

IN THE CLARK CIRCUIT COURT II FOR CLARK COUNTY

STATE OF INDIANA

ELIZABETH CANTREELL, BETTY HAILEY,  
LOUISE BORNWASSER, DAVID FINNEGAN,  
GIOVONNE RONDO HILLMAN, ROBIN MESHEW,  
KEITH HILLMAN, ELDENE MAAS, GREG BIELEFELD,  
GLENN THOMAS, DEBBIE ZOELLER PULLEN,  
MARTIN DALE HALEY, NORA STROHM, WADE MORGAN,  
WALTER KINDLER, MARCIA C. HALL, BARRY GATES,  
THOMAS PIKE, SHELIA RUDDER and PAUL RANNEY  
Petitioners

v.

CASE # 10C02-1209-PL-092

THE HARBOURS CONDOMINIUM ASSOCIATION, INC.,  
Respondents

**MOTION FOR CHANGE OF VENUE FROM THE JUDGE**

Comes now the Respondents, The Harbours Condominium Association, Inc., by counsel, Dawn R. Elston, and for their Motion for Change of Venue from the Judge, pursuant to Indiana Rule of Trial Procedure 76(B), respectfully requests a change of venue from the judge in this matter

**WHEREFORE**, the Respondents, The Harbours Condominium Association, Inc., respectfully requests that her Motion for Change of Venue from the Judge be granted.

Respectfully submitted,



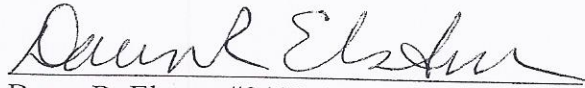
Dawn R. Elston, #8408-49  
538 E. Court Avenue  
Jeffersonville, In 47130  
T: (812) 280-7700 F: (812) 280-7707

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of September, 2012, service of a true and complete copy of the above and foregoing pleading or paper was made upon the following named party herein by

depositing the same in the United States mail in an envelope properly addressed to the following with sufficient first-class postage prepaid:

Larry O. Wilder, Counsel for Petitioners, 530 E. Court Avenue, Jeffersonville, In 47130

A handwritten signature in cursive script, reading "Dawn R. Elston", written in black ink. The signature is fluid and connected, with a long horizontal stroke at the end.

Dawn R. Elston, #8408-49

IN THE CLARK CIRCUIT COURT NO. 2  
STATE OF INDIANA

ELIZABETH CANTRELL, BETTY HAILEY  
LOUISE BORNWASSER, DAVID FINNEGAN,  
ET. AL.,

PETITIONERS

vs.

CASE NO. PL-092

THE HARBOURS CONDOMINIUM  
ASSOCIATION, INC.,

RESPONDENTS

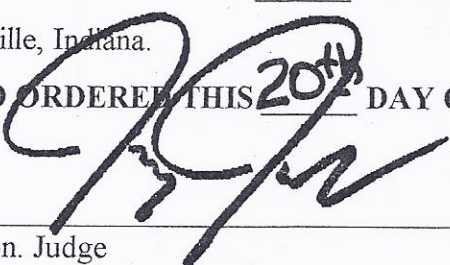
MOTION FOR HEARING ON PETITIONERS'  
REQUEST FOR INJUNCTION AND RESTRAINING ORDER  
AND ORDER SCHEDULING HEARING THEREON

Come now the Petitioners, by counsel, Larry O. Wilder, and request that the court schedule a hearing upon their request for temporary restraining order and injunctive relief, which in words and figures follows:

HI

AND THE COURT, after first being duly advised, does hereby set the matter for hearing upon the request for temporary restraining order and injunctive relief to be held on the 3<sup>rd</sup> day of ~~September~~<sup>Oct</sup>, 2012, to begin at 9:00 o'clock A.m. in the Clark Circuit Court No. 2 in the Clark County Courthouse, 501 East Court Avenue, Jeffersonville, Indiana.

SO ORDERED THIS 20<sup>th</sup> DAY OF SEPTEMBER, 2012.

