

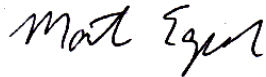
DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) HARVEY SENDER et al.	DATE FILED: December 6, 2019 2:34 PM CASE NUMBER: 2019CV33374
v.	
Defendant(s) RUSSELL BECKER et al.	
△ COURT USE ONLY △	
Case Number: 2019CV33374 Division: 424 Courtroom:	
Order: RESPONSE TO ORDER TO SHOW CAUSE AND REQUEST FOR SUBSTITUTE SERVICE OF JOSEPH J. PEIRCE OR, IN THE ALTERNATIVE, EXTENSION OF TIME TO SERVE JOSEPH J. PEIRCE (w/attach)	

The motion/proposed order attached hereto: GRANTED IN PART.

The Court finds that the plaintiff has exercised reasonable diligence in attempting to locate and personally serve the defendant, both in the state of Colorado and Florida. The Court finds that it is likely that future attempts to locate and personally serve the defendant will be futile. The Court further finds, based upon the representations in the motion regarding contacts with the defendant, that personal service upon the defendant's daughter, Heidi Griffith and the defendant's son-in-law, Jeffrey Griffith, is reasonably calculated to provide the defendant actual notice of this action.

Accordingly, the motion for substituted service is granted, insofar as the such service shall be upon **both** Heidi Griffith and Jeffrey Griffith.

Issue Date: 12/6/2019



MARTIN FOSTER EGELHOFF
District Court Judge

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
<p>Plaintiff: Harvey Sender, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC.</p> <p>v.</p> <p>Defendants: Russell Becker, Joseph J. Peirce, and Ken Stoltzfus.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Receiver:</p> <p>Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Jeremy T. Jonsen, #48859 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 mgilbert@allen-vellone.com pvellone@allen-vellone.com jjonsen@allen-vellone.com rsternlieb@allen-vellone.com</p>	<p>Case Number: 19CV33374</p> <p>Division/Courtroom: 269</p>
<p>RESPONSE TO ORDER TO SHOW CAUSE AND REQUEST FOR SUBSTITUTE SERVICE OF JOSEPH J. PEIRCE OR, IN THE ALTERNATIVE, EXTENSION OF TIME TO SERVE JOSEPH J. PEIRCE</p>	

Plaintiff, Harvey Sender, solely in his capacity as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC (the “Receiver”), responds to the Court’s Order to Show Cause and pursuant to C.R.C.P.

4(f), requests that the Court authorize substitute service of Defendant Joseph J. Peirce (“Peirce”) or, alternatively, for an extension of time to serve him.

1. The Receiver filed his Complaint against Peirce and others on August 30, 2019.

2. Pursuant to C.R.C.P. 4(m), the Receiver was required to serve Peirce with the summons and complaint by November 1, 2019.

3. The Receiver has diligently attempted to serve Peirce. Upon information and belief, the Receiver believed Peirce resided at 5125 West Lake Ave., Littleton CO 80123. When the process server attempted to serve Peirce there on September 12, 2019, he was told Peirce no longer lived there or owned the house. *See Exhibit 1.*

4. Unable to find Peirce in Colorado, the Receiver continued to investigate his whereabouts and obtained information indicating Peirce might be living in Florida. The Receiver thereafter attempted to serve Peirce at 13715 N.W. 11th Street, Pembroke Pines, FL 33028 (the “Florida House”), which the Receiver reasonably believed was Peirce’s Florida’s residence. Despite repeated service attempts, the Receiver was unable to serve Peirce there. *See Exhibit 2.* On October 2, 2019, the second attempt to serve Peirce in Florida, the process server was told by Peirce’s son-in-law, Jeffrey Griffith, that Peirce was vacationing in Costa Rica. *Id.* The Receiver’s investigation has found that Mr. Griffith is married to Mr. Peirce’s daughter Heidi Griffith, who also resides at the Florida House. *See ex. Exhibit 3* at p. 2; **Exhibit 4.**

5. Anticipating he would return from vacation, the process server unsuccessfully attempted to serve Peirce at the Florida House on October 22, 2019, and again on October 24, 2019. Ex. 2. No one answered the door either time. *Id.*

6. On October 28, 2019, the Receiver asked the Court for additional time, through December 2, 2019, to serve Peirce. The Receiver then hired a private investigator, Marshall Wolf of Risk Review & Support Investigations LLC, to attempt to locate and serve Peirce.

7. Mr. Wolf investigated Peirce's whereabouts. See **Exhibit 5**. Ultimately, Mr. Wolf's research revealed that the Florida House is the address most closely associated with Peirce. *Id.*

8. The Receiver suspects Peirce may be evading service and has actual notice of this action, given that process servers spoke with his son-in-law at the Florida House.

9. The Colorado Rules of Civil Procedure, Rule 4(f), provides the following with respect to substituted service of process:

In the event that a party attempting service of process by personal service under section (e) is unable to accomplish service, and service by publication or mail is not otherwise permitted under section (g), the party may file a motion, supported by an affidavit of the person attempting service, for an order for substituted service. The motion shall state (1) the efforts made to obtain personal service and the reason that personal service could not be obtained, (2) the identity of the person to whom the party wishes to deliver the process, and (3) the address, or last known address of the workplace and residence, if known, of the party upon whom service is to be effective. If the court is satisfied under section (e) would be to no avail, and that the person to whom delivery of the process is appropriate under the

circumstances and reasonably calculated to give actual notice to the party upon whom services is to be effective, it shall:

(1) authorize delivery to be made to the person deemed appropriate for service, and

(2) order the process to be mailed to the address(es) of the party to be served by substituted services. As set forth in the motion, on or before the date of delivery. Service shall be complete on the date of delivery to the person deemed appropriate for service.

10. The Receiver has diligently attempted to serve Peirce in two states at two separate locations for over three months. Further attempts to serve Peirce personally will likely be futile given the number of unsuccessful attempts thus far.

11. Service by mail or publication under C.R.C.P. 4(g) is unavailable because this action is not an *in rem* proceeding and does not affect specific property or its status.

12. Under the circumstances, serving the summons and complaint on Jeffrey Griffith (Peirce's son-in-law) or Heidi Griffith (his daughter) personally at the Florida House is appropriate and reasonably calculated to provide Peirce actual notice of this lawsuit given that 1) Jeffrey and Heidi own the Florida House (*see* Ex. 4); 2) Heidi is Peirce's daughter (*see* Ex. 3 at pp. 155-56, 178-79 and **Exhibit 6** at 55, 60, 63, 79); 3) the Florida House appears to have been sold by Peirce to the Griffiths (Ex. 3 at p. 52); and 4) Jeffrey informed the process server that Peirce "stayed with [the Griffiths] for a couple weeks" and knew that Peirce was "in Costa Rica." Ex. 2. Moreover, a 2002 Mercedes-Benz registered under Peirce's name is registered to the Florida House. Ex. 5 at p. 2.

13. The Receiver will also mail a copy of the Summons and Complaint to the Florida House.

14. If the Court does not authorize substituted service, the Receiver requests an additional 60 days, through and including February 1, 2019, to serve Peirce.

WHEREFORE, the Receiver asks the Court to enter an order authorizing substituted service on Joseph J. Peirce by personally serving either Jeffrey Griffith or Heidi Griffith at the Florida House. In the alternative, the Receiver asks the Court to grant him an additional 60-day extension, through and including, February 1, 2020, in which to serve Peirce.

Dated: December 5, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By:


/s/ Jeremy T. Jonsen

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ATTORNEYS FOR THE PLAINTIFF, AS RECEIVER

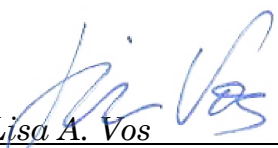
CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2019, I served a true and correct copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE AND REQUEST FOR SUBSTITUTE SERVICE OF JOSEPH J. PEIRCE OR, IN THE ALTERNATIVE, EXTENSION OF TIME TO SERVE JOSEPH J. PEIRCE** on the Colorado Courts E-Filing system to the following or by USPS postage prepaid:

Douglas W. Brown, Esq.
Rachel H. Connor, Esq.
Brown Dunning Walker PC
2000 South Colorado Blvd.
Tower Two, Suite 700
Denver, CO 80222

Russell Becker (VIA USPS)
16 La Villita Circle NE
Albuquerque, NM 87122

Joseph Peirce (VIA USPS to his last known address)
13715 N.W. 11th Street
Pembroke Pines, FL 33028


s/ Lisa A. Vos

Allen Vellone Wolf Helfrich & Factor P.C.