

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

GARDEN OAKS MAINTENANCE
ORGANIZATION, INC.,

DEBTOR.

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CASE NO. 18-60018-H2-11

**MOTION FOR ORDER (I) APPROVING DISCLOSURE STATEMENT;
(II) SCHEDULING PLAN CONFIRMATION HEARING; (III) APPROVING
SOLICITATION PACKAGES AND DISTRIBUTION PROCEDURES;
(IV) APPROVING VOTING PROCEDURES; (V) ESTABLISHING VOTING
DEADLINE; (VI) APPROVING PROCEDURES FOR VOTE TABULATIONS;
AND (VII) GRANTING RELATED RELIEF**

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 28 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.

TO THE HONORABLE DAVID R. JONES, UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors of Garden Oaks Maintenance Organization, Inc. (the "Committee") files this *Motion for Order (i) Approving Disclosure Statement; (ii) Scheduling Plan Confirmation Hearing; (iii) Approving Solicitation Packages and Distribution Procedures; (iv) Approving Voting Procedures; (v) Establishing Voting Deadline; (vi) Approving Procedures for Vote Tabulations; and (vii) Granting Related Relief* and would respectfully show the Court the following:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. Circumstances Leading to Chapter 11 Filing.

2. Since 2002, GOMO has operated as a property owners association (a “POA”) under the Texas Property Code for four of the five sections of the Garden Oaks neighborhood in Northwest Houston. In this role, GOMO has enforced deed restrictions against property owners and collected assessments that it asserted were mandatory under the Texas Property Code.

3. GOMO charged assessments in the form of transfer fees by demanding payment of 0.75% of the greater of (i) the gross purchase price of property or (ii) the appraisal of the property reflected in the records of the Harris County Appraisal District (the “Transfer Fee”). Thus, for example, if a person purchased a home in Garden Oaks, Section 2 for \$400,000, GOMO demanded payment of \$3,000.

4. GOMO was party to litigation with Peter S. Chang and Katherine M. Chang (the “Changs”), who are residents of Garden Oaks, regarding attempted enforcement of a deed restriction before the Texas state courts.

5. The litigation resulted in a published opinion of the Court of Appeals of Texas styled *Garden Oaks Maintenance Organization v. Chang*, 542 S.W.3d 117 (Tex. App.—Houston [14th Dist.] 2017). In that opinion, the Texas Court of Appeals held that GOMO’s founders failed to properly form a petition committee under Texas law and thus the deed restriction modification purporting to make GOMO a mandatory POA was invalid with respect to the Changs.

6. Although the Texas Court of Appeals’ decision in *Garden Oaks Maintenance Organization v. Chang* only adjudicated the rights between two homeowners and GOMO, the factual basis for this

decision were the actions taken by GOMO's founders and the circumstances under which GOMO was founded.

B. Bankruptcy.

7. On April 11, 2018 (the "Petition Date"), GOMO filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code in this Court. GOMO has stated that the reason for its bankruptcy filing was to restructure its operations and source of funding in light of the Texas Court of Appeals's decision in *Garden Oaks Maintenance Organization v. Chang*.

8. The United States Trustee formed the Committee and appointed its members pursuant to section 1102 of title 11 of the United States Code (the "Bankruptcy Code") on May 31, 2018.

9. On the date hereof, the Committee filed a disclosure statement and plan.

C. The Chapter 11 Plan of Reorganization and Disclosure Statement.

10. The Committee seeks to approve and to confirm a Plan and Disclosure Statement to, among other things, replace GOMO's Transfer Fee with an annual assessment, distribute GOMO's assets to its creditors, and bring this case to an end.

11. The Plan here contemplates that one class of creditors — General Unsecured Claims — will be the only impaired class of claimants entitled to vote on the Plan. The creditors in all other classes under the Plan are not entitled to vote either because they are unimpaired or are deemed to reject the Plan. Regardless of these creditor classifications, all owners in Garden Oaks will be given the opportunity to vote on the Proposed Amendment to the Deed Restrictions and the Proposed Amendment to the Bylaws.

