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DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Telephone: 303-606-2429	
Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC, v. **Defendants:** GARY J. DRAGUL, BENJAMIN KAHN, THE CONUNDRUM GROUP, LLP, SUSAN MARKUSCH, ALAN C. FOX, ACF PROPERTY MANAGEMENT, INC., MARLIN S. HERSHEY, PERFORMANCE HOLDINGS, INC., and JANE DOES 1-10, and XYZ CORPORATIONS 1-10.	▲COURT USE ONLY ▲
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DEFENDANTS ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.'S MOTION TO DISMISS PURSUANT TO C.R.C.P. 12(b)(1), 12(b)(5), AND 9(b)

Defendants Alan C. Fox and ACF Property Management, Inc. ("ACF" and, collectively with Alan Fox, "Fox"), through counsel, hereby submit their Motion to Dismiss Pursuant to C.R.C.P. 12(b)(1), 12(b)(5), and 9(b), and in support thereof state as follows:

C.R.C.P. 121 § 1-15, ¶ 8 CERTIFICATE OF CONFERRAL

Counsel for Fox certifies they have attempted in good faith to confer with counsel for Plaintiff Harvey Sender, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC ("Receiver") about this motion. Such efforts included (a) sending the Receiver's counsel a conferral letter on March 12, 2020, setting forth a detailed explanation of the various deficiencies in the Receiver's claims against the Fox Defendants, and (b) leaving a follow-up telephone message with the Receiver's counsel's receptionist on March 17, 2020. As of the time of this filing, counsel for Fox has not yet received any response to such conferral efforts.

INTRODUCTION

On August 30, 2018, the Receiver was appointed in the civil enforcement action captioned *Gerald Rome v. Gary Dragul et al.*, Denver District Court case number 2018CV33011 ("Receivership Action"), asserted by the Colorado Securities Commissioner against Gary Dragul ("Dragul"), GDA Real Estate Services LLC and GDA Real Estate Management (collectively "GDA"). Fox is not a party to the Receivership Action. Fox is, however, one of the largest creditors of the receivership estate, holding a claim in the amount of over $6 million.

On January 21, 2020, almost eighteen months into his appointment and having nearly exhausted the assets of the receivership estate, the Receiver commenced this action in an apparent attempt to dig into deeper pockets. The Receiver asserts claims in this action against virtually every potential deep pocket with whom Dragul conducted business in the fifteen years preceding

the Receivership Action. Given his sizeable claim against the estate, Fox is a particularly attractive target. As demonstrated below, this action epitomizes the Receiver's "shoot first, ask questions later" approach to litigation and should not be condoned.

As a threshold matter, the Receiver lacks standing to bring claims on behalf of Dragul's creditors. The Receiver stands in the shoes of the persons in receivership and can only assert claims on their behalf. Each of the claims against Fox, however, can only be asserted by the investors who allegedly sustained injury. The claims simply do not belong to Dragul or GDA.

The Receiver also fails to allege fraud with the particularity required by Rule 9(b), rendering his Complaint fatally defective. Boiled down, the Receiver purports to bring fraud claims on behalf of ***unidentified creditors***, each of whom invested an ***unspecified amount***, at an ***unspecified time***, in an ***unspecified entity***, based on some ***unspecified omissions or misrepresentations***. The Complaint conspicuously omits the elemental "who, what, when, where, and how" of each alleged misrepresentation and transaction, instead relying on conclusory group allegations. Without these specifics, Fox can neither investigate nor defend against the allegations. Stripped of impermissible conclusory allegations, the few tenuous details the Receiver could muster fall far short of stating a fraud claim against Fox. The Receiver's claims against Fox are also time-barred by the applicable statutes of limitations.

Taken together, these myriad deficiencies confirm the Receiver's claims against Fox lack merit. Fabricating his guilt-by-association theories upon impermissibly vague and demonstrably

false allegations, the Receiver has irresponsibly impugned Fox's reputation with the apparent hope of offsetting Fox's claims against the receivership estate.[1]

ALLEGATIONS OF THE COMPLAINT

The Receiver alleges Dragul operated a Ponzi scheme through various special purpose entities ("SPEs") engaged in acquiring and managing commercial real estate, commingled investor funds, and diverted them to his personal accounts. Compl. ¶¶ 31, 47. When he was unable to pay investors the promised return, Dragul allegedly used new investments to pay fictitious returns and employed other means to conceal his scheme. *Id.* ¶¶ 52, 56, 60-61. The Receiver does not allege Fox had any part in this activity.

The gravamen of the allegations against Fox concerns alleged misrepresentations in the solicitation of investors. The Complaint is replete with conclusory allegations. It alleges only a few specifics, and with respect to only three properties:

1. Market at Southpark ("MSP")

In April 2009, Market at Southpark 09 LLC ("MSP LLC"), an entity owned by ACF, purchased the MSP property for $22,000,000. *Id.* ¶¶ 77, 78. At closing, MSP LLC paid the costs of the transaction, including ACF's and GDA's consulting fees, bringing the total amount it paid for the property to $23,691,646. *See id.* ¶ 78, Ex. 9 (showing that costs were paid by the purchaser).

In January 2010, Fox sent solicitation materials to Dragul, reflecting a purchase price of $24,750,000. *Id.* ¶¶ 71, 72. The Receiver alleges these statements were false because the price that

[1] Exemplifying his irrelevant, inflammatory, and demonstrably false allegations, the Receiver alleges Fox "orchestrated a virtually identical fraudulent scheme" and that "a judgment for approximately $14 million was recently entered in California against Fox." Compl. ¶ 63. Yet the Receiver fails to mention that the judgment to which he refers was ***vacated*** and a new trial ordered.

MSP LLC paid when it acquired the property was less than that amount. *Id.* ¶¶ 77, 78. The Receiver does not allege Fox distributed the solicitation materials to any of Dragul's investors. Instead, he alleges "Dragul forwarded the Market at Southpark Solicitation Materials to [defendant Marlin] Hershey to distribute to prospective investors," and that Hershey distributed the materials to prospective investors. *Id.* ¶¶ 73, 74.

The Receiver alleges Dragul subsequently sent updates to his investors providing leasing and income information for the MSP property, but failed to mention a plan to market and sell the property. *Id.* ¶¶ 79-82. The Receiver does not allege Fox had any involvement in preparing or distributing those updates. MSP LLC sold the property in November 2011 for $30 million and, at closing, ACF and GDA were paid fees and commissions. *Id.* ¶ 83. Although the Receiver alleges the commissions were not disclosed to investors, he fails to allege that investors received any details regarding the sale or acted in reliance on any alleged nondisclosure. *Id.* ¶ 85.

