

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	
GARDEN OAKS MAINTENANCE	§	Case No. 18-60018
ORGANIZATION, INC.	§	Chapter 11
	§	
Debtor.	§	

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS’
APPLICATION TO EMPLOY DIAMOND MCCARTHY LLP
AS COUNSEL NUNC PRO TUNC TO JUNE 4, 2018**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

The Official Committee of Unsecured Creditors (the “Committee”) of Garden Oaks Maintenance Organization, Inc. (“GOMO” or the “Debtor”), pursuant to section 1103(a) of title 11 of the United states Code (the “Bankruptcy Code”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the Southern

District of Texas (the “Local Rules”), files this application (the “Application”) for entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the Committee to retain and employ Diamond McCarthy LLP (“Diamond McCarthy”) as its counsel in connection with GOMO’s chapter 11 case (the “Chapter 11 Case”), effective *nunc pro tunc* to June 4, 2018. In support of the Application, the Committee submits the declaration of Charles M. Rubio attached hereto as Exhibit B (the “Rubio Declaration”) and respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter over to 28 U.S.C. §§ 157 and 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory and rule predicates for the relief requested herein are Bankruptcy Code § 1103(a), Bankruptcy Rule 2014, and Local Rule 2014-1.

BACKGROUND

4. On April 11, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.
5. The Debtor continues to operate its business as a debtor in possession pursuant to Bankruptcy Code § 1107(a) and 1108. No request has been made for the appointment of a trustee or an examiner.
6. On May 31, 2018, the United States Trustee for Region 7 (the “U.S. Trustee”) appointed the Committee pursuant to Bankruptcy Code § 1102. [ECF No. 28]. On June 4, 2018, the Committee selected Diamond McCarthy to serve as counsel to the Committee, subject to the approval of the Court.

RELIEF REQUESTED

7. The Committee seeks to retain and employ Diamond McCarthy as its counsel *nunc pro tunc* to June 4, 2018, pursuant to Bankruptcy Code § 1103(a), Bankruptcy Rule 2014, and Local Rule 2014-1.

BASIS FOR RELIEF

8. Subject to bankruptcy court approval, Bankruptcy Code § 1103(a) authorizes a committee appointed under Bankruptcy Code § 1102 to select and employ attorneys provided that such attorneys do not represent an entity having an adverse interest in connection with the case. The Committee respectfully submits that the retention of Diamond McCarthy is necessary and appropriate to enable the Committee to fulfill its duties under the Bankruptcy Code and is in the best interests of the Debtor's estate. Further, the hourly compensation rates agreed to between the Committee and Diamond McCarthy and are reasonable and Diamond McCarthy has informed the Committee that neither the firm nor any of the professionals employed by the firm represent any party with an adverse connection with the case and its compensation rates agreed to by the Committee are reasonable.

A. Scope of Services

9. The Committee seeks to retain and employ Diamond McCarthy to, among other things:

- (a) Advise the Committee with respect to its rights, duties, and powers in the Chapter 11 Case;
- (b) Assist and advise the Committee in its consultations and negotiations with the Debtor and other parties in interest;
- (c) Assist the Committee in analyzing the claims of the Debtor's creditors and the Debtor's capital structure and in negotiating with holders of claims or other interests;

- (d) Assist the Committee in its investigation of the acts, conduct, assets, liabilities, and financial condition of the Debtor and its insiders and the operation of the Debtor's business;
- (e) Assist the Committee in its analysis of, and negotiations with, the Debtor or any third party concerning matters related to, among other things, the assumption or rejection of certain leases of non-residential real property and executory contracts, asset dispositions, financing of other transactions, and the terms of one or more plans of reorganization for the Debtor and accompanying disclosure statements and related plan documents;
- (f) Assist and advise the Committee as to its communications to the general creditor body regarding significant matters in the Chapter 11 Case;
- (g) Represent the Committee at all hearings and other proceedings before this Court;
- (h) Review and analyze applications, orders, statements of operations, and schedules filed with the Court and advise the Committee as to their propriety and, to the extent deemed appropriate by the Committee, support, join, or object thereto;
- (i) Advise and assist the Committee as to any legislative, regulatory, or governmental activities;
- (j) Assist the Committee in its review and analysis of the Debtor's various agreements;
- (k) Prepare, on behalf of the Committee, any pleadings, including, without limitation, motions, memoranda, complaints, adversary complaints, objections, or comments in connection with any matter related to the Debtor or the Chapter 11 Case;
- (l) Investigate and analyze any claims belonging to the Debtor's estate; and
- (m) Perform such other legal services that may be required or are otherwise deemed to be in the interests of the Committee in accordance with the Committee's powers and duties as set forth in the Bankruptcy Code, Bankruptcy Rules, or other applicable law.

