

ROSALYNNE R. ATTERBEARY
REVOCABLE TRUST *et. al.*

Plaintiffs

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC.

Defendant

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IN THE
CIRCUIT COURT
FOR
ANNE ARUNDEL COUNTY,
MARYLAND

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

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**REQUEST FOR ADMISSION OF FACTS
AND GENUINENESS OF DOCUMENTS**

TO: Property Owners Association of Arundel on the Bay, Inc., Defendant

FROM: Rosalynne R. Atterbeary Revocable Trust, Plaintiff

Rosalynne R. Atterbeary Revocable Trust, by its counsel, Eileen E. Powers, Barbara J. Palmer, and Blumenthal, Delavan, Powers & Palmer, P.A., pursuant to the Maryland Rule 2-424, submits the following Request for Admission of Facts and Production of Documents to the Defendant, Property Owners Association of Arundel on the Bay, Inc. The Association is to respond to this Request in writing within thirty (30) days of the date of service hereof.

Instructions

A. You are requested to admit, for the purposes of the pending action only, the truth of the following statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in these requests.

B. Each matter for which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or

longer time as the court may allow, you serve a written answer or objection addressed to the matter, signed by you or your attorney.

C. If objection made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the matter for which an admission is requested. You shall specify so much of it as is true and qualify or deny the remainder.

D. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you have made reasonable inquiry and the information known or readily obtainable by you is insufficient to enable you to admit or to deny.

E. If you consider that a matter for which an admission has been requested presents a genuine issue for trial, you may not, on that ground alone, object to the request. You may, subject to the provisions of Md. Rule 2-424, deny the matter or set forth reasons why you cannot admit or deny it.

F. The Instructions set forth above shall apply to each Request for Admission set forth herein, as fully as if the same were included in each such request.

G. The Definitions set forth below shall apply to each request set forth herein, as fully as if the same were included in each such request.

H. These requests are directed to the Defendant and call for information in the possession, custody, or control of the Defendant and any agent, investigator and/attorney of the Defendant unless privileged or otherwise legally protected.

Definitions

As used in these interrogatories, the following terms are to be interpreted in accordance with these definitions:

(a) In accordance with Rule 1-202(t), the term "person" includes any individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity.

(b) In accordance with Rule 2-421(b), the terms "you" and "your" includes the person(s) to whom these interrogatories are addressed, and all of that person's agents, representatives, or attorneys.

(c) The term "document" includes a writing, drawing, graph, chart, photograph, recording, and other data compilation from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.

(d) The terms "identify," "identity," or "identification," (1) when used in reference to a natural person, means that person's full name, last known address, home and business telephone numbers, and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, means that person's full name, a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of "person" above), and the person's last known address, telephone number, and principal place of business; (3) when used in reference to any person after the person has been properly identified previously means the person's name; and (4) when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of document

(e.g. letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer, appropriately labeled to correspond to the interrogatory.

(e) The “Atterbeary Property” refers to the property at 3551 Narragansett Avenue, Annapolis, Maryland 21403, and identified as Lots A and B, Block 11, Arundel on the Bay.

(f) The “Coble Property” refers to the property at 3557 Narragansett Avenue, Annapolis, Maryland 21403, and identified as Lots K, L, and M, Block 12, Arundel on the Bay.

(g) “Atterbeary” refers to the plaintiff, Rosalynne R. Atterbeary Revocable Trust, which is a Trust and Rosalynne R. Atterbeary is the Trustee of the Trust.

(h) “Coble” refers to the plaintiff, Wilma L. Coble Qualified Personal Residence Trust, which is a Trust and Cyde T. Coble is the Trustee of the Trust.

(i) The “Complaint” refers to the Complaint filed by Plaintiffs at the Circuit Court for Anne Arundel County on December 1, 2015.

(j) The “Disputed Area” refers to those portions of Magnolia Avenue and Chesapeake Walk that bind on the Atterbeary Property and the Coble Property and are located between Narragansett Avenue and the waters of the Chesapeake Bay.

(k) The “Coble Strip” refers to that portion of Magnolia Avenue described in Count VI of the Complaint.

(l) “Arundel on the Bay” refers to a subdivision shown on a plat created in 1890 entitled “Arundel on the Bay,” which plat is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book S.H. 34, folio 509 and on a revised plat created in 1927 entitled “Revised Plat of Arundel on the Bay,” which plat is recorded among the Land records of Anne Arundel County, Maryland in Plat Book 9, folio 25.

