

Maryland Circuit Court for Anne Arundel County

CHRISTOPHER DAVID MCKEON,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 02-C-08-132379 I J
Charing Cross Townhouse)	
Condominium, Inc.,)	
Joseph R. DeSantis,)	
Carol Frankhouser,)	
Kathleen Marek,)	
Michael J. Helpa,)	
COMANCO, INC.,)	
Ruth Angell,)	
)	
Defendants.)	

**PLAINTIFF’S MOTION FOR AN EMERGENCY EX PARTE TEMPORARY
RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, having concurrently filed his Complaint in this matter seeking injunctive and other ancillary relief, and moves this Court for an emergency Ex parte Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”). In support of his Motion, Plaintiff respectfully refers this Court to his Verified Memorandum of Points and Authorities in Support of Plaintiff’s motion.

Respectfully submitted,

Christopher McKeon
1120 Soho Court
Crofton, MD 21114
Plaintiff, *Pro Se*
202-441-9853

Maryland Circuit Court for Anne Arundel County

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Plaintiff,)	
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COMANCO, INC.,)	
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Defendants.)	

**PLAINTIFF’S VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF HIS MOTION FOR AN EMERGENCY EX PARTE
TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and submits this verified memorandum of points and authorities in support of his Plaintiff’s Motion for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause why a Preliminary Injunction Should Not Issue.

1. Plaintiff incorporates by reference the entire record in the above-captioned action and filed concurrently with the instant motion as if fully set forth herein.
2. All cited Exhibits are attached to the instant Memorandum.
3. The Charter, Declaration, Condominium Plat, By Laws, other rules and regulations of the Association (hereinafter “By Laws”); the Maryland

Condominium Act (hereinafter “the Act”) and the General Maryland Corporation Law (hereinafter “MCL”) may hereinafter be collectively referred to as “governing laws.”

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I. PLAINTIFF’S REQUESTED TRO AND SUPPORTING ARGUMENT

5. Plaintiff seeks an Order:
- a. Temporarily restraining Defendants from further violations of the governing laws as enumerated in the Complaint and *infra* which include, but are herein not limited to: open meetings requirement; elections; email

voting prohibitions; the proper calling of meetings of the Board and Members; records maintenance and protection;

- b. Temporarily restrain Defendants from attending, conducting or transacting any Association business at the June 19, 2008 Board meeting because Defendants have not informed Members of the substantive issues regarding elections, director terms, legal status and membership of the Board upon which Defendants have indicated they will act;
- c. Temporarily removing from Defendants DeSantis, Frankhouser, Helpa and Marek any and all authority to act as directors, officers or employees of the Association, as removal is likely to be granted on the merits; and temporarily reinstating all authority to act as directors to Tom Knighten and Charlene Julien whose statutory terms are unexpired and whose unlawful removal (*infra*, 61-68) is likely to be reversed on the merits;
- d. Temporarily restraining and enjoining Defendants from destroying, concealing, manipulating or falsifying Association records and from transferring, concealing or otherwise disposing of related evidence;
- e. Ordering a special meeting of the Members to convene within 15 days of this Court's Order for the purpose of fully disclosing to the Members the instant Complaint, supporting documents and pleadings, and correcting all aspects of the elections and the Board's legal status and membership so as to enable a lawful annual meeting of the Members; Establishing rules to ensure quorum at said meeting as this Court deems appropriate; Ordering Defendant Comanco to provide lawful notice at a suitable venue,

including full disclosure of the instant Complaint, within five (5) days or less of this Court's order;

- f. Granting leave for expedited Discovery;
- g. Requiring Defendants to show cause why this Court should not issue a preliminary injunction extending such temporary relief pending an adjudication on the merits;
- h. Award Plaintiff a reasonable amount for fees and expenses incurred in connection with these proceedings pursuant to By Laws Article XVIII Section 5 and § 11-113(c) of the Maryland Condominium Act; and
- i. Order such other relief as this Court deems proper and necessary.

6. The supporting documents to the instant Complaint establish Plaintiff has attempted without success since November 2007 to inform Defendants of the violations to the governing laws caused by their actions, and to reason with and attempt to reduce or eliminate said violations.

7. Md. Rule 15-502(b) permits this Court to grant an injunction as justice may require. Plaintiff believes the instant Complaint meets the factors set forth in *Dept. of Transportation v. Armacost*, 299 Md. 392, 404-05 (1984).

7. Regarding the likelihood of succeeding on the merits, “[i]t is not necessary that the moving party's right to a final decision after trial be wholly without doubt; rather the burden is on the party seeking relief to make a prima facie case showing a reasonable probability that it will prevail on the merits.” *Punnett v. Carter*, 621 F.2d 578, 583 (3d Cir. 1980) The facts enumerating specific and multitudinous violations of the governing

laws and the irreparable harm to Plaintiff and Members thereto, documented *infra* and in the exhibits to the instant Motion, establish that Plaintiff has raised serious and substantive claims with supporting facts that make a prima facie case there is a reasonable probability of success on the merits on one or more of the claims.

8. Granting the instant motion will not cause greater injury to Defendants than denying it causes Plaintiff and Members. Indeed, Defendants' demonstrable pattern of engaging in substantive violations of the governing laws in full knowledge their actions constitute violations indicates that continuing on their business-as-usual course into the June 19, 2008 meeting without disclosing to Members the substantive electoral issues at play and the Board's subordinate role to the Members in addressing them, will in all likelihood cause even greater injury to Plaintiff and Members. Plaintiff is merely asking this Court to suspend the Board meeting until and to help guarantee the Members are able to meet and address the electoral and Board membership issues, as is their right in the By Laws. On balance, the very negligible injury to Defendants or to the Association in delaying a Board meeting is weightily offset by the substantive and irreparable injury to Plaintiff and Members that Defendants' prevention of disclosure will inure.

9. Cases involving ongoing violations and deceptive practices such as this fit squarely within the category of cases where *ex parte* relief is appropriate and necessary. As in other circumstances where a defendant shows a demonstrable pattern of violations, Defendants, by voting directors off the Board at undisclosed meetings and manipulating the ballot and terms of office, and their efforts to ignore or squelch opposition to these and other violations, demonstrate they cannot reasonably be considered disinterested or independent and will pursue their own ends regardless of fact, governing laws or the best

interests of the Association. Absent an immediate ex parte TRO with evidence preservation and restraint from conducting the affairs of the Association while the alleged violations are sorted out, evidence heard and corrections openly debated and enacted by Members, additional irreparable injury, loss, or damage to Plaintiff and Members will likely result.

10. The extraordinary relief granted by ex parte relief is necessary here. An ex parte TRO is warranted where the facts show that irreparable injury, loss, or damage will result before the defendant can be heard in opposition. The June 19, 2008 Board meeting is only two days away, Defendants are not independent, and there is no other remedy at law. Defendants' demonstrable pattern of obfuscating and obstructing Plaintiff, the sudden change of meeting date, time and to a larger venue, and Defendants' failure and refusal to disclose pertinent information regarding the agenda to both Plaintiff—who is a director and certainly entitled to disclosure—and Members reasonably supports the presumption that Defendants plan:

1.1 To bring a group too large for the routine and customary venue used for 26 years in order to obstruct and intimidate Plaintiff and Members from a fair, forthright and duly diligent investigation and remediation as the facts require;

1.2 To attempt to remediate to Defendants' best interests via Board vote matters that are statutorily and necessarily within the realm of the Members to resolve because they involve elections, terms for directors and the legal status and membership of the Board;

1.3 To prevent participation, open discussion and full disclosure to the Members of the problems and facts enumerated in the instant Complaint, causing Plaintiff and Members to suffer further loss of rights and participation in the deliberative affairs of the Association, and hence greater irreparable injury.

11. As explained more thoroughly in the Complaint and the Statement of Facts, *infra*, Defendants' practices are permeated by, and reliant upon, deceptive acts that violate the governing laws so as to keep Plaintiff and Members ignorant of Defendants' continuing violations, to prevent disclosure and to ensure Members are unsuccessful in challenging them.

12. Hence, absent emergency *ex parte* relief irreparable injury, loss, or damage will likely result if Defendants fail to be restrained by this Court on or before June 19, 2008 and thereafter, and are allowed to conduct business as usual.

