

# REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (7/2012)

Supreme COURT, COUNTY OF Kings  
 Index No: 548/2020 Date Index Issued: 2/10/20

For Court Clerk Use Only:	
IAS Entry Date	
Judge Assigned	
RJI Date	

**CAPTION:** Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

Olga Scarcella  
 Plaintiff(s)/Petitioner(s)

-against-  
 The Sea Gate Association  
 Defendant(s)/Respondent(s)

**NATURE OF ACTION OR PROCEEDING:** Check ONE box only and specify where indicated.

<p><b>MATRIMONIAL</b></p> <input type="checkbox"/> Contested NOTE: For all Matrimonial actions where the parties have children under the age of 18, complete and attach the <b>MATRIMONIAL RJI Addendum</b> . For Uncontested Matrimonial actions, use RJI form UD-13. <p><b>TORTS</b></p> <input type="checkbox"/> Asbestos <input type="checkbox"/> Breast Implant <input type="checkbox"/> Environmental: _____ (specify) <input type="checkbox"/> Medical, Dental, or Podiatric Malpractice <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Products Liability: _____ (specify) <input type="checkbox"/> Other Negligence: _____ (specify) <input type="checkbox"/> Other Professional Malpractice: _____ (specify) <input type="checkbox"/> Other Tort: _____ (specify) <p><b>OTHER MATTERS</b></p> <input type="checkbox"/> Certificate of Incorporation/Dissolution [see NOTE under Commercial] <input type="checkbox"/> Emergency Medical Treatment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Local Court Appeal <input type="checkbox"/> Mechanic's Lien <input type="checkbox"/> Name Change <input type="checkbox"/> Pistol Permit Revocation Hearing <input type="checkbox"/> Sale or Finance of Religious/Not-for-Profit Property <input checked="" type="checkbox"/> Other: Defendant violating Not-for-Profit Corp Law (specify)	<p><b>COMMERCIAL</b></p> <input type="checkbox"/> Business Entity (including corporations, partnerships, LLCs, etc.) <input type="checkbox"/> Contract <input type="checkbox"/> Insurance (where insurer is a party, except arbitration) <input type="checkbox"/> UCC (including sales, negotiable instruments) <input type="checkbox"/> Other Commercial: _____ (specify) NOTE: For Commercial Division assignment requests [22 NYCRR § 202.70(d)], complete and attach the <b>COMMERCIAL DIV RJI Addendum</b> . <p><b>REAL PROPERTY:</b> How many properties does the application include? _____</p> <input type="checkbox"/> Condemnation <input type="checkbox"/> Mortgage Foreclosure (specify): <input type="checkbox"/> Residential <input type="checkbox"/> Commercial Property Address: _____ NOTE: For Mortgage Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the <b>FORECLOSURE RJI Addendum</b> . <input type="checkbox"/> Tax Certiorari - Section: _____ Block: _____ Register Lot: _____ <input type="checkbox"/> Tax Foreclosure <input type="checkbox"/> Other Real Property: Tr. 4464910 \$95.00 RJI (specify) <p><b>SPECIAL PROCEEDINGS</b></p> <input type="checkbox"/> CPLR Article 75 (Arbitration) [see NOTE under Commercial] <input type="checkbox"/> CPLR Article 78 (Body or Officer) \$95.00 <input type="checkbox"/> Election Law <input type="checkbox"/> MHL Article 9.60 (Kendra's Law) \$100.00 <input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Initial) \$5.00 <input type="checkbox"/> MHL Article 10 (Sex Offender Confinement-Review) <input type="checkbox"/> MHL Article 81 (Guardianship) <input type="checkbox"/> Other Mental Hygiene: _____ (specify) <input checked="" type="checkbox"/> Other Special Proceeding: Defendant violating Not-for-Profit Corp Law
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**STATUS OF ACTION OR PROCEEDING:** Answer YES or NO for EVERY question AND enter additional information where indicated.

Has a summons and complaint or summons w/notice been filed?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, date filed: _____ / _____ / _____
Has a summons and complaint or summons w/notice been served?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, date served: _____ / _____ / _____
Is this action/proceeding being filed post-judgment?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, judgment date: _____ / _____ / _____

**NATURE OF JUDICIAL INTERVENTION:**

Check ONE box only AND enter additional information where indicated.

- Infant's Compromise
- Note of Issue and/or Certificate of Readiness
- Notice of Medical, Dental, or Podiatric Malpractice
- Notice of Motion
- Notice of Petition
- Order to Show Cause
- Other Ex Parte Application
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other (specify): \_\_\_\_\_

Date Issue Joined:       /      /        
 Relief Sought: \_\_\_\_\_ Return Date:       /      /        
 Relief Sought: \_\_\_\_\_ Return Date:       /      /        
 Relief Sought: compel defendant to follow law Return Date:       /      /      

**RELATED CASES:**

List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases. If additional space is required, complete and attach the RJJ Addendum. If none, leave blank.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

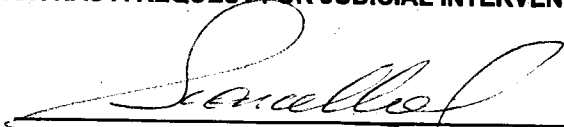
**PARTIES:**

For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided. If additional space is required, complete and attach the RJJ Addendum.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	Name: <u>Olga Scarcella</u> Role(s): <u>Plaintiff</u>	<u>4532 Beach 45th St</u> <u>BKLYN, NY 11234</u> <u>347-585-4597</u> <u>olga.scarcella@gmail.com</u>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: <u>The Sea Gate Association</u> Role(s): <u>Defendant</u>	<u>Arthur J. Miller III</u> <u>Trivella &amp; Forte, LLP</u> <u>1311 Memorick Ave / St 170</u> <u>White Plains, NY 10605</u> <u>914-949-9075</u> <u>ajm@tfsllp.com</u>	<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 2, 20, 20

  
 SIGNATURE  
Olga Scarcella  
 PRINT OR TYPE NAME

ATTORNEY REGISTRATION NUMBER

Instructions: Fill in the names of the parties and the index number. Complete the blank spaces next to the instructions printed in **bold** type. Cross out information in *italics* which does not apply. PRINT AND USE BLACK INK ONLY. (Other blank spaces are for Court use)

At an IAS Part 72 of the Supreme Court of the State of New York, held in and for the County of Kings, at the courthouse at 360 Adams Street on the 20 day of February, 2020

PRESENT: HON. Pamela L. Fisher  
Justice of the Supreme Court

**FILED**

FEB 20 2020

KINGS COUNTY CLERK'S OFFICE

Index Number

548, 2020

Olga Scarcella  
Plaintiff(s) / Petitioner(s) [fill in names]

- against -

The Sea Gate Association  
Defendant(s) / Respondent(s) [fill in names]

**ORDER TO SHOW CAUSE  
WITH T.R.O. IN CIVIL  
ACTION / PROCEEDING**

Upon reading and filing the affidavit / petition of Olga Scarcella  
[your name] sworn to / verified on the \_\_\_ day of \_\_\_, 20\_\_\_, [date the paper

was sworn to before a notary public] and upon the exhibits attached thereto, and [list any other supporting papers, e.g. additional affidavits, exhibits] Defendant's Plaintiff legal status as non-pro fit corp & member of such; applicable Not-for-Profit Corp Law; Defendant-Plaintiff communications;

Let the plaintiff(s) / petitioner(s) / defendant(s) / respondent(s) (other side) or his/her/their attorney show cause at IAS Part 96, Room 364 of this Court, to be held at the Courthouse, 360 Adams Street, Brooklyn, NY on the 2<sup>nd</sup> day of April, 2020, at 9:30 o'clock in the forenoon of that day or as soon thereafter as the parties may be heard why an order should

