

DISTRICT COURT, COUNTY OF DENVER,  
STATE OF COLORADO  
Court Address: 1437 Bannock Street, Room 256  
Denver, CO 80202  
Telephone: 720-865-8301

Plaintiff: CHRIS MYKLEBUST SECURITIES  
COMM. FOR THE STATE OF COLORADO,

vs.

Defendant: GARY DRAGUL, et al.,

***Attorneys for Secured Creditors Victoria  
Capital Trust, formerly known as Toorak Repo  
Seller I Trust (“VCT”), and Patch of Land  
Lending, LLC***

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Case Number: 2018CV33011

Division : 424

**REPLY IN SUPPORT OF SECURED CREDITORS’ MOTION TO RELEASE THE ASH  
AND BELLAIRE PROPERTIES FROM RECEIVERSHIP STAY**

Secured Creditors Victoria Capital Trust, formerly known as Toorak Repo Seller I Trust (“VCT”), and Patch of Land Lending, LLC (“POL” and, collectively with VCT, the “Secured Creditors”), by and through their attorneys of record, McCarthy & Holthus LLP, hereby submit the following reply in support of their request to releasing the Ash and Bellaire Properties from the receivership stay so Secured Creditors’ may pursue their state law remedies including, but not limited to, initiating foreclosures with respect to the Ash and Bellaire properties.

Secured Creditors continue to engage in settlement discussions with the Receiver but no final agreement has yet been reached. Secured Creditors are hopeful that a settlement will be

reached. Nonetheless, this reply is submitted pursuant to the Court's last order extending the deadline for Secured Creditors to submit a reply.

Termination of the Stay is Warranted So Secured Creditors May Protect Their Interests in the Properties in the Event the Contract Fails.

Receiver Harvey Sender ("Receiver") is confused as to why Secured Creditors can support the sale of the Ash and Bellaire Properties yet seek to terminate the creditor stay. There is nothing confusing or inconsistent about Secured Creditors' request. While Secured Creditors are hopeful the Receiver will be successful in his efforts to sell the Ash and Bellaire Properties, the reality of the transaction necessitates the relief requested. The Receiver asks this Court to keep the stay in place even though the sale of the properties will realistically not occur for a minimum of 9 – 12 months. Not only are there a number of contingencies in the contract, but the Receiver must also resolve the objections of WBF/CT Associates, LLC ("WBF") and Galloway & Company, Inc. ("Galloway"). To be sure, the Receiver only recently filed a complaint against WBF to avoid its lien and has taken no legal action against Galloway. Even if there is a global settlement, the closing date is many months away.

So, where does that leave Secured Creditors? In nine months, assuming the liens of WFB and Galloway are greatly reduced, the contractual purchase price for the proposed transaction will be insufficient to pay real estate commissions and the outstanding debt owed to Secured Creditors. Accordingly, in order to adequately protect Secured Creditors' rights and interests in the Ash and Bellaire Properties, Secured Creditors request an order from the Court allowing them to initiate non-judicial foreclosures. That way, Secured Creditors will be in a position to exercise their rights and remedies if the sale is canceled. In other words, Secured Creditors, who have not received a single payment in over a year, should not have sit back and wait nine to

twelve months to see if the transaction will actually close, as the delay and/or cancelation of the contract will be detrimental to Secured Creditors.

Pursuant to Colorado law, it takes a minimum of one-hundred twenty-five days for a non-judicial foreclosure to be completed once the documents are submitted to the Denver County Public Trustee. Thus, if the foreclosure documents were submitted by October 15, 2019, the earliest sale date would be the end of February, 2020, and could be postponed if the sale is still intact by then and the contract has not be canceled.

The Receiver accuses Secured Creditor of relying on incorrect and unsubstantiated assumptions, even calling their calculations “bogus math.” Yet, it is the Receiver who estimates a recovery between \$1,600 and \$600,000. The figures used by Secured Creditors are based upon the contractual interest rate, the length of the contract and the objections by WBF and Galloway. Both of the junior lien holders filed objections to the sale and have stated they want to be paid in full. Even if the liens of WBF and Galloway are reduced, Secured Creditors estimate there will be no equity for the receivership estate in approximately nine months.

The Receiver criticized VCT for not seeking a termination of the stay before the hearing on the Receiver’s motion to sell twenty-two properties. That transaction did not close. It is somewhat ironic for the Receiver to now oppose the request to terminate the stay in connection with this sale when it faulted Secured Creditors for not seeking relief previously. Also, VCT disagrees with the Receiver’s unsupported allegation in footnote 4 that it violated the Receivership Order. First, the allegation is in no way relevant to the instant motion as it doesn’t relate to the Ash and Bellaire Properties. Second, both the order granting the motion and the Receiver’s sworn testimony at the hearing confirmed the creditor stay terminated upon the granting of the Receiver’s motion.

Finally, Secured Creditors disagree with the Receiver regarding the effect of allowing foreclosures to be initiated for the Ash and Bellaire Properties. Obviously, the purchaser in this transaction is aware of the receivership and the liens as the contract contemplates court approval. Contrary to the Receiver's opposition, the initiation of foreclosures could actually help to facilitate the sale because the purchaser will be motivated to pursue whatever approvals, financing and other conditions set forth in the contract or risk losing the properties.

In sum, given the length of the contract, the contingent nature of the transaction, the reality that the proceeds are insufficient to pay the lienholders, the failure of the Receiver to make any payments to Secured Creditors, and the Receiver's inability to sell any of Secured Creditors' properties since the inception of the receivership on August 31, 2018, Secured Creditors request the Court to lift the stay so that Secured Creditors may concurrently pursue their state law remedy of foreclosure.

Dated this 27th day of September 2019

McCarthy & Holthus, LLP

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 27, 2019 a copy of the foregoing document and exhibits were served via the court approved e-filing system and/or depositing a copy in the United States mail, postage prepaid, to the following:

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