

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

<b>In re:</b>	)	
	)	
<b>GORDON PROPERTIES, LLC</b>	)	<b>Case No. 09-18086-RGM</b>
<b>CONDOMINIUM SERVICES, LLC</b>	)	<b>(Jointly Administered)</b>
	)	
<b>Debtors.</b>	)	
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<b>HOWARD SOBEL, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Adv. Proc. No. 12-1562-RGM</b>
	)	
<b>BRYAN SELLS, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
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**DEFENDANT FIRST OWNERS ASSOCIATION’S ANSWER**

For its answer to the complaint, defendant First Owners Association of Forty Six Hundred Condominium, Inc. (“FOA”) states as follows:

**FIRST DEFENSE**

1. FOA admits the allegations contained in paragraph 1.
2. FOA admits the allegations contained in paragraph 2.
3. FOA admits the allegations contained in paragraph 3.
4. FOA admits the allegations contained in paragraph 4.
5. FOA admits the allegations contained in paragraph 5.
6. FOA admits the allegations contained in paragraph 6.
7. FOA admits the allegations contained in paragraph 7.
8. FOA admits the allegations contained in paragraph 8.

9. FOA admits the allegations contained in paragraph 9.
10. FOA admits the allegations contained in paragraph 10.
11. FOA admits the allegations contained in paragraph 11.
12. FOA admits the allegations contained in paragraph 12.
13. FOA admits the allegations contained in paragraph 13.
14. FOA admits the allegations contained in paragraph 14.
15. FOA admits the allegations contained in paragraph 15.
16. FOA admits the allegations contained in paragraph 16.
17. FOA denies that Bryan Sells purchased Unit 703 at a foreclosure and admits the remaining allegations contained in paragraph 17.
18. FOA denies that Elizabeth Greenwell is Sells's cousin and admits the remaining allegations contained in paragraph 18.
19. FOA admits the allegations contained in paragraph 19.
20. FOA admits the allegations contained in paragraph 20.
21. FOA admits the allegations contained in paragraph 21.
22. FOA admits the allegations contained in paragraph 22.
23. FOA admits the allegations contained in paragraph 23.
24. FOA admits that Sells sent a letter to all FOA unit owners on or about August 1, 2006, the terms of which speak for themselves, that CSI opened a bank account in FOA's name, that FOA did not authorize the opening of the account, and that FOA did not have signatory authority over the account and lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 24.

25. FOA admits that CSI continued to collect assessment payments on behalf of FOA after August 1, 2006, and deposited them into an unauthorized bank account opened in FOA's name, that CSI used the assessments to pay itself management fees totaling approximately \$91,000 and that the Court held that FOA had properly terminated the management agreement and denies the remaining allegations contained in paragraph 25.

26. FOA admits that it filed a complaint against CSI in the Circuit Court for the City of Alexandria, the terms of which speak for themselves, and that CSI counterclaimed in that action and denies the remaining allegations contained in paragraph 26.

27. FOA admits that the case referenced in the previous paragraph was tried in November 2009 and that judgment was entered against CSI upon conclusion of the trial, the terms of which speak for themselves, and denies the remaining allegations contained in paragraph 27.

28. FOA admits that the judgment referenced in the previous paragraph was appealed to the Supreme Court of Virginia and that an opinion was issued by that Court, affirming the judgment, reported at 281 Va. 561 (2011), the terms of which speak for themselves, and denies the remaining allegations contained in paragraph 28.

29. FOA admits that Gordon Properties, LLC, filed suit against it in the Circuit Court for the City of Alexandria, Case No. CL 2008-1432, that FOA filed a counterclaim and that the Court issued an order dated January 30, 2009, the terms of all of which speak for themselves, and that the Virginia

Supreme Court did not accept an appeal in that case and denies the remaining allegations contained in paragraph 29.

30. FOA admits that it assessed Gordon Properties for back assessments in the amount of approximately \$315,000 and denies the remaining allegations contained in paragraph 30.

31. FOA admits that CSI refused to pay the judgment referenced in paragraph 27 except in accord with the laws and rules of the Bankruptcy Court, that Gordon Properties refused to pay the assessment referenced in the previous paragraph except in accord with the laws and rules of the Bankruptcy Court and that Gordon Properties, of which Sells is the managing member and in day-to-day control, and CSI, which is wholly owned by Gordon Properties, have both filed for protection under Title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, and denies that remaining allegations contained in paragraph 31.

32. FOA admits that the value of Gordon Properties' assets exceeded its liabilities when it filed for protection under Title 11 of the United States Code and that the commencement of Case No. 09-18086 stayed all efforts to collect debts owed by Gordon Properties and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 32.

