

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

GDLC, LLC and MICHAEL SALZHAUER,

Petitioners,

-against-

THE TOREN CONDOMINIUM, BOARD
OF MANAGERS OF THE TOREN
CONDOMINIUM, and RESIDENTIAL
BOARD OF MANAGERS OF THE TOREN
CONDOMINIUM,

Respondents,

For a Judgment Compelling the Production of Books
and Records Pursuant to CPLR Article 78.

Index No. 157284/2016

VERIFIED PETITION

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners GDLC, LLC (“GDLC”) and Michael Salzhauer (“Salzhauer,” and together with GDLC, “Petitioners”), by their attorneys, Schwartz Sladkus Reich Greenberg Atlas LLP, respectfully show to this Court as follows:

Nature of the Proceeding

1. This is a proceeding under CPLR Article 78 to enforce Petitioners’ indisputable rights to inspect and copy the books and records of respondents The Toren Condominium, the Board of Managers of The Toren Condominium, and the Residential Board of Managers of The Toren Condominium (collectively, “Respondents”).

2. Although Petitioners include a member of the subject condominium boards, the current board president has denied them copies of vital condominium documents. These

documents include the condominium's 2015 and 2016 financial statements, its 2016 budget, and a critical settlement agreement between the board and the condominium's sponsor/developer.

3. The settlement agreement was signed without the knowledge or consent of Petitioners—including a sitting member of the condominium's boards and the owner of the condominium's largest commercial unit—even though it concerns building-wide construction defects.

4. Petitioners must be given a copy of the settlement agreement because, among other reasons, it supposedly requires the sponsor to repair serious façade defects posing a grave public hazard—*i.e.*, the building's windows falling from the façade onto the street below. (The long-unrepaired façade also damages the tenant occupying Petitioner's commercial unit.)

5. The condominium board has failed for years to abate this grave public hazard, and now the board president won't even give Petitioners a copy of the agreement that supposedly deals with the problem. The board president forbids Petitioners even from glancing at a copy of the settlement agreement unless they agree not to show it to *anyone*, including their attorneys and engineers. Although not legally required to do so, Petitioners are willing to sign a *reasonable* confidentiality agreement.

6. But the restrictions imposed by the board president are *unreasonable*, and they prevent Petitioners from discharging their fiduciary and other legal duties as a board member, and from protecting their condominium unit and its tenant.

7. Accordingly, it respectfully is requested that the Court order Respondents to furnish Petitioners with a copy of the requested documents forthwith.

The Parties

8. Respondent The Toren Condominium (the “Condominium”) is an unincorporated association of the Condominium’s unit owners, having been formed under a Declaration of Condominium (the “Declaration”), dated January 21, 2009, duly filed and recorded pursuant to Article 9-B of the New York Real Property Law in the Office of the City Register of the City of New York on March 9, 2009. The Condominium’s affairs are governed by, among other things, the Declaration and a set of by-laws (the “By-laws”), a copy of which is annexed as **Exhibit 1**.

9. Respondent Board of Managers (the “Condominium Board”) of The Toren Condominium consists of duly elected members of the Condominium’s board of managers, and it is charged, pursuant to Article 2 of the By-laws, with administering the affairs of the Condominium and managing and operating the Condominium’s building located at 150 Myrtle Avenue, Brooklyn, New York 11201 (the “Building”).

10. The Condominium Board is the Condominium’s overarching, parent board of managers. It is, in turn, comprised of two co-equal subsidiary boards of managers:

- Respondent Residential Board of Managers (the “Residential Board”) of The Toren Condominium consists of duly elected members of the Condominium’s residential board of managers, and it is charged with administering the affairs of the residential units of the Condominium and managing and operating the residential portions of the Building.
- Non-party Commercial Board of Managers (the “Commercial Board”) of The Toren Condominium consists of duly elected members of the Condominium’s commercial board of managers, and it is charged with administering the affairs of the commercial units of the Condominium and managing and operating the commercial portions of the Building.

11. Petitioner GDLC is a New York limited liability company with its principal office in the State and County of New York. GDLC owns “Unit 100,” the largest of the Building’s four commercial units.

12. Petitioner Salzhauer is a principal of GDLC, and he also is a member of the Commercial Board and, pursuant to Section 4.10 of the By-laws, is a member of the overarching, parent Condominium Board.

