

FILED

CIVIL DISTRICT COURT

2013 NOV -5 A 11:29

PARISH OF ORLEANS

STATE OF LOUISIANA CIVIL DISTRICT COURT

NO.

DIVISION

ALICE ATKINSON, DAVID WELLS AND JOHN MCHUGH

VERSUS

HARBOR HOME OWNERS ASSOCIATION, INC. BOARD OF DIRECTORS, MICHAEL GEORGE, PETE INGRASSIA AND LISA SCHULER; AND BONNIE LOFTIS

FILED: \_\_\_\_\_

Deputy Clerk

*why*  
~~RULE TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER OR~~  
PRELIMINARY INJUNCTION *should not issue*

CONSIDERING THE FOREGOING, it is ORDERED that Michael George, Pete Ingrassia, Lisa Schuler as the purported Directors of Harbor Homeowners Association, and Bonnie Loftis, as manager of the Harborview Condominiums, show cause on the 22 day of November, 2013 at 10 A.M. why:

1 - An annual meeting of Unit Owners of the Harbor Homeowners Association, Inc. should not be Ordered by this Court to be held at a date, time and location set by this Court;

2 - Why said individual Board of Directors, Michael George, Pete Ingrassia and Lisa Schuler, should not be declared as holding their positions invalidly or illegally and removed until such Annual Meeting for the reasons set forth in the Petition for Declaratory Judgment, Restraining Order and Request for Preliminary or Permanent Injunction;

3 - Why the individuals holding themselves out as Directors should not be restrained from transferring any funds held in any account for the Association pending the hearing and why a preliminary of permanent injunction should not issue prohibiting said persons from keeping these funds in accounts other than Orleans Parish;

*TRO denied for failure<sup>22</sup> to comply with  
La. CCP 3603  
DMS  
5 NOV 2013*

4 - Why said individuals and each of them should not be ordered to provide the following information to Unit Owners (or their attorney) at least ten (10) days before the annual meeting of Unit Owners of the Association, at the Association office, Unit 100, 500 Lake Marina Drive, New Orleans, Louisiana 70124, for inspection and copying.

A - All receipts of insurance proceeds from State Farm Insurance Company or its subsidiaries or affiliates paid into accounts for the Association, the location of each and every accounts, the amounts thereof, and any disbursements from said accounts to Unit Owners or to any other entity or entities; as well as produce the relevant State Farm policies involved;

B - Accounting for any funds received in Civil District Court action No. 2008-13169-J, Favolora Constructors vs Harbor Homeowners Association, Inc. et al, as well as any other settlement of judgments received by said Association, and disbursements from said funds and the locations of all such funds;

C - Accounting for all income, revenues from any source, insurance proceeds, etc. from the years 2011, 2012 and 2013, which has not been provided to Unit Owners in any budget or other report.

5 - Why the individuals holding themselves out as Directors should not be restrained, by Temporary Restraining Order or preliminary injunction from seeking to take any further action on the proposed Amendments to the By-Laws shown as Exhibits 5, 6 and 6a, or any subsequent amendments, until election of the Board of Directors.

6 - Why an annual meeting date, place and time should not be set by this Court for the Unit Owners to vote on a Board of Directors and any proposed changes in the by-Laws.

7 - Why a Special Master or Trustee should not be appointed by this Court, with the Special Master or Trustee's fees charged against funds of the Association, to:

i) Preside over the annual meeting of Unit Owners, call the meeting to order for purposes of receiving and counting votes for the Board of directors, and declare the parties elected and report the results to this Court; and (ii) to take over administration of all accounts of the Association and report amounts, disbursements, locations of accounts, to the newly-elected Board of Directors.

8 - Why any fines or withholding of FOB keys against any Unit Owners or their tenants should not be held invalid for reasons set forth in the Petition herein.

9 - Why any proposed Amendments to the Articles, By-Laws and Declaration of the Association proposed in 2011, 2012 and 2013 should not be held invalid and of no effect.

10 - Why said defendants should not be ordered to disclose to petitioners, for purposes of offering alternative candidates for the Board of Directors, within ten (5) five days of this Court's Order, the names and addresses of all Unit Owners, so that petitioners or candidates for the Board may contact them.

TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

IT IS ORDERED that Michael George, Pete Ingrassia, Lisa Shuler and Bobbie Loftis are herewith restrained and/or enjoined from taking any of the following actions until the hearing on this temporary restraining order or preliminary injunction set for 02 NOV, 2013 at 10 .M. as follows:

       1 - Diverting or transferring any funds from any accounts of Harbor Homeowners Association, Inc., whether insurance or settlement funds received by the Association, or any other

revenues, except any such payments from said accounts necessary to pay the monthly obligations of the Association;

\_\_\_\_\_ 2 - Taking any action on proposed "Amendments to By-Laws" of the Association or from seeking to acquire or exercise "Ballots" regarding said proposed amendments;

\_\_\_\_\_ 3 - Enforcing any "fines" against Unit Owners until the validity of said fines is determined.

\_\_\_\_\_ 4 - Seeking to run for election to the Board of Directors until they have complied with the requests to provide full financial records to the Unit Owners, including those involving insurance proceeds received and disbursements, funds from settlements of judgments received by the association, and all records of other income received by the Association and disbursements for the period 2011, 2012 and 2013; and

\_\_\_\_\_ 5 - Accounting for income received from "regular monthly assessments" (dues) in 2005-2008 and disbursements from said funds.

~~IT IS FURTHER ORDERED that petitioners post bond in the amount of \$ \_\_\_\_\_ to cover any damages which the parties restrained may prove they have sustained as a result of this Restraining Order or Preliminary Injunction.~~

SO ORDERED, at New Orleans, Louisiana, this 5 day of

NOV

, 2013.

(Sgd.) Robin M. Giarusso

\_\_\_\_\_  
J U D G E

Serve:

1 - Michael George, 519 Jewel Street, New Orleans, Louisiana 70124

2 - Pete Ingrassia, 500 Lake Marina Drive, Unit 234, New Orleans, Louisiana 70124

3 - Lisa Schuler, 500 Lake Marina Drive, Unit 324, New Orleans, Louisiana 70124

4 - Bonnie Loftis, 500 Lake Marina Drive, Suite 100, New Orleans, Louisiana 70124

NOTE TO PROCESS SERVER: Ms. Loftis is present as manager of the complex in suite 100 on Mondays, Wednesdays and Fridays.