(m) "The Association" refers to the Property Owners Association of Arundel on the Bay, Inc.

Requests

1. Admit that you were a party to the case filed in the Circuit Court for Anne Arundel County, Maryland captioned *Sherry Bellamy v. Property Owners Association of Arundel on the Bay, Inc.*, Civil Action No. C-06-15184 ("Bellamy Case").

2. Admit that the attached Amended Opinion and Order dated January 8, 2008 by Judge Philip T. Caroom is a genuine and accurate copy of the final decision in the Bellamy Case.

3. Admit that the Plaintiffs in the Bellamy Case alleged that they held fee simple title to those portions of Chesapeake Walk and the perpendicular streets that intersected with Chesapeake Walk that abutted their respective properties pursuant to Maryland Annotated Code, Real Property Article, Section 2-114.

4. Admit that the Association also alleged that it held fee simple title to the portions of the roads in Arundel on the Bay described in Paragraph 3.

5. Admit that Judge Caroom held in favor of the Plaintiffs and denied all claims of ownership raised by the Association in the Bellamy Case.

6. Admit that the Association did not appeal the final decision in the Bellamy Case.

7. Admit that the Plaintiffs in the Bellamy Case are similarly situated to the Plaintiffs in the present action in terms of the location of their lots on Chesapeake Walk and Magnolia Avenue, which runs perpendicular to Chesapeake Walk and abuts their respective properties.

8. Admit that the issue of use of the disputed roads in the Bellamy Case was resolved by agreement between the parties and not by judicial decree.

9. Admit that the Association's claims of ownership to the Disputed Areas in the present action are identical to the Association's claims of ownership to the disputed roads in the Bellamy Case.

10. Admit that the theories upon which the Association bases its claims of title to the streets in Arundel on the Bay, including the Disputed Area and the Coble Strip at issue in the present action, are identical in the Bellamy Case and the present action.

11. Admit that with the exception of several adverse possession claims relating to title to platted roads within Arundel on the Bay, the issue of the right to use the roads within Arundel on the Bay has not been decided by the Circuit Court for Anne Arundel County, Maryland.

12. Admit that the Association claims title to and the right to manage and control the Disputed Areas described in the Complaint.



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SHERRY BELLAMY, et, al

* IN THE CIRCUIT COURT
* FOR ANNE ARUNDEL COUNTY

v.

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PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY

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Case # C-06-115184

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AMENDED OPINION

On June 30, 2006 Plaintiffs filed a complaint with the Circuit Court for Anne Arundel County. A complex motions hearing was held on September 5, 2007, as to motions for summary judgment, with Eileen Powers, Esq., representing the Plaintiffs and Wayne Kosmerl, Esq., representing the Defendant's. Having considered these matters as well as Plaintiff's Motion to Alter or Amend Judgment and Defendant's response, this court now provides this amended opinion and amended order.

FACTS

The parties dispute who owns platted streets in fee simple in the Arundel on the Bay subdivision. Plaintiffs are three couples who own a total of eight lots within the community known as "Arundel on the Bay".

The Defendant's identity and claims call for a discussion of local history: The property that now comprises Arundel on the Bay was originally part of a 273 acre tract of land owned by Richard Chase and conveyed to the Chesapeake and Columbia Investment Company (Chesapeake and Columbia) by deed dated September 1890. Chesapeake and

Columbia subdivided the raw land it acquired into 600 lots, and the subdivision of Arundel on the Bay was created on September 17, 1890.

Eight years after the subdivision of Arundel on the Bay was created by plat, a legislative act of the General Assembly of Maryland incorporated the town of Arundel on the Bay as an independent municipality. The charter for the municipality of Arundel on the Bay was forfeited in 1926.

On May 31, 1949, the charter for Chesapeake and Columbia also was forfeited, and the balance of all unsold property in Arundel on the Bay was transferred by Anne Arundel County Circuit Court to certain trustees. On May 28, 1949, three days before the charter was dissolved, the Town Commissioners conveyed title to all of the streets within the corporate limits of the town to the town trustees, to be held in trust for all property owners within the community. In September of 1951, the Town Trustees purported to convey in fee simple land comprising the streets or avenues, disputed herein to the *Property Owners Association of Arundel-on-the-Bay, Inc.*

THE PRESENT CONTROVERSY

Plaintiffs filed this lawsuit on June 30, 2006 alleging that the Property Association has removed trees from walkways, demanded that lot owners obtain written permission to apply for permits to build piers on the Chesapeake Bay, and portrayed Chesapeake Walk as a "Community Recreation Area" on maps published by the association on the community website. Plaintiffs sought to enjoin the Defendant's from trespassing on certain portions of the platted streets, as well as to obtain declaratory

judgment affirming fee simple ownership. The Property Association countered that they should have the right of access and use of all the platted streets in Arundel on the Bay.

