

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

Robynn D. Squires
250 Harlem Road
Pasadena MD 21122

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Floyd C. Culhane, Jr.
8410 Echo Drive
Pasadena MD 21122

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And

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Peter Leimbach
148 Riviera Drive
Pasadena MD 21122

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Plaintiffs

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v.

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Case No. 02-C-08-_____ DJ

Riverbea Corporation
Serve on: John Robbins, President
269 Kenwood Road
Pasadena MD 21122

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This Complaint is a LIS PENDENS as to
Real Property 0.631 acres
Park Road at Riviera Walk Riviera Beach
Deed reference Book 19163 page 307
Tax No. 03-693-90227987

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And

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John Robbins
269 Kenwood Road
Pasadena MD 21122

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Edward P. Kiley
223 Chelsea Road
Pasadena MD 21122

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And

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Will Guizzardi
267 Harlem Road
Pasadena MD 21122

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And

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Jack Leibsach II
8464 Main Avenue
Pasadena MD 21122

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And

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Robert Snyder
8473 Meadow Lane
Pasadena MD 21122

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And

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Brett Scheibe
8483 Ft. Smallwood Road
Pasadena MD 21122

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And

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John Barry Tiernan
7767 Outing Avenue
Pasadena MD 21122

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Defendants

This Complaint is a LIS PENDENS as to
Real Property 0.631 acres
Park Road at Riviera Walk Riviera Beach
Deed reference Book 19163 page 307
Tax No. 03-693-90227987

* * * * *

**COMPLAINT FOR DECLARATORY JUDGMENT
AND DERIVATIVE AND INJUNCTIVE AND OTHER RELIEF**

Plaintiffs, Robynn D. Squires and Floyd C. Culhane, Jr., and Peter Leimbach by their attorneys Daniel J. Mellin and Hillman, Brown & Darrow, P. A., for their Complaint for Declaratory and Injunctive and Other Relief sue all of the Defendants named above and for cause state as follows:

1. All of the lands which are the subject of this action are shown on the Subdivision Plats of Riviera Beach Subdivision, recorded among the Plat Records of Anne Arundel County, Maryland at Plat Book 04 page 039, and at other pages too numerous to mention in this Complaint. The principal piece of real property at issue in this case is known as the "Triangle", and is depicted as "RESERVED" on this Plat, together with acres of waterfront and shoreline also showing on this Plat and the other Plats of Riviera Beach (the "Beach Area" or "Riviera Walk"), (a copy of the Plat is attached as an exhibit and incorporated herein).

2. Plaintiffs are all property owners in Riviera Beach, and are accordingly members of the Corporations named below, and have standing to bring this action in their own right, as well as derivatively on behalf of the Defendant Riverbea Corporation. Plaintiffs have requested from the Corporation the relief sought herein, but the Directors of the Corporation have refused to act on Plaintiffs' requests,

3. Riverbea Corporation ("Riverbea") (a Maryland corporation) is a non-stock corporation whose purpose is to hold title to the Triangle and the Beach Area and other common areas of Riviera Beach for the benefit of the property owners in Riviera Beach. The membership of Riverbea consists of the owners of all platted lots in Riviera Beach.

4. The Riviera Community Improvement Association Inc ("RCIA") (a Maryland corporation) is a non-stock corporation whose purpose is to act as the Property Owners' or Homeowners' Association for all of the Property Owners in Riviera Beach, and to take care of the maintenance and repair and regulation of the use of the Community Property in Riviera Beach, which primarily consists of the Triangle and the Beach Area. The membership of RCIA consists of all of the Property Owners of all platted lots in Riviera Beach.

5. John Barry Tiernan is the purported owner of the Triangle as set forth below.

6. The other individual Defendants are current and past officers and directors of Riverbea Corporation.

7. Title to the Triangle and the Beach Area is set forth on two deeds dated April 8, 1961, recorded at Book 1469 page 527, and dated March 30, 1961, recorded at Book 1469 page 532 (the "1961 Deeds"). The deeds are attached hereto as exhibits and are incorporated herein by reference.

