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VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
CIVIL INTAKE

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

MIDTOWN ALEXANDRIA
STATION CONDOMINIUM
UNIT OWNERS ASSOCIATION

Plaintiff,

v.

Case No. **2020 05414**

PAULA COWAN
Serve: 2451 Midtown Avenue, Unit 908
Alexandria, VA 22303

and

VIRGINIA DEPARTMENT OF HEALTH
Serve: James H. Edmondson, Jr.
Executive Committee, VDH
1651 Old Meadow Road, Suite 305
McLean, Virginia 22102

Defendant.

COMPLAINT AND WRIT OF MANDAMUS

Midtown Alexandria Station Condominium Unit Owners Association (the
"Association"), by counsel, submits the following Complaint against Defendant Paula Cowan
("Cowan"):

PARTIES

1. The Association is a condominium association subject to the Condominium Act,
Va. Code Ann. § 55.1-1900 *et seq.* and exists pursuant to a Declaration recorded among the land
records of Fairfax County at Deed Book 19168, Page 254. The Association is responsible for
overseeing the welfare and administering the affairs of the Condominium building located at
2451 Midtown Avenue, Alexandria, Virginia 22303 (the "Condominium").

2. Cowan is a Virginia resident, who resides at Unit 908 within the Condominium.
3. The Virginia Department of Health ("VDH") is an official governmental department created by virtue of Va. Code Ann. § 32.1-1 *et seq.* According to its website, "The Mission of the Virginia Department of Health is to protect the health and promote the well-being of all people in Virginia. The agency's vision statement is 'Become the healthiest state in the nation.'"

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to Va. Code Ann. § 17.1-513.
5. Venue is proper in this judicial district pursuant to Va. Code Ann. § 8.01-262(1) and (4).

FACTUAL BACKGROUND

6. The United States is the current epicenter of the COVID-19 global pandemic. The Governor of Virginia issued Executive Order-55 (EO-55), which includes a "stay home" order instructing members of the public to remain in their homes unless they are leaving to engage in essential activities as specified in EO-55.

7. On March 12, 2020, Governor Northam issued Executive Order-51, in which he declared that a state of emergency exists in Virginia until June 10, 2020, in response to Covid-19.

8. As of the date of this filing, there are at least 3,333 confirmed cases of COVID - 19 in Virginia, resulting in 563 hospitalizations and 63 deaths.

9. The Center for Disease Control (CDC) website states that someone who has COVID-19 is advised to: "Stay in a specific "sick room" or area and away from other people. If possible, use a separate bathroom." (Emphasis in Original).

10. The VDH website states: "If you had close contact with a person who has lab-confirmed COVID-19 or who was diagnosed with COVID-19 without lab testing, self-quarantine (stay home) and monitor your health for symptoms of COVID-19 for 14 days after your last contact. If you live in the same household as someone who has lab-confirmed COVID-19 or who was diagnosed with COVID-19, self-quarantine for 14 days after any sick person in the household's self-isolation period ends." (Emphasis in Original).

11. After the COVID-19 outbreak and in an effort to promote social distancing, the Board of Directors of the Association instituted a policy where persons not living in the same unit could not be on an elevator together.

12. On April 6, 2020, Cowan told a resident of the building, Jeffrey Cann, that she had "the virus," referring to COVID-19.

13. Specifically, Cann was on a freight elevator in the Condominium. Cann saw Cowan approaching the elevator with the intention of riding the elevator with him, which would violate the directive of the Board of Directors.

14. As Cowan was attempting to get on the elevator, Cann noticed that Cowan looked sick.

15. Cowan had paperwork in her hand and said to Cann that she had "the virus."

16. Cowan was not wearing a face mask at the time she said she had "the virus."

17. Cann indicated to Cowan that she could not ride the elevator. See Exhibit 1, Cann Affidavit.

18. Cowan's statement that she had "the virus" was consistent with her prior behavior.

19. Prior to her encounter with Cann, Cowan asked the concierge in the Condominium lobby, Rikaya Frigon, to scan paperwork to Cowan's email address. The paperwork stated, "This person has been tested for COVID-19." See **Exhibit 2**, Frigon Affidavit.

20. Despite her positive test for COVID-19, Cowan has continued to use the common elements, to include going to the lobby and interacting with the concierge.