Jurisdiction and Venue

13. Under CPLR Article 4 and Article 78, this Court has jurisdiction to enforce Petitioners' rights to inspect and copy Respondents' books and records because Respondents failed to perform a duty enjoined upon them by law, proceeded without and/or in excess of jurisdiction, and made a determination in violation of lawful procedure and affected by an error of law.

14. Venue in Supreme Court, New York County is proper under CPLR 503 as Petitioners' principal office and place of residence, respectively, are located in New York County.

Background

15. In an underhanded example of corporate malfeasance, Respondents secretly and improperly entered into a settlement with the Condominium's sponsor/developer, and now seek to conceal from Petitioners the terms of that settlement—even though the settlement bears directly upon Petitioners' rights and duties, as both a commercial unit owner and a sitting member of Respondents' boards of managers, to, among other things, abate a grave public danger and protect their interests in the Building.

16. In furtherance of their scheme to silence Petitioners' rightful voice in the management and operation of the Condominium, and render Salzhauer unable to fulfill his fiduciary obligations as a Condominium Board and Commercial Board member, Respondents

have refused to hold regular Condominium Board meetings (as required by the By-laws), and they deliberately have excluded Petitioners from the one meeting actually held.

17. Even more integral to Respondents' plan, however, is their violation of Petitioners' indisputable rights to inspect and copy the Condominium's books and records, whether as a commercial unit owner or a sitting member of the Condominium Board itself.

18. Among other things, Respondents have concealed from Petitioners vital information concerning litigation against the Condominium's developer/sponsor pertaining to Building-wide design and construction defects, settlement of that litigation, and knowledge of the finances and operations of the Condominium.

19. This not only prevents Petitioners from fulfilling their fiduciary duties, it also effectively divests Petitioners of their rights as a unit owner and member of both the overarching, parent Condominium Board and the Commercial Board.

20. The law does not tolerate Respondents' brazen misconduct, and neither will Petitioners.

***Respondents Have Ignored Petitioners' Demands For
The Condominium's Financial Statements And Budget***

21. Under Section 339-w of the New York Real Property Law, commonly known as the Condominium Act, a condominium's board of managers

shall keep detailed, accurate records, in chronological order, of the receipts and expenditures arising from the operation of the property. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of weekdays. A written report summarizing such receipts and expenditures shall be rendered by the board of managers to all unit owners at least once annually.

22. Under the Condominium's own By-laws, moreover, the Condominium Board is obligated to

maintain complete and accurate books and records with respect to the finances and operation of the Condominium, including without limitation: (a) detailed accounts, in chronological order, of receipts and expenditures affecting the Property; (b) detailed books of account of the Condominium Board; (c) other financial records, as well as other books of account of the Condominium, as may be required to be kept pursuant to the terms of these By-laws; and (d) minutes and other records of all meetings held pursuant to the terms of these By-laws (Exhibit 1 at Article 2.4(A)(iii)).

23. As for the Condominium's budget, the By-laws obligate the Condominium Board

to adopt a budget for the Condominium for each fiscal year thereof, setting forth, without limitation: (a) a detailed accounting of the anticipated Common Expenses for the ensuing fiscal year and (b) a detailed projection of all sources and amounts of income necessary to discharge the same (Exhibit 1 at Article 2.4(A)(iv)).

24. Petitioners have made *multiple* demands for copies of Respondents' 2015 and 2016 financial statements and 2016 budget.

25. As a sitting member of the overarching, parent Condominium Board, a sitting member of the Commercial Board, and an owner of the Condominium's largest commercial unit, Petitioners have the absolute and unqualified right—indeed the fiduciary duty—to inspect, copy, and review the Condominium's financial statements and budget.

26. Without access to the Condominium's financials, Petitioners cannot execute their fiduciary duties to the Condominium's unit owners or participate in the management of the Condominium or ensure that the Condominium is being managed responsibly and for the benefit of all unit owners or protect their investment in the Condominium.

27. Nevertheless, Respondents have completely ignored Petitioners' multiple demands for these crucial documents.

***The Condominium's Litigation Against The Sponsor
Concerning Building-Wide Construction Failures***

28. Construction of the Building was completed in or around 2008 by the Condominium's sponsor/developer, BFC Partners LP (the "Sponsor"¹).

