

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

D. GREGORY SINGLETON, *et al* :

Plaintiff :

V. : CASE #: 02-C-03-091246 RP

HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INCORPORATED, *et al* :

Defendants :

* * * * *

AMENDED MOTION RAISING A PRELIMINARY OBJECTION AND MOTION TO DISMISS

COMES NOW the Defendant, the HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INCORPORATED, a non-profit corporation of the State of Maryland, by and through its attorneys, MICHAEL J. RAGLAND, SR. and the law firm of BELL AND RAGLAND, P.A., and pursuant to Rule 2-322 (a) and (e) of the Maryland Rules of Procedure and moves this Honorable Court to dismiss these proceedings; and without waiving the grounds set forth in it's previous Motions to Dismiss, and in support thereof says as follows:

1. The Defendant, HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INC., hereby incorporates herein by reference all of the allegations, Points and Authorities contained in its previous Motions to Dismiss under Rule 2-322, as fully and effectually as if same were here repeated verbatim; and
2. As a matter of law the Plaintiffs have not and can not establish Adverse Possession to the property in question; and
3. Title 5, Section 103 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland provides:

5-103. Adverse possession; common-law doctrine of prescription and other limitations unaffected.

Bell and Ragland, P.A.
7 King Charles Place
Annapolis, MD 21401
410-267-5944

- (a) *In general.* – Within 20 years from the date the cause of action accrues a person shall:
- (1) File an action for recovery of possession of a corporeal freehold or leasehold estate in land; or
 - (2) Enter on the land.
- (b) *Exceptions.* - (1) This section does not affect the common-law doctrine of prescription as it applies to the creation of incorporeal interests in land by adverse use.
- (2) This section does not affect the period of limitations set forth in 6-103 or 8-107 of the Real Property Article.

4. Adverse possession can only be established by proving possession was actual, hostile, open, notorious, exclusive, under a claim of title or ownership, and continuous or uninterrupted for the statutory period of 20 years. *Orfanos Contractors v. Schaefer*, 85 Md. App. 123, 582 A. 2d 547 (1990); and
5. The possession is not continuous or uninterrupted if the title owner or those claiming under them re-enters or retains the right to enter upon the property under a claim of right before the 20 years have expired. *Miceli v. Foley*, 83 Md App. 541, 575 A. 2d 1249 (1990); and
6. The Amendment Joining Necessary Parties – Complaint fails to state any overt or observable actions taken by any of the Plaintiffs that would establish an open, hostile or exclusive possession of the property that would continue 20 years prior to 1997; and
7. The Deed and Agreement of July 9, 1965 provides that the “community beach” is conveyed:

for the use and benefit of the party of the second part, for the use and benefit of all Hillsmere lot owners, its successors and assigns, in fee simple, for the uses and purposes and subject to the restrictions, conditions, and understanding as follows:
8. Thus all lot owners had the right, acquired through the Hillsmere Shores Improvement Association, Inc. conveyance to enter upon and use the community beach, including the property here in dispute, and such an entry is all that is required of the Owner, or those claiming a right under the Owner, under Title 5, Section 103(a) of the Courts

and Judicial Proceedings Article of the Annotated Code of Maryland to toll the Statute and prevent a claim of adverse possession from ripening; and

9. Any member of the class of "lot owners" re-entering the community beach or retaining the right to do so would toll the 20 years for both the class of "lot owners" and the title holder to the servient property.
10. On November 25, 1996, before the 20 years period relied upon by the Plaintiffs herein had matured, John R. Hammond, Financial Officer for Anne Arundel County, as the Collector of State and County Taxes issued a Tax Sale Deed to a lot in Hillsmere to **PARVIZ SAHANDY**, one of the Plaintiffs in this, a copy of which is attached hereto and made a part hereof, which deed included:

