ORIGINAL

U.S. BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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In re:

SOBOL, et al., 12-01562-RGM

Chapter 11

versus,

SELLS, et al.,

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GORDON PROPERTIES, LLC and 09-18086-RGM

CONDOMINIUM SERVICES, INC. Chapter 11

Alexandria, Virginia

Tuesday, January 29, 2013

The above-entitled action came on to be heard before the Honorable Robert G. Mayer, a Judge for the U.S. Bankruptcy Court for the Eastern District of Virginia, 200 South Washington Street, Alexandria, Virginia 22314, beginning at 11:42 o'clock a.m.

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APPEARANCES:

For Plaintiffs:

MICHAEL DINGMAN, ESQUIRE

For Gordon Properties, LLC, and Condominium Services, Inc.:

DONALD F. KING, ESQUIRE

For the First Owners' Association:

JONATHAN BRAVANA (phonetic), ESQUIRE

For Bryan Sells and Elizabeth Greenwell:

PETULA METZLER, ESQUIRE

For the First Owners' Association:

PHILIP J. HARVEY, ESQUIRE

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

THE COURT: We just have the two matters left. Call the Gordon Properties.

THE CLERK: Recalling item 25, 26 and 27, Gordon Properties and Condominium Services, case number 09-18086 and Sobel versus Sells, case number 12-1562.

MR. KING: Donald King for Gordon Properties and Condominium Services.

MR. BRAVANA: Jonathan Bravana for First Owners' Association.

MS. METZLER: Good morning again, Your Honor, Petula Metzler for Bryan Sells and Elizabeth Greenwell.

MR. HARVEY: Good morning, Your Honor, Philip Harvey for First Owners' Association in the adversary proceeding.

MR. DINGMAN: Good morning, Your Honor, Michael Dingman for the plaintiffs. Mr. Sullivan had to leave for a meeting with one of his children, so he sends his apologies to the court.

THE COURT: Thank you. Mr. King?

MR. KING: Well, for my purposes we're here for the scheduling on the settlement agreement. We did file the motion and the settlement agreement and Mr. Boone is here on behalf of Mr. Donelan, who was unavailable for today's hearing, but I think at this point we're simply

scheduling that for a hearing and getting Your Honor's guidance on the notice with respect to whatever requirements Your Honor might have.

THE COURT: All right, very well. We'll go ahead and dispose of the disqualification motion and then come back to the scheduling and schedule all the matters that we need to at that particular point.

Now, the first question in a disqualification motion is which rule under the Rules of Professional Conduct apply. And throughout this we're referring to the Rules of Professional Conduct, of course their predecessors, but they're substantially the same as the present rules, while not necessarily identical.

The two that are applicable, the first is Rule 1.6, confidentiality of information, and the second is Rule 1.9, which is conflicts of interest/former clients. Rule 1.6, dealing with confidentiality of information, reads as follows: In subsection (a), a lawyer shall not reveal information protected by the attorney/client privilege under applicable law or other information gained in the a professional relationship that the client has requested be held in inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client. Unless the client consents after consultation, except for the

disclosures that are impliedly authorized in order to carry out the representation and except as stated in parts (b) and (c). This is the same rule that we discussed earlier today with respect to a subpoena to an attorney.

The applicable parts of Rule 1.9, dealing with conflicts of interest of former clients, are (a) and (c). (a) says a lawyer who has formerly represented a client in a matter shall not thereafter represent another client in the same or substantially related matter in which that person's interests are materially adverse to the interest of the former client unless both the present and the former client consent after consultation.

Part (c) is a lawyer who has formerly represented a client in a matter shall not thereafter, one, use information relating to or gained in the course of the representation to the disadvantage of the former client, except as Rule 1.6 or Rule 3.3 would permit or require with respect to the client or when the information becomes generally known or to reveal information relating to the representation, except as Rule 1.6 or 3.3 would permit or require with respect to a client.

Now these rules seek to capture competing

principles. On the one hand, a party should have the right to retain counsel or his or her own choice. On the other, a lawyer must preserve his client's confidences. Judge Bostetter wrote about that in the Chantilly case some years ago.

The first, the right to counsel of one's choice, must be subordinate to the second, the preservation of client's confidences and confidential communications. And the lawyer, just like a doctor, needs his client to tell him everything he knows about his situation. Without full knowledge, the good, the bad and the ugly, neither the doctor, nor the lawyer, may fully and properly evaluate the client's or patient's situation and offer competent advice.

A client will be reluctant to divulge information to his doctor or his lawyer if he thinks that information may be divulged to others, or in the case of a lawyer, actually used against him later by that same lawyer.

Rules 1.6 and 1.9 endeavor to count, capture the balance between addressing client's confidences and the use of information obtained from a client during the course of representing a client.

Comment 2(b) to Rule 1.6 states that as a result of the rule on confidentiality, quote, the client

is encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter, end quote.

The rules address with respect to information, three types of information, first is privileged communications, the second is client secrets and the third is information relating to or gained by the lawyer in the course of his representation of his client. Each of the three is dealt with a bit differently.

Privileged communications are subject to the attorney/client privilege and like the doctor/patient privilege or the priest/penitent privilege. The communications between the lawyer, the doctor or the priest on the one hand or the client, patient or parishioner on the other may not be revealed by the doctor, lawyer, or priest without the client's permission even if a subpoena is issued, as was the case earlier.

While there are limited exceptions to those, to the attorney/client privilege, none are applicable in this case. A client's secret is a little bit different and it's broader. Comment 3 to Rule 1.6 defines it as information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would

likely to be detrimental to the client, whatever its source.

The third type of information is information that is obtained by the lawyer that relates to or was gained in the course of the lawyer's representation of the client. The lawyer's use of this information is also restricted but not as severely as privileged or confidential information.

A lawyer may not use this type of information to the disadvantage of his former client unless it becomes, as the Rule says, generally known, that's Rule 1.9(c)(1). In addition, he may not reveal the information relating to the representation that he obtained with respect to the representation. There is a slight difference between those two because there is no exception for any information that has become generally known in the latter, Rule 1.9(c)(2).

And I would add one last note, it arose in the argument last time to a question that I asked Mr. Sullivan, generally known does not mean information anyone or someone can find, it means information that is generally known.

For example, a lawyer may have drafted a property settlement agreement in a divorce case and it may be filed in the courthouse where anyone could go,

find it, and read it. But it is not generally known, unless, of course, it appears on a front page of a tabloid, then it's generally known. It doesn't have to appear on the front page of a tabloid to be generally known, but it is more than sitting in a file in the courthouse, which is open, may be open to the public.

These rules dealing with confidentiality lead quite directly to the limitations on a lawyer's ability to represent new clients in matters involving former clients. As Judge Bostetter said in Chantilly, once an attorney/client relationship is established, an irrebuttable presumption arises that confidential information was conveyed to the attorney in the prior matter.