Served on Bonnie on Nov. 6, 2013 at 12:30 pm.

ATTORNEY'S NAME: Harrington Jr, Overton 06599  
AND ADDRESS: 301 Huey P Long,  
Gretna LA 70053-0775

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

NO: 2013 -- 10431 3 DIVISION: G SECTION: 11  
ATKINSON, ALICE ET AL VERSUS HARBOR HOMEOWNERS ASSOCIATION, INC. ET AL

CITATION

TO: BONNIE LOFTIS  
THROUGH:  
500 LAKE MARINA DRIVE  
SUITE 100  
NEW ORLEANS LA 70124

1064-13  
Atkinson  
McHugh  
Wells  
vs  
HH7

YOU HAVE BEEN SUED: You are ordered to show cause November 22, 2013 at 10:00 AM as prescribed in the annexed copy of petition as prayed for. You must either comply with the demand contained in the petition FOR DECLARATORY JUDGMENT W/ EXHIBITS 1-12 ATTACHED

a certified copy of which accompanies this citation, or file an answer or other legal pleading in the office of the Clerk of this Court, Room 402, Civil Courts Building, 421 Loyola Avenue, New Orleans, LA, within fifteen (15) days after the service hereof under penalty of default

ADDITIONAL INFORMATION

Legal assistance is advisable. If you want a lawyer and can't find one, you may call the New Orleans Lawyer Referral Service at 504-561- 8828. This Referral Service operates in conjunction with the New Orleans Bar Association. If you qualify, you may be entitled to free legal assistance through the New Orleans Legal Assistance Corp. You may call them at 800-624-4771 or 504-525-4431.

\*\*\*\*\*COURT PERSONNEL ARE NOT PERMITTED TO GIVE LEGAL ADVICE\*\*\*\*\*

IN WITNESS HEREOF, I have hereunto set my hand and affix the seal of the Civil District Court for the Parish of Orleans, State of LA November 5, 2013

Clerk's Office, Room 402, Civil Courts  
421 Loyola Avenue  
New Orleans, LA

DALE N. ATKINS, Clerk of  
The Civil District Court  
for the Parish of Orleans  
State of LA

by *[Signature]*  
Deputy Clerk

SHERIFF'S RETURN

(for use of process servers only)

PERSONAL SERVICE

On this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ served a copy of the w/i petition  
FOR DECLARATORY JUDGMENT W/ EXHIBITS 1-12 ATTACHED

On  
BONNIE LOFTIS

THROUGH:

Returned same day

No.

Deputy Sheriff of \_\_\_\_\_

Mileage: \$ \_\_\_\_\_

PAPER

RETURN

SERIAL NO.

DEPUTY

PARISH

DOMICILIARY SERVICE

On this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ served a copy of the w/i petition  
FOR DECLARATORY JUDGMENT W/ EXHIBITS 1-12 ATTACHED

On  
BONNIE LOFTIS

THROUGH:

by leaving same at the dwelling house, or usual place of abode, in the hands of \_\_\_\_\_ a person of suitable age and discretion residing therein as a member of the domiciliary establishment, whose name and other facts connected with this service I learned by interrogating HIM / HER the said \_\_\_\_\_ BONNIE LOFTIS

being absent from the domicile at time of said service.

Returned same day

No.

Deputy Sheriff of \_\_\_\_\_

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

NO. 13-10431

DIVISION G

SECTION 11

Alice Atkinson

VERSUS

Harbor Homeowners

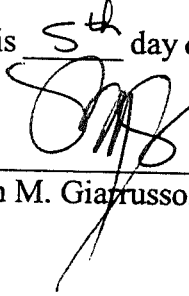
This matter will come before the Court for hearing on the 22 day of November,  
20 13, at 10:00 10:00 (a.m./p.m.) in Division G on an application for a preliminary  
injunction and/or a dissolution or modification of a temporary restraining order, and/or a  
dissolution or modification of a preliminary injunction.

ORDER

IT IS ORDERED that the application in this matter is to be heard upon the verified  
pleadings and/or supporting affidavits and oral arguments only. A copy of this order shall be  
served upon the defendant in conformity with La. C.C.P. art. 3609.

IT IS FURTHER ORDERED that the applicant for the preliminary injunction file their  
affidavits not later than seventy-two (72) hours prior to hearing, and that the defendant in rule file  
their affidavits not less than twenty-four (24) hours prior to hearing.

SIGNED, NEW ORLEANS, LOUISIANA this 5<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
Judge Robin M. Giarrusso, Judge Division G

A TRUE COPY  
TLL  
NOV 22 2013 CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
LOUISIANA



CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LOUISIANA

FILED

2013 NOV -5 A 11:33

NO.

DIVISION

DISTRICT COURT

ALICE ATKINSON, DAVID WELLS, AND JOHN MCHUGH

VERSUS

HARBOR HOMEOWNERS ASSOCIATION, INC. BOARD OF DIRECTORS,  
MICHAEL GEORGE, PETE INGRASSIA, LISA SCHULER; AND BONNIE LOFTIS,  
AS PRESIDENT OF FONTAINE MANAGEMENT COMPANY (managers of  
HARBORVIEW CONDOMINIUMS)

Filed: \_\_\_\_\_

Deputy Clerk

PETITION FOR DECLARATORY JUDGMENT:

- (1) ORDERING HOLDING OF ANNUAL MEETING IN ACCORDANCE WITH ARTICLE 1, SEC. 2.2 OF THE BY-LAWS OF HARBOR HOMEOWNERS ASSOCIATION, INC.; ALSO REQUEST FOR RESTRAINING ORDER, PRELIMINARY AND/OR PERMANENT INJUNCTION
- (2) RULE TO SHOW CAUSE WHY SAID DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR FAILURE TO PROVIDE DOCUMENTS PREVIOUSLY ORDERED BY THE COURT IN A CONNECTED MATTER AND/OR AN ORDER BY THIS COURT TO PROVIDE SAME AT LEAST TEN (10) DAYS PRIOR TO SAID ANNUAL MEETING;
- (3) PETITION FOR DECLARATORY JUDGMENT DECLARING PRESENT BOARD OF DIRECTORS TO BE INVALIDLY CONSTITUTED DUE TO FAILURE TO COMPLY WITH SAID BY-LAWS UNDER ART. 3, SECTION 3.3 OF SAID BY-LAWS; AND
- (4) PETITION FOR DECLARATORY JUDGMENT TO HOLD BALLOTS REQUESTED BY BOARD OF DIRECTORS IN 2011, 2012 AND 2013 TO BE INVALID AS REQUESTED BY ILLEGALLY CONSTITUTED BOARD OF DIRECTORS AND TO HOLD SUCH PROPOSED REVISIONS, AMENDMENT AND ADDITIONS TO BY-LAWS, DECLARATIONS AND ARTICLES OF HARBOR HOMEOWNERS' ASSOCIATION INVALID AND TO BE AND RESTRAINED OR ENJOINED UNTIL THE ANNUAL OR A SPECIAL MEETING REQUIRED BY SAID BY-LAWS IS HELD.
- (5) PETITION FOR DECLARATORY JUDGMENT DECLARING THAT DEFENDANTS SHOULD PROVIDE ALL INFORMATION REGARDING INCOME TO UNIT HOLDERS FROM ALL SOURCES INCLUDING INSURANCE PROCEEDS, SETTLEMENTS AND INCOME OF ANY NATURE PRIOR TO SAID ANNUAL MEETING; AND
- (6) REQUEST FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND/OR PERMANENT INJUNCTION PROHIBITING DEFENDANTS FROM DISPOSING OF ANY MONIES IN ANY ACCOUNTS OF THE ASSOCIATION OR HELD FOR THE ASSOCIATION PENDING ANNUAL MEETING (EXCEPT FOR PAYING NORMAL MONTHLY EXPENDITURES);
- (7) REQUEST FOR RESTRAINING ORDER, PRELIMINARY INJUNCTION

- (8) REQUEST FOR RESTRAINING ORDER AND/OR INJUNCTION PROHIBITING COLLECTION OF FINES ARBITRARILY ASSESSED AGAINST PETITIONER ALICE ATKINSON AND WITHHOLDING FOB KEY PRIVILEGES TO DAVID WELLS' TENANT UNTIL SUCH AUTHORITY FOR SUCH ACTIONS IS ESTABLISHED TO THE COURT'S SATISFACTION, SAID RESTRAINING ORDER AND/OR TO APPLY ALSO TO ANY SIMILARLY-SITUATED UNIT OWNERS OR TENANTS SIMILARLY AFFECTED BY FINES OR WITHHOLDING OF FOB KEY ACCESS PRIVILEGES
- (9) REQUEST THAT THE COURT APPOINT A SPECIAL MASTER OR TRUSTEE FOR THE PURPOSE OF CALLING AND OF OPENING ANNUAL MEETING AND CONDUCTING SAME IN ACCORDANCE WITH ELECTION OF BOARD OF DIRECTORS AND TO DECLARE NAMES OF PARTIES ELECTED TO BOARD AND FOR THE PURPOSE OF OVERSEEING ANY ACCOUNTS OF THE ASSOCIATION, TO BE PAID FROM GENERAL FUNDS OF THE ASSOCIATION
- (10) REQUEST FOR RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION THAT MICHAEL GEORGE, PETE INGRASSIA AND LISA SCHULER OR ANY OF THEM BE PROHIBITED FROM SEEKING TO OBTAIN VOTES, BALLOTS OR PROXIES FOR THE ANNUAL ELECTION UNTIL THEY HAVE PROVIDED UNIT HOLDERS WITH FINANCIAL, INSURANCE, BANK AND OTHER RECORDS REQUESTED BY PETITIONERS HEREIN

The Petition of Alice Atkinson, David Wells and John McHugh, of the age of majority and residents of Orleans Parish, with respect represent:

1.

Petitioners Alice Atkinson and David Wells are homeowners of individual units in Harborview Condominiums, located at 500 Lake Marina Drive, New Orleans, Louisiana 70124, Units 230 and 231, respectively, and as such are also shareholders (called "Unit Owners") of the Harbor Homeowners' Association. John McHugh, by virtue of marriage to Alice Atkinson, has an interest in said Petition, Restraining Order and Injunction as a spouse of an owner as provided in Article 1 of the Articles of Incorporation. (Exh. 1 hereto).

2.

Made defendants herein are:

A - The persons purporting to be the Board of Directors of the Harbor Homeowners' Association, specifically known to be Pete Ingrassia, Michael George and Lisa Schuler, who was appointed to serve as a Board Member until the next regular



meeting of the members and shareholders of the Association which is a valid temporary appointment according to the By-Laws of the Association but which lapses until she is re-elected at the annual meeting (see Exh. 2 "By-Laws", except that the validity of the Board members appointing her is challenged herein);

3.

Also made a defendant as to one issue involved in the request for restraining order and injunction, namely the arbitrary assessment of a fines and withholding of FOB keys, is Bonnie Loftis, who has arbitrarily assessed a fine against petitioners under a fine list which was passed subsequent to 1983 and which subsequently was held invalid by the presiding judge in the matter of Stephen Andrew Oats vs Harbor Homeowners Association, Inc. et al, No. 2004-13993-"I" by Judgment dated July 1, 2005 (annexed as Exh. 3). The Judgment was not appealed and is final. Ms. Loftis's company, Fontaine Management, Inc. serves as day-to-day of Harborview Condominiums. Her role, if any, in other matters herein of which Petitioners are aggrieved is unknown at present.

4.

This Court has jurisdiction over this matter as the Condominiums themselves, located at 500 Lake Marine, Drive, New Orleans 70124, the Association, which is incorporated in Orleans Parish, and the individual defendants are residents of Orleans Parish (except possibly Bonnie Loftis but she and her management company. Fontaine Management, Inc., oversees day-to-day operations of the Complex at 500 Lake Marina Drive, New Orleans 70124.

