

PAUL JOHN CISAR, et al. * IN THE
Plaintiffs, * CIRCUIT COURT
v. * FOR
F.O. MITCHELL & BRO, et al. * HARFORD COUNTY
Defendants. *
* Case No.: C-12-CV-22-000888

* * * * *

F.O MITCHELL & BRO.’S OPPOSITION TO PLAINTIFFS’ MOTION TO STRIKE IMPROPER AND UNSUPPORTED EXHIBITS TO AND ASSERTIONS IN DEFENDANT F.O. MITCHELL & BROS. MOTION TO DISMISS VERIFIED AMENDED COMPLAINT.

F.O. Mitchell & Bro. (“Mitchell”), by and through their attorneys, Robert S. Lynch, Esquire, David S. Lynch, Esquire, and Stark and Keenan, P.A., oppose Plaintiffs’ Motion to Strike Improper and Unsupported Exhibits to and Assertions in Defendant F.O. Mitchell & Bros. Motion to Dismiss Verified Amended Complaint (“Motion to Strike”), stating the following:

ARGUMENT

This Honorable Court should consider Exhibits A-E to Mitchell’s Motion to Dismiss Amended Complaint (“Motion to Dismiss”) and certain assertions made in Mitchell’s supporting memorandum (“Mitchell’s Memorandum”) because the exhibits and assertions are expressly referenced in Plaintiffs’ Amended Complaint, serve to supplement the allegations of the Amended Complaint, and cannot be

controverted. Plaintiffs' colorful assertions to the contrary and selective citations to case law are directly contradicted by Maryland's well-established jurisprudence on the question of whether, on a motion to dismiss, the Court may consider documents outside the four corners of the Amended Complaint. Plaintiffs complain that this Court may not consider assertions as fundamental as the address and historical zoning classification of the Subject Property. The exhibits and assertions made by Mitchell are all either official public documents or matters of common knowledge of which this Court may properly take judicial notice. Plaintiffs' instant Motion to Strike is yet another improper attempt by Plaintiffs to further burden this Court and Mitchell with frivolous litigation regarding a proposed development that has yet to be approved. For these reasons, set forth in greater detail below, Mitchell urges this Court to deny Plaintiff's Motion to Strike.

I. The Exhibits Attached to Mitchell's Memorandum are Properly Before this Court on a Motion to Dismiss.

Throughout their Amended Complaint, Plaintiffs expressly reference a proposed development at the Subject Property located in Perryman, Harford County, Maryland. For example, Plaintiffs write:

Defendants CREG and Frederick Ward have begun development of the Mitchell Farm by seeking and in some instances receiving approvals for the Freight Terminal. Defendants CREG and Frederick Ward have, among other things, **submitted concept plans, Forest Stand Delineation Plans, Forest Conservation Plans, Preliminary Plans, Site Plans, Stormwater Management Plans, and presented multiple versions of a traffic impact study.**

Amended Complaint, ¶34 (emphasis supplied); *see also id.*, ¶¶1, 2, 3, 8, 52, 53. Exhibits A-D attached to Mitchell’s Memorandum consist of the Forest Conservation Plan (Exhibit A), the Landscape Plan (Exhibit B), the Preliminary Plan (Exhibit C), and the Site Plan (Exhibit D). Exhibit E is a copy of the Development Advisory Committee Minutes, a portion of which Plaintiffs quote verbatim at paragraph 3 of their Amended Complaint. Nonetheless, Plaintiffs ask this Court to strike Exhibits A-E to Mitchell’s Memorandum, which are undeniably expressly referenced by the Amended Complaint.

It is well-settled in Maryland that in addition to the facts alleged in the Complaint, the Court may consider documents expressly referenced in the Complaint because they merely supplement the allegations and cannot be controverted. *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015) (agreement could be considered on motion to dismiss because it “merely supplements the allegations of the complaint, and the document is not controverted”); *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 710 n.4 (2015) (permitting consideration of agreement referenced in complaint). In this case, Plaintiffs expressly premise their lawsuit on the submission of Development Plans to the County and directly quote from a document (Exhibit E) related to the County’s review of those Development Plans. Without basis in law or logic, Plaintiffs improperly ask this Court to strike the exact documents expressly referenced by

their Complaint and which merely supplement the allegations raised by Plaintiffs in their Complaint.

