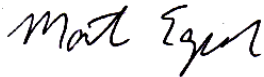


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. v. Defendant(s) GARY DRAGUL et al.	DATE FILED: June 4, 2019 2:31 PM CASE NUMBER: 2018CV33011
	△ COURT USE ONLY △
	Case Number: 2018CV33011 Division: 424 Courtroom:
Order: RECEIVER'S SECOND MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE AND MOTION TO APPROVE INCREASED COMMISSION AT CLOSING (w/attach)	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 6/4/2019



MARTIN FOSTER EGELHOFF
District Court Judge

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	<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>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</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 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424
RECEIVER’S SECOND MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE AND MOTION TO APPROVE INCREASED COMMISSION AT CLOSING	

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 sale of real property known as the Summit Marketplace,

located at 385 Crossing Drive, Lafayette, CO 80026 (the “Property”) to Michael Manwaring and Rand Lewis (“Buyers”) for \$4.6 million pursuant to the Contract submitted as **Exhibit 1** with this motion (the “Summit Contract”). The Receiver also requests approval to pay an increased commission of an additional 1.5% (\$69,000) from the sales proceeds to the Receiver’s selling broker, Marcus & Millichap.

I. The Receivership Order authorizes the Receiver to sell the Property.

1. On August 15, 2018, Gerald Rome, 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, 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, interests and management rights in related affiliated and subsidiary businesses, and any assets of any kind or of any nature related in any manner, or directly or indirectly derived from investor funds from the solicitation or sale of securities as described in the Commissioner’s complaint in this case (the “Receivership Estate” or the “Estate”). Receivership Order at 3, ¶ 9.

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)).

5. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on interested parties as authorized by this Court's February 1, 2019, Order Granting the Receiver's Motion to, among other things, Clarify Ongoing Notice Procedure. Upon acceptance, this Motion will also be posted on the Receiver's website, <http://dragulreceivership.com>.

II. Summit Marketplace: ownership, management, and debt

6. The Summit Marketplace is a retail shopping mall located at 385 Crossing Drive, Lafayette, CO 80026. It has 7 separate units and approximately 14,000 s.f. of gross leasable space. The Property is 90% leased and is adjacent to a King Soopers.

7. Summit 06 A, LLC ("Summit 06") purchased Summit Marketplace on January 10, 2006, for \$4,700,000. Summit 06 is a single purpose entity ("SPE") whose members are Dragul (13.38%) and 36 other individual investors. These include a number of insiders such as Dragul's parents, GDA employees and former employees, and a promoter. The Receiver has not as yet determined what these purported

members contributed to Summit 06 or verified their purported membership interests. Summit 06 is managed by GDA Real Estate Management, Inc., whose president and sole shareholder is Dragul.

8. The Property was purchased in part with funds from a \$3,500,000.00 loan made by Countrywide Commercial Real Estate Finance, Inc. to Summit 06 that was secured by a deed of trust, and in part with funds Dragul solicited from individual investors. On November 6, 2016, Dragul refinanced the Property and obtained a loan from Rialto Mortgage Finance (“Rialto”) for \$3,600,000.00, which he personally guaranteed (the “Rialto Loan”). The Property is property of the Estate the Receiver is authorized to sell.

III. Sale of the Property is in the best interests of the Estate and its creditors.

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 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 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 of the Property is in the best interest of the Estate and its creditors. The Receiver has hired the nationally-recognized firm of Marcus & Millichap to market the Property and has negotiated with the Buyer and believes the proposed sales price is fair and reasonable.

12. This is the second contract the Receiver has entered into for the Summit Property. As set forth in the Receiver’s March 1, 2019, Motion for Order Authorizing

Sale of Summit Marketplace, the original purchase contract called for payment to the Receiver of \$4.4 million. Under that agreement, the buyer also agreed to pay off the first lien on the Property at closing, which would have required paying a \$495,000 exit fee to Rialto. The Court approved the sale on March 21, 2019. On March 25, 2019, the initial buyer terminated its contract. Since this termination, the Receiver's brokers have continued to market the Property, leading to the present Summit Contract.

13. Under the Summit Contract, Buyers are to assume the Rialto Loan and closing is scheduled to occur no later than 30 days after Rialto approves assumption of the Loan. Rialto has declared its Loan in default due to non-payment, among other things, and the Loan has been accruing interest at the default rate since August 30, 2018. Rialto previously indicated it intends to begin sweeping the rental income from the Property to service its loan and tendered a proposed forbearance agreement to the Receiver that would require the Estate to pay substantial up-front fees to forestall foreclosure.

14. Under the Summit Contract, the Receiver may entertain and accept any competing offer he deems to be a higher and better offer until this Motion is granted. And under the Contract, neither Dragul nor any of his former employees shall have any ownership or management interest with respect to the Property or the Buyers going forward.

15. If the Court approves the increased commission to Marcus & Millichap as requested, the Receiver estimates the proposed sale will net approximately \$600,000 to the Estate. Given the uncertainty concerning the ownership interests in Summit 06 and the extensive co-mingling of funds among Estate entities, the Receiver anticipates depositing the net sales proceeds into the general Receivership account. The sale is in the best interest of the Estate because absent a timely sale, the Property is at risk of being lost to foreclosure with no return to the Estate.

IV. Motion to Pay Increased Commission at Closing

16. As set forth in the Receiver's November 15, 2018, Notice Concerning Employment of Marcus & Millichap, Marcus & Millichap was hired to market and sell various Estate properties, including the Summit Property. The Notice indicated the Receiver agreed to pay Marcus & Millichap 3% of the gross purchase price from the Summit sale. The Notice also indicated the Receiver agreed to pay Marcus & Millichap 3% of the gross sales proceeds from the sale of the Ash & Bellaire Development site and 1.5% of the gross sales proceeds from the sale Happy Canyon Shoppes.

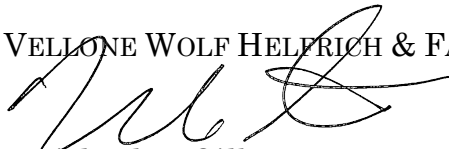
17. To facilitate the closing of the Happy Canyon Shoppes on April 15, 2019, Marcus & Millichap reduced its commission by approximately \$75,000. To facilitate the sale of the Ash & Bellaire property (for which a contract is being finalized), Marcus & Millichap has agreed to reduce its commission by \$15,000. Marcus & Millichap has also agreed to waive marketing fees of approximately \$75,000.

18. To date, Marcus & Millichap has performed extraordinary work for the Estate and benefited the Estate by reducing its fees by approximately \$165,000. To partially compensate Marcus & Millichap, the Receiver requests Court approval to increase Marcus & Millichap's commission on the Summit sale by 1.5% (\$68,000). The benefit provided to the Estate substantially outweighs this increase, and in fairness, the Receiver asks the Court to approve the increased commission.

WHEREFORE, the Receiver asks the Court to: (1) grant this Motion and approve the proposed sale of the Summit Property in accordance with the terms of the Summit Contract; and (2) approve an increase of 1.5% in Marcus & Millichap's commission and authorize the Receiver to pay that commission at closing of the Property.

Dated: May 20, 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

Tel: (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 May 20, 2019, I served a true and correct copy of the foregoing **RECEIVER'S SECOND MOTION FOR ORDER AUTHORIZING SALE OF SUMMIT MARKETPLACE AND MOTION TO APPROVE INCREASED COMMISSION AT CLOSING** 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***

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

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

A copy of the foregoing is also being served by electronic mail in accordance with the Court's February 1, 2019, Order Clarifying Notice Procedure and will be posted to the Receiver's website, <http://dragulreceivership.com/>


By: /s/ Lisa A. Vos

Allen Vellone Wolf Helfrich & Factor P.C.