

HILL WALLACK LLP

Michael S. Karpoff, Esq., NJ Attorney ID No.: 025681980
Catherine M. Brennan, Esq., NJ Attorney ID No.: 034311994
21 Roszel Road, P.O. Box 5226
Princeton, New Jersey 08543-5226
(609) 924-0808
Attorneys for Plaintiffs

RIVER RIDGE CONDOMINIUM UNIT OWNERS' COALITION, an unincorporated association; **ELLIOT CHAN; ELIZABETH LEE; and MI SUN KAREN LEE,**

Plaintiffs

vs.

RIVER RIDGE CONDOMINIUM ASSOCIATION, INC., a Non-Profit Corporation of New Jersey; and **NORMAN ADAMS; SHERRI BENEKE; DAVID BEREZIN; MICHAEL DEMATTIA; PAUL KIM; ARIELE KRANTZOW; BOB MOHL; MOUNZER TCHELEBI; and JOHN DOE(S),** which name or names are fictitious, in their capacities as Directors and/or Officers of River Ridge Condominium Association, Inc.,

Defendants

SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION – BERGEN COUNTY

Docket No. BER-C-178-21

Civil Action

VERIFIED AMENDED COMPLAINT

Plaintiffs, River Ridge Condominium Unit Owners' Coalition, Elliot Chan, Elizabeth Lee, and Mi Sun Karen Lee, with addresses at 200 Old Palisades Road, Borough of Fort Lee, County of Bergen, State of New Jersey, by way of amended complaint against the defendants, say:

COUNT I

1. River Ridge Condominium (hereinafter, “the Condominium”) is a duly established condominium created pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-1, *et seq.*, and by a Master Deed dated August 4, 1983 and recorded in the Office of the Bergen County Register on August 5, 1983, in Deed Book 6771, at page 758, etc., and is located at 200 Old Palisades Road in the Borough of Fort Lee, County of Bergen, State of New Jersey.

2. Plaintiff River Ridge Condominium Unit Owners’ Coalition (hereinafter, “the Coalition”) is an unincorporated association comprised of owners of condominium units within the Condominium, consists of more than 7 persons, and sues here as a representative body of the unit owners who comprise its membership with respect to their common interests, rights and obligations pertaining to the Condominium.

3. Plaintiffs Elliot Chan, Elizabeth Lee, and Mi Sun Karen Lee are individuals who are owners of condominium units within the Condominium.

4. Defendant River Ridge Condominium Association, Inc. (hereinafter, “the Association”) is a duly established non-profit corporation of the State of New Jersey created pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-1, *et seq.*, and the New Jersey Not-for-Profit Corporation Act, N.J.S.A. 15:1-1, *et seq.*, and by a Certificate of Incorporation filed with the New Jersey Secretary of State on October 1, 1982, having its principal office at 200 Old Palisades Road in the Borough of Fort Lee, County of Bergen, State of New Jersey.

5. The Association is responsible for the administration and operation of the Condominium and the maintenance, repair and replacement of the Condominium’s common elements.

6. All owners of units within the Condominium are members of the Association.

7. Article VI, Section 3 of the Association's Amended By-Laws authorizes the Association's Board of Directors to adopt the annual budget and allocate and assess the common expenses among the Condominium's unit owners.

8. Defendants Norman Adams, Sherri Beneke, David Berezin, Michael DeMattia, Paul Kim, Ariele Krantzow, Bob Mohl and Mounzer Tchelebi have been at all times relevant to this matter and are currently members of the Board of Directors of the Association and/or Officers of the Association.

9. Defendants John Doe(s), which names are fictitious, are persons appointed by the Association's Board of Directors to fill any vacancies on the Board and who are currently serving on the Board.

10. The Condominium consists of 243 units.

11. Prior to July, 2021, the Board of Directors began considering a major restoration project to replace the siding on the building ("the façade restoration project") and the manner to fund that and other projects.

12. Despite concerns raised that assessing the Condominium unit owners for the costs of the renovation project as part of the annual common expense budget would cause extreme financial hardship, on or about July 13, 2021, the Board of Directors voted to approve a budget for the fiscal year running from August 1, 2021 to July 31, 2022, which included an increase of required revenue from \$3.1 million for the 2020-2021 fiscal year to \$6.227 million for fiscal year

2021-2022, more than doubling the annual budget and the common expense assessments for the condominium units.

