

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock St. Denver, CO 80202 (720) 865-8612	▲ COURT USE ONLY ▲
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	
<i>Attorney for Investor/Creditor/Claimant Chad Hurst</i> Christopher S. Mills, Atty. Reg. No. 42042 Jones & Keller, P.C. 1675 Broadway, 26 th Floor Denver, CO 80202 Phone: 303-573-1600 Email: cmills@joneskeller.com	
CHAD HURST’S MOTION TO CONTINUE HEARING ON MOTION TO APPROVE SETTLEMENT AGREEMENT AND REQUEST FOR EXPEDITED BRIEFING [PARTIALLY OPPOSED]	

Investor/Creditor/Claimant Chad Hurst, through counsel, Jones & Keller, P.C., hereby moves to continue the hearing on the Receiver’s Motion to Approve Settlement Agreement with Clearwater Bankruptcy Estates, currently set for November 13, 2024, for three months, and in support thereof, states as follows:

C.R.C.P. 121 § 1-15(8) CERTIFICATION

Undersigned counsel for Mr. Hurst conferred with counsel for Plaintiff, the Commissioner, and counsel for the Receiver, regarding this Motion. The Commissioner takes no position. The Receiver opposes the relief requested herein.

1. On March 29, 2024, the Receiver filed his Motion to Approve Settlement Agreement with Clearwater Bankruptcy Estates (“Settlement Motion”) which sought for the Court to approve a settlement agreement (“Settlement Agreement”) he had reached with the Liquidating Trustee of bankruptcy estates for two entities (the “Clearwater Entities”) in which the Receiver had previously abandoned his interest along with abandoning the Clearwater Entities’ only material asset—a large shopping center in Florida.

2. Mr. Hurst is an investor/creditor and claimant of the Receivership Estate established in this action, and he objected to the proposed Settlement Agreement between the Receiver and Trustee.

3. On April 26, 2024, the Court ordered that the Settlement Motion be set for hearing, and directed counsel for the Receiver to obtain dates.

4. The Receiver’s counsel did so, then conferred with Mr. Hurst’s counsel, and ultimately set the hearing for November 13, 2024.

5. As the Receiver notes in paragraph 29 of his Settlement Motion, “[t]he Settlement Agreement is not effective unless and until it is approved by both this Court and the Bankruptcy Court.”

6. Consistent with that requirement, on March 26, 2024, the Liquidating Trustee filed a motion with the Bankruptcy Court seeking that court’s approval of the very same proposed Settlement Agreement.

7. After reviewing the Trustee’s settlement motion and objection filed thereto, the Bankruptcy Court set the matter, including the question of whether the Receiver had standing to

be filing claims in the Bankruptcy Court at all since he abandoned the Clearwater Entities and their shopping center, for a four-day trial/evidentiary hearing to occur on September 24-27, 2024.

8. However, on July 24, 2024, the Bankruptcy Court held a telephonic hearing on a discovery dispute related to the Trustee's settlement motion. During that telephonic hearing, the Bankruptcy Court indicated that it was skeptical that the Receiver had standing to pursue claims in the Bankruptcy Court in light of the Receiver's abandonment of his interest in the Clearwater Entities and their shopping center. However, the Bankruptcy Court wanted to give the Receiver an opportunity to further address the issue. Thus, the Bankruptcy Court vacated the evidentiary hearing and ordered the parties to submit briefs regarding "the Receiver's standing to modify the [liquidation] plan [as the Settlement Agreement would effectively involve], waiver by the Receiver, and abandonment by the Receiver." This was memorialized in a minute order issued the same day, which is attached hereto as Exhibit A.

9. The Receiver filed his brief addressing his standing to pursue claims in the Bankruptcy Court on August 23, 2024. Mr. Hurst, through his separate bankruptcy counsel, filed his brief on the same day. The Receiver then filed a response on August 29, 2024. These briefs and response are attached hereto as Exhibits B-D.

10. Mr. Hurst is not certain when the Bankruptcy Court will rule on whether the Receiver has standing to pursue claims in the Bankruptcy Court, and on the Trustee's motion to approve the Settlement Agreement with the Receiver, but anticipates it will be soon.

