

APPEARANCES:

For Debtor/Plaintiff:

DONALD KING, ESQ.

For Defendant First Owners' Association of Forty Sixty Hundred
Condominium, Inc.:

ROBERT MARINO, ESQ.

MICHAEL DINGMAN, ESQ.

C O N T E N T S

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Dee Cuadros	15	28	36	--
Bryan Sells	38	47	66	--
Lindsay Wilson	67	79	87	--
James Bryant	88	90	--	--
Martina Hernandez	96	99	102	--
Richard Mendelson	107	110	--	--
Dee Cuadros	132	137	141	--
Kevin Broncato	142	146	--	--
Corey Brooks	156	161	166	168
Jerry Terry	169	173	175	--

E X H I B I T S

	FOR IDENTIFICATION	IN EVIDENCE
Plaintiff's Exhibit No. 1	20	--
Defendant's Exhibit A	31	--

1 P R O C E E D I N G S

2 THE CLERK: All rise. The United States Bankruptcy Court for
3 the Eastern District of Virginia is now in session. The Honorable
4 Robert
5 G. Mayer presiding. Please be seated.

6 We have Item Number 2, Gordon Properties, LLC, versus First
7 Owners' Association of Forty Six Hundred, APN 09-01304.

8 MR. KING: Good morning, Your Honor. Donald King for Gordon
9 Properties.

10 MR. MARINO: Good morning, Your Honor. Robert Marino for
11 First Owners' and with me is Michael Dingman from the Law Firm of Reed
12 Smith.

13 THE COURT: All right. Thank you.

14 MR. DINGMAN: Good morning, Your Honor.

15 THE COURT: Mr. King.

16 MR. KING: Thank you, Your Honor. We are ready to proceed,
17 Your Honor. I think it would be appropriate to have a rule on
18 witnesses.

19 THE COURT: All right. Who do you intend to call as
20 witnesses?

21 MR. KING: My witnesses are all seated at this row over here,
22 Your Honor.

23 THE COURT: All right. You want to identify who's who?

24 MR. KING: Yes, Your Honor. Richard Mendelson, Lindsay
25 Wilson, Jane Brungard, and Martina Hernandez.

THE COURT: All right.

MR. DINGMAN: Your Honor, we have two witnesses, Kevin

1 Broncato and Corey Brooks, and one other who's not arrived yet, Jerry
2 Terry, but we'll ask him to stay outside, as well.

3 THE COURT: All right. Those of you who may be witnesses,
4 you're going to be asked to step outside and wait in the Witness Room.
5 You'll be called at the time that your testimony is necessary.

6 This is done so that we get your testimony and not anyone
7 else's, so that you're not influenced by it, and that means I don't
8 want
9 you to talk about your testimony from this point on with anyone either
10 before or after until you've been released and the case is over. All
11 right. Thank you. We'll call you as you're called.

12 MR. KING: Your Honor, I think -- I think Your Honor is
13 probably aware of a little bit of the background, but essentially
14 Gordon
15 -- Gordon Properties owns approximately 40 units at the Forty Six
16 Hundred
17 Condominium. That's 4600 Duke Street Condominium. The Unit Owners
18 Association of that condominium is an entity by the name of First
19 Owners'
20 Association of Forty Six Hundred Condominium, Inc.

21 Everybody familiar with the condominium and the association
22 routinely refers to the association as FOA, First Owners' Association,
23 and I think you'll hear that regularly today.

24 We're here today, Your Honor, because we believe FOA has
25 violated the automatic stay by denying Gordon Properties its right to
26 vote at the annual meeting that was conducted -- excuse me, Your Honor
27 --
28 on October 7th.

29 Shortly after the bankruptcy filing, we asked on an expedited
30 basis for a preliminary injunction to allow Gordon Properties to vote
31 at
32 at

1 its -- at the FOA Annual Meeting on October 7th. We had anticipated
2 that
3 the association would deny Gordon Properties the right to vote. Your
4 Honor granted us an expedited hearing, actually on the same day of the
5 annual meeting, October 7th. We had the hearing in the morning and the
6 annual meeting was in the evening.

7 Your Honor denied the preliminary injunction at that point.
8 I think it's fair to say that Your Honor was somewhat sensitive to the
9 issues with respect to that, but on an expedited basis without evidence,
10 without really an opportunity to look at it, I think the Court was
11 lightly concerned about granting the relief that was requested at that
12 time.

13 However, Your Honor, what in fact Gordon Properties feared
14 did in fact happen and it was denied its right to vote at the annual
15 meeting and again we believe that violated the automatic stay.

16 Your Honor, why are we here? Very candidly, Gordon
17 Properties owns 20 percent of the vote of this condominium, one-fifth
18 of
19 the condominium, and it essentially has been denied its right to vote
20 for
21 the board for three years. Gordon Properties currently does not
22 support
23 the board that governs the association. Gordon Properties believes
24 that
25 a majority of the owners do not support the board that governs the
26 association.

27 There has been no annual meeting since 2006, Your Honor.
28 Gordon Properties believes this has been by design. Without a meeting,
29 the board continues to remain in power and they could only accomplish
30 this by denying Gordon Properties its right to vote because it not only

1 has 20 percent but it believes that it can acquire proxies that would
in
2 fact sustain the majority at any meeting that would -- that would occur.

3 The association has gone -- even gone so far as to concoct
4 assessments in advance of meetings and declared Gordon Properties
5 delinquent in order to deny them the right to vote, and I say concocted
6 because a jury of the Alexandria Circuit Court has told First Owners'
7 Association that the assessments were improper and that they couldn't
8 deny -- they couldn't assess the charges against them.

9 Here's what happened, Your Honor. In 2007, the annual
10 meeting wasn't even held. The association simply put a piece of paper
on
11 the wall and said we're canceling the meeting, there isn't a quorum.
12 They didn't even have the meeting.

13 In 2008, they attempted to have a meeting but declared -- in
14 2008, they attempted to have a meeting but declared there was no quorum
15 and that was based upon the fact that Gordon Properties was denied its
16 right to vote and it was denied its right to vote based upon an
17 assessment, as I said earlier, that had been concocted by the
association
18 shortly before the meeting. So Gordon Properties wasn't allowed to
vote.
19 There was no quorum. The unit owners weren't allowed to vote for a new
20 board at that time.

21 That assessment that FOA relied upon to deny Gordon
22 Properties its right to vote at the 2008 meeting is the one that was
23 later rejected by a jury of the Alexandria Circuit Court and so now
24 freshly being current on its assessments, no longer being tasked with
the
25 delinquency, Gordon Properties asked for a special election, a special

1 meeting, so that an election could occur.

2 Within days prior to that special meeting, which was finding
3 notice by the association, within days prior to that meeting, the
4 association retroactively assessed five years worth of assessments
5 against one of the commercial units and declared Gordon Properties
6 delinquent and didn't let them vote at the special assessment that
7 Gordon
8 Properties asked for. So they couldn't even vote at their own meeting
9 and so no meeting was -- no meeting occurred.

9 That brings us to the October 7th annual meeting, Your Honor.
10 Again, shortly after the bankruptcy filing we asked the Court for
11 relief.
12 After the hearing was conducted, the meeting went forward that evening
13 and Gordon Properties was still denied its right to vote.

13 Your Honor's going to hear the testimony with respect to all
14 of this. You're going to hear, Your Honor, that the board comes out
15 and
16 announces that there's no quorum, asks for a motion to adjourn. One of
17 the unit owners jumps up, the first person to respond, asks for an
18 adjournment for 30 days, the president simply ignores her, calls on one
19 of her cronies who is the head of the Election Committee who stands up
20 and moves to vote -- moves to adjourn indefinitely. There is a clear
21 majority, the voting against the motion, but the president says,
22 "I'm going to do a voice vote," declares that the ayes have it, and
23 adjourns the meeting and so we're back here today, Your Honor.

23 We believe the conduct, the testimony will clearly establish
24 that the automatic stay was violated, that Gordon Properties was denied
25 its right to vote. Your Honor still has to make the legal
determination
determination

1 as to whether that was a violation of the automatic stay. We'll argue
2 that at the end of the case, but I'm pretty confident with respect to
3 that.

4 MR. DINGMAN: Good morning, Your Honor. Michael Dingman for
5 the First Owners' Association.

6 I'd like to provide the Court with some background, as well,
7 because I've unfortunately been involved in four different lawsuits
8 that
9 Gordon Properties has brought against this association, two of which
10 dealt expressly with the issues before the Court today, and I'd like to
11 correct some of the statements that Mr. King made regarding the past
12 history because they're not accurate.

13 But at the outset, Your Honor, we do believe that the
14 automatic stay does not apply and Mr. Marino will address those issues.
15 We also believe that this is clearly a two-party dispute. The only
16 issue
17 that's been pursued in this bankruptcy by Gordon Properties is this
18 issue
19 relating to its right to vote. That's why it filed this case and we
20 believe it's improper and will make further argument with respect to
21 that.

22 The reason they brought this case --

23 THE COURT: Why do I care if the case was improperly brought
24 today?

25 MR. DINGMAN: Because we believe if the Court --

THE COURT: Why -- why haven't you filed a motion to dismiss?

MR. DINGMAN: We have not filed a motion to dismiss because
we are --

1 THE COURT: Isn't that the way to bring it before the Court?

2 MR. DINGMAN: Well, I think it's -- the reason we're bringing
3 it before the Court, we're not suggesting the Court dismiss the case
4 today, but to the extent -- and they are asking for a mandatory
5 injunction to direct the association to reconvene the annual meeting,
6 that whether the case was properly brought is a consideration when the
7 Court decides whether or not it would grant a mandatory injunction.

8 THE COURT: And you're willing to be collaterally bound by
9 that determination made today?

10 MR. DINGMAN: We're not willing to be collaterally bound by
11 that determination.

12 THE COURT: Well, how can you -- how can you argue it if
13 you're not going to be bound by it further on?

14 MR. DINGMAN: Well, we can argue, Your Honor, under the
15 injunction requirements. They have to show a substantial likelihood of
16 success. If the Court has questions or doubts as to the validity of
17 the filing, then that affects whether or not they would be able to
18 ultimately
19 proceed and therefore that would be a factor for the Court to consider
20 with respect to the request for an injunction.

21 On the issues that have been brought up, Your Honor, there
22 have been at least two state court decisions adverse to Gordon
23 Properties
24 dealing with these same issues. In 2008, Gordon Properties, prior to
25 the
2008 annual meeting, filed suit in the Circuit Court for the City of
Alexandria, Case No. 08-3228, in which they asked for an injunction to
be
allowed to vote at the 2008 annual meeting, raising the same issues
here,
here,

1 including what they contend is the disputed assessment.

2 THE COURT: Well, that's not the same issue.

3 MR. DINGMAN: Well, --

4 THE COURT: It is not the same issue. They're here on 362
5 which was not effective and was not before the Circuit Court. The
6 Circuit Court had no ability to consider 362 because there was no
7 bankruptcy filing.

8 MR. DINGMAN: But the Court --

9 THE COURT: And that's all that's before the Court today.

10 MR. DINGMAN: But the Court in that case did consider the
11 bylaws of the association. The Court did consider --

12 THE COURT: The Court did not consider 362. It is not --

13 MR. DINGMAN: I understand.

14 THE COURT: -- preclusive on this Court.

15 MR. DINGMAN: But my -- the point that we want to make, Your
16 Honor, is the Court dealt with the bylaws of the association and
17 expressly the request of Gordon Properties that the bylaws not be
18 applied
19 so they could vote at the 2008 annual meeting --

19 THE COURT: That's not the question presented today.

20 MR. DINGMAN: That, just so the Court is aware, relief was
21 denied. It was appealed to the Virginia Supreme Court and the appeal
22 was
23 not taken. Gordon Properties then filed a second lawsuit which is Case
24 No. 08-3629, in which it asked the Court again for an injunction to be
25 able to vote at the 2008 annual meeting. That injunction was also
denied, and in that case they expressly asked the Court to declare the

1 bylaws provision regarding voter eligibility to be invalid. So they
2 have
3 presented these arguments, Your Honor, in state court and have not been
4 successful and that's why they've come here.

5 Now with respect to the background, there has not been a
6 quorum achieved at an annual meeting since 2006. That is true. The
7 question of whether an annual meeting was held was precisely the issue
8 brought before the Circuit Court for the City of Alexandria in Case No.
9 3228 and the judge expressly held that an annual meeting had in fact
10 been
11 conducted but they could not conduct business because a quorum was not
12 met.

13 The 2007 annual meeting that was referred to by Mr. King,
14 Your Honor, was actually continued twice in an effort to obtain a
15 quorum
16 but after two continuances, it was clear a quorum would not be attained
17 and that was the end of the 2007 annual meeting.

18 So there's not been any effort by the board to stifle
19 anyone's ability to vote. The board is required to follow the bylaws.
20 It's required to file -- follow the VA Condominium Act and that's
21 what's
22 it done.

23 Now moving up to the 2009 annual meeting, it's undisputed,
24 Your Honor, that Gordon Properties votes were counted with respect to
25 whether a quorum had been achieved. It's undisputed that a quorum was
not achieved, that the votes present were 38.1 percent. The bylaws
require 50 percent quorum. Therefore, no business could be conducted.
In fact, when I took the deposition of Mr. Sells as the designee for
Gordon Properties, he agreed that the only thing that could be

1 entertained was a motion to adjourn.

2 The evidence will show that no one from the association ever
3 told Gordon Properties they could not vote on the motion to adjourn or
4 otherwise. The evidence will show, and we have four witnesses who will
5 all testify to this, that a voice vote was called, that the chair who
6 was Ms. Cuadros, said the ayes have it. She doesn't know how Gordon
7 Properties voted because it was a voice vote, that Gordon Properties
8 did not make any motion for a roll call vote or division of the house or
9 any other motion to contest her determination that the motion to adjourn
10 had carried.

11 So at no time were they denied their right to vote and
12 they've now asked that this Court require a reconvening of the annual
13 meeting which would cost the association significant money at which
14 there's certainly no assurances that a quorum would be achieved and
15 they ask this in the context of asking this Court to set aside a provision
16 of the bylaws which is a contract between all of the unit owners --

17 THE COURT: They're not asking for it to be set aside.
18 They're asking that Section 362 be enforced.

19 MR. DINGMAN: Our view, Your Honor, is that the condominium
20 instruments are a contract.

21 THE COURT: Your view is irrelevant. The issue is whether
22 362 has been violated and will be enforced. The way you're posing the
23 question is incorrect, it is wrong, and you're going down the wrong
24 road.
25 So I suggest you rethink it and start focusing on 362.

MR. DINGMAN: Well, our position, Your Honor, just so it's

1 clear on the record, is that the condominium instruments are a contract
2 between the parties that cannot be varied. The evidence is going to
3 show
4 that as far back at least as 2008 Gordon Properties was not eligible to
5 vote under the bylaws.

6 THE COURT: What does the effect of 362 have on them?

7 MR. DINGMAN: On -- I'm sorry?

8 THE COURT: On your documents. What's the effect of 362 on
9 the documents?

10 MR. DINGMAN: We believe that it has no effect.

11 THE COURT: That's the question before the Court today and
12 that's what you have to address. All right?

13 MR. DINGMAN: And we --

14 THE COURT: Don't -- don't go beyond that and try to uphold
15 the documents or anything like that. That's not the issue. The issue
16 is
17 362. Keep your eyes on it. Keep focused on it. Otherwise you're
18 going
19 to lose because you're not asking and answering the right question.

20 MR. DINGMAN: We will keep our focus on that, Your Honor. We
21 just want to be clear on the record that we believe that this is a
22 contract between the unit owners that cannot be varied. The
23 ineligibility status of Gordon Properties existed well before it filed
24 this petition. So there's been no change in its status after it filed.
25 So we'd ask that the Court deny the motion for preliminary injunction.

26 Thank you.

27 MR. KING: Your Honor, Gordon Properties calls Dee Cuadros.

28 THE COURT: Dee Cuadros, please come forward. Please come

1 forward and be sworn, please.

2 THE COURT: Raise your right hand.

3 Whereupon,

4 DEE CUADROS

5 was called as a witness and, having been first duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. KING:

9 Q Good morning, Ms. Cuadros.

10 A Good morning.

11 Q State your name and address, please.

12 A My name is Dewanda Cuadros, and I live at 4600 Duke Street in
13 Alexandria.

14 Q And you are a unit owner at the Forty Six Hundred
15 Condominium?

16 A Yes, I own 910.

17 Q Any other units?

18 A No.

19 Q Okay. Now, Ms. Cuadros, you heard me say to Judge Mayer that
20 for ease of reference we'll refer to the owners association as FOA.
21 You're familiar with that term and you'll --

22 A Yes.

23 Q -- understand --

24 A Yes, sir.

25 Q You'll understand what I'm talking about when I say FOA? You

1 are a board member of the Board of Directors of FOA?

2 A Yes, I am.

3 Q And you were in fact elected to the board in 2005, is that
4 right?

5 A Yes.

6 Q And you presently serve as the president of FOA?

7 A That's true.

8 Q And you were elected and have served as the president since
9 2006?

10 A Yes.

11 Q You also briefly served as a board member and the president
12 of FOA earlier in the decade, didn't you?

13 A Yes, I did.

14 Q You're familiar with Gordon Properties, Ms. Cuadros?

15 A Yes, I know who they are.

16 Q Okay. And Gordon Properties owns approximately 40 units in
17 the condominium, is that right?

18 A That's true.

19 Q And just so the Judge understands, Forty Six Hundred
20 Condominium is really three distinct portions, isn't it? You have the
21 main building that has the residential units and some commercial units
22 and then you have two separate commercial pad sites?

23 A Yes.

24 Q And one of those pad sites has a gas station on it and one of
25 those pad sites has a restaurant on it?

1 A Yes.

2 Q And the restaurant is named Mango Mike's?

3 A Correct.

4 Q And that commercial pad site where the restaurant is located
5 is owned by Gordon Properties?

6 A Yes.

7 Q And then it owns in the building itself -- well, at the time
8 this bankruptcy case was filed, it had six residential units but it's
9 since sold one, so it has five residential units now, is that correct?

10 A Yes.

11 Q And the remainder of their units are the commercial units?

12 A Yes, that's true.

13 Q Okay. Now, FOA's position is that Gordon Properties is
14 delinquent in its assessments, is that right?

15 A Yes.

16 Q And the amount's approximately \$300,000?

17 A I believe it's in excess of that.

18 Q Okay. And that delinquency relates to the Mango Mike's pad
19 site, is that right?

20 A Yes.

21 Q Gordon Properties is current with respect to all of its other
22 assessments in the condominium, is that right?

23 A I believe so.

24 Q And it's FOA's position that Gordon Properties is not
25 entitled to vote its interest because of that delinquency?

1 A That is the stipulation that's in the bylaws, yes.

2 Q And that's the position of the Board of Directors?

3 A It has been, yes.

4 Q And -- and -- and you maintain that FOA is not entitled to
5 vote any of its interests, even if the other units are current, as long
6 as it's delinquent with respect to one of its unit, is that right?

7 A Yes.

8 Q And -- and you'd agree that FOA's voting rights would be
9 restored the minute it paid the assessments, is that right?

10 A Yes, it would be.

11 Q So the withholding of the vote is intended to get first --
12 get Gordon Properties to pay its assessments, is that right?

13 A The intent is to comply with the bylaws which say that they
14 cannot vote if they're delinquent 30 days.

15 Q So -- so you try to get them to come into compliance with the
16 bylaws by paying their assessments?

17 A They and everyone else.

18 Q Now let's turn to the October 7th meeting specifically, Ms.
19 Cuadros. That was a regularly-scheduled meeting of the association?

20 A Yes, it was.

21 Q And you are aware that earlier in the day we were -- in fact,
22 I think you were here. We were in court on Gordon Properties' first
23 motion that same day of the annual meeting. Do you recall that?

24 A In 2009?

25 Q The October 7, 2009, meeting. Yes, ma'am.

1 A Yes, that's true.

2 Q Yes. And so you were aware prior to the start of that
3 meeting that the board was going to have to make a determination as to
4 whether it was going to allow Gordon Properties to vote at that meeting?

5 A Yes.

6 Q Following the registration for the meeting, you determined
7 that a quorum did not exist, is that right?

8 A Yes.

9 Q And in fact, your attorney made an announcement at the
10 meeting that a quorum had not been met and that the -- and they also
11 made
12 an announcement about what happened in Bankruptcy Court earlier that
13 day,
14 is that right?

15 A I made the announcement that they -- no quorum had been
16 reached.

17 Q I'm sorry. You're right. Your attorney -- your attorney
18 made an announcement about what had happened earlier in the day in
19 Judge
20 Mayer's court?

21 A Yes, he did.

22 Q And when he made that announcement, he had in fact said
23 because a quorum hadn't been met, you didn't have to make a
24 determination
25 as to whether Gordon Properties would be entitled to vote?

A True.

Q By the way, who conducted the registration for the October
7th meeting?

A The League of Women Voters.

1 Q And the association engaged the League of Women Voters to
2 conduct that registration, is that right?

3 A Yes.

4 Q Now the Declaration of the association establishes how many
5 votes each unit has, is that right?

6 A Yes.

7 Q And the total number of votes of the condominium is a
8 thousand, is that right?

9 A Yes.

10 Q And so -- and not all units have the same number of votes, do
11 they?

12 A No.

13 Q So, for example, one unit might have five votes whereas
14 another unit might have two votes?

15 A Yes.

16 Q Based upon the registration count that was conducted by the
17 League of Women Voters, Gordon Properties held a majority of the votes
18 at the October 7th meeting, didn't it?

19 A Yes, it did.

20 MR. KING: Your Honor, I would ask that this be identified as
21 Gordon Properties Exhibit No. 1. It has a Deposition Exhibit Stamp on
22 the bottom.

23 THE COURT: It will be marked as Exhibit No. 1.

24 (Plaintiff Exhibit No. 1 was marked for
25 identification.)

1 BY MR. KING:

2 Q Ms. Cuadros, if you would please look at -- excuse me --
3 Exhibit No. 1. You're familiar with that document, aren't you?

4 A Yes.

5 Q And this in fact reflects the tally of the votes of those who
6 registered for the annual meeting on October 7th, is that right?

7 A It is the number of votes for quorum by Gordon Properties.

8 Q Well, look at the third page.

9 A The third page? Oh, okay.

10 Q That's all the rest of the units, right?

11 A Yes, it is.

12 Q So -- so this entire document together, all four pages, is
13 the total of all of the votes who -- that registered for the annual
14 meeting?

15 A That is correct.

16 Q Okay. Now you had mentioned Gordon Properties. The first
17 two pages and it says at the top on the second line, Gordon Properties,
18 so this in fact is the tally of all of the votes of Gordon Properties
19 that registered for the meeting, is that right?

20 A Yes.

21 Q And it totals as a percentage 19.7179, is that right?

22 A Yes.

23 Q And then if you turn to the third page, this is the tally of
24 all of the other votes --

25 A Yes.

1 Q -- that were registered and that totals 18.4288 percent, is
2 that right?

3 A Correct.

4 Q Ms. Cuadros, tell me why -- why were there separate tallies,
5 one done for Gordon Properties and one done for everybody else?

6 A Well, I'm not sure why it was done. The -- I think it was
7 done at the request of our attorney.

8 Q And that was in case you had to determine whether Gordon
9 Properties was going to be allowed to vote, you knew how much it was?

10 A Yes.

11 Q There's a name at the top left corner Deborah Ribis, Ribis.
12 Who is that?

13 A She is the person that we hired to count the votes.

14 Q Okay. So -- and she has a computer program that does that,
15 is that right?

16 A Yes, she does.

17 Q And all of the proxies that were given to the League of Women
18 Voters to register were then given to Ms. Ribis so that she could input
19 them into her computer to determine whether a quorum had existed?

20 A Correct.

21 Q Ms. Cuadros, at the -- at the end of the tables on both Page
22 2 and Page 4, there's something that has been blacked out. What is
that?

23 A I don't know.

24 Q Unit Owner Jane Brungard registered for the meeting, is that
25 right?

1 A I don't know.

2 Q You don't know who registered for the meeting?

3 A No.

4 Q Doesn't who registered for the meeting determine who's
5 qualified to vote?

6 A Well, yes, it does, but I did not look at the -- at the
7 proxies. I have never seen proxies. I cannot tell you if Jane
8 Brungard registered to vote.

9 Q Okay. Can you tell me whether Martina Hernandez registered
10 to vote?

11 A No, I can't.

12 Q You don't know?

13 A I can't tell you whether anyone registered to vote, except
14 for what I see here.

15 Q I understand, I understand. So when you're sitting in a room
16 conducting a vote and all of the people in there respond to you and say
17 I vote in favor or not, you don't know whether they were even qualified
18 to vote, do you?

19 A No, I don't. I don't know if they're owners or -- I know
20 that they are owners.

21 Q Assume for the moment, Ms. Cuadros, that Jane Brungard
22 registered with 100 votes. That would be 10 percent of the entire
23 association's votes, wouldn't it?

24 A Yes.

25 Q And assume that Ms. Hernandez registered with 50 votes. That

1 would be five percent of the entire association, wouldn't it?

2 A All right.

3 Q Is that correct?

4 A Yes.

5 Q We already know that Gordon Properties registered with just
6 about 20 percent of the vote and so if you add on the assumed 10
7 percent and five percent from Ms. Brungard and Ms. Hernandez, my math adds that
8 up to 35 percent, is that right?

9 A Yeah.

10 Q And the total number of percentage of votes that were
11 registered at the meeting was 38 percent, wasn't it?

12 A Yes.

13 Q After you made the determination that a quorum did not exist,
14 you asked for a motion to adjourn, didn't you?

15 A I did.

16 Q And the first person to respond was Jane Brungard who moved
17 to adjourn for 30 days, is that correct?

18 A Jane Brungard did respond. She was not -- she was not
19 selected to make that --

20 Q You didn't select her?

21 A No, I didn't.

22 Q But she was the first person to jump up and move to -- to
23 adjourn?

24 A She jumped up and -- and moved to adjourn.

25 Q She was the first person to, is that right?

1 A She was not the first person to raise her hand or his hand to
2 make that motion.

3 Q She was the first person to speak?

4 A She was the first person to speak, which she often is.

5 Q And you told Ms. Brungard that you would not recognize her
6 because Mr. Broncato, who was sitting in the back of the room had his
7 hand up first?

8 A That is correct.

9 Q And Mr. Broncato is the chairperson of your Election
10 Committee, is that right?

11 A Yes.

12 Q And Mr. Broncato's motion was to adjourn indefinitely, is
13 that right?

14 A He made the motion to adjourn, yes.

15 Q And you took a vote on that motion?

16 A A voice vote.

17 Q A voice vote. You didn't record who voted on the motion?

18 A No, I did not.

19 Q And you didn't ask if -- did you ask if anyone opposed the
20 motion?

21 A Yes, I did.

22 Q Okay. And you know Lindsay Wilson, do you not?

23 A I do know Lindsay Wilson.

24 Q And Lindsay Wilson was the representative of Gordon
25 Properties who was in attendance at the meeting?

1 A She was in attendance.

2 Q And she was there on behalf of Gordon Properties?

3 A I assume so.

4 Q And you heard her vote in opposition to the Broncato motion,
5 didn't you?

6 A I can't say I did. I heard -- I heard a number of voices
7 vote in opposition. I don't know who they were --

8 Q Okay.

9 A -- any more than I knew who voted for adjournment.

10 Q And it's -- it's -- it's -- it's your testimony that even
11 though everyone in that room had a different number of votes, you were
12 entitled to determine whether the motion passed simply by what you
13 heard?