  
\_\_\_\_\_  
Hon. Judge  
Clark Circuit Court

CC: Larry O. Wilder, Attorney for Petitioners  
Dawn Elston, Attorney for Board of Directors, 530 E. Court Ave., Jeffersonville, In.  
47130

IN THE CLARK CIRCUIT COURT NO. 2  
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BARRY GATES, THOMAS PIKE, SHELIA RUDDER,  
AND PAUL RANNEY,  
PETITIONERS

vs.

CASE NO.

12-092

THE HARBOURS CONDOMINIUM  
ASSOCIATION, INC.,  
RESPONDENTS

VERIFIED COMPLAINT AND PETITION  
FOR DECLARATORY JUDGMENT

Come the Petitioners, by their representative, after first being duly sworn upon their oath, and by their counsel. Larry O. Wilder, and for their Complaint and Petition state as follows:

1. The Plaintiffs own and occupy condominium homes located in The Harbours.
2. As owners of condominium homes in The Harbours, the Plaintiffs are Members of the Harbours Condominium Association corporation.

3. The Plaintiffs are required to pay dues and assessments for the maintenance improvement of common areas and facilities.
4. The Harbours Condominium Association, Inc. was formed under the Non Profit Association Act of 1991. The duties of Directors, the authority of Members, record keeping requirements, and the rights of Members to inspect records is contained in Indiana Code 23-17 et seq.
5. Complaints have been made by Members to the Directors regarding incidents of trespass upon the Members' residential premises, and their personal property; actual and constructive eviction of Members from common areas and facilities; battery committed against Members; Board members have violated individual members of the Associations' right to privacy inasmuch as they have placed surveillance cameras in private areas, including but not limited to shower areas in the pool; breach of fiduciary duties by members of the Board, including but not limited to fraud, self-dealing and conversion; all of these actions by employees and agents of the Harbours Condominium Association, Inc and/or Directors of the Harbours Condominium Association.
6. The dues and costs associated with home ownership in the Harbours have been increased to oppressive levels by the Directors of the Harbours Condominium Association, without cause, without justification, and without legally mandated explanation.

7. In addition, the Indiana Attorney General has filed a civil proceeding against members of the board of the Harbours Condominium Association, more particularly Kevin Zipperle, Sharon Chandler and Mary Trautwein-Lamkin, setting forth various allegations consistent with those averred by the Plaintiffs herein. (See Attached Exhibit "A").
8. Moreover, Plaintiffs have requested financial information, pursuant to Indiana Statute, to determine that money belonging to the corporation, collected from members is being spent or invested to directly benefit the corporation and its members, Plaintiff requested a statement of salaries paid to persons for the operation or maintenance of the condominium or its units, a statement of the number of persons employed by the corporation, and a statement of the total amount spent on salaries by the corporation.
9. The directors have vested employees with the authority to prevent members from having access to common areas of the condominium, to remove them from common areas, and to use physical force against them.
10. In response to Plaintiff's request, the Corporation through its directors, has refused to even provide a statement of the number of employees of the corporation, their salaries and/or they have refused to provide the Plaintiffs' with relevant information regarding the Harbours Condominium Association. The Directors have failed and refused to provide any and all financial information requested by the members. The Directors have engaged in self-dealing by engaging in conduct designed to force members to sell their condominium units for less than fair market value and then purchasing said units

themselves. The Board has engaged in self-dealing by buying-selling and price fixing condominium units as well as parking spaces in the development. In sum, the Board of Directors has knowingly, recklessly and intentionally engaged in conduct which constitutes a breach of their fiduciary duty.

11. The Board of Directors that have been sued by the Indiana Attorney General have engaged in an ongoing pattern of self-dealing, fraud, deceit and conversion. All of their conduct has been in derogation of their fiduciary duties as members and directors of the Harbours Condominium Association.

12. Indiana Code **IC 23-17-12-13** provides that:

**Removal by court order**

Sec. 13. (a) The circuit court or superior court of the county where a corporation's principal office is located may remove a director of the corporation from office in a proceeding commenced by the corporation or at least ten percent (10%) of the members of a class entitled to vote for directors, if the following conditions exist:

(1) The court finds that:

(A) the director engaged in:

- (i) fraudulent or dishonest conduct; or
- (ii) gross abuse of authority or discretion; with respect to the corporation; or

(B) a final judgment has been entered finding that the director has violated a duty under IC 23-17-13.

