TRUST OF
ROSALYNNE R. ATTERBEARY, et al.

Plaintiffs

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL-ON-THE-BAY, INC.

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No.: C-02-CV-15-003736
*

DISCOVERY CERTIFICATE

I HEREBY CERTIFY that I served the following discovery materials in these proceedings as indicated and that I will retain the original of this document in my possession, without alteration, until the case is concluded in this Court, the time for noting any appeal has expired, and any appeal noted has been decided:

Date of Service: September 13, 2016

Method of Service: MDEC

Materials Served:

1. Defendant's Notice of Deposition of Rosalynne R. Atterbeary, Trustee – Rosalynne R. Atterbeary Revocable Trust
2. Defendant's Notice of Deposition of Clyde T. Coble, Trustee – Wilma L. Coble Qualified Personal Residence Trust
3. Defendant's Subpoena and Notice of Deposition of Wilma Coble
4. Defendant's Subpoena and Notice of Deposition of Knowlton R. Atterbeary

Person(s) Served: See Certificate of Service

Respectfully submitted,

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

By: /s/ N. Tucker Meneely
Wayne T. Kosmerl
N. Tucker Meneely
Steven A. Brown
125 West Street, 4th Floor
Annapolis, MD 21401
(410) 268-6600
(410) 269-8409 fax
Kosmerl@CouncilBaradel.com
Meneely@CouncilBaradel.com
Brown@CouncilBaredel.com
Attorneys for Defendant

EXHIBIT 1

RULE 20-201(F)(1) CERTIFICATE

I HEREBY CERTIFY that the foregoing submission does not contain any restricted information.

/s/ N. Tucker Meneely
N. Tucker Meneely

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of September, 2016, a copy of the foregoing paper was served upon all parties registered to receive service via MDEC and/or via first class mail upon the following:

Eileen E. Powers, Esq.
Barbara J. Palmer, Esq.
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road, Suite 240
Annapolis, Maryland 21401
epowers@bdpplaw.com
bpalmer@bdpplaw.com
Attorneys for Plaintiffs

/s/ N. Tucker Meneely
N. Tucker Meneely

EXHIBIT 1

THE REVOCABLE TRUST OF
ROSALYNNE R. ATTERBEARY, et al.

Plaintiffs

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL-ON-THE-BAY, INC.

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No.: C-02-CV-15-003736
*

DISCOVERY CERTIFICATE

I HEREBY CERTIFY that I served the following discovery materials in these proceedings as indicated and that I will retain the original of this document in my possession, without alteration, until the case is concluded in this Court, the time for noting any appeal has expired, and any appeal noted has been decided:

Date of Service: September 13, 2016

Method of Service: MDEC

Materials Served: 1. Defendant's Amended Subpoena and Amended Notice of Deposition of Wilma Coble

Person(s) Served: See Certificate of Service

Respectfully submitted,

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

By: /s/ N. Tucker Meneely
Wayne T. Kosmerl
N. Tucker Meneely
Steven A. Brown
125 West Street, 4th Floor
Annapolis, MD 21401
(410) 268-6600
(410) 269-8409 fax
Kosmerl@CouncilBaradel.com
Meneely@CouncilBaradel.com
Brown@CouncilBaredel.com
Attorneys for Defendant

EXHIBIT 1

RULE 20-201(F)(1) CERTIFICATE

I HEREBY CERTIFY that the foregoing submission does not contain any restricted information.

/s/ N. Tucker Meneely
N. Tucker Meneely

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of September, 2016, a copy of the foregoing paper was served upon all parties registered to receive service via MDEC and/or via first class mail upon the following:

Eileen E. Powers, Esq.
Barbara J. Palmer, Esq.
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road, Suite 240
Annapolis, Maryland 21401
epowers@bdpplaw.com
bpalmer@bdpplaw.com
Attorneys for Plaintiffs

/s/ N. Tucker Meneely
N. Tucker Meneely

EXHIBIT 1

ROSALYNNE R. ATTERBEARY
REVOCABLE TRUST, et al.

Plaintiffs,

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC.

