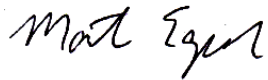


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF CO v. Defendant(s) GARY DRAGUL et al.	DATE FILED: February 26, 2019 3:36 PM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order: Motion for Order Authorizing Sale of Village Inn Pad w/attach	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 2/26/2019



MARTIN FOSTER EGELHOFF
District Court Judge

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</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 pvellone@allen-vellone.com mgilbert@allen-vellone.com rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424
MOTION FOR ORDER AUTHORIZING SALE OF VILLAGE INN PAD	

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 the sale of real property known as the Village Inn Pad located at 5290 East Arapahoe Road, Centennial, Colorado (the “Property”), to Sidford Capital

Partners, LLC for \$1,200,000 pursuant to the Purchase and Sale Agreement submitted as **Exhibit 1** with this motion (the “Sidford PSA”).

I. The Receivership Order authorizes the Receiver to sell the Property.

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, their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. The Receivership Order grants the Receiver the authority to 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)).

5. 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 interested parties as authorized by this Court's February 1, 2019, Order Granting the Receiver's Motion to, among other things, Clarify Ongoing Notice Procedure. Upon acceptance, this Motion will also be posted on the Receiver's website, <http://dragulreceivership.com>.

II. Village Inn Pad: ownership, management, and debt

6. The Village Inn Pad is a single structure (a "pad") located at 5290 East Arapahoe Road, Centennial Colorado. Prior to the Receiver's appointment, the Property was leased and operated as a restaurant.

7. The Property was purchased in August 2017 for \$500,000.00 by AV Pad 17, LLC, a Single Purpose Entity ("SPE") that owns the property in fee simple. AV Pad 17, LLC is 100% owned by Gary J. Dragul, and managed by GDA Real Estate Management, Inc., whose president and sole owner is also Gary J. Dragul (collectively, the "Manager"). The Property was purchased with cash.

8. The Property is encumbered by a Deed of Trust recorded on October 23, 2017 in favor of WBF/CT Associates, LLC ("WBF" and the "WBF Deed of Trust") securing a \$1,000,000 loan made to Gary Dragul personally. Under an October 4, 2017, Loan Agreement, WBF agreed to immediately advance \$700,000, and to advance an additional \$300,000, which it did on March 28, 2018 (the "WBF Loan"). Upon information and belief, the WBF Loan matured prior to the Receiver's

appointment.¹ It does not appear that AV Pad 17, LLC received reasonably equivalent value in exchange for the WBF Deed of Trust, which may therefore be avoidable pursuant to under COLO. REV. STAT. §§ 38-8-105 and 106.

9. Notwithstanding the Receiver's efforts to lease the Property, it has remained vacant since the Receiver's appointment on August 30, 2018, and the Estate has not received any rental income from the Property.

III. Sale of the Property is in the best interests of the Estate and its creditors.

10. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver's proposed sale. In analogous bankruptcy contexts, approval of a sale of property pursuant to Section 363 of the Bankruptcy Code is warranted where there exists a "sound business reason." *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). "In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a 'business judgment test.'" *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

11. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property include (where applicable): (1) the

¹ Under the terms of the loan agreement, the "maturity date" is "five months after Borrower receives the initial \$700,000, which occurred in October 2017.

proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or lease the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted). Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; see *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that “[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion”).

12. In the Receiver’s Judgment the proposed sale of the Property is in the best interest of the Estate and its creditors. The Receiver has hired the nationally-recognized firm of Marcus & Millichap to market the Property and has negotiated with the Buyer. Closing under the Sidford PSA is to occur within 45 days of the date the PSA was executed (or on March 22, 2019).

13. Presently, the Estate lacks sufficient cash flow to service the loans and operating expenses on the Property.² The Receiver has been using funds from other sources to fund critical expenses for the property.

14. Sale of the Property will generate proceeds of \$1,152,000.00 (\$1.2 million minus a 4% commission of \$48,000). There will be additional closing costs in an as of yet undetermined amount. If the WBF Deed of Trust were paid at closing, the Estate is likely to receive over \$100,000. Alternatively, the Receiver may seek to escrow the net sales proceeds pending a determination of the validity of the WBF lien.

15. Regardless of how the net proceeds from the proposed sale are distributed, the Estate will receive at least \$100,000.00 from the proposed sale. Absent a timely sale, the Property is at risk to being lost in foreclosure.

WHEREFORE, the Receiver asks the Court to grant this Motion and approve the proposed sale of the Property in accordance with the terms of the Contract.

Dated: February 14, 2019

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: /s/ Michael T. Gilbert 

Patrick D. Vellone, #15284

Michael T. Gilbert, #15009

Rachel A. Sternlieb, #51404

ATTORNEYS FOR THE RECEIVER

² According to GDA documents and records, the estimated operating expenses for the Property in 2018 exceeded \$20,000.00.

CERTIFICATE OF SERVICE

I certify that on February 14, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF VILLAGE INN** via CCE to the following:

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Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
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LLC and GDA Real Estate
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E-mail: brad@sidfordcapital.com

Village Inn Property Buyer

By: /s/ Terri M. Novoa 
Allen Vellone Wolf Helfrich & Factor, P.C.

CERTIFICATION OF E-SERVICE ON CLAIMANTS

A copy of the Motion will be sent out by electronic mail in accordance with the Court's Order regarding same, on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

By: /s/ Terri M. Novoa 
Allen Vellone Wolf Helfrich & Factor P.C.

Attachment to Order - 20180413391