

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF et al. v. Defendant(s) GARY DRAGUL et al.	DATE FILED: May 4, 2021 2:50 PM CASE NUMBER: 2018CV33011 <p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2018CV33011 Division: 424 Courtroom:
Order: Defendant Gary Dragul's Motion For Clarification Re Brownstein Complaint w/attached	

The motion/proposed order attached hereto: MOOT.

The Court denies this motion as moot. See Orders of April 21, 2021.

Issue Date: 5/4/2021



SHELLEY ILENE GILMAN
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</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 style="text-align: center;">▲ COURT USE ONLY ▲</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 (admitted <i>Pro Hac Vice</i>) 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>DEFENDANT GARY DRAGUL’S MOTION FOR CLARIFICATION RE BROWNSTEIN COMPLAINT</p>	

Defendant Gary Dragul, through counsel, seeks clarification from this Court regarding the complaint filed against Brownstein Hyatt Farber Schreck, LLP (“Brownstein”) in Nevada (“Brownstein Complaint”), and in support, 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 Securities Commissioner for the State of Colorado (“Commissioner”), Brownstein, the Receiver, Harvey Sender, and creditor Chad Hurst regarding the relief requested herein. The Commissioner takes no position on this motion. Brownstein and the Receiver oppose this motion. Mr. Hurst does not oppose.

1. In September 2020, Mr. Dragul moved to have several legal claims, primarily against professionals, abandoned by the Receiver. On October 1, the Court denied that motion, stating that it does not “appear from the pleadings that Mr. Dragul, though his counsel, has provided the receiver (through conferral or otherwise) a sufficient basis from which the receiver can determine whether or not viable claims may be asserted as to third parties.”

2. In an attempt to cure the deficiency the Court identified, Mr. Dragul, through Nevada counsel, drafted a complaint against one professional in particular: Brownstein. With the statute of limitations poised to expire, Mr. Dragul filed the Brownstein Complaint in Nevada (“Nevada Action”), noting that certain of the claims belonged to the Receiver.

3. Mr. Dragul then shared the Brownstein Complaint with the Receiver and asked if the Receiver wanted to take up and prosecute certain of the claims. The Receiver did not indicate one way or the other, and Mr. Dragul filed a motion to order the claims against Brownstein abandoned.

4. Several weeks later, the Receiver filed a motion to approve a settlement agreement it had reached with Brownstein to settle the claims in the Brownstein Complaint.

5. On February 19 and 26, 2021, the Court held a hearing on the Receiver's motion to approve that settlement agreement and Mr. Dragul's motion to order the Brownstein claims abandoned.

6. On February 26, the Court issued oral findings and entered an order granting the Receiver's motion to approve the settlement agreement, denying Mr. Dragul's motion to order the Brownstein claims abandoned, and enjoining Mr. Dragul from prosecuting the Nevada Action ("February 26 Order").

7. Mr. Dragul has not prosecuted the Nevada Action. The Brownstein Complaint has never been served. In fact, in early February, after conferring with Brownstein who did not oppose, Mr. Dragul's Nevada counsel, Shumway Van, filed a motion to extend the time to serve the Brownstein Complaint until May 2021. The Nevada court granted that motion. Nothing more has occurred in the Nevada Action.

8. While the February 26 Order does not expressly direct Mr. Dragul to dismiss the Brownstein Complaint, Mr. Dragul assumes for purposes of this Motion that the Court intended for him to dismiss that Complaint as well.

9. However, on March 3, 2021—three business days following the February 26 hearing and Order—a creditor of the Receivership Estate, Chad Hurst, sent a meet-and-confer email to counsel for all parties in this action. It is attached as Exhibit 1. In that meet and confer, Mr. Hurst indicated that he would file a Petition for Show Cause Order under C.A.R. 21, and that in connection with that Petition, he would seek a stay of the Court's February 26 Order. Mr. Dragul understood Mr. Hurst's stay and Rule 21 Petition to involve the Brownstein claims. In other words, Mr. Hurst sought a stay to maintain the status quo with respect to the Brownstein claims.

10. If Mr. Dragul dismissed the Brownstein Complaint, that would change the status quo Mr. Hurst sought to preserve. Indeed, since Mr. Dragul filed the Brownstein Complaint just before the statute of limitations ran, the claims likely could not be refiled if Mr. Dragul dismissed them. Mr. Dragul therefore believed he would irreparably moot Mr. Hurst's planned stay motion if he dismissed the Brownstein Complaint. And if Mr. Hurst's planned Rule 21 Petition also involved the Brownstein claims, as the context of Mr. Hurst's March 3 meet-and-confer appeared to indicate, dismissing the Brownstein Complaint seemed likely to moot that appeal as well.

11. Mr. Dragul is not presently pursuing an appeal of the February 26 Order. However, if he had, it seems likely he would not be forced to dismiss the Brownstein Complaint during the pendency of that appeal since doing so would irreparably moot the appeal and effectively make the February 26 Order unreviewable. Mr. Dragul is not aware of any reason why this would be different when another party is pursuing an appeal. Dismissing the Brownstein Complaint immediately would likely moot Mr. Hurst's appeal, again making the February 26 Order unreviewable.