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No: C-02-CV-15-003736
*

* * * * *

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant, Property Owners Association of Arundel on the Bay, Inc., pursuant to Rule 2-412, will take the oral deposition, for the purpose of discovery or use at trial, of the following individual before a certified court reporter, notary public, or some other individual authorized by law to administer oaths, the deposition to continue from day to day until complete. This deposition will be recorded by electronic audio or audio-video means in addition to stenographic recording, and any recording of the deposition by electronic audio-video means may be used during trial pursuant to Rule 2-416 and Rule 2-419.

Name: Wilma Coble

Address: c/o Eileen E. Powers, Esq.
Barbara J. Palmer, Esq.
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road, Suite 240
Annapolis, Maryland 21401

Date: October 5, 2016

Time: 1:00 pm

Place: Law Offices of Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
Annapolis, Maryland 21401

The deponent is hereby notified to personally appear and attend at the time and place specified

EXHIBIT 1

for the purposes of having his deposition taken in accordance with the foregoing Notice. A copy of the Subpoena for Deposition is attached hereto.

Respectfully submitted,

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

By: /s/ N. Tucker Meneely
Wayne T. Kosmerl
N. Tucker Meneely
Steven A. Brown
125 West Street, 4th Floor
Annapolis, MD 21401
(410) 268-6600
(410) 269-8409 fax
Kosmerl@CouncilBaradel.com
Meneely@CouncilBaradel.com
Brown@CouncilBaredel.com
Attorneys for Defendant

EXHIBIT 1

ROSALYNNE R. ATTERBEARY
REVOCABLE TRUST, et al.

Plaintiffs,

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC.

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No: C-02-CV-15-003736
*

* * * * *

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant, Property Owners Association of Arundel on the Bay, Inc., pursuant to Rule 2-412, will take the oral deposition, for the purpose of discovery or use at trial, of the following individual before a certified court reporter, notary public, or some other individual authorized by law to administer oaths, the deposition to continue from day to day until complete. This deposition will be recorded by electronic audio or audio-video means in addition to stenographic recording, and any recording of the deposition by electronic audio-video means may be used during trial pursuant to Rule 2-416 and Rule 2-419.

Name: Clyde T. Coble, Trustee – Wilma L. Coble Qualified Personal Residence Trust

Address: c/o Eileen E. Powers, Esq.
Barbara J. Palmer, Esq.
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road, Suite 240
Annapolis, Maryland 21401

Date: October 5, 2016

Time: 9:00 am

Place: Law Offices of Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
Annapolis, Maryland 21401

The deponent is hereby notified to personally appear and attend at the time and place specified

EXHIBIT 1

for the purposes of having his deposition taken in accordance with the foregoing Notice.

Respectfully submitted,

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

By: /s/ Wayne T. Kosmerl
Wayne T. Kosmerl
N. Tucker Meneely
Steven A. Brown
125 West Street, 4th Floor
Annapolis, MD 21401
(410) 268-6600
(410) 269-8409 fax
Kosmerl@CouncilBaradel.com
Meneely@CouncilBaradel.com
Brown@CouncilBaredel.com
Attorneys for Defendant

EXHIBIT 1

ROSALYNNE R. ATTERBEARY
REVOCABLE TRUST, et al.

Plaintiffs,

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC.

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No: C-02-CV-15-003736
*

* * * * *

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant, Property Owners Association of Arundel on the Bay, Inc., pursuant to Rule 2-412, will take the oral deposition, for the purpose of discovery or use at trial, of the following individual before a certified court reporter, notary public, or some other individual authorized by law to administer oaths, the deposition to continue from day to day until complete. This deposition will be recorded by electronic audio or audio-video means in addition to stenographic recording, and any recording of the deposition by electronic audio-video means may be used during trial pursuant to Rule 2-416 and Rule 2-419.

Name: Knowlton R. Atterbeary, Jr.

Address: c/o Eileen E. Powers, Esq.
Barbara J. Palmer, Esq.
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road, Suite 240
Annapolis, Maryland 21401

Date: October 4, 2016

Time: 1:00 pm

Place: Law Offices of Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
Annapolis, Maryland 21401

The deponent is hereby notified to personally appear and attend at the time and place specified

EXHIBIT 1

for the purposes of having his deposition taken in accordance with the foregoing Notice. A copy of the Subpoena for Deposition is attached hereto.