Pending this Court's decision of the parties motions for summary judgment, the parties reached a settlement agreement dismissing counts of both the complaint and counterclaim, leaving only actions to quiet title as well as declaratory judgment. Thus, the sole issue remaining for the court's decision is who owns in fee simple the platted roads of Arundel on the Bay that abut Plaintiffs properties?

DISCUSSION

Plaintiffs have never claimed that the Property Association of Arundel on the Bay does not have a right to use the streets, they instead assert that they are the fee simple owners of Chesapeake Walk, Cedar Street, Redwood Avenue, and Walnut Avenue. They argue they acquired ownership via their predecessors in interest, who acquired lots between 1891 and 1935. Through application of the Annotated Code of Maryland, Title 2, section 114, Plaintiffs stress that their predecessors in title were granted land absent reservation of title by the grantor or another person. Plaintiffs also cite section 2-114(B) to espouse the idea that they have ownership in fee to the center of those portions of Cedar Avenue, Walnut Avenue, and Redwood Avenue upon which their properties bind, and because Chesapeake Avenue is bound on the other side by a body of water, to the entire portion of Chesapeake Avenue upon which their properties bind.

Defendant's base their ownership claims on several theories including presumption due to adverse possession, the 1951 conveyance received by their trustees, and laches. Defendant's argue that they have exercised substantial dominion and control

over the streets for the requisite number of years to qualify for adverse possession. To substantiate the claim of adverse possession, Defendant's state that they initiated litigation when the streets were blocked or encroached by residents.

In regards to the 1951 conveyance, Defendant's claim the deed has not been challenged for fifty years, and that Plaintiffs' predecessors in title recognized the Association's ownership of the streets.

Considering Maryland's common law as to rights, which a municipality may acquire by "adverse possession" or extended use of the streets, this court finds that "the existence of a public way may be established by evidence of an uninterrupted user by the public for twenty years." *Day v. Allender*, 22 Md. 511 (Md. 1865). However, the public rights so established are an easement, not fee simple title. In *Adams v. Commissioners of Town of Trappe*, a chancellor determined that a public easement existed because boundary lines in the street had been in existence for thirty five years, and used by the public for the entire time. *Adams v. Commissioners of Town of Trappe*, 204 Md. 165, 176 (Md. 1954)

Applying *Adams* to the facts of this case, the boundary lines have existed since the 1st plat was recorded for the Arundel on the Bay subdivision in 1890, far exceeding the required twenty years to create an easement. Because the lot owners of Arundel on the Bay generally utilized the streets without interruption beyond the requisite twenty years, the disputed streets herein are subject to an easement by these lot owners and their successors. As discussed above, the parties reached an agreement during the pendency of this to settle the terms of this matter to settle the terms of this easement for their common use of the platted streets of Arundel on the Bay.

Because lot owners within Arundel on the Bay have used the platted streets of Arundel on the Bay, those streets are subject to an easement in common by all lot owners in Arundel on the Bay consistent with the easement agreement negotiated by the parties and accepted by the court.

Such an easement is not inconsistent with Plaintiffs' assertion of their fee simple title to the street. While Plaintiffs apply section 2-114(B) to support their claim of ownership up to the centerline of the street, it has been held that "even if abutting owners do own the fee to the center of the street, it is subservient to the paramount public easement for street purposes." *Adams v. Commissioners of Town of Trappe*, 204 Md. 165, 176 (Md. 1954).

Assuming for the sake of argument that adverse possession would have sufficed to create fee simple title, this court does not find that Defendant's affidavit sufficed to show exclusive use of the disputed portions of the roads herein in a manner inconsistent with Plaintiffs' claims, so the court would deny relief to Defendant on this ground also.

