

<p><b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b></p> <p>Court Address: City and County Building 1437 Bannock Street Denver, CO 80202</p>	<p>DATE FILED: August 10, 2020 10:49 AM CASE NUMBER: 2018CV33011</p>
<p>Plaintiff:</p> <p><b>DAVID CHEVAL, Acting Securities Commissioner for the State of Colorado</b></p> <p>v.</p> <p>Defendant:</p> <p><b>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC.</b></p>	<p>^ COURT USE ONLY ^</p> <p>Case Number: <b>18CV33011</b></p> <p>Courtroom: <b>424</b></p>
<p><b>ORDER RE: RECEIVER'S MOTION FOR TURNOVER vs. ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.</b></p>	

The Court has reviewed the motion, the response filed on behalf of non-parties Alan C. Fox and ACF Property Management, Inc., the reply and sur-reply filed thereto. The Court has also considered the various attachments to the pleadings, applicable authorities and the Court's file, as well as the statements and arguments presented at the hearing on the motion. The Court now enters the following findings and orders.

**1. Documents**

The Receiver seeks the disclosure from the non-parties of documents deemed necessary in order to value and market the Receiver's membership interest in a variety of entities created by the non-parties. Among the categories of documents subject to the turnover motion are (1) operating agreements for each of the 16 identified entities; (2) tax returns for each entity for the last five years; (3) detailed financial statements for each entity for the

last five years; (4) debt/loan documents related to the financing of each entity and related financing information; (5) documentation of the owners of each entity, including changes in ownership during the past five years; and (6) the most recently available appraisals of the real estate owned by each entity.

The Court finds that the documents requested by the Receiver are relevant and necessary for a proper valuation of the Receiver's membership interest in the specified entities, and that such valuation is likewise necessary for the Receiver to accomplish its mandate to liquidate these membership interests for the benefit of the Estate. Although the non-parties raised a variety of objections to disclosure of the documents in their written pleadings, they acknowledged at the hearing on the motion that their primary concern was obtaining an appropriate confidentiality agreement to protect itself and others from what they consider inappropriate disclosure.

The Court accordingly **grants** the Receiver's motion for disclosure of the categories of documents specified in the motion, subject to an appropriate confidentiality agreement. The confidentiality agreement must recognize the Receiver's need to share documents and other information derived from the documents with internal staff, experts, third-party prospective buyers and others involved in liquidating the assets, as well as the Court. The confidentiality agreement, however, may limit disclosure of the documents and information derived therefrom with other entities and parties who are not related with or involved in the marketing and sale of various membership interests for the benefit of the Estate. Such non-disclosure includes the non-parties' involvement in independent litigation.

The Receiver and the non-parties represented at the hearing that they would cooperate to draft a mutually acceptable agreement for the Court's approval, which is now so ordered, subject to the general parameters as stated in this order. To the extent that issues persist as to the scope or limits of the confidentiality agreement, such issues may be set for a further hearing.

## **2. Distributions**

It is undisputed that the non-parties have withheld in excess of \$180,000.00 in distributions owing to the Estate. Regardless of "concerns" expressed by the non-parties as to how the Receiver might "handle" the distributions, the non-parties have failed to state a legal

justification for withholding the distributions that due and owing to the Receivership Estate.

Accordingly, the Receiver's motion for the non-parties to pay the Estate the \$184,637.00 in withheld distributions, as documented in the motion, as well as a complete and accurate accounting of all distributions owed to the Estate, is granted. Such payment shall be accomplished within 14 days of this order. Any additional accounting shall be accomplished within 35 days of this order.

### **3. Transfer of SSC 02, LLC**

The Receiver's motion seeks an order requiring the non-parties to convey to the Receiver the Estate's former SSC 02 interests in Kenwood Pavilion 14 A, LLC, Fenton Commons, and College Marketplace, or to otherwise pay to the Estate the reasonable value of the asset. In essence, the Receiver asserts that the non-parties conspired with Dragul (and possibly others) to illicitly remove the assets from the Receivership Estate, and that the transfer of the asset to the non-parties was fraudulent.

The Court recognizes that the circumstances of the transfer, as outlined in the motion and reply, raise suspicion about the nature of the transfer and the non-parties' notice or knowledge of the Estate's asserted interest in the asset. However, the Court also recognizes that requiring the non-parties to reconvey the asset to the Receiver (or pay commensurate value) under the auspicious of the Receivership Order, without the process and findings otherwise required by Colorado's Uniform Fraudulent Transfer Act, deprives the non-parties of significant due process rights, not the least of which is to confront and challenge the allegations and mount a defense in a court of law.

Accordingly, the motion to convey the Estate's former interest in the SSC 02 entity is **denied**. Relief, if any, should be sought by other means, including relief via the CUFTA.

SO ORDERED, this 10<sup>th</sup> day of August, 2020

BY THE COURT:

*Mart Egelhoff*

---

Martin F. Egelhoff  
District Court Judge