13. At that meeting, the Board also voted to approve the façade restoration project and to enter into contracts to implement it.

14. The Board of Directors' explanation for the huge increase in the budget and the assessments is that the renovation project is necessary but that the Board's only means to raise the necessary funds for the renovation project is to assess the Condominium owners as part of the annual budget.

15. The Board's decision was made with a lack of transparency, without adequate notice to the unit owners of what the Board was considering and without seeking input from the unit owners.

16. Both the New Jersey Condominium Act, specifically N.J.S.A. 46:8B-14(j), and the Planned Real Estate Development Full Disclosure Act, specifically N.J.S.A. 45:22A-44b, require the Association to exercise its powers and discharge its functions in a manner that protects and furthers or is not inconsistent with the general welfare of the community's residents.

17. In more than doubling the annual budget and the common expense assessments, the Association and the individual Directors breached their fiduciary duty to the Condominium owners by acting contrary to the general welfare of the residents of the Condominium. In particular, the defendants did not consider alternative financing such as a long-term loan to ease the financial burden on the owners, they have more than doubled each owner's required contribution to common expenses without considering the financial impact, and they thereby have imposed severe financial

hardship on the owners, caused a reduction in the value of all Condominium units, and made the Condominium units more difficult to sell and to refinance.

18. The financial hardship and the said detriments imposed upon the unit owners constitute irreparable harm because they cannot be adequately compensated by money damages. Unit owners who cannot afford to pay the increased assessments may be subjected to sanctions by the Association including additional charges, may lose title to their units through their inability to pay the assessments or due to additional financial impacts caused by the increase, or may lose sales or suffer financial losses in sales resulting from the added extreme financial burden placed on units, damages for which cannot be practicably determined and would not adequately compensate owners for their losses and the harm created. Furthermore, any compensation for monetary losses would come from the Association, which would then have to assess the same unit owners additional sums to pay the damages, thus offsetting the monetary compensation.

WHEREFORE, plaintiffs demand the following relief:

1. An order preliminarily enjoining the implementation of the approved 2021-2022 Association budget that is to be effective August 1, 2021 and enforcement of the common expense assessments derived from that budget and preliminarily enjoining the Association from entering into and the Directors and Officers from signing any contracts for the planned façade restoration project.
2. A final order permanently enjoining the implementation of the approved 2021-2022 Association budget that is to be effective August 1, 2021 and enforcement of the common expense assessments derived from that budget and permanently enjoining the Association from entering into and the Directors and Officers from signing any

contracts for the planned façade restoration project unless the Board of Directors can prove the need for the complete restoration and the need to complete payment within the one year called for and can demonstrate that there is no reasonable alternative to finance the restoration over a longer period of time.

3. Judgment for damages and costs of suit.
4. Such other relief as the Court shall deem fair and just.

COUNT II

1. Plaintiffs repeat the allegations of Count I in their entirety and make them a part hereof as if set forth at length.

2. Article II, Section 3 of the Association's Amended By-Laws requires that a special meeting of the Association members, that is, the unit owners, be scheduled upon the request of at least one-third by number of the unit owners, and Article III, Sections 2 and 3 of the Amended By-Laws authorize removal of Directors from office, with or without cause, upon the affirmative vote of a majority of all votes entitled to be cast and election of Directors to replace the removed Directors.

3. On July 21, 2021, plaintiffs presented to the defendants a petition signed by at least 51% of all Condominium unit owners demanding that the Board schedule a special meeting of the Association members for the purpose of voting to remove the Directors from office and elect new directors so that the expense of the façade restoration project and the financial responsibilities of the Condominium unit owners may be reconsidered with the interests of the owners in mind.

4. Allowing the Association to proceed with the planned project when the Directors who approved it may be removed from office and replaced by the membership would cause irreparable harm to the Association and the owners by forcing a project and huge expense on them that the majority do not agree with and that many cannot afford.

5. It is appropriate for the Court to impose an injunction against the increased assessment and the restoration project, thereby maintaining the status quo, at least until such time as the special meeting of the members to remove the Directors is held and a determination is made by the members whether to retain or replace the current Directors.

