

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In re:

**GORDON PROPERTIES, LLC,  
CONDOMINIUM SERVICES, INC.**

Debtors.

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**GORDON PROPERTIES, LLC,**

Plaintiff,

v.

**FIRST OWNERS' ASSOCIATION OF  
FORTY SIX HUNDRED CONDOMINIUM, INC.,**  
Serve: Dewanda F. Cuadros (Registered Agent)  
4600 Duke Street, Unit #411  
Alexandria, Virginia 22304

and

**BOARD OF DIRECTORS OF FIRST  
OWNERS' ASSOCIATION OF FORTY SIX  
HUNDRED CONDOMINIUM, INC.,**  
Serve: Dewanda F. Cuadros (President)  
4600 Duke Street, Unit #411  
Alexandria, Virginia 22304

and

**DEWANDA F. CUADROS**, in her capacity as  
Member of the Board of Directors  
4600 Duke Street, Unit #910  
Alexandria, Virginia 22304

and

**COREY BROOKS**, in his capacity as  
Member of the Board of Directors  
4600 Duke Street, Unit #1131  
Alexandria, Virginia 22304

**Case No. 09-18086-RGM**  
(Chapter 11)  
(Jointly Administered)

**Adv. Pro. No. 11-\_\_\_\_\_ -RGM**

and

**ELIZABETH MOORE**, in her capacity as  
Member of the Board of Directors  
4600 Duke Street, Unit #411  
Alexandria, Virginia 22304

and

**F. J. PEPPER**, in his capacity as  
Member of the Board of Directors  
4600 Duke Street, Unit #932  
Alexandria, Virginia 22304

and

**JERRY TERRY**, in his capacity as  
Member of the Board of Directors  
4600 Duke Street, Unit #1010  
Alexandria, Virginia 22304

and

**LUCIA HADLEY**, in her capacity as  
Member of the Board of Directors,  
4600 Duke Street, Unit #1109  
Alexandria, Virginia 22304

and

**KEVIN BRONCATO**, in his capacity as  
Chairman of the Elections Committee,  
4600 Duke Street, Unit #1524  
Alexandria, Virginia 22304

Defendants.

## COMPLAINT

This is an action for injunctive, equitable and other relief brought by Gordon Properties LLC, pursuant to 11 U.S.C. §362, Va. Code Ann. §§ 13.1-801 *et seq.*, §§ 55-79.38 *et seq.*, and common law, against the Defendants for an injunction and damages for violation of the automatic stay, judicial review of a corporate election, breach of fiduciary duty, and other relief as set forth below:

### The Parties

1. Plaintiff Gordon Properties, LLC (“Gordon Properties”) is the debtor in this case,<sup>1</sup> having commenced its chapter 11 case (the “Case”) with the filing of a voluntary petition (the “Petition”) on October 2, 2009 (the “Petition Date”). Gordon Properties is in possession of its assets and is operating its business as a debtor-in-possession.

2. Forty Six Hundred Condominium (“Condominium”) is a mixed-use high rise condominium project located at 4600 Duke Street, Alexandria, Virginia. It consists of one sixteen-story structure containing multi-family residential and commercial condominium units and two separate, detached street-front commercial units.

3. The Condominium was established by a Declaration recorded on November 16, 1975, in Deed Book 811, Pages 317, *et seq.* among the land records of the City of Alexandria, Virginia.

4. Section XV of the Declaration states that the “[a]dministration of the Condominium Project shall be vested in the Owners’ Association in accordance with this Declaration, the By-Laws, Exhibits and amendments thereto. The Owners’ Association shall consist of all Unit Owners in Accordance with the By-Laws attached [to the Declaration] as

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<sup>1</sup> This case is jointly administered with the chapter 11 case of Condominium Services, Inc., a wholly-owned subsidiary of Gordon Properties.

Exhibit E and made a part hereof.” (Together the Declaration and the By-laws are referred to as the “Condominium Instruments.”)