The legitimacy of Michael George as a director is challenged due to the fact he has sold his units in the

condominium complex in 2009, according to information and belief, and thus is not a Unit Owner as required by Art. 3, Sect. 3.4 of the By-Laws, Exh. 2), and no replacement director has been appointed or elected since that time in his place and stead.

I.

PETITION FOR DECLARATORY JUDGMENT ORDERING ANNUAL MEETING AND  
REQUEST FOR RESTRAINING ORDER AND/OR PRELIMINARY AND PERMANENT  
INJUNCTION

5.

Despite repeated requests from one or more of the Petitioners herein, the Board of Directors have failed to hold an annual meeting since the annual meeting of 2010, held late in early 2011 and thus invalid, despite the requirements of Article 2, Section 2.2 "Annual Meeting" stating: "the annual meetings of the Association shall be held each year within thirty (30) days before the beginning of the fiscal year. At such annual meetings the Board of Directors shall be elected by ballot of the unit owners in accordance with the requirements of Section 3.4 of these By-Laws." See Exh. 2. The word 'shall' is not discretionary and does not allow discretion to ignore the proper way to elect directors. Thus, any holding of office by any of the Directors listed after 2011 is void and they do not hold valid office in 2012 or 2013.

It is petitioners' position that this meeting was invalid as being in violation of said By-Laws as not held in the time frame required, but defendant George and defendant Ingrassia have simply ignored requirements of the articles, Declarations and By-Laws for several years. Even if the 2010 meeting can be deemed valid, there were no 2011, 2012 or 2013 meetings held and there is as of this Petition no validly-elected Board of Directors and none of the "directors" listed, Messrs. George and

Ingrassia and Ms. Schuler, therefore are validly-elected and their actions as directors are likewise invalid.

As Ms. Schuler was "appointed" by invalid directors, her serving as director is likewise void and of no effect.

Thus, in fact, as there are no longer valid directors, there are no persons empowered any longer to call an annual meeting.

6.

The Board since then, apparently to avoid many issues raised by Petitioners herein, now never holds annual meetings, but instead seeks to "pass" proposed amendments to by-laws discussed in detail below, all or most of which appear to benefit the individual Board members and seek to do so by "Ballots"--in lieu of an annual meeting. The Board and especially members Michael George and Pete Ingrassia who are the more "permanent" members of the illegally-constituted Board, have been sending out these "ballot requests" for three years in lieu of a meeting--but while if arguably a number of changes in Articles or By-Laws might be achieved by ballot, it appears the Board has never obtained the necessary 51% of ballots required to pass any of their proposals. As the ballots are never tied to any duly-called meeting, they are invalid and even in counting ballots, ballots issued if any) in 2011 are invalid for proposals made in 2012 or 2013 as they could have only applied to proposals made as of those dates and could not apply retroactively to earlier years or prospectively to future years. This is also true of ballots in 2012 and 2013. The Court will note (see Exh. 5 and 6, as well as Exh. 6a) that in the 2012 and 2013 proposed Amendments, many set forth hereinbelow, the "Board" requests approval of the same proposed amendments, indicating to Petitioners that the Board has never received

enough "ballots" to pass the proposed amendments or the Board would not again be asking for approval of the same amendments.

Petitioners seek in this regard the following:

1 - A declaratory judgment that the Board members no longer hold valid office and an order that an annual meeting be scheduled for the purpose of electing Directors, as the by-laws provide that Directors shall be elected at the annual meetings and therefore this "Board" has held office for almost three years without being duly-elected. A director may be appointed to replace a Director who resigns or no longer qualifies and thus the illegally-constituted Board appointed Lisa Schuler to replace a Board member who sold his unit, but her term would lapse at the annual meeting and she must be re-elected at that time.

2 - A restraining order, preliminary and permanent injunction against these board members taking any action until the annual meeting for election of the Board of Directors, except for payment of regular monthly expenses and debts due by the Association during this period.

3 - An Order that an annual meeting be scheduled within a reasonable time of the hearing herein, in a range of 30-45 days from the date of this Court's Order; and for the Court to appoint a Special Master to open the meeting, receive all ballots or proxies to vote on the Board, and count said votes and issue a declaration as to who has been elected to the Board, said fee of the special Master to be paid out of assets or present reserves of the Association.

4 - A further Order that the Board comply with requests of Petitioners to provide documents requested for up to eight years in some instances but for several years in all specific requests

set forth hereinbelow, but never provided; and that either the Board show cause why it should not be held in contempt of Court for failing to abide by an earlier decision in the matter entitled Stephen Andrew Oats vs Harbor Homeowners Association, Inc., CDC No. 2004-13993-"I", dated July 1, 2005. See Exh. 3. Although Oats later dismissed his case without prejudice, on the date set in the Order to provide documents listed below, the defendants had not provided the documents and were in contempt of court and despite requests from these petitioners, the documents have not been provided for more than eight years!

Alternatively, an Order requiring the Board to provide said documents within least ten (10) days before the annual meeting, in order for Petitioners and other affected Unit Holders in the condominium to inspect same for purposes of deciding their votes for directors.

5 - A restraining Order prohibiting said individuals, Michael George, Pete Ingrassia or Lisa Schuler from seeking to obtain "ballots", "proxies" or other votes as future Directors until they have provided the requested documents since Unit Holders not aware of many of these issues are entitled to review same to determine whether they wish to cast votes for any of those individuals or for competing candidates for seats on the Board.

6 - A restraining Order prohibiting Michael George from running for office as a Director as he has sold his unit(s) in the building in 2009 and it is provided that a Board member who has sold his units may not serve on the Board (see Exh. 2, art. 3.4 of By-Laws. P. 9), until Michael George shows legal grounds why under the Declarations, Articles or By-Laws he is entitled to run for office.

III.

Request for Specific Declaratory Judgment, Restraining Order, Request for Preliminary and Permanent Injunction With Regard to Records, Revenues and Financial Items Specified Hereinbelow and With regard to Invalidating "Proposed Amendments for 2011, 2012 and 2013 Which Are not Being Submitted at an Annual or Duly- Called Special Meeting

7.

