

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:	*	
	*	
GORDON PROPERTIES, LLC,	*	Case No. 09-18086-RGM
CONDOMINIUM SERVICES, INC.,	*	Chapter 11
	*	(Jointly Administered)
Debtors.	*	
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GORDON PROPERTIES, LLC,	*	
	*	
Plaintiff,	*	
	*	
v.	*	Adv. Pro. No. 11-01020-RGM
	*	
FIRST OWNERS' ASSOCIATION OF	*	
FORTY SIX HUNDRED	*	
CONDOMINIUM, INC.,	*	
	*	
Defendant.	*	

ORDER REGARDING COMPLAINT FOR INJUNCTION

This proceeding came on for trial on July 25, 2011, upon Count I of the Complaint (“Complaint”) filed herein by the Plaintiff, Gordon Properties, LLC (“Gordon Properties”), against the Defendant, First Owners’ Association of Forty Six Hundred Condominium, Inc. (“FOA”).¹ For the reasons stated on the record and any memorandum opinion which the Court may issue, the Court finds that FOA willfully violated the automatic stay of 11 U.S.C. §362 and that Gordon Properties’ request for injunctive relief should be granted.

¹ The Complaint filed by Gordon Properties contained four (4) counts. For the reasons stated in the Court’s memorandum opinion of May 23, 2011 [Docket No. 43], Counts II through IV were dismissed by order entered on May 24, 2011 [Docket No. 47]. Thereafter, at a hearing held by the Court on July 22, 2011, the Court bifurcated Gordon Properties’ injunction request from its claim for damages and continued the hearing on damages to a date and time to be determined.

It is therefore ORDERED as follows:

1. FOA is enjoined from enforcing any provision of its declaration, bylaws, or other documents or instruments which purport to deny Gordon Properties all of the rights of a unit owner under the condominium instruments, including, without limitation, voting at meetings, nominating candidates, or holding office, on the basis that it has failed to pay any prepetition debt owed to FOA, including, without limitation, the claim filed in this case by FOA.

2. FOA shall schedule and conduct its 2011 annual meeting (“Annual Meeting”) in accordance with the procedures outlined in the 2011 Annual Meeting Procedures attached hereto and incorporated herein (the “Meeting Procedures”) and the applicable condominium instruments. To the extent of any inconsistency between the Meeting Procedures and condominium instruments, the Meeting Procedures shall control. This Court retains jurisdiction to hear and determine any dispute that may arise with respect to interpretation of or compliance with the Meeting Procedures.

3. FOA is sanctioned (the “Sanction”) for contempt of Court for violation of the automatic stay in the amount of One Hundred Thousand Dollars (\$100,000), payable to the Clerk of Court. Notwithstanding the foregoing, this Order is without prejudice to FOA’s ability to purge its contempt and seek a reduction, in whole or in part, of the Sanction upon written certification filed with the Court not later than ten (10) days after the Annual Meeting has been conducted and that FOA has fully complied with this Order and the Meeting Procedures. This Order is without prejudice to the right of Gordon Properties to oppose FOA’s certification and request for reduction of the Sanction, and the Sanction is without prejudice to Gordon Properties’ damage claim. FOA shall not be

required to pay the Sanction until such time as the Court enters a further order in that regard following FOA's certification as required above.

4. This matter is continued for trial on Gordon Properties' damage claim, which trial shall be scheduled pursuant to separate order of this Court.

Alexandria, Virginia
August 24, 2011

/s/Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

SEEN AND AGREED:

/s/Donald F. King
Donald F. King, Esquire (VSB No. 23125)
Counsel for Gordon Properties, LLC
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SEEN AND OBJECTED TO:

/s/Jennifer L. Sarvadi
Jennifer L. Sarvadi, Esquire (VSB No. 47543)
Counsel for FOA
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Donald F. King
Jennifer L. Sarvadi

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FORTY SIX HUNDRED	*	
CONDOMINIUM, INC.,	*	
	*	
Defendant.	*	

