

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p>DATE FILED: February 18, 2021 3:23 PM FILING ID: DD9799A0C62AA CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>TUNG CHAN, Securities Commissioner for the State of Colorado, Plaintiff, v. GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC, Defendants.</p>	
<p>Attorneys for Defendant Gary Dragul: Paul L. Vorndran, Atty. Reg. No. 22098 Christopher S. Mills, Atty. Reg. No. 42042 Jones & Keller, P.C. 1675 Broadway, 26th Floor Denver, CO 80202 Phone: 303-573-1600 Email: pvorndran@joneskeller.com cmills@joneskeller.com</p> <p>Michael C. Van Shumway Van 8985 S Eastern Ave., Suite 100 Las Vegas, Nevada 89123 Phone: 702 478-7770 Email: Michael@shumwayvan.com</p>	<p>Case No. 2018CV33011 Courtroom: 424</p>
<p style="text-align: center;">DEFENDANT GARY DRAGUL’S MOTION TO CONTINUE HEARING ON RECEIVER’S MOTION TO APPROVE SETTLEMENT WITH BROWNSTEIN</p>	

Defendant Gary Dragul, through counsel, reluctantly moves the Court for a short continuance of one or two weeks of the hearing on the Receiver’s Motion to Approve Settlement Agreement with Brownstein Hyatt Farber Schreck, LLP (“Brownstein Settlement Motion”), which is currently scheduled for tomorrow, February 19, 2021. The grounds for seeking the

continuance are: (1) Douglas Shumway, an important witness for Mr. Dragul, is located in Texas and has been told to expect rolling blackouts “for about an hour and a half every three hours” through the hearing date; and (2) several of the exhibits Brownstein disclosed this morning make Mr. Shumway’s testimony particularly critical, and also necessitate an additional witness Mr. Dragul had not planned to otherwise call. In support Mr. Dragul states as follows:

CERTIFICATE OF CONFERRAL

Pursuant to C.R.C.P. 121 § 1-15(8), counsel for Mr. Dragul conferred with counsel for Plaintiff Commissioner, Brownstein, and the Receiver, regarding the relief requested herein. The Commissioner takes no position on this motion. Brownstein and the Receiver oppose this motion.

1. Pursuant to C.R.C.P. 121 § 1-11, the Court may grant a motion to continue a hearing for good cause. “The decision to grant or deny a request for a continuance is left to the sound discretion of the trial court.” *Todd v. Bear Valley Vill. Apartments*, 980 P.2d 973, 976 (Colo. 1999). Good cause exists to continue a *trial*, let alone a hearing, when there are “unforeseen and exceptional circumstances requiring a continuance.” *Id.* Here, unforeseen and exceptional circumstances exist. Moreover, since this is only a hearing and only on a discrete issue in the context of the entire case, and Mr. Dragul seeks only a short continuance—one or two weeks—any prejudice to any parties would be minimal.

2. Mr. Dragul intended to call Douglas Shumway, who played the primary role in gathering and analyzing the evidence that supports Mr. Dragul’s complaint against Brownstein filed in Nevada (“Brownstein Complaint”), as a fact witnesses. He would testify about his research regarding and evidence supporting the Brownstein Complaint, including about his analysis of and facts related to the statute of limitations, the merits of the claims, and damages.

However, he is currently located in Texas which is suffering from wide-spread blackouts due to weather events that have dominated the news recently. Late last night, he received an email from his power company telling him to expect service interruptions “for about an hour and a half every three hours” through tomorrow. (That email is attached as Exhibit 1.) It is highly likely he will be unable to virtually attend the hearing tomorrow.

3. On February 16th, Brownstein’s counsel stated that he did not believe the hearing was an appropriate forum to introduce witness testimony and “have a mini trial”, and that he viewed the hearing as one in which counsel would argue but nothing more. This morning, however, Brownstein served its exhibit list and exhibits for the hearing. Mr. Shumway’s testimony, and that of a witness Mr. Dragul had otherwise determined not to call, are critical to address several of Brownstein’s exhibits (specifically, Exhibits 101 and 102). But because of Mr. Shumway’s lack of electrical service to login to the hearing, and because Mr. Dragul no longer has time before tomorrow morning’s hearing to subpoena the other witness needed to address Brownstein’s exhibits, neither will be available.

