

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

Plaintiffs

v.

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

Defendants

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

Case No.: C-02-CV-15-003736

* * * * *

ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendant, Property Owners Association of Arundel on the Bay, Inc., by and through its attorneys, Wayne T. Kosmerl, N. Tucker Meneely, Steven A. Brown, and Council, Baradel, Kosmerl and Nolan, P.A., and pursuant to Maryland Rule 2-323, files this Answer to Plaintiffs' Second Amended Complaint, and states as follows:

Preliminary Matters

1. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' Second Amended Complaint fails to join all necessary parties.

Specific Responses

1. Defendant admits the allegations contained in paragraph 1 of the Second Amended Complaint.
2. Defendant admits that Atterbeary owns real property located in Anne Arundel County, Maryland with an address of 3551 Narragansett Avenue, Annapolis, Maryland 21401 but is without sufficient knowledge to admit or deny and therefore denies the remaining allegations contained in Paragraph 2 of the Second Amended Complaint.

3. Defendant admits the allegations contained in Paragraph 3 of the Second Amended Complaint.

4. Defendant admits that Coble owns real property in Anne Arundel County, Maryland with an address of 3557 Narragansett Avenue, Annapolis, Maryland 21403 but is without sufficient information to admit or deny and therefore denies the remaining allegations contained in Paragraph 4 of the Second Amended Complaint.

5. Defendant admits the allegation contained in Paragraph 5 of Plaintiffs' Second Amended Complaint that the Defendant Association is a Maryland corporation with its principal place of business in Anne Arundel County, but deny that its purposes are so limited as described by the remainder of Paragraph 5. Defendant admits that the subdivision of Arundel on the Bay is shown on record plat recorded originally at SH 37, folio 509, and as amended in 1927 by plat recorded at Plat Book 9, folio 25.

6. Defendant is without sufficient information to admit or deny whether the property owners of Arundel on the Bay are identified in Exhibit E of the Second Amended Complaint and therefore denies that allegation contained in Paragraph 6 of the Second Amended Complaint. Defendant denies the remaining allegations of Paragraph 6 of the Second Amended Complaint to the extent that they misrepresent the Order of the Court dated December 1, 2016.

7. Defendant admits the allegations contained in Paragraph 7 of the Second Amended Complaint.

8. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs' allegations contained in Paragraph 8 of the Second Amended Complaint.

9. Defendant admits the allegation contained in Paragraph 9 of the Second Amended Complaint that Magnolia Avenue [as shown on record plat for Arundel-on-the-Bay recorded

originally at SH 37, folio 509, and as amended in 1927 by plat recorded at Plat Book 9, folio 25 (“Record Plat”)], runs perpendicular to and abuts a portion of Chesapeake Walk and the shoreline of the Chesapeake Bay, but denies the remaining allegations including that the section of Magnolia Avenue located between Narragansett Avenue and Chesapeake Walk has never been used for vehicular traffic.

10. Defendant denies the allegations contained in Paragraph 10 of the Second Amended Complaint.

11. Defendant denies the allegations contained in Paragraph 11 of the Second Amended Complaint to the extent that they refer to a document, which speaks for itself.

12. Defendant denies the allegations contained in Paragraph 12 of the Second Amended Complaint.

13. Defendant admits the allegation contained in Paragraph 13 of the Second Amended Complaint that the Association has claimed title to and a right to use and regulate those sections of Magnolia Avenue and Chesapeake Walk referred to as the Disputed Roads in the Second Amended Complaint.

14. Defendant admits the allegations contained in Paragraph 14 of the Second Amended Complaint that Anne Arundel County holds record title to a utility easement and that the Plaintiffs purport to acknowledge and not dispute in this action.

15. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs’ allegations contained in Paragraph 15 of the Second Amended Complaint.

16. Defendant denies the allegations contained in Paragraph 16 of the Second Amended Complaint to the extent that they refer to a document, which speaks for itself.

17. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs' allegations contained in Paragraph 17 of the Second Amended Complaint.

18. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs' allegations contained in Paragraph 18 of the Second Amended Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of the Second Amended Complaint.

20. Defendant denies the allegations contained in Paragraph 20 of the Second Amended Complaint.

21. Defendant denies the allegations contained in Paragraph 21 of the Second Amended Complaint.

22. Defendant admits the allegation in Paragraph 22 of the Second Amended Complaint that Coble purports to seek "to quiet title by order of the Court declaring that Coble is the absolute owner by adverse possession of that portion of Magnolia Avenue described in the 1971 Deed as Parcel No. 2 and as Parcels 2 and 3 on the Special Purpose Boundary Survey."

23. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs' allegations contained in Paragraph 23 of the Second Amended Complaint.

24. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs' allegations contained in Paragraph 24 of the Second Amended Complaint.

25. Defendant admits the allegation contained in Paragraph 25 of the Second Amended Complaint that the Association claims title to Magnolia Avenue, as well as other roads, streets and highways within Arundel on the Bay but denies the remaining allegations to the extent they misstate Defendant's claims.

26. Defendant denies the allegations contained in Paragraph 26 of the Second Amended Complaint.

27. Defendant admits the allegation in Paragraph 27 of the Second Amended Complaint that Atterbeary purports to seek “to remove any cloud from its title resulting from the Association’s claim of superior title over that portion of Magnolia Avenue that immediately adjoins and abuts the Atterbeary Property.”

28. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs’ allegations contained in Paragraph 28 of the Second Amended Complaint.

29. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs’ allegations contained in Paragraph 29 of the Second Amended Complaint.

30. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs’ allegations contained in Paragraph 30 of the Second Amended Complaint.

31. Defendant admits the allegation contained in Paragraph 31 of the Second Amended Complaint that the Association claims title to Magnolia Avenue and Chesapeake Walk, as well as other roads, streets and highways within Arundel on the Bay, but denies the remaining allegations to the extent they misstate Defendant’s claims.

32. Defendant denies the allegations contained in Paragraph 32 of the Second Amended Complaint.

33. Defendant admits that, in Paragraph 33 of the Second Amended Complaint, Coble purports to “seek to remove any cloud from its title resulting from the Association’s claim of superior title over those portions of Chesapeake Walk and Magnolia Avenue that immediately join and abut the Coble Property.”

34. Defendant admits the allegations contained in Paragraph 34 of the Second Amended Complaint that purport to set forth Plaintiffs' claim for relief under Count IV of the Second Amended Complaint.

35. Defendant admits that in Paragraph 35 of Second Amended Complaint, Plaintiffs' acknowledge that the AOB Plat and Revised AOB Plat "created a limited implied easement for adjacent lot owners in Arundel on the Bay to use Magnolia Avenue and Chesapeake Walk for pedestrian ingress and egress between their lots and the nearest public road and the waters of the Chesapeake Bay, in accordance with Maryland law, and for no other purpose."

36. Defendant denies the allegations contained in Paragraph 36 of the Second Amended Complaint to the extent that they limit and/or mischaracterize Defendant's claims in this matter.

37. Defendant denies the allegations contained in Paragraph 37 of the Second Amended Complaint.

38. Defendant denies the allegations contained in Paragraph 38 of the Second Amended Complaint.

39. Defendant is without sufficient knowledge to admit or deny and therefore denies the Plaintiffs' allegations contained in Paragraph 39 of the Second Amended Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of the Second Amended Complaint.

41. Defendant denies the allegations contained in Paragraph 41 of the Second Amended Complaint.

42. Defendant denies the allegations contained in Paragraph 42 of the Second Amended Complaint.

43. Defendant denies the allegations contained in Paragraph 43 of the Second Amended Complaint.

44. Defendant denies the allegations contained in Paragraph 44 of the Second Amended Complaint.

45. Defendant admits the allegations contained in Paragraph 45 of the Second Amended Complaint.

46. Defendant admits the allegations contained in Paragraph 46 of the Second Amended Complaint.

47. Defendant denies the allegations contained in Paragraph 47 of the Second Amended Complaint.

48. Defendant denies the allegations contained in Paragraph 48 of the Second Amended Complaint.

49. Defendant denies the allegations contained in Paragraph 50 of the Second Amended Complaint.

50. Defendant denies the allegations contained in Paragraph 50 of the Second Amended Complaint.

51. Defendant denies the allegations contained in Paragraph 50 of the Second Amended Complaint.

Affirmative Defenses

Defendant raises the following affirmative defenses: Res Judicata, Judicial and/or Equitable Estoppel, Laches, Statute of Limitations, Failure to State a Claim Upon Which Relief Can be Granted, Contributory Negligence, Statutory Immunity including Sections 5-507 and/or 5-406 of the Courts and Judicial Proceedings Article, Md. Code Ann., Waiver, Abandonment and

Privilege. Defendant reserves the right to plead any and all other defenses to which it may be entitled that are not now known but may be discovered during discovery and/or as this case progresses.

WHEREFORE, Defendant, Property Owners Association of Arundel on the Bay, Inc., having fully answered the Second Amended Complaint, prays that the Second Amended Complaint be dismissed and for such other and further relief as the nature of this case may require.

Respectfully submitted,

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

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RULE 20-201(F)(1) CERTIFICATE

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

/s/ Wayne T. Kosmerl
Wayne T. Kosmerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January, 2017, 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:

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