

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 (720) 865-8612</p>	<p>DATE FILED: March 20, 2019 4:18 PM FILING ID: 7234507622D93 CASE NUMBER: 2018CV33011</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>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<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</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S RESPONSE IN OPPOSITION TO SECURED CREDITORS’ MOTION TO PROHIBIT AND/OR LIMIT THE RECEIVER’S USE OF CASH COLLATERAL</p>	

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”), hereby submits his

Response in Opposition to Secured Creditors' Motion to Prohibit and/or Limit the Receiver's Use of Cash Collateral (the "Motion") filed by creditors Victoria Capital Trust, f/k/a Toorak Repo Seller 1 Trust and Normandy Capital Trust (jointly, "Secured Creditors").

I. The Estate has been funding the essential expenses for the Properties and has already provided an accounting to the Secured Creditors.

In their Motion and the proposed order submitted with it, Secured Creditors ask the Court to order the Receiver to: (1) provide an accounting for the rents and expenses paid on 15 residential properties on which they hold mortgages (the "Properties"); (2) segregate the "cash collateral" attributable the Properties; (3) use the rents to pay essential expenses for the Properties (taxes, insurance, and property management fees pursuant to an approved budget); and (4) then to pay the mortgage debts. *See* Order Regarding Secured Creditors' Motion to Prohibit and/or Limit the Receiver's Use of Cash Collateral ("Proposed Order").

On March 10, 2019, the Receiver provided the requested accounting to Secured Creditors' counsel; a copy is attached as **Exhibit 1**. It shows that from the Receiver's appointment through February 28, 2019, the Estate received rents from only 7 of the 15 Properties, totaling \$64,650. During that time, the Estate paid \$91,801.34 in essential expenses for the Properties. The Estate is thus out-of-pocket \$27,151.34 for carrying the expenses for the Properties, and this does not account for any management or Receivership fees that may properly be surcharged against any income received from the Properties. Given the lack of excess cash to be fighting

about, in the March 10th email transmitting the accounting to Secured Creditors' counsel, the Receiver asked Secured Creditors to withdraw the Motion and allow the Receiver to market and sell the Properties without further interference or expense. Secured Creditors did not respond to that request.

There is no excess cash collateral. The Receiver is already using the rents from the Properties to preserve and fund their essential operating expenses. The Receiver is marketing and attempting to sell the Properties for the benefit of the Estate and all its creditors, including the Secured Creditors. If the proposed sales are sufficient to pay off the Secured Creditors' liens, they will be paid in full at closing. If not, the Receiver will seek Court approval to abandon the Properties and Secured Creditors will be able to foreclose their liens. Pending any sales, the Receiver will continue to use the rents from the Properties to fund their essential operating expenses and will provide periodic accountings to Secured Creditors' as may be reasonably requested.

There is no reason to interfere with the process for managing the Estate established by the Court's August 30, 2018, Receivership Order and impose additional burdens on the Receiver and the Estate. Recently, the Receiver hired a property management firm to manage all Estate residential properties, including the Properties at issue. The management fee is \$300 per month per property. Any order requiring the Receiver to manage the Properties for Secured Creditors' benefit, should also require them to pay the Estate's expenses for preserving and attempting to sell the Properties, including allocable Receiver and legal fees.

II. This Court's Receivership Order controls the disposition of rental income from the Properties.

The Receivership Order expressly authorizes the Receiver to collect all accounts receivable and other obligations from Receivership property, and to contract for and obtain services to preserve and protect property of the estate. Receivership Order at 8, ¶¶ 13(e), (f). The Receivership Order also governs how revenues collected by the Receiver are to be applied: first, to pay Receivership expenses, “including the costs and expenses of preserving and liquidating the Receivership Property, taxes incurred from the appointment of the Receiver through the conclusion of the Receivership Proceeding and discharge of the Receiver, and to compensation due the Receiver and any employees, consultants, or professionals” *Id.* at 16, ¶ 22(a). Secured Creditors are third-priority claimants. *Id.* at 17. Thus, under the Receivership Order, the Receiver is already required to pay the necessary expenses of the Properties, to the extent the Estate has sufficient funds do so. Here the Estate has actually been subsidizing the Properties with other Estate funds and has not been surcharging Secured Creditors' collateral with general and administrative expenses.

This is consistent with the case law. Receivers are required to pay operating expenses out of rents and entitled to surcharge collateral for their fees and third-party management costs. *E.g., Chaeussee v. Morningstar Ranch Resorts, Co. (In re Morningstar Ranch Resorts)*, 64 B.R. 818, 822 (Bankr. D. Colo. 1986). And here it is questionable as to whether there is any “cash collateral” at all because the income from the Properties is insufficient to pay their essential operating expenses. *See id.*

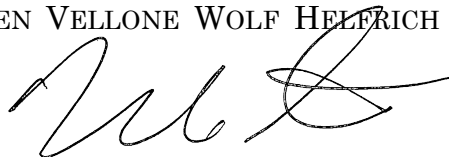
(arguably there is no cash collateral until all expenses are accounted for, only what is left is cash collateral in which the lender has an interest).

In any event, the Secured Creditors' Motion should be denied because it will impose potentially conflicting and additional administrative burdens on the Estate for the sole benefit of the Secured Creditors. Part of the Receiver's obligations already include accounting for Estate assets and providing information to creditors, which he has done with the Secured Creditors and will continue to do. This will allow the Receiver to continue efforts to market and sell the Properties for the benefit of all creditors.

WHEREFORE, the Receiver asks the Court to deny the Secured Creditor's Motion.

Dated: March 20, 2019.

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 March 20, 2019, I served a true and correct copy of the foregoing via the Colorado Courts E-Filing system to the following:

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**Income and Expenses
Residential Properties
September 1, 2018 through February 28, 2019**

DATE FILED: March 20, 2019 4:18 PM
FILING ID: 7234507622D93
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Property	Rental Income	Expenses Paid	Net Amount
2176 South Ash 16, LLC	7,000.00	(2,997.85)	4,002.15
2186 South Ash 16, LLC	1,500.00	(1,313.47)	186.53
2175 South Bellaire 16, LLC	8,000.00	(1,502.52)	6,497.48
2166 South Ash 16, LLC	5,400.00	(2,545.25)	2,854.75
7517 East Davies 17, LLC	13,800.00	(2,552.77)	11,247.23
3593 South Hudson 17, LLC	14,250.00	(1,877.79)	12,372.21
5788 South Lansing 17, LLC	14,700.00	(654.00)	14,046.00
1777 Larimer 17, LLC	-	(4,181.45)	(4,181.45)
1660 North LaSalle 16, LLC	-	-	-
891 Fourteenth Street 17, LLC	-	-	-
5455 Landmark Place 17, LLC	-	(5,805.97)	(5,805.97)
1002 Scottsdale East 6th 17, LLC	-	(3,908.25)	(3,908.25)
1004 Scottsdale East 6th 17, LLC	-	(4,298.89)	(4,298.89)
1005 Scottsdale East 6th 17, LLC	-	(4,082.11)	(4,082.11)
41 South Fairway	-	(56,081.02)	(56,081.02)
Total	64,650.00	(91,801.34)	(27,151.34)