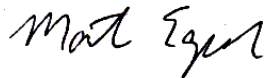


DISTRICT COURT, DENVER COUNTY, COLORADO		
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202		
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. v. Defendant(s) GARY DRAGUL et al.		DATE FILED: May 29, 2019 9:22 AM CASE NUMBER: 2018CV33011
		△ COURT USE ONLY △
		Case Number: 2018CV33011 Division: 424 Courtroom:
Order: Receiver's Motion for Order Authorizing Sale of Estate's Interest in 22 Residential Properties (w/attach)		

The motion/proposed order attached hereto: SET FOR HEARING.

This matter shall be set for a hearing. Counsel on behalf of the receiver shall be responsible for contacting the division staff of Courtroom 424 and obtaining a suitable date that is acceptable to all necessary parties.

Issue Date: 5/29/2019



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>Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendant: 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 & 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 No.: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE’S INTEREST IN 22 RESIDENTIAL PROPERTIES</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary J. 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 approve the Estate’s sale of its interest in the 22 residential properties identified

below (the “Residential Properties”) pursuant to the April 29, 2019, Contract to Buy and Sell Real Estate (“Sale Contract”) between the Receiver and Chad Hurst (“Buyer”) attached as **Exhibit 1**.

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 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 22 Residential Properties listed below for \$575,000 pursuant to the Sale Contract. Upon Court approval, the parties will prepare any additional documents necessary to transfer the Estate’s interest to Buyer and any other documents necessary to consummate the transaction.

II. The Residential Properties

6. The following table lists the 22 Residential Properties the Receiver seeks to sell:

#	PROPERTY ADDRESS	CITY	STATE	ZIP	OWNER
1	1660 N. LaSalle Drive #3909	Chicago	IL	61614	1600 North LaSalle 16, LLC (100% owned by Gary J. Dragul)
2	1660 N. LaSalle Drive, #4205	Chicago	IL	61614	4205 North LaSalle 18, LLC (100% owned by X12 Housing, LLC)
3	5455 Landmark Pl, #509	Greenwood Village	CO	80111	5455 Landmark Place 17, LLC (100% owned by X12 Housing, LLC)
4	5722 S Lansing Court	Englewood	CO	80111	5722 South Lansing 14, LLC (100% owned by X12 Housing, LLC)
5	5788 S Lansing Way	Englewood	CO	80111	5788 South Lansing 17, LLC (100% owned by X12 Housing, LLC)
6	6316 E Fair Avenue	Centennial	CO	80111	6316 East Fair 16, LLC (100% owned by X12 Housing, LLC)
7	7373 E Fremont	Centennial	CO	80112	7373 East Fremont 15, LLC (100% owned by X12 Housing, LLC)
8	7517 E Davies Place	Centennial	CO	80112	7517 East Davies 17, LLC (100% owned by X12 Housing, LLC)
9	7842 E Briarwood Boulevard	Centennial	CO	80112	7842 East Briarwood 16, LLC (100% owned by X12 Housing, LLC)
10	1777 Larimer Street #703	Denver	CO	80202	1777 Larimer 17, LLC (100% owned by X12 Housing, LLC)

#	PROPERTY ADDRESS	CITY	STATE	ZIP	OWNER
11	1777 Larimer Street, #901	Denver	CO	80202	901 Larimer 18, LLC (100% owned by X12 Housing, LLC)
12	891 14th Street, #2417	Denver	CO	80202	891 Fourteenth Street 16, LLC ¹
13	3142 S Leyden Street	Denver	CO	80222	3142 South Leyden 14, LLC (100% owned by X12 Housing, LLC)
14	3555 S Holly Street	Denver	CO	80237	355 South Holly 15, LLC (100% owned by X12 Housing, LLC)
15	3593 S Hudson Street	Denver	CO	80237	3593 South Hudson 17, LLC (100% owned by X12 Housing, LLC)
16	3675 S Hibiscus Way	Denver	CO	80237	3675 South Hibiscus 17, LLC (100% owned by X12 Housing, LLC)
17	41 S Fairway	Beaver Creek	CO	81620	41 South Fairway 17, LLC (100% owned by X12 Housing, LLC)
18	6937 E 6th Street, #1002	Scottsdale	AZ	85215	1002 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)
19	6937 E 6th Street, #1004	Scottsdale	AZ	85215	1004 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)
20	6937 E 6th Street, #1005	Scottsdale	AZ	85215	1005 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)
21	2432 S Newport Street	Denver	CO	80224	Gary Dragul and/or SSC 02, LLC
22	2624 S Oneida Street	Denver	CO	80224	Gary Dragul and/or SSC 02, LLC