5. Defendant First Owners' Association of Forty Six Hundred Condominium, Inc. (“FOA”) is a Virginia non-stock corporation incorporated on May 17, 1977, to serve as the “Owners’ Association” required by the Condominium Instruments.

6. Schedule D of the Debtor’s Schedule of Assets and Liabilities (the “Schedules”) identifies FOA as a secured claimant with respect to a condominium lien for unpaid assessments in the approximate amount of \$300,000 (the “Claim”). The Claim relates to the Restaurant Unit (as hereinafter defined) and is scheduled by the Debtor as disputed.<sup>2</sup>

7. Defendant Board of Directors of the FOA (“Board”) is the Board of Directors required by Va. Code Ann. §13.1-853.A and Article V, Section 1 of the By-Laws.

8. Defendant Dewanda F. Cuadros (“Cuadros”) is a resident of Virginia, a unit owner at the Condominium, a member of the Board, and serves as President of the Board.

9. Defendant Corey Brooks (“Brooks”) is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

10. Defendant Elizabeth Moore (“Moore”) is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

11. Defendant F. J. Pepper (“Pepper”) is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

12. Defendant Jerry Terry (“Terry”) is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

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<sup>2</sup> Gordon Properties has objected to the Claim, and the objection is scheduled for trial before this Court on February 24, 2011. Gordon Properties alleges that FOA did not have the authority to make the assessments that are the subject of the Disputed Assessments, and it has not paid those Disputed Assessments. Gordon Properties has fully and timely paid all other assessments relating to its Units. Nonetheless, Gordon Properties submits that it is entitled to the relief sought in this Complaint regardless of whether the Disputed Assessments are valid or invalid.

13. Defendant Lucia Hadley ("Hadley") is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

14. Defendant Kevin Broncato ("Broncato") is a resident of Virginia, a unit owner at the Condominium, and served as Chairman of the Elections Committee during FOA's 2009 annual meeting. (Defendants Caudros, Brooks, Moore, Pepper, Terry, Hadley, and Broncato are collectively referred to herein as the "Individual Defendants" and FOA and the Individual Defendants are collectively referred to herein as the "Defendants.")

15. Gordon Properties is a Virginia limited liability company which owns thirty-nine (39) condominium units at the Condominium (the "Units"): four (4) "Residential Units," thirty four (34) "Commercial Units," and one (1) "Street-Front Commercial Unit" (the "Restaurant Unit"), as those terms are defined in the Declaration and By-Laws.

16. The ownership of the Gordon Properties' Units includes ownership of an undivided interest of approximately 19% of the common elements as established by Exhibit D to the Declaration.

17. Gordon Properties is a member of FOA with all rights and privileges of membership created by applicable law of the Commonwealth, the By-Laws of the Corporation, and the Condominium Instruments.

#### Jurisdiction/Venue

18. This court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334(b).

19. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (M), and (O).

20. This court is the proper venue for this proceeding pursuant to 28 U.S.C. § 1409(a).

Qualifications and Terms of and Voting for Directors; Annual Meetings

21. Article V, Section 1 of FOA's By-Laws provides that the FOA Board is to be "composed of at least seven (7) natural persons who shall (after the first annual meeting of members) be members of the Owners' Association."

22. Article V, Section 5 of FOA's By-Laws provides that members of the Board are to be elected on a staggered basis to two-year terms.

23. Article V, Section 5 also provides that the directors will hold office until their successors have been elected and hold their first meeting.

24. Va. Code. Ann § 55-79.75 requires FOA to hold a meeting of its members at least once each year.

25. The Condominium Instruments require FOA to hold annual meetings in the first Wednesday of each October.

26. The last election for directors at FOA was held in October 2006.

27. The two-year term of office of each member of the Board elected in October 2006 has expired.

28. Pursuant to the Condominium Instruments, the votes cast at an annual meeting are determined by and consistent with the percentage ownership of the common elements and, therefore, Gordon Properties' vote at FOA's annual meetings represents approximately 19% of the total votes available.

