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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Melissie C. Rumizen, Deceased  
Fiduciary Number FI-2007-0000060

Commissioner's Report  
of Debts and Demands

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To the Honorable Judges of the Circuit Court of Fairfax County, Virginia:

At the request of William R. Clemmons, co-executor of the above estate, the undersigned gave the notice required under § 64.1-171 of the Virginia Code, setting the 3<sup>rd</sup> day of November, 2008, at 10:00 A.M. at the office of your Commissioner in Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Melissie Clemmons Rumizen. At the said time and place, the said William R. Clemmons appeared on behalf of the estate. No person appeared to offer proof of any debts or demands against said estate.

Greens at Wescott Ridge filed a claim against the estate with the Commissioner of Accounts in the amount of \$2,589.34. The executor provided the claimant with notice of the hearing, a copy of which is attached hereto as Exhibit 1. The estate does not dispute the validity of the claim; however, the estate is insolvent and the claim is disputed to the extent it includes late payment charges assessed subsequent to the decedent's date of death.

The claim by Greens at Wescott Ridge arises from past condominium assessments, fees and late charges on the decedent's condominium, which were assessed prior to the property's foreclosure in August, 2007. Pursuant to § 55-79.84(A) of the Virginia Code, a condominium unit owners association "shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit." In the instant case, Bank of America held a first and second trust on the condominium. Subsequent to the decedent's passing away, Bank of America foreclosed said property. As a result, Green at Wescott Ridge has no further recourse against the property itself; thus, they filed a personal claim against the decedent's estate. § 55-79.84(G) of the Virginia Code states: "[n]othing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55-79.53." That section requires that every condominium owner must comply with the relevant condominium instruments and that "any lack of such compliance



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WILL BK 00851 PG 0308  
Fiduciary # FI-2007-0000060  
Date 01/22/2009  
Estate RUMIZEN, MELISSIE C  
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FAIRFAX COUNTY CIRCUIT COURT  
TESTE, JOHN T. FREY

shall be grounds for an action or suit to recover sums due...or for any other remedy at law or in equity, maintainable by the unit owners' association." Va Code. Ann. § 55-79.53. In *Unit Owners Ass'n of Plaza Village Townhouses v. Younger* the Court held that the owners association may pursue a money judgment against a condominium owner, notwithstanding the availability or pursuit of alternative enforcement procedures.<sup>1</sup> Furthermore, the Court concluded that the owners associations' ability to seek a money judgment against the condominium owner may be limited only by the association's own bylaws.<sup>2</sup>

In your commissioner's opinion, the Greens at Wescott Ridge Condominium Bylaws clearly contemplate and authorize personal suits against condominium owners. "All *Unit Owners* shall be obligated to pay the Common Expenses assessed by the Board of Directors."<sup>3</sup> (*emphasis added*). Further, "[t]he Board of Directors shall take prompt action to collect any assessments for Common Expenses due from any *Unit Owner* which remain unpaid..."<sup>4</sup> (*emphasis added*). Based upon the foregoing excerpts, your commissioner is of the opinion that the bylaws authorize assessments and fees against the unit owners themselves and that the board may pursue the collection of said assessments and fees directly from the owners. Therefore, in the instant case, it appears proper to file a claim against the decedent's estate for unpaid condominium assessments and fees.

Your commissioner is of the opinion that the liability of the estate for such assessment and fees is limited to the obligations of the decedent to the condominium association. The estate did not step into the shoes of the decedent as owner of the real property; to the contrary, the real estate passes directly to the heirs and the estate has no interest in the land. *Coles v. Jamerson*, 112 Va. 311, 71 S.E. 618 (1911). Thus, the estate is not the "unit owner" within the meaning of the Bylaws of The Greens at Westcott Ridge. Further, your commissioner finds that the decedent's estate is insolvent. When an estate is insolvent, no interest is allowed on the claims against the estate. *Virginia Surety Co. v. Hilton*, 181 Va. 952, 27 S.E.2d 62 (1943)(interpreting the predecessor to § 64.1-170). This is consistent with the adoption of the rule in Virginia disallowing interest on claims against insolvent entities. *See, e.g. Swiss Re Life Co. v. Gross*, 253 Va. 139, 479

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<sup>1</sup> 29 Va. Cir. 199, 1992 WL 884963 (Loudoun 1992)

<sup>2</sup> *Id.*

<sup>3</sup> The Greens at Wescott Ridge Condominium Bylaws, p.24 Article VI, Section 3 (2001)

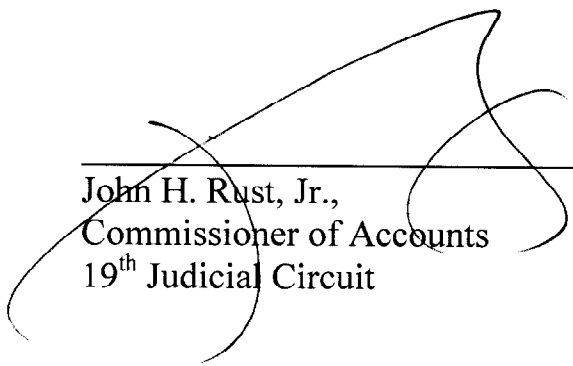
<sup>4</sup> *Id.* at p. 25 Article VI, Section 4

S.E.2d 857 (1997)(insolvent insurance company); *Metompkin Bank v. Bronson*, 172 Va. 494, 2 S.E.2d 323 (1939)(insolvent banking institution). Your commissioner is of the opinion that the late charges assessed subsequent to the decedent's date of death in the instant matter are substantially equivalent to interest charges and the same should not be allowed as charges against a decedent's estate when the estate is insolvent.

