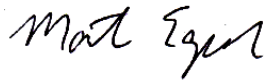


DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. v. Defendant(s) GARY DRAGUL et al.	DATE FILED: March 4, 2020 8:24 AM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order:Receiver's Motion to Abandon Ash & Bellaire Properties w/ Attach	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 3/4/2020



MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</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 ASH & BELLAIRE PROPERTIES</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 2166, 2176, 2186, and 2196 South Ash

Street, and 2175 and 2195 South Bellaire Street, Denver, Colorado 80222 (the “Ash & Bellaire Properties” or sometimes the “Property”).

I. Summary of the Ash & Bellaire Properties

1. The Ash & Bellaire Properties are six single-family homes owned by special purpose entities that are 100% owned and formerly controlled by Dragul. Dragul acquired the Ash & Bellaire Properties intending to demolish the homes and construct a 27-townhome development. Plans for the development were prepared before the Receiver was appointed.

2. Dragul originally purchased the Property in 2016 and 2017 for approximately \$2.7 million. Four of the homes (2166, 2176, and 2186 S. Ash, and 2175 S. Bellaire) are encumbered by first mortgages in favor of Victoria Capital Trust, which as of March 4, 2020, will have a collective payoff balance of \$1,840,635, accruing interest of approximately \$21,700 per month. The other two (2195 South Bellaire and 2196 South Ash) are encumbered by first mortgages in favor of Patch of Land Lending, LLC with a joint payoff balance as of March 4th of approximately \$888,000, accruing interest of approximately \$10,300 per month (Victoria and Patch of Land are the “Secured Creditors”). Patch of Land commenced a foreclosure against 2195 South Bellaire in December 2018; that foreclosure is stayed pursuant to paragraph 26 of this Court’s Receivership Order.

3. All six of the homes are purportedly encumbered by second deeds of trust that secure a \$500,000 loan made to Dragul by WBF/CT Associates, LLC. A

\$141,988.94 mechanic's lien has also been recorded against all six of the Ash & Bellaire homes by Galloway & Company, Inc.

4. Three of the Ash & Bellaire houses are vacant. The three that are occupied have month-to-month tenants whose total rent payments are approximately \$4,900 per month. One tenant, however, has not paid rent since October 2019. Previously, the Receiver evicted another tenant for non-payment of rent. Taxes have not been paid on any of the houses for the last three years and all are in ill-repair with substantial deferred maintenance. On July 5, 2019, the Denver Police came to the Property and removed squatters from the 2166, 2176, and 2186 S. Ash Street houses, and two of those houses (2166 and 2176 S. Ash) are contaminated with methamphetamine.

II. On February 17, 2020, Sognare terminated its agreement to buy the Ash & Bellaire Properties.

5. Since his appointment, the Receiver has attempted to sell the Ash & Bellaire houses as a package to a developer to be redeveloped as originally contemplated believing this would provide the best return to the Estate. Notwithstanding the known problems with the Property, on July 31, 2019, the Receiver filed a Motion for Order Authorizing Sale of the Ash & Bellaire Properties to Sognare Development, LLC for \$3.1 million. Consummation of the sale would have provided an estimated \$40,000-50,000 to the Estate.

6. Several objections to the sale motion were filed; the Receiver resolved the objections through settlement agreements and the Court approved the sale on

October 7, 2019. The Sognare contract provided a 120-day due diligence period which was twice extended through February 28, 2020.

7. During due diligence, Sognare discovered that the sewer main serving the Property will be at full capacity with the construction of the next major development in the University Hills neighborhood in which the Property is located. There is a 350-unit development to the east of the Ash & Bellaire site that is expected to break ground this year, which will consume all existing sewer capacity. Unless the sewer line capacity is increased under East Evans Avenue from approximately Ash Street west to Monroe Street, Sognare's proposed development could not be approved. The City of Denver informed Sognare that the City has no plans or funds to increase the sewer capacity and that the \$1.5+ million cost of doing so would have to be paid by the next project needing increased capacity. This additional cost caused Sognare to terminate its purchase contract on February 17, 2020.

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

8. 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).

9. There is no equity in the Property nor does the Estate have any ability to further stay its foreclosure. **Exhibit 1** is the Receiver's analysis of the economic status of the Ash & Bellaire Properties. As shown, there is no equity in four of the houses: 2166 and 2186 S. Ash, and 2175 and 2195 South Bellaire.¹ And the estimated Zillow value that shows \$13,385 of equity in 2176 S. Ash does not account for the methamphetamine contamination of the property. Nor do the Zillow values consider the substantial deferred maintenance on all of the homes.

10. The only property with potential equity is 2196 S. Ash. But the analysis on Exhibit 1 assumes that Galloway's mechanic's lien could be apportioned equally among all six of the Ash & Bellaire Properties, which is not correct. The full \$141,000 lien arguably encumbers all six houses and would wipe out any projected equity in 2196 S. Ash.

11. Meanwhile the Estate continues to incur management fees of \$250/month per house and to pay insurance, utilities, and maintenance for all of the houses.

12. Even if there were any equity in any of the Ash & Bellaire Properties, pursuant to the Court-approved settlement agreement between the Receiver and the Secured Creditors, once Sognare terminated its purchase contract Secured Creditors

¹ The Zillow website indicated it didn't have enough information to provide an estimated market value for 2195 S. Bellaire. The estimate on Exhibit 1 is based on the last sale price for the property; the property's assessed value in 2019 was \$461,000.


are free to obtain relief from the Court's litigation stay and foreclose. See **Exhibit 2**. The Estate lacks the funds, and given the lack of equity, there is no reason to cure the loan defaults and continue to hold the Property.

13. Given these circumstances, the Property is of no value to, and is burdensome to the Estate and its creditors.

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

Dated: February 21, 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

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO ABANDON ASH & BELLAIRE PROPERTIES** via CCE or first-class mail, postage prepaid, to the following:

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***Counsel for WBF/CT Associates, LLC,
Chad Hurst, and Tom Jordan***

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.