

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

	*	
In re:	*	
	*	Case No. 09-18086-RGM
GORDON PROPERTIES, LLC,	*	Chapter 11
	*	
Debtor.	*	
	*	

**RESPONSE OF FIRST OWNERS ASSOCIATION OF FORTY SIX HUNDRED
CONDOMINIUM INC. TO DEBTOR’S OBJECTION TO CLAIM**

First Owners Association of Forty Six Hundred Condominium, Inc., by and through the undersigned counsel, pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure and Rule 3007-1(D) of the Local Rules of the above-captioned Court, respectfully files its *Response* to the *Objection to Claim of First Owners Association* (the “Objection”), filed by Gordon Properties, LLC (“Gordon Properties” or “Debtor”), the debtor and debtor in possession herein, as to that certain *Proof of Claim* filed by FOA and designated as Claim No. 2-1 (the “Claim”) on the claims register maintained by the Clerk in the above-captioned Chapter 11 case, and with respect to each numbered paragraph of the *Objection* provides its specific correspondingly numbered response as follows:

1. Admitted.
2. Admitted.
3. FOA states that the Declaration speaks for itself.

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4. Admitted.

5. Admitted.

6. FOA admits it is the Board required by the Bylaws, but otherwise denies the allegations of this paragraph.

7. Denied.

8. Admitted.

9. Admitted.

10. Admitted.

11. FOA's claim speaks for itself and the allegations of this paragraph are denied to the extent that they differ or vary from FOA's claim.

12. Admitted.

13. Admitted.

14. Denied. The Notice was sent by FOA.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. The Notice speaks for itself and the allegations of this paragraph are denied to the extent that they differ or vary from the Notice.

21. In response to this paragraph FOA states that Gordon Residential Holdings, LLC did not own a unit at the Condominium during the years 2003-2008.

22. Denied. The owner of the other street front unit was also given notice at that same time. Moreover, all of the unit owners had received notice of assessment for the years 2003-2008.

23. In response to this paragraph FOA states that the Bylaws speak for themselves and the allegations of this paragraph are denied to the extent that they differ or vary from the Bylaws.

24. FOA denies that any meeting was necessary to levy the disputed assessment on Gordon Properties.

25. FOA states that Gordon Properties would vote against any assessment made by FOA against it.

26. FOA denies that it levied an assessment only upon Gordon Properties.

27. Denied.

28. FOA states that the Notice speaks for itself and the allegations of this paragraph are denied to the extent that they differ or vary from the Notice.

29. Denied.

30. Gordon Properties is entitled to no credit because, among other things, it has not paid the disputed assessment.

31. Denied.

32-38. In response to these paragraphs FOA states that the Declaration and Bylaws speak for themselves and the allegations of these paragraphs are denied to the extent that they differ or vary from these documents.

39. Denied. The Circuit Court for the City of Alexandria (the "Circuit Court"), in an Order entered on January 30, 2009 (attached hereto and incorporated herein as Exhibit A) (the "Circuit Court Order") in the civil action known as *Gordon Properties, LLC v. First Owners Association of Forty Six Hundred Condominium, Inc.*, Case No. CL08-1432 (the "Circuit Court Action"), found as a matter of law that the street front commercial unit owned by Gordon Properties is subject to assessment. Gordon Properties unsuccessfully appealed this decision to the Virginia Supreme Court. Accordingly, Gordon Properties is barred by *res judicata* from re-litigating this same issue in this Court.

40. Denied. In fact, there is no Order that modifies or rescinds the Circuit Court Order. Gordon Properties statement that the trial court “vacated” this decision is a knowingly false assertion.

41. Denied. The assessments follow precisely the decision of the Circuit Court as set forth in the Circuit Court Order.

42. Denied. Further, this claim is barred by res judicata because Gordon Properties litigated a claim regarding assessments in the Circuit Court Action and lost. Gordon Properties’ appeal to the Virginia Supreme Court was unsuccessful. Therefore, the decision of the Circuit Court is final and binding.

43 – 53. In response to these paragraphs FOA states that the condominium instruments speak for themselves and the allegations of these paragraphs are denied to the extent that they vary or differ from the condominium instruments.

54. Admitted.

55. Denied. Moreover, Gordon Properties litigated and lost the issue of the allocation of assessments between residential unit owners and commercial unit owners in the Circuit Court Action. Accordingly, Gordon Properties is barred by res judicata from attempting to re-litigate those issues here.

56. Denied. Further, any claims as to “future years” have nothing to do with the claim asserted by FOA in this case.

57. Denied.

58. Denied. Further, as stated above, Gordon Properties fully litigated its alleged claim of over-assessment in the Circuit Court Action and lost these claims which are now final and binding on Gordon Properties.

59. This paragraph sets forth a legal conclusion with no factual basis and is denied.

60. This paragraph sets forth legal conclusions without any factual basis and is denied.

61. Denied.

62. FOA admits that an amendment was recorded in Deed Book 883 at Page 761, but states that it speaks for itself.

63. Admitted.

64. Denied. Gordon Properties has rented out its storage areas in the past.

65. FOA has insufficient knowledge to admit or deny the amount of rent Gordon Properties has received with respect to its storage areas.

66. FOA admits that it owns storage area 1C2 but denies the remaining allegations of this paragraph.

67. In response to this paragraph, FOA states that the Condominium Act speaks for itself.

68. Denied.

69. FOA admits that its board adopted a resolution regarding the assessment of the residential commercial limited common elements but denies the remaining allegations of this paragraph. FOA further states that this issue was litigated by Gordon Properties in the Circuit Court Action in which the Circuit Court denied Gordon Property's claim that the storage areas had been over-assessed.

70. The assessments of a user fee for the storage areas speak for themselves and the allegations of this paragraph are denied to the extent that they differ or vary from the assessments.

71. Admitted.

72. Denied.

73. The 2010 assessments are irrelevant to FOA's claim.

74. Admitted.

75. Admitted.

76. Denied. Further, this is a knowingly false statement as demonstrated by Exhibit 2 to the *Objection*. In fact, the Circuit Court dismissed Gordon Properties' claim of alleged over-assessment with respect to the storage areas because Gordon Properties failed to present any

evidence in support of its claim. Post-trial, Gordon Properties filed a motion for reconsideration of this ruling which was denied as set forth in the April 3, 2009 letter opinion of Judge Kemler attached as Exhibit 2 to the *Objection*. In that letter opinion the Circuit Court reiterated its ruling at trial stating “Gordon Properties presented no evidence as to either the amount of the expenses that it should be properly assessed for its use and maintenance of the storage areas or what would constitute a reasonable user fee with respect to the storage areas. For these reasons, Gordon Properties’ motion for reconsideration and new trial is denied.”

77. Denied. Further, as the Exhibits to the *Objection* makes clear, this issue was raised by Gordon Properties in the Circuit Court Action and dismissed.

78-81. Denied. Further, Gordon Properties raised these very same arguments in the Circuit Court Action which were rejected by the Circuit Court.

82. Admitted.

83. FOA admits that Gordon Properties has been charged an off-site user owner fee, but denies Gordon Properties’ allegation that it is not an off-site owner.

84. Denied.

85. FOA does not know at this time the precise amount paid by Gordon Properties.

86. Denied.

87. Denied.

88. FOA states that the Bylaws speak for themselves and the allegations of this paragraph are denied to the extent that they differ or vary from the by-laws.

89. FOA admits that the Bylaws do not specifically provide for late fees.

90. Denied.

91. FOA admits that Gordon Properties has habitually failed to pay its assessment and has been assessed late fees in accordance with FOA’s condominium documents.

92. Denied.

93. Denied.

94. Additionally, Gordon Properties has the burden of proof in challenging the Claim and must set forth the specific factual and legal basis for its *Objection*. Gordon Properties fails to meet this burden as its *Objection* has few factual allegations and instead merely sets forth legal conclusions.

WHEREFORE, FOA requests that this Court enter an Order (i) denying and overruling the *Objection*, (ii) allowing Claim No. 2-1 filed by FOA in the above-captioned case, and (iii) providing such other and further relief as the Court deems just and proper.

Dated: November 2, 2010

Respectfully submitted,

FIRST OWNERS' ASSOCIATION OF
FORTY SIX HUNDRED CONDOMINIUM, INC.
By Counsel

/s/ Linda S. Broyhill

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CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of November, 2010, caused a copy of the foregoing *Response* to be served electronically through the CM/ECF system upon all persons entering their appearance and requesting notice in this Chapter 11 case, including Donald F. King, Esq. and the Office of the United States Trustee.

/s/ Robert M. Marino
Robert M. Marino