

**DENIED BY COURT**

**10/28/2020**

DATE FILED: October 28, 2020 3:27 PM

CASE NUMBER: 2020CV30255

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

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

v.

Defendants: GARY J. DRAGUL, an individual;  
BENJAMIN KAHN, an individual; THE  
CONUNDRUM GROUP, LLP, a Colorado  
Limited Liability Company; 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  
CORPORATIONS 1 – 10.

  
**ROBERT LEWIS MCGAHEY JR**  
District Court Judge

▲ COURT USE ONLY ▲

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**ORDER GRANTING MARKUSCH DEFENDANTS'  
MOTION TO DISMISS**

THIS MATTER has come before the Court on the Motion of Defendants Susan Markuschs" and Olson Real Estate Services, LLC (the "Markucsh Defendants") and the Court being now fully advised in the matter, hereby **ORDERS**:

(1) Plaintiff Harvey Sender, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC (the "Receiver") lacks standing to bring the claims for relief asserted against the Markusch Defendants. The Receiver's Complaint is therefore **DISMISSED** with prejudice, pursuant to C.R.C.P. 12(b)(1), as to Susan Markusch and Olson Real Estate Services, LLC.

(2) The Receiver's claims for relief asserted against the Susan Markusch fail for a lack of particularity and for otherwise not stating a claim upon which relief can be granted. The Receiver's Complaint is therefore **DISMISSED** with prejudice, pursuant to C.R.C.P. 12(b)(5) and 9(b), as to the Markusch Defendants; and

(3) The Receiver's Complaint fails to join indispensable parties whom have not be shown to to be impractical or impossible to join. Accordingly, Receiver's Complaint is thus **DISMISSED** with prejudice, as a matter of law, pursuant to C.R.C.P. 12(b)(6) as to the Marksuch Defendants.

Dated:

BY THE COURT:

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Robert L. McGahey, Jr.  
District Court Judge  
Denver DistrCourt