This does not mean that the lawyer is forever barred from representing a new client against a former client; Rule 1.9(a) makes it plain. It says, a lawyer who has formerly representing a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client.

The critical phrase is the same or a substantially related matter. A lawyer may sue a former client on behalf of a new client in matters that are not

substantially related. For example, during a divorce the parties may enter into a property settlement agreement that provides for the disposition of personal real estate. And during the ensuing 18 years, they do not dispose of the property as the property settlement agreement says and both former spouses are represented on different matters by the same law firm, a number of matters.

One of those matters, in fact, involves the development of that parcel of land which is addressed in the property settlement agreement. The development is not, but it is part of the marital property to be disposed of. The property is not disposed of as provided in the property settlement and the former husband, represented by the law firm that represented both of them in various differing matters and the aborted development effort, sues the former wife to enforce the property settlement agreement. May the law firm represent the former husband.

To resolve the issue, and this is a real case, the court examined the prior representations and the current representation and it concluded that none of the various matters that the law firm undertook for either the former husband or wife related to the property settlement agreement itself.

While the development effort concerned the very property involved in the property settlement agreement, the issues were entirely different and there was no relationship and had no bearing on the property settlement agreement at all. In this matter, the court held that the matters were not substantially related and the law firm could represent the former husband. That's Stokes versus Firestone out of this court, a 1993 decision.

Now in order to resolve the question presented in this case, the court must first examine Reed Smith's prior representation with First Owners' Association and then the current representation to determine whether they are substantially related. Reed Smith agreed that it previously represented FOA in numerous matters over six years, a fact beyond dispute.

It describes the representations, the prior ones in great detail in the complaint it filed against FOA and the three directors. Reed Smith's complaint, in its complaint identifies who are the eleven plaintiffs. At least four are former members of FOA's board of directors. Dewanda F. Cuadros was present at least during the bankruptcy period through the October 2011 election and there until that was resolved. She unsuccessfully ran for re-election. F.J. Pepper, Alban

Zoki (phonetic) and Elizabeth Moore were elected to the remaining one year seats in 2011. The court's unaware whether they ran for re-election in 2011, but they're not now currently members of the board as I understand.

Mr. Zogabe (phonetic) and Betty Gilliam were both members of the first special litigation committee and apparently replaced in October 2012 by two newly elected members of the board of directors. Those are the plaintiffs. Reed Smith next identifies the three individual defendants. They are three of the four members of Gordon Properties. They were elected to the board of directors for two-year terms in October 2011. FOA is the fourth defendant.

The details of the prior representation of FOA are contained in paragraphs 20 to 43 of the complaint. They're at pages 5 to 12, and in that Reed Smith sets out two key disputes right at the beginning of the complaint in a section named Nature of Dispute between FOA, Gordon Properties and CSI.

The first is the termination of CSI's management agent for FOA. In that dispute CSI asserted that the board of directors did not have the authority to terminate it and that the termination was improper. CSI made the mistake of resorting to self-help to right what it considered a wrong rather than yielding and

suing for damages. FOA sued CSI and recovered a judgment in the amount of $161,792 in compensatory damages and $275,000 for punitives.

The second issue identified at the beginning of the complaint is condominium fees assessed by FOA against Gordon Properties for its street-front condominium unit. As we all know, the condominium consists principally of a high rise building, where the residences and some offices are located, a stand alone gas station, and a street front unit, which Gordon Property owns, and is used as a restaurant.

The gas station and the restaurant are physically separate from the high rise and are separate condominium units. The condominium documents divide expenses among the units in the high rise, the gas station and the restaurant. After about 30 years of operations, more or less, the board of directors determined that the condominium assessments had not been properly allocated among all the units. Specifically, the two street-front units had been underassessed, they believe, for years.

The board, of which at least four of the plaintiffs were members at the time of the assessments or during the litigation that ensued, issued a supplemental assessment for five years, and I don't know

the amount, it's in the record somewhere, but in the magnitude of $250,000, or something like that, in addition to the condominium fees that the Gordon Properties had already paid.

Litigation ensued, not surprising, and Gordon Properties sought, among other things, a determination of the street-front units were not subject to condominium fees and FOA sought to collect the additional assessment. Gordon Properties also sought a determination that, about the proper allocation of expenditures of reserves. The court held that the street-front units were subject to condominium assessments and set out a method relating principally to the reserves, how they're to be allocated and expended.

FOA's claim for assessments was denied because, as Judge Kemler said, they had not been assessed at the time of the litigation. FOA immediately after that ruling went back and assessed them, again, for a look back of five years.

First, CSI, then Gordon Properties filed bankruptcy. Gordon Properties immediately sought an injunction requiring FOA to require it to vote at the next annual meeting, which was October 2009. The bylaws prohibit anyone in arrears in the payment of their condominium fees, I believe it's for a period of 30

days, from voting at the annual meeting and Gordon Properties asserted that this provision violated the automatic stay imposed by Section 362 of the Bankruptcy Code.

FOA prevailed at the first injunction suit, this court finding that Ms. Cuadros, as president and the presiding officer of the 2009 annual meeting, abused her position but did not deny Gordon Properties its right to vote.

In the second injunction suit this court found that FOA did deny Gordon Properties its right to vote and that was a violation of the automatic stay and that occurred in canceling the 2010 annual meeting.

As a remedy the court established procedures for the 2011 annual meeting to ensure that Gordon Properties would be able to vote and that the election would be fair and transparent. The court sanctioned FOA but gave it the opportunity to purge its contempt, which it did. The old board, which had been in office since 2006 as holdovers because there had been no elections between 2006 and 2011, were unsuccessful in their election attempts in 2011.

Gordon Properties was successful in electing at first four but ultimately three members on the board. The change from four to three was a late claim by FOA

that an entity could hold only one seat on the board, a proposition with which I agreed. Gordon Properties was able to elect three members to the board because of its related entities but not four. It owned only 39 units in its own right. Gordon Residential Holdings owned, I believe, one and Gordon Sells owned one individually.

The issue arose in part from a 2009 resolution of the board of directors that limited related entities and individuals to one seat on the board. Reed Smith was counsel of record in that case, although Jennifer Sarvadi was there, Ryan handled most of the board.

The second major piece of litigation was Gordon Property's objection to FOA's proof of claim. This court follows the state court as to the method of allocating assessments, where the state court had dealt primarily with reserves, this court dealt with assessments. After determining the method by which the assessment should be calculated and that FOA's proof of claim did not use that method, this court disallowed the proof of claim.

FOA bore the burden of proving the correct assessment and failed to produce sufficient evidence from which the court could do so. The court was a bit surprised by that because at a preliminary hearing the court said that might be the possibility and one should

be prepared with evidence to prove the claim. FOA was not.