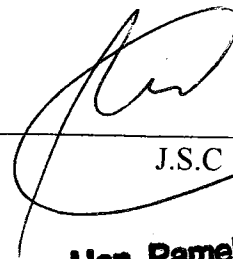
not be made [describe what you are asking the Court to grant] Defendant ordered to provide Plaintiff legally mandated access to demanded/requested documentation... financial & Minutes... with Defendant enjoined & restrained from imposing its verbally stated & written not stipulated...

restrictions on and Defendant enjoined & restrained from altering, modifying, amending, moving, and/or destroying any of the demanded/requested documentation for the reasons that [briefly describe the reasons for your request] Defendant has refused to comply with NYS Not. for Prot. Corp. Law (Article 6, Section 671 (b) (e-1) by refusing to grant Plaintiff access to all documentation demanded/requested for examination & review, with such refusal stated by Defendant President, in pt. of Defendant attorney's written letter. Defendant also will only release minimal documentation, but only with harsh, onerous, & not-stipulated-in-the-law restrictions... rendering any such access granted to be of little to no value whatsoever

Pending the hearing of this motion it is ORDERED that [insert the action you are asking the Court to direct or stop] Defendant is ordered to provide Plaintiff (legally obligated & mandated) access to demanded/requested documentation, with Defendant enjoined & restrained from imposing onerous, not-stipulated-in-the-law restrictions and enjoined & restrained from altering, modifying, amending, moving, and/or destroying any of the demanded/requested documentation

Sufficient cause appearing therefor, let personal service of a copy of this order and the papers upon which it is granted, upon the plaintiff(s) / petitioner(s) / defendant(s) / respondent(s), except, if represented, upon their counsel on or before the 21<sup>st</sup> day of February, 2020 be deemed good and sufficient. An affidavit or other proof of service shall be presented to the Court on the return date directed in the second paragraph of this order.

ENTER,

  
\_\_\_\_\_  
J.S.C.

Hon. Pamela L. Fisher, J.S.C.

Instructions: Fill in the box below and the index number Complete the blank spaces printed in bold below in accordance with the directions given. Attach copies of the indicated documents and mark them as exhibits.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
In the Matter of the Application of

Olga Scarcella

Index No. \_\_\_\_\_/\_\_\_\_

[YOUR NAME(S)] Petitioner(s)

-against

VERIFIED PETITION

The Sea Gate Association

[FILL IN NAME(S)] Respondent(s)

-----X  
TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF KINGS:

The petition of Olga Scarcella [YOUR NAME(S)]

respectfully shows to this Court as follows:

1) Your petitioner(s) resides at

4532 Beach 45th Street  
Brooklyn, NY 11224

[YOUR ADDRESS].

2) The respondent(s) is/are [IDENTIFY THE RESPONDENT(S)]

The Sea Gate Association

3) [DESCRIBE ALL FACTS CONCERNING YOUR CLAIMS IN THIS PROCEEDING, INCLUDING THE UNDERLYING EVENTS AND THE NATURE OF ANY ACTION OR DECISION TAKEN BY RESPONDENT(S) THAT YOU WISH TO CHALLENGE. ADD MORE PAGES IF NEEDED]

See Attached Pages 1B-10B

4) \_\_\_\_\_

Index #

...Olga Scarcella vs. The Sea Gate Association

Verified Petition

...Defendant (The Sea Gate Association) is a not-for-profit corporation, incorporated in New York State (Exhibit C), is registered as such in NYS (with the NYS Attorney General Office's Charities Bureau...Exhibit D-2), and has a federal tax-exempt status with the Internal Revenue Service of 501(c)(4) (Exhibit D-1)...as a Homeowners Association.

...The ByLaws (Exhibit E) of the Defendant/homeowners association list as its "Objectives", on page 3:

"The Association is organized for the mutual comfort and convenience of its *members*; to provide and maintain suitable means of access between properties of its *members*, and suitable sanitary arrangements for their comfort and health; to provide and maintain a casino or other buildings for mutual convenience; to provide and maintain open places on the beach or elsewhere at Sea Gate for the common use of its *members*; to provide generally for the care, protection and maintenance of the property at Sea Gate of itself and its *members*, and to promote social intercourse among its *members*, and, to the ends of aforesaid, to acquire, take, hold and dispose of such property, real and personal, as the purpose of the Association may require, subject to such limitations as may be presented by law. To provide parks and playgrounds, buildings or grounds for camp, musical or other meetings; to preserve and maintain the private community known as Sea Gate in the Borough of Brooklyn, City and State of New York, including all the facilities therein and to take all means for the improvements, betterment and welfare of said community and the properties and facilities located

— continued —

therein.

...Plaintiff is a member of record of Defendant, that is, a member of The Sea Gate Association, via property ownership of 4531 Beach 45<sup>th</sup> Street, Brooklyn, NY 11224 (property deed, Exhibit A), and is a member in “good standing”, based upon Defendant’s ByLaws’ definition of such (Exhibit E, page 7, Section 2-a), that is, Plaintiff “is current and not in arrears...” with any other charges, fees, etc. ( Exhibit B, most recent statement of Plaintiff’s Dues and Charges displaying no arrears).

...As per the provisions of New York State’s Not-For-Profit Corporation Law, Article 6, Section 621 (b) (Exhibits G-1, G-2, G-3), “Any person who shall have been a member of record of a corporation for at least six months immediately preceding his demand, or any person holding, or thereunto authorized in writing by holders of, at least five percent of any class of the outstanding capital certificates, upon at least five days written demand shall have the right to examine in person or by agent or attorney, during normal business hours, its minutes of proceedings of its members and list or record of members and to make extracts therefrom.”...Plaintiff, as a member of the corporation for at least six months (since 2/5/2017, according to Exhibit A) made such a Minutes-related “demand”, in writing (via e-mail), to Defendant’s governing body, its Board of Directors (the names of such noted on Exhibit F), initially on 11/19/19 (Exhibit H-1), and subsequently on 11/19/19 (simply noting any missed Board members on that initial e-mail, Exhibit H-2), 11/20/19 (Exhibit H-3), 11/21/19 (Exhibit H-4), 11/22/19 (Exhibit H-5)....The specifics of the legally-made, detailed “demand were: .....” “to examine in person...during normal business hours’...the ‘minutes of the proceedings’ of every 2019 Board of Directors meeting (including the one held on 11/18/19); every 2019 Executive Committee meeting; any and all 2019 Minutes of the proceedings of the Board’s members ‘and to make extracts therefrom.’ ”

— continued —

On 11/22/19, Defendant's 1<sup>st</sup> Vice President, Barbara Garofalo, responded to Plaintiff, via e-mail (Exhibit H-6), writing, "We are working on your request." Plaintiff then responded to 1st Vice President Garofalo, again, with Plaintiff's demand/request on 11/23/19 (Exhibit H-7), and 11/25/19 (Exhibit H-8), and on 11/29/19 (Exhibit H-10).

On 11/25/19, meanwhile, Defendant 2<sup>nd</sup> Vice President, Vincent Cirino, e-mailed Plaintiff (Exhibit H-9), writing that Plaintiff's demand/request was now not being worked on, but that Defendant's Board of Directors was simply "in the process of reviewing the request..." and thus clearly not "working on" it. Plaintiff then reiterated its demand/request to 2<sup>nd</sup> Vice President Cirino on 11/29/19 (Exhibits H-11 and H-12), 12/2/19 (Exhibit H-13), 12/3/19 (Exhibit H-14), 12/5/19 (Exhibit H-15), and 12/8/19 (Exhibit H-16).