13 A Yes.

14 Q Did you hear Jane Brungard vote in opposition to the vote?

15 A I don't know who voted in opposition to the vote.

16 Q So your testimony will also be that you don't know whether
17 Martina Hernandez voted against it?

18 A I have no idea.

19 Q Okay. And in fact, you have no idea specifically who voted
20 for or against the meeting?

21 A I --

22 Q The motion?

23 A That's true.

24 Q Ms. Cuadros, you had already determined before you even asked
25 for the motion that it was going to be passed, didn't you?

1 A I didn't know that. How would I know that?

2 Q You acknowledge today that the votes were not counted in
3 accordance with the Declaration, is that right?

4 MR. DINGMAN: Object, Your Honor. He's asking her a legal
5 question. She's already testified that it was a voice vote and he's
6 not
7 established a foundation that that's improper or contrary to the
8 documents.

8 THE COURT: Overruled. Answer the question, if you can.

9 THE WITNESS: Okay. Would you ask the question again?

10 MR. KING: Certainly, Ms. Cuadros.

11 BY MR. KING:

12 Q You understand today that the -- that the manner in which you
13 counted the votes was not in accordance with the Declaration, is that
14 right?

15 A I don't know if it was or not. We always have a voice vote.
16 In the 30 years that I have lived there, it has always been a voice
17 vote
18 and it was a voice vote that day.

18 Q But -- but votes are by ownership interest, aren't they?

19 A They are for electing candidates, yes.

20 Q Is that all?

21 A The motion was to adjourn. I called for a voice vote.

22 Q Okay, okay. And based upon your estimate of who voted in
23 favor of it, you adjourned the meeting?

24 A I did.

25 Q Let me ask you this, Ms. Cuadros. From the time you asked

1 for a motion to adjourn until the time you adjourned the meeting itself,
2 in your estimate how much time had elapsed?

3 A Oh, I have no idea. I wasn't timing it.

4 Q Was it 10 minutes?

5 A No, I don't think so.

6 Q Was it less than 30 seconds?

7 A I don't think so.

8 Q Was it less than --

9 A Between 30 seconds and 10 minutes.

10 Q It is a big difference.

11 A Yes, it is.

12 MR. KING: No further questions, Your Honor.

13 THE COURT: Thank you.

14 CROSS EXAMINATION

15 BY MR. DINGMAN:

16 Q Ms. Cuadros, I'd like to go back to the questions you were
17 asked with respect to the bylaws.

18 Do the bylaws of the association state that if a unit owner
19 is delinquent in any amount that they're not eligible to vote?

20 A Yes, if they're 30 days past due.

21 Q So the fact that Gordon Properties may have been current in
22 some but not all their units doesn't change that provision of the
23 bylaws,
right?

24 A No, it doesn't.

25 Q And isn't it true that Gordon Properties had been delinquent

1 on the street front unit going all the way back to prior to the 2008
2 annual meeting?

3 A Yes.

4 Q This provision of the bylaws, is it applied to all unit
5 owners?

6 A Yes.

7 Q So it's not something that you applied just to Gordon
8 Properties?

9 A No, not at all.

10 Q And it's not something that was applied to Gordon Properties
11 after it filed this case?

12 A No.

13 Q And the bylaws are part of the condominium --

14 MR. KING: Your Honor, I'm willing to give Mr. Dingman a
15 certain amount of latitude. This is his witness and I don't think he's
16 allowed to lead her.

17 THE COURT: Are you asking her what's in the bylaws?

18 MR. DINGMAN: I just -- Mr. King asked her --

19 THE COURT: I didn't ask you that. I didn't ask you what Mr.
20 King asked her. I asked you a question.

21 MR. DINGMAN: I understand, Your Honor, and let me just say
22 something for the record.

23 THE COURT: No. I just want you to -- no. If you're -- if
24 you're -- are you just asking her what's in the bylaws?

25 MR. DINGMAN: All right, sir.

1 THE COURT: No, all right isn't the right answer. If you're
2 -- the point is simply this. If you want me to know what's in the
3 bylaws, you can produce them and you can introduce --

4 MR. MARINO: We will, Your Honor.

5 THE COURT: Then do. Then why don't -- why don't you do
6 that?

7 MR. DINGMAN: Well, I just wanted to ask her the question to
8 follow up on the questions that Mr. King asked and we'll put the bylaws
9 in evidence in our case.

10 THE COURT: No, don't -- don't try and take her through the
11 bylaws. You're going to introduce them and they speak for themselves
12 and they are what they are.

13 MR. DINGMAN: Well, I understand that, but I think you
14 allowed him, Mr. King, to ask her questions about the Declaration and I
15 think I have the right on -- on cross examination to go over those same
16 topics.

17 THE COURT: What do you want to know from her? Do the bylaws
18 provide that 30 days past due you can't vote? She said yes. Were they
19 always past due according to the association records? Yes. What else
20 do you want to know?

21 MR. DINGMAN: My question is are they part of the condominium
22 instruments for FOA?

23 THE COURT: All right. You need to put the documents in.

24 MR. DINGMAN: I'll call Ms. Cuadros, I guess, in our case,
25 Your Honor.

1 THE COURT: Well, you can put them in now. You can take them
2 out of order, if you want.

3 MR. DINGMAN: Okay. I don't think Mr. King would object to
4 that.

5 MR. KING: No. In fact, they were attached to the opposition
6 to the first motion which is already part of the adversary proceedings.
7 So I think Your Honor probably has them.

8 THE COURT: Well, introduce them for today so the record is
9 clear. They form the basis of the complaint and the defense. So I
10 think that's what we need to see.

11 Mark them as Defendant's No. -- Defendant A, please.

12 (Defendant Exhibit A was marked for
13 identification.)

14 THE COURT: Now if you want to ask about how they've been
15 interpreted over time or something like that, if there's -- you know,
16 to understand them, that's something different, but the documents are what
17 they are.

18 Now where in the documents are you looking?

19 MR. DINGMAN: It's Article IV, Section 7.

20 THE COURT: What page is that?

21 MR. DINGMAN: It's Page 4, Your Honor.

22 THE COURT: Called Voting?

23 THE COURT: Yes.

24 THE COURT: All right. Let me take a look at it.

25 (Pause to review the document.)

1 THE COURT: All right. I've read Section 7.

2 MR. DINGMAN: Thank you.

3 BY MR. DINGMAN:

4 Q Ms. Cuadros, how long have you lived at the 4600 Condominium?

5 A For 30 years.

6 Q And during that time, has the association applied this
7 provision of the bylaws regarding voter eligibility?

8 A Yes.

9 Q Now with respect to the registration of the votes, you
10 testified that that's done by the League of Women Voters?

11 A Yes.

12 Q Is that the association's normal procedure?

13 A We've had various different organizations do the registration
14 of proxies and -- in the past and the League of Women Voters has done
15 it for a number of years.

16 Q And are they hired as an independent body to do that?

17 A Yes, they are.

18 Q So you were not involved in the registration of the votes, is
19 that right?

20 A I wasn't, no.

21 Q Were any board members?

22 A No.

23 Q And then Ms. Ribis, I believe you testified, calculates the
24 information presented by the League of Women Voters to determine how
25 many votes are present?

1 A Yes.

2 Q **And is she also hired as an independent contractor?**

3 A Yes, she is.

4 MR. KING: Your Honor, I'm going to object. That's the
5 second time Mr. Dingman has done that. I don't mind him asking as a
6 fact question that the association hired, but to the extent he's trying to
7 get a legal determination with respect to an independent contractor,
8 clearly what Mr. Dingman is trying to do, Your Honor, and they've done it in
9 the past is they're trying to avoid having to respond to discovery with
10 respect to the results of these registrations. They have consistently
11 maintained in the state court and they have refused to produce
12 documents today, Your Honor, saying that the association has no control. So I
13 just don't want a legal determination with respect to that question.

14 THE COURT: Well, the discovery issues are not before the
15 Court.

16 MR. KING: Understood.

17 BY MR. DINGMAN:

18 Q **So Ms. Ribis then determined how many votes were present at**
19 **the 2009 annual meeting?**

20 A Yes, she did.

21 Q **And that information was subsequently conveyed to you?**

22 A Yes, it was brought to me in the meeting.

23 Q **And you were the chair at the 2009 annual meeting, right?**

24 A Correct.

25 Q **Have you acted as the chair in prior meetings of the**

1 association?

2 A Yes, I have.

3 Q On how many occasions?

4 A Well, just annual meetings are you talking about?

5 Q Yes.

6 A Probably five.

7 Q In your prior experience as the chair of the meetings of the
8 association, how are votes typically taken?

9 A It's a voice vote.

10 Q And you already testified you took a vote -- well, let me
11 back up for a minute.

12 Since a quorum was not achieved, could any business be
13 conducted at the 2009 annual meeting?

14 A No. I made that announcement, that no business could be
15 conducted, and I asked for a motion to adjourn.

16 Q When you asked for the motion to adjourn, who moved, raised
17 their hand, or asked to be acknowledged first?

18 MR. KING: Your Honor, it was asked and answered.

19 THE COURT: Sustained.

20 THE WITNESS: It was Kevin Broncato. I'm sorry.

21 THE COURT: I sustained the objection. He'll ask another
22 question.

23 THE WITNESS: Okay.

24 BY MR. DINGMAN:

25 Q How did Mr. Broncato indicate that he wanted to make a

1 motion?

2 A He raised his hand.

3 Q And did he raise his hand before Ms. Brungard stood up?

4 A Yes, he did. He was the first. There were several people
5 who raised their hands, and he was the first one.

6 Q And you've already testified the motion he made and then you
7 asked or called for a voice vote, right?

8 A Correct.

9 Q Did you eventually announce that you believed the ayes have
10 it and the motion carried?

11 A I did.

12 Q Did Gordon Properties make any motions at that time?

13 A No.

14 Q Did Gordon Properties object to your determination at that
15 time?

16 A No.

17 Q Have you been in prior meetings where Gordon Properties has
18 requested a roll call vote?

19 A Yes, I have.

20 Q Did they make such a request at the 2009 annual meeting?

21 A No, they didn't.

22 Q Prior to the vote on the motion to adjourn, did you tell
23 Gordon Properties or Lindsay Wilson, who was there for them, that she
24 could not vote on the motion?

25 A I did not.

1 Q Did anyone from the association tell Ms. Wilson she could not
2 vote?

3 A No.

4 MR. DINGMAN: That's all the questions I have, Your Honor.

5 THE COURT: Thank you. Any redirect?

6 MR. KING: Very briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. KING:

9 Q The registration list that is used by the League of Women
10 Voters to register the votes is obtained from the association, is that
11 right?

12 A We put tables in the lobby for them, for their use, yes.

13 Q The list, Ms. Cuadros, the list of the owners where they
14 check in, that is provided to the League of Women Voters by the
15 association?

16 A Yes.

17 Q When Broncato's motion, Mr. Broncato's motion to adjourn was
18 accepted, the effect of that motion is there is no continued meeting,
19 you don't meet again until the next year's annual meeting, is that right?

20 A That's true.

21 Q Your testimony is that you didn't hear Ms. Wilson object to
22 your indicating that the motion passed?

23 MR. DINGMAN: Object, Your Honor. That's been asked and
24 answered both in direct and in cross examination.

25 THE COURT: This is a different question. Overruled.

1 THE WITNESS: If she -- I have no idea how she voted. If she
2 voted no, I -- I don't know that. I don't know who --

3 THE COURT: I didn't understand that to be the question. I
4 --

5 THE WITNESS: Okay.

6 THE COURT: -- understood the question to be --

7 MR. KING: I understand --

8 THE COURT: -- whether after the vote you heard her object.

9 THE WITNESS: I -- she didn't object, not to me.

10 BY MR. KING:

11 Q Did you hear Ms. Brungard object?

12 A No, I didn't.

13 Q Did you hear Ms. Hernandez object?

14 A No, I did not.

15 Q Did you hear anyone object?

16 A No, I heard no objections.

17 Q You testified that you didn't tell Ms. Lindsay that she
18 couldn't vote. Did you tell her she could vote?

19 A I didn't even talk to her. I -- I didn't tell her one thing
20 or another.

21 Q You testified that no one from the association told her she
22 couldn't vote. You were not at the registration desk when Ms. Lindsay
23 checked in, were you?

24 A No, I wasn't.

25 Q So you wouldn't know if someone at registration told her she

1 was not allowed to vote, would you?

2 A I don't know what may have been said to her at registration.

3 Q Thank you.

4 THE COURT: All right. Thank you. You may have a seat with
5 your attorney.

6 (The witness was excused.)

7 MR. KING: Gordon Properties calls Bryan Sells, Your Honor.

8 THE COURT: All right. Would you come forward, please, and
9 be sworn?

10 THE COURT: Raise your right hand.

11 Whereupon,

12 BRYAN SELLS

13 was called as a witness and, having been first duly sworn, was examined
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. KING:

17 Q State your name and address for the record, please, Mr.
18 Sells.

19 THE COURT: We don't need your home address, just a business
20 address.

21 BY MR. KING:

22 Q Where you live, city and state.

23 A My name is Bryan L. Sells, and I live in Atlanta, Georgia.

24 Q And how long have you lived in Atlanta?

25 A I've lived in Atlanta for about 10 years. I grew up in

1 Loudon County, near Leesburg, but -- and then I moved around a bit for
2 school but been in Atlanta for 10 years.

3 **Q And what is your educational background, Mr. Sells?**

4 A I got my undergraduate degree from Harvard College and my law
5 degree from Columbia Law School.

6 **Q And what do you do now for a living?**

7 A I'm a senior staff attorney for the Voting Rights Project of
8 the American Civil Liberties Union which is known as the ACLU.

9 **Q And what is it that you do for them?**

10 A Mostly voting rights litigation. I specialize in Native
11 American voting rights, primarily in the American West, and I also do a
12 fair amount of ballot access litigation on behalf of minor parties and
13 independent candidates.

14 **Q Mr. Sells, what is your involvement with Gordon Properties,**
15 **LLC?**

16 A I'm a managing member.

17 **Q Are there other members?**

18 A There are four members total, including myself.

19 **Q And who are the others?**

20 A There's my sister Elizabeth Brandon Sells who goes by the
21 name Brandy and there are two of my cousins, Lindsay Brandon Wilson,
22 and
23 Julia Gordon Langdon who goes by Julie.

24 **Q At the current time is there anyone else who's involved with**
25 **Gordon Properties?**

A Yes, Richard Mendelson is involved in Gordon Properties, as

1 well.

2 Q And that's Richard Mendelson, the Alexandria attorney?

3 A Yes, he's --

4 Q What is -- I'm sorry. What is his involvement?

5 A He is the court-appointed co-conservator for my cousin Julie.

6 Q And so Mr. Mendelson has a role in representing the interests
7 of Gordon Properties, as well?

8 A Right. He essentially represents, along with the other co-
9 conservator, my cousin Julie's interests in Gordon Properties matters.

10 Q And who's the other conservator?

11 A My cousin Lindsay.

12 Q Okay. And what is the business of Gordon Properties?

13 A Gordon Properties owns condominium units at 4600 Duke Street.

14 Q And how did Gordon Properties come to own those units?

15 A Well, Gordon Properties acquired them in October 2002

16 following the termination of a trust that was created by my
17 grandfather's will.

18 Q And your grandfather was?

19 A Bryan Gordon, Jr.

20 Q And when did he die?

21 A 1979, November, I think.

22 Q So the Gordon Properties units then were in your
23 grandfather's estate from '79 until Gordon Properties acquired them in
24 2002?

25 A Yeah. I don't know technically whether they were in an

1 estate or trust and when all that stuff happened, but they were in some
2 other vehicle between his death and 2002.

3 Q And, of course, you're familiar with First Owners'
4 Association of Forty Six Hundred Condominium, Inc.?

5 A I am.

6 Q And as I asked Ms. Cuadros, you'll understand when I say FOA?

7 A Yes.

8 Q Okay. When Gordon Properties acquired its units in 2002, how
9 many units did it acquire?

10 A I think it was 41 units and of those, I think seven were
11 residential, 33 commercial, and then the restaurant site. We also have,
12 I think, about 14 parking spaces in the garage which are single-user-
13 limited common elements assigned to our units and six or seven storage
14 areas in the basement which are also single-user-limited common
15 elements assigned to our units.

16 Q And does Gordon Properties still own all the units it
17 acquired in 2002?

18 A No. I think we've sold two of them and we have a sale
19 pending for a third.

20 Q Okay. And is Gordon Properties a member of FOA?

21 A It is. All unit owners are automatically members of FOA.

22 Q And you're familiar with the condominium documents?

23 A Yes, I am.

24 Q And you're familiar with how a unit owner's voting rights are
25 determined?

1 A Yes, I think it's Exhibit E to the Declaration. There's a
2 table. It may be Exhibit D, but one of the exhibits it sets forth the
3 Table of Voting Rights.

4 Q And what are the total number of votes of FOA?

5 A A thousand.

6 Q And approximately what percentage of those votes does Gordon
7 Properties own?

8 MR. DINGMAN: Your Honor, I'm going to object if the
9 Declaration speaks for itself and that's the document that should be
10 presented to the Court to substantiate what it says.

11 THE COURT: He's not asking what the Declaration says. He
12 asked what his ownership interest is.

13 MR. DINGMAN: I think his testimony is that was in Exhibit, I
14 think he said, E. It's actually D --

15 THE COURT: Overruled.

16 MR. DINGMAN: -- to the Declaration.

17 THE COURT: Overruled. Answer the question.

18 MR. DINGMAN: I object to the lack of foundation then.

19 THE COURT: Overruled. Answer the question.

20 THE WITNESS: We have about 19 and a half percent of the
21 total votes of the condominium association.

22 BY MR. KING:

23 Q Are you aware whether any other unit owners have a similar
24 percentage of the vote as Gordon Properties?

25 A No one does. We are by far the largest unit owner in terms

1 of number of units and number of votes.

2 **Q When was the last time FOA held an annual meeting at which it**
3 **conducted business?**

4 A October 2006.

5 **Q What happened at the 2007 meeting?**

6 A It was cancelled by the association when the board posted
7 something on the -- on the Meeting Room door saying that -- that there
8 was so many delinquencies that a quorum was unlikely.

9 **Q And what happened in 2008?**

10 A Again, there was no quorum attained at the 2008 meeting.

11 **Q And were you present at the 2008 meeting?**

12 A I was.

13 **Q Were you allowed to vote?**

14 A No.

15 **Q And why were you not allowed to vote?**

16 A We were told that we were delinquent and therefore unable to
17 vote.

18 **Q And what was that delinquency based on?**

19 A Several weeks before the annual meeting, FOA had added some
20 retroactive charges on our accounts which then made us delinquent by 30
21 days as of the date of the annual meeting.

22 **Q So did you then pay those assessments?**

23 A No, we did not.

24 **Q What happened to those assessments?**

25 A Those assessments became the basis of FOA's counterclaim

1 against Gordon Properties in the state court litigation that went to
2 trial in February of this year.

3 **Q And what happened?**

4 A The jury returned a verdict in favor of Gordon Properties on
5 that -- on that question to the effect that Gordon Properties did not
owe
6 the amounts that had been added just prior to the 2008 annual meeting.

7 **Q Let's turn to 2009. Did Gordon Properties, after that jury
8 verdict, undertake any effort to have an election in 2009?**

9 A We did. Not long after the jury verdict and post-trial
10 motions and so on, we circulated a petition for a special meeting to
11 elect -- to have an election for all members of the board whose terms
had
12 expired and because the terms of office under the documents are two
years
13 and there hadn't been a meeting since '06, all seven members of the
board
14 had expired terms and we asked for that meeting to take place on or
15 before June 17th.

16 **Q And what happened in response to your request?**

17 A Well, we submitted our request on May 13th and on May 20th, I
18 got a letter from Ms. Cuadros informing me that the board was imposing
a
19 retroactive assessment on Mango Mike's unit, the restaurant unit, to
20 cover the period from 2003 to 2008 and the letter also said that we had
21 until June 1st to pay that amount and after June 1st that that amount,
22 which was about \$300,000, would become delinquent.

23 **Q And is that \$300,000 assessment the same \$300,000, more or
24 less, whatever the exact amount is, that's listed as the disputed debt
on
25 Gordon Properties' Bankruptcy Schedules?**

1 A Yes, that's -- that's the amount.

2 Q And you said that assessment related just to the Mango Mike
3 site?

4 A Yes.

5 Q Is it your understanding that you are current on all other
6 assessments, other than the Mango Mike site?

7 A That's my understanding, yes.

8 Q When was the special meeting called?

9 A The board called a special meeting for June 25th.

10 Q And what happened at that special meeting?

11 A The board denied us the right to vote.

12 Q When you say the board, specifically who denied you the right
13 to vote?

14 A Well, it -- it was one of FOA's attorneys, Jane Rogers.
15 She's with Whiteford Taylor and Preston.

16 Q So was there a quorum at that special meeting?

17 A No, there was not a quorum at that meeting. I think it was
18 about 37 percent.

19 Q And of that 37 percent, how much was represented by Gordon
20 Properties?

21 A About 19 and a half percent, so a little bit more than half
22 of the total number of votes present at that meeting.

23 Q Was there a motion to adjourn that meeting?

24 A There was.

25 Q And do you remember who that was?

1 A Cory Brooks, who's a member of the board, made that motion.

2 Q **And what was -- what exactly was his motion?**

3 A His motion was to adjourn sine die, which means without a
4 date for reconvening, as I understand it.

5 Q **And -- and did you vote on that motion?**

6 A Well, I tried to. It was again a voice vote and I was very
7 vociferous in voicing my objections to that motion.

8 Q **Did the motion carry?**

9 A It was declared carried.

10 Q **By?**

11 A Ms. Cuadros.

12 Q **Now let's turn to the October 7th, 2009, annual meeting. Did**
13 **you personally attend that meeting?**

14 A No, I did not.

15 Q **And did Gordon Properties designate one of its members to**
16 **attend in its behalf?**

17 A Yes, we designated Lindsay.

18 Q **Okay. Why are you asking the Court to declare that meeting**
19 **-- that vote in violation of the automatic stay and --**

20 MR. DINGMAN: Your Honor, I'm going to object. There's no
21 relevance to why he's asking. It's a legal question of whether there's
22 been a violation of the stay.

23 MR. KING: I'm fine, Your Honor. I have no further questions
24 for Mr. Sells.

25 THE COURT: Any cross?

1 MR. DINGMAN: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. DINGMAN:

4 Q Mr. Sells, you testified that Gordon Properties' business is
5 essentially the ownership of these units at the Forty Six Hundred
6 Condominium, correct?

7 A Yes.

8 Q And isn't it true that the purpose for filing this motion is
9 to try to get control of the board to lower the Gordon Properties'
10 assessments?

11 MR. KING: Your Honor, he just objected as to why I asked and
12 now he's asking.

13 THE COURT: Objection is sustained on the same basis as your
14 objection was, Mr. Dingman.

15 BY MR. DINGMAN:

16 Q What is the business purpose to which the right to vote
17 affects Gordon Properties as alleged in your motion for preliminary
18 injunction?

19 MR. KING: Again, Your Honor, I think his -- his objection
20 was there's no relevance to why they're --

21 THE COURT: What is the purpose of your questions?

22 MR. DINGMAN: They have alleged that the right to vote is a
23 material and highly-valuable asset of the estate.

24 THE COURT: Do you deny that?

25 MR. DINGMAN: Yes, we do.

1 THE COURT: Really?

2 MR. DINGMAN: Absolutely. And his testimony --

3 THE COURT: Well, let's let the voting rights lawyer answer
4 the question.

5 MR. DINGMAN: Well, he answered it at his deposition.

6 THE COURT: Well, I'm going to let him answer.

7 MR. DINGMAN: I'll rephrase my question so he understands it.

8 THE COURT: You don't have to rephrase it. You can answer
9 the question asked, unless you want to rephrase it. I don't care, but
10 let's hear the question and the answer.

11 BY MR. DINGMAN:

12 Q Isn't it true that the reason Gordon Properties is seeking to
13 pursue this issue in this case is to vote in a board who will lower the
14 Gordon Property assessments?

15 A We don't have the ability on our own to vote in a board, we
16 only have 19 and a half percent, but we certainly want there to be an
17 election for the board and we think that the current board -- well, we
18 know that three members on the current board have never been elected to
19 anything. They've been appointed to fill vacancies, and we think that
20 there ought to be an elected board and we think that the current board
21 doesn't have the support of a majority of the unit owners and the
22 reason it doesn't have the support of a majority of the unit owners is because
23 they're not managing the condominium very well, and we think we can,
24 together with other unit owners, elect a better board that will better
25 manage the condominium.

1 Q Do you remember giving a deposition in this case as the
2 designee for Gordon Properties?

3 A I do.

4 Q And do you recall being asked why Gordon Properties wants to
5 change the board?

6 A Yes.

7 Q And didn't you testify because you wanted a board that would
8 lower Gordon Properties' assessments?

9 A No, I don't believe that was exactly my testimony.

10 Q Referring to Page 57, Line 8, "Question. So Gordon
11 Properties would like to elect a board that would lower its assessment
12 payments? Answer. Yeah. I think that's fair to say."

13 A I stand by that testimony today. Absolutely. We'd like to
14 elect a board that would lower assessment payments. What condominium
15 unit owner wouldn't?

16 Q You mentioned -- you mentioned, Mr. Sells, the 2007 annual
17 meeting. Isn't it true that that meeting was reconvened twice in an
18 effort to obtain a quorum?

19 A I don't remember it being reconvened twice, no.

20 Q Was it reconvened at all?

21 A I -- I don't remember it being reconvened. It may have been.
22 What I remember most vividly is the note on the door saying the meeting
23 is canceled.

24 Q I want to know your testimony under oath, Mr. Sells. Are you
25 testifying that the 2007 meeting was not reconvened?

1 A No. I'm saying I don't remember, Mr. Dingman.

2 Q So it's possible it was reconvened, you just don't recall?

3 A Yes.

4 Q Since the meeting seemed to be very important to you, how is
5 it that you can't recall this meeting being reconvened?

6 A I don't know.

7 Q You mentioned the 2008 annual meeting. Isn't it true that
8 Gordon Properties filed two lawsuits prior to that meeting?

9 A Yes.

10 Q And --

11 A With respect to that meeting, I -- I take it that's what you
12 mean.

13 Q 2008 annual meeting.

14 A Yes.

15 Q And in both those lawsuits, you sought injunctive relief
16 asking the Court to allow you to exercise your right to vote, correct?

17 A No, I don't think that's a correct characterization of the
18 two pieces of litigation.

19 Q So if I show you your complaint, would that refresh your
20 memory of what you asked for?

21 A It might.

22 Q Well, let me ask --

23 A But my -- my -- I have a pretty clear recollection of what I
24 think those two pieces of litigation were about. I want to be clear.
25 I'm not saying that I don't recall what those two pieces of litigation

1 were about.

2 Q Well, there were two lawsuits filed --

3 A Yes, there were.

4 Q -- with respect to the 2008 annual meeting, correct?

5 A Yes, that's right.

6 Q The second lawsuit requested an injunction to declare that
7 the bylaws provision regarding eligibility was invalid, right?

8 A I don't recall if that was one of the claims, but it was a
9 request for a TRO. It was a motion for a TRO and -- and my
10 recollection of it is that it was a motion for a TRO to declare that we were not
11 delinquent because the -- because the amounts that had recently been
12 added to our account were improper and the Court ruled that it wasn't
13 going to decide that on a motion for a TRO because it was a matter in
14 the litigation that was already ongoing between the parties.

15 MR. DINGMAN: Your Honor, if I can approach the witness?

16 THE COURT: Yes.

17 BY MR. DINGMAN:

18 Q I'd like you to take a look at -- it's Verified Claim for
19 Preliminary Injunctive Relief. Turn to Page 10. My first question is
20 can you tell me if that's your signature?

