

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

In re:	*	
	*	
<b>GORDON PROPERTIES, LLC,</b>	*	<b>Case No. 09-18086-RGM</b>
<b>CONDOMINIUM SERVICES, INC.,</b>	*	Chapter 11
	*	(Jointly Administered)
Debtors.	*	
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<b>HOWARD SOBEL, et al,</b>	*	
	*	
Plaintiffs,	*	
v.	*	<b>Adv. Pro. No. 12-1562-RGM</b>
	*	
<b>BRYAN SELLS, et al,</b>	*	
	*	
Defendants.		

**ANSWER TO COMPLAINT**

Defendants, Bryan Sells (“Sells”), Elizabeth Greenwell (“Greenwell”), and Lindsay Wilson (“Wilson”) (Sells, Greenwell, and Wilson are referred to herein collectively as the “FOA Board Members”), by and through their respective counsel, hereby file their joint answer to the Complaint for Declaratory Judgment and Injunctive Relief (the “Complaint”) filed herein by the Plaintiffs as follows:

1. The FOA Board Members admit the allegations contained in paragraphs 1 through 16, 19 through 22, and 39 of the Complaint.
2. The FOA Board Members deny the allegations contained in paragraphs 40, 46, 52, 56, 60, 61, 70, and 71 of the Complaint.
3. Responding to the allegations contained in paragraph 17 of the Complaint, the FOA Board Members deny that Sells purchased Unit 703 at foreclosure. The remaining allegations contained in paragraph 17 are admitted.

4. Responding to the allegations contained in paragraph 18 of the Complaint, the FOA Board Members deny that Greenwell is the cousin of Sells. The remaining allegations contained in paragraph 18 are admitted.

5. Responding to the allegations contained in paragraph 23 of the Complaint, the FOA Board Members admit that FOA sent a termination letter to CSI and that FOA alleged the facts stated in this paragraph 23 as the basis for termination. The remaining allegations contained in this paragraph 23 are denied.

.6. Responding to the allegations contained in paragraph 24 of the Complaint, the FOA Board Members admit that Sells sent the letter to unit owners on behalf of CSI, that CSI opened a bank account in FOA's name, and that FOA did not have signatory authority over the account. The letters sent to unit owners speak for themselves. The remaining allegations contained in paragraph 24 are denied.

7. Responding to the allegations contained in paragraph 25 of the Complaint, the FOA Board Members admit that CSI collected assessment payments from the unit owners, deposited the assessment payments in the FOA bank account, and used the funds to pay FOA expenses, including management fees to CSI. The remaining allegations contained in paragraph 25 are denied.

8. Responding to the allegations contained in paragraph 26 of the Complaint, the FOA Board Members admit that FOA filed a complaint against CSI and CSI filed a counterclaim against FOA. The pleadings filed by the parties speak for themselves. The remaining allegations contained in paragraph 26 are denied.

9. Responding to the allegations contained in paragraph 27 of the Complaint, the FOA Board Members admit that a trial was conducted in November 2009 and that a

judgment was entered against CSI in favor of FOA. The judgment speaks for itself. The remaining allegations contained in paragraph 27 are denied.

10. Responding to the allegations contained in paragraph 28 of the Complaint, the FOA Board Members admit that CSI appealed the judgment to the Virginia Supreme Court and that the Virginia Supreme Court affirmed the judgment. The Virginia Supreme Court's opinion speaks for itself. The remaining allegations contained in paragraph 28 are denied.

11. Responding to the allegations contained in paragraph 29 of the Complaint, the FOA Board Members admit that Gordon Properties commenced action CL2008-1432 against FOA in the Alexandria Circuit Court, that FOA filed a counterclaim against Gordon Properties, and that FOA sought partial summary judgment against Gordon Properties. The various pleadings filed by the parties in that action speak for themselves. The FOA Board Members further state that the Alexandria Circuit Court entered various orders and letter opinions on the parties' claims. The orders and letter opinions of the Alexandria Circuit Court speak for themselves. The FOA Board Members further state that both Gordon Properties and FOA appealed various portions of the Alexandria Circuit Court's orders and that all appeals were denied by the Virginia Supreme Court. The remaining allegations contained in paragraph 29 are denied.

12. Responding to the allegations contained in paragraph 30 of the Complaint, the FOA Board Members admit that FOA sent a letter to Gordon Properties in May 2009 purporting to make an assessment against Gordon Properties' street-front unit for years 2003 through 2008. The remaining allegations contained in paragraph 30 are denied.

13. Responding to the allegations contained in paragraph 31 of the Complaint, the FOA Board Members admit that CSI did not pay the judgment, Gordon Properties did not pay the assessment, and both CSI and Gordon Properties sought relief under Chapter 11 of the Bankruptcy Code. The remaining allegations contained in paragraph 31 are denied.

14. Responding to the allegations contained in paragraph 32 of the Complaint, the FOA Board Members admit that, at the time Gordon Properties commenced its Chapter 11 case, the value of its assets exceeded the amount of its debt. The remaining allegations contained in paragraph 32 are denied.

15. Responding to the allegations contained in paragraph 33 of the Complaint, the FOA Board Members state that Gordon Properties filed Schedules of Assets and Liabilities in its Chapter 11 case, which Schedules speak for themselves, and further state that Gordon Properties funds operating shortfalls of CSI as and when needed. The remaining allegations contained in paragraph 33 are denied.

16. Responding to the allegations contained in paragraph 34 of the Complaint, the FOA Board Members admit that FOA's by-laws contain provisions dealing with the rights of a delinquent unit owner. FOA's by-laws speak for themselves. The remaining allegations contained in paragraph 34 are denied.

17. Responding to the allegations contained in paragraph 35 of the Complaint, the FOA Board Members admit that Gordon Properties commenced an adversary proceeding against FOA seeking damages and other relief for FOA's intentional violation of the automatic stay. The FOA Board Members further admit that, following trial, the Bankruptcy Court held that FOA had intentionally violated the automatic stay and

entered orders awarding damages and providing other relief for FOA's intentional violation of the automatic stay. Gordon Properties' complaint in the adversary proceeding and the Bankruptcy Court's orders speak for themselves. The FOA Board Members further admit that FOA appealed the Bankruptcy Court's order and that the appeal is pending. The remaining allegations of paragraph 35 are denied.

18. Responding to the allegations contained in paragraph 36 of the Complaint, the FOA Board Members admit that Gordon Properties objected to the proof of claim filed by FOA in Gordon Properties' Chapter 11 case, that the Bankruptcy Court disallowed FOA's claim in its entirety following trial on the claim objection, that FOA appealed the Bankruptcy Court's order, and that the appeal is pending. The remaining allegations contained in paragraph 37 are denied.

19. Responding to the allegations contained in paragraph 37 of the Complaint, the FOA Board Members admit that FOA filed a motion seeking substantive consolidation of the bankruptcy estates of Gordon Properties and CSI, that the Bankruptcy Court denied the motion following trial, that FOA appealed the Bankruptcy Court's order, and that the District Court reversed and remanded to the Bankruptcy Court for further proceedings. The remaining allegations contained in paragraph 37 are denied.

20. Responding to the allegations contained in paragraph 38 of the Complaint, the FOA Board Members admit that FOA adopted Policy Resolution No. 2009-03. The policy resolution speaks for itself. The remaining allegations contained in paragraph 38 are denied.

21. Responding to the allegations contained in paragraph 41 of the Complaint, the FOA Board Members admit that Gordon Residential nominated candidates for

election to FOA's board of directors. The FOA Board Members further state that FOA's voting records identify the candidates who were nominated, and those voting records speak for themselves. The FOA Board Members further admit that FOA commenced action CL2011-00441 in the Alexandria Circuit Court, that Gordon Properties removed the action to the Bankruptcy Court, and that the Bankruptcy Court remanded the action to the Alexandria Circuit Court in reliance upon certain representations made by FOA's counsel regarding the relief it would seek in that court. The pleadings filed by the parties in that action and the Bankruptcy Court's order speak for themselves. The remaining allegations contained in paragraph 41 are denied.

22. Responding to the allegations contained in paragraph 42 of the Complaint, the FOA Board Members admit that the Alexandria Circuit Court entered a preliminary injunction. The preliminary injunction speaks for itself. The remaining allegations contained in paragraph 42 are denied.

23. Responding to the allegations contained in paragraph 43 of the Complaint, the FOA Board Members admit that FOA conducted its annual election on October 5, 2011. The FOA Board Members further state that FOA's voting records identify the candidates who were nominated, the report of the independent election administrator appointed by the Bankruptcy Court to supervise the election states the results of the election, and the voting records and report speak for themselves. The remaining allegations contained in paragraph 43 are denied.

24. Responding to the allegations contained in paragraph 44 of the Complaint, the FOA Board Members admit that the Board elected Sells as president, elected

Greenwell as vice-president, and voted to terminate the services of Reed Smith. The remaining allegations of paragraph 44 are denied.

25. Responding to the allegations contained in paragraph 45 of the Complaint, the FOA Board Members admit that the Bankruptcy Court ruled that only one representative of Gordon Properties could sit on FOA's board of directors, and that Mr. Howland was replaced on the board by Ms. Moore. The remaining allegations contained in paragraph 45 are denied.

26. Responding to the allegations contained in paragraph 47 of the Complaint, the FOA Board Members admit that FOA's board of directors appointed a special litigation committee ("SLC"). The FOA Board Members further state that the individuals appointed to the SLC and the authority of the SLC are set forth in the board's resolutions and minutes, which speak for themselves. The FOA Board Members further state that the actions of the SLC are set forth in the minutes of its meetings, which speak for themselves, and of which the FOA Board Members have no knowledge. The remaining allegations contained in paragraph 47 are denied.

27. Responding to the allegations contained in paragraph 48 of the Complaint, the FOA Board Members admit that FOA conducted its 2012 annual election on October 3, 2012, that three seats on the board were up for election, not including the seats of Sells, Greenwell, and Wilson, and that Martina Hernandez, Bill Reichenbach, and Jonathan Halls were elected to the board. The remaining allegations contained in paragraph 48 are denied.

28. Responding to the allegations contained in paragraph 49 of the Complaint, the FOA Board Members admit that, immediately following conclusion of the 2012

election, the new board conducted its organizational meeting. The FOA Board Members further state that the board voted, by a vote of 4-1, to replace two of the members of the SLC with two newly-elected board members, Hernandez and Reichenbach. The remaining allegations contained in paragraph 49 are denied.

29. Responding to the allegations contained in paragraph 50 of the Complaint, the FOA Board Members admit that the board voted to engage CSI as interim manager for FOA. The remaining allegations contained in paragraph 50 are denied.

30. Responding to the allegations contained in paragraph 51 of the Complaint, the FOA Board Members state that the actions of the SLC are evidenced by its minutes, which speak for themselves, and of which the FOA Board Members have no knowledge. The remaining allegations contained in paragraph 51 are denied.

31. Responding to the allegations contained in paragraph 53 of the Complaint, the FOA Board Members admit that Reed Smith and LeClair Ryan withdrew from representing FOA in both the Bankruptcy Court and the District Court. The FOA Board Members further state that the orders entered by those Courts speak for themselves. The remaining allegations contained in paragraph 53 are denied.

32. Responding to the allegations contained in paragraph 54 of the Complaint, the FOA Board Members admit that the Bankruptcy Court entered an order directing that Gordon Properties and FOA enter into mediation. The remaining allegations contained in paragraph 54 are denied.

33. Responding to the allegations contained in paragraph 55 of the Complaint, the FOA Board Members admit that the SLC has the authority to negotiate with and settle

all claims by and against Gordon Properties, subject to Bankruptcy Court approval. The remaining allegations contained in paragraph 56 are denied.

34. Responding to the allegations contained in paragraph 57 of the Complaint, the FOA Board Members admit that FOA's board voted to engage CSI as its management company. The remaining allegations contained in paragraph 57 are denied.

35. Responding to the allegations contained in paragraph 58 of the Complaint, the FOA Board Members state that their obligations as board members under Virginia law require a legal conclusion. The remaining allegations of paragraph 58 are denied.

36. Responding to the allegations contained in paragraph 59 of the Complaint, the FOA Board Members state that the scope of the SLC's authority is set forth in the board's resolutions and minutes, which speak for themselves. The remaining allegations contained in paragraph 59 are denied.

37. Responding to the allegations contained in paragraph 62 of the Complaint, the FOA Board Members admit that they are interested directors with respect to certain matters involving Gordon Properties and CSI. The remaining allegations contained in paragraph 62 are denied.

38. Responding to paragraph 63 of the Complaint, the FOA Board Members incorporate their responses to paragraphs 1 through 62.

39. Responding to paragraphs 64, 65, 67, and 69 of the Complaint, the FOA Board Members state that these paragraphs contain conclusions of law as to which no response is required. The FOA Board Members further state that the conclusions of law stated in these paragraphs are incorrect. To the extent any of the statements in paragraphs 64, 65, 67, and 69 are deemed to be factual allegations, those allegations are denied.

40. Responding to the allegations contained in paragraph 66 of the Complaint, the FOA Board Members admit that all votes taken by them at any board meeting were proper and were cast in accordance with all requirements of applicable law. The remaining allegations contained in paragraph 66 are denied.

41. Responding to paragraph 68 of the Complaint, the FOA Board Members incorporate their responses to paragraphs 1 through 62.

**DEFENSES**

1. The Complaint fails to state a claim against the FOA Board Members upon which relief can be granted.

2. The Complaint fails to join necessary parties as defendants.

3. FOA has failed to effect proper service of the Complaint upon the FOA Board Members.

WHEREFORE, Bryan Sells, Elizabeth Greenwell, and Lindsay Wilson respectfully request that the Complaint be dismissed and that they be awarded their attorney's fees and costs pursuant to Va. Code § 55-79.

Respectfully submitted,

**BRYAN SELLS  
ELIZABETH GREENWELL  
LINDSAY WILSON**

By counsel

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**CERTIFICATE OF SERVICE**

The undersigned certifies that this Answer was served on April 2, 2013, (i) electronically, upon Philip J. Harvey, Esquire, Counsel for defendant, FOA, pursuant to this Court's CM/ECF procedures, and (ii) by U. S. Mail, upon the Plaintiffs at the following addresses:

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