...Beginning on 11/30/19 (Exhibit I-1), and also as per the provisions of the New York State Not-For-Profit Corporation Law, Article 6, Section 621 (e-1) (Exhibits G-1, G-2, G-3), "In addition to those documents described in paragraph (e) of this section, members of a homeowners association incorporated pursuant to the provisions of this chapter shall also be entitled to review, upon request to the homeowners association's governing board, invoices, ledgers, bank accounts, reconciliations, contracts, and *any documents* related to the expenditure of homeowners association dues." ...Plaintiff, clearly a member of record of Defendant, that is, a member of record of the not-for-profit corporation named The Sea Gate Association, made such a "financial data"-related request, in writing (via e-mail), to Defendant's Board of Directors on 11/30/19 (Exhibit I-1), 12/2/19 (Exhibit I-2), 12/3/19 (Exhibit I-3), 12/5/19 (Exhibit I-4), and 12/8/19 (Exhibit I-5)....The specifics of the legally-made, detailed request were:

....." 'to examine in person...during usual business hours' 'and to make extracts therefrom' ...the following documentation of the SGA for the years 2017 and 2018: any and all...invoices; bills; receipts; ledgers; bank/asset accounts (all accounts, all pages); reconciliations; contracts



(with any and all suppliers, vendors, contractors, etc.); payroll data, pay checks, etc. (with, of course, any privacy concerns properly, legitimately, and legally dealt with therein); legal settlement data (both for and against the SGA); and, of course, a full and complete detailed listing of all monies, revenues, etc. received by SGA (again, respecting any legitimate and legal privacy concerns therein.)”

...At this point in time, on 12/9/19, Defendant held its Annual, open Budget Meeting, at which point, publicly, 2nd Vice President Cirnio agreed to have a meeting with Plaintiff (and any homeowner/member supporters who wished to accompany Plaintiff to the still-to-be scheduled meeting in order to discuss Plaintiff’s demands/requests. Unfortunately, despite best efforts by Plaintiff to schedule a meeting as soon as possible (Exhibits J-1 and J-2), Defendant did not agree to schedule the meeting prior to 1/5/20.

...And on 1/5/20, Plaintiff and Defendant did meet, with Plaintiff accompanied by 4 other Defendant homeowner association members of record, and Plaintiff having 5 Board of Directors members in attendance: President David Wynn, 2<sup>nd</sup> Vice President Vincent Cirino, Treasurer Lance Burns, and members Elaine Fridlin and Robbin Paraison...as well as its attorney, Arthur J. Muller III, of the firm Trivella & Forte, who attended, verbally and orally, via speaker phone.

The position of Defendant was made quite clear by President Wynn and 2<sup>nd</sup> Vice President Cirino: stating that *all* of the 2019 Minutes in question, except for those concerning “open” Board meetings—such as the Annual September ‘election’ meeting (at which annual elections take place) and the Annual December Budget Meeting (more financial in nature)—would not be included in any Plaintiff examination unless they were to be so heavily redacted as to render them useless (although a list of Board of Directors “votes” only was offered)...and that *none* of the financial data for 2017 and 2018 was to be provided (as per the current

request), as Plaintiff's request was too broad in nature and that, to quote 2<sup>nd</sup> VP Cirino, Plaintiff should "narrow it in scope."..."We're not going to do that," stated Defendant President Wynn regarding Plaintiff's request for financial data access.

Specifically, Defendant's President Wynn, *without* noting specifics himself, stated that Plaintiff's request for access to the 2017 and 2018 financial data requested would be too time-consuming, burdensome, and expensive to produce in the manner requested by Plaintiff...a complete and total falsehood, inasmuch as all of the 2017 and 2018 financial data had already been gathered, collated, analyzed, reviewed and, supposedly, audited for the 2017 and 2018 federal Tax Returns, which had already been completed and filed with the Internal Revenue Service, and sent to the NYS Department of Taxation and Finance and Attorney General's Charities Bureau, as well as for the 2017 and 2018 Financial Statements, which had already been handed out to those corporation/association members attending the December 9, 2019 Annual Budget Meeting. In addition, Defendant President Wynn also stated that no matter what limited financial data Defendant might allow Plaintiff access to, there would be only very limited additional material provided to Plaintiff should it subsequently be requested.

In addition, Defendant, via 2nd Vice President Vincent Cirino, went so far as to state that, legally, no Defendant homeowner—other than the 15 members of the Board of Directors—even had any legal right at all to review, or even see, *any* Minutes of any Board of Directors meetings at all...though the public, open ones would be allowed.

Plaintiff left meeting, with no terms, arrangements, etc. agreed to by Plaintiff, other than that Plaintiff would consider the position of Defendant—that Plaintiff should reduce, "narrow" down, etc. its requests/demands—and would respond shortly via e-mail.

...On 1/7/20, Plaintiff did respond, via e-mail (Exhibit K-1), to Defendant's 1/5/20 stated positions...and, in the spirit of good faith, courtesy, and community spirit, as well as in an attempt to cooperate with the leadership of the community, did, somewhat, narrow the scope of Plaintiff's demands/requests in the hope of achieving some manner of

negotiated harmony with Defendant without having to resort to legal action against Defendant (although Plaintiff was clearly within its legal rights *without* having to take such an action)...that is, demanding/requesting access to less documentation, records, material, etc. than Plaintiff had originally requested access to...and Plaintiff continued to demand/request such access, via e-mail on 1/10/20 (Exhibit K-2), 1/13/20 (Exhibit K-3), 1/16/20 (Exhibit K-4), and 1/22/20 (Exhibit K-5).

...On 1/27/20, Plaintiff finally received Defendant's response (Exhibit L) to Plaintiff's numerous post-1/5/20 meeting e-mails, that is, a letter, dated 1/23/20, from Defendant's attorney, Arthur J. Muller III, of the firm Trivella & Forte...the same attorney who attended the 1/5/20 meeting via speaker phone. Unfortunately, Mr. Muller's letter is so replete with misstatements, omissions, and acts of obfuscation as to make Plaintiff regret even attempting to compromise its original position via its 1/7/20 (and beyond) narrowed down material access requests, as such attempts to compromise only appear, apparently, to Defendant as acts of weakness, thus emboldening Defendant further in its actions in violation of the Law. For example:

.....Mr. Muller incorrectly and inaccurately writes that, at the 1/5/20 meeting, Plaintiff agreed to inspect "open minutes and redacted Board minutes." This is a complete fabrication, for, as previously noted, Plaintiff only agreed to consider Defendant's 1/5/20 position, and responded as such on 1/7/20, 1/10/20, 1/13/20, 1/16/20, and 1/22/20.

.....Mr. Muller incorrectly and inaccurately writes that Plaintiff is "essentially requesting review of all Sea Gate documents...", which is also a fabrication, as both Plaintiff's original demands/requests and its subsequent narrowed down post-1/5/20 meeting ones are quite specific, noting specific documentation timeframes and descriptions in vivid detail.

.....Mr. Muller incorrectly and inaccurately writes that Plaintiff gave Defendant no "indication of the purpose" of said demands/requests, which is both a fabrication and, in and of itself, inconsequential,

according to the Law. Firstly, Defendant, via President David Wynn, thoroughly questioned Plaintiff at the 1/5/20 meeting regarding the "intent or purpose," of the requests ("I do not have any personal intent or anything against the well-being of the community" was the answer given), and secondly, the only criteria established via the Not-For-Profit Corporation Law has already been met by Plaintiff, via her corporation membership status and her 1/5/20 "access" letter, signed by Plaintiff (Exhibit N)...which was never even, to date, requested by Defendant.

