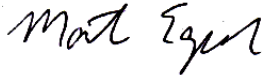


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
<b>Plaintiff(s)</b> GERALD ROME SECURITIES COM FOR THE ST OF et al v. <b>Defendant(s)</b> GARY DRAGUL et al.	DATE FILED: March 29, 2019 8:45 AM CASE NUMBER: 2018CV33011  <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424      Courtroom:
<b>Order: RECEIVERS MOTION FOR ORDER APPROVING AGREEMENT WITH HAGSHAMA CONCERNING  SALE OF CLEARWATER COLLECTION AND HICKORY CORNERS (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</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;"><b>RECEIVER’S MOTION FOR ORDER APPROVING AGREEMENT WITH HAGSHAMA CONCERNING SALE OF CLEARWATER COLLECTION AND HICKORY CORNERS</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 “Agreement” submitted with this Motion as **Exhibit 1**<sup>1</sup> thereby authorizing the agreement reached between the Receiver and Hagshama about the sale of, and distribution of proceeds from, Clearwater Collection and Hickory Corners.

### **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 under 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

---

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

greater than \$10,000 (Receivership Order at 12, ¶ 13(t)). The Receivership Order 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 asks the Court to approve the Agreement it has reached with Hagshama, which resolves the parties’ disputes over the sales of Clearwater Collection and Hickory Corners. Upon Court approval, Hagshama will withdraw its objections to both the Clearwater Collection and Hickory Corners sale motions, which will resolve the only objection filed to the Clearwater sale, and remove the major impediment to the Hickory sale.<sup>2</sup>

## **II. Clearwater Collection and Hickory Corners**

6. Clearwater Collection and Hickory Corners are retail shopping centers owned as tenants-in-common by at least one Hagshama entity and at least one entity in which Dragul owns an interest.<sup>3</sup> Equity in some of the Dragul entities that own

---

<sup>2</sup> One other creditor, National Commercial Builders, Inc., has objected to the Receiver’s motion to sell Hickory Corners. NCB’s objection is addressed in the Receiver’s Response to: (1) National Commercial Builders, Inc.’s Objection to Receiver’s Motion for Order Authorizing Sale of Hickory Corners; and (2) its Motion for Relief from Stay (filed March 18, 2019). As set forth in that Response, NCB does object to the Hickory Corners sale itself, but rather to distributed the sales proceeds without paying its mechanics’ lien on the Hickory Corners property.

<sup>3</sup> 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

interests in the Hagshama Projects is also held by other investors. The following table shows the respective ownership percentages in Clearwater Collection and Hickory Corners:

Receivership property	Hagshama equity %	Other investment equity	Dragul equity percentage <sup>4</sup>
Clearwater Collection (Clearwater, FL)	Approx. 54%	Approx. 46%	6.76%
Hickory Corners (Hickory, NC)	64.59%	35.41%	25.875%

7. Mortgages on both Clearwater Collection and Hickory Corners are in default and lenders on both properties have commenced foreclosures. Before the Receiver was appointed, the Clearwater Collection lender declared loan defaults and began to sweep the rental income from the property and to apply it to its loan.

8. **Hickory Corners.** On February 8, 2019, the Receiver filed a motion seeking Court approval to sell Hickory Corners to Nova Capital Partners, LLC for \$13,600,000. Hagshama objected on February 19, 2019, arguing that applicable operating agreements, the tenant-in-common common agreement, and State law all require its consent to the sale, and it did not consent.

---

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.

<sup>4</sup> In some cases, the companies' records do not appear consistent with respect to these equity percentages. The above estimates are based on the best estimates presently available. The Receiver and Hagshama have agreed to agree to the accurate ownership percentages before distributing Clearwater Collection and Hickory Corners sales proceeds.

9. On March 8, 2019, the Receiver filed a reply in support of the sale motion, and on March 14, 2019, Hagshama filed a sur-reply. A hearing on the Hickory Corners sale motion is set for March 21, 2019, at 3:00 pm MDT.

