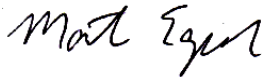


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
<b>Plaintiff(s)</b> GERALD ROME SECURITIES COM FOR THE ST OF et al v. <b>Defendant(s)</b> GARY DRAGUL et al.	DATE FILED: March 29, 2019 8:46 AM CASE NUMBER: 2018CV33011  <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424      Courtroom:
<b>Order: Receivers Motion for Order Authorizing Sale of Estates Interest in Five Hagshama Projects to Isabel Marina LLC (w/attach)</b>	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 3/29/2019



MARTIN FOSTER EGELHOFF  
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO  Denver District Court  1437 Bannock St.  Denver, CO 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Plaintiff:</b> Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendant:</b> Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	
<p>Attorneys for Receiver:  Patrick D. Vellone, #15284  Michael T. Gilbert, #15009  Rachel A. Sternlieb, #51404  ALLEN VELLONE WOLF HELFRICH &amp; 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</p>	<p>Case Number: 2018CV33011  Division/Courtroom: 424</p>
<p><b>RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE’S INTEREST IN FIVE HAGSHAMA PROJECTS TO ISABEL MARINA, LLC</b></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”), asks the Court to enter an order approving the “Master Agreement” and the First Amendment to Master

Agreement submitted with this Motion as **Exhibit 1** (together, the “Master Agreement”)<sup>1</sup> thereby authorizing the sale of the Estate’s interest in the “Five Hagshama Projects” described below.

### **I. Background**

1. On August 15, 2018, Gerald Rome, the former 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 and 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)). The Receivership Order

---

<sup>1</sup> To the extent any terms of this Motion are inconsistent with the Master Agreement, the Master Agreement controls.

provides that “Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects . . . within ten (10) days after service by the Receiver or written notice of such request.” Receivership Order at 21, ¶ 34.

5. The Receiver seeks Court authority to sell the Estate’s interest in the Five Hagshama Projects for \$710,000 to Isabel Marina, LLC (“Isabel” or “Buyer”) pursuant to the Master Agreement. Upon Court approval of the Master Agreement, the parties will negotiate and prepare documents necessary to transfer the Estate’s interest in each of the Five Hagshama Projects to Buyer and any other documents necessary to consummate the transaction.

## II. The Five Hagshama Projects

6. Each of the Five Hagshama Projects is owned as tenants-in-common by at least one Hagshama entity and at least one entity in which Dragul owns an interest. Equity in some of the Dragul entities which own interests in the Five Hagshama Projects is also held by other investors. The following table lists the Five Hagshama Projects and, based on the Receiver’s information and belief, summarizes the equity invested and equity percentages held in each project.

	<b>Receivership property</b>	<b>Hagshama investment</b>	<b>Total investment dollars</b>	<b>Hagshama equity %</b>	<b>Other investment equity</b>	<b>Dragul equity percentage<sup>2</sup></b>
1	Cassinelli Square (Cincinnati, OH)	\$2,880,000	\$3,180,000	90%	10%	4.00%

<sup>2</sup> In some cases, the companies’ records do not appear consistent with respect to Mr. Dragul’s equity percentage in the Five Hagshama Projects and the above estimates are based on the best estimates currently available.

	<b>Receivership property</b>	<b>Hagshama investment</b>	<b>Total investment dollars</b>	<b>Hagshama equity %</b>	<b>Other investment equity</b>	<b>Dragul equity percentage<sup>2</sup></b>
2	Delta Marketplace (Lansing, MI)	\$6,903,141	\$7,353,141	90%	10%	7.07%
3	DU Student Housing (Denver, CO)	\$2,800,000	\$3,650,000	80%	20%	20%
4	Happy Canyon Marketplace (Denver, CO)	\$3,595,298	\$4,035,298	83.71%	16.29%	9.41%
5	Windsor Square (Knoxville, TN)	\$5,603,705	\$6,478,705	90%	10%	3.793%
	<b>Totals</b>	<b>\$21,782,144</b>	<b>\$24,697,144</b>			

7. Hagshama is an Israeli private investment firm that solicits investments from individuals. Those investor funds are then pooled and invested in real estate ventures throughout the world, including the United States. Hagshama is presently responsible for the investments of about 28,000 investors. Globally, it has invested over \$5 billion in various projects, including those with the Receivership Estate.