2. Plaza Mall of Georgia North

On December 24, 2008, Dragul's entity Plaza Mall North 08 B Junior LLC ("North 08 B") purchased the property known as Plaza Mall of Georgia North ("PMG") for a purchase price of $25,920,000. *Id.* ¶ 92. At closing, ACF and GDA were paid consulting fees. *Id.* ¶ 95. The total amount paid for the property, including all commissions and fees, was $27,281,817. *Id.* Ex. 13.

Also in 2008, Dragul provided solicitation materials and financial projections to potential investors. *Id.* ¶ 87. Dragul represented in the solicitation materials that the price of the property was $26,979,567. *Id.* ¶¶ 88-92. The Receiver does not allege Fox had any part in drafting the solicitation materials or in distributing them to investors. *Id.* ¶¶ 87-88. Fox allegedly invested $4,210,000 in Dragul's North 08 B. *Id.* ¶ 96.

In April 2016, Fox sold his interest to Plaza Mall North 16 LLC, a Dragul LLC. *Id.* ¶ 97. In connection with that transaction, Dragul received fees. *Id.* ¶ 98. No fees were paid to Fox, and Fox is not alleged to have had any involvement in the property after he sold his interest. North 08 B sold the PMG property in April 2017. Dragul allegedly did not notify his investors about the sale and continued to make monthly payments to them. *Id.* ¶ 100. The Receiver does not allege Fox knew about Dragul's alleged conduct.

3. Prospect Square

In October 2007, Dragul purchased a shopping center known as Prospect Square through five different SPEs ("Prospect SPEs") for $16,000,000. *Id.* ¶¶ 103, 105. The total amount paid for the property, including fees and commissions, was $18,515,969, and the purchase was financed in part by a mortgage loan. *Id.*, Ex. 17. Dragul prepared and sent to his investors solicitation materials, in which he represented that the price of the property was $18,330,000. *Id.* ¶ 106. Dragul raised $5 million from investors. *Id.* ¶ 107. The Receiver does not allege Fox had any involvement in the acquisition of Prospect Square or in the solicitation of investments. Nor does he allege that Fox received any commissions. *Id.* ¶ 108.

In January 2014, the Prospect SPEs filed for a chapter 11 bankruptcy, and later sought the bankruptcy court's approval for the sale of Prospect Square to Park City Commercial Properties, LLC ("Park City") for $16.15 million. *Id.* ¶¶ 109-110. The Receiver alleges the managing member of Park City was Edward Delava, who had been ACF's CFO. *Id.* ¶ 112. The sale to Park City did not close and the lender sought to foreclose on the property. *Id.* ¶ 115. In court filings, the Prospect SPEs stated that the buyer had backed out of the deal after the anchor tenant announced its intentions to relocate, which resulted in a significant decrease in the fair market value of the

property. *Id.* ¶¶ 116, 120. The Receiver alleges Dragul falsely represented to the bankruptcy court that he had no knowledge of the anchor tenant's intentions. *Id.* ¶¶ 117-118.

The lender ultimately agreed to accept a discounted amount on the loan, and the Prospect SPEs sought the bankruptcy court's approval for the sale of the property to ACF for the reduced price of $12.2 million. *Id.* ¶ 123. The sale was approved and the transaction closed in July 2015. *Id.* ¶ 126. In connection with that sale, the purchaser (ACF's assignee - Prospect Square 15 LLC) paid additional fees and commissions in the total amount of $818,645. *Id.* ¶¶ 128, 132, Ex. 18 (showing the buyer paid costs). Therefore, the total amount paid for the property was $13,128,167. *Id.* Ex. 18. The Receiver does not allege that Fox received any fees or commissions.

In January 2016, Prospect Square 15 LLC sold Prospect Square to Dragul's new SPE, PS 16, LLC, for $13.8 million.[2] *Id.* ¶ 135. Dragul and other defendants received fees and commissions in this transaction; no fees were paid to Fox. *Id.* ¶ 136. There are no allegations that Fox had any involvement in the property after selling his interest. *Id.* ¶¶ 138-144.

The Receiver alleges that between 2002 and 2015 Fox received a total of $6,420,291 in commissions for transaction involving various "Dragul properties." *Id.* Ex. 6. The Receiver alleges these commissions were undisclosed, illegal, and obtained from investors by fraud. *Id.* at ¶ 149.

LEGAL STANDARD

In evaluating a motion to dismiss under C.R.C.P. 12(b)(5), courts may consider only those matters stated in the complaint, all averments of material fact must be accepted as true, and the allegations of the complaint must be viewed in the light most favorable to the plaintiff. *Coors*

[2] Although the Receiver alleges Fox made a profit of $1.6 million for the short amount of time they held the property, his calculations conveniently ignore the fees and commissions ACF paid to acquire the property. Compl., Ex. 18.

Brewing Co. v. Floyd, 978 P.2d 663, 665 (Colo. 1999). However, courts are "not required to accept as true legal conclusions couched as factual allegations, and a complaint properly may be dismissed if the substantive law does not support the claims asserted." *Vickery v. Evelyn V. Trumble Living Trust*, 277 P.3d 864, 869 (Colo. App. 2011). Moreover, "although a court primarily considers the pleadings, certain matters of public record may also be taken into account, and matters which are properly the subject of judicial notice may be considered without converting the motion into one for summary judgment." *Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo. App. 2006). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016) (citations omitted).

A party must have standing to assert claims, or the Court lacks jurisdiction to hear them and they must be dismissed pursuant to Rule 12(b)(1). *Ferguson v. Spalding Rehab., LLC*, 456 P.3d 59, 61 (Colo. App. 2019). "Standing is a threshold issue that must be satisfied before a case may be decided on the merits. To establish standing, a plaintiff must show that he has suffered an injury in fact to a legally protected interest." *Adams v. Land Services, Inc.*, 194 P.3d 429, 430 (Colo. App. 2008).