11. The Settlement Agreement cannot become effective unless *both* this Court and the Bankruptcy Court approve it. (Settlement Motion ¶ 29.) Thus, if the Bankruptcy Court denies the Trustee's settlement motion, as seems likely, the Settlement Agreement cannot become

effective regardless of how this Court rules on the Receiver's Settlement Motion (and vice versa).

12. Even if the hearing before this Court went forward on November 13th, it appears likely that the Bankruptcy Court will rule on whether to approve the Settlement Agreement before this Court does. Thus, holding the hearing on November 13th may result in wasting the Court's and parties' time and resources.

13. Indeed, if the Court grants this Motion to continue the November hearing, and the Bankruptcy Court refuses to approve the Settlement Agreement before the hearing occurs, this Court could vacate the hearing. If the Bankruptcy Court instead approves the Settlement Agreement, this Court would have the benefit of the Bankruptcy Court's analysis before the hearing.

14. Thus, continuing the hearing is in the interest of judicial economy, and will provide the Court with a more fulsome record if the hearing takes place.

15. For those reasons, good cause exists to continue the hearing for approximately three months, or however long thereafter until the Court's schedule can accommodate it.

16. Though the Receiver opposes this Motion, it does not appear he would suffer any prejudice from continuing the hearing. If the hearing is ultimately vacated because the Bankruptcy Court declines to approve the Settlement Agreement, the Receiver would save the time and cost of the hearing—which, if incurred, he would bill to the Receivership Estate, reducing the funds available to distribute to claimants in the Receivership. And the Receiver will have the benefit of the Bankruptcy Court's analysis if the hearing ultimately takes place.

17. Since the November 13th hearing is 14 days away, this Motion would not be fully briefed on the normal briefing schedule. Consequently, Mr. Hurst requests that the Receiver file his opposition, if any, by November 6, 2024, and that Mr. Hurst file his reply, if any, by November 8, 2024, to allow the Court time to rule. This Motion is relatively simple, and a compressed schedule should not prejudice the Receiver.

18. Undersigned counsel certifies pursuant to C.R.C.P. 121 § 1-11 that a copy of this Motion is being concurrently served on Mr. Hurst.

19. A proposed order is attached.

WHEREFORE, Mr. Hurst respectfully requests that the Court continue the November 13, 2024 hearing on the Receiver's Settlement Motion for three months (until February 2025), or whenever thereafter the Court's schedule can accommodate the hearing, and order an expedited briefing schedule on this Motion.

DATED this 30th day of October, 2024.

JONES & KELLER, P.C.

/s/ Christopher S. Mills

Christopher S. Mills, #42042

1675 Broadway, 26th Floor

Denver, CO 80202

Telephone: (303) 573-1600

Facsimile: (303) 573-8133

ATTORNEY FOR

INVESTOR/CREDITOR/CLAIMANT CHAD

HURST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **CHAD HURST'S MOTION TO CONTINUE HEARING ON MOTION TO APPROVE SETTLEMENT AGREEMENT AND REQUEST FOR EXPEDITED BRIEFING [PARTIALLY OPPOSED]** was filed and served via the CCE e-file system on this 30th day of October, 2024 to all counsel of record for the parties to the action, including the following:

Patrick D. Vellone
Michael T. Gilbert
Averil K. Andrews
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout St., Suite 1900
Denver, Colorado 80202
Phone Number: (303) 534-4499
pvellone@allen-vellone.com
mgilbert@allen-vellone.com
aandrews@allen-vellone.com

Counsel for Receiver

Arthur Tyrone Glover
TYRONE GLOVER LAW, LLC
2590 Walnut St.
Denver, CO 80205
tyrone@tyroneglover.com

Attorney for Gary Dragul

Robert W. Finke
Janna K. Fischer
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203
Robert.Finke@coag.gov
Janna.Fischer@coag.gov

***Counsel for Tung Chan,
Securities Commissioner for the
State of Colorado***

/s/ Renae K. Mesch
Renae K. Mesch, Paralegal