PAUL JOHN CISAR, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
F.O. MITCHELL & BRO., et al.,	*	ANNE ARUNDEL COUNTY
Defendants.	*	Case No. C-02-CV-22-000988

HARFORD COUNTY'S REPLY IN SUPPORT OF MOTION TO DISMISS

Defendant Harford County, Maryland by its undersigned counsel, hereby submits this Reply in Support of its Motion to Dismiss Plaintiffs' Verified Complaint for Injunctive Relief and Declaratory Judgment and Private Action for Nuisance and Public Nuisance ("Complaint") because of improper venue, failure to state a claim upon which relief can be granted, and lack of jurisdiction over the subject matter.

Argument

A. Venue is improper in Anne Arundel County.

Plaintiffs have no basis to assert venue over Harford County in Anne Arundel County. Plaintiffs wrongly assert that they can establish venue under Section 6-201(b) of the Courts and Judicial Proceedings Article despite the fact that the section applies only if "there is no single venue applicable to all defendants," Maryland Code Ann., Cts. & Jud. Proc. § 6-201(b). The Court of Appeals has recognized the import of the plain language – that the section is not applicable unless "there is no single venue applicable to all defendants." *See, e.g., Green v. N. Arundel Hosp. Ass'n, Inc.*, 366 Md. 597, 605 (2001) ("there was a single venue applicable to both defendants … and the alternatives stated in § 6–201(b) were therefore inapplicable").

The undisputed evidence submitted in connection with the motion to dismiss for improper venue was that all Defendants were subject to venue in Harford County.[1] Plaintiffs do

[1] It is unclear whether Plaintiffs, in Section I of their Opposition, are asserting that affidavits should not be considered in connection with the motion to dismiss for improper venue. Opp. at 2-

not even mention this fact in their Opposition, much less address it. Because all defendants are subject to venue in Harford County, Plaintiffs cannot use § 6–201(b) to establish venue where only one of the Defendants carries on a regular business.

Rather, Plaintiffs must establish venue for each defendant under § 6–201(a) because "[t]he privilege of a defendant to be sued only in the county of his residence is a substantial right not to be denied except in strict compliance with the exceptions established by law." *Capron v. Mandel*, 250 Md. 255, 260 (1968). Even the *Payton-Henderson* case cited by Plaintiffs reinforces this concept, quoting the Court of Appeals:

> The purpose of the statute according a defendant, in other than the excepted cases, the right to be sued in the jurisdiction of his residence, and not in a jurisdiction foreign to him, is a salutary protection to all citizens of the state alike, and should be carefully guarded. It is evidently designed to accord a defendant the right to defend in a jurisdiction which better suits his own convenience, and ordinarily is preferable to him.

Payton-Henderson v. Evans, 180 Md. App. 267, 275 (2008), quoting *Woodcock v. Woodcock*, 169 Md. 40, 47–48 (1935). Plaintiffs would have this court ignore this long-established right without any basis under the plain language of § 6–201. The affidavits establish that venue is not proper in Anne Arundel County.

B. Plaintiffs' claims must be dismissed because of the related doctrines of exhaustion, finality, and justiciability.

Plaintiffs are attempting to circumvent the doctrines of finality and exhaustion by making the misleading and irrelevant claim that they "are not seeking judicial review of an administrative agency or any of its decisions." Opp. at 14. This is true only because they have

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4. If so, they are incorrect as a matter of law because, on a venue motion, affidavits are permissible. *Lampros v. Gelb & Gelb, P.C.*, 153 Md. App. 447, 452 (2003). Indeed, the court is permitted to make findings of fact regarding venue. Neimeyer & Schuett, Maryland Rules Commentary, Rule 2-322 at 205 (3rd ed. 2003) ("If determinations of fact become necessary in deciding the motion, the court may consider affidavits or, in connection with any hearing, take testimony. The court, not the jury, makes the necessary findings and decides the ultimate legal issues.").

failed to wait for those administrative decisions to be made, which violates the well-established concepts of exhaustion and finality.