21 A That is my signature.

22 Q And isn't one of the reliefs on Page 10 that the provision of
23 bylaws at issue in this proceeding be declared invalid and
24 unenforceable? Specifically, if you would look at Page 10, Mr. Sells?

25 A Okay. I'm just trying to orient myself because this --

1 Q My question is there's a specific request for relief on Page
2 10, I believe it's Paragraph C, and I have a very specific question.
3 Doesn't it ask the Court to declare that the bylaws provision in this
4 case is unenforceable?

5 MR. KING: And I think Mr. Sells' attempted response was he
6 was trying to orient himself so he could answer the question.

7 THE WITNESS: Yeah.

8 THE COURT: You may do that.

9 MR. DINGMAN: Your Honor, it's a very specific question.
10 It's about the request for relief.

11 THE COURT: He may look at the document before he answers
12 your question.

13 (The witness reviewed the document.)

14 THE WITNESS: Your Honor, my -- my confusion or my hesitance
15 is because this is not a filed copy and it doesn't have the -- the case
16 number on here. So I need to make sure which case he's asking me about.

17 MR. DINGMAN: I'll represent, Your Honor, that since this was
18 a TRO, we didn't get a copy with the case number on it, but the page
19 I'm asking him about has his signature on it.

20 THE COURT: Which -- which case was it pending in?

21 MR. DINGMAN: This is -- the case number is on the file.

22 It's --

23 THE WITNESS: But, see, this is a Verified Complaint for
24 Preliminary Injunctive Relief, and my recollection was that the second
25 lawsuit was a TRO request, and so --

1 BY MR. DINGMAN:

2 Q Isn't your signature on the document?

3 A Yes, that's my signature, Mr. Dingman.

4 Q Okay.

5 A But I'm not sure which lawsuit this is on --

6 Q This is lawsuit --

7 A I need to look at it.

8 Q -- 3629. You recall that you filed a lawsuit first that had
9 a hearing? You remember that? With Judge Dawkins?

10 A Yes, I remember that.

11 Q And Judge Dawkins dismissed your case, right? Right?

12 A I don't remember if that was the exact ruling. He certainly
13 denied our petition for a court-ordered special meeting. That's what
14 we were asking for in the first lawsuit, was we were --

15 Q Was --

16 A Because the association had not had a meeting since 2006, we
17 invoked a provision in the Virginia Non-Stock Corporation Act which
18 authorizes the Circuit Court to order a meeting to be held. Judge
19 Dawkins denied that petition on the ground that posting a notice on the
20 door saying we are canceling the meeting is holding a meeting for
21 purposes of the Virginia Non-Stock Corporation.

22 Q And Gordon Properties appealed that to the Supreme Court and
23 the appeal was not taken, right?

24 A That's right.

25 Q So the Supreme Court didn't find any error in Judge Dawkins'

1 **decision?**

2 MR. KING: Objection, Your Honor. That's not the result of
3 declining the petition.

4 MR. DINGMAN: I don't know what else the result could be.

5 THE COURT: Well, did they deny the writ for error?

6 MR. DINGMAN: They did not accept the petition.

7 THE COURT: Did they deny it? How did -- what -- what did
8 they phrase -- is it a petition for appeal now?

9 MR. DINGMAN: Yes, sir.

10 THE COURT: And did they deny it?

11 MR. DINGMAN: Yes, sir.

12 THE COURT: All right. They say it's on the merits, Mr.
13 King.

14 BY MR. DINGMAN:

15 **Q After Judge Dawkins dismissed the first case, you then filed**
16 **this case prior to the 2008 annual meeting in which you requested a**
17 **temporary restraining order so that you could exercise your claimed**
18 **right to vote at the 2008 meeting, right?**

19 A Well, I can say we filed a second litigation. I -- I'm not
20 sure that this is that -- that this is that -- what we filed.

21 **Q Well, if you'd look at Page 10, can you tell me if that's**
22 **your signature?**

23 A I've told you three times that's my signature, --

24 **Q Okay.**

25 A -- Mr. Dingman.

1 Q And is there a paragraph on the page that has your signature
2 that asks the Court to declare this bylaws provision at issue in this
3 motion unenforceable?

4 MR. KING: The bylaw in which motion, Mr. Dingman?

5 MR. DINGMAN: The bylaw provision at issue today.

6 MR. KING: We're not asking the Court to declare the bylaw --

7 THE COURT: No, that's not the question, Mr. King.

8 THE WITNESS: That's not what this says, Mr. Dingman.

9 MR. DINGMAN: Can I get the document, Your Honor?

10 THE COURT: You stay at the podium and they'll bring the
11 document.

12 MR. DINGMAN: I believe that's what it says. I want to make
13 sure I'm correct.

14 Paragraph C asks the Court to enjoin the association from
15 enforcing Section 7, Article IV, of the Bylaws against Gordon
16 Properties,
17 LLC, and Gordon Residential Holdings, LLC.

18 THE WITNESS: Right. But if we were asking the Court to hold
19 that provision unenforceable, it would be asking -- I think it would
20 say
21 something different. The point of that petition is as -- as -- that
22 motion in that second lawsuit, I think, as I remember it Mr. Dingman,
23 it
24 was we didn't think that we should be declared delinquent based upon
25 this
26 concocted assessment that was added to our account, you know, post hoc.

27 We had -- we had obtained statements of account saying that
28 we were not delinquent and then they went back and added assessments
29 and
30 -- and so I think that that paragraph you're referring to is asking the

1 Court to rule that in fact we are not delinquent and therefore have the
2 right to vote at that meeting.

3 BY MR. DINGMAN:

4 Q And Paragraph 28 of the complaint says, your allegation,
5 Section 7 of Article V of the bylaws is invalid and cannot be enforced
6 by the association. Wasn't that your allegation in that case?

7 A I don't think that was the allegation in the TRO which was
8 the only thing that was ruled on.

9 Q Your testimony under oath is you never challenged the
10 validity of that --

11 THE COURT: Did you read that in the complaint?

12 MR. DINGMAN: I'm sorry?

13 THE COURT: Did you read just Paragraph 28 from the
14 complaint?

15 MR. DINGMAN: Yes.

16 THE COURT: Not from the request for the temporary
17 restraining order or both?

18 MR. DINGMAN: Well, the -- the request from the complaint is
19 the basis for the TRO.

20 THE COURT: Was there a separate motion for the TRO?

21 MR. DINGMAN: I don't believe that there was. It was an ex
22 parte motion. The only -- at the time we found out about it, Your
23 Honor, was when we got the order denying it. So it was ex parte. I don't
24 believe a separate motion was filed. If it was, we never saw it.

25 THE COURT: Page 10 of the affidavit, what would that be?

1 MR. DINGMAN: That is the Verified Complaint for Preliminary
2 Injunctive Relief in which they asked that the Court grant the TRO to
3 allow them to vote at the 2008 annual meeting and declare that the
4 bylaws provision at issue in this motion is invalid and that was denied.

5 THE COURT: Read that Paragraph 10 again.

6 MR. DINGMAN: It's Page 10, Your Honor. It's Paragraph C of
7 their --

8 THE COURT: Okay. Paragraph C.

9 MR. DINGMAN: -- clause.

10 THE COURT: Read that again for me.

11 MR. DINGMAN: "Enjoins the association from enforcing Section
12 7, Article IV, of its bylaws against Gordon Properties, LLC, and Gordon
13 Residential Holdings, LLC."

14 BY MR. DINGMAN:

15 Q That request for injunctive relief was also denied by Judge
16 Dawkins, correct?

17 A I don't know which judge heard the case, to be honest with
18 you, but again I -- I think what went before the judge was a TRO. The
19 judge declined to bring the TRO and we did not pursue the case.

20 Q So at the 2008 annual meeting, the Court, after two lawsuits
21 and at least two hearings, did not tell the association that it had to
22 allow Gordon Properties to exercise its claimed right to vote, correct?

23 A I'm sorry. Can you repeat the question?

24 Q Prior to the 2008 annual meeting, the Court, on two
25 occasions, had denied Gordon Properties' request that it be allowed to

1 **exercise its claimed right to vote at the 2008 annual meeting?**

2 A No, I think that's a mischaracterization of the two lawsuits,
3 Mr. Dingman. That's not what the first lawsuit was about at all.

4 Q **Isn't it true that the association acted with respect to the**
5 **2008 annual meeting in compliance with what the Court had ordered in**
6 **these two lawsuits?**

7 A Well, the Court didn't order anything with respect to the two
8 lawsuits.

9 Q **But it denied your request that you be allowed to vote,**
10 **right?**

11 A In the second one by denying the TRO, yes, it -- it declined
12 to rule on that on an expedited ex parte basis.

13 Q **And there was no quorum achieved at the 2008 annual meeting,**
14 **was there?**

15 A That's right.

16 Q **Now you also testified about the disputed assessments, so-**
17 **called, in this case. Isn't it true that Judge Kimler entered summary**
18 **judgment against Gordon Properties on the issue of whether it was**
19 **liable**
20 **for assessments with respect to the street front unit?**

21 A Yes, I think that's a reasonable characterization of her
22 summary judgment order from January of this year.

23 Q **And she specifically ordered that that street front unit was**
24 **liable for the general common expenses of the association, correct?**

25 A Well, what she ruled is that it can be liable, I believe. It
was our contention that the documents which say that residential and

1 commercial unit owners shall pay assessments, that it did not include
2 residential, commercial, and street front unit owners, and she ruled
3 that
4 even though it doesn't include street front unit owners, that under the
5 Condominium Act, street front unit owners can be assessed for certain
6 expenses.

6 Q Have you read the petition for appeal that Gordon Properties
7 filed with respect to Judge Kimler's decision that was filed on
8 December
9 1st, 2009?

9 A Yes, I believe so.

10 Q And doesn't Gordon Properties specifically contend that Judge
11 Kimler was in error in finding that the street front unit was liable
12 for
13 common expenses of the association?

13 A No, I think that's a mischaracterization of the petition.

14 Q Okay. Well, how would you characterize it under oath?

15 A Well, as I recall, the issue with Judge Kimler's opinion is
16 that she -- she said that the -- she appeared to say that street front
17 unit owners can be assessed for all of the items that are in Article
18 VIII, I think it is, of the -- of the Declaration and -- no. Of the
19 bylaws, which includes some things that clearly they shouldn't be
20 assessed for.

21 Q But what you just said is, I think, the question I asked
22 awhile ago. Judge Kimler found that the association had the right to
23 assess the street front units for specific expenses set forth in the
24 condominium documents, right?

25 A She didn't rule on which precise expenses. She didn't rule

1 on the validity of any particular assessment. She simply ruled that
2 there could be an assessment on the street front units.

3 Q Have you looked at the summary judgment order?

4 A Yes, I've seen it.

5 Q And doesn't it say that the street front units are liable,
6 based on their voting percentage, for the common expenses set forth in
7 the bylaws?

8 A Well, again, it's that they can be assessed for common
9 expenses as set forth in the bylaws, but she didn't say exactly what
10 they could -- they could be assessed for. She specifically reserved that
11 ruling, you know, declined to make that ruling.

12 Q And that's the issue that you've now appealed to the Virginia
13 Supreme Court, correct?

14 A I think so. Yeah.

15 Q And you testified before that the jury found in your favor on
16 this disputed amount. Isn't it true that there was no damage claim
17 presented to the jury with respect to the street front unit?

18 MR. KING: Objection, Your Honor. When Mr. Dingman says this
19 amount, he's alluding to a totally different assessment than what he
20 was just questioning Mr. Sells on.

21 MR. DINGMAN: I don't understand the objection.

22 THE COURT: Well, you're confusing me. I don't know what
23 amount you're talking about.

24 MR. DINGMAN: Let me see if I can put it in context.

25 BY MR. DINGMAN:

1 Q The summary judgment decision by Judge Kimler was made before
2 trial, correct?

3 A Yes.

4 Q At trial, the association did not present a damage claim to
5 the jury with respect to assessments owed by the street front unit?

6 A Well, it tried to, but Judge Kimler granted a motion to
7 strike, I believe, on that.

8 Q Wasn't the claim for an accounting?

9 A That's correct. Yeah. It was a claim for accounting.

10 Q And wasn't that dismissed without prejudice because Judge
11 Kimler said you just have to go assess them?

12 A Yeah. She said she wasn't going to rule on the validity of
13 any assessments against the street front unit until the association
14 actually made the assessments. It hadn't made the assessment on the
15 street front unit at that time, but that's not what went to the jury.
16 That was, I believe, Count 2 of your complaint.

17 Q My question is, and you can correct me if I'm wrong, --

18 A Okay.

19 Q -- I thought you testified that the jury found in Gordon
20 Properties' favor on the assessment with respect to the street front
21 unit, is that not correct?

22 A No. I think you're misunderstanding my testimony or maybe I
23 wasn't clear, but I can certainly clarify it for you.

24 Q Okay. So, just so it's clear on the record, the jury didn't
25 find in Gordon Properties' favor on that issue because it never went to

1 **the jury?**

2 A Well, when you say that -- that issue, let's be clear.

3 **Q The street front unit assessment.**

4 A Right. That -- that has not been resolved and that's why
5 it's being disputed in this Bankruptcy proceeding, not this motion here
6 today, but -- but that's what's listed on the Schedules, as I testified
7 earlier.

8 **Q And that's being disputed through an appeal to the Virginia
9 Supreme Court, right?**

10 A No.

11 **Q No?**

12 A No. I think we have to make that very clear. Judge Kimler
13 never said this \$300,000 that -- that Ms. Cuadros wrote to me about a
14 week after I filed the special meeting petition, she never said that
15 that was okay. She said you make the assessment and then I'll deal with it
16 and instead of dealing with that in -- in the Circuit Court, we're here
17 in Bankruptcy Court. So that issue is not on appeal anywhere. That
18 has never been -- the validity of that assessment has never yet been ruled
19 upon.

20 It was an entirely different assessment that went to the
21 jury. I mean, we could call -- you could think about this 300,000 as
22 the 2009 retroactive assessment. It's the 2008 retroactive assessment that
23 prevented us from voting in the 2008 meeting that went to the jury in
24 February of 2009 and the jury found in our favor.

25 **Q The jury found in your favor on why?**

1 A On the -- on FOA's collection action for non-payment of
2 assessments by Gordon Properties.

3 Q The \$91,000 that went to CSI?

4 A It was -- I think it was -- yeah. It was more than that. It
5 was -- it was substantially more than that, but --

6 Q So that I understand your testimony, the legal predicate of
7 the right to assess Gordon Properties is appealing in state court to
8 the Virginia Supreme Court and however that resolves, you intend to contest
9 in this case the validity of the assessments actually made?

10 A Well, I don't know what the Virginia Supreme Court is going
11 to rule. All I can tell you is that in this case, we are contesting
12 that May 20th, the 2009 retroactive assessment.

13 Q Now you testified about the June 2009 special meeting. That
14 was requested by Gordon Properties, correct?

15 A That's right. Among other unit owners.

16 Q When the vote was taken that you testified to, did you ask
17 for a roll call vote?

18 A I did.

19 Q And what happened?

20 A I was ignored.

21 Q By who?

22 A I guess everyone.

23 Q Did you do anything about that?

24 A What do you mean?

25 Q Well, you filed several lawsuits against the association for

1 voting issues. Did you take any action based on your alleged denial to
2 make that motion?

3 A Well, when you say any action, sure, I took some action.

4 Q Did you send a letter to somebody?

5 A I believe we sent letters, yes.

6 Q To -- to who?

7 A There were letters to -- you were copied by Bob Diamond. I
8 know that that was certainly the case. I can remember that.

9 Q So Gordon Properties certainly knew that if it didn't agree
10 with a motion to adjourn being deemed to have passed, it could ask for
11 a roll call vote, right?

12 A Well, I -- I knew that I could ask for a roll call vote and I
13 knew certainly that I could ask for anything I want, but that doesn't
14 mean I'll get it.

15 Q Gordon Properties did not ask for a roll call vote at the
16 2009 annual meeting with respect to the motion to adjourn, correct?

17 A You know, I don't think that my cousin Lindsay, who was there
18 representing Gordon Properties, specifically said, you know, I'd like a
19 roll call vote. I'm not sure -- you'll have to ask her what she said,
20 but --

21 THE COURT: Were you there at the meeting?

22 THE WITNESS: I was not. It was my second anniversary and I
23 was at dinner with my wife.

24 BY MR. DINGMAN:

25 Q But you did testify as the designee for Gordon Properties and

1 as the designee, wasn't it your testimony that no motion was made?

2 MR. KING: No, I didn't ask him that question on direct. It
3 was asked by Mr. Dingman in his deposition, but I didn't ask him that
4 on
4 direct.

5 MR. DINGMAN: He asked him about the 2009 annual meeting,
6 Your Honor.

7 MR. KING: The only thing I --

8 THE COURT: Just a minute. Do you have a question to ask?

9 MR. DINGMAN: Yes. My question was --

10 THE COURT: What is your question?

11 BY MR. DINGMAN:

12 Q Isn't it true that Gordon Properties did not make a motion
13 for a roll call vote after the motion to adjourn at the 2009 annual
14 meeting was deemed to pass?

15 A I -- like I said, I don't think my cousin Lindsay said
16 anything like I move to reconsider or I move to, you know, do whatever.
17 You'll have to ask her what she said, but --

18 Q Present at that meeting was, you testified, Mr. Mendelson
19 who's an attorney, correct?

20 A He is an attorney, yes.

21 Q And Michael Zupan with Mercer Trigiani was also present at
22 that meeting representing Gordon Properties, correct?

23 A He was.

24 Q And both of them were in the room when the motion to adjourn
25 was deemed to have passed, right?

1 A I believe so. I wasn't there.

2 MR. DINGMAN: That's all I have, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. KING:

5 Q Following up on that last question, I recognize you weren't
6 there, but since Mr. Dingman asked you, I'll ask you, is it your
7 understanding that your sister objected to the vote?

8 A It's my cousin Lindsay.

9 Q I'm sorry. Cousin.

10 A It's a common mistake. Yes.

11 Q Thank you.

12 THE COURT: You have a seat with your attorney.

13 THE WITNESS: Thank you.

14 (The witness was excused.)

15 MR. KING: We can get the specific answer now. We'll call
16 Lindsay Wilson, Your Honor.

17 THE COURT: Come forward, please, to be sworn.

18 THE CLERK: Please raise your right hand.

19 Whereupon,

20 LINDSAY WILSON

21 was called as a witness and, having been first duly sworn, was examined
22 and testified as follows:

23 THE COURT: Have a seat in the witness stand.

24

25

1 DIRECT EXAMINATION

2 BY MR. KING:

3 Q Could you state your name for the record, please?

4 A My name is Lindsay Langdon Wilson.

5 Q And, Ms. Wilson, what is your involvement with Gordon
6 Properties?

7 A I'm one of the four owners of Gordon Properties.

8 Q And what is your day to day role with Gordon Properties?

9 A I wouldn't say that I have a day to day role. Bryan Sells
10 would handle those matters as they come up, but I do attend meetings on
11 occasion on behalf of Gordon Properties.

12 Q I'd like to turn your attention, Ms. Wilson, specifically to
13 the October 7th, 2009, annual meeting of FOA, and you understand what I
14 mean when I say FOA?

15 A I do.

16 Q The association? Did you attend the October 7th, 2009,
17 meeting on behalf of Gordon Properties?

18 A I did.

19 Q Was anyone with you at the meeting?

20 A Yes, Rick Mendelson was with me as was Mike Zupan.

21 Q And by -- by Rick Mendelson, you mean Richard Mendelson, the
22 attorney here in Alexandria?

23 A I do.

24 Q And -- and what -- what was -- and he is, along with you, the
25 co-conservator for your sister Julie?

1 A That's correct.

2 Q And who is Mike Zupan?

3 A Mike Zupan is an attorney with Mercer Trigiani and he
4 represents Gordon Properties.

5 Q Okay. Now, Ms. Lindsay -- Ms. Wilson, please tell me about
6 the annual meeting. Let's talk specifically about the first thing that
7 happened when you arrived for the meeting.

8 A Okay. When -- when I arrived for the meeting, Rick
9 Mendelson, Mike Zupan, and I assembled with the other unit owners in
10 the lobby of 4600 Duke where the registrar's tables were set up.

11 Q And that's where you registered the votes of Gordon
12 Properties?

13 A We did.

14 Q And when you attempted to register, were your votes accepted?

15 A They were not accepted to vote.

16 Q And -- and what were you told?

17 MR. DINGMAN: I'm going to object, Your Honor, to the
18 hearsay, unless it's a member of the association's board. I don't
19 believe her answer is going to reflect that it's a statement by a
20 member of the board.

21 THE COURT: Lay a foundation. I don't know who's speaking at
22 this point.

23 MR. KING: I'll lay a foundation.

24 BY MR. KING:

25 Q When you initially registered, do you know who it was you

1 were speaking with?

2 A I was speaking with a representative of the League of Women
3 Voters.

4 Q Okay. And after you presented your proxies, are you aware of
5 what the representative of the League of Women Voters did?

6 A Well, I saw her go through each vote form and compare them to
7 a printed sheet that she had in front of her and I asked her what she
8 was
9 doing and she told me --

9 MR. DINGMAN: I'm going to object, Your Honor. That's the
10 hearsay. The League of Women Voters, there's no foundation under 801
11 that they're the agent of the association. In fact, the testimony is
12 that they were hired independently to oversee the registration.
13 Without
14 that foundation, it's hearsay and it comes within no exception.

14 MR. KING: Your Honor, first of all, the testimony by Ms.
15 Cuadros was that FOA engaged the League of Women Voters to conduct the
16 registration for them. Mr. Dingman can sit here and attempt as much as
17 he wants to divorce the League of Women Voters from FOA, but it is
18 clear
19 from the testimony that they were engaged by FOA to conduct this
20 registration on their behalf. That was clear from Ms. Cuadros's
21 testimony. I don't think there's any question but they acted as their
22 agent.

22 MR. DINGMAN: Your Honor, the 4th Circuit in the United
23 States v. Portsmouth Paving Corporation, 694 F.2d 312, held that it is
24 the proponent who has to lay a foundation that the person who allegedly
25 made the statement was not only the agent but had authority to act on

1 behalf of the party in order to bring it within the exception, and the
2 Court went on to say in that case that the fact that a statement was
made
3 does not satisfy that burden.

4 There's been no evidence presented that the League of Women
5 Voters had the authority to speak on behalf of the association
regarding
6 voting issues. Without that, it's hearsay that comes within no
exception
7 and it should not be allowed.

8 MR. KING: Your Honor, I think Mr. Dingman is simply ignoring
9 his own client's testimony. His own client's testimony is that the
10 League of Women Voters was tasked with conducting the registration,
11 taking the proxies for the purpose of determining whether a quorum
12 existed. That was her testimony. How can she not -- how can they not
13 have authority?

14 MR. DINGMAN: The testimony was they registered and they gave
15 that information to Debbie Ribis who then did the calculations.
There's
16 been no testimony that League of Women Voters was given the authority
to
17 speak on behalf of the Association as to who could or could not vote.

18 THE COURT: What are you -- what is the statement that you
19 expect to hear?

20 MR. KING: Your Honor, Ms. Wilson's testimony would be that
21 the representative from the League of Women Voters looked at the
22 registration list that had all the unit owners and that Gordon
Properties
23 was indicated as not qualified to vote because they were delinquent.

24 She will also testify that the League of Women Voters'
25 representative went to the FOA office manager who was present, Teresa,

1 last name I can never pronounce, I'm sorry, Your Honor, who was present
2 and who told her in a very loud voice with the intent that Gordon
3 Properties hear it, no, Gordon Properties is not allowed to vote at the
4 meeting because they're delinquent or something to that effect. That's
5 what I'm trying to get at.

6 MR. DINGMAN: Your Honor, --

7 THE COURT: I'll allow it, subject to you clarifying the
8 authority.

9 MR. DINGMAN: I just will note a continuing objection, Your
10 Honor, because I think it's hearsay and no foundation laid.

11 THE COURT: Object to something to object to. I'm not
12 accepting a continuing objection.

13 MR. DINGMAN: Well, I also want to --

14 THE COURT: I want to know specifically what you're doing.
15 I'm allowing it, and Mr. King will tie it up, but we need to get -- you
16 know, one way or the other, we have to understand what happened before
17 I can rule on the admissibility of the statements.

18 All right. Go ahead. She's -- you're at the stage where
19 she's presented her proxy and I think that some member of the League of
20 Women Voters looking at a list of some sort.

21 BY MR. KING:

22 Q So, again, Ms. Wilson, we're at the point now where the
23 League of Women Voters representative had taken your proxy, looked at
24 the registration list, and then made an --

25 MR. DINGMAN: Your Honor, I'm going to object to the leading.

1 This is an important foundation. I object to the leading questions.
He
2 should simply ask and let her respond.

3 MR. KING: I was just trying to summarize what I'd already
4 asked to get to the point, Your Honor. So, fine, I'll go through it
5 again.

6 BY MR. KING:

7 Q When you arrived at the desk for registration, what did you
8 do, Ms. Wilson?

9 A I handed my votes to the representative of the League of
10 Women Voters. She compared each vote and the unit number on that vote
11 to a printed list, that she told me when I asked --

12 MR. DINGMAN: Your Honor, I'm going to object. It's hearsay.
13 There's no foundation that it brings -- it brings that within an
14 exception.

15 THE COURT: You made this objection before. I told you I'm
16 allowing it subject to it being tied up, and he's -- you objected again
17 because he was trying to summarize and get him to this point, and I'm
18 going to rule the same way that I ruled the first time.

19 MR. DINGMAN: Well, I believe she's about to testify to
20 hearsay.

21 THE COURT: She certainly is.

22 MR. DINGMAN: And my objection is --

23 THE COURT: I'm going to allow it.

24 MR. DINGMAN: -- it comes within the exception. I thought
25 the Court hadn't made that decision yet.

1 THE COURT: I haven't.

2 MR. DINGMAN: All right. Well, then I --

3 THE COURT: I want -- I want to put the facts in and let Mr.
4 King, who says he can tie it all up, tie it all up.

5 MR. DINGMAN: Well, I would just note my objection to the
6 hearsay.

7 THE COURT: This is the third time you've done that and I
8 heard it the first two.

9 MR. DINGMAN: Well, I understand, Your Honor.

10 THE COURT: I'm going to allow it.

11 MR. DINGMAN: You told me to object every time.

12 THE COURT: You know, I'm not that dense. Have a seat, Mr.
13 Dingman. Go ahead, Mr. King.

14 BY MR. KING:

15 Q You want me to ask again or can you continue, Ms. Wilson?

16 A I think -- I think I can continue. She told me -- I said,
17 "What are you doing?" and she told me that that list had been provided
18 to her just before the -- just before the -- the voting began designating
19 which unit owners were delinquent and therefore those unit owners'
20 votes could not be accepted and I said something like, "Oh, really. Are you
21 sure?" and -- and after I made those statements, the registrar stood up
22 and turned -- went back to Theresa Rojinmah, the FOA manager who was
23 standing behind the registration table, and said something to her which
24 I couldn't hear, and Theresa answered in a loud voice such that I could
25 hear her answer, and Theresa said, --

1 MR. DINGMAN: Your Honor, I'm going to object.

2 THE WITNESS: -- "Gordon Properties can't vote."

3 MR. DINGMAN: Your Honor, I'm going to note an objection on a
4 different ground because I took the deposition of Gordon Properties and
5 Mr. Sells, rather than Ms. Lindsay who was at the meeting, was not the
6 designee. It was Mr. Sells, and I specifically asked him did anyone on
7 behalf of the association make any statements regarding the right to
8 vote
9 and he said the only person was the alleged representative of the
10 League
11 of Women Voters. They are bound by his testimony. That's the whole
12 purpose of taking the deposition to find out what they're going to say
13 and now she's giving a different story and that's inappropriate.