It appears to Petitioners that, to avoid the meeting, by the following actions, the Board thus now has achieved that it operates solely on its own when it pleases and administers all common funds at its own discretion and without accounting for income or expenditures. Under the Declarations creating the condominium Exh.7, art. VIII, paragraph 1), the Board is to render an annual accounting of assets, monies received, and monies paid out, including any insurance proceeds and disposition thereof. Instead, an improper and thus invalid "half budget" is sent to Homeowners stating what the Board did spend, but never stating what monies are received or what assets are in the Homeowners general fund. Exh. 8. The Unit Owners thus have not received any accounting of monies received for three years, including any insurance proceeds or settlements, the latter discussed hereinbelow. This now violates Condominium Declaration 11, "Accounting Records" which requires homeowners be shown revenues. Exh. 9.

Given to petitioners and in their possession, condominium owner Erika Boerr see E-Mails, Exh.10) has repeatedly requested meetings allowed by the above to inspect the books and records which request has never been honored. She notes in her E-Mails it is her fourth request, not responded to. Petitioners herein have made similar requests without success. See Affidavits to Petition of David Wells, Alice Atkinson and John McHugh.

8.



The Board takes the following actions to avoid an annual meeting, proper accounting and opportunity for homeowners to vote in a new Board or to debate the proposed changes submitted by the Board as to which it requests "Ballots" on the subject rather than holding a meeting. However, the Court in the Oats matter referred to above held invalid all changes in By-Laws, etc. prior to its decision in July, 2005 and stated only the 1983 original Articles, Declarations and By-Laws were applicable. See Exh. 6b. Thus, all methods used thereafter are simply invalid, unless adopted at an annual or duly-called special meeting, described as follows,

The "Board" then (see below for specific examples) tries to use these methods and the "Ballot" approach in lieu of annual meetings to strip Unit Holders of long-vested rights and also to avoid financial obligations to the Unit Holders, as explained herewith. Ironically, it is provided in Article II, Sect. 2.10 of the valid 1983 By-Laws that proxies are invalid after 180 days. See Exh. 11. There is no time set for "Ballots" which may be the way the Board avoids the time limits on proxies, so this Petition also requests that this court state that ballots shall be treated like proxies and be declared invalid after 180 days. Ballots have been requested every year since 2011 in lieu of an annual meeting.

The Court will see that many of the proposed amendments (Exh. 12) below appear bizarre on their face to the Court itself, especially if the Court was itself a Unit Holder and some appear intended as a retaliation against one or more of the individual petitioners in this matter who have repeatedly complained to the Board. All of the items discussed below are found in the 2011, 2013 and 2013 proposed Amendments and

adversely affect Unit Holders and strip them of vested rights.

Examples:

By way of specific illustrative examples which should concern the Court were it a Unit Holder, single-spaced to save on length:

A - The Board sent out requests for ballots on its proposal: "All regular monthly assessments [dues] made and/or charged from August, 2005 through August, 2008 are re-characterized as special assessments and everyone who paid them is given full credit for those payments." See Exh. 12, 2012 Proposed Amendment No. 10, p. 3. This should immediately alert the Court, due to the time frame, that something suspicious is going on. While it is believed insufficient ballots were received, nevertheless this is the adverse effect of this proposal unclear to less-informed Unit Holders, especially those who purchased their units after 2008 and do not know the history below on the dues. The best estimate of the total dues (i.e., "regular monthly assessments") paid in this period is approximately \$1,000,000 by persons unable to live in the complex, after Katrina for four years.

Monthly dues for all years since 1983 when the Association was founded, are to be applied only to the following: (a) common electricity; (b) water payable to Sewerage and Water Board; (c) insurance on the building itself, presumably including worker's comp and liability (d) light maintenance. Exh. 2, Art. 9 of 1983 By-Laws. Any use of dues for any other reason is in violation of the Articles, By-Laws and Declarations. Further, Art. 9 of the By-Laws permits "special assessments" for "capital improvements", so in such case, were these passed, the Board could have done in the past and can do in the future anything it wanted with this money which can be called "capital improvement" and not account to the Unit Holders for what was done with this money, even if in violation of Articles or By-Laws. Special assessments require two-thirds vote of the Unit Owners. By-Laws, Art. 9(4), p. 22 of By-Laws, Exhibit 2.

After Hurricane Katrina, for four years through 2009, the Unit Holders could not move back in to their Units as the Board supposedly was restoring the complex. However, they were forced to pay their dues for four years and have asked questions about the use of these funds and have never received a response. If dues are changed retroactively to "special assessments" there is no requirement for this money to have been spent as authorized. Thus, there would no accounting on whether the dues were spent only on the items allowed-or, for example, whether the dues were improperly used. The Board can just arbitrarily "assess" the

Unit Holders. Special assessments can only be done at the annual meeting or at a special meeting duly-called, by two-thirds of the Unit Owners. See Exh. 2, Art. 9(4), p. 22.

B- These are part of constant attempts to convert dues to assessments which grants almost sole power to Board to enter into any arrangement, whether beneficial or not, and then just subsequently "specially assess" all the Homeowners without accounting or explanation. Example: the homeowners were "assessed" \$5,000 minimum (more if unit size was larger) as a "deductible" on Hurricane Katrina insurance proceeds which the Board claimed had to be paid before insurance proceeds from State Farm could be distributed. What was done with these funds is unknown. The best estimate of this total sum is a minimum of \$500,000, but it believed that in fact the total real deductible on the 101 units was less than this sum, but there has been no accounting.

C - With regard to the insurance proceeds, estimated to be no less than \$1,500,000 and, as a Board member informally stated there was "a second distribution" perhaps adding at least \$500,000 or perhaps more, the Board has adamantly refused despite repeated requests from the Petitioners herein, to explain what was done with receipt of insurance funds from State Farm Insurance due to Hurricane Katrina-which funds were to be distributed so that unit holders could repair their units. Further, the Board will not say where the funds are kept, but the original By-Laws state that all such funds are to be kept in an account in Orleans Parish and request for an Order to this effect is made herewith.

