

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

DATE FILED: December 14, 2020 4:44 PM
FILING ID: 555D310582E1B
CASE NUMBER: 2020CV30255

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; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JUNIPER CONSULTING GROUP, LLC, a Colorado limited liability company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.

▲ COURT USE ONLY ▲

Attorneys for Plaintiff:

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Case No.: 2020CV30255

Division/Courtroom: 414

**APPLICATION FOR ENTRY OF DEFAULT AGAINST DEFENDANTS
SUSAN MARKUSCH AND OLSON REAL ESTATE SERVICES, LLC**

Plaintiff, Harvey Sender, in his capacity as Receiver for Gary Dragul; GDA Real Estate Services, LLC; And GDA Real Estate Management, LLC (the “**Receiver**”), pursuant to C.R.C.P. 55(a), hereby asks the Clerk to enter default against Defendants Susan Markusch (“Markusch”) and Olson Real Estate Services, LLC (“Olson”).

1. Plaintiff filed his Complaint against Defendants Gary Dragul, Benjamin Kahn, The Conundrum Group, LLP, Susan Markusch, Alan C. Fox, ACF Property Management, Inc., Marlin S. Hershey, Performance Holdings, Inc., John and Jane Does 1-10 and XYZ Corporations 1-10 on January 21, 2020.

2. All listed Defendants were properly and timely served, including Markusch, who was served on February 4, 2020. (*See* AOS of Susan Markusch, attached as **Exhibit A.**)

3. On June 1, 2020, Plaintiff filed his First Amended Complaint, which added Olson Real Estate Services, LLC as a Defendant.

4. Thomas F. Quinn, Olson’s counsel, waive service of the summons and First Amended Complaint on Olson on June 10, 2020. (*See* Waiver and Acceptance of Service for Olson Real Estate Services, Inc., attached as **Exhibit B.**)

5. On July 9, 2020, Markusch and Olson filed a joint Unopposed Motion for Extension of Time to Respond to the First Amended Complaint seeking an extension up to and including July 17, 2020, which the Court granted.

6. Defendants Markusch and Olson did not file an Answer to the First Amended Complaint on July 17, 2020, but instead, along with most of the other Defendants in the case, filed a Motion to Dismiss the First Amended Complaint (“Motion to Dismiss”) on July 31, 2020. The Receiver filed his Omnibus Response to Defendants’ Motions to Dismiss on August 17, 2020.

7. On October 28, 2020, this Court denied Defendants’ Motions to Dismiss, making Defendants’ deadline to answer or otherwise respond to the First Amended Complaint November 12, 2020.

8. On November 6, 2020, Defendants ACF Property Management, Inc., Alan C. Fox, Marlin Hershey, Performance Holdings, LLC, and Gary Dragul filed an Unopposed Joint Motion for Extension of Time to Answer or Respond to the First Amended Complaint seeking an extension up to and including December 17, 2020, which the Court granted on November 10, 2020.

9. On December 4, 2020, Defendants ACF Property Management, Inc., Alan C. Fox, Marlin Hershey, Performance Holdings, LLC, and Gary Dragul filed another Unopposed Joint Motion for Extension of Time to Answer or Respond to the First Amended Complaint, which the Court granted on December 8, 2020.

10. Defendants Susan Markusch and Olson Real Estate Services have not requested additional time to plead or otherwise respond to the First Amended Complaint, nor did they plead or otherwise respond by the November 12, 2020,

deadline. Pursuant to C.R.C.P. 55(a), the clerk therefore *shall* enter default against them.

WHEREFORE, Plaintiff asks the Clerk to enter default against Defendants Susan Markusch and Olson Real Estate Services, LLC pursuant to C.R.C.P. Rule 55(a) .

Dated: December 14, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: s/ Rachel A. Sternlieb *Rachel A. Sternlieb*
Patrick D. Vellone, #15284
Matthew M. Wolf, # #33198
Rachel A. Sternlieb, #51404
Michael T. Gilbert, #15009

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of December, 2020 a true and correct copy of the **APPLICATION FOR ENTRY OF CLERK'S DEFAULT AGAINST DEFENDANTS SUSAN MARKUSCH AND OLSON REAL ESTATE SERVICES, LLC** was filed and served via the Colorado Courts E-Filing system and/or email to the following:

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Pro Se Defendants

***Counsel for Defendants, Marlin Hershey
and Performance Holdings, Inc.***

s/ Christina A. Clerihue
Allen Vellone Wolf Helfrich & Factor P.C.