13. Finally, the rights and welfare of the 122 Members of the Association—compromised and injured by Defendants' violation of the governing laws and usurpation of Members prerogatives and electoral will—is a compelling and substantive public interest for this Court to protect by granting Plaintiff's instant Motion.

14. Plaintiff respectfully refers this Court to Plaintiff's Statement of Facts, *infra*, and its supporting exhibits. Plaintiff has not previously applied for relief sought in this *ex parte* motion or any similar relief against Defendants aside from that sought in the concurrently filed Complaint.

15. Pursuant to Rule 1-351 of the Maryland Rules, Plaintiff certifies that prior to the time he presents this application to the Court, Defendant Comanco, agent for the

Association and Defendants, was notified via telephone and/or email of the time and place of presentation to the Court of the instant motion.

II. STATEMENT OF FACTS

APPLICABILITY OF STATUTE, RULE OF CONSTRUCTION, MISC

17. The Declaration, Condominium Plat, By Laws and other rules of the Association are subordinate to the Act pursuant to § 11-124(e) of the Act and By Laws Article XVIII Section 2.

18. By Laws Article III Section 2 and § 11-109(d) establishes that Title 5 Subtitle 2 of the Corporations Article, Annotated Code of Maryland pertaining to non-stock corporations, not inconsistent with the Act shall govern the Association. MCL § 5-201 establishes that the provisions of General Maryland Corporation Law shall govern Title 5 Subtitle 2 except as therein noted in § 5-201(a) and (b).

19. An audit of the Association's Board and annual meeting minutes, election records and certain covenant enforcement records undertaken by Plaintiff March 3 – June 4, 2008 and included as supporting documentation in Plaintiff's May 23, 2008 complaint to the Consumer Protection Division of the Maryland Office of Attorney General ("the Audit") provides the facts and information that supports Plaintiff's instant complaint. Plaintiff incorporates by reference the Audit as if fully set forth herein. (Audit, Exhibit E)

20. Plaintiff transferred his handwritten notes taken during the Audit to typed documentation ("the Notes") that provides the notational support to the Audit. Plaintiff incorporates by reference the Notes as if fully set forth herein (Notes, Exhibit E)

21. The record persuasively indicates that when Plaintiff questions or opposes Defendants DeSantis and Comanco's efforts, he is frequently excluded from subsequent communications on that matter. When Defendants then vote by phone or email, Defendant Comanco reports to Members or contractors "the Board" has acted.

BOARD AND DUTIES OF PRESIDENT

22. The By Laws Article V Sections 1 and 3 vest the powers and duties of the Association in a board of directors.

23. The By Laws Article V Sections 10, 11 and 13 specify the Board may meet, conduct and transact Association business at regular or special meetings of the Board with quorum. Except as provided in § 11-109.1 of the Act and MCL §2-408(c), § 11-109 of the Act specifies that all meetings of a governing body shall be open to the members of the Association ("the Members") and that voting shall be by majority.

24. By Laws Article V Section 10 state a majority of the Board shall call all regular meetings of the Board.

25. The By Laws do not grant any powers and duties of the Association to any one or more individuals acting outside the collective will of the Board, except by resolution of the Board at a duly called meeting of the Board, consistent with the By Laws and pursuant to MCL § 2-408.

26. The By Laws limit the powers and duties of the Board to actions that are "consistent with law and the provisions of these By-Laws and the Declaration." (Article V Section 3)

27. The By Laws specify the duties of the president as the following: 1) To call a special meeting of the members on the Board's resolution or by a petition of the members

(Article IV Section 3); 2) To call a special meeting of the Board (Article V Section 11); 3) to preside at all meetings of the members and the Board, to appoint committees, be the chief executive officer and to “have all of the general powers and duties which are usually vested in the office of president of a corporation” (Article VI Section 4); 4) To act as the Board determines, consistent with the By Laws (MCL § 2-414(a)(2)).

28. Plaintiff asserts and maintains the “general powers and duties which are usually vested in the office of president of the corporation” cannot and must not empower or authorize the Board president to violate, circumvent, ignore or act unencumbered by the By Laws or relevant Maryland laws, or act on voted resolutions or non-voted tacit authorizations of the Board that, in acting upon or in consequence of them—or in enlisting, encouraging or causing others to so act—causes the Board president and hence the Board to be in violation of the By Laws or relevant Maryland laws.

29. Indeed, MCL § 2-414 establishes that an officer “has the authority and shall perform the duties in the management of the assets and affairs of the corporation as: (1) Provided in the bylaws; and (2) Determined from time to time by resolution of the board of directors not inconsistent with the bylaws. In the instances enumerated herein and others, Defendant DeSantis routinely exceeds his enumerated powers and acts without the resolution of the Board not inconsistent with the By Laws.

30. Plaintiff asserts and maintains that the following facts exemplify the routine, historical pattern of governing laws violations by Defendant DeSantis, encouraged and abetted by other Defendant Board members’ tacit authorization by silence:

- a. 9/27/2007: Authorized Defendant Comanco to hire a recording secretary without Board approval for the expenditure for a closed meeting

10/4/2007 that does not meet the requirements of § 11-109.1 of the Act. In so doing, Defendant Comanco ignored its own policy conveyed to Plaintiff 11/6/2007 that a majority of the Board must agree to incur costs. (Email: “Charing Cross - RE: contact info,” Exhibit F)

b. 11/5/2007: Incurred attorney expenses without notification to or approval by the Board by instructing Defendant Comanco by telephone to forward Plaintiff’s emails to the Association attorney Michael S. Neall (“the Attorney”), and by initiating a telephone conversation with the attorney which led to an 11/6/07 written legal opinion to Plaintiff without the Board’s knowledge or approval, as evidenced by Defendant Marek’s 11/23/2007 email that noted, “Got your email and I'm confused and totally ‘out of the loop’ regarding your letter to Ruth/Comanco.....what letter did you receive?? Don't have a clue what is going on, but I'm sure we will address all issues at the Board Meeting on Tuesday.” (Unit Activity Report 11/15/07, Exhibit C)

c. 11/6/2007: At the same time Defendant Comanco informed Plaintiff contact with the Attorney was impermissible without Board approval, Comanco was aware the Association attorney was mailing an 11/6/07 legal opinion per Defendant DeSantis’ 11/5/07 request without Board knowledge or approval. (Unit Activity Report 11/15/07, Exhibit C)

d. 11/12/2007: Caused Defendant Comanco to write and mail a letter not authorized by and without the knowledge of the Board to Plaintiff providing the Board’s official position regarding his balcony, signed by Defendant Comanco on behalf of the Board. (Exhibit G)

- e. 1/25/2008: Incurred attorney expenses without Board approval by holding a telephone conversation with the Attorney, and informed Defendant Comanco (but not the Board) via telephone, noting, "I spoke with Mike Neall and he knows what the agenda is." (Unit Activity Report 2/21/08, Exhibit C)
- f. 2/8/2008: Made a unilateral "executive decision" outside of a duly called meeting of the Board to approve a change in shingle color for a minor roof repair to 1029 Shire Court when he determined unanimous written approval in compliance with the governing laws could not be had. The record shows he spoke only with Defendant Frankhouser and could not contact Defendant Helpa as a rationale for his decision. Plaintiff complained to the Board and dissented in two 2/13/08 emails to which Defendants are unresponsive, noting that Defendant DeSantis' act created a credible impression that he suspended the rules to approve the homeowners' shingle color request if no insurance claim was pursued against the Association by the homeowner. (Unit Activity Report 2/21/08 pp 24-29, Exhibit C)
- g. 2/15/2008: Telephoned Defendant Comanco to inform her that he is calling a contractor to fix his roof at Association expense because "It is wind damage and is covered under the insurance." On the same day, Defendant Comanco telephoned Defendant DeSantis and asks, "Do you want to get Board approval first?" There is no recorded response from Defendant DeSantis, who so notifies the Board 2/15/08 via email of his action, because "Ruth is out today." Plaintiff demanded Defendant Comanco act as though any homeowner had just taken such action. Defendants were unresponsive.