.....Mr. Muller incorrectly and inaccurately writes that Plaintiff "request...was not narrowed in accordance with our discussions," which is another fabrication, as Mr. Muller seems to imply that there was an agreement of some kind for Plaintiff to narrow the scope of its demands/requests, which was clearly not the case (see Exhibits K1—K5), again, as the only thing Plaintiff agreed to was a consideration of Defendant's position. Yet, as previously noted, Plaintiff still did, in fact, as a matter of good faith, courtesy, and community spirit *only*, somewhat "narrow it in scope"...but the fact that it wasn't "narrowed" to the specifications of Defendant is immaterial to the matters at hand, as such narrowing, even if agreed to, is purely elective, and a matter of good will, on the part of Plaintiff, and not mandatory under the Law.

.....Mr. Muller incorrectly and inaccurately writes that Defendant, if Plaintiff accepts access to the limited documentation Defendant is currently offering access to, "can then provide any related contracts, invoices, etc." should Plaintiff subsequently desire any. However, that statement is totally contrary to the positions stated by Defendant President David Wynn at the 1/5/20 meeting, during which he stated that, once whatever documentation Defendant may initially allow Plaintiff access to, Defendant will *not* permit any more access, other than a limited amount...and thus Mr. Muller's so-called offer is nothing more than a bit of fluff, or grandstanding for public consumption, because it definitively and totally is contradicted by that which was stated as Defendant's position at the 1/5/20 meeting by Defendant President Wynn. And indeed, this particular Defendant has a track record, with this particular law firm, of having the law firm promise one thing, and then having Defendant do something totally, 180 degrees

different and contradictory to what the law firm promised, thus rendering the law firm's written promises on behalf of Defendant to be worthless. (Stated Defendant President Wynn on 1/5/20: "What are you looking for? I get it to you once, and if there's another question after, ok, fine, so let's be it, but this is not something that I'm going to give you papers and then you're going to ask me for another 30 pages...and then another 30 pages."...clearly refusing to provide any meaningful, substantial amount of additional documentation after whatever it were to initially provide access to....in direct contrast to that which is stated in Defendant attorney's letter of 1/23/20.

.....As proof of this, please see Exhibits M1—M5, which concern this law firm's written statement and promise to another member of record of Defendant corporation/homeowner association who raised issues concerning years of Defendant's problematic Tax Returns and Financial Statements.

.....In Exhibit M-1, homeowner notes, via 11/8/19 e-mail, the concept of Defendant consulting, retaining, etc. a not-for-profit corporation financial expert regarding the financial issues in question.

.....In Exhibit M-2, Defendant's law firm (and one of the 2 name Partners in Mr. Muller's firm, Scott Trivella) writes, via an 11/8/19 e-mail, that "as soon as the BOD (Board of Directors) designates someone as a neutral third party with credentials/experience with regards to Not for Profit (sic) Corporations we will forward same and obtain a response thereto."...that is, the homeowner will be notified of the entity retained, and asked for his comment.

.....In Exhibit M-3, an 11/11/19 e-mail, the law firm's other name Partner, Denise Forte) writes that "Sea Gate is in the process of speaking with an outside independent accounting firm to review and assess the points raised in your email (sic) and the attachments thereto."

.....In Exhibit M-4, name Partner Ms. Forte writes, in the 11/18/19 e-mail, "Please be advised that the Board of Directors are still engaged in the process of speaking with an outside independent accounting firm to review and assess the points raised in your email (sic) and the attachments thereto."

.....And yet in Exhibit M-5, name Partner Denise Forte's 11/19/19 e-mail to the homeowner, Ms. Forte writes that, "As far as notifying you directly, when a firm is selected, the Board does not feel that same is necessary" ...that is, the homeowner was now *not to be* notified, contacted, asked for comment, etc....Everything promised to the homeowner by Mr. Muller's law firm turned out *not to be true*, as, the written comments by Defendants lawyers notwithstanding, Defendant ultimately did whatever it wanted to do—which was totally contradictory to what its lawyers promised—in *spite of* everything its law firm stated that it, and Defendant, would do. (Interestingly, Defendant attorney's other statement notwithstanding...Defendant actually never even retained the not-for-profit corporation financial expert it was, presumably, searching for...yet another example of Defendant's lack of candor, and truthfulness, both with another member of record of the corporation/association and even with its own attorneys.)

As such, promises made by Mr. Muller on behalf of his client, the Defendant, are meaningless, as Defendant has already demonstrated its propensity for ignoring what its lawyers may state and promise to others, in writing, as well as its lack of integrity and its lack of caring what its attorneys state in matters such as these.

.....Mr. Muller, in addition, also writes of the onerous, harsh, and totally outside the boundaries of the Law restrictions that Defendant would impose upon Plaintiff, and others, should such requested access ever be given—no copying or photographing of documentation; no cell phones to be present; and the signing of a Non-Disclosure Agreement—so as to render such access literally worthless and valueless, as such harsh conditions are clearly outside not just the letter, but the intent and spirit, of the Law as well, and would make the very purpose of Plaintiff's demands/requests—as well as the Law itself—moot.

.....Mr. Muller also incorrectly and inaccurately writes that Defendant "*intends to comply with Section 621 of the not-for-profit law which permits inspection of invoices, ledgers, bank accounts, reconciliations, contracts and any documents related to the expenditure*

- Page 15B -

*of homeowner association dues*”...and yet Defendant still, in fact refuses to “comply” with the Law by continuing to refused legitimately and legally requested demands/requests of Plaintiff....If defendant simply listened to its attorney and complied with the Law...none of this would even be necessary...yet...here we are.

And thus the purpose of this application to the court, to compel Defendant to adhere to the provisions of the Law and grant access to Plaintiff to the documentation, records, material, etc. demanded/requested (OTC with TRO pages 3A-4A)...without the onerous and illegal “parameters,” restrictions, etc. noted in Defendant’s counsel’s letter of 1/23/20, as well as by Defendant President Wynn on 1/5/20...and to enjoin and restrain Defendant from tampering with, altering, modifying, amending, changing, destroying, moving, etc. any of the aforementioned documentation, records, material etc. that Plaintiff has requested access to.

- end -

5) \_\_\_\_\_

6) \_\_\_\_\_

7) Attached hereto as Appendix/Appendices is/are copies of relevant documents showing petitioner's right to win this case, including determination(s) issued by respondent(s) that have a bearing on this case and/or of which petitioner herein complains, if any. These documents are [IDENTIFY ALL SUCH DOCUMENTS, INCLUDING ALL WRITTEN DECISIONS OR DETERMINATIONS MADE BY RESPONDENT(S) THAT ARE PERTINENT TO THIS CASE AND ATTACH COPIES THEREOF. SEPARATELY MARK EACH SEPARATE DOCUMENT ATTACHED AS EXHIBIT A, EXHIBIT B, EXHIBIT C, ETC.]: See Attached Pages 11B-14B

The following Exhibits are attached [IDENTIFY BY LETTER] <sup>Exhibits</sup>

A, B, C, D (1-2), E, F, G (1-3), H (1-10), I (1-5), J (1-2), K (1-5), L, M (1-5), N

8) A prior application \_\_\_ has  has not been made for the relief requested herein. [CHECK ONE. CHECK THAT A PRIOR APPLICATION HAS BEEN MADE ONLY IF YOU SOUGHT THE SAME RELIEF YOU ARE NOW SEEKING.] The prior application was made [DESCRIBE WHERE, WHEN AND BY WHOM THE PRIOR APPLICATION WAS MADE, THE RESULT, AND WHY YOU ARE MAKING A SECOND APPLICATION.]