There were several other matters that merit attention. One was the motion in this court to substantively consolidate the two bankruptcy cases. The prospects of FOA collecting the $436,792 judgment against CSI were at best dim. It has no substantial assets. It's on a cash-flow basis and from my experience in bankruptcy that's a significant judgment from what I'm aware of their cash flow.

The effect of substantive consolidation would require Gordon Properties to pay the CSI judgment. Gordon Properties has substantial assets and would be in a position to do so. The court ruled against FOA but was reversed by the district court and that matter is now pending on remand.

All matters in the bankruptcy court, except the substantive consolidation motion, are now on appeal to the district court. In 2011 the district court ordered the parties to mediation, which did not result in a settlement. FOA filed an additional suit in state court seeking to adjudicate a number of seats that a related entity could hold on the board at one time as established by the board's 2009 resolution. That was removed to this court and then remanded and then sent to

arbitration.

The second portion of Reed Smith's complaint sets out actions taken by the boards elected in October 2012 and October 2011. The gist of this portion of the complaint concerns the board's handling of the special litigation committee. After the 2011 annual meeting the board appointed the three-person special litigation committee, which consisted of two of the plaintiffs, one of whom was a board member, and a third person.

The 2011 board also terminated Reed Smith but did not terminate LeClair Ryan. The special litigation commission retained John Donelan as its counsel and after it was constituted, rehired Reed Smith to handle the matters on appeal. But it does not appear that the special litigation committee was up to that point successful in bringing the matters to a conclusion.

After the October 2012 annual meeting, the special litigation committee was reconstituted. Mr. Zogabe and Ms. Gilliam were replaced by two newly elected board members, Marietta Hernandez and William Richenbach. Reed Smith's complaint challenges the propriety of that change and the thrust of the complaint was to prohibit the three members of the board, the three individual defendants, who are associated with Gordon Properties, from voting on any settlement or

other issue involving Gordon Properties or CSI. The complaint also challenged the propriety of hiring CSI on an interim basis or temporary basis.

October 12, 2012, FOA represented by Ms. Sarvadi of LeClair Ryan filed a consent motion to approve the engagement of Joe Riviere of CSI as interim manager on the same financial terms as the prior manager. The part of the order determining the outcome of the 2011 election, this court prohibited the board, newly elected board, from hiring CSI without authority from this court. The motion sought that authority and the motion was granted.

Count one seeks declaratory relief and there are eight specific forms of relief requested. The first is to declare that the election of Gordon Properties affiliated members to the board in 2011 was invalid. The fifth prayer was to declare that the rehiring of CSI was invalid. Three involved challenges to the special litigation commission, or committee and the remaining three seek to prohibit the three Gordon Properties affiliated members and the three defendants from voting on matters affecting Gordon Properties or CSI.

Count two seeks damages from the three individuals for their alleged breach of their fiduciary duty. At the court's behest, the parties submitted to

mediation before Judge Hennigans. The report, the parties report that the mediation was successful and that the special litigation committee on behalf of FOA successfully reached an agreement with Gordon Properties that was approved by the board by, I believe, 6-0. We talked about that last time, with one abstention.

A motion to approve the settlement was filed with the court yesterday and that matter is now before the court on approval this time.

Well, where does that leave us now? We have seen that there are two fundamental principles that may come into conflict, the right of a party to choose counsel of his or her own choosing and the right of a party to freely and fully discuss his case with his counsel without hesitation and without fear that the lawyer will reveal those discussions to others or use that information or other information that counsel may obtain in the course of the representation against him, that is, to his disadvantage. When these two rules conflict, confidentiality prevails.

As in the Tessier case, the district court stated that the right to retain counsel of his choosing is secondary in importance to the court's duty to maintain the highest ethical standards and/or professional conduct and to ensure and preserve trust

and the integrity of the bar.

The two rules I discussed earlier, 1.6 and 1.9 help define the limits and the balance. Lawyers are self-regulating; they generally recognize these issues and resolve them without court intervention. Many counsel will come up, recognize and decline inappropriate engagements.

However, when they do not, it is an appropriate, opposing counsel believes that they have not properly recused themselves or declined the representation, the matter must be decided by the court.

As the court in Tessier said, the court is charged with the duty and responsibility to supervise in the conduct of lawyers who appear before it. Disqualification motions obviously can be misused; they can be inappropriately used to attempt to remove counsel who is knowledgeable about a case so that he can't use that knowledge in a case.

The court again in Tessier said, it is not unmindful of the recent practice indulged in by some to use a disqualification motion for purely strategic purpose and the court should not be oblivious to this fact. Appropriately the court is cautioned against a mechanical application of the Virginia Code of Professional Responsibility, that's a predecessor to

current rules, to all situations.

Judge Bostetter in Chantilly and other judges have noted the same thing. Judge Clark, who wrote the Tessier decision for the district court for the Eastern District of Virginia, wrote it in 1990, which is 25 years ago, 24 years ago, 23. Fortunately, those days have passed and the abuse that he noted has declined substantially, especially in this court.

And although disqualification motions may be improperly used, they should be made when appropriate and this is just such a case. The question of propriety of Reed Smith representing past board members and other unit owners against the very client it represented for six years is an obvious question. In fact, Richard Sullivan, a partner at Reed Smith, argued the motion. He introduced himself as essentially the ethics compliance partner at the law firm and he represented to the court that this issue was identified and fully vetted before Reed Smith undertook the representation. The firm reached the conclusion that the representation was permitted and proceeded.

Well, they recognized the problem, the issue, and FOA immediately saw the same issue. They hired an attorney who has not previously been involved in the litigation to advise them on the issue and he came to

the opposite conclusion, filed this disqualification motion and argued it.

The issue is an obvious issue that properly should be examined. The motion is not simply a litigation strategy or tactic and to characterize it simply as litigation tactic demeans the underlying principle of protecting former client's confidences.

In Rogers versus Pittston, also a case out of a district court, I believe, in the Western District for Virginia, this time 1992, the court disqualified counsel for Rogers. The court carefully considered the facts of the representation, basically there was a mineral lease under which Pittston made royalties to, among others, Rogers. The suit in question involved the lease. Rogers' attorney had previously been employed by Pittston as an in-house counsel and in the course of his duties had reviewed the lease when Rogers sent a letter to Pittston asking to be paid royalties. He reviewed the lease, said they owed the royalties, sent a memo to the accounting department and apparently they paid the royalties.

During his employment there were two other memos dealing with the same lease, one was copied, both written by other attorneys in the office. One was copied to him and the other was not. He had no

recollection of the last two memos.

The court, however, disqualified him because he obtained or had confidential information from Pittston about the lease in question in the current litigation. The court noted the counsel is not forever disbarred from representing parties against Pittston, but was disqualified in this case because of the confidential information he had acquired as in-house counsel.