7. The first 20 properties are owned by special purpose entities Dragul formed, each of whose sole member is X12 Housing, LLC (“X12”), f/k/a GDA Housing, LLC,² whose sole member is Dragul. X12 is managed by X12 Housing Management, Inc., f/k/a GDA Housing Management, Inc.,³ whose sole shareholder and President is

¹ There are two conflicting March 23, 2017, operating agreements for 891 Fourteenth Street 16, LLC. One shows that X12 Housing owns 100% of the LLC, the other shows that Dragul’s son Spencer, who lives in the condominium, is the sole member.

² On April 17, 2018, Articles of Amendment changing the name of GDA Housing, LLC to X12 Housing, LLC were filed with the Colorado Secretary of State.

³ On April 17, 2018, Articles of Amendment changing the name of GDA Housing Management, Inc. to X12 Housing Management, Inc. was filed with the Colorado Secretary of State.

Dragul. Based on information currently known to the Receiver, properties 21 and 22, above, appear to be owned by SSC 02, LLC (“SSC 02”), an entity owned by Dragul and, purportedly, his three adult children, Spencer, Samuel, and Charli Dragul.⁴ According to SSC 02’s 2016 tax return, the respective ownership interests are: Gary Dragul (71.58%), Spencer Dragul (9.12%), Samuel Dragul (12.33%), and Charli Dragul (6.97%). There is no evidence Dragul’s children contributed any money for their purported ownership interests. Throughout the Receivership, Dragul has represented that the Newport and Oneida properties are property of the Estate the Receiver may sell.⁵ Therefore, the Residential Properties are property of the Estate the Receiver is authorized to sell.

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

8. 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)).

9. 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

⁴ Initially, Mr. Dragul misrepresented that SSC 02 was owned entirely by his three children.

⁵ Despite repeated demands, Dragul has refused to provide any documents concerning SSC 02 or an accounting of its assets and activity.

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).

10. 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”).

11. In the Receiver's judgment, the proposed sale is in the best interest of the Estate and its creditors. Each of the Residential Properties was purchased by Dragul, either individually or through the various SPEs, over the course of the past several years as set forth below:

#	PROPERTY ADDRESS	CITY	STATE	ZIP	PURCHASE DATE	PURCHASE PRICE
1	1660 N. LaSalle Drive #3909	Chicago	IL	61614	2/13/2017	\$314,500
2	1660 N. LaSalle Drive, #4205	Chicago	IL	61614	4/17/2018	\$307,000
3	5455 Landmark Pl, #509	Greenwood Village	CO	80111	4/28/2017	\$650,000
4	5722 S Lansing Court	Englewood	CO	80111	10/10/2014	\$371,000
5	5788 S Lansing Way	Englewood	CO	80111	12/29/2017	\$450,000
6	6316 E Fair Avenue	Centennial	CO	80111	6/23/2016	\$444,450
7	7373 E Fremont	Centennial	CO	80112	4/30/2015	\$329,000
8	7517 E Davies Place	Centennial	CO	80112	2/07/2017	\$380,000
9	7842 E Briarwood Boulevard	Centennial	CO	80112	6/10/2016	\$385,000
10	1777 Larimer Street #703	Denver	CO	80202	12/06/2017	\$441,500
11	1777 Larimer Street, #901	Denver	CO	80202	3/23/2018	\$460,000
12	891 14th Street, #2417	Denver	CO	80202	4/28/2017	\$654,000
13	3142 S Leyden Street	Denver	CO	80222	5/13/2015	\$405,000
14	3555 S Holly Street	Denver	CO	80237	12/09/2015	\$619,230
15	3593 S Hudson Street	Denver	CO	80237	10/06/2017	\$515,000
16	3675 S Hibiscus Way	Denver	CO	80237	7/17/2015	\$460,000
17	41 S Fairway	Beaver Creek	CO	81620	9/19/2017	\$2,100,000
18	6937 E 6th Street, #1002	Scottsdale	AZ	85215	6/07/2017	\$414,000
19	6937 E 6th Street, #1004	Scottsdale	AZ	85215	6/20/2017	\$420,000
20	6937 E 6th Street, #1005	Scottsdale	AZ	85215	7/06/2017	\$385,000
21	2432 S Newport Street	Denver	CO	80224	12/01/2006	\$289,500
22	2624 S Oneida Street	Denver	CO	80224	5/29/2007	\$260,500

12. Many of the first mortgages carry high interest rates. A number of the loans have matured, are accruing default interest of between 18-24%, and several lenders have commenced or threatened foreclosures. If the Receiver were able stave off foreclosure and ultimately sell the Residential Properties individually for their currently estimated fair market value, the Estate's net return would not likely exceed the proposed \$575,000 purchase price. Selling the Residential Properties individually would require the Estate to pay brokers' commissions of 5.5% (approximately \$739,080) and estimated closing costs of 1.5% (approximately \$246,360). After paying the first and second mortgages, the estimated return to the Estate might at best net about \$650,000.

#	PROPERTY	Zip	Est. FMV	1st DOT	2nd DOT	RE Comm'n (6.0%)	Closing Costs (2.0%)	Est. Equity
1	1660 N. LaSalle Drive #3909, Chicago, Il	61614	\$298,898	(\$273,867)		(\$17,934)	(\$5,978)	\$1,119
2	1660 N. LaSalle Drive, #4205, Chicago, Il	61614	\$307,000	(\$279,794)		(\$18,420)	(\$6,140)	\$2,646
3	5455 Landmark Pl, #509, Greenwood Village, CO	80111	\$727,400	(\$601,530)		(\$43,644)	(\$14,548)	\$67,678
4	5722 S Lansing Court Englewood, CO	80111	\$491,000	(\$326,938)	(\$96,985)* ⁶	(\$29,460)	(\$9,820)	\$27,797
5	5788 S Lansing Way Englewood, CO	80111	\$470,000	(\$408,889)		(\$28,200)	(\$9,400)	\$23,511
6	6316 E Fair Avenue Centennial, CO	80111	\$525,000	(\$408,743)		(\$31,500)	(\$10,500)	\$74,257
7	7373 E Fremont Centennial, CO	80112	\$400,000	(\$297,979)	(\$59,097)*	(\$24,000)	(\$8,000)	\$10,924
8	7517 E Davies Place Centennial, CO	80112	\$450,000	(\$341,701)	(\$50,610)*	(\$27,000)	(\$9,000)	\$21,690

⁶ The eleven second deeds of trust that are asterisked are held by an affiliate of the Buyer, WBF/CT Associates, LLC. Ten of those seconds (all except the second on the 41 S. Fairway, Beaver Creek property) are subject to a Court approved agreement between the Estate and WBF/CT pursuant to which WBF/CT would receive 70% of any net sale proceeds. See Court's November 1, 2018, Order on Motion to Approve Settlement Agreement with WBF/CT Associates, LLC. The amount of the seconds listed in the table for those ten properties is an estimate of the amount that would be owed to WBF/CT under that agreement.