B. Diamond McCarthy's Qualifications

10. The Committee believes that Diamond McCarthy possesses extensive knowledge and expertise in the areas of law relevant to the Chapter 11 Case and that Diamond McCarthy is well-qualified to represent the Committee in the Chapter 11 Case. Diamond McCarthy has

substantial expertise and experience in all aspects of bankruptcy matters and with respect to legal (both state and federal, including bankruptcy) and business issues. Further, Diamond McCarthy possesses the experience, ability, and resources necessary to provide the full range of services the Committee will need during the pendency of this Chapter 11 Case.

11. Because of the legal services that the Committee requires in connection with the Chapter 11 Case, and the fact that the full nature and extent of such services are not known at this time, the Committee believes that employing Diamond McCarthy to provide the services described above and such other services as may be necessary for the Committee to satisfy its obligations to the Debtor's unsecured creditor constituency is appropriate and in the best interests of the Debtor's estate and its creditors.

C. Diamond McCarthy's Connections

12. Except as disclosed in the Application or Rubio Declaration, to the best of the Committee's knowledge, the partners and other attorneys and professionals at Diamond McCarthy do not currently represent an entity having an adverse interest in connection with the Chapter 11 Case. Nor do they have any interest adverse to the Debtor or any connections with the Debtor, its creditors, directors, officers, or other significant parties-in-interest, or their respective attorneys and accountants, that would prevent Diamond McCarthy from representing the Committee.

13. Based upon the Rubio Declaration, the Committee submits that Diamond McCarthy is a "disinterested person" as that term is defined in §§ 101(14) and 1107(b) of the Bankruptcy Code.¹

¹ The Bankruptcy Code only requires that attorneys retained by official committees not represent an adverse party in connection with the particular case. Nonetheless, Diamond McCarthy meets this higher standard.

14. The Committee has been informed that Diamond McCarthy will conduct an ongoing review of its files to ensure that no disqualifying circumstances arise, and if any new relevant facts or relationships are discovered, Diamond McCarthy will supplement its disclosure to the Court. Based on the Rubio Declaration, the Committee believes that Diamond McCarthy is in compliance with the requirements of Bankruptcy Code § 1103 and Bankruptcy Rule 2014.

D. Diamond McCarthy's Compensation

15. The Committee requests that all fees and related costs and expenses incurred by the Committee on account of services rendered by Diamond McCarthy in the Chapter 11 Case be paid as administrative expenses of the Debtor's estates pursuant to Bankruptcy Code §§ 330, 331, 503(b), and 507(a)(2). Subject to this Court's approval and Bankruptcy Code §§ 330, and 331, Diamond McCarthy will charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date such services are rendered.

16. Diamond McCarthy has advised the Committee that it is Diamond McCarthy's policy to charge its clients in all areas of practice for expenses incurred in connection with its representation of a client. The expenses charged to clients include, among other things, photocopying charges, travel expenses, and computerized research. Diamond McCarthy will maintain detailed records of actual and necessary costs and expenses incurred in connection with the legal services provided to the Committee.

17. The names, positions and current hourly rates of the Diamond McCarthy timekeepers currently expected to have primary responsibility for providing services to the Committee are as follows:

TIMEKEEPER	TYPE/POSITION	HOURLY RATE
Charles M. Rubio	Attorney (Partner)	\$475.00
R. J. Shannon	Attorney (Associate)	\$325.00
Cathy Burrows	Paralegal	\$220.00

18. Diamond McCarthy has advised the Committee that it will apply for compensation and reimbursement of expenses in accordance with the procedures set forth in Bankruptcy Code §§ 330 and 331, the applicable Bankruptcy Rules, and any other applicable order of the Court.

E. *Nunc Pro Tunc* Relief

19. The Committee believes that the employment of Diamond McCarthy effective *nunc pro tunc* to June 4, 2018, the date the Committee selected Diamond McCarthy as its proposed counsel, is warranted under the circumstances of the Chapter 11 Case. Upon its selection, the Committee requested Diamond McCarthy to commence work immediately on time-sensitive matters and devote substantial resources to these Chapter 11 Case prior to the submission and approval of this Application. Thus, Diamond McCarthy has provided, and will continue to provide, valuable services to the Committee. Furthermore, Local Rule 2014-1(b)(1) provides that an application for approval of employment made within thirty days of the commencement of the provision of services is deemed contemporaneous.

NO PRIOR REQUEST

20. No prior request for the relief sought herein has been made to this Court or any other Court.

CONCLUSION

21. WHEREFORE, the Committee respectfully requests that the Court (a) enter an order, substantially in the form annexed hereto as Exhibit A, authorizing the Committee to retain and employ Diamond McCarthy as its counsel, and (b) provide the Committee with such other and further relief as the Court may deem just, proper, and equitable.

Dated: July 5, 2018.

DIAMOND MCCARTHY LLP

/s/ Charles M. Rubio

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*Proposed Counsel for the Official
Committee of Unsecured Creditors*

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Local Rule 9003-1, this document was served on the U.S. Trustee and upon those parties registered to receive ECF notifications in this case on July 5, 2018.

/s/ Charles M. Rubio

Charles M. Rubio