33. FOA admits the allegations contained in paragraph 33.

34. FOA admits Gordon Properties did not pay its assessment of approximately \$315,000, that, even though the assessment was disputed, Gordon Properties was more than thirty days delinquent making a payment to FOA, that Section 7 of FOA's By-Laws states in part that "No member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors who is shown on the books or management account of the Owners' Association to be more than thirty (30) days delinquent in any payment due the Owners' Association" and denies the remaining allegations contained in paragraph 34.

35. FOA admits that Gordon Properties filed Adversary Proceeding No. 11-1020, that the Bankruptcy Court issued an order and opinion in that adversary proceeding, the terms of which speak for themselves, and that FOA appealed that decision to the United States District Court, Alexandria Division, in Civil Action No. 11-cv-1060, which is pending, and denies the remaining allegations contained in paragraph 35.

36. FOA admits that the Bankruptcy Court disallowed FOA's claim number 2 in Case No. 09-18086 pursuant to the terms of a memorandum opinion and order, the terms of which speak for themselves, and that it filed an appeal to the United States District Court for the Eastern District of Virginia, Alexandria Division, in Civil Action No. 12-cv-1155, the terms of which speak for themselves, which is pending, and denies the remaining allegations contained in paragraph 36.

37. FOA admits that it filed a motion to substantively consolidate the separate cases filed in the United States Bankruptcy Court for the Eastern District of Virginia, by CSI and Gordon Properties, the terms of which speak for themselves, that the Bankruptcy Court denied that motion, that the United States District Court for the Eastern District of Virginia, Alexandria Division, reversed and remanded that decision in Civil Action No. 12-cv-394, reported at 478 B.R. 750 (E.D. Va. 2012) and that, if the two cases are substantively consolidated, CSI and Gordon Properties should collectively have sufficient assets to pay FOA all amounts that it claims and denies the remaining allegations contained in paragraph 37.

38. FOA admits that its board of directors adopted Policy Resolution No. 2009-03 on or about March 26, 2009, the terms of which speak for themselves, and denies the remaining allegations contained in paragraph 38.

39. FOA admits that allegations contained in paragraph 39.

40. FOA lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40.

41. FOA admits that it filed a complaint in the Circuit Court for the City of Alexandria, Case No. CL 2011-441, the terms of which speak for themselves, which case was removed and later remanded, and denies the remaining allegations contained in paragraph 41.

42. FOA admits the allegations contained in paragraph 42.

43. FOA admits that it held an annual meeting on October 5, 2011, that an election was held for the members of the board of directors, that

Gordon Properties was allowed to vote its interests in accordance with a ruling of the Bankruptcy Court and that Sells, Greenwell, Lindsay Wilson and Dennis Howland ran in the election and were all elected and denies the remaining allegations contained in paragraph 43.

44. FOA admits that, after the election referenced in the previous paragraph, Sells was elected its president, Greenwell was elected its vice president and Reed Smith was discharged as its counsel and denies the remaining allegations contained in paragraph 44.

45. FOA admits that, following a ruling of the United States Bankruptcy Court, Howland was replaced on the board by Elizabeth Moore, and denies the remaining allegations contained in paragraph 45.

46. FOA admits that Sells does not control its board, that Sells presides over meetings of the board of the directors as the president of FOA, that the board voted to adjourn one meeting without consideration of a resolution to remove him as president, and denies the remaining allegations contained in paragraph 46.

47. FOA admits that its board appointed a Special Litigation Committee ("SLC"), which was initially composed of Betty Gilliam, Jane Brungart and Alec Zoghaib, that the SLC retained John Donelan to assist it and that the SLC decided to retain Reed Smith, after receiving advice from Donelan concerning that matter, the substance of which is privileged, to pursue the appeal on behalf of FOA to the United States District Court for the

Eastern District of Virginia, Alexandria Division, in Civil Action No. 12-cv-394, and denies the remaining allegations contained in paragraph 47.

48. FOA admits that it held an annual meeting on October 3, 2012, that Sells, Greenwell and Wilson were not up for election and that Martina Hernandez, Jonathan Halls and William Reichenbach were elected to fill the open seats and denies the remaining allegations contained in paragraph 48.

49. FOA admits that, upon conclusion of the annual meeting and without prior notice, the board held an organizational meeting, which was attended by a quorum, and voted to change the membership of the SLC to consist of Hernandez, Brungart and Reichenbach and denies the remaining allegations contained in paragraph 49.

50. FOA admits that, at the board meeting referenced in the preceding paragraph, the board voted to retain Joe Riviere of CSI to manage the condominium on an interim basis, that Sells, Greenwell, Wilson and Hernandez voted in favor and Halls voted against and that Sells, Greenwell and Wilson are members of Gordon Properties and denies the remaining allegations contained in paragraph 50.

51. FOA admits that Reed Smith was subsequently discharged as counsel again, after receiving advice from Donelan concerning that matter, the substance of which is privileged, and denies the remaining allegations contained in paragraph 51.

52. FOA admits that the SLC discharged Reed Smith and LeClair Ryan, both of which had previously represented FOA in litigation against

Gordon Properties and CSI, and denies the remaining allegations contained in paragraph 52.

53. FOA admits that Reed Smith and LeClair Ryan filed motions to withdraw as counsel to FOA in the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, and the United States District Court for the Eastern District of Virginia, Alexandria Division, that those motions have been granted and that an order was issued by the District Court, the terms of which speak for themselves, and denies the remaining allegations contained in paragraph 53.

54. FOA admits that the Bankruptcy Court ordered Gordon Properties and FOA to mediate their disputes and denies the remaining allegations contained in paragraph 54.

55. FOA admits that the SLC is authorized to negotiate with Gordon Properties and with CSI to resolve the parties' various disputes and denies the remaining allegations contained in paragraph 55.

56. FOA denies the allegations contained in paragraph 56.

57. FOA admits that there is an outstanding, unpaid judgment in its favor against CSI in an amount currently in excess of \$450,000 (approximately \$91,000 of which is predicated on a judgment in FOA's favor on a common law conversion claim), that FOA was authorized to engage CSI on an interim basis by the Bankruptcy Court on October 17, 2012, that FOA wants to engage CSI on a regular basis to manage the condominium, that one of the votes of the board of FOA to approve the regular engagement of CSI had Sells, Greenwell,

Wilson, Hernandez and Reichenbach voting in favor and Lucia Hadley and Halls voting against and that Sells, Greenwell and Wilson are members of Gordon Properties and denies the remaining allegations contained in paragraph 57.

58. FOA admits that Sells, Wilson and Greenwell owed it various duties and denies the remaining allegations contained in paragraph 58.

59. FOA admits that Sells, Greenwell and Wilson were elected to the board of directors of FOA, that the authority of the SLC is set forth in the resolutions and minutes of FOA's board of directors, the contents of which speak for themselves, and denies the remaining allegations contained in paragraph 59.

60. FOA admits that a settlement among Gordon Properties, CSI and it has been negotiated and submitted to the Bankruptcy Court for approval, the terms of which speak for themselves, and denies the remaining allegations contained in paragraph 60.

61. FOA denies the allegations contained in paragraph 61.

62. FOA admits that Sells, Greenwell and Wilson are interested directors with regard to certain matters involving Gordon Properties and denies the remaining allegations contained in paragraph 62.

**Count I**

63. FOA repeats its admissions, denials and allegations contained in paragraphs 1 through 62.

64. FOA lacks knowledge or information sufficient to form a belief as to the nature of the plaintiffs' contentions and denies the remaining allegations contained in paragraph 64.

65. FOA lacks knowledge or information sufficient to form a belief as to the nature of the plaintiffs' contentions and denies the remaining allegations contained in paragraph 65.

66. FOA admits that the votes and actions of Sells, Greenwood and Wilson have fully satisfied any applicable requirements of Va. Code § 13.1-871 and denies the remaining allegations contained in paragraph 66.

67. FOA admits that the votes and actions of Sells, Greenwood and Wilson have fully satisfied any applicable requirements of Va. Code § 13.1-871 and denies the remaining allegations contained in paragraph 67.

**Count II**

68. FOA repeats its admissions, denials and allegations contained in paragraphs 1 through 62.

69. FOA admits that Sells, Wilson and Greenwell owed it various duties and denies the remaining allegations contained in paragraph 69.

70. FOA denies the allegations contained in paragraph 70.

71. FOA denies the allegations contained in paragraph 71.

**SECOND DEFENSE**

The complaint fails to state a claim against FOA upon which relief can be granted.

**THIRD DEFENSE**

Service of process on FOA was improper.

**FOURTH DEFENSE**

Insufficient process was served on FOA.

WHEREFORE, defendant First Owners Association of Forty Six Hundred Condominium, Inc. (1) requests that the complaint be dismissed with prejudice; (2) demands that it be awarded its attorneys' fees and costs pursuant to Va. Code § 55-79.53 A, jointly against all of the plaintiffs; and (3) seeks such further relief as is just and equitable.

Dated: April 2, 2013

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

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*Counsel for Defendant First Owners  
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Condominium, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2013, I filed the foregoing using the Clerk's CM/ECF system, which will provide notice to all counsel of record.

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