

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:	*	
	*	
GORDON PROPERTIES, LLC,	*	Case No. 09-18086-RGM
	*	Chapter 11
Debtor.	*	
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GORDON PROPERTIES, LLC,	*	
	*	
Plaintiff,	*	
v.	*	Adv. Pro. No. 09-01304-RGM
	*	
FIRST OWNERS' ASSOCIATION OF	*	
FORTY SIX HUNDRED	*	
CONDOMINIUM, INC.,	*	
	*	
Defendant.	*	

DEBTOR'S AMENDED COMPLAINT FOR
DAMAGES FOR INTENTIONAL VIOLATION OF AUTOMATIC STAY
AND FOR INJUNCTIVE RELIEF TO ENFORCE AUTOMATIC STAY

The debtor, Gordon Properties, LLC ("Debtor"), by counsel, respectfully requests that the Court enter judgment in favor of the Debtor against the defendant, First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA"), for damages for intentional violation of the automatic stay of 11 U.S.C. §362, and enter a preliminary and permanent injunction enforcing the automatic stay of 11 U.S.C. §362, and in support of this Amended Complaint states as follows:

1. The Debtor commenced this chapter 11 case with the filing of a voluntary petition (the "Petition") on October 2, 2009. The Debtor is in possession of its assets and operating its business as a debtor-in-possession.

DONALD F. KING, ESQUIRE, VSB NO. 23125
Counsel for Debtor
ODIN FELDMAN & PITTLEMAN PC
9302 Lee Highway, Suite 1100
Fairfax, Virginia 22031
Direct: 703-218-2116
Fax: 703-218-2160
E-Mail: donking@ofplaw.com

2. The Debtor's bankruptcy estate (the "Estate") consists of, *inter alia*,¹ its 100% fee ownership interest in forty-one (41) condominium units (the "Units") at the Forty Six Hundred Condominium ("The 4600 Condominium") located at 4600 Duke Street, Alexandria, Virginia. The 41 Units consist of six (6) residential condominium units, thirty-four (34) commercial condominium units, and one (1) separate pad-site commercial condominium unit occupied by Mango Mike's Restaurant (the "Restaurant Unit").

3. The defendant, First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA"), is a Virginia non-stock corporation incorporated on May 17, 1977, to serve as the owners' association required by the declaration and bylaws of The 4600 Condominium.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §1409. This is a core proceeding pursuant to 11 U.S.C. §157(b)(2).

5. On October 2, 2009, the Debtor commenced this adversary proceeding with the filing of Debtor's Complaint for Injunctive Relief to Enforce Automatic Stay (the "Complaint") [Docket No. 1]. The Complaint was served upon FOA on October 7, 2009 [Docket No. 11]. No responsive pleadings have been filed as of the filing of this Amended Complaint.²

¹ The Estate also includes fourteen (14) garage spaces and six (6) storage units at The 4600 Condominium, each of which is a "single-user" limited common element assigned to a Unit owned by the Debtor, the Debtor's 100% ownership interest in Condominium Services, Inc., a community association and rental property management company, the Debtor's 100% ownership interest in Gordon Residential Holdings, LLC, which owns 1 residential unit at The 4600 Condominium, and various cash deposits and rent receivables.

² Although FOA responded [Docket No. 10] to the Debtor's Motion for Preliminary Injunction (the "Motion") [Docket No. 3], FOA has not yet responded to the Complaint. Pursuant to FRBP 7015 (FRCP 15(a)(1)(A)), the Debtor may amend its Complaint at any time prior to being served with a response.

6. Schedule D of the Debtor's Schedule of Assets and Liabilities (the "Schedules") identifies FOA as a secured claimant with respect to a condominium lien for unpaid assessments in the approximate amount of \$300,000. FOA's claim is scheduled by the Debtor as disputed (the "Disputed Assessments").³ The Disputed Assessments relate to the Restaurant Unit.