TOGETHER with the buildings and improvements thereon erected or being, and all the rights, privileges, appurtenances and advantages hereon belonging or appertaining, free and clear of all liens and encumbrances thereon occurring prior to the date of the aforesaid judgment. (Emphasis Added)
11. One of the privileges and advantages to owning that lot was the right under the July 1965 Deed and Agreement to enter, use and enjoy the community beach; and
12. The effect of this Tax Sale Deed is to prevent any claim of adverse possession, by any one, from ripening into adverse possession for 20 years following the date of the recording of the deed because "adverse possession of the property did not survive the proper foreclosure of redemption and appellants have no claim to the property"; and
13. In *Lippert v. Jung*, 366 Md. 221, 782 A. 2d 206 (2001) the Court of Appeals declared that the recording of a Tax Sale Deed terminates any inchoate claim of adverse possession. The Tax Sale Deed created a new chain of title that did not exist prior to the Tax Sale Deed and for which the 20 years could not begin to run until after the date of recording the Tax Sale Deed. The Court of Appeals clearly stated:

It must be remembered that although tax sales are concerned with the payment of taxes on land, the issue in most tax cases, where the equity of redemption has been properly foreclosed, is almost always a matter of title. It remains our view, and it is the holding of our cases, that a valid tax sale and proper foreclosure of the equities of redemption terminates the prior title, and creates a new title granted by the sovereign. Accordingly, the new title cannot be adversely possessed until the statutory period runs from the time of the creation of the new title (although, as we note later, there is a special adverse possession statute that affords some limited

prospective rights to prior record holders that remain in possession after the foreclosure proceedings.)

14. As to that special adverse possession statute, the Court's declaration that it was unavailable in *Lippert, supra*, also makes it inapplicable to the case at issue:

The language of the above section would appear to apply in those situations where the person whose rights are sold at the tax sale remains in possession for a period of seven years, after the final order foreclosing the right of redemption. (The Tax-Property Article contains no section that speaks to "ratification." It refers to "Final order" and describes it as the foreclosure of rights of redemption). A purchaser at a tax sale or his assigns has to move by way of ejectment or other appropriate action to dispossess the former owner who has remained in possession subsequent to the sale within seven years. If not, the former owner of record may, in seven years, not twenty, obtain title by adverse possession to the same land he formerly owned. In the present case, appellants were never record owners. Their prior adverse possession had not been twenty years in duration, so at the time of the tax sale they were not owners. Had they been owners of record, this provision, if appropriate facts existed, might have been applicable.

In any event, it is clear that the Legislature was aware of the concept of the acquisition of title by adverse possession as it addressed the issue in the context of tax sales, although not in the context of the issue in this case. Had the Legislature chosen to permit the prior continuation of adverse use to survive the new title obtained through a tax sale, it might have been able to [sic] so. It did not, and we will not.

15. The class of lot owners had the right through the July 1965 Deed and Agreement to enter and use the subject property and for at least one member of that class adverse possession prior to November 25, 1996 has been abolished which means that adverse possession against their right of entry and use could not ripen, at the earliest, until November 25, 2016; and
16. The rights of the class of "lot owners" has been preserved by the new title created for one of its members. That right is derived from and secures the right of the title holder. Accordingly, a claim of adverse possession could not ripen until, at the earliest, November 25, 2016; and
17. As the Defendant, **HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INC.**, filed an answer to the original complaint in this case prior to November 25, 2016, the statute of limitations has been tolled without the possession maturing into ownership. *Rosencrantz v. Shields, Inc.* 28 Md. App. 379, 346 A. 2d 237 (1975).

WHEREFORE the Defendant respectfully prays this Honorable Court:

- A. To find as a matter of law that the class of "lot owners" includes a property that can not lose its right to enter upon the community beach until November 25, 2016; and
- B. To find as a matter of law that as the use benefit is derived from the ownership of title by and through the Defendant, **HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INC.**, the continuing right of a lot owner to enter upon and use the property until November 25, 2016, precludes the loss of title by the title holder until November 25, 2016; and
- C. To find that the Plaintiffs have failed to state a claim upon which relief may be granted; and
- D. To dismiss these proceedings with prejudice and to assess all costs in these proceedings against the Plaintiffs; and
- E. To grant such other and further relief as this Court may deem just and proper.

BELL AND RAGLAND, P.A.

BY: 

MICHAEL J. RAGLAND, SR.
7 King Charles Place
Annapolis, Maryland 21401-2622
410-267-5944 (Fax) 410-269-5999
Attorney for Defendant - H.S.I.A.

