

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

Plaintiffs/Counter-
Defendants,

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

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ANSWERS TO INTERROGATORIES

To: Rosalyn R. Atterbeary Revocable Trust, Plaintiff

From: David Delia, Defendant

David Delia, Defendant, by his attorneys, Council, Baradel, Kosmerl & Nolan, P.A., Wayne T. Kosmerl, N. Tucker Meneely and Steven A. Brown, for answers to the Interrogatories propounded by the Plaintiff, Rosalynne R. Atterbeary Revocable Trust, states as follows:

GENERAL OBJECTIONS AND QUALIFICATIONS

(a) The information supplied in these answers is not based solely upon the knowledge of the executing party, but includes the knowledge of that party's agents, representatives and attorneys, unless privileged.

(b) The word usage and sentence structure is that of the attorney who in fact prepared these answers, and does not purport to be the exact language of the executing party.

(c) A refusal to answer any of the interrogatories propounded in this matter reflects the legal conclusion of counsel, and is not to be construed as a refusal by the answering party to answer such interrogatories.

(d) Defendant sets forth herein below certain general objections which are applicable to many or all of the Interrogatories. Although Defendant will specifically object to each particular Interrogatory as may be appropriate, the following general objections are set forth to preserve applicable objections. Each and every general objection stated herein below is a continuing objection which Defendant incorporates into each and every one of his answers to the Interrogatories to the extent applicable.

(e) Defendant objects to the instructions and definitions contained in the Interrogatories to the extent they purport to impose obligations upon Defendant greater and/or different than those imposed by the Maryland Rules of Civil Procedure.

(f) Defendant objects to the Interrogatories to the extent they call for information protected by the attorney work-product doctrine, and, to such extent, Defendant will not answer any such Interrogatory or that portion of any such Interrogatory which may seek such privileged information.

(g) Defendant objects to these Interrogatories to the extent they are ambiguous or improper in form, including compound questions.

(h) Defendant objects to the extent that the Interrogatories, as framed, assume facts not in evidence or imply erroneous conclusions of law.

(i) To the extent that certain of the Interrogatories are overly broad, unduly burdensome, or seek to obtain information that is not relevant to this action, nor likely to lead to the discovery of admissible evidence, Defendant objects to those Interrogatories.

(j) Defendant reserves the right to further object to the Interrogatories to the extent that additional objections may be appropriate.

(k) Defendant expressly reserves the right to object to the admissibility at trial of any and all responses and/or documents identified herein.

Answers

Interrogatory No. 1: Identify each person, other than a person intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, including any claim for damages, and state the subject matter of the information possessed by that person. (Standard General Interrogatory No.1.)

Answer: Defendant adopts and incorporates Answer to Interrogatory No. 1 set forth in the Answers to Interrogatories of Defendant Property Owners Association of Arundel on the Bay, Inc. (“AOTB”).

Interrogatory No. 2: Identify each person you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, and with respect to an expert whose findings and opinions were acquired in anticipation of litigation or for trial, summarize the qualifications of the expert, state the terms of the publications written by the expert and any written report made by the expert concerning the expert's findings and opinions. (Standard General Interrogatory No.2.)

Answer: Defendant expects to rely upon the expert testimony of Anne C. Ogletree, Esquire. Defendant adopts and incorporates the Preliminary Identification of Expert Witnesses filed on June 23, 2016 by Defendant AOTB in this matter and any amendment or supplement thereto.

Interrogatory No. 3: If you intend to rely upon any documents, electronically stored information, or tangible things to support a position you have taken or intend to take in this action, including any claim for damages, provide a brief description, by category and location, of all such documents, electronically stored information, and tangible things, and identify all persons having possession, custody or control of them. (Standard General Interrogatory No.3.)

Answer: See documents produced by Defendant AOTB in Response to Plaintiffs’ Request for Production of Documents. Defendant, at this time, does not expect to rely on any additional documents not already produced by Defendant AOTB in this matter. If, as and when any such additional documents are identified, Defendant will supplement this Answer and produce such documents.

Interrogatory No. 4: Identify the person(s) answering these interrogatories and include in your answer the information set forth in Definition (b) (1) and (2) above.

Answer: David J. Delia. Mr. Delia can be contacted through counsel.

Interrogatory No. 5: Identify each person with whom you consulted, sought advice from, or discussed the preparation of your answers to these interrogatories and identify any document which you reviewed in preparing your answers to these interrogatories.

Answer: Defendant consulted no one besides his attorneys, and he reviewed no documents.