ARGUMENT

1. The Receiver Lacks Standing to Bring the Claims Asserted Against Fox.

A receiver's function is to collect the assets of those in receivership, obey the court's order, and maintain and protect the property and the rights of the various parties. *Hart v. Ed-Ley Corp.*, 482 P.2d 421, 425 (Colo. App. 1971). A receiver "stand[s] in the shoes of the entity in receivership." *Wuliger v. Manufacturers Life Ins. Co.*, 567 F.3d 787, 793 (6th Cir. 2009) (citations omitted). Accordingly, a receiver "lack[s] standing to bring suit unless the receivership entity

could have brought the same action." *Id.* In other words, "although the stated objective of a receivership may be to preserve the estate for the benefit of creditors, that does not equate to a grant of authority to pursue claims belonging to the creditors." *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 627 (6th Cir. 2003) (citations omitted); *see also Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995) ("equity receiver may sue only to redress injuries to the entity in receivership.") As one court put it, "the plaintiff in his capacity of receiver has no greater rights or powers than the corporation itself would have. A receiver may commence lawsuits, but stands in the shoes of the corporation and can assert only those claims which the corporation could have asserted." *Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) (citations and quotation marks omitted); *see also Fleming v. Lind–Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990) (equity receiver did not have standing to bring claims on behalf of investors); *Commodity Futures Trading Comm'n. v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1481 (10th Cir. 1983) (receiver can assert claims only for the corporate fund, and cannot seek "damages on the claims for the investors"); *see also Sender v. Kidder Peabody & Co., Inc.*, 952 P.2d 779, 781 (Colo. App. 1997) ("A bankruptcy trustee cannot assert the claims of creditors or third parties but stands in the shoes of the debtor and may properly asset claims belonging to the debtor.").

The Receiver theorizes he has standing to bring the first through sixth claims for relief on behalf of the investors and/or the SPEs "all of whom are creditors of the Receivership Estate." Compl. ¶¶ 167, 177, 182, 193, 200, 214. His theory is incorrect. Because he stands in the shoes

of the individuals and entities in receivership (*i.e.*, Dragul and GDA), he can only assert claims on their behalf. Yet none of these claims can be asserted by Dragul or GDA.[3]

The Receiver fails to even allege a basis for his purported standing to assert the eleventh through fourteenth claims for relief (for fraudulent transfer, constructive fraud, unjust enrichment, and turnover). Those claims likewise belong exclusively to the creditors. The relief afforded by the Colorado Uniform Fraudulent Transfer Act (which covers both fraudulent transfer and constructive fraud) is expressly available only to creditors. C.R.S. § 38-8-108(1) ("In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in section 38-8-109, may obtain" relief). Accordingly, courts have held that receivers lack standing to bring such claims. *See Eberhard*, 530 F.3d at 132 (receiver lacked standing to assert fraudulent conveyance claim because he did not represent any creditor); *Troelstrup v. Index Futures Group, Inc.*, 130 F.3d 1274 (7th Cir.1997) (receiver appointed for trader who allegedly defrauded investors lacked standing to sue the defendant because the trader had no possible claim and the receiver had no standing to act on investors' behalf); *see also* 2 Clark on Receivers § 364 (3d ed. 1959) (a receiver "acquires no right ... to the property fraudulently transferred for the reason that the transfer is valid against the debtor and cannot be set aside by the receiver as the debtor's successor. The transfer is good against everyone except the creditors of the [transferor].").

[3] Securities fraud claims can be asserted only by a purchaser or seller of a security who was deceived in connection with his purchase or sale. C.R.S. §§ 11-51-501(1), 11-51-604(3). Claims for negligence and negligent misrepresentation are premised on a duty of care that the Receiver claims Fox owed "to investors and prospective investors." Compl. ¶¶ 178, 187-190. The claim for civil theft asserts injury to the "GDA Entity investors." *Id.* at ¶ 197. Violation of COCCA and aiding and abetting can be asserted only by those injured by one or more predicate acts. C.R.S. § 18–17–106(7). Neither Dragul nor GDA can assert any of these claims.

Some courts have allowed receivers to bring fraudulent transfer and similar claims on behalf of the entities in receivership, but only where—***unlike here***—a distinct harm was clearly traceable to the entities in receivership. *See Scholes*, 56 F.3d 750 (receiver had standing to recover fraudulent transfers because the entity in receivership was distinct from the wrongdoer who was displaced by the receiver, and the entity was harmed by the fraud); *Wuliger,* 567 F.3d at 793-97 (because entities in receivership had been harmed, receiver had standing to bring claims, but receiver's recovery was barred by the doctrine of unclean hands). Importantly, these cases confirm that receivers do not stand in the shoes of the creditors. Instead, the receivers' standing in those cases arose from the distinct injury sustained by the entity in receivership. Here, in contrast, the Receiver does not allege any such injury. Rather, the theory he is pursuing is that the commissions he seeks to recover were paid by the SPEs using funds raised from investors.[4] There is no dispute that the commissions were not paid by Dragul or GDA. In fact, the Receiver claims GDA ***received*** those allegedly improper commissions. *See, e.g.*, Compl. ¶¶ 95, 136.

While GDA may argue it was harmed by Dragul's financial mismanagement, it has no such argument as to Fox. *See* Compl. ¶¶ 52-61. In *Knauer v. Jonathon Roberts Financial Group, Inc.*, 348 F.3d 230 (7th Cir. 2003), the court recognized this important distinction. Noting (in *dicta*) that Ponzi schemes often consist of two distinct time periods (the solicitation phase and the embezzlement phase), the *Knauer* court explained that no harm could come to the receivership entities from selling unregistered securities in the solicitation phase, even if the schemer obtained fees and salaries from the funds he solicited. That is because the sales only "fatten[ed] the

[4] As more fully discussed below, the exhibits attached to the Complaint contradict the Receiver's theory that all commissions were paid by Dragul's SPEs.

companies' coffers." *Id.,* at 233-234. The receivership entities, however, may be injured by the schemer's actions during the embezzlement phase because the schemer "depletes the Ponzi entity of resources, which are diverted to the entity's principal, the schemer." *Id.* The receiver in *Knauer* had standing to bring claims to invalidate a fraudulent transfer in the embezzlement phase but ***not*** in the solicitation phase. *Id.* The Receiver's claims against Fox exclusively concern the solicitation phase. Only the creditors, and not the Receiver, have the right to pursue any fraudulent transfer claims arising from the solicitation phase.