8. Isabel is independent of Dragul. Isabel Marina, LLC is a Texas limited liability company that is affiliated with Tarantino Properties, Inc., a Texas corporation, which is a full-service real estate company operating in many states, and currently managing over \$2 billion in real estate assets, with over 38 years of experience. Tarantino Properties, Inc. is recognized for its property management expertise by the Institute of Real Estate Management's prestigious designation as an Accredited Management Organization®. Tarantino Properties Inc. and its related companies are led by Anthony Tarantino of Houston. Anthony's real estate experience

includes management, leasing, investment sales, consulting and real estate syndications of all property types including multifamily, retail, office, industrial and hotels. Furthermore, Anthony has represented a variety of clients that include private investors, banks, and national institutional investors such as GE Capital, Lehman Brothers, and Midland Loan Service. More information about Tarantino may be found at: <https://www.tarantino.com>. Under the Master Agreement, Buyer agrees that, to its knowledge, Gary Dragul shall not have an ownership interest in any of the Five Hagshama Projects or the Buyer and will not be employed in any capacity by Buyer, or any successor of Buyer, in any activity related to the Projects. Master Agreement ¶ 7(b).

9. Four of the Five Hagshama Projects are retail shopping centers: (1) Cassinelli Square, (2) Delta Marketplace, (3) Happy Canyon Marketplace, and (4) Windsor Square. These four Projects have other non-Hagshama investors Dragul solicited to invest in those Projects.

10. The fifth Hagshama Project is DU Student Housing. It is a development owned as tenants-in-common by GDA-DU A, LLC (95%), and GDA-DU B, LLC (5%) (the "DU tenants-in-common"). Gary Dragul owns 100% of GDA DU Student Housing Member, LLC, which owns 15.79% of GDA-DU A, LLC. Dragul is also purportedly the sole owner of GDA-DU B, LLC. The DU tenants-in-common acquired three single-family-homes across from the University of Denver intending to develop a 0.43-acre site with a 5-story 60,000 sq. ft. student housing development. Before the Receiver

was appointed, a site development plan for the project had been approved and architectural plans and construction drawings had been prepared but not submitted for approval. No construction has started nor has construction financing been obtained for the project. Although Dragul is listed as owning 20% of the DU project, the Receiver has not discovered any evidence he contributed any cash into the project.<sup>3</sup>

11. The mortgages on the Five Hagshama Projects are in default. Before the Receiver was appointed, the lenders on Delta Marketplace and Windsor Square declared loan defaults. Other than the Delta lender, the lenders on these properties began to sweep the rental income from those properties and to apply them to their loans. The Delta rents have until recently been held in a suspense account, and other than the lender's recent agreement to pay the essential operating expenses for the property, have not been available to the Estate.

12. As indicated above, Hagshama provided approximately 88% of the equity financing for the Five Hagshama Projects. Most of the other equity financing for the Five Hagshama Projects appears to have been obtained from approximately 11 other third-party investors.

---

<sup>3</sup> Although a number of investors appear to have invested in the High Street Condo Project, LLC, which previously owned a portion of the DU Student Housing Project real property, which is now owned by GDA-DU A, LLC and GDA-DU B, LLC, the Receiver is not aware that any of the High Street investors hold membership interests in the GDA-DU entities.

### III. The proposed sale is in the best interests of the Estate and its creditors.

13. 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).

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

15. In the Receiver’s judgment, the proposed sale is in the best interest of the Estate and its creditors. The economics concerning the proposed sale are in part summarized in the following table:

Receivership property	Estimated sale price if property were sold separately <sup>4</sup>	Debt encumbering Five Hagshama Projects <sup>5</sup>	Potential equity claims satisfied	Estimated value of Dragul interest <sup>6</sup>
Cassinelli Square (Cincinnati, OH)	\$2.9 million	\$800,000	\$300,000	\$11,000
Delta Marketplace (Lansing, MI)	\$19 million	\$12.4 million	\$450,000	\$420,000
DU Student Housing (Denver, CO)	\$3 million	\$1.84 million	0	\$150,000
Happy Canyon Box (Denver, CO)	\$6.5 million	6.28 million	\$345,000	\$7,000
Windsor Square (Knoxville, TN)	\$16.25 million	\$12.1 million	\$625,000	\$143,000
<b>Total</b>	<b>\$47.65 million</b>	<b>\$33.4 million</b>	<b>\$1,720,000</b>	<b>\$731,000</b>

<sup>4</sup> The estimated sale price for the properties (except for Delta) is based on offers the Receiver has obtained for those properties. The Delta price is based on a market evaluation by Marcus & Millichap, commercial real estate brokers hired by the Estate.

