

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
*

* * * * *

ANSWERS TO INTERROGATORIES

To: Rosalynne R. Atterbeary Revocable Trust, et. al., Plaintiffs

From: FRANK A. FLORENTINE, Defendant

FRANK A. FLORENTINE, Defendant, for answers to the Interrogatories propounded by Plaintiffs Rosalynne R. Atterbeary Revocable Trust, et. al, states as follows:

- (a) The information supplied in these answers is based upon the knowledge of the executing party.
- (b) The word usage and sentence structure is that of the executing party.

Plaintiffs' Instructions

Pursuant to Rule 2-421, you are required to answer the following interrogatories **within 30 days** or within the time otherwise required by court order or by the Maryland rules:

- (a) In accordance with Rule 2-421(b), your response shall set forth the interrogatory, and shall set forth the answer to the interrogatory "separately and fully in writing under oath" or "shall state fully the grounds for refusal to answer any interrogatory." The response shall be signed by you. (Standard Instruction (a).)

(b) Also in accordance with Rule 2-421(b), your answers “shall include all information available” to you “directly or through agents, representatives or attorneys.” (Standard Instruction (b).)

(c) Pursuant to Rule 2-401(e), these interrogatories are continuing. If you obtain further material information before trial you are required to supplement your answers promptly. (Standard Instruction (d).)

(d) If pursuant to Rule 2-421(c), you elect to specify and produce business records of yours in answer to any interrogatory, your specification shall be in sufficient detail to permit the interrogating party to locate and identify the records from which the answer may be ascertained. (Standard Instruction (d).)

(e) If you perceive any ambiguities in a question, instruction or definition, set forth the matter deemed ambiguous and the construction used in answering (Standard Instruction (e).)

Plaintiffs’ Definitions

In these interrogatories, the following definitions apply:

(a) Document includes electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in the any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form. (Standard General Definition (a).)

(b) Identify, identity, or identification, (1) when used in reference to a natural **person**, means that the **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** below, 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, the **identity** of the present custodian of the **document**, 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. (Standard General Definition (b).)

(c) Person includes an 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 of political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)

(d) **You and your** includes each and every person(s) to whom these interrogatories are addressed, and all of that person's agents, representatives, or attorneys. (Rule 2-421(b).)

(e) **Arundel on the Bay** is that subdivision shown on 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, a copy of which is attached as Exhibit A to the **Complaint**, 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, a copy of which is attached as Exhibit B to the **Complaint**.

(f) **Association** is the Property Owners Association of Arundel on the Bay, Inc.

(g) **Atterbeary** refers to the plaintiff, Rosalynne R. Atterbeary, Trustee of the Rosalynne R. Atterbeary Revocable Trust, which owns the Atterbeary Property.

(h) **Atterbeary Property** is the property located at 3551 Narragansett Avenue, Annapolis, Maryland 214003, and identified as Lots A and B, Block 11, Arundel on the Bay.

(i) **Coble** is the plaintiff, Clyde T. Coble, Trustee of the Wilma L. Coble Qualified Personal Residence Trust, which owns the **Coble Property**.

(j) **Coble Property** is the property located at 3557 Narragansett Avenue, Annapolis, Maryland 21403, and identified as Lots K, L and M, Block 12, Arundel on the Bay, which lots are shown as **Parcel 1** on the attached Exhibit 1, Special Purpose Boundary Survey by John J. Dowling dated January 12, 2016.

(k) **Complaint** refers to the Second Amended Complaint filed by Plaintiffs on January 13, 2017 and attached as a link on the websites for the Anne Arundel County Circuit Court and Arundel-on-the-Bay. (sic)

(l) **Disputed Roads** 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 Chesapeake Bay as shown on the **Arundel on the Bay** plats, and as more particularly shown as "Magnolia Avenue" and "Chesapeake Walk" on the Special Purpose Survey attached as Exhibit 1. Unless otherwise specified, **Disputed Roads** does not include **Parcel 1**, **Parcel 2** or **Parcel 3** as shown on the Special Purpose survey attached hereto as *Exhibit 1*.

