

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

In re:

GORDON PROPERTIES, LLC, and
CONDOMINIUM SERVICES, INC.,

Debtor.

Case No. 09-18086-RGM
Chapter 11

GORDON PROPERTIES, LLC,

Complainant,

vs.

Adv.Proc. 11-1020

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

Defendant.

ORDER

This case was before the court on August 23, 2013, for a hearing on the approval of a settlement agreement (Docket Entry 498) and for status on various other motions. Upon consideration of which and for the reasons stated on the record, it is

ORDERED that:

1. Settlement Motion. Final argument on the Joint Motion and Memorandum for Order Approving Settlement Between Debtors and First Owners' Association of Forty-Six Hundred Condominium, Inc. ("FOA"), and for Related Relief (Docket Entry 498) will be

held on September 12, 2013, at 9:30 a.m. in Courtroom II, at the Martin V.B. Bostetter, Jr., United States Bankruptcy Court, 200 S. Washington St., Alexandria, Virginia.

2. Evidentiary Hearings.

A. Evidentiary hearings will be held on September 20, 2013, at 9:30 a.m. on the following matters:

i. Gordon Properties' Motion for award of attorney's fees to prevailing party (Docket Entry 436);

a. Gordon Properties will file all time records supporting the request for attorney's fees on or before September 4, 2013, and may file a supplemental memorandum in support of its motion by the same date.

b. Objections to the motion shall be filed on or before September 16, 2013. This deadline includes the objections, if any, of the United States Trustee.

c. On this matter, counsel for FOA shall meet and communicate in private with the members of FOA's Board of Directors not affiliated with the debtors. The acts of the majority of the disinterested members of the Board of Directors shall be the act of the Board of Directors and the Gordon Properties-affiliated directors shall not be present at the portion of any meeting of the Board of Directors at which this matter is raised or discussed or upon which action is taken and shall not discuss this matter with any of the other four directors outside of any meeting or seek to influence them or their decisions in any manner. A majority of the disinterested directors shall constitute a quorum for any meeting or portion of any meeting held for this purpose. The disinterested members of the Board of Directors shall have the right to select

any one or more counsel they wish to represent FOA in this matter, including without limitation, Michael Dingman of the law firm of Reed Smith and/or Robert Marino of the law firm of Redmon, Peyton & Braswell. The court expressly includes this provision in this order to make clear the actions and considerations that the non-Gordon Properties-affiliated members of the Board of Directors may make and not as a recommendation, one consideration among others being the experience and knowledge of counsel who participated in the proceedings that gave rise to the claim for attorney's fees. Counsel retained by the disinterested directors by FOA will promptly paid all reasonable fees and expenses of counsel without set off, recoupment or other similar reduction. This court will exercise exclusive jurisdiction to resolve any dispute concerning any such fees or expenses. This provision is made in light of the past actions of the Board of Directors which included the participation of the Gordon Properties-affiliated directors, the testimony heard on August 23, 2013, the need to prevent inappropriate conduct and the need to preserve the integrity of these proceedings.

ii. Joint Motion to approve service agreement with Condominium Services, Inc.

(Adv. Proc. No. 11-1020, Docket Entry 326);

iii. United States Trustee's Motion to Appoint Chapter 11 Trustee (Docket Entry 592);

a. The exhibits the United States Trustee filed on August 16, 2013 will constitute her exhibits for this motion. The exhibits admitted into evidence at the hearing on the Joint Motion for approval of a settlement on August 23,

2013 are admitted into evidence for purposes of this motion as well. Those exhibits not previously admitted will be deemed admitted unless an objection is filed on or before September 9, 2013.

iv. Motion of Stites & Harbison PLLC to convert to chapter 7 (Docket Entry 643).

a. Witness lists and exhibits shall be filed and exchanged on or before September 16, 2013. Objections to exhibits shall be filed on or before September 18, 2013.

3. Modification of Consent Order Conditioning Rights of Debtor In Possession

(Docket Entry 42). The court, *sua sponte*, will hold a hearing on September 20, 2013, to consider modification of the Consent Order Conditioning Rights of Debtor in Possession (Docket Entry 42). The court will consider whether the debtor should be required to attend the 2013 annual meeting of FOA to be held on or about October 2, 2013 or otherwise be counted as present throughout the meeting for purposes of quorum; whether the debtor may vote for any candidate for the Board of Directors or a limited number thereof or be prohibited from voting for any candidate who is affiliated with the debtors or any owner thereof or a write-in candidate or a limited number thereof; whether any person affiliated with the debtors, any related entity or any owner or person related thereto may be elected to or seated on the Board of Directors or a limited number thereof; whether the three incumbent Gordon Properties-affiliated directors of FOA or any number thereof shall be required to resign if new directors are not elected at the next annual meeting or a quorum is not obtained, and if so, when; and such further modifications as may be necessary or appropriate.

4. Matters Continued for a Further Status Hearing. A status hearing on the following matters will be held on September 20, 2013, at 9:30 a.m.:

A. Motion for Substantive Consolidation (Docket Entry 74).

B. Motion to Stay Garnishment (Adv.Proc. 11-1020 Docket Entry 248).

5. Judicial Notice. The court may take judicial notice of all pleadings, orders, memorandum opinions, transcripts and other papers filed in the debtors' cases and in any appeal to the District Court and the Court of Appeals, any decision of the Virginia Supreme Court and any decision of the Circuit Court for the City of Alexandria available on Westlaw or Lexus. The court may take judicial notice of any further pleadings, orders and related documents as may be appropriate but counsel are reminded that they must provide copies of such pleadings, orders and related documents. The court will consider the testimony and exhibits of the August 23, 2013 hearing without the necessity of a transcript, but the parties are encouraged to obtain and file a copy of the transcript of the August 23, 2013 hearing to assist in developing the record. Judicial notice will be taken only in accord with Fed.R.Evid. 201.

6. Further Matters.

A. The court may modify this order as may be appropriate.

B. Counsel for FOA's Special Litigation Committee and Debtors shall deliver copies of this order to the directors and members of the Special Litigation Committee of FOA.

Alexandria, Virginia
August 26, 2013

/s/ Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

Copy electronically to:
Donald F. King
John T. Donelan
Philip J. Harvey
Joseph A. Guzinski
Stephen E. Leach

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