RELIEF REQUESTED

12. By this Motion, the Committee seeks entry of an order (the "Disclosure Statement Order"), substantially in the form attached hereto:

- (a) approving the adequacy of the Disclosure Statement under 11 U.S.C. § 1125;

- (b) scheduling the hearing to consider the confirmation of the Plan (the “Confirmation Hearing”) and approving the notice with respect to the Confirmation Hearing substantially in the form attached to the Disclosure Statement Order (the “Hearing Notice”);
 - (c) approving the contents of solicitation materials (the “Solicitation Packages”);
 - (d) authorizing distribution procedures, including allowing door-to-door canvassing;
 - (e) establishing the record date for purposes of determining the holders of claims against GOMO (the “Voting Record Date”);
 - (f) approving voting and tabulation procedures;
 - (g) approving the use of ballots and the instructions for doing so substantially in the form annexed to the Disclosure Statement Order (the “Ballot Instructions”);
 - (h) approving the form of the Consent Form substantially in the form annexed to the Disclosure Statement Order (the “Consent Form”);
 - (i) establishing the deadline by which holders of claims against the Debtors must vote to accept or reject the Plan (the “Voting Deadline”); and
 - (j) establishing the deadline to object to the confirmation of the Plan (the “Objection Deadline”).
13. The Committee requests dates and deadlines established for the following events:

Event
Hearing to Consider Approval of this Motion
Voting Record Date
Deadline to transmit the Solicitation Packages and Consent Form Packages (the “ <u>Solicitation Date</u> ”)
Deadline to Object to Claims for Voting
Objection Deadline
Voting Deadline
Deadline to file Ballot Summary
Deadline to file Proposed Confirmation Order
Confirmation Hearing

BASIS FOR THE RELIEF REQUESTED

A. Approving the Adequacy of the Disclosure Statement.

14. Section 1125 of the Bankruptcy Code provides that the Bankruptcy Court may approve a disclosure statement as containing adequate information before solicitation of approval of a plan. *See* 11 U.S.C. § 1125(b). Adequate information means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtors that would enable a hypothetical investor to make an informed judgment about the plan. 11 U.S.C. § 1125(a)(1). The Committee contends that the Disclosure Statement contains adequate information.

15. The Committee's Disclosure Statement discusses the background to this case (including the *Chang* decision), GOMO's formation history, its current financial condition, and a full description of the treatment of all claims.

16. The Solicitation Packages will be sent to all residents of the Garden Oaks subdivision, few of whom will have much familiarity with the Bankruptcy Code. Accordingly, the Committee has included cover sheets with likely questions for recipients of the Solicitation Packages and has taken care to keep the Disclosure Statement as simple as possible.

B. Confirmation Hearing.

17. Section 1128 of the Bankruptcy Code provides that "[a]fter notice, the court shall hold a hearing on confirmation of a plan" and that "[a] party in interest may object to confirmation of a plan." 11 U.S.C. § 1128.

18. For the reasons set forth below, the Debtors respectfully request that the Court enter an order scheduling the Confirmation Hearing.

C. The Confirmation Hearing and Establishment of Notice and Objection Procedures.

19. Bankruptcy Rule 3017 requires that notice of the hearing to consider the proposed disclosure statement be provided to creditors and other parties-in-interest, and that the court shall hold a hearing to consider the disclosure statement and any objections thereto on 28 days' notice as provided in Rule 2002. Pursuant to Bankruptcy Rule 3020(b), objections to confirmation of a plan must be filed and served "within a time fixed by the court." Bankruptcy Rules 2002(b) and 2002(d) require 28 days' notice of the hearing on both the hearing on a disclosure statement and confirmation of a plan and for filing objections to both a disclosure statement and confirmation of a plan.