REQUEST FOR HEARING

The Defendant, **HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INC.**, demands a hearing on the foregoing Amended Preliminary Motion – Motion to Dismiss.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of July, 2006, I mailed by first class mail, postage prepaid a copy of the foregoing Amended Motion Raising Preliminary Objection and Motion to Dismiss to:
William M. Simmons, Esquire

Bell and Ragland, P.A.
7 King Charles Place
Annapolis, MD 21401
410-267-5944

20 West Street, P.O. Box 2266
Annapolis, Maryland 21404-2266
And to

All other Defendants at their last know address, who have not admitted or waived service as shown on the attached forms.

MICHAEL J. RAGLAND, SR.

Neil and England, P.A.
7 King Charles Place
Annapolis, MD 21401
410-267-5944

PREPARED WITHOUT TITLE EXAMINATION

DEED

THIS DEED, made this 25th day of November, 1996, by and between JOHN R. HAMMOND, Financial Officer for Anne Arundel County, as the Collector of State and County taxes, Grantor, and PARVIZ SAHANDY, Grantee.

WHEREAS, by Final Judgment of the Circuit Court for Anne Arundel County, Maryland, passed on October 3, 1996, Case No. C-96-28909 OC, and known as Sahandy vs. Sahandy, the same being an action to foreclose all rights of redemption of the above-named parties in the hereinafter described property, and heretofore sold for default in the payment of taxes, pursuant to the Acts of the General Assembly and the Code of Public General Laws of Maryland, the Grantor, as the Collector of State and County taxes, was by said Judgment directed to give a deed of conveyance to Grantee, upon payment to Grantor of all the purchase price due, if any, together with all taxes, interest and penalties accruing since the date of sale; and

WHEREAS the said Grantee, having made the aforementioned payment in full as required, is entitled to have executed and delivered to him a deed of conveyance of the hereinafter described property.

NOW, THEREFORE, THIS DEED WITNESSETH, That in consideration of the sum of Six Hundred Sixty-Five and 58/100 Dollars (\$665.58) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey unto PARVIZ SAHANDY, said Grantee, his heirs, personal representatives, and assigns in fee simple, that lot of land situated, lying and being in the Second Assessment District of Anne Arundel County, as described above and which is more particularly described as follows:

BEING KNOWN and designated as Lot No. 7, Block T, as shown on Plat 2, of Section 3 of Hillswere Estates, prepared by J.R. McCrone, Jr., Registered Surveyor, and recorded among the Land Records of Anne Arundel County in Plat Cabinet 4, Rod G-9, Plat 7; now Plat Book 25, Folio 8.

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Anne Arundel County

WILLIAM F. SINGORE

1

ACCT. 2-412-10143503
ALL LIENS ARE PAID AS
OF 11/25/96 AA COUNTY
CONTROLLER BY AKS

20
2
3.33
5

del and 12-17-96

BEING ALSO the same property described in Anne Arundel County Tax Sale held on June 6, 1995, for Tax Account No. 2-4121-0143-503, and was previously recorded in the Land Records of Anne Arundel County at Liber 2600, Page 076.

TOGETHER with the buildings and improvements thereon erected or being, and all the rights, privileges, appurtenances and advantages hereon belonging or appertaining, free and clear of all liens and encumbrances thereon occurring prior to the date of the aforesaid Judgment.

TO HAVE AND TO HOLD the above described lot of land, and hereby intended to be conveyed, unto the proper use of said FARVIZ SAHANDY, his heirs, personal representatives, and assigns, in fee simple forever.

IN WITNESS WHEREOF, on the date and year first above written.

WITNESS:

Stephen J. Jell *John R. Hammond*
John R. Hammond, Anne Arundel County Financial Officer, Collector

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit: *November 25th*

I HEREBY CERTIFY that on this *25th* day of *November*, in the year one thousand nine hundred and ninety-six, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared John R. Hammond, Financial Officer of Anne Arundel County, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing Deed to be his act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I, hereunto set my hand and official seal.

Carol Hill
Notary Public

My Commission expires: *11/1997*

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

[Signature] *11/25/96*
Office of Law Date

I HEREBY CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Elana R. Byrd
Elana R. Byrd