<sup>5</sup> The listed debt is based on the best estimates presently available.

<sup>6</sup> The value of Dragul’s equity interest is estimated based on known, applicable operating agreements.

16. **Purchase price.** Under the proposed transaction, the Estate would sell Dragul's minority, non-controlling interest in the Five Hagshama Projects for \$710,000 to Isabel. The estimated value of those interests is approximately \$731,000. In the Receiver's opinion, it is unlikely that marketing and selling those interests on the open market would yield a better monetary result for the Estate. The proposed transaction also resolves potentially expensive and time-consuming litigation with Hagshama over control of, and the Estate's ability to sell, the underlying Project properties.

17. **Closing and potential exclusions.** Under the Master Agreement, Isabel is required to deposit the \$710,000 purchase price into an escrow account by the close of business on March 19, 2019. Buyer has no due diligence period. The only contingency to the sale is obtaining Court approval within 30 days. Master Agreement ¶ 2. Closing on the transaction is to occur within five business days of Court approval. At that time, the \$710,000 will be released to the Estate. *Id.* ¶ 5.

18. **Assumed liabilities.** For any acquired Hagshama Project, Buyer will take subject to all debts associated with that Project, including all mortgages, mechanics' liens, unpaid taxes, etc., and undertake commercially reasonable efforts to pay those obligations. The proposed transaction may eliminate over \$33 million in claims against the Estate (most of which are secured).

19. **Investor consents.** Four of the Five Hagshama Projects have a limited number of non-Dragul related investors. Under the terms of the proposed transaction,

informed written consent is to be obtained from each of those investors, who will be required to either: (a) elect to retain their membership interest in the Project in which they hold a membership interest, admit Buyer as a member and manager, and release any claim they may have against the Estate and as to the Buyer prior to the date of closing relating to that investment, or (b) relinquish their membership interest in exchange for filing a claim against the Estate. A copy of the Disclosure and Information Statement, and the Consent and Release form being provided to these investors is attached as Exhibit 1 to the Master Agreement. Obtaining investor consents is a material part of the Master Agreement.

20. To the extent a member in any of the Five Hagshama Projects does not timely object to this Motion or return a Consent and Release Form, the member should be deemed to have consented to the relief sought in this Motion and the terms of the Master Agreement. Notice of this Motion is being provided to all investors and interested parties as provided in this Court's February 1, 2019, Order Granting the Receiver's Motion to, among other things, Clarify Ongoing Notice Procedure, and upon acceptance by the Court will be posted on the Receiver's website, <http://dragulreceivership.com>. Should members in any of the Five Hagshama Project properties elect to retain their membership interests, claims against the Estate could potentially be reduced by \$1,720,000 as set forth in the table in paragraph 15.

21. Critically, absent the proposed sale, the Estate is at risk of losing any interest in the Five Hagshama Projects. Each of the loans on the Projects is in default;

one is in foreclosure. Virtually all of the rental income being generated from the underlying properties is being swept by the lenders. Meanwhile, the Estate is unable to pay critical expenses for the Five Hagshama Projects and lacks funds to pay debt service on any of them. Due to the cash position of the Estate, there is a risk the properties may be lost to foreclosure eliminating any return to the Estate.

22. The proposed sale transaction also avoids potential costly litigation with Hagshama concerning the Receiver's authority to sell the Five Hagshama Projects without Hagshama's consent. Hagshama contends the operating agreements for the Projects require its consent to any sale of the underlying property and has indicated it will not consent to the Receiver selling the properties now. The Five Hagshama properties are, however, held in tenancies-in-common with Dragul entities now controlled by the Receiver, arguably affording the Receiver equal rights to control the disposition of the property. Litigating these control and liquidation issues will be expensive and time consuming for the Estate, during which time the properties may ultimately be lost to foreclosure or otherwise depreciate. The Master Agreement resolves these issues without litigation with its attendant costs and uncertainties; Hagshama has consented to and approves the Master Agreement.

