

DISTRICT COURT, DENVER COUNTY,  
STATE OF COLORADO  
1437 Bannock St.  
Denver, CO 80202

HARVEY SENDER AS RECEIVER FOR GARY  
DRAGUL; GDA REAL ESTATE SERVICES, LLC;  
AND GDA REAL ESTATE MANAGEMENT, LLC,

Plaintiff and Counterclaim Defendant,

v.

GARY J. DRAGUL, an individual; BENJAMIN  
KAHN, an individual; SUSAN MARKUSCH, an  
individual; ALAN C. FOX, an individual; ACF  
PROPERTY MANAGEMENT, INC., a California  
Corporation; MARLIN S. HERSHEY, an individual;  
and PERFORMANCE HOLDINGS, INC., a Florida  
Corporation; JOHN AND JANE DOES 1-10; and XYZ  
CORPORATION 1-10,

Defendants,

and

THE CONUNDRUM GROUP, LLP, a Colorado  
Limited Liability Company,

Defendant and Counterclaimant.

Attorneys for Defendants Benjamin Kahn and The  
Conundrum Group, LLP

**GORDON & REES LLP**

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Case No.: **2020 CV 30255**

Division: **414**

**LAW FIRM'S PARTIAL JOINDER IN MOTION TO DISMISS BY DEFENDANT  
GARY J. DRAGUL**

Defendants Benjamin Kahn and The Conundrum Group, LLP (collectively, the “Law Firm”), through undersigned counsel, join in and adopt as their own portions of the Motion to Dismiss filed by Defendant Gary J. Dragul (“Mr. Dragul”):

1. Mr. Dragul filed a Motion to Dismiss plaintiff’s Complaint pursuant to C.R.C.P. 12(b)(1), 12(b)(5) and 9(b) (“Mr. Dragul’s Motion”), arguing in part that the Receiver acted beyond the scope of his authority in asserting claims against Mr. Dragul and the other Defendants. The Receiver’s theory appears to be that certain entities or investors have claims against Mr. Dragul, and the Receiver can sue Mr. Dragul on behalf of these entities or investors - - notwithstanding that he is Mr. Dragul’s fiduciary, and has commingled the receivership estate. The Receiver also asserts that he can sue the Law Firm or the other Defendants on behalf of these entities or investors because he has seized and exhausted Mr. Dragul’s assets. The Receiver is now paying himself and his counsel out of dwindling receivership estate dollars to defend his decision to sue Mr. Dragul and the other Defendants.

2. The Law Firm joins in Argument Section I in Mr. Dragul’s Motion to the extent those arguments are applicable to the Receiver’s claims against the Law Firm. The Receiver cannot prosecute claims on behalf of unspecified corporate entities and unnamed individual investors.

3. The Law Firm joins in the portions of Argument Section II(A) in Mr. Dragul’s Motion that argue The Receiver – standing in the shoes of Mr. Dragul and GDA Real Estate Services, LLC (“GDA RES”) – cannot sue third parties for working with Mr. Dragul or GDA RES, to the extent those arguments are applicable to plaintiff’s claims against the Law Firm.

4. The Law Firm joins in Argument Section III in Mr. Dragul's Motion to the extent those arguments are applicable to the Receiver's claims against the Law Firm. The Receiver cannot gloss over the purported predicate acts of the Law Firm or ignore the absence of any actual fraudulent enterprise.

5. In addition, the Law Firm joins in Argument Sections IV(B), IV(C) and IV(D) in Mr. Dragul's Motion with respect to the Eleventh through Fourteenth Claims for Relief in the Receiver's Complaint. The Receiver cannot prosecute claims for any alleged "Commissions" to the Law Firm that are time-barred.

6. The Law Firm reserves all of its rights and defenses and does not waive any arguments set forth in its pending Motion for More Definite Statement.

Dated this 1<sup>st</sup> day of April, 2020.

**GORDON & REES LLP**

*Pursuant to C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures shall be maintained by the undersigned and will be made available for inspection by other parties or the court, upon request.*

/s/ John M. Palmeri

John M. Palmeri, #14252

Margaret L. Boehmer, #45169

ATTORNEYS FOR DEFENDANT  
BENJAMIN KAHN and  
THE CONUNDRUM GROUP, LLP

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the above and foregoing was filed and served via the CO-Courts electronic filing system this 1<sup>st</sup> day of April 2020, which will serve the following.

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