29. Apparently dissatisfied with the Sponsor's construction of the Building, in or around 2011, the Condominium commenced litigation against the Sponsor and its related entities (the "Construction Defects Litigation"). A copy of the complaint in the Construction Defects Litigation is annexed as **Exhibit 2**.²

30. In the Construction Defects Litigation, the Condominium repeatedly made allegations and asserted claims concerning and affecting the entire Building, including its commercial portions and general common elements. For example, it was alleged that:

- "the Condominium was designed and built in a manner...inconsistent with the representations made, the purchase agreements, the plan, applicable building codes and industry standards" (Exhibit 2 at pg. 6);
- "conditions indicating that the design and/or construction of...**the Building [is] defective and inconsistent with the representations made** to them, the Plan, and the terms of the Purchase Agreements" (Exhibit 2 at ¶ 24 [emphasis added]);
- "**The Building is designed and constructed** in a manner that is inconsistent with...the [Offering] Plan, the Purchase Agreements, applicable building codes and industry standards including, without limitation, the **design and construction of the Building's curtain wall, roof drainage, fire stopping, and dual temperature systems**" (Exhibit 2 at ¶ 25 [emphasis added]);

¹ The term "Sponsor" as used herein includes all Sponsor affiliates, parents, subsidiaries, and related entities and principals, including, but not limited to, Myrtle Owner LLC, Myrtle Avenue Development Associates LLC, Myrtle Venture LLC, Flatbush Owners Company LLC, Gregory Baron, Pietro Ferrara a/k/a Peter Ferrara, Donald Capoccia, Joseph Ferrara, and Brandon Baron.

² While the Construction Defects Litigation was commenced in 2011, a complaint was not filed until 2014.

- “Multiple violations of the New York City Building Code regarding the design and/or construction of the Building” (Exhibit 2 at ¶ 26);
- “Water infiltration in several areas of the Building, which, upon information and belief, is related to the defective design and/or construction of the roof drainage, roof membrane, and/or curtain wall systems” (Exhibit 2 at ¶ 26 [emphasis added]);
- “Widespread water damage...” (Exhibit 2 at ¶ 26);
- “the Sponsor has failed, and continues to refuse, to repair and otherwise remediate the various defects in the Condominium” (Exhibit 2 at ¶ 27);
- “Sponsor failed to construct the Building and the Units, including the materials, equipment and fixtures to be installed therein, in accordance with the [Offering] Plan and the Plans and Specifications, and remedy the defects in the design and construction of the Building” (Exhibit 2 at ¶ 45 [emphasis added]);
- “The Sponsor breached its duty by failing to properly design and construct the Building in accordance with the applicable rules and regulations governing the design and construction of a residential building in the City of New York, including without limitation, the Sponsor’s failure to design and construct the Building in accordance with all applicable codes and regulations of the Department of Buildings” (Exhibit 2 at ¶ 58 [emphasis added]);
- The Sponsor failed, despite its promises, to ensure “that the Building would achieve LEED Gold certification [and] a permanent Certificate of Occupancy for the Building within two years...” (Exhibit ¶ 66);
- “The Sponsor has misappropriated the condominium’s resources, including...General Common Elements” (Exhibit 2 at ¶ 98 [emphasis added]);
- “The Sponsor has also [interfered with] property in spaces designated as...General Common Elements, thus depriving the Condominium and its Unit Owners of their rightful use and enjoyment of such usurped spaces” (Exhibit 2 at ¶ 99 [emphasis added]).

31. The Court’s decisions in the Construction Defects Litigation likewise confirm that Building-wide claims were the subject of that action. For instance, by Decision and Order dated July 15, 2014, a copy of which is annexed as **Exhibit 3**, the Court recited that

Plaintiffs allege that [the Sponsor] defectively constructed and designed the building. They claim that, among other defects, the roof does not drain properly, the heating and A/C systems malfunction, the plumbing is ineffective, and that these defects led to water damage from leaks and condensation.

32. Indeed, recognizing that the Construction Defects Litigation concerned Building-wide issues, by Decision and Order dated September 30, 2014, a copy of which is annexed as **Exhibit 4**, the Court noted that “Plaintiff is the Board of Managers of the Toren Condominium.”

33. In short, the Condominium prosecuted litigation against the Sponsor relating to Building-wide conditions (including those affecting the commercial units and general common elements), without overall Condominium Board authorization and without Petitioners’ detailed knowledge of, or input into, the claims being asserted, despite the fact that Petitioners own the Building’s largest commercial unit, and are a member of the overarching, parent Condominium Board and the Commercial Board.