Petitioner McHugh just two days before filing of this Petition set up a telephone conference for counsel to discuss with Stephen Andrew Oats the aspect of his case where the Court

ordered that the financial records be disclosed and the Board members, especially Messrs. George and Ingrassia never complied, and in that conversation it was learned by petitioner that Mr. Oats states that he was told, in front of another witness, by alleged Board Member Pete Ingrassia, that there was a second distribution, but that it already "had been spent". None of this has been disclosed to Unit Owners at any time and whether these funds were spent properly or improperly under the terms of the State Farm policy and the terms of the Declarations, Articles and By-Laws is not known.

Thus, the petitioners in behalf of all Unit Owners request that the Court grant a restraining order over these funds and preliminary and/or permanent injunction prohibiting the Board from disposing of any further funds until they are accounted for. Petitioners also request that a Trustee or Special Master be appointed by this Court to administer said funds.

D - The rest of the proposals (see Exh. 12, incorporating the same proposals for 2011, 2012, 2013) may be summarized as often retaliatory or even unconstitutional or violating public policy and actually seem to take rights of ownership away from unit holders and vest them in the Board and almost grant what can be termed as an irrevocable power of attorney in the Board over any future act of the Unit Owners, as if the Board owns the complex and the unit owners thus become only tenants or apartment renters with few rights.

i - Article 21(iii) of the 2012 proposals impairs the obligations of contracts and actually provides no owner may lease his unit without Board approval. This is an unconstitutional impairment of contracts. In preceding article 21(ii), it then takes away the owner's right to sell to a former convicted felon, even if the felon was last convicted 19 years earlier and has lived a spotless life since then. Felons are not prohibited by state law from renting or buying property from parties willing to rent or lease to them and this provision is against public policy and impairs the obligations of contracts.

First proposed in 2011 regarding the 2010 annual meeting, it is believed Article 21 was designed to retaliate against petitioner McHugh, who has been a principal opponent of the Board. See Exh. 12, 2012 Proposed Amendments, No. 14, pp. 4-6.

Unit Owners may not "approve" By-Laws which violate U.S. and Louisiana constitutional and other laws as to rights of Unit Owners to sell or lease their property to whomever they please.

As to the use of insurance proceeds previously mentioned, it is in fact provided in the 1983 By-Laws (Art. 2) that alterations and improvements of common elements may be made by the Board, but not if they "prejudice the rights and property of any unit owner without his written consent provided that the making of such alterations and improvements are first approved by the affirmative vote of seventy five (75%) of the Unit Owners, in number, with each unit having one vote as set forth more fully in Article 2, section 6 of the By-Laws."

This calls into question whether alterations and improvements after Katrina were made which were not authorized by the intent for the benefit of the Homeowners as certain improvements have been made which were described as "curb appeal" and "beautification" items by Board Member Pete Ingrassia. It is not clear from what source where funds for such "curb appeal" and "beautification" were obtained, but if used from the insurance proceeds, these proceeds were to be used for each unit holder to restore his or her unit and these funds have never been distributed to, for example, petitioners Alice Atkinson and David Wells, who have had to file separate lawsuits in this regard. It might be added that the next, somewhat bizarre proposals appear to relate back to the funds although not specifically disclosing the Board's intent.

ii - Thus, a proposal in the 2012 "Proposed Revisions", etc.

appears to be a clear attempt to put under the authority of the Board for whatever purpose all insurance funds due the Unit Holders and forfeit the right of the unit owner to their own insurance proceeds to repair their unit. It reads:

"Any unit owner who fails to make repairs to their condominium within five years of a catastrophic event (such as a Hurricane) forfeits their right to be paid or reimbursed from any insurance proceeds held by the Condominium association for the benefit of that unit. In the event that five years passes and the repairs are not made and no demand for reimbursement for those repairs has been made, then any insurance proceeds held in trust for that unit will revert to the common fund and no longer will be available to that unit owner." Exh. 12 (2012 amendments), Proposal 16, page 7.

This clearly cannot be made retroactive to the insurance funds received on Katrina as the unit owners are entitled to these funds. However, few if any distributions of those funds appear to have been made and in the case of Mrs. Alice Atkinson McHugh and David Wells, a portion of their lawsuits have to do with the failure of the Board to distribute to them adequate insurance proceeds to finish repairing their units. In their cases, the necessary demands have been made, but other Unit Owners may not be aware of their entitlement to these funds.

Pretermittting the issue whether this violates vested legal rights of individual Unit Owners which cannot be "voted away", as the Board could withhold the funds necessary for the repairs and then claim if the Unit Owner cannot raise needed repair funds from other sources they lose said funds for repairs, this is an incredibly odd proposal and should shock the conscience of this Court. There seems to be no legitimate interest the Board can show for making this proposal.

Thus, is the Board attempting to state that since petitioners Atkinson and Wells have been unable to finish repairing their units because the Board has refused to distribute the monies for such repairs, they now forfeit their right to the repairs?



iii - Without going into much further detail, many proposals seems retaliatory or designed to give the Board outrageous powers in the event of a dispute with a Unit Owner. Proposal 18. 2012 Amendments allows the Board to take over ownership of the locks on the door of the unit owner and lock him or her out in the event of a dispute. They also want the power to cut off a unit owner's electricity in the event of a dispute. E.g., Exh. 12, 2012 Proposed Amendments, Proposal 18, page 8. While it claims to be limited to non-payment of fees for 12 months, it still gives the Board power of the locks and thus in any dispute the Board can simply change the locks.

#### IV.

Restraining Order against "Fines" or Withholding access to Areas of the Building by Cutting Off FOB key to intimidate Unit Owners or Tenants Under What appears to Be No Present Authority as Not Voted on By Unit Holders

These matters apparently are administered by defendant Bonnie Loftis and her company, Fontaine Management, and thus the Restraining Order applies not just to Michael George, Pete Ingrassia and Lisa Schuler, but specifically to Bonnie Loftis.