Answers

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

Answer: **Frank A. Florentine, 3403 Saratoga Ave, Annapolis, MD 21403-4903 410-626-1336; Retired.**

Interrogatory No. 2: 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: I consulted with my wife, Susan V. Cook, an attorney. Documents reviewed included The Pier newsletter of AOTB, various years; various documents accrued while holding various appointed offices in the Association; my personal diaries during my term as President of AOTB, Book 1 10/1/03 entry; book 1 10/3/03 entry, book 1, 10/19/03 entry, book 1, 2/16/04 entry, book 1, 9/5/04 entry; book 1, 9/6/04 entry; book 2, 8/6/05 entry; book 2, 8/22/06 entry; book 2, 8/26/06 entry; book 2, 9/4/06 entry; book 2, 12/9/06 entry; letter from Wilma Coble dated September 8, 2004; “AN ASSESSMENT OF NEED FOR SHORELINE PROTECTION AT ARUNDEL ON THE BAY, ANNE ARUNDEL COUNTY, MARYLAND” prepared by State of Maryland, Department of Natural Resources, Capital Programs Administration, Shore Erosion Control, circa post 1974. Drawing showing areas for Grass Cutting, 2006.

Interrogatory No. 3: 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: 3403 Saratoga Ave, Annapolis, MD 21403-4903, Parcel 2002-9005-8741-000, Lot ER BK 56; title listed as COOK SUSAN V AND FLORENTINE FRANK A. Acquired in July 1993; mortgage is with Wells Fargo Bank.

Interrogatory No. 4: 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 the 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.

Answer: Property is my primary personal residence. My Wife, Susan V. Cook, 70, resides with me at this address.

- 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.

Answer: Not applicable

- 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: Not applicable

Interrogatory No. 5: 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: Not Applicable.

Interrogatory No. 6: 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: Objection: calls for speculation, vague, overly broad. There are undoubtedly numerous people who share my belief that this property belongs to the AOTB and that Plaintiffs' claims to the contrary are legally and morally wrong; it would be impossible to list them all as the list would certainly start with the majority of persons who reside in the community and also include the Association's law firm, Council Baradel Kosmerl & Nolan.

Former Treasurer Rebecca Morris shares my views on this. And while my wife Susan V. Cook does not agree with me on everything, she certainly agrees with me on this.

Interrogatory No. 7: 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: I intend to rely on the expert witnesses presented by the AOTB's attorneys.

Interrogatory No. 8: 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: I have diligently reviewed my files in the search for responsive information, and have located the following relevant documents.

- 1. My personal diaries from my term as President of AOTB, Book 1 10/1/03 entry; book 1 10/3/03 entry, book 1, 10/19/03 entry, book 1, 2/16/04 entry, book 1, 9/5/04 entry; book 1, 9/6/04 entry; book 2, 8/6/05 entry; book 2, 8/22/06 entry; book 2, 8/26/06 entry; book 2, 9/4/06 entry; book 2, 12/9/06 entry;**
- 2. letter from Wilma Coble dated September 8, 2004;**
- 3. "AN ASSESSMENT OF NEED FOR SHORELINE PROTECTION AT ARUNDEL ON THE BAY, ANNE ARUNDEL COUNTY, MARYLAND" prepared by State of Maryland, Department of Natural Resources, Capital Programs Administration, Shore Erosion Control, circa post 1974-1980's.**

4. A 2006 drawing showing the Disputed Roads plus other areas of the Community to be maintained by the Association (grass cutting) This drawing was used to solicit bids from contractors.

The documents listed in paragraph 1 and 4 are in my personal possession. The documents listed in paragraphs 2 and 3 are included within those documents also in the possession of Council Baradel Kosmerl and Nolan which have been made available to Plaintiffs as part of an earlier discovery process.

Interrogatory No. 9: If you have ever served 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:

2003-2007 – PRESIDENT: I discharged the varied duties of that office.

