

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>TUNG CHAN, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PHILIP J. WEISER, Attorney General ROBERT W. FINKE, 40756* First Assistant Attorney General JANNA K. FISCHER, 44952* Assistant Attorney General Ralph L. Carr Judicial Building 1300 Broadway, 8th Floor Denver, CO 80203 Tel: (720) 508-6000 robert.finke@coag.gov janna.fischer@coag.gov *Counsel of Record</p>	<p>Case No.: 2018CV33011</p> <p>Courtroom: 424</p>
<p>RESPONSE OF THE SECURITIES COMMISSIONER IN OPPOSITION TO MOTIONS TO STAY AND VACATE COURT’S FEBRUARY 26, 2021 ORDER</p>	

Plaintiff, Tung Chan, Securities Commissioner for the State of Colorado, hereby opposes the Emergency Motion to Stay the Court’s February 26, 2021 Order filed March 19, 2021 (“Motion to Stay”) and Motion to Vacate February 26, 2021 Order filed March 23, 2021 (“Motion to Vacate”) by nonparty Chad Hurst.

In the Motion to Stay, Hurst requests that this Court stay the enforcement of its Order of February 26, 2021 (“Order”) approving the Receiver's Motion to Approve Settlement Agreement with Brownstein, Hyatt, Farber & Schreck, LLC (“Brownstein”). The Court, after hearing two days of testimony on February 19 and 26, 2021, approved a settlement agreement negotiated between the Receiver, Harvey Sender, and Brownstein. Hurst is a creditor of the Receivership Estate and is not a party to the settlement agreement or to this litigation. At the second day of the hearing, Hurst was represented by counsel. Hurst requested a continuance of the hearing for the purpose of allowing the Receiver to consider a different settlement, the terms of which were not disclosed to this Court. The Receiver opposed the motion for a continuance and indicated that he was not close to reaching a different settlement with Hurst. The Court denied Hurst’s motion for a continuance.

Hurst’s Motion to Stay is predicated on the filing of a petition for certiorari under C.A.R. 21 with the Colorado Supreme Court. (Mot. to Stay at 5.) Yet no such petition has been filed. C.R.C.P. 62(b)(3) allows for a discretionary stay “during the time permitted for filing a notice of appeal.” Hurst indicates in the Motion to Stay that he intends to seek review under C.A.R. 21, in which the Supreme Court can choose to exercise its original jurisdiction. C.A.R. 21(a)(1); *Smith v. Jeppsen*, 277 P.3d 224, 226 (Colo. 2012). There is no set time permitted for filing a petition under C.A.R. 21, an “extraordinary remedy that is limited in purpose and availability.” *In re Est. of Feldman*, 443 P.3d 66, 69 (Colo. 2019). Here, there is no set time permitted to appeal, no appeal is pending, and C.R.C.P. 62(b)(3) does not apply.

Hurst argues in the Motion to Vacate that this Court should vacate its Order under C.R.C.P. 60(b)(5) because a “significant new matter of fact or law” has arisen not previously presented to the Court. Mot. to Vacate at 2 (citing *State Farm Mut. Auto Ins. Co. v. McMillan*, 925 P.2d 785, 790 (Colo. 1996)). But Hurst does not identify any “significant new matter of fact” that were not known at the time of the February 26, 2021 hearing at which Hurst was represented by counsel. Hurst contends that his lack of notice of the Brownstein settlement should warrant vacating the Order. However, Hurst did have enough notice of the settlement to engage counsel to represent him at the hearing. Hurst’s counsel did not raise lack of notice as an issue. The Motion to Vacate does not state grounds to vacate the Order.

For the reasons stated above, the Court should deny the both Emergency Motion to Stay and the Motion to Vacate.

Dated: April 9, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2021, I served a true and correct copy of the foregoing **RESPONSE OF THE SECURITIES COMMISSIONER IN OPPOSITION TO MOTIONS TO STAY AND VACATE COURT'S FEBRUARY 26, 2021 ORDER** via CCE to the following:

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