8. Recently the Plaintiffs discovered that the directors of Riverbea acting in secrecy purported to sell the Triangle to John Barry Tiernan by deed dated April 27, 2007, and recorded June 6, 2007, at Book 19163 page 307. The deed is attached hereto as an exhibit and is incorporated herein by reference.

9. Plaintiffs contend that Riverbea lacked the requisite corporate authority to sell the Triangle, and that the actions of the officers and directors in executing the deed and conveying the Triangle property were ultra vires and fraudulent and oppressive to the rights of the members in the Corporation, and should be declared to be ultra vires and null and void and of no effect.

10. Further Plaintiffs contend that the purported deed is not effective to change the status of the Triangle as part of the common property of Riviera Beach, and that the Triangle remains part of the Beach Area and Riviera Walk, and the Triangle remains subject to the rights of use and enjoyment of all Property Owners in Riviera Beach, by virtue of the covenants and restrictions set forth in the 1961 Deeds.

11. The Triangle is clearly set forth on the Subdivision Plat as "reserved", meaning reserved for the Property Owners in Riviera Beach, together with the Beach Area and Riviera Walk. This is further set forth as part of the "scheme of development" set forth in the Pamphlets given to all new Property Owners purchasing lots in Riviera Beach (attached hereto as an exhibit).

12. The actions of the Defendants have violated the Articles of Incorporation and Bylaws of Riverbea and RCIA. Copies of the Articles and Bylaws of Riverbea and RCIA are attached hereto as exhibits and are incorporated herein by reference.

13. Plaintiffs contend that the Bylaws of Riverbea are ineffective and were not adopted correctly by the Members of Riverbea and should be declared to be null and void.

14. Plaintiffs contend that the officers and directors of Riverbea for years have been acting fraudulently and oppressively towards the Members of both Corporations and towards the Property Owners of Riviera Beach.

15. Plaintiffs contend that the officers and directors of Riverbea have acted secretively and without open meetings and have not had proper authority from the Members of the Corporations and the Property Owners of Riviera Beach, for whose specific benefit the two Corporations were created and should be operating.

16. Plaintiffs contend that the officers and directors of Riverbea for years have breached their fiduciary duties to the Members of the Corporations and the Property Owners of Riviera Beach, for whose specific benefit the two Corporations were created and should be operating.

17. Plaintiffs contend that the officers and directors of Riverbea for years have misused the assets of the Corporations, and have not properly accounted for the revenues and accounts of the Corporations.

18. Plaintiffs contend that the officers and directors of Riverbea for years have denied to the Members of the Corporations and the Property Owners of Riviera Beach their deeded

rights to use and enjoy the Reserved Common Areas of Riviera Beach and the Beach Area and Riviera Walk.

19. Plaintiffs contend that an actual controversy exists between the parties regarding these issues.

20. Plaintiffs contend that this Court should issue a Declaratory Judgment pursuant to Title 3 Subtitle 4 of the Courts and Judicial Proceedings Article determining and declaring the rights of the parties hereto regarding the legal status of the Triangle and the Beach Area and Riviera Walk and the operations of the two Corporations.

21. Plaintiffs are interested persons and have standing in this matter because Plaintiffs are the owners of lots in Riviera Beach and are directly affected by the actions of the Defendants complained of herein.

22. Plaintiffs will be irreparably injured if the Defendants continue to operate the Corporations in secret and without proper authority and without proper supervision by the Court or the Members of the Corporations.

23. Plaintiffs contend that the directors of Riverbea have not been validly elected or appointed and that they should be removed as directors based upon their breaches of their fiduciary obligations to the Corporation and the Members of the Corporation and the Property Owners of Riviera Beach.

24. Plaintiffs contend that the oppressive conduct of the directors requires that they be removed from their positions as directors.

