

Served on me this 1st day of May, 2015 at 3:00 PM CTD

ATTORNEY'S NAME: Miller, Pierre 17712
AND ADDRESS: Suite 1680 Texaco Center, 400 Poydras
New Orleans LA 70130-7408

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO: 2013 -- 10431 5 DIVISION: G SECTION: 11

ATKINSON, ALICE ET AL VERSUS HARBOR HOMEOWNERS ASSOCIATION, INC. ET AL

CITATION

TO: HARBOR HOMEOWNERS ASSOCIATION, INC.
THROUGH: ITS COUNSEL OF RECORD: CALEB H. DIDRIKSEN, ESQ.
3114 CANAL STREET
NEW ORLEANS LA 70119

YOU HAVE BEEN SUED: You are ordered to show cause May 29, 2015
at 9:00 AM as prescribed in the annexed copy of petition as prayed for and according to law.
You must either comply with the demand contained in the petition
Amending Petition FOR WRIT OF MANDAMUS DECLARATORY JUDGMENT, AND DAMAGES

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 April 28, 2015

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 Barbara Gaudet
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
Amending Petition FOR WRIT OF MANDAMUS DECLARATORY
JUDGMENT, AND DAMAGES

On
HARBOR HOMEOWNERS ASSOCIATION, INC.

THROUGH: ITS COUNSEL OF RECORD: CALEB H.
DIDRIKSEN, ESQ.

Returned same day
No.

Deputy Sheriff of _____

Mileage: \$ _____

_____ / ENTERED / _____
PAPER RETURN

SERIAL NO. DEPUTY PARISH

DOMICILIARY SERVICE

* On this _____ day of _____
* _____ served a copy of the w/i petition
* Amending Petition FOR WRIT OF MANDAMUS DECLARATORY
* JUDGMENT, AND DAMAGES

* On
* HARBOR HOMEOWNERS ASSOCIATION, INC.

* THROUGH: ITS COUNSEL OF RECORD: CALEB H.
* DIDRIKSEN, ESQ.

* 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 _____
* HARBOR HOMEOWNERS ASSOCIATION, INC.

* 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

FILED

NO.: 2013-10431

DIVISION: "G"

2015 APR 27 SECTION: 11

ALICE ATKINSON, DAVID WELLS, AND JOHN MCHUGH

CIVIL DISTRICT

v.

HARBOR HOMEOWNERS ASSOCIATION, INC., *ET AL.*

FILED: _____

DEPUTY CLERK

AMENDED PETITION FOR WRIT OF MANDAMUS,
DECLARATORY JUDGMENT, AND DAMAGES

Alice Atkinson and John McHugh, petitioners, amend their original petition to read in full as follows:

1.

Petitioners, Alice Atkinson ("Atkinson") and John McHugh ("McHugh"), are competent persons of the full age of majority residing and domiciled in the Parish of Orleans.

2.

Made defendant herein is Harbor Homeowners Association, Inc. (the "Association"), a Louisiana not-for-profit corporation domiciled in the Parish of Orleans, with its registered office at 500 Lake Marina Drive, New Orleans, Louisiana. Defendant may be served and cited through its registered agent for service of process, Caleb H. Didriksen, 3114 Canal Street, New Orleans, LA 70119.

3.

Also made defendants are:

- 1) Michael George, a competent person of the full age of majority residing in the Parish of Orleans, State of Louisiana;
- 2) Peter Ingrassin, a competent person of the full age of majority residing in the Parish of Orleans, State of Louisiana; and
- 3) Lisa Schuler, a competent person of the full age of majority residing in the Parish of Orleans, State of Louisiana.

4.

Jurisdiction and venue is proper in this court in accordance with the articles governing jurisdiction and venue in the Louisiana Code of Civil Procedure.

5.

No answer has been filed in the captioned action; therefore, leave of court for this amendment is not required. La. Code Civ. Proc. art. 1033.

WRIT OF MANDAMUS

6.

Atkinson is a voting member of the Association.

7.

La. Rev. Stat. § 12:223(A) requires every Louisiana not-for-profit corporation to maintain and keep at its registered office certain documents and records, including “membership records giving the names and addresses of the members in alphabetical order....” La. Rev. Stat. § 12:223(C) provides: “Every shareholder and voting member may examine in person, or by agent or attorney, at any reasonable time, the records of the corporation listed in subsection A of this section.”

8.

By letter dated December 23, 2014, a copy of which is attached as Exhibit A, Atkinson made amicable demand to exercise the rights granted to her by La. Rev. Stat. § 12:223. Atkinson specifically requested, as set forth in Exhibit A.

Please allow this to serve as amicable demand on behalf of Ms. Atkinson to exercise the rights granted to her by Louisiana Revised Statute 12:223. Please provide in writing a place, date, and time for Ms. Atkinson, in person, or by agent or attorney, to examine the records required to be maintained by section 223(A), including but not necessarily limited to membership records giving the names and addresses of the members in alphabetical order. The statute speaks of “any reasonable time” and accordingly we would expect the actual examination to take place within fifteen days from the date of this letter.

