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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)
)
GORDON PROPERTIES, LLC)
CONDOMINIUM SERVICES, LLC)
)
Debtors.)

Case No. 09-18086-RGM
(Jointly Administered)

CLERK
US BANKRUPTCY COURT
ALEXANDRIA DIVISION

HOWARD SOBEL, et al.,)
)
Plaintiffs,)
)
v.)
)
BRYAN SELLS, et al.,)
)
Defendants.)

Adv. Proc. No. 12-1562-RGM

**DEFENDANT FIRST OWNERS ASSOCIATION'S MOTION
TO DISQUALIFY REED SMITH AND MEMORANDUM IN SUPPORT**

Defendant First Owners Association of Forty Six Hundred Condominium, Inc. ("FOA") moves this Court to disqualify all attorneys associated with the firm of Reed Smith LLP from representing the plaintiffs in this adversary proceeding because its representation of the plaintiffs violates Rule 1.9 of Virginia's Rules of Professional Conduct.

As grounds for this motion, FOA states as follows:

1. Reed Smith has previously represented FOA in the following actions: [1] *Gordon Properties, LLC v. First Owners' Association of Forty Six Hundred Condominium, Inc., et al.*, Civil Case No. CL08-1432 (Va. Cir. 2009); [2] *First Owner's Association of Forty Six Hundred Condominium, Inc. v. Gordon*

Properties, LLC, 1:10-cv-00872 (E.D. Va.); [3] *Condominium Services, LLC v. First Owners' Association of Forty Six Hundred Condominium, Inc.*, 281 Va. 561; 709 S.E.2d 163 (2011); [4] *First Owners' Association of Forty Six Hundred Condominium, Inc. v. Gordon Properties, LLC*, 1:11-cv-00255 (E.D. Va.); [5] *First Owners' Association of Forty Six Hundred Condominium, Inc. v. Gordon Properties, LLC et al*, 1:12-cv-00394 (E.D. Va.); [6] *Gordon Properties, LLC v. First Owners' Association of Forty Six Hundred Condominium, Inc.*, 1:11-cv-00905 (E.D. Va.); and [7] *First Owners Association of Forty Six Hundred v. Gordon Properties, LLC*, Civil Action No. 1:11-cv-01060 (E.D. Va.).

2. Each of these actions involves some facet of the continuing conflict involving FOA, Gordon Properties, its subsidiary Condominium Services, and some of the unit owners at the condominium located at 4600 Duke Street. The fight for control of FOA has been a focal point for much of this litigation.

3. When this litigation began years ago, Reed Smith represented FOA and established an attorney-client relationship with that entity. Once an attorney-client relationship is shown to have existed, "an irrebuttable presumption arises that confidential information was conveyed to the attorney in the prior matter." *In re Chantilly Const. Corp.*, 39 B.R. 466, 469 (Bankr. E.D. Va. 1984). Additionally, once that relationship is established, the Rules of Professional Conduct apply to it.

4. Reed Smith no longer represents FOA. Under these circumstances, Rule 1.9(a) of Virginia's Rules of Professional Conduct applies to the individual attorneys of Reed Smith and provides as follows:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation.

Rule 1.10(a) imputes the prohibitions of this rule to all attorneys of Reed Smith.

5. Reed Smith's client was FOA; the fact that the identity of the persons in control of FOA has changed does not alter the fact that FOA was the firm's client. Having once represented FOA, Reed Smith is not free to turn on it when new individuals control the entity.

6. Representation of the plaintiffs in this case, in which FOA is a named defendant, violates Rule 1.9. There can be no legitimate doubt that the complaint in this adversary proceeding is substantially related to earlier cases in which Reed Smith represented FOA. Indeed, the complaint specifically refers to some of them. *See, e.g.*, Complaint, ¶¶ 26, 27, 28, 29, 35, 36, 37. Moreover, many of the facts giving rise to the plaintiffs' claim in this adversary proceeding are alleged to have occurred while Reed Smith was counsel of record for FOA.

7. There can also be no legitimate doubt that Reed Smith's current clients, eleven of the Unit Owners, have interests that are materially adverse to FOA. Paragraph 64 of the complaint plainly states that "an actual and justifiable [sic – should be "justiciable"] controversy has arisen and now exists between the Unit Owners and Sells, Greenwell, Wilson and FOA concerning the respective rights and obligations under the Bylaws, Condominium Act,

Nonstock Act and the laws of Virginia affecting the Board's powers." Having specifically pleaded that the plaintiffs' interests are adverse to FOA, Reed Smith is disqualified from representing them.

For these reasons, defendant First Owners Association of Forty Six Hundred Condominium, Inc. respectfully requests that its motion be granted and that the attorneys of Reed Smith be disqualified from representing the plaintiffs.

Dated: December 17, 2012 FIRST OWNERS ASSOCIATION OF FORTY
SIX HUNDRED CONDOMINIUM
ASSOCIATION, INC.
By Counsel

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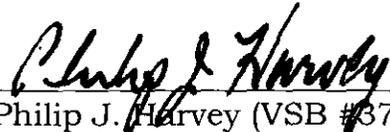
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served this 17th day of December, 2012, by U.S. and electronic mail on the following counsel:

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