

Maryland Circuit Court for Anne Arundel County

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

**PLAINTIFF’S RESPONSE AND OPPOSITION TO DEFENDANT CAROL
FRANKHOUSER’S MOTION TO DISMISS COMPLAINT**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and responds to and opposes Defendant Carol Frankhouser’s Motion to Dismiss Complaint. For reasons given in the attached Verified Memorandum of Points and Authorities, the instant motion should be dismissed.

Respectfully submitted,

Christopher McKeon
1120 Soho Court, Crofton, MD 21114
Plaintiff, *Pro Se*, 410-271-7907

Maryland Circuit Court for Anne Arundel County

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Plaintiff,)	
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**PLAINTIFF’S VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF HIS RESPONSE AND OPPOSITION TO DEFENDANT
CAROL FRANKHOUSER’S MOTION TO DISMISS COMPLAINT**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and submits this Verified Memorandum of Points and Authorities in Support of his Response and Opposition to Defendant Carol Frankhouser’s Motion to Dismiss Complaint.

STATEMENT OF FACTS

1. Plaintiff incorporates by reference the entire record of the above-captioned action, particularly Plaintiff’s Motion for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“Ex Parte Motion”) filed June 17, 2008 as if fully set forth herein.
2. Exhibits are attached to the instant Response unless noted.
3. Maryland Condominium Act is hereinafter referred to as “the Act.”
4. Maryland General Corporation Law is hereinafter referred to as “MCL.”

ATTORNEY CONFLICT OF INTEREST

5. Defendant counsel Owen J. Curley (“Counsel”) presently represents Charing Cross Townhouse Association, Inc. (“Association”) pursuant to Counsel’s July 8, 2008 letter filed with his Motion to Dismiss for Insufficiency of Service of Process. (Exhibit A) The Association is his first client in the above-captioned action (“Complaint”).

6. Counsel, by and through his Defendant Carol Frankhouser’s Motion to Dismiss Complaint (“Second Motion to Dismiss”), makes an initial appearance on behalf of Defendant Carol Frankhouser, a director and Secretary of the Association. (see p. 10 of Verified Points and Memorandum of Second Motion to Dismiss)

7. Counsel does not presently represent any other defendant in the Complaint, but Plaintiff presumes they will shortly seek his services.

8. Maryland Rule (“Rule”) § 1-321(a) states in relevant part, “Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties.” Counsel’s certificate of service, attached to the Second Motion to Dismiss pursuant to Rule § 1-323, certifies the motion was served only to Plaintiff and to no other party.

9. Counsel claims in his Second Motion to Dismiss that he is filing said motion as counsel for the Association, which he plainly is not doing, (see p. 2 of Second Motion to Dismiss) Plaintiff requests this Court to admonish Counsel to be truthful and accurate in his pleadings and papers pursuant to the Maryland Lawyer’s Rules of Professional Conduct.

10. Rule § 1-331 states, “a party's attorney may perform any act required or permitted by these rules to be performed by that party. When any notice is to be given by or to a party, the notice may be given by or to the attorney for that party.”

11. Rule § 2-131(b) states, “An appearance may be entered by filing a pleading or motion, by filing a written request for the entry of an appearance, or, if the court permits, by orally requesting the entry of an appearance in open court.”

12. Counsel has made no appearance on behalf of any other defendants other than Defendants Association and Frankhouser.

13. Neither Plaintiff or Counsel are permitted to perform any act on behalf of, or to serve pleadings or papers or give notice to, Defendants DeSantis, Marek, Helpa, Angell or Comanco by or through Counsel because Counsel is not any of these parties' attorney.

14. The Maryland Lawyers' Rules of Professional Conduct, Client-Lawyer Relationship, Rule 1.13(d) (hereinafter, “Lawyer-Client Rule”) states, “In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.”

15. Lawyer-Client Rule 1.13(e) states, “A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7.”

16. Lawyer-Client Rule 1.7(a) states, in relevant part, “a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of

interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client.”

FACTS REGARDING COMPLAINT

17. Plaintiff’s original-written complaint contained sufficient facts required by Rule § 2-305. But when Plaintiff *pro se* filed his Complaint concurrently with his Ex Parte Motion, he divided the original-written complaint to place the facts in the Ex Parte Motion, believing that is where they should be in order for the court to decide the emergency motion, and not realizing at the time he could simply incorporate the Complaint by reference into his Ex Parte Motion. The Complaint and Ex Parte Motion were filed and served on Defendants Comanco and Association concurrently, as a package.

18. Plaintiff’s facts are therefore in the record from Day 1. Defendant Frankhouser is fully notified and aware of the facts contained in the Ex Parte Motion, being properly served through the Association 6/17/08 with the Ex Parte Motion the same day and time as the Complaint (for a full account of service of process, see Plaintiff’s Motion to Substitute Service of Process), and then again 8/11/08 (see “Doc No./Seq No.” 39 in online case history). Indeed, although Defendant Frankhouser claims the Complaint contains insufficient facts, she notes in the Second Motion to Dismiss that “Even if ‘Ultra Vires’ could be considered a recognized cause of action in the Maryland courts, the *facts of this matter* [rather than the allegedly insufficient facts in the Complaint] (Second Motion to Dismiss, 2nd para., p. 7) could never

support any such claim.” This supports the inference that Defendant Frankhouser has read and understood the facts presented in the Ex Parte Motion as the very facts underlying Plaintiff’s Complaint.

19. Moreover, members of the Association met at a possibly unlawful 9/4/08 special meeting of the members of the Association for the exclusive purpose of removing Plaintiff as a director of the Association because he filed the instant lawsuit and was an “impediment” to the board, at the parish hall of Ann Seton Catholic Church, 1800 Seton Drive, Crofton, MD 21114 between 7-8.30pm. It should be noted that while Defendants have informed the Association of the lawsuit’s existence, they have thus far failed and refused to inform members of its contents, facts and charges, nor asked whether members wish to pay to defend or settle while unlawfully authorizing the expenditure of monies for legal fees and costs. Indeed, no vote authorizing any of their actions or expenditures of money regarding this lawsuit has been made in any lawful, properly called meeting of the board.

20. Plaintiff, Defendant Board Members, Defendant Angell (representing Defendant Comanco), Association attorney Michael S. Neall and approximately 31 members were present at the 9/4/08 meeting. In this meeting, a member living on Jeffrey Court in the condominium project, and seated in the left, second row of chairs, asked if the facts alleged by Plaintiff in the above-captioned Complaint were true. Defendant DeSantis gave a page count for both the Complaint and the Ex Parte Motion (in his words, “the TRO...the temporary restraining order”), noting that like Plaintiff’s allegedly verbose emails to Defendants, the Complaint and Ex Parte Motion together were a ridiculous 70-plus pages; he held them aloft so members

could see them. None of Defendants present claimed the Complaint failed to state any or insufficient facts. Instead, Defendants DeSantis, Frankhouser, Marek and Helpa unanimously denied the truth of all the facts alleged in the “lawsuit” (which includes the Complaint, Ex Parte Motion and other papers). Defendant Angell made no opposition to these statements. This demonstrates Defendants’ full and complete knowledge of the facts upon which Plaintiff states his claims.

21. The veracity of Defendant Frankhouser’s statements is certainly suspect and begs greater scrutiny. For example, using inflammatory and scandalous language to elicit sympathy and stoke the crowd’s anger, she told the assembled members how distressing, shocking and hurtful it was to come home to a policeman waiting outside her door to serve her. Yet she failed and refused to tell these members she had evaded mailed service since June 19, 2008 both personally and for the Association as its secretary, compelling Plaintiff to resort to the county sheriff to serve the Writ of Summons (see Plaintiff’s Motion to Substitute Service, Affidavits and Exhibits Regarding Refused Service in Vault, etc.). But receiving service is a simple corporate duty for any officer of a corporation. She also failed and refused to tell these members (and upon information and belief has not informed other defendants or the Association attorney) that she has been served several times in the last four years with criminal and civil complaints, of which Anne Arundel County Circuit Court case number 02K04001422 regarding theft, theft-scheme and embezzlement from her employer potentially directly affects the Association and her duties thereof as a director. (*supra*, at 29) This supports the inference her performance at the 9/4/08

meeting was thoroughly contrived to elicit sympathy for her and anger against Plaintiff.

22. Defendants' 9/4/08 public denial of the facts upon which Plaintiff states his claims, and made known to this Court herein, constitute an answer pursuant to Rule § 2-323 (which is also untimely), and a denial of facts pursuant to Rule § 2-424.

23. Defendant Frankhouser improperly and wrongly uses the captions—the sole purpose of which is to illuminate each count in the Complaint (much as they are used in the Maryland Rules; see Rule § 1-201(e))—as Plaintiff's actual cause of action and relief. In so doing, she creates nothing more than syllogisms to obfuscate Plaintiff's real complaints that are fully articulated in the text of each count. Therefore, this Court should strike from the Second Motion to Dismiss all references and allegations that "there is not a cause of action in Maryland for" whichever caption Defendant Frankhouser is then citing.

24. Rule § 1-311(b) states, "The signature of an attorney on a pleading or paper constitutes a certification...the pleading or paper...is not interposed for improper purpose or delay." However, the facts surrounding Defendants' knowledge of and response to the Complaint support the inference that both of Counsel's motions to dismiss on behalf of Defendant Association and now Defendant Frankhouser are calculated to obtain a technical dismissal on a point that Plaintiff may easily and lawfully remediate by filing an amended complaint. (see Rule § 2-341) Since Counsel's initial Motion to Dismiss for Insufficiency of Service of Process is likely to be denied as Plaintiff finally overcomes Defendants' evasion of service, and his Second Motion to Dismiss is likely to be denied either because it is clear Defendant

Frankhouser (and all Defendants) are fully cognizant and notified of Plaintiff's facts upon which he states his claims and/or because Plaintiff timely files an amended complaint, both of Counsel's motions to dismiss the Complaint appear calculated to avoid the Complaint entirely or at least delay responding honestly and openly to its merits.

ARGUMENT REGARDING ATTORNEY CONFLICT OF INTEREST

25. Plaintiff incorporates as reference paragraphs 5-16 above as though fully set forth hereinunder.

26. In violation of Rule § 1-331 and 2-131(b), Counsel in his Second Motion to Dismiss repeatedly plainly represents defendants DeSantis, Marek, Helpa, Angell and Comanco in the above-captioned action for whom Counsel has made no appearance and does not represent when he repeatedly states Plaintiff has stated no cause of action against "any defendants," and when he asks this Court to dismiss the Complaint "as to all Defendants." (see paragraph B, p. 2 of Second Motion to Dismiss; and pp. 4, 7 and 10 of Memorandum of Second Motion to Dismiss). How can Counsel know if the Complaint should or can be dismissed as to all Defendants if he does not represent them and know the facts pertinent to each of them, specifically?

27. Yet, Counsel in his Second Motion to Dismiss repeatedly plainly represents defendants DeSantis, Marek, Helpa, Angell and Comanco in the above-captioned action for whom Counsel has made no appearance and does not represent when he repeatedly states Plaintiff has stated no cause of action against "any defendants," and

when he asks this Court to dismiss the Complaint “as to all Defendants.” (see paragraph B, p. 2 of Second Motion to Dismiss; and pp. 4, 7 and 10 of Memorandum of Second Motion to Dismiss). How can Counsel know if the Complaint should or can be dismissed as to all Defendants if he does not represent them and know the facts pertinent to each of them, specifically?

28. Moreover, as explained below, there is the appearance of a conflict of interest by Counsel representing the Association as well as its constituent directors and officers (such as Defendant Frankhouser) who are also party to the instant Complaint, and whose defense, potential settlement options or judgement(s) against may be inimical to the Association itself.

29. The Complaint asks this Court for specific or additional remedies against both the Association and its constituent directors and officers which, if granted in toto, could be antithetical. Suppose, for example, that as the facts of the case become clear and incontrovertible Counsel determines the best interests of the Association are served by ensuring Defendant Frankhouser negotiate a settlement or accept a defense that cannot, in light of the Association’s best interests, be simultaneously in her best interests, or vice versa. Or suppose, again, that in defense of the Association, Counsel is compelled to present facts or assert argument or request settlement that directly or indirectly prejudices Defendant Frankhouser’s defense, or vice versa. Or, suppose yet again, that the facts underlying Defendant Frankhouser’s criminal and civil suit history (which upon information and belief remain undisclosed to the Association) are found to be relevant to her position as a director and secretary or contributory to her actions which are part of the proximate cause of the instant action. (Maryland

Judiciary Case Search Results, Exhibit B) Clearly, in just these three potential scenarios, a conflict of interest would exist that puts Counsel's defense of at least these two clients in the same case at odds.

30. In fact, the instant Complaint alleges, inter alia, that Defendants are violating the Association's governing laws; actions that are not in the Association's best interests. While defending the Association's best interests, Counsel cannot simultaneously represent and defend defendants who the Complaint alleges are damaging those same interests. In asking this Court to dismiss the Complaint against "any" and "all" Defendants whom he does not represent, Counsel is making a conclusion of law in their defense. Counsel should, therefore, be unencumbered of any conflict of interest in reaching his conclusions as they pertain to his original client after a full hearing of the facts in above-captioned case. Hence, the instant motion must be denied on the above grounds.

31. Indeed, this apparent conflict of interest is a hallmark of Defendants in their exercise of the Association's functions. It mirrors the conflict of interest presently maintained by Defendants DeSantis, Frankhouser, Marek and Helpa between the Association and its property manager Defendant Comanco through its general counsel Michael S. Neall. He is unable to advise or represent, inter alia, the Association's interests vis-à-vis Defendant Comanco regarding Plaintiff's 5/27/08 Petition to Audit, the issues regarding record-keeping and others that are the subject of the Complaint because he is compromised by his ongoing professional relationship with Defendant Comanco. (Email "Attorney Conflict of Interest," Exhibit F of the Ex Parte Motion) Part of the reason this case has now come before the Court is because Defendants

DeSantis, Frankhouser, Marek and Helpa will not consult disinterested counsel (i.e., Email “2008 Elections,” Exhibit F of the Ex Parte Motion) to properly advise them on obeying the governing laws, and in such a muddied, incestuous atmosphere where the requirements of the governing laws cannot be authoritatively clarified, they continue their activities which are the proximate cause of the Complaint.

ARGUMENT REGARDING COMPLAINT

32. Plaintiff incorporates as reference paragraphs 17-24 above as though fully set forth hereinunder.

33. Having been concurrently served with the Ex Parte Motion, Defendant Frankhouser is indeed “apprised of the matters in controversy between them,” (Pearce v. Watkins, 68 Md. 534, 538 (1888)) and was thereby provided notice as to the nature of the claim, the facts upon which the claim rests, the litigation’s boundaries and makes it clear the Complaint is not without merit. (Scott v. Jenkins, 345 Md. 21, 27 (1997))

34. Moreover, at the September 4, 2008 special meeting of the members (*supra*, at 19), Defendant Frankhouser, along with Defendants DeSantis, Marek and Helpa, clearly indicated her clear and incontrovertible knowledge of the “matters in controversy between them.” (Id. at 33)

35. Further, the facts and inferences in the Ex Parte Motion must be assumed by this court as true (Morris v. Osmose Wood Preserving, 340 Md. 519, 531 (1995)), that they are legally sufficient to permit Plaintiff to bring the above-captioned action

(*Sharrow v. State Farm Mutual Ins. Co.*, 306 Md. 754, 768 (1986)), and that they must be viewed “in a light most favorable to the non-moving party.” (*Lloyd v. GMC Corp.*, 397 Md. 122 (2007)) Indeed, Plaintiff asks this Court to view the fact that the Ex Parte Motion contains the relevant facts to bring his action, rather than the Complaint, in the most favorable light, as well, remembering his argument at 33-34, above.

36. Nevertheless, Plaintiff will timely file an amended complaint pursuant to Rule § 2-341(a) and the court’s 6/30/08 Scheduling Order, which will recombine the facts placed in the Ex Parte Motion with the claims in the Complaint itself (hereinafter, “Amended Complaint”). This renders moot Defendant Frankhouser’s argument that Plaintiff fails to state sufficient facts to support a cause of action or the requested relief, as well as her motion to dismiss for failure to state a claim, pursuant to Rule § 2-305 upon which her motion exclusively relies.

Plaintiff’s Count I

37. Defendant Frankhouser spends an inordinate amount of time and effort arguing this count (see p. 4 of Second Motion to Dismiss), when it has nothing to do with her. In fact, this count refers to acts and practices alleged specifically against Defendant DeSantis. To belabor this point so needlessly—when so little effort is made to defend the rest of the counts that do include Defendant Frankhouser—makes one suspect there truly is fire under that smoke.

38. The term “Ultra Vires” is Latin for “beyond powers.” Plaintiff captioned this count with “Ultra vires” merely to indicate the count deals with an action beyond a defined scope of powers. However, as the count itself makes plain, Plaintiff is

alleging that Defendant DeSantis' (rather than the Association's) acts and practices exceed the scope of his own authority as a director and president of the Association (as defined in the Ex Parte Motion, at 3), and thereby violate specifically enumerated governing laws. (see Complaint, at 21-23)

39. Hence, Defendant Frankhouser's argument against Plaintiff's Count I is irrelevant and immaterial and should be struck from the Second Motion to Dismiss, and Count I should not be dismissed.

Plaintiff's Counts II-XII, Generally

40. Defendant Frankhouser's response to each of Plaintiff's Counts II-XII separately argues the Count must be dismissed because there is no cause of action related to the caption of the Count. Each of these statements should be struck from the Second Motion to Dismiss as irrelevant and immaterial.

41. Additionally, since the facts are pled in the concurrently filed and served Ex Parte Motion, and those facts are well known to Defendant Frankhouser—indeed, to all defendants—each of the Counts II-XII are indeed supported by well-pled facts of which they are aware. (see 33-36, above) Further, Plaintiff's amended complaint shall include sufficient relevant facts for all counts, I-XII.

42. Therefore, this Court should not dismiss Plaintiff's Counts II-XII for any of the reasons enumerated by Defendant Frankhouser.

Plaintiff's Count III

43. Defendant Frankhouser falsely states to this Court that Plaintiff's Count III “does not claim that Defendants breached any particular By-law or failed to hold elections,” and then fails to refer this Court to the correct paragraph which in fact

specifies which governing laws are violated and breached. (Complaint, at 29)

Moreover, Plaintiff clearly states Defendants failed to hold elections when he alleges in plain English that Defendants “fail[ed] to hold annual elections.” (Complaint, at 27)

44. Therefore, Defendant Frankhouser fails to address or misrepresents Plaintiff’s actual claim in the Complaint, provides no compelling reason to dismiss, and accordingly Plaintiff’s Count III must not be dismissed.

Plaintiff’s Count IV

45. Defendant Frankhouser falsely states to this Court that Plaintiff’s Count IV “fails to allege that [the incidents mentioned in the Count] violated the By-laws or were in any way improper.” (see Second Motion to Dismiss, at p. 6, letter ‘C’) In fact, Plaintiff’s Count IV specifically states the incidents “set forth...are false, irreparably harm and injure Plaintiff and Members,” which, by any stretch, certainly does allege the incidents were “improper.”

46. Plaintiff clearly states said incidents violated “By Laws Article V Sections 5-7, MCL § 2-406(a)(1) and (2).” Defendant Frankhouser’s statement here is certainly erroneous and an egregious attempt to misrepresent the obvious.

47. Further, the two incidents cited by Defendant Frankhouser involving Charlene Julien and Tom Knighten most certainly do involve Plaintiff as a voting member of the Association whose lack of obedience to the governing laws directly impacts and creates irreparable harm to Plaintiff’s rights, obligations, duties and investment in it.

48. Further, as stated in the Complaint at para. I.a, Plaintiff does indeed have standing to bring a claim against the Association, its directors or any member of the Association pursuant to its governing laws for any violation of the governing laws.

49. Therefore, Plaintiff does in fact have standing to bring the claim in Plaintiff's Count IV and accordingly it must not be dismissed.

Plaintiff's Count V

50. Defendant Frankhouser misrepresents the obvious by claiming Plaintiff "appears to argue that the Board of Directors cannot conduct closed meetings" (Second Motion to Dismiss, at p. 8, letter 'D') pursuant to Md. Condominium Act § 11-109.1 (2008). Plaintiff argues no such thing. In fact, Plaintiff's Count V specifically states Defendants cannot hold any meetings of a governing body without notice to members, that in cases of conflict the Act supersedes the By Laws, and that all meetings be open (except, obviously, as provided in § 11-109.1).

51. Therefore, Defendant Frankhouser again fails to address or misrepresents Plaintiff's actual claim in the Complaint, and accordingly Plaintiff's Count V must not be dismissed.

Plaintiff's Count VI

52. Defendant Frankhouser misrepresents the obvious by claiming Plaintiff "fails to identify which By-law, if any, was violated by this rescheduling of a regular Board meeting." (Second Motion to Dismiss, p. 8, letter 'E') In fact, Plaintiff clearly states Defendants' actions violate "By Laws Article V Section 10, Article 5 Section 3, and MCL § 2-408(a), § 2-408(b)(1), § 2-408(c) and § 11-109(c)(6) of the Act." (Complaint, at 38)

53. Therefore, Defendant Frankhouser again fails to address or misrepresents Plaintiff's actual claim in the Complaint, and accordingly Plaintiff's Count VI must not be dismissed.

Plaintiff's Count VII

54. Defendant Frankhouser misrepresents the obvious by claiming Plaintiff "appears to argue that voting on any Condominium business must take place only by a vote with voters being physically present," and alleges Plaintiff's claims in this regard are thwarted by virtue of § 11-139.1 and 139.2 (2008) of the Act. (Second Motion to Dismiss, p. 8, letter 'F') But this is a non sequitur.

55. First, Plaintiff's Count VII references the board of directors meetings, and not those of the council of unit owners. He clearly states that, among directors, voting by *majority* via email, phone, personal conversation or via any other means outside of a properly called and open meeting violates "By Laws Article V Section 14, MCL § 2-408(c), § 11-109(c)(6) of the Act." (Complaint, at 41) It makes no complaint regarding the board of directors' authority to permit "unit owners to submit a vote or proxy by electronic transmission" under § 11-139.2 of the Act. Nor does Plaintiff complain in this Count VII of electronic notice of meetings as permitted by § 11-139.1 of the Act.

56. Second, the referenced provisions of the Act are irrelevant and immaterial to the claim because they have nothing to do with (nor do they render moot) the governing laws that establish what constitutes a valid act of the board of directors, about which Plaintiff is complaining in Count VII.

57. Defendant Frankhouser appears to admit the truth of Plaintiff's Count VII that Defendants do in fact vote by majority via email, phone, personal conversation or by other electronic or non-electronic means as Plaintiff complains in this Count VII.

58. Therefore, Defendant Frankhouser fails to address or misrepresents Plaintiff's actual claim in the Complaint, appears to admit to the acts and practices alleged in this Count VII, and accordingly Plaintiff's Count VII must not be dismissed.

Plaintiff's Count VIII

59. Defendant Frankhouser misrepresents the obvious by dismissing out of hand all the allegations contained in this Count VIII, and by claiming "Plaintiff fails to identify which by-law, if any, was violated by this action [of removing a director], or even how that By-law was violated." (Second Motion to Dismiss, p. 9, letter 'G')

60. Defendant Frankhouser fails to refer this Court to the correct paragraph in this Count VIII wherein Plaintiff plainly states Defendants' acts and practices violate the "By Laws Article V Sections 3 and 7, MCL § 2-406(a)(1), § 2-406(a)(2), and § 11-109(d) of the Act." (Complaint, at 44)

61. Therefore, Defendant Frankhouser again fails to address or misrepresents Plaintiff's actual claim in the Complaint, and accordingly Plaintiff's Count VIII must not be dismissed.

Plaintiff's Count IX

62. Defendant Frankhouser misrepresents the obvious by alleging Plaintiff's Count IX is self-contradictory. In fact, Plaintiff's Count IX alleges Defendants assert by their acts and practices that they have no *duty* to create, keep or maintain records, and that not creating, keeping or maintaining records is not an impediment to

pursuing violations against homeowners...not that they “failed to maintain records.”
(Second Motion to Dismiss, p. 9, letter ‘H’)

63. However, this count will be clarified in Plaintiff’s amended complaint.

64. Therefore (and given that Defendant Frankhouser is fully aware of the facts upon which this Count IX is based; *supra*, at 17-20), Defendant Frankhouser’s inability or unwillingness to make sense of the allegations in the count—or her willful obtuseness—is hardly a rationale for dismissing it. Accordingly, Plaintiff’s Count IX must not be dismissed.

Plaintiff’s Count X

65. Defendant Frankhouser’s defense against this Count X is the first evidence provided by Defendants acknowledging they are in receipt of and have seen the 5/27/08 petition to audit—nearly four months after receiving it 5/28/08 via Comanco. In fact, Defendants have never notified the board of directors or members of the Association of this petition or any information regarding it. Moreover, until serving the Second Motion to Dismiss, they have never notified Plaintiff that signatures were removed, or by what method, or by whom. Was it Comanco? Defendant board members? Petitioners? If petitioners, was it spontaneous on their part, or solicited by Defendants? Can petitioners remove their signatures voluntarily or by solicitation after a petition is lawfully submitted? That information, so far, remains undisclosed.

66. Defendant Frankhouser alleges Plaintiff failed to state if the petition was even submitted with the requisite 5% of members’ signatures. Yet, Plaintiff’s Count X clearly implies, even if it doesn’t specifically state (as the facts in the Ex Parte Motion do, of which she is well aware), that the petition to audit met the 5% threshold

required by the governing laws. This is pretty specious reasoning on Defendant Frankhouser's part.

67. Moreover, Defendant Frankhouser is the secretary of the Association, and is charged with receiving any petitions submitted by members of the Association. (By Laws Article VI Section 6) Therefore, she should be able to speak directly and definitively as to what happened with this petition. But her statement that "*it appears* [emphasis added] that petitioners removed their names from the audit petition, which *apparently* [emphasis added] resulted in less than 5 percent of the units requesting an audit," indicates that not even Defendant Frankhouser herself is sure what percentage of names remain on the petition, how signatures were removed, when and by whom, or the actual status of the petition at this very moment. "*It appears*"??? "*Apparently*"??? Does she not *know*? Is this only *hearsay*? Defendant Frankhouser raises new facts without affidavit or evidence in violation of Rule § 2-311(d).

68. Defendant Frankhouser fails to address any salient point of Plaintiff's Count X, and in fact raises more questions. Accordingly it must not be dismissed.

Plaintiff Count XI

69. Defendant Frankhouser misrepresents the obvious by claiming Plaintiff "fails to include [sic] identify by [sic] By-law, if any, were violated," and then, again, fails to reference the correct paragraph in the Count XI which contradicts the above statement. (Second Motion to Dismiss, p. 10, letter 'J')

70. In fact, Plaintiff specifically alleges Defendants violated "By Laws Article V Section 3, § 11-109(c)(6), 11-109(d), § 11-111 of the Act." (Complaint, at 53).

71. Defendant Frankhouser fails to provide any reason why this Count should be dismissed other than the aforementioned lack of facts (which is being remedied), and accordingly this Count XI should not be dismissed.

Plaintiff's Count XII

72. Defendant Frankhouser appears to have no defense to the allegations in this Count XII other than to speciously assert Plaintiff is confused with Maryland insurance laws when Plaintiff, in plain English, bases his allegations on MCL § 2-405.1 regarding the standard of care expected of directors of a corporation. In fact, the abbreviated term "MCL" is even defined for Defendant Frankhouser, (Complaint, at I.a) so it is very difficult to understand this level of confusion by Defendant Frankhouser and/or Counsel other than a willful obtuseness.

73. MCL § 2-405.1 provides the statutory foundation for the standard of conduct expected of directors of a Maryland corporation as generally expressed as a "fiduciary duty" embodying a duty of care, a duty of loyalty, and a duty to inform.

74. Plaintiff uses the term "fiduciary" to mean "where one person places complete confidence in another in regard to a particular transaction or one's general affairs or business." (see <http://law.com>; specifically, legal term search "fiduciary relationship.") That definition certainly applies to directors of a Maryland corporation, and it is in that context Plaintiff refers to MCL § 2-405.1(b)(1)'s good faith provisions as providing a framework for understanding a fiduciary duty, and MCL § 2-405.1(b)(2)'s definition of what constitutes acting bad faith and, therefore, a violation of this fiduciary duty.

75. Defendant Frankhouser fails to provide any reason why this Court should be dismissed and, accordingly, this Court XII should not be dismissed.

Conclusion

76. Plaintiff has to wonder why Defendant Frankhouser felt it so necessary to misrepresent Plaintiff's actual claims in each of his counts, when simply stating that the facts required by Rule § 2-305 not being included establishes a prima facie case for dismissal. The reasonably inferred reason is that Defendant Frankhouser is fully apprised of the facts, cannot controvert them, knows full well Plaintiff can and will amend his Complaint to comply with the technical requirements of Rule § 2-305, and instead seeks to obfuscate Plaintiff's claims by attempting to rewrite the complaint, and to misdirect and confuse the Court towards winning a technical dismissal of the action. This, however, is not in the interest of real or substantial justice.

77. For the reasons stated above, Defendant Frankhouser fails at every level—aside from the aforementioned facts being placed in the Ex Parte Motion instead of the Complaint—to establish even a prima facie case for dismissing the Complaint. Virtually all of Defendant Frankhouser's claims to dismiss involve her completely rewriting or misrepresenting Plaintiff's allegations, or failing to refer the Court to the portions of the Complaint that contradict Defendant Frankhouser's assertions.

78. Defendant Frankhouser makes one unsubstantiated claim in the last paragraph of the Second Motion to Dismiss (at p. 10) that "many of Plaintiff's causes of action are barred by statute," which, while also not a true statement, must be ignored by this

Court for failing to identify which statute(s) provide the bar, why, to which causes of action it refers and for violating Rule 2-311(d).

79. Plainly, Defendant Frankhouser has failed to establish any good or legal reason why the Complaint cannot be maintained against Defendant Frankhouser, and therefore the Second Motion to Dismiss must be DENIED in its entirety.

80. Furthermore, this Court is respectfully requested to establish whether or not Counsel has a real or perceived conflict of interest by representing both Defendant Association and Defendant Frankhouser, and potentially other Defendant board members.

81. Further, pursuant to Rule § 2-322(e) and as argued hereinabove, Plaintiff requests and moves this Court to strike all references to “any defendant” or to “all defendants,” or any like references, and all references to Plaintiff’s captions as a cause of action, in the Second Motion to Dismiss.

82. Further, Plaintiff requests this Court to order Defendants to notify and inform the Association’s members of the content, facts, allegations and charges contained in the above-captioned action, including those in the original complaint and the Ex Parte Motion, and those of Plaintiff’s amended complaint(s) when filed by ordering Defendants to mail to all members a copy of said documents.

83. Further, Plaintiff requests this Court to order Defendants to notify and inform the Association’s members of any and all orders or judgments or decisions of this Court pertaining to the above-captioned action to all members of the Association, by mailing to said members each and every of said documents.

WHEREFORE, Plaintiff respectfully requests that this Court deny Defendant Frankhouser's Second Motion to Dismiss, and grant Plaintiff's requests as enumerated hereinabove.

Respectfully Submitted,

Christopher McKeon, Plaintiff, *Pro Se*
1120 Soho Court, Crofton, MD 21114
410-271-7907

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 Response and Opposition to Carol Frankhouser's Motion to Dismiss Complaint is true and correct to the best of my knowledge, information and belief.

Christopher D. McKeon
1120 Soho Court, Crofton, MD 21114

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 _____, 200____, upon the following:

Comanco, Inc., and
Ruth Angell
c/o Thomas R. Callahan
Callahan & Callahan, P.C.
2133 Defense Hwy
Crofton, MD 21114

Charing Cross Townhouse Association,
Inc., Carol Frankhouser
c/o Owen J. Curley
Niles, Barton & Wilmer, LLP
111 S. Calvert Street, Suite 1400
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Joseph R. DeSantis
1001 Shire Court
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Respectfully Submitted,

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Plaintiff, *Pro Se*
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