Defendant Comanco subsequently notified Defendant DeSantis “Do you realize that Chris is continuing to cc Mike Neall on all his emails?” (Unit Activity Report 2/21/08 pp 30-31, 35-36, Exhibit C) After Plaintiff’s 2/18/08 email complaint to Defendants, Defendant DeSantis notified Defendant Comanco (but not the Board) that he was suspending repairs to his roof until it could be voted on at the next regular meeting of the Board; however, Plaintiff visually verified the repairs were in fact made the week of February 18, 2008. Defendant DeSantis failed and refused to inform the Board of the \$250 repair until the 2/26/08 regular meeting of the Board and only after Plaintiff demanded debate. The Board took no vote regarding his roof repair, nor did Defendants DeSantis or Comanco ever disclose who paid for it. (Minutes 2/26/08 p 4, Exhibit B)

h. 3/26/2008: Incurred attorney expense without the knowledge of or approval by the Board by requesting a legal opinion from and consulting with the Attorney regarding correcting the staggered term of office. This request resulted in a 5/9/2008 letter by the Attorney based upon false and misleading information to further Defendant DeSantis’ personal interests and promulgated solutions that violate the Association’s governing documents. (Unit Activity Report, 4/15/08 p 1; 5/20/08 pp 1-2, 6-7, Exhibit C, 5/9/08 letter, Exhibit G) Defendants were unresponsive to Plaintiff’s response. (Email “Notice of complaint to the office of attorney general,” “Attorney conflict of interest,” Exhibit F)

i. Upon information and belief Defendant Comanco verbally told one or more homeowners during her follow-up Spring walk-through the last week of May or the first week of June 2008 that a general meeting of the members or of the Board was being called. Defendant Comanco responded to Plaintiff's request for information via email June 5, 2008 that the June 24, 2008 regular meeting of the Board was cancelled because of "scheduling conflicts" and a June 19, 2008 regular meeting of the Board was called without Plaintiff's knowledge or a vote by the Board as required in By Laws Article V Section 10. Defendants were unresponsive to Plaintiff's follow-up June 5, 2008 email requesting to know who cancelled and called the meetings, how and why it was done, show schedule conflicts were involved and why Plaintiff's potential schedule conflicts were not requested. (Email "115-RE: general meeting of the members?" Exhibit F) Plaintiff reasonably assumes and asserts said undisclosed person(s) is Defendant DeSantis and one or more Defendants acting via silent majority in a closed meeting.

j. Defendants DeSantis or Ruth Angell initiated a series of phone calls 3/26/2008 – 5/22/08 instructing the Association attorney to prepare a written legal opinion regarding correcting the Association's terms of office, without the knowledge or approval of the Board until 5/22/08 when the Management Report with the Attorney's 5/9/08 written legal advice on correcting terms of office was mailed to Board members. (Unit Activity Report 4/15/08 pp 1, 7-8 and 5/20/08 pp 1-2, 5-7, Exhibits C)

k. On 4/23/2008 Defendant DeSantis unilaterally committed the Association to a \$100 contract to remove a tree, and in so doing cancelled a more comprehensive proposal from JAMS for the same tree scheduled to come before the Board 5/27/08. Defendant DeSantis did not inform the Board until the 5/27/08 regular meeting of the Board, over one full month after his action. This foreclosed any chance for Plaintiff, members of the Board or the Members to debate or exercise any other option. (Unit Activity Report 5/20/08 p 5, Exhibit C)

ELECTIONS

31. The By Laws Article IV Sections 1, 2, 4-9 and Article V Sections 5-7, in consonance with the relevant portions of MCL Title 2 Subtitles 4 and 5 and §11-109 of the Act, set forth the rules for the annual meeting, election, term of office, vacancies and director removal.

32. The 9/24/2001 regular meeting of the Board acknowledged its historical failure to follow election rules (since at least 1984—Audit at 10-11, 16) and set the term of office in compliance with the By Laws and re-established staggered terms such that only 1-2 seats would be on the ballot each year. Defendant DeSantis, a member of the Board since 2000, was present and participated in the 9/24/2001 regular meeting of the Board at which the rules and term of office governing the election of directors was clarified and re-established by act of the Board, and he accepted a 2-yr term of office presumably in furtherance of the Board's electorally restorative aims. (Audit at 16)

33. Defendants are routinely unresponsive to Plaintiff's complaints regarding alleged violations of the governing laws, failures to follow established and routine

procedures, and electoral dysfunctions. Plaintiff informed Defendants of violations, dysfunction and confusion regarding elections, stagger and term of office, number of directors, identity of directors and the 2008 election via email or certified mail (occasionally including the Attorney) 1/15/2008, 1/24/2008, 6/5/2008 and at the regular meeting of the Board 1/25/2008, 2/26/2008, 4/22/2008, 6/2/2008. (Emails, Exhibit F) Defendants failed and refused to respond to Plaintiff except at the 2/26/2008 regular meeting of the Board where no action was taken except to anecdotally claim the Association had previously established a 5-seat board, stating Defendants had no need to document that fact and that Plaintiff could review the records himself. On or about February 28, 2008 Plaintiff verbally requested and 3/3/2008 made a 2nd request in writing for access to the Association's records 1979 to present. Not until June 2, 2008 did Defendant Comanco finally provide all the requested records. (Minutes 2/26/08, Exhibit B; Unit Activity Report 3/20/08, 4/20/08, 5/20/08, Exhibit C)

34. The Audit shows Defendant Comanco improperly permitted Defendant Marek to vote more proxies than allowed in By Laws Article IV Section 7 in the 2007 election.

35. The Audit shows that Defendant DeSantis voted his parent's proxy in 2006 and 2007 in violation of By Laws Article IV Section 7 and MCL § 2-507 (which permits the By Laws to limit voting rights, such as to whom a member may assign a proxy), which stipulates that only members, the Declarant or Management Agent may vote another member's proxy. Defendant DeSantis is not a member of the Association. (Audit at 90-92) Additionally, that he voted Defendant Frankhouser's 2006 proxy in violation of By Laws Article IV Section 7. (Notes at p 18)

36. The Audit shows the 2000-2007 boards (which included Defendants DeSantis and Frankhouser mid-2006 on) failed to comply with the governing laws and with the resolution of the 9/24/2001 board to re-establish fidelity with the election rules of the By Laws, as summarized below (see chart at end of Audit for additional clarity):

- a. 2001: *supra*, at 32.
- b. 2002: One director elected to an undisclosed term (Audit at 18).
- c. 2003: The 7/8/2003 annual meeting was adjourned to 7/22/2003 for lack of quorum; the 7/22/2003 reconvened annual meeting was adjourned for lack of quorum even though votes in person and by proxy were available, in violation of MCL § 2-501(a), § 11-109(c)(8) and Article IV Sections 1, 2, 8 which require an annual meeting to elect directors and specify that any number of Members present at a reconvened meeting shall constitute a quorum suitable for transacting any business. Defendant DeSantis' 2003 2-yr term expired; no record indicates he informed the 2003 Board or Defendant Comanco of the 9/24/01 Board's findings and corrective actions. The members of the 2003 Board including Defendant DeSantis knew or should have known and comprehended the election rules in the governing laws, which supports Plaintiff's inference this tactic was used to hold over directors without election. (Audit at 19-22)
- d. 2004: No annual meeting held or unclear from records. All directors appear to be informally held over. No record indicates Defendant DeSantis informed the 2004 Board and Defendant Comanco of the 9/24/01 Board's findings and corrective actions. (Audit at 21-22)

e. 2005: All five (5) seats on the Board placed on the ballot in contravention to the By Laws and the act of the 9/24/2001 Board. Those elected were assigned an unspecified term of office based on vote counts. With 18 votes, Defendant DeSantis certainly would have been expected to receive a term of 2 or 3 years under the vote count scheme, yet the names on the 2006 ballot indicates the 2005 Board alleged a 1-yr term for all directors which created contradiction regarding the 2006 election, as below. No records indicate Defendant DeSantis informed the Board or Defendant Comanco of the 9/24/01 Board's findings and corrective actions. (Audit at 23)