#	PROPERTY	Zip	Est. FMV	1st DOT	2nd DOT	RE Comm'n (6.0%)	Closing Costs (2.0%)	Est. Equity
9	7842 E Briarwood Boulevard Centennial, CO	80112	\$480,200	(\$350,964)		(\$28,812)	(\$9,604)	\$90,820
10	1777 Larimer Street #703 Denver, CO	80202	\$460,000	(\$400,220)		(\$27,600)	(\$9,200)	\$22,980
11	1777 Larimer Street, #901, Denver, CO	80202	\$470,000	(\$414,600)		(\$28,200)	(\$9,400)	\$17,800
12	891 14th Street, #2417 Denver, CO	80202	\$572,000	(\$594,930)		(\$34,320)	(\$11,440)	(\$68,690)
13	3142 S Leyden Street Denver, CO	80222	\$540,000	(\$342,224)	(\$118,320)*	(\$32,400)	(\$10,800)	\$36,256
14	2432 S Newport Street Denver, CO	80224	\$506,500	(\$190,907)	(\$43,405)	(\$30,390)	(\$10,130)	\$231,668
15	2624 S Oneida Street Denver, CO	80224	\$470,000	(\$175,207)		(\$28,200)	(\$9,400)	\$257,193
16	3555 S Holly Street Denver, CO	80237	\$575,000	(\$418,631)	(\$89,786)*	(\$34,500)	(\$11,500)	\$20,583
17	3593 S Hudson Street Denver, CO	80237	\$520,000	(\$467,367)	(\$7,723)*	(\$31,200)	(\$10,400)	\$3,310
18	3675 S Hibiscus Way Denver, CO	80237	\$560,000	(\$403,233)	(\$90,405)*	(\$33,600)	(\$11,200)	\$21,562
19	41 S Fairway Beaver Creek, CO	81620	\$2,145,000	(\$1,824,997)	(\$400,000)*	(\$128,700)	(\$42,900)	(\$251,597)
20	6937 E 6th Street, #1002 Scottsdale, AZ	85215	\$450,000	(\$380,413)	(\$23,511)*	(\$27,000)	(\$9,000)	\$10,076
21	6937 E 6th Street, #1004 Scottsdale, AZ	85215	\$450,000	(\$376,797)	(\$26,042)*	(\$27,000)	(\$9,000)	\$11,161
22	6937 E 6th Street, #1005 Scottsdale, AZ	85215	\$450,000	(\$353,765)	(\$42,164)*	(\$27,000)	(\$9,000)	\$18,070
TOTALS			\$12,317,998	(\$9,633,694)	(\$1,048,048)	(\$739,080)	(\$246,360)	\$650,816

13. These estimates do not account for the continued accrual of default interest, unpaid taxes, other unknown liens, or the administrative costs (attorneys' fees, Receiver fees, expenses) that the Estate would incur selling the Residential Properties individually.

14. The Sale Contract prohibits Dragul or any Dragul Entity from having any ownership or ongoing management interest in any of the Residential Properties and from receiving any compensation arising from the proposed transaction or the Residential Properties. See **Exhibit 1**, at 25, ¶ 5. Five of the Residential Properties are presently occupied or otherwise available to Dragul family members. See **Exhibit**

1, at 60. The Sale Contract allows Buyer, at his discretion, to continue to allow Dragul family members to occupy those properties or to transfer those properties to Dragul family members based on terms and conditions Buyer deems appropriate.

15. For these reasons, the Receiver believes the proposed sale is in the best interest of the Estate and its creditors.

WHEREFORE, the Receiver asks the Court to enter an Order approving the Sale Contract and authorizing the Receiver to take all actions and execute all further documents necessary to consummate the transaction.

Dated: May 10, 2019.

ALLEN VELLONE WOLF HILFRICH & FACTOR P.C.

By: *Rachel A. Sternlieb*
Rachel A. Sternlieb

Patrick D. Vellone, #15284

Michael T. Gilbert, #15009

Rachel A. Sternlieb, #51404

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on May 10, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN 22 RESIDENTIAL PROPERTIES** via CCE to the following:

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