Plaintiff expressly ask this Court to interfere with the ongoing administrative process and order Harford County not to issue permits and approvals in the subdivision process. Any assertion that they are not attempting to interfere in the administrative process is plainly rebutted by the Complaint itself, which repeatedly objects to various pending approvals and permits. Indeed, Plaintiffs expressly allege that Harford County is "responsible for the approval and granting of permits for development of real property in its jurisdiction," and "has the obligation to prevent unlawful development of real property in Harford County." Complaint, ¶ 24. In paragraph 32, Plaintiffs complain that Defendants CREG and Frederick Ward are seeking administrative approvals for the project, including "concept plans, Forest Stand Delineation Plans, Preliminary Plans, Site Plans, and … a traffic impact study." As relief, Plaintiffs ask this court to enjoin the Defendants from "obtaining any permitting or approvals" and "taking any steps in furtherance of the development of the Mitchell Farm at Perryman Peninsula, including but not limited to permitting, approvals, subdividing." Complaint, Wherefore Clauses B & C. Plaintiffs request this relief because they recognize that, under the Harford County Subdivision Code, if no further administrative approvals are granted, the project could not go forward and the alleged nuisances they claim would be eliminated. *E.g.*, Harford County Code, § 268-7 ("nor shall a building permit be issued for a structure [on a lot], until a final plat of such subdivision or any section thereof has been recorded in accordance with these Regulations").

It cannot be disputed that Plaintiffs are asking this Court to interfere in the Harford County administrative development process. The concepts of exhaustion and finality are designed precisely to prevent this kind of judicial interference in the administrative process. In *Soley v. State Comm'n on Hum. Rels.*, 277 Md. 521, 526 (1976), the Court of Appeals explained:

> The rule requiring exhaustion of administrative or statutory remedies is supported by sound reasoning. The decisions of an administrative agency are often of a discretionary nature, and

> frequently require an expertise which the agency can bring to bear in sifting the information presented to it. The agency should be afforded the initial opportunity to exercise that discretion and to apply that expertise. Furthermore, to permit interruption for purposes of judicial intervention at various stages of the administrative process might well undermine the very efficiency which the Legislature intended to achieve in the first instance. Lastly, the courts might be called upon to decide issues which perhaps would never arise if the prescribed administrative remedies were followed.

All of these reasons are applicable here. The Harford County Department of Planning and Zoning should be permitted to use its discretion and apply its expertise in determining whether to approve the subdivision and development. These approvals have not yet occurred and if they ever do occur, the issues likely will differ from those Plaintiffs present to the Court now. Having this Court intervene at this point destroys the efficiency intended in the administrative process.

Plaintiffs' three pages of argument concerning the inherent authority of this Court are entirely beside the point. None of the authorities cited by Plaintiffs hold that this Court may interfere with the administrative process and ignore the concepts of exhaustion and finality. To the contrary, "the courts are … without authority to interfere … with the lawful exercise of administrative authority or discretion." *Cnty. Council for Montgomery Cnty. v. Invs. Funding Corp.*, 270 Md. 403, 431 (1973), quoting *Heaps v. Cobb*, 185 Md. 372, 379 (1945).

Nor do Plaintiffs explain why any exception to exhaustion would apply in this case after block quoting, without comment, *Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 443 Md. 199, 218 (2015). There is no attack on the validity of a statute and no indication in the statute that exhaustion is not required. There is a remedy available to Plaintiffs in the form of appeal of the agency decision under Harford County Code § 268-28. The approvals of the Preliminary Plan and Site Plan are the central issues in the case, and the prevention of such approvals are the primary relief sought. Complaint, ¶ 32, Wherefore Clauses B & C. Plaintiffs make no attempt to argue that any of the exceptions apply. They do not.

Plaintiffs have failed to exhaust their administrative remedies and have failed to wait for a final decision of the Harford County Department of Planning and Zoning. Their Complaint must be dismissed.

C. Count Four seeking injunctive relief does not allege a cause of action.

Plaintiffs have not disputed that Count Four does not state an independent cause of action. Because Count One seeking a declaratory judgment must be dismissed for the reasons stated above, Count Four seeking an injunction must also be dismissed against Harford County.