f. 2006: The extant call for nominations shows Linda Williams and Laura Goldblatt with continuing terms and not to be nominated, although the subsequent ballot called for five (5) directors to be elected, including Linda Williams. (Notes at 18) Defendant DeSantis, Don Walton and Linda Williams were placed on the 2006 ballot when they had been elected in 2005 to what were lawfully statutory 3-yr terms, though not Laura Goldblatt. However, even allowing for the fact the Board was improperly and in violation of the election rules in the By Laws handing out terms of office based on vote count (highest 3 years, next 2 years, last 1 year), it is impossible under this scheme for four (4) members of the Board out of five (5) to receive 1-yr terms, as evidenced by the fact that Defendant DeSantis, Don Walton and Linda Williams were placed on the ballot and Laura Goldblatt was not (nor did she continue her term onto the 2006 Board), inferring that her term expired and she chose not to run again or she resigned without remark in the records. The

fifth member of the Board Mike Evans (elected in 2005) moved from the community in December 2006 after the 2006 election but the records do not show a resignation. The inference is that four or all five members elected in 2005 were awarded 1-yr terms in complete contradiction to and in violation of the By Laws. No records indicate that Defendants DeSantis or Comanco informed the Board of the 9/24/01 Board's findings and corrective actions, of which they were well aware, having participated. Charlene Julien and Tom Knighten were thereby on the ballot and elected. The Board handed out the following terms: Defendant DeSantis 3 years; Don Walton 3 years; Linda Williams 3 years; Charlene Julien 1 year; Tom Knighton unknown. (Audit at 24-41 and chart)

g. 2007: The annual election was set for 7/24/07. The 5/17/07 call for nominations shows Defendants DeSantis and Frankhouser, and Charlene Julien with continuing terms and not to be nominated. (Notes p 20) Defendant Comanco sent to homeowners 6/12/07 that "There will now be five (5) Directors elected for a three-(3) year term." On 6/13/07 the Unit Activity Report shows a new annual election set for 7/31/07. (Audit at 44-48) A subsequent 6/27/07 call for nominations shows only Defendant DeSantis with a continuing term and not to be nominated. (Notes at 20) The Association attorney in his 5/9/2008 letter to the Association alleges Don Walton resigned prior to this election though there is no record of it. (Audit at 43) Linda Williams did resign and Defendant Frankhouser was elected to her seat by the Board 10/26/2006. (Audit at 39) Charlene Julien was placed on the ballot

(Audit at 49) and Tom Knighten had already been unlawfully removed at a secret 4/3/2007 special meeting of the Board. (*below* at 63) Defendants Helpa, Marek and Plaintiff were elected to 3-yr, 2-yr and 1-yr terms, respectively, according to vote count which was in violation of the election rules in the By Laws. (Audit at 52-53) Defendant Frankhouser, serving in the Linda Williams' vacancy, was elected to an unspecified term and Defendants have no documented idea—nor have they to date been willing to discuss—when her term expires. (Audit at 54)

h. 2008: At the 3/25/2008 regular meeting of the Board (at which Plaintiff was absent) Defendant Board members voted to call the annual meeting for July 17, 2008 although Article IV Section 2 mandates July 1. Defendants have not scheduled the 2008 election, as evidenced by the fact they have not called for nominations in compliance with §11-109(c)(13) of the Act that would permit an election by July 17, 2008. Defendants have failed and refused to respond to Plaintiff's written requests to schedule the 2008 election. However, Defendants have yet to establish whose term expires and when, how many seats are currently on the Board (due to Tom Knighten and Charlene Julien's unlawful removal or exclusion from the Board, the election of four additional members in 2007 and Defendant DeSantis' seat), as well as the correct term stagger. In fact, upon information and belief and in Plaintiff's hearing Defendants informed the Association attorney at the 2/26/2008 regular meeting of the Board that Defendants DeSantis and Frankhouser's terms were continuing through 2009, that the 1-yr term based on vote count

awarded to Plaintiff at the 9/25/2007 regular meeting of the Board would be hereinafter two years and hence there was no need for a 2008 election. The By Laws and Maryland laws notwithstanding, and without the faintest credible and documented idea as to the current electoral status and composition of the Board, Defendants do not at this time appear to believe an annual election is warranted or required. Based on Defendants' information given over Plaintiff's protests at the 2/26/08 regular meeting of the Board, the Association attorney stated Plaintiff's elections dispute need not be resolved until sometime "next year," and in his unapproved 5/9/2008 letter to the Board, stated that no election is required in 2008, in frank violation of the By Laws and the will of the 9/24/2001 Board which mandate an annual election with at least 1 seat on the ballot. Defendants knew or should have known said information to the attorney was false, misleading, and could be construed and is so construed by Plaintiff as conspiracy, collusion, constructive fraud and fraud in the inducement in furtherance of maintaining their positions on the Board. (Audit at 60-69)

i. Additionally, the Attorney and Defendants failed and refused to respond to Plaintiff's 5/23/2008 certified letter and 5/27/08 email of same, "What records, if any, were provided to you in response to your 4/16/08 request to Joe DeSantis for 'factual background information' so that you did not 'make any incorrect assumptions of fact when reaching [your] conclusion'?" (Email "Notice of Complaint to the office of attorney general," Exhibit F)

37. Defendants have individually and collectively failed and refused to respond to a single communication by Plaintiff regarding the 2008 election since 1/15/2008 except Defendant DeSantis' two statements that the issue is tabled until the February and now the June regular meeting of the Board (1/22/08 minutes, 5/27/08 regular meeting of the Board, no minutes available) and discussion based on false or anecdotal information at the 2/26/2008 regular meeting of the Board.

38. Plaintiff attempted at the 5/27/2008 regular meeting of the Board a motion to table the agenda until the election issues were resolved. Defendant DeSantis refused the motion, refused to permit a vote, and instead declared the election issues tabled until the June 24, 2008 regular meeting of the Board (now surreptitiously rescheduled to June 19, 2008 to a different venue). Plaintiff then attempted a motion to reject the agenda; Defendant DeSantis said the agenda does not require a motion and refused to permit a vote. Plaintiff requested the recording secretary include the above in the minutes.

39. On 6/2/08 Plaintiff requested Defendants stop delaying a resolution to the elections issue so they could lawfully hold elections and requested a special meeting in advance of the 6/24/08 regular meeting. On 6/5/08 Plaintiff informed Defendants they should not conduct Association business while the election and Board membership issues remain unresolved. On 6/12/08 Plaintiff requested the Attorney provide a second recommendation to resolve the election issues in keeping with the By Laws. Defendants were unresponsive to each. (Emails "2008 Elections," "7 Board member seats," Exhibit F)

40. Defendants are in full knowledge of the statutory 3-yr term for directors and the rules regarding proxy voting as evidenced by the 6/19/2007 Reschedule Date for Annual Meeting Notice. (Exhibit G)

41. Based on Defendant DeSantis' eight years on the Board, his eight-year history of violations of the governing laws of the Association, Defendant Frankhouser's participation in unlawfully removing Tom Knighten at an unlawful special meeting of the Board, the manipulation of terms for Board members, their refusal to diligently investigate or take timely action on Plaintiff's complaints, it is inconceivable that their violations result from the ignorance of volunteers; hence, Plaintiff has openly called upon them to resign in the best interests of the Association. Plaintiff therefore asserts said Defendants are making every effort as enumerated in 36.g above to avoid elections, substantive discussion in an open meeting of the facts and violations derived from the Association's records, the restoration to the Board of unlawfully removed Directors, and to instead craft in secret planning sessions that exclude Plaintiff and the Members to continue business as usual as enumerated herein and unencumbered by the governing laws.

OPEN MEETINGS

42. Section 11-109(c)(6) of the Act requires that, except as provided in §11-109.1 of the Act, "a meeting of a governing body shall be open and held at a time and location as provided in the notice or bylaws."

43. Article V Section 13, in consonance with MCL § 4-408(a) and (b)(1) sets forth the Board's quorum as a majority of directors, and that a vote by a majority of directors at a duly called meeting with quorum shall constitute an act of the Board.

44. Article V Section 14, in consonance with § 4-408(c), permits action by the Board outside of a duly called regular or special meeting of the Board if such action is taken with the unanimous, written consent of the Board and certain other statutory requirements are met.

