

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: February 21, 2020 4:28 PM FILING ID: F453A9E60B266 CASE NUMBER: 2019CV33374
<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>▲ COURT USE ONLY ▲</p>
<p><u>Attorneys for Defendant Russell Becker:</u> Jason B. Wesoky, Reg. No. 34241 Darling Milligan PC 1331 17th Street, Suite 800 Denver, CO 80202 Phone: (303) 623-9133 Fax: (303) 623-9129 E-mail: jwesoky@darlingmilligan.com</p>	<p>Case No.: 2019CV033374</p> <p>Division: 424</p>
ANSWER	

Defendant Russell Becker answers the Complaint as follows:

1. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 1 and therefore denies the same.
2. Paragraph 2 is a legal conclusion to which no response is required. Further, Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 2 and therefore denies the same.
3. Paragraph 3 is a legal conclusion to which no response is required. Further, Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 3 and therefore denies the same.
4. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 4 and therefore denies the same.
5. Admit.

6. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 6 and therefore denies the same.

7. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 7 and therefore denies the same.

8. Mr. Becker admits this Court has subject matter jurisdiction but denies it has personal jurisdiction over Mr. Becker. Mr. Becker denies all allegations in Paragraphs 8, 8(A), 8(B), and 8(C) not otherwise admitted.

9. Admit.

10. Paragraphs 10 through 32 all seem to relate to a different lawsuit or case; none of the allegations are against Mr. Becker; and Mr. lacks sufficient information to admit or deny the allegations in Paragraphs 10 through 32. Therefore, Mr. Becker denies the allegations in Paragraphs 10 through 32.

11. Mr. Becker denies the first sentence of Paragraph 33. Mr. Becker lacks sufficient information to admit or deny the allegations in the second sentence of Paragraph 33 as to the Receiver's motivation in bringing this suit and therefore denies the same.

12. In response to Paragraph 34, Mr. Becker incorporates his responses to Paragraphs 1 through 33.

13. Mr. Becker denies Paragraph 35. Further, Mr. Becker states that Exhibit 1 is not self-authenticating and appears to be a summary of voluminous documents that have not been provided or presented.

14. Mr. Becker denies Paragraph 36.

15. Paragraph 37 appears to state a legal conclusion to which no response is required. To the extent a response is required, Mr. Becker denies the allegations.

16. Paragraph 38 appears to state a legal conclusion to which no response is required. To the extent a response is required, Mr. Becker denies the allegations.

17. In response to Paragraph 39, Mr. Becker incorporates his responses to Paragraphs 1 through 38.

18. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 40 and therefore denies the same.

19. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 41 and therefore denies the same.

20. Paragraph 42 appears to state a legal conclusion to which no response is required. To the extent a response is required, Mr. Becker denies the allegations.

21. Paragraph 43 appears to state a legal conclusion to which no response is required. To the extent a response is required, Mr. Becker denies the allegations.

22. In response to Paragraph 44, Mr. Becker incorporates his responses to Paragraphs 1 through 43.

23. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 45 and therefore denies the same.

24. Mr. Becker denies the allegations in Paragraph 46.

25. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 47 and therefore denies the same.

26. Mr. Becker lacks sufficient information to admit or deny the allegations in Paragraph 48 and therefore denies the same.

27. Paragraph 49 appears to state a legal conclusion to which no response is required. To the extent a response is required, Mr. Becker denies the allegations.

28. In response to Paragraph 50, Mr. Becker incorporates his responses to Paragraphs 1 through 49.

29. Mr. Becker denies the allegations in Paragraph 51.

30. In response to the WHEREFORE paragraph and all subparagraphs, Mr. Becker denies Plaintiff is entitled to any relief.

31. In response to Paragraphs 52 through 69, the WHEREFORE clause and all subparagraphs that immediately follow Paragraph 69, Paragraphs 70 through 87, and the WHEREFORE clause and all subparagraphs that immediately follow Paragraph 87, Mr. Becker states the allegations are not directed at him and are not related to claims asserted against him, therefore no response is required. To the extent a response is required, Mr. Becker denies all allegations.

32. Mr. Becker asserts the following affirmative defenses:

- a. Statute of limitations – some or all of the claims asserted may be barred by applicable statutes of limitations as Plaintiff seeks to obtain monies allegedly paid to Mr. Becker going as far back as 2004.
- b. Failure to state a claim – Plaintiff has failed to state a claim against Mr. Becker either for the statutory claims or the common law claims.
- c. Failure to join indispensable parties – The vast majority of the substantive allegations in Plaintiff’s complaint are allegations against persons and entities not joined or named in this lawsuit (namely the “debtor” as that term is understood in the context of C.R.S. § 38-8-105). Accordingly, Mr. Becker, who is not a member of the entities not named, cannot defend against the allegations and the failure to join those parties is inherently prejudicial to Mr. Becker, effectively shifts the burden of disproving the allegations onto Mr. Becker, and the rights of Mr. Becker cannot be fully adjudicated without those indispensable parties.
- d. Lack of personal jurisdiction – there are no allegations in the Complaint that provide for a plausible claim that this Court has personal jurisdiction over Mr. Becker. Paragraph 8(B) contains only conclusory statements that entities in which Mr. Becker allegedly had ownership owned real estate in Colorado. Nothing in the Complaint identifies that real estate or where it is or provides any information about the entities Mr. Becker was allegedly a member of. Further, the conclusory statement that Mr. Becker “purportedly performed services for both entities” fails to state where those services were performed. Moreover, the basis of the claims against Mr. Becker is that he provided no consideration for his membership interests, *i.e.*, he didn’t perform the services, therefore, Plaintiff’s Complaint is internally inconsistent – the claims cannot succeed if Mr. Becker performed services which would create personal jurisdiction, and if Mr. Becker didn’t perform such services, there is no personal jurisdiction.

Respectfully submitted this 21st day of February 2020.

DARLING MILLIGAN PC

/s/ Jason B. Wesoky
Jason B. Wesoky, Reg. No. 34241
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of February 2020, a true and correct copy of the foregoing **ANSWER** was filed and served via Colorado Court E-Filing or by USPS postage prepaid upon the following parties:

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In accordance with C.R.C.P. Rule 121 §1-26(7), a printed copy of this document with original or scanned signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.