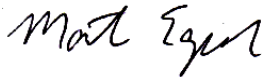


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. v. Defendant(s) GARY DRAGUL et al.	DATE FILED: April 1, 2019 3:23 PM CASE NUMBER: 2018CV33011
△ COURT USE ONLY △	
Case Number: 2018CV33011 Division: 424      Courtroom:	
<b>Order: Stipulated Order Approving Sale of Estates Interest in Certain Hagshama Projects to Isabel Marina, LLC</b>	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 4/1/2019



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>Defendants:</b> Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	
<p><b>Attorneys for Receiver:</b></p> <p>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  Tel: (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>STIPULATED ORDER APPROVING SALE OF ESTATE’S INTEREST IN CERTAIN HAGSHAMA PROJECTS TO ISABEL MARINA, LLC</b></p>	

This matter is before the Court upon the express agreement and stipulation of the undersigned parties, through their respective counsel, to approve the sale of the Estate’s interest in certain Hagshama Projects to Isabel Marina, LLC on the terms set forth herein. The Court being otherwise advised in the premises finds and orders as follows:

## I. Findings and conclusions

A. On March 19, 2019, Harvey Sender of Sender & Smiley LLC (the “Receiver”) filed a *Motion for Order Authorizing Sale of Estate’s Interest in Five Hagshama Projects to Isabel Marina, LLC* (the “Sale Motion”).

B. In the Sale Motion, the Receiver asked the Court to approve the sale of the Estate’s interest in the “Five Hagshama Projects” (as defined in the Sale Motion) to Isabel Marina, LLC (“Isabel Marina”)<sup>1</sup> by entering an order approving the proposed Master Agreement attached as Exhibit 1 to the Sale Motion.

C. Included as two of the Five Hagshama Projects identified in the Sale Motion were the commercial real properties commonly known as: (i) the Marketplace at Delta Township, 416-647 S. Marketplace Boulevard, Lansing, Michigan 48917 (the “Delta Property”); and (ii) the Windsor Square, 101-245 Seven Oaks Drive North, Knoxville, Tennessee 37922 (the “Windsor Property”) (the Windsor Property and Delta Property are collectively referred to as the “Properties”).

D. According to the Delta Lender, the Delta Property is subject to, and secured and encumbered by, certain loan documents, including without limitation the following, these loan documents are collectively referred to as the “Delta Loan Documents”:<sup>2</sup>

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<sup>1</sup> The parties have represented that Isabel Marina is apparently a Texas limited liability company that is affiliated with Tarantino Properties, Inc., a Texas corporation specializing in real-estate and property management. “Isabel Marina” includes any and all affiliates, owners, or assigns of Isabel Marina, LLC, including but not limited to Anthony Tarantino and Tarantino Properties, Inc.

<sup>2</sup> According to the Delta Lender, the Delta Loan Documents also include the Environmental Indemnity Agreement (“Delta EIA”), Lockbox – Deposit Account Control Agreement (“Delta Lockbox Agreement”) and any and all additional loan documents evidencing the Delta Loan.

- (i) The Loan Agreement dated May 26, 2017 entered into between Delta 17 A, LLC and Rialto Mortgage Finance, LLC (the “Delta Loan Agreement”);
- (ii) A Promissory Note dated May 26, 2017 (the “Delta Note”);
- (iii) A Mortgage dated May 26, 2017 (the “Delta Mortgage”);
- (iv) The Guaranty of Recourse Obligations dated May 26, 2017 (the “Delta Guaranty”); and
- (v) The Cash Management Agreement dated May 26, 2017 (the “Delta CMA”).

E. According to the Delta Lender, the Delta Loan Documents were assigned to interested, non-party Wells Fargo Bank, National Association, as Trustee for the Benefit of the Registered Holders of UBS Commercial Mortgage Trust 2017-C2, Commercial Mortgage Pass-Through Certificates, Series 2017-C2 (“Wells Fargo” or “Delta Lender”).