Here, investors and other creditors of Dragul's alleged scheme have not assigned to the Receiver any claims they may have against Fox, and are capable of representing their own interests. While the Stipulated Order Appointing Receiver requires creditors to agree not to independently prosecute claims against Dragul and GDA as a condition to submitting a claim, *see* Compl., Ex. 1 at ¶ 16, the Order requires nothing of the sort as to independently prosecuting claims against Fox—thus unfairly exposing Fox to the possibility of duplicative actions and liability.

The Receiver cites ¶ 13(s) of the Stipulated Order as the source of his authority to assert his claims. To the extent the Stipulated Order purports to empower him to prosecute claims on behalf of the creditors, however, it exceeds the judiciary's power and cannot be enforced. *See Scholes v. Schroeder*, 744 F. Supp. 1419, 1420–23 (N.D. Ill. 1990) ("To the extent that the orders… purport to authorize suit on behalf of the investors, those orders are at odds with the fundamental command of Article III"); *Fleming*, 922 F.2d at 24–25 (although the district court empowered the receiver "to prevent irreparable loss, damage and injury to commodity customers and clients," the receiver lacked standing to sue for claims belonging to investors). For all the foregoing reasons, the Receiver lacks standing to bring his claims against Fox.

2. The Receiver Fails to Adequately Allege Fraud Against Fox.

a. Under Rule 9(b), Fraud Must be Plead with Particularity.

Rule 9(b) requires that "in all averments of fraud, the circumstances constituting fraud shall be stated with particularity." *State Farm Mut. Auto. Ins. Co. v. Parrish*, 899 P.2d 285, 288 (Colo. App. 1994). To satisfy the particularity requirement, "the complaint must sufficiently specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiff contends the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements." *Id.* (citations omitted). In other words, the plaintiff must allege with factual particularity the who, what, when, where and how of the fraud. *Zvelo, Inc. v. SonicWALL, Inc.*, No. 06-cv-0045-PAB-KLM, 2013 WL 5443858, at *8 (D. Colo. Sept. 30, 2013) (in reference to the comparable Federal Rule 9(b)); *See also In re Edmonds*, 924 F.2d 176, 180 (10th Cir. 1991) (plaintiff must "set forth the time, place and contents of the false representation, the identity of the party making the false statement and the consequences thereof.").

Moreover, allegations "lumping together" multiple defendants are inadequate to satisfy Rule 9(b)'s particularity requirement. Instead, the plaintiff must allege specifically what conduct is attributed to each defendant. *Koch v. Koch Indus., Inc.*, 203 F.3d 1202, 1237 (10th Cir. 2000) (plaintiff "failed to identify any specific Defendant who made these alleged fraudulent misrepresentations or omissions."); *Seidl v. Greentree Mortg. Co.*, 30 F. Supp. 2d 1292, 1304 (D. Colo. 1998) (under the requirement that fraud be plead with particularity, "[t]he lumping together of defendants in allegations of fact is impermissible."). The particularity requirements of Rule 9(b) apply to each element of the claims. *Kinsey v. Preeson*, 746 P.2d 542, 550 (Colo. 1987). These elements include: (1) a false representation of a material fact; (2) knowledge that it is false;

(3) ignorance on the part of the one to whom the representation is made of the falsity; (4) representation made with intention that it be acted upon; (5) resulting damage. *Id.*

b. The Receiver Fails to Allege with the Requisite Particularity Each of His Claims Sounding in Fraud (i.e., the First, Third, Fourth, Fifth, Sixth, and Eleventh).

The heightened pleading standard of Rule 9(b) applies to all claims "sounding in fraud" regardless of the label attached to the claim or the theory of liability. *State Farm*, 899 P.2d at 289. Here, the first, fifth,[5] sixth and eleventh claims overtly attempt to allege a fraudulent scheme and are thus subject to Rule 9(b). *See* Compl. ¶¶ 168-173, 204, 207-210, 217, 222, 225, 258, 264. The third and fourth claims, labeled "negligent misrepresentation" and "civil theft," likewise are subject to Rule 9(b) because they are premised upon the same alleged deceptive conduct of inducing investments though fraudulent misrepresentations and diverting them to other uses. *See id.* ¶¶ 179, 183, 195; *Van Leeuwan v. Nuzzi*, 810 F. Supp. 1120, 1123 (D. Colo. 1993) (claims for negligent misrepresentation are subject to Rule 9(b) if they aver fraud or mistake); *Hammond v. Reality Technology, Inc.*, No. 07CV6283, 2007 WL 6334106 (Colo. Dist. Ct. January 10, 2007) (a claim for "civil theft by deception would appear to be a claim sounding in fraud" and thus subject to Rule 9(b)) (in *dicta*).

c. The Receiver's Fraud Allegations Fail to Meet the Particularity Requirement of Rule 9(b).

The Receiver's claims sounding in fraud against Fox conspicuously omit the "specific who, what, when, where, and how." *Zvelo*, 2013 WL 5443858. For example, the Receiver alleges in a

[5] "When a claim includes fraud as an element, e.g., a COCCA or RICO claim, that claim's allegations must be pled with particularity, as required by Fed.R.Civ.P. 9(b) and Colo. R. Civ. P. 9(b)." *Dawson v. Goldman Sachs & Co.*, No. 13-cv-02030-CMA-KMT, 2014 WL 5465127, at *3 (D. Colo. October 27, 2014).

conclusory manner that in soliciting investments Dragul acted "in concert with," or "with the assistance of" the "Non-Dragul Defendants." *See, e.g.*, Compl. ¶¶ 1, 47, 62, 65, 96. He then impermissibly lumps together multiple defendants and attributes to all of them a list of alleged misrepresentations. *Id.* ¶ 173. These prototypical group allegations do not suffice under Rule 9(b) – they fail to identify the role and actions of each defendant and to specify what was said and by whom in what form, and with respect to what transaction. The chief allegation that "Dragul and other Defendants told prospective investors that the properties to be acquired cost substantially more than they actually did" fails for the same reasons. *Id.* ¶ 69. The Receiver's summary chart of fees allegedly paid to each Defendant only compounds the problem because it does not detail what entity paid those fees or how they relate to any alleged misrepresentation. *Id.* ¶ 69, Ex. 6.[6]