20. In accordance with Bankruptcy Rules 2002, 3017, 3020, and 9006, the Committee proposes to provide to all secured creditors, all general unsecured creditors, and all parties on GOMO's master service list the Confirmation Hearing Notice, setting forth (i) the procedure for obtaining copies of the Plan and Disclosure Statement, (ii) the Voting Record Date, (iii) the Voting Deadline, (iv) the Objection Deadline for filing objections to confirmation of the Plan, and (v) the date and time of the Confirmation Hearing. Copies of the Plan and Disclosure Statement will also be available on-line.

21. In light of the proposed solicitation procedures described herein, the Committee requests that the Confirmation Hearing be scheduled for approximately six to eight weeks after the Court has considered entry of the Disclosure Statement Order or otherwise as the Court's calendar will permit. The Committee seeks to establish an objection deadline to parties-in-interest will receive at least 21 days' notice of the Objection Deadline and 28 days' notice of the Confirmation Hearing date. The proposed Objection Deadline will afford the Court, the Committee, GOMO, and other parties in interest sufficient time to consider the objections and any proposed modifications prior to the Confirmation Hearing.

22. The Committee believes that the foregoing procedures will provide adequate notice of the Confirmation Hearing and the Objection Deadline related thereto.

D. Procedure for Objecting to the Plan

23. The Confirmation Hearing Notice provides, and the Committee requests that the Court direct that objections to the confirmation of the Plan, if any, must (i) be in writing, (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (iii) state with particularity the basis and nature of any objection or proposed modification to the Plan to cure such objection, and (iv) be filed, together with proof of service, with the Court no later than the Objection Deadline.

24. Pursuant to § 1127 of the Bankruptcy Code, the Committee reserves the right to modify the Plan prior to or during the Confirmation Hearing in order to address any objections or as otherwise appropriate. Modifications of the Plan will be filed with the Court.

E. Filing Ballot Summary and Related Matters.

25. The Committee requests that it be allowed to submit its written ballot summary as required by Local Rule 3018 two (2) days prior to the Confirmation Hearing.

26. The Committee also requests that it be authorized to submit their proposed Findings of Fact and Conclusions of Law to be file with the Court on the date that is two (2) days prior to the Confirmation Hearing.

F. Establishment of a Voting Record Date.

27. Bankruptcy Rule 3017(d) provides that, for the purpose of soliciting votes in connection with the confirmation of a plan, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” The record date for determining which holders of equity securities and creditors whose claims are based on a security of record are entitled to vote to accept or reject a plan is the “date the order approving the disclosure

statement is entered or another date fixed by the court, for cause, after notice and a hearing.” FED. R. BANK. P. 3018(a).

28. The Committee requests that the Court set the date of the Disclosure Statement Order as the Voting Record Date. Holders of claims as of the Voting Record Date shall be holders of record, and as such, shall be entitled to vote on the Plan. The Voting Record Date shall have no preclusive effect as to distributions under the Plan. Accordingly, the Debtors submits that the Voting Record Date is appropriate and should be approved.

G. Approval of Solicitation Packages and Distribution Procedures.

29. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims for the purpose of soliciting their votes and providing adequate notice of the hearing on confirmation of a plan of reorganization:

Upon approval of a disclosure statement, – except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders – the Debtors in possession, trustee, proponent of the plan, or clerk as the court orders, shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of such plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. . .

FED. R. BANKR. P. 3017(d).

30. The Solicitation Packages will be sent to all holders of general unsecured claims. The Solicitation Package will include: (i) the Hearing Notice; (ii) the Ballot Instructions for voting to accept or reject the Plan; (iii) the Ballot; (iv) a copy of the Disclosure Statement; (v) a copy of the Plan; and (vi) such other materials as the Court may direct.

31. The Plan also contemplates amendments to the Deed Restrictions. The amendments require the affirmative vote of two-thirds (2/3) all owners in Garden Oaks. In order to implement the amendments to the Deed Restrictions and the related Bylaws, the Committee will distribute to the owners in Garden Oaks a copy of all of the following (“Consent Form Package”): (i) the Consent Form and (ii) the Notice of Hearing.