Interrogatory No. 6: State all facts and identify all documents that support your claim in Paragraph 1 of your Answer to the Complaint that the Complaint fails to state a claim upon which relief can be granted.

Answer: Defendant adopts and incorporates Answers to Interrogatories Nos. 5 through 10 set forth in Defendant AOTB's Answers to Interrogatories. Defendant further adopts and incorporates Defendant AOTB's Counterclaim. Defendant identifies the documents attached and/or referenced in Defendant AOTB's Counterclaim and produced by Defendant AOTB.

Interrogatory No. 7: If you have knowledge of a prior civil action litigated between the Association and individual lot owners in Arundel on the Bay captioned Sherry Bellamy, et al., v. Property Owners Association of Arundel on the Bay, Inc. (Civil Case No. 02-C-06-115184), describe when, how, and under what circumstances you obtained that knowledge and state whether you have reviewed or otherwise are aware of the Amended Opinion and Order issued in that action on January 8, 2008.

Answer: Defendant was involved in all such cases via his involvement in the Association.

Interrogatory No. 8: Describe your service as an officer, director, committee chair or member, or in any other leadership role for the Association, identify the capacity in which you served, the dates of service, and describe your duties while serving in that capacity.

Answer: Defendant has served since 2005 through the present as a Board Member, Secretary, Board Chair and President. Duties are set forth in the Constitution and By-Laws of the Association, which can be found at the following link:
<http://arundelonthebay.org/pdf/constitution&rules.pdf>

Interrogatory No. 9: If you have ever communicated, either orally, in writing, or in any other manner, with Rosalynne Atterbeary, Knowlton Atterbeary, Clyde Coble, or Wilma Coble, regarding title to or use of Magnolia Avenue or Chesapeake Walk, state the date, time, location, and manner of the communication, identify any other person who was present during or had knowledge of the communication, and describe in detail the substance of the communication.

Answer: Defendant has spoken and emailed with Wilma Coble several times but does not recall exact dates and time of such conversations and doesn't recall others being present.

Interrogatory No. 10: If you deny the allegations in the Association's cross-claim against you, state all facts and identify all documents that support your claims.

Answer: I do not deny the allegations in the Association's cross-claim.

Interrogatory No. 11: Describe by mailing address, and by lot and block, all property you own or in which you have a property interest in Arundel on the Bay. For each property listed, identify any co-owner(s), state how it is titled, the date of acquisition, the date on which you acquired your interest, and identify the holder of any current lien, deed of trust, or mortgage on the property.

Answer: Address: 1375 Walnut Ave
Co-owner: Oye Ling Margaret Delia
Bought in September 1998
SLS Mortgage

Interrogatory No. 12: For each property identified in the preceding interrogatory, describe how the property is used and include in your answer the following information:

- a) If the property is used for your personal residential purposes identify all persons with whom you reside, state that individual's age and relationship with you; state whether the property is your primary personal residence and, if not, how often and under what circumstances you use the property.
- b) If the property is used for leasing or rental purposes, identify the current tenant(s) of the property and describe how often and under what circumstances the tenant uses the property.
- c) If the property is used for short-term vacation rental or home-sharing purposes, describe how and by whom the property is listed or advertised for rental and describe the number of days the property was rented during the preceding twenty-four (24) month period.

Answer:

- a) Personal residence
- b) N/A
- c) N/A

Interrogatory No. 13: For each property identified in the previous interrogatory that you have owned for less than twenty (20) years, identify the prior owner of the property and describe any ongoing relationship you may have with the prior owner.

Answer: Previous Owners:

Randy and Phyllis Marshall

140 Riverton Pl

Edgewater (last known address)

Interrogatory No. 14: If you dispute the claims by Atterbeary and Coble that they own fee simple title to the Disputed Roads, identify each person you contend does own fee simple title to the Disputed Roads and state all facts and identify all documents upon which you rely to support your contention.

Answer: Defendant objects to this Interrogatory as calling for a legal conclusion and for seeking a legal analysis of rights of third parties, including Defendant AOTB. Defendant agrees that the Association has valid legal title to the Disputed Roads. Defendant adopts and incorporates the facts set forth in Defendant AOTB's Counterclaim. Defendant identifies the documents attached and/or referenced in Defendant AOTB's Counterclaim as well as documents produced by Defendant AOTB in response to Plaintiffs' Request for Production of Documents to AOTB.

Interrogatory No. 15: If you dispute the claim that Coble has possessed Parcel 2 and/or Parcel 3, as shown on Exhibit 1, for more than 20 years exclusively, openly, notoriously, or under a claim of right in a manner which evidences Coble's claim of ownership by adverse possession, state all facts and identify all documents upon which you rely to support your contention.