7. Notwithstanding the existence of a *bona fide* dispute with respect to the Disputed Assessments, FOA has denied substantive rights to the Debtor based upon its assertion that the Debtor is delinquent in payment of its assessments.

8. In particular, FOA denied the Debtor the right to vote the interests of each of the Debtor's Units and proxies granted to the Debtor by other unit owners at FOA meetings held in October 2008 and June 2009 upon the assertion that the Debtor is delinquent in payment of the Disputed Assessments.

9. The annual owners' meeting of FOA was scheduled for October 7, 2009 (the "Annual Meeting"), which was after the commencement of this case. Anticipating that FOA would similarly deny the Debtor its voting rights at the Annual Meeting, the Debtor commenced this adversary proceeding and sought emergency relief to enjoin FOA from denying the Debtor the right to vote at the Annual Meeting [Motion for Preliminary Injunction, Docket No. 3].

10. Although this Court denied the Debtor's emergency motion [Order Denying Motion for Preliminary Injunction, Docket No. 14], the denial was without prejudice. Moreover, both the Court's order and its statements from the bench made it

³ The Debtor alleges that FOA did not have the authority to make the assessments that are the subject of the Disputed Assessments, and the Debtor has not paid those Disputed Assessments. The Debtor has fully and timely paid all other assessments relating to its Units. Nonetheless, the Debtor submits that it is entitled to the relief sought in this Complaint regardless of whether the Disputed Assessments are valid or invalid.

clear that there was a distinct possibility that denying the Debtor the right to vote could constitute a violation of the automatic stay and that FOA would be acting at its own peril.

11. In the evening following the hearing on the Debtor's Motion for Preliminary Injunction, the Debtor attended the Annual Meeting.

12. At the Annual Meeting, an insufficient number of unit owners was present, in person or by proxy, to meet the quorum requirement stated in FOA's bylaws.

13. The Debtor's votes present at the Annual Meeting constituted more than fifty percent (50%) of the total votes present at the Annual Meeting.

14. FOA's president and board member, Dewanda Cuadros ("Cuadros"), convened the Annual Meeting solely for the purpose of entertaining a motion to adjourn.

15. Cuadros recognized fellow FOA board member, Kevin Broncato, who moved that the annual meeting be adjourned and not reconvened (the "Broncato Motion").

16. Cuadros then purported to take a vote on the Broncato Motion.

17. Gordon Properties voted "no" on the Broncato Motion.

18. Cuadros refused to recognize the Debtor's vote and declared the Broncato Motion passed.

19. Had FOA allowed the Debtor to vote, the Broncato Motion would not have passed.

20. Had FOA allowed the Debtor to vote, the Debtor would have moved (the "Debtor's Motion") to adjourn for a shorter period so that sufficient proxies could be obtained to achieve a quorum.

21. At least one other unit owner who was present at the Annual Meeting would have seconded the Debtor's Motion.

22. Had FOA allowed the Debtor to vote on the Debtor's Motion, that motion would have passed.

23. The Debtor's ownership interests in the Units, and its right to vote, constitute a material and highly valuable component of the Debtor's chapter 11 estate and its ability to reorganize.

Count I

24. The Debtor incorporates the allegations contained in paragraphs 1 through 23, above, as if fully set forth herein.

25. FOA denied the Debtor its right to vote on the Broncato Motion solely because FOA alleges that the Debtor is delinquent in paying its assessments.

26. FOA denied the Debtor its right to vote on the Broncato Motion with knowledge of the existence of the automatic stay of 11 U.S.C. §362.

27. FOA denied the Debtor its right to vote on the Broncato Motion following the hearing conducted earlier that day on the Debtor's Motion for Preliminary Injunction and with knowledge of the Court's admonitions regarding any potential violation.

28. FOA's denial of the Debtor's right to vote has caused immediate and irreparable harm to the Estate and the Debtor's reorganization prospects.

