

**D. GREGORY SINGLETON,
et. al.**

Plaintiffs

vs.

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

Defendants

IN THE

*** CIRCUIT COURT**

*** FOR**

*** ANNE ARUNDEL COUNTY**

*** Consolidated**

*** Case No.: C-2003-91246**

*** * * * ***

**OPPOSITION TO MOTION RAISING PRELIMINARY OBJECTION
AND
REQUEST FOR HEARING**

D. Gregory Singleton, Susan G. Singleton, Parviz Sahandy, Edward R. Hertz, and Leah G. Hertz, by William M. Simmons, their attorney, in opposition to the Motion Raising Preliminary Objection or Motion to Strike, state as follows:

The essence of Defendant’s Motion is to contend that every lender who holds a mortgage on a lot in Hillsmere must be joined in this case, notwithstanding that they have no actual interest in the outcome and that the sole purpose is to vastly increase the number of defendants, vastly increase the cost to prosecute this case, and vastly increase the burden on this Court in trying to keep track of additional defendants which have no interest in this proceeding. Moreover, to compound the offensiveness of the Motion, the Defendant has suggested that any amended complaint must be filed within thirty days, something that Defendant knows would be impossible since, in order to name every mortgage holder, a title search would have to be performed on every


single lot in Hillsmere, being over 1,000 title searches. Aside from the ridiculousness of the request, it is neither justified by the Court of Special Appeals' Opinion, nor required by law.

As properly quoted by the Defendant, the Court of Special Appeals specifically stated "to the extent reasonably feasible, the court should seek to join all lot owners in the subdivision as necessary parties. . . . Upon remand in conformity 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."

The operative terms here are "lot owners who have a right to use the beach" and "reasonably feasible." Clearly, no mortgage holder is a lot owner as contemplated by the Court of Special Appeals and no mortgage holder, has a "right to use the beach." Moreover, it is neither reasonably feasible nor necessary to join the mortgage holders. Although mortgage holders may hold "bare legal title," for the purpose of securing their lien, they do not hold true title to the property. As was stated in Galeano v. Galeano, 21 Md. App. 208 (1974), "[i]t is well established in the State that a lien of a judgment creditor does not attach to bare legal title held by an equitable mortgagee or one holding a similar interest as security for an outstanding debt. (Cites omitted.) This is so because the holder of a mortgage does not own the land but merely the right to possess the land in the event of default of the mortgage terms." True title is held by the lot owners themselves who may of course discharge the lien at any time by paying the mortgage. During the pendency of the mortgage, the mortgage holder has no right to possess the property under any modern mortgage or deed of trust, or to use the beach, and may only acquire such rights if the mortgage holder forecloses on the property and is the successful purchaser. As such, the mortgage holder has absolutely no interest in this proceeding, especially since the lot

owners have no ownership interest in the beach property, only a right to walk on it.


WHEREFORE, it is respectfully requested that this Honorable Court deny the Motion as being inconsistent with the Order of the Court of Special Appeals, and since joinder is neither reasonable nor necessary.



William M. Simmons
20 West Street, P.O. Box 2266
Annapolis, Maryland 21404-2266
Attorney for Plaintiffs
410-268-0899

REQUEST FOR HEARING

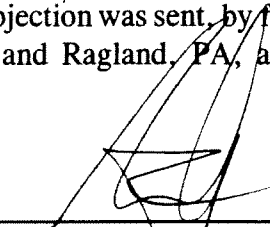
Defendants hereto request a Hearing, unless the Court determines that, based on the pleadings, it will deny Defendant's Motion.



William M. Simmons

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2/1st day of June, 2006, a copy of Plaintiffs Opposition to Motion Raising Preliminary Objection was sent, by first class mail, postage prepaid, to Michael J. Ragland, Sr., Esquire, Bell and Ragland, PA, at 7 Charles Place, Annapolis, Maryland 21401, Attorney for Defendant.



William M. Simmons

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 :

* * * * *

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