The Board, in response to Petitioners Atkinson and McHugh-- who are being harassed now with regard to a parking place in front of the building which they use due to safety concerns about the pillars with the additional weight being added by new I-Beams-- have "fined" them without authority and there are threats by the Board to tow their vehicle, when the Board has no right to issue "fines" since the decision in Oats.

More interestingly, McHugh was told that the support beams in the complex of which he complained were in excellent shape. See E-Mail from Michael George to Alice Atkinson, Exh. 13. However, Petitioners have investigated and in litigation over the additional weight and integrity of the building, Favolora

Constructors vs. Harbor Homeowners Association, Inc. et al, No. 2008-13169-J, it has been discovered that there was a settlement in the amount of between \$250,000-400,000 plus \$100,000 in attorney's fees in a lawsuit no unit holder was told about, and receipt of which funds have not been disclosed to Unit Owners, and it appears that the recovery had to do with allegations by the Board that in fact the weight-bearing beams are defective. Whether true or not, no Unit Holder has been told about receipt of these funds.

Petitioners demand an accounting for these funds, a statement of their location and an Order restraining the Board Members from distributing these funds in any respect until there is an annual meeting and to disclose the bank location and numbers wherein these funds were deposited.

H - A further example involves Russell A. Easley, the tenant of petitioner David Wells, and which appears retaliatory against Mr. Wells and involves the restraining order or preliminary and/or permanent injunction against Ms. Loftis, as day-to-day manager of the condominium complex. Ms. Loftis demanded proof of valid insurance for Mr. Easley to be able to use the parking garage, which itself would be reasonable. However, she then required Mr. Easley to submit unnecessary personal information such as date of birth, social security number, and information Mr. Easley, fearing modern ways to sue such information to break into bank accounts, etc., refused to give stating he would produce proof of valid insurance but nothing else. Retaliating, Ms. Loftis revoked Mr. Easley's use of what is called a "FOB key", which can be incapacitated, and now Mr. Easley cannot use the parking garage, the main lobby, the gym and the sauna and has to park his vehicle elsewhere and can only use one entrance to enter his leased unit.

It is petitioners' position that since the Oats decision above, the Board has never validly gotten its rules, regulations, fines, etc. properly approved at annual or duly-called special meeting of the Unit Owners and that all their fines and retaliatory denial of FOB access keys is wholly invalid and Petitioners move that a temporary restraining order or injunction prohibiting the individual Board members and Ms. Loftis, as day-to-day manager of the condominium, from denying any FOB key access to any Unit Holder and especially to Mr. Easley as an example, until the validity of her authority to do so has been established.

I - As an extremely important final example of non-compliance referred to above, the Board of Directors does not submit a proper Budget for the Unit Owners to review but submits a "half-budget" showing proposed future annual expenditures only. Since at least the beginning of 2011, the Unit Owners have no idea how much has been received by the Board in revenues, dues, assessments or from other sources and Petitioners move that the Court also require that complete budgets be furnished from 2011-2012 and 2013 so they can determine revenues from all sources, or that the Board members be ordered to submit same prior to any annual meeting. See Exh. 8 ("half budgets").

II - Petitioners request that the defendants be ordered to Disclose, by the date of the hearing on the Restraining Order or Injunction, names and addresses of all Unit Owners in order for their proposed Directors to be able to contact same and request their proxies, ballots or votes. Due to many sales, some owners living outside the city and state, and other factors, Petitioners know the names of only about 50% of the Unit Owners and thus the defendants would be able to contact the remaining

50% requesting votes while Petitioners herein would be unable to contact them to solicit votes.

V.

RESERVATION OF ANY CAUSES OF ACTION ARISING FROM ANY MATTERS DISCOVERED AFTER PRODUCTION OF REQUESTED DOCUMENTS

As petitioners do not have information which might support any of the following causes of action, these are reserved by Petitioners Alice Atkinson, David Wells and John McHugh if production of said documentation leads to any of the following listed or other related causes of action: (1) any action for misuse of insurance funds or diversion of any funds; any causes of action arising from the use or misuse of settlement funds in the Favolora matter set forth hereinabove or other funds received, including "dues" from the years 2005-2009; (ii) any causes of action arising from improper allocation of said funds or failure to pay funds if improperly allocated; any causes of action arising from misuse of general funds in said homeowners' accounts or misdirection of any such funds or application of funds to any improper recipient; (iii) any failure to oversee any Trustee or agent in application of any funds of the Association, however received; (iv) any claims sounding in fraud, breach of fiduciary duty. All such claims or any related claims are expressly reserved herewith and petitioners reserve the right to amend said Petition herein if any such causes of action are subsequently discovered.

Petitioner David Wells reserves the right to amend in this action or to amend in his present suit, David Wells vs Harbor Homeowners Association, Inc., No. 2012-10408-G, Civil District Court. Petitioner Alice Atkinson likewise reserves her right to amend in this case or, if appropriate, in her case involving failure to pay repairs monies in Alice Atkinson vs Harbor Homeowners Association, No. 09-8867-J.

WHEREFORE, Petitioners move for:

1 - A Declaratory Judgment as prayed for and as set forth in the Rule to Show cause Why Declaratory Judgment should not issue, particularly with regard to ordering that a valid annual meeting be held for proper election of a Board of Directors;

2 - A Temporary Restraining Order or Preliminary Injunction Restraining or enjoining the "Board of Directors" and individual members thereof, Messrs. George and Ingrassia and Ms. Schuler from seeking to obtain "Ballots" to pass their Proposed Amendments to the Articles, Declarations and By-Laws as well as restraining the Board and its individual members from disbursing any funds held from insurance proceeds and settlements of litigation until ruled upon in the Declaratory Judgment and/or the Preliminary of Permanent Injunction Hearing, except for normal monthly expenditures for monthly obligations now due and payable (i.e., lights, water, etc. and any loan payments due third parties and for appointment of a Trustee to oversee these funds and their disbursement; and

3 - After due proceedings are had, a preliminary and/or permanent injunction against the Board and its members enjoining them from taking the actions complained of herein and specifically designated in the Order annexed hereto and against Ms. Loftis with regard to the specific matters alleged as to Ms. Loftis.