The Receiver strategically uses these sorts of conclusory group allegations to disguise the dearth of any specific facts tending to implicate Fox. For example, the allegation that Dragul "in concert with the Fox and Hershey Defendants" sent misleading solicitation materials to investors, *see id.* ¶ 65, masks what the specific allegations make clear: Fox never sent solicitation materials to Dragul's investors. Similarly, the Receiver lumps Fox together with those who allegedly commingled investor funds and diverted them to their use. *See id.* ¶¶ 169, 204, 208. Again, however, the more specific allegations confirm Fox had no role in the financial management of Dragul's SPEs. *Id.* ¶¶ 52-61. Ultimately, the Receiver's claims against Fox are asserted on behalf of a collection of ***unidentified creditors***, who invested an ***unspecified amount,*** at an ***unspecified***

[6] In fact, the exhibits reflect that in some cases the entities that appear to have paid the commissions are not even owned or controlled by Dragul – they are ACF entities. *See, e.g.*, Compl. ¶¶ 78, 126, 127, Exs. 9, 18 (showing that fees and commissions were paid by the buyer – the ACF entity).

time, in an ***unspecified entity***, based on ***unspecified omissions or misrepresentations***. Given these crucial unknowns, Fox cannot investigate or defend against the Receiver's claims. Moreover, as demonstrated below, where the Receiver provides even a remote level of specificity—as with the three transactions discussed above—that specificity only confirms he has not and cannot state a fraud claim against Fox.

3. The Receiver Fails to State a Claim for Securities Fraud (or Any Other Fraud) Against Fox.

To establish a securities fraud claim under C.R.S. § 11-51-501(1), a plaintiff must show:

> (1) that the plaintiff is a purchaser or seller of a security; (2) that the security is a 'security'; (3) that the defendant acted with the requisite scienter; (4) that the defendant's conduct was in connection with the purchase or sale of a security; (5) that the defendant's conduct was in violation of section [11–51–501]; and (6) that plaintiff relied upon defendant's conduct to his or her detriment or that defendant's conduct caused plaintiff's injury.

Huffman v. Westmoreland Coal Co., 205 P.3d 501, 505 (Colo. App. 2009). The Receiver's allegations fail to "plausibly" assert that Fox made false statements on which investors relied to their detriment in connection with the purchase or sale of their interests. *Warne*, 373 P.3d at 597 (allegations of a complaint must be plausible to survive dismissal).

Although the Receiver makes a conclusory allegation in one part of his Complaint that the solicitation materials sent to prospective investors "in some instances" were prepared by Fox, Compl. ¶ 66, a closer examination reveals that only one property – MSP – involved solicitation materials allegedly prepared by ACF. *Compare id.* ¶ 71 *with* ¶¶ 88, 106. Notably, the only individual Fox is alleged to have provided the MSP solicitation materials to is Dragul. *Id.* ¶ 71. Fox is not alleged to have distributed any solicitation materials to Dragul's investors at any time. *Id.* ¶¶ 73-76.

According to the Receiver, the solicitation materials were fraudulent because they stated that the purchase price of the property was higher than the price paid for the property several months earlier, and that the higher price was intended to conceal the fees received by Dragul and Fox. *Id.* ¶¶ 72, 76-78. The Receiver's fraud theory, however, collapses in light of the fact that: (1) the fees paid in the acquisition of MSP were paid by MSP LLC, an ACF entity, *id.*, Ex. 9; (2) the fees were paid before any solicitation materials allegedly were distributed, and therefore could not have come from funds raised from Dragul's investors, *id.* ¶ 78; (3) investors were solicited to purchase an ownership interest in MSP LLC, rather than directly in the real property, *id.* at ¶ 1; and (4) there is no explanation why the price of the LLC members' interest (months after the acquisition of the property) should have mirrored the original price of the real property.

Moreover, the Receiver ignores that real property transactions in Colorado and the prices at which those transactions occurred are a matter of public record. C.R.S. § 38-35-109(1) (providing for the recording of deeds evidencing real estate transactions). Indeed, records of the type attached hereto as **Exhibit A**,[7] which disclose the price paid for the properties, were readily accessible to the investors when they acquired their interests in the SPE. In fact, the investors are

[7] The Complaint is replete with details regarding the subject real estate transactions that necessarily implicate the recorded documents related thereto. Accordingly, these Exhibits are not "outside the pleadings" such that they convert this Rule 12(b) dismissal motion to a Rule 56 summary judgment motion. *Yadon v. Lowry*, 126 P.3d 332, 336 (Colo. App. 2005)("A document that is referred to in the complaint, even though not formally incorporated by reference or attached… is not considered a 'matter outside the pleading.'"). Where a document is referred to in the complaint and central to a plaintiff's claim, "the defendant may submit an authentic copy to the court to be considered on a motion to dismiss, and the court's consideration of the document does not require conversion of the motion to one for summary judgment." *Id.* Of course, the Court may also take judicial notice of these Exhibits pursuant to C.R.E. 201. *See Bank of N.Y. Mellon v. Peterson*, 442 P.3d 1006, 1012 n.3 (Colo. App. 2018) (taking judicial notice of real estate documents filed with the county clerk and recorder).

deemed to have constructive knowledge of this information. *Nile Valley Fed. Savings & Loan Assoc, v. Sec. Title Guarantee Corp.*, 813 P.2d 849, 852 (Colo. App. 1991) ("If a document is properly recorded, the whole world is deemed to have constructive notice of the encumbrance."); *Kesicki v. Mitchell*, No. 06CV11247, 2008 WL 2958598 (Colo. Dist. Ct. April 24, 2008) citing *Parsons v. Shackleford*, 117 Colo. 545, 546, 188 P.2d 587, 587 (Colo. 1948) ("in regards to transactions that are matters of public record, full possession of the means of detecting a fraud is equivalent to knowledge."). Because investors could have easily obtained information from the public record regarding the price paid for the property, the Receiver's allegations fail to state facts showing justifiable reliance.

In *Kesicki*, the trial court rejected a very similar fraud theory to the one the Receiver pursues here. The defendant in *Kesicki* acquired real property for $66,000, and several weeks later sold an interest in the property to the plaintiff based on defendant's representation that the property was worth $99,000. Rejecting plaintiff's fraud argument, the court held:

> [T]here was nothing intrinsically improper about [defendant's] immediate profit, or the manner in which he structured the Agreement. The parties were free to either enter into this Agreement under the terms expressed, or to reject the Agreement. They were also free to conduct their own examination or investigation into the Agreement, and apparently chose to do nothing in that regard.

