

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p>DATE FILED: May 27, 2021 4:17 PM FILING ID: BB593A41E3500 CASE NUMBER: 2020CV30255</p>
<p>Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL; GDA REAL ESTATE SERVICES, LLC; AND GDA REAL ESTATE MANAGEMENT, LLC</p> <p>v.</p> <p>Defendants: GARY J. DRAGUL, an individual; BENJAMIN KAHN, an individual; THE CONUNDRUM GROUP, LLP, a Colorado Limited Liability Company; SUSAN MARKUSCH, an individual; MARLIN S. HERSHEY, an individual; and PERFORMANCE HOLDINGS, INC., a Florida Corporation; OLSON REAL ESTATE SERVICES, LLC, a Colorado Limited Liability Company; JOHN AND JANE DOES 1 – 10; and XYZ CORPORATIONS 1 – 10.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Defendant Gary J. Dragul Christopher S. Mills, Atty. Reg. No. 42042 Paul L. Vorndran, Atty. Reg. No. 22098 Jones & Keller, P.C. 1675 Broadway, 26th Floor Denver, CO 80202 Phone: 303-573-1600 Email: cmills@joneskeller.com pvorndran@joneskeller.com</p>	<p>Case No. 2020CV30255 Courtroom: 414</p>
<p>DEFENDANT GARY DRAGUL’S MOTION TO TOLL DEADLINE TO RESPOND TO FIRST AMENDED COMPLAINT</p>	

Defendant Gary Dragul seeks to toll the deadline to respond to the Receiver’s First Amended Complaint until fourteen days following the Court’s ruling on Mr. Dragul’s concurrently filed Renewed Motion for Reconsideration of Order Denying Motion to Dismiss First Amended Complaint (“Renewed Motion”). In support thereof, Mr. Dragul states as follows:

Certification of Conferral

Pursuant to C.R.C.P. 121 § 1-15(8), counsel for Mr. Dragul conferred with counsel for the Receiver and the Receiver opposes the relief sought in this Motion.

1. Concurrent with the filing of this Motion to Toll Deadline to Respond to First Amended Complaint (“Motion”), Mr. Dragul is filing his Renewed Motion which asks the Court to revisit Mr. Dragul’s Motion to Dismiss the Receiver’s First Amended Complaint (“FAC”).

2. Mr. Dragul’s Renewed Motion (and underlying Motion to Dismiss) include two case-dispositive issues implicating the Court’s subject matter jurisdiction: (1) whether the Receiver has standing to assert third-party creditors’ claims; and (2) whether the Receiver may sue Mr. Dragul even if Mr. Dragul is in the Receivership.

3. If the Court grants the Renewed Motion, reconsiders the Motion to Dismiss, and dismisses the Receiver’s claims, there will be no need to answer the FAC.

4. Additionally, should the deadline to answer the FAC approach, Mr. Dragul intends to move to stay the case. Mr. Dragul is defending against two criminal indictments involving substantially the same facts as the Receiver alleges in the FAC. The first indictment is currently scheduled to go to trial at the end of June. No criminal defense attorney would allow his or her client to testify in a civil proceeding about facts related to a pending criminal case. The criminal attorney would instead instruct the client to invoke his Fifth Amendment rights.

5. Doing so in this civil case will preclude Mr. Dragul from defending himself. It will also preclude other defendants from defending themselves in this civil action, as they assuredly need testimony from Mr. Dragul for their defense. For that reason, courts may and often do stay such civil cases when parallel criminal cases are pending. *See, e.g., United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970) (collecting cases); *People v. Shifrin*, 342 P.3d 506, 513

(Colo. App. 2014); *Trustees of Plumbers and Pipefitters Nat'l Pension Fund v. Transworld Mechanical, Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995).

6. However, there is no need to stay the case if it is instead dismissed for lack of subject matter jurisdiction or other reasons. Indeed, if the Court lacks subject matter jurisdiction, it is unclear it would even have jurisdiction to stay the case (or allow it to proceed).

7. No party will be prejudiced by tolling the complaint response deadline. The case is not yet at issue and no other dates exist that could be impacted. The requested tolling until 14 days after the Court rules on the Renewed Motion does not represent a significant delay in the overall timeline of a case. That is particularly so since Mr. Dragul intends to move to stay the case if it is not dismissed, meaning it might not move forward anyway. And tolling the deadline would prevent the parties from having to expend time and resources drafting and addressing pleadings that may be wholly unnecessary.

CONCLUSION

For those reasons, Mr. Dragul requests the Court toll the deadline for Mr. Dragul to respond to the FAC until fourteen (14) days following the Court's ruling on Mr. Dragul's Renewed Motion. Should the Court grant the Renewed Motion and dismiss the case, there will be no need for Mr. Dragul to respond to the FAC or file the motion to stay. Should the Court deny the Renewed Motion, tolling the deadline will allow Mr. Dragul to draft and file his motion to stay. A proposed order is submitted herewith.

Dated this 27th day of May, 2021.

JONES & KELLER, P.C.

s/ Christopher S. Mills

Christopher S. Mills, #42042

Paul L. Vorndran, #22098

*ATTORNEYS FOR DEFENDANT GARY J.
DRAGUL*

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2021, a true and correct copy of the foregoing **DEFENDANT GARY DRAGUL'S MOTION TO TOLL DEADLINE TO RESPOND TO FIRST AMENDED COMPLAINT** was filed and served via the Colorado Court E-filing system to the following:

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