DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202 720.865.8612	DATE FILED: September 6, 2019 4:55 PM FILING ID: 46EF8C784DE58 CASE NUMBER: 2018CV33011
Plaintiff: CHRIS MYKLEBUST, SECURITIES COMMISSIONER FOR THE STATE OF COLORADO, v. **Defendants:** GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC.	▲ COURT USE ONLY ▲
Attorneys for Galloway & Company, Inc.: 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: dpiazza@montgomerylittle.com lmiller@montgomerylittle.com	Case No.: 2018CV33011 Div.: 424

SUR-REPLY TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ASH AND BELLAIRE PROPERTIES

Galloway & Company, Inc. ("Galloway"), through its attorneys at Montgomery Little & Soran, PC, respectfully files this Sur-Reply to Receiver's Motion for Order Authorizing Sale of Ash and Bellaire Properties ("Motion") and Reply in Support of the Motion ("Reply") as follows:

1. As previously established in Galloway's Motion for Leave to File Sur-Reply to the Receiver's Motion for Order Authorizing Sale of Ash and Bellaire Properties, the Receiver identifies new, yet illogical, 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 (Reply, p. 3, 8-10); 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 (*Id.*).

2. In response to the first new argument, given the wide-sweeping language of the Court's August 15, 2018 Temporary Restraining Order Freezing Assets, Order of Non-Destruction of Records and Preliminary Injunction ("Temporary Order"), the August 30, 2018 Order of Preliminary Injunction ("Injunction"), and the August 30, 2018 Order Appointing Receiver, Receiver's argument makes no sense and no relevant case law is cited in support of it. Quite simply, it is illogical to require a creditor to seek an order from the court to consent to an action (i.e. foreclosure of real estate) that is contrary to an existing court order freezing assets. The single case cited by Receiver in support of this proposition, *King v. W. R. Hall Transp. and Storage Co.* 641 P.2d 916 (Colo. 1982), was fact-specific and required strict compliance with the statutory requirements with respect to foreclosure of a mechanic's lien in the context of tolling to join various parties. That is not the case here. Galloway did not commence a foreclosure or take other action solely due to the reasonable and good faith belief that multiple court orders barred it from doing so.

3. Next, the state court receivership process in this matter is not unlike the process in federal bankruptcy court, in terms of disposition of assets and treatment of creditors. Thus, the argument that the 6-month period is tolled as it would be in bankruptcy pursuant to 11 U.S.C. § 108 applies here, is equitable, and not unreasonable. Once again, the Receiver cites to case law that is fact-specific, and does not stand for the broad proposition argued. In fact, the lien claimant in *Thomas Wells and Associates v. Cardinal Properties, Inc.* 543 P.2d 1275 (Colo. Ct. App. 1975) was denied his request to toll the statute of limitations specifically due to his failure to comply with a contractual provision requiring arbitration between the parties. Again, that is not the case

here. The application of a tolling period here is appropriate given the imposition of the stay as to the subject Properties in order for the Receiver to administer and manage Defendants' assets.

4. The Receiver argues that the fact that Galloway filed its lien after the Order Appointing Receiver was entered undermines the tolling argument. In fact, it does not. Galloway filed its lien without knowledge of the proceedings against Mr. Dragul and was completely unaware of the entry of the Temporary Order, the Injunction, or the Order Appointing Receiver at the time it recorded its lien. Galloway was later made aware of these Orders by an article in the *Denver Business Journal*. Galloway was not otherwise provided with formal notice of the stay as to the Properties. Thus, the Receiver cannot and should not point to the timing of the recordation of the lien as "proof" that Galloway was aware of its obligations to timely commence a foreclosure pursuant to Colorado statute.

5. Indeed, Galloway filed (and the Receiver has acknowledged) a valid claim in this matter. The Receiver's suggestion that Galloway's claim is an equivalent substitute for its lien on the subject Properties is incorrect, and should not be an accepted as a reason to invalidate Galloway's lien.

6. Based on the foregoing, Galloway reasserts its position that it is not opposed to the proposed sale of the subject Properties; however, Galloway asserts a valid and enforceable lien on the Properties and reserves all of its rights with respect thereto.

WHEREFORE, Galloway reasserts a valid and enforceable lien on the subject Properties and requests payment in full in the amount of the lien at closing, and for such other and further 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:

Robert W. Finke
Sueanna P. Johnson
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, CO 80203

Holly R. Shilliday
McCarthy Holthus, LLP
7700 E. Arapahoe Rd., Ste. 230
Centennial, CO 80120

Jeffrey A. Springer
Springer and Steinberg, P.C.
1600 Broadway, Ste. 1200
Denver, CO 80202

Duncan Barber
Shapiro Bieging Barber Otteson, LLP
7979 E. Tufts Ave., Ste. 1600
Denver, CO 80237

Karen Radakovich
Frascona Joiner Goodman & Greenstein, P.C.
4750 Table Mesa Dr.
Boulder, CO 80305

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.