Moreover, the Court may also consider facts of which it may properly take judicial notice, such as adjudicative facts in “official public documents.” *Chesek v. Jones*, 406 Md. 446, 456 n.8 (2008) ; *see also* Md. Rule 5-201 (permitting judicial notice of fact “not subject to reasonable dispute”); *Faya v. Almaraz*, 329 Md. 435, 444 (1993) (“to place a complaint in context, we may take judicial notice of additional facts that are either matters of common knowledge or capable of certain verification.”). Here, Exhibits A-E are public documents contained within Harford County’s subdivision record. The Harford County Department of Planning and Zoning has made the public records relating to the proposed development easily accessible online at a dedicated link on the County’s webpage: <https://hcgweb01.harfordcountymd.gov/weblink/0/fol/8098795/Row1.aspx>. These documents are public records of which this court should take judicial notice. The authenticity of these public documents is easily verified by their status as public records. Exhibits A-E to Mitchell’s Memorandum are properly before the Court and Mitchell respectfully urges this Court to deny Plaintiffs’ Motion to Strike.

II. The Highlighted Portions of Mitchell’s Memorandum, Set Forth in Exhibit 1 to Plaintiffs’ Motion to Strike, Are Properly Before this Court.

Plaintiffs urge this Court to strike matters of common knowledge from portions of Mitchell’s Memorandum because those portions of Mitchell’s

Memorandum are unsupported by affidavit. These portions include facts based on public records or basic information related to the express allegations in the Amended Complaint. Plaintiffs seek to strike: 1) Mitchell's reference to the County's webpage containing public records related to the proposed development (Ex. 1 to Motion to Strike, p. 1); 2) the date that Chesapeake, the developer of the proposed development, submitted its series 3 development plans to the County (*Id.*); 3) the address of the Subject Property (*Id.*, p. 3); 4) the abbreviated zoning history of the Subject Property (*Id.*); 5) the fact that the Development Plans reference a proposed warehouse development (*Id.*, p. 4); 6) that Mitchell allegedly took actions to further the proposed warehouse development (*Id.*, p. .13); and 7) that Mitchell asserts no construction has been initiated at the Subject Property in accordance with the proposed Development Plans¹ (*Id.*, p.14). All of Mitchell's assertions are based on documents contained in the public record² or matters of common knowledge which need not be supported by affidavit on a motion to dismiss. *See Faya*, 329 Md.

¹ Mitchell notes that Plaintiffs do not seek to strike Exhibit G to Mitchell's Memorandum, which is a document in the public record titled, "Plans Review Status Tables." This table confirms that the Development Plans remain pending. Development cannot occur in accordance with the Development Plans until those plans are approved. *See generally*, Harford County Code (2008, as amended), Chapter 268 ("Subdivision Regulations") and Chapter 267 ("Zoning Code").

² In 1997, the Harford County Council adopted Bill No. 97-55, which was a comprehensive zoning bill that classified the majority of the Subject Property as Light Industrial.

at 444 (1993) (“to place a complaint in context, we may take judicial notice of additional facts that are either matters of common knowledge or capable of certain verification.”). For example, the address of the Subject Property is easily verifiable and is certainly part of the public record. The same is true for every other highlighted portion of Plaintiff’s Exhibit 1 to their Motion to Strike.

CONCLUSION

For all of the reasons set forth herein, Mitchell respectfully urges this Honorable Court to deny Plaintiffs’ Motion to Strike.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 9th day of March, 2023, that a copy of the foregoing F.O. Mitchell & Bro.'s Opposition to Plaintiffs' Motion to Strike Improper and Unsupported Exhibits to and Assertions in Defendant F.O. Mitchell & Bros. Motion to Dismiss Verified Amended Complaint was served on all parties registered for services via MDEC e-filing

_____/s/_____
David S. Lynch, Esquire
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