21. The Association, through counsel, transmitted a letter to Cowan demanding that she self-quarantine. A copy of the letter is attached hereto as **Exhibit 3**.

22. Cowan has stated to staff working in the Association that her health is not the business of the Association.

23. Cowan's behavior poses a risk to each resident residing in and each staff member working at the Association, particularly the elderly and those who are immunocompromised.

24. To date, Cowan has refused to self-quarantine.

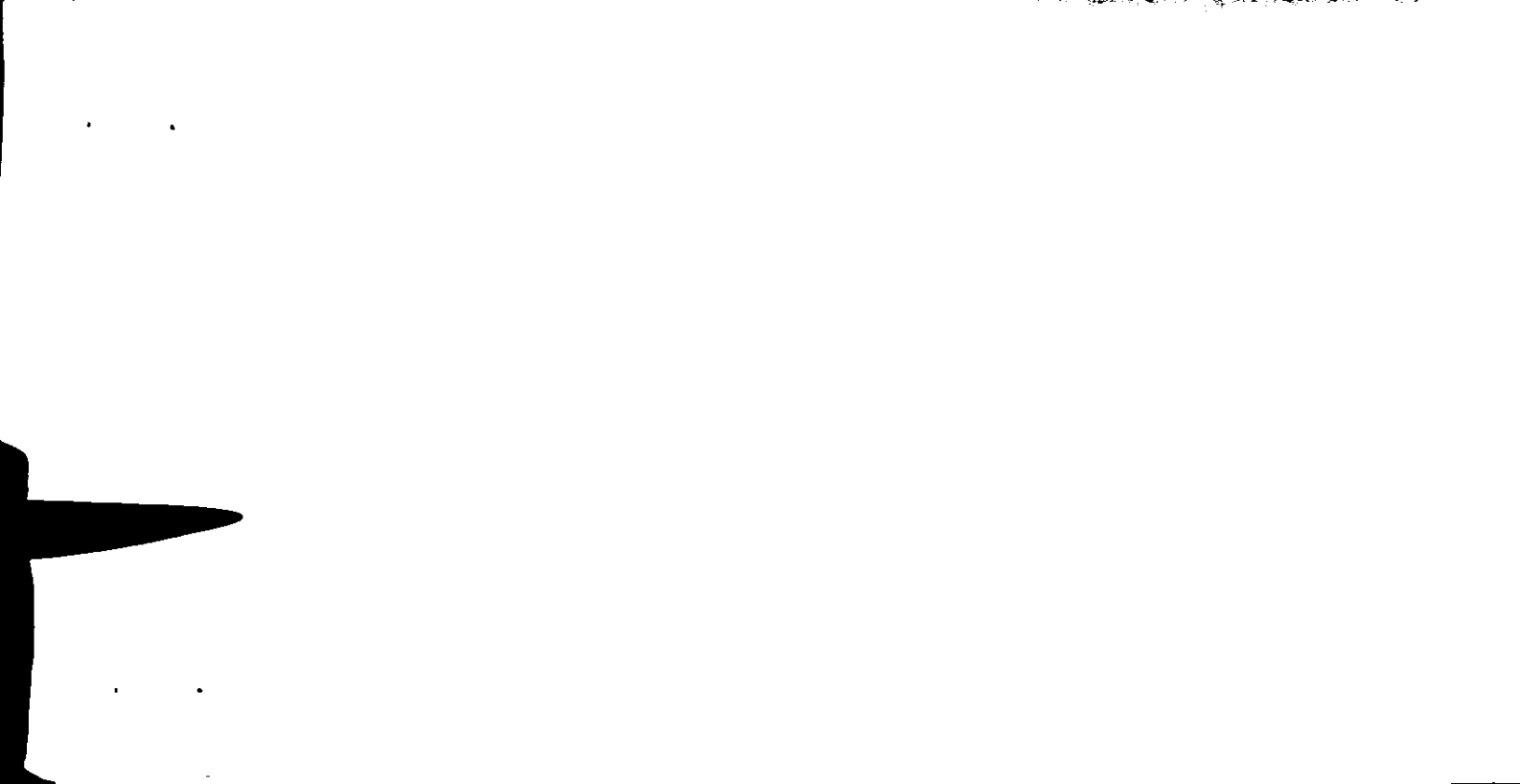
25. On April 7, 2020, counsel for the Association contacted the VDH to seek intervention, but the VDH has refused to intervene to require Cowan to self-quarantine.