The Tessier also analyzed the facts and that's what the court of appeals says to do, is to analyze the facts of the case. We could go through several cases with the facts to figure out what is substantially related. Tessier I think is a very helpful case because it speaks, in addition to analyzing the facts, points out similar elements that the court considered.

Tessier was a doctor, he was a member of a medical practice. Disagreements arose and the practice was split into two groups. Ultimately the parties entered into a settlement agreement and at that point there were lawsuits. Tessier filed first one suit and then another and in the second one there's a question about the propriety of counsel representing the other party.

The court first examined the nature of the cases and their factual relationship to each other,

discussed it, the court discussed how the evidence in the first case could assist in the second case. The parties and potential parties in both the cases were the same. Now that one, I note, but I don't put a great deal of strength because the identity of parties is not controlling because one would expect in these sorts of cases that there would be an overlap of parties. But it is something to examine. It is to be expected that at least one of the parties is going to have an overlap for there to be a conflict.

The court looked at the genesis of the two cases and it said both suits are the byproducts of the dissolution of the medical practice, more importantly both suits are outgrowths of Dr. Tessier's professional relationship with Dr. McGee and PSA, which was one of the two successor practices.

The court looked at the legal theories and on that it stated while the legal theories employed in both cases are substantially different, the cases do arise from substantially similar facts. Confidential information conveyed in one case does not lose its confidential character because it was not utilized to develop a legal theory in a subsequent case. The information remains protected whether it is used or not.

In this case, Reed Smith was employed to

collect money from CSI and in an assessment, more money from Gordon Properties. They recovered a judgment against CSI and endeavored to collect it since. They represented FOA in litigation to collect an additional assessment from Gordon Properties. They litigated whether the store-front units were liable for assessment and litigated the method to be applied to the reserves and the assessment and litigated the amount of the assessment and it took appeals to the district court, which are now pending.

It represented FOA in the injunction matters and was involved in dealing with the automatic stay. It advised the association on that as well. The number of seats that Gordon Properties could hold on the board of directors was litigated. It represented FOA in its ongoing business matters, Gordon Properties' right to vote at the annual meetings and other related matters.

Many of these issues are still open and on appeal and the thrust of all of them, though, they all have a common denominator, collect money from CSI and Gordon Properties. That's the genesis of all of this litigation.

Now, there's been a change in the membership of the board of directors and in FOA's counsel. The special litigation committee is now represented by John

Donelan and was represented by him during the negotiations to bring all the litigation to a conclusion. He did not represent it during the mediation in the district court, which was not successful.

There's now a settlement pending between FOA and Gordon Properties which must be approved by the court. Reed Smith seeks to effectively scuttle the settlement by attacking the legitimacy and authority of the board and the special litigation committee. The object of all of the litigation during the past six years, for resolution of claims between FOA, Gordon Properties and CSI may be within the grasp of those parties.

This litigation would hinder, certainly delay and perhaps prevent that resolution. The parties are the same in all the litigation. This litigation arises out of the same underlying facts and the complex processes that have developed. The allegations in the complaint recite almost all of the prior history of the litigation between the parties.

The prayers for relief are significant in showing the substantial relatedness of the cases. I look particularly to prayer A and E. Prayer A asks that the state court invalidate the election of three Gordon

Properties directors to the board. This is exactly the issue that was presented to this court, tried by this court, resolved by this court and now is on appeal to the district court and Reed Smith simply cannot be involved against FOA on this issue in any form.

Prayer E requests that the board's employment of CSI be invalidated. This matter was subject to this court's approval. The employment was sought by FOA in a consent motion filed by Ms. Sarvadi, who independently represented FOA in the injunction and stay violation matter. Reed Smith and LeClair Ryan were co-counsel of record for FOA and had significant communications between themselves on these matters. And this is another matter that Reed Smith cannot be involved in against FOA in any form.

Reed Smith stated at oral argument last week when we were here, that it intended to withdraw those prayers for relief and therefore take, thereby take them out of the case. But their inclusion shows how closely related all of the facts and prior representations are in this case.

The facts alleged would allegedly support their prayers for relief in these two items. Taking the prayers for relief out doesn't change any of the facts alleged and there's no indication that any facts would

be withdrawn or allegations.

The prayers for relief concerning the special litigation committee are directly at odds with the objective Reed Smith originally had, collection of the money from CSI and Gordon Properties. Most cases are resolved consensually by settlement and there was an effort to resolve this matter by consent, certainly in the district court mediation and probably, possibly on other occasions as well. But certainly the one I'm aware of was in the district court.

The prayers for relief with respect to the special litigation committee are at odds with FOA and its objective throughout the litigation, which is to collect this money.

The last three prayers for relief ask that the three individual defendants be prohibited from acting as directors on any matter in which Gordon Properties or CSI has an interest. That includes all matters that Reed Smith previously represented FOA in. The effect would be to hinder and perhaps prevent a resolution of these matters. That would be to the disadvantage of FOA.

In all of these matters, Reed Smith knows through its prior representations the strength and weaknesses of FOA's positions and in reaching any

consensual resolution, Reed Smith would undoubtedly use that information and it's prohibited from doing so.

Comment 2 to Rule 1.9 states that the scope of a matter for purposes of this rule may depend on the facts of the particular situation or transaction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

And that is exactly what is happening in this case. There is and has been only one objective from the beginning. The situation has changed, the old board is no longer in office. After more than five years, they were unsuccessful in resolving this dispute and they spent an enormous amount on legal fees, has been represented by counsel in this court over a million dollars, litigation in every local court and appealed virtually every judgment order.

They're no longer members of the board; a new board succeeded where they failed. The new board has reached a settlement agreement that's before the court and must be approved by the court. When the complaint was filed, there was no settlement but the plaintiffs were afraid that the settlement would not meet with their approval.

Reed Smith came up with a new theory, a new approach to limit the ability of the former client to resolve the matters that Reed Smith has sought to resolve unsuccessfully for six years. It may be a new theory, it may be a new approach, it's the same matter.

The court notes that the settlement is subject to the court's approval and that's what we will address next. The issue raised in the suit is the authority of the board, the composition of the special litigation committee, the appropriateness of the settlement itself, all of those are issues that are fair game and I expect will probably be heard of after settlement, the hearing on the settlement and are appropriate matters to consider and I would consider them in any matter that was brought before the court.

Reed Smith will be disqualified from representing the main plaintiffs and they will have the right to represent themselves if they so desire or retain new counsel.

MR. KING: Your Honor, can I ask the court to stay, stay the adversary proceeding pending an appeal of the disqualification of counsel to the district court?

MR. HARVEY: We're representing these folks pro bono. They have no ability to retain counsel to represent them in this matter, so it's quite important

to them to have an opportunity to have this decision considered before any further action is taken in this case.

MR. DINGMAN: Your Honor, I think it's very clear under the law that order disqualifying counsel is not appealable. It is an interlocutory order. I think the plaintiffs have a right to file a motion asking for leave to appeal the interlocutory order but I think there's a process for that. I don't think there's any reason to address it today, it's not before the court.

MR. KING: The district court has the ability to take the appeal on an interlocutory basis and we will certainly seek that. I again believe it's important for plaintiffs in this case not to have their rights prejudiced by proceeding without them being represented by counsel.

THE COURT: Mr. Harvey?

MR. HARVEY: I would oppose any stay, Your Honor. The plaintiffs can get a new lawyer or they can proceed pro se. I don't see any reason to stop the train that's moving.

THE COURT: Well, there are two issues that are addressed now. One deals with what do we do with the adversary proceeding that was removed to this court from the state court. And in that, these individuals are the

moving parties, it's an adversary proceeding. I don't know if answers have been filed, I haven't checked for that. I don't know if discovery has been taken. I don't know that it is going anywhere quickly. So I don't know what it means to stay that particular proceeding or leave that with me. I'm, I don't really understand that.

MR. DINGMAN: There's the pending motion to remand before the court.

THE COURT: That's true, there is a pending motion to remand. That's your motion?

MR. HARVEY: Yes.

THE COURT: Yeah. And you can't pursue it? They can pursue it, but you can't. So how does that impact the stay?

MR. HARVEY: I think the court should stay ruling on the motion to remand until we can appeal this decision; otherwise, these folks do not have the ability, we've told the court and it's a clear fact that they're being represented pro bono. They don't have the means to hire counsel. They're not going to be capable of representing themselves pro se.

So to proceed on a motion -

THE COURT: Why can't they?

MR. HARVEY: Your Honor, they have no legal

background. They don't understand these legal issues of jurisdiction between the state and federal courts. They don't have the ability to come in and make those arguments.

THE COURT: I think what he's suggesting is that the issue that he's concerned with the issue of whether it would be remanded or go forward.

MR. KING: Well, we're obviously opposing remand so in that sense, I guess we don't mind that it's stayed because it means we don't ever get to the issue and it just stays here. And that candidly is sort of what I asked Your Honor in any event. So in thinking about it, I'm not sure that I really oppose Mr. Dingman's request. I want to make sure that nothing in that regard stops the train with respect to the settlement. We ought to go forward with that.

THE COURT: That issue, which I alluded to and this issue, they're common issues between the two of them and my thought when I raised it is, all right, what does it mean to stay the adversary, the motion to remand it would be the next item to be discussed. It's not anywhere close to trial. But how does that affect, if at all, the settlement motion which we're about to schedule?

MR. DINGMAN: Your Honor, our position would be,

that should be stayed as well because if the court were to grant the remand or the case is remanded to the state court, then the decision of the state court would affect whether the settlement was properly negotiated and entered into.

THE COURT: And that's exactly why they're related, Mr. Dingman.

MR. DINGMAN: Well, I very much disagree with that, Your Honor.

THE COURT: Well, I know you do because that would mean that -

MR. DINGMAN: I think there's no relationship at all between them and we'll take that issue up on appeal. But, in the meantime, I think it's unfair to as Mr. King says, let the train continue to roll down the track while these folks at the end of the day, it may be deemed that they do have the right to have Reed Smith represent them. It may be deemed that the state court is the proper venue to decide these issues and to go forward with a settlement that would deprive them of those rights just to allow the train to go on down the track, I believe, is not a proper basis to continue this matter.

We ought to have a stay; we'll seek an expedited appeal and move as swiftly as we can in the

district court.

THE COURT: Would you be representing anyone opposing the settlement if, independently of the adversary?

MR. HARVEY: Well, Your Honor, I have to consider the decision the court has made today to disqualify. Certainly there may be some, I've not seen the final version of the settlement agreement, I'm not sure exactly what it says. But my, I would suspect that someone will oppose it, but no one has contacted us to represent them with respect to that. My concern is -

THE COURT: Well, I guess the broader question would be, that is a different issue than the removed matter, although the issues raised are the same. The disqualification seems even clearer in that way.

MR. DINGMAN: We had no, Reed Smith did not represent FOA in any settlement negotiations at any point in time. We were disqualified, we were out as counsel. In fact, Your Honor, we did not represent FOA when the CSI matter was brought before the court. We had been terminated at that time as well. Only Ms. Sarvadi represented FOA at that time. So we had no involvement in any -

THE COURT: If I recall correctly, and please correct me if I'm wrong, in the second one, what was it,

10-20, that docket number -

MR. DINGMAN: 11-1020.

THE COURT: 11-1020, you were counsel of record initially but she came in and took over.

MR. DINGMAN: Well, and then before all of these matters, Your Honor -

THE COURT: Am I correct about that?

MR. DINGMAN: Well, she was hired, actually she was lead counsel, we were co-counsel -

THE COURT: Well, that was my only point.

MR. DINGMAN: Right, but then we were terminated and we submitted motions to withdraw, which was granted by this court, before the CSI matter was brought to this court and before there was any even mediation or settlement discussions. So Reed Smith did not represent FOA in any of those instances.

THE COURT: You did represent, who represented the special litigation committee in the district court litigation?

MR. KING: Well, there was no special litigation committee in the district court.

THE COURT: It was FOA?

MR. KING: It still was FOA and Mr. Dingman represented them.

MR. DINGMAN: But that was two years ago, Your

Honor.

THE COURT: Right.

MR. DINGMAN: That was before there was a change of the board.

THE COURT: Right, I got that, Mr. Dingman. All right, well, tell me, Mr. Dingman, I want to make sure I've got it right. You don't want to, you don't want this court to proceed with the remand motion unless, of course, I were to grant it immediately. You would like to seek leave to appeal the order, either take an appeal of the order or seek leave to appoint, take an interlocutory appeal and you would like to, the principle thing on the remove action is the remand consideration, which you're concerned with, and Mr. King said, well, we don't really need to reach that anyway at this point. That goes into the issue of the scheduling on the settlement and you're arguing that the settlement should be postponed?

MR. DINGMAN: Yes, I think until there's a decision on who can represent the plaintiffs and the remand motion is decided, because the issues within that case would, I think, directly affect the settlement agreement, if the settlement agreement process proceeds while these appeals are going forward. Then if the appeals are successful, then it would be a moot victory

because the settlement agreement would have proceeded to a resolution before the court.

THE COURT: So what you're suggesting is, your ideal litigation strategy would be the remand order is granted during the pendency of that litigation in state court. I would stay consideration of the settlement order because that would address the authority of the board and based on what the state court ultimately resolved, it would either come back to me to approve it or it would be vaporized because it was not authorized. Is that basically how it would follow?

MR. DINGMAN: The way that we think the case should proceed is, it should never have been removed from state court. The state court had it not been removed would have already decided whether the actions of the board members was appropriate or not. The court should have the -

THE COURT: I understand that, Mr. Dingman, but I, it was removed and I'm looking prospectively from this point forward.

MR. DINGMAN: And I think, the reason I say that, Your Honor, is I think if the case is remanded to the state court, it will move swiftly to decide these issues as it was prepared to do before the removal.

THE COURT: Well, I don't know about how

swiftly, but do you disagree with the sequence, whether it's quick or not?

MR. DINGMAN: I think the sequence will be to decide in appeal the motion to disqualify Reed Smith and then the remand and then the state court would have to take up the issue of whether under state law these board members acted appropriately or not.

THE COURT: And during the pendency of all that, the hearing on the settlement order would, motion would be postponed until the state court ruled?

MR. DINGMAN: I think it would have to be, Your Honor, because if the state court were to rule that it was improper then I think the approval of the settlement agreement would be very much in doubt.

THE COURT: And how long will it take the state court to rule on it do you suppose?

MR. DINGMAN: Well, when we filed on the 29th of November we had a hearing set for one week later.

THE COURT: And had anything, any final order not been appealed to the Virginia Supreme Court?

MR. KING: Your Honor, when they were involved in the state court litigation never appealed a single case to the Virginia Supreme Court.

THE COURT: I didn't, I didn't ask -

MR. DINGMAN: It's a false representation,

number one.

THE COURT: Gentlemen, gentlemen, it doesn't matter to me who appealed, the reality of it is everything gets appealed, it's gone to the Supreme Court, one of them was the writ was taken, I guess now they call it an appeal was taken, the other one it wasn't.

MR. HARVEY: Your Honor, on behalf of FOA in the removed action, if it's remanded we're going to oppose the motion for a preliminary injunction. The fact that they have a hearing doesn't mean they're going to get an answer, much less one they like. So whoever represents them or whether they proceed pro se, we'll oppose it. And if the court denies the preliminary relief, that means the case goes forward, which means, with the damages claim tied in with it, it'll be a year before that's over.

That's the standard outside limit in that court. I don't see any reason for that one to go any faster. They've got 12 plaintiffs or something. I have a client to defend. My client actually hasn't even been served yet, so I don't know what we're staying. I mean, not, there has been no service of process, we got a copy in the mail before the aborted hearing.

So the court's ruling on disqualification

obviously is one with which we agree. Forgetting that, it's, the court's rulings are presumed correct. We shouldn't stop this whole matter because Reed Smith disagrees that they vetted this thing incorrectly. And we certainly shouldn't stop the settlement process that's going forward. The court has to do what's going to be before the court and what they want to do is try to take those issues away to the state court. There's no reason that needs to be done. Sometimes courts both look at the same issues. The settlement, we have a chance to end this or to bring a big, big chunk of it to a close.

Mr. King, there are other creditors and other things, but we've got it in sight and if Ms. Cuadros and the other people want to come in and complain about the settlement, forget the issues of state court, federal court jurisdiction removal, remand, bankruptcy, is it a good deal or not, is it appropriate or not. They can come in all by themselves.

I mean, I understand the court's going to give all the unit owners or many of them a chance to come in and talk. So they can come in and tell you whether they think it's a good deal or bad deal and whether they think these people were fair or unfair, if this is a sham or they were dupes or the mediator didn't know what

he was doing. They can do all that. We don't need to wait for anything, much less appeals that may not get granted and then if granted may get, you know, stayed and then may get decided and go, for the circuit, we shouldn't wait for that. The court's ruled, the court's ruling is considered correct even if it's against me, it's presumed correct and we should go forward with what we have here.

Whether the adversary proceeding is stayed or not, it doesn't matter to me. I'm happy to have it stayed because I think we have a forum here to get this all resolved.

THE COURT: Okay, thank you.

MR. KING: I would simply add, it's hard to follow, I would simply add, Your Honor, that this court, there can be no reasonable debate that this court does not have jurisdiction over every issue that has to be decided in the context of approving this settlement and that includes corporate covenants issues with respect to the propriety of FOA's actions and whether it, in fact, had the authority to enter into this settlement.

So there is no reason to stop it. If there was an issue with respect to whether this court had jurisdiction over those issues, you know, that could be raised. It could be appealed. But I don't think

there's any reasonable debate about that.

There may be, I don't know, I haven't looked at it well enough yet, Your Honor, I'm asking to read the jurisdiction issue. I think the court clearly has jurisdiction over this case. But there may be issues that are raised in the complaint where both the bankruptcy court and the state court would have equal jurisdiction. That's not a basis to remand, it's not a basis to say that this court doesn't have jurisdiction. There may be a practical reason why the court would remand it, but none of that has to do with the settlement agreement. Everything in the settlement agreement, this court clearly has jurisdiction over. It's what it's wanted, it's what the district court has wanted, it's what the bankruptcy court has wanted. It's what we have been pushed to by the courts for so long. We're there, there's no reason to stop it now.

THE COURT: Did you want to add anything, Mr. Dingman?

MR. DINGMAN: No, Your Honor.

THE COURT: All right, thank you. The oral motion for a stay I'm not going to grant. If, as I hear it, what meets the matter, the next matter is to, in the remove matter is for a hearing on the remand. That's not yet been set and we can schedule it for a status

hearing at some point in the future. I don't hear anyone eagerly asking that it be heard immediately.

MR. DINGMAN: No, and, in fact, Your Honor, in light of Your Honor's ruling, in order to give the plaintiffs an opportunity to procure new counsel or make their own decisions with respect to whether they want to go forward, I would ask that the court withdraw its direction to me to file a response with respect to the jurisdictional issue until the decision is made about whether either this action is going to go forward or what the scope of it would be.

THE COURT: Well, I think that I would not hear the remand motion until such time as the parties had opportunity to figure out where they are, how they want to proceed and what they want to do. So I don't think there's any imminent need to hear it on an oral motion.

I'm not denying it with prejudice. If you want to make a motion, you follow the ordinary course for filing a written motion, setting it down for a hearing. I do that because I think it should be seen in writing. It should be, people should be able to look at it, respond to it and consider it and we're not doing anything anyway so as a practical matter you're not going to be disadvantaged by that motion coming forward.

Now I am going to set it down for a status so

it doesn't get lost off the docket, but it will be status only, not for argument. And at that point we can determine the status of representation, new counsel, pro se, a mixture of both and try to reschedule it so that the parties themselves had the opportunity to participate as they need, may wish to do. So that's the issue on that.

Now, with respect to the other two matters or, the second one being the Friday motion, we're going to continue that over to whatever date that we get. I think it's, if there's a settlement, then that goes away as well or it's resolved in some fashion. Am I correct?

MR. KING: It is, one of the settlement terms is that the money that has been placed, the bond that's been posted with the court, then goes back to FOA as part of the settlement.

THE COURT: All right, there's no intent, obviously, there's no enforcement action going to be taken. To the extent, I don't know if that stay was temporally limited by time -

MR. KING: It must be. I - the order, I didn't know it was on for hearing for Friday. I thought what Mr. Donelan did was, with my consent, submitted an order to just stay it until, pending the settlement.

THE COURT: Why don't you take a look at the

orders and submit a new one if necessary that leaves it, once the bond is posted it should remain effective.

MR. KING: Well, I think one of the problems was that there was -

THE COURT: It was $24,000, --

MR. KING: Exactly, it's short, we were okay with that, we just wanted to go forward with the settlement. We were happy to have everything just stay until we get through.

THE COURT: Why don't you get with Mr. Donelan, put an order together to wrap that up and I don't know that further hearings are needed if the bond is adequate.

MR. KING: No, I think we can submit a joint order just staying, continuing the stay until whatever hearing the court has.

THE COURT: And I'll remove it from Friday's docket. We don't need - now, that being said, we now have a settlement that was filed yesterday. Thank you for getting it in. It's lengthy, so I have not read the whole thing. But we're needing to schedule it.

In scheduling it, we need to figure out what sort of notice is going to go out and what sort of information the unit owners should have so that they can decide whether they want to come to court and address

the court, which they're welcome to do.

I understand from the last time that we were here that one unit owner meeting, open meeting was held. Is there a need for an additional meeting now that everything's written, finalized and final with the court?

MR. KING: I would defer to counsel for FOA on that. I believe it was Mr. Donelan's belief that he had satisfied the court's request in that regard.

MR. BRAVANA: I think that's true, that the board would not need to meet or that SLC would not need to meet again prior to continuing -

MR. KING: I'm sure if the unit owners asked for such a meeting, they would be accommodated but I, when we were here with Mr. Donelan, I think what Mr. Donelan was saying to the court was that he gave all the -

THE COURT: He gave notice and only 25 showed up.

MR. KING: Right.

THE COURT: Which is a nice group.

MR. KING: Gordon Properties is not opposed to another town hall meeting if that's Your Honor's preference. We're certainly not opposed to it. I think that has to be taken into consideration on the scheduling. I'm not sure it's necessary, but we're not

opposed to it.

THE COURT: Well, I don't want to make unnecessary work but I want to make sure that everyone in the building has enough information to figure out what's going on and enough information to decide how they want to respond to it.

Are there any parts of the settlement agreement that are time sensitive? I mean, obviously we'd like to get the hearing so that you know whether, what goes on and whether it's approved or not approved?

MR. KING: No, not time sensitive in the fact that it has to be done within the next two or three weeks. I think everybody wants to see it resolved and that's the time sensitivity issue, that's all.

THE COURT: I've got an open date on the 21st of March, which I think gives enough time for notice, meaningful notice to go out to the unit owners and an opportunity for people who want to speak or object to file pleadings and for the proponents of the settlement to be aware of that and be prepared to respond to those. So is that a date that's open for counsel?

MR. DINGMAN: It is, Your Honor.

THE COURT: All right, we'll schedule that at 9:30, the 21st of March.

MR. KING: Your Honor, with the court's

indulgence may we do 10:00, that's an MBVBA breakfast meeting that morning.

THE COURT: Yes, we'll put it at 10:00.

MR. KING: Thank you, Your Honor.

THE COURT: Now you're going to be preparing for a hearing in any event, how much time though do you need for specific objections, if any?

MR. DINGMAN: Can we say, I don't think I need a lot of time to respond.

THE COURT: Would a week be enough?

MR. DINGMAN: I was going to suggest 14 days since it's already set all the way out to March 21st, I would think, I can deal with seven days, Your Honor.

THE COURT: All right. All right, I'll set a deadline for any written objections and for unit owners, they can be called to comment if they wish to, call comments, March 14th. That will give anyone, everyone and anyone else an opportunity to look at them and decide how to respond to them if they wish.

Notice, you've got about 400 and some notices to get out?

MR. BRAVANA: Correct, Your Honor.

THE COURT: And you can do that within a week, do you think?

MR. KING: We, well, Gordon Properties has not

been coordinating those notices. Those, Mr. Donelan took care of last time and I believe the system is now set up so that they can do that within that amount of time. The only thing I'm concerned about is that Mr. Donelan is out of town, I'm not sure when he gets back.

THE COURT: What's his schedule?

MR. KING: He'll be back next week, he's just out this week.

THE COURT: He'll be back next week, meaning Monday?

MR. KING: Yes.

THE COURT: Okay.

MR. KING: And within that, I would think he should be able to get those notices out within a week, Your Honor.

THE COURT: We'll make it the 8th of February which is through next Friday. They can certainly go out earlier than that.

MR. BRAVANA: The practical reality is that the manager takes care of that and the manager is sitting here and has heard so I think he can get it together.

THE COURT: Now, are those, how, I want to make sure that everyone gets that there are people who are not residents and need to get it by mail. How is the best way to get them so that people in the building know

about what's going on, mail or personal delivery slip under the door or both?

MR. KING: I'll advise mail, Your Honor. And I know from what Mr. Donelan said the last time, that mail was provided, there were both resident owners and non-resident owners and they have separate address lists for those and the notice was provided both to the resident owners and to the non-resident owners.

THE COURT: Have all notices go out in the mail, have it posted conspicuously at the main entrance or lobby or wherever notices are generally put with a supply of the notices available in the management office for anyone who wishes to pick one up.

Any other way to give notice, any peculiar circumstances here?

MR. KING: No, I think you've covered it. I think having the notices in addition to being mailed to all the unit owners, having it published on the community bulletin board and having extra copies at the management office for anyone who wants to pick it up, and we will state that in the notice as well, although if they get the notice, I don't know if they need to pick one up, but the notice posted on the board will say that they can certainly get a copy at the management office.

THE COURT: When is the next meeting of the board of directors?

MR. KING: I think it's two weeks, Your Honor, maybe not quite two weeks. It's not next week, it's the week after, the third Tuesday, Your Honor. So it's the Tuesday after next.

THE COURT: That would, the third Tuesday of February would be the 19th of February. Would the board, how, for another town hall meeting or the meeting at the board, is the board able to respond to questions at that meeting if there are questions about the settlement?

MR. KING: The board wasn't present at the last town hall meeting, it was only Mr. Donelan and I think that's, that's how it would be. I think Mr. Donelan would field the questions with respect to the settlement. If Your Honor is suggesting that a representative from the other party also be present to answer any question, I don think that's inappropriate. I think we'd be happy to respond.

THE COURT: The other party, what do you mean?

MR. DINGMAN: Meaning Gordon Properties. Other than the other parties besides FOA.

THE COURT: Was there a representative or a member of the special litigation committee present at the open town -

MR. DINGMAN: All three were there, Your Honor.

THE COURT: All right. I'm going to leave that up to the discretion of the parties, the board and to discuss it with Mr. Donelan. You're certainly permitted to do that and Mr. Donelan can set that up. I don't think you need a great deal of notice and it can be given through the usual means that you give notice.

I can't tell whether there's a need for it. There was one held. You are getting closer, something has been filed with the court so there may be greater interest today than there was before. People may look at the material that is mailed out to them and it may generate questions. So I would encourage Mr. Donelan to establish a town hall meeting and if you are inclined to do that, send that out with the notice so that there's a single package getting mailed out. But I'm not close enough to understand the mechanics of what's going on.

The notice that goes out, the settlement agreement is 55 pages long?

MR. DINGMAN: Well, the settlement agreement itself is not. What is so voluminous, Your Honor, is that one of the terms of the settlement is that in addition to complying with Judge Kemler's order and your order with respect to calculating assessments, the board adopted the 2013 budget containing the template for the

very first time for FOA that was required by Judge Kemler.

And so, what the settlement agreement does, it says everybody agrees that this is the way assessments ought to be calculated, this is the template for its future use and so the settlement agreement attaches and incorporates that budget. That's the voluminous part. I think that budget is like 40 or 50 pages by itself.

The settlement agreement itself is only about five pages, I think, four or five pages. I can't remember.

THE COURT: But a reasonable, but the exhibit of the budget is substantial.

MR. DINGMAN: That's the voluminous part.

MR. KING: Yes, Your Honor.

MR. DINGMAN: But we have the capability of copying it two sided so it reduces the volume of it. I don't think we have any problem in including the whole thing in the notices, Your Honor. I think it's, if it was much bigger, it would be difficult but I think this one is manageable.

THE COURT: I want them to get the motion and the settlement order. I think that was attached to it, including all of the attachments and the budget, all of the information that is involved. A notice of the

hearing on the 21st and a clear notice to unit owners that they are permitted to file objections or simply comment if they wish to be heard. And make sure they know the address by which they need to be mailed or they can deliver them here. There's no fee for them to do that.

And it should also make plain that they have the right to attend the hearing and time permitting, I will endeavor to hear whoever wishes to be heard on the matter. They're not required, of course, but their input is welcome on it.

MR. DINGMAN: How much time will we have on the 21st, Your Honor, do we have it all day?

THE COURT: I'm going to, this is a separate day. In that case I'm not unhappy starting at 10:00, I hope you don't need it, if that's a more convenient time for people to miss traffic or something, I'm happy to do that. All right, any other notice that needs to be given?

MR. DINGMAN: I think that covers it, Your Honor.

THE COURT: Mr. Harvey, any comments on that?

MR. HARVEY: No, Sir.

THE COURT: All right, prepare the order if you would. And I think that will take care of it. Any

other matters we need to attend to?

MR. DINGMAN: I assume that, Your Honor, for status purposes, both the stay motion with respect to the bond and the remand will be adjourned to the same day, the 21st?

THE COURT: Yes, it's March 21.

MR. DINGMAN: Thank you, Your Honor.

THE COURT: And it's for status only, neither of them will be heard at that point.

MR. DINGMAN: By the way, Your Honor asked about whether any answers have been filed, there's actually a pending motion, the three individual defendants filed a motion requesting an extension of time to file responsive pleadings. Again, I would suggest that the obligation to file responsive pleadings be part of this day, be part of the status hearing and that at the status hearing a time for filing responsive pleadings will be determined if necessary.

THE COURT: Any objections?

MR. HARVEY: Well, Your Honor, my only objection will be that in order for this to proceed as swiftly as possible, they were served with this almost two months ago. It's not a difficult thing to file an answer, it's not a difficult thing to file a response to a motion to remand so that those things can move perhaps to a

hearing if that's where we are on the 21st. But delaying all of that for another two months, if things are such that we can continue in this case and the court needs to decide those issues, it seems to me it's not a terrible burden to have answers and motions filed so the court's in a position to do exactly that.

THE COURT: Did you want to add something?

MS. METZLER: Yes, Your Honor. Petula Metzler. I represent Bryan Sells and Elizabeth Greenwell. With regard to Mr. Sells, he still has not been served. He has otherwise received a copy of the complaint. Ms. Greenwell has been served, neither of them have filed an answer because as the court knows, no sooner than this was filed in state court it was remanded to this court.

And we recognize under the rules they do have an obligation because they have been served or otherwise received a copy to file an answer here. And we also recognize that with the posture of this case, particularly after today's ruling, that it may ultimately be a moot point and so if the court is inclined to stay this for a status for the 21st of March, which is not that much time down the road, it may ultimately save these individual defendants the time and expense and attorneys' fees of having to file these answers when the court granting -

THE COURT: I'm not sure if the settlement if approved will resolve the adversary but that's a different matter. I haven't reviewed it for that. Mr. Dingman asked for a stay and they indicated from the other parties that no one really objected, that the case isn't going to move forward. The reason for the stay is to give, the requested stay is to give an opportunity to appeal, if appropriate, that matter or in the alternative, for the individuals to obtain counsel.

I think it's appropriate in those circumstances to go ahead and extend the time for any answers and any briefs that had previously been requested. Go ahead and prepare an order putting that, I guess there's a motion pending for an extension of time. Put that down, in fact, I don't want to deal with all of these at one time so the 21st will be the date only for Gordon Properties' settlement. The 26th, which is the following Tuesday put the other matters on the docket and put this on the docket as well, and in the interim, we will grant an extension of time to file all pleadings and answers, briefs, whatever so that neither party needs to do anything on that and I'll consider the matter further on the 26th.

MR. HARVEY: Is that an 11:00 o'clock docket, Your Honor?

THE COURT: That is an 11:00 o'clock docket.

MR. HARVEY: Although it's an adversary proceeding?

THE COURT: I know.

MR. HARVEY: Okay.

THE COURT: The wrong day for it, but -

MS. METZLER: So, Your Honor, just so I'm clear, on March 26th you'll be hearing the motions for leave to file late answers?

THE COURT: No, I'm only putting them for status on that day. I need to keep them on the docket. And you'll submit an order granting an interim extension through and including, you can put through that Friday so that we can hear it further, Friday the 29th of March.

MR. HARVEY: Understood, Your Honor.

THE COURT: And that would include the brief that you previously suggested. Anything else that's left on that?

MR. HARVEY: I think that's it, Your Honor.

THE COURT: Thank you.

MR. HARVEY: Thank you.

(Whereupon, at 12:55 o'clock p.m., the hearing in the above-captioned matter was concluded.)

CERTIFICATE OF COURT REPORTER

I, CAROLYN J. TIMKO, a Verbatim Reporter, do hereby certify that I took the notes of the foregoing hearing by Stenomask and thereafter reduced to typewriting under my direction; that the foregoing is a true record of said hearing to the best of my knowledge and ability; that I am neither related to nor employed by any attorney or counsel employed by the parties thereto; nor financially or otherwise interested in the action.

/s/

CAROLYN J. TIMKO

Court Reporter