

VERDE, STEINBERG & PONTELL, LLC

One Parker Plaza
400 Kelby Street
Fort Lee, New Jersey 07024
(201) 944-4200

*Attorneys for Plaintiffs, Thomas Wiggins, Martha Norget,
Martha DiGiovanni and The Coalition for a Better Galaxy, Inc.*

THOMAS WIGGINS, MARTHA NORGET,
MARTHA DiGIOVANNI, and THE
COALITION FOR A BETTER GALAXY,
INC.,

Plaintiffs,

v.

THE GALAXY TOWERS CONDOMINIUM
ASSOCIATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
CHANCERY DIVISION

DOCKET NO. C-81-10

CIVIL ACTION

NOTICE OF MOTION

To: The Galaxy Towers Condominium Association
Management Office
7000 Boulevard East, 16th Floor
Guttenberg, New Jersey 07093

PLEASE TAKE NOTICE that on **July 23, 2010** at 9:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorneys for plaintiffs, Thomas Wiggins, Martha Norget, Martha DiGiovanni and The Coalition for a Better Galaxy, Inc., will move before the Superior Court of New Jersey, Chancery Division - General Equity, Hudson County, 583 Newark Avenue, Jersey City, New Jersey, for an Order granting the following relief:

1. Permitting the within action to proceed summarily pursuant to Rule 4:67-1(b).

2. Fixing the date of the summary trial, pursuant to Rule 4:67-5, to be the return date of this motion or such date thereafter as the Court so chooses.
3. Declaring, after conclusion of the summary trial, that Plaintiffs are entitled to the documents and information sought in Count One of the Restated and Amended Verified Complaint, and requiring Defendant to immediately provide same to Plaintiffs.
4. Declaring, after conclusion of the summary trial, that Plaintiffs, as indicated in Count Two of the Restated and Amended Verified Complaint, have properly requested a special meeting of the Unit Owners, and requiring Defendant to immediately hold such special meeting for the purpose of recalling certain members of Defendant's Board of Directors.
5. Compelling, after conclusion of the summary trial and as indicated in Count Three of the Restated and Amended Verified Complaint, that Defendant is obligated to maintain, repair and/or replace certain Common Elements.
6. In the event the Court determines that not all counts of the Restated and Amended Verified Complaint can proceed in a summary manner, severing the counts accordingly.

PLEASE TAKE FURTHER NOTICE that in support of this Notice of Motion Plaintiffs shall rely upon the attached Memorandum of Law and Restated and Amended Verified Complaint.

PLEASE TAKE FURTHER NOTICE that plaintiffs hereby request oral argument in the event opposition is submitted.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is enclosed herewith.

VERDE, STEINBERG & PONTELL, LLC
Attorneys for Plaintiffs

By: 
Louis J. Verde

Dated: June 16, 2010

F:\wpdocs\LITIGATI\Coalition for a Better Galaxy\Notice of Motion (NOM) to Proceed Summarily.wpd

THOMAS WIGGINS, MARTHA NORGET,
MARTHA DiGIOVANNI, and THE
COALITION FOR A BETTER GALAXY,
INC.,

Plaintiffs,

v.

THE GALAXY TOWERS CONDOMINIUM
ASSOCIATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
CHANCERY DIVISION

DOCKET NO. C-81-10

CIVIL ACTION

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO PROCEED SUMMARILY**

VERDE, STEINBERG & PONTELL, LLC

One Parker Plaza
400 Kelby Street
Fort Lee, New Jersey 07024
(201) 944-4200

*Attorneys for Plaintiffs, Thomas Wiggins, Martha
Norget, Martha DiGiovanni and The Coalition for a
Better Galaxy, Inc.*

Of Counsel and on the Brief:

Louis J. Verde, Esq.

On the Brief:

Jameson P. Van Eck, Esq.

TABLE OF CONTENTS

Table of Cases ii

Table of Statutes and Authorities iii

Table of Court Rules iii

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 3

STATEMENT OF FACTS 4

LEGAL ARGUMENT

POINT I 15

This Matter is Ripe for Summary Disposition

POINT II 19

Plaintiffs are Entitled to the Requested Information

POINT III 23

Plaintiffs Submitted a Petition to Hold a Special Meeting of the Unit Owners, Which Exceeded the Twenty-Five (25%) Percent Threshold Required by the Governing Documents, and Therefore, Defendant Must Hold the Special Meeting

POINT IV 29

The Association is Obligated to Maintain, Repair and/or Replace the General and Limited Common Elements, As is Necessary for the Health, Safety, Pleasure and Welfare of Its Members

CONCLUSION 33

TABLE OF CASES

Baker v. Reeves, 9 N.J. Misc. 1303 (Sp. Ct. 1931) 25, 27, 28

Balm v. City of Cape May, 3 N.J. Misc. 58 (Sup. Ct. 1925) 27

Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373
(App. Div. 2003) 17

Ford v. Gilbert, 89 N.J.L. 482 (Sup. Ct. 1916) 26, 27

Kim v. Flagship Condo. Owners Assoc., 327 N.J. Super. 544 (App. Div. 2000) 30

MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.
Super. 534 (App. Div. 2005) 16, 32

Mocco v. Picone, 203 N.J. Super. 443 (App. Div. 1985) 25, 26

Perritti v. Ran-Dav's County Kosher, Inc., 289 N.J. Super. 618 (App. Div. 1996) 17, 32

Price v. N.J. Manufacturers Ins. Co., 182 N.J. 519 (2005) 17

Salorio v. Glaser, 82 N.J. 482 (1980) 16

Thanasoulis v. Winston Towers 200 Assoc., Inc., 110 N.J. 650 (1988) 30

Watson v. Manhattan & Bronx Surface Transit Operating Auth., 487 F. Supp. 1273
(D.N.J. 1980) 16

TABLES OF STATUTES AND AUTHORITIES

N.J.S.A. 15A:5-24(a)	21
N.J.S.A. 46:8B-14(a)	30
N.J.S.A. 46:8B-14(k) & -15(f)	22
N.J.S.A. 46:8B-15(f)	25
N.J.S.A. 46:8B-15(g)	20
N.J.S.A. 46:8B-18	30
N.J.S.A. 47:1A-6	18

TABLE OF COURT RULES

R. 1:6-3	15
R. 4:10-2(a)	22
R. 4:67-1	2, 3
R. 4:67-1(a)	15
R. 4:67-1(b)	15
R. 4:67-2	16
R. 4:67-2(b)	15, 16
R. 4:67-5	15, 16, 17

PRELIMINARY STATEMENT

Plaintiffs are three Unit Owners of the Galaxy Towers Condominium, as well as a non-profit corporation comprised solely of additional Unit Owners. Defendant is the Galaxy Towers Condominium Association, Inc., of which Plaintiffs are members by virtue of being Unit Owners. This memorandum of law is submitted in support of Plaintiffs' motion to proceed summarily as to all counts of the Restated and Amended Verified Complaint.

In or about October 2009, in accordance with the defendant association's governing documents, Plaintiffs filed a petition consisting of 366 written requests to Defendant's Secretary, seeking to hold a special meeting of the Unit Owners in order to have a vote to recall three members of Defendant's Board of Directors.

In or about December 2009, the Board of Directors (three of whom were the very individuals sought to be recalled) and the Secretary of the Association took the position that approximately 211 of the 366 written requests were ineligible for various reasons and voted not to permit the special meeting. However, Plaintiffs believe that a large percentage of the "ineligible" requests must be counted as a matter of law per the language of the Association's governing documents.

Subsequent to Defendant's refusal to honor the petition for a special meeting, Plaintiffs requested certain documentation from the Association that allegedly supported Defendant's position. Plaintiffs are entitled to this information pursuant to the governing documents, the New Jersey Condominium Act and the New Jersey Non-Profit Corporation Act. Notwithstanding Plaintiffs' entitlement to this information, Defendant denied Plaintiffs access to the information on multiple

occasions.

Finally, Plaintiffs are seeking to compel the Association to maintain, repair and/or replace various General and Limited Common Elements, which the Association is obligated to do pursuant to its governing documents. Notwithstanding this obligation and duty, the Association has failed to take action on multiple projects and must be compelled to do so for the benefit of the Association and its members.

Left with no other options, Plaintiffs commenced the within litigation to vindicate their right to vote, to gain access to records of the Association, and to compel the Association to uphold its duty to maintain the Common Elements. Because the existing, undisputed record is sufficient for the purposes of a decision on the legal issues, Plaintiffs are entitled to have their dispute resolved in a summary manner pursuant to Rule 4:67-1 et seq.

PROCEDURAL HISTORY

The Verified Complaint was filed on May 21, 2010. Thereafter, on June 8, 2010, the Restated and Amended Verified Complaint was filed. Along with the Restated and Amended Verified Complaint, Plaintiffs served a Notice of Motion and Memorandum of Law, seeking to proceed summarily in accordance with Rule 4:67-1 et seq.

STATEMENT OF FACTS

I. The Parties

Plaintiffs, Thomas Wiggins, Martha Norget and Martha DiGiovanni, are owners of Units in the multiple family dwellings known as the Galaxy Towers Condominium (the “Galaxy”), located at 7000, 7002 and 7004 Boulevard East, Guttenberg, New Jersey 07093, and as such, are “members” of the Galaxy Towers Condominium Association (“Defendant” or “GTCA” or “Association”) with all rights appurtenant thereto. In addition, they are members and officers of plaintiff, The Coalition for a Better Galaxy, Inc. (the “Coalition”), which is a non-profit corporation organized under the statutes of the State of New Jersey, having a principal place of business at 7002 Boulevard East, Apartment # 38G, Guttenberg, New Jersey 07093. The Coalition is comprised solely of Unit Owners at the Galaxy. (Res. & Am. V. Compl. at ¶¶ 1-5).

Defendant, GTCA, is a not-for-profit corporation of the State of New Jersey charged with the maintenance, preservation and control of the Galaxy, which contains approximately 1105 voting Units. Defendant’s principal office is located at 7000 Boulevard East, 16th Floor, Guttenberg, New Jersey 07093. The GTCA is governed by a Board of Directors (the “Board”), who act on the GTCA’s behalf. (Id. at ¶5).

II. The Governing Documents

On or about March 26, 1980, a master deed converting the Galaxy into condominium ownership was recorded in the office of the Register of Hudson County at Deed Book 3297, Page 231 (the “Master Deed”). Annexed to the Master Deed are the By-Laws of the Association (the Master Deed and By-Laws collectively referred to as the “Governing Documents”). (Id. at ¶6).

Pursuant to Section 14 of the Master Deed, as set forth below, ownership of a Unit

automatically establishes the Unit Owner as a member of the GTCA:

MEMBERSHIP IN THE ASSOCIATION. Upon acceptance of a Deed to a Unit each Unit Owner shall automatically become a member of the Association and shall be a member for so long as he shall hold legal title to his Unit subject to all provisions of this Master Deed, the New Jersey Condominium Act, the Articles of Incorporation, and the By-Laws and Rules and Regulations which may now or hereafter be established for or by the Association.

[Id. at ¶7].

Article II, Section 7 of the By-Laws, as set forth below, establishes that each member/Unit Owner is entitled to one (1) vote for each Unit owned:

Votes. Each Unit Owner shall be entitled to such vote(s) for each Unit to which he holds title as is provided in Paragraph 6 of the Master Deed. When more than one person holds title, the vote(s) for each Unit shall be exercised as the Co-Owners among themselves determine. When one or more Co-Owners signs a proxy or purports to vote for his or her Co-Owners, such vote(s) shall be counted unless one or more of the other Co-Owners is present and objects to such vote(s); or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote(s) are counted. If Co-Owners disagree as to the vote(s), the vote(s) shall be split equally among the Co-Owners.

[Id. at ¶8].

Article II, Section 5 of the By-Laws, as set forth below, states that the voting rights of any member may be suspended by act of the Board for unpaid common expense assessments, provided the Unit Owner is afforded an opportunity for a hearing:

Suspension of Rights. *The membership and voting rights of any member may be suspended by the Board for any period during which any assessment against the Unit to which his membership is appurtenant remains unpaid;* but upon payment of such assessments, and any interest accrued thereon, whether by check or cash, his rights and privileges shall be immediately and automatically restored. Further, if the Rules and Regulations governing the use of the

Common Elements and the conduct of persons thereon have been accepted and published, as authorized by the By-Laws, the rights and privileges of any person in violation thereof may be suspended at the discretion of the Board for a period not to exceed thirty (30) days for any single non-continuous violation. If the violation is of a continuing nature, such rights and privileges may be suspended indefinitely until such time as the violation is abated. ***No such action shall be taken by the Board until the Unit Owner is afforded an opportunity for a hearing which is consistent with the principles of due process of law.***

[Id. at ¶9 (emphasis added)].

Article III, Section 3 of the By-Laws, as set forth below, permits Unit Owners to call a special meeting so long as twenty-five (25%) percent of the members entitled to vote submit a written request for such a meeting:

Special Meetings. After the first annual or special meeting, special meetings of Unit Owners may be called by the President whenever he deems such a meeting advisable, or shall be called by the Secretary when so ordered by the Board, or upon the written request of Members representing not less than twenty-five (25%) percent of all the votes entitled to be cast at such meeting. Such request shall state the purpose(s) of such meeting and the matter(s) proposed to be acted upon. Unless Unit Owners representing at least fifty (50%) percent of all votes entitled to be cast request such a meeting, no special meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting of the Unit Owners held during the preceding twelve (12) months, which determination shall be made by the Board in its sole and absolute discretion.

[Id. at ¶10].

Article III, Section 5 of the By-Laws, as set forth below, establishes that a member of the Board may be removed by a majority vote of the Unit Owners present at a special meeting called for that purpose:

Removal of Members of the Board. At any duly held regular or special meeting of the Unit Owners, any one or more Directors may

be removed with or without cause by a majority of the Unit Owner votes present, and a successor may then and there be appointed by a majority of the remaining Directors to fill the vacancy thus created. In the event that all of the Directors are removed, successors shall be elected by the Unit Owners in the manner set forth in Article IV, Section 3 herein to fill the vacancies thus created. Each person so created shall be a Director for the remainder of the terms of the Director whose term he is filling and until his successor is duly elected and qualified. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting. This provision shall not apply to any Director appointed by the Sponsor.

[Id. at ¶11].

Article VI, Section 14 of the By-Laws, as set forth below, permits a Unit Owner to review the books of account of the Board upon ten (10) days written notice to the Treasurer:

Examination of Books. Each Unit Owner shall be permitted to examine the books of account of the Board by appointment at a reasonable time on business days; provided, however, that the Treasurer has been given at least 10 days prior written notice of the Unit Owner's desire to make such an examination.

[Id. at ¶12].

III. Petition for Special Meeting of Unit Owners

On or about October 14, 2009, Plaintiffs filed with the Secretary of the GTCA the written petition of 366 Unit Owners seeking to hold a special meeting of the Unit Owners for the purpose of recalling three (3) directors of the Board (the "Petition"). (Id. at ¶30). This represented approximately thirty-three (33%) of all members of the GTCA. (Id.). Specifically, the Petition stated conspicuously on the top of the document:

We the Homeowners and Voting Members of the Galaxy Towers Condominium Association request a Special Meeting of the Homeowners and the Board of Directors to be called not less than 10 days or more than 90 days after presentation of this request to the

Board, for the purpose of the immediate removal of Directors Lerner, Strumza and Miller, currently serving on the GTCA Board.

[Id. at ¶31].

On or about October 25, 2009, the Secretary made the following oral representations with respect to the Petition:

- a. The Petition was comprised of 366 numbered names;
- b. Approximately 240 of the requests were invalid for the following reasons:
 - i. 66 were redundancies (as a result of duplicate and triplicate names or names without signatures);
 - ii. 79 petitioners were in arrears as of the date when the Petition was received;
 - iii. 21 petitioners were not members of the Association;
 - iv. 64 petitioners subsequently signed a document withdrawing their names from the Petition;
 - v. 5 petitions bore no signature; and,
 - vi. 5 petitions were not clear.
- c. Some of these numbers overlap and the figures were not final.
- d. Based upon a total of 1,105 voting Units, the Petition did not contain the requisite percentage of Unit Owners.

[Id. at ¶32].

On or about December 10, 2010, the Board held a meeting at which they voted to reject the Petition upon the report of the Secretary. (Id. at ¶33). By letter of that same date, the Secretary

outlined the basis for rejecting the Petition. (Id. at ¶34). In contrast to some of the positions taken by the Secretary on October 25, 2009, the Secretary made the following representations regarding the Petition in the December 10th letter:

- a. The Petition was comprised of 366 numbered names;
- b. Approximately 211 (as opposed to the 240 previously indicated) of the requests by the petitioners were invalid for the following reasons:
 - i. 66 were redundancies (as a result of duplicate and triplicate names or names without signatures);
 - ii. 66 petitioners were in arrears as of the date when the Petition was received;
 - iii. 20 petitioners were not members of the Association (or owners of record);
 - iv. 48 petitioners subsequently signed a document withdrawing their names from the Petition; and
 - v. 11 petitioners failed to sign or otherwise provide clear identifying information.
- c. The Petition contained 155 valid names and signatures, and based upon a total of 1,105 voting Units, the Petition did not contain the requisite percentage of Unit Owners.

[Id. at ¶35].

Sometime after the December 10th meeting, the Board requested that the accounting firm for the Association conduct an “audit” of the Petition. (Id. at ¶36). The report from the accountants

states (after emphasizing that the procedure by which the review was conducted was provided by the Board, and as such, was not a true audit):

- a. 366 names were included in the Petition.
- b. Approximately 211 of the requests by the petitioners were invalid for the following reasons:
 - i. 68 were duplicates;
 - ii. 77 petitioners were in arrears as of the date when the Petition was received;
 - iii. 11 petitioners were not current owners of record;
 - iv. 7 petitioners referenced a name/address that was incorrect/ineligible/incomplete; and
 - v. 48 petitioners subsequently withdrew via letter.

[Id. at ¶ 37].

However, notwithstanding the results of the audit, certain of the above-referenced categories of alleged ineligible petitioners must be counted as a matter of law, as will be explained in detail below.

IV. Request for Information

On or about December 15, 2009, counsel for Plaintiffs submitted a written request to the Secretary for access to certain books and records of the Galaxy, for the purpose of disputing the Board's determination that certain petitioners were ineligible. (Id. at ¶16). In that letter, Plaintiffs' counsel requested the following:

- a. Copies of the account for each Unit setting forth any common expenses or

- other charges due, the due dates thereof, the balance due and any interest in common surplus, as required by the New Jersey Condominium Act;
- b. Copies of any records indicating whether specific Units were found to be “not in good standing” and if so, whether such members were afforded a hearing as required by the Governing Documents;
 - c. In the event that fines were an element of the arrears of any Unit, copies of records indicating that the Unit Owner was given notice of the alleged basis for the fine and an opportunity to participate in a dispute resolution procedure as required by the New Jersey Condominium Act;
 - d. Copies of a list of the names and address of all members (i.e., Unit Owners) of the GTCA, as required to be maintained and provided to members pursuant to the New Jersey Non-Profit Corporation Act;
 - e. Copies of the letters of those members who allegedly withdrew their requests for a special meeting; and
 - f. Copies of those written requests for a special meeting deemed to be ineligible on the basis of a lack of signature or other missing information.

[(Id. at ¶17)].

By letter dated December 22, 2009, counsel for the GTCA responded to Plaintiffs’ request for information and denied same. (Id. at ¶18). The reasons articulated by the GTCA for denying Plaintiffs’ access to records was that the Coalition was not itself a Unit Owner and the request for records did not identify the members of the Coalition to confirm that they were Unit Owners. (Id. at ¶19). The GTCA also took the position that the records were not GAAP records, and accordingly,

were broader than that permitted by statute. (Id.). Finally, the GTCA took the position that, notwithstanding the New Jersey Condominium Act and Non-Profit Corporation Act, any request for records must comply with the GTCA's Administrative Resolution #25. (Id.).

On or about January 21, 2010, counsel for Plaintiffs provided the names of the officers of the Coalition (all of whom are Unit Owners) and reiterated the request for access to the GTCA's records. (Id. at ¶20). In that letter, Plaintiffs provided justification in support of their request. (Id. at ¶21).

By letter dated February 4, 2010, counsel for the GTCA responded to Plaintiffs' request for information and again denied same. (Id. at ¶22). The Galaxy articulated several reasons for denying the request. With regard to its refusal to provide the list of members required by the New Jersey Non-Profit Corporation Act, the GTCA contended that it did not maintain such a list because it was not a non-profit corporation. (Id. at ¶¶ 22-23). With regard to the accounts for each Unit required by the New Jersey Condominium Act, the GTCA responded that such accounts were not GAAP records, notwithstanding that the statute specifically declared them to be GAAP records. (Id.). With regard to the list of petitioners deemed by the Secretary to be redundancies, unknowns or not owners of record, the GTCA responded that they were not GAAP records, apparently arguing that the Unit Owners have no right to substantiate the position taken by the Secretary. (Id.). Finally, with regard to copies of the forty-eight (48) alleged requests to withdraw from the Petition, the GTCA responded that they were not GAAP records, again apparently arguing that the Unit Owners have no right to substantiate the position taken by the Secretary. (Id.).

In accordance with the Governing Documents and applicable statutes, the Board has the obligation to maintain the books and records of the Association and to make same available for inspection by the Unit Owners. (Id. at ¶24).

V. Maintenance, Repair and Replacement of General and Limited Common Elements

Article V, Section 2 of the By-Laws, as set forth below, obligates the Board to maintain, replace and repair the General and Limited Common Elements as necessary to sustain a first class condominium:

Duties and Responsibilities. It shall be the affirmative and perpetual obligation and duty of the Board to perform the following: (a) Cause the General and Limited Common Elements to be maintained according to accepted standards and as set forth in the Master Deed, including, but not limited to such maintenance, painting, replacement and repair work as may be necessary All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first class quality.

[Id. at ¶49].

Pursuant to Section 8 of the Master Deed, set forth below in pertinent part, the Board is required to levy and collect Common Expense assessments for the purpose of maintaining and repairing the Common Elements for the health, safety, pleasure and welfare of the members:

The annual Common Expense assessments levied by the Board shall be used . . . for promoting the health, safety, pleasure and welfare of the members of the Association, including, but without limitation: the maintenance and repair of the exterior and roofs of the Complex, including but not limited to cleaning, painting and sandblasting of the exterior surfaces and finishes; roof repairs; maintenance, repair and replacement of the Common Elements

[Id. at ¶50].

That same section of the Master Deed, as set forth below, also identifies Exhibit G to the Master Deed, which sets forth certain maintenance obligations:

Notwithstanding the general provisions of maintenance set forth in this paragraph 8 of the Master Deed or in any other provisions of the Master Deed or By-Laws, specific maintenance responsibilities and the cost attributable thereto shall, to the extent set forth thereon, be

determined pursuant to the Chart of Maintenance Responsibilities attached as Exhibit G hereto.

[Id. at ¶51].

The Galaxy is approximately 35 years old and the major structural components and major mechanical systems are in their original condition. A prior board of directors had developed a strategic plan to address these issues, which was subsequently halted by the present Board in or about January 2008. (Id. at ¶54).

According to Exhibit G of the Master Deed, the list of items for maintenance, repair and replacement includes, but is not limited to, the following: plumbing and related systems and components; electrical and related systems and components; heating, ventilation and cooling related systems and components; parking spaces and ingress and egress; storage cubicles; paved areas and other improvements outside the main building; exterior roof, walls and foundations; and entrance areas to the units. (Id. at ¶52). The following items at the Galaxy are in need of remediation:

- a. Elevator systems (upgrade);
- b. Roof for Tower Two;
- c. Hallway carpets and wall coverings;
- d. Concrete garage decks/floors;
- e. Driveway;
- f. Indoor pool structure and underpinnings;
- g. Lobby area (partially completed);
- h. Gym equipment; and
- i. Additional infrastructure issues. [Id. at ¶53].

LEGAL ARGUMENT

POINT I

This Matter is Ripe for Summary Disposition

There are two categories of summary proceedings that are referred to in the Court Rules: summary actions that are authorized by various rules and statutes, R. 4:67-1(a), and plenary actions that are converted by motion into summary proceedings. R. 4:67-1(b). Pursuant to the latter subsection of the Rule, the Court can proceed summarily “provided it appears to the court, on motion made pursuant to R. 1:6-3 and on notice to the other parties to the action not in default, that it is likely that the matter may be completely disposed of in a summary manner.” R. 4:67-1(b). In this matter, Plaintiffs seek to convert a plenary action into a summary proceeding on the basis that the matter can be disposed of in a summary manner.

“If the court is satisfied that the matter may be completely disposed of on the record (which may be supplemented by interrogatories, depositions and demands for admissions) or on minimal testimony in open court, it shall, by order, fix a short date for the trial of the action, which shall proceed in accordance with R. 4:67-5, insofar as applicable.” R. 4:67-2(b). Rule 4:67-5 states in pertinent part:

The court shall try the action on the return date, or on such short day as it fixes. If no objection is made by any party, or the defendants have defaulted in the action, or the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon. If any party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment.

Based on the above-cited Rules, a non-moving party’s claim that discovery is needed will

not, by itself, derail a motion to proceed in a summary manner. See S. Pressler, Rules Governing the Courts of the State of New Jersey, Comment to Rule 4:67-2 (2010) (stating, “[t]he rule expressly permits supplementation of the record by discovery and expressly authorizes the court to order a summary disposition even where it appears that testimony will be required . . .”). Rather, only if the Court determines that there is a disputed factual issue that requires development of an extensive record, should the motion be denied. See Salorio v. Glaser, 82 N.J. 482, 517 (1980) (holding in a case with constitutional implications that “the complexity of this determination and the far-reaching effects of a decision on the issue of the statute’s constitutionality make this case inappropriate for the summary disposition . . . a full record should therefore be developed”).

The New Jersey District Court commented on summary proceedings as follows, “[t]his is a highly efficient procedure by which cases involving only minor factual disputes and largely turning on questions of law can be decided promptly, expeditiously and inexpensively. Unlike the traditional motion for summary judgment, the court is allowed to hear and resolve minor factual issues and then decide the case.” Watson v. Manhattan & Bronx Surface Transit Operating Auth., 487 F. Supp. 1273, 1295 (D.N.J. 1980). The New Jersey Appellate Division made similar remarks and stated, “[s]ummary actions are, by definition, short, concise, and immediate, and further, are ‘designed to accomplish the salutary purpose of swiftly and effectively disposing of matters which lend themselves to summary treatment.’” MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 551 (App. Div. 2005). Rule 4:67-2(b) allows for an “elaborated record” and “specifically contemplate[s] depositions.” Id.

The court must try the action on the return day "or on such short day as it fixes." R. 4:67-5. At the summary trial, the court may try the action on the pleadings and affidavits, hear oral

arguments, and render its final judgment if the affidavits "show palpably" that there is no genuine issue as to any material fact. R. 4:67-5; see Price v. N.J. Manufacturers Ins. Co., 182 N.J. 519, 528 (2005) (although the parties disagreed on the legal implications of the material facts, there was no need for a plenary hearing, as the court applied the law to the undisputed facts). A summary action is not a summary judgment motion. The court in a summary action "must make findings of fact, either by adopting the uncontested facts in the pleadings after concluding that there are no genuine issues of fact in dispute, or by conducting an evidentiary hearing. Moreover, a party in a summary action proceeding is not entitled to favorable inferences such as those afforded to the respondent in a summary judgment motion." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 378-79 (App. Div. 2003).

In the event a court finds that part of a case can proceed summarily, while another part should proceed in a plenary fashion, the court should sever the matters accordingly. Perritti v. Ran-Dav's County Kosher, Inc., 289 N.J. Super. 618, 624 (App. Div. 1996).

In this matter, Plaintiffs have pled three counts in their Restated and Amended Verified Complaint: Count One which seeks access to condominium records, Count Two which seeks to compel a special meeting of the Unit Owners, and Count Three which seeks to compel the Association to perform necessary maintenance, repair and/or replacement of certain Common Elements.

There can be no dispute that the first count can be resolved as a matter of law on the basis of the allegations certified to in the Restated and Amended Verified Complaint. Resolution of Count One turns largely on questions of law pertaining to the right of Unit Owners to seek access to information. In the unlikely event that there is a factual issue in dispute in relation to Count One,

it could easily be resolved with either minimal discovery or testimony. Count One of the Restated and Amended Verified Complaint can be “completely disposed of in a summary manner”, and should be treated like cases for access to public records, which are handled in a summary manner pursuant to statute. See N.J.S.A. 47:1A-6. Therefore, Plaintiffs respectfully request that Count One be decided on the return date of this motion or on such date thereafter as the court decides.

Count Two of the Restated and Amended Verified Complaint alleges that Plaintiffs submitted a written request for a special meeting of the Unit Owners, consisting of twenty-five (25%) percent of the Unit Owners entitled to vote, and therefore as a matter of law, the condominium association is obligated to hold the special meeting. While Defendant takes the position that 211 of the 366 petitioners are ineligible, 125 of the 211 must be counted as a matter of law. The 125 of 211 requests that should be counted relate to members in arrears and members who later withdrew. When the 125 requests are added to the 155 requests not in dispute, Plaintiffs have 280 requests in total, which exceeds the twenty-five (25%) percent threshold. There is no factual dispute that would preclude a determination on the existing record.

Accordingly, Plaintiffs respectfully request that Count Two be decided on the return date of this motion or on such date as fixed by the Court thereafter. In the event the Court determines that additional evidence is necessary, the Court can set the matter down for a short trial date and provide expedited discovery deadlines. However, such need for additional evidence should not bar the matter from proceeding in a summary fashion as the issue is ripe for prompt and expeditious resolution.

Finally, Count Three of the Restated and Amended Verified Complaint alleges that Plaintiffs have not properly maintained certain of the Common Elements and seeks to compel the Association

to remedy this issue. This Court will require limited discovery to flesh out the Common Elements in need of repair and the nature and extent of such repairs. However, any need for additional evidence should not bar the matter from proceeding in a summary fashion as the issue is ripe for prompt and expeditious resolution, and the Court can establish a reasonable discovery timetable. In the event the Court disagrees that this count can be handled in a summary fashion, it should sever this count from the Restated and Amended Verified Complaint for plenary disposition and allow the other two counts to proceed summarily.

In sum, Counts One, Two and Three can be resolved at a summary proceeding.

POINT II

Plaintiffs are Entitled to the Requested Information

In Count One of the Restated and Amended Verified Complaint, Plaintiffs seek a judgment compelling Defendant to provide access to certain condominium records. The facts pertaining to this issue are settled, and as such, on the return date of this motion the Court can adopt findings of fact and conclusions of law based on the existing record.

In accordance with the Governing Documents and applicable statutes, the Board has the obligation to maintain the books and records of the Association and to make same available for inspection by the Unit Owners. Plaintiffs have requested three category of documents, which will each be addressed in turn: (i) accounts for each Unit, (ii) a list of all Unit Owners, and (iii) documents relied upon by Defendant in determining that Plaintiffs did not exceed the twenty-five (25%) percent threshold required for a special meeting.

First, Article VI, Section 14 of the By-Laws permits a Unit Owner to review the books of account upon ten (10) days written notice to the Treasurer. (Id. at ¶12). More importantly, however,

the New Jersey Condominium Act unequivocally permits a Unit Owner to review certain records of a condominium association, including but not limited to the accounts of other Unit Owners:

The association . . . shall be responsible for the performance of the following duties . . . : (g) The maintenance of accounting records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners. Such records shall include: (i) A record of all receipts and expenditures, [and] (ii) An account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus.

[N.J.S.A. 46:8B-15(g)].

The GTCA is governed by the Condominium Act and its requirement that members of the condominium are entitled to review the account records for each Unit. On December 15, 2009, January 21, 2010, and March 12, 2010, Plaintiffs requested the account records for each Unit in an effort to verify those individuals allegedly in arrears at the time the Petition was submitted. This information was needed to verify the number of petitioners who were in arrears and to verify the total number of all voting members in arrears.¹ Notwithstanding the statutory requirement that this information be made available, the GTCA has refused to provide the requested documentation, based on a Board created Administrative Resolution #25. The GTCA also alleged that the Department of Community Affairs had approved this resolution. Even if the latter allegation was true, neither the DCA nor the Board has the authority to overturn a statutory mandate unless such authority is

¹ When calculating the twenty-five (25%) percent threshold for calling a special meeting, the numerator of the fraction represents the number of eligible petitioners. The denominator represents the total number of eligible votes of the GTCA. While there are approximately 1105 voting members of the GTCA, the By-Laws require that the denominator only be those “votes entitled to be cast at such meeting.” Accordingly, to the extent that the GTCA disqualifies petitioners for having suspended voting rights (numerator), so too must it disqualify the overall number of members who can vote (denominator).

provided in the statute.

Second, the New Jersey Non-Profit Corporation Act provides that each member of the corporation may inspect, among other things, the records containing the names and addresses of all members of the corporation:

Each corporation shall keep books and records of account and minutes of the proceedings of its members and board and executive committee, if any. Unless otherwise provided in the bylaws, the books, records and minutes may be kept outside this State. The corporation shall make available for inspection at its registered office, in this State, or at its principal office if it is in this State, records containing the names and addresses of all members, the number, class and series of memberships held by each and the dates when they respectively became members of record thereof, within 10 days after demand by a member entitled to inspect them, as defined in subsection c. of this section. The foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time. A corporation shall convert into written form without charge any records not in that form, upon the written request of any person entitled to inspect them.

[N.J.S.A.15A:5-24(a)].

The GTCA is a corporation subject to the New Jersey Non-Profit Corporation Act. (Res. & Am. V. Compl. at ¶25, Exh. E). Accordingly, the members are entitled to obtain a list of the names and addresses of other members. On the above-referenced dates, Plaintiffs requested a list of all Unit Owners of record at the time the Petition was filed to be used in determining whether certain petitioners should be discounted as alleged by Defendant. Notwithstanding the statutory requirement that the information be provided, the GTCA has refused to comply with the statutory mandate.

Third, the remainder of the information sought was requested to verify the GTCA's determination that the request for a special meeting was insufficient. On the dates noted above, Plaintiffs requested the following information: (i) copies of any records indicating whether specific

Units were found to be “not in good standing” such that their voting rights were suspended by the Board, and if so, whether such members were afforded a hearing as required by the Governing Documents; (ii) in the event that fines were an element of the arrears of any Unit and served as a basis for disqualifying petitioners, copies of records indicating that the Unit Owner was given notice of the alleged basis for the fine and an opportunity to participate in a dispute resolution procedure as required by the New Jersey Condominium Act, see N.J.S.A. 46:8B-14(k) & -15(f); (iii) copies of the letters of those members who allegedly withdrew their requests; and (iv) copies of those written requests deemed to be ineligible on the basis of a lack of signature or other missing information.

Clearly, the GTCA cannot disregard its Governing Documents and the rights thereunder in an effort to disenfranchise Unit Owners. When Unit Owners request a special meeting, as is their right, and same is unilaterally denied by the very individuals sought to be recalled at the special meeting, the Units Owners must be given access to the records relied upon to quash their request. Accordingly, Plaintiffs’ request for documentation directly related to the denial of Unit Owner’s request for a special meeting is impliedly authorized by the Governing Documents and the New Jersey Condominium Act. Furthermore, as the matter is now in litigation and such information is clearly “relevant”, Plaintiffs are entitled to the requested information by virtue of the discovery rules. See, e.g. Rule 4:10-2(a).

In sum, Plaintiffs requested certain documentation referenced by Defendant in support of its refusal to honor the petition for a special meeting. Plaintiffs are entitled to this documentation under the New Jersey Condominium Act, the New Jersey Non-Profit Corporation Act, the Governing Documents and the discovery rules. Accordingly, Plaintiffs request that the Court conduct a hearing on the return date of this motion and confirm Plaintiffs’ rights to the requested information under

the Declaratory Judgment Act. No material facts are in dispute and the existing record is sufficient for the Court to make findings of fact and conclusions of law on this issue. Therefore, Plaintiffs are entitled to a Judgment ordering Defendant to provide the requested information.

POINT III

Plaintiffs Submitted a Petition to Hold a Special Meeting of the Unit Owners, Which Exceeded the Twenty-Five (25%) Percent Threshold Required by the Governing Documents, and Therefore, Defendant Must Hold the Special Meeting

In the second count of the Restated and Amended Verified Complaint, Plaintiffs seek a judgment compelling Defendant to hold a special meeting of the Unit Owners based upon the Petition filed with the Secretary. The facts pertaining to this issue are settled, and as such, on the return date of this motion the Court can adopt findings of fact and conclusions of law based on the existing record.

Ownership of a Unit automatically makes the Unit Owner a member of the Association. (Res. & Am. V. Compl. at ¶7, Section 14 of the Master Deed). All members of the Association are entitled to vote on Association matters. (*Id.* at ¶8, Article II, Section 7 of the By-Laws). The voting rights of a member may be suspended for unpaid common expense assessments only if the Board takes appropriate action to do so, after the Unit Owner is afforded an opportunity for a hearing. (*Id.* at ¶9, Article II, Section 5 of the By-Laws). Specifically in this regard the By-Laws state, “[t]he membership and voting rights of any member may be suspended by the Board for any period during which any assessment against the Unit to which his membership is appurtenant remains unpaid . . . [n]o such action shall be taken by the Board until the Unit Owner is afforded an opportunity for a hearing which is consistent with the principles of due process of law.” (*Id.*).

The Unit Owners may call a special meeting so long as twenty-five (25%) percent of the members entitled to vote submit a written request. (Id. at ¶10, Article III, Section 3 of the By-Laws). Members of the Board may be removed at any such special meeting by a majority of the votes present. (Id. at ¶11, Article III, Section 5 of the By-Laws).

On or about October 14, 2009, Plaintiffs filed with the Secretary of the GTCA, in accordance with the By-Laws, the written Petition of 366 Unit Owners seeking to hold a special meeting of the Unit Owners for the purpose of recalling three (3) directors of the Board. (Id. at ¶30). This represented approximately thirty-three (33%) of all members of the GTCA. (Id.).

Even assuming that not all 366 requests should be counted as alleged by Defendant, those written requests that must be counted as a matter of law exceed the twenty-five (25%) percent threshold. Notably, of the 366 requests, 155 are not in dispute. Of the remaining 211 requests allegedly in dispute, at least 125 must be counted as a matter of law, as will be explained in greater detail below. When the 125 requests are added to the 155 not in dispute, Plaintiffs properly submitted 280 petitions, where a minimum of 271 requests were required to meet the twenty-five (25%) percent threshold.

Of the categories of reasons articulated by the Secretary and the accountants for deeming requests ineligible, the following may not be deemed ineligible as a matter of law: (i) requests from Unit Owners allegedly in arrears but not properly suspended, (ii) requests of Unit Owners later withdrawn, and (iii) written requests without signatures. With regard to these categories, there are no facts in dispute, and as such, the Court can make findings of fact and conclusions of law on the existing record.

With regard to the Unit Owners in arrears and their right to vote, the Governing Documents

establish that a special meeting can be called by the Unit Owners if they submit the written request of twenty-five (25%) percent of “all the votes entitled to be cast at such meeting.” A vote is entitled to be cast so long as the vote is from a member of the GTCA and such member is in good standing.

In order to be found “not in good standing”, the Board must take action to suspend the voting rights of members who are in arrears, after providing a hearing. There is no evidence that the Board, after a hearing, took action to suspend the voting rights associated with the seventy-seven (77) Unit Owners found to be in arrears by the accountant. Moreover, to the extent that any of the arrears consisted of fines for alleged violations of the Governing Documents, the Board was obligated to provide written notice of the action taken and the alleged basis for the action, and to afford the Unit Owner an opportunity to participate in a dispute resolution procedure. N.J.S.A. 46:8B-15(f). There is no evidence that this procedure was properly followed by the GTCA. Rather, the GTCA takes the position that the voting rights of its members are automatically suspended upon being in arrears, notwithstanding the language in the By-Laws mandating that the Board take formal action to suspend the voting rights after providing an hearing. Accordingly, these seventy-seven (77) members are “votes entitled to be cast” as a matter of law per the Governing Documents and New Jersey Condominium Act.

The next category of requests that must be counted include the forty-eight (48) requests allegedly withdrawn after the Petition was submitted. Whether a special meeting should be called is based on the number of eligible voters at the time of the submission of the Petition, not on some date thereafter. Based on applicable case law, once the Petition was filed on October 14, 2009, the Secretary could not recognize withdrawals. See Baker v. Reeves, 9 N.J. Misc. 1303, 1304 (Sp. Ct. 1931); Mocco v. Picone, 203 N.J. Super. 443, 447 (App. Div. 1985). Adopting such a practice

would:

[P]ermit[] systematic and planned obstruction of the petition process through the soliciting of withdrawals by personal confrontation or even coercion of the signators to the filed petitions. Such a result would be unfair to both the general electorate and the individual signors of the recall petitions.

. . . . We are convinced that the democratic process of free election is best served by limiting withdrawals to the period prior to the filing of the recall petitions [The trial judge] has not defeated the rights of those parties desiring to change their position on recalling any incumbent as such persons can both campaign and vote as they choose at the recall election.

[Mocco, supra, 203 N.J. Super. at 448 (emphasis added)].

The GTCA contends that the above cited line of cases is inapplicable because the cases relate to general elections, not condominium elections. However, there is no basis for not applying this line of cases to condominium elections, as the underlying principal is directly on point - at what time can a petitioner withdraw his request for a recall election. Although there are no cases that address condominium elections directly, the goals of protecting the fundamental fairness of the electoral process and avoiding fraud and intimidation equally apply to both the public and private context.

Notwithstanding the case law addressing withdrawal of signatures from the recall petitions, the GTCA takes the position that the Petition was not “filed” with the Secretary until she determined whether the requests were valid, which according to the Board could occur months after the petition was received. The GTCA, in its correspondence with Plaintiffs, cited two cases for this proposition. However, upon closer review, the cases cited by the GTCA do not support its position. For instance, the GTCA cited the following language in Ford v. Gilbert:

The statute imposes the duty upon the clerk to examine the petition and ascertain whether it is in conformity with the requirements of the statute. After he has done this if he accepts and files the petition the

first step in the matter is completed and jurisdiction vests. It is then too late for signers to withdraw.

[89 N.J.L. 482, 485-86 (Sup. Ct. 1916)].

The GTCA also cited the following language in Balm v. City of Cape May:

In statutory proceedings . . . where jurisdiction is placed in a public officer to perform an act by petition, . . . the rule is that withdrawals may be legally made up to the time fixed by the Legislature for the taking effect of the jurisdiction or authority reposed in the public officer or public body.

[3 N.J. Misc. 58, 61 (Sup. Ct. 1925)].

Notably, in both Balm and Ford, the Court determined that it was improper to allow the signatures to be withdrawn. Moreover, the GTCA's reliance on the statements in those two cases ignores the Supreme Court's subsequent decision in Baker v. Reeves, in which the Court essentially held that the petition was filed, for purposes of denying withdrawals, upon receipt by the official regardless of the fact that the official had not yet determined the validity of the petitions:

The question to be decided largely hinges on when the petition was filed. *The clerk admits he received it on December 22d, but says he did not file it because he was required to investigate and satisfy himself of its validity before filing. We think the petition was filed when originally presented on December 22d.* The clerk may not have marked the petition filed, but the petitioners filed it with him. The case of Balm v. City of Cape May, is similar to the instant one. In that case withdrawal petitions were presented after the original was filed but before action had been taken thereon, and the clerk refused to recognize the withdrawals. Mr. Justice Campbell, sitting alone, upheld this action. He said: "I know of no authority permitting an official to receive a document required by statute to be filed with him or in his office and withhold it from his files to some subsequent date unless so authorized by statute." *It follows that the petition was filed on December 22d, when originally handed to the clerk.*

If this be so, the next question is whether or not the clerk had power to recognize the withdrawals and give effect to them. Mr. Justice

Campbell, in the above cited case, held to the contrary and cites authority for his holding. He concludes: "*The city clerk was clothed with jurisdiction and, in fact, was impressed with the duty, of calling the election immediately that the petitions were filed with him, and both by the legislative language and the authorities relating to the subject it was too late for petitioners to withdraw after such petitions were placed in the hands of the city clerk.*"

In our opinion the clerk was without power to allow the withdrawals. His action in refusing to recognize the names not signed personally was correct, but omitting these there were still twenty percent of the voters on the petitions

[9 N.J. Misc. 1303, 1304-05 (Sup. Ct. 1931) (emphasis added)].

While Plaintiffs' agree with the GTCA's position that the Secretary had the right to determine whether the Petition was valid prior to ordering a special meeting of the Unit Owners, they disagree with the position that the Secretary can entertain withdrawals during the multi-week period wherein she reviewed the requests. To allow such a result would permit fraud and intimidation to disenfranchise the Unit Owners. As the Supreme Court made clear, those who wished to withdraw their signatures after the Petition was filed could actively campaign and vote against the recall. If at the time the Petition was filed with the Secretary there were a sufficient number of requests for a special meeting, such special meeting must be held.

Finally, as it relates to the five (5) requests without signatures, the Governing Documents do not require a signature, but rather only a "written request." (Res. & Am. V. Compl. at ¶10, Article III, Section 3 of the By-Laws). Assuming, *arguendo*, that a signature was required, the law makes clear that writing your name in your own hand is a signature, even if the signature is not in script. CITE. Because the petitioners voluntarily affixed their name to the Petition, they have legally "signed" the Petition. Accordingly, any petition disqualified for a lack of signature must be counted as a matter of law as no facts are in dispute. To the extent that the Court disagrees with this position,

Plaintiffs have nonetheless met the twenty-five (25%) threshold because if the forty-eight (48) withdrawals and seventy-seven (77) arrears are counted, Plaintiffs have 280 requests where only 271 are needed.

In sum, there is no dispute that Plaintiffs have submitted the written requests of at least 280 Unit Owners for a special meeting to recall three (3) Board members. This amount exceeds the twenty-five (25%) percent threshold, and accordingly, the Court should order that Defendant hold the special meeting.

POINT IV

The Association is Obligated to Maintain, Repair and/or Replace the General and Limited Common Elements, As is Necessary for the Health, Safety, Pleasure and Welfare of Its Members

In its third count, Plaintiffs seek a judgment compelling Defendant to maintain, repair and/or replace certain Common Elements. The facts underlying this count are straightforward and an adequate record can be established with limited discovery. Therefore, this matter can proceed in a summary manner. To the extent the Court disagrees, it should sever this count from the Restated and Amended Verified Complaint and allow the other two counts to proceed summarily.

The Board has a fiduciary duty and obligation to maintain the Common Elements up to a first class standard. In the event any Common Element is not maintained to that standard, the Board is obligated to perform the necessary repair or replacement. The Galaxy is approximately 35 years old and multiple Common Elements are in need of maintenance, repair and/or replacement, yet the Board has failed to act despite a strategic plan being in place to address these issues. The Board's failure to act is a breach of its duty and obligations under the Governing Documents, and accordingly, the Court should compel the Board to take appropriate remedial action.

The Condominium Act requires that the Association “perform[] the following duties . . . [including] [t]he maintenance, repair, replacement, cleaning and sanitation of the common elements.” N.J.S.A. 46:8B-14(a). Moreover, the Condominium Act makes it quite clear that only the association, and not the unit owners themselves, can maintain and preserve the common elements. N.J.S.A. 46:8B-18 (stating, “no unit owner shall contract for or perform any maintenance, repair, replacement, removal, alteration or modification of the common elements or any additions thereto, except through the association and its offices . . .”). Accordingly, the Board has a fiduciary “duty to preserve and protect the common elements and areas for the benefit of all its members.” Kim v. Flagship Condo. Owners Assoc., 327 N.J. Super. 544, 550 (App. Div. 2000). The New Jersey Supreme Court reiterated this fiduciary maintenance obligation and defined it as “the most significant responsibility” of an association:

In essence, an association is responsible for the governance of the common areas and facilities used by the owners of the condominium units. It is a representative body that acts on behalf of the unit owners. Its powers derive from the by-laws, the master deed, and applicable statutory provisions ***The most significant responsibility of an association is the management and maintenance of the common areas of the condominium complex.***

[Thanasoulis v. Winston Towers 200 Assoc., Inc., 110 N.J. 650, 656-57 (1988) (emphasis added)].

According to the By-Laws, the Board is obligated to maintain, replace and repair the General and Limited Common Elements as necessary to sustain a first class condominium. (Res. & A. V. Compl. at ¶49, Article V, Section 2 of the By-Laws). Pursuant to the Master Deed, the Board is required to levy and collect Common Expense assessments for the purpose of maintaining and repairing the Common Elements for “the health, safety, pleasure and welfare” of the members. (Id.

at ¶50, Section 8 of the Master Deed).

That same section of the Master Deed references Exhibit G, which lists certain maintenance obligations. (Id. at ¶51, Exhibit G to the Master Deed). According to Exhibit G of the Master Deed, the list of items for such maintenance, repair and replacement includes, but is not limited to: plumbing and related systems and components; electrical and related systems and components; heating, ventilation and cooling related systems and components; parking spaces and ingress and egress; storage cubicles; paved areas and other improvements outside the main building; exterior roof, walls and foundations; and entrance areas to the units. (Id. at ¶52).

The following items at the Galaxy are in need of maintenance, repair and/or replacement:

- a. Elevator systems (upgrade);
- b. Hallway carpets and wall coverings;
- c. Roof for Tower Two;
- d. Concrete garage decks/floors;
- e. Driveway;
- f. Indoor pool structure and underpinnings;
- g. Lobby area (partially completed);
- h. Gym equipment; and
- i. Additional infrastructure issues.

[Id. at ¶53].

The Galaxy is approximately 35 years old and much of it is the original construction. A prior board of directors had developed a strategic plan to address these issues, which was subsequently halted by the present Board in or about January 2008. (Id. at ¶54).

The Board owes a fiduciary duty to the GTCA's members to perform the necessary maintenance, repairs and/or replacement of the General and Limited Common Elements, for the health, safety, pleasure and welfare of its members. Notwithstanding such duty and obligation, the Board has failed to maintain, repair and/or replace the aforementioned General and Limited Common Elements. Accordingly, Plaintiffs request that the Court conduct a hearing on the return date of this motion, or as soon thereafter as the Court deems appropriate, and compel the Association to comply with its obligations under the Governing Documents.

In the event the Court determines that limited discovery is necessary, the Court should set the matter down for a short trial date and provide expedited discovery deadlines. However, such need for additional evidence should not bar the matter from proceeding in a summary fashion as the issue is ripe for prompt and expeditious resolution. See S. Pressler, supra, Comment to Rule 4:67-2; MAG Entertainment, LLC, supra, 375 N.J. Super. at 551. In the event the Court finds that this count should not proceed in a summary fashion, the Court should sever this count for plenary disposition and allow the remaining counts to proceed in a summary fashion. Perritti, supra, 289 N.J. Super. at 624.

Therefore, Plaintiffs are entitled to a Judgment ordering Defendant to maintain, repair and/or replace the General and Limited Common Elements as necessary for the health, safety, pleasure and welfare of its members.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that their motion to proceed summarily be granted and that the Court hold trial on the Counts of the Restated and Amended Verified Complaint on the return date of the motion or on such date thereafter as the Court determines.

Respectfully submitted,

VERDE, STEINBERG & PONTELL, LLC
Attorneys for Plaintiffs

By: 

Louis J. Verde

Dated: June 16, 2010

F:\wpdocs\LITIGATI\Coalition for a Better Galaxy\Brief in Support of Motion to Proceed Summarily (FOR FILING).wpd

VERDE, STEINBERG & PONTELL, LLC

One Parker Plaza
400 Kelby Street
Fort Lee, New Jersey 07024
(201) 944-4200

*Attorneys for Plaintiffs, Thomas Wiggins, Martha Norget,
Martha DiGiovanni and The Coalition for a Better Galaxy, Inc.*

THOMAS WIGGINS, MARTHA NORGET, MARTHA DiGIOVANNI, and THE COALITION FOR A BETTER GALAXY, INC., Plaintiffs, v. THE GALAXY TOWERS CONDOMINIUM ASSOCIATION, Defendant.	SUPERIOR COURT OF NEW JERSEY HUDSON COUNTY CHANCERY DIVISION DOCKET NO. C-81-10 <u>CIVIL ACTION</u> ORDER
---	---

THIS MATTER having been brought before the Court by Verde, Steinberg & Pontell, LLC, attorneys for plaintiffs, Thomas Wiggins, Martha Norget, Martha DiGiovanni and The Coalition for a Better Galaxy, Inc.; defendant, The Galaxy Towers Condominium Association, having appeared through Diktas Schandler Gillen Morejon, PC; the Court having considered the Restated and Amended Verified Complaint and memorandum of law submitted in support of the application, and the papers submitted in opposition to the application; the Court having heard the arguments of counsel; and for good cause otherwise having been shown;

IT IS ON THIS _____ day of _____ 2010

ORDERED that Count One of the Restated and Amended Verified Complaint shall proceed in a summary manner, as permitted by Rule 4:67-1 et seq.; and it is

FURTHER ORDERED that the summary trial pursuant to Rule 4:67-5 for Count One of the Restated and Amended Verified Complaint shall be conducted on July 23, 2010; and it is

FURTHER ORDERED that Count Two of the Restated and Amended Verified Complaint shall proceed in a summary manner, as permitted by Rule 4:67-1 et seq.; and it is

FURTHER ORDERED that the summary trial pursuant to Rule 4:67-5 for Count Two of the Restated and Amended Verified Complaint shall be conducted on _____, 2010; and it is

FURTHER ORDERED that Count Three of the Restated and Amended Verified Complaint shall proceed in a summary manner, as permitted by Rule 4:67-1 et seq.; and it is

FURTHER ORDERED that the summary trial pursuant to Rule 4:67-5 for Count Three of the Restated and Amended Verified Complaint shall be conducted on _____, 2010; and it is

FURTHER ORDERED that a copy of the within Order shall be served by plaintiffs on all counsel of record within seven (7) days of its entry.

Hon. Thomas P. Olivieri, P.J.Ch.

___ Opposed
___ Unopposed

VERDE, STEINBERG & PONTELL, LLC

One Parker Plaza

400 Kelby Street

Fort Lee, New Jersey 07024

(201) 944-4200

Attorneys for Plaintiffs, Thomas Wiggins, Martha Norget,

Martha DiGiovanni and The Coalition for a Better Galaxy, Inc.

THOMAS WIGGINS, MARTHA NORGET,
MARTHA DiGIOVANNI, and THE
COALITION FOR A BETTER GALAXY,
INC.,

Plaintiffs,

v.

THE GALAXY TOWERS CONDOMINIUM
ASSOCIATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
CHANCERY DIVISION

DOCKET NO. C-81-10

Civil Action

SUMMONS

From The State of New Jersey To Defendant(s):

**THE GALAXY TOWERS
CONDOMINIUM ASSOCIATION**

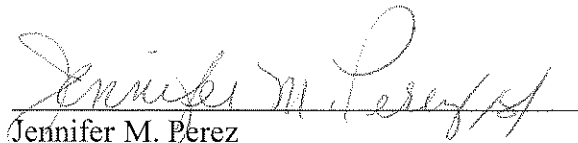
The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this Summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the Deputy Clerk of the Superior Court in the County listed above within thirty-five (35) days from the date you received this Summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the Deputy Clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the Court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford to pay an attorney, you may call the Legal Services Office in the county where you live.

A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

DATED: June 16, 2010


Jennifer M. Perez
Acting Clerk of the Superior Court

Name of Defendant to be served: **The Galaxy Towers Condominium Association**

Address of Defendant to be served: Management Office
7000 Boulevard East, 16th Floor
Guttenberg, New Jersey 07093

**DIRECTORY OF SUPERIOR COURT DEPUTY CLERK'S OFFICES
COUNTY LAWYER REFERRAL AND LEGAL SERVICES OFFICES**

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL

(609) 345-3444

LEGAL SERVICES

(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Room 115
Justice Center, 10 Main St.
Hackensack, NJ 07601

LAWYER REFERRAL

(201) 488-0044

LEGAL SERVICES

(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Rd.
Mt. Holly, NJ 08060

LAWYER REFERRAL

(609) 261-4862

LEGAL SERVICES

(800) 496-4570

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Justice
1st Fl., Suite 150
101 South 5th Street
Camden, NJ 08103

LAWYER REFERRAL

(856) 964-4520

LEGAL SERVICES

(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Cape May Court House, NJ 08210

LAWYER REFERRAL

(609) 463-0313

LEGAL SERVICES

(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
60 West Broad Street
P.O. Box 10
Bridgeton, NJ 08302

LAWYER REFERRAL

(856) 692-6207

LEGAL SERVICES

(856) 451-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
Civil Customer Service
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102

LAWYER REFERRAL

(973) 622-6204

LEGAL SERVICES

(973) 624-4500

GLOUCESTER COUNTY:
Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street
Woodbury, NJ 08096

LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:
Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House--1st Floor
583 Newark Ave.
Jersey City, NJ 07306

LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:
Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822

LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:
Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 S. Broad Street, P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:
Deputy Clerk of the Superior Court,
Middlesex Vicinage
2nd Floor - Tower
56 Paterson Street, P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:
Deputy Clerk of the Superior Court
Court House
P.O. Box 1269
Freehold, NJ 07728-1269

LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:
Morris County Courthouse
Civil Division
Washington and Court Streets
P. O. Box 910
Morristown, NJ 07963-0910

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:
Deputy Clerk of the Superior Court
118 Washington Street, Room 121
P.O. Box 2191
Toms River, NJ 08754-2191

LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY:

Deputy Clerk of the Superior Court
Attn: Civil Case Management Office
92 Market Street
Salem, NJ 08079

LAWYER REFERRAL
(856) 678-8363
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division
P.O. Box 3000
40 North Bridge Street
Somerville, N.J. 08876

LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(908) 475-2010

VERDE, STEINBERG & PONTELL, LLC

One Parker Plaza
400 Kelby Street
Fort Lee, New Jersey 07024
(201) 944-4200

*Attorneys for Plaintiffs, Thomas Wiggins, Martha Norget,
Martha DiGiovanni and The Coalition for a Better Galaxy,
Inc.*

FILED

JUN 08 2010

THOMAS P. OLIVIERI, P.J.Ch.

THOMAS WIGGINS, MARTHA NORGET,
MARTHA DiGIOVANNI, and THE
COALITION FOR A BETTER GALAXY,
INC.,

Plaintiffs,

v.

THE GALAXY TOWERS CONDOMINIUM
ASSOCIATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
CHANCERY DIVISION

DOCKET NO. C-81-10

CIVIL ACTION

**RESTATED AND AMENDED
VERIFIED COMPLAINT**

Plaintiffs, Thomas Wiggins, Martha Norget, Martha DiGiovanni and The Coalition for a Better Galaxy, Inc. (collectively referred to as "Plaintiffs"), by way of restated and amended complaint against the defendant, says:

THE PARTIES

1. Plaintiff, Thomas Wiggins ("Wiggins"), is the owner of a Unit in the The Galaxy Towers Condominium, and as such, is a member of the condominium association with all rights appurtenant thereto. In addition, Wiggins is a member and the President of plaintiff, The Coalition for a Better Galaxy, Inc.

2. Plaintiff, Martha Norget (“Norget”), is the owner of a Unit in the The Galaxy Towers Condominium, and as such, is a member of the condominium association with all rights appurtenant thereto. In addition, Norget is a member and the Treasurer of plaintiff, The Coalition for a Better Galaxy, Inc.

3. Plaintiff, Martha DiGiovanni (“DiGiovanni”), is the owner of a Unit in the The Galaxy Towers Condominium, and as such, is a member of the condominium association with all rights appurtenant thereto. In addition, DiGiovanni is a member and the Secretary of plaintiff, The Coalition for a Better Galaxy, Inc.

4. Plaintiff, The Coalition for a Better Galaxy, Inc. (the “Coalition”), is non-profit corporation organized under the statutes of the State of New Jersey, having a principal place of business at 7002 Boulevard East, Apartment # 38G, Guttenberg, New Jersey 07093. The Coalition is comprised solely of some members of defendant, The Galaxy Towers Condominium Association.

5. Defendant, The Galaxy Towers Condominium Association (“Defendant” or “Galaxy” or “Association”), is a not-for-profit corporation of the State of New Jersey and is charged with the maintenance, preservation and control of a condominium containing approximately 1105 voting Units, located at 7000, 7002 and 7004 Boulevard East, Guttenberg, New Jersey 07093, known as The Galaxy Towers Condominiums. The Galaxy’s principal office is located at 7000 Boulevard East, 16th Floor, Guttenberg, New Jersey 07093.

FACTS COMMON TO ALL COUNTS

6. On or about March 26, 1980, the Master Deed for the Galaxy was recorded in the office of the Register of Hudson County at Deed Book 3297, Page 231. Annexed to the Master Deed are the By-Laws of the Association (sometimes, the Master Deed and By-Laws are collectively referred to as the “Governing Documents”).

7. Pursuant to Section 14 of the Master Deed for the Galaxy, as set forth below, ownership of a Unit automatically establishes the Unit Owner as a member of the Galaxy:

MEMBERSHIP IN THE ASSOCIATION. Upon acceptance of a Deed to a Unit each Unit Owner shall automatically become a member of the Association and shall be a member for so long as he shall hold legal title to his Unit subject to all provisions of this Master Deed, the New Jersey Condominium Act, the Articles of Incorporation, and the By-Laws and Rules and Regulations which may now or hereafter be established for or by the Association.

8. Article II, Section 7 of the By-Laws of the Galaxy, as set forth below, establishes the voting rights of the membership:

Votes. Each Unit Owner shall be entitled to such vote(s) for each Unit to which he holds title as is provided in Paragraph 6 of the Master Deed. When more than one person holds title, the vote(s) for each Unit shall be exercised as the Co-Owners among themselves determine. When one or more Co-Owners signs a proxy or purports to vote for his or her Co-Owners, such vote(s) shall be counted unless one or more of the other Co-Owners is present and objects to such vote(s); or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote(s) are counted. If Co-Owners disagree as to the vote(s), the vote(s) shall be split equally among the Co-Owners.

9. Article II, Section 5 of the By-Laws of the Galaxy, as set forth below, states that the voting right(s) of any member may be suspended for unpaid common expense assessment by action of the Board of Directors of the Galaxy, after the Unit Owner is afforded an opportunity for a hearing:

Suspension of Rights. The membership and voting rights of any member may be suspended by the Board for any period during which any assessment against the Unit to which his membership is appurtenant remains unpaid; but upon payment of such assessments, and any interest accrued thereon, whether by check or cash, his rights and privileges shall be immediately and automatically restored. Further, if the Rules and Regulations governing the use of the Common Elements and the conduct of persons thereon have been accepted and published, as authorized by the By-Laws, the rights and privileges of any person in violation thereof may be suspended at the discretion of the Board for a period not to exceed thirty (30) days for any single non-

continuous violation. If the violation is of a continuing nature, such rights and privileges may be suspended indefinitely until such time as the violation is abated. No such action shall be taken by the Board until the Unit Owner is afforded an opportunity for a hearing which is consistent with the principles of due process of law.

10. Article III, Section 3 of the By-Laws of the Galaxy, as set forth below, permits Unit Owners to call a special meeting so long as twenty-five (25%) percent of the members entitled to vote submit a written request for such a meeting:

Special Meetings. After the first annual or special meeting, special meetings of Unit Owners may be called by the President whenever he deems such a meeting advisable, or shall be called by the Secretary when so ordered by the Board, or upon the written request of Members representing not less than twenty-five (25%) percent of all the votes entitled to be cast at such meeting. Such request shall state the purpose(s) of such meeting and the matter(s) proposed to be acted upon. Unless Unit Owners representing at least fifty (50%) percent of all votes entitled to be cast request such a meeting, no special meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting of the Unit Owners held during the preceding twelve (12) months, which determination shall be made by the Board in its sole and absolute discretion.

11. Article III, Section 5 of the By-Laws of the Galaxy, as set forth below, establishes the procedure by which a member of the Board may be removed:

Removal of Members of the Board. At any duly held regular or special meeting of the Unit Owners, any one or more Directors may be removed with or without cause by a majority of the Unit Owner votes present, and a successor may then and there be appointed by a majority of the remaining Directors to fill the vacancy thus created. In the event that all of the Directors are removed, successors shall be elected by the Unit Owners in the manner set forth in Article IV, Section 3 herein to fill the vacancies thus created. Each person so created shall be a Director for the remainder of the terms of the Director whose term he is filling and until his successor is duly elected and qualified. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting. This provision shall not apply to any Director appointed by the Sponsor.

12. Article VI, Section 14 of the By-Laws of the Galaxy, as set forth below, permits a Unit

Owner to review the books of account of the Board upon ten (10) days written notice to the Treasurer:

Examination of Books. Each Unit Owner shall be permitted to examine the books of account of the Board by appointment at a reasonable time on business days; provided, however, that the Treasurer has been given at least 10 days prior written notice of the Unit Owner's desire to make such an examination.

13. The New Jersey Condominium Act, at *N.J.S.A. 46:8B-15(g)*, unequivocally permits a Unit Owner to review certain records of a condominium association, including but not limited to the accounts of other Unit Owners:

The association . . . shall be responsible for the performance of the following duties . . . : (g) The maintenance of accounting records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners. Such records shall include: (I) A record of all receipts and expenditures, [and] (ii) An account for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, the present balance due, and any interest in common surplus.

14. The New Jersey Non-Profit Corporation Act, at *N.J.S.A. 15A:5-24(a)*, provides that each member of the corporation may inspect, among other things, the records containing the names and addresses of all members of the corporation:

Each corporation shall keep books and records of account and minutes of the proceedings of its members and board and executive committee, if any. Unless otherwise provided in the bylaws, the books, records and minutes may be kept outside this State. The corporation shall make available for inspection at its registered office, in this State, or at its principal office if it is in this State, records containing the names and addresses of all members, the number, class and series of memberships held by each and the dates when they respectively became members of record thereof, within 10 days after demand by a member entitled to inspect them, as defined in subsection c. of this section. The foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time. A corporation shall convert into written form without charge any records not in that form, upon the written request of any person entitled to inspect them.

FIRST COUNT

(Declaratory Judgment Compelling Inspection of Certain Corporate Records)

15. Plaintiffs restate and reallege the allegations in the preceding paragraphs as if set forth at length herein.

16. On or about December 15, 2009, counsel for Plaintiffs submitted a written request to the Secretary for access to certain books and records of the Galaxy. A true and correct copy of correspondence from Louis J. Verde, Esq. to Gail Hoffman, dated December 15, 2009, is attached hereto as **Exhibit A**.

17. In that letter, the Plaintiffs' counsel requested the following:

- a. Copies of the account for each Unit setting forth any common expenses or other charges due, the due dates thereof, the balance due and any interest in common surplus;
- b. Copies of any records indicating whether specific Units were found to be "not in good standing" and if so, whether such members were afforded a hearing as required by the Governing Documents;
- c. In the event that fines were an element of the arrears of any Unit, copies of records indicating that the Unit Owner was given notice of the alleged basis for the fine and an opportunity to participate in a dispute resolution procedure as required by the New Jersey Condominium Act;
- d. Copies of a list of the names and address of all members (i.e., Unit Owners) of the Galaxy, as required to be maintained and provided to members pursuant to the New Jersey Non-Profit Corporation Act;
- e. Copies of the letters of those members who allegedly withdrew their requests

for a special meeting; and

- f. Copies of a list of those written requests for a special meeting deemed to be ineligible on the basis of a lack of signature or other missing information.

18. By letter dated December 22, 2009, counsel for the Galaxy responded to Plaintiffs' counsel's request for information and denied same. A true and correct copy of correspondence from Michael L. Kingman, Esq. to Louis J. Verde, Esq., dated December 22, 2009, is attached hereto as **Exhibit B**.

19. The reasons articulated by the Galaxy for denying Plaintiffs' access to records was that the Coalition was not itself a Unit Owner and the request for records did not identify the members of the Coalition to confirm that they were Unit Owners. The Galaxy also took the position that the records were not GAAP records, and accordingly, were broader than that permitted by statute. Finally, the Galaxy took the position that, notwithstanding the New Jersey Condominium Act and Non-Profit Corporation Act, any request for records must comply with the Galaxy's Administrative Resolution #25.

20. On or about January 21, 2010, counsel for Plaintiffs responded to the Galaxy's letter of December 22, 2009, provided the names of the officers of the Coalition and reiterated the request for access to the Galaxy's records. A true and correct copy of correspondence from Louis J. Verde, Esq. to Michael Kingman, Esq., dated January 21, 2010, is attached hereto as **Exhibit C**.

21. In that letter, Plaintiffs' counsel reiterated the request for the following information and provided the following justification therefore:

- a. For verification purposes, copies of the 97 petitioners alleged by the Secretary in her letter dated December 10, 2009, to be redundancies, unknowns or names which were identified as "not owners of record";

- b. Copies of a list of the names and addresses of each member (Unit Owner) of the Galaxy, and the date upon which they became a member, as specifically required in the New Jersey Non-Profit Corporation Act, *N.J.S.A.* 15A:5-24;
- c. Copies of the account, as of October 14, 2009, for each Unit setting forth any common expenses or other charges due, the due dates thereof, the balance due and any interest in common surplus, as required by *N.J.S.A.* 46:8b-14(g)(ii). Also, due to the Secretary's allegation that 66 Units were ineligible to vote, copies of any additional information as to whether the requisite statutory notice was given before any fines were levied on "ineligible" Unit Owners; and
- d. For verification purposes, copies of the 48 letters or other documents alleged by the Secretary in her letter dated December 10, 2009, to be requests by certain Unit Owners for withdrawal of their signatures from the Petition for a special meeting.

22. By letter dated February 4, 2010, counsel for the Galaxy responded to Plaintiffs' request for information and again denied same. A true and correct copy of correspondence from Michael L. Kingman, Esq. to Louis J. Verde, Esq., dated February 4, 2010, is attached hereto as **Exhibit D.**

23. The Galaxy articulated several reasons for denying the request. With regard to its refusal to provide the list of members required by the New Jersey Non-Profit Corporation Act, the Galaxy contended that it did not maintain such a list because it was not a non-profit corporation, but rather maintained a list of all Unit Owners – precisely the list requested by Plaintiffs. With regard to the accounts for each Unit required by the New Jersey Condominium Act, the Galaxy responded that such accounts were not GAAP records, notwithstanding that the statute specifically declared them to

be GAAP records. With regard to the list of petitioners deemed by the Secretary to be redundancies, unknowns or not owners of record, the Galaxy responded that they were not GAAP records, apparently arguing that the Unit Owners have no right to substantiate the position taken by the Secretary. Finally, with regard to copies of the 48 alleged requests to withdraw signatures from the Petition, the Galaxy responded that they were not GAAP records, again apparently arguing that the Unit Owners have no right to substantiate the position taken by the Secretary.

24. In accordance with the Governing Documents and applicable statutes, the Board of Directors has the obligation to maintain the books and records of the Association and to make same available for inspection by the Unit Owners.

25. The Galaxy is a corporation subject to the New Jersey Non-Profit Corporation Act. Accordingly, the members are entitled to obtain a list of the names and addresses of other members. Notwithstanding this statutory requirement, the Galaxy has refused to provide the requested documentation. A true and correct copy of the Certificate of Long Form Standing for the Galaxy Towers Condominium Association is attached hereto as **Exhibit E**.

26. The Galaxy is governed by the Condominium Act and its requirement that members of the condominium are entitled to review the account records for each Unit. Notwithstanding this statutory requirement, the Galaxy has refused to provide the requested documentation.

27. Finally, the remainder of the information requested was done so to verify the Galaxy's determination that the request for a special meeting was improper. Clearly, the Galaxy cannot blatantly disregard its Governing Documents, and the rights created thereby, in an effort to disenfranchise Unit Owners. When Unit Owners request a special meeting, as is their right, and same is unilaterally denied by the very individuals sought to be recalled, the Units Owners must be given access to the records relied upon to quash their request. Accordingly, Plaintiffs' request for

documentation directly related to the denial of Unit Owner's request for a special meeting, is impliedly authorized by the Governing Documents and the New Jersey Condominium Act.

28. A serious, real and justiciable conflict exists between Plaintiffs and Defendant as to the following: (a) whether Unit Owners are entitled to a list of the Unit Owners/members of the Association, as provided for by the New Jersey Non-Profit Corporation Act, (b) whether the Unit Owners are entitled to access to records of the account for each Unit setting forth any common expenses or other charges due, the due dates thereof, the present balance due and any interest in common surplus, as provided for by the New Jersey Condominium Act, and (c) whether the Unit Owners are entitled to documentation relied upon by the Association and its officers and directors in denying a request for a special meeting.

WHEREFORE plaintiffs, Thomas Wiggins, Martha Norget, Martha DiGiovanni and The Coalition for a Better Galaxy, Inc., demand judgment in their favor and against defendant, The Galaxy Towers Condominium Association, as follows:

- A. Declaring and determining, pursuant to N.J.S.A. 2A:16-51 et seq., that:
- (i) Plaintiffs are entitled to review a list of the names and addresses of the Unit Owners/members of the Galaxy, as provided for by the New Jersey Non-Profit Corporation Act;
 - (ii) Plaintiffs are entitled to review an account for each Unit setting forth any common expenses or other charges due, the due dates thereof, the present balance due and any interest in common surplus, as provided for by the New Jersey Condominium Act; and
 - (iii) Plaintiffs are entitled to review documentation relied upon by the Association and its officers and directors in denying a request for a

special meeting;

- B. Compelling Defendant to provide Plaintiffs with access to the documentation requested;
- C. Enjoining and restraining Defendant from interfering with Plaintiffs' right to review the documentation requested;
- D. Awarding Plaintiffs all costs of suit, including court costs and reasonable attorneys' fees; and
- E. For such other relief as the court deems equitable and proper.

SECOND COUNT

(Declaratory Judgment Compelling Special Meeting of Unit Owners)

29. Plaintiff restates and realleges the allegations in the preceding paragraphs as if set forth at length herein.

30. On or about October 14, 2009, Plaintiffs provided the Secretary of the Galaxy with the written petition of 366 Unit Owners (which are members) seeking to hold a special meeting of the Unit Owners for the purpose of recalling three (3) directors of the Board of Directors of the Galaxy (the "Petition"). This represented approximately thirty-three (33%) of all members of the Galaxy.

31. Specifically, the Petition stated conspicuously on the top of the document:

We the Homeowners and Voting Members of the Galaxy Towers Condominium Association request a Special Meeting of the Homeowners and the Board of Directors to be called not less than 10 days or more than 90 days after presentation of this request to the Board, for the purpose of the immediate removal of Directors Lerner, Strumza and Miller, currently serving on the GTCA Board.

32. On or about October 25, 2009, the Secretary of the Galaxy made the following oral representations with respect to the Petition:

- a. The Petition was comprised of three hundred and sixty six (366) numbered names;
- b. Approximately half of the requests by the petitioners were invalid for the following reasons:
 - i. 66 were redundancies (as a result of duplicate and triplicate names or names without signatures);
 - ii. 79 petitioners were in arrears as of the date when the Petition was received;
 - iii. 21 petitioners were not members of the Association;
 - iv. 64 petitioners subsequently "signed a document withdrawing their names" from the Petition;
 - v. 5 petitions bore no signature; and,
 - vi. 5 petitions were not clear.
- c. Some of these numbers overlap and the figures were not final.
- d. Based upon a total of 1,105 voting Units, the Petition did not contain the requisite percentage of Unit Owners.

33. On or about December 10, 2010, the Board of Directors of the Galaxy held a meeting at which they voted to reject the petition upon the report of the Secretary.

34. By letter of that same date, the Secretary of the Galaxy forwarded a letter to the Unit Owners outlining the basis for the rejection of the petition. A true and correct copy of correspondence from the Secretary to the Unit Owners, dated December 10, 2010, is attached hereto as **Exhibit F**.

35. In contrast to some of the positions taken by the Secretary on October 25, 2009, the Secretary made the following representations regarding the Petition in the December 10th letter:

- a. The Petition was comprised of three hundred and sixty six (366) numbered names;
- b. Approximately 211 of the requests by the petitioners were invalid for the following reasons:
 - i. 66 were redundancies (as a result of duplicate and triplicate names or names without signatures);
 - ii. 66 petitioners were in arrears as of the date when the Petition was received;
 - iii. 20 petitioners were not members of the Association (or owners of record);
 - iv. 48 petitioners subsequently "signed a document withdrawing their names" from the Petition; and
 - v. 11 petitioners did not sign or otherwise failed to provide clear identifying information.
- c. The Petition contained 155 valid names and signatures, and based upon a total of 1,105 voting Units, the Petition did not contain the requisite percentage of Unit Owners.

36. Sometime after the December 10th meeting, the Board of Directors hired an accounting firm to conduct an "audit" of the Petition. A true and correct copy of the report from Wilkin & Guttenplan, PC, dated February 5, 2010, is attached hereto as **Exhibit G**.

37. As stated in the report from Wilkin and Guttenplan, PC, it determined that the following applies to the Petition (after emphasizing that the procedure by which the review was conducted was provided by the Board of Directors, and as such, was not a true audit):

- a. Three hundred sixty six (366) names were included in the Petition.
- b. Approximately 211 of the requests by the petitioners were invalid for the following reasons:
 - i. 68 were duplicates;
 - ii. 77 petitioners were in arrears as of the date when the Petition was received;
 - iii. 11 petitioners were not current owners of record;
 - iv. 7 petitioners referenced a name/address that was incorrect/ineligible/incomplete; and
 - v. 48 petitioners subsequently withdrew via letter.

38. Although the "audit" aligned with the results of the Secretary, they both relied on several inappropriate premises, which contradict the clear language of the Governing Documents.

39. The Governing Documents establish that a special meeting can be called by the Unit Owners if they submit the written request of twenty-five (25%) percent of "all the votes entitled to be cast at such meeting."

40. A vote is entitled to be cast so long as the vote is from a member of the Galaxy and such member is in good standing.

41. In order to be found "not in good standing", the Board must take action to suspend the voting rights of members who are in arrears, after providing a hearing. There is no evidence that the Board, after a hearing, took action to suspend the seventy-seven (77) petitions found to be in arrears by Wilkin and Guttenplan, PC. Accordingly, these seventy-seven (77) members are "votes entitled to be cast."

42. Additionally, the total number of members considered for purposes of calculating the

twenty-five (25%) percent should not be the total number of voting Units in the Galaxy (1105), but rather the total number of members whose rights were not suspended. Accordingly, the total used by Defendant was improper.

43. Furthermore, the Governing Documents only require that a "written request" be submitted, not that the petition submit a "written signature." Accordingly, any petition disqualified for a lack of signature must be counted.

44. With regard to the forty-eight (48) petitioners who withdrew their names after the Petition was submitted, there is no evidence that these individuals actually withdrew their names or why they supposedly did so. Whether a special meeting should be called is based on the number of eligible voters at the time of the submission of the Petition, not on some date thereafter. Accordingly, the forty-eight (48) petitioners that allegedly withdrew must be counted.

45. Finally, the Governing Documents do not give the Board of Directors the power to determine whether or not to accept the written request for a special meeting to remove certain Directors, and as such, their determination to disallow the special meeting was improper. This is especially so when the directors sought to be removed by the special meeting were the ones who voted to deny the special meeting.

46. Based on the actions of the Board of Directors of the Galaxy, which were in direct contravention to the clear mandates of the Governing Documents, Plaintiffs and other members were disenfranchised. As such, Plaintiffs have suffered harm.

47. A serious, real and justiciable conflict exists between Plaintiffs and Defendant as to the following: (a) whether a special meeting should be held, (b) whether the Galaxy can disregard a request for a special meeting from those members who are simply in arrears, as opposed to those members found "not to be in good standing" after a hearing and specific action by the Board; (c)

whether the Galaxy can disregard a request for a special meeting from those members who did not sign the written request; (d) whether the Galaxy can disregard a request for a special meeting from those members who originally signed the Petition but then allegedly withdrew their names after the Petition was submitted to the Secretary; (e) whether the Board of Directors of the Galaxy has the power under the Governing Documents to accept or deny a request for a special meeting in the first instance; and (f) whether the total number of members to be used in calculating the twenty-five (25%) percent threshold is equal to the total number of Units or only those Units whose members are "eligible" to vote.

WHEREFORE plaintiffs, Thomas Wiggins, Martha Norget, Martha DiGiovanni and The Coalition for a Better Galaxy, Inc., demand judgment in their favor and against defendant, The Galaxy Towers Condominium Association, as follows:

- A. Declaring and determining, pursuant to N.J.S.A. 2A:16-51 et seq., that:
- (i) A special meeting of the Unit Owners should be held based upon the written requests submitted for such purpose;
 - (ii) A member may only be deemed ineligible to request a special meeting if previously found not to be in good standing by action of the Board after an opportunity for a hearing has been provided;
 - (iii) A member need not sign a written request for a special meeting, so long as enough information is provided to determine that he/she is a member;
 - (iv) A member may not withdraw his/her request for a special meeting after the Petition including such request has been submitted to the Secretary;
 - (iv) The Board of Directors lacks the power to accept or deny a petition for

- a special meeting, as such power is reserved to the Unit Owners; and
- (v) The total number of members to be used in calculating the twenty-five (25%) percent threshold is equal to the total number of members who are "eligible" to vote and not the total number of Units in general;
- B. Compelling Defendant to call a special meeting of the Unit Owners;
 - C. Enjoining and restraining Defendant from interfering with the special meeting of the Unit Owners;
 - D. Awarding Plaintiffs all costs of suit, including court costs and reasonable attorneys' fees; and
 - E. For such other relief as the court deems equitable and proper.

THIRD COUNT

(Replacement and Repair of General and Limited Common Elements)

48. Plaintiffs restate and reallege the allegations in the preceding paragraphs as if set forth at length herein.

49. Article V, Section 2 of the By-Laws, as set forth below, obligates the Board of Directors of the Galaxy to maintain, replace and repair the General and Limited Common Elements as necessary to sustain a first class condominium:

Duties and Responsibilities. It shall be the affirmative and perpetual obligation and duty of the Board to perform the following: (a) Cause the General and Limited Common Elements to be maintained according to accepted standards and as set forth in the Master Deed, including, but not limited to such maintenance, painting, replacement and repair work as may be necessary All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first class quality.

50. Pursuant to Section 8 of the Master Deed, set forth below in pertinent part, the Board

of Directors is required to levy and collect Common Expense assessments for the purpose of maintaining and repairing the Common Elements for the health, safety, pleasure and welfare of the members:

The annual Common Expense assessments levied by the Board shall be used . . . for promoting the health, safety, pleasure and welfare of the members of the Association, including, but without limitation: the maintenance and repair of the exterior and roofs of the Complex, including but not limited to cleaning, painting and sandblasting of the exterior surfaces and finishes; roof repairs; maintenance, repair and replacement of the Common Elements

51. That same section of the Master Deed, as set forth below, also identifies Exhibit G to the Master Deed, which sets forth certain maintenance obligations:

Notwithstanding the general provisions of maintenance set forth in this paragraph 8 of the Master Deed or in any other provisions of the Master Deed or By-Laws, specific maintenance responsibilities and the cost attributable thereto shall, to the extent set forth thereon, be determined pursuant to the Chart of Maintenance Responsibilities attached as Exhibit G hereto.

52. According to Exhibit G of the Master Deed, the list of items for such maintenance, repair and replacement includes, but is not limited to, the following: plumbing and related systems and components; electrical and related systems and components; heating, ventilation and cooling related systems and components; parking spaces and ingress and egress; storage cubicles; paved areas and other improvements outside the main building; exterior roof, walls and foundations; and entrance areas to the units.

53. The following items at the Galaxy are in need of maintenance, repair and/or replacement:

- a. Elevator systems (upgrade);
- b. Roof for Tower Two;

- c. Hallway carpets and wall coverings;
- d. Concrete garage decks/floors;
- e. Driveway;
- f. Indoor pool structure and underpinnings;
- g. Lobby area (partially completed);
- h. Gym equipment; and
- i. Additional infrastructure issues.

54. The Condominium is approximately 35 years old, and the major structural components and major mechanical systems are in their original condition. A prior board had developed a strategic plan to address these issues, which was subsequently halted by the present Board of Directors in or about January 2008.

55. The Board of Directors of the Galaxy owes a fiduciary duty to the Galaxy's members to perform the necessary maintenance, repairs and/or replacement of the General and Limited Common Elements, for the health, safety, pleasure and welfare of its members.

56. Notwithstanding such duty and obligation, the Board of Directors of the Galaxy has failed to maintain, repair and/or replace the aforementioned General and Limited Common Elements.

WHEREFORE plaintiffs, Thomas Wiggins, Martha Norget, Martha DiGiovanni and The Coalition for a Better Galaxy, Inc., demand judgment in their favor and against defendant, The Galaxy Towers Condominium Association, as follows:

- A. Ordering and compelling Defendant to maintain, repair and/or replace the General and Limited Common Elements as is necessary to maintain a first class condominium for the health, safety, pleasure and welfare of its members;
- B. Awarding Plaintiffs all costs of suit, including court costs and reasonable

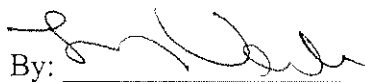
attorneys' fees; and

C. For such other relief as the court deems equitable and proper.

CERTIFICATION

The matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding. In addition, no other action or arbitration is contemplated with regard to the subject matter of this lawsuit. The names of any other parties who should be joined in this action are not known to Plaintiffs.

VERDE, STEINBERG & PONTELL, LLC
*Attorneys for Plaintiffs, Thomas Wiggins,
Martha Norget, Martha DiGiovanni and The
Coalition for a Better Galaxy, Inc.*

By: 

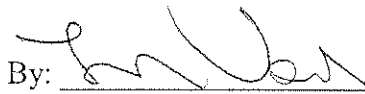
Louis J. Verde

Dated: June 7, 2010

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of *Rule 4:25-4*, Louis J. Verde, Esq. is designated as trial counsel for Plaintiffs.

VERDE, STEINBERG & PONTELL, LLC
*Attorneys for Plaintiffs, Thomas Wiggins,
Martha Norget, Martha DiGiovanni and The
Coalition for a Better Galaxy, Inc.*

By: 

Louis J. Verde

Dated: June 7, 2010

VERIFICATION

I, Thomas Wiggins, individually and as President of The Coalition for a Better Galaxy, depose and say that I have read the annexed Restated and Amended Verified Complaint, know the contents thereof and the same is true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, are based upon the files maintained by the Plaintiffs. I hereby certify that the foregoing statements by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

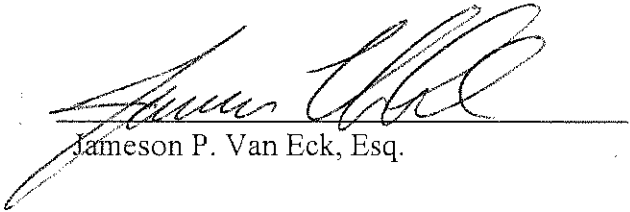


Thomas Wiggins, Individually and as President
of The Coalition for a Better Galaxy

Dated: June 7, 2010

ATTORNEY'S CERTIFICATION
PURSUANT TO R. 1:4-4(c)

I certify that Thomas Wiggins, whose photocopy/facsimile signature appears on the Restated and Amended Verified Complaint, acknowledged to me the genuineness of his signature. The original of this document will be filed with the Court upon the request of the Court or any party.


Jameson P. Van Eck, Esq.

Dated: June 7, 2010

EXHIBIT A

VERDE, STEINBERG & PONTELL, LLC

ATTORNEYS AT LAW

ONE PARKER PLAZA

400 KELBY STREET

FORT LEE, NEW JERSEY 07024-2937

(201) 944-4200

TELECOPIER (201) 944-4562

NEW YORK OFFICE

276 FIFTH AVENUE

SUITE 405

NEW YORK, NEW YORK 10001

(212) 996-0630

MERRICE D. STEINBERG*

LOUIS J. VERDE*

STEVEN PONTELL**

SIOBHAN MCGOWAN**

MARTINE PIERRE-PAUL

JAMESON P. VAN ECK*

* MEMBER OF N.J., N.Y. & CAL. BARS

+ MEMBER OF N.J. & N.Y. BARS

** MEMBER OF N.J., N.Y. & D.C. BARS

** MEMBER OF N.J. & PA. BARS

** CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY

DIRECT E-MAIL:

Lverde@vsplaw.com

December 15, 2009

Via Certified Mail RRR and Ordinary Mail

Ms. Gail Hoffman, Secretary

Galaxy Towers Condominium Association, Inc.

c/o Management Office

7000 Boulevard East, 16th Floor

Guttenberg, New Jersey 07093

Re: Coalition for a Better Galaxy, Inc. - Petition for a Special Meeting

Dear Ms. Hoffman:

Please be advised that this office has been retained by The Coalition for a Better Galaxy, Inc. ("CBG"), a non-profit organization comprised of some members of the Galaxy Towers Condominium Association (the "Association"). In the Notice prepared by you to the Galaxy Homeowners dated October 29, 2009, you acknowledged that on October 14, 2009, you, as the Secretary of the Association, received a petition from CBG (the "Petition") requesting the president to call a "Special Meeting of the Home Owners and Board of Directors on not less than ten (10) days nor more than ninety (90) days of the presentation" of the Petition for the purpose of scheduling a vote for the immediate removal of the three directors. Although almost two (2) months have transpired since the Petition was presented, the Association only announced on December 10, 2009 that the Petition was rejected and has yet to send CBG a formal notice of same setting forth the specific reasons for the decision along with appropriate support documentation. For the purposes of this letter I assume it was for the reasons you stated at the October meeting, such as duplication, arrears, the subsequent withdrawal of some signatures and other miscellaneous deficiencies.

You, as Secretary and perhaps the President, above all know that the administration of the Association is governed by the provisions of the New Jersey Non-Profit Corporation Act, N.J.S.A. 15A:1-1 et seq. (the "Non-Profit Corporation Act"), the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq. (the "Condominium Act"), the Master Deed, the Articles of Incorporation of the

Ms. Gail Hoffman, Secretary

December 15, 2009

Page 2

Association, its By-Laws and applicable case law. The Condominium Act provides that "The administration and management of the condominium and condominium property and the actions of the Association shall be governed by the By-Laws ..." N.J.S.A. 46:8B-13.¹ The acts of the Association and its Board of Directors are then subject to a two-pronged test which was initially applied to condominium associations in Siller v. Hartz Mountain Ass'n, 93 N.J. 370 (1983) and reiterated by the New Jersey Supreme Court decision in Thanasoulis v. Winston Towers 200 Ass'n, 110 N.J. 650 (1988), which requires that the "...acts of an association 'should be properly authorized;' and second, that the association's management has a 'fiduciary relationship to the unit owners, comparable to the obligation that a board of directors of a corporation owes its stock holders,' and that '[f]raud, self-dealing or unconscionable conduct at the very least should be subject to exposure and relief.'" (Citations omitted); Id. at 657.

It is therefore based upon the parameters of these documents and the principles set forth therein that I have been requested to protect the rights of my clients, who are also members of the Association.

On October 25, 2009, you made the following statements with respect to the Petition:

- The petition was comprised of three hundred and sixty six (366) numbered names;
- Approximately half of the requests by the petitioners were invalid for the following reasons:
 - 66 were redundancies (as a result of duplicate and triplicate names or names without signatures);
 - 79 petitioners were in arrears as of the date from when the Petition was received;
 - 21 petitioners were not members of the Association;
 - 64 petitioners subsequently "signed a document withdrawing their names" from the Petition;

¹ It should be noted that Article XV, Section 1 of the By-Laws provides as follows:

Anything to the contrary herein notwithstanding, if any provision of these By-Laws is in conflict of or contradiction of the Master Deed, the Articles of Incorporation or with the requirements of any law, then the requirements of said Master Deed or law shall be deemed controlling.

Ms. Gail Hoffman, Secretary

December 15, 2009

Page 3

- 5 petitions bore no signature; and,
- 5 petitions were not clear.
- You acknowledge that some of these numbers overlap and that the figures were not final.
- You then concluded that based upon a total of 1,105 Units, the Petition did not contain the requisite percentage of Unit Owners.

I take exception to some of these statements and others require verification and documentary support.

As you noted, a request for a Special Meeting is governed by Article II, Section 3 of the By-Laws which states in pertinent part:

After the first Annual or Special Meeting, Special Meetings of Unit Owners may be called by the President whenever he deems such a meeting advisable, or shall be called by a Secretary once so ordered by the board, or upon the written request of members representing not less than 25% percent of **all votes entitled to be cast at such meeting**. Such request shall state the purpose(s) of such meeting and the matter(s) proposed to be acted upon... .

Article II, Section 5 and Article II, Section 7 of the By-Laws provide some guidance in trying to ascertain the meaning of the phrase “**votes entitled to be cast at such meeting**”, and respectively provides in pertinent part:

The membership and voting rights of any Member may be suspended by the Board for any period during which any assessment against the Unit to which his membership is appurtenant remains unpaid; but upon payment of such assessments and any interest accrued thereon, whether by check or cash, his rights and privileges shall be immediately restored.....No such action shall be taken by the Board until the Unit Owner is afforded an opportunity for a hearing which is consistent with the principles of due process of law. [Article II, Section 5].

Except as otherwise required by the Articles of Incorporation, the Master Deed or any law, a quorum being present, a majority of votes

Ms. Gail Hoffman, Secretary

December 15, 2009

Page 4

present, in person or by proxy shall be sufficient on those matters which are to be voted on by the Unit Owners... [Article II, Section 7].

Based on the above, I believe it is clear, despite the doubt you expressed at both meetings, that the denominator for determining the twenty five (25%) percent of votes entitled to be cast at such meeting" is comprised of all the Units at the Condominium (less the 3 owned by the Association) reduced by the total number of Members who are in arrears.

This analysis leads to a related issue and is the first of my demands for the production of certain records and documents. You indicated that of the total number of "unique signatures, 79 members are in arrears." Based on information that I have received, it would seem that of those members that signed the Petition, a disproportionate amount were in arrears when compared to the average percentage of arrears for the entire Association at any given time. In essence this would mean, that CBG went out of its way to solicit the signatures of non-paying members. Accordingly, I am asking you (or by copy of this letter the Treasurer of the Association, if any) to produce a report showing the open balances for each Unit at the Galaxy as of October 14, 2009, which should also include the nature of the arrears. This request is made pursuant to the Condominium Act which in N.J.S.A. 46:8B-14(g)(ii) requires the Association to maintain:

...accounting records in accordance with generally accepted accounting principals, open to inspection at reasonable times by Unit Owners. Such records shall include:

....

(ii) an account for each unit setting forth any shares or common expenses or other charges due, the due dates thereof, the present balance due and any interest in common surplus" [See also, Article VI, Section 14 of the By-Laws].

At the time you produce these records, please present the names of the seventy nine (79) petitioners whom you allege were "in arrears". A review of these records will allow my client to determine the total number of votes entitled to be cast at a Special Meeting and to determine whether or not the seventy nine (79) petitioners were in fact in arrears. The records should also reflect whether or not these Unit Owners were afforded an opportunity for a hearing, consistent with the principles of due process of law, prior to the suspension of their voting rights. Further, it is questionable whether the Governing Documents authorize the suspension of voting rights if any of these arrears are based upon unpaid fines or late charges. In addition, if any of the arrears were comprised of fines, you must also provide records to show that prior to levying same, the Unit Owner was given notice of the action taken, the alleged basis of the action and was advised of the

Ms. Gail Hoffman, Secretary

December 15, 2009

Page 5

right to participate in a dispute resolution procedure. *See*, N.J.S.A. 46:8B-15(f) and N.J.S.A. 46:8B-14(k).

You also stated that twenty-one (21) of the petitioners were not owners of the Units. Accordingly, a second demand is hereby made that pursuant to the Non-Profit Corporation Act N.J.S.A. 15A:5-24(a), you provide the records containing the names and addresses of all Members of the Association, the number, class and series of memberships held by each, and the dates when they respectively became members of record. Also, please identify and produce copies of these twenty-one (21) petitioners.

Third, please produce copies of the documents evidencing that sixty-four (64) petitioners withdrew their names from the Petition and provide a brief description of the circumstances under which these withdrawals were obtained.²

Fourth, please produce copies of the sixty-six (66) petitioners which you allege were redundancies, the five (5) which were not signed (although it is not clear whether a signature is required) and the five (5) petitioners in which the petitioner is unidentified.

You are expected to produce these documents within ten (10) days of the date of this letter. Please advise me as to the exact date, time and location where same may be reviewed.

In closing, it is without question that the Board members owe a fiduciary duty to the Unit Owners and that they should "exercise their powers and discharge their functions... in a manner that protects and furthers or is not inconsistent with the health, safety and general welfare of the residents of the community" (N.J.S.A. 46:8B-14(j)) and free from self-dealing. Unfortunately, in this instance, and unlike the prior petition for a Special Meeting in 2007, the Board has sought to protect its own interests by stalling and trying to eliminate well over one hundred names from the Petition without offering proper documentary support for same. These actions have resulted in disenfranchising the Members of the Association.

Because such actions by the Board have grave consequences, please note that even though the regular annual meeting of Unit Owners is scheduled for March, 2010 at which two of the three members of the Board that are the subject of the recall Petition are up for reelection, the issues raised herein will not be rendered moot. The CBG intends to seek appropriate redress for any wrongful act by the Board and to enforce not only the rights of its members as Unit Owners at the Galaxy, but the rights of all the future Unit Owners at the Galaxy.

² It should be noted that, nothing in the By-Laws addresses whether a petitioner may subsequently withdraw his or her name; unlike a proxy in which it may be withdrawn at any time prior to the commencement of a meeting of unit owners. Therefore, whether these alleged withdrawals are effective is currently being examined.

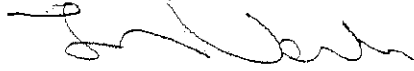
Ms. Gail Hoffman, Secretary

December 15, 2009

Page 6

I anticipate hearing from you directly.

Very truly yours,



Louis J. Verde

LJV/cf

cc: Treasurer, GTCA
Slava Lerner, President GTCA
Thomas Wiggins, President CBG
Michael Kingman, Esq.
Edward Hannaman, Department of Community Affairs
Board of Directors, GTCA
Unit Owners, GTCA

EXHIBIT B

CHRISTOS J. DIKTAS*
CHRISTINE GILLEN*
ROBERT A. SCHANDLER*
JULIO C. MOREJON

DIKTAS SCHANDLER GILLEN MOREJON

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

381 PARK AVENUE SOUTH
SUITE 701
NEW YORK, NEW YORK 10016

DENISE K. ZEVALLOS
BRIAN P. JAKULEVICIUS*

596 ANDERSON AVENUE
P.O. BOX 2199
CLIFFSIDE PARK, NEW JERSEY 07010

REPLY TO:

X NEW JERSEY
NEW YORK

MICHAEL L. KINGMAN
STEVEN A. COCHRANE
JON S. PLEVRITIS*
OF COUNSEL

(201) 943-8020

*MEMBERS OF NJ & NY BARS

JAMES F. MADDEN (1921-2004)
JAMES J. DEER (1930-1995)

TELECOPIER (201) 943-8838

E-MAIL WRITER MLKESQ@AOL.COM

December 22, 2009

VIA LAWYERS SERVICE

Louis J. Verde Esq.
Verde, Steinberg & Pontell, LLC
One Parker Plaza
400 Kelby Street
Fort Lee, NJ 07024

RE: Coalition for a Better Galaxy, Inc.

Dear Mr. Verde;

Please be advised that this firm is corporate counsel for the Galaxy Towers Condominium Association, Inc. (GTCA). Your letter of December 15, 2009, addressed to the Secretary of the GTCA has been referred to me for a response. Kindly address, pursuant to the Rules of Ethics, all future correspondence to the undersigned concerning this matter.

I note that you purport to represent a New Jersey Corporation which is not in itself a unit owner of the GTCA. In accordance with the statutes governing such matters, and our understanding of the policy of the DCA, it will be necessary that you confirm that your clients are in fact unit owners, and that no non-unit owners are involved in this corporation, or would have access to GTCA records, by providing an initial list of the individuals represented by you who would receive any documents related to this matter. The need for this is particularly reasonable since your clients appear to be unaware that the GTCA has had no Treasurer for a considerable period of time, a remarkable level of ignorance from supposed unit owners. In any event the corporation you represent has no legal standing in this matter, may make no demands for records, and is entitled to nothing from the GTCA. Only unit owners have such rights, and the GTCA has the right to make sure that non unit owners do not receive privileged unit owner records.

Your letter, dated December 15, also refers to matters that occurred in October, before the actual vote of the Board of Directors on December 10, following the delivery to the Board of a formal report by the Controller and Board Secretary (something else that your clients, as supposed unit owners, should have known). The Board Secretary has delivered to unit owners a written explanation of the actions taken by the Board of Directors and the reasons for those actions. The factual allegations contained in your letter, written five days after the meeting of the Board at which the actual actions were taken, are therefore oddly inaccurate. Whoever your clients are, it would appear that the information

they have provided to you is either intentionally or negligently inaccurate, and that they are unaware of the actual actions taken, and the legal basis for the same.

The truth of this is further proven by the "records" you seek, and the manner of production of such records you demand. While you correctly cite the appropriate statute permitting unit owners to see certain GAAP records, your request for records is significantly broader than merely such GAAP records, and you fail to cite any law whatsoever in support of such request. Your "requirement" that the GTCA produce for you records concerning confidential personal records of all unit owners and residents, along with personal records concerning the financial status of all unit owners, and personal or legal communications to and from unit owners is absurdly broad, ill defined, and unsupported by any legal requirement that the GTCA provide such voluminous, and private, owner records. I must advise you that the attempt by your clients, whoever they may be, to invade the privacy of unit owners will be strongly resisted. The GTCA recognizes that under the appropriate law, and GTCA Administrative Resolution #25, certain records are to be made available for inspection by unit owners by appointment. Your letter does not even pretend to follow the statutory dictates, nor does it follow the requirements of AR#25, a resolution recognized as legitimate by the DCA some years ago (further evidence that your clients are either not unit owners or, if they are, that they have no intention of following proper legal procedures).

The text and tenor of your letter suggests a confrontational and gratuitously insulting approach to this matter which ill serves its purported intent. The fact that your letter personally attacks the integrity of the GTCA Secretary, and the Board of Directors itself, for alleged misconduct contradicts your claim that your clients are only seeking certain information. In fact, your letter makes clear that you are more interested in justifying certain pre-conceived notions than in determining the truth. Your threats to seek "appropriate redress" establishes that your clients have no real desire to approach their concerns with civility or good faith, and the fact that you have indicated your letter is being sent to all unit owners is further evidence of the real motive for your correspondence - an attempt to frighten and intimidate unit owners at the Galaxy in advance of a lawsuit against those owners by your clients.

It is also difficult to understand why if, as you claim, you represent unit owners at the GTCA, such unit owners would desire that the GTCA incur thousands of dollars in legal fees in connection with a lawsuit that is totally unnecessary. I believe the Board intends to consider, at its next meeting, authorizing the independent accounting firm that conducts audits at the Galaxy to review the underlying documents which led to the reports of the Controller and Secretary, and verify their accuracy. If, as you claim, you are interested in establishing the accuracy of the contents of the reports and confirming the basis for the vote of the Board, such a review would certainly be in your clients interest, and would be far more cost effective than attempting to deal with your over-broad claim for personal and privileged records unrelated to the issue at hand, and not legally required to be produced. I anticipate such a review will be placed on the agenda for the next Board meeting in January, and certainly such an independent, unbiased, objective review by a professional accounting firm would satisfy any legitimate concerns. In the meanwhile, any unit owners you represent are free to contact the GTCA directly, without the need to incur legal fees, to inspect GAAP records.

One final point requires your attention. The Secretary of the Board of Directors has reported that some unit owners have complained of deceitful and fraudulent misconduct by individuals purporting to act on behalf of your client in seeking signatures for the request to hold a special meeting of unit owners. Any lawsuit by your client will be met with a countersuit against those personally involved in such scandalous misbehavior. Whether the

Board of Directors of the GTCA wishes to direct the office of GTCA Counsel, or some other entity, to conduct a further investigation into these allegations remains an open question. However, the commencement of legal action such as you have threatened against the GTCA and its lawful representatives will require a responsive and appropriate investigation and legal proceedings.

Galaxy Towers Condominium Association, Inc.,
Diktas Schandler Gillen Morejon P.C.
Corporate Counsel



BY: MICHAEL L. KINGMAN, Esq.

MLK/cr

CC: Russell Jermyrn, Acting General Manager
Robert Forfa, Controller
GTCA Board of Directors

EXHIBIT C

VERDE, STEINBERG & PONTELL, LLC

ATTORNEYS AT LAW

ONE PARKER PLAZA

400 KELBY STREET

FORT LEE, NEW JERSEY 07024-2937

(201) 944-4200

TELECOPIER (201) 944-4562

NEW YORK OFFICE

276 FIFTH AVENUE

SUITE 405

NEW YORK, NEW YORK 10001

(212) 996-0630

MERRICK D. STEINBERG*

LOUIS J. VERDE⁺

STEVEN PONTELL**

SIOBHAN MCGOWAN**

MARTINE PIERRE-PAUL

JAMISON P. VAN ECK⁺

* MEMBER OF N.J., N.Y. & CAL. BARS

⁺ MEMBER OF N.J. & N.Y. BARS

** MEMBER OF N.J., N.Y. & D.C. BARS

** MEMBER OF N.J. & PA. BARS

** CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY

DIRECT E-MAIL: Lverde@vsplaw.com

January 21, 2010

Michael Kingman, Esq.
Diktas Schandler Gillen
596 Anderson Avenue
P.O. Box 2199
Cliffside Park, New Jersey 07010

Re: Coalition for a Better Galaxy, Inc. - Petition for a Special Meeting

Dear Mr. Kingman:

Thank you for your letter of December 22, 2009. Please accept this letter in response to the issues that you raised and to that it is also my clients' desire to conclude this matter in the most expeditious and courteous fashion possible and to avoid any unnecessary expenditure of attorneys fees.

First, I understand your concern about the composition of the Coalition for a Better Galaxy, Inc. (The "Coalition") and your desire to verify that its members are Unit Owners of Galaxy Towers Condominium Association ("GTCA"). Accordingly, I am enclosing a list of the officers of the Coalition, each of whom is a unit owner at the Galaxy, and can assure you that I represent each person individually and a member of the Coalition.

As to any reference to my clients' ignorance or lack of knowledge as to certain facts, I must take full responsibility for same. Although my clients advised me that the GTCA had no Treasurer (even though Article VII of the By-Laws considers the Treasurer as one of the principal officers), I addressed a carbon copy of my December 15, 2009 letter to "Treasurer" because the By-Laws of the GTCA, specifically Article VI, Section 14 provides that Unit Owners are permitted to examine the books of account of the Board, "...provided, however, that the Treasurer has been given at least ten (10) days prior written notice of the Unit Owner's desire to make such an examination." Erring on the side of caution, I did not want any denial of my clients' request to examine the books of account to be based upon non-compliance with By-Law requirements. As to referencing the findings of the Secretary of the GTCA at the October 2009 meeting of the Board, I did so because I believe that not all details were provided by the Secretary at the December 10, 2009 meeting and I did not receive

Michael Kingman, Esq.

January 21, 2010

Page 2

a copy of the Secretary's letter until after the transmittal of my letter of December 15, 2009. Nevertheless, the categories for disqualified signatories remained the same with minor variations in the numbers. Therefore, my request for documents on behalf of my clients likewise remains the same.

This leads to your second issue that my request for records is "too broad", that I failed to comply with the Administrative Resolution #25 ("AR #25") of the GTCA, (which you indicate was recognized as legitimate by the Department of Community Affairs) or that I failed to cite any legal authority upon which I based my request. I will renew my request as specifically as possible:

- The Secretary reported in her letter dated December 10, 2009 that there were 66 redundancies, 11 unknowns and 20 names which were identified as "not owners of record". Accordingly please make available for review copies of those 97 petitions so that my clients may verify the Secretary's determination.
- In relation to the above and despite anything set forth in the AR #25 to the contrary, specifically paragraph 4(i)(G), please provide for review and copying the names and addresses of each member (Unit Owner) of the GTCA, and the date upon which they became a member as specifically required in the New Jersey Non-Profit Corporation Act, N.J.S.A. 15A:5-24. *(Since the GTCA was created in compliance with "Title 15 Chapter 1, et seq of the New Jersey Statutes Annotated" as set forth in the Articles of Incorporation, I think you will agree that no administrative resolution adopted by a Board of Directors of a condominium association created pursuant to same could override a statutory mandate unless the statute expressly permitted same. Further, regardless of whether the DCA found AR #25 to be "legitimate", I think you will also agree that it does not have the authority to amend or limit any statutory rights granted to members of a condominium association).*
- The Secretary also reported in her letter dated December 10, 2009 that 66 signatories have been reported to have had outstanding assessments against their Units. In response to a request to review an account for each Unit, you indicated that I did not even "pretend to follow the statutory dictates or the requirements of AR #25 nor did I provide any basis for my overly broad request for GAAP records. I again direct your attention (as I did on page 4 of my original letter) specifically to the New Jersey Condominium Act, specifically, N.J.S.A. 46:8b-14(g)(ii) which requires a condominium association to maintain:

...accounting records in accordance with generally accepted accounting principals, open to inspection at reasonable times by Unit Owners. Such records shall include:

....

Michael Kingman, Esq.

January 21, 2010

Page 3

(ii) **an account for each unit setting forth any shares or common expenses or other charges due, the due dates thereof, the present balance due and any interest in common surplus**" [*Emphasis supplied; see also, Article VI, Section 14 of the By-Laws*].

Accordingly, I reiterate my request that the GTCA produce for review an account for each unit as of October 14, 2009 showing the charges due for each. Also, in applicable cases, please include the additional information as to whether the requisite statutory notice was given before any fines were levied. (*Once again, I believe you will agree that any provision of AR#25 which attempts to classify this specific accounting as "protected" pursuant to N.J.S.A. 46:8B-13 would be of no effect since the relevant portions of N.J.S.A. 46:8B-13 which were added as an amendment to the Condominium Act in 1991, do not expressly amend N.J.S.A. 46:8B-14, and therefore based on the rules of statutory construction, would not negate same*).

The Secretary also reported in her letter dated December 10, 2009 that 48 signatories to the Petition requested that their names be withdrawn. Please provide copies for review by my client of those documents evidencing that these 48 individuals withdrew their names.

As to the withdrawal by the 48 signatories, I believe that based on applicable case law, once the Petition was filed on October 14, 2009, the Secretary of the GTCA could not recognize withdrawals. The right of a shareholder or member of a corporation to vote will be protected by the courts especially when it relates to any action by a board affecting the election of directors. Any interference with this right may give rise to a cause of action to enforce that right. Once a petition is filed, it would be improper for the reviewing authority to recognize any withdrawals. See, Baker v. Reeves, 9 N.J. Misc. 1303, 1304 (Sp. Ct. 1931); Mocco v. Picone, 203 N.J. Super. 443, 447 (App. Div. 1985). Adopting such a practice would be "...permitting systematic and planned obstruction of the petition process through the soliciting of withdrawals by personal confrontation or even coercion of the signators to the filed petitions. Such a result would be unfair to both the general electorate and the individual signors of the recall petitions." *Id.* at p. 448. Although the above cited cases related to general elections, I believe that a court would apply these principles to this matter.

Finally, my clients take issue with your statement that an objective review by an "independent" and "unbiased" accounting firm would be more cost effective. First, it is an added expense to the GTCA and second, my clients' interest will be equally, if not better, served if they conduct the review of the requested records. Fees for attorneys would only be necessary if the GTCA fails to comply with its obligations.

VERDE, STEINBERG & MONTPELLI, LLC
Michael Kingman, Esq.

January 21, 2010

Page 4

Thank you for your anticipated cooperation. Please contact me within the time prescribed by applicable statute and advise me as to the date, time and location that the Association will make these documents available for review by my clients and what arrangements must be made to ensure that the GTCA is paid for all copying costs.

Very truly yours,



Louis J. Verde

LJV/cf

cc: Slava Lerner, President GTCA
Thomas Wiggins, President CBG
Martha Norget, Treasurer, CBG
Martha DiGiovanni, Secretary, CBG
Michael Kingman, Esq.
Edward Hannaman, Department of Community Affairs
Board of Directors, GTCA
Unit Owners, GTCA

VERDE, STEINBERG & TONTELL, LLC
Michael Kingman, Esq.
January 21, 2010
Page 5

COALITION FOR A BETTER GALAXY, INC.

List of Officers

Thomas Wiggins, President

Martha Norget, Treasurer

Martha DiGiovanni, Secretary

EXHIBIT D

CHRISTOS J. DIKTAS*
CHRISTINE GILLEN*
ROBERT A. SCHANDLER*
JULIO C. MOREJON

DENISE R. ZEVALLOS
BRIAN P. JAKULEVICIUS*

MICHAEL L. KINGMAN
STEVEN A. COCHRANE
JON S. PLEVRITIS*
OF COUNSEL

JAMES F. MADDEN (1921-2004)
JAMES J. DEER (1930-1995)

DIKTAS SCHANDLER GILLEN MOREJON

ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

596 ANDERSON AVENUE
P.O. BOX 2199
CLIFFSIDE PARK, NEW JERSEY 07010

(201) 943-8020

TELECOPIER (201)943-8838

E-MAIL WRITER MLKESQ@AOL.COM

381 PARK AVENUE SOUTH
SUITE 701
NEW YORK, NEW YORK 10016

REPLY TO:

X NEW JERSEY
NEW YORK

*MEMBERS OF NJ & NY BARS

February 4, 2010

VIA LAWYERS SERVICE

Louis J. Verde Esq.
Verde, Steinberg & Pontell, LLC
One Parker Plaza
400 Kelby Street
Fort Lee, NJ 07024

RE: Coalition for a Better Galaxy, Inc.

Dear Mr. Verde;

This will acknowledge receipt of your letter of January 21, 2010. I appreciate your providing me with a list of the officers of your client, which list includes the name of a candidate for the position of Director of the GTCA Board Thomas Wiggins, the wife of another Board candidate Michael Deluca, and that of a former Board member (as both Mr. Wiggins and Mr. Deluca are former members of the Board). I note that your letter does not state that these are the only members of the "Coalition", nor do you state that all members of the "Coalition" are GTCA unit owners. However, since you indicate you are representing Mr. Wiggins and the others personally, I will respond on that basis. The political status of your clients as candidates explains why you have seen fit to circulate your letter to all unit owners, and also makes clear the reason that elements of your letter are political, and not legal, in nature.

I will address your demands with regard to the "petition" requesting a special meeting of GTCA unit owners submitted by your clients in the order presented in your letter. First, you ask for the names of those individuals who were found to be redundancies, unknown, or not owners at the Galaxy according to the report of the Secretary, although you once again fail to provide a legal basis for your request. Certainly you cannot be claiming that these names constitute GAAP financial records reviewable by unit owners. Since they clearly do not fall within that category, what is the legal basis upon which you are relying in demanding this information be produced? If you are claiming that this list constitutes records which are reviewable pursuant to Administrative Resolution (AR) 25 of the GTCA, surely Mr. Wiggins and Mr. Deluca as former Directors are well aware of the procedures by which unit owners may request such records under that resolution. However, they have failed to request that information in accordance with AR# 25, preferring instead to force unit owners to incur legal costs to respond to their attorney instead of simply complying with that resolution. Since this odd approach cannot possibly be the result of

ignorance, they must be choosing to ignore the proper legal channels in furtherance of their political campaigns.

You also demand a list of all "Members" of the GTCA and the dates that they became "Members", under the provisions of the New Jersey Non-Profit Corporation Act. Since you, and your clients, know that the GTCA is not such an organization, but rather is a Condominium Association under the New Jersey Condominium Act, which has elected to function pursuant to the procedures of the act that you have cited, they also know that no such list exists. The GTCA does not maintain a list of "Members" and the dates that they became "Members". The GTCA maintains a list of current unit owners, who become owners when a deed is properly executed and delivered. The sort of list which you are requesting would have no legal use to the GTCA, and has never been maintained so far as I am aware. It is fair therefore to ask why former Board members would demand something that they know does not exist, and has never been legally required. Do Mr. Deluca and Mr. Wiggins seriously expect the GTCA to undertake the time and expense to generate a list of names and dates for their own political purposes? Do Mr. Deluca and Mr. Wiggins actually intend to force unit owners to incur legal expenses over a lawsuit concerning a completely esoteric legal point with absolutely no value or use to the GTCA?

You next ask for the names of those individuals who the Secretary found to have outstanding unpaid assessments against them rendering them ineligible to request a meeting of unit owners under the GTCA By-laws, along with records concerning communications with those individuals. First, I reject out of hand your claim that such a list is a GAAP record subject to inspection under the statute you cited. Second, the attempt by you and your clients to invade the privacy of unit owners who may be suffering financial difficulties is completely unacceptable. Third, it appears necessary to set forth what exactly N.J.S.A. 46:8b-14 requires. I will do so by quoting from a letter recently sent to unit owner Barbara Tokay, a Director and unit owner who recently has been requesting similar material to that demanded by your clients (although she has, oddly, elected to do so in her capacity as a unit owner and not a Director):

THE LAW CONCERNING EXAMINATION OF ASSOCIATION RECORDS

In order to provide you, and other unit owners, with accurate information concerning the law as to the right of unit owners to examine GTCA GAAP records, I have reviewed not only the applicable statute, but also prior letters issued by Edward Hannaman of the Department of Community Affairs who reviews these matters, and in fact I spoke with Mr. Hannaman personally at some length last week. Mr. Hannaman's opinions do not have the force of law; he is an employee of the state, charged to interpret the law to the best of his ability, but as he would be the first to admit, there is no way to know if the courts would agree with his views. The fact is that there have been no court decisions interpreting the statute governing these matters, and the state has not adopted any rules or regulations concerning the implementation of that statute. However, I found in my conversation with Mr. Hannaman that he and I are in agreement concerning what we both believe are reasonable interpretations of the law.

Pursuant to the New Jersey Condominium Act, the GTCA maintains a record of receipts and expenditures, and accounts for each unit setting forth any shares of common expenses or other charges due, the due dates thereof, any balance due, and any interest in common surplus for such units. In accordance with the law, unit owners in good standing are entitled to make an appointment to examine those records.

However, not all GAAP records may be examined by a unit owner, and not all

financial records are considered GAAP records. The law does not define what GAAP records are. Different organizations are free to define records as GAAP records, or non GAAP records, as may be determined by their Controller, accountants, and auditors. A pamphlet published by the DCA addressing this issue in fact makes this very point. Mr. Hannaman has stated in the past in written correspondence dated January 28, 2005 addressed to previous GTCA counsel the following opinions, with which I agree:

(1) Payroll records, in order to protect privacy, may have individual identifying information redacted;

(2) Non-financial information on legal expenses considered privileged may be redacted. (The Appellate Division of our Superior Court reiterated in a decision released in July of 2009 that attorney bills are subject to the attorney client privilege)

Since information in both of these two categories appear in the records described above, they must be redacted before they may be examined by unit owners, or copies given.

In addition, Mr. Hannaman agrees that similar redactions may be done to delete personal identifying information as to unit owners. He and I discussed, and I believe we both agree, the fact that the purpose of the statute is to provide financial information concerning the condominium, its expenses, and its income, and that the law is not meant to allow unit owners to spy on and obtain personal information about their neighbors. It is frankly not your, or that of anyone else, business what your neighbors spend for cable or parking. What you are entitled to is a list of all units, which may be assigned individual numbers that would not identify them by owner or unit number, showing the expenses and payments for that unit. In this way you could see what the assessments are for unit X, and what the payments for that unit are, without knowing to whom that unit belongs. This satisfies the requirement that unit owners be provided with an account "for each unit" showing expenses, charges, and payments for that unit. Such information would enable a unit owner to see assessments and payments for all units and see how many (and which) units are in arrears without compromising the right of privacy each unit owner enjoys as to his or her personal financial affairs.

I reiterate that both Mr. Hannaman and I are in agreement that such a procedure is both lawful and appropriate. Interestingly, Mr. Hannaman volunteered that financial records concerning the units owned by Directors could be made available to unit owners, since unit owners arguably have a right to see whether their Directors are in arrears, or make late payments, and that could affect how they vote on particular issues. Other than Directors, however, Mr. Hannaman agreed that unit owners have a right to see the financial status only of the entity which is the condominium, and that personal information concerning individual owners is not necessary to fulfill that right.

I recognize that you may disagree with the interpretation of the law shared by Mr. Hannaman and myself. However, you have failed to make any compelling case disputing that interpretation. As to the records you have requested, to the extent that they are covered by AR #25, your clients Mr. Deluca and Mr. Wiggins are fully aware of the procedures they, and all unit owners, must follow under that resolution.

You have also renewed your demand for the names of those who requested that their names be withdrawn from the request for a special meeting. Once again, you do not claim that this list would constitute GAAP records open to inspection by unit owners under the statute (as such a contention would of course be absurd). However, you do not cite any legal basis under which the GTCA could be compelled to honor your demand. Once again,

your clients are directed to AR#25, which they seem assiduously determined to avoid - a bewildering stance for former directors and present candidates. You have, however, suggested an argument under which you contend the withdrawals might not be considered legally valid, and I will reply to that argument.

First, you equate the signature by a unit owner on a request for a special meeting of unit owners to signatures on **petitions required** for certain purposes under the **election laws** of the state of New Jersey **which apply to general and special elections to public office**. While this is certainly a novel argument, it fails on a number of levels to be applicable to the facts here. First, as you are of course aware, our Supreme Court, in the famous *Twin Rivers Homeowners Association* case, ruled that Condominium Associations are not public or quasi public bodies, but are rather corporate in nature. Second, the cases you cited addressed the nature of *formal petitions required* under those forms of public bodies governed by the New Jersey *Walsh Act*. Although you have approached this matter from the point of view that we are dealing with formal petitions, in fact such is not the case. No petitions are required under the By-laws; individual unit owner requests, however, are required. Once a certain number of unit owners have been properly found to have requested a meeting of unit owners, then such a meeting is called. The manner of the request, whether by separate submissions, or a "petition", is of no legal consequence. The only relevance to the use of a petition would be where, as is the case here, some signers claim they misunderstood, or were lied to, about the nature of the document they were signing.

I would also point out that, even if the theory you are offering was applicable to the circumstances here, your legal research failed to take into account the fact that under New Jersey law, even when a petition is formally required, it is not only proper but necessary that the petition be reviewed by the statutorily designated official to make certain the petition meets applicable legal criteria. I direct you, for example, to *Ford v. Gilbert et. al.*, 89 N.J.L. 482 (Sup. Ct. 1916), which stated

The statute imposes the duty upon the clerk to examine the petition and ascertain whether it is in conformity with the requirements of the statute. After he has done this if he accepts and files the petition the first step in the matter is completed and jurisdiction vests. It is then too late for signers to withdraw.

Since the Board of Directors required an investigation by the Secretary and Controller into the validity of the request for a special meeting before voting whether or not to accept it, clearly withdrawals before that time were appropriate. Indeed, another court stated in *Balm v. City of Cape May et. al.*, 3 N.J. Misc. 58 (Sup. Ct. 1925) that

*In statutory proceedings...where jurisdiction is placed in a public officer to perform an act by petition, or where jurisdiction is directly given... **the rule is that withdrawals may be legally made up to the time fixed by the legislature for the taking effect of the jurisdiction or authority reposed in the public officer...***

There are other cases to the same effect. However, the main and inarguable point is that the Secretary and Controller were obligated to review the validity of the request for a special meeting, and found that it lacked a sufficient number of valid signatures. Do Mr. Deluca and Mr. Wiggins seriously contend that no review of the petition was legally appropriate, and are they going to force unit owners to incur the cost of a spurious lawsuit over this issue?

In closing, you and your clients should also be aware that, as the result of a review by the accounting firm which performs annual audits of the GTCA, the conclusions of the Secretary and Controller as presented to the Board were confirmed, following a completely

independent examination of the underlying basis for the conclusions of the Secretary and Controller, including an examination of the official records of the GTCA by the auditors. That report will be formally presented to the Board at its next meeting. In the meanwhile, your clients are invited to avail themselves, as unit owners, of the rights afforded to all unit owners under AR #25. You may also inform them that all GTCA GAAP records for the entire year of 2009 are presently being copied, redacted in accordance with legal standards described above, and will shortly be made available to all unit owners, a level of openness and transparency never before made available to unit owners by any previous Board. All unit owners will be advised when the production of these approximately fifteen thousand pages of records are available for inspection.

Galaxy Towers Condominium Association, Inc. ,
Diktas Schandler Gillen Morejon P.C.
Corporate Counsel

BY: MICHAEL L. KINGMAN, Esq.

MLK/cr

CC: Russell Jermyrn, Acting General Manager
Denise Colletti, Controller
GTCA Board of Directors
GTCA unit owners

EXHIBIT E

DEPARTMENT OF THE TREASURY
LONG FORM STANDING WITH CHARTERED DOCUMENTS

THE GALAXY TOWERS CONDOMINIUM ASSOCIATION

0100114174

I, the Treasurer of the State of New Jersey, do hereby certify that the above-named New Jersey Non Profit Corporation was registered by this office on May 23, 1980.

As of the date of this certificate, said business continues as an active business in the State of New Jersey. Annual Reports are outstanding for the following year(s):

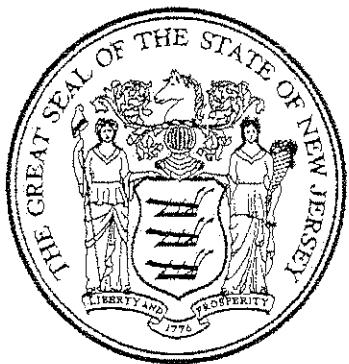
2009

I further certify that the registered agent and registered office are:

Gtca Mgmt Office
7000 Boulevard East, 16th Floor
Guttenberg, NJ 07093

I further certify that as of the date of this certificate, the following amendments and changes are on file in this office:

Change Of Agent And Office	08/01/1985
Change Of Registered Agent	05/06/2002
Change Of Agent And Office	02/20/2003
Change Of Registered Agent	05/30/2003



Certification# 117133462

Verify this certificate at

https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed my
Official Seal at Trenton, this
14th day of May, 2010

Andrew P Sidamon-Eristoff
State Treasurer

EXHIBIT F



The Galaxy Towers
Condominium Association

December 10, 2009

Dear Homeowners,

At the Board of Directors meeting this evening, I presented my final report concerning the "Petition for a Special Homeowners Meeting to Remove Board Members Slava Lerner, Fini Strumza, and Richard Miller" which I received in its original format on October 14, 2009.

The Comptroller reviewed the written request of unit owners requesting a special meeting and did provide and certify his list to legal counsel and the Board Secretary of any persons who signed the written request and had any outstanding assessments against their units. In addition to outstanding assessments, duplicate names and owner and unit identification were criteria by which this petition was vetted. I reviewed the information, documents, and records available to me and my report is as follows:

Each page was numbered for a total of 189 pages. We assigned a number to each contact portion on each page that was filled in. One apartment equals one vote. Although there were only 365 contact portions, the last signer on the last page of the petition clearly indicated she was signing for two apartments which she clearly identified as to tower and unit, so we gave her two numbers, one for each clearly and fully identified apartment:

366 Contact Portions were submitted.

Of this number, 66 Redundancies were identified and removed.

The petitions contained 300 original, unique names of persons claiming to be unit owners ;r removing duplicates.

Of these 300 names, 20 names were identified as not the "Owners of Record", so deducting these names brought the number to 280 names;

Of these 280 names, there were 11 "Unknowns" - Portions where there was either no signature or a lack of clear identification of unit, and deducting these unknowns brought the number to 269.

Of these 269 names, 66 have been reported as having outstanding assessments against their units as of the date of the formal receipt of the petition, and would therefore be ineligible to vote or request a special meeting, so deducting these names leaves 203 names. Of those 203 signatures, 48 additional signers have requested that their name be withdrawn from the request to hold a special meeting for a variety of reasons, including a denial that they understood what they were signing, or were misled or changed their minds. This leaves **155 valid names** and signatures

7000 Boulevard East Guttenberg, New Jersey 07093 • (201) 453-2400 * Fax: (201) 861-8387

There are 1105 Galaxy voting units including the mall. The 3 GTOA owned units are already removed from this number (1076 + 32 - 3 + 1105) and the By-laws require that a request for a special meeting must contain the signatures of 25% of all votes eligible to be cast at such a meeting. The request therefore falls short by 122 signatures and must be rejected.

A motion was made to disqualify and reject this Petition to Request a Special Meeting of Unit Owners because the 25% threshold of 277 Unit Owners eligible to vote (*in good standing) has not been met. ** The motion passed. The Petition to Request a Special Meeting was disqualified

*** BY LAWS: ARTICLE 11-Membership and Voting Rights:**

Section 5, Suspension of Rights. The membership and voting rights of any member may be suspended by the Board for any period during which any assessment against the Unit to which his membership is appurtenant remains unpaid; but upon payment of such assessments, and any interest accrued thereon, whether by check or cash, his rights and privileges shall be immediately and automatically restored.

****ARTICLE 111 - Meetings of Unit Owners:**

Section 3, Special Meetings. After the first annual or special meeting, special meetings of Unit Owners may be called by the President whenever he deems such a meeting advisable, or shall be called by the Secretary when so ordered by the Board, or upon the written request of members representing not less than twenty-five (25%) of all votes entitled to be cast at such meeting.

I am saddened and disappointed, as are many others, by the troubling behavior surrounding this petition. It has caused much division amongst our neighbors

There have been stories about people being misled and lied to concerning the petition they were signing. I do believe that it is the responsibility of everyone to be fully informed and understand the documents to which they affix their signature, but I have come to believe that there were many instances of deceptive behavior.

I received a copy of a letter dated September 4th from a unit owner who relays his story of being asked to sign this petition. Although he says he initially refused, he states that he was pressured to sign and he was told the petition was nothing more than asking the board to release more information to the residents. He says he was not shown the text of the petition and being in a hurry, and believing what he was told, he signed. When he found out that this petition was really to call a meeting to remove 3 directors, he felt duped and misled and asked that his name be removed.

I have a letter from a unit owner who relays a conversation he had with another owner. In that conversation, the owner told this gentleman that her family member was asked to sign the petition to protest budget cuts here at the Galaxy so she signed it. It later became known that this petition was not a mere protest of budget cuts but a petition to remove 3 sitting directors.

One unit owner wrote a letter and declares that not only is the signature on the petition not his, but that the telephone number is not his number and is not written in his handwriting either and is also a different handwriting from that indicating the tower and apartment number.

I personally had a conversation with a unit owner who told me that their signature was solicited by a front desk employee in order to "save his job". This person signed the petition under the assumption that one of the directors wanted to fire these employees as that is what was said so to help someone keep his job, this owner signed the petition. I was astounded at hearing this and explained no one on the board wanted these employees fired and then I explained the true purpose of the petition.

The deceitful tactics used to solicit signatures in these examples are outrageous and should not be tolerated ever again. However, the idea that the people or perhaps a person behind or involved with the distribution of this petition encouraged and provided an employee in the lobbies of the Galaxy with the petition document so that he might solicit signatures on their behalf and/or accepted this petition document from this employee with owner signatures is a ver[^] serious problem. For all we know there may have been more than one employee doing this. None of us should allow this to go on. This is our home, not some arena in which a few get to disrupt and break the rules as they see fit.

This is over the top and quite a problem for us all. Using our employees as pawns, as part of an overall strategy to "win" so to speak or meet some particular goal does nothing but compromise our employees by politicizing them and further disrupt the peace and tranquility to which we are all entitled. Because when this happens, and please make no mistake about it, we all lose.

Sincerely,



Gail Hoffman
Secretary,
GTCA Board of Directors

Cc: Michael
Kingman GTCA
Counsel

Slava Lerner President,
GTCA

Russell Jermyn Galaxy
Manager

Robert Forfa GTCA
Comptroller

EXHIBIT G



February 19, 2010

Dear Unit Owner,

As you may be aware, the Board of Directors retained the independent accounting firm of Wilkin & Guttenplan to review the report issued by former Controller Bob Forfa and myself to the Board concerning the Request for a Special Meeting of Unit Owners submitted to the Board. The report which has been issued by Wilkin & Guttenplan is enclosed for your review.

As you can see, the results contained in the initial report submitted to the Board on December 10, 2009, have been independently verified and confirmed. In the interests of full and complete disclosure, the Board of Directors is pleased to provide you with this information.

Sincerely,

Gail Hoffman
Secretary, GTCA
Board of Directors

Cc: Russell Jermyn, GM
Michael Kingman, GTCA Attorney
GTCA Board of Directors



Wilkin & Guttenplan, P.C.
Certified Public Accountants & Consultants

1200 Tices Lane ■ East Brunswick, NJ 08816 ■ (732) 846-3000 ■ fax(732) 846-0618 ■ www.wgcpas.com

February 5, 2010

Mr. Michael Kingman
Diktas Schandler Gillen Morejon, PC
596 Anderson Avenue Suite 301
Cliffside Park, NJ 07010

RE: Agreed upon procedures for the Galaxy
Towers Condominium Association, Inc.
regarding the petitions for a request for a
special meeting of the unit owners

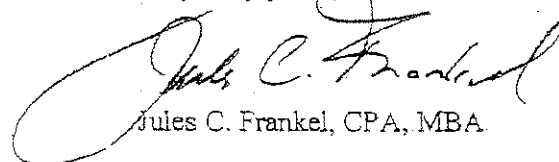
Dear Mr. Kingman:

Attached please find our report on applying agreed upon procedures regarding the petitions for a request for a special meeting of the unit owners. As discussed in the first paragraph of the report, we have applied certain procedures that were agreed to by the Board to assist the Board in determining if the summary of findings of the secretary and controller with regard to the validity of petitions for a request for a special meeting of the unit owners were supported by appropriate evidence. All procedures that were applied are detailed in the report.

As discussed in the last paragraph of the report we have indicated that we do not express an audit opinion on any of the accounts or items referred to above. This is because an audit opinion is only appropriate when referring to a set of financial statements. Standards established by the American Institute of Certified Public Accountants precludes us from issuing an opinion on specified agreed upon procedures. Therefore, in accordance with the American Institute of Certified Public Accountants, we have stated the procedures done and our findings relative the procedures undertaken.

Please distribute our report as you deem appropriate. Please call us with any questions or comments or if we can be of further assistance.

Very truly yours,



Jules C. Frankel, CPA, MBA

JCPA/cb (070270)



Wilkin & Guttenplan, P.C.

Certified Public Accountants & Consultants

1200 Tices Lane ■ East Brunswick, NJ 08816 ■ (732) 846-3000 ■ fax (732) 846-0618 ■ www.wgcpas.com

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING
AGREED-UPON PROCEDURES

Galaxy Towers Condominium Association, Inc.
7000 Boulevard East
16th Floor, Management Office
Guttenberg, NJ 07093

RE: Agreed-Upon Procedures of the Galaxy Towers
Condominium Association Inc. regarding the
petitions for a request for a special meeting of the
unit owners

Dear Members of the Board,

We have performed the procedures described below, which were agreed to by you, to assist you in determining if the summary of findings of the secretary and controller with regard to the validity of petitions for a request for a special meeting of the unit owners were supported by appropriate evidence. The scope of our procedures did not include verification of the authenticity of the signatures on the original petitions as well as the signatures on the letters authorizing removal from the petition. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings were as follows:

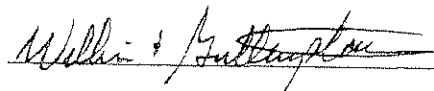
1. We obtained the original petitions containing signatures requesting the holding of a special meeting. There were 366 signatures on the petitions. We traced these signatures to a listing prepared by the board secretary, which detailed unit number and name. All signatures on the petitions were traced without exception to the listing prepared by the board secretary and controller. We then reviewed this listing for units listed more than once. We noted duplicate petitions from 68 units, indicating that there were more than one signature on behalf of a given unit. When we subtracted these duplicate petitions, there remained petitions representing 298 units.

Our count is as follows:

Total signatures on petitions	366
Petitions representing duplicate units	(68)
Petitions representing units in arrears	(77)
Petitions where signature were not that of current unit owner	(11)
Petitions where name/address is incorrect/ineligible/incomplete	(7)
Names withdrawn from petitions via letter from unit owner	(48)
Remaining Number of Valid Signatures	<u>155</u>

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an audit opinion on any of the accounts or items referred to above. Had we performed additional procedures, matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of The Galaxy Condominium Association, Inc. taken as a whole.

Very truly yours,



WILKIN & GUTTENPLAN, P.C.

Certified Public Accountants