2001 – PIER AND BOAT RAMP COMMITTEE; CO-CHAIR WITH ARIS T. ALLEN.
Duties of that office are obvious from the title.

1998-2001-BOARD OF DIRECTORS: I discharged the duties of that office.

1994-1998 – MEMBERSHIP COMMITTEE CHAIR: I discharged the duties of that office.

Interrogatory No. 10: 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: References are to my personal journal from my years as President.

Book 1 10/1/03 entry: regarding DNR Contact Len Casanova for Hurricane recovery;

Book 1 10/3/03 entry: regarding DNR Contact Len Casanova for Hurricane recovery;

Book 1, 10/19/03 entry: Wilma Coble called me regarding bldg. on Lot 89;

Book 1, 2/16/04 entry: Wilma thinks Wendell Lilly would give title for Lot 89 to purchaser;

Book 1, 9/5/04 entry: Called Wilma regarding sign at Magnolia and Narragansett and she said she would take it down;

Book 1, 9/6/04 entry: Wilma called and stated sign has been removed. It was actually replaced by me with a green AOTB sign;

Book 2, 8/6/05 entry: Wilma Coble called regarding having Ms. Q'McManus on the Board of Directors;

Book 2, 8/22/06 entry: Called Wilma Coble regarding her historical knowledge of the community;

Book 2, 8/26/06 entry: talked with Wilma Coble regarding the McManus Litigation; she would be willing to testify for the Association;

Book 2, 9/4/06 entry: Wilma Coble called and stated that they lost the steps to their dock in the storm but found them at the Taylor's; lots of debris washed on shore; need variance for their deck; does POA-AOTB object? Hearing will be October 17;

Letter from Wilma Coble dated September 8, 2004 stating sign has been removed, apologizing for any problems the sign might have caused and asking the community to replace the sign. See picture of sign replaced at this time with Green Sign as well as a picture of the current sign – blue.

“AN ASSESSMENT OF NEED FOR SHORELINE PROTECTION AT ARUNDEL ON THE BAY, ANNE ARUNDEL COUNTY, MARYLAND” prepared by State of Maryland, Department of Natural Resources, Capital Programs Administration, Shore Erosion Control, circa post 1974-1980's. Document lists Magnolia Avenue as Community Right of Way and shows new construction and repairs of bulkhead on Chesapeake Bay side of Magnolia Avenue

and Coble and other residences. This was funded by the Shore Erosion Control fund, established by and paid for by all property owners in the community.

Interrogatory No. 11: If you have any knowledge of the problems or concerns regarding title to and use of Magnolia Avenue and Chesapeake Walk experienced by Rosalynne Atterbeary, Knowlton Atterbeary, Clyde Coble, and/or Wilma Coble, that motivated them to file this action against the Association on December 1, 2015, describe in detail your understanding of those problems and/or concerns and state how, when, and under what circumstances you acquired that knowledge.

Answer: I have no first hand personal knowledge of “problems or concerns” experienced by Plaintiffs and decline to speculate as to their motivation for this lawsuit.

Interrogatory No. 12: If you have any knowledge of the efforts by Atterbeary and Coble, and/or Rosalynne Atterbeary, Knowlton Atterbeary, Clyde Coble, and/or Wilma Coble, to resolve their concerns with the Association prior to filing this action on December 1, 2015, describe in detail your understanding of those efforts and state how, when, and under what circumstances you acquired that knowledge.

Answer: I have no first hand personal knowledge of efforts plaintiffs made to resolve their concerns.

Interrogatory No. 13: 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: I contend that the Property Owner’s Association of Arundel on the Bay owns fee simple title to the Disputed Roads because of the community deeds, the fact the entire Association has paid for shore erosion control, and the actions of Wilma Coble and Clyde Coble as stated in the answer to Interrogatory #10. I also understand that there are other legal bases for the Association’s rights in the Disputed Roads and I support those arguments (including implied easement).