25. Plaintiffs contend that the court should appoint a Receiver for the Corporation and order elections of new directors.

WHEREFORE, Plaintiffs request the following relief from the Court:

A. That an order or injunction be issued removing the Defendants from their positions as directors.

B. That an injunction be issued enjoining and restraining the Defendants from continuing to operate Riverbea before there has been a final declaratory judgment issued by this Court regarding all of the disputed matters regarding the Property.

C. That a Receiver be appointed by the Court to take over the operations of Riverbea

pending new elections by the Members for new directors and officers.

D. That an injunction be issued enjoining and restraining all of the Defendants from spending or dissipating any assets of the Corporations and from transferring any more corporate property.


E. That the Court issue a Declaratory Judgment determining and declaring the rights and obligations of all of the Parties with respect to the ownership of the Triangle and the rights to use and enjoyment thereof, as well as the Beach Area and Riviera Walk and all of the other Reserved Common Areas in Riviera Beach.

F. That an injunction be issued enjoining and restraining the Defendant John Barry Tiernan from taking any actions on the Triangle, including but not limited to grading or excavating, and any other activities that would interfere with the Plaintiffs' right to use and enjoy the Triangle,

G. That a permanent injunction be issued enjoining and restraining the Defendants from acting or refusing to act in conformance with the Declaratory Judgment.

H. And that Plaintiffs be granted such other and further relief as the nature of their cause may merit.

Dated: April 24, 2008


Daniel J. Mellin (djm@hbdlaw.com)
Hillman, Brown & Darrow, P. A.
221 Duke of Gloucester Street
Annapolis, Maryland 21401-2582
410-263-3131 FAX 410-269-7912
Attorney for Plaintiffs 15630/280302

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Defendants

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STATEMENT OF POINTS AND AUTHORITIES

White v. Pines Community Improvement Ass'n, Inc., Court of Appeals No. 29, September Term 2007, 403 Md. 13, 939 A.2d 165, 2008 WL 89940 (Md. 2008):

“Thus, the deeds granted the use in common of riparian rights. We hold that those terms are clear and unambiguous. The deeds establishing easements for the lot owners' use of the Community Land in The Pines and their riparian rights are in common with others, not separate and exclusive.” White, 173 Md.App. at 39-44.

We agree with the Court of Special Appeals' reasoning, finding that PCIA is the owner of the community property, and that the community property is subject to a common easement that allows PCIA and all of the individual lot owners a right to use the community property in common with each other.

As the PCIA is the owner of the community property, it follows therefore, that it also normally would be the owner of the piers attached to that community property. Maryland Code (1982, 2007 Repl.Vol.), § 16-201 of the Environment Article states, in relevant part:

“[A] person may make improvements into the water in front of the land to preserve that person's access to the navigable water or protect the shore of that person against erosion. After an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached.” (Emphasis added.)

With regard to the case at bar, the Court of Special Appeals went on to hold: “The grant of riparian rights to appellants in the deeds are express and interpretation is, thus, controlled by the language of the deed.... No extrinsic evidence is required to interpret its meaning. The piers built by appellants' predecessors in interest became the property of the riparian owner.... The grant of riparian rights to the lot owners does not equate to the ownership of riparian land.” White v. Pines Community Improvement Ass'n, 173 Md.App. at 45.

As PCIA was the actual owner of the waterfront property, subject to an easement allowing all individual lot owners to exercise riparian rights in common with each other, there exists a presumption that the permissive use of the real property in common with all members of the community normally cannot ripen

into a prescriptive easement. Kirby v. Hook, 347 Md. 380, 393, 701 A.2d 397, 404 (1997) (citing Phillips v. Phillips, 215 Md. 28, 33, 135 A.2d 849, 851 (1957)).