Defendant contends that the "Property Owners Association of Arundel-on-the-Bay, Inc." should be presumed to have properly obtained title citing *The Baltimore Chemical Manufacturing Company's Lessee v. Dobbin*, 23 Md. 210 (1865). This Court does not find that this case supports the proposition since it relates to an inference due to usage that the claim is a proper one. Here, under Maryland law, usage gives rise only to presumed easement, not a presumed fee. In *Baltimore Chemical*, the Court focused on the fact that the appellant was never in possession of the disputed property and had sold the land he claimed he owned under a presumption theory. There are no similarities between the appellant in *Baltimore Chemical*, and the Plaintiffs in this case. Plaintiffs never sold

the land they assert fee simple ownership to and also possessed the property via their predecessors in interest.

Defendants also claim fee simple ownership under a laches theory. The doctrine of laches applies when there has been such a delay as to render the enforcement of the asserted right inequitable. *In re Beaty*, 306 F. 3d 914 (9th Cir. 2002). Laches does not result simply from a lapse of time, but from the fact that during the passage of time circumstances have prejudiced the opposition or subjected them to a disadvantage. *Chirco v. Crosswind Communities, Inc.*, 474 F.3d 227 (6th Cir. 2007). Here, the Association was not put at a disadvantage or subject to prejudice in any way regarding their simple easement. In regards to Defendant's claim of an admission by predecessors in interest Merrill H. Curtis and Albert J. Goodman of its ownership (Def.'s Memorandum in support of motion for summary judgment at 10), the court finds it is not sufficiently specific as to fee ownership versus easement ownership to form the basis for relief.

Thus, the Defendant's sole remaining claim to title could be actual, good title, which would reverse the burden of proof, requiring Plaintiffs to demonstrate adverse possession.

As to Defendant's claim to actual title, the court holds that the creation of the municipality per se did not give Defendant's predecessor title or divest Plaintiffs' predecessor of title. *Boswell v. Prince George's County*, 273 Md. 522 (1975). To obtain title, the municipality, just like its creator the state government, would have required either to a) exercise eminent domain through proper court proceedings or b) to acquire land through the transactions with individual owners. *Rollins Outdoor Advertising v.*

State Roads Commission of State Highway Administration, 60 Md. App. 195 (1984). No evidence has been proffered that the town did either of these acts. Accordingly, the town legally was incapable of conveying to its successor the actual fee ownership of the streets.

For all these reasons, the Court shall grant Plaintiffs motion of summary judgment and deny relief to the Defendant.



Judge Philip T. Caroom

SHERRY BELLAMY, et, al

* IN THE CIRCUIT COURT
* FOR ANNE ARUNDEL COUNTY

v.

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PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY

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* Case # C-06-115184

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AMENDED ORDER

For the reasons stated in the foregoing amended opinion, it is on this 10 day of ~~November~~ 2007, by the Circuit Court for Anne Arundel County, ORDERED,

1. That, Pursuant to Maryland Real Property Article § 14-108, a decree be and is hereby entered, that Plaintiffs have absolute ownership and the right of disposition of the following properties, in accordance with Maryland Real Property Article, § 2-114:

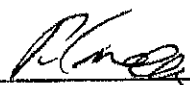
- a) John and April Moses, owners of Lot D, Block 6 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot D, Block 6;
- b) John and April Moses, owner of Lots E and F, Block 6 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding in Lots E and F, and to the center of Redwood that binds on Lot F;
- c) John and April Moses, owners of Lot G, Block 6 in Arundel on the Bay, hold fee simple title to the center of Redwood Avenue that binds on Lot G,
- d) Sherry Bellamy and George Bumbray, owners of Lot D, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot D;

- e) Sherry Bellamy and George Bumbray, owners of Lot E, Block 3 in Arundel on the Bay, hold fee simple title to the center of Cedar Avenue that binds on Lot E;
- f) John and LaVerne Davis, owners of Lot B, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot B;
- g) John and LaVerne Davis, owners of Lot A, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Walk binding on Lot A and to the center of Walnut Avenue that binds on Lot A.

2. That the Property Owners Association of Arundel on the Bay, Inc. does not own fee simple title in the aforementioned streets in Arundel on the Bay, but does hold an easement to the streets adjoining the aforementioned lots on terms provided in the parties partial settlement agreement dated September 19, 2007 and filed herein,

3. That this court found the other relief requested herein moot in light of the parties' partial settlement agreement and,

4. That this amended order constitutes a final judgment based upon which an appeal may be filed.



Judge Philip T. Caroom