

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

In re:

**GORDON PROPERTIES, LLC., AND
CONDOMINIUM SERVICES, INC.,**

Debtors.

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

Chapter 11

**UNITED STATES TRUSTEE'S OBJECTION TO GORDON PROPERTIES' MOTION
FOR AWARD OF ATTORNEY'S FEES AS PREVAILING PARTY**

Comes now, Judy A. Robbins, United States Trustee for Region 4 (the "United States Trustee"), by counsel, and hereby objects to the motion of Gordon Properties, LLC. for award of attorney's fees as prevailing party.

Gordon Properties was the prevailing party in an objection to a claim filed by First Owners' Association ("FOA") in the amount of \$315,673.36. Gordon Properties' asserts that they are entitled to an award of attorney's fees as the prevailing party and seeks an aggregate total of \$198,950 for work associated with the claim objection litigation by the law firm of Odin Feldman & Pittleman P.C. as well as the debtors' special counsel, Mercer Triginai P.C. In addition to these fees, Gordon Properties seeks an award for additional fees relating to mediation, settlement negotiations, and approval of the settlement agreement, to the extent that a portion of the fees for these services were related to the claim objection. Gordon Properties suggests an additional aggregate award of \$82,960, which represents half of the attorney's fees associated with the mediation and settlement negotiations. Thus, the total amount of fees sought equal

\$281,910. The U.S. Trustee takes the position that the attorney's fees should not be approved by the Court at this time for the following three reasons.

First, given the posture of this case, the U.S. Trustee does not believe that, FOA, the party in the best position to oversee and object to the reasonableness of the attorney's fees sought by the debtor is capable of doing so. The existing of interlocking boards of directors between FOA and Gordon Properties has been an issue on several important matters as this case has progressed, particularly the appointment of an Examiner and the consideration of the proposed settlement agreement between the parties. The evidence before the Court on those matters, demonstrated a pattern of control that the Gordon Properties affiliated directors chose to exercise over FOA, for the benefit of Gordon Properties at the expense of FOA. Absent the appointment of a disinterested chapter 11 trustee to replace management of Gordon Properties, there is no reason to believe that this pattern of control will not continue.

In its August 26 scheduling order, the Court required FOA's counsel to meet with the non-Gordon Properties affiliated directors, prohibited the non-affiliated directors from discussing this matter with the interested directors, and provided that the non-Gordon Properties affiliated directors of FOA may select any counsel they wish to represent them in this matter. The Court stated that it included this provision in order "to prevent inappropriate conduct and the need to preserve the integrity of these proceedings." While the U.S. Trustee agrees that this inappropriate conduct must cease, the fact that the Court had to enter such an order demonstrates the need to structurally change the relationship between the parties to eliminate these conflicts. Absent the appointment of a chapter 11 trustee, every decision that FOA makes, or fails to make,¹ will be subject to question.

¹ At the time of the filing of the U.S. Trustee's objection, FOA has not yet filed a response or objection to the debtors' motion for an award of attorney's fees, other than its earlier statement in Docket No. 485 that the matter is being mediated.

Second, the approval of the debtors' attorney's fees will have the effect of approving one of the major terms in the settlement agreement that the Court rejected. Paragraph 9 of the Settlement Agreement provides that FOA will pay Gordon Properties \$377,000 over five years in full and final satisfaction of for attorney's fees related to this claim objection as well as for Gordon Properties' monetary claims for damages related to the violation of the automatic stay. This provision is the only provision in the settlement that will result in cash being transferred between the parties. If the Court approves the debtors' motion in full, nearly \$282,000 of the amount in dispute will be fully liquidated. This has the danger of changing the negotiating leverage between the parties. The U.S. Trustee contends that it would be better to appoint a chapter 11 trustee,² ensure that the parties are operating independently, and allow the trustee to exercise his or her business judgment in determining whether to pursue liquidation of these fees or whether to negotiate the matter in settlement discussions.

Finally, were the Court to reach the merits of the motion for award of attorney's fees, the U.S. Trustee objects to the award of \$82,960, which represents half of the attorney's fees associated with the mediation and settlement negotiations. While Gordon Properties was the prevailing party in the litigation relating to the claims objection, it is difficult to understand how they were the prevailing party in the subsequently ordered mediation and the resulting settlement agreement, particularly where the settlement agreement was not approved by this Court. The debtors cite no case authority for this Court to issue such an award, and no breakdown is provided to explain how they reached the calculation that 50% of the time spent in mediation and on the settlement agreement were devoted to issues surrounding the claims objection. This amount is surprisingly high amount considering that this Court had already heard and ruled upon that issue and the settlement agreement encompassed many other matters, some quite complex:

² The U.S. Trustee's motion for the appointment of a chapter 11 trustee is set for hearing at the same date and time as the hearing on the debtors' motion for approval of their attorney's fees.

four pending appeals, a state court arbitration proceeding, claims related to the assessment methodology for the limited common elements, FOA's claim against CSI for conversion, and more.

Therefore, the U.S. Trustee respectfully requests this Court to not approve the award of attorney's fees until after this Court determines whether a chapter 11 trustee should be appointed. In the alternative, the U.S. Trustee asks that this Court deny approval of \$82,960 of the fees sought by the debtors.

September 16, 2013

JUDY A. ROBBINS
U.S. TRUSTEE, REGION 4

By: /s/ Bradley D. Jones
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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2013, a true copy of this motion, notice of motion, and proposed order were served on the following persons by first class U.S. mail, or by notice of electronic filing:

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Debtor

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Examiner

/s/ Bradley Jones

Bradley Jones