***Petitioners Have Long Requested The Expert Report
Concerning The Building’s Physical Conditions***

34. In anticipation of, and to aid in, the Construction Defects Litigation, Respondents commissioned a report from RAND Engineering & Architecture, DPC to detail the physical conditions of the Building (the “RAND Report”).

35. Upon information and belief, Respondents used Condominium common funds—a significant portion of which is contributed by Petitioners, as owners of the Condominium’s largest commercial unit—to commission and pay for the RAND Report.

36. In early 2014, Petitioners asked Respondents for a copy of the RAND Report.

37. At the request of the former Condominium Board, Petitioners executed a reasonable confidentiality agreement, a copy of which is annexed as **Exhibit 5**, in the hopes of

obtaining a copy of the RAND Report, even though as a unit owner and a member of both the Condominium Board and Commercial Board, they were not obligated to do so.

38. Much to Petitioners dismay, however, they have never received a copy of the RAND Report.

***Respondents Secretly Settle The Construction Defects Litigation—
Again, Without Petitioners’ Consent, Input, Or Even Knowledge***

39. Unbeknownst to Petitioners, on or around October 15, 2015, the Condominium Board apparently entered into a settlement agreement (the “Settlement Agreement”) with the Sponsor, settling, compromising, and releasing the above-described Building-wide claims, as well as creating rights and obligations impacting and binding the Condominium Board, the Commercial Board, and the Building’s commercial unit owners, including Petitioners.

40. Respondents did so without the consent, input, or even knowledge of Petitioners (including a sitting member of both the overarching, parent Condominium Board).

41. Respondents had no right to settle, compromise, release, or in any way curtail the claims and rights of Petitioners (including a sitting member of both the overarching, parent Condominium Board and the Commercial Board) without their knowledge, input, and consent.

42. As a sitting member of both the overarching, parent Condominium Board and the Commercial Board, as well as an owner of the Building’s largest commercial unit, Petitioners had every right to be privy to the Condominium’s settlement with the Sponsor, and they have an absolute and unqualified right to review, comment upon, inspect, and copy the Settlement Agreement.

43. Without a copy of the Settlement Agreement:

- Petitioners cannot know whether and to what extent the Settlement Agreement requires the Sponsor to repair the Building’s serious façade defects posing a grave public hazard.

- Petitioners cannot know the full extent of how their claims against the Sponsor have been settled, compromised, and/or released.
- Petitioners cannot know what financial and other rights and/or obligations were created and/or compromised on their behalf in connection with the Construction Defects Litigation, the Building, and the Condominium.
- Petitioners cannot know whether and to what extent they are executing faithfully and fully their fiduciary duties and other obligations.
- Petitioners cannot know if the Condominium is being managed and operated responsibly and in a manner that furthers the best interests of all unit owners.
- Petitioners cannot protect their investment in their commercial unit or the business interests of their tenant, both of which are being damaged by the long-unrepaired Building façade.

44. Respondents know all this, of course, which is *precisely* the reason they are denying Petitioners access to the Settlement Agreement, the RAND Report, and the Condominium's financial statements and budget.

45. Respondents essentially are divesting Petitioners of their voice in the management and operation of the Condominium and the Building (including as to matters bearing directly upon their property and other rights and duties), and then concealing critical books and records in an unabashed effort to keep Petitioners in the dark.

Petitioner's Good-Faith Demands To Inspect And Copy The Books and Records, And Their Extraordinary Efforts To Avoid Having To Bring The Instant Proceeding

46. In an effort to resolve Respondents' unlawful conduct, and to avoid the need for this proceeding, Petitioners' counsel initiated a series of telephone conversations with Respondents' counsel concerning Petitioners' entitlement to, and demand for, a copy of the Settlement Agreement.

47. Respondents' counsel initially agreed to provide a copy of the Settlement Agreement, only to do an about-face. The Condominium Board's president, Kenneth B. Cera, Esq., who rules the Condominium as his personal fiefdom, demanded that Petitioners sign a "confidentiality" or "indemnification" "agreement," and Respondents' counsel represented to Petitioners' counsel that *all* Condominium Board members wishing to view the Settlement Agreement were required to sign this "agreement."

48. Despite promising to do so, however, Respondents' counsel did not provide Petitioners or their counsel with a copy of any such proposed "agreement" for weeks to come.

