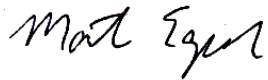


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
<b>Plaintiff(s)</b> GERALD ROME SECURITIES COM FOR THE ST OF CO v. <b>Defendant(s)</b> GARY DRAGUL et al.	<b>DATE FILED:</b> September 26, 2019 7:32 AM <b>CASE NUMBER:</b> 2018CV33011  <p style="text-align: center;">△ <b>COURT USE ONLY</b> △</p> Case Number: 2018CV33011 Division: 424      Courtroom:
<b>Order: Motion to Approve Settlement Agreement with WBF/CT Associates, LLC (Ash &amp; Bellaire) w/attach</b>	

The motion/proposed order attached hereto: GRANTED.

The settlement is approved.

Issue Date: 9/26/2019



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><b>Plaintiff:</b> Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> 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 &amp; 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  Division/Courtroom: 424</p>
<p><b>MOTION TO APPROVE SETTLEMENT AGREEMENT WITH WBF/CT ASSOCIATES, LLC (Ash &amp; Bellaire)</b></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. A copy of the “Settlement Agreement” is submitted with this motion 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. On or about October 30, 2017, Dragul entered into a Loan Agreement with WBF pursuant to which WBF agreed to loan Dragul up to \$750,000. On October 30, 2017, Dragul executed a Promissory Note payable to WBF in an amount up to \$750,000, with 24% per year interest, payable in full by March 31, 2018 (the “\$750,000 Note”).

5. The \$750,000 Note was secured by a second deed of trust (the “**High Street Deed of Trust**”) encumbering properties owned by Lower High Street 17, LLC (2311 South High Street, Denver, Colorado); High Street Condo Project, LLC (2321 South High Street, Denver, Colorado); and Upper High Street 17, LLC (2329 South High Street, Denver, Colorado) (collectively the “**High Street Properties**”).

6. WBF wired \$600,000 of the \$750,000 loan amount to High Street Condo Project, LLC on November 1, 2017. WBF wired an additional \$150,000 to Dragul on November 14, 2017.

7. On or about January 11, 2018, Dragul sold the High Street Properties to GDA-DU Student Housing 18 A, LLC and GDA-DU Student Housing 18 A, LLC as tenants-in-common for \$1,042,500.

8. At the closing of the High Street Properties sale to the DU entities on January 11, 2018, Dragul paid WBF \$250,000 (and \$15,859 in interest).

9. On January 11, 2018, Dragul and WBF entered into a Modification of Loan Agreement (“**Loan Modification**”). In the Loan Modification, Dragul and WBF agreed to substitute collateral and grant WBF deeds of trust on the following properties to secure the \$500,000 principal balance still owed on the \$750,000 Note:

A. **2166 South Ash Street, Denver, CO 80222**, Second Deed of Trust dated January 11, 2018, granted by 2166 South Ash 17, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No. 2018049400 in the records of the Clerk and Recorder of the City & County of Denver, State of Colorado.

B. **2176 South Ash Street, Denver, CO 80222**, Second Deed of Trust dated January 11, 2018, granted by 2176 South Ash 16, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No.

2018049401 in the records of the Clerk and Recorder of the City & County of Denver, State of Colorado.

C. **2186 South Ash Street, Denver, CO 80222**, Second Deed of Trust dated January 11, 2018, granted by 2186 South Ash 16, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No. 2018049402 in the records of the Clerk and Recorder of the City & County of Denver, State of Colorado.

D. **2196 South Ash Street, Denver, CO 80222**, Second Deed of Trust dated January 11, 2018, granted by 2196 South Ash 16, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No. 2018049403 in the records of the Clerk and Recorder of the City & County of Denver, State of Colorado.

E. **2175 South Bellaire Street, Denver, CO 80222**, Second Deed of Trust dated January 11, 2018, granted by 2175 South Bellaire 16, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No. 2018049404 in the records of the Clerk and Recorder of the City & County of Denver, State of Colorado.

F. **2195 South Bellaire Street, Denver, CO 80222**, Second Deed of Trust dated January 11, 2018, granted by 2195 South Bellaire 16, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No. 2018049399 in the records of the Clerk and Recorder of the City & County of Denver, State of Colorado. The preceding six properties are referred to as the “**Ash & Bellaire Properties.**”

G. **6316 East Fair Avenue, Centennial, CO 80111**, Second Deed of Trust dated January 11, 2018, granted by 6316 East Fair 16, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No. D8041026 in the records of the Clerk and Recorder of Arapahoe County, State of Colorado.

H. **7842 East Briarwood Boulevard, Centennial, CO 80112**, Second Deed of Trust dated January 11, 2018, granted by 7842 East Briarwood 16, LLC, a Colorado limited liability company, recorded on April 27, 2018, at Reception No. D8041025 in the records of the Clerk and Recorder of Arapahoe County, State of Colorado.

Collectively, these deeds of trust are referred to as the “**Substitute Deeds of Trust.**”

10. On March 18, 2019, WBF/CT filed a claim against the Receivership Estate seeking to recover, *inter alia*, amounts owed under the \$750,000 Note, which, as of August 30, 2018, it claimed to be \$500,000 with accrued interest of \$29,918.07, plus per diem interest of \$328.77, and late charges of \$25,000 (the “**WBF/CT Ash & Bellaire Claim**”).

11. On or about July 24, 2019, the Receiver entered into a contract to sell the Ash & Bellaire Properties to Sognare Development, LLC, and on July 31, 2019, the Receiver filed a motion with the Receivership Court seeking approval of that contract (the “**Ash & Bellaire Motion**”).

12. On August 12, 2019, WBF/CT filed a Limited Objection to the Ash & Bellaire Motion (the “**WBF/CT Limited Objection**”).

13. On August 28, 2019, the Receiver filed a complaint against WBF/CT in Denver District Court, Case No. 2019CV33315 (the “**Litigation**”), seeking, *inter alia*, to avoid the Substitute Deeds of Trust and to recover the value thereof for the benefit of the Receivership Estate.

14. The proposed Settlement Agreement resolves the dispute between the Receiver and WBF/CT as to the validity of Substitute Deeds of Trust and WBF/CT’s Limited Objection to the Ash & Bellaire Motion.

**II. The Settlement Agreement is in the best interests of the Estate and its creditors.**

15. 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).

16. Considering these factors, the Court should approve the Settlement Agreement with WBF/CT. Under the Settlement Agreement, WBF/CT will receive 20% of the net sales proceeds from the sale of the Ash & Bellaire or the East Fair or East Briarwood properties, up to a maximum amount of \$100,000, and in exchange will release its deeds of trust on those properties to facilitate the closing of their sales. WBF/CT will retain a claim against the Receivership Estate for the unpaid balance of its \$750,000 Note. Within three days of Court approval of the Settlement Agreement, WBF/CT will withdraw its objection to the Ash & Bellaire Motion, and the parties will seek to stay the pending Litigation. Upon the recording of the releases of the WBF/CT deeds of trust, the parties will dismiss the Litigation with prejudice.

17. The Settlement Agreement is in the best interest of the Estate and its creditor. It resolves the dispute as to the validity of the Substitute Deeds of Trust and WBF/CT's Limited Objection to the Ash & Bellaire Motion without further expense or litigation risk, and will facilitate the Estate's sale of the Ash & Bellaire and the East Fair and Briarwood properties.

18. 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.

Dated: September 13, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR  
P.C.



By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER



**CERTIFICATE OF SERVICE**

I hereby certify that on September 13, 2019, I served a true and correct copy of the foregoing **MOTION TO APPROVE SETTLEMENT AGREEMENT WITH WBF/CT ASSOCIATES, LLC** (Ash & Bellaire) via CCE to the following:

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***Counsel for Patch of Land Lending,  
LLC***

A copy of the Motion was also served by electronic mail and/or U.S. Mail first-class, postage-prepaid 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  
Salowa Khan