Index # ...Olga Scarcella vs. The Sea Gate Association

Verified Petition

Exhibit A...Plaintiff property Quitclain Deed

Exhibit B...Plaintiff's most recent Dues and Charges statement from Defendant

Exhibit C...NYS Division of Corporations Entity Information for Defendant

Exhibit D-1...Defendant IRS Determination Letter

Exhibit D-2...Defendant listing with NYS Attorney General's Charities Bureau

Exhibit E...Defendant ByLaws

Exhibit F...Defendant letterhead displaying Board of Director members, Officers, etc.

Exhibit G-1...NYS Not-For-Profit Corporation Law, Article 6, Section 621

Exhibit G-2...NYS Not For-Profit Corporation Law, Article 6, Section 621

Exhibit G-3...NYS Not-For-Profit Corporation Law, Article 6, Section 621

— continued —

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Exhibit H-1...Plaintiff 11/19/19 e-mail to Defendant—re: Minutes

Exhibit H-2...Plaintiff 11/19/19 e-mail to Defendant—re: Minutes

Exhibit H-3...Plaintiff 11/20/19 e-mail to Defendant—re: Minutes

Exhibit H-4...Plaintiff 11/21/19 e-mail to Defendant—re: Minutes

Exhibit H-5...Plaintiff 11/22/19 e-mail to defendant—re: Minutes

Exhibit H-6...Defendant 11/22/19 e-mail to Plaintiff—re: Minutes

Exhibit H-7...Plaintiff 11/23/19 e-mail to Defendant—re: Minutes

Exhibit H-8...Plaintiff 11/25/19 e-mail to Defendant—re: Minutes

Exhibit H-9...Defendant 11/25/19 e-mail to Plaintiff—re: Minutes

Exhibit H-10...Plaintiff 11/29/19 e-mail to Defendant—re: Minutes

Exhibit H-11...Plaintiff 11/29/19 e-mail to Defendant—re Minutes

Exhibit H-12...Plaintiff 11/29/19 e-mail to Defendant—re: Minutes

Exhibit H-13...Plaintiff 12/2/19 e-mail to Defendant—re: Minutes

Exhibit H-14...Plaintiff 12/3/19 e-mail to Defendant—re: Minutes

Exhibit H-15...Plaintiff 12/5/19 e-mail to Defendant—re: Minutes

— continued —

— Page 13 B —

Exhibit H-16...Plaintiff 12/8/19 e-mail to Defendant—re: Minutes

Exhibit I-1...Plaintiff 11/30/19 e-mail to Defendant—re: Financial Data

Exhibit I-2...Plaintiff 12/2/19 e-mail to Defendant—re: Financial Data

Exhibit I-3...Plaintiff 12/3/19 e-mail to Defendant—re: Financial Data

Exhibit I-4...Plaintiff 12/5/19 e-mail to Defendant—re: Financial Data

Exhibit I-5...Plaintiff 12/8/19 e-mail to Defendant—re: Financial Data

Exhibit J-1...Plaintiff 12/11/19 e-mail to Defendant—re: Meeting

Exhibit J-2...Plaintiff 12/11/19 e-mail to Defendant—re: Meeting

Exhibit K-1...Plaintiff 1/7/20 e-mail to Defendant—re: Meeting  
Response

Exhibit K-2...Plaintiff 1/10/20 e-mail to Defendant—re: Meeting  
Response

Exhibit K-3...Plaintiff 1/13/20 e-mail to Defendant—re: Meeting  
Response

Exhibit K-4...Plaintiff 1/16/20 e-mail to Defendant—re: Meeting  
Response

Exhibit K-5...Plaintiff 1/22/20 e-mail to Defendant—re: Meeting  
Response

— continued —

— Page 14B —

Exhibit L...Defendant attorney's 1/23/20 letter to Plaintiff

Exhibit M-1...Defendant/association member's 11/8/19 e-mail to Defendant attorney

Exhibit M-2...Defendant/association's attorney's 11/8/19 e-mail to association homeowner

Exhibit M-3...Defendant/association's attorney's 11/11/19 e-mail to association member

Exhibit M-4...Defendant/association attorney's 11/18/19 e-mail to association member

Exhibit M-5...Defendant/association attorney's 11/19/19 e-mail to association member

Exhibit N...Plaintiff 1/5/20 letter to Defendant—re: Minutes usage

— end —

WHEREFORE, your deponent prays that this Court. [DESCRIBE THE RELIEF YOU REQUEST]: See Attached Page 15B

Dated: 2/18, New York, 2020  
[DATE SIGNED]

Sworn to before me this 18th day  
of February, 2020

Angela M. Fernandez  
NOTARY PUBLIC  
ANGELA M. FERNANDEZ  
Notary Public, State of New York  
NO. 01FE6161092  
Qualified in Bronx County  
My Commission Expires Feb 20, 2023

Olga Scarcella  
Petitioner  
[SIGN YOUR NAME BEFORE A NOTARY PUBLIC]

Olga Scarcella  
[PRINT NAME]

4532 Beach 45th Street  
Brooklyn, NY 11234  
347-585-9597  
[Petitioner's Address and Telephone Number]

Index #

...Olga Scarcella vs. The Sea Gate Association

Verified Petition

...Order Defendant to provide legally obligated and mandated access to the documentation, records, material, etc. (specified Board of Directors/association/corporation “Minutes” and specified “financial data” requested—OTC with TRO pages 3A-4A), and is enjoined and restrained from doing so via the imposition of the onerous, harsh and not-stipulated-by-the Law conditions, stipulations, and restrictions it has stated it intends to impose (OTC with TRO page 4A)...and that Defendant is enjoined and restrained from tampering with, altering, modifying, amending, changing, destroying, moving, etc. any of the aforementioned documentation, etc. that Plaintiff has requested access to, because if not done, Defendant will continue to violate the Law by not providing Plaintiff the legally obligated and mandated access it warrants, with the documentation in question in danger, as a result of Defendant’s ongoing breach of proper behavior towards and actions against Plaintiff, of being tampered with, altered, destroyed, etc.

— end —

Instructions: **FILL IN THE NAMES OF THE PARTIES AND THE INDEX NUMBER. COMPLETE THE BLANK SPACES NEXT TO THE INSTRUCTIONS PRINTED IN BOLD TYPE. PRINT AND USE BLACK INK ONLY. SIGN YOUR NAME IN THE PRESENCE OF A NOTARY PUBLIC.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF Kings \_\_\_\_\_X

Olga Scarcella  
[FILL IN NAME(S)] Plaintiff(s)

Index No.  
\_\_\_\_\_ /

vs

The Sea Gate Association  
[FILL IN NAME(S)] Defendant(s) \_\_\_\_\_X

AFFIDAVIT  
IN SUPPORT

STATE OF NEW YORK  
COUNTY OF New York [COUNTY WHERE NOTARIZED] ss:

Olga Scarcella [YOUR NAME], being duly sworn, deposes and says:

1. I am the plaintiff defendant [CIRCLE ONE], in this action. I make this affidavit in support of my motion for an order [STATE WHAT YOU WANT THE COURT'S ORDER TO PROVIDE OR GRANT YOU, INCLUDING WHY YOU SHOULD BE GRANTED IMMEDIATE RELIEF PENDING THE HEARING OF THIS MOTION BY THE COURT. THIS STATEMENT MUST ALSO BE INCLUDED IN THE NOTICE OF MOTION OR ORDER TO SHOW CAUSE] See Attached Page 1C

