

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: October 15, 2018 4:18 PM FILING ID: 4F7FEB318683B CASE NUMBER: 2018CV33011
Plaintiff: Gerald Rome, Securities Commissioner for the State of Colorado v. Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424
MOTION TO APPROVE SETTLEMENT AGREEMENT WITH WBF/CT ASSOCIATES, LLC	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving a settlement agreement he has reached with WBF/CT Associates, LLC. A copy of the “Settlement Agreement” is submitted with this motion as **Exhibit 1**.

I. Background

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner, Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to COLO. REV. STAT. § 11-51-602(1), C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities and their respective properties and assets, as well as their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. On or about March 21, 2018, WBF/CT Associates, LLC (“Lender”) extended a line of credit of up to \$1,200,000.00 to Dragul (the “LOC”).¹ The LOC was evidenced by a March 21, 2018, Promissory Note and Loan Agreement, and was secured and cross-collateralized by 11 residential properties that are property of the Receivership Estate (the “Collateral”). The Collateral is identified on Attachment 1 to **Exhibit 1**. Lender later recorded second deeds of trust on the Collateral. As of the date of the Settlement Agreement, the outstanding balance on the LOC was \$1,120,000.00.

5. A dispute exists between the Receiver and the Lender as to whether Lender holds perfected liens against the Collateral and whether Lender’s deeds of trust on the Collateral are subject to avoidance. The Settlement Agreement resolves that dispute and paves the way for payment of funds to the Estate from sale of the Collateral.

II. The Settlement Agreement is in the Best Interests of the Estate and its Creditors.

6. The Receivership Order grants the Receiver the authority to:

a. Pay obligations incurred by Dragul and the GDA Entities prior to the appointment of the Receiver which are deemed necessary or advisable for the preservation or protection of the Estate (Receivership Order at 8, ¶ 13(h); at 11, ¶ 13(q));

¹ The Receiver and Lender are referred to as the “Parties.”

b. Sell or otherwise dispose of Estate property, and obtain Court approval for any sale for greater than \$10,000 (Receivership Order at 12, ¶ 13(t)); and

c. Establish procedures for asserting claims against the Estate, resolving claim disputes, and distributing proceeds from the sale of Receivership property (Receivership Order at 12, ¶ 13(u)).

7. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver's settlement agreement. In analogous bankruptcy contexts courts consider whether "the settlement is fair and equitable and in the best interests of the estate." In considering whether to approve a settlement, bankruptcy courts consider four primary factors: "the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views." *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

8. Considering these factors, the Court should approve the Settlement Agreement with Lender. The Settlement Agreement resolves the Parties' dispute as to how the net sales proceeds from the sale of the Collateral should be distributed. Lender contends it is entitled to 100% of the net sales proceeds until the outstanding balance of the LOC has been paid in full. Under the Settlement Agreement, Lender has agreed to accept 70% of the net sales proceeds until the outstanding balance of the LOC is paid in full, after which it has agreed to release any remaining deeds of trust it holds on the Collateral. If 70% of the net sales proceeds from the Collateral does not satisfy the entire outstanding balance of the LOC, the Settlement Agreement provides Lender will retain an unsecured claim against the Estate for any remaining balance.

9. The Settlement Agreement will allow the Estate to sell the Collateral and retain 30% of the net proceeds of those sales. The Estate needs funds for continued administration, and the Settlement Agreement will facilitate the Estate's receipt of funds and the sale of the Collateral without further dispute. Indeed, contemporaneously with filing this Motion, the Receiver is filing a motion seeking approval to sell one of the Collateral properties, 11188 Campsie Fells Ct., Las Vegas, Nevada. Approval of this Motion will result in the Estate receiving approximately \$38,000 from that sale and avoiding litigation regarding the distribution of net sales proceeds from that sale, as well as other sales of the Collateral.

10. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on all currently known creditors of the Estate.

WHEREFORE, the Receiver respectfully requests the entry of an Order approving the Settlement Agreement.

Dated: October 15, 2018.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2018, I served a true and correct copy of the foregoing **MOTION TO APPROVE SETTLEMENT AGREEMENT WITH WBF/CT ASSOCIATES, LLC** via CCE to the following:

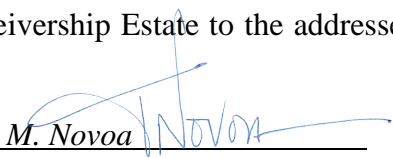
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Real Estate Services, LLC and GDA Real
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A copy of the Motion was also served by electronic mail and/or U.S. Mail first-class, postage-prepaid on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

/s/ Terri M. Novoa 
Terri M. Novoa