Answer: Defendant objects to this Interrogatory as calling for a legal conclusion and for seeking a legal analysis of rights of third parties, including Defendant AOTB. Without waiving said objection, Defendant adopts and incorporates Answer to Interrogatory No. 6 set forth in Defendant AOTB's Answers to Interrogatories.

Interrogatory No. 16: If you contend that you use or have used the Disputed Roads within the past twenty (20) years, describe with specificity, where, when, under what circumstances, and for what purpose you use or have used them.

Answer: I have used the Disputed Roads every year since 2003. I have walked this street end at least five times a year, either looking at the Bay or picking up pine cones, and occasionally trash.

Interrogatory No. 17: If you contend that any other person(s) does or has used the Disputed Roads within the past twenty (20) years, identify the person(s) and describe with specificity where, when, under what circumstances, and for what purpose the person(s) uses or has used them.

Answer: Defendant knows that Michael Postlewaite, Phil Colbert Senior and Junior and Isam Saman have fished along the waterfront portion of the Disputed Roads as far back as Defendant can remember.

Interrogatory No. 18: If you contend that you or any other person have/has used the Disputed Roads within the past twenty (20) years, describe whether that use changed after this lawsuit was filed in in the Circuit Court on December 1, 2015 and, if so, describe the frequency, nature, purpose, or other changes in use that occurred after December 1, 2015.

Answer: See Answer to Interrogatory No. 17.

Interrogatory No. 19: If you contend that the members and/or officers of the Board of Directors of the Association have maintained a claim of ownership to the Disputed Roads and regulated the use of the same, state all facts and identify all documents that support your contention.

Answer: Defendant objects to this Interrogatory as it is vague and confusing. Without waiving said objections, no members or officers of the Board of Directors of the Association have personally maintained any claim of ownership to the Disputed Roads. The

Association's position regarding ownership of certain platted streets and rights of use of the streets, including the Disputed Roads, has been disseminated at community meetings, Board meetings, and to government officials including in the context of surveying, permitting, road maintenance, drainage and the like for many decades including by Plaintiffs' Predecessor in title and presumably trust beneficiary Wilma Coble on many occasions. The Association has historically undertaken activities such as landscaping, mowing, gravelling, paving, snow removal, erecting signage, fixing pot holes, erosion control, tree trimming, tree removal, and similar activities on non-County owned roads in the community. See documents produced by Defendant AOTB in response to Plaintiffs' Request for Production of Documents. In addition, Defendant states that Wilma Coble requested that the Association not mow the Disputed Roads, and the Association agreed as long as Ms. Coble understood and agreed that maintenance of the Disputed Roads by her did not constitute any claim to title thereof and Ms. Coble always agreed.

Interrogatory No. 20: Describe all acts you have taken as an officer or member of the Board of Directors of the Association that relate to the Disputed Roads, and include in your answer the date and nature of the acts and identify any other person who participated in those acts with you.

Answer: The Association's position regarding ownership of certain platted streets and rights of use of the streets, including the Disputed Roads, has been disseminated at community meetings, Board meetings, and to government officials including in the context of surveying, permitting, road maintenance, drainage and the like for many decades including by Plaintiffs' Predecessor in title and presumably trust beneficiary Wilma Coble on many occasions. The Association has historically undertaken activities such as landscaping, mowing, gravelling, paving, snow removal, erecting signage, fixing holes, erosion control, tree trimming, tree removal, and similar activities on non-County owned roads in the community, including the Disputed Roads. With respect to date, nature and persons who participated in such acts,

Defendant refers Plaintiffs to the documents produced by Defendant AOTB in response to Plaintiffs' Request for Production of Documents. *See also* Answer to Interrogatory No. 1 of Defendant AOTB's Answers to Interrogatories. Defendant also personally worked on DNR-mandated drafting site reforestation with AOTB's then-landscaping chairperson, Roy Karten.

Interrogatory No. 21: State all facts and identify all documents that support your denial of the allegations in Paragraphs 9 and 10 of the Complaint that the Disputed Roads are and have been open and undeveloped grass space and have never been used for vehicular purposes.

Answer: Defendant adopts and incorporates Answers to Interrogatory Nos. 13 and 14 set forth in Defendant AOTB's Answers to Interrogatories.

Interrogatory No. 22: If you contend that you, the members and officers of the Board of Directors of the Association, or any person(s) other than Atterbeary and Coble, maintains or has maintained the Disputed Roads, identify the person(s) and describe with particularity where, when, and under what circumstances the maintenance has been performed.