45. The Audit and facts enumerated below support Plaintiff's assertion that Defendants routinely violate the rules and laws governing open meetings and voting through the use of email, personal meetings, possibly "planning sessions," and other means not heretofore discovered.

46. The Members were not notified of the following special meetings of the Board: 2/7/1994, 6/28/1999, 7/12/2001, 4/3/2007, 12/10/2007, 1/17/2008.

47. There are no minutes or records for the following special meetings of the Board in violation of MCL §2-111: 7/12/2001, referenced in the 8/29/2001 minutes (Notes p 12); 4/3/2007, referenced in the 5/1/2007 minutes (Audit at 33, 34) Plaintiff and the Members remain uninformed as to what deliberations or actions occurred therein.

48. The records do not show Members were notified of the following regular meetings of the Board: 1/24/2006 apparently rescheduled to 1/31/2006; 4/24/2007 rescheduled to 5/1/2007; 5/22/2007 rescheduled to 6/6/2007.

49. At the following regular meetings of the Board Defendants took official actions without quorum: 1/24/2006, 6/27/2006 (Notes p 16-17)

50. The following closed meetings occurred on Comanco's premises that do not meet the requirements of §11-109.1 of the Act: 9/25/2007, 10/4/2007.

51. Defendant Comanco told the Board in a 5/16/2008 email, "Please also be advised that Boards are permitted to hold planning sessions with Board members only to

discuss these matters prior to the meeting to save time and the Associations money. These types of meetings are generally held at a neutral location such as a school, church, police station or a members home. It is recommended that very lengthy discussions take place prior to the Board meetings. The Board should have a list of specific instructions and requests. All voting will take place during the Board meetings only.” Comanco’s advice flagrantly violates the open meeting requirements of the Act, which states in 11-109(c)(6) that “a meeting of a governing body shall be open and held at a time and location as provided in the notice or bylaws;” such a planning session is certainly a meeting of a governing body and would certainly irreparably deprive Members full deliberative information and input on subsequent actions by the Board on any topic that comes before it. In fact, such a planning session appears designed to organize and settle upon a course of action regarding any business before the Board while excluding Members and even directors from deliberations. (Unit Activity Report 5/20/08, Exhibit C)

52. Upon information and belief Defendants and previous boards failed and refused to notify Members of any meetings of the Architectural, Grounds, Landscaping or Parking committees.

53. A 5/24/2008 written report to the Board by Defendant Helpa shows he formed a Traffic Safety committee, selected himself as Board representative, solicited four homeowners to serve on the committee, and scheduled a committee meeting with Anne Arundel County for 3pm June 9, 2008 without Board or Board president authorization. Notwithstanding the Board president’s silent acquiescence providing substantive authorization pursuant to his statutory authority, the Board failed and refused to notice

the Members of the committee meeting. Further, Defendant Helpa unilaterally and without knowledge or authorization by the Board, changed the terms and scope of work of a contract to repave two streets that had been approved by vote in open meeting 4/??/2008. (“Report on Coordination with County Representatives,” Exhibit G)

54. Defendant DeSantis appears in the records beginning August 2000 and appears to chair the Architectural Committee alone. The record shows he adjudicates architectural/landscaping requests in private or in consultation with the homeowner, without notice to the Members or an open meeting, and reports his completed adjudications at regular or special meetings of the Board usually—though not always—without debate or formal ratification. Plaintiff has not come across any instance of the Board challenging Defendant DeSantis’ adjudications. (Notes, Exhibit E)

EMAIL VOTING BY THE BOARD

55. Email, telephone and conversational voting is defined as voting outside of a duly constituted meeting by email, telephone, or in personal conversation with other Board members in the street, in a living room, or any other venue (hereinafter, “email voting”). Voting via email is the most common such practice, but Defendants vote by telephone and while meeting together in conversation, as well. Email voting is strictly informal; no motion is formally made and no second is ever provided.

56. Defendants know or should know email voting by majority violates By Laws Article V Section 14, MCL §2-408(c) §11-109(c)(6) of the Act as well as the Board’s own policy resolution 2/26/08 reserving majority email votes for bonafide emergencies where danger to life or property was imminent and conclusive.

57. The Board voted at its 2/26/08 regular meeting to implement the Attorney's advice that "in the event of an emergency at the next Board meeting the prior decisions taken with majority Board approval will be disclosed and ratified." (Minutes 2/26/08, Exhibit B)

58. Defendants DeSantis, Frankhouser and Marek voted between 2/29-3/5/2008 to authorize non-emergency insured repairs to 1011 Broderick Court's soffit. Plaintiff complained via 3/3/08 email and Defendants excluded him from further communications on this subject and Defendants' subsequent email vote until he read them in the March 25, 2008 Management Report. Defendant DeSantis telephoned Defendant Comanco 3/5/08 "The majority agrees to fix the wind damage at 1011 Broderick Court. Please move forward with the work." Defendant Comanco informed contractor Richard Harrison 3/5/08 "Your proposal was accepted. Please move forward with the repairs to 1011 Broderick Court at your earliest convenience." (Unit Activity Report 3/20/08, pp 4-7, Exhibit C) Defendants know or should know these actions violate By Laws Article V Section 14, MCL §2-408(c), §11-109(c)(6) of the Act because they do not meet the requirements of §11-109.1 of the Act and the Board's own 2/26/2008 policy on the Attorney's advice reserving majority vote email for bonafide emergencies involving imminent danger to life or property.

59. On 6/12/08 Defendant Comanco misrepresented the work requested for drainage repairs by 1108 Soho Court and solicited an email vote by the Board for approval. Defendant DeSantis voted "yes" without informing the Board by distributing the request form although Defendant Comanco had provided it to him. Defendant Marek voted yes after receiving the form. Defendant Helpa demurred and Defendant Comanco

attempted to force the vote, “Please keep in mind that if this not addressed and she requests to file a claim through the master policy [for water damage from rain backup], the Association may be responsible for the repairs to her unit.” (Email “115-Charing Cross,” Exhibit F)

60. The 3/25/2008 minutes of the regular meeting of the Board state, “Kathy has drafted a letter and the Board will get together and review the letter.” Plaintiff asserts and maintains this cavalier attitude with the open meetings requirement of the Act and the irreparable harm it conveys to Members is typical of Defendants and absent relief by this Court will continue (Minutes 3/25/08, Exhibit B).

VACANCIES AND DIRECTOR REMOVAL

61. Article V Section 6 permits the Board to fill a vacant seat that results from any cause except removal of a director by the Members (and in MCL §2-407(b) which results from any reason other than an increase of directors). A vacancy shall be filled until the next annual meeting of the members and the person elected to the vacant seat shall serve out the unexpired portion of the vacated term.

62. Article V Section 7, in consonance with MCL §2-406(a) permits the Members at a regular or special meeting of the Members duly called for such purpose to remove a director with or without cause and to there and then elect a successor to fill the vacancy thus created.

63. The Audit shows Tom Knighten, elected 2006, was unlawfully removed from the Board by majority vote of the directors in violation of Article V Section 7 and MCL § 2-406 at a special meeting of the Board 4/3/2007 that was convened without notification to the members. Defendants DeSantis, Frankhouser and Don Walton voted to remove

Tom Knighten. Upon information and belief Director Charlene Julien, Defendant Comanco and a recording secretary were not present. There are no records or minutes of this meeting; it was reported in the minutes of the 5/1/2007 regular meeting of the Board as follows, "At this time it was stated a special meeting was held and it was voted on and passed that Tom Knighten is no longer on the Board." (Audit at 32-38)

64. The Audit shows that Defendants in 2003 failed and refused to inform the Members that Defendant DeSantis' term as director was expired and should be on the 2003 ballot (Audit at 19-20); in 2004 failed and refused to inform the Members that Defendant DeSantis' term as director remained expired and should be on the 2004 ballot. (Audit at 21-22) Plaintiff asserts and maintains Defendants DeSantis, Comanco (in full knowledge of the 9/24/01 Board's election findings and corrective actions) and other Defendant Board members failed and refused to hold elections and assign terms in compliance with the governing laws.