2011 ANNUAL MEETING PROCEDURES

1. FOA shall schedule its Annual Meeting to be held at 8:00 p.m. on Wednesday, October 5, 2011, at 4600 Duke Street. These Meeting Procedures are a part of the Order Regarding Complaint for Injunction entered by the Court in this proceeding (the "Order").²

2. The Annual Meeting, and all pre-meeting activities relating to or in preparation for the Annual Meeting, shall be conducted pursuant to these Meeting Procedures and in accordance with the requirements of the Virginia Condominium Act, the Virginia Non-Stock Corporation Act, the Condominium Instruments, and Roberts Rules of Order Newly Revised (10th ed. 2000), except as modified by this Order which includes these Meeting Procedures. In the event of conflict, these Meeting Procedures control. These Meeting Procedures are related only to the 2011 Annual Meeting,

² Capitalized terms in these Meeting Procedures shall have the same meaning as stated in the Order.

including any recession thereof, and these Meeting Procedures shall not be used as a basis for any FOA member or other person to assert that any provision hereof that is inconsistent with FOA's obligations under FOA's Condominium Instruments or other applicable law must be implemented at any other FOA annual meeting.

3. Schilansky & Binnall is appointed as the election administrator ("Election Administrator") for the Annual Meeting, with such authority and duties as set forth in these Meeting Procedures. In the event Schilansky & Binnall declines its appointment hereunder, the Court will appoint a substitute Election Administrator upon expedited motion by either FOA or Gordon Properties, LLC ("Gordon Properties").

4. The Election Administrator shall be an independent authority under the exclusive jurisdiction and control of this Court. All communications from FOA, or the election committee ("Election Committee") appointed by FOA's board of directors ("Board"), to the Election Administrator regarding the Annual Meeting shall be made in writing, with contemporaneous copy to counsel for Gordon Properties by email transmission or via telephone or an in-person meeting with notice and opportunity for counsel for Gordon Properties to participate.

5. The Election Administrator shall be assisted in the performance of its duties by the Election Committee. No member of the Election Committee may be a member of or candidate for the Board. If there is any disagreement between the Election Administrator and the Election Committee or the Board with respect to these Meeting Procedures, the decision of the Election Administrator shall control.

6. Schilansky & Binnall is appointed as an independent parliamentarian ("Parliamentarian") to advise and assist FOA and the Election Administrator with

compliance with Roberts Rules of Order during the Annual Meeting. The Parliamentarian shall be an independent authority under the exclusive jurisdiction and control of this Court.

7. The Election Administrator and Parliamentarian shall have standing to seek the guidance of the Court on any issue regarding their authority or duties hereunder, upon notice to FOA and Gordon Properties.

8. All fees and costs incurred by the Election Administrator and the Parliamentarian in the performance of their duties hereunder shall be paid by FOA.

9. Within three (3) business days after entry of this Order, FOA shall provide to the Election Administrator, in such format as directed by the Election Administrator, the name and address of every unit owner for purpose of providing notice of the Annual Meeting. At the same time, and again ten (10) calendar days prior to the Annual Meeting, and again not later than 5 p.m. on the day of the Annual Meeting, FOA shall identify to the Election Administrator the names of all unit owners which FOA believes are eligible to vote at the Annual Meeting. Any unit owner which is not eligible to vote at the Annual Meeting shall receive notice not later than ten (10) days prior to the Annual Meeting that they are not eligible to vote and stating the reason for such ineligibility, and all such unit owners shall have the right to cure any eligibility defect prior to 5 p.m. on the last business day prior to the Annual Meeting.

10. Within three (3) business days after entry of this Order, the Election Committee shall prepare and deliver to the Election Administrator a notice package for delivery to each unit owner (the "Meeting Notice Package"). The Meeting Notice Package shall be prepared in both English and Spanish. The Meeting Notice Package

shall contain all of the information and documents customarily delivered to a unit owner for an annual meeting. In addition, the Meeting Notice Package shall contain an express notice that all unit owners, including delinquent unit owners, are invited and encouraged to attend the Annual Meeting because all unit owners, including delinquent unit owners, will be counted for quorum purposes and are entitled to participate in the Annual Meeting, regardless of whether they are eligible to vote. The Meeting Notice Package shall contain a copy of the Order and Meeting Procedures.

11. The Meeting Notice Package shall be provided to each unit owner under the supervision of the Election Administrator not later than September 10, 2011. The Election Administrator, or its designee, shall use reasonable efforts to hand-deliver Meeting Notice Packages to each unit owner at their respective units. In the event that the Election Administrator does not deliver a Meeting Notice Package to a unit owner in person and obtain a receipt for the Meeting Notice Package on or before September 9, 2011, the Election Administrator shall on or before September 10, 2011, mail by both certified mail, return receipt requested, and by regular mail the Meeting Notice Package to those unit owners to whom a Meeting Notice Package was not so delivered in person and a receipt obtained. In addition, FOA shall deliver a Meeting Notice Package to any unit owner who requests a package or a replacement package from FOA at FOA's office during normal business hours. Any unit owner who receives a Meeting Notice Package by hand will be asked to sign a receipt for same, which receipt shall be delivered to the Election Administrator. Notwithstanding the foregoing, no unit owner shall be required to sign a receipt as a condition to receiving the Meeting Notice Package, but a record of such delivery shall be maintained by FOA and delivered to the Election Administrator.

Not later than September 11, 2011, FOA shall publish a notice on its bulletin board and shall cause to be published in the next scheduled publication of The 4600 Duke Crier a notice that the Meeting Notice Packages have been delivered or mailed to each unit owner, and further stating that any unit owner may obtain a Meeting Notice Package from either the Election Administrator or FOA.

12. Any FOA member shall have the right to review and copy at any time convenient to the Election Administrator any documents provided to the Election Administrator by FOA, the Board, the Election Committee, or any unit owner.

13. Neither FOA, the Board, nor any member of the Board, may use any of FOA's funds, personnel, or equipment to campaign for or against any candidate for election at the Annual Meeting, except that all candidates for the Board, including current Board members, may use FOA's copy machine at the expense of the candidate. Any candidate wishing to make use of FOA's equipment shall contact the Management Office to coordinate a time during normal business hours to make such copies. FOA shall not limit or otherwise interfere with the ability of any candidate to distribute election materials to unit owners, including, without limitation, door-to-door distribution, except that all campaign materials must be signed by the candidate. Further, FOA will provide a mailing list and a set of mailing labels to each candidate for the Board of Directors.

14. FOA shall provide meeting facilities at such times and places as the Election Administrator shall reasonably determine (with the advice of the Election Committee) for a candidate "meet-and-greet."

15. FOA shall take such actions as it reasonably determines to encourage unit owners to attend the Annual Meeting either in person or by proxy. The Election

Administrator may recommend any such actions to FOA. FOA, through its Election Committee, shall offer one or more prizes to encourage attendance in present or by proxy at the Annual Meeting. No other person shall be permitted to offer any giveaway or offer anything of value in exchange for a proxy from or registration of members at the Annual Meeting, provided, however, that any person may offer to contribute money to FOA to be used to purchase prizes, and any person may offer non-monetary consideration to encourage participation (e.g., transportation services, translation services, babysitting services, etc.). FOA may disclose these restrictions in the Meeting Notice Package.

16. The Meeting Notice Package shall advise unit owners that they may deliver their proxies/ballots either by mail to a post office box or by hand to a drop box maintained at The 4600 Condominium. The post office box shall be opened by the Election Administrator, and the Election Administrator shall have sole and exclusive access to the post office box. The drop box shall be provided by FOA, shall be located in FOA's business office during normal business hours and at the front-desk at all other times, shall be available to unit owners for delivery of proxies/ballots during all normal business hours, and shall be secured by a lock purchased by and under the sole and exclusive control of the Election Administrator. The Election Administrator shall have sole and exclusive possession of the key for the lock and the contents of the drop box.

17. Registration for the Annual Meeting shall commence not later than 6 p.m. on the day of the Annual Meeting. The Election Administrator shall conduct the registration for the Annual Meeting and shall report to the President of FOA and the representative of Gordon Properties the number of proxies/ballots present for purpose of creating a quorum for the Annual Meeting. In the event a quorum for the Annual

Meeting is not achieved, the Annual Meeting shall be recessed to October 26, 2011, at 8 p.m. (with registration to commence not later than 6 p.m.) to allow further time to obtain a quorum. In the event a quorum for the recessed Annual Meeting is not achieved, the Annual Meeting shall be recessed again to November 16, 2011, at 8 p.m. (with registration to commence not later than 6 p.m.). Nothing herein is intended to restrict or otherwise limit the right of the unit owners in attendance at the Annual Meeting to move to recess the Annual Meeting in accordance with Roberts Rules of Order. The Order and these Meeting Procedures shall apply to any such recessed Annual Meeting. These Meeting Procedures shall not prejudice the right of FOA to request relief from the Court (and Gordon Properties may oppose any such relief) in the event a quorum cannot be achieved after having attempted to achieve a quorum and conduct the Annual Meeting on at least three attempts, notwithstanding any vote of the members.

18. FOA shall arrange to have one or more persons available to provide Spanish language translation during the registration period and during the Annual Meeting. In addition, members shall be entitled to have any person of their choosing present during registration and the Annual Meeting to assist them with translation or disability.

19. The following shall be deemed present for quorum purposes at the Annual Meeting and any recession thereof: (i) all units owned by Gordon Properties, provided that a representative of Gordon Properties is present either in person or by proxy, and (ii) all units owned by FOA. The Election Administrator shall have the authority to resolve all disputes regarding the validity of a proxy, other than determining the delinquency of a member.

20. Gordon Properties shall be entitled to have not more than one (1) observer per registration table who shall be authorized to observe the pre-registration and registration process from behind the registration tables and shall have the right to observe the counting of votes for any purpose, including, without limitation, quorum and election.

21. The Election Administrator, or its designee, shall maintain a roster identifying all persons who enter the meeting room at any time, and the Election Administrator may require any person who enters the meeting room at any time to sign in. All unit owners present in person shall be counted for purposes of quorum even if they have not registered.

22. In accordance with the Condominium Instruments, the President of FOA shall preside over the Annual Meeting, provided, however, that the Election Administrator shall have authority with respect to compliance with these Meeting Procedures, and the Parliamentarian shall advise the presiding officer with respect to compliance with Roberts Rules of Order. The President is not precluded by this Order from seeking advice of legal counsel.

23. The Election Administrator shall engage an independent service provider to make a record of the Annual Meeting. The record may be either audio or video, or both, at the discretion of the Election Administrator.

24. The Election Administrator shall register members, review and accept proxies, and record the votes made by the unit owners for the election of members of the Board. The term of office for the four (4) candidates receiving the highest number of votes shall be two (2) years, and the term of office for the candidates receiving the fifth (5th), sixth (6th), and seventh (7th) highest number of votes shall be one (1) year.

25. The unit owners may conduct such other business at the Annual Meeting that properly comes before it, without oversight by the Election Administrator, as permitted by the Condominium Instruments, the Virginia Condominium Act, the Virginia Non-Stock Corporation Act, or any other applicable law. Unit owners shall be entitled to discuss and make motions with respect to any new business at the Annual Meeting, regardless of whether such new business was part of the agenda announced by FOA. The Election Committee has requested that items be added to the agenda by August 15, 2011. The time for adding items to the agenda shall be extended to September 23, 2011, and notice to that effect will be included in the Meeting Notice Package.

26. Upon completion of the Annual Meeting, the Election Administrator shall prepare a written report verifying the notice of the Annual Meeting, the names of the unit owners present at the Annual Meeting either in person or by proxy, and the result of the election of new members of the FOA Board, and shall deliver the report to counsel for Gordon Properties and FOA and will make such report available to any member requesting it. The Election Administrator shall retain all documents relating to the election for a period not less than eighteen (18) months, unless ordered otherwise by the Court.