49. As Petitioners would discover only later, upon information and belief, at the time Respondents' counsel had made that representation, no Condominium Board members had signed any such "confidentiality" "agreement."

***The Condominium Board Finally Convenes A Regular Meeting,
Albeit A Sham One Designed To Further Target And Stymie Petitioners***

50. The By-laws obligate the Condominium Board to hold "regular meetings" not less than four times per fiscal year (Exhibit 1 at Article 2.12).

51. Petitioners have time and again requested of the Condominium Board and President Cera—a self-proclaimed "experienced lawyer"—that the Condominium Board abide by this requirement and schedule and hold regular meetings.

52. Nevertheless, in violation of the By-laws and in utter dereliction of their fiduciary duties, the Condominium Board and President Cera failed and refused to hold *any* regular Condominium Board meetings since January 8, 2015—a period of nearly 19 months.³

³ This is but one example of the Condominium Board's and President Cera's many breaches of the By-laws and fiduciary duties. Petitioners expressly reserve the right to seek redress for all such wrongs.

53. This was yet another installment in Respondents' campaign to marginalize Petitioners and stifle their voice in, and conceal information pertaining to, the operations, management, and affairs of the Condominium and the Building.

54. After not having held a regular Condominium Board meeting for nearly 19 months, on July 28, 2016, President Cera purported to notify the Condominium Board of a regular meeting to be held on August 5, 2016—a Friday in August, when many people typically are travelling.

55. This “notice” was inadequate, however, as the By-laws specifically require that “notice of all regular meetings of the Condominium Board shall be given by the Secretary” (Exhibit 1 at Article 2.12). As President Cera is *not* the Condominium Board’s Secretary, his purported “notice,” in non-compliance with the By-laws’ mandates, was ineffectual, rendering any and all actions purportedly taken at the August 5 meeting a nullity.

56. The so-called “notice” also purposely failed to include any agenda or in any way inform Petitioners that the critical issues they had been raising with Respondents for many months would be discussed and acted upon at the meeting.

57. Petitioners were out of town and unable to attend the hastily-convened August 5 meeting, and they asked that the meeting be adjourned to August 8, 2016 (*i.e.*, the following business day), when the Condominium Board already was convening for a special meeting.

58. Unsurprisingly, President Cera refused. Instead, he announced that the August 5 date worked for other Condominium Board members and that the meeting would proceed. (Upon information and belief, President Cera had pre-scheduled the August 5 date with the other Condominium Board members and only then reached out to Petitioners. Regardless, his

unexplained refusal to adjourn the meeting one business day, after having refused to hold a regular meeting for nearly 19 months, speaks volumes about President Cera's intentions.)

59. Knowing full-well that Petitioners could not attend the invalid, last-minute August 5 meeting, the Condominium Board disseminated copies of the Settlement Agreement to each and every Condominium Board member—except Petitioners—and then singled-out Petitioners by purporting to adopt a mechanism that, in effect, requires only Petitioners to sign additional documentation in order to inspect a copy of the Settlement Agreement. Upon information and belief, other members of the Condominium Board were not required to sign any “confidentiality” or “indemnification” “agreement.”

60. The Condominium Board purported to adopt a so-called “Resolution,” a copy of which is annexed as **Exhibit 6**, which “approve[d] that all [Condominium] Board Members who wish to view a copy of the Settlement Agreement *after the date of this Resolution*”—i.e., only **Petitioners**—“must sign the attached Acknowledgment of Confidentiality before doing so, and such viewing (without copy or photograph) must take place at the office of the managing agent of the Condominium and (sic) a mutually convenient time” (emphasis added).

61. The so-called “Resolution” was implemented solely to frustrate, delay, and otherwise hinder Petitioners’ access to the Settlement Agreement.

***Respondents Continue To Obstruct Petitioners’ Access Despite
Petitioners’ Efforts To Avoid This Otherwise Needless Proceeding***

62. On August 8, 2016, still not having received a copy of the Settlement Agreement, Petitioners’ counsel wrote to Respondents’ counsel. The letter, a copy of which is annexed as **Exhibit 7**, outlined a host of wrongs being committed by the Condominium Board and the Residential Board, including Respondents’ continued and unjustifiable obstruction of Petitioners’ access to a copy of the Settlement Agreement.