2. I believe the Court should grant my motion because [EXPLAIN YOUR REASONS, USE ADDITIONAL PAPER IF NECESSARY.] See Attached Pages 2C-5C

Index #

...Olga Scarcella vs. The Sea Gate Association

Affidavit In Support

...Defendant is ordered to provide to Plaintiff the legally obligated and mandated access to the documentation, records, material, etc. (specified Board of Directors/association/corporation “Minutes” and specified “financial data” requested—pages 3A-4A), and is enjoined and restrained from doing so via the imposition of the onerous, harsh, and not-stipulated-by-the Law conditions, stipulations, and restrictions it has stated it intends to impose (page 4A)...and that Defendant is enjoined and restrained from tampering with, altering, modifying, amending, changing, destroying, moving, etc. any of the aforementioned documentation, etc. that Plaintiff has requested access to, because if not done, Defendant will continue to violate the Law by not providing Plaintiff the legally obligated and mandated access it warrants, with the documentation in question itself in danger, as a result of Defendant’s ongoing breach of proper behavior towards and actions against Plaintiff, of being tampered with, altered, destroyed, etc.

—end—



Index #

...Olga Scarcella vs. The Sea Gate Association

Affidavit In Support

...Defendant (a New York State incorporated and registered not-for-profit corporation, and homeowners association) continues to violate provisions of New York State's Not-For-Profit corporation Law, Article 6, Section 621, (b) and (e-1), by refusing to grant Plaintiff access to all of the documentation, records, material, etc. which Plaintiff member of the corporation has legally, with specific material and timeframes detailed, requested and is legally entitled to examine and review—and which Defendant is legally obligated and mandated to allow...provisions which Defendant's own attorney has stated verbally (on 1/5/20) and written (1/23/20...Exhibit E) that Defendant "*intends to comply with*" (though after 3 months of Plaintiff demands/requests, Defendant still refuses such compliance with the Law)—via the tactics of outright refusal; obfuscation (via its attorney's letter of 1/23/20, which is replete with misstatements, omissions, and outright falsehoods, as well as promises made by the attorney which the Defendant's President, David Wynn, had already previously contradicted during a meeting held with Plaintiff and 4 other homeowners association members on 1/5/20 (and attended, via speak phone, by Defendant's attorney); and via the tactic of trying to impose such improper and illegal conditions and restrictions on the access of what little documentation it, presumably, is willing to offer access so as to render even that little bit of documentation access presumably granted to be of little to know value...which defies both the letter and intent and spirit of the Law itself.

...Defendant's already established pattern of lying to association/corporation members of record, via its attorneys (see Exhibits M-2—M-5) in which Defendant's attorney promises another association/corporation member, Gary Daniels, that Defendant is to retain a particular kind of not-for-profit corporate financial expert to review financial issues and questions raised by Mr. Daniels and then

—continued—

notify Mr. Daniels of that fact for him to comment upon...only to then (Exhibit M-5) notify Mr. Daniels that Defendant changed its mind, and “does not feel that same is necessary,” and thus that which the attorneys had promised Mr. Daniels, on behalf of Defendant, turned out to be a misstatement, at best...and a lie, at worst.

In addition Defendant and its attorney—from the same law firm which made the aforementioned misstatements to the other Defendant corporation member—have also made material misstatements to Plaintiff, as the contradictions and discrepancies between the written statement of attorney Arthur J. Muller III in his 1/23/20 letter to Plaintiff (Exhibit L) and those made by Defendant corporation President David Wynn during the 1/5/20 meeting include:

.....Mr. Muller writes that, should Plaintiff agree to accept a limited amount of documentation to review (rather than Plaintiff’s original request), “if there is further documentation related to any specific items we can then provide any related contracts, invoices, etc.”...seemingly willing to provide access to abundant, substantial, etc. additional documentation if the limited amount provided proves not to be sufficient. Yet, at the 1/5/20 meeting, President Wynn stated exactly the opposite, stating, “I don’t want to give you paperwork, and then you’re going to come down with 500 more questions.” Adding, “What are you looking for? I get it to you once, and if there’s another question after, ok, fine, and so let’s be it, but this is not something that I’m going to give you papers and then you’re going to ask me for another 30 pages...and then another 30 pages.”...clearly refusing to provide any meaningful, substantial amount of additional documentation after whatever limited documentation it were to initially provide access to...thus rendering Defendant attorney’s letter of 1/23/20 to be meaningless.

.....In addition, at the same 1/5/20 meeting, Defendant 2nd Vice President Vincent Cirino actually stated, for the record, that Plaintiff had no legal right of examination to any of the requested “Minutes,” stating that neither Plaintiff, nor any of the other Defendant corporation/homeowner association members of The Sea Gate Association (that is, the Defendant not-for-profit corporation), are actually even members of record of the corporation, but merely of the association. “The

corporation,” he stated, “by definition, is us, the Board (of Directors)...the association is the community, the constituents.” Yet, there is nothing in any of the applicable Sections of the Not-For-Profit Corporation Law (Exhibits G-1—G-3), nor in Defendant ByLaws (Exhibit E) differentiating between members of the “association” vs. members of the “corporation”. Indeed, the ByLaws refer to members of the Board of Directors in multiple ways...”Board of Directors,” ”director(s),” “members of the Board of Directors,” “officer(s),” “director of (sic) officer of the Corporation,” ...but *never* as a “member of the corporation”...as every property owner in the community of Sea Gate is a “member,” “member of record,” etc. of the Defendant corporation/association, while only those duly elected “members of record” can become members of the Board of Directors, but “member of record” of the corporation itself does *not* solely mean members of the Board of Directors, as that is simply a fictional, contrived device that exists nowhere but in the mind of 2<sup>nd</sup> Vice President Cirino...and thus, in fact, 2<sup>nd</sup> Vice President Cirino’s highhanded attempt to obfuscate the issues at hand by attempting to invent a distinction between the words “corporation” and “association”, as this is a difference in wording without meaning or significance: Defendant is a corporation, a not-for-profit corporation (Exhibit C), which just happens to be a homeowners association (Exhibits C and E), and thus are, literally, one and the same, and any attempt to distinguish one from another is merely just another way of Defendant attempting to dissuade Plaintiff from continuing with its demands/requests, or, at the least, of persuading Plaintiff to reduce, minimize, and—to quote 2<sup>nd</sup> Vice President Cirino—“narrow it (Plaintiff’s documentation demands/requests) in scope.”

All of the above, and more, leads Plaintiff to have great concern over the continued integrity, safety, and even continued existence of the documentation, records, material, etc. in question (as result of the ongoing deceit, obfuscation, misstatements, double dealing, etc. by Defendant)...and thus believe the only manner of action which possesses the certainty of maintaining said integrity, safety, and even the continued existence of such material is via court order, because if not

- Page 5C -

done, Defendant will continue to violate the Law by not providing Plaintiff the legally obligated and mandated access it warrants, with the documentation in question itself in danger, as a result of Defendant's ongoing breach of proper behavior towards and actions against Plaintiff, of being tampered with, altered, destroyed, etc.

- end -

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3. No prior application has been made for the relief sought herein except [LIST ALL PRIOR REQUESTS FOR THE SAME RELIEF MADE IN THIS OR ANY OTHER COURT AND THE RESULTS OF THOSE APPLICATIONS. USE ADDITIONAL PAPER IF NECESSARY. IF NO PRIOR REQUESTS HAVE BEEN MADE, STATE "None"] None

WHEREFORE, I respectfully request that this motion be granted, and that I have such other and further relief as the Court may find to be just and proper.