WHEREFORE, plaintiffs demand the following relief:

1. An order preliminarily enjoining the implementation of the approved 2021-2022 Association budget that is to be effective August 1, 2021 and enforcement of the common expense assessments derived from that budget and preliminarily enjoining the Association from entering into and the Directors and Officers from signing any contracts for the planned restoration project.
2. A final order permanently enjoining the implementation of the approved 2021-2022 Association budget that is to be effective August 1, 2021 and enforcement of the common expense assessments derive from that budget and permanently enjoining the Association from entering into and the Directors and Officers from signing any contracts for the planned restoration project until after the special meeting of the Association members to vote on the removal of the Directors is held and the composition of the Board of Directors is determined by the vote of the members.
3. Judgment for costs of suit.

4. Such other relief as the Court shall deem fair and just.

COUNT III

1. Plaintiffs repeat the allegations of Counts I and II in their entirety and make them a part hereof as if set forth at length.

2. N.J.A.C. 5:26-8.11(d) reads as follows:

Association members may initiate removal of a board member who was elected by the unit owners by submitting to the board a petition signed by 51 percent of association members for removal of that board member.

1. A special election of the association membership shall be held within 60 days of receipt of the petition.
2. When the annual meeting of the association membership is scheduled to occur within 60 days of the submission of the petition, then the election shall be held at the annual meeting.

3. N.J.A.C. 5:26-8.11(e) reads as follows:

Notice of the special election meeting shall be provided to all association members and voting eligible tenants at least 14 days prior to the date of the meeting.

1. The meeting shall be scheduled at a reasonable date and time of day to allow \ most association members to attend.
2. The ballot shall be drafted in accordance with N.J.A.C. 5:26–8.9(l)1iv.
3. At least 14 days prior to the meeting, the ballot shall be mailed, hand delivered, or if bylaws permit, and the owner consents, electronically delivered to all association members together with the notice of the meeting.
4. If the bylaws permit, the notice of the meeting shall include an absentee ballot with instructions for returning the ballot. If the bylaws provide for a proxy ballot, an absentee ballot shall also be included.
 - i. The instructions shall allow return of the proxy or absentee ballot by facsimile or electronic means and shall not require receipt of the ballot more than one business day prior to the meeting.

4. Article II, Section 3 of the Association's Amended By-Laws reads in part as follows:

Special Meetings. Special meetings of Unit Owners, for any purpose or purposes, ... shall be called by the Secretary promptly upon the written request of not less than one-third (1/3) in number of Unit Owners. All special meetings of the Unit Owners required to be held pursuant to the provisions of Section 1 or Section 3 of Article III of these By-Laws shall be called by the President within thirty (30) days after the occurrence of the event necessitating the holding of such meeting, and notice thereof shall be given to each Unit Owner of record entitled to notice of or to vote at the meeting not less than twenty (20) nor more than thirty (30) days prior to the date of such meeting.

5. Article III, Section 2 of the Association's Amended By-Laws reads in part as follows;

Removal. Directors may be removed with or without cause by an affirmative vote of a majority of all votes entitled to be cast by all Unit Owners. ...

6. Article III, Section 3 of the Association's Amended By-Laws reads in part as follows:

... Vacancies in the Board of Directors caused by the removal of a member thereof by a vote of the Unit Owners pursuant to Section 2 of this Article III shall be filled by a vote of the Unit Owners at a special meeting of the Unit Owners called for such purpose.

7. Article II, Section 4, paragraph (b) [sic] and Section 9 of the Association's Amended By-Laws authorize Association members to vote by proxy.

8. Because plaintiffs presented to the defendants on July 21, 2021 a petition signed by at least 51% of all Condominium unit owners demanding that the Board schedule a special meeting of the Association members for the purpose of voting to remove the Directors from office and elect new directors, pursuant to N.J.A.C. 5:26-8.11(d), such meeting must be held by September 19, 2021 (60 days after the requisite petition).

9. Pursuant to Article II, Section 3 of the Association's By-Laws, the Association must give notice of the special meeting to the Unit Owners no less than 20 days before the meeting (which also complies with the requirement of N.J.A.C. 5:26-8.11(e) requiring at least 14 days' notice).

10. Pursuant to N.J.A.C. 5:26-8.11(e)3 & 4, the notice of the meeting must also provide a ballot, a proxy and an absentee ballot.

11. Prior to sending the notice and the requisite forms, the Association must enable candidates for election in the event of the removal of any Directors to place their names in nomination so that their names may be included on the ballot and additional forms, and such request for nominations or solicitation of candidates must be made a reasonable time before notices of the meeting are sent to the unit owners to allow people to submit their names.