63. Having received no formal response, on August 17, 2016, Petitioners' counsel again wrote to Respondents' counsel, reiterating Petitioners' demand for a copy of the Settlement Agreement, as well as the Condominium's 2016 budget and financial statements for the years 2015 and 2016. A copy of Petitioners' counsel's August 17, 2016 letter is annexed as **Exhibit 8**.

64. On August 18, 2016, following up on other matters, Petitioner's counsel renewed his request for a copy of the Settlement Agreement, e-mailing: "Please be kind enough to send a copy of the settlement agreement." President Cera replied: "[Respondents' counsel] will get back to you on that and we will get it to you" (emphasis added). A copy of this e-mail exchange is annexed as **Exhibit 9**.

65. But despite President Cera's assurance that "we will get it to you," Respondents' counsel wrote to Petitioners' counsel the very next day stating anything but. A copy of Respondents' counsel's letter is annexed as **Exhibit 10**.

66. According to Respondents' counsel, Petitioners would not be furnished with a copy of the Settlement Agreement under any circumstances; at most, Petitioners might be permitted to travel to the Condominium's managing agent and glance at the Settlement Agreement momentarily if—and only if—Petitioners signed an "Attestation of Confidentiality and Agreement of Indemnity" (the "Attestation"), a copy of which is annexed as **Exhibit 11**.

67. Neither the Condominium Board nor President Cera had any intention of following through on President Cera's promise that "we will get it to you."

68. As a sitting member of the overarching, parent Condominium Board, a sitting member of the Commercial Board, and a unit owner in the Condominium, Petitioners are not required to sign the Attestation in order to exercise their rightful access to the Condominium's

books and records—their right to inspect and copy all of the Condominium’s books and records is absolute and unqualified.

69. Inasmuch as the Settlement Agreement itself contains a confidentiality provision, Petitioners—as a member of the Condominium Board party to and bound by the Settlement Agreement—already are bound by the confidentiality terms of the Settlement Agreement (provided they are reasonable) and their existing fiduciary duties. Nothing more is necessary.

70. Nevertheless, in an effort to compromise, Petitioners are willing to execute any reasonable confidentiality agreement.

71. In addition to its unreasonably overbroad indemnification provisions, moreover, the Attestation states that Petitioners “shall not to (sic) disclose...the terms and contents of the Settlement Agreement to any other parties for any reason whatsoever.” That means that Petitioners could not disclose the terms of the Settlement Agreement even if required to do so by law or court order, or even if they sought review of the Settlement Agreement itself by their accountants, attorneys, or the courts. Indeed, the Attestation is so outrageous that it likely is unenforceable as against public policy.

72. Accordingly, on August 22, 2016, Petitioners’ counsel wrote to Respondents’ counsel one last time, demanding a copy of the Settlement Agreement and warning that continued violation of Petitioners’ rights to inspect the Condominium’s books and records would result in legal proceedings. A copy of that letter is annexed as **Exhibit 12**.

73. Despite Petitioners’ efforts to obtain the Settlement Agreement, RAND Report, budget, and financial statements, and despite the great lengths to which Petitioners have gone to *avoid* this proceeding, Respondents and their counsel have remained steadfast in their obstruction. Respondents’ counsel responded to Petitioners’ final demand by letter dated August

24, 2016, a copy of which is annexed as **Exhibit 13**, adhering stubbornly and inexplicably to her position that Petitioners are not entitled to the Condominium's books and records.

**Petitioners' Demands Were And Are Made In
Good Faith And For Multiple Proper Purposes**

74. Petitioners' demands were and are made in good faith and for numerous proper purposes, including, among others, to (i) ascertain the propriety (or impropriety) of Respondents' conduct in commencing, continuing, and settling the Construction Defects Litigation without the involvement, consent, input, or even knowledge of the Commercial Board and/or Petitioners; (ii) ascertain Petitioners' rights and potential remedies with respect to the Sponsor's design and construction of the Building; (iii) ascertain Petitioners' rights, duties, and obligations created by, or arising under, the Settlement Agreement and/or the Condominium's secret settlement with the Sponsor; (iv) ascertain the financial standing and well-being of the Condominium and ensure that the Condominium is being managed and operated responsibly and in the best interests of all unit owners; (v) investigate potential wrongdoing, mismanagement, breaches of contract, and breaches of fiduciary duty by the Residential Board and members of the Condominium Board in connection with the events, circumstances, and transactions described above; (vi) assess the ability of the Residential Board and members of the Condominium Board to act impartially and for the best interests of the entire Condominium and all its unit owners; (vii) protect GDLC's rights, interests, and property as an owner of the Condominium's largest, commercial unit; (viii) protect Salzhauer's rights and interests as a member of the Condominium Board and the Commercial Board, including his ability to carry out his obligations as a fiduciary; (ix) explore potential remedial measures, including, but not limited to, taking appropriate legal action in the event Respondents did not discharge properly their fiduciary and other duties.