4 - An order or judgment ordering the members of the Board to turn over all financial and other information hereinabove requested to the Unit Owners at least ten (10) days before the annual meeting, specifically to each petitioner and with copies available for inspection any all Unit Owners in the office of the Association during business hours, so that they may consider

the effects of this information before deciding which unit owners to vote for as members of the Board of Directors.

The records specifically requested as to which Petitioners seek a court Order are:

A - A listing of all accounts held by the Association including bank, account number, locations of exact location where funds are held, for the periods starting with 2011 through the present date and furnishing said accounts for inspections by the Homeowners as to income and disbursements, including from whom monies were received and to whom payments by check or wire transfer have been made;

B - All receipts of insurance funds on Hurricane Katrina payments from State Farm Insurance, including records of receipts from State Farm of funds whether by check, wire transfer or other means. This also includes any "second distribution" of funds from State Farm which is believed to have been received; and copies of the applicable State Farm policies.

C - Complete records, including checks or wire transfers showing disbursements from the funds in item B, above, as to all monies paid out by the "Board" or any individual member of the Board.

D - Complete report of all income from any settlements of judgments received by the Association from 2011 to date, including specifically the settlement received in the Favorola Constructors vs Harbor Homeowners Association, Inc. et al matter set forth above, being no. 2008-13169-J of the Civil District Court, location of said funds, and any disbursements from these funds.

5 - An order restraining the defendants from transferring or diverting any funds from bank or other financial accounts; and



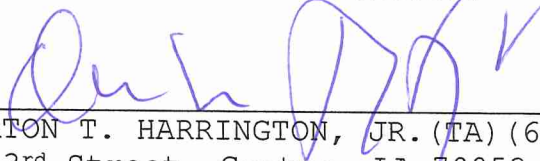
ordering them to produce the locations thereof (bank, account number, branch) and produce the latest statements showing present account balances and also to make said accounts for available for inspection and copying at the office of the Association (500 Lake Marine Drive, Unit 100, New Orleans 70124).

6 - An order presently restraining or enjoining Messrs. George and Ingrassia and Ms. Schuler, or any representative thereof, from seeking to obtain ballots, proxies or votes for them from unit owners or to seek to obtain votes for their re-election until they have complied with the Court order that they disclose all relevant financial information and other documents above to the Unit Owners as sought in Article 4 hereinabove.

7 - An order restraining enforcement of "fines", denial of access through cutting off FOB keys, or other actions against Owners or their lessees until the validity of the regulations under which they claim authority to do so is determined.

8 - An Order that defendants disclose the names and addresses of all Unit Owners so that Petitioners may contact them prior to any annual meeting for election of Directors.

9 - An Order appointing a Special Master or Trustee: (1) to oversee the annual meeting for election of Directors, issue any additional orders as may be fit, open the meeting for the purpose of receiving in-person votes, proxies or ballots and counting same and reporting the results to the Unit Owners and to this Court; and (ii) take over administration of all accounts of the Association and report amounts, disbursements, locations to this Court and the newly-elected Board of Directors.

  
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OVERTON T. HARRINGTON, JR. (TA) (6599)  
718 3<sup>rd</sup> Street, Gretna, LA 70053  
Tel.: 504-232-0236; fax: 504-366-2105  
Attorney for Petitioners Alice  
Atkinson, David Wells and John McHugh

V E R I F I C A T I O N

STATE OF LOUISIANA

PARISH OF JEFFERSON

BEFORE ME, the undersigned authority, personally came and appeared Alice Atkinson, 500 Lake Marina Avenue, Unit 230, New Orleans, Louisiana 70124, who, being by me duly sworn, deposed and said that she is one of the Petitioners in this matter and has read the allegations and prayer for relief and that the same are true, correct and complete to the best of Affiant's knowledge, information and belief.

Alice Atkinson  
ALICE ATKINSON

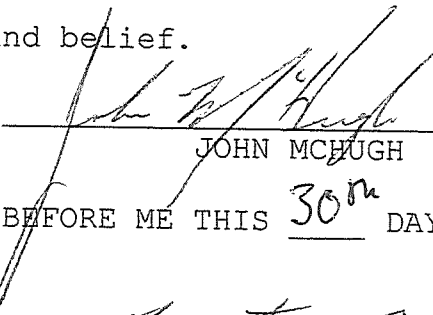
SWORN TO AND SUBSCRIBED BEFORE ME THIS 30<sup>th</sup> DAY OF OCTOBER, 2013.

Hunter Bienvenu  
HUNTER BIENVENU - NOTARY PUBLIC

V E R I F I C A T I O N

STATE OF LOUISIANA  
PARISH OF JEFFERSON

BEFORE ME, the undersigned authority, personally came and appeared John McHugh, 500 Lake Marina Avenue, Unit 230, New Orleans, Louisiana 70124, who, being by me duly sworn, deposed and said that she is one of the Petitioners in this matter and has read the allegations and prayer for relief and that the same are true, correct and complete to the best of Affiant's knowledge, information and belief.

  
\_\_\_\_\_  
JOHN MCHUGH


SWORN TO AND SUBSCRIBED BEFORE ME THIS 30<sup>th</sup> DAY OF OCTOBER, 2013.

  
\_\_\_\_\_  
J. HUNTER BIENVENU - NOTARY PUBLIC

V E R I F I C A T I O N

STATE OF LOUISIANA  
PARISH OF JEFFERSON

BEFORE ME, the undersigned authority, personally came and appeared David Wells, who stated that he resides at 8210 Hickory Street, New Orleans, Louisiana 70118 and that he owns 500 Lake Marina Avenue, Unit 231, New Orleans, Louisiana 70124, who, being by me duly sworn, deposed and said that he is one of the Petitioners in this matter and has read the allegations and prayer for relief and that the same are true, correct and complete to the best of Affiant's knowledge, information and belief.

  
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DAVID WELLS

SWORN TO AND SUBSCRIBED BEFORE ME THIS 30<sup>th</sup> DAY OF OCTOBER, 2013.

  
\_\_\_\_\_  
J. HUNTER BIENVENU - NOTARY PUBLIC