(2) Removal is in the best interests of the corporation.

(b) The court that removes a director may bar the director from serving on the board of directors for a period prescribed by the court.

(c) If members commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) The articles of incorporation or bylaws of a religious corporation may limit or prohibit the application of this section.

13. The Plaintiffs have secured the signatures of at least ten percent of the members of the members of the Harbours Condominium Association. The affidavits are attached to the complaint as a multi-page Exhibit "B".
14. The petitioners request the court conduct a hearing and make a determination that it is in the best interest of the Association for the removal of the members of the Board of Directors that have been sued by the Indiana Attorney General in that suit filed and attached hereto as Exhibit "A".


WHEREFORE, the Petitioner prays the Court:

- A. Conduct a trial upon the merits of the claims;
- B. Enter an order finding that Kevin Zipperle, Mary Lou Lamkin-Trautwein and Sharon Chandler, as members of the Board of Directors engaged in fraudulent and/or dishonest conduct in their duties as directors;
- C. Enter an order finding that Kevin Zipperle, Mary Lou Lamkin-Trautwein and Sharon Chandler, as members of the Board of Directors engaged in conduct which constituted a gross abuse of their authority and discretion;
- D. Enter an order finding that Kevin Zipperle, Mary Lou Lamkin-Trautwein and Sharon Chandler, as members of the Board of Directors engaged in conduct which constituted a breach of their fiduciary duty and those duties owed pursuant to Indiana Code 23-17-3, et. Seq.
- E. Costs for brining this cause of action to be assessed personally against Kevin Zipperle, Mary Lou Lamkin-Trautwein and Sharon Chandler, the members of the Board of Directors;

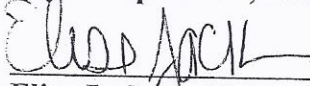


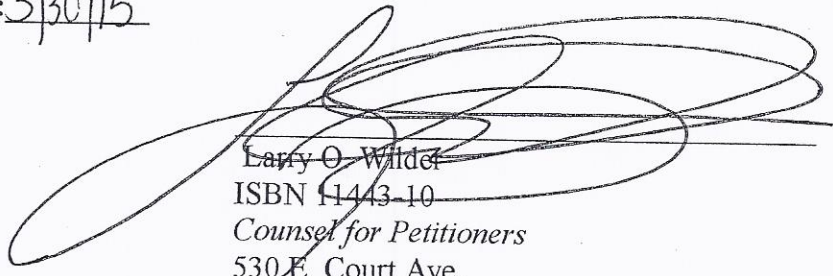
F. Any and all other relief that they may otherwise be entitled to in the premises.

I, Elizabeth Cantrell, after first being duly sworn upon my oath affirm that the statements set forth above are true and accurate as to the best of my knowledge and belief.

  
Elizabeth Cantrell, Petitioner

I, Elise Jackson, affirm that Elizabeth Cantrell appeared before me on this 20<sup>th</sup> day of September, 2012, and, after first being duly sworn affixed her signature hereto.

  
Elise Jackson, Notary Public  
State of Indiana-County of Clark  
My Commission Expires: 3/30/15

  
Larry O. Wilder  
ISBN 11443-10  
Counsel for Petitioners  
530 E. Court Ave.  
Jeffersonville, IN 47130  
Tx: 812.288.6820 Em: lowilder40@aol.com

IN THE CLARK CIRCUIT COURT NO. 2  
STATE OF INDIANA

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BARRY GATES, THOMAS PIKE, SHELIA RUDDER,  
AND PAUL RANNEY,  
PETITIONERS

SEP 20 2012  
CLERK OF COURT

vs.