Respectfully submitted,

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

By: /s/ Wayne T. Kosmerl
Wayne T. Kosmerl
N. Tucker Meneely
Steven A. Brown
125 West Street, 4th Floor
Annapolis, MD 21401
(410) 268-6600
(410) 269-8409 fax
Kosmerl@CouncilBaradel.com
Meneely@CouncilBaradel.com
Brown@CouncilBaredel.com
Attorneys for Defendant

EXHIBIT 1

ROSALYNNE R. ATTERBEARY
REVOCABLE TRUST, et al.

Plaintiffs,

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC.

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No: C-02-CV-15-003736
*

* * * * *

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that Defendant, Property Owners Association of Arundel on the Bay, Inc., pursuant to Rule 2-412, will take the oral deposition, for the purpose of discovery or use at trial, of the following individual before a certified court reporter, notary public, or some other individual authorized by law to administer oaths, the deposition to continue from day to day until complete. This deposition will be recorded by electronic audio or audio-video means in addition to stenographic recording, and any recording of the deposition by electronic audio-video means may be used during trial pursuant to Rule 2-416 and Rule 2-419.

Name: Rosalynne R. Atterbeary, Trustee – Rosalynne R. Atterbeary Revocable Trust

Address: c/o Eileen E. Powers, Esq.
Barbara J. Palmer, Esq.
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road, Suite 240
Annapolis, Maryland 21401

Date: October 4, 2016

Time: 9:00 am

Place: Law Offices of Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
Annapolis, Maryland 21401

The deponent is hereby notified to personally appear and attend at the time and place specified

EXHIBIT 1

for the purposes of having his deposition taken in accordance with the foregoing Notice.

Respectfully submitted,

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

By: /s/ N. Tucker Meneely
Wayne T. Kosmerl
N. Tucker Meneely
Steven A. Brown
125 West Street, 4th Floor
Annapolis, MD 21401
(410) 268-6600
(410) 269-8409 fax
Kosmerl@CouncilBaradel.com
Meneely@CouncilBaradel.com
Brown@CouncilBaredel.com
Attorneys for Defendant

EXHIBIT 2

N. Tucker Meneely

From: Eileen Powers <epowers@bdppplaw.com>
Sent: Monday, September 19, 2016 12:04 PM
To: N. Tucker Meneely
Cc: Wayne T. Kosmerl; Susan T. Ford; Steven A. Brown; Susan E. Martone; Barbara Palmer
Subject: RE: Atterbeary/Coble v. AOB POA

Tucker,

As we discussed by phone, we have a discovery deadline in 3 weeks on a case in which a preliminary motion to dismiss and motion for summary judgment are pending. At this point I do not know (a) if title to the street beds will be in issue, or (b) if we will be required to name all lot owners as defendants. You have identified a significant number of persons with knowledge of the issues in this case. Of course, you have not yet filed an answer stating your defenses or any counterclaim, so I do not know what defenses you will raise. We are simply not in a position of taking depositions until we know which direction this case is headed.

I intend to file a motion to amend the scheduling order to extend the discovery deadline until at least 45 days after we get a ruling on the motion to dismiss, which as of today is still pending. Our case time standard deadline is not until June 1, 2017, and our pretrial conference is not until December 7. I have asked you to consent to the motion (which I will draft this afternoon), and understand you need to discuss this with your partners.

You have noted the depositions of my clients for the first week in October. They are available on the dates we discussed. I would like to schedule depositions of your representative of the POA and your expert witness that same week, and am available any day that week except the afternoon of the 6th. If you do not give me dates I will send notices for the 3rd and 7th. I want to avoid the time and expense of taking any depositions if we can get a motion granted to avoid it.

I understand you want my clients' depositions in order to respond to our motion for summary judgment. I explained that I intend to amend the motion as soon as we get a ruling on your motion, provided we go forward with the case. You want additional time to respond to our summary judgment motion in order to get the depositions done. I have no objection to that request, if you can let me know how much time you need.

I will get you a draft of my motion as soon as it's ready.

Eileen



Eileen E. Powers
Blumenthal, Delavan, Powers & Palmer, P.A.
888 Bestgate Road, Suite 413
Annapolis, Maryland 21401
epowers@bdppplaw.com
410-573-2900