Kesicki, 2008 WL 2958598. Simply put, offering an interest in the entity at a marked-up price is not fraud.[8]

The allegations against Fox regarding PMG and Prospect Square are even more tenuous because the Receiver does not (and cannot) allege Fox had any role in preparing or distributing the

[8] The Receiver alleges that Dragul subsequently failed to advise his investors about the intent to sell the property, but there is no allegation connecting Fox to that omission. Compl. ¶¶ 79-82.

attendant solicitation materials. Compl. ¶¶ 88, 106. The only allegation relating to Fox with respect to PMG is that he purchased an interest in North 08 A, which he later sold (at a net loss), to an SPE managed by Dragul. *Id.* ¶¶ 96-98, Ex. 14. The Receiver has abjectly failed to allege how these transactions could possibly constitute fraud on the investors. Notably, these transactions did not affect the interest of any other investor, and the commissions (paid to other defendants, as Fox received none) appear to have been paid ***by*** Fox. *Id.* Ex. 14.

With respect to Prospect Square, the Receiver alleges Fox was affiliated with Park City, the party that originally contracted to purchase the property out of bankruptcy and later backed out of the deal, and that Fox ultimately purchased the property at a reduced price. *Id.* ¶¶ 112, 123. The Receiver alleges that Dragul failed to disclose in his court filings his relationship with Fox. *Id.* ¶¶ 113, 117-118, 125. Fox, however, did not file anything with the bankruptcy court, had no communications with the lender and made no representations to anyone, and thus cannot be liable for fraud. *See* 18 U.S.C. § 157 (requiring for a finding of bankruptcy fraud the filing of a fraudulent document or the making of a fraudulent statement to a bankruptcy court). Moreover, because all the proceeds from the sale went directly to the secured lender, the investors could not have suffered any harm from the sale of the property at a reduced price. The allegations against Fox are simply devoid of any facts that can constitute fraud on the investors, the lender, or the bankruptcy court. As such, the Court should dismiss the Receiver's securities fraud claim as to Fox.

5. The Receiver Fails to State a Claim for Violations of or Aiding and Abetting Violations of the Colorado Organized Crime Control Act, C.R.S. § 18-17-101, *et seq*. ("COCCA").

To state a claim for violating COCCA, the Receiver must allege that Fox:

> (1) through the commission of two or more predicate acts (2) which constitute a pattern (3) of racketeering activity (4) directly or indirectly conducted or

participated in (5) an enterprise and (6) the plaintiff was injured in its business or property by reason of such conduct.

C.R.S. § 18-17-104(3); *Sender v. Mann*, 423 F. Supp. 2d 1155, 1177 (D. Colo. 2006) (citations omitted). The Receiver has failed to plead these elements, much less with the required specificity.

a. The Receiver Fails to Allege that Fox Engaged in a Pattern of Racketeering Activity.

"Pattern" of racketeering activity is defined as "engaging in at least two acts of racketeering activity which are related to the conduct of the enterprise." C.R.S. § 18-17-103(3). The Receiver purports to assert the following predicate acts: (1) violations of the Colorado Securities Act; (2) wire fraud; (3) civil theft; and (4) bankruptcy fraud under 18 U.S.C. § 157. Compl. ¶ 207-208. But the alleged predicate acts either cannot support a COCCA claim or are improperly alleged. C.R.S. § 18-17-103(5) provides a dispositive list of what constitute predicate acts, and neither civil theft nor bankruptcy fraud under 18 U.S.C. § 157 are included in that statutory list.[9] Moreover, as noted above, no bankruptcy fraud can be attributed to Fox, who did not file anything with the bankruptcy court. *See* 18 U.S.C. § 157.

Moreover, the Receiver's allegations of wire fraud do not meet the standard of Rule 9(b). To state a claim for wire fraud, the plaintiff must assert the use of the wire with particularity. *New England Data Services, Inc. v. Becher*, 829 F.2d 286, 292 (1st Cir. 1987) (allegations found

[9] C.R.S. § 18-17-103(5)(a) states that racketeering activity is "(a) Any conduct defined as "racketeering activity" under 18 U.S.C. 1961(1)(A), (1)(B), (1)(C), and (1)(D)." 18 U.S.C.A. § 1961(1)(D) specifically excludes from its scope "a case under section 157 of this title." Therefore, bankruptcy fraud is not a cognizable predicate act. *See Cadle Co. v. Flanagan*, 271 F. Supp. 2d 379, 385 (D. Conn. 2003); *In re Reinert,* Bankr. No. 11-22840-JAD, Adversary No. 14-02204-JAD, 2015 WL 1206714, at *13 (Bankr. W.D. Pa., Mar. 12, 2015). C.R.S. § 18-17-103(5)(b)(II) makes *criminal* theft pursuant to C.R.S. § 18-4-401, rather than civil theft pursuant to C.R.S. § 18-4-405, a predicate act.

insufficient where plaintiffs merely stated conclusory allegations of mail and wire fraud, with no description of any time, place or content of the communication); *Azurite Corp. Ltd. v. Amster & Co*., 730 F. Supp. 571, 577 (S.D.N.Y. 1990) (allegations of wire fraud were pled with insufficient particularity where complaint contained only vague references to use of telephone or other means of wire transmissions). Therefore, in addition to the deficiencies discussed in Section 2 above, the generalized allegations in paragraph 207(b) concerning the use of the wire are wholly inadequate.

Finally, the securities fraud allegations fail as a predicate act for the reasons discussed above. In addition, because only one transaction (MSP) involved any alleged misrepresentation by Fox, that one predicate act does not suffice to show a "pattern" of racketeering activity. C.R.S. § 18-17-103(3) (requiring "at least two acts of racketeering activity" to impose COCCA liability).

b. The Receiver Fails to Allege an Enterprise Distinct from the Persons Allegedly Engaged in Racketeering Activity.

Section 104(3) of COCCA is modeled after 18 U.S.C. § 1962(c), which courts have held requires that the "enterprise" and the "person" engaged in the racketeering activity be different entities. *Bd. of Cnty. Commrs. v. Liberty Grp.*, 965 F.2d 879, 886 n.4 (10th Cir. 1992) (ten of the eleven circuits that have addressed the issue have found that § 1962(c) requires that the "person" and the "enterprise" engaged in racketeering activities must be distinct); *Llacua v. W. Range Assoc*., 930 F.3d 1161, 1185-87 (10th Cir. 2019) (affirming dismissal of RICO claim where defendant persons were part of, not distinct from, the alleged enterprises). The Colorado Court of Appeals likewise has confirmed that under COCCA an enterprise must consist of at least one other person or entity besides the defendant. *People v. Pollard*, 3 P.3d 473 (Colo. App. 2000). Here, the members of the alleged "enterprise" are all named defendants who are also alleged to be "persons"

within the meaning of COCCA. Compl. ¶¶ 201, 203, 205. The Receiver therefore fails to allege an "enterprise" distinct from the alleged "persons."

c. The Receiver Fails to Allege Fox Conducted or Participated in the Racketeering Enterprise.