In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

<input type="checkbox"/> County Court <input checked="" type="checkbox"/> District Court Denver County, Colorado Court Address: 1437 Bannock St., Denver, CO 80202	<p style="text-align: center;">DATE FILED: December 17, 2020 14:56 AM FILING ID: 855399B05287B7B CASE NUMBER: 2020CV30255</p> <p style="text-align: center;">COURT USE ONLY</p>
Plaintiff/Petitioner(s): Harvey Sender, as Receiver for Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC v. Defendant/Respondent(s): 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	
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: 2020CV30255 Division 414 Courtroom
AFFIDAVIT OF SERVICE	

I declare under oath that I am 18 years or older and not a party to the action and that I served Summons, Complaint, Delay Reduction Order, District Court Civil Case Cover Sheet on Susan A. Markusch in Arapahoe County/Colorado on 02/04/2020 at 8:20am at the following location: 6321 S. Geneva Cir., Englewood, CO 80111.

By handing the documents to a person identified to me as the Defendant/Respondent: Susan Markusch (print name of person served).

By identifying the documents, offering to deliver them to a person identified to me as the Defendant/Respondent who refused service, and then leaving the documents in a conspicuous place.

By leaving the documents at the Defendant/Respondent's usual place of abode with _____ (Name of Person) who is a member of the Defendant/Respondent's family and whose age is 18 years or older. (Identify family relationship)_____.)

By leaving the documents at the Defendant/Respondent's usual workplace with _____ (Name of Person) who is the Defendant/Respondent's secretary, administrative assistant, bookkeeper, or managing agent. (Circle title of person served.)

By leaving the documents with _____ (Name of Person), who as _____ (title) is authorized by appointment or by law to receive service of process for the Defendant/Respondent.

By serving the documents as follows (other service permitted by C.R.C.P 4(g) or C.R.C.P. 304(c)(d) and (e):
_____.

I have charged the following fees for my services in this matter:

Private process server

Sheriff, _____ County
Fee \$ _____ Mileage \$ _____

VERIFICATION AND ACKNOWLEDGMENT

I Ryan Quinn (name) swear/affirm under oath, that I have read the foregoing *AFFIDAVIT OF SERVICE* and that the statements set forth therein are true and correct to the best of my knowledge.

Ryan Quinn
Printed name

[Signature] 2-13-2020
Signature Date

Subscribed and affirmed, or sworn to before me in the County of Boulder, State of Colorado, this 13 day of February, 20 20. My Commission Expires: 10/25/2022

[Signature]
Notary Public

SARA FELDSTEIN-NIXON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184041937
MY COMMISSION EXPIRES OCT. 25, 2022

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p>DATE FILED: December 19, 2020 4:43 PM FILING CLERK: SDA/ASB/EFB/47DC7 CASE NUMBER: 2020CV30255</p>
<p>Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC</p> <p>v.</p> <p>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; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JUNIPER CONSULTING GROUP, LLC, a Colorado limited liability company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: Patrick D. Vellone, #15284 Matthew M. Wolf, #33198 Rachel A. Sternlieb, #51404 Michael T. Gilbert, #15009 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 pvellone@allen-vellone.com mwolf@allen-vellone.com rsternlieb@allen-vellone.com mgilbert@allen-vellone.com</p>	<p>Case No: 2020CV30255 Division/Courtroom: 414</p>
<p>WAIVER AND ACCEPTANCE OF SERVICE OF SUMMONS</p>	

I, Thomas Quinn, attorney for Olson Real Estate Services, LLC (“Olson”), a Defendant in this action, acknowledge receipt of the Plaintiff’s First Amended Complaint, First Amended Complaint Exhibit Index, Exhibits, and Summons, in the above action.

I am authorized by Olson I and do agree on behalf of Olson that service of process is accepted as provided by Rule 4 of the Colorado Rules of Civil Procedure.

Olson Real Estate Services, LLC retains all defenses or objections to the Complaint or to the jurisdiction of the Court, except for objections based on a defect in the Summons or in the service of the Summons.

6/16/2020
Date


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