*Scarcella* 2/18/2020  
(Sign your name in the presence of a notary public)  
Olga Scarcella  
(Print your name)

Sworn to before me this  
18 day of Feb, 20020

*[Signature]*  
(NOTARY PUBLIC)  
ANGELA M FERNANDEZ  
Notary Public - State of New York  
NO. 01FE6161092  
Qualified in Bronx County  
My Commission Expires Feb 20, 2023

VERIFICATION

STATE OF NEW YORK )

SS:

COUNTY OF KINGS)

Olga Scarcella

[YOUR NAME], being duly sworn,

deposes and says: That I am the petitioner in this proceeding, that I have read the foregoing petition and know the contents thereof; that the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief; and that as to those matters I believe them to be true. To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

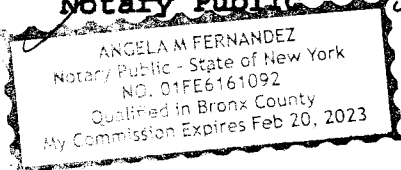
Scarcella 2-18-2020

Petitioner  
[SIGN YOUR NAME BEFORE A  
NOTARY PUBLIC]

Olga Scarcella  
[PRINT NAME]

Sworn to before me this 18 day  
of February, 20020

Angela M Fernandez  
Notary Public



03/01

Instructions: Fill in the names of the parties and the Index Number. Complete the blank spaces next to the instructions printed in bold type. PRINT AND USE BLACK INK ONLY. SIGN YOUR NAME BEFORE A NOTARY PUBLIC.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X

Olga Scarcella  
[FILL IN NAME(S)] Plaintiff(s)/Petitioner(s)

Index No.  
\_\_\_\_\_ / \_\_\_\_\_

-against-

The Sea Gate Association

**AFFIDAVIT of  
EMERGENCY**

[FILL IN NAME(S)] Defendant(s)/Respondent(s)  
-----X

STATE OF NEW YORK  
COUNTY OF New York [COUNTY WHERE NOTARIZED] ss:

Olga Scarcella [YOUR NAME],

being duly sworn, deposes and says:

1. I am the plaintiff/petitioner/defendant/respondent [CIRCLE ONE], in this action/proceeding. I make this affidavit of emergency for the following reason:

See Attached Pages 1D-2D

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Index #

...Olga Scarcella vs. The Sea Gate Association

Affidavit of Emergency

...Defendant continues to arbitrarily and illegally refuse to provide Plaintiff the legally obligated and mandated access to the documentation, records, material, etc. (specified Board of Directors/homeowners association/corporation "Minutes" and specified "financial data" requested—OTC with TRO pages 3A-4A) that Plaintiff has properly and legally demanded/requested, and which Defendant is legally obligated and mandated to provide, instead, wasting months...first ignoring Plaintiff demands/requests...then delaying any discussion (written or verbal) of such...and ultimately, and simultaneously, both denying Plaintiff's right for such documentation access while also attempting to convince Plaintiff to reduce, decrease, minimize, "narrow" down, etc. its demands/requests—under the threat of not receiving *any* documentation, etc. unless Plaintiff does Defendant's bidding—and then attempting to impose such illegal and restrictive conditions upon Plaintiff's demands/requests that even if Defendant should provide even limited documentation access to Plaintiff it would so hamper Plaintiff in its efforts of examination and review as to render such efforts—and thus the applicable Law itself—worthless and valueless. And in doing all of the aforesaid, Defendant has used, deceit, obfuscation, misstatements, falsehoods, and threats (legal, not physical) against Plaintiff to restrain Plaintiff from continuing its legal pursuit of Plaintiff's rights...and thus the purpose of this application to the court...to order Defendant to provide Plaintiff with the demanded/requested and legally obligated and mandated access it is obligated to do under the Law, and to enjoin and restrain Defendant from doing so via the imposition of the onerous, harsh conditions, and not-stipulated-by-the-Law stipulations, and restrictions it has stated it intends to impose (OTC with TRO page 4A)...and to as well enjoin and restrain Defendant from tampering with, altering, modifying, amending,

— continued —



changing, destroying, moving, etc. any of the aforementioned documentation, etc. in question, because if not done, Defendant will continue to violate the Law by not providing Plaintiff the legally obligated and mandated access it warrants, with the documentation in question itself in danger, as a result of Defendant's ongoing breach of proper behavior towards and actions against Plaintiff, of being tampered with, altered, destroyed, etc.

In fact, even Defendant's attorney, in his 1/23/20 letter to Plaintiff, wrote that Defendant "*intends to comply with*" the Law...and after 3 months of Plaintiff demands/requests Defendant certainly has had enough time to do so...but, to date, still has not complied...and thus the reason for Plaintiff's application to the court.

- Encl -

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N/A

Scarcella 2-18-20

[SIGN YOUR NAME BEFORE A

NOTARY PUBLIC]

Olga Scarcella

PRINT YOUR NAME

Sworn to before me on

18 day of February, 20020

[Signature]

NOTARY PUBLIC

ANGELA M FERNANDEZ  
Notary Public - State of New York  
NO. 01FE6161092  
Qualified in Bronx County  
My Commission Expires Feb 20, 2023

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

X

Olga Scarcella

Plaintiff/Petitioner

-against-

The Sea Gate Association

Defendant/Respondent

X.

INDEX NO. \_\_\_\_\_

Part 130 Certification/  
Legal Back

To the best of my knowledge, information and belief,  
formed after an inquiry reasonable under the circumstances,  
the presentation of these papers or the contentions therein  
are not frivolous as defined in subsection (c) of section  
130-1.1 of the Rules of the Chief Administrator (22NYCRR)

Sign name:

Scarcella 2/11/75

Print name:

Olga Scarcella

Address:

4537 Beach 45th Street  
Brooklyn, NY 11224

Telephone

347-585-4597

**AFFIDAVIT / ATTORNEY'S AFFIRMATION IN SUPPORT OF NOTIFICATION**

**Instructions:** Fill in the box below and the index number. Complete the blank spaces printed in bold below following the directions provided. Print and use black ink only.

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

Olga Scarcella  
-----  
[Fill in Name(s)] Plaintiff(s) / Petitioner (s)

Index No. 1

vs.

The Sea Gate Association  
-----  
[Fill in Name(s)] Defendant(s) / Respondent(s)

STATE OF NEW YORK }  
COUNTY OF Kings [Insert County Where Signed]

Olga Scarcella [Your Name], being duly sworn (an attorney admitted to practice in the State of New York, duly affirms under penalty of perjury, if attorney), SAYS:

1. I reside at 4532 Beach 45th Street Brooklyn, NY 11224 [Your Address / Office] in the County of Kings [Insert County of Residence / Office] and State of New York.

2. I am about to commence a special proceeding or submit an order to show cause containing a stay and /or restraining order for [Briefly describe the reasons why you want the Court to grant your request.]