12. Thus, substantial lead time is necessary before the special meeting itself, to prepare and submit the requisite notice and forms for voting to the unit owners.

13. On August 11, 2021, plaintiffs, through counsel, requested that defendants advise plaintiffs by August 16, 2021 the date of the special meeting and provide information regarding the procedures and the forms to be used.

14. As of the date of this Amended Answer, defendants have not advised of a date for the special meeting and have provided no information regarding the procedures or forms to be used.

15. As of the date of this Amended Answer, defendants have sent no notice to the unit owners soliciting candidates to fill any vacancies created by the removal vote.

16. As of the date of this Amended Answer, defendants have sent no notice of special meeting to the unit owners.

17. The defendants have acted in a dilatory manner, seeking to stall the special meeting and the vote to remove the Directors so as to obstruct the Association members from exercising their rights to remove the Directors and retain control over the Association despite the majority will.

18. By failing to comply with N.J.A.C. 5:26-8.11 and Article II, Section 3 of the Association's Amended By-Laws as well as any other requirement of the By-Laws regarding special meetings and votes to remove Directors and elect replacement Directors, the defendants have breached their fiduciary duty to the Association and its members and have caused damage,

19. Delaying the special meeting has caused irreparable harm and will continue to do so by denying the Association members and the plaintiffs their rights and by exacerbating the financial harm to the unit owners.

WHEREFORE, plaintiffs demand the following relief:

- A. A preliminary order compelling the defendants to prepare for the special meeting, including
- (1) promptly selecting a reasonable date and location for the special meeting of the Association's members to vote on the removal of the current members of the Board of Directors and to elect persons to fill any such vacancies;
 - (2) providing preliminary notice of the special meeting to all Association members and notifying them that within a reasonable deadline, they may submit their own names or other nominations as candidates to fill the seats of Directors who are removed from office at the special meeting[;]
 - (3) preparing the ballots, proxies and absentee ballots for the special meeting; and
 - (4)

providing weekly written updates to the Court and the attorney for the plaintiff regarding the arrangements for the special meeting.

- B. A final order compelling the defendants in a timely manner (1) to notify all Association members of the special meeting of the Association's members to vote on the removal of the current members of the Board of Directors and to elect persons to fill any such vacancies, such notice to be provided at least 20 days before the meeting, along with the requisite ballots, proxies and absentee ballots, and (2) to hold such meeting, vote and election.
- C. Judgment for damages and costs of suit.
- D. Such other relief as the Court shall deem fair and just.

HILL WALLACK LLP
Attorneys for Plaintiffs

By: s/ *Michael S. Karpoff*
MICHAEL S. KARPOFF

DATED: August 19, 2021

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Michael S. Karpoff, Esq. as trial counsel.

HILL WALLACK LLP
Attorneys for Plaintiffs

By: s/ *Michael S. Karpoff*
MICHAEL S. KARPOFF

DATED: August 19, 2021

CERTIFICATION OF FILING AND SERVICE

I certify that the instant Verified Amended Complaint has been filed with the Deputy Clerk of the Superior Court of New Jersey in Bergen County via NJ JEDS, and copies have been served upon the attorney for defendants, Benjamin D. Lambert, Jr., Esq., via e-mail to and by first class mail, postage prepaid, to his last known address, Law Offices of Lambert & Associates, PA, 953 U.S. Route 202 North, 2nd Floor, Branchburg, NJ 08876.

s/ Michael S. Karpoft
MICHAEL S. KARPOFF

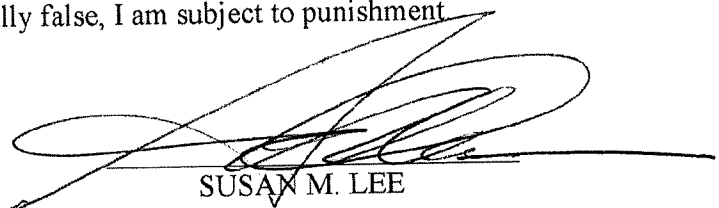
DATED: August 19, 2021

VERIFICATION

I, SUSAN M. LEE, hereby certify the following:

1. I am the president of the plaintiff River Ridge Condominium Unit Owners' Coalition.
2. I have read the allegations contained in the foregoing amended complaint.
3. I have personal knowledge of the facts alleged in the foregoing amended complaint.
4. The factual allegations in the foregoing amended complaint are true.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment


SUSAN M. LEE

DATED: 8/19/2021