The Association has not responded and has thereby failed or refused to permit the exercise of the rights granted to Atkinson by La. Rev. Stat. § 12:223. La. Code Civ. Proc. art. 3864 provides that this Honorable Court may issue a writ of mandamus to compel the Association to permit Atkinson the exercise of such rights.

9.

Atkinson has been required by the bad faith of the Association to institute these proceedings to enforce her rights under La. Rev. Stat. § 12:223 and therefore, in addition to an

order compelling the Association to produce the requested records, Atkinson is entitled to an award under La. Rev. Stat. § 12:264(B) of the costs and expenses of this proceeding necessary to enforce such inspection rights, and for any and all other damages sustained by her. Atkinson's damages, costs, and expenses herein include the attorney fees and court costs she has had and will have to expend to enforce her statutory rights.

10.

Atkinson shows she is entitled to a summary proceeding pursuant to La. Code Civ. Proc. art. 3781 and to have, under La. Code Civ. Proc. art. 3782, the issue of her right to a writ mandating the Association to comply with La. Rev. Stat. § 12:223 tried summarily no more than ten days after service upon the Association, reserving for separate trial Atkinson's remaining actions in accordance with La. Code Civ. Proc. arts. 464-65. Atkinson further shows that, under La. Code Civ. Proc. art. 3865, upon the filing of this petition, the Honorable Court shall order the issuance of an alternative writ directing defendant to perform the act demanded or to show cause to the contrary.

DECLARATORY JUDGMENT

11.

Under the Condominium Declaration Creating and Establishing Condominium Property Regime of "Harborview Condominiums" ("Condominium Declaration"), the administration and operation of the condominiums is the responsibility of the Association, which is composed of all the Unit Owners. Condominium Declaration, Article I, Section 6. Furthermore, the Unit Owners act by and through a Board of Directors of the Association to manage, operate and maintain the condominiums for the benefit of the Units and all the Unit Owners. Condominium Declaration, Article III, Section 1.

12.

Directors are elected at the annual members' meetings in the manner provided by the Bylaws. Articles of Incorporation of Harbor Homeowners Association, Inc., Art. 6, Section 6.1. The Board of Directors is composed of three persons, all of whom must be Unit Owners or the spouses of Unit Owners, Mortgagees or their designees, or designees of the partnership that created the condominium regime. Bylaws Art. 3, Section 3.1(b). The board members serve fixed terms of three years, staggered so that the term of one director expires each year. Bylaws, Art. 3, Section 3.3(a).

13.

In violation of the Condominium Declaration, Articles of Incorporation, and Bylaws, the Association did not hold a valid annual meeting since December 2009. Accordingly, the terms of all of the members of the board of directors have expired.

14.

The Association and the individual defendants purport to have held annual meetings since December 2009, including one on December 23, 2013; however, on each occasion, the Association failed to notice the meeting properly in accordance with the Bylaws and/or a quorum of the Unit Owners did not attend, either in person or by proxy.

15.

Atkinson and McHugh desire and are entitled to a judgment declaring no Association business was validly conducted at any such purported annual meetings of the Unit Owners because the neither Association nor the Board of Directors gave proper and sufficient notice to all Unit Owners and/or the quorum necessary to conduct business was not present at any such purported annual meeting.

16.

In 2005, this Court rendered a Judgment finding all prior attempts to amend the Bylaws were without effect because the Association's and/or the Board of Director's attempts to amend the Bylaws were defective or deficient.

17.

Since that time, the Association and/or the Board of Directors has attempted to amend the Bylaws.

18.

Atkinson and McHugh desire and are entitled to a judgment declaring those attempts defective, invalid, and otherwise without effect, and declaring the initial Bylaws of the Association remain in effect without amendment.

19.

Michael George is no longer a Unit Owner or the spouse of a Unit Owner; therefore, he is no longer eligible to serve as a Director on the Association's Board of Directors.

20.

Atkinson and McHugh desire and are entitled to a judgment declaring Michael George is no longer eligible to serve as a director on the Board of Directors of the Association.

21.

McHugh is the spouse of a Unit Owner; therefore, he is eligible to serve as a Director on the Association's Board of Directors.

22.

Atkinson and McHugh also seek and are entitled to a judgment declaring McHugh is eligible to serve as a Director on the Board of Directors.

23.

Atkinson and McHugh seek a writ of mandamus requiring the Association to schedule an annual meeting of the Unit Owners and provide proper notice in accordance with the requirements of the Bylaws of the Association, said requirements to include:

- 1) Notices sent at least twenty-one (21), but no more than thirty (30) days prior to the meeting;
- 2) Delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid;
- 3) To all Unit Owners at the address which the Unit Owner has designated in writing and filed with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner; and
- 4) Along with all nominating petitions assigned by a Unit Owner with a statement that the person nominated is willing to serve on the board that is submitted to the Secretary at least thirty (30) days prior to the meeting.