See Attached Page 1E-2E  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Index #

...Olga Scarcella vs. The Sea Gate Association

Affidavit In Support of Notification

...Defendant should be enjoined and restrained from continuing to arbitrarily and illegally refuse to provide Plaintiff the legally obligated and mandated access to the documentation, records, material, etc. (specified Board of Directors/ homeowners association/corporation “Minutes” and specified “financial data” requested—OTC with TRO pages 3A-4A) that Plaintiff has properly and legally demanded/requested, and which Defendant is legally obligated and mandated to provide, instead, wasting months...first ignoring Plaintiff demands/requests...then delaying any discussion (written or verbal) of such...and ultimately, and simultaneously, both denying Plaintiff’s right for such documentation access while also attempting to convince Plaintiff to reduce, decrease, minimize, “narrow” down, etc. its demands/requests—under the threat of not receiving *any* documentation, etc. unless Plaintiff does Defendant’s bidding—and then attempting to impose such illegal and restrictive conditions upon Plaintiff’s demands/requests that even if Defendant should provide even limited documentation access to Plaintiff it would so hamper Plaintiff in its efforts of examination and review as to render such efforts—and thus the applicable Law itself—worthless and valueless. And in doing all of the aforesaid, Defendant has used, deceit, obfuscation, misstatements, falsehoods, and threats (legal, not physical) against Plaintiff to restrain Plaintiff from continuing its legal pursuit of Plaintiff’s rights...and thus the purpose of this application to the court...to order Defendant to provide Plaintiff with the demanded/requested and legally obligated and mandated access it is obligated to do under the Law, and to enjoin and restrain Defendant from doing so via the imposition of the onerous, harsh conditions, and not-stipulated-by-the-Law stipulations, and restrictions it has stated it intends to impose (OTC with TRO page 4A)...and to as well enjoin and restrain Defendant from tampering with,

—Continued—

altering, modifying, amending, changing, destroying, moving, etc. any of the aforementioned documentation, etc. in question, because if not done, Defendant will continue to violate the Law by not providing Plaintiff the legally obligated and mandated access it warrants, with the documentation in question itself in danger, as a result of Defendant's ongoing breach of proper behavior towards and actions against Plaintiff, of being tampered with, altered, destroyed, etc.

In fact, even Defendant's attorney, in his 1/23/20 letter to Plaintiff, wrote that Defendant "*intends to comply with*" the Law...and after 3 months of Plaintiff demands/requests Defendant certainly has had enough time to do so...but, to date, still has not complied...and thus the reason for Plaintiff's application to the court.

— end —

FILL IN EITHER PARAGRAPH 3 or 4

3. I have notified my opposition to appear in Part 72, 2<sup>nd</sup> Floor - Room 295 at 360 Adams Street, Brooklyn, NY.

a) [WHEN DID YOU CALL OR FAX THEM?]

On the 19<sup>th</sup> of February, 2020 at 8:33 AM / PM

b) [WHAT NUMBER DID YOU DIAL?]

914 - 944 - 4752  
AREA CODE

c) [DID YOU RECEIVE A RESPONSE?] CIRCLE ONE:  YES / NO

[IF YES, WRITE RESPONSE HERE AND INCLUDE THE NAME OF THE PERSON WITH WHOM YOU SPOKE]

Defendant attorney misrepresents portions of both Defendant & Plaintiff...  
(Arthur J Moller III)

d) [WHEN DID YOU TELL THEM TO APPEAR IN COURT - Must be a specific time between 9 a.m. - 12 p.m. or 2-3 p.m. (e.g. 10:40 a.m.)]

On the 20<sup>th</sup> of February, 2020 at 10:30 AM / PM

4. I believe that there will be significant prejudice by giving notice because: [DETAIL REASONS]

5. Has a previous application been made for this relief?

CIRCLE ONE:  NO / YES

[If yes, you must provide a description of where, when and by whom the request was made, the result, and if the application was unsuccessful, why you believe you are entitled to apply again.]

DATE: 2/20, 2020

[Signature]  
[NOTARY PUBLIC]

KAMAL P. SONI  
Notary Public, State of New York  
No. 01SC0089949  
Qualified in Kings County  
Commission Expires March 31, 2023

[Signature]  
[SIGN IN THE PRESENCE OF A NOTARY PUBLIC, using attorney]

Olga Scarcella  
[PRINT YOUR NAME]

AFFIDAVIT OF SERVICE  
AFTER COMMENCEMENT OF LITIGATION

Index No. 548, 2020

Olga Scarcella vs. The Sea Gate Association

STATE OF NEW YORK, COUNTY OF Kings ss:

Gary Daniels being sworn says: I am not a party to the action, am over 18 years of age, and reside at 3744 Lyme Ave. Bklyn. NY 11234

On 2/20, 2020, I served a true copy of the following papers Case with TRO on Civil Action/Proceeding, which are attached to this affidavit, in the following manner:

[CHECK ONE]

PERSONAL SERVICE

By personally delivering the papers to: [PERSON SERVED] at [ADDRESS]

The individual I served had the following characteristics: [CHECK]

Male  Female  Skin Color \_\_\_\_\_ Hair Color \_\_\_\_\_  
21-34 yrs. \_\_\_\_\_ 35-50 yrs. \_\_\_\_\_ 51-61 yrs. \_\_\_\_\_ Over 61 yrs. \_\_\_\_\_  
120-150 lbs. \_\_\_\_\_ 151-181 lbs. \_\_\_\_\_ Over 182 lbs. \_\_\_\_\_  
Approximate height \_\_\_\_\_ Other distinguishing features \_\_\_\_\_

MAIL

By mailing the same in a sealed envelope with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below.

X

OVERNIGHT DELIVERY SERVICE

By depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The delivery service used was UPS 1D FDX 4D

Name and Address of Person (s) served:

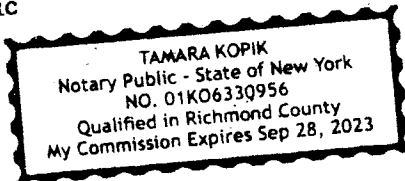
Arthur J. Miller III, Esq. / Krivella & Forte, LLP  
1311 Mamaroneck Ave. / Suite 170  
White Plains, NY 10605

Sworn to before me this 21 day of February, 2020

[Signature]  
Notary Public

[Signature]  
[Sign Name] before a Notary

Gary Daniels  
PRINT NAME



2020 FEB 24 AM 9:11

KINGS COUNTY CLERK  
RECEIVED

Order To Show

914-  
949-  
9075



**AFFIDAVIT OF SERVICE  
AFTER COMMENCEMENT OF LITIGATION**

Index No. 548, 2020

Olga Scarcella vs. The Sea Gate Association

STATE OF NEW YORK, COUNTY OF Kings ss:

Gary Daniels being sworn says: I am not a party to the action, am over 18 years of age, and reside at 3744 Lyme Ave. Bklyn. NY 11234

Order to Show Cause with TRD & Civil Action/Proceeding

On 2/20, 2020, I served a true copy of the following papers which are attached to this affidavit, in the following manner:

[CHECK ONE]

PERSONAL SERVICE

By personally delivering the papers to: [PERSON SERVED] at [ADDRESS]

The individual I served had the following characteristics: [CHECK]

Male  Female  Skin Color \_\_\_\_\_ Hair Color \_\_\_\_\_  
21-34 yrs. \_\_\_\_\_ 35-50 yrs. \_\_\_\_\_ 51-61 yrs. \_\_\_\_\_ Over 61 yrs. \_\_\_\_\_  
120-150 lbs. \_\_\_\_\_ 151-181 lbs. \_\_\_\_\_ Over 182 lbs. \_\_\_\_\_  
Approximate height \_\_\_\_\_ Other distinguishing features \_\_\_\_\_

MAIL

By mailing the same in a sealed envelope with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below.

X

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White Plains, NY 10605

Sworn to before me this 21 day of February, 2020

[Signature]  
Notary Public

[Signature]  
[Sign Name] before a Notary

Gary Daniels  
PRINT NAME