32. Obtaining approval for the Proposed Amendment to the Deed Restrictions will be difficult unless the Committee can canvas door-to-door. Therefore, the Committee respectfully requests that in soliciting votes on the Plan and Proposed Amendment to the Deed Restrictions, members of the Committee be allowed to participate in door-to-door canvassing typical of that historically used by neighborhood organizations in the Garden Oaks subdivision.

33. The Committee proposes to mail or cause to be mailed the Solicitation Packages and the Consent Form Packages within one week of the entry of the Disclosure Statement Order.

34. With respect to any transferred claim, if the transferor of such claim is entitled to vote to accept or reject the Plan, the Committee proposes that the transferee be entitled to receive a Solicitation Package and vote to accept or reject the Plan on account of the transferred claim only if all actions necessary to effect the transfer of the claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date.

35. Further, the Committee will distribute, or cause to be distributed by the Solicitation Date, the Confirmation Hearing Notice and any other materials as the Court may direct to all parties on GOMO’s master service list maintained in this Chapter 11 Case.

36. The Committee submits that it has shown good cause for implementing the foregoing notice and service procedures.

H. Establishing Voting Deadline for Receipt of Ballots

37. Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the Court shall fix a time within which the holders of claims or equity security interests may accept or reject a plan. The Committee expects to complete mailing of the Solicitation Packages by the Solicitation Date. For a ballot to be counted as a vote to accept or reject the Plan, the Committee proposes that each ballot must be actually received by the Voting Deadline, a date that is more than 21 days after the Solicitation Date. The Committee submits that such solicitation period is a sufficient period within which creditors can make an informed decision regarding whether to accept or reject the Plan.

I. Approval of Voting and Tabulation Procedures

38. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that “the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.”

39. Solely for purposes of voting to accept or reject the Plan and not for the purpose of the allowance of, or distribution on account of, any claim, and without prejudice to the rights of the Committee or GOMO in any other context, the Committee proposes that each claim within a class of claims entitled to vote to accept or reject the Plan to be temporarily allowed in an amount equal to the amount of such claim as set forth in the Debtors’ Schedules of Assets and Liabilities, if such claim is not

marked as either contingent, disputed or unliquidated, or the amount as set forth in the proofs of claim filed in the Debtor's claim register, subject to the following:

- (a) If a claim is allowed by order of the Court, such claim is allowed for voting purposes in the allowed amount set forth in the order;
- (b) If a claim for which a proof of claim has been timely filed is for unknown or undetermined amounts, or is wholly unliquidated or contingent (as determined on the face of the claim or after a reasonable review of the supporting documentation by the Committee) and such claim has not been allowed, such claim will be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution and accorded one vote and valued at an amount equal to one dollar (\$1.00), unless such claim is disputed as set forth in paragraph (g) below;
- (c) If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- (d) If a proof of claim was timely filed in an amount that is liquidated and matured, such claim is temporarily allowed in the amount set forth on the proof of claim, unless such claim is disputed as set forth in subparagraph (g) below;
- (e) If a claim is listed in the Schedules as contingent, unliquidated, or disputed or for \$0.00 and a proof of claim was not (i) filed by the applicable bar date for the filing of proofs of claims established by the Court or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline, the Committee proposes that such claim shall be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c);
- (f) If a claim is listed in the Schedules or on a timely filed proof of claim as contingent, unliquidated, or disputed in part, such claim is temporarily allowed in the amount that is liquidated, matured, and undisputed for voting purposes only, and not for purposes of allowance or distribution;
- (g) If the Debtor or the Committee has served an objection or request for estimation as to a claim at least fourteen (14) calendar days before the Voting Deadline, such claim is temporarily disallowed for voting purposes unless a motion for temporary allowance is filed and approved by the Court by the Confirmation Hearing; provided, however, that if such objection is an objection to reduce the amount of the claim or reclassify a claim and no motion for temporary allowance is filed, the claim shall be allowed to be voted in the reduced amount or on the reclassified basis, as applicable; and

(h) If a proof of claim has been amended by a later-filed proof of claim, the earlier-filed claim will not be entitled to vote, regardless of whether any party has objected to such earlier-filed claim.

40. The Committee proposes that the following procedures shall apply for tabulating votes:

(a) any Ballot that is otherwise timely completed, executed, and properly cast to the Committee but does not indicate an acceptance or rejection of the Plan, or that indicates both an acceptance and rejection of the Plan, shall not be counted; if no votes to accept or reject the Plan are received with respect to a particular class that is entitled to vote on the Plan, such class shall be deemed to have voted to accept the Plan;

(b) if a creditor casts more than one Ballot voting the same claim before the Voting Deadline, the last properly cast Ballot received before the Voting Deadline shall be deemed to reflect the voter's intent and thus supersede any prior Ballots;

(c) creditors must vote all of their claims within a particular class to either accept or reject the Plan, and may not split their votes within a particular class and thus a Ballot (or group of Ballots) within a particular class that partially accepts and partially rejects the Plan shall not be counted;

(d) a creditor who votes an amount related to a claim that has been paid or otherwise satisfied in full or in part shall only be counted for the amount that remains unpaid or not satisfied, and if such claim has been fully paid or otherwise satisfied, such vote will not be counted for purposes of amount or number; and

(e) except as otherwise provided in this Motion, for purposes of determining whether the numerosity and amount requirements of §§ 1126(c) and 1126(d) of the Bankruptcy Code have been satisfied, the Committee will tabulate only those Ballots received by the Voting Deadline. For purposes of the numerosity requirement of § 1126(c) of the Bankruptcy Code, separate claims held by a single creditor in a particular Class shall be aggregated as if such creditor held one claim against the Debtor in such Class, and the votes related to such claims shall be treated as a single vote to accept or reject the Plan.

41. The Committee further proposes that the following Ballots will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

a. it is illegible or contains insufficient information to permit the identification of the holder of the Claim;

b. it was transmitted by a method other than as specifically set forth in the ballots;

c. it was cast by a Person or Entity that is not entitled to vote on the Plan;

- d. it was cast for a Claim listed in GOMO's Schedules as contingent, unliquidated, or disputed, for which the applicable Claims bar date has passed and no Proof of Claim was timely filed, or to which GOMO, the Committee, or another party-in-interest with standing has objected, and such objection remains unresolved;
- e. it is unsigned; or
- f. it is not clearly marked to either accept or reject the Plan, or it is marked both to accept and reject the Plan.

42. Also, the Committee proposes that no Consent Form will be counted toward approval of the Proposed Amendment to the Deed Restrictions if:

- a. it is illegible;
- b. it was transmitted by facsimile or other means other than as specifically set forth in the Consent Form;
- c. it is unsigned; or
- d. it is not clearly marked to either accept or reject the Proposed Amendment to the Deed Restrictions and Bylaws, or it is marked both to accept and reject the Proposed Amendment to the Deed Restrictions and Bylaws.

43. The Committee believes that the proposed voting and tabulation procedures will facilitate the Plan confirmation process. Specifically, the procedures will clarify the obligations of every holder of a claim entitled to vote to accept or reject the Plan and will create a straightforward process by which the Committee can determine whether it have satisfied the numerosity requirement of § 1126(c) of the Bankruptcy Code. Accordingly, the Committee submits that the voting and tabulation procedures are in the best interests of GOMO's estate, creditors, and other parties-in-interest, that such procedures provide for a fair and equitable voting process, and that good cause supports the relief requested herein.

44. Accordingly, the Committee submits that the voting and tabulation procedures should be approved.

NON-SUBSTANTIVE MODIFICATIONS

45. The Committee requests authorization to make non-substantive modifications to the Confirmation Hearing Notice, Solicitation Packages, Ballots, Consent Forms, and related documents

without further order of the Court, including modifications to correct typographical and grammatical errors, if any, and to make conforming modifications to the Plan and Disclosure Statement and any other materials in the Solicitation Packages prior to distribution.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully requests that the Court enter an order, substantially in the form attached hereto, granting the relief requested herein and granting such other and further relief the Court deems just and proper.

Dated: January 28, 2019

Respectfully submitted,

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