

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
<b>Plaintiff(s)</b> GERALD ROME SECURITIES COM FOR THE ST OF et al. v. <b>Defendant(s)</b> GARY DRAGUL et al.	<b>DATE FILED:</b> April 21, 2021 1:27 PM <b>CASE NUMBER:</b> 2018CV33011  <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424      Courtroom:
<b>Order: Motion to Vacate February 26, 2021 Order</b>	

The motion/proposed order attached hereto: DENIED.

The matter is before the Court on the attached Motion to Vacate February 26, 2021 Order filed by Creditor Chad Hurst. The Court, having reviewed the motion, the responses filed by the Receiver and the Securities Commissioner, the joinder filed by Brownstein Hyatt Farber Schreck, LLP, the Court's file, and the applicable legal authority, and noting that the Creditor has not filed a reply, denies the motion, for the following reasons:

The motion is based on the Creditor's representation that he did not receive notice of the motion to approve the Brownstein settlement. The Court rejects that representation. Creditor Hurst and approximately 900 other creditors received actual notice of the motion to approve the Brownstein settlement. See Receiver's Combined Response to Chad Hurst's (1) Emergency Motion to Stay the Court's February 26, 2021, Order, and (2) Motion to Vacate that Order, Ex. C. The manner in which the Receiver provided notice was approved by this Court on November 13, 2018. Moreover, as represented by the Receiver and not rebutted by Creditor Hurst, Creditor Hurst's attorney appeared at the hearing on the motion to approve Brownstein settlement. To the extent that he objects to the manner in which he received notice, Creditor Hurst waived any challenges to said notification by appearing at the hearing. *Cline v. City of Boulder*, 450 P.2d 335, 337 (Colo. 1969). Moreover, Creditor Hurst did not object to approval of the settlement at the time of the hearing. Instead, he only sought to continue the hearing.

Issue Date: 4/21/2021



SHELLEY ILENE GILMAN  
District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER,  
COLORADO  
Denver District Court  
1437 Bannock Street  
Denver, CO 80202  
Phone: 720-865-8301

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**PLAINTIFF:**

Tung Chan, Securities Commissioner for the  
State of Colorado

v.

**DEFENDANTS:**

Gary Dragul, GDA Real Estate Services, LLC,  
and GDA Real Estate Management, LLC

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**Attorneys for Nonparty Chad Hurst:**

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▲ COURT USE ONLY ▲

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Case Number: 2018CV33011

Courtroom: 424 Div.

**MOTION TO VACATE FEBRUARY 26, 2021 ORDER**

Creditor, Chad Hurst, through counsel, Williams LLP, submits this Motion to Vacate the Order dated February 26, 2021 under C.R.C.P. 60(b)(5) (“Motion”) because the Receiver did not serve or otherwise provide notice to the Receivership’s creditors of the settlement with Brownstein, Hyatt, Farber, and Schreck LLP (“Brownstein”) or of the Receiver’s motion seeking approval of the settlement with Brownstein.

**CERTIFICATION OF CONFERRAL**

This Motion arises from Mr. Hurst's Motion for Stay and incorporates the argument in Section A(iii) of the Motion to Stay. Attorneys for Brownstein, for the Colorado Division of Securities, and for the Receiver **oppose** the Motion for Stay, and so, also oppose this Motion because this Motion is a companion motion of the Motion for Stay. For the same reasons, the attorneys for Gary Dragul **do not oppose** this Motion.

**MOTION TO VACATE FEBRUARY 26, 2021 ORDER**

A Motion under Rule 60(b)(5) is reserved for where, as here, a "significant new matter of fact or law arises which is extrinsic to it because of not having been presented to the court." *State Farm Mut. Auto Ins. Co. v. McMillan*, 925 P.2d 785, 790 (Colo. 1996) (affirming the trial court's decision to vacate its order under Rule 60(b)(5) because of the "extraordinary circumstances" that the case presented)(citing *E.B. Jones Constr. v. City & Cnty. of Denver*, 717 P.2d 1009, 1013 (Colo. App. 1986)).

As argued in Mr. Hurst's Motion for Stay, the Receivership was established to protect the Receivership's creditors from acts and omissions committed by Gary Dragul. However, since the appointment of the Receiver, based on the Receiver's Reports to this Court, the creditors of the Receivership have received no correspondence from the

Receivership Estate and have otherwise had little to no interaction with the Receivership.

In addition, and more importantly, creditors of the receivership have not been kept informed of the Receivership's business. As argued in Section A(iii) of Mr. Hurst's Motion for Stay, which arguments are incorporated in this Motion as if they were fully argued in this motion, the procedure set forth in Paragraph 34 of the Stipulated Receivership Agreement does not comply with the United States' Supreme Court's holding in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Mr. Hurst did not the Trustee's settlement with Brownstein or the Trustee's Motion to Approve the Settlement with Brownstein. Because neither Mr. Hurst nor any other creditor of the Receivership were served with the settlement documents or with the Motion seeking approval of the settlement with Brownstein, Mr. Hurst moves to set aside the February 26, 2021 Order. Without setting aside the February 26, 2021 Order, Mr. Hursts alone will suffer more than \$1 million dollars in losses because the Brownstein Settlement does not consider the creditors interests.

This Motion is timely because Mr. Hurst is filing it within 6 months (or within 182 days) of the order being issued. C.R.C.P. 60(b)(5).

**WHEREFORE**, Creditor, Chad Hurst, seeks an order vacating the February 26, 2021 Order.

Dated: March 23, 2021.

By: /s/ T. Edward Williams, Esq.  
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*ATTORNEYS FOR CREDITOR CHAD  
HURST*

Attachment to Order - 2018CV002011

**CERTIFICATE OF SERVICE**

I certify that on March 23, 2021, a true and correct copy of the foregoing **MOTION TO VACATE FEBRUARY 26, 2021 ORDER** was served via CCES, addressed to the following:

Bart Williams, Esq. et. al.  
*Counsels for Brownstein Hyatt Farber & Schreck LLP*

Patrick D. Vellone, Esq. et. al.  
*Counsels for Receiver Harvey Sender, Esq.*

Paul Vordran, Esq. et. al.  
*Counsels for Gary Dragul*

Robert W. Finke, Esq. et. al.  
*Counsels for Tung Chan, Securities Commissioner*

WILLIAMS LLP

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