4. Mr. Shumway’s unavailability was not learned until late last night, and the need for the other witness was not learned until this morning. They were “unforeseen”. *Todd*, 980 at 976. And since both are critical to Mr. Dragul providing the “developed facts” upon which the Court must base its evaluation of the proposed settlement, *In re Kopexa Realty Venture Co.*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997), their absence also constitutes “exceptional circumstances”, *Todd*, 980 at 976.

5. There will be minimal prejudice, if any, to any other parties. While the Receiver and Brownstein both oppose, it is unclear what harm they would suffer if the hearing were continued one or two weeks. No other deadlines in this case would need to

move. Nor is there any reason to believe the timing of the hearing would affect any other aspect of this proceeding. And the Commissioner has taken no position on this motion, so it appears she anticipates no prejudice. Good cause therefore exists for a short continuance of the hearing.

6. Pursuant to C.R.C.P. § 121 § 1-11, a copy of this motion is being served upon Mr. Dragul.

7. A Proposed Order is attached.

WHEREFORE, Mr. Dragul respectfully requests the Court grant a short continuance of no more than two weeks (or whenever the Court first has availability) of the February 19, 2021 hearing.

Respectfully submitted this 18th day of February, 2021.

s/ Christopher S. Mills

Paul L. Vorndran, #22098

Christopher S. Mills, #42042

*ATTORNEYS FOR DEFENDANT GARY J.
DRAGUL*

CERTIFICATE OF SERVICE

I certify that on this 18th day of February, a true and correct copy of the foregoing **DEFENDANT GARY DRAGUL'S MOTION TO CONTINUE HEARING ON RECEIVER'S MOTION TO APPROVE SETTLEMENT WITH BROWNSTEIN** was filed and served via the Colorado Court's E-Filing system upon the following:

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s/ Christopher S. Mills

Christopher S. Mills

Christopher S. Mills

From: Douglas J. Shumway <Douglas@shumwayvan.com>
Sent: Thursday, February 18, 2021 11:42 AM
To: Christopher S. Mills
Subject: FW: Update from PEC

DATE FILED: February 18, 2021 3:23 PM
FILING ID: DD9799A0C62AA
CASE NUMBER: 2018CV33011

Here you are.

Best regards,

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From: pec-no-reply@smarthub.coop <pec-no-reply@smarthub.coop>
Sent: Wednesday, February 17, 2021 8:11 PM
To: Douglas J. Shumway <Douglas@shumwayvan.com>
Subject: Update from PEC



Important Message From PEC

PEC Members,

PEC continues to make progress restoring power to our members. We know many of you have been without power for an extended period of time, and that some of you remain out of power. We want you to know that we are committed to getting you back online as quickly as possible.

If you have had an outage that exceeds two hours, you likely have a weather-related outage. If you have reported it as an outage, we are working diligently to restore power to you. If you have not yet reported it, please call 888-883-3379 or use PEC.SmartHub.coop.

We have implemented a rotating outage schedule to provide members more certainty with these outages.

- As of today, members should experience service interruptions for about an hour and a half approximately every three hours.
- We expect some level of outages to continue to occur at least through tomorrow afternoon with the amount of time you have power hopefully increasing.

This schedule is subject to change when ERCOT's requirements change, but we are working to ensure the outages do not exceed an hour and a half at a time. We will alert you on our website and social media if there is a change to the outage portion of the schedule.

Winter storm warnings continue across our service territory through tomorrow. Please take advantage of local resources as needed. A list of these resources can be found [here](#). Thank you for your continued patience! Please visit pec.coop for the latest information as well as our social media posts.

The PEC Management and Operations Team



Questions? Use the Contact Us tab via PEC's [website](#) or [SmartHub](#).

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