14 MR. KING: I -- I -- I agree. Mr. -- Mr. -- Mr. Sells did
15 not testify at his deposition about the discussion between the League
16 of
17 Women Voters and the office manager. He was asked who from the
18 association told her that she couldn't vote. The office manager didn't
19 tell Ms. Wilson she couldn't vote. It was the League of Women Voters.
20 She's simply reciting what the office manager said in her hearing to
21 the
22 League of Women Voters.

23 MR. DINGMAN: Your Honor, I specifically asked him what was
24 their basis for claiming that the association denied them the right to
25 vote and his only testimony was the League of Women Voters'
26 representative allegedly made some statements. That's it.

27 THE COURT: Well, do you have a copy of the deposition?

28 MR. DINGMAN: Yes, sir.

29 (Pause to locate cited testimony.)

1 MR. KING: Your Honor, I'll withdraw the question.

2 THE COURT: The question's withdrawn.

3 BY MR. KING:

4 Q After your registration, attempted registration, whatever it
5 is that you did upstairs at the registration desk, what happened after
6 that?

7 A After I was told that we would --

8 Q Don't -- you don't need to recite that. Just tell me what
9 you did after you left the registration desk.

10 A Then we went downstairs two floors below to where the meeting
11 that evening was to take place and we took our seats in the front row
12 of the assembly area.

13 Q And how did the meeting begin?

14 A The meeting began when the board members began to file in and
15 Dee Cuadros came in and took her seat and declared the meeting was
16 opened.

17 Q And when you say Ms. Cuadros, you mean Ms. Cuadros here, the
18 president of FOA?

19 A I do.

20 Q Okay. And what happened after Ms. Cuadros announced that
21 there was no quorum?

22 A Well, at that point the meeting began -- began to get noisy
23 and -- and some disarray as there was a lot of discussion and objection
24 and exclamation going on amongst the -- the -- the audience, if you
25 will. People were saying show us the numbers, how can that be, and so there
was
was

1 a lot of going on behind me. I was in the front row facing the board,
2 but -- so the meeting began to be disorderly.

3 Q And did there come a time when it was announced -- I'm sorry.
4 I asked you about the announcement of the quorum.

5 After it was determined that there was no quorum, did Ms.
6 Cuadros make a motion?

7 A Well, right after that announcement one of the other board
8 members read from a list of board business or some sort of prepared
9 statement and then shortly after that Ms. Cuadros asked for a motion to
10 adjourn.

11 Q And now you said -- you said you were sitting in the front
12 row?

13 A Yes.

14 Q And can you describe for the Judge how the meeting room was
15 set up and exactly where you were sitting relative to Ms. Cuadros?

16 A Mm-hmm. The board was assembled at three tables set up in a
17 U-shape with Ms. Cuadros in the middle and then about 12 feet away was
18 the front row of the audience seats, the folding chairs, and I was in
19 the front row. When facing Ms. Cuadros, I'd be slightly to her right.

20 Q Now, when Ms. Cuadros moved to adjourn, who was the first
21 person to respond?

22 A Jane Brungard.

23 Q And what did Jane Brungard do?

24 A Jane raised her hand and stood to speak and made a motion to
25 adjourn for 30 days.

1 Q Do you know if Ms. Brungard's motion was seconded?

2 A It was quickly seconded by Ms. Hernandez.

3 Q Okay. And did Ms. Cuadros take a vote on Ms. Brungard's
4 motion?

5 A She did not.

6 Q And what did she do in response?

7 A She made some sort of dismissive comments, something like
8 "not you" or "sit down" or made a motion with her hand to -- that
9 indicated to me that Jane, be quiet, if you will.

10 Q And did -- did she then take a motion from someone else?

11 A Yes, and then she called on Kevin Broncato.

12 Q And where was Kevin Broncato sitting?

13 A He was behind Jane Brungard.

14 Q Okay. And where was Ms. Brungard sitting in relation to you?

15 A She was in the second row of the audience, slightly behind me
16 to my left. The chairs were a little staggered, so she was sort of
17 over
my left shoulder in the seat behind me.

18 Q And when Ms. Brungard made her motion, were you -- were you
19 looking at her or were you looking at Ms. Cuadros?

20 A I was turned in my chair looking at Ms. Brungard and the rest
21 of the audience that were behind me.

22 Q Could you see Mr. Broncato from where you were?

23 A Yes.

24 Q And when Ms. Brungard was making her motion, was Mr.
25 Broncato's hand in the air?

1 A No, it was not.

2 Q And after Mr. Broncato made his motion to adjourn, tell me
3 what Ms. Cuadros did?

4 A Someone -- someone quickly seconded the motion and Ms.
5 Cuadros very, very quickly, almost more quickly than my ear could hear
6 it and it could get to my brain and process what was happening, Ms.
7 Cuadros asked, "Any yeas? Any nays?" and people -- it was such a cacophony of
8 sounds. It was almost happening -- it appeared to be happening
9 simultaneously, but there were yeas and nays being shouted from the
10 audience at that time.

11 Q And then what did she -- what did she do?

12 A Then she made some motion. I don't know if she shut --
13 slammed a book, rapped her hand on the table, some motion and said, "We
14 are adjourned" so quickly that my head was spinning.

15 Q Did you respond to the request for a vote?

16 A I did. When she called for the nays, I said, "No," and I --
17 because I was in the front row and there was so much noise behind me, I
18 shook my head and body in sort of an exaggerated way to make sure that
19 my no was both visible with my body movements in the event that my word
20 could not -- words could not be heard, given the noise.

21 Q Do you know if anyone else in the room voted no?

22 A Yeah. I heard other nos.

23 Q Do you know who?

24 A I believe Ms. Brungard voted no and perhaps Ms. Hernandez,
25 but I heard a number of nos, but again it was hard to distinguish who
was
was

1 speaking.

2 Q In your estimate, Ms. Wilson, in the time that Ms. Cuadros
3 asked for the motion to adjourn until the time that she slapped down
and
4 said meeting adjourned, how much time elapsed?

5 A Oh, my. It was a matter of seconds. It was stunningly fast.
6 It felt -- I -- I couldn't even process that it had happened. I felt
7 like -- I felt like a card trick had just been played in front of me.
I
8 was -- it took my breath away. It -- 10 seconds, maybe.

9 Q Did you voice any objection to the process?

10 A Oh, yes. At that point I stood up, said, "This is not okay.
11 What's happening here? Did I just see that happen? What's going on?"
I
12 stood in my chair, raised my hands again to say, "What is happening
13 here?" and at that point the meeting had completely disintegrated.
There
14 was no longer a forum in which civilized speech could take place.
There
15 was arguing and shouting. People were moving from their seats. The
16 board was departing the room. It all had completely disintegrated.

17 Q Thank you, Ms. Wilson.

18 CROSS EXAMINATION

19 BY MR. DINGMAN:

20 Q Now, Ms. Wilson, I want to pick up with the meeting and, in
21 particular, the motion to adjourn. When that request was made for a
22 motion to adjourn, did you attempt to make any motion on behalf of
Gordon
23 Properties?

24 A Jane Brungard had made the motion that I would have made,
25 given the chance, and that would be to adjourn for 30 days. So she
beat
beat

1 me to it, but even if I had wanted to, there was simply no opportunity.
2 I mean, it was obviously designed that there be no opportunity.

3 **Q If you can just stick to the facts, Ms. Wilson, and not what**
4 **you think happened.**

5 MR. KING: Objection, Your Honor.

6 MR. DINGMAN: She has -- she's just speculating and -- and
7 it's just argument.

8 BY MR. DINGMAN:

9 **Q Did you have a discussion with Jane Brungard before the**
10 **meeting about her making a motion?**

11 A I did not.

12 **Q Okay. And what were you doing before Ms. Brungard stood up**
13 **to allegedly make her motion?**

14 A I was sitting there. This is all in split seconds. So I was
15 sitting there looking at the board and turning to look at the audience.
16 So I was there present at the meeting.

17 **Q Did you turn and look at Ms. Brungard after she rose and**
18 **started making her motion?**

19 A Because she was right behind me and the seats were close
20 together, I could -- you know, I guess I could sense movement behind my
21 left shoulder. So I suppose that was her preparing to stand up. So I
22 --
22 in hearing someone standing behind me, that turned my attention to --
23 to
23 look at that person.

24 **Q Who was sitting next to you at the meeting?**

25 A Rick Mendelson was sitting next to me.

1 Q How about Mr. Zupan?

2 A He was to Rick's left.

3 Q Okay. So you were sitting in -- where were you sitting in
4 the front row? At the end or in the middle?

5 A I was close to the middle but slightly, as I had said before,
6 slightly to the -- to the right of the middle.

7 Q Okay.

8 A So if this is the front row, I was maybe here.

9 Q Okay. And you had Mr. Mendelson on one side?

10 A On my left.

11 Q Okay. And was anybody sitting on your right?

12 A I don't remember.

13 Q Was --

14 A I mean, it's just -- it was just -- how many seats? Eight?
15 Eight folding chairs, maybe, 10 folding chairs. It varied. You know,
16 it was a small space.

17 Q Is it possible that Mr. Zupan was also sitting next to you?

18 A No, no. He was to Rick's left.

19 Q And you testified that Mr. Broncato was in a, what, row or
20 two behind Ms. Brungard?

21 A When he spoke, he was behind her. I recall him in other
22 places in the room during the meeting, but when he was speaking, when
23 he made his motion, he was standing behind Ms. Brungard.

24 Q Is it possible that he raised his hand before you turned to
25 look at Ms. Brungard?

1 A He -- he didn't. I mean, it was a small room. I was looking
2 to see who raised their hand and she had her hand up first.

3 Q Well, if you were looking, as I think you testified, at the
4 board and then you heard some rustling from Ms. Brungard, isn't it
5 possible Mr. Broncato already had his hand in the air before you turned?

6 A Well, I -- because there was activity throughout the room and
7 my purpose in being there, among others, was to see what was going on,
8 I had my attention in front of me and -- I was -- you know, I was moving
9 in my seat. This isn't a large space and so I can -- I can see the entire
10 -- what was going on in the entire room from where I was sitting.

11 Q It's your testimony when you heard the rustling of Ms.
12 Brungard, you were looking at the board? In other words, you were
13 looking straight ahead, not behind you?

14 A You're making it sound as if there was a span of time
15 elapsing and it was just as quick as I'm turning my head to look at you
16 right now. I mean, I can see --

17 Q Wasn't it the rustling of Ms. Brungard that you testified
18 caused you to turn?

19 A Yeah. Yes.

20 Q Isn't it possible that Mr. Broncato had already stood up or
21 raised his hand before Ms. Brungard started to rustle and make movement?

22 A I saw her hand first.

23 Q But you couldn't see Mr. Broncato until you turned after you
24 heard Ms. Brungard start to make movement, right? You couldn't see him?

25 A I can -- I can only testify to what I saw and I saw Ms.

1 Brungard's hand first.

2 Q Now when the motion was voted on, there were votes in favor
3 of the motion to adjourn, correct?

4 A There was a lot of talking and shouting going on, but yes, I
5 -- I believe there were yeas as well as nays, but again what -- what
6 chaos.

7 Q Now you say that when you voted, you said no and you shook
8 your head?

9 A Yes.

10 Q Do you know whether Dee Cuadros knows or knew how you voted
11 on that motion?

12 A I only know what I did and what I said and I voted no and
13 made myself as clear as possible, given the setting in which I was
14 voting. What she knew or absorbed, I can't say.

15 Q Okay. When the motion to adjourn was made and seconded, did
16 Gordon Properties make any effort to ask for a roll call vote on the
17 motion?

18 A Could -- could you clarify your question?

19 Q Yes. My understanding is your testimony is Mr. Broncato made
20 a motion, it was seconded. Did Gordon Properties at that time ask that
21 it be a roll call vote?

22 A Well, I had already objected. I had already made my
23 objection clear to -- to the -- to the room. So --

24 Q Your objection to Mr. Broncato being recognized instead of
25 Ms. Brungard?

1 A No. My nay vote on the motion to adjourn.

2 Q I'm talking about before the vote was taken, there was a
3 motion, there was a second. Did Gordon Properties attempt to ask for a
4 roll call vote before a vote was taken?

5 A I didn't use that -- those -- those magic combination of
6 words. I did not say those words.

7 Q Did you say anything?

8 A I said a lot of things. I said, "How did this occur? What
9 just happened here? I don't like this."

10 Q If I could just -- I want you to look at -- I'm asking about
11 the time frame before the vote was taken, not after. We'll get to the
12 after in just a moment.

13 Before the vote was taken, Gordon Properties didn't ask for a
14 roll call vote or percentage vote or anything --

15 A On Mr. Broncato's motion?

16 Q Before Mr. Broncato's motion was made.

17 A Look, look. I mean that -- that would be great if things had
18 been happening in a methodical orderly fashion. As I already said,
19 this was conducted at lightening speed. As I was poised to -- to observe
20 what was happening, it happened so quickly I-- I -- there was no time. I
21 was not allowed time and I can only imagine that that was by design.

22 Q So --

23 A It's -- it's preposterous to say I could have even -- no, no
24 one could have heard me.

25 Q -- that's not my question. The question is very simple.

1 Before the vote was taken on Mr. Broncato's motion, isn't it true that
2 Gordon Properties did not make a motion for a roll call vote or a
3 percentage vote?

4 THE COURT: Isn't it true, Mr. Dingman, you don't ask for a
5 roll call vote until after a motion is made?

6 MR. DINGMAN: Well, it's --

7 THE COURT: And you're asking about before the motion is
8 made?

9 MR. DINGMAN: Well, I'm asking her if they did anything since
10 he said she objected to the motion.

11 THE COURT: You're -- that's not what your question was.
12 You're asking about a roll call vote before there's a motion on the
13 floor.

14 MR. DINGMAN: Yes, sir.

15 THE COURT: And apparently the answer is no because there was
16 no motion on the floor. All right. Now what else are you trying to
17 endeavor to do?

18 MR. DINGMAN: That's what I was trying to get to.

19 BY MR. DINGMAN:

20 Q And after the -- let me ask you this. When the vote -- the
21 voice -- I'm sorry. The vote was called, were you talking to your
22 attorneys?

23 A When the vote was called? No. I was listening -- I was
24 listening to Dee.

25 Q After the vote was announced that it had carried, did you at

1 that time attempt to make a motion for a roll call vote?

2 A No, I couldn't, if I'd wanted to, no.

3 Q Did you have any discussions with your attorneys at that
4 time?

5 A No.

6 MR. DINGMAN: That's all I have, Your Honor.

7 THE COURT: All right. Thank you.

8 REDIRECT EXAMINATION

9 BY MR. KING:

10 Q I just want to clarify, Ms. Wilson, relative to the time that
11 Ms. Cuadros asked for the vote, when did she then adjourn the meeting?

12 A Instantly upon hearing it.

13 Q Thank you.

14 THE COURT: Anything further of the witness?

15 MR. DINGMAN: No, Your Honor.

16 THE COURT: Can the witness be excused?

17 MR. KING: She can.

18 MR. DINGMAN: Yes, sir.

19 THE COURT: All right. You're excused, which means that if
20 you want to, you can sit in the courtroom and listen or you can go home,
21 do what you want. You're not required to remain.

22 THE WITNESS: Okay. Thank you.

23 THE COURT: But don't talk about your testimony to the other
24 witnesses who have not yet testified.

25 THE WITNESS: Okay.

1 (The witness was excused.)

2 MR. KING: Gordon Properties calls Jane Brungard. Your
3 Honor, I just have three more witnesses and they're rather short.

4 THE COURT: That's fine.

5 THE DEPUTY: She's in the bathroom. She'll be momentarily.

6 MR. KING: We can call Martina Hernandez.

7 THE DEPUTY: They're both in the bathroom.

8 THE COURT: Well, we can wait. Did you want to take your
9 third witness?

10 MR. KING: I think I would prefer to take these -- one of
11 these two before the third, Your Honor.

12 THE COURT: All right. Why don't we take a short recess?
13 We'll return in about five minutes.

14 MR. KING: Thank you, Your Honor.

15 THE COURT: All rise. The Court is now in recess.

16 (A brief recess was taken.)

17 THE COURT: All rise. This Court is again in session.
18 Please be seated and come to order.

19 MR. KING: Call Jane Brungard, Your Honor.

20 THE COURT: All right. Come up to be sworn, please.

21 THE CLERK: Raise your right hand.

22 Whereupon,

23 JANE BRUNGARD

24 was called as a witness and, having been first duly sworn, was examined
25 and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. KING:

3 Q Good afternoon, Ms. Brungard.

4 A Good afternoon.

5 Q State your name for the record, please.

6 A Yes. Jane Brungard.

7 Q And you live at the Forty Six Hundred Condominium?

8 A I do.

9 Q Do you own a unit there?

10 A I do.

11 Q Did you attend the annual meeting on October 7th, 2009?

12 A I did.

13 Q And you registered your votes at the meeting?

14 A I did.

15 Q And how many votes did you register?

16 A About a 106.

17 Q So if there's a total of 1,000, that's basically about 10.6

18 percent, is that right?

19 A Yes, sir.

20 Q Do you know who Dee Cuadros is?

21 A I do.

22 Q She's sitting here?

23 A Right.

24 Q And she chaired the meeting on October 7th?

25 A Yes, she did.

1 Q And do you recall that there came a time during the meeting
2 that Ms. Cuadros announced that a quorum had not been achieved?

3 A Yes, I remember.

4 Q Please tell the Court what happened after Ms. Cuadros
5 announced that there was not a quorum.

6 A She began talking and I can't relay what she was saying, but
7 she was just talking and I quickly jumped up and said, "I move that the
8 meeting be continued," and then she said, "Kevin Broncato had his hand
9 up before you did," and then she asked for his motion and he asked that
10 the meeting be adjourned, stopped, and she asked for a voice vote and she
11 asked for the ayes and the ayes. I mean, she asked for the nays and we
12 very strongly gave our nays that the meeting be stopped and the meeting
13 was over. It was -- it happened within seconds. It was very fast.

14 Q What specifically was your motion?

15 A That the meeting be continued.

16 Q What does that meeting?

17 A That it continue on, that it not be stopped at that point,
18 but that the proxies still would have value and that the meeting would
19 continue on at another -- for another period of time.

20 Q I see. Was your motion seconded?

21 A I don't believe so because she didn't give -- she just sort
22 of cut me off and said, well, Brian -- Kevin Broncato's hand was up
23 before yours was and she heard his motion and voted on it. So she
24 never voted on my motion nor did she allow a second to be heard.

25 Q Okay. Are you aware of anyone else that voted no to Mr.

1 **Broncato's motion?**

2 A Well, I think Corey Brooks voted no and I think probably
3 Michael Yuan voted no and probably Dee Cuadros voted no.

4 **Q No. I'm sorry, I'm sorry. No as to Mr. Broncato's motion.**

5 A Oh, I'm sorry. I did strongly. Ms. Hernandez, Martina
6 Hernandez did. Lindsay Wilson did. I'm sure of those three. There
7 might have been some more, but I know of those three.

8 **Q Thank you. Did you -- after Ms. Cuadros announced the
9 meeting adjourned, did you object in any fashion?**

10 A It happened so quickly. No, I did not object because it
11 happened very quickly and I felt like since she said the meeting was
12 over, there was nothing yet to be said. I didn't realize I could
13 object.
14 I would have objected if I knew I could, but I did not.

14 **Q Thank you, Ms. Brungard.**

15 A Sure. Thank you.

16 CROSS EXAMINATION

17 BY MR. DINGMAN:

18 **Q Ms. Brungard, you testified that you registered a 106 votes.
19 Was that a 106 units or how does -- how did you determine that?**

20 A It's according to the number of bedrooms each unit has and
21 there's a strict formula for that. For instance, a two-bedroom might
22 have 1.9 or, depending on the square footage, it could be a 2.2. So
23 that
24 was not the number of units, that was the number of proxies that was
25 allotted to each unit. So that was the total number of proxies, of
votes
that were given.

1 Q And you engaged in extensive activities to obtain proxies for
2 the meeting, right?

3 A Yes, I did.

4 Q Did you work with Gordon Properties in that regard?

5 A No. I worked independently.

6 Q And what did you do to try to gain those proxies?

7 A Well, for about three weeks I went door to door talking to
8 people. I talked to people in the lobby, mainly just talking with
9 homeowners, asking them for their proxy votes. I also sent two letters
10 to outside owners, and I was not satisfied that any of those proxies
11 reached the ballot box.

12 Q In past meetings have you worked with Gordon Properties to
13 solicit proxies?

14 A No, not for them. I've just worked independently.

15 Q So your testimony under oath is that you've never worked with
16 Gordon Properties to obtain proxies for any prior meetings of the
17 association?

18 MR. KING: Your Honor, we're only talking about the October
19 7th meeting. That was the extent of the direct examination.

20 THE COURT: He can ask the question.

21 BY MR. DINGMAN:

22 Q Do you remember the question, Ms. Brungard?

23 A Mm-hmm.

24 Q Let me just ask it again for you.

25 A Okay.

1 Q Okay? Is it your testimony that you have not in the past
2 worked with Gordon Properties to obtain proxies for a meeting of the
3 association?

4 A For a meeting of the association?

5 Q Yes, any meeting. Let me ask it this way. Isn't it true
6 that you have worked with Gordon Properties in the past to try to
7 remove
the board of directors?

8 A The only way that could happen would be through an election
9 and as I stated in this election, I've acted independently. I got my
own
10 proxies for my own name.

11 Q I understand that, but isn't it true in the past that you've
12 worked with Gordon Properties to try to remove the board, isn't that
13 right?

14 A I've tried to -- I've been on the board for 10 years and I
15 have tried to get myself re-elected. If people ask me questions about
16 Gordon Properties, I would answer their questions, but I did not
actively
17 campaign for them. I've campaigned for myself.

18 Q In fact, you've been censured by the board on several
19 occasions, right?

20 A On false charges. I was censured because I walked in the
21 office. I was censured a \$100 because I walked in with Ms. Hernandez
who
22 was afraid of the manager. She asked me to go in as a witness so she
23 could get a fob and so she could put her -- her own ballot in the box
to
24 run for -- for election, and I think this is America. It's a free
25 country. I have a right to walk into the office. I haven't been
banned
banned

1 from the office, but the board censured me a \$100 for that.

2 I talked, also, with a former attorney, Mr. Cunningham,
3 because I was concerned about some of the things that were going on.
4 They censured me for that seven counts and I had to pay \$345. The
5 board
6 has paid over 400,000 this year in legal fees and because I talked to a
7 former attorney charged \$345, I was censured about seven counts for
8 that.

9 I feel like both of those were false charges. The only
10 reason I paid the \$555 was because if I didn't pay it, I would be
11 delinquent and would not have been able to run for the board. So it
12 was
13 to me a purely kangaroo court that they set up, but I paid it in order
14 to
15 run for the board.

16 **Q And so you want to see this board removed as much as Gordon**
17 **Properties does?**

18 **A** I want to see fairness and honesty and transparency and
19 myself, I was photographed putting campaign material under people's
20 doors. They used the security camera to take -- photograph my backside
21 in color. They distributed that under every single door in the
22 building,
23 plus put it on three bulletin boards under glass for several weeks. So
24 even the delivery people came in, would come to my door and they'd
25 laugh
26 and they'd say, oh, we see -- we saw you on the bulletin board, now we
27 know what your backside looks like.

28 This is the kind of tactics they have used to try to
29 intimidate me and harass me and embarrass me and I don't think any
30 homeowner should have to go through that and I have gone through it.
31 Every time I appear in court as a witness, my name appears in the
32 monthly
33 monthly

1 Crier as being a renegade or somebody. We have a right to come to
2 court
3 as -- as a witness and yet they always harass me and put it in the
4 paper,
5 making me look like I'm some kind of a traitor. I'm not a traitor. I
6 simply want honesty and fairness.

7 **Q But isn't it true, Ms. Brungard, you have voluntarily**
8 **testified on behalf of Gordon Properties in prior litigation against**
9 **the**
10 **association?**

11 **A** At the last court case, --

12 **Q I think it's yes or no. Isn't it true that you've testified**
13 **for Gordon Properties in lawsuits against the association without a**
14 **subpoena? You voluntarily appeared?**

15 **A** I can remember getting a subpoena and going and never
16 testifying. I had such a bad cold I couldn't talk.

17 **Q Well, --**

18 **A** That's the only time I can remember.

19 **Q -- the case you're referring to was last month with CSI,**
20 **right?**

21 **A** Exactly.

22 **Q And CSI is a wholly-owned subsidiary of Gordon Properties,**
23 **right?**

24 **A** Exactly. I was subpoenaed.

25 **Q You were subpoenaed? Are you sure about that?**

A Yes, I'm sure about that. I was subpoenaed as a witness and
in this country, we have a right to answer a subpoena without being
labeled a traitor.

1 Q Let me go back to the 2009 annual meeting. Where was Mr.
2 Broncato sitting or standing in relation to where you were?

3 A He was behind me.

4 Q And you testified that Dee was saying something and that you
5 jumped up and tried to make your motion, is that right?

6 A Did you say Dee was saying something?

7 Q Yes.

8 A Yes, that's correct.

9 Q So the chair had the floor?

10 A She did.

11 Q And she did ask for the ayes and the nays, right?

12 A She did.

13 Q And there were people who voted in favor of the motion to
14 adjourn?

15 A Yes.

16 MR. DINGMAN: That's all I have, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. KING: Nothing further, Your Honor.

19 THE COURT: All right. Can the witness be excused?

20 MR. KING: The witness can be excused, Your Honor.

21 THE COURT: Mr. Dingman, can the witness be excused?

22 MR. DINGMAN: Yes, sir.

23 THE COURT: All right. You're excused, which means you can
24 leave or you can stay. You can remain in the courtroom, if you want,
25 but do not talk about your testimony with any witness who's not yet been

1 excused.

2 (The witness was excused.)

3 MR. KING: Gordon Properties calls Martina Hernandez.

4 THE CLERK: Raise your right hand.

5 Whereupon,

6 MARTINA HERNANDEZ

7 was called as a witness and, having been first duly sworn, was examined

8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KING:

11 Q Good afternoon, Ms. Hernandez.

12 A Hello.

13 Q Could you please state your name for the record?

14 A Martina Hernandez.

15 Q And you live at the Forty Six Hundred Condominium?

16 A That is correct.

17 Q And do you own a unit in that condominium?

18 A Yes.

19 Q Did you attend the annual meeting in October 7th -- on
20 October 7th, 2009?

21 A Yes, I did.

22 Q And how many votes did you register at the meeting?

23 A It was roughly, I think, between 50 or 60, 50 or 60. Yeah.

24 Q Between 50 or 60?

25 A Yeah.

1 Q And you know who Dee Cuadros is?

2 A Oh, yes, she's the president of the board.

3 Q Sitting here?

4 A Yeah. That's her.

5 Q And did Ms. Cuadros chair the October 7th meeting?

6 A Yes, she did.

7 Q And you'll recall that there was a time where Ms. Cuadros
8 announced that there was not a quorum to conduct a business meeting?

9 A Yes.

10 Q Could you tell the Court, after Ms. Cuadros announced there
11 was not a quorum, what happened after that?

12 A Ms. Jane Brungard raised her hand to propose for the meeting
13 to be taken a different day and then I seconded it, you know, and at
14 that point Mr. Broncato raised his hand for the meeting to move to be
15 adjourned that day.

