

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

D. GREGORY SINGLETON, *et al* :

Plaintiff :

v. : CASE NUMBER: C-2003-91401 QT

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

Defendants :

\* \* \* \* \*

MOTION RAISING A PRELIMINARY OBJECTION – MOTION TO STRIKE

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 strike the “Amendment Joining Necessary Parties” and to dismiss these proceedings, and without waiving the grounds set forth in it’s original Motion 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 original Motion to Dismiss under Rule 2-322, as fully and effectually as if same were here repeated verbatim; and
2. The Court of Special Appeals in its Opinion of December 5, 2005, Hillsmere Shores Improvement Association, Inc. v. D. Gregory Singleton, et al, No. 00763, September Term 2004 declared the following:

We are satisfied that, while Appellees sought to adjudicate legal title to the disputed portions of the community beach, their actions cannot be resolved in a vacuum. To the extent reasonably feasible, the court should seek to join *all lot* owners in the subdivision as necessary parties. Therefore, we shall vacate the judgment and remand for further proceedings consistent

with this opinion. Upon remand, inconformity with the requirements of Maryland Rule 2-211(a), the circuit court shall order that the necessary parties include all lot owners whose right to use the beach would be affected by a judgment in favor of the Appellees. (Emphasis Added)

3. In its' opinion the Court of Special Appeals made clear why lot owners were necessary parties, as follows:

Among other things, the transfer of title of a portion of the beach to the Appellees surely will augment the value of their properties, while perhaps diminishing the value of the properties of other lot owners in the subdivision. Moreover, we cannot be certain from the status of this case that the other lot owners' rights to use of the entire beach have been protected. Clearly, it would be most efficient to resolve all of these issues in one action.

4. The Plaintiff's "Amendment Joining Necessary Parties" only names those individuals to whom a lot in the subdivision has been conveyed by Deed.
5. In Maryland a mortgage or Deed of Trust conveys and transfers the legal title to the property to the mortgagee or the Trustees under the Deed of Trust until the payment of the entire debt. Kramer v. ILS, 190 F.2d 712 (1951); Hebron Sav. Bank v. City of Salisbury, 259 Md. 294, 269 A.2d 597 (1970); and
6. Although the newly named Defendants have an equitable title to their lots until a default in the repayment of the loan, their lender holds all of their legal interests in the property until the debt is paid in full Shpak v. Oletsky, 280 Md. 355, 373 A.2d 1234 (1977); and
7. The vast majority of the newly named Defendants have mortgages and/or Deeds of Trust on their property which means that while they hold equitable title, the legal ownership is in the mortgagees named in the mortgages or in the Trustees named in the Deed of Trust; and
8. That the Plaintiff's have still failed to name all of the necessary parties, owner of the lots in the subdivision, whose title is derived through a mortgage or a Deed of Trust; and
9. As this action may diminish the value of the equitable title owners, it may also diminish the value of the security held by the legal title owners under their mortgages and/or Deeds of Trust.

WHEREFORE as the Plaintiff's Amendment Joining Necessary Parties fails to include the owners of lots in the subdivision whose legal title was derived through a mortgage or Deed of Trust, the Defendant, **HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INC.** respectfully prays this Honorable Court:

- A. To strike the Amendment Joining Necessary Parties; and
- B. To order the Plaintiff's to name as party Defendants all owners of all of the lots in the subdivision, including Mortgagees and Trustees under Deeds of Trust; and
- C. To afford the Plaintiff's only thirty (30) days to file a proper amended Complaint as specified in Rule 2-322 ( c) of the Maryland Rules of Procedure; and
- D. To grant such other and further relief as this Honorable Court may deem just and proper.

**BELL AND RAGLAND, P.A.**

BY: 

**MICHAEL J. RAGLAND, SR.**

7 King Charles Place  
Annapolis, Maryland 21401-2622  
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Attorney for Defendant - H.S.I.A.

**REQUEST FOR HEARING**

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of June, 2006, I mailed by first class mail, postage prepaid a copy of the foregoing Preliminary Motion – Motion to Strike to:

William M. Simmons, Esquire  
20 West Street, P.O. Box 2266  
Annapolis, Maryland 21404-2266

  
**MICHAEL J. RAGLAND, SR.**

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\* \* \* \* \*

ORDER

UPON CONSIDERATION of the Motion Raising Preliminary Objections and Motion to Dismiss, filed by the Defendant, HILLSMERE SHORES IMPROVEMENT ASSOCIATION, INC. and the Opinion issued in these proceedings by the Court of Special Appeals of Maryland; it is this \_\_\_\_ day of \_\_\_\_\_, 2006, by the Circuit Court for Anne Arundel County, Maryland:

ORDERED that the Plaintiff's Amendment Joining Necessary Parties shall be and is hereby stricken, and it is further

ORDERED that the Plaintiff's are hereby granted thirty (30) days leave to amend their original Complaint to name all property owners in the subdivision of Hillsmere Estates as additional named party Defendants.

\_\_\_\_\_  
JUDGE