26. On April 7, 2020, counsel for the Association contacted the Fairfax County Government to seek intervention, but the Fairfax County Government has refused to intervene to require Cowan to self-quarantine.

27. The Franconia Police Station has refused to intervene.

COUNT 1 – WRIT OF MANDAMUS

28. The foregoing paragraphs are incorporated herein by reference.



29. The VDH has the power under Va. Code § 32.1-48.05 to issue orders of quarantine or prepare orders of isolation for a communicable disease of public health threat.

30. The VDH has an obligation to examine Va. Code Ann. § 32.1-48.07 and determine whether it is necessary to issue a quarantine order upon Cowan.

31. The VDH has failed to undertake this exercise, instead stating that it has no power to protect members of the Association or the community at large, notwithstanding the power granted by Va. Code § 32.1-48.05.

32. A review of Va. Code Ann. § 32.1-48.07 demonstrates that the VDH must issue a quarantine order to Cowan as she poses a health and safety risk to others.

33. Despite multiple calls from undersigned counsel, the VDH has indicated that it will not act to assist the Association and its members, who may become infected with COVID-19.

34. The Fairfax County Government has also refused to exercise its powers, writing:

Thank you for reaching out with your concern. Everyone in Virginia is subject to Governor Northam's stay-at-home order, which includes a list of acceptable reasons for leaving home. Those individuals with known cases of COVID-19 or who are awaiting test results should follow the direction of their healthcare providers and should self-quarantine per guidance from the CDC and the Virginia Department of Health. More information on that guidance is available here: [https://www.fairfaxcounty.gov/health/sites/health/files/assets/documents/pdf/home_isolation-quarantine_release_graphic_3.23.2020_final%20\(003\).pdf](https://www.fairfaxcounty.gov/health/sites/health/files/assets/documents/pdf/home_isolation-quarantine_release_graphic_3.23.2020_final%20(003).pdf)

If you are concerned about the behavior of an individual or a group of people who may not be following the guidance provided by local, state and federal officials, you may call the Fairfax County Police non-emergency number at 703-691-2131. Our public safety officials will seek to educate and to encourage voluntary compliance.

35. A writ of mandamus is necessary to compel the VDH to comply with its statutory obligations.

COUNT 2 – NUISANCE

36. The foregoing paragraphs are incorporated herein by reference.

37. The term “nuisance” includes everything that endangers life or health or obstructs reasonable and comfortable use of property.

38. By failing to quarantine and by going to common areas, including the lobby, elevators and hallways, Cowan has endangered the life and health of other residents.

39. Cowan has also denied other residents the ability to use their property fully out of fear that Cowan could transmit the virus to them.

COUNT 3 – TEMPORARY RESTRAINING ORDER

40. The foregoing paragraphs are incorporated herein by reference.

41. A temporary restraining order is necessary to ensure that Cowan remains in her unit.

42. The Association, which is responsible for overseeing the health and welfare of the Condominium and its residents, will suffer irreparable harm if an injunction is not granted because Cowan will continue to expose residents to COVID-19.

43. The Association is likely to succeed on the merits of its claim.

44. The public interest is served by having Cowan remain in her unit so that others will not be infected and possibly die from COVID -19 due to the actions of Cowan.

COUNT 4 - QUARANTINE ORDER (IN THE ALTERNATIVE)

45. Paragraphs 1-27 are incorporated herein by reference.

46. The CDC guidelines and VDH guidelines operate as a quarantine order for individuals diagnosed with COVID -19.

47. Cowan has been diagnosed with COVID -19.

48. The quarantine of Cowan bears a real or substantial relation to protection of the public health.

49. The Court can enforce the quarantine order as the power of enforcement has been delegated to the law enforcement agencies, over which the Court has oversight.

Wherefore, Plaintiff requests that the Court enter judgment against Cowan and VDH, require VDH to conduct its statutory obligations, require Cowan to quarantine in her unit for at least 14 days or until such time as a physician or the VDH finds that Cowan no longer has COVID-19, whichever is later, and grant all other relief deemed appropriate.

REES BROOME, PC



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