


GRANTED BY COURT

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p>12/15/2020 DATE FILED: December 15, 2020 9:26 AM CASE NUMBER: 2018CV33011  MARTIN FOSTER EGELHOFF District Court Judge</p>
<p>Plaintiff: Tung Chan, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1900 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com</p>	<p>Case Number: 2018CV33011 Division/Courtroom: 424</p>
<p>RECEIVER'S MOTION TO APPROVE AGREEMENT WITH ALAN C. FOX, THE ALAN C. FOX REVOCABLE TRUST DATED DECEMBER 2, 1999, AND ACF PROPERTY MANAGEMENT, INC.</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving his Agreement for Purchase, Assignment

and Assumption of Membership Interests, Settlement of Claims, and Mutual Release (“Agreement”) with Alan C. Fox (“Fox”), the Alan C. Fox Revocable Trust Dated December 2, 1999 (“Fox Trust”), and ACF Management, Inc. (“ACF”). A copy of the Agreement is submitted as **Exhibit 1**.

I. Background

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender as receiver for Dragul and the GDA Entities and their respective properties and assets, as well as their interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order ¶ 5.

3. Under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, to exercise control over all subsidiaries and related companies owned or managed by Dragul, GDARES or GDAREM, and to investigate and pursue all claims and causes of action on behalf of the Estate. Receivership Order ¶¶ 13(a), (b), (k), & (o).

4. Under the Receivership Order, the Estate owns and/or controls Fort Collins WF 02 LLC (“Fort Collins”), PR Investments, Inc. (“PR”), GDA Village Crossroads LLC (“Village Crossroads”), and GDA Market at Southpark LLC (“Market at Southpark”).

5. Dragul, Fort Collins, PR, Village Crossroads, and Market at Southpark (collectively, the “Members”) own and hold of record minority membership interests (“Membership Interests”) in certain ACF affiliated entities (“ACF Affiliated Entities”). Each of the ACF Affiliated Entities is governed by an operating agreement that contains significant restrictions on the transfer of the Membership Interests, including Fox’s right of first refusal with respect to the transfer, assignment or sale of any Membership Interest.

6. The Receiver, on behalf of the Members, wishes to sell the Membership Interests to the Fox Trust and the Fox Trust wishes to purchase those Membership Interests from the Estate, subject to the terms of the Agreement.

7. On or about January 30, 2019, the ACF Parties filed certain claims against the Receivership Estate, totaling \$6,916,304.43 (“ACF Claims”).

8. On January 21, 2020, the Receiver filed a complaint in the Denver County District Court, Colorado against Fox and ACF, among other defendants, captioned *Sender v. Dragul, et al.*, Case No. 2020CV30255, (the “Insider Case”). In the Insider Case, the Receiver asserted, among other things, that Fox and ACF received approximately \$10.2 million in what the Receiver alleged were illegal commissions, paid from 2002 to 2016, in connection with real estate transactions involving the GDA Entities.

9. Fox and ACF deny all claims asserted in the Insider Case, as well as the Receiver’s standing to assert such claims, and further deny any liability or wrongdoing in connection with the transactions alleged in the Insider Case.

10. In order to settle their disputes and in furtherance of the Receiver's task of liquidating the assets of the Estate, the Receiver and the ACF Parties have entered into the Agreement, which, subject to this Court's approval, provides that the ACF Parties will pay the Estate \$650,000 and will withdraw the ACF Claims against the Estate in exchange for the transfer of the Membership Interests to the Fox Trust or its assignee and the dismissal of the Action against Fox and ACF.

II. The Agreement is in the best interest of the Estate and its creditors.

11. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver's settlement agreement. In analogous bankruptcy contexts, courts consider whether "the settlement is fair and equitable and in the best interests of the estate." In considering whether to approve a settlement, bankruptcy courts consider four primary factors: "the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views." *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

12. Considering these factors, the Court should approve the Agreement. First, although the Receiver believes his claims against Fox and ACF are meritorious,

Fox and ACF have raised various defenses to those claims, including that the statutes of limitations bar some or all of the Receiver's claims and that the Receiver lacks standing to bring them. Second, based on the allegations and defenses asserted thus far, it is expected that litigating the claims in the Insider Case against Fox and ACF will be complex, lengthy, and costly. Third, as part of the Agreement, the ACF Parties will withdraw more than \$6.9 million in claims against the Receivership Estate, which will leave more funds available for distribution to other creditors. Fourth, the contemplated sale of the Membership Interests to the Fox Trust is in the best interest of the Estate. Because of the restrictions on the transferability of the Membership Interests and the fact that the Estate holds minority, non-controlling interests in the ACF Affiliated Entities, a sale to the ACF Parties is the only realistic option for obtaining value for the Estate for those Interests. In addition, the real properties owned by the ACF Affiliated Entities are retail shopping centers that have seen significant decreases in value over the past few months as a result of the COVID-19 pandemic. Given these facts, the Fox offer to purchase the Membership Interests is likely the only reasonable opportunity to liquidate those Interests for the benefit of the Estate.

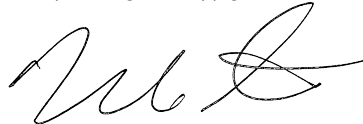
13. Given the potential costs of litigation, the uncertainty of prevailing, the likely unmarketability of the Membership Interests, and the resolution of more than \$6.9 million in claims against the Estate, in the Receiver's business judgment the proposed Agreement is in the best interest of the Estate and its creditors and will result in the prompt payment of funds to the Estate.

14. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on all currently known creditors of the Estate.

WHEREFORE, the Receiver asks the Court to enter its Order approving the proposed Settlement.

Dated: December 3, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.



By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE AGREEMENT WITH ALAN C. FOX, THE ALAN C. FOX REVOCABLE TRUST DATED DECEMBER 2, 1999, AND ACF PROPERTY MANAGEMENT, INC.** via CCE to:

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***Counsel for David S. Cheval, Acting Counsel for Defendant Gary Dragul
Securities Commissioner***

/s/Salowa Khan

Allen Vellone Wolf Helfrich & Factor P.C.

CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS

In accordance with this Court's February 1, 2019 Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

/s/Salowa Khan

Allen Vellone Wolf Helfrich & Factor P.C.