16 Q What was Ms. Cuadros' response to Ms. Brungard's motion?

17 A She didn't even look at her. She did not look at her or me.
18 She completely ignored us, which is not unusual.

19 Q And what was Mr. Broncato's motion?

20 A To move the -- the meeting to be adjourned that day, I mean
21 to be over with.

22 Q And do you recall whether Ms. Cuadros asked for a vote on
23 that meeting?

24 A Yes, she did.

25 Q I'm sorry. On that motion?

1 A Yeah. Yes.

2 Q On Mr. Broncato's motion?

3 A Yes.

4 Q And did --

5 A We oppose. I opposed --

6 Q You opposed it?

7 A -- and Jane Brungard opposed and she did not acknowledge our
8 opposition for the meeting to be moved to a different date.

9 Q Okay. Do you recall whether -- do you know whether -- do you
10 know who Lindsay Wilson is?

11 A Yes.

12 Q Do you --

13 A That's her.

14 Q Do you recall whether Ms. Wilson voted in response to the
15 motion?

16 A I do recall that Ms. Lindsay did oppose, as well, for the
17 meeting to be carried out on a different date.

18 Q Thank you. And then after Ms. Cuadros took the vote, what
19 did she do?

20 A Well, they said that we did not reach quorum. So, you know,
21 we kept asking the board to reconsider and to have the meeting a
22 different date and, of course, I mean, that is just typical of the --
23 you know, of how things are run at the Forty Six Hundred for the last
24 25,000 years, that we're not acknowledged, our voices are not heard as
25 homeowners. The building is falling apart and at this point the board

1 completely needs to be replaced.

2 MR. DINGMAN: Your Honor, the answer is not responsive to the
3 question.

4 THE WITNESS: So our concern --

5 THE COURT: Just a minute.

6 MR. KING: I would -- I would agree, Your Honor.

7 THE COURT: You've gone a little afield. Just answer the
8 question he asks and if he wants more, he'll ask more.

9 BY MR. KING:

10 Q Ms. Hernandez, after Ms. Cuadros took the vote, did she
11 adjourn the meeting?

12 A She -- yeah. She finished completely and they said there is
13 no quorum and that's that.

14 Q Okay. From the time that Ms. Cuadros asked for a motion to
15 adjourn until the time that she actually adjourned the meeting, in your
16 estimate, how much time expired between then?

17 A It took less than a second. It was pretty fast. It was -- I
18 mean, I was amazed by how, you know, they were carrying the whole
19 process
and so, yeah, it was that fast. It was less than a second, actually.

20 Q Thank you, Ms. Hernandez.

21 A Mm-hmm.

22 THE COURT: Before you go, let him ask his questions.

23 CROSS EXAMINATION

24 BY MR. DINGMAN:

25 Q Ms. Hernandez, did you work with Jane Brungard to obtain

1 **proxies for the 2009 annual meeting?**

2 A I did not work with her. I did ask her if she could because
3 she's a Notary, and I did ask, you know, if she could notarize some of
4 my proxies.

5 **Q You mentioned that you know Lindsay Wilson. How do you know**
6 **her?**

7 A I know her from, you know, we've had -- just when she's
8 attended some meetings and I've seen her, you know, in the -- in
9 candidates' night, for example, I've seen her in there and I introduced
10 myself and we've talked, you know, but when I say know her, not from a
11 personal, you know, just I would say just knowing her by, say,
12 introducing myself and just getting to be acquainted with her, you know,
13 as an owner, you know.

14 **Q Did you support her candidacy for the board?**

15 A Absolutely, yes.

16 **Q Did you support all the Gordon Properties' candidates for the**
17 **board?**

18 A Well, the fact is that --

19 **Q My question at this point, Ms. Hernandez, is did you support**
20 **all of the Gordon Properties' candidates for the board of directors?**

21 A I -- I will support anybody who will be for the good of the
22 community. We need to better the community. They are for bettering
23 the community and I will support anybody who do that, who does that.

24 **Q So you did support the Gordon Properties' candidates?**

25 MR. KING: Object. Mr. Dingman, please be specific. It's

1 obvious that Ms. Hernandez is supporting --

2 THE WITNESS: Right.

3 MR. DINGMAN: Hold on.

4 MR. KING: I'm not sure they're talking to each other.

5 MR. DINGMAN: Your Honor, it goes to her bias, if she's
6 supportive.

7 THE COURT: The question is unclear.

8 MR. KING: Your Honor, can we get a foundation?

9 THE WITNESS: See, counsel --

10 THE COURT: Wait, wait. Who were the candidates?

11 MR. DINGMAN: I'm just going on what her testimony was. She
12 said she met Ms. Wilson at a candidates' night --

13 THE COURT: Well, why don't you --

14 MR. DINGMAN: -- and that she --

15 THE COURT: -- lay a better foundation? Find out -- find out
16 who the candidates are and that sort of stuff. The question is too
17 open-
ended and the answer is not particularly helpful.

18 BY MR. DINGMAN:

19 **Q Other than Ms. Wilson, were there any other candidates that**
20 **you were aware of who were running for the board related to Gordon**
21 **Properties?**

22 A Well, I have read their -- her -- you know, their intentions
23 before for the community, to help the community, to better the
24 community,
and I will support anybody who is willing to work with us to better the
25 community, you know, and so when you ask me do you know her, I know her

1 from -- as a candidate, you know, perspective, and I will support
2 anybody
3 who is willing to work with us, you know, as homeowners because we
4 really, really need to make changes at the 4600 Duke Street and so,
5 yeah,
6 I do support her as a candidate for -- for the board.

7 **Q After the 2009 annual meeting, have you met with Gordon**
8 **Properties to discuss what happened at the meeting?**

9 A No.

10 **Q You've never talked to anybody from Gordon Properties, from**
11 **the time of the annual meeting until your testimony today, about what**
12 **happened at the meeting?**

13 A No. Once the meeting was over and -- and Ms. Cuadros said,
14 you know, we did not reach any quorum, I was so depressed, to tell you
15 the truth, that we didn't win and we worked so hard, you know, for --
16 for
17 a cause that I believe in and no, I haven't had any contact with them.

18 **Q Where were you sitting at the annual meeting?**

19 A I was sitting, I remember, next to Ms. Jane Brungard.

20 **Q And your testimony was at some point she raised her hand to**
21 **be recognized?**

22 A She raised her hand, you know, to -- for the meeting to be
23 moved to a different day and I seconded it, you know.

24 MR. DINGMAN: That's all I have, Your Honor.

25 REDIRECT EXAMINATION

BY MR. KING:

Q Ms. Hernandez, just to be clear, you spoke to me in advance
of this meeting, didn't you?

1 A Yes, I did.

2 Q Thank you.

3 A Yeah, yeah. Yes.

4 THE COURT: Ms. Hernandez, after the vote was taken and it
5 was announced that there was no quorum, what happened?

6 A Well, we -- you know, that -- once we saw that Ms. Cuadros
7 was not going to acknowledge our opposition, you know, we just kept
8 asking her to move the meeting to a different date, you know, and we
9 were convinced that how they were carrying the whole process it was
10 completely wrong. Allowing the employees -- I mean running back and forth with
11 the proxies, which is completely unethical, you know, and so we were not
12 sure, you know, whether the votes that we had were correct or not, the
13 fears they were given us.

14 So we were really concerned, you know, to see if we could
15 move the meeting to a different date so we could more properly, you
16 know,
17 see if we could reach some sort of, you know, an agreement or to work
18 things.

18 THE COURT: Well, after the --

19 THE WITNESS: But she completely ignored us.

20 THE COURT: After the vote was taken and it was announced
21 that a quorum was not present and the meeting was adjourned, was there
22 an
23 opportunity to raise these issues at the meeting?

23 THE WITNESS: Oh, yeah. Oh, Your Honor, --

24 THE COURT: At the meeting after the vote. Was the meeting
25 still in order? Could you stand and speak to the community?

1 THE WITNESS: No. See, they don't allow us to have a voice.
2 That's the thing with this board. The board would --

3 THE COURT: Well, I'm asking after the meeting, not whether
4 you were allowed to vote, --

5 THE WITNESS: No.

6 THE COURT: Was it loud or was it very quiet? Was it very
7 orderly afterwards?

8 THE WITNESS: Well, not really. I mean not quiet. You know,
9 they -- when -- by themselves, they separated themselves from us and we
10 kept asking them, you know, to have the meeting for a different date
and
11 they said, well, -- you know, the lawyer kept saying, you know, we
didn't
12 have a quorum, that's the end of it, and he took the position of a
13 counsel, of a lawyer, you know, and a commanding voice, and I kept
14 saying, no, we need -- we need to have a better count of our proxies,
you
15 know.

16 THE COURT: Was this before or after the board --

17 THE WITNESS: It was after.

18 THE COURT: After -- well, wait just a minute.

19 THE WITNESS: Yeah.

20 THE COURT: Was that before or after the board members began
21 to leave the room, these discussions that you're having?

22 THE WITNESS: That was before. They were standing, all of
23 them were standing separated by, you know, a corner and I was asking
24 them, you know, --

25 THE COURT: Were they on the way out of the room? Were they

1 leaving?

2 THE WITNESS: We were -- everybody was together in the same
3 room and we were just, you know, asking them --

4 THE COURT: Well, this is -- I'm directing your attention
5 only to the time after the adjournment. Did everyone stand up at that
6 point or did people remain seated?

7 THE WITNESS: No. They stood up.

8 THE COURT: And did everyone on the board stand up at that
9 point?

10 THE WITNESS: Yes.

11 THE COURT: Previously, everyone had been seated?

12 THE WITNESS: Previously, they had been seated, yeah. Yes.

13 THE COURT: And so it was announced that the meeting was
14 adjourned, everyone stood up?

15 THE WITNESS: Right. Everybody stood up.

16 THE COURT: And then you started asking your questions?

17 THE WITNESS: Once I saw my hopes, you know, that they
18 defined that there was no quorum, you know, I kept, you know, I -- I
19 did
ask, you know, the attorney and -- and Mr. Broncato, you know, that I
had
20 questions about the procedure that it was taking, you know, how they
21 carry out the -- the whole voting process, you know, by allowing their
22 employees to play with our proxies. So I had really objections on how,
23 you know, -- I wasn't sure whether their employees, you know, were
doing
24 things ethically, you know.

25 THE COURT: All right. All right. Thank you. Any other

1 questions?

2 MR. KING: No, Your Honor. Thank you.

3 MR. DINGMAN: No, sir.

4 THE COURT: Can she be excused?

5 MR. KING: She can.

6 THE COURT: All right. Thank you for coming. You're free to
7 leave, if you want.

8 MR. KING: You can stay.

9 THE COURT: You can stay in the courtroom if you want, you
10 can leave, but I ask that you not talk to the witnesses who have not
11 yet testified until they are released, as well.

12 THE WITNESS: All right.

13 (The witness was excused.)

14 MR. KING: Gordon Properties calls Richard Mendelson.

15 THE COURT: Okay. Richard Mendelson. Would you get Mr.
16 Mendelson, please?

17 We're going to take a lunch recess in about 10 to 15 minutes.

18 MR. KING: I think that should give us enough time with Mr.
19 Mendelson.

20 THE COURT: All right. Do you have other witnesses after
21 that?

22 MR. KING: No. Mr. Mendelson is my final witness, Your
23 Honor.

24 THE COURT: All right. Well, let's see if we can -- is that
25 enough time to cross examine and have them close?

1 MR. DINGMAN: I believe it is, Your Honor.

2 THE COURT: All right.

3 MR. MARINO: I was going to suggest, Your Honor, at the
4 conclusion of the evidence that I have a motion.

5 THE COURT: You'll have to come back after lunch. Come on
6 up, please. What I'd like to do is get Mr. King's case in, go to lunch,
7 and then allow you to come back afterwards.

8 MR. MARINO: Yes, Your Honor.

9 THE COURT: All right. Come on up and be sworn, please, Mr.
10 Mendelson.

11 Whereupon,

12 RICHARD MENDELSON

13 was called as a witness and, having been first duly sworn, was examined
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. KING:

17 Q Good afternoon, Mr. Mendelson. Could you state your name for
18 the record, please?

19 A Richard Mendelson.

20 Q And what is your profession, Mr. Mendelson?

21 A I'm an attorney.

22 Q And how long have you been practicing law?

23 A Since 1969.

24 Q And what is your affiliation with Gordon Properties?

25 A I was appointed by the Alexandria Circuit Court to serve as

1 the -- as a co-conservator for Julia Langdon who is the sister of
Lindsay
2 Wilson and one of the grandchildren of Mr. Gordon. Ms. Julia Langdon
is
3 under a disability and consequently she needed a conservator. Judge
4 Haddock of the Alexandria Circuit Court appointed myself and Ms.
Lindsay
5 Wilson as co-conservators for Julia. Julia is a 25 percent equity
member
6 of Gordon Properties.

7 Q And you're familiar with -- so you are in fact somewhat
8 familiar with the history between Gordon Properties and Forty Six
Hundred
9 Condominium?

10 A Yes, sir.

11 Q And if I refer to the owners association as FOA, you'll know
12 what I'm talking about?

13 A Yes, sir.

14 Q I want to take you specifically, Mr. Mendelson, to the
15 October 7th, 2009, annual meeting of FOA. Did you attend that meeting?

16 A I did.

17 Q And did you attend in your capacity as Ms. Langdon's
18 conservator?

19 A Yes.

20 Q And who -- who actually was appearing at the meeting as the
21 representative of Gordon Properties?

22 A Lindsay Wilson.

23 Q Now were you present in the meeting room with Ms. Wilson when
24 Ms. Cuadros announced that -- that the meeting, the business part of
the
25 meeting would not be conducted because there was no quorum?

1 A Yes, I was sitting in the front row of the seats, the chairs
2 that were set up in that meeting room. I was sitting next to Ms.
Wilson.

3 Q And were you present when Ms. Cuadros asked for a motion to
4 adjourn?

5 A Yes.

6 Q And do you recall who first responded when she asked for a
7 motion to adjourn?

8 A My recollection is seated several rows behind me was Jane
9 Brungard and she made her -- she made a motion.

10 Q Do you remember specifically what the motion was?

11 A My recollection is she made a motion to adjourn for some
12 numbers of days thereafter. I think it might have been 30.

13 Q And did Ms. Cuadros recognize the motion?

14 A No, she did not. She specifically said, "I don't recognize
15 you, Jane."

16 Q And did Ms. Cuadros recognize someone after that?

17 A She did.

18 Q And who was that?

19 A It was a fellow seated well behind where I was.

20 Q Did you know who it was?

21 A Not at the time. I've since recognized him as being one of
22 the witnesses in the other room.

23 Q Okay. And what was his motion?

24 A His motion, as I recall, is just to adjourn.

25 Q And did Ms. Cuadros ask for a motion -- I'm sorry. Did Ms.

1 Cuadros ask for a vote on that motion?

2 A The -- what happened next was very fast. I believe she did.

3 Q Can you describe to the Court in your own words then exactly
4 what happened after Ms. Cuadros recognized Mr. Broncato's motion?

5 A That was the fellow who made the --

6 Q I'm sorry. Yes. Yes, that's the fellow you identified.

7 A After she -- after that individual made his statement or his
8 motion, then Ms. Cuadros indicated she'd take a vote and asked all in
9 favor and then there were some people said yea or yes, and then all not
10 in favor, in opposition, and there were some people who said something
11 and that was it.

12 Q Tell me, Mr. Mendelson, in your own estimate, from the time
13 that Ms. Cuadros asked for the motion to adjourn until the time that
14 she actually adjourned the meeting, how much time had elapsed?

15 A A matter of seconds.

16 Q To your perception, did Ms. Cuadros make any attempt to
17 record the votes that were being made to the motion?

18 A Not that I could see.

19 Q Thank you, Mr. Mendelson.

20 CROSS EXAMINATION

21 BY MR. DINGMAN:

22 Q Mr. Mendelson, how long have you acted as co-conservator for
23 Ms. Langdon?

24 A Since 2002.

25 Q And who compensates you for that work?

1 A Ms. Julia Langdon.

2 Q **And is her resources from Gordon Properties?**

3 A They are resources from Ms. Langdon's individual funds.

4 Q **As her representative, have you been involved in Gordon**
5 **Properties' legal decisions with respect to its disputes with the**
6 **association?**

7 A I've had, in my role as co-conservator, many conversations
8 with the other members of Gordon Properties.

9 Q **Have you ever objected to any of the actions taken by Gordon**
10 **Properties?**

11 A I've had much input into the discussions back and forth. So
12 I'm not sure what you mean by objections.

13 Q **Well, in their decision, for example, to file lawsuits, have**
14 **you agreed with those?**

15 A I've had -- I've not had specific -- to the extent that the
16 lawsuits were filed, I've had input into them, but I don't know what
17 you mean by objections. We've had -- we've gone back and forth and had I
18 not had the input I had, there might have been some differences in those
19 lawsuits.

20 Q **Well, but as the representative of a 25 percent equity**
21 **member, have you ever said I don't agree with filing this lawsuit or**
22 **that lawsuit against the association?**

23 A I've had -- I've had objections to different aspects of the
24 lawsuits in which those lawsuits were amended or changed from -- along
25 with other counsel of Gordon Properties.

1 Q Were you involved in the decision of Gordon Properties to
2 file this bankruptcy proceeding?

3 A I was involved in discussions with Mr. King and with Mr.
4 Sells and with the other members of Gordon Properties.

5 Q And did you support the decision to file for bankruptcy?

6 A Yes, I thought it was the right thing to do.

7 Q And you support the motion that's pending today?

8 A Well, I defer to Mr. King's judgment on that.

9 Q Well, as the representative of a 25 percent equity member,
10 did you voice any objection to them proceeding with the motion?

11 A My conversations and discussions with Mr. King, with Mr.
12 Sells, Ms. Wilson, and with Randy Sells in that regard is to discuss
13 that which was brought up by Mr. King and to confer with him about that just
14 as Ms. Wilson and -- and Randy Sells and -- and Bryan Sells did.

15 Q Well, do you agree that it's your belief that Gordon
16 Properties prevailing on this motion is in the interests of Ms. Langdon?

17 A I certainly do.

18 Q So you'd like to see Gordon Properties prevail for that
19 reason, right?

20 A Well, I want the right -- I leave it up to the discretion of
21 the Court. Whatever the right thing, however the facts and the law are
22 considered by the Court, that's what should happen.

23 Q Now you testified that Jane Brungard was several rows behind
24 you.

25 A Yes.

1 Q How did you know if or when she made a motion?

2 A Well, I could hear her.

3 Q So you didn't see her before you heard her?

4 A I heard her and as she was speaking I turned and looked and I
5 saw it was her.

6 Q And Mr. Broncato, you testified, you didn't know who he was
7 at the time, was several rows behind Ms. Brungard, right?

8 A I don't know exactly where he was sitting relative to her. I
9 know it was behind me.

10 Q So you don't know whether he was raised his hand before you
11 turned to look at Ms. Brungard after she said something, right?

12 A No, I don't know that.

13 Q Now you testified that when the motion was deemed to have
14 carried, it was a matter of seconds before the meeting was deemed
15 adjourned. Wasn't there sufficient time for someone to stand up to be
16 recognized?

17 A Well, within those few seconds. What happened was in the --
18 in the -- at the point where she was taking the voice vote, there were
19 several -- lots of people -- several people speaking at once and when
20 she declared that the ayes have it, it was over.

21 Q Well, but you said there was a matter of seconds.

22 A That's right.

23 Q And isn't it true that if you're sitting there, you can stand
24 up in a second, can't you?

25 A I suppose somebody could stand up if they could understand in

1 the chaos what was going on.

2 Q But nobody did that on behalf of Gordon Properties, right?

3 A Not that I saw under the circumstances, but it was a matter
4 of confusion.

5 THE COURT: Excuse me. Would you repeat the last answer? I
6 didn't hear it.

7 THE WITNESS: Not that I saw. There was quite a bit of
8 confusion and in the course of that, Ms. Cuadros says, "We're adjourned."
9

10 THE COURT: Okay. Did you have anything?

11 MR. KING: Nothing further, Your Honor.

12 THE COURT: Now after the -- oh, it was announced that there
13 would be an adjournment, the votes taken, Ms. Cuadros says that the
14 meeting is adjourned, what was the state of the meeting? Was -- was it
15 orderly? Was it disorderly? What was -- what was going on in the room?

16 THE WITNESS: Once she said that it was adjourned, people got
17 up and began to leave. Mr. Zupan, Michael Zupan of the firm of Mercer
18 Trigiani, was there with me and we asked Mr. Diamond to come -- to come
19 over to talk to us and he did. By then everybody else was scattered
20 and left the room.

21 THE COURT: Now who was Mr. Diamond representing?

22 THE WITNESS: He was -- he's one of the attorneys with Reed
23 Smith who was counsel for First -- First Owners'.

24 THE COURT: As soon as the announcement was made that the
25 meeting was adjourned, did the directors stand up and start to leave?

THE WITNESS: I don't know how many directors were there. I

1 think there was Dr. Pepper might have been there. I can't remember
2 whether he was there. I think there might have been one or two that --
3 and I believe they did get up and move.

4 THE COURT: And what did Ms. Cuadros do as soon as she
5 announced it was adjourned?

6 THE WITNESS: Well, my attention was directed to Mr. Diamond.
7 I think but I'm not entirely sure, but I think she was moving towards
8 the
-- towards the hallway.

9 THE COURT: Okay. Any other questions?

10 MR. KING: No, Your Honor.

11 MR. DINGMAN: No, sir.

12 THE COURT: All right. Can Mr. Mendelson be excused?

13 MR. KING: Yes, Your Honor.

14 MR. DINGMAN: Yes, sir.

15 THE COURT: All right. Thank you for coming. You're
16 excused. You can stay or leave, as you wish.

17 THE WITNESS: Thank you.

18 (The witness was excused.)

19 THE COURT: All right. Do you have any other witnesses you
20 wish to present?

21 MR. KING: No, Your Honor.

22 THE COURT: Any other evidence, documentary or otherwise?

23 MR. KING: No, Your Honor.

24 THE COURT: All right. Very well. We'll go ahead and recess
25 for lunch. You have some witnesses outside?

1 MR. DINGMAN: Yes, Your Honor, we have three witnesses
2 outside.

3 THE COURT: All right. You want to ask them to come in,
4 please?

5 I've got an uncontested -- supposedly uncontested matter at
6 2:30. How long do you need?

7 MR. DINGMAN: Your Honor, I think these witnesses are going
8 to focus on what you've already heard in the annual meetings. So I
9 don't think it's going to be lengthy. I think the three of them, we should
10 be able to do in an hour.

11 THE COURT: One hour? All right. Well, then come back at
12 2:30. That's the time that the other matter is on. It's a cash
13 collateral order and supposedly consented to. So we'll take it from
14 there.

15 You said you used Robert's Rules of Order at the meeting?

16 MR. DINGMAN: I don't think there was testimony to that but
17 that's what Ms. Cuadros would testify to.

18 THE COURT: Which -- which -- which edition?

19 MR. DINGMAN: I think we attached it to our pleading and I
20 have a copy, an extra copy, Your Honor.

21 THE COURT: I'm not asking for a definitive ruling. I saw
22 something attached. I'm trying to figure out what it was.

23 MR. KING: I had -- I had a line of questioning in my direct
24 examination of Ms. Cuadros with respect to her familiarity with
25 Robert's Rules of Order, etcetera, etcetera, that is very telling, but I chose
not
not

1 to go there because I -- I was trying to keep it narrow, but if Your
2 Honor is going to go with respect to Robert's Rules of Order, I want
Your
3 Honor to hear her testimony in that regard.

4 THE COURT: Well, --

5 MR. KING: We didn't -- we didn't go in that direction.

6 THE COURT: I see an attachment and my only question is in
7 being ready for whatever comes is which edition you used.

8 MR. DINGMAN: It's -- we have, Your Honor, we attached is --
9 the copyright is 1976.

10 THE COURT: What's the title?

11 MR. DINGMAN: I don't know that I have the front.

12 THE COURT: There's Robert's Rules, Newly Revised, Robert's
13 Rules of Order, Super Newly Revised, or do you know?

14 MR. DINGMAN: I just -- we copied the -- a chapter, Your
15 Honor. I don't have the front page, but I can certainly find out
before
16 2:30.

17 THE COURT: All right.

18 MR. DINGMAN: But the copyright's 1975, Irvington Publishers.

19 THE COURT: All right. See if you can find out which edition
20 it is. There are several.

21 MR. DINGMAN: Yes, sir.

22 THE COURT: All right. We'll adjourn then till 2:30. Thank
23 you.

24 THE CLERK: All rise. This Court is now in recess.

25 (Whereupon, at 12:43 p.m., a luncheon recess was taken.)

1 A F T E R N O O N S E S S I O N

2 THE CLERK: All rise. The Court is again in session. Please
3 be seated.

4 Gordon Properties, LLC, versus First Owners' Association of
5 Forty Six Hundred, Adversary Proceeding Number 09-1304.

6 MR. MARINO: Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. MARINO: Howard Marino once again for First Owners'.

9 Given the close of the Plaintiff's case, we would move at this time to
10 deny the motion. There's a few reasons that support our motion.

11 First of all, Your Honor, as a matter of law, we believe that
12 the automatic stay cannot be said to have been violated here primarily
13 because there hasn't been any pre-petition property rights that were
14 restricted or forfeited in this case.

15 Now property rights are all established under state law.
16 Bankruptcy Code doesn't define those underlying rights. Obviously 541
17 of the Bankruptcy Code says whatever is established, whatever the debtor
18 has under state law becomes property of the estate.

19 The debtor has no more and no less than what is defined under
20 state law and we cited a case called FCX in our briefs, but basically
21 the debtor has nothing more, nothing less than what it has as of the filing
22 date.

23 Now the bylaws in this case, which contractually define the
24 debtor's property interests of each owner in the condominium unit, in
25 the condominium, clearly prescribe the eligibility requirements for a unit

1 owner to vote with respect to association business and one of those
2 requirements is that the owner be in good standing with the association
3 and that means that -- and I should point out I don't think that the
4 debtor has materially challenged that provision in their pleadings
today.
5 So that issue -- there's no dispute about that restriction, about that
6 right, about that property interest.

7 Now in this case, the debtor's been delinquent in its condo
8 fees for years prior to the petition date and it has lost the right,
the
9 eligibility to vote many years in advance of the commencement of this
10 bankruptcy case. They don't have that right. They never did. They
11 haven't had it for years. So as of the filing date, they didn't have
12 that right to vote.

13 Now if the debtor didn't have the eligibility to vote when it
14 filed the bankruptcy case, then the debtor never had and can't possibly
15 have lost a right or suffered any restriction on that property interest
16 after the bankruptcy was filed in this case and that's exactly why the
17 automatic stay is not implicated here, Your Honor.

18 The stay essentially prohibits the forfeiture or restriction
19 of an existing property right of the debtor. It is designed
essentially
20 to be a shield, to protect the debtor's property interests or property
21 rights, their existing property rights.

22 The stay is not designed to forfeit -- I'm sorry -- to create
23 new rights or to reinstate previously-forfeited rights where those
rights
24 never existed in the first instance and as of the petition date in this
25 case. So -- and we've used the term "sword and shield." It's not

1 designed as a sword that can be used by the debtor to create or renew
2 property rights that the debtor didn't have to begin with as of the
3 filing date and that's exactly what the debtor's trying to do here.

4 They're trying to reinstate forfeited rights that had been
5 lost years before this petition was ever filed and they're essentially
6 using 362 to effectively spring new rights from their old rights and --
7 and -- and creating a springing interest is not what the automatic stay
8 was designed to do.

9 So I don't think that the automatic stay is -- has been
10 violated in this case. As Your Honor said, this is a -- this is a
11 proceeding about a violation of the automatic stay and what we're
12 talking about is a violation of the debtor's right to vote, but they never had
13 that right to vote. So that's one position, I think, that is very
14 strong in this case to show that we really have not violated the automatic
15 stay.