10. **Clearwater Collection.** On February 21, 2019, the Receiver filed his motion seeking Court approval to sell Clearwater Collection to Fortune Capital Partners, Inc. for \$17,100,000.

11. On March 1, 2019, Hagshama objected to the sale raising arguments similar to those it made to the Hickory Corners sale. On March 14, 2019, the Receiver filed a reply in support of his Clearwater Corners sale motion.

**III. The proposed Agreement is in the best interests of the Estate and its creditors.**

12. There exists little Colorado authority regarding factors the Court should consider whether to approve a Receiver's proposed sale. In analogous bankruptcy contexts, approval of a sale of property under 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).

13. 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 soon; (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 alternative of use, sale or lease the proposal envisions; and (7) most important 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”).

14. In the Receiver’s judgment, the proposed Agreement is in the best interest of the Estate and its creditors. Hagshama contends the Clearwater Collection and Hickory Corners governing documents require its consent to the pending sale motions, and has indicated it will not consent to the Receiver selling the properties now. Litigating these control and liquidation issues will be expensive and time-consuming for the Estate, during which time the properties may be lost to foreclosure

or otherwise depreciate. The Agreement resolves these issues without litigation with its attendant costs and uncertainties.

15. Upon approval of the Agreement, Hagshama will withdraw its objections to the Clearwater Collection and Hickory Corners sales motions, which will allow the properties to be sold without further delay, expense, or uncertainty. The potential economic benefits to the Estate include avoiding potential costly litigation with Hagshama and the payment of much needed cash to the Estate.

16. In addition, the Agreement resolves potential future disputes about distribution to the equity shareholders of the entities that own Clearwater Collection and Hickory Corners. By agreeing in advance on how the net sales proceeds from these sales will be distributed, the Parties will each avoid significant potential attorneys' fees and costs.


17. Finally, avoiding a time-consuming dispute is critical because foreclosure proceedings have been commenced against both Clearwater Collection and Hickory Corners. Absent timely sales, the properties may be lost to foreclosure and the Estate may receive nothing.

WHEREFORE, the Receiver asks the Court to approve the Agreement submitted as **Exhibit 1** and authorize the Receiver to take all actions and execute all further documents necessary to consummate the transaction.

Dated: March 18, 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

Attachment to Order - 2018CV33301

**CERTIFICATE OF SERVICE**

I certify that on March 18, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER APPROVING AGREEMENT WITH HAGSHAMA CONCERNING SALE OF CLEARWATER COLLECTION AND HICKORY CORNERS** 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, Esq.  
Lewis Roca Rothgerber Christie, LLP  
1200 17<sup>th</sup> Street, Suite 3000  
Denver, CO 80202  
krossman@lrrc.com

***Counsel for the Hagshama Entities***

William W. Pettit, Esq.  
Hutchens Law Firm  
6230 Fairview Road, Suite 315  
Charlotte, North Carolina 28210  
Walt.Pettit@hutchenslawfirm.com

***Counsel for Dynasty, LLC***

Jeffery A. Springer, Esq.  
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***

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***

Alvin D. Lodish  
Morgan L. Swing  
Duane Morris LLP  
200 S. Biscayne Blvd., Suite 3400  
Miami, FL 33131-2318  
ALodish@duanemorris.com  
MLSwing@duanemorris.com

***Counsel for Rialto Capital Advisers, LLC***

Deanna Lee Westfall  
11101 West 120th Avenue, Suite 280  
Broomfield, Colorado 80021  
DeannaW@w-legal.com

*Counsel for Dynasty, LLC*

Joshua R. Proctor  
Proctor Brant, P.C.  
4B Inverness Court East, Suite 110  
Englewood, CO 80112  
[jproctor@proctorbrant.com](mailto:jproctor@proctorbrant.com)

*Counsel for National Commercial  
Builders, Inc.*

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.*

**CERTIFICATE OF SERVICE ON KNOWN CREDITORS**

In accordance with this Court's February 1, 2019, Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail 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/ Victoria Ray* \_\_\_\_\_  
Allen Vellone Wolf Helfrich & Factor P.C.