Interrogatory No. 14: 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: After Hurricane Isabel in 2003, I frequently walked the Disputed Roads with representatives of Federal Emergency Management Agency (FEMA) and coastal engineers trying to develop a plan for recovery from the hurricane. At no time was I ever challenged or told I didn't have a right to be there. At no time was I told that the land belonged to the Cobles and/or others. See also answers to Interrogatories Nos. 10 and 15.

While I was President the, the Association had the Disputed Roads on the list of areas to be serviced by the Association's grass cutting service. See Interrogatory #8, Item 4. Both the President and the Treasurer are required to sign contracts and/or payment checks. It came to my attention from the Treasurer that during the bidding phase for the grass cutting contract, the Treasurer initially had the contractor bid on site of the Disputed Roads and the Treasurer was asked by Wilma Coble to allow her to maintain the grass in the area of the Disputed Roads so that all the grass could be maintained to the same height. Mrs. Coble told the Treasurer that she wasn't doing this in order to make any ownership claim to the Disputed Road.

Interrogatory No. 15: 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: See answer to No. 14. Additionally, I watched fireworks from that area, I rode my bicycle down to the edge of the water to view the Chesapeake Bay, and I watched sailboat races from that area.

Interrogatory No. 16: 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: Other members of the community watched fireworks from this area, but I cannot specifically identify them. I have also seen people fishing at this location.

Interrogatory No. 17: 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 on December 1, 2015 and, if so, describe the frequency, nature, purpose, or other changes in use that occurred after December 1, 2015.

Answer: I have personally ridden my bicycle in the area because I believe it is community property and all in the community have a right to utilize street ends to reach the Bay.

Interrogatory No. 18: 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: When I moved into the community in 1993, community persons and others would fish from the end of the Disputed Roads. At times, I did see their vehicles at the end of the street, near the Chesapeake Bay. After Hurricane Isabel in 2003, the Association and Officers made a concerted effort to keep vehicles off this area so as not to put undue pressure on the shoreline erosion works.

Interrogatory No. 19: 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: I rely on the grounds asserted by Council Baradel Kosmerl & Nolan.

Interrogatory No. 20: If you contend that you 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: See answer to Interrogatory No. 14.

Interrogatory No. 21: Describe your understanding of any rights you contend you have as a property owner in Arundel on the Bay to use the Disputed Roads, and identify all documents upon which you rely to support your understanding.

Answer: I rely on the grounds asserted by Council Baradel Kosmerl & Nolan. See

also answer to Interrogatory No. 13

Interrogatory No. 22: Describe your understanding of any rights you contend that 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: I rely on the grounds asserted by Council Baradel Kosmerl & Nolan.

See also answer to Interrogatory No. 13

Interrogatory No. 23: If you contend that the Association has a right to manage or otherwise oversee the maintenance and use of the Disputed Roads, state all facts and identify all documents upon which you rely to support your contention.

Answer: I rely on the grounds asserted by Council Baradel Kosmerl & Nolan.

Interrogatory No. 24: 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 declaring that the individual lot owners owned fee simple title to the platted roads that abut their properties and denying the Association's claims of title to the roads.

Answer: Yes, I have read the Bellamy Amended Opinion and order. I do not share Plaintiffs' interpretation of the decision or Plaintiffs' apparent belief that it is somehow dispositive of all the issues in the current litigation.

Interrogatory No. 25: 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: All images of the property that I am aware of are publically available and/or have already been made available to Plaintiffs and/or are being produced to Plaintiffs with my response to Plaintiffs' request for documents.

Interrogatory No. 26: 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: I rely on the matters asserted by Council Baradel Kosmerl & Nolan.

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

Date: _____

Frank A. Florentine

RULE 20-201(F) (1) CERTIFICATE

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

NAME

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the ____ day of _____, 2017, a copy of the foregoing paper was personally served upon the following:

Eileen E. Powers, Esq.
Barbara J. Palmer, Esq.
Blumenthal, Delavan & Williams, P.A.
888 Bestgate Rd, Ste 413
Annapolis MD 21401

NAME