WHEREFORE, Petitioner, Alice Atkinson, respectfully prays, this Honorable Court enter and serve upon defendants an alternative writ commanding defendant, Harbor Homeowners Association, Inc., to comply with La. Rev. Stat. § 12:223 as demanded herein or to show cause to the contrary. Petitioner further prays for judgment awarding petitioner and condemning defendant to pay damages reasonable in the premises, including her attorney fees incurred to enforce her statutory rights, plus interest as provided by law, and assessing all costs to defendant.

Petitioners, Alice Atkinson and John McHugh, further pray for a judgment declaring any attempts to amend the Bylaws of Harbor Homeowners Association, Inc. are defective, invalid and otherwise without effect, and the initial Bylaws of Harbor Homeowners Association, Inc. without amendment remain in effect and are the governing Bylaws of Harbors Homeowners Association, Inc.

Petitioners, Alice Atkinson and John McHugh, further pray for a judgment declaring Michael George to be ineligible to serve as a board of director.

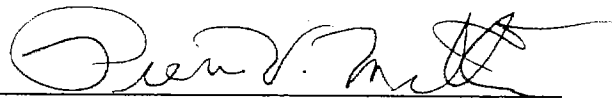
Petitioners, Alice Atkinson and John McHugh, further pray for a judgment declaring John McHugh is eligible to serve as a Director on the Board of Directors.

Petitioner, Alice Atkinson, further prays for a writ of mandamus requiring Harbor Homeowners Association, Inc. to hold an annual meeting for the purpose of electing board for the purpose of electing board members and to issue a notice of the meeting in accordance with the requirements of the Bylaws of Harbor Homeowners Association, Inc., including the following requirements:

- 1) Notices sent at least twenty-one (21), but no more than thirty (30) days prior to the meeting;
- 2) Delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid;
- 3) To all Unit Owners at the address which the Unit Owner has designated in writing and filed with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner; and
- 4) Along with all nominating petitions assigned by a Unit Owner with a statement that the person nominated is willing to serve on the board that is submitted to the Secretary at least thirty (30) days prior to the meeting.

Petitioners, Alice Atkinson and John McHugh, further pray for any and all additional legal, equitable, and general relief to which they may be justly entitled.

Respectfully submitted,



Patrick H. Patrick (14297)
Pierre V. Miller II (17712)
PATRICK MILLER LLC
400 Poydras Street, Suite 1680
New Orleans, Louisiana 70130
Telephone: (504) 527-5400
Facsimile: (504) 527-5456

Attorney for Petitioners, Alice Atkinson and John McHugh

PLEASE SERVE:

Harbor Homeowners Association, Inc.
through its counsel of record:
Caleb H. Didriksen, Esq.
3114 Canal Street
New Orleans, LA 70119

Michael George
3525 N. Causeway Blvd., Suite 633
Metairie, LA 70002

Peter Ingrassin 234
500 Lake Marina Drive, Unit 234
New Orleans, LA 70124

Lisa Schuler
500 Lake Marina Drive, Unit 324
New Orleans, LA 70124

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

NO.: 2013-10431

DIVISION: "G"

FILED SECTION: 11

2015 APR 27 A 9:54

ALICE ATKINSON, DAVID WELLS, AND JOHN MCHUGH

v.

CIVIL DISTRICT COURT

HARBOR HOMEOWNERS ASSOCIATION, INC., *ET AL.*

FILED: _____

DEPUTY CLERK

ALTERNATIVE WRIT DIRECTING DEFENDANT TO PERFORM THE ACT DEMANDED OR TO SHOW CAUSE TO THE CONTRARY

Pursuant to La. Code Civ. Proc. art. 3865,

IT IS HEREBY ORDERED that Harbor Homeowners Association, Inc., comply with La. Rev. Stat. § 12:223 as demanded in the foregoing petition or show cause to the contrary, if any there be, on the 29 day of May, 2015, at 9 o'clock A.m. why the writ of mandamus sought by Alice Atkinson and John McHugh should not be **ISSUED** and the relief she has sought **GRANTED**.

New Orleans, Louisiana, this 27 day of April, 2015.

Tiffany M. Collins, Minute Clerk
Division "G"
BY ORDER OF THE COURT

Judge, Civil District Court, Orleans Parish

PLEASE SERVE:

Harbor Homeowners Association, Inc.
through its counsel of record:
Caleb H. Didriksen, Esq.
3114 Canal Street
New Orleans, LA 70119

Michael George
3525 N. Causeway Blvd., Suite 633
Metairie, LA 70002

Peter Ingrassin 234
500 Lake Marina Drive, Unit 234
New Orleans, LA 70124

Lisa Schuler
500 Lake Marina Drive, Unit 324
New Orleans, LA 70124

A TRUE COPY

DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA