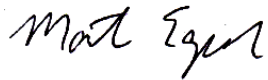


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al v. Defendant(s) GARY DRAGUL et al.	DATE FILED: March 3, 2020 10:33 AM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order:Receiver's Motion to Abandon Clearwater Collection w/ Attach	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 3/3/2020



MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 720.865.8612</p>	
<p>Plaintiff: David S. Cheval, Acting Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 pvellone@allen-vellone.com mgilbert@allen-vellone.com rsternlieb@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION TO ABANDON CLEARWATER COLLECTION</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”), hereby requests Court

approval to abandon the Estate's interest in Clearwater Collection 15, LLC ("Collection"), and Clearwater Plainfield 15, LLC ("Plainfield").

I. Clearwater ownership, management, and debt

1. Collection and Plainfield are tenants-in-common and own the Clearwater Collection Shopping Center, a retail shopping center at 21688-21800 US Highway 19N, Clearwater, Florida 33765 (the "Property"). Under their Tenancy-in-Common Agreement, Collection holds an 82.52% interest in the Property and Plainfield a 17.48% interest. The Property has approximately 134,000 leasable square feet and is only about 63% leased.

2. Collection and Plainfield purchased the Property for \$17,801,000 in August 2015. Attached as **Exhibit 1** is an Organizational Chart that shows the Property's complex ownership structure.

3. Collection is a single purpose entity ("SPE") that is owned by two other SPEs, GDA Clearwater 15, LLC (34.82%) and GDA Clearwater Investors, LLC (65.18%). The members of GDA Clearwater 15, LLC are Dragul, who purportedly holds a 5.38% interest, and 15 other individuals who purportedly own the remaining 94.62%.

4. GDA Clearwater Investors, LLC is owned by Hagshama Florida 13, LLC (71.43%) and CoFund V, LLC (28.57%) (the "Hagshama Entities"). The Property's other tenant-in-common, Plainfield, is owned by yet another SPE, Plainfield 09 A, LLC, which is purportedly owned by Dragul (36.94%) and approximately 33 other

individuals, most of whom originally invested in a prior Dragul-promoted project. Their interests were then “rolled over” or exchanged for ownership interests in Plainfield. The Hagshama Entities purportedly own a majority of the membership interests in the entities that ultimately own the Property.

5. Both Collection and Plainfield are managed by GDA Clearwater Management, LLC, a wholly-owned Dragul entity that is ultimately managed by GDA Real Estate Management, Inc., whose president and sole shareholder is also Dragul. Nearly all of the membership interests in the SPEs associated with the Property were solicited and obtained by Dragul. The Property is therefore property of the Estate the Receiver is authorized to sell or otherwise dispose of.

II. Abandoning the Property is in the best interest of the Estate.

6. The Receivership Order authorizes the Receiver to sell or otherwise dispose of the assets of the Estate, including the personal property of the Receivership Estate. *Receivership Order* ¶ 13(t), at 12. Upon obtaining a court order, a receiver may generally abandon property that is of inconsequential value to an estate. *E.g.* 65 AM. JUR. 2D Receivers § 156. Under the Bankruptcy Code, property may be abandoned that is burdensome or of inconsequential value or benefit to a bankruptcy estate. 11 U.S.C. § 554(a).

7. The Property is encumbered by a deed of trust securing a \$13,350,000 million loan Rialto Mortgage Finance, LLC, made to Collection and Plainfield (the “Rialto Loan”). In April 2018, before the Receiver was appointed, Rialto declared the

Loan in default and began sweeping the rents from the Property and to apply them to pay interest on its Loan.

8. On August 24, 2018, again before the Receiver was appointed, Rialto commenced an action to foreclose the Property in Florida state court, *Wilmington Trust, N.A. v. Clearwater Collection 15, LLC*, Case No. 18-005459, 6th Judicial Circuit, Pinellas County, Florida. That action has been stayed pursuant to paragraph 26 of the Receivership Order. Rialto has foregone seeking relief from the stay to afford the Receiver an opportunity to sell the Property in an attempt to obtain some benefit for the Estate.

9. On February 21, 2019, the Receiver filed a Motion for Order Authorizing Sale of Clearwater Collection (the "Clearwater Sale Motion"), seeking Court approval to sell the Property to Fortune Capital Partners, Inc. ("FCP") for \$17,100,000 (the "FCP Contract"). On April 8, 2019, after an objection to the sale was resolved, the Court entered an Order authorizing the proposed sale.

10. Under the FCP Contract, closing was to occur by June 24, 2019, 30 days after the conclusion of Buyer's due diligence period. On May 20, 2019, FCP notified the Receiver it was terminating the FCP Contract due to its apparent dissatisfaction with the condition of the Property. FCP terminated the contract for several reasons.

11. First, Clearwater's anchor tenant LA Fitness vacated the Property and moved to a different location less than a mile away. LA Fitness leased 33.49% of the total square footage of the Property under a substantially above-market lease.

Although LA Fitness's lease term continues through April 2022, and it continues to pay rent, its vacation of the Property has dramatically affected its value. The Receiver's brokers have conservatively estimated that to re-lease the LA Fitness space will require approximately \$378,000 in leasing commissions and \$1.125 million in tenant improvements.

12. Second, FCP's physical inspection of the Property revealed substantial deferred maintenance requiring an estimated \$1.7+ million in repairs, including roof replacement costs of \$1.25 million.

13. Third, there is a parking easement over a significant portion of the shopping center parking area in favor of the Philadelphia Phillies to service its spring training needs. This too decreases the market value of lease space at the Property.

14. So, after FCP terminated its purchase agreement, on May 30, 2019, the Receiver filed a Withdrawal of Receiver's Motion for Order Authorizing Sale of Clearwater Collection.

15. Since then, the Receiver has diligently attempted to find another buyer willing to purchase the Property at a price that would provide a return to the Estate but has not been able to do so.

16. In December 2019, the Receiver obtained a Letter of Intent from a prospective Clearwater purchaser for \$13 million. As evidenced by **Exhibit 2**, however, as of February 2019 the amount needed to pay-off the Rialto loan exceeded \$14.8 million. As shown by **Exhibit 3**, if a buyer were willing to assume the

\$13,350,000 principal balance of the existing Rialto loan, to bring the loan current would take an additional capital infusion of over \$531,000.

17. The Receiver informed Rialto of this offer and the issues driving the value of the Property down and asked Rialto to discount its payoff and/or bring-current demands. For example, to pay off the Rialto loan would require a prepayment penalty of \$2.39 million, and through February 2019 Rialto had accrued default interest of \$1.3 million.¹

18. Given a purchase of this size and complexity, even if a buyer could be found, it would likely take at least six months from Court approval to close. The economic effect of that delay *vis a vis* the Rialto loan is shown on **Exhibits 4 and 5**. In August 2020, the loan payoff would be over \$15 million, and the bring-current amount for an assumption of the \$13,350,000 principal balance would be \$886,000. Given broker's commissions, even with the unrealistic assumption that a buyer would not demand any credits at closing, the breakeven price for the Property would be approximately \$14.5 million.

19. On February 5, 2020, with knowledge of the LA Fitness issue and deferred maintenance, a potential purchaser submitted an offer for \$11 million subject to inspection rights. The Receiver presented all of this information to Rialto and sought concessions from Rialto that would make a Clearwater transaction

¹ This even though the Rialto Loan has been current since Rialto began sweeping the rents in April 2018. Rialto claims default interest based on the appointment of the Receiver.

economically viable for the Estate. Rialto has refused to accept anything less than the full amount it claims to be owed under its loan documents with the Clearwater entities.² The Property is substantially underwater. Dragul overpaid for the Property which had serious flaws, the biggest being that the LA Fitness lease was roughly 50% above market rate for similar space.

20. In addition, the Receiver is paying its property manager, Revesco, \$10,000 a month to manage the Property and an additional \$2,000-3,000/month in expenses for the Property.

21. Given these circumstances, the Property is of no value to, and is burdensome to the Estate and its creditors and is costing the Receiver over \$10,000/month to retain.

WHEREFORE, the Receiver asks the Court to enter the proposed Order submitted with this Motion authorizing the Receiver to abandon the Property.

Dated: February 19, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By:  s/ Michael T. Gilbert

Patrick D. Vellone, #15284

Michael T. Gilbert, #15009

Rachel A. Sternlieb, #51404

ATTORNEYS FOR THE RECEIVER

² Rialto's bring-current demands contain assumption fees of 1% (\$133,500), yet its loan agreement appears to provide for only 0.25%. Although asked, Rialto has not explained this discrepancy.

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO ABANDON CLEARWATER COLLECTION** via CCE or first-class mail, postage prepaid, to the following:

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Counsel for Hagshama

***Counsel for Rialto Capital
Advisers, LLC***

CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS

In accordance with this Court's February 1, 2019 Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail 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

Allen Vellone Wolf Helfrich & Factor P.C.