65. The Audit supports Plaintiff's assertion that in 2007 Defendants DeSantis, Frankhouser and Comanco violated the rules and laws governing the removal of a director 4/3/2007 (Audit at 31-38) and established two false vacancies on the Board by misrepresenting the statutory term of office to Directors with continuing terms. (Audit at 49-50).

66. Plaintiff asserts and maintains that a thorough and careful reading of the Association's documents at least back to 2005 supports the inference that a co-dependent relationship where proper boundaries between property manager and Board liaison seem to have dissolved exists between Defendants Comanco and DeSantis where Comanco appears to act as Association president, and which appears to provide protection and

cover to each other, to assist and enforce a conspiratorial style and method of Association governance and its enforcement against recalcitrant directors (2/26/08 Defendant Comanco character defense of Defendant DeSantis, Unit Activity Report 3/20/08 p 2, Exhibit C).

67. Defendant Comanco has been the Association's property manager since 1979 and knows or should know the governing laws and facts regarding the Association's electoral requirements and its history. Yet the record demonstrates that Defendant Comanco is studiously ignorant of the Association's electoral requirements and history and that since at least 2005 Defendant Comanco has worked with Defendant DeSantis in such a way as to corrupt, delegitimize and make unlawful many actions of the Board.

68. Defendant DeSantis has served on the Board for eight (8) consecutive years, was present when the 9/24/01 Board found lapses and violations in the elections and established corrective actions. Yet, since at least 2003 Defendant DeSantis has studiously failed and refused to employ said findings and corrective actions, to inform subsequent boards ignorant of the 9/24/01 findings and corrective actions, and to provide "institutional knowledge" towards lawfully compliant elections, terms, procedures for dealing with vacancies and removal of directors, condominium maintenance and covenants enforcement. Plaintiff asserts and maintains that the documented records demonstrate that Defendant DeSantis is no ignorant volunteer Board member just trying to serve his community, mistakes and all, but rather a calculating politician willfully exploiting every opportunity and the actual ignorance of novice and volunteer Board members just trying to serve their community in order to act by his own rules and enforce

them upon others rather than understand the governing laws and work within them to legitimately reach his personal ends.

RECORD-KEEPING

69. Article XIV Section 2, in consonance with MCL §2-111 and §11-116, sets forth the record-keeping requirements by which the Association shall maintain a record of the acts of the Board, of the Members and of all other aspects of the business of the Association.

70. Article XIV Section 3, in consonance with § 11-116(b) of the Act, requires the Association to cause an audit of its books and records upon receipt of a petition signed by at least 5% of the Members.

71. The Audit and additional facts enumerated below supports Plaintiff's assertion that Defendants routinely have and are violating the rules and laws regarding record-keeping by not creating, losing or manipulating records such that Plaintiff and Members cannot be reasonably or confidently informed of the Association's actions.

72. Since 1982, the Board has typically and customarily held regular meetings of the Board monthly except December, with some exceptions. The Audit indicates there are no extant records for the following meetings of the Board, or the record is unclear if the meeting occurred at all: 11/1982; All 1983 except 8/15/83, 9/19/83; All 1984 except 5/16/84; 3/18/1985, 7/1985, 8/1985; 6/1986; 1/26/1988, 5/1988, 6/22/1988 (notes unclear), 8/23/1988; 2/27/1990, 4/24/1990, 6/26/1990, 8/1990; 2/19/1991, 10/22/1991; 6/1992; 1/26/1993, 7/1993; 6/1995, 7/1995; 6/1996; All 1997; All 1998; 10/1999, 11/1999; 1/2000, 3/2000, 7/11/2000 (annual meeting); 10/2000; 7/2001, 10/2001; 6/25/2002, 8/2002 (probably met 7/30/2002, Notes p 13), 11/27/2002; 2/4/2003, 3/2003,

5/27/2003, 8/26/2003, 12/10/2003; 1/2004 (possibly met 2/3/2004, Notes p 14), 7/14/2004 (no Plaintiff notes or no record exists); 1/2005 (no Plaintiff notes or no records exist), 6/2005; 9/25/2007.

73. Defendant Comanco has failed and refused to maintain comprehensive and adequate records in order to establish and maintain certain knowledge as to architectural changes per unit and the term expiration dates of directors, as evidenced by the fact that Defendant Comanco's records do not match with adjudications in the minutes (1101 Soho Court, *et al*), and the contradicting information between the 9/27/07 and 10/17/07 Board/Committee Rosters and that asserted by Defendants. (Audit at 53-54, 64)

74. Defendant Comanco manipulated a 1/24/2008 email from Plaintiff to the Association attorney and Defendants to remove the subject header "Charing Cross Board of Directors ordered to cease and desist until legal membership of Board is determined," and replaced it with "RE: Legal Membership of Board" which, at first glance, makes it appear a benign communication. Plaintiff asserts and maintains this is a willful falsification of the Association's records in violation of MCL § 2-111 and §11-116 of the Act. (Unit Activity Report 2/21/08 p 3, Exhibit C)

75. Defendant Comanco excluded from the Unit Activity Report the 5/1/08 – 5/27/08 email thread between Plaintiff and Defendant Comanco regarding the 2007 annual meeting minutes and election records which Defendant Comanco claimed were lost at the same time the Attorney was preparing for Defendant DeSantis unauthorized legal advice regarding the same event. Plaintiff infers that Defendant Comanco did not want Plaintiff aware the attorney may have been using the 2007 records to inform his opinion, or because she was attempting to delay Plaintiff reviewing the facts until after

Defendants had taken action in accordance with the Attorney's 5/9/08 letter at the 5/27/08 regular meeting of the Board. If so, it supports the inference Defendant Comanco colluded and conspired with Defendant DeSantis to lie and fraudulently prevent Plaintiff from viewing the 2007 records he had been requesting to see since 2/28/08. (Unit Activity Report 5/20/08, Exhibit C)

76. Furthermore, Plaintiff instructed Defendant Comanco 5/15/08 that if the records could not be found, she must notify the Board, which she did not. Defendant Comanco provided the regular meeting minutes for review, but withheld the annual meeting minutes and elections records until Plaintiff additionally requested them (but would not permit review until after the 5/27/08 Board meeting). Plaintiff infers Defendant Comanco did not want the Board to know she lied and colluded with Defendant DeSantis to effect a specific outcome at the 5/27/08 Board meeting. (Email, "2007 Annual minutes," Exhibit F)

77. Defendants refused to act on Plaintiff's information that records were missing, or to cause even a cursory informal audit to inform them as to its veracity.

78. On May 28, 2008 Plaintiff submitted in person to Defendant Comanco a petition signed by 7% of the Members demanding an audit of all Association non-financial records to commence no later than 30 days from the date presented to the Board at its May 27, 2008 regular meeting (Plaintiff forgot to present it to the Board until after the meeting was adjourned and did so to Defendant Comanco the following day) (Receipt and copy of petition, Exhibit G)

79. In a June 8, 2008 email addressed to Defendant Comanco and copied to Defendants, Plaintiff requested information as to when the audit petition would be disseminated to the Board. All Defendants are unresponsive to date.

80. As of June 15, 2008 Plaintiff, as vice president of the Board, has received no communication from Defendant Comanco that the audit petition was disseminated to the Board or that Defendant Comanco is acting on the petition.

81. Upon information and belief Plaintiff talked to one or more petition signatories during her follow-up Spring walk-through the last week of May or the first week of June, 2008, saying the cost to the Association of the petition would be in the thousands and that if they understood this cost they never would have signed or would remove their signatures. In fact, Plaintiff asserts and maintains it is Defendant Comanco who cannot account for the Association's records contractually in its keeping, and is therefore liable to the cost. Defendant Comanco was unresponsive to Plaintiff's 6/5/08 complaint of same. (Email "Pulling signatures from audit petition," Exhibit F)

82. On June 6, 2008 Defendants caused a general notice to be sent to all Members informing them the duly called regular meeting of the Board June 24, 2008 was cancelled and calling a regular meeting of the Board June 19, 2008. The notice included information on rear yards, 1150 Jeffrey Drive, grills on decks and parking/fire lanes, but no information on the audit petition already in Defendant Comanco's hands for nine (9) days, or the substantive elections and Board membership issues on the agenda. As of June 15, 2008, Defendant Comanco has failed and refused to notify the Board and Members of the audit petition.

COVENANT ENFORCEMENT

83. Further Discovery will demonstrate that Defendants, in violation of By Laws Article XI, routinely and arbitrarily use “grandfathering” as a means to ignore unapproved or non-conforming changes made to units without prior or post Board approval; approve or “grandfather” architectural change requests after the work is complete; approve requests via email without notifying the entire Board or viewing the required documentation; arbitrarily outright ignore unapproved changes such that Plaintiff and Members are irreparably denied their right to be informed of requested changes or registering their response with the Board prior to approval/denial. The records suggest the Association’s standard operating procedure for handling many unapproved or non-conforming changes is to “grandfather” them with an unenforced stipulation to remove the change at sale or upon life-cycle replacement of the change to require conformity. Members are not informed that the substantial presence of undocumented non-conforming changes throughout the community caused in part by Defendants (as well as previous boards) effectively waives enforcement of these covenants. (Notes at 23-24)

84. Further Discovery will demonstrate that Defendants arbitrarily, whimsically, capriciously and captiously adjudicate architectural/landscaping change requests using an amalgam of written and unwritten rules and regulations that contradict and cross-cancel such that neither Plaintiff as a Board member nor Members can clearly understand what changes to a unit are permitted or prohibited and must simply go on Defendant DeSantis’ word when he invariably informs a homeowner via telephone prior to informing the Board if a requested change passes muster. (Minutes 1/17/08, Exhibit B; Email “Charing Cross – RE: Urgent – Charing Cross – 1011 Broderick Court,” Exhibit F)

85. Upon information and belief and in Plaintiff's hearing, Defendants maintain that the Act or other relevant laws do not require they have any written rules and regulations at all, so long as the Board does not appear arbitrary; and that architectural rules and regulations do not fall under requirements of § 11-111 of the Act.

FIDUCIARY DUTY

86. MCL § 2-405.1 establishes the standard of care required of a director.

87. Plaintiff asserts and maintains that Defendant Board members fail their duty to act in good faith and with the care that an ordinarily prudent person in a like position would use under similar circumstances, as follows:

a. Good faith: Pursuant to MCL §2-405.1(b)(2) Defendants are acting in bad faith because they have knowledge of the facts and matters enumerated in the instant complaint and know or should know their reliance on conflicting or undocumented information or sources is doubtful or unwarranted.

b. Prudent person: Pursuant to MCL § 2-405.1(b)(1) Defendants are not acting with the care of an ordinarily prudent person when they routinely deny and dismiss Plaintiff's researched, documented and credible complaints that cast doubt upon sources of information Defendants have heretofore believed reliable and competent within their professional expertise, and to then act as though they were never informed...business as usual.

88. Plaintiff asserts and maintains Defendants fail their duty of loyalty:

a. No fair process. Defendants routinely ignore established and routine procedures incumbent upon them in order to reap a benefit to themselves or their "agenda" while placing the Association at risk of irreparable harm, such

as ignoring the dispute resolution requirements of § 11-113 of the Act, the diligent investigation of the objective documentation underlying Plaintiff's instant complaint, and complying with the open meeting and record-keeping requirements of the Act and MCL.

89. Plaintiff asserts and maintains Defendants fail their duty of care:
 - a. Business judgement rule: With regard to Plaintiff's instant complaint, Defendants fail at almost every step to pay attention and try to make good decisions that are not completely irrational. Since 1/15/08 Defendants have acted irrationally in their efforts to ignore the 9/24/01 Board's electoral findings and corrective actions, the rules and laws governing the issues herein enumerated and the substance of Plaintiff's instant complaint by sticking their heads in the sand, circling the wagons and attempting to act as a 4-member board, short-circuit Plaintiff's efforts to resolve the issues enumerated herein by conducting closed meetings to plan and enact counter strategies that in every instance have collapsed under the weight of their faulty fact and logic (i.e., efforts at 2/26/08 meeting to dismiss Plaintiff's complaints and send him to get lost in the records, if he even bothered; failed efforts to prepare a legal opinion the Board planned to enact at the 5/27/08 meeting and their likely efforts at the 6/19/2008 meeting to deny or "spin" violations documented herein).
90. Plaintiff asserts and maintains Defendant DeSantis (who routinely keeps the agenda and other plans undisclosed until a meeting is called to order) and other Defendant Board members fail their duty of disclosure and to inform:

- a. Most crucially, Defendant DeSantis failed and refused to inform boards subsequent to the 9/24/01 Board of its electoral findings and corrective actions such that the Association could perform lawfully compliant elections.
- b. Defendant DeSantis on numerous and routine occasions failed and refused to inform the Board of his actions in soliciting legal opinions from and holding private consultations with the Association attorney; instructing Defendant Comanco to take official actions, write and send letters, or expend monies allegedly on behalf of or authorized by the Board but in fact without the Board's knowledge and/or vote;
- c. Defendant DeSantis fails and refuses to inform the Board every time he refuses to respond to a request—written or verbal—for information pertinent to the Association's affairs.
- d. Defendants fully understand their fiduciary duty to inform as evidenced by Defendant DeSantis' 9/27/07 email to Comanco and the Board: "Since we have new Board members, I should have stated at the last Board meeting, that all emails should be sent to Ruth and all Board members so we can all be kept informed." (Unit Activity Report 10/22/07, Exhibit C)
- e. Upon information and belief and in Plaintiff's hearing, the Attorney informed the Board at its 12/10/07 special meeting and its 4/22/08 regular meeting that the By Laws do in fact require unanimous, written consent of the Board prior to the Board taking any action outside of a duly called meeting, as well that communications must include all directors.

f. Defendants routinely withhold information from the entire Board, fail to inform all Board members of pertinent information in a timely manner, act unilaterally and commit the Association without the knowledge or approval of the Board, and vote by majority via email. Plaintiff asserts these actions have the effect of committing the Association to actions favored by a select minority of the Board or the property manager which knows it can't succeed at a regular meeting of the Board, does not want to wait or go to the trouble of arguing their case and excludes pertinent information from other Board members and the Association's members. Plaintiff asserts such acts are high-handed, captious and whimsical in manner, denies opposing Board members or Association Members a forum to dissent, creates a venue for irrevocably committing the Association in which other Board members or Members of the Association are powerless to change the outcome.

g. Defendants were unresponsive to Plaintiff's 2/26/08 email which stated, in part: "Notifying the other board members via the monthly unit activity report after the fact of any private communications and unilateral decisions via email or phone, when the full board should be in the immediate loop regarding any and all communications regarding association business, does not convert the private communications...to public communications such that the full board of directors could reasonably consider itself informed of the board president's activities allegedly on its behalf. Further, the portion of the contract you quoted does not authorize the board president to take actions on behalf of the board, to spend association money, to communicate with the

association attorney on his own, to direct Comanco to take any action, or to do any other thing on his own volition without prior board approval other than to liaise with Comanco...Hence, as in routine past instances, the board president has kept the full board in the dark as to his intentions for the 2/26/08 meeting, planning to share them only when the meeting has commenced, and that constitutes the board president acting privately, outside of board control, and without authorization. And if, as you say, the attorney's agenda includes 'all of the concerns' I have brought to the board's attention, how is it that you, the attorney and the board president have known that information, but, until your letter today, the rest of the board has not? In fact, the agenda should be circulated among all board members as it progresses through drafts, until it is formally adopted by vote at the board meeting." (Unit Activity Report 3/20/08, Exhibit C)

ACTS BY COMANCO

91. There is no anecdotal or documented record that shows Defendant Comanco ever informed the boards subsequent to the 9/24/2001 Board of its electoral findings and corrective actions, such that the Association's future elections could be held in accordance with the Board's intent and the governing laws.

92. Plaintiff asserts and maintains Defendants DeSantis and Comanco maintain such a close relationship that they routinely collude and conspire to act as the Board without the Board's knowledge or voting consent.