CASE NO. 10C02-1208-PL-088 AL-92

THE HARBOURS CONDOMINIUM  
ASSOCIATION, INC.,  
RESPONDENTS

VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER  
AND INJUNCTION

I, Elizabeth Cantrell, after first being duly sworn upon my oath affirm that:

1. I own a condominium at the Harbours Condominium (hereinafter "Harbours") located at Riverpointe Plaza, Clark County, Jeffersonville, Indiana.
2. As an owner at the Harbours I am a member of the Harbours Condominium Association (hereinafter "Association").
3. On August 30, 2012 the State of Indiana filed suit against Sharon Chandler, Frank Prell, Mary Lou Lamkin-Trautwein and Kevin Zipperle in case number 10C02-1208-PL-088.
4. The Indiana Attorney General has alleged that the parties set forth above have engaged in a multitude of wrongful acts that have resulted in monetary losses to the Association.
5. Lamkin-Trautwein, Zipperle and Chandler are members of the Association's Board of Directors (hereinafter "Board").
6. The Board is the governing body of the Harbours. The Board controls the Association's finances which are in the tens of thousands of dollars monthly and annually.

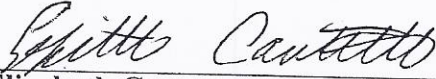
7. The Board has experienced several "resignations" subsequent to the filing of the lawsuit by the Attorney General. None of the parties that were sued have resigned.
8. The Board members that have been sued continue to control the Board's records, the Association's funds and the physical building itself.
9. The Board members that have been sued have taken no steps to engage the process provided by statute or by the Association's by laws to fill vacancies on the Board thereby insuring that the sued members maintain the majority of the votes.
10. The sued Board members continue to make policy decisions that are harmful to the members of the Association and said harm cannot be quantified by financial recovery.
11. The sued Board members retain the ability to enter into contracts, agreements and undertake policy that can and will result in irreparable damage to the membership.
12. The sued Board members continue to breach their fiduciary duties to the membership of the Association.
13. If the sued Board members are not enjoined and restrained from acting on behalf of the members of the association the association will suffer irreparable harm.
14. The members lack an adequate remedy at law for the actions of the sued Board members.
15. There is a strong likelihood that the members will prevail upon their claims as a matter of law.
16. The public interest would not be disserved by the granting of the requested injunctive relief.

Wherefore, Elizabeth Cantrell, on behalf requests the following relief:

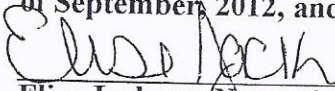
- A. An injunction enjoining those sued Board members from continuing to serve upon the Board of Directors of the Harbours;
- B. An injunction enjoining those sued Board members from exercising any authority that they may have as a result of being members of the Board of Directors of the Harbours;
- C. An injunction prohibiting those Board members from utilizing any funds from the Harbours Homeowner's Association to defend themselves in this case and/or any other case wherein the allegations have been made that the Board members have breached their fiduciary duty and/or engaged in any unlawful conduct;
- D. An injunction prohibiting those Board members that have been sued from serving upon the Board of Directors until that time which this case has been fully litigated;
- E. An injunction prohibiting those Board members that have been sued from using property located at the Harbours that contains security cameras, computer access and/or any and all other property that is not normally available for the use and enjoyment of each and every member of the homeowner's association; and
- F. An immediate hearing upon this petition for injunction and any and all other relief that

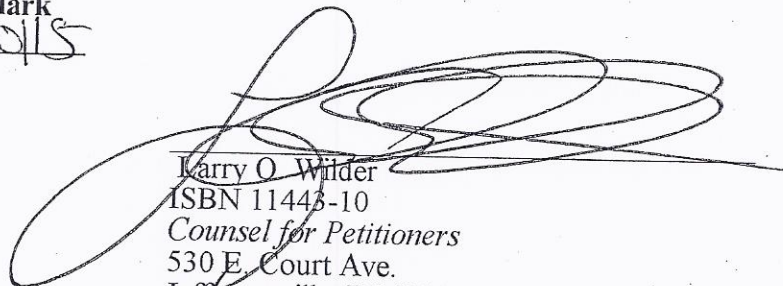
may be available to the members of the homeowner's association as a matter of law.

I, Elizabeth Cantrell, affirm that the above statements are true and accurate as to the beset of my knowledge and belief.

  
Elizabeth Cantrell, Petitioner

I, Elise Jackson, affirm that Elizabeth Cantrell appeared before me on this 20<sup>th</sup> day of September, 2012, and, after first being duly sworn affixed her signature hereto.

  
Elise Jackson, Notary Public  
State of Indiana-County of Clark  
My Commission Expires: 3/30/15

  
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Counsel for Petitioners  
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