75. None of these eminently valid purposes can be realized by being permitted only to glance momentarily at (and not copy or disclose to their attorneys and other advisors) the Settlement Agreement, RAND Report, and the Condominium's 2015 and 2016 financial statements and 2016 budget.

76. To date, Respondents have failed and refused to comply with their legal and fiduciary obligations, thereby necessitating this proceeding.

First Cause Of Action
(Books and Records)

77. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through 76 of this Petition as if fully set forth herein.

78. Under New York law, board members possess an absolute and unqualified right—and likely the duty—to inspect and copy any and all condominium books and records, regardless of purpose, motive, or intent.

79. New York law also grants all condominium unit owners—and even more so, condominium board members—the unfettered right to inspect and copy all condominium books and records for a valid purpose and in good faith.

80. As a member of the overarching, parent Condominium Board, a member of the Commercial Board, and a unit owner, Petitioners unquestionably are entitled to examine and copy all of the Condominium's books and records.

81. As alleged hereinabove, Petitioners' demands to inspect and copy the Condominium's books and records, including those set forth in the schedule annexed as **Exhibit 14** (also annexed to Petitioners' Order to Show Cause), were and are made in good faith and for multiple valid purposes.

82. As alleged hereinabove, prior to bringing this proceeding, Petitioners made due and adequate demand upon Respondents to inspect and copy the Condominium's books and records, but to no avail: Respondents have failed and refused to comply with their duties to provide Petitioners with such unfettered access.

83. Petitioners have no adequate remedy at law.

84. By reason of the foregoing, Petitioners are entitled to a judgment compelling the production and copying of Respondents' books and records, including, without limitation, the books and records specifically identified and demanded in the within proceeding (Exhibit 14).

Second Cause Of Action
(Costs, Expenses, and Reasonable Attorneys' Fees)

85. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 through 84 of this Petition as if fully set forth herein.

86. Under the By-laws,

[a]ll sums of money expended, and all costs and expenses incurred, by...the Commercial Unit Owner(s) in connection with any abatement, enjoinder, or remedy of any violation or breach of the Condominium Documents pursuant to the terms of paragraph (B) of Section 9.2 hereof [dealing with violations of the Commercial Unit Owners' rights], shall be immediately payable by...the offending party (i.e., the Condominium Board or the Unit Owner) to Sponsor or the Commercial Unit Owner(s), as the case may be...(Exhibit 1 at ¶ 9.2)

87. As alleged hereinabove, both New York law and the Condominium's own governing documents mandate that Petitioners be afforded access to the Condominium's books and records, including, without limitation, those demanded herein.

88. Respondents nevertheless have refused to provide such access to Petitioners.

89. By reason of the foregoing, Petitioners are entitled to advancement by, and reimbursement from, Respondents of all costs and expenses, including reasonable attorneys'

fees, incurred in connection with this proceeding seeking to enforce Petitioners' rights and enjoin Respondents' violations thereof.

90. No prior request has been made for the relief sought herein.

WHEREFORE, Petitioners respectfully request that the Court issue a judgment compelling the production of Respondents' books and records, including, without limitation, the books and records specifically identified herein (Exhibit 14), awarding Petitioners their costs, expenses, and reasonable attorneys' fees incurred in connection with this proceeding, and granting to Petitioners such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 30, 2016

SCHWARTZ SLADKUS
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Verification

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

Blair Axel, being duly sworn, deposes and says:

I am General Counsel of petitioner GDLC, LLC. I have read the allegations contained in the foregoing Verified Petition, and all the allegations are true to my own knowledge, except as to allegations stated to be upon information and belief, and, as to those allegation, I believe them to be true.


Blair Axel

Sworn to before me this
30th day of August 2016


Notary Public

JEAN MACALUSO
Notary Public, State of New York
No. 01MA0041725
Qualified in Bronx County
My Commission Expires 10/27/2018