F. According to the Windsor Lender, the Windsor Property is subject to, and secured and encumbered by, certain loan documents, including without limitation the following, these loan documents are collectively referred to as the “Windsor Loan Documents”:<sup>3</sup>

- (i) The Loan Agreement dated September 18, 2015 entered into between Windsor 15, LLC and Rialto Mortgage Finance, LLC (the “Windsor Loan Agreement”);
- (ii) A Promissory Note dated September 18, 2015 (the “Windsor Note”);
- (iii) A Mortgage dated September 18, 2015 (the “Windsor Mortgage”);
- (iv) The Guaranty of Recourse Obligations dated September 18, 2015 (the “Windsor Guaranty”); and
- (v) The Cash Management Agreement dated September 18, 2015 (the “Windsor CMA”).

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<sup>3</sup> According to the Windsor Lender, the Windsor Loan Documents also include the Environmental Indemnity Agreement (“Windsor EIA”), Lockbox – Deposit Account Control Agreement (“Windsor Lockbox Agreement”) and any and all additional loan documents evidencing the Windsor Loan.

G. According to the Windsor Lender, the Windsor Loan Documents were assigned to Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2015C31, Commercial Mortgage Pass-Through Certificates, Series 2015-C31 (“Wilmington Trust” or “Windsor Lender”) (collectively with the Delta Lender, the “Lenders”).

H. The Delta Loan Documents and Windsor Loan Documents are collectively referred to herein as the “Loan Documents.” The Delta Lender and the Windsor Lender are jointly referred to as the “Lenders.”

I. The Lenders maintain that the Loan Documents are currently in default due to the Receiver’s appointment and that any sale of the Properties to Isabel Marina without Lenders’ approval will operate as an additional event of default under the Loan Documents (the “Specified Defaults”).<sup>4</sup>

J. The Lenders withhold objection to the Sale Motion, provided that all of Lenders’ rights, remedies, and entitlements under the Loan Documents are reserved and shall not otherwise be affected by this Order.

NOW, THEREFORE, the Court, having reviewed the Sale Motion and the stipulation and agreement set forth herein, having resolved all remaining objections to the Sale Motion, and being otherwise fully advised,

HEREBY ORDERS:

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<sup>4</sup> This is not meant to be an exhaustive list of what Lenders claim are defaults under the Loan Documents.

## **II. The Master Agreement**

1. The Court hereby grants the Sale Motion. Nothing herein or in the Master Agreement shall result in, or otherwise be construed as, the Lenders waiving any rights under the Loan Documents. For the avoidance of any confusion, this Order does not preclude or otherwise prejudice any rights of Lenders to enforce the Loan Documents at any time and within any court of proper jurisdiction.

2. Upon the Closing Date of the Master Agreement (as defined in the Master Agreement), the Properties shall no longer be considered property of the Receivership Estate (as defined in the Receivership Order) or otherwise subject to the terms and conditions of the Receivership Order. Upon the Closing Date, this Court will no longer have jurisdiction over the Properties and all disputes concerning the Properties shall be resolved in the respective jurisdictions where the Properties are located or as otherwise provided for, or required under, the respective Loan Documents.

## **III. Lenders' Reservation of Rights**

3. Without waiving any rights as they relate to the Specified Defaults, Delta Lender will initiate the process contained in Section 4.1.12(d) of the Delta Loan Agreement for purposes of reviewing Isabel Marina as Transferee (as that term is defined in the Delta Loan Agreement) of the Estate's interest in the Delta Property.

4. Without waiving any rights as they relate to the Specified Defaults, Windsor Lender will similarly initiate the process contained in Section 4.1.12(d) of the Windsor Loan Agreement

for purposes of approving Isabel Marina as Transferee (as that term is defined in the Windsor Loan Agreement) of the Estate's interest in the Windsor Property.<sup>5</sup>

5. When considering Isabel Marina as Transferee of the Estate's interest in the Properties, Lenders shall have any and all rights, protections, and entitlements as set forth in the Loan Documents. Among other things, Lenders are entitled to the rights under Section 4.1.12(d) of the Loan Agreements, which in part include, but are not limited to:

- (a) The protections guaranteed under Section 4.1.12(d)(iii)-(ix) of the Loan Agreements regarding Isabel Marina's financial history, legal history and experience in managing properties similar to that of the Properties;
- (b) Isabel Marina's assumption of "all obligations of Borrower under the Loan Documents accruing from and after such assumption pursuant to an assumption agreement in form and substance reasonably satisfactory to Lender" pursuant to Section 4.1.12(d)(xiv) of the Loan Agreements;
- (c) Isabel Marina's delivery, "at its sole cost and expense, an endorsement to the Title Insurance Policy...as a valid first lien on the [Properties] which endorsement shall insure that...the [Properties] shall not be subject to any Liens other than those contained in the Title Insurance Policy...the Permitted Encumbrances and any Liens approved by the Lender in writing" pursuant to Section 4.1.12(d)(xv) of the Loan Agreements (to the extent an endorsement as herein described is available in the jurisdiction in which the Properties are located);
- (d) The assumption of all obligations contained in the Delta Guaranty and Windsor Guaranty and accompanying Environmental Indemnity Agreement by "one or more [Isabel Marina's] Sponsors reasonably acceptable to Lender having a direct or indirect interest of twenty percent (20%) or more in [Isabel Marina], control over [Isabel Marina] and an aggregate net worth and liquidity reasonably satisfactory to Lender" pursuant to Section 4.1.12(d)(xvi) of the Loan Agreements. Or, in the alternative, Isabel Marina's execution of a replacement guaranty and a replacement environmental indemnity in form and substance reasonably satisfactory to Lenders pursuant to that same subsection;
- (e) If required by Lenders, Isabel Marina's delivery of a "Rating Agency Confirmation as to such Transfer and [Isabel Marina]" pursuant to Section 4.1.12(d)(xviii) of the Loan Agreements.

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<sup>5</sup> According to the Lenders, the terms of both the Delta Loan Agreement and Windsor Loan Agreement are almost identical with respect to section 4.1.12(d).

- (f) Isabel Marina's payment to Lenders of "an assumption fee equal to one quarter of one percent (0.25%) of the Outstanding Principal Balance for the Transfer" and "all reasonable out-of-pocket costs and expenses actually incurred in connection with such Transfer (including reasonable fees and disbursements of Lender's counsel and fees, costs and expenses of the Rating Agencies)" pursuant to Sections 4.1.12(d)(xix)-(xx) of the Loan Agreements.
- (g) Any additional requirements, including attorneys' fees and costs incurred by Lenders during the pending litigation.

6. Upon satisfaction of all the above-mentioned conditions, and all others contained within Section 4.1.12(d) of the Loan Agreements, including Isabel Marina's assumption of the Delta and Windsor Guaranties or execution of replacement Guaranties, with the exception of Sections 4.1.12(d)(i), (ii), and (xiii), Lenders will consider for approval Isabel Marina's assumption of the obligations set forth in the Loan Documents.

7. Lenders have reserved, and they are entitled to, exercise any and all rights, remedies, and protections contained in the Loan Documents following the Court's entry of this Order and approval of the Master Agreement, including, without limitation, Lenders' right to reject Isabel Marina as a Transferee and further pursue the remedies outlined in Section 7.2 of the Loan Agreements as well as all other rights and remedies under the Delta Mortgage and Windsor Mortgage including, but not limited to, acceleration of the subject debt and right to foreclose upon the Properties. In the event Lenders do not approve of Isabel Marina, LLC as Transferee, Isabel Marina, LLC, Tarantino Properties, Inc., and any and all affiliates of the aforementioned will timely conclude their management of the Subject Properties in good faith, and refrain from asserting any legal claims or additional fees against Lenders, or Lenders' agents and affiliates, in relation to the termination of their management duties.

8. In the event Lenders elect to exercise the rights to enforce the Loan Documents, this Court will not maintain jurisdiction over such matters, and Lenders may pursue enforcement



of the Loan Documents in the jurisdiction in which the Properties are located or in the jurisdictions otherwise provided for in the Loan Documents.

SO ORDERED:

Dated: March \_\_\_\_\_, 2019.

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Honorable Martin F. Egelhoff  
Denver County District Court Judge

Stipulated and agreed to form, content, and entry of this Order:

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HELFRICH & FACTOR P.C.

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