Your commissioner has reviewed the Resident Transaction Report, submitted by the claimant, and finds that the decedent owed a total balance of \$15.36 as of the date of the decedent's death. This represents the total amount due to the condominium association from the decedent's estate. Therefore, your commissioner allows the claim by The Greens at Wescott Ridge in the total amount of \$15.36 and the balance of the claim is denied.

As the estate is insolvent, the assets are to be distributed pursuant to the priorities established by § 64.1-157 of the Virginia Code. The executor submitted to your commissioner a Proposed Disbursements of Remaining Assets, a copy of which is attached hereto as Exhibit 2. Your commissioner finds that the claim by Fairfax County for the decedent's unpaid personal property tax is a priority 8 claim; the remaining items listed in Exhibit 2 are priority 1 administrative expenses pursuant to § 64.1-157 of the Virginia Code. Further, your commissioner approves of the proposed executor's fee in the amount of \$544.28. All claims other than those listed in Exhibit 2 are to be treated as priority 9 claims and should be satisfied at their pro rata share of the balance of the estate.

Respectfully submitted this 31<sup>st</sup> day of December, 2008.



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John H. Rust, Jr.,  
Commissioner of Accounts  
19<sup>th</sup> Judicial Circuit


Commissioner's Fee for this Report	Waived	
<u>Publication costs</u>	<u>\$ 10.00</u>	
Total Amount Due	\$ 10.00	- UNPAID

cc: William R. Clemmons, Co-Executor  
Alicia C. Hill, Co-Executor  
Greens at Wescott Ridge Condominium Association  
County of Fairfax, Department of Tax Administration

I, JOHN T. FREY, Clerk of the Circuit Court of Fairfax County, Virginia, do hereby certify that the foregoing Account or Report has been filed in my office for more than fifteen days, and that no exceptions have been filed thereto, and the same is now recorded pursuant to the provisions of §§26-33 and 26-35 of the Code of Virginia, as amended.

Teste: JOHN T. FREY, Clerk

1/22/09  
Date

By:   
Deputy Clerk

October 28, 2008

Mercer Prigiani  
112 South Alfred St.  
Suite 200  
Alexandria, VA 22314

Re: 4174A Lochleven Trail  
Greens at Westcott Ridge  
Fairfax, VA

Sir or Madam

My understanding is that a claim has been filed by your office against the estate of Melissie C. Rumizen, deceased, in the amount of \$2,589.34.

In confirmation of my phone message left with Gretchen Robertson on October, 28, 2008, please be advised that the Co-Executors are disputing this claim on the basis that the estate is insolvent. A hearing has been scheduled for November 3, 2008 at 10:00 AM at the office of the Fairfax County Commissioner of Accounts, 10555 Main St, Suite 500, Fairfax, VA 22030. You may wish to have representation.

I apologize for the short notice and regret any inconvenience it may have caused. The Co-Executors were unaware of your claim until notified by the Commissioner of Accounts office earlier this year, not having received any communication directly from Mercer Prigiani.

Sincerely

William R. Clemmons  
5924 North Shore Dr  
Baton Rouge, LA 70817  
(225) 753-1868

cc: Alicia C. Hill, Co-Executor  
10424 Duryea Dr  
Richmond, VA 23235

EX. 1

**Proposed Disbursements of Remaining Assets**  
**Estate of Melissie C. Rumizen**  
**Fiduciary No, 2007-0000060**

Estate Assets per First Accounting		\$2,596.79
Additional Receipts		
COBRA refund 1/29/08	\$39.90	
COA Return of Overpayment on filing fee 4/11/08	\$434.00	
IRS Fed Tax Refund - 2006 Amended return 5/9/08	\$1,493.38	
Gain in Tower Fed Credit Union Acct 196374	\$0.51	
SubTotal	<u>\$1,967.79</u>	\$4,564.58
Additional Priority Expenses Already Disbursed		
Alicia C. Hill, reimbursement, County of Fairfax property tax for auto - 2006	\$105.31	
Grimes Insurance Agency bonding premium (receipt attached)	\$1,398.00	
Fairfax Commissioner of Accounts filing fee	\$600.00	
Sub Total	<u>\$2,103.31</u>	
Current Estate Assets		\$2,461.27
Proposed Disbursements		
Travel Expense January, 2007 for estate inventory	\$569.50	
W R Clemmons reimbursement - County of Fairfax property tax for auto - 2007 (receipt attached) - \$26.15	\$26.15	
W R Clemmons reimbursement - postage (receipt attached) - \$23,82	\$29.34	
Bonding reduction petition filing fee	\$53.00	
Commissioner of Accounts, 2nd filing fee - \$116.00	\$116.00	
W. R. Clemmons reimbursement, travel expense (2246 miles @ \$0.50/mile) for hearing	\$1,123.00	
Sub Total	<u>\$1,916.99</u>	
Projected Estate Assets		\$544.28
Proposed Executor's Fees		
W R Clemmons, Co-Executor's fee	\$272.14	
Alicia C, Hill, Co-Executor's fee	\$272.14	
Sub Total Executor's fees	<u>\$544.28</u>	
Residual Assets		\$0.00

Ex. 2