

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	<b>Civil Action No. 18-CV-5587</b>
<b>Plaintiff,</b>	)	<b>Hon. John Z. Lee</b>
<b>v.</b>	)	
<b>EQUITYBUILD, INC., et al.,</b>	)	<b>Magistrate Judge Young B. Kim</b>
	)	
<b>Defendants.</b>	)	
	)	

**RECEIVER’S COMBINED RESPONSE TO OBJECTIONS TO FEE APPLICATIONS<sup>1</sup>**

As their objections reflect, the institutional lenders act and submit argument as though they occupy undisputed first priority position. As they see it, the Court should shutter this receivership at once. And unless and until that happens, they intend to litigate everything to achieve precisely that result, which of course means objecting strenuously to its petitions for interim payments of professional fees.

There is a giant elephant in the room, however, that the lenders do not care to mention. That elephant assumes the form of nearly 1,000 individual investors, scattered across the country and beyond, who purport to hold senior mortgages on nearly all the same properties that the institutional lenders claim for collateral. Many of these individuals poured their life savings into these assets and now face potentially staggering losses as a result of the Ponzi scheme that the Receivership Defendants operated in admitted violation of federal securities laws. Typically, these individuals made loans to EquityBuild through promissory notes secured by group mortgages in which they held a proportionate financial interest, mortgages that appear in many cases to have

---

<sup>1</sup> Rather than file separate responses to the institutional lender objections, the Receiver submits this combined response; and, accordingly, requests leave to file this response in excess of 15 pages.

been released by without their knowledge or consent before or during refinancing events in which the proceeds of the fresh capital (for example, obtained from institutional lenders) were diverted and not deployed to reimburse them, as a result of which EquityBuild was able to borrow against the same property at least twice. The process for equity and justice available to *all* victims of the Cohens' massive and pervasive fraud is the receivership action now pending established pursuant to the SEC's complaint, complete with a thorough and fairly administered claims process.

In conjunction with sorting through the competing claims, however, the Receiver must marshal 115 properties many of which have challenges, stave off tax sales, defend dozens of municipal building code violation cases, fund critical repairs intended to address health and safety concerns, pay past due insurance charges, plan the orderly marketing and sale of the assets, and administer a claims process, among dozens of other critical responsibilities. Moreover, this work, which is Herculean in scope, has been rendered substantially more onerous and time-consuming because the Receiver has been forced to divert critical resources to address the numerous filings from the institutional lenders, who consistently drive up the costs through such submissions, thereby diminishing the value of the estate, and then complain about the Receiver's mounting legal fees.

The Court should overrule those self-serving objections and grant the Receiver's two pending fee applications, covering the work of the Receiver and his retained professionals from August through December 2018. The work described covers a critical period of the Receivership, in which the Receiver gained control over and preserved the properties, identified more than 1,000 stakeholders, recovered a massive amount of records, staved off enormous costs, eliminated an unnecessary marketing work force, set a plan for liquidating the properties and implementing a claims process, among many other essential activities. The Receiver accomplished this crucial

work, pursuant to and in accordance with the Court's appointing Order, with a lean staff and substantially discounted billing rates. The fee applications – which were reviewed and approved by the SEC before they were submitted to the Court – provide intricate detail reflecting the time spent, the nature of the professional activities and necessary work performed that has provided substantial value to the Receivership Estate and benefited the victims and other creditors left in the wake of the Cohens' massive real estate-based fraud. The Court should approve the fee applications and allow the Receiver to pay the invoices with funds that are now, or will be in the near term, in the Receiver's account.

The awarding of fees in receiverships “rests in the district judge's discretion, which will not be disturbed unless he has abused it.” *SEC v. First Securities Co. of Chicago*, 528 F.2d 449, 451 (7th Cir. 1976) (citation omitted). “A receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred.” *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008); *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934); *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992).

“[T]he court may consider all of the factors involved in a particular receivership in determining an appropriate fee.” *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994) (citations omitted). In determining the reasonableness of the Receiver's fee application, the Court should consider “the complexity of problems faced, the benefit to the receivership estate, the quality of work performed, and the time records presented.” *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973). Here, the complexity of the receivership cannot be questioned. The quality of the work performed is not disputed. The time records are organized according to the SEC's billing guidelines, provide extensive detail, and have the SEC's approval. “In securities

law receiverships, the position of the Securities and Exchange Commission in regard to the awarding of fees will be given great weight.” *First Securities Co.*, 528 F.2d at 451 (citing *Fifth Avenue Coach Lines*, 364 F. Supp. at 1222).

A Receiver’s fee application is entitled to a presumption of reasonableness. The objectors have the burden to “explain[] what therein is unreasonable or, at least, what would be reasonable under the circumstances. Absent such evidence ..., the opposition fails.” *FTC v. Capital Acquisitions & Mgmt. Corp.*, 2005 WL 3676529, \*4 (N.D. Ill. Aug. 26, 2005) (citation omitted). The objecting lenders fail to meet this burden. They attempt to justify their objections with broad, unsupported assertions, as they cavalierly presume they hold first position mortgages. They overlook the benefits the Receiver’s work provides to the assets of the Receivership Estate, to them, and to all of the Cohens’ victims and creditors, and they willfully refuse to recognize that justice cannot be accorded without a thorough claims process. As the Seventh Circuit instructed in *Gaskill*, “a benefit to a secured party may take more subtle forms than a bare increase in monetary value. Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation.” *Gaskill*, 27 F.3d at 253 (quoting *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992)). The fee applications and the record show that their objections are without basis and should be overruled.

**I. The Receivership Estate’s assets have substantial value, and there are sufficient funds to pay the Receiver’s fee applications.**

The objectors have had a penchant for describing the Receivership Estate as insolvent – and they appear to be trying to make it so.<sup>2</sup> But the Estate has been challenged by liquidity. The

---

<sup>2</sup> The objectors cite *In re Taxman Clothing Co.*, 49 F.3d 310 (7th Cir. 1995) and *In re Eckert*, 414 B.R. 404 (Bankr. N.D. Ill. 2009) – for the proposition that the Receiver should not be paid because of this purported insolvency. (R. 509 at 3) Both cases are inapposite. *Taxman* involved an attorney’s preference claim in a

Receiver has previously reported that the real estate assets of the Receivership Estate are expected to sell for more than \$80 million. (Docket No. 467, at 2; hereafter, docket references will be to “R. \_\_\_”.) The Receiver currently estimates that total sales may exceed \$85 million<sup>3</sup>, particularly if the Receiver can sell the properties according to the sales procedures he has recommended (and which have been approved by the Court).<sup>4</sup> The current balance of the Receiver’s Account is \$702,107.85. In addition, there is a motion currently pending before the Court to approve the sales of four unencumbered properties that will infuse the Account with an additional \$2,476,000. (R. 524) The Receiver also expects to file another motion later this month for approval to sell properties that will deliver perhaps another \$1,975,000 in unencumbered cash to the Estate.

Moreover, the Receiver estimates that the Naples property, which he has successfully confirmed as a Receivership Asset, has equity of approximately \$900,000.<sup>5</sup> (R. 467, at 44.) As a result, the Receiver ultimately expects to hold in excess of \$6 million in the Receiver’s Account,

---

bankruptcy matter where it was clear the costs far exceeded any benefit. By contrast, this is neither a preference claim, nor a bankruptcