

Provided by Brian Korte

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1 IN THE 17th JUDICIAL CIRCUIT COURT
IN AND FOR BROWARD COUNTY, FLORIDA

2 CASE NO. CACA10021953

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5 US BANK NATIONAL ASSOCIATION

AS TRUSTEE FOR THE REGISTERED

6 HOLDERS OF MLCC COMMERCIAL

MORTGAGE TRUST 2006-1,

7 COMMERCIAL MORTGAGE PASS-THROUGH

CERTIFICATES, SERIES 2006-1, ETC.,

8

Plaintiff,

9

vs.

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11 TIDEWATER ESTATES CO-OP INC., et. al.,

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Defendants.

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Fort Lauderdale, Florida

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Tuesday, May 17, 2011

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8:45 a.m. - 10:25 a.m.

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20 The above-styled case came on for hearing
21 before the Honorable MICHELE TOBIN SINGER, at the
22 Broward County Courthouse, Fort Lauderdale, Florida on
23 the 17th day of May, 2011.

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1 APPEARANCES:

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ON BEHALF OF THE PLAINTIFF:

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ROETZEL & ANDRESS, LPA

4

350 East Las Olas Boulevard

Suite 1150

5

Fort Lauderdale, Florida 33301

BY: LORI HEYER-BEDNAR, ESQ.

6

7 ON BEHALF OF THE DEFENDANTS:

8 KORTE & WORTMAN, PA

2041 Vista Parkway

9 Suite 102

West Palm Beach, Florida 33411

10 BY: SCOTT J. WORTMAN, ESQ.

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1 Thereupon:

2 The following proceedings were had:

3 MR. WORTMAN: Good morning, Judge.

4 THE COURT: Yeah, I wasn't happy when I saw

5 this yesterday. All right.

6 MR. WORTMAN: Judge, can I make sure you have

7 our motion as well?

8 THE COURT: I just have plaintiff's motion

9 for accounting and to compel.

10 Before we begin, everyone state their name

11 for the record.

12 MS. HEYER: Lori Heyer, on behalf of the

13 plaintiff.

14 MR. WORTMAN: Scott Wortman, for the

15 defendant, Tidewater Estates Co-op. I also have

16 with me today Bob Weist, the property manager and

17 Ron, Bavacqua, who's the president of the co-op.

18 THE COURT: Okay.

19 MS. HEYER: Okay, Your Honor. The reason

20 that I am not smiling is the reason that I had to

21 file a motion to compel. First and foremost, it

22 jumped off the page is, despite the fact that

23 deposit was made untimely in accordance with the

24 court order, they violated the court order, because

25 Your Honor specifically gave them \$17,000 which

1 included a \$4,000 cushion, and what do they do, they
2 went ahead and made the deposit and took out an
3 additional \$3,000 from the deposit, which we
4 attached to our motion.

5 They could have easily either called me, told
6 me about it. We could have put it on motion
7 calendar. It never even came across my desk, not
8 through an e-mail, not through correspondence,
9 before they just unilaterally decided to lop off an
10 additional \$3,000, and we just think that's
11 completely unacceptable. And we have been duking

12 this out since April 25. And I think your order was
13 very clear when we were here last week on motion
14 calendar to exactly what was supposed to go into the
15 registry of the court.

16 THE COURT: Okay. What's your response?

17 MR. WORTMAN: This is really simple. The
18 money that she is talking about, okay, that's not
19 rent money. Your Honor entered an order involving
20 the sequestration of rents, not sequestration of
21 water fees. Water fees are moneys that are coming
22 in from the shareholders and the renters related to
23 water bills that come from these individuals to the

24 co-op and go out. That is, those are moneys that

25 are not to be sequestered. It is not the subject of

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1 Your Honor's court order.

2 In fact, we went above and beyond what we

3 thought we were obligated to do by providing a very

4 detailed breakdown as far as the moneys coming in,

5 the moneys going out. There are two parts to this.

6 First was the initial deposit. The money was

7 deposited on time in accordance with your Your

8 Honor's order. The check was delivered.

9 Unfortunately, we didn't realize it had to be a
10 certified check, so we were sent back by the court's
11 registry. The very next day we hand delivered a 220
12 something thousand dollar check to the court's
13 registry.

14 So we complied with Your Honor's court order
15 as it relates to what has to be deposited, and we
16 made the effort to do it on the day that it was due.
17 We were just sent back because it wasn't a certified
18 check, and the very next day a certified check was
19 delivered.

20 The moneys that she's complaining about, some
21 \$3,800, is not rent, it's water moneys.

22 THE COURT: Why can't you then next month say
23 that the moneys are not rent, it's electric money,
24 it's payment of staff moneys, it's, you know. We
25 can go on and on.

6

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1 You know what I don't like here is the fact
2 that this is just costing the clients money.

3 MR. WORTMAN: I agree, Judge. First of
4 all --

5 THE COURT: Well, you know what; you know how
6 Ms. Heyer is. You should have just called her up
7 and told her that's what your position was going to

8 be, then you call her up and let her know.

9 MR. WORTMAN: But Your Honor, we provided her

10 with a breakdown, which went above and beyond

11 delineating exactly what was to be deposited into

12 the court's registry. In fact, we didn't have to do

13 that. We could have just sent a gross check and let

14 her figure it out, but we didn't do that, Judge. We

15 gave her a breakdown of exactly dollar for dollar

16 what was being deposited, and we had a line item

17 where water moneys that were in our account, which

18 are not rent moneys. They are not rent, Judge.

19 This is not a sequestration of water fees. It's a

20 sequestration of rent, and we showed it to her. We

21 delivered it to her.

22 If she had a massive issue with it, why

23 wouldn't she pick up the phone? Instead, what we

24 get, Judge, is four days later a motion to compel, a

25 motion for sanctions. She didn't call us. After we

7

1 made the disclosure specifically, that, hey, here's

2 what we got in our accounts, here's what we are

3 depositing into the court's registry. This is how

4 we came up with that. There is a line item there

5 for these water fees, because waters fees are not

6 rent. It's not the subject of this Court's order.

7 THE COURT: It goes for landscaping?

8 MR. WORTMAN: That's a completely separate

9 issue.

10 THE COURT: It is, okay.

11 MR. WORTMAN: Landscaping is --

12 THE COURT: All right, I remember. So is

13 water fees nothing to do with landscaping?

14 MR. WORTMAN: It's a passthrough expense,

15 Judge.

16 THE COURT: All right.

17 MR. WORTMAN: Comes in and goes out.

18 THE COURT: All right.

19 MS. HEYER: Reply, Judge, briefly, if I may.

20 We're going off the budget that was provided to the
21 Court last time around and provided to us. It was
22 this budget alone that we were using for purposes of
23 rent in, money in, and moneys out.

24 Now, if these utilities are not rent, then
25 guess what; we shouldn't be using rent money to pay

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1 them. It has to be apples to apples, oranges to
2 oranges. It's in the money that they are putting in
3 as part of their budget of \$78,000, and we allocated
4 money in the court order to pay those expenses, to
5 pay that water bill. It has to be reciprocal.

6 MR. WORTMAN: It doesn't matter. It doesn't
7 matter, because that money, when a renter or
8 shareholder sends a check to the co-op, it sends a
9 check representing rent plus water, and that's the
10 breakdown that we gave to them. They are
11 entitled --

12 THE COURT: Did you give it to them before I
13 signed my order?

14 MR. WORTMAN: Pursuant to the order we --

15 THE COURT: No, no, before the order. You
16 know, you have given them numbers before breakdown.
17 Was it ever explained to them before?

18 You're acting like you don't know. The

19 answer is no, right?

20 MR. WORTMAN: Judge, we were ordered to

21 provide an accounting pursuant to the order that you

22 entered. That's what we provided them. Frankly,

23 before that, we gave them mounds of financial

24 paperwork, and frankly, I'm about 99.9 percent

25 positive all that was delineated several times over

1 when Your Honor ordered us to provide all the

2 various discovery along the way.

3 But the order for sequestration of rents that

4 Your Honor ordered specifically said we had to

5 provided an accounting, a breakdown how the moneys

6 are to be deposited into the court's registry.

7 That's what we did. We're arguing over something

8 that is outside the subject of Your Honor's order.

9 These are water moneys. This is not rent. Rent,

10 they are entitled to. Rent is going into the

11 court's registry. The water moneys go in and out.

12 It's as if -- let me give you a hypothetical. The
13 rent from a shareholder is \$700, and the water bill
14 for the month is \$31. They send \$731.

15 THE COURT: So each tenant has a different
16 amount?

17 MR. WORTMAN: Basically, on the water usage.

18 Water usage is different from owner to owner.

19 THE COURT: Okay. So each tenant is going to
20 pay a different amount because --

21 MR. WORTMAN: For water usage.

22 THE COURT: Right. So their check, their
23 monthly check, one owner might send one for 735,

24 another might send one for 715 if they use less

25 water, is that right?

10

1 MR. WEIST: The water is read once a month.

2 THE COURT: Go ahead and state your name for

3 the record.

4 MR. WEIST: My name is Bob Weist. I'm the

5 property manager. Every month, every third Thursday

6 maintenance goes around and reads -- each house has

7 an individual water meter. The water bills are

8 compiled and mailed out. Some of the residents pay

9 a separate check for the water and one separate

10 check for the rent. Some of them combine them.

11 THE COURT: All right. Seems reasonable.

12 MR. WEIST: The other thing is --

13 MS. HEYER: It seems reasonable on its face

14 now, Judge, but why this wasn't disclosed in the

15 beginning, I don't know. Our motion for

16 sequestration of rent, we actually attached the

17 deposition -- excuse me, the transcript from the

18 evidentiary hearing of Mr. Weist, and we asked him

19 specifically what is the gross amount of rent that

20 you collect. He said \$78,000 under oath.

21 THE COURT: You know what; I have to say --

22 MS. HEYER: It's just very surprising after

23 the fact now.

24 THE COURT: Do you not communicate? Do you

25 guys not call each other, e-mail each other?

11

1 MR. WORTMAN: Judge, I didn't think we had a

2 problem. We provided this transaction --

3 THE COURT: All right, but when you saw this

4 discrepancy, did you think about e-mailing or

5 calling him to find out what was going on, or did

6 you just prepare the motion?

7 MS. HEYER: Your Honor, in this case, because

8 it was outrageous that he took money without either

9 asking me or asking the Court, I felt it had to be

10 brought to the Court's attention. This is a little

11 different than anything else.

12 THE COURT: All right. Well, I think now,

13 don't rub it in. It's not -- don't. Especially,

14 you guys have to get along, because you know who's

15 suffering, your clients.

16 MR. WORTMAN: Judge, it's not my choice to be

17 here today. I didn't file a motion --

18 THE COURT: It doesn't matter. Who's paying

19 for you to be here today; who's paying for you to be

20 here today?

21 MR. WORTMAN: Of course, they are. The last

22 thing I want to do is spend their limited resources.

23 THE COURT: That's right. Then let's not
24 continue this hearing any longer. I think they have
25 given an adequate explanation. I would suggest if

12

1 there are any other discrepancies, please call
2 opposing counsel to see if it is something like
3 this. If not, then go ahead and file your motions
4 for sanctions, et cetera. But this, you know, I
5 just feel bad for the tenants of the Tidewater.

6 MS. HEYER: Your Honor, if they are going to
7 keep out the rent money -- I mean the water money,
8 then they shouldn't use rent money to pay for those
9 utilities, that Your Honor has already authorized

10 them to pay.

11 MR. WEIST: We don't.

12 THE COURT: Let me look at that document. Is

13 it in this packet?

14 MS. HEYER: Well, I have an extra copy. This

15 was the budget that we were provided we discussed

16 last hearing. If you look in there, it has down

17 there utilities. It has electric, water, sewer,

18 trash. You see that's a lot of expenditure, annual

19 expenditure.

20 THE COURT: All right.

21 MR. WORTMAN: These are estimated budget

22 figures. They are, again, these moneys are not part
23 of the \$17,000. This is money that's separate and
24 apart, that comes in separately and goes out
25 separately.

13

1 THE COURT: All right. If they are

2 passthrough which is what --

3 MS. HEYER: It's listed up in the income.

4 Says water and sewer. It's the 40,000 up on the

5 top.

6 MR. WEIST: That's not rent.

7 MS. HEYER: Understand. But it can't, you

8 can't use rent money, which is already in the

9 registry of the court now, to pay the utility if

10 it's a passthrough.

11 MR. WEIST: We don't.

12 THE COURT: But she's saying when the budget

13 was given --

14 MS. HEYER: For purposes of the order.

15 THE COURT: -- for the Court to determine how

16 much money they need --

17 MS. HEYER: For expenses.

18 THE COURT: Thank you. So that should be

19 fixed. That should be modified, because it's

20 passthrough, it's not being included in the

21 definition of rent.

22 MR. WORTMAN: First, the rent number changes

23 every single month, because the receipts are not the

24 same every single month. Ms. Bednar keeps referring

25 to this \$78,000 number. That's if a hundred percent

14

1 is collected. A hundred percent is not collected

2 every single month. Some months it's 72, some

3 months it's 73, some months it's 70. So that number

4 is going to fluctuate. So I want to avoid next

5 month --

6 THE COURT: I would suggest in the future any

7 discrepancies, call counsel and explain, and you

8 should be able to work it out.

9 MR. WORTMAN: I would be happy to do that.

10 THE COURT: You know what? But what's not

11 good is when you want to work with somebody, you

12 don't want to make gratuitous comments like

13 inferring that it's not me, it's the other side, you

14 know, it's like siblings. If one -- oh, it's not

15 me, you know, I'm willing to get along. It doesn't

16 work.

17 MR. WORTMAN: Judge, I think that's not fair.

18 I'm going tell you why. I do this at the risk of

19 further alienating me with yourself.

20 THE COURT: You're not. I like you.

21 MR. WORTMAN: I like you too, Judge, but I
22 don't think that's fair. We went above and beyond
23 here in terms of explaining the breakdown of these
24 moneys. We provided to counsel in accordance with
25 Your Honor's order, we never thought there was an

15

1 issue. We never thought we were confusing her or
2 trying to do something in deviating from the Court's
3 order.

4 If there was a legitimate confusion or
5 clarification or dispute, I would have been happy,
6 and I have always put out the olive branch to
7 counsel, whether it comes to loan modifications,

8 which still haven't heard anything from, which Your
9 Honor suggested we should get a response. We have
10 nothing along those lines.

11 As relates to any motion, my phone is always
12 open. My e-mail works perfectly. I'd be happy to
13 resolve this by way of not having to come down to
14 Broward County. What we got instead was two days
15 later, a motion to compel and sanctions. So I think
16 that door was shut pretty darn quickly by their
17 side, not by us.

18 THE COURT: Again, I don't want to engage in
19 finger pointing, because it's not constructive.

20 Even if I were to say, you know, opposing counsel

21 was wrong, you're right, she was wrong, it wasn't

22 your fault at all; that's not going to help your

23 relationship. That's all I'm saying. So --

24 MR. WORTMAN: Can we do one more thing?

25 Hopefully, it will be quick. On my motion --

16

1 MS. HEYER: No, we haven't finished the other

2 motion. We have a motion for accounting, and I

3 think you actually mentioned it previously, that you

4 said you were providing an accounting. When we

5 tried to draft the order, we got absolute resistance

6 for any accounting under 697.07. So in the interest

7 of getting the order entered as quickly as possible,
8 we went ahead and took that out. And so what we had
9 to do then is actually have to file a motion for an
10 accounting under 697.07, and what it mandates is an
11 accounting of the income coming in and the expenses
12 being paid. Two days. We still do not know exactly
13 what is coming in and is what going out.

14 In fact, the order actually does ask for a
15 certified rent roll. In all prior months we
16 actually got a rent roll. It wasn't certified, we
17 got a rent roll.

18 Now, all of a sudden, all we got is a

19 QuickBooks printout that mixes rent and water
20 receipts. So we're not really getting a certified
21 rent roll of moneys that are just rent. We're just
22 looking for the information under 697.07. It's
23 really clean and simple.

24 MR. WORTMAN: Judge, can I respond?

25 THE COURT: Yes.

17

1 MR. WORTMAN: First of all, there were
2 various iterations of the proposed order that Your
3 Honor signed. We went back and forth, politely, as
4 relates to what we thought Your Honor had ordered as
5 relates to sequestration of rents. That's something

6 we were actually able to work out. So one for the

7 two of us, I guess.

8 The order -- and one of the major bones of

9 contention in this proposed form of order involved

10 whether or not we, on a monthly basis, would have to

11 justify all of our operational expenses. And

12 counsel for the plaintiff eventually agreed that's

13 not what's Your Honor ordered. Your Honor had

14 decided \$17,000 is the number. We are not going to

15 have to justify that on a monthly basis and provide

16 a breakdown and accounting, an invoice by invoice

17 delineation of what the co-op is spending. That's

18 not what's called for in the order. And, frankly,

19 it's an unfair, unnecessary burden to place on the

20 co-op.

21 Furthermore, the statute does not require

22 that. The statute does not require that we provide

23 to the plaintiff a justification on a monthly basis

24 of our operational expenses, and I think that's what

25 she's looking for.

18

1 What we are obligated to provide, which the

2 Court order, did mandate, is a breakdown of the

3 rental receipts. And what we did, Judge, is we were

4 over inclusive, not under inclusive.

5 THE COURT: How about this? Even if you

6 don't think that the order required it or that the

7 statute requires it, preserve your objection, but

8 for the time being, provide it in the interest of,

9 hopefully, resolving these.

10 MR. WORTMAN: Provide what? I'm not sure

11 even what they are looking for. They want a line by

12 line, invoice by invoice delineation of every dollar

13 that goes out of the co-op? That's not what Your

14 Honor had ordered. And frankly, I'm trying to avoid

15 that back and forth. And I thought we narrowed the

16 issue and through the iterations of the court order

17 that we came up with that Your Honor had signed and

18 specifically carved it out. She tried to put it in

19 at first. She tried to put it in. We carved out

20 the fact that there will be no monthly accounting

21 that's required as it relates to operational

22 expenses. Rent receipts, yes.

23 THE COURT: You're saying they don't do this

24 monthly accounting?

25 MR. WORTMAN: If they just want a QuickBooks

19

1 printout, we can do that. I'm sure that's easy, but

2 if they are talking about a backup, an invoice

3 attached to every single line item, which is going

4 to be long, you know how these QuickBooks sheets

5 look, I think that's unfair, unnecessary, not
6 required by the court order and not required by the
7 statute. If they just want a monthly printout of
8 our expenses, happy to do that. That's not an
9 issue.

10 THE COURT: What about, I don't know if this
11 would be a suitable compromise. US Bank can have
12 someone go to the office at any time and look at
13 receipts if they want to check.

14 MS. HEYER: Well, the order actually says
15 shall provide an accounting.

16 THE COURT: What does that mean, accounting?

17 MS. HEYER: Let me just provide this

18 information to the Court. Previously they have
19 provided a budget, so we know what the income and
20 expenses is projected to be. Why can't we have,
21 monthly basis, as to what the money received and the
22 expenses.

23 THE COURT: He's saying he will do that.

24 MS. HEYER: Right. And in the past they have
25 also provided us with bank statements. How can we

20

1 determine if the moneys that they are saying that
2 are being deposited into the registry of the court
3 are correct? Just like a receiver.

4 THE COURT: That's not onerous, bank

5 statements. They are not asking for receipts for

6 every single bill, but the bank statements.

7 MR. WORTMAN: I don't think that's

8 unreasonable. The bank statements come out at

9 different times of the month.

10 MR. WEIST: They usually come out within the

11 first seven days of the month. Now, going back to

12 the original statement of request for financial

13 statements, our fiscal year end is the end of

14 January. We are engaged right now and have been

15 since then, the certification of the certified

16 audit. I do not have my adjusting journal entries

17 yet for fiscal year end. So any statement I would
18 be giving you from February 1st to the beginning of
19 fiscal year, based on the operations, could be
20 subject to change because of these adjusting journal
21 entries from the year end.

22 MS. HEYER: Your Honor, we're not looking for
23 financial statements.

24 MR. WEIST: I thought you were.

25 MS. HEYER: No, we are looking for income

21

1 coming in and income going out on a monthly basis.

2 MR. WORTMAN: You want the actual bank

3 statements from Wachovia and Regions Bank?

4 MS. HEYER: Correct, all the accounts.

5 MR. WORTMAN: We just have Wachovia?

6 MR. WEIST: We have the Wachovia operating,

7 Wachovia escrow, which has been exempt, and the

8 sweep account. So basically, you're looking at two

9 accounts that are active.

10 MS. HEYER: Right. And the ones that have

11 been closed, because the money is deposited into the

12 registry of the court.

13 MR. WEIST: One statement that would show

14 it's been closed.

15 MS. HEYER: Correct, perfect.

16 THE COURT: I imagine then US Bank is going

17 to look at the bank statements and make sure that
18 they correlate.

19 MR. WEIST: There is not going to be able to
20 correlate anything between that and the official
21 rent roll, which I certified per the court order and
22 turned over to the attorneys, which I'm sure was
23 turned over to the plaintiff's counsel.

24 THE COURT: What US Bank wants to make sure
25 of is that they want to know is how much money are

1 you collecting from the owners, and what are you
2 doing with that money. If you say that you're
3 paying bills, they want to know. They want to see

4 documentation of that.

5 MR. WEIST: Well, a bank statement will show

6 that, but she's not going to be able to correlate

7 the numbers from the bank statement to the actual

8 rent roll, because deposits come in every day. More

9 specifically, like the first 15 days of the month or

10 then the last 15 days of the month.

11 MR. WORTMAN: If they want to try to figure

12 it out, I guess it's up to them.

13 MR. WEIST: I have no problem providing that.

14 MR. WORTMAN: What we are providing, Judge,

15 is this. This is the transaction list by customers

16 showing the rent coming in and the water coming in.

17 We can't break it up the way their QuickBooks is set

18 up, so that's why it's over inclusive.

19 THE COURT: The bank, won't they have copies

20 of the checks and everything else on their bank

21 records?

22 MR. WEIST: No, you don't get copies of

23 checks any more.

24 MR. WORTMAN: We can provide bank statements,

25 if they want bank statements.

23

1 THE COURT: All right. Why don't we start

2 with that. If you want more specific --

3 MS. HEYER: Which we do.

4 THE COURT: What else do you want?

5 MS. HEYER: The statute mandates an

6 accounting, money coming in and money going out. We

7 need to have a breakdown, whether it's in QuickBooks

8 or not QuickBooks, showing the moneys going out on a

9 monthly basis by item, whether it's for accounting,

10 landscaping, electric, whatever the case may be.

11 THE COURT: That seems fair. Here's how much

12 money we collected this month. Here's how much

13 money we spent on landscaping, here's how much money

14 we spent on whatever.

15 MR. WEIST: That can be done on a monthly

16 basis, but, again, I'm saying the numbers may be

17 skewed until I get my final journal entries from

18 last fiscal year end.

19 MR. WORTMAN: Is there a monthly breakdown?

20 MR. WEIST: I can give you a monthly

21 breakdown starting February 1st, March 1st.

22 MR. WORTMAN: Just going forward. They have

23 the previous ones.

24 MS. HEYER: Well, it should be April.

25 MR. WORTMAN: Can you do an April

24

1 reconciliation of the money in, money out?

2 MR. WEIST: Yeah.

3 MR. WORTMAN: We can do that.

4 MR. WEIST: It's basically, an income

5 statement.

6 MR. WORTMAN: Can we do that? Is the 10th of

7 the month for the previous month?

8 MR. WEIST: That's reasonable. We're on an

9 accrual basis, and by the 10th of the month, most

10 invoices are in.

11 MR. WORTMAN: So we can provide that. The

12 bank statements, are they available by the 10th of

13 the next month? Sometimes they lag.

14 MR. WEIST: No, that's -- by the 10th of the

15 month, they should be in.

16 THE COURT: Now, if there is any

17 discrepancies or you're not satisfied or if you have

18 questions, e-mail, then see what response you get

19 back. If it's not satisfactory --

20 MS. HEYER: That one we actually did discuss,

21 and we didn't work it out, which is why we brought

22 that to court.

23 MR. WORTMAN: Our short motion, Judge. If

24 you recall, in the original order signed by Your

25 Honor May 6, there was a specific carveout for

25

1 landscaping and attorney's fees, not included in the

2 \$17,000 figure Your Honor had computed.

3 As part of our motion or attached to our

4 motion is justification for landscaping expenses

5 which are, actually, it's a flat fee of \$2,400 a

6 month paid to the landscaper. There are additional

7 special projects that cost additional moneys beyond

8 the 2,400. We're not dealing with that right now.

9 We're just looking to supplement the 17,000 with the

10 flat fee landscaping expense.

11 We have an invoice attached from our

12 landscaper showing that flat fee billing of 2,400.

13 THE COURT: Right. Now, when I came up with

14 the 17,000, I added \$3,000 to everything, taking

15 into account landscaping and legal fees.

16 MS. HEYER: Actually, four, Your Honor.

17 THE COURT: Four, so --

18 MR. WORTMAN: The order excludes,

19 specifically excluding --

20 MS. HEYER: Correct. She gave you a cushion.

21 THE COURT: So I can reduce that cushion and

22 give you the landscaping and the legal fees.

23 MR. WORTMAN: It's ironic in that the 17 plus

24 2,400, plus the 1,400 in attorney's fees that you

25 also excluded adds up to \$20,800 and that is,

26

1 basically, what the operating expenses are of the

2 co-op on a monthly basis.

3 MR. WEIST: Per the budget.

4 MR. WORTMAN: So there is no cushion there.

5 THE COURT: Well, this isn't the sheet that I

6 looked at when I came up with it.

7 MS. HEYER: Yeah, it is.

8 THE COURT: It is, okay.

9 MS. HEYER: Only one we have been given, the

10 projected budget.

11 THE COURT: All right.

12 MS. HEYER: Ironically, Your Honor, they are

13 coming back now and asking for more money when if

14 you total it, it actually exceeds the total

15 expenditures that they had projected under the

16 budget.

17 THE COURT: Right. When I look at this

18 sheet, it's just under 20,000, and now you're asking

19 for more than that.

20 MR. WORTMAN: Your Honor, I'm just going by

21 the order that specifically states that -- and Your

22 Honor had stated when we were in Your Honor's

23 chambers; that come back with justification for

24 landscaping and attorney's fees.

25 THE COURT: Yes.

27

1 MR. WORTMAN: That's what we have done.

2 We're not here to relitigate whether 17,000 is
3 appropriate or not. We're here just to potentially
4 supplement the 17.

5 THE COURT: Fine.

6 MS. HEYER: With respect to the two items,
7 Your Honor, we have a brief response. With respect
8 to attorneys' fees, for -- I'm assuming these are
9 for the attorneys for collection of assessments.

10 There are no invoices for 2011. They have attached
11 invoices that previously have been paid for 2010.

12 And those invoices range anywhere from 800 to 600,
13 500, 400, whatever. Now they are asking for an

14 automatic \$1,400 every month. Why can't they come
15 before the Court with at least bills coming in 2011
16 and all those payments were paid past due, by the
17 way, to those attorneys. Why can't they submit
18 those either to the plaintiff for approval or if we
19 can't work it out to, like, a \$500 stipend or
20 something like that, then seek Court approval. Why
21 are they coming back with prior invoices and now
22 seeking something prospectively?

23 MR. WORTMAN: Because it's a snapshot of a
24 calendar year, and what we did was we took the total
25 number and divided it by 12. We are not coming up

28

1 with 1,400 out of thin blue air. It's an average of

2 the 12 months in 2010 for collection of rent, for
3 evictions, for reasonable legal costs as relates to
4 the community with 200 plus people.

5 That is not a large amount of money that we're
6 seeking as relates to attorneys' fees. \$1,400 a
7 month is a small amount in consideration for the
8 number of units and the number of legal issues that
9 arise from time to time in a co-op.

10 THE COURT: But Ms. Bednar is saying if you
11 just show her a bill, she could agree as long as it
12 is not unreasonable.

13 MR. WORTMAN: All the invoices are attached

14 to our motion.

15 MS. HEYER: They are all 2010.

16 THE COURT: Right. Why would you give her

17 invoices from 2010? Why not give her from 2011?

18 MR. WORTMAN: We did a snapshot of one

19 calendar year, which seemed to make the most sense

20 for averaging purposes, instead of trying to say,

21 well, in February, 2011, it was, this and May of --

22 THE COURT: Are you saying that if they show

23 you that the bill for April let's say was \$1,400,

24 would you agree to let them take an additional

25 \$1,400 out?

29

1 MS. HEYER: Yes, but not necessarily every

2 month. If you see the range, they are all over the
3 place. Some months may be more active than others.

4 THE COURT: She says if you show her the bill
5 for 1,400 she'll agree to do the 1,400. Next month
6 if it's 1,500, she'll let you do that. And what's
7 the big deal about that?

8 MR. WORTMAN: Just trying to avoid more court
9 appearances, Judge. I figured I'd come up with a
10 ballpark figure which is a fair averaging and just
11 trying to build it in as automatic.

12 THE COURT: I understand, but 2010, there may
13 have been more foreclosures than now. Hopefully,

14 there aren't as many foreclosures now. I don't

15 know. If they are, they are.

16 If you want to show as of January through now

17 it's been an average of \$1,400, I'll go ahead and

18 approve it.

19 MS. HEYER: Some of these invoices are only

20 \$400. So I'm assuming it's going to fluctuate.

21 MR. WORTMAN: Yeah, it is. It's an

22 averaging. It's 1,400 average per month. Some

23 months it's 2,200, some months it's 800, some months

24 it's 300.

25 THE COURT: I don't have a problem with

30

1 giving you \$1,400 a month, and then if you see

2 that -- I don't know.

3 MS. HEYER: We should have the invoices. We
4 should be provided with invoices. How can we tell
5 what they are paying?

6 MR. WORTMAN: We are going to give her the
7 accounting.

8 MS. HEYER: If it says legal, I'm not going
9 to know whether it's legal for attorneys' fees or
10 for this case or their attorneys' fees for
11 assessments or for another case or whatever. That's
12 why the invoicing is a better method, because you
13 actually get to see what the moneys are being spent

14 on and get approved either by the plaintiff or by

15 the Court.

16 THE COURT: If they gave you an invoice --

17 not an invoice but an accounting that said legal

18 fees, and you want it to be further broken down, let

19 them know. She's letting you know up front for

20 legal fees she wants to know how much for

21 collections, how much is for this case.

22 MR. WORTMAN: All the moneys, all the

23 invoices there have nothing to do with this case,

24 nothing to do with this case. The 1,400, they are

25 invoices from a separate law firm, not mine. Just

31

1 the regular general collection outside of this

2 litigation.

3 THE COURT: All right. But you're going to

4 provide the plaintiff the invoices from Webber

5 Hinden from January of 2011 up to now, and if it

6 doesn't average to \$1,400, then maybe it should be

7 more or less, I don't know.

8 MR. WORTMAN: All right. We'll try and

9 confer on that, but can Your Honor --

10 THE COURT: I'll go ahead and approve that,

11 yeah. I will go ahead and do it. Then if plaintiff

12 has things that, after receiving the documentation,

13 that it's inflated, talk to defendants, and if you

14 guys can't agree, then come in front of me.

15 MR. WORTMAN: All right. So just so the

16 record is clear, the expenses now to be excluded

17 from -- deducted from the rents collected, are now

18 the increase from 17,000 to 19,400 based on --

19 THE COURT: More than that. It's more than

20 that.

21 MR. WORTMAN: Including the attorney's fees

22 on top of that. So it's 20,800.

23 MS. HEYER: Your Honor, can we have the

24 invoicing for both of those items then going

25 forward?

32

1 THE COURT: Yeah.

2 MS. HEYER: Because it's just a line item on
3 the income statement. You can't tell what the hell
4 it is.

5 MR. WEIST: May I just ask a question of
6 counsel? If I -- on QuickBooks, I mean, you want
7 the actual invoices? If I click on the specific
8 line item for the statement, it will give me a
9 complete breakdown of all the items that are
10 included in that total, by name of vendor.

11 MS. HEYER: Right.

12 MR. WEIST: Would that be sufficient, or do
13 you actually need the invoice?

14 MS. HEYER: No, that would be sufficient.

15 You have given that in the past.

16 MR. WORTMAN: The landscaping, again, isn't

17 that just that one contract, though, or is there a

18 monthly invoice?

19 MR. WEIST: There is a monthly contract of

20 2,400 to provide --

21 MR. WORTMAN: Is there a monthly statement?

22 MR. WEIST: I get a monthly invoice. But

23 then again, on top of that, in order to keep the

24 park in good condition, we fertilize, weed control.

25 Basically, just did all the palm trees, 160 of them.

33

1 This is on top of the 2,400. I wrote a check last

2 week for \$5,800.

3 THE COURT: All right. Well, show that bill

4 to the plaintiff, and then she can very well approve

5 it. If she doesn't and you think they should, bring

6 it in front of me. But I'm going to expect that the

7 parties are going to work better together than this,

8 because I think some of this could have been worked

9 out. Probably all of it.

10 MR. WORTMAN: Okay, Judge. Thank you very

11 much for your time.

12 THE COURT: Okay. Thank you.

13 (The foregoing proceedings were concluded at

14 10:25 a.m.)

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CERTIFICATE.

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4 THE STATE OF FLORIDA,

5

6 COUNTY OF PALM BEACH.

7

8 I, Thomas R. April, Registered Professional

9 Reporter, do hereby certify that the foregoing

10 proceedings were held as hereinabove set out; that I was

11 authorized to and did report in machine shorthand the

12 proceedings in said hearing; and that the foregoing

13 pages comprise a true and correct transcription of my

14 stenotype notes of the proceedings.

15

16

17 DATED this 23rd day of May, 2011

18

19

20 Thomas R. April,

21 Registered Professional Reporter

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23

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