To be liable under COCCA, a defendant must conduct or participate in the operation of the racketeering enterprise. *See Reeves v. Ernst & Young*, 507 U.S. 170, 185 (1993) ("liability depends on showing that the defendants conducted or participated in the conduct of the 'enterprise's affairs,' not just their own affairs."). The allegations against Fox do not constitute the kind of participation necessary for liability under § 104(3). The Receiver does not and cannot allege that Fox participated in the financial management of any of the Dragul SPEs. Nor are there any allegations that he was aware that Dragul commingled and diverted funds. And again, the Receiver does not allege Fox ever communicated with any of Dragul's investors. Fox's alleged preparation of solicitation materials in one transaction, and his alleged acceptance of commissions in two, simply do not suffice as the involvement required under COCCA.

d. The Sixth Claim for Relief for Aiding and Abetting Violation of COCCA Fails to State a Claim.

Aiding and abetting in Colorado requires that the defendant knowingly participated in the underlying breach or violation. *Nelson v. Elway*, 971 P.2d 245, 249-50 (Colo. App. 1998). The defendant must have had actual knowledge of the primary violation – it is not enough to have engaged in reckless or negligent conduct. *Stat-Tech Liquidating Tr. v. Fenster*, 981 F. Supp. 1325, 1339 (D. Colo. 1997). Instead of alleging specific facts showing knowledge of the alleged Ponzi scheme by Fox, the Receiver repeats his ill-fated allegations for a COCCA violation and sporadically inserts conclusory phrases like "through aiding and abetting." Compl. ¶¶ 219, 225.

There are no facts showing Fox had any knowledge of Dragul's alleged commingling activity, diversion of investor's funds, the insolvency of his operation, or his alleged misrepresentations to investors with whom Fox never communicated.

6. The Receiver's Claims Against Fox are Time-Barred.

a. The First Claim for Relief is Barred by the Five-Year Statute of Repose.

A claim brought pursuant to section 604(3) of the Colorado Securities Act must be brought within "five years after the purchase or sale" of securities. C.R.S. § 11-51-604(8). As noted above, the acquisition of MSP is the only transaction described in the Complaint in which Fox allegedly had any involvement in the preparation of solicitation materials. To assert injury, the investors had to have purchased their interest prior to November 15, 2011, when the real property was sold. *See* Compl. ¶ 83. Therefore, any claim under the Colorado Securities Act by such investors expired on November 15, 2016, well before the Receiver filed this action.

b. The Twelfth Claim for Relief is Barred by the Four-Year Statute of Repose.

A cause of action for constructive fraud under § 38-8-105(1)(b), claiming there was a transfer for less than a reasonably equivalent value, is "extinguished" if not brought "within four years after the transfer was made or the obligation was incurred." C.R.S. § 38-8-110. This statute focuses solely on the date of the transfer and is not tolled due to delayed discovery. The last alleged payment of fees to Fox was on November 12, 2015. Compl. Ex. 6. A claim for constructive fraud expired four years later, on November 12, 2019. The twelfth claim is thus time-barred as to Fox.

c. The Eleventh, Thirteenth, and Fourteenth Claims for Relief are Time-Barred.

Pursuant to C.R.S. § 38-8-110, a cause of action for avoidance of a transfer made with actual intent to defraud under C.R.S. § 38-8-105(1)(a) is "extinguished" unless it is brought "within

four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant." C.R.S. § 38-8-110. As noted above, the four-year limitations period for any fees and commissions paid to Fox expired on November 12, 2019. The one-year extended period for delayed discovery began running no later than the date the Receiver was appointed. *See Lewis v. Taylor*, 375 P.3d 1205, 1208–1207 (Colo. 2016) (finding that the transfer was or could reasonably have been discovered by the Receiver on the date of his appointment). Because the Receiver was appointed on August 30, 2018, a fraudulent transfer claim expired no later than August 30, 2019. Compl. ¶ 9. This claim therefore is also time-barred.

The Receiver's equitable claims for unjust enrichment and turnover fare no better. Equitable claims are "technically subject to an equitable laches rather than a legal statute of limitations analysis." *Sterenbuch v. Goss*, 266 P.3d 428, 436–437 (Colo. App. 2011) (citations omitted). However, absent extraordinary circumstances, "a court 'will usually grant or withhold relief [by] analogy to the statute of limitations relating to actions at law of like character." *Id*. In this case, the unjust enrichment and turnover claims are similar to the fraudulent transfer or constructive fraud claims and, like those claims, are time-barred.

d. The Second Through Sixth Claims for Relief Are Barred by the Two-Year Statute of Limitations.

The second through sixth claims for relief are subject to the two-year statute of limitations imposed by C.R.S. § 13-80-102, which specifically applies to negligence (second claim for relief) and to actions for which no other period of limitations is stated (the third through sixth claims for relief). *See Callaham v. First American Title Ins. Co.*, 837 P.2d 769, 771 (Colo. App. 1992) (negligent misrepresentation); *Michaelson v. Michaelson*, 923 P.2d 237, 242 (Colo. App. 1995)

(civil theft) *rev'd on other grounds*, 939 P.2d 835 (Colo. 1999); *F.D.I.C. v. Refco Group, Ltd.*, 989 F. Supp. 1052, 1078 (1997) (COCCA). For the action under COCCA to be timely, at least one predicate act must occur within the limitations period and the second must occur within 10 years prior to that act. *People v. Davis*, 296 P.3d 219, 229 (Colo. App. 2012); C.R.S. § 18-17-103(3).