16 We haven't -- I mean because the debtor's basically saying
17 the violation of the automatic stay is denying the debtor the right to
18 vote and we contend that they never had that right to vote to begin
19 with and they haven't -- they really can't challenge that eligibility
20 requirement under state law. That's really what this is all about.
21 That's why Mr. Dingman kept referring to the bylaws and the contractual
22 documents in this case. That establishes the debtor's property
23 interests, not the Bankruptcy Code. The Bankruptcy Code simply
24 recognizes what state law provides for and the debtor's interests in
25 this case, including its right to vote as part of that bundle of rights that
they have as unit owners, is established under state law and that state

1 law is defined by the terms of the contract.

2 Now even if Your Honor doesn't agree with that position and
3 believes that the debtor either had the right to vote or that the right
4 to vote somehow sprang into existence or could spring into existence
5 post-petition, the debtor's put on no evidence to show that they were
6 denied the right to vote in this particular matter for this particular
7 meeting, annual meeting.

8 There's been no testimony that any member of the association
9 specifically and affirmatively denied them the ability to vote at the
10 meeting. There's been no testimony to that effect. There's been some
11 hearsay but there's been no affirmative testimony that any association
12 board member specifically told the debtor that it didn't have the right
13 to vote at this meeting.

14 There's been no evidence that anyone attempted to call for a
15 division of the house following the voice vote on adjournment. As we
16 understand the testimony today, there was -- Ms. -- I'm sorry. The
17 chair
18 of the -- of the board had the floor. She then called for motions.
19 There was recognition of a Mr. Broncato who raised his hand before Ms.
20 Brungard raised her hand. There's no testimony that that -- there is
21 nobody who's testified here as to the order of the -- of the -- of the
22 raising of the hands here.

23 In fact, everybody that testified was actually sitting in
24 front of Mr. Broncato. That's -- that's my understanding of the
25 testimony and that -- so we don't know exactly -- the only person
that's
testified as to what she saw was the person standing upfront observing

1 the room and they -- and she recognized Mr. Broncato before Ms. -- Ms.
2 Brungard because he raised his hand first. That's -- that's the
evidence
3 that we have here.

4 So there's -- and from that point after that motion was made,
5 subsequent to the motion being made, there was no attempt by any party
in
6 the -- in the room to call for a division of the house, and I think
that
7 the meetings were probably conducted -- were conducted according
8 generally to the Robert's Rules of Order and it recognizes if you have
a
9 voice vote, if someone wants to call for a division of the house and
10 actually ask for a specific identification of who's voting for what,
they
11 could have done that. They did not do that. They had a counsel
present
12 and Mr. Zupan was representing GP at that time, the debtor. So they
13 didn't -- they didn't follow through on that. So there's no evidence
in
14 that regard.

15 There's no evidence that -- that -- to support that the
16 debtor -- there's no evidence to support that the debtor was ever
17 relieved of the obligation to pay the assessments to begin with.
There's
18 been no challenge to that at this point. We know that there's some
19 appeals pending. There's no objection to a claim. It's early in the
20 case, obviously, but there's been no evidence to challenge the basis
for
21 that assessment. As far as we know today, based upon the evidence,
that
22 assessment is due and owing, and it establishes the eligibility
23 requirements for voting and that eligibility requirement has not
existed
24 since years before the bankruptcy was commenced.

25 So, in short, Your Honor, there is absolutely no evidence

1 today offered by the debtor to show that the association affirmatively
2 prohibited or restricted the debtor from voting at the meeting.

3 Now, I should also point out, Your Honor, there was some
4 discussion at the beginning about the nature of this proceeding today.
5 Your Honor disagreed that this was nothing more than -- disagreed with
6 Mr. Dingman that this was nothing more than a hearing about automatic
7 stay violation and I agree. This is a hearing about whether the stay
8 was violated, but we should point out, in fairness to Mr. Dingman's
9 characterizations, that the motion is couched as a preliminary
10 injunction motion and it is clearly couched in that terms and there are relief
11 provisions requested. There is relief requested beyond simply a
12 finding that the Court -- from the Court that there's a violation of the
13 automatic stay, and in -- in -- in that regard, any of the relief that
14 the debtor is seeking beyond a determination that the stay was violated,
15 quite frankly, requires a meeting of the tests for preliminary
16 injunction which is that Obama case that we cited in our briefs and that Obama
17 case requires, under the 4th Circuit's rulings, requires a showing of
18 irreparable harm and so anything else that the debtor is seeking in
19 their motion beyond a violation of the automatic stay in this case requires
20 that they show some irreparable harm and there hasn't been a shred of
21 evidence about that.

22 There hasn't been a single piece of evidence to show that
23 there is any harm, and I'm hard-pressed to come up with the harm that
24 they would have suffered by not being able to adjourn the hearing --
25 adjourn the meeting with the purpose of reconvening it at some point or

1 continuing the meeting, however they put it.

2 So, in summary, Your Honor, there is no violation of the stay
3 here, even on the facts, as it stands. I don't believe that the stay
4 really applies in this instance because we do have a property right
5 that
6 didn't exist as of the filing date, so there's nothing to violate there.

7 We haven't denied the debtor anything that they didn't otherwise not
8 have
9 as of the filing date, and ultimately they haven't shown anything else
10 to
11 support the other relief that they're seeking in this motion, and I
12 think
13 on that basis, the motion should be dismissed without -- without
14 further.

15 Thank you.

16 MR. KING: Your Honor, Mr. Marino is very recently in this
17 case, so I'll give him the benefit of the doubt with respect to his
18 obvious lack of knowledge with respect to the prior history because
19 he's
20 clearly misstated it time after time after time.

21 First of all, Your Honor, Gordon Properties has not been in
22 arrears for years before the bankruptcy and its right to vote was not
23 taken away for years before the bankruptcy. That's just simply a
24 misunderstanding on his part as to what happened.

25 The testimony was very clear, first of all, Your Honor, that
at the 2008 meeting the right to vote was taken away by these recently-
concocted assessments that were then overturned by a jury verdict so
that
they were -- their right to vote was then reinstated and they called
for
a special meeting. They were clean.

In 2009 called for a special meeting and within days prior to
the special meeting the association concocted another assessment and

1 retroactively assessed for five years and declared them in default so
2 that they couldn't vote and that's the default, that's the arrearage,
3 that one just this year that was assessed against them that denied them
4 the right to vote, and so again, in Mr. Marino's defense, I understand
he
5 doesn't know all of that history. So that's -- that's fair.

6 But to the issue of the violation of the automatic stay, Your
7 Honor, to suggest that this debtor forfeited its property right, its
8 voting right is absurd. There is nothing in the Condominium Act,
nothing
9 in FOA's own documents that say you forfeit your right to vote if you
10 don't pay, and the testimony of FOA today was very clear. It was
11 intended to get you to pay the assessments and when you pay the
12 assessments, your right to vote is reinstated. So it's clearly a
13 collection effort. That was the testimony, Your Honor, and that's
14 exactly what the documents say. You pay, it's reinstated.

15 So it's clearly a tool of collection, Your Honor, and it's
16 clearly a violation of the automatic stay not to give them the right to
17 vote when -- when a bankruptcy is filed.

18 We will possibly at some point in the future in this case or
19 in some other litigation get to the underlying validity of the
provisions
20 of the bylaws with respect to voting, but we don't have to go there.
For
21 purposes of today's hearing, we don't have to contest that. We're
22 willing to say, yeah, under the bylaws it says you can't vote and
that's
23 a tool of collection that was pretty clear from the testimony that was
24 elicited today and it's pretty clear from the testimony that it relates
25 to a very recent assessment which is itself is the subject of dispute.

1 Mr. Marino suggests that there is no evidence that Gordon
2 Properties was denied its right to vote. Unless Mr. Marino slipped out
3 at some point during the day, I think he missed some of the testimony,
4 Your Honor.

5 The testimony is very clear that Gordon Properties held a
6 majority of the votes at that meeting and the testimony is clear that
7 they voted in opposition to the meeting to adjourn. It was ignored,
8 Your Honor. Am I Perry Mason? Can I get people to say on the stand that
9 they intentionally denied Gordon Properties the right to vote? He's right.
10 There isn't anybody that got up on that stand and said we told Gordon
11 Properties they couldn't vote from FOA, other than the people from the
12 League of Women Voters. So he's right about that.

13 But Your Honor can come to your own conclusions with respect
14 to the evidence. What is undisputed is that Gordon Properties held a
15 majority of the vote. What is undisputed is that Gordon Properties
16 voted against the motion and what the association did was pass the motion
17 over that vote against it which means it clearly -- it clearly passed a
18 motion that had not been voted on.

19 The only way that could have happened, Your Honor, is for
20 them to ignore Gordon Properties' vote to deny them the right to vote.
21 That's the only way it could have happened.

22 Mr. Marino made reference to the Robert's Rules of Order and
23 Your Honor made reference to it shortly before the break, and -- and
24 the -- the relevance of it from Mr. Marino's point of view was that -- that
25 Gordon Properties did not call for a division of the vote.

1 If we're going to stick with Robert's Rules of Order, Your
2 Honor, then it's got to apply all the way across the board and there
3 are
4 several things about Robert's Rules of Order that the testimony today
5 have already established for Your Honor's benefit that FOA did not
6 follow
7 Robert's Rules of Order.

8 First of all, it was clear from the testimony that there was
9 a motion to adjourn to a time specific. Robert's Rules of Order make
10 it
11 absolutely clear that that's a priority motion. No other motion can be
12 heard when a motion to adjourn to a time specific is pending. That was
13 ignored by the chair of the meeting and she took over that -- over that
14 motion a motion to adjourn indefinitely. That's improper under the
15 Rules
16 of Robert's Order.

17 Secondly, the Rules of Robert's Order make it very clear how
18 the meeting is to be conducted, Your Honor. You will find nothing in
19 Robert's Rules of Order that allow the chair of the meetings to say can
20 I
21 have a motion to adjourn, all in favor, aye, all opposed, no, adjourned.
22 That's not either with the letter or the spirit of Robert's Rules of
23 Order, Your Honor, and it was pretty clear that they didn't follow
24 Robert's Rules of Order in that regard.

25 And then, lastly, Your Honor, Robert's Rules of Order make it
26 clear that the chair cannot entertain another motion after she's
27 adjourned the meeting. Once the meeting is adjourned, it's over, it's
28 adjourned, and the testimony was very clear that no one was given an
29 opportunity, even Mr. Mendelson, nobody was given an opportunity to say
30 anything, although they were, they were clearly voicing their objection,

1 they were making it absolutely clear to the chair that they opposed
what
2 was going on, she had already adjourned the meeting.

3 So even under Robert's Rules of Order, even if they had used
4 the magic words that Mr. Marino wanted, a division of the house, it
would
5 have been improper under Robert's Rules of Order.

6 Lastly, Your Honor, what FOA cannot point you to, Your Honor,
7 is a single case that holds that in order to get relief to enforce the
8 automatic stay, you have to go through any of the elements that are
9 normally applied with respect to an injunction. They simply don't
exist,
10 Your Honor.

11 It is debatable under the case law whether you have to go
12 through those four tests for an injunction if the injunction is under
13 Section 105. There's some debate in the case law about that. Some
cases
14 say no, even if it's an injunction under 105 to enforce the automatic
15 stay or to impose an automatic stay, you don't have to go through those
16 steps.

17 I don't know whether that's right or whether that's not, but
18 that's not what we're on, Your Honor. We're not under Section 105.

19 There is some additional debate in the case law whether
20 relief to enforce the automatic stay has to be by an adversary
21 proceeding. We took the abundant road of caution and filed an
adversary
22 proceeding. There's a ton of case law out there that says that you can
23 get relief to enforce the automatic stay simply by a motion, but we
24 didn't, we filed the adversary proceeding and then we filed our motion
to
25 enforce the automatic stay.

1 What is clear, Your Honor, is that every single case, every
2 single court that has been asked to impose irreparable harm, all of
3 those
4 other tests to enforce the automatic stay have all said the same thing.
5 The automatic stay is an injunction.

6 You know, you don't need more irreparable harm to enforce the
7 injunction, and -- and -- and I'll cite you, Your Honor, to -- to a
8 couple cases in that regard. The 6th Circuit, National Century
9 Financial
10 Enterprises, 423 F.3rd 567, said exactly that. The 9th Circuit, In Re:
11 Minoco, 799 F.2d 517, out of the Bankruptcy Court in Idaho, which cited
12 the 9th Circuit Case, In Re: Pintlar, 175 BR.379. That was reversed
13 on
14 other grounds but not the grounds with respect to the -- to the
15 automatic
16 stay, Your Honor. So it's pretty clear that -- that you don't have to
17 go
18 through those tests.

19 But having said that, Your Honor, I will also tell Your Honor
20 and remind Your Honor that, as my voting rights lawyer client reminds
21 me
22 time and time again, the case law in this country is uniform that
23 denying
24 a right to vote is per se irreparable harm.

25 Thank you, Your Honor.

THE COURT: Anything else you want to add?

MR. MARINO: I guess the question of voting rights that Mr.
Sells is familiar with relates to sovereign bodies and this is a
private
entity that owns interests. We're not talking about a sovereign here.
So I'm not so sure that those things are relevant.

 But in any event, I want to play semantics here. Forgive me
for saying years, it is more than a year. The fact is that the rights

1 that the debtor supposedly had in 2008 or thereabouts or before that
2 did
3 not exist as of the filing date. That's the point. The point is it
4 doesn't matter how many years we're talking about. The point is that
5 the
6 debtor was not eligible to vote as of the filing date and that's an
7 important point here.

8 If the debtor didn't have that right to vote, it didn't have
9 that right to vote after they filed the bankruptcy case and that's the
10 issue for the determination of whether the stay applied here.

11 The question is if they had the right, then -- then the
12 question is, of course, the Court needs to get into the question of
13 whether we violated that right during the course of the meeting, but if
14 they didn't have that right and we maintain fervently that they did not
15 have that right. They were not eligible as of the filing date, there's
16 nothing in this proceeding to specifically challenge that eligibility
17 requirement. There's nothing today that they've shown that says that
18 that right, that that eligibility requirement in the bylaws is somehow
19 invalid under applicable state law, and we have to go back, and I have
20 to
21 repeat fervently that this right, these property rights are established
22 under state law. They have nothing to do with Bankruptcy Code and the
23 bankruptcy case. The bankruptcy case simply acknowledges what those
24 rights are under state law and that's what we have to go back to, state
25 law.

26 What does state law provide for? The state law provides that
27 those provisions need to be adhered to. They may be the subject of
28 dispute at some point. There may be separate legal proceedings that
29 may
30 may

1 ultimately determine that those rights have somehow been improperly
2 denied, but that is for another day. That is not for this proceeding
3 today. This proceeding today is to determine whether we've violated
4 the stay with respect to a property right that exists in the debtor and
5 there is no property right here, with due respect to Mr. King.

6 THE COURT: Now what happens in a case where a consumer owns
7 a car that is repossessed pre-petition but not sold? Is there a
8 violation of the stay for the creditor to keep the car, even though he
9 doesn't sell it?

10 MR. MARINO: I don't understand the Court's scenario.

11 THE COURT: That debtor has a car. He's delinquent. The
12 documents give the right of repossession, --

13 MR. MARINO: So it's repossessed.

14 THE COURT: -- and it's repossessed. The debtor has no right
15 of possession of the vehicle. The debtor files bankruptcy. Does the
16 creditor have to give the car back?

17 MR. MARINO: I would suggest to the Court that there should
18 be some right on the part of the creditor to go ahead and sell it
19 because there's no possessory interest, except that I suppose that the debtor
20 has -- bear legal title that could arguably be implicated by the stay, and
21 I will -- I will point out to you that --

22 THE COURT: I'm not asking whether he can go forward and sell
23 it. That's clearly prohibited. Must he give the car back?

24 MR. MARINO: Must they give the car back? I don't believe
25 they would need to give the car back, Your Honor.

1 THE COURT: Isn't there significant case law that says he
2 must?

3 MR. MARINO: Well, there is the -- Judge Mitchell has had
4 that decision, I believe, yes. But how is that analogous to this case?

5 THE COURT: Right. I deny the motion. Call your first
6 witness.

7 MR. DINGMAN: We recall Dee Cuadros, Your Honor.
8 Whereupon,

9 DEE CUADROS
10 was called as a witness and, having been previously duly sworn, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DINGMAN:

14 Q Ms. Cuadros, I want to pick up -- you've already testified
15 before, so we're going to move ahead, but I want to go back to the 2007
16 annual meeting.

17 Was a quorum obtained at that meeting?

18 A No.

19 Q What, if anything, did the association do to try to obtain a
20 quorum?

21 A We continued the meeting for at least twice.

22 Q And was the association ever able to obtain a quorum?

23 A No.

24 Q Turning now to the 2006 annual meeting, I believe you've
25 already testified you were the chair for that meeting, correct?

1 A 2006 annual meeting?

2 Q 2009.

3 A 2009.

4 Q Yes.

5 A Yes, I was.

6 Q Okay. And you testified previously you had been the chair
7 for prior meetings of the association, correct?

8 A Yes, that's true.

9 Q Okay. And you've heard discussion about Robert's Rules of
10 Order. How -- what rules did you follow as the chair of the meeting?

11 A The name of the rule?

12 Q Well, let me ask you this. Are you familiar with Robert's
13 Rules of Order?

14 A Somewhat. I'm not an expert.

15 Q And did you generally try to follow those as the chair of the
16 meeting?

17 A Yes.

18 Q And you may have testified to this previously but let me just
19 ask. Is the voice vote the normal method for voting on motions at the
20 association meetings?

21 A Yes, it is.

22 Q Now did there come a time when you convened the 2009 annual
23 meeting?

24 A Yes.

25 Q And what happened at that point?

1 A We did not have the information --

2 MR. KING: Your Honor, I'm going to object. I think this was
3 asked and answered earlier this morning.

4 MR. DINGMAN: I don't believe it was, Your Honor.

5 THE COURT: All right. Go ahead and answer the question.

6 THE WITNESS: Okay. We did not have the information from the
7 League of Women Voters and Debbie Ribis as to whether or not we had a
8 quorum. So we -- using the -- the agenda that's in the bylaws, we
9 convened the meeting. We asked the -- let's see. I asked the
10 secretary
11 to read the meeting notice and then I asked the secretary to read the
12 minutes of the 2008 meeting and the special meeting from June of 2009.

13 After that, I asked our attorney, Robert Diamond, to speak to
14 the meeting as to the legal issues that had gone on earlier that day.

15 BY MR. DINGMAN:

16 **Q Did there come a time during the meeting when you were
17 informed whether a quorum had been obtained?**

18 A Yes.

19 **Q And who informed you of this?**

20 A Kevin Broncato.

21 **Q And what did you do when you were informed that no quorum had
22 been obtained?**

23 A I read the -- he gave me this document that tells what the
24 numbers were. I read them to the -- to the meeting and then I
25 indicated
that no business could be conducted because there was no quorum for the
meeting and I was attempting to ask for a -- a motion to adjourn when

1 Jane popped up with her motion which I declared her out of order and
the
2 first hand that -- that went up was Kevin Broncato's and so I called on
3 him to make the motion which he did.

4 Q What motion did he make?

5 A He made a motion to adjourn.

6 Q Was it seconded?

7 A Yes, it was.

8 Q And what did you do then?

9 A I waited a reasonable amount of time and then I adjourned the
10 meeting.

11 Q Well, did you ask for a vote on the motion?

12 A Oh, yes, I did. Absolutely.

13 Q And what type of vote was taken?

14 A It was a voice vote and clearly the ayes had it and so after
15 a reasonable amount of time, as I said, I declared the meeting
adjourned.

16 Q And can you explain to the Court how you went about
17 proceeding with the voice vote? What did you say to the people
gathered
18 at the meeting?

19 A I said, "All those in favor of adjourning the meeting, please
20 say aye."

21 Q And was there a response to that?

22 A There was.

23 Q What did you do then?

24 A Then I asked if there were any opposed to it and there were
25 some people that -- some voices that did not want the adjournment.

1 Q Do you know who those were?

2 A I have no idea.

3 Q And based on what you heard, what did you do then?

4 A I told the meeting that the ayes had it and I adjourned the
5 meeting.

6 Q And did you wait any period of time between saying the ayes
7 have it and adjourning the meeting?

8 A It was a reasonable amount of time, yes.

9 Q Did anyone attempt to make a motion during that time?

10 A No.

11 Q You know Lindsay Wilson, correct?

12 A Yes, I do.

13 Q And she was present at the meeting?

14 A She was.

15 Q Do you know how Gordon Properties voted on the motion to
16 adjourn?

17 A No, I don't.

18 Q Did Gordon Properties make any motions after you stated that
19 the motion to adjourn had carried?

20 A No, they didn't.

21 Q And you then concluded the meeting?

22 A I then concluded the meeting, yes.

23 Q And after the meeting was concluded, did you stay in the
24 meeting room?

25 A We stayed there for awhile. Some of the -- the -- the people

1 attending the meeting left but the board of directors, there were
several
2 of them present and they stayed for awhile, yes.

3 Q Now you've heard testimony from a number of witnesses that at
4 some point after the motion to adjourn the meeting became disorderly,
is
5 that true?

6 A No, it isn't. It was a very quiet meeting.

7 MR. DINGMAN: That's all I have, Your Honor.

8 THE COURT: Thank you.

9 CROSS EXAMINATION

10 BY MR. KING:

11 Q What is a reasonable amount of time, Ms. Cuadros?

12 A I have no idea, but I didn't wait 10 or 15 minutes.

13 Q You asked for all the votes in favor of the motion?

14 A Yes.

15 Q How long did you wait before you asked for all the votes
16 opposed?

17 A Directly afterwards.

18 Q Okay. And after you asked for the votes in opposition, how
19 long did you wait before you said the ayes carried it?

20 A I don't know. I wasn't keeping a watch of the time.

21 Q Right away?

22 A It -- yeah. It was right away.

23 Q And then after you said the ayes carried it, right away you
24 said the motion's adjourned -- I mean the hearing -- the meeting is
25 adjourned?

1 A Well, I wasn't -- I wasn't speeding along. It was a
2 reasonable amount of time for all of these things.

3 Q Ms. Cuadros, you don't own a copy of Robert's Rules of Order,
4 do you?

5 A No, I don't.

6 Q And in fact, you know you haven't even looked at Robert's
7 Rules of Order since you were elected to the board in 2005, isn't that
8 right?

9 A I'd say that's probably true.

10 Q You're not even sure if FOA owns a copy of Robert's Rules of
11 Order, are you?

12 A I -- I'm not sure, but I believe they do.

13 Q But if they do, you have no idea where it's located?

14 A Well, it would be in the office, if we have one.

15 Q But you don't know that?

16 A I don't know that, no.

17 Q What does Robert's Rules of Order tell you with respect to
18 the manner in which you ask for the motion and -- and -- and take the
19 votes? What does it tell you?

20 A I don't know. I'm not sure what you're asking.

21 Q Well, you -- you -- you -- you told Mr. Dingman that you
22 generally try to follow Robert's Rules of Order when you ask for a
23 motion.

24 A Yes.

25 Q Tell me what -- what is your understanding of what that

1 process is?

2 A Well, my understanding of what that process is is that once I
3 ask for the motion, I expect the -- whoever wants to make a motion
4 would
5 raise their hand and wait to be recognized before they start talking
6 and
7 I -- I ask the first one whose hand goes up, if I possibly can.

8 Q And with respect to asking for the votes, what does Robert's
9 Rules of Order tell you the manner in which you should ask for the
10 votes
11 and then acknowledge the votes?

12 A I -- I don't know.

13 Q Doesn't, in fact, Ms. Cuadros, Robert's Rules of Order tell
14 you that when you know that there is an opposition, that you should
15 pause
16 and before you say that the ayes have it, aren't you supposed to say it
17 appears the ayes have it to give people an opportunity to object?
18 Isn't
19 that what Robert's Rules of Order say?

20 A I'm not aware of that.

21 Q You're not aware of that?

22 A I'm not aware of that.

23 Q Okay. Doesn't Robert's Rules of Order require you to address
24 a motion to adjourn to a specific time before you adjourn the motion --
25 before you address the motion to adjourn?

26 A Not to my knowledge.

27 Q Did you register for the meeting, Ms. Cuadros?

28 A Did I register for the meeting?

29 Q Did you register your proxies for the meeting?

30 A No.

1 Q Did Mr. Broncato register his proxies for the meeting?

2 A I have no idea.

3 Q Did any of the board members register their proxies for the
4 meeting?

5 A I don't know. I can only speak for myself.

6 Q Do you know of any board members who did not register their
7 proxies for the meeting?

8 A I don't know who registered for the meeting and who didn't
9 register for the meeting, except for myself.

10 Q Who seconded the Broncato motion?

11 A I believe it was Corey Brooks.

12 Q And exactly how long did you wait at the table there with the
13 board members after you adjourned the meeting?

14 A Oh, I would say it was probably 15 minutes, a half an hour.

15 Q And how many board members were there?

16 A Let's see. I think there were four or five.

17 Q What was the total number of people in the room,
18 approximately?

19 A About 20.

20 Q About 20.

21 A I would say about 20.

22 Q Thank you.

23 MR. DINGMAN: Just a brief redirect, Your Honor.

24 THE COURT: Go ahead.

25 MR. DINGMAN: If that's all right?

1 THE COURT: Go ahead.

2 REDIRECT EXAMINATION

3 BY MR. DINGMAN:

4 Q Ms. Cuadros, did you conduct the 2009 annual meeting any
5 differently than how you had conducted prior meetings of the
6 association?

6 A No, I did not.

7 MR. DINGMAN: That's all I have, Your Honor.

8 THE COURT: All right. You said you did not register your
9 proxies?

10 THE WITNESS: I did not register my proxy.

11 THE COURT: How many proxies do you hold?

12 THE WITNESS: One.

13 THE COURT: How many votes do you hold?

14 THE WITNESS: I have a three-bedroom apartment. I think it's
15 something over two.

16 THE COURT: And why is it that you did -- and so I take it
17 that your two votes were not counted as part of the quorum?

18 THE WITNESS: No, it wouldn't have been.

19 THE COURT: They were not?

20 THE WITNESS: They were not.

21 THE COURT: And why didn't you register?

22 THE WITNESS: Well, I don't know. I just didn't feel like I
23 wanted to vote that day.

24 THE COURT: All right. Thank you. Any other questions?

25 MR. KING: Ms. Cuadros, I have one more question.

1 THE COURT: Just a minute.

2 THE WITNESS: Okay.

3 RECROSS EXAMINATION

4 BY MR. KING:

5 Q In fact, you didn't register your vote because you didn't
6 want a quorum, didn't you?

7 A No. No, that isn't it.

8 THE COURT: All right. You can have a seat with your
9 attorney.

10 (The witness was excused.)

11 MR. DINGMAN: Call Kevin Broncato, Your Honor.

12 THE COURT: Come on up, please, to the podium where you'll be
13 sworn.

14 Whereupon,

15 KEVIN BRONCATO

16 was called as a witness and, having been first duly sworn, was examined
17 and testified as follows:

18 THE COURT: Have a seat in the witness stand, please.

19 DIRECT EXAMINATION

20 BY MR. DINGMAN:

21 Q And please state your name, sir.

22 A Kevin Broncato.

23 Q Where do you currently reside, Mr. Broncato?

24 A 4600 Duke Street.

25 Q Do you own a unit at the Forty Six Hundred Condominium?

1 A Yes, I do.

2 Q And how long have you owned a unit there?

3 A Since October 2001.

4 Q Okay. Where are you currently employed, Mr. Broncato?

5 A At the Rand Corporation.

6 Q What is your position there?

7 A I'm a defense analyst.

8 Q Are you a member of the association's board of directors?

9 A No, I am not.

10 Q Were you a member of the association's Elections Committee
11 with respect to the 2009 annual meeting?

12 A Yes, I was. I was the chairman.

13 Q Can you explain how the association went about registering
14 votes for the meeting?

15 A The association contracted with the League of Women Voters to
16 administer a desk where people could come down and register their
17 presence at the annual election. This desk was opened at approximately
18 6 p.m. the night of the -- the annual election and was open up until the
19 time the quorum was to be decided.