D. This case must be dismissed because Plaintiffs failed to join a necessary party.

In arguing that Charles A. Maslin III is not a necessary party, Plaintiffs ignore the plain language of Section 3-405(a) of the Maryland Uniform Declaratory Judgments Act: "If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party." Md. Code Ann., Cts. & Jud. Proc. § 3-405(a). Plaintiffs seek declarations concerning the subdivision process for Mr. Maslin's land.[2] He clearly has an interest in what occurs regarding that subdivision process and is a necessary party under the Act.

E. This case should be transferred to Harford County based on *forum non conveniens*.

In arguing against transfer to Harford County based on *forum non conveniens*, Plaintiffs stress merely that Anne Arundel County is their choice of forum. Opp. at 6-7. Plaintiffs ignore entirely the fact that Plaintiffs have no relationship to Anne Arundel County. They further ignore that the events of this case have no relationship to Anne Arundel County. Maryland law is clear that under such circumstances, any "deference owed to the plaintiff may face significant diminishment to the point of non-existence." *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 408 (2017).

[2] Plaintiffs do not dispute that Mr. Maslin owns a portion of the land subject to the subdivision process at issue in this case. Nevertheless, Plaintiffs wrongly assert that this Court may not consider anything outside the Complaint (Opp. at 2-4), ignoring the well-established precedent that this Court may consider, in deciding a motion to dismiss, facts of which it may properly take judicial notice, such as the existence of the official public documents in the subdivision record. *E.g. Faya v. Almaraz*, 329 Md. 435, 444 (1993).

All of the witnesses live or work in Harford County; all of the decisions will be made in Harford County by Harford County officials. Plaintiffs cite no authority for the proposition that a defendant must establish that an hour's drive would be difficult for the witnesses. Opp. at 8. To the contrary, Maryland courts have often granted *forum non conveniens* motions between adjoining counties much closer in distance than Anne Arundel and Harford Counties. *See, e.g., Payton-Henderson v. Evans,* 180 Md. App. 267, 273 (2008) (transfer from Baltimore City to Baltimore County); *Cobrand v. Adventist Healthcare, Inc.,* 149 Md. App. 431, 436 (2003) (transfer from Prince George's County to Montgomery County).

Whatever slight deference must be given to Plaintiffs' choice of forum is more than overcome by the facts that the Plaintiffs do not live in the forum, the relevant events occurred outside the forum, the subject property is located outside of the forum, and the case has strong ties to Harford County, not Anne Arundel County. It is a case filed by Harford County residents against Harford County, a property owner in Harford County, an engineering firm in Harford County, and a developer that does substantial development in Harford County. The case relates entirely to a Harford County development and asks this Court to intervene in the Harford County subdivision process. If not dismissed, the case should be transferred to Harford County under Rule 2-327(c).

WHEREFORE Defendant Harford County, Maryland requests that its Motion to Dismiss be granted and the case dismissed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of August, 2022, a copy of the foregoing Harford County's Reply in Support of Motion to Dismiss was served through MDEC on: Rignal W. Baldwin V, Esq., Michael A. Cuches, Esq., Baldwin Seraina, LLC, 111 South Calvert Street, Suite 1805, Baltimore, Maryland 21202, rbaldwinv@baldwin-seraina.com, mcuches@baldwin-seraina.com; David S. Lynch, Esq. and Robert Lynch, Esq., Stark and Keenan, P.A., 30 Office Street, Bel Air, Maryland 21014, dlynch@starkandkeenan.com, rlynch@starkandkeenan.com; Joseph F. Snee, Jr., Esq. and Laura Bechtel, Esq., Snee, Lutch, Helminger & Spielberger, P.A., 112 S. Main Street, Bel Air, Maryland 21014, jsnee@slhslaw.com, lbechtel@slhslaw.com; and Andrew T. Stephenson, Esq. and Jessica D. Corace, Esq., Franklin & Prokopik, P.C., Two North Charles Street, Suite 600, Baltimore, Maryland 21201, astephenson@fandpnet.com, jcorace@fandpnet.com.

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ORDER

Upon consideration of Harford County's Motion to Dismiss, and the response thereto, it is this _____ day of _____, 2022, ORDERED:

1) That Harford County's Motion to Dismiss is GRANTED; and

2) that the Verified Complaint for Injunctive Relief and Declaratory Judgment and Private Action for Nuisance and Public Nuisance is hereby DISMISSED.

_____
Judge,
Circuit Court for Anne Arundel County