For purposes of the statute of limitations, these causes of action accrue on the date the plaintiff knew or should have known the essential facts that give rise to a claim. C.R.S. § 13–80–108(8); *Jones v. Cox*, 828 P.2d 218, 223–24 (Colo. 1992). The plaintiff need only know or have reason to know the facts that underlie or are essential to the cause of action, not the precise legal theory upon which the action may be brought. *Morris v. Geer*, 720 P.2d 994 (Colo. App. 1986). This standard is objective. "The focus is on a plaintiff's knowledge of facts that would put a reasonable person on notice of the general nature of damage and that the damage was caused by the wrongful conduct of [the defendant]." *Peltz v. Shidler*, 952 P.2d 793, 796 (Colo. App. 1997). The discovery rule in no way minimizes a plaintiff's duty reasonably to investigate and discover potential claims. *Schell v. Carlson*, No. 08CV417, 2010 WL 6570151 (Colo. Dist. Ct. Oct. 15, 2010) ("Appropriate focus…is on the facts that were available at the pertinent time, which would have caused a reasonable person to investigate and discover its claims.").

Moreover, to obtain the benefit of the delayed discovery rule in a fraud case, the plaintiff must affirmatively plead specific facts demonstrating he was not at fault in failing to discover facts sufficient to put him on notice within the limitations period, as well as when he became aware of such facts. *Noland v. Gurley*, 566 F.Supp. 210, 216 (D. Colo. 1983) (motion to dismiss granted where plaintiff did not allege she was unable to discover the fraud despite diligent efforts nor the date upon which she became aware of the fraud). The Receiver here has not done so; nor can he.

As more fully discussed in Section 3 above, the price paid in the purchase or sale of real property was a matter of public record. With reasonable diligence, the investors could have had all the information they needed to discover the alleged misrepresentation as early as the time of the transaction. *See also Kline v. Turner*, 87 Cal. App. 4th 1369, 1374 (2001) ("when the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to [her] investigation (such as public records or corporation books), the statute commences to run.").

In *Kesicki*, the court rejected a similar delayed discovery argument. There, the plaintiff brought an action for breach of contract and fraud, claiming, among other things, that when he acquired his interest in the property twenty-six years earlier, defendant misrepresented the value of the property because the defendant had purchased the property for less several weeks earlier. The plaintiff argued his cause of action did not accrue until he received a letter from the defendant revealing the alleged fraud. Pointing out that the documents in the public record reflected defendant's purchase price for the property, the court concluded:

> [N]early all of the information required for Plaintiff to discover the specifics of the transactions relating to the subject property were matters of public record. Because those records were available to Plaintiff, the fact that he chose not to review those records until 2005 does not mean that his cause of action did not accrue until he made such inquiry…. Accordingly,…the statute of limitations has expired as to any claim relating to the original purchase of the property.

Kesicki, 2008 WL 2958598.

Similarly, here, the documents reflecting the purchase price of the property were part of the public record and were readily accessible to the investors at the time of the transaction. Therefore, the two-year statute of limitations began to run as soon as the investors purchased their interest in MSP LLC, which was no later than November 15, 2011. Compl. ¶ 83. And even if the

unspecified transactions in which Fox allegedly received commissions (according to Exhibit 6) are considered, the two-year limitation period started no later than November 12, 2015, when the last payment of fees or commissions allegedly was made to Fox. These claims are thus time-barred.

CONCLUSION

For the foregoing reasons, ACF and Fox respectfully urge the Court to grant their motion to dismiss the Complaint in its entirety. A proposed order granting that dismissal is filed herewith.

Dated: March 17, 2020.

Respectfully submitted,

MOYE WHITE LLP

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2020 a true and correct copy of the foregoing was electronically filed via CCEF and served on the following:

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Real Property Transaction Record

Source Information

Filings Current Through:	02/21/2020
County Last Updated:	03/12/2020
Frequency of Update:	WEEKLY
Current Date:	03/13/2020
Source:	COUNTY CLERK AND RECORDER

Transaction Information

Transaction Date:	08/11/2009
Seller Name:	REAL ESTATE ACCOUNT
Sale Price:	$22,000,000.00
Deed Type:	GRANT DEED
Document Type:	SPECIAL WARRANTY DEED
Type of Transaction:	RESALE
Mortgage Amount:	$15,500,000.00
Mortgage Type:	CONVENTIONAL
Mortgage Deed Type:	DEED OF TRUST
Mortgage Date:	08/11/2009
Lender Name:	DB PRIVATE WEALTH MTG
Address:	NEW YORK, NY 10017-1216
Recording Date:	08/11/2009
Document Number:	B9087676
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	MORTGAGE

Owner Information

Owner(s):	MARKET AT SOUTHPARK 09 LLC
Ownership Rights:	COMPANY / CORPORATION
Corporate Owner:	CORPORATE OWNER
Absentee Owner:	SITUS FROM SALE (ABSENTEE)
Property Address:	7901 BROADWAY LITTLETON, CO 80122-2718
Mailing Address:	C/O ACF PROPERTY MANAG 12411 VENTURA BLVD STUDIO CITY, CA 91604-2407

Property Information

County:	ARAPAHOE
Assessor's Parcel Number:	2077 34 3 02 003
Property Type:	RETAIL
Building Square Feet:	65442

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

EXHIBIT A

authorized under the FCRA. By accessing one of our services, you agree not to use the service or data for any purpose authorized under the FCRA or in relation to taking an adverse action relating to a consumer application.

End of Document

Real Property Transaction Record

Source Information

Filings Current Through:	02/21/2020
County Last Updated:	03/12/2020
Frequency of Update:	WEEKLY
Current Date:	03/13/2020
Source:	COUNTY CLERK AND RECORDER

Transaction Information

Transaction Date:	11/15/2011
Seller Name:	VILLAGE CROSSROADS 11 LLC
Sale Price:	$30,000,000.00
Deed Type:	GRANT DEED
Document Type:	SPECIAL WARRANTY DEED
Type of Transaction:	RESALE
Recording Date:	11/17/2011
Document Number:	D1113493
	FIDELITY NATIONAL TITLE INSURA
Construction Type:	SALE IS A RE-SALE
Purchase Payment:	CASH

Owner Information

Owner(s):	MARKET AT SOUTHPARK 1674 LLC
Ownership Rights:	UNDIVIDED INTEREST/ UNDIVIDED INDIVIDUAL
Corporate Owner:	CORPORATE OWNER
Partial Interest:	PARTIAL INTEREST
Property Address:	CO
Mailing Address:	3333 NEW HYDE PARK RD 100 NEW HYDE PARK, NY 11042-1205

Property Information

County:	ARAPAHOE
Property Type:	MISCELLANEOUS

End of Document