29. Article IV, Section 5 of FOA's By-Laws provides that "[t]he presence, either in person or by proxy, of members representing at least a majority of the total votes of the Condominium Project shall be requisite for, and shall constitute a quorum for the transaction of any business which affects the rights and duties of all unit owners."

30. Robert's Rules of Order is FOA's parliamentary authority.

The 2009 Annual Meeting

31. FOA noticed the 2009 annual meeting (the "2009 Annual Meeting") for October 7, 2009, the first Wednesday in October 2009.

32. FOA established a procedure whereby owners registered their attendance at an annual meeting and their respective number of votes prior to the start of the meeting. This registration was then used to determine if the necessary percentage of votes was present to establish a quorum.

33. Members representing approximately 38% of the total votes of FOA registered in person or by proxy for the 2009 Annual Meeting and were counted as present for purposes of determining whether a quorum was present.

34. Gordon Properties registered for the 2009 Annual Meeting and its approximately 19% of the total votes were counted toward the establishment of a quorum.

35. Two other individuals, Jane Brungart, who is a member of the Board, and Martina Hernandez, both of whom are independent of Gordon Properties, gathered registered proxies for the 2009 Annual Meeting representing approximately 15% of the total votes of FOA.

36. Together, Gordon Properties, Brungart, and Hernandez held approximately 34% of the total available votes and more than 90% of the votes registered for the 2009 Annual Meeting.

37. The 2009 Annual Meeting was called to order by Defendant Cuadros as President of FOA. Cuadros proceeded to chair the 2009 Annual Meeting.

38. The chairman of FOA's elections committee, Kevin Broncato, reported to Cuadros that, based on the registration, there was an insufficient number of votes to establish a quorum.

39. At least three members of the Board (Defendants Cuadros, Terry, and Brooks) and the chair of FOA's election committee (Broncato) were present in person at the 2009 Annual Meeting, but were not counted for quorum purposes because they intentionally did not register their votes before entering the meeting room.

40. Other members of FOA who did not register may also have been present in person at the 2009 Annual Meeting and were not counted for purposes of establishing a quorum.

41. When Broncato reported that the number of votes "present" at the meeting were insufficient to establish a quorum, he knew that number to be false because he knew that he and others present in person at the meeting were not counted for purposes of establishing a quorum.

42. Cuadros knew when she began to preside over the meeting that she had not registered her votes as present at the meeting for quorum purposes.

43. After receiving Broncato's report that no quorum was established, Cuadros then announced that there was no quorum for the 2009 Annual Meeting and asked for a motion to adjourn.

44. Brungart was the first to respond. Brungart rose and moved to adjourn the meeting for 30 days.

45. Cuadros then told Brungart that she was not recognized and recognized Broncato instead.

46. Broncato then moved to adjourn *sine die*. The motion was seconded by Defendant Terry.



47. Cuadros knew when she recognized Broncato for purposes of making a motion to adjourn that he had not registered his votes as present at the meeting for quorum purposes.

48. Cuadros knew when she accepted a second on the Broncato motion from Terry that he had not registered his votes as present at the meeting for quorum purposes.

49. Defendants Cuadros, Terry, Brooks, and Broncato were present in person and participated fully in the meeting even though they knew they had not registered as present and were not being counted for quorum purposes.

50. The Individual Defendants deliberately and intentionally failed to count everyone present in person at the 2009 Annual Meeting when making the determination as to whether a quorum had been established.

51. The Individual Defendants took these actions with the intent to deprive Gordon Properties and other members of FOA of the opportunity to vote for and elect a Board of Directors.

52. The members of FOA, including Gordon Properties, were improperly denied their right to elect a Board of Directors.

53. Cuadros was an experienced chairperson, skilled at running meetings, and familiar with the basics of Robert's Rules of Order.

54. Cuadros took a voice vote on the Broncato motion to adjourn, announced that the motion passed, and, without recognizing anyone else or providing sufficient time for anyone else to speak or seek recognition, adjourned the meeting.

55. During the brief voice vote on Broncato's motion, Brungart, Hernandez, and Gordon Properties voted "no."

56. Cuadros knew that the votes in FOA were weighted and that the outcome of the vote on the Broncato motion should not have been based upon either the volume of the voices or the number of people responding but upon the weight of the votes.

57. Cuadros knew that Gordon Properties, Brungart, and Hernandez, independently and collectively, held enough votes to determine the outcome on the Broncato motion had it been proper.

58. Cuadros knew that a sufficient number of votes in FOA voted “no” to defeat the Broncato motion.

59. Cuadros willfully and intentionally ruled the Broncato motion passed when she knew or should have known that it failed.

60. Cuadros also failed to provide sufficient time after the Broncato motion to give those in attendance an opportunity to object to the adjournment or take other action with respect to the meeting.

61. Had Cuadros provided sufficient time after declaring the Broncato motion passed and before declaring the meeting adjourned, Gordon Properties would have asked for a division of the house or would have otherwise objected to the ruling of the chair.

62. By declaring the Broncato motion passed notwithstanding the votes of Brungart, Hernandez, and Gordon Properties and by failing to provide sufficient time to request a division or to object to the ruling of the chair, the Defendants denied Gordon Properties its right to vote.

63. Cuadros willfully and intentionally did not allow sufficient time after declaring the Broncato motion passed for anyone to speak or seek recognition before declaring the meeting adjourned.

64. The individual Defendants engaged in willful misconduct at the 2009 Annual Meeting for the purpose of perpetuating the Board in office and to prevent Gordon Properties and other unit owners from exercising their right to vote and elect directors.

65. The manner in which the meeting was conducted was an intentional abuse of corporate power.

66. FOA never rescheduled the 2009 Annual Meeting.

67. Gordon Properties sought an injunction against FOA for violation of the automatic stay of 11 U.S.C. § 362 (the “Automatic Stay”), alleging that the actions taken at the 2009 Annual Meeting were a violation of the Automatic Stay (Adversary Proceeding No. 09-01304-RGM). Following trial, the Court ruled that FOA had not violated the Automatic Stay because its actions were directed against all unit owners, not just Gordon Properties (see *Memorandum Opinion*, Docket No. 35, incorporated herein).

#### The 2010 Annual Meeting

68. FOA noticed the 2010 annual meeting (the “2010 Annual Meeting”) for October 6, 2010, the first Wednesday in October 2010.

69. On September 29, 2010, FOA sent a notice to Gordon Properties that FOA was canceling the 2010 Annual Meeting. A copy of the cancellation notice is attached hereto and incorporated herein as Exhibit A.

70. The stated purpose for canceling the 2010 Annual Meeting was that FOA did not want to allow Gordon Properties the right to vote and that denying Gordon Properties the right to vote would constitute a violation of the automatic stay.

COUNT I

(Violation of the Automatic Stay)

71. Gordon Properties incorporates the allegations contained in paragraphs 1 through 70 as if fully set forth herein.

72. FOA's cancellation of the 2010 Annual Meeting was intended to deny Gordon Properties its right to vote as an act to collect the disputed assessments.

73. FOA canceled the 2010 Annual Meeting and denied Gordon Properties its right to vote with knowledge of the existence of the automatic stay.

74. FOA's denial of Gordon Properties' right to vote has caused immediate and irreparable harm to the bankruptcy estate and Gordon Properties' reorganization prospects.

75. FOA's denial of Gordon Properties' right to vote has caused real damages to the Debtor and the bankruptcy estate.

76. FOA has acted willfully and maliciously and with a specific intent to harm Gordon Properties and its business interests.

COUNT II

(Corporate Election Fraud)

77. Gordon Properties incorporates the allegations contained in paragraphs 1 through 76 as if fully set forth herein.

78. The Defendants engaged in willful acts of corporate election fraud for the purpose of perpetuating themselves in office and to prevent Gordon Properties and other unit owners from exercising their right to vote and elect directors.

79. Defendants' actions prevented the 2009 Annual Meeting from being properly called to order, properly conducted, and properly adjourned, rendering the meeting void.

80. Pursuant to Va. Code Ann. § 13.1-861 and § 13.1-840, the courts have the power to review the election procedures at the 2009 Annual Meeting, order a new election, order that a meeting of the members be held, and grant such other relief as may be equitable under the circumstances.

81. An election of directors would have taken place at the 2009 Annual Meeting, or at an adjournment thereof, but for noncompliance by FOA and the Individual Defendants with the Condominium Instruments, the Condominium Act, and the Virginia Nonstock Corporation Act.

82. Gordon Properties is aggrieved by the Defendants' failure to hold a lawful election for directors.

83. Gordon Properties has given reasonable notice of its claims to FOA and to the Defendants.

### Count III

#### (Failure to Hold Annual Meetings)

84. Gordon Properties incorporates the allegations contained in paragraphs 1 through 83 as if fully set forth herein.

85. FOA has not held an annual meeting since 2006.

86. FOA did not hold an annual meeting in 2007.

87. FOA did not hold an annual meeting in 2008.

88. FOA did not hold an annual meeting in 2009.

89. FOA did not hold an annual meeting in 2010.

90. The failure of the Defendants to hold an annual meeting violates the Virginia Condominium Act and the Condominium Instruments.

91. Gordon Properties is aggrieved by the failure to hold an annual meeting since 2006.

92. Gordon Properties has given reasonable notice of its claims to FOA and to the Defendants.

Count IV

(Breach of Fiduciary Duty)

93. Gordon Properties incorporates the allegations contained in paragraphs 1 through 92 as if fully set forth herein.

94. The Individual Defendants, as officers, directors, and committee chair of FOA, owed a fiduciary duty to the members of FOA, including Gordon Properties, to conduct the 2009 Annual Meeting in accordance with the Condominium Instruments, the Condominium Act, and the Virginia Non-stock Corporation Act, that was free from fraud, malfeasance and official misconduct.

95. The Individual Defendants breached that duty by allowing the 2009 Annual Meeting to be conducted in the manner set forth above.

96. The Individual Defendants, as officers and directors of FOA, owed a fiduciary duty to the members of FOA, including Gordon Properties, to conduct annual meetings in accordance with the Condominium Instruments and the Condominium Act.

97. The Individual Defendants breached that duty by canceling the 2010 Annual Meeting and by failing to conduct annual meetings since 2006.

98. The Individual Defendants acted willfully and in bad faith.

99. The Individual Defendants' breaches of fiduciary duty prevented Gordon Properties and the other members of FOA from exercising their right to vote for directors.

100. The Individual Defendants' breaches of fiduciary duty prevented the 2009 Annual Meeting from being properly called to order, properly conducted, and properly adjourned, rendering the meeting void.

WHEREFORE, Gordon Properties, LCC, by counsel, respectfully prays that this Court grant the following relief:

a. determine that FOA's cancellation of the 2010 Annual Meeting was a violation of the automatic stay of 11 U.S.C. § 362, and grant judgment in favor of Gordon Properties against FOA for compensatory and punitive damages for intentional violation of the automatic stay;

b. determine that the failure to hold an annual meeting since 2006 violates the Virginia Condominium Act and the Condominium Instruments;

c. determine that the Defendants' conduct at the 2009 Annual Meeting and their cancellation of the 2010 Annual Meeting denied Gordon Properties and other unit owners their right to vote in violation of the Condominium Instruments, the Virginia Condominium Act, and the Virginia Nonstock Corporation Act;

d. determine that the Defendants' conduct at the 2009 Annual Meeting constituted fraud, willful misconduct, and breach of fiduciary duty;

e. order that the 2009 Annual Meeting be reconvened as soon as practicable;

f. order that the 2010 Annual Meeting be rescheduled as soon as practicable;

g. order that Gordon Properties be entitled to participate and vote at the reconvened 2009 Annual Meeting and the rescheduled 2010 Annual Meeting notwithstanding the alleged delinquency in payment of its assessments;

h. order that proxies given for both the 2009 Annual Meeting and 2010 Annual Meeting remain valid until that meeting is properly conducted and adjourned;

j. appoint an independent elections observer under the jurisdiction of this Court to oversee the next election for the Board; and

k. provide any other relief that the Court deems equitable and just.

Respectfully submitted,

**GORDON PROPERTIES, LLC**  
By Counsel

*/s/Donald F. King*

**Donald F. King, Esquire (VSB No. 23125)**  
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September 29, 2010

## **2010 ANNUAL MEETING POSTPONED** **\*\*\*URGENT NOTICE TO OWNERS\*\*\***

Dear Unit Owner,

**The Board of Directors regrets that it has become necessary to postpone the 2010 Annual Meeting of the First Owners' Association of 4600 Duke Street.** Our legal counsel has analyzed our legal situation in the current litigation with a unit owner which filed for bankruptcy protection and has advised us that proceeding with the Annual Meeting without a court decision on the voting issue would not be advisable and would put the Association at risk. Although we requested an expedited hearing and expected to have a decision by the courts earlier this month, a decision will not be obtained for some months. Also, there has recently been improper, and likely illegal, campaign activity that has invalidated an unknown number of proxy forms. Thus, **the Annual Meeting cannot be held on October 6 and will be rescheduled once clarification of these critical issues is provided by the courts.**

FOA Legal Counsel offers the following description of our dilemma:

*With respect to the issue of whether a delinquent unit owner which has filed for bankruptcy (in this case, Gordon Properties, LLC) should be allowed to vote at the upcoming Annual Meeting, we believe the Board should postpone the meeting until such time as a final decision has been obtained from the federal courts as to whether enforcement of the voter eligibility requirements of the Association's Bylaws violates the automatic stay. Otherwise, the Board is placed in the untenable position of potentially violating the stay, and subjecting the Association to sanctions and other penalties if Gordon Properties is not allowed to vote, or allowing Gordon Properties to vote in violation of the Bylaws and the Condominium Act and potentially having to throw out the results of any election if the appellate court subsequently agrees that enforcement of the Bylaws as to Gordon Properties does not violate the automatic stay. Notwithstanding the Association's efforts to obtain a binding court decision on this issue, the conflict between the apparent holding by Judge Mayer in the Bankruptcy Court and the clear provisions of the Association's Bylaws poses an insoluble dilemma for the Board and the Association which almost forces the Association to choose among alternatives which are all fraught with risk.*

*An additional factor is the Board's discovery that an unknown individual distributed to unit owners a flyer offering a chance to win a free HDTV theatre system if the unit owners will send their proxies to an anonymous post office box address. This activity, however, appears to be an illegal raffle under Virginia Code 18.2-340 et seq. In addition, the collection of proxies by an anonymous person or entity (an "undisclosed principal") would also violate established agency rules related to the proper collection of and validity of proxies. Moreover, since the person soliciting the proxies is unknown, it will be impossible to identify any proxies obtained through this improper solicitation. Use of the improper proxies will taint the integrity of any election or vote at the 2010 Annual Meeting. **Accordingly, the Board should postpone the meeting to reissue new proxy forms to ensure the validity of all proxies to be used at the Annual Meeting.***

Therefore, based on the analysis and recommendations by our legal counsel, following yesterday's unsuccessful effort at mediation with Gordon Properties, the Board of Directors believes that the most prudent and fiscally responsible course of action is to postpone the Annual Meeting until we receive the necessary legal guidance from the courts and have time to issue new proxy forms. As unit owners and members of the Board of Directors, we are doing our best to comply with the law, to obtain a quorum for the Annual Meeting, and to have a fair election which will not generate even more expensive and unproductive litigation.

We will keep you advised as we learn more about these issues and obtain further rulings from the courts. Thank you in advance for your patience and understanding as we seek to resolve these critical issues in the best interests of all owners.

For the Board of Directors,



Dewanda F. Cuadros  
President