

FILED IN DENVER
DISTRICT COURT
DENVER, COLORADO

DISTRICT COURT, CITY AND COUNTY OF DENVER,
STATE OF COLORADO

Court Address:
1437 Bannock Street
Denver, CO 80202

19 JAN 22 PM 3: 51

DATE FILED: January 22, 2019
CASE NUMBER: 2018CV33011

Plaintiffs: **CHRIS MYKELBUST, Securities
Commissioner for the State of Colorado**

▲ COURT USE ONLY ▲

v.

Defendants: **GARY DRAGUL, GDA REAL ESTATE
SERVICES, LLC, and GDA REAL
ESTATE MANAGEMENT LLC.**

Case Number: 2018CV33011

Division: 424

Name: James A. Thomas, #13501
David M. Rich, #15211
Kim L. Ritter, #22725
MINOR & BROWN, P.C.
Address: 650 South Cherry Street, Suite 1100
Denver, CO 80246
Phone Number: (303) 376-6020
Fax Number: (303) 320-6330
E-mail: jthomas@mb-law.law
drich@mb-law.law
kritter@mb-law.law

**BPI, INCORPORATED'S OBJECTION TO RECEIVER'S MOTION FOR ORDER
AUTHORIZING SALE OF HAPPY CANYON SHOPPES AND NOTICE OF OFFER**

COMES NOW, BPI, Incorporated by and through its attorneys Minor & Brown, P.C., for BPI, Incorporated's Objection to Receiver's Motion for Order Authorizing Sale of Happy Canyon Shoppes and Notice of Offer states as follows:

Duty to Confer

Pursuant to C.R.C.P. 121, §1-15(8), undersigned counsel contacted the attorneys representing the Securities Commissioner, the Receiver, and Defendant Dragul. Counsel for the Receiver does not object to this pleading. Counsel for the Securities Commissioner does not take a position. Counsel for Defendant Dragul did not respond.

Objection

1. BPI, Incorporated (“BPI”) is an entity that controls and manages affiliated entities that invest in real estate. All decisions of these entities are done through BPI and its President, Bradley (“Buzz”) H. Calkins, Jr.

2. BPI learned of the above captioned receivership action and the Receiver Harvey Sender’s desire to sell the Happy Canyon Shoppes. In an effort to purchase the property, BPI contacted the Receiver in September, 2018 and made several offers in an attempt to get it under contract which were rejected.

3. On January 16, 2019 the Receiver filed *Receiver’s Motion for Order Authorizing Sale of Happy Canyon Shoppes* for the sale of the property to Alberta Development Partners, LLC (“Alberta”) for \$23,625,000.

4. BPI objects to the sale of the Happy Canyon Shoppes to Alberta Development Partners, LLC under the terms set forth in the Purchase and Sale Agreement because the terms and price for the real property do not represent the best offer for the real property nor maximize the return for the Receivership Estate. The Receiver is a fiduciary and consistent with those duties, as noted in paragraph 2.1 of the Purchase and Sale Agreement, the Receiver can and should select a higher or better offer. BPI’s last offer to the Receiver was ignored by the Receiver; it was

superior to the current offer submitted to this Court. BPI is now increasing its offered price on the terms set forth below.

Offer

5. BPI will execute a Purchase and Sale Agreement on the same terms and conditions as the Alberta agreement with only the following changes:

- (a) BPI will pay \$24,000,000 (Twenty-Four Million Dollars and No Cents); and
- (b) The earnest money deposit under the agreement (\$250,000) (Two Hundred and Fifty Thousand Dollars and No Cents) will be non-refundable to BPI other than upon a termination of the agreement for seller's default. The contingencies in the Alberta Purchase and Sale Agreement providing for Alberta's recovery of its earnest money upon unresolved title objections (Section 3.2), inspection issues (Section 4.3), and tenant estoppel issues (Section 4.4), will not apply.
- (c) The agreement will be assignable by BPI to a qualified intermediary in order for BPI and its affiliates to acquire the Happy Canyon Shoppes in a tax-deferred exchange under Section 1031 of the Internal Revenue Code.

6. BPI's offer is superior than the offer of Alberta Development Partners, LLC because the purchase price is \$375,000 more than the current offer, and the \$250,000 earnest money deposit is non-refundable except upon the seller's breach of the agreement.

7. BPI's offer above provides more money for the Receivership Estate and should be accepted with the terms currently set forth in the Purchase and Sale Agreement submitted to this Court.

WHEREFORE, BPI, Incorporated objects to the sale of the Happy Canyon Shoppes under the terms presented to this Court and requests this Court to accept the offer of BPI, Incorporated, to order the sale of the real property under the terms of the submitted Purchase and Sale Agreement with the amendment to the price and earnest money set forth in this pleading, and for such other and further relief as is just and proper.

Dated: January 22, 2019.

Respectfully submitted,

MINOR & BROWN, P.C.

A handwritten signature in cursive script, appearing to read "David M. Rich".

James A. Thomas, #13501

David M. Rich, #15211

Kim L. Ritter, #22725

Attorneys for BPI, Incorporated

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above **BPI, INCORPORATED'S OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HAPPY CANYON SHOPPES AND NOTICE OF OFFER** was filed via hand delivery and served via U.S. Mail, proper postage prepaid, this 22nd day of January, 2019, to all parties who have entered an appearance in this case and including:

Matthew J. Bouillon
Robert W. Finke
Sueanna P. Johnson
Office of the Attorney General
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203
*Attorneys for Plaintiff Chris Myklebust
Securities Commissioner for the State of
Colorado*

Rachel A. Sternlieb
Michael T. Gilbert
Patrick D. Vellone
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202
Attorneys for Receiver

Jeffrey A. Springer
Springer and Steinberg, P.C.
1600 Broadway Street, #1200
Denver, CO 80202
*Attorney for Defendants Gary Dragul, GDA
Real Estate Management, LLC, and GDA
Real Estate Services, LLC*

It is understood by BPI, Incorporated that all pleadings are listed and filed on a special web site regarding this Receivership matter at: dragulreceivership.com


Megan Deas