

<b>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO</b> 1437 Bannock Street Denver, CO 80202 720.865.8612	DATE FILED: September 6, 2019 4:55 PM FILING ID: 46EF8C784DE58 CASE NUMBER: 2018CV33011
<b>Plaintiff:</b> CHRIS MYKLEBUST, SECURITIES COMMISSIONER FOR THE STATE OF COLORADO,  v.  <b>Defendants:</b> GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<b>Attorneys for Galloway &amp; Company, Inc.:</b> Debra Piazza, #15197 Lindsay J. Miller, #42372 MONTGOMERY LITTLE & SORAN, PC 5445 DTC Parkway, Suite 800 Greenwood Village, CO 80111 Phone No.: 303.773.8100 Email: <a href="mailto:dpiazza@montgomerylittle.com">dpiazza@montgomerylittle.com</a> <a href="mailto:lmiller@montgomerylittle.com">lmiller@montgomerylittle.com</a>	<hr/> Case No.: 2018CV33011  Div.: 424
<p style="text-align: center;"><b>UNOPPOSED MOTION FOR LEAVE TO FILE SUR-REPLY TO RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF ASH AND BELLAIRE PROPERTIES</b></p>	

Galloway & Company, Inc. (“Galloway”), through its attorneys at Montgomery Little & Soran, PC, respectfully files this Motion for Leave to File Sur-Reply to Receiver’s Motion for Order Authorizing Sale of Ash and Bellaire Properties (“Motion”) to address new arguments raised in Receiver’s Reply in Support of Motion (“Reply”), as follows:

**CERTIFICATE OF CONFERRAL**

Undersigned counsel certifies that she has conferred with counsel for Receiver regarding the relief requested herein. Receiver does not oppose Galloway’s request for leave to file a Sur-Reply.

1. The Colorado Rules of Civil Procedure do not expressly permit the filing of a Sur-Reply and do not allow a new “motion” to be presented in a response or reply to an original motion.

Pursuant to C.R.C.P. 121 § 1-15(1):

...

**(c)** Except for a motion pursuant to C.R.C.P. 56, the moving party shall have 7 days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief. For a motion pursuant to C.R.C.P. 56, the moving party shall have 14 days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief.

**(d)** A motion shall not be included in a response or reply to the original motion.

2. However, when the movant includes new arguments or a new request (motion) in a response or reply to an original motion, it appears that a sur-reply from the respondent is appropriate. Colorado state case law on the procedure and propriety of a sur-reply appears to be scant. However, federal case law regarding sur-replies filed in federal court is informative here. When a party puts forth new arguments in a reply brief, a court may avoid error by either: (1) choosing not to rely on the new arguments in determining the outcome of the motion, or (2) permitting the nonmoving party to file a sur-reply. *E.E.O.C. v. Outback Steak House of Fla., Inc.*, 520 F.Supp.2d 1250 (D. Colo. 2007).

3. Here, as to Galloway, the Receiver’s Reply identifies new arguments in “support” of its request to sell the subject Properties: (1) that Galloway’s lien is invalid and should be released because Galloway did not take action to commence foreclosure proceedings within the 6 month statutory period; and (2) that despite the fact that there was a court order in place freezing assets,

it was incumbent on Galloway to seek relief from the court to take action under the statute to preserve the lien.

4. The Receiver did not make such arguments in its original Motion, and appears to have only presented these arguments now in direct response to Galloway's Response to Receiver's Motion for Order Authorizing Sale of Ash and Bellaire Properties, in violation of C.R.C.P. 121 § 1-15, above. Galloway seeks leave of Court to file the Sur-Reply, attached hereto and filed herewith, to correct the inaccuracies cited by Receiver in its Reply and to respond to the new allegations identified above.

WHEREFORE, Galloway requests that the Court enter an Order authorizing Galloway to file the attached Sur-Reply, and for further such other relief as the Court deems just and proper.

DATED: September 6, 2019.

Respectfully submitted,

MONTGOMERY LITTLE & SORAN, PC

*s/ Lindsay J. Miller*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2019, a true and correct copy of the foregoing was served via Colorado Courts E-Filings system as follows:

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*Original signature on file*

*/s/ Lindsay J. Miller* \_\_\_\_\_

*In accordance with C.R.C.P. 121 § 1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.*