93. The records of the Association demonstrate Defendant Comanco routinely initiates or solicits email votes from the Board on a variety of issues not meeting the

requirements of § 11-109.1 for a closed meeting and thereby irreparably harm Plaintiff and Members, as below.

- a. 3/29/2006: The Unit Activity Report shows that Defendant Comanco mailed a letter approving 1009 Broderick Court's architectural change request 3/29/2006, entered the approval into its database 3/31/2006, yet the Board did not approve this request in an open, duly called regular meeting until 5/23/2006, nearly two (2) months later. (Notes p 17, Exhibit E)
- b. 10/05/2007: Defendant Comanco informed the Board via email that an email vote was approved by majority vote, in violation of Article V Section 14 and Maryland Corporation Law § 2-408(c), and informed the vendor JAMS it was authorized to conduct work. (Unit Activity Report 10/22/07, Exhibit C)
- c. 1/17/2008: The Unit Activity Report 2/21/08 shows Defendant Comanco entered approvals and generated an "approved as modified" letter for a 1011 Broderick Court architectural change request possibly prior to the non-noticed 7pm 1/17/2008 special meeting of the Board wherein the request was actually "approved as modified" following debate with the homeowner. Plaintiff presumes this action was decided and enacted before the meeting and the debate with the homeowner was inconsequential.
- d. 1/22/2008: Upon information and belief and in Plaintiff's presence, Defendant Comanco refused on several occasions to permit Defendant DeSantis or the Board to discuss Plaintiff's complaints regarding number of directors permitted on the Board and terms of office, even though it was on the published agenda. She prompted Defendant DeSantis numerous times to

recall their previous discussions on the matter (once using her elbow as emphasis), that Defendant DeSantis could adjourn the meeting at any time without a vote by the Board if he wanted, that he must table the issue until at a meeting with the Attorney present (and did so without a vote over Plaintiff's objections). Plaintiff (as well as the Board) was prevented and unable to pursue these agenda items by Defendants Comanco and DeSantis. Plaintiff asserts and maintains the minutes of the meeting were sanitized and manipulated to remove all references to the debate as though it had never taken place. (Minutes 1/24/2008, Exhibit B) Plaintiff asserts and maintains the 2/26/2008 minutes were manipulated to show a unanimous vote for the 1/17/2008 and 1/22/2008 minutes when in fact Plaintiff abstained on both. Plaintiff was absent from the 3/25/2008 regular meeting of the Board wherein the 2/26/2008 minutes were approved.

e. 2/5/2008: Defendant DeSantis instructed Defendant Comanco via telephone to fax the November, December 2007 and January 2008 minutes of the Board to the Attorney, incurring expense without Board knowledge or approval. Defendant Comanco executed the instruction but did not notify the Board. (Unit Activity Report 2/21/08, Exhibit C)

f. 2/15/08: Defendant Comanco telephoned Defendant DeSantis, "Do you realize that Chris is continuing to cc Mike Neall on all his emails?" Defendant DeSantis' telephone response: "I know but want to wait to address this issue at the next meeting. I know you are concerned about the costs that are being incurred by his emails." (Unit Activity Report 2/21/08, Exhibit C)

Plaintiff asserts and maintains this exemplifies a vaguely familial rather than professional relationship between the Board president and the Association's property manager.

g. 2/26/2008: Defendant Ruth Angell informs the Board in response to a 2/26/08 email from Plaintiff that, "There never have been, nor will there ever[y] be private communications, hence the management report." Yet, Defendant Comanco oversaw the cancellation of the June 24, 2008 regular meeting of the Board, and the calling of the June 19, 2008 regular meeting of the Board without a vote by the Board, and none of this was communicated to the Board until Plaintiff requested verification of a homeowner's tale.

Defendants were unresponsive to Plaintiff's request for information as to how the meetings were cancelled and called. (Unit Activity Report 3/20/08, Exhibit C)

h. 3/25/2008: Defendant Comanco advised "the Board can approve the architectural request with the stipulation that when the [1120 Soho Court] homeowner sells the house the balcony needs to be put back to its original state." The statement is astonishing in its degree of negligence and incompetence considering Defendant Comanco's negligent complicity in the balcony issue through its failure to notice the change and to maintain records in compliance with law and its contract such that the change's conformance could be adequately verified. Moreover, the balcony cannot be returned to its original state because Anne Arundel County building code does not permit the

structure, a fact repeatedly made known in writing to—and ignored by—
Defendants.

i. 4/2/2008 - 4/3/2008: DeSantis, Marek and Frankhouser voted “yes,”
Helpa voted “no” via email to a proposal through Defendant Comanco to
provide Walden Community Pool with Association members’ mailing
addresses. 4/2/08 Plaintiff provided a different motion and requested a second;
the Board ignored it. On 4/3/2008 Defendants reversed themselves and voted
no to the original proposal. With full knowledge that majority vote via email
violates the governing laws, Defendant Comanco informed Walden
Community Pool that “the majority of the Board has declined the request for
mailing labels at this time. Plaintiff asserts and maintains Defendant Comanco
conveyed to Walden that the Board’s majority vote by email was a lawful act
of the Board in full knowledge it was not. (Unit Activity Report 4/15/08,
Exhibit C)

j. 5/1/2008: Defendant Comanco emailed the Board: “After reviewing [a
letter from Association attorney Michael S. Neall], please send approval of
your decision via e-mail at your earliest convenience. This is a matter that
should be addressed prior to the next meeting.” Plaintiff and Defendant Helpa
refused to vote due to the seriousness of the issue, and Defendant Comanco
conceded 5/5/08 that, “It is not necessary to make a decision before the
meeting regarding [the homeowner]. (Email “115-Michael Neall,” Exhibit F)
Members’ rights to due process and full access to the deliberations of the

Board are routinely placed at irreparable risk by Defendants' recourse to email voting in lieu of open meetings.

k. 5/5/2008: Defendants were unresponsive to Plaintiff's email requesting clarification of a roof "emergency" at 1004 Shreve Court prior to voting by email, wherein he noted that it did not appear to constitute an emergency that warranted suspension of the normal open-meeting approval process. Plaintiff was excluded from all further communications on this matter. Defendants voted by majority 5/5/08 – 5/9/08 to approve the homeowner's shingle color. On 5/9/08 Defendant Comanco notified 1004 Shreve via telephone "The Board has given approval for your roof replacement," in violation of the governing laws. Defendants argued to Plaintiff at the Board's 5/27/08 regular meeting that they are authorized to vote by majority via email pursuant to the Attorney's 2/26/08 approval for "emergency" action. Notwithstanding the fact this email vote does not meet the requirements of § 11-109.1, Defendant Comanco failed and refused to abide by the Attorney's legal guidance at the 2/26/2008 regular meeting of the Board that any Board approval outside of an open meeting must be a bonafide emergency, be considered an "imperfect approval" and that such be communicated to the homeowner so they can proceed "at their own risk." Plaintiff was not included in this email vote nor informed of it until he was provided the 5/27/08 Management Report. (2/26/08 minutes, Exhibit B; Unit Activity Report 5/20/2008, Exhibit C)

WHEREFORE, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Ex Parte Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Respectfully Submitted,

Christopher McKeon
Plaintiff, *Pro Se*
1120 Soho Court
Crofton, MD 21114
410-271-7907
cmckeon@clanmckeon.com

I DO SOLEMNLY SWEAR AND AFFIRM, under penalty of perjury, that the foregoing Plaintiff's Verified Memorandum of Points and Authorities in Support of His Motion for Ex parte Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue is true and correct to the best of my knowledge, information and belief.

Christopher D. McKeon
1120 Soho Court
Crofton, MD 21114
410-271-7907

CERTIFICATE OF SERVICE

I, Christopher McKeon, Plaintiff, *Pro Se*, do hereby certify that a copy of the foregoing Motion has been served by First Class U.S. Mail, postage paid, this _____ day of _____, 2008, upon the following:

Comanco, Inc. and
Charing Cross Townhouse Condominium, Inc. care of Comanco, Inc.
PO Box 3637,
2139 Defense Highway
Crofton, MD 21114

Respectfully Submitted,

Christopher McKeon
Plaintiff, *Pro Se*
410-271-7907
cmckeon@clanmckeon.com