29. FOA's denial of the Debtor's right to vote has caused real damages to the Debtor and its Estate.

30. FOA has acted willfully and maliciously with a specific intent to harm the Debtor and its business interests.

Count II

31. The Debtor incorporates the allegations contained in paragraphs 1 through 23, above, as if fully set forth herein.

32. Prior to the filing of this chapter 11 case, the Debtor and FOA were parties to certain litigation (the "Litigation") pending in the Circuit Court for the City of Alexandria, Virginia (the "Circuit Court").

33. The Litigation included claims by the Debtor against FOA and counterclaims by FOA against the Debtor.

34. The Litigation resulted in certain rulings by the Circuit Court that were not favorable to FOA on its counterclaim. Consequently, FOA noted an appeal to the Virginia Supreme Court (the "Appeal").⁴

35. Following commencement of this chapter 11 case, FOA filed with the Clerk of the Virginia Supreme Court a Notice of Bankruptcy Filing by Gordon Properties, Inc. (the "Bankruptcy Notice").⁵ In the Bankruptcy Notice, FOA acknowledged that it was stayed by 11 U.S.C. §362 from taking any action on its Appeal, including, without limitation, the filing of a Petition for Appeal.

36. Notwithstanding FOA's knowledge of the existence of the automatic stay and the statutory injunction against it with respect to taking any action on the Appeal, and without first obtaining relief from the automatic stay, FOA filed a Petition for Appeal with the Virginia Supreme Court.

37. FOA's actions have caused immediate and irreparable harm to the Debtor.

⁴ Some rulings of the Circuit Court were in favor of FOA, and others were not. Similarly, some rulings were in favor of the Debtor, and others were not. Each party noticed its appeal of the rulings that were not in its favor.

⁵ The Bankruptcy Notice was filed jointly by FOA and the Debtor.

38. FOA has acted willfully and maliciously with a specific intent to harm the Debtor and its business interests.

WHEREFORE, the Debtor, Gordon Properties, LLC, by counsel, respectfully requests that the Court:

(i) enter judgment that FOA violated the automatic stay by denying the Debtor its right to vote at the Annual Meeting;

(ii) enter judgment that FOA violated the automatic stay by filing its Petition for Appeal;

(iii) enter judgment that FOA acted with knowledge of the existence of the automatic stay;

(iv) enter judgment that FOA acted willfully, maliciously, and with specific intent to harm the Debtor and its business interests;

(v) enter judgment against FOA for compensatory and punitive damages and attorney's fees in an amount determined following trial to be appropriate under the circumstances based upon the evidence presented;

(vi) enter judgment voiding any action taken by FOA at the Annual Meeting;

(vii) enter judgment ordering FOA to reconvene the Annual Meeting within a reasonable period of not less than thirty (30) days;

(viii) permanently enjoin FOA from denying the Debtor the right to vote the interest of each of its Units and all proxies at any meeting of FOA, including the Annual Meeting, on the basis that it has not paid assessments or any other monies that might be due; and

(ix) permanently enjoin FOA from assessing against any of the Units owned by the Debtor any amounts intended to pay any judgment entered herein or any costs incurred by FOA in this bankruptcy case, including, without limitation, attorney's fees.

Respectfully submitted,
GORDON PROPERTIES, INC.
By counsel

By: /s/Donald F. King
Donald F. King, Esquire, VSB No. 23125
Counsel for Debtor
ODIN FELDMAN & PITTLEMAN PC
9302 Lee Highway, Suite 1100
Fairfax, Virginia 22031
Direct: 703-218-2116
Fax: 703-218-2160
E-Mail: donking@ofplaw.com

Certificate of Service

The undersigned certifies that this Amended Complaint was served electronically on November 3, 2009, upon Linda S. Broyhill, Esquire, Counsel for FOA, pursuant to this Court's CM/ECF procedures.

/s/Donald F. King

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