Answer: The Association's position regarding ownership of certain platted streets and rights of use of the streets, including the Disputed Roads, has been disseminated at community meetings, Board meetings, and to government officials including in the context of surveying, permitting, road maintenance, drainage and the like for many decades including by Plaintiffs' Predecessor in title and presumably trust beneficiary Wilma Coble on many occasions. The Association has historically undertaken activities such as landscaping, mowing, gravelling, paving, snow removal, erecting signage, fixing holes, erosion control, tree trimming, tree removal, and similar activities on non-County owned roads in the community, including the Disputed Roads. With respect to date, nature and persons who participated in such acts, Defendant refers Plaintiffs to the documents produced by Defendant AOTB in response to Plaintiffs' Request for Production of Documents. *See also* Answer to Interrogatory No. 1 of Defendant AOTB's Answers to Interrogatories.

Interrogatory No. 23: Describe your understanding of any rights you contend individual property owners in Arundel on the Bay have to use the Disputed Roads, and identify all documents upon which you rely to support your understanding.

Answer: Defendant objects to this interrogatory as it calls for a legal conclusion. Defendant further objects to this Interrogatory as it calls for information protected from disclosure by the attorney-client privilege and the attorney work-product doctrine. Without waiving said objection, Defendant refers Plaintiffs to the Counterclaim of Defendant AOTB, which sets forth claims regarding the right of access for property owners within the community of Arundel on the Bay to the Disputed Roads. See also documents produced by Defendant AOTB in response to Plaintiffs' Request for Production of Documents as well as documents attached and/or referenced in Defendant AOTB's Counterclaim. See also Affidavit of John J. Dowling, at ¶ 27, attached to Plaintiffs' Motion for Summary Judgment.

Interrogatory No. 24: Describe your understanding of any rights you contend the general public (other than owners of lots in Arundel on the Bay) has to use the Disputed Roads, and identify all documents upon which you rely to support your understanding.

Answer: Defendant objects to this interrogatory as it calls for a legal conclusion. Defendant further objects to this Interrogatory as it calls for information protected from disclosure by the attorney-client privilege and the attorney work-product doctrine. Without waiving said objection, Defendant is not aware of rights belonging to the general public to use the Disputed Roads.

Interrogatory No. 25: Describe your understanding of any rights you contend the Association has to manage or otherwise oversee the maintenance and use of the Disputed Roads, and state all facts and identify all documents upon which you rely to support your contention.

Answer: The Association's position regarding ownership of certain platted streets and rights of use of the streets, including the Disputed Roads, has been disseminated at community meetings, Board meetings, and to government officials including in the context of

surveying, permitting, road maintenance, drainage and the like for many decades including by Plaintiffs' Predecessor in title and presumably trust beneficiary Wilma Coble on many occasions. The Association has historically undertaken activities such as landscaping, mowing, gravelling, paving, snow removal, erecting signage, fixing holes, erosion control, tree trimming, tree removal, and similar activities on non-County owned roads in the community, including the Disputed Roads. With respect to date, nature and persons who participated in such acts, Defendant refers Plaintiffs to the documents produced by Defendant AOTB in response to Plaintiffs' Request for Production of Documents. *See also* Answer to Interrogatory No. 1 of Defendant AOTB's Answers to Interrogatories, which identifies individuals who participated in such activities.

Interrogatory No. 26: If you have knowledge of any photograph, plat, plan, video, motion picture, drawing, model, or any other image made of the property shown on Exhibit 1, attached hereto, describe the medium on which the image is recorded, identify each person who participated in that process, state the date when the image was made, and identify the person who has present custody of the image.

Answer: Defendant has no such documents in Defendant's personal possession, custody or control. To the extent such documents exist, they have been produced by Defendant AOTB.

Interrogatory No. 27: State all facts and identify all documents that support any claim or defense you have made or intend to make in this action not otherwise set forth in your answers to these interrogatories, and identify all persons with knowledge of those claims or defenses.

Answer: See documents produced by Defendant AOTB in response to Plaintiffs' Request for Production of Documents, as well as any documents attached and/or referenced in any motions, pleadings or other papers filed by Defendant AOTB in this matter. Defendant further adopts and incorporates the facts set forth in the Counterclaim filed by Defendant AOTB.

I SOLEMNLY AFFIRM under the penalties of perjury that these interrogatory answers are true to the best of my knowledge, information and belief.

Date: 25JUNE2017
AOTB

/s/ David J. Delia, president, POA-

David J. Delia