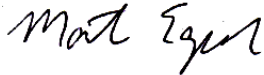


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al v. Defendant(s) GARY DRAGUL et al.	DATE FILED: August 16, 2019 8:07 AM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order: Receiver's Motion to Approve Settlement Agreement with WBF/CT Associates, LLC Concerning Hickory Corners w/attach	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 8/16/2019



MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 720.865.8612</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>Defendants: Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC.</p>	
<p>Attorneys for Receiver:</p> <p>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</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH WBF/CT ASSOCIATES, LLC CONCERNING HICKORY CORNERS</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 a settlement agreement he has reached with WBF/CT Associates,

LLC (“WBF/CT”) concerning the Hickory Corners property. A copy of the “Settlement Agreement” is submitted as **Exhibit 1**.

I. Background

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 and their respective properties and assets, as well as their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. The Estate includes assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint filed by the Commissioner, or derived indirectly or indirectly from investor funds.

5. The Receivership Order grants the Receiver the authority to, among other things, settle claims relating to Estate property. Receivership Order at 12, ¶ 13(u).

II. WBF/CT has a Disputed Lien on the Hickory Corners property.

6. On February 8, 2019, the Receiver filed a Motion for an Order Approving the Sale of Real Property known as the Hickory Corners shopping center (the “Sale Motion”). Hickory Corners is a retail shopping center located in Hickory, North Carolina and consists of two separate but adjacent parcels both owned by Dragul related entities.

7. The first parcel is a strip mall (the “Shops”) owned by Hickory Corners 16 A, LLC (“Corners 16A”) and Hickory Corners 16B, LLC (“Corners 16B”) as tenants-in-common, 64.59% and 35.41%, respectively. The second parcel is a standalone “Box” adjacent to the Shops owned Hickory Corners Box 16 A, LLC (“Box 16A”) and Hickory Corners Box 16 B, LLC (“Box 16B”), as tenants-in-common, again 64.59% and 35.41%, respectively. Dragul was the manager of both the Corners and Box entities.

8. On March 13, 2018, Gary Dragul personally borrowed \$500,000 from WBF/CT Associates, LLC and as manager of the Box 16A and Box 16B granted WBF/CT a second deed of trust on the Box (the “Disputed Lien”). The \$500,000 note (the “Hickory Note”) evidencing the loan was due and payable on October 13, 2018, and bears interest of 2% per month. Approximately \$170,000 in interest is owed on the Note.

9. WBF/CT wired \$495,000 of the \$500,000 to GDA Hickory 17, LLC on March 13, 2018 (the remaining \$5,000 was treated as an “origination fee.” GDA Hickory 17 is not an owner of the Box property; it held a 50.10% interest in Box 16B. None of the \$495,000 was distributed to Box 16A or 16B or used to benefit the Hickory Corners property. Instead, Dragul had Hickory 17 transfer the entire \$495,000 to him personally on March 13th and used it for his own purposes. WBF/CT did not record its deed of trust on the Box until April 30, 2018, two weeks after Dragul was indicted.

10. On or about March 18, 2019, WBF/CT filed a Proof of Claim in the Receivership Action for \$5,330,797.84, representing amounts alleged to be due under various loans made by WBF/CT to Dragul and the GDA Entities including the Hickory Note (the “WBF/CT Claim”).

11. On February 15, 2019, WBF/CT filed a Limited Objection to the Sale Motion asserting a right to re-payment of the Hickory Note, among other things, upon the sale of the Property, which is scheduled to occur in August 2019. On July 1, 2019, WBF/CT also filed a Motion for Leave to File Suit to Establish Validity of North Carolina Lien, in which it sought leave from the Receivership Court to file a declaratory judgment action in North Carolina to establish the validity of the Disputed Lien (the “Motion for Leave”).

III. Settlement Agreement is in the Best Interests of the Estate and its Creditors.

12. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver’s settlement

agreement. In analogous bankruptcy contexts courts consider whether “the settlement is fair and equitable and in the best interests of the estate.” In considering whether to approve a settlement, bankruptcy courts consider four primary factors: “the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views.” *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

13. Considering these factors, the Court should approve the Settlement Agreement. Under the Agreement, the Estate has agreed that WBF/CT will receive \$350,000 at the closing of the Hickory Corners sale scheduled later this month. In exchange, WBF/CT will release the Disputed Lien thereby enabling the Estate to convey marketable title to the purchaser. WBF/CT’s Claim will be reduced by that \$350,000 payment, and WBF/CT will retain an unsecured claim against the Receivership Estate for the unpaid balance of the Hickory Note.

14. In the Receiver’s informed business judgment, the Settlement Agreement is in the best interest of the Estate and its creditors. It will allow the

Hickory Corners sale to close without additional delay and result in the payment to the Estate of an estimated more than \$600,000. The settlement also avoids the litigation costs the Estate would incur seeking to avoid the Disputed Lien and defending against the Motion for Leave. And although the Receiver believes his claim to avoid the Disputed Lien is strong, the proposed settlement avoids the risk of not prevailing and the accrual of additional interest that would have to be paid at closing of the Hickory Corners sale.

15. 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 all currently known creditors of the Estate.

WHEREFORE, the Receiver respectfully requests the entry of an Order approving the Settlement Agreement submitted as **Exhibit 1**.

Dated: August 2, 2019.

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2019, a true and correct copy of the **RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH WBF/CT ASSOCIATES, LLC CONCERNING HICKORY CORNERS** was filed and served via the Colorado Courts E-Filing system to the following:

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CERTIFICATION OF E-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.

s/ Salowa Khan

Allen Vellone Wolf Helfrich & Factor P.C.

Attachment to Order - 2018CV3330