12. Thus, following the March 3 meet-and-confer, Mr. Dragul considered his options: (1) dismiss the Brownstein Complaint immediately; or (2) do nothing with the Brownstein Complaint—neither prosecute it nor dismiss it—until the Court had a chance to rule on Mr. Hurst's stay motion. The prejudice to Mr. Hurst if Mr. Dragul dismissed the Brownstein Complaint immediately is clear. Moreover, Mr. Dragul was concerned that if he immediately dismissed the Brownstein Complaint and rendered Mr. Hurst's stay motion moot, it would usurp the Court's power to rule on that motion—effectively making the Court's mind up for it. On the other hand, Mr. Dragul perceived little prejudice to Brownstein or the Receiver in giving the

Court time to rule on Mr. Hurst's motion before taking any action with the Brownstein Complaint. Since Mr. Dragul never served that Complaint and has not taken any action to prosecute it in any other way since long before the February hearing, neither Brownstein nor the Receiver would need to do anything in the Nevada Action. Mr. Dragul therefore determined that he should do nothing with the Brownstein Complaint—neither prosecute it nor dismiss it—until the Court had a chance to rule on Mr. Hurst's motion.

13. Two weeks later, on March 17, the Receiver's counsel emailed Mr. Dragul's counsel and demanded that Mr. Dragul dismiss the Brownstein Complaint. Mr. Dragul's counsel then emailed Mr. Hurst's counsel the same day asking if Mr. Hurst still intended to file a motion for stay. Mr. Hurst's counsel indicated that he did still intend to file that motion.

14. Mr. Hurst filed the stay motion on March 20. Mr. Dragul's counsel emailed the Receiver's counsel to explain that Mr. Dragul had determined to do nothing with respect to the Brownstein Complaint (neither prosecute nor dismiss it) until the Court had a chance to rule on Mr. Hurst's motion so as to avoid altering the status quo the stay motion sought to preserve and avoid mooting it. That email is attached as Exhibit A to the 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, filed April 9, 2021 ("Rec. Resp. to Hurst Motions").

15. On March 31, Brownstein's counsel sent Mr. Dragul's counsel a letter accusing Mr. Dragul and his counsel of being in contempt of court for not having already dismissed the Brownstein Complaint, despite that Mr. Hurst's stay motion had not yet been ruled on.¹ Mr.

¹ Brownstein's letter also insinuated that upon receiving the Receiver's counsel's March 17 email, Mr. Dragul rushed to Mr. Hurst and had him draft the motion for stay, allegedly to provide cover for Mr. Dragul's purported contempt of the Court's Order. The Receiver argues the same, stating "Hurst seeks a stay in an apparent attempt to excuse Dragul's continuing contempt." (Rec. Resp. to Hurst Motions at 3.) That is incorrect. The relevant date is March 3,

Dragul and his counsel do not want to be in contempt. However, Mr. Dragul also does not want to moot a motion for stay currently pending before the Court unless it is clear that is what the Court wants him to do.

16. Moreover, on April 5, Mr. Hurst filed a motion to vacate the Court's February 26 Order. It appears that dismissing the Brownstein Complaint would moot that motion as well.

17. For these reasons, Mr. Dragul respectfully requests the Court's clarification about what he should do with respect to dismissing the Brownstein Complaint. Should he neither prosecute it nor dismiss it until the Court has an opportunity to rule on Mr. Hurst's motions? Or should Mr. Dragul dismiss the Brownstein Complaint now, before the Court has ruled on those motions, thus mooting them and potentially foreclosing Mr. Hurst's appellate review?

18. A proposed order is attached.

WHEREFORE, Mr. Dragul respectfully requests the Court clarify whether he should dismiss the Brownstein Complaint now or wait until the Court has ruled on Mr. Hurst's motions.

Respectfully submitted this 12th day of April, 2021.

s/ Christopher S. Mills

Paul L. Vorndran, #22098

Christopher S. Mills, #42042

s/ Michael C. Van

Michel C. Van (admitted *Pro Hac Vice*)

*ATTORNEYS FOR DEFENDANT GARY J.
DRAGUL*

not March 17 and not March 20. That was when Mr. Hurst sent his meet-and-confer email about the stay motion to all counsel. All parties were therefore on notice as of March 3—two weeks before the Receiver's March 17 email and only three business days following the February 26 Order—that Mr. Hurst would seek to stay the Order. Thus, Mr. Dragul knew by March 3 that immediately dismissing the Brownstein Complaint would moot Mr. Hurst's planned stay motion. Therefore, Mr. Dragul determined on March 3 to do nothing with the Brownstein Complaint until the Court had a chance to rule on the stay motion.

CERTIFICATE OF SERVICE

I certify that on this 12th day of April, a true and correct copy of the foregoing **DEFENDANT GARY DRAGUL'S MOTION FOR CLARIFICATION RE BROWNSTEIN COMPLAINT** was filed and served via the Colorado Court's E-Filing system (or email for those not registered with the E-Filing system) upon the following:

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