In Hanley v. Stulman, 212 Md. 273, 278, 129 A.2d 132, 134 (1957), the Court of Appeals discussed the general powers of an equity court to fashion justice where the circumstances merit. In Hanley a landowner had bulldozed a dirt road right of way and then defended against a suit to re-establish the easement by contending that the road no longer existed and therefore could not support an easement by prescription. The appellate court ruled that the trial judge had the equitable power to order a re-locating and rebuilding of the road in order to protect the rights of the users of the road. The Court of Appeals stated"

"The arm of an Equity Court is not so short, nor its authority so impotent, that it must permit a defendant to evade, with impunity, the broad and salutary principle of law that one cannot profit by his own wrongdoing. There is an ancient maxim in Equity that says: 'Equity will not suffer a wrong without a remedy'. This principle, which is the somewhat restricted application to the equity jurisprudence of the more comprehensive legal maxim, *Ubi jus, ibi remedium*, is the source of the entire equitable jurisdiction. It is subject to certain limitations, none of which are applicable here. Pomeroy's Equity Jurisprudence, pars. 423, 424. 'Courts of equity are not, in the dispensation of justice, subject to those strict technical rules, which in other Courts are sometimes found in the way, and so difficult to surmount. The remedies here are moulded, so as to reach, if practicable, the real merits of the controversy, and justice will not be suffered to be entangled in a web of technicalities. If such a decree can be put upon the record as will meet the substantial justice of the case, it will be done.' Crain v. Barnes, 1 Md.Ch. 151, 155. We think the evidence, as indicated by the Chancellor, clearly demonstrates the appellant and the public had been wronged, and we hold the Equity Court had authority to grant them an appropriate remedy."

Hanley v. Stulman, 212 Md. 273, 278, 129 A.2d 132, 134 (1957), 212 Md. at 278, 129 A.2d at 134.

See also the following Anne Arundel County cases involving water-privileged subdivisions and the rights of lot owners to use the reserved common areas and waterfront:

Hanley v. Stulman, 212 Md. 273, 129 A.2d 132 (1957).

Owen v. Hubbard, 260 Md. 146, 271 A.2d 672 (1970).

Waldschmidt v. Vito, 228 Md. 328, 179 A.2d 884 (1962).

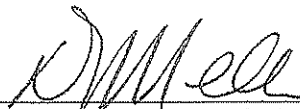
Williams Realty v. Robey, 175 Md. 532, 2 A.2d 683 (1938).

Klein v. Dove, 205 Md. 285, 107 A.2d 83 (1954).

Simon Distributing v. Bay Ridge Civic Ass'n, 207 Md. 472, 114 A.2d 829 (1955).

Olde Severna Park Imp. Assoc. v Gunby, 402 Md. 317, 331 (2007)

Dated: April 24, 2008


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EXHIBITS FOR COMPLAINT

Plat of Riviera Beach Subdivision, Plat Book 04 page 039

Deed dated April 8, 1961, recorded at Book 1469 page 527 (the "1961 Deeds").

Deed dated March 30, 1961, recorded at Book 1469 page 532 (the "1961 Deeds").

Deed to Triangle to John Barry Tiernan 04-27-2007 recorded 06-06-2007 Book 19163 page 307