20 Q And what was the process for determining whether a quorum
21 existed?

22 A The process for determining a quorum is whether or not over
23 50 percent of the -- the units registered as present. So essentially
24 people would have to have put their proxy forms into the box ahead of
25 time and those be counted by the League of Women Voters or show up with

1 their proxy forms at the desk and those would be registered against a
2 list of all registered owners provided to the League of Women Voters
and
3 they would check off if a person was present.

4 **Q And how would the association -- who determined, based on**
5 **that information, what the voting percentages were that were present at**
6 **the meeting?**

7 A An independent vote administrator, Debbie Ribis, was given
8 the proxy forms by the League of Women Voters.

9 **Q Did there come a time when she informed you that a quorum had**
10 **not been achieved?**

11 A Yes.

12 **Q Did you convey that information to Ms. Cuadros?**

13 A Yes, I did. I had taken that information and I had walked
14 down to the meeting, the -- that annual meeting that had already begun.
15 Elizabeth Moore, the secretary, was either reading the minutes of the
16 previous election meeting or some other notification. I was able to
talk
17 to Ms. Cuadros, tell her that, based on the tabulations from Debbie
18 Ribis, an insufficient number of votes were registered to -- and a
quorum
19 was not achieved.

20 **Q And what did you do after you conveyed that information to**
21 **Ms. Cuadros?**

22 A I walked to the back of the room and I sat down.

23 **Q What happened next at the meeting?**

24 A Next at the meeting, I believe there was an account by Bob
25 Diamond of recent legal actions, and then Ms. Cuadros asked for a
motion
motion

1 to adjourn.

2 Q What, if anything, did you do in response to that motion?

3 A I raised my hand immediately.

4 Q Were you the first one at the meeting to raise your hand?

5 A I believe so. I was in the back and I could see.

6 Q Do you know who Jane Brungard is?

7 A Yes.

8 Q Did she attempt to make a motion at or around that same time?

9 A Yes, she did. She stood up.

10 Q Did you have your hand raised before she stood up?

11 A Yes.

12 Q And what was your motion?

13 A My motion was a motion to adjourn.

14 Q Was it seconded?

15 A Yes, it was, by multiple people.

16 Q What happened then?

17 A Then I believe Ms. Cuadros called for a voice vote.

18 Q And was there in fact a voice vote taken?

19 A Yes, there was.

20 Q And did some vote in favor of the motion?

21 A Yes, I believe an overwhelming number of people voted in

22 favor of the motion.

23 Q Were there any who voted against the motion?

24 A Yes, I did. I heard Jane Brungard vote against the motion.

25 Q After the vote was taken, what happened next?

1 A The vote was taken. I believe enough -- there was some time
2 -- the vote was taken. I -- it was seconded. I believe the -- the --
3 it
4 was held. It was -- then Ms. Cuadros called an end to the annual
5 meeting.

6 Q And did Ms. Cuadros announce that the ayes have it as far as
7 the --

8 A Oh, yes.

9 Q Okay. Was there any opportunity after she said the ayes have
10 it for a person present at the meeting to make any motion?

11 A I believe there was sufficient time. It's -- it was roughly
12 the standard operation, the amount of time that the vote is taken at
13 almost all meetings that I've been present at.

14 Q And at that time of the meeting, was it -- was the meeting in
15 disorder or what was going on at that time?

16 A At the time I -- I wouldn't say it was in disorder. I -- I
17 would say everyone's still in their seat and/or standing at the side
18 and
19 then once the meeting was adjourned, people got up.

20 MR. DINGMAN: That's all I have, Your Honor.

21 CROSS EXAMINATION

22 BY MR. KING:

23 Q The -- the League of Women Voters was given a registration
24 list for purposes of people registering their proxies?

25 A Let me describe it. They were given a list of all the unit
owners' names and units for the purpose of registration, yes. So they
were given this printout.

1 Q Okay. How long is that list?

2 A It was long enough so that they had to split it in two. They
3 had multiple people. I'd say the first half of unit numbers were here
4 and the second half was here or I can't remember if it was the unit
5 numbers or by last name, they split it up.

6 Q Okay. So on that registration list was the name, the unit
7 number?

8 A Yes.

9 Q What else?

10 A Whether or not a person was in delinquent status with the
11 association.

12 Q Okay. Anything else?

13 A I'm going to try to recall. There were other --

14 Q Did it show the number of votes that the unit was entitled
15 to?

16 A I do not recall.

17 Q Okay.

18 A I do not recall. It -- I'm not certain that was generated
19 from that -- that list. There was -- there's a standard printout list.
20 It may or may not have. I don't remember.

21 Q And did -- were you the one that provided that list to the
22 League of Women Voters?

23 A No, I was not.

24 Q Do you know who was?

25 A I'm not certain. I believe that list would have been

1 provided by the association's management.

2 Q Theresa?

3 A Yes, most likely. It could have come through either --
4 either through Theresa or one of the financial management contract of
5 the association. It's not clear.

6 Q Did you review that list?

7 A For whether -- in what context?

8 Q Did you review it at all before the registration process
9 started, during the registration process?

10 A The question -- there are 400 units on there. Did I review
11 it if all the pages were there? Yes. Did I review it to see if each
12 and every person's name was there? No, because it's impossible. I don't
13 know everyone's name.

14 Q Did you know whether Gordon Properties' name was on there?

15 A Were their units on there? Yes.

16 Q You saw those?

17 A Yes.

18 Q Okay. And was there any notation there with respect to
19 delinquency?

20 A I believe so. There was, yes.

21 Q Mm-hmm. Now, what -- what -- so what then happened with
22 those registration lists? What did the people from the League of Women
23 Voters do with those registration lists?

24 A The registration lists? It's just basically one list. It's
25 just split out for convenience sake. It was put back together and
handed
handed

1 to Debbie Ribis, the independent vote administrator.

2 Q Okay. And when people registered, they would actually turn
3 over their proxies, their --

4 A Their proxies.

5 Q -- ballots? What is it that they would turn over?

6 A The proxy form.

7 Q Proxy form?

8 A Yes.

9 Q And --

10 A So the proxy form was given -- if I may explain? It was
11 given to people so they may indicate whether they wish to vote for
12 quorum only or wish to have somebody else make decisions for them at the
13 meeting or if they wish to vote for a slate, an identified slate of candidates.

14 Q And those proxies were received by the representative from
15 the League of Women Voters?

16 A Yes.

17 Q And what did the representative from the League of Women
18 Voters do with those proxies?

19 A Maintained them.

20 Q Maintained them?

21 A And then handed them off to the independent vote
22 administrator.

23 Q Ms. Ribis?

24 A Yes.

25 Q Okay. So -- so at the end of the registration process, Ms.

1 **Ribis had possession of the registration lists and all of the proxies?**

2 A I'm -- I'm not going to -- I can't tell if they were handed
3 back. Right. So it's quite possible that -- I don't know who has
4 current possession of them. So I saw that these were provided to
5 Debbie
6 Ribis. I do not know if they were handed back at the end.

7 **Q Well, what would be -- what would be the standard procedure**
8 **for the association? Would -- would -- would those items be maintained**
9 **--**

10 A Those items should be maintained by the League of Women
11 Voters.

12 **Q -- by the League of Women Voters?**

13 A I believe so.

14 **Q Okay. And is that what you engaged the League of Women**
15 **Voters for?**

16 A I did not directly contract with them, so I don't know. It
17 has been standard procedure for the League of Women Voters to maintain
18 them, yes.

19 **Q Okay. Are you -- are you familiar with how the League of**
20 **Women Voters was engaged by FOA to do that work?**

21 A No, I am not.

22 **Q You're not. Okay.**

23 A This is a process that is handled administratively.

24 **Q Did you register your proxies for the meeting?**

25 A No, I did not.

Q And how many votes did you have, Mr. Broncato?

1 A What do you mean votes?

2 Q **How many votes would you be entitled to, had you registered?**

3 A I don't know the exact voting percentage. I own a two-
4 bedroom unit.

5 Q **Do you know how many votes go with that unit?**

6 A I do not recall, no.

7 Q **Did you have any proxies --**

8 A Did I --

9 Q **-- at that meeting?**

10 A Did I hold other people's proxies?

11 Q **Did you hold --**

12 A No.

13 Q **-- other people's proxies --**

14 A No.

15 Q **-- for that meeting?**

16 A No.

17 Q **Are you familiar with Robert's Rules of Order?**

18 A I am --

19 MR. DINGMAN: I'm going to object, Your Honor. I didn't ask
20 him any questions about Robert's Rules of Order or present him as an
21 expert on that.

22 MR. KING: Your Honor, he testified that the vote was taken
23 in accordance with ordinary procedures of the association.

24 THE COURT: I'll overrule the objection.

25 MR. DINGMAN: That was not his testimony. His testimony --

1 THE COURT: I've overruled the objection.

2 MR. DINGMAN: -- was to what his motion he made and he said
3 he raised his hand.

4 BY MR. KING:

5 Q You're the Election Committee chairperson, right?

6 A Yes, sir.

7 Q Okay. What is your responsibility as the Election Committee
8 chairperson?

9 A My responsibility as the chairperson is to ensure that (1)
10 that an overall timeline is established, such that candidates can be
11 accepted, that their -- that a letter of acceptance goes out to -- to
12 those that have been accepted, that -- excuse me. Not the letter of
13 acceptance, but that the whole sequence is made so that a sufficient
14 time is available for the election to take place.

15 There's a lot of dates that have to be met before an election
16 can be had. So overall that's what I'm responsible for. I wrote up
17 the proxy form which was a modified version of the previous letter. I held
18 a meeting whereby all the residents could come and voice their opinions
19 and essentially was given responsibility by the president of the board of
20 directors to ensure that this was done in accordance with the policies
21 that are in the policies and declarations.

22 Q And the association typically conducts its elections and its
23 meetings in accordance with Robert's Rules of Order?

24 A I do not know.

25 Q Now, Ms. Brungard's motion was to adjourn for -- to a time

1 certain, was that right?

2 A I don't believe Ms. Brungard made a clear motion. She stood
3 up and -- and involved herself in the meeting but not -- was not
4 recognized to make a motion.

5 Q You -- you don't recall specifically what her motion was?

6 A Ms. Brungard did not make a motion.

7 Q Okay. Thank you. Now the voice vote on the meeting, you
8 said you heard Jane Brungard vote against your motion?

9 A Yes.

10 Q Did you hear Ms. Hernandez vote against your motion?

11 A I -- I -- maybe she did. I do not know.

12 Q Do you know who Ms. Hernandez is?

13 A Yes, I do.

14 Q Okay. And -- and I assume you're going to tell me you didn't
15 know -- don't know whether Ms. Wilson voted against it?

16 A I was far enough from Ms. Wilson I -- I could not see.

17 Q Okay. Mr. Dingman asked you if there was any disorder in the
18 meeting and it's a pretty tough word. So let's ignore the word
19 "disorder."

20 But would you agree, Mr. Broncato, that after Ms. Cuadros
21 took the vote and adjourned the meeting, that there were people in the
22 meeting room that were voicing their displeasure with respect to what
23 happened?

24 A Oh, for some time thereafter, there were people who had made
25 disparaging remarks regarding the -- the job I had taken previously to

1 accusations that ballots were thrown away to a whole sequence of
2 accusations for some time because people continued to have a
3 conversation
4 after the -- the annual meeting was over.

4 Q But you wouldn't consider that disorder, huh?

5 A Conversation?

6 Q Okay. Thank you, Mr. Broncato.

7 THE COURT: Do you have further questions?

8 MR. DINGMAN: No, sir.

9 THE COURT: Mr. Broncato, why did you not register your
10 proxy?

11 THE WITNESS: I did not believe that it was in the interests
12 of the association to see -- to actually have a majority at this time.
13 So I personally decided that it was not something I wanted to see
14 happen.

14 THE COURT: You were present at the meeting?

15 THE WITNESS: Yes, sir.

16 THE COURT: You participated in the meeting?

17 THE WITNESS: I -- I want -- I want to be clear. Did I
18 register for presence officially on the -- on the list? No. Was I
19 present physically at the meeting? Yes. Did I participate? Yes, sir.

20 THE COURT: You were not counted as part of the quorum?

21 THE WITNESS: No, sir.

22 THE COURT: How many other people attended who were not
23 counted as part of the quorum?

24 THE WITNESS: I would say it would be very difficult to say.

25 I would say there were a number, as far as I could tell from people I -
-
-

1 I've known, but there were a number of people at the meeting who I did
2 not know and they clearly had registered.

3 THE COURT: All right. Thank you.

4 THE WITNESS: You're welcome, sir.

5 MR. KING: I have a follow-up, Your Honor.

6 THE COURT: Okay. Go ahead.

7 BY MR. KING:

8 Q Did you vote on your motion?

9 A No, sir, I did not.

10 Q Okay. Was there any discussion amongst any of the unit
11 owners that you're aware of for the purpose of not registering their
12 votes for that meeting?

13 A Were people having private conversations regarding this?

14 Q Are you aware of them?

15 A I've seen people say to each other that it was possible that
16 they didn't want to vote. I did not and I explicitly told them I am
17 not going to tell you one way or the other what to do. It's not my
18 responsibility. It's my responsibility to make sure this election is
19 held in fairness. You all decide what you're going to do.

20 MR. KING: Thank you.

21 THE COURT: Thank you. You can take -- can the witness be
22 excused?

23 MR. KING: Yes, Your Honor.

24 MR. DINGMAN: Yes, sir.

25 THE COURT: All right. Thank you. You're excused, which

1 means that you can sit in the courtroom and watch or you can go home,
2 whatever you'd like to do, but you may not talk with other witnesses
3 until they're excused, as well.

4 THE WITNESS: Yes, sir. Thank you.

5 THE COURT: All right.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you.

8 (The witness was excused.)

9 MR. DINGMAN: Call Corey Brooks, Your Honor.

10 THE COURT: Who?

11 MR. DINGMAN: Corey Brooks.

12 THE COURT: Corey Brooks, please. Come on up, please. A
13 little bit more. Right there is fine. Please be sworn.

14 Whereupon,

15 COREY BROOKS

16 was called as a witness and, having been first duly sworn, was examined
17 and testified as follows:

18 THE COURT: Have a seat in the witness chair.

19 DIRECT EXAMINATION

20 BY MR. DINGMAN:

21 Q Please state your name, sir.

22 A Corey Brooks.

23 Q And where do you currently reside, Mr. Brooks?

24 A 4600 Duke Street.

25 Q Do you own a unit at the Forty Six Hundred Condominium?

1 A Yes, sir, I do.

2 Q How long have you lived there?

3 A Since October of 2005, about four years or so.

4 Q And where are you currently employed, Mr. Brooks?

5 A With the United States Navy.

6 Q And what's your position there?

7 A I'm an intelligence warfare officer, currently assigned to
8 the Pentagon as an aide in the Under Secretary's Office.

9 Q Are you a member of the association's board of directors?

10 A Yes, sir, I am.

11 Q How long have you been on the board?

12 A A little over two years.

13 Q What is your position on the board?

14 A I'm the vice president.

15 Q How long have you served in that position?

16 A A little over a year.

17 Q Were you present at the 2009 annual meeting of the
18 association?

19 A Yes, sir, I was.

20 Q And where were you seated at the meeting?

21 A I was seated on the second row, a little bit off to the left
22 as you're facing the front.

23 Q And can you describe how the room was configured for the
24 meeting?

25 A Yes, sir. It was a long room, similar to this. The chairman

1 would have been sitting approximately where the Judge is. We would
2 have
3 been sitting out in the audience. There was a table where the
4 chairperson was sitting and then there were probably five or six rows
5 of
6 chairs, probably five or six across in a row.

7 **Q And you were sitting out in the audience?**

8 **A Yes, sir, I was.**

9 **Q And you may have already testified to this. Where were you**
10 **sitting?**

11 **A As you're facing the chairman, I was on the left side of the**
12 **room, second row.**

13 **Q Okay. Did there come a time when a motion to adjourn was**
14 **requested by the chair?**

15 **A Yes, sir, there did.**

16 **Q Okay. What happened at that time?**

17 **A At that point, as the president, Ms. Cuadros, was about to**
18 **ask for the motion to adjourn mid-sentence, Ms. Brungard, another**
19 **member**
20 **of the board of directors, jumped up from in the audience and made some**
21 **motion about extending or something to that nature, and she was**
22 **instructed that she needed to raise her hand as was our practice, and**
23 **then the president finished asking for the motion to adjourn and then**
24 **she**
25 **called on another member of the audience.**

Q And who was that?

A Mr. Kevin Broncato.

Q And from where you were seated, did Mr. Broncato's hand go up
or did he respond first to the request for a motion?

1 A He did. When she had finished making her motion and it was
2 appropriate, his hand was up and he was clearly ready to make a motion
in
3 an orderly fashion.

4 Q Was the motion seconded?

5 A It was.

6 Q By who?

7 A By me, sir, and several others.

8 Q Was a voice vote then taken?

9 A Yes, sir, it was.

10 Q And were there members there who voted in favor of the motion
11 to adjourn?

12 A Yes, sir. Nearly everyone voted in favor.

13 Q Do you know who Lindsay Wilson is?

14 A Yes, sir, I do.

15 Q And was she present at the meeting?

16 A Yes, sir, she was.

17 Q And where was she sitting in relation to where you were
18 seated?

19 A She was in the front row on the right side of the audience.

20 Q Did you have occasion to observe her when the voice vote was
21 taken?

22 A Yes, sir, I did.

23 Q What did you observe?

24 A After the motion was made and seconded, she leaned over and
25 began speaking with her attorneys or who I later learned were her

1 attorneys, the two gentlemen sitting with here there in the audience,
and
2 they were whispering back and forth during the voice vote.

3 Q Did you see her shake her head no?

4 A No, sir, I didn't.

5 Q Did you hear her say no?

6 A No, sir.

7 Q And how --

8 A She was still talking.

9 Q -- close were you to Ms. Wilson when the vote was taken?

10 A I was probably two or three chairs away from her laterally
11 and one row back.

12 Q Was there any reason you were observing her response to that
13 vote or the motion, rather?

14 A I was. During the previous meeting, our special meeting that
15 was held in June of that same year, her brother, Mr. Sells, was also at
16 the meeting and had made a motion after the motion to adjourn was made
to
17 conduct a roll call vote or something of that nature and also during
that
18 campaign session, there were several town hall meetings at which Ms.
19 Wilson was extremely animated, engaging with some of the members of the
20 association who were asking her questions in a fairly rude and
boisterous
21 manner. So I was kind of curious to see what might unfold at this next
22 iteration of annual meetings.

23 Q Did the chair announce that the motion to adjourn carried?

24 A Yes, sir, she did.

25 Q Was there time after that announcement for a person present

1 to make any motion?

2 A Could you repeat that?

3 Q Let me ask this. How much -- did she -- how much time passed
4 from when the chair stated that the motion to adjourn carried to the
5 time
5 the meeting was actually adjourned?

6 A Oh, there was a meaningful pause of several seconds.

7 Q Enough time for someone to stand up and raise their hand?

8 A Certainly.

9 Q And then when the meeting was adjourned, did you stay in the
10 meeting room?

11 A Yes, sir.

12 Q For how long?

13 A Probably 20 to 30 minutes.

14 MR. DINGMAN: That's all I have, Your Honor.

15 CROSS EXAMINATION

16 BY MR. KING:

17 Q Good afternoon.

18 A Good afternoon, sir.

19 Q Is it Lieutenant?

20 A Yes, sir.

21 Q My commendation to you for your service. Thank you very
22 much, Lieutenant.

23 A Thank you, sir. It's my pleasure.

24 Q Lieutenant Brooks, you had indicated that you were sitting in
25 the second row.

1 A Yes, sir.

2 Q Where was Mr. Broncato sitting in relation to where you were?

3 A Mr. Broncato was on the same side of the auditorium as Ms.
4 Wilson, the right side, facing the front, and several rows back.

5 Q He was all the way in the back, wasn't he?

6 A I can't say if he was all the way in the back, but he was
7 certainly towards the back.

8 Q And was your chair facing forward or was your chair facing
9 backwards?

10 A It was facing forward, sir.

11 Q And -- and as Ms. Cuadros is speaking, I assume you were
12 looking at her?

13 A Yes, sir, I was.

14 Q But you were able to see Mr. Broncato raise his hand?

15 A Not at that point. I was able to observe that his hand was
16 up when Ms. Brungard sprang to her feet and interrupted the meeting.

17 Q And how was that?

18 A She was sitting also behind me. So Mr. Broncato was also in
19 my field of vision at that time.

20 Q Ms. Broncato was sitting in the same row as you, wasn't she?

21 A Ms. Who?

22 Q Ms. Broncato -- I'm sorry. Ms. Brungard was sitting in the
23 same row as you, wasn't she?

24 A No, sir. I believe she was sitting in the row behind me.

25 Q Did you register your votes, Lieutenant?

1 A No, sir, I did not.

2 Q You did not?

3 A No, sir.

4 Q And what was your vote on Mr. Broncato's motion?

5 A Maybe you should rephrase.

6 Q Did you vote in favor of the motion or against the motion?

7 A Oh, I'm sorry. Yes, I did vote during the meeting. I
8 apologize. I misunderstood your question.

9 Q Did you vote in favor of Mr. Broncato's motion --

10 A Yes.

11 Q -- or against it? You voted in --

12 A In favor of Mr. Broncato's motion. Yes, sir.

13 Q Lieutenant, are you aware of anyone else who was in the
14 meeting room who had not registered their proxies?

15 A I don't know.

16 Q You don't know?

17 A I've not been privileged to who registered their proxies, who
18 didn't.

19 Q Was there any discussion that you were aware of prior to the
20 meeting regarding whether someone should or should not register their
21 proxies?

22 A There was a lot of talk over the building about whether one
23 should or should not, but I did not come down nor did I encourage
24 anyone
25 to do one thing or the other.

25 Q Thank you, Lieutenant.

1 A Yes, sir.

2 THE COURT: Any redirect?

3 MR. DINGMAN: No, sir.

4 THE COURT: All right. Why is it that you didn't register
5 your proxy?

6 THE WITNESS: There was no vote that was held. I was waiting
7 to see if we were going to approach quorum or if there was going to be
8 a
9 quorum.

9 THE COURT: I don't understand that answer.

10 THE WITNESS: Well, if we didn't have a quorum, then there
11 would be no reason to submit any sort of ballot. If we were so far
12 away
13 from a quorum, then it also didn't make sense to --

13 THE COURT: When were you going to make that decision?

14 THE WITNESS: Towards the end of the evening, sir.

15 THE COURT: You mean after the meeting started?

16 THE WITNESS: No, sir. Close enough to time. Once they
17 started --

18 THE COURT: Before the meeting?

19 THE WITNESS: When they closed off the polls. Yes, sir.

20 THE COURT: So you could be last in line to the polls, so to
21 speak?

22 THE WITNESS: Essentially. Yes, sir.

23 THE COURT: So you're going to pay attention to what was
24 going on?

25 THE WITNESS: Certainly.

1 THE COURT: And then you were going to make a strategic
2 decision as to whether you were going to register and be counted as a
3 part of the quorum, is that right?

4 THE WITNESS: Yes, sir.

5 THE COURT: And what factors entered into your mind as to
6 whether you should register to be counted as a part of the quorum
7 versus
8 not registering to be counted as part of the quorum?

9 THE WITNESS: If it appeared as though we were approaching
10 quorum, then I certainly wanted to be counted, have my vote heard. If
11 it
12 looked as though there was no possibility of a quorum, then I saw no
13 reason to put the ballot forward. There had been a lot of litigation
14 going on. There's been a lot of questions about privacy, who might get
15 the ballots based on court decisions, and I wanted to preserve my
16 privacy
17 of how I was voting, if at all possible.

18 THE COURT: And do you think that those types of concerns
19 kept people from coming to the meeting?

20 THE WITNESS: I think those types of concerns kept people
21 from coming to the meeting and also the possibility of Gordon
22 Properties
23 or its representatives taking over the board or the building as it were.
24 I think a lot of people are concerned about that and could lead to some
25 of the apathy as well as some of the staying home when the voting is
taking place.

26 THE COURT: When were you elected to the board?

27 THE WITNESS: I was not, sir. I was appointed to the board.

28 THE COURT: And when was that?

1 THE WITNESS: That was in, I believe, January or February of
2 2008.

3 THE COURT: And how many members are there of the board of
4 directors?

5 THE WITNESS: There are seven voting members and two non-
6 voting members.

7 THE COURT: And of the seven voting members, how many were
8 elected as opposed to appointed as in your case?

9 THE WITNESS: I believe four directors remain who are
10 elected. Four of the voting members, that is, Your Honor.

11 THE COURT: And do you know the year in which those four were
12 elected?

13 THE WITNESS: I don't, Your Honor. I couldn't say
14 absolutely.

15 THE COURT: All right. Any other questions?

16 MR. KING: Yes, one follow-up.

17 THE COURT: Go ahead, Mr. Dingman.

18 REDIRECT EXAMINATION

19 BY MR. DINGMAN:

20 Q Mr. Brooks, what is -- it's not one unit/one vote, right?

21 A No, sir. It's certainly not.

22 Q It's a percentage?

23 A Yes, sir.

24 Q And what is the voting percentage that is attached to your
25 unit?

1 A My unit's about 1.6-ish, I believe.

2 Q Is it less than one?

3 A I would actually have to look at that. I don't know for
4 certain. I have one of the largest units in the building, so it's a
5 higher voting percentage.

6 Q Well, you know that the Gordon Properties' units, which are
7 41, have approximately 20 percent of the votes, right?

8 A Correct.

9 Q So the other 80 percent are spread out over 400+ units, --

10 A Correct.

11 Q -- right?

12 A Yes, I suppose it is less than one percent.

13 Q So your -- if you registered your proxies, that would not
14 have led to a quorum?

15 MR. KING: Your Honor, --

16 THE WITNESS: Oh, certainly not.

17 MR. KING: -- I object. Lieutenant, please.

18 THE WITNESS: Sorry, sir.

19 MR. KING: He's been leading him since he got up here, Your
20 Honor. That question was totally improper.

21 THE COURT: Sustained.

22 BY MR. DINGMAN:

23 Q What, if anything, would have changed the quorum if you cast
24 your vote?

25 A Nothing, sir.

1 Q Thank you.

2 REDIRECT EXAMINATION

3 BY MR. KING:

4 Q Lieutenant, how would you have known whether a quorum was
5 obtained so that you would then register your votes?

6 A I was observing the folks who were coming down. There was a
7 general knowledge of how many votes the Gordon Properties' folks had
8 mustered, assumed knowledge, and then the other folks who were
9 unaffiliated with the Gordon Properties' effort at getting proxies that
10 had filtered through. I think a pretty decent determination, plus
11 factoring in the other delinquencies in the building and those kind of
12 folks. So you could see, generally speaking.

13 Q You wouldn't know whether there was a quorum until the vote
14 was tabulated and the announcement was made that there was a quorum,
15 isn't that right?

16 A Certainly not a 100 percent for sure but an intelligent
17 person could watch what was going on and get a pretty good feel,
18 especially based on recent history.

19 Q I see.

20 A Yes, sir.

21 Q I hold you in high admiration, Lieutenant. So I'm hesitant
22 about asking this question but I'm going to ask it anyway.

23 A Yes, sir.

24 Q Don't you think it's voter fraud to vote on a motion when you
25 haven't registered your proxies?

1 A No, sir, I don't.

2 Q Thank you.

3 THE COURT: It's your witness. Do you have any other
4 questions?

5 MR. DINGMAN: No.

6 THE COURT: All right. Thank you. Can he be excused?

7 MR. DINGMAN: Yes, sir.

8 THE COURT: All right. Thank you. You're free to leave, you
9 can stay if you'd like, not to talk to any other witnesses until
10 they're released.

11 (The witness was excused.)

12 MR. DINGMAN: Call Jerry Terry, Your Honor.

13 THE COURT: Please come forward to be sworn.

14 THE CLERK: Raise your right hand.

15 Whereupon,

16 JERRY TERRY

17 was called as a witness and, having been first duly sworn, was examined
18 and testified as follows:

19 THE COURT: Have a seat in the witness stand.

20 DIRECT EXAMINATION

21 BY MR. DINGMAN:

22 Q Please state your name, sir.

23 A Jerry Terry.

24 Q Where do you currently reside, Mr. Terry?

25 A 4600 Duke Street.

1 Q Do you own a unit there?

2 A Yes.

3 Q How long have you lived there?

4 A About six years.

5 Q Have you owned your unit the entire time?

6 A Yes.

7 Q How are you -- where are you currently employed?

8 A BoozAllenHamilton.

9 Q What is your position there?

10 A Senior consultant.

11 Q Are you a member of the association's board of directors?

12 A Yes.

13 Q How long have you been a member of the board?

14 A A little over a year.

15 Q What is your position on the board?

16 A I'm treasurer and a board member.

17 Q Were you present for the 2009 annual meeting?

18 A Yes.

19 Q Did there come a time at that meeting when a motion to
20 adjourn was requested by the chair?

21 A Yes.

22 Q And who responded to that request first?

23 A Kevin, Kevin Broncato.

24 Q And where were you seated at the meeting at the time the
25 motion to adjourn was requested?

1 A I was sitting in the audience three -- three or four rows
2 back from the front, near the left side, and Kevin was on the right
3 side,
4 to my right.

4 Q Did Ms. Broncato -- I'm sorry -- Ms. Brungard also attempt to
5 make a motion on or about that same time?

6 A Yeah. Shortly after Kevin.

7 Q And what did she do?

8 A I saw Kevin's hand go up and then just a second or so later,
9 I saw Ms. Brungard's hand go up. The president called on Kevin. At
10 that point Ms. Brungard started speaking out of turn. The chair said that
11 she had seen Kevin's hand first and that he had the floor and Jane had not
12 been recognized and then Kevin made his motion to adjourn.

13 Q Was his motion seconded?

14 A Yes.

15 Q Was a voice vote then taken?

16 A Yes.

17 Q Did people vote in favor of the motion to adjourn?

18 A Yes.

19 Q In your view did more vote in favor than against?

20 A Yes.

21 Q Do you know Lindsay Wilson?

22 A I -- I don't know her personally but I know who she is by
23 sight.

24 Q Was she present at the meeting?

25 A Yes.

1 Q Did you have occasion to observe her while the voice vote was
2 being taken?

3 A Yes.

4 Q What did you observe?

5 A When -- when Kevin called for the motion to adjourn, she
6 leaned over to one of her attorneys and said something that I couldn't
7 understand. He turned and said something in response and then she just
8 looked back forward, but she didn't say anything or raise her hand or
9 anything to that effect.

10 Q Did you see her shaking her head no in response to the voice
11 vote?

12 A No, I didn't.

13 Q And how close were you to Ms. Wilson?

14 A I was sitting two or three rows behind her.

15 Q On the same side of the room?

16 A Yes. She was actually sitting near the middle. I was
17 probably one or two seats to the left and maybe a couple rows behind
her.

18 Q Okay. Did the chair announce that the motion to adjourn had
19 carried?

20 A Yes.

21 Q Was there any pause or passage of time between that
22 announcement and the adjournment of the meeting?

23 A Yeah. There was just a brief pause.

24 Q Was that pause sufficient for someone to stand to be
25 recognized?

1 A Yes, I believe so.

2 Q Did anyone attempt to make a motion at that time?

3 A No.

4 Q And after the meeting was declared adjourned, did you stay in
5 the meeting room for any period of time?

6 A No, no. We all left.

7 Q Okay.

8 MR. DINGMAN: That's all I have, Your Honor.

9 CROSS EXAMINATION

10 BY MR. KING:

11 Q Good afternoon, Mr. Terry. Mr. Terry, how is one's voting
12 weight determined in the association?

13 A I don't know the precise formula off the top of my head.
14 It's my understanding that it's based on a formula in the bylaws that
15 has a relationship to percentage of ownership in the building, I believe in
16 terms of square footage.

17 Q And so it's possible that one unit owner owns more voting --
18 votes than another unit owner?

19 A Yes.

20 Q And is it your understanding that there's a thousand votes in
21 the association?

22 A I -- I don't remember off the top of my head but that sounds
23 right.

24 Q That sounds about right, and did you see the vote tally that
25 the League of Women Voters and Ms. Ribis had prepared for the meeting?

1 A I saw it after the fact. I didn't read it closely.

2 Q It's sitting right in front of you there, if you want to take
3 a look at it. You'll see on the top page it shows the percentage of
4 votes held by Gordon Properties. Do you see that? 19.71 something?

5 A Yes.

6 Q Okay. Go down to the third page and you'll see the
7 percentage with respect to all the other unit owners present at the
8 meeting, and what's the percentage?

9 A The number here says 18.4288.

10 Q So you'll acknowledge, won't you, Mr. Brooks, that if Gordon
11 Properties --

12 A It's Mr. Terry.

13 Q I'm sorry, Mr. Terry. You'll acknowledge, Mr. Terry, that if
14 Gordon Properties had voted on Mr. Broncato's motion, it would not have
15 passed?

16 A It's -- it's -- I'm not sure exactly how the vote works. It
17 was a voice vote was my understanding, but if -- assuming these numbers
18 are correct and -- and that it was based on the percentages, I assume
19 that would be correct.

20 Q Okay. Did you register your proxies for the meeting?

21 A No. Actually, I didn't have any proxies to submit.

22 Q Your vote, I mean. Did you register your vote for the
23 meeting?

24 A No.

25 Q And did you vote in favor of Mr. Broncato's motion or against

1 it?

2 A In favor.

3 Q Thank you.

4 MR. DINGMAN: Brief redirect.

5 REDIRECT EXAMINATION

6 BY MR. DINGMAN:

7 Q Is it your understanding, Mr. Terry, that a quorum was not
8 achieved for the annual meeting?

9 A Yes.

10 Q And is it your understanding in the absence of a quorum, no
11 business can be conducted?

12 A Yes.

13 Q Are you aware of any procedure that would prohibit you from
14 have voting on the motion to adjourn since no quorum was achieved?

15 A No.

16 MR. DINGMAN: That's all I have, Your Honor.

17 THE COURT: I wasn't quite sure of the answer to your
18 question. You did not register, so you were not counted as a part of
19 the quorum, is that correct?

20 THE WITNESS: I -- I did not cast a vote that night.

21 THE COURT: You said you didn't have a proxy and you didn't
22 register your proxy.

23 THE WITNESS: Right, right. It's -- it's -- I could be
24 misunderstanding. It's my understanding that the proxies are used for
25 someone that's going to vote absentee. I was there, but I didn't vote
on
on

1 that night.

2 THE COURT: Were you part of the quorum?

3 THE WITNESS: If -- if -- if -- if the quorum was based on
4 voting, I would not have been a part of that. If it was based on
5 presence, I was there.

6 THE COURT: Well, what did the League of Women Voters do when
7 they filled out the registration at the registration desk? What was
8 that
9 for?

9 THE WITNESS: It's my understanding that that was part of the
10 process of voting, that they were verifying that people were actually
11 residents when they were stepping up to cast their votes.

12 THE COURT: Did it have anything to do with quorum?

13 THE WITNESS: I'm -- I'm not entirely sure of their exact
14 procedure on that.

15 THE COURT: But you did not register with the League of Women
16 Voters?

17 THE WITNESS: Correct.

18 THE COURT: And you did not want to be a part of the quorum
19 at that point?

20 THE WITNESS: Correct.

21 THE COURT: And why was that?

22 THE WITNESS: A lot of things had been going on that
23 concerned me about the integrity of the vote and, honestly, I felt that
24 it was probably better to not have quorum that night than potentially
25 let
some of the behavior I was concerned about unfairly influence the vote.

1 THE COURT: And when were you elected to the board?

2 THE WITNESS: I was actually appointed to the board a little
3 over a year ago. I don't remember the exact month.

4 THE COURT: Last year, you said?

5 THE WITNESS: Yes. Yes, sir.

6 THE COURT: About a year ago?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Any other questions?

9 MR. DINGMAN: No, sir.

10 MR. KING: No, Your Honor.

11 THE COURT: Can the witness be excused?

12 MR. DINGMAN: Yes, he can.

13 THE COURT: Thank you. Thank you for coming. You're
14 excused. You can stay in the courtroom if you wish.

15 (The witness was excused.)

16 THE COURT: Do you have any other witnesses?

17 MR. DINGMAN: No, sir.

18 THE COURT: Is there -- is there anyone out in the hall?

19 MR. DINGMAN: No.

20 THE COURT: All right. Is there any other evidence you want
21 to put in?

22 MR. DINGMAN: No, sir. That concludes our evidence.

23 THE COURT: All right. Are you going to have any rebuttal
24 witnesses?

25 MR. KING: I am not, Your Honor.

1 THE COURT: No rebuttal. So is that the case?

2 MR. KING: It is, Your Honor.

3 THE COURT: That's the case, Mr. Dingman?

4 MR. DINGMAN: Yes, sir.

5 THE COURT: All right. Then we'll take a short recess.

6 We'll return in 10 minutes or so.

7 THE CLERK: All rise. The Court is now in recess.

8 (A brief recess was taken.)

9 THE CLERK: All rise. The Court is now in session. Please
10 be seated.

11 THE COURT: All right. Mr. King, you're prepared to go
12 forward.

13 MR. KING: Well, Your Honor, the law hasn't changed since
14 2:30, so I don't know that I have a whole lot to add from a legal
15 perspective. I think Your Honor understands our position.

16 I certainly understood Your Honor's analogy with respect to
17 the car and I -- and I think it's appropriate. I think we could come
18 up
19 with hundreds of similar analogies in the bankruptcy concept as to why
20 a
21 right that someone had prior to a bankruptcy petition but loses because
22 they don't pay a debt but that can be reinstated if you pay the debt,
23 that when you file the bankruptcy and the automatic stay prevents the
24 creditor from enforcing because it is an attempt to collect a debt, and,
25 I mean, this is -- maybe my mind's too simple, but to me this is --
this
is about as basic as it gets with respect to whether it's a violation
of
the automatic stay or not.

1 But it doesn't even have to come down to some technical legal
2 arguments. It's pretty clear from the testimony that the association,
3 whose documents we're talking about, acknowledges that if you pay it's
4 reinstated, it's certainly not forfeited, and it's intended to collect
5 the debt. It's a coercive tool to collect the debt.

6 So I think it's clearly violated if -- if the -- if the vote
7 -- if the right to vote -- denial of the right to vote continues post
8 petition.

9 And I've already argued again the legal issues with respect
10 to the standards as to what it is that we have to show today to enlist
11 the support of the Court to enforce the statutory data that is set
12 forth in 362 and, moreover, again, I cited to the cases. I didn't cite the
13 case, but I think it's universal. I don't think there's any cases to
14 the contrary that hold a denial of right of the vote is -- is irreparable
15 harm by itself.

16 The association takes -- places a lot of emphasis, attempts
17 to place a lot of emphasis on the fact that Gordon Properties somehow
18 didn't follow Robert's Rules of Order at the end of the motion by
19 asking for a division of the house or something to that effect and I -- I do -
20 I do think that there are provisions in Robert's Rules of Order with
21 respect to giving aggrieved people the opportunity to ask for a roll
22 call vote or a division of the house or whatever you might call it, but it's
23 clear that it can't be asked after the meeting's adjourned.

24 It's clear, also under the Robert's Rules of Order, that --
25 it's clear that the association itself has violated its own Rules of

1 Robert's Order. It -- it -- the motion made by Ms. Brungard clearly
2 took
3 precedence. It's a priority motion that was simply ignored. Our
4 witnesses testified with respect to the rapidity of the conduct, the
5 manner in which the vote was taken, and that in fact there simply
6 wasn't
7 any opportunity to raise a motion.

8 But, moreover, our witnesses clearly testified that they did
9 voice an objection. Did they use the magic words that Mr. Dingman
10 would
11 like them to have used? No. But they clearly voiced their objection
12 and
13 were -- it was -- it was simply ignored.

14 But the most important part of this whole thing, the focus,
15 Your Honor, is was the stay violated and the stay was violated, in my
16 opinion, Your Honor, if Gordon Properties was denied its right to vote
17 and there is no way that this motion could have passed because Gordon
18 Properties held a majority and the testimony was overwhelming with
19 respect to whether Gordon Properties attempted to vote against it, and
20 it's not only Gordon Properties' 20 percent. There's -- there's the
21 10.6
22 percent of Ms. Brungard and the five percent of Ms. Hernandez. That
23 was
24 35 percent of 38 percent there, Your Honor. 35 percent of 38 percent
25 present voted against it. On that the testimony is very clear.

26 I guess the only thing that's changed from this morning to
27 this afternoon, Your Honor, is that we now have, I think, we have a
28 chairperson who was not qualified to chair the meeting because she
29 didn't
30 register. We have a member who moved, whose motion was accepted by the
31 chair who didn't register and is not present. They may be present
32 physically, Your Honor, but that's not what it takes to be present to
33 be
34 be

1 able to vote on a motion. He moved. He made a motion and he was not
2 authorized to make a motion. And you have two unit members who voted
3 on
4 the motion who weren't present and were not authorized to vote, and,
5 Your
6 Honor, I know this case today isn't about voter fraud, but that's
7 exactly
8 what we have here today, and I think Your Honor is beginning to get a
9 sense of how it is that this board has been able to resist attaining a
10 quorum for three years and there's going to be very difficult -- we've
11 got a lot of work cut out for us in order to get that quorum, but we
12 have
13 to be given the opportunity, Your Honor, and we're not being given the
14 opportunity.

15
16 We can't vote. We have 20 percent and until the association
17 conducts a meeting and gives us the right to vote, I think the stay has
18 been violated, and I ask the Court to exercise its powers to, Number 1,
19 to declare that the stay has in fact been violated and to require the
20 association to reconvene the meeting.

21
22 THE COURT: What is the urgency of a ruling today versus two
23 or three weeks? The reason I ask is we're running into Christmas and
24 New
25 Year's.

MR. KING: Candidly, I don't think it's that urgent, Your
Honor. I don't think Your Honor has to -- I think it can wait until
Your
Honor returns. Obviously, this has been going on a long time. I know
Gordon Properties would like to have it resolved sooner, but I can't
tell
Your Honor that there's anything that is that critical that it can't
wait
for a couple weeks.

THE COURT: All right.

1 MR. DINGMAN: Your Honor, I don't know if the law has changed
2 either in the last two hours, and I'll let Mr. Marino address those
3 issues.

4 What I'd like to address, Your Honor, is what we view as the
5 issue before the Court, what the evidence showed, and the request for
6 relief that's been asked for.

7 It's undisputed that there was no quorum achieved for the
8 2009 annual meeting which means the association could not conduct any
9 business. So there was no denial of a right to vote, for example, for
10 the board because no business could be conducted.

11 So their entire motion boils down to whether Gordon
12 Properties was denied the right to vote on a motion to adjourn. That's
13 what their case is about. They did not present any evidence that, when
14 the motion to adjourn was put to a voice vote, that Ms. Cuadros knew
15 how Gordon Properties voted. In fact, I asked Ms. Wilson that very
16 question and she says, "I don't know."

17 Now she says she shook her head and said no, other witnesses
18 said she didn't do that, but nobody testified that Gordon Properties
19 was told you cannot vote on the motion to adjourn and nobody testified that
20 Ms. Cuadros knew that they had voted against it and ignored their vote.

21 THE COURT: Well, can I not draw the inference that with
22 Gordon Properties holding more than a majority of those present, that
23 Ms. Wilson testified she voted against it, that her vote and that would
24 have sunk the motion? Why can I not infer that her vote was ignored and
25 they were denied the right to vote?

1 MR. DINGMAN: Because it was a voice vote which means that
2 the determination of whether the ayes have it or the nays have it isn't
3 based upon the chair counting heads and adding up votes. It's based
4 upon
5 does it sound like the ayes have it and you make that decision.

5 THE COURT: Isn't that incorrect in a condominium association
6 as a matter of law?

7 MR. DINGMAN: No, sir.

8 THE COURT: Show me the cases that support your --

9 MR. DINGMAN: This was --

10 THE COURT: Show me the cases that support your proposition
11 that in a condominium where there's proportional voting, based on size
12 or
13 whatever basis in a condominium, that a voice vote is counted
14 differently
15 than a paper ballot vote. Show me the cases.

14 MR. DINGMAN: Your Honor, voice votes --

15 THE COURT: Is that what you're saying?

16 MR. DINGMAN: -- are taken --

17 THE COURT: Let me -- let me, first of all, make sure I
18 understand. Is that what you are saying?

19 MR. DINGMAN: We are saying that a voice vote was taken --

20 THE COURT: No.

21 MR. DINGMAN: -- which is the normal --

22 THE COURT: Don't answer your question. Answer my question.

23 MR. DINGMAN: Well, I'm trying, Judge.

24 THE COURT: Well, you're not succeeding. Do you want me to
25 restate it for you? Let me restate it --

1 MR. DINGMAN: Sure.

2 THE COURT: -- for you. Condominium associations have
3 proportional voting. Not every unit is created equal for whatever
4 reason and they can use either square footage, they can use value and that
5 value can be from a higher floor or a lower floor. In general, it is on the
6 basis of square footage and that's what it is and there are typically a
7 variety of sizes of units and that's quite plainly the case in this
8 instance. You have 400 units, more or less, and you have, it looks
9 like, at least 52 types of units, each with a different vote.

10 Now the condominium law, the Condominium Act says that when
11 you vote, you vote in accordance with your percentage interest and you
12 have a quorum based on your percentage interest and you're going to
13 elect, as your witnesses have testified, officers and directors,
14 directors not officers, according to percentage interest, and I don't
15 think that's contested. Is that contested?

16 MR. DINGMAN: It's contested, Your Honor, because no quorum
17 was met which means no business of the association --

18 THE COURT: Mr. Dingman, how late do you want to stay here
19 tonight?

20 MR. DINGMAN: Your Honor, I'm trying to answer your
21 questions.

22 THE COURT: You're not even -- you're not even --

23 MR. DINGMAN: I have the right to make a record in response

24 --

25 THE COURT: No. Mr. Dingman, you don't have a right to talk

1 over my voice.

2 MR. DINGMAN: Your Honor, --

3 THE COURT: You will remain silent. You will accord this
4 Court dignity.

5 MR. DINGMAN: I have, Your Honor.

6 THE COURT: You will not interrupt me.

7 MR. DINGMAN: My client dignity in this proceeding.

8 THE COURT: You will not --

9 MR. DINGMAN: I'm simply trying to make my record.

10 THE COURT: I will adjourn for five minutes and I will be
11 back.

12 THE CLERK: All rise. The Court is in recess.

13 (A brief recess was taken.)

14 THE CLERK: All rise.

15 THE COURT: All right. Mr. Dingman, continue.

16 MR. DINGMAN: Your Honor, before I continue, I just want to
17 say I don't mean to be offensive to the Court. If I did, I apologize.
18 I'm trying to simply state our position and if I went too far, then I
19 apologize to the Court for that.

20 Our position on the evidence is that the voice vote was the
21 normal procedure. No one objected to it. There was no evidence that
22 Ms. Cuadros knew how Gordon Properties voted. Had there been a roll call
23 vote, had there been a division of the house, then they may very well
24 have carried the vote but that was not asked for. Gordon Properties
25 had asked for roll call votes previously. They had counsel present. So we

1 don't believe the evidence has demonstrated that the association denied
2 the right to vote on the motion to adjourn.

3 And as far as the request for relief which is the reconvening
4 of the meeting, as we've argued previously, Your Honor, we think that
5 falls within the category of an injunction, in fact a mandatory
6 injunction, directing the association to take certain action which will
7 cost the association significant money, and we do not believe any
8 evidence was presented to show irreparable harm or any of the other
9 bases
10 required for the entry of an injunction, and so we would ask that that
11 --
12 at least that part of it be denied.

13 And it is also our position for all the reasons we stated,
14 Your Honor, that we do not believe it's a violation of the stay nor
15 that
16 facts have been presented demonstrating there was a denial of Gordon
17 Properties' attempt to vote at the 2009 annual meeting.

18 Thank you.

19 THE COURT: Thank you. Mr. Marino, did you have anything to
20 add?

21 MR. MARINO: I'll be very brief, Your Honor. I -- I think I
22 said everything earlier this afternoon at 2:30 and I agree that the law
23 really hasn't changed all that much since then.

24 The only -- the only point I wanted to bring up, though, Your
25 Honor made an analogy between the possessory interest that an owner who
files for bankruptcy has in a vehicle that's been repossessed and
analogized it to this case where you have an eligibility requirement
that's a part of the bundle of intangible rights that encompass the

1 ownership of a condominium, and I'm not sure that the analogy is as
clear
2 as Mr. King believes it might be.

3 I think it's a little bit more murky only because of the
4 differences between those rights. A possessory interest in an
automobile
5 for an individual consumer debtor who files for bankruptcy and loses
the
6 ability to use his car and I think that that was part of the motivation
7 perhaps for that decision, and forgive me because I have not read that
8 decision in quite some time and I don't remember the specific context
9 that decision was made in, whether it was an automatic stay issue or
10 whether it was something else. I have vague recollections of it.

11 But that's a little bit different from a situation where a
12 condominium owner has an eligibility requirement that they don't --
that
13 they haven't qualified for pre-petition and they lose that right and
they
14 don't have that right as of the filing date and to me that's -- that's
--
15 that's a different -- that's a different thing.

16 But in any event, I don't want to argue with the Court on
17 that point, and I don't know whether that's --

18 THE COURT: There would be another analogy and that's the
19 garnishment.

20 MR. MARINO: A garnishment? Well, again, a tangible right in
21 -- in money that's due, that's different. That's not necessarily the
22 same or analogous to what we have here. Again, we're talking about
part
23 of the bundle of rights that relate to the ownership of this
condominium.
24 That is not being denied, the use of its condominium. The debtor is
not
25 being deprived of any dollars associated with that condominium.

1 All we're talking about is the right to vote and actually
2 what we're really talking about here is a procedural issue. This is
3 not necessarily a right to vote on a substantive issue. This is really an
4 issue about a procedural point that related to the -- the -- the
5 adjournment of the meeting. We're not even talking about voting on
6 substantive issues.

7 I could understand if this case had to do with a situation
8 where there was a quorum and the debtor had enough votes to command the
9 entire meeting. That's not what this is all about.

10 THE COURT: A vote is a vote, isn't it?

11 MR. MARINO: Well, no, not in this context. There's
12 different votes. I have to -- I have to --

13 THE COURT: One's more important than the other?

14 MR. MARINO: Well, in this particular instance, it is because
15 really what they're fighting about here, and at the end of the day what
16 they want, is the ability to adjourn this so that they can go out and
17 command enough proxies to command a quorum and that apparently has been
18 a futile process for the last several years because in the last two years
19 or so, actually several years now -- forgive me again. I am new to the
20 case. Mr. King is correct about that and I'm gathering the facts as I
21 go along here and I think I understand the history.

22 But there's been a number of previous meetings where they've
23 attempted to command a quorum and they haven't been able to do it and
24 they have attempted to adjourn meetings and reconvene them and they
25 haven't been successful. So all of this really is about --

1 THE COURT: Does it -- does it disturb you that the chairman
2 of the Elections Committee isn't out there trying to get a quorum?

3 MR. MARINO: I'm not sure that the chairman of the Elections
4 Committee has really not tried to get a quorum. I think that there is
5 a significant distrust. I think I heard somebody testify about there
6 being a distrust about what could happen at these meetings if there was a
7 quorum. I think the homeowners seem to be genuinely afraid.

8 Now, I'm only using one person's example, but somebody
9 actually testified up there that they were worried about what would
10 happen. I mean, look, Gordon Properties, there's not a lot of evidence
11 here today about their motives in doing this. It wasn't really
12 relevant to this proceeding. Hopefully, if Your Honor -- regardless of Your
13 Honor's ruling today, presumably we're going forward with the actual
14 complaint and at that time, it would seem to me it would be relevant to
15 determine why they're doing what they're doing and what the motivation
16 is and the history behind this whole thing and how the property is
17 maintained and what will happen in the future if they get the right to
18 do what they want to do. That's a problem, but that's not for today's
19 hearing.

20 But I view this as nothing more than a procedural issue
21 dealing with, you know, a voting right that would eventually give them
22 the ability to go out and trying to find a quorum which they haven't
23 been able to do for the last two or three years. So it might be all much
24 ado about nothing. If we lose today and they go and they do what they want
25 to do, maybe it's a matter of we saying who cares, they're not going to

1 get what they want which is to control the board and which is to
2 ultimately change the responsibilities and rights that they have to the
3 association. That's the motivation here at the end of the day.

4 Not testified to but that is our belief of what their
5 motivation is, but irregardless, I --

6 THE COURT: I thought if that's the issue to be presented,
7 then why isn't it -- what's the problem in getting out the vote and
8 having a quorum and letting the people decide it?

9 MR. MARINO: I think there's a problem in the fact that every
10 time they do this, it costs the association about \$15,000 or so and
11 that,
12 you know, that's a problem because you're dealing with an association
13 that has budget. But every time they do that, then they have to expend
14 the dollars. So that I think that's a concern. But I think ultimately,
15 at the end of the day, I don't think they win the war because I don't
16 think that they're going to be able to command a quorum and maybe I've
17 said something that sort of takes away from our case here, but they're
18 really not going to do -- they're really not going to get the true
relief
that they really want which is to -- to take over the board.

19 So again --

20 THE COURT: But the question is, isn't it, is the right to
21 have that come to a vote --

22 MR. MARINO: And I --

23 THE COURT: -- and to determine whether or not they can
24 muster the support that -- that they -- they would like to muster?

25 The -- what is the importance of getting a decision quickly

1 or next couple of weeks?

2 MR. MARINO: I don't think there's any -- any urgency on
3 this, Your Honor. I think this can stay, as Mr. King has suggested.
4 We
4 would agree with that.

5 THE COURT: All right. Yeah. I don't hear any evidence as
6 to the cost of the association to hold a meeting and that's not a part
7 of
7 the record.

8 MR. MARINO: Understand.

9 THE COURT: All right.

10 MR. MARINO: Understand.

11 THE COURT: All right. And you get the final say, Mr. King.

12 MR. KING: First of all, if I heard what Mr. Marino said
13 accurately, it's scary that he's suggesting to the Court that you
14 shouldn't give Gordon Properties the right to vote because they're
15 concerned that they're going to take over the board and change things.
16 That's what the vote's all about, Your Honor. That's democracy.

17 The only other thing I want to say, Your Honor, is again with
18 great -- Mr. Dingman spent time talking about the opportunity to have
19 this division and again the important part here, Your Honor, is that I
20 think what Mr. Dingman is suggesting to Your Honor is that you elevate
21 Robert's Rules of Order above the United States Bankruptcy Code and
22 that's not the way it works.

23 THE COURT: All right. Thank you. I'll take the matter
24 under advisement.

25 We're adjourned.

1 THE CLERK: All rise. The Court stands in recess.
2 (Whereupon, at 5:10 p.m., the case was submitted.)

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