23. In addition, the Master Agreement has been executed in connection with an agreement the Receiver has reached with Hagshama that resolves Hagshama's objections to the Receiver's pending motions to sell the Clearwater Collection and Hickory Corners properties. *See* Receiver's Motion for Order Approving Agreement

with Hagshama Concerning Sale of Clearwater Collection and Hickory Corners (filed March 18, 2019). Closing these sales and the Master Agreement sale will eliminate substantial Estate expenses and result in the payment of substantial funds to the Estate.

WHEREFORE, the Receiver asks the Court to approve the Master Agreement submitted as **Exhibit 1**, authorize the sale of the Estate's interest in the Five Hagshama Projects to Isabel, and authorize the Receiver to take all actions and execute all further documents without further Court approval that are necessary to consummate the transaction.

Dated: March 19, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: /s/ Michael T. Gilbert 

Patrick D. Vellone

Michael T. Gilbert

Rachel A. Sternlieb

1600 Stout Street, Suite 1100

Denver, Colorado 80202

(303) 534-4499

E-mail: pvellone@allen-vellone.com

E-mail: mgilbert@allen-vellone.com

E-mail: rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I certify that on March 19, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN FIVE HAGSHAMA PROJECTS TO ISABEL MARINA, LLC** via CCE to the following:

Robert W. Finke  
Sueanna P. Johnson  
Matthew J. Bouillon Mascareñas  
Ralph L. Carr Judicial Building  
1300 Broadway, 8th Floor  
Denver, Colorado 80203

***Counsel for Chris Myklebust, Colorado Securities Commissioner***

Kenneth Rossman.  
Lewis Roca Rothgerber Christie, LLP  
1200 17<sup>th</sup> Street, Suite 3000  
Denver, CO 80202  
krossman@lrrc.com

***Counsel for the Hagshama Entities***

Ari M. Charlip  
Dickinson Wright, PLLC  
2600 Big Beaver Rd., Suite 300  
Troy, MI 48084  
ACharlip@dickinson-wright.com

***Counsel for Wells Fargo N.A.***

Michael J. Baum  
Jeffery M. Lippa  
Greenberg Traurig, LLP  
77 West Wacker Dr., Ste. 3100  
Chicago, IL 60601  
baumm@gtlaw.com  
lippaj@gtlaw.com

***Counsel for AFF II Denver, LLC***

Jeffery A. Springer  
Springer and Steinberg P.C.  
1600 Broadway, Suite 1200  
Denver, Colorado 80202

***Counsel for Defendants, Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC***

Harvey J. Heller  
Coats Rose, P.C.  
9 Greenway Plaza, Suite 1000  
Houston, TX 77046-0905  
hheller@coatsrose.com

Richard Bolton  
Ragsdale Liggett PLLC  
2840 Plaza Place, Suite 400  
Raleigh, NC 27612  
rbolton@rl-law.com  
andy@novacap.com

***Counsel for Nova Capital Partners, LLC***

David S. Chipman  
Dean B. Shaffer  
Chipman Glasser, LLC  
2000 S. Colorado Blvd.  
Tower One, Ste. 7500  
Denver, CO 80222  
dchipman@chipmanglasser.com  
dshaffer@chipmanglasser.com

***Counsel for U.S. Real Estate Credit Holdings III, L.P.***

Charles H. Jacobs  
Lohf Shaiman Jacobs Hyman & Feiger  
PC  
950 S. Cherry St., Suite 900  
Denver, CO 80246-2666  
cjacobs@lohshaiman.com

Jose Luis Machado  
Law Offices of Machado & Herran, P.A.  
8500 S.W. 8<sup>th</sup> Street, Suite 238  
Miami, FL 33144  
jose@machadolaw.com

*Counsel for Fortune Capital Partners, Inc.*

*Counsel for Greeley Asset Funding, LLC*

**CERTIFICATION REGARDING ON CREDITORS**

A copy of the Motion will also be served by electronic mail in accordance with the Court's Order regarding same on all currently known creditors of the Receivership Estate for whom the Receiver has email addresses and who have asked to receive email notice as set forth on the service list maintained in the Receiver's records.

*By: /s/ Victoria Ray*

Allen Vellone Wolf Helfrich & Factor P.C.