Pamphlet given to all new Property Owners purchasing lots in Riviera Beach

Articles of Incorporation and Bylaws for Riverbea Corporation

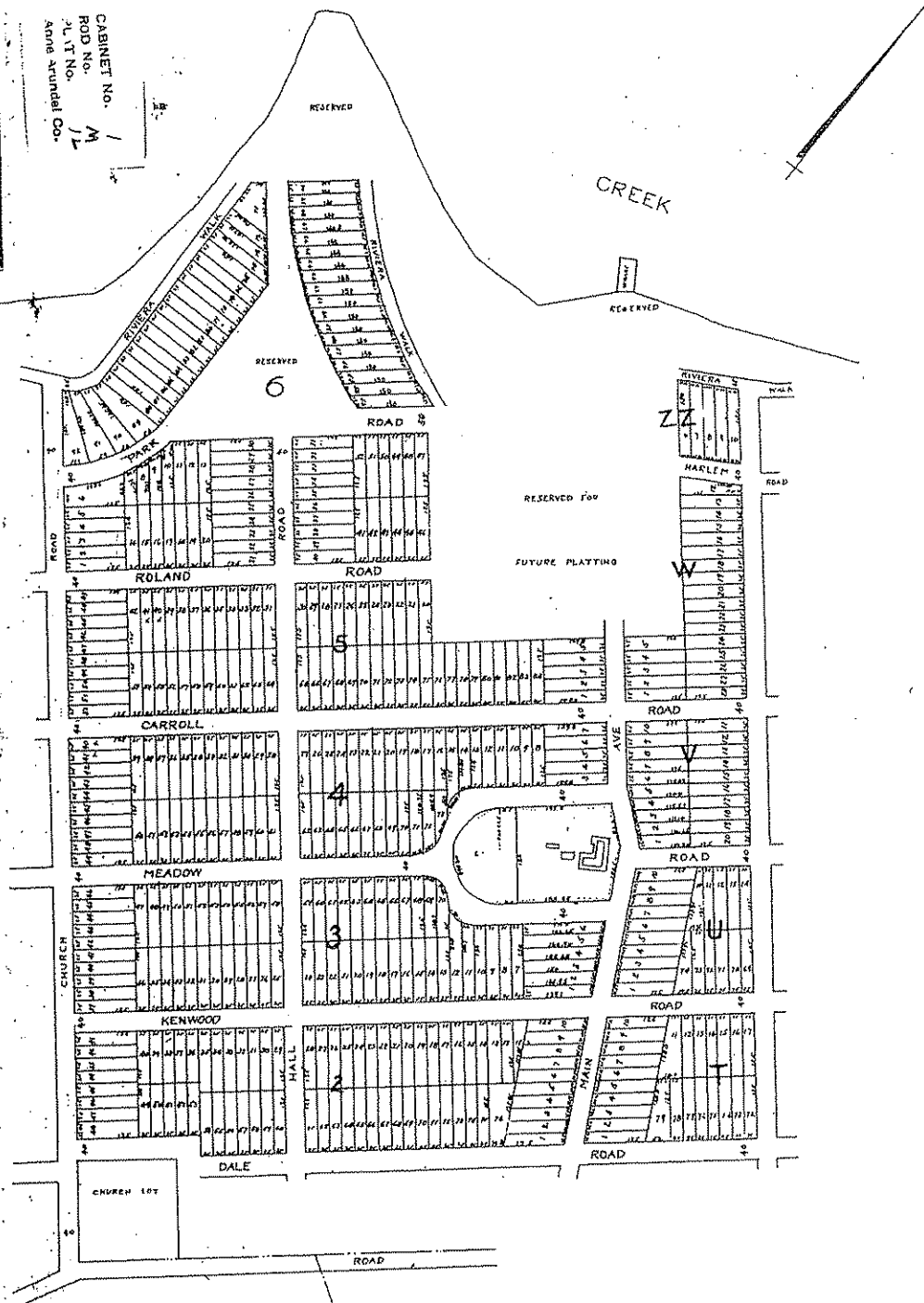
Articles of Incorporation and Bylaws for Riviera Community Improvement Association

Dated: April 24, 2008



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CABINET No. 1
 ROD No. M
 PLAT No. 72
 Anne Arundel Co.



Filed 6th May 1925
 (No 162)

PLAT OF
 PART OF
RIVIERA BEACH
 ANNE ARUNDEL CO., MD
 RIVIERA BEACH DEVELOPMENT CO.
 113 S. HANOVER STREET
 BALTIMORE, MARYLAND.

SCALE 1"=100' April 8, 1925
 EY COOHAN & Co
 SURVEYORS & CIVIL ENGINEERS
 211 CHEVERLAND STREET
 BALTIMORE, MD.

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