

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

Garden Oaks Maintenance Org, Inc.
DEBTOR

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CASE NO. 18-60018

**TRUSTEE’S MOTION TO ALLOW
THE FILING OF AN OMNIBUS CLAIM OBJECTION**

THIS APPLICATION 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 APPLICATION 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 APPLICATION 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 APPLICATION AT THE HEARING.

IF A PARTY REQUESTS EMERGENCY CONSIDERATION, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT ALLOWS A SHORTER RESPONSE THAN TWENTY-ONE (21) DAYS, YOU MUST RESPOND WITHIN THAT TIME. IF THE COURT SETS AN EMERGENCY HEARING BEFORE THE RESPONSE TIME WILL EXPIRE, ONLY ATTENDANCE AT THE HEARING IS NECESSARY TO RESERVE YOUR RIGHTS. IF AN EMERGENCY HEARING IS NOT SET, YOU MUST RESPONSE BEFORE THE RESPONSE TIME EXPIRES.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Randy Williams, chapter 7 Trustee , and files this *Motion To Allow The Filing Of An Omnibus Claim Objection* (the “Motion”) and in support would respectfully show:

1. A voluntary Chapter 11 was filed by Garden Oaks Maintenance Organization, Inc. (the “Debtor”) on April 11, 2018.
2. On June 6, 2019, the Court converted this case to a Chapter 7.
3. Randy Williams was appointed as Chapter 7 trustee and continues to serve as chapter 7 trustee (the “Trustee”).
4. The Debtor operated as a homeowners association, with volunteer officers and directors.
5. At conversion, the Debtor’s sole asset was cash (\$639,379.38, the current cash balance is \$584,728.71) with approximately 444 proofs of claim being filed to date.
6. After initial review, over 400 of the claims assert as a basis of the proof of claim the right to a refund of association dues (transfer fees) that were paid upon the transfer of their property. The transfer fees were the sole source of the operating funds for the Debtor prepetition.
7. The Trustee believes that the claims asserting a right to a refund are objectionable as a matter of law.
8. Prepetition, a single owner sued the Debtor and as part of his award, which was upheld on appeal, the finding that the manner in which the Debtor was formed did not comport with Texas state law. The ruling suggests that the Debtor was therefore without authority to collect the transfer fees, which were provided for in the documents filed when the Debtor was formed. A review of the record at trial and on appeal however, shows that the Debtor never pled the statute of limitations as an affirmative defense. Under Texas state law, there is a specific statute of limitations with respect to challenges of whether a homeowners association was properly formed.
9. In addition, under Texas state law, unless all affected homeowners are joined in a lawsuit involving a homeowners association, findings relative to the association apply solely to the parties to the case and do not apply to

non-parties. As a result, it is the Trustee's position that this Court needs to decide whether or not the parties who filed proofs of claim on the basis of the pre-petition state court ruling are in fact prevented from arguing that the Debtor was improperly formed, and are therefore unable to collect the transfer fees.

10. The Trustee requests permission to file an omnibus claims objection, in the nature of a declaratory judgment action, seeking to disallow the claims of parties seeking to recover transfer fees paid to the Debtor prepetition, and avoid the filing of over 400 separate claim objections, wherein each would assert the same grounds for objection.

WHEREFORE, the Trustee requests the Court to enter an Order allowing him to file an omnibus claim objection in this case, and to grant the Trustee such other and further relief, at law or in equity, to which the Trustee may be entitled.

Dated: December 18, 2019

Respectfully submitted,

By: /s/ Johnie Patterson

Johnie Patterson

SPECIAL COUNSEL FOR THE TRUSTEE

SBN 15601700

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Johnie Patterson, hereby certify that a true and correct copy of the foregoing Motion was posted on the Debtor's website, served upon all entities requesting notice, and served electronically on all parties participating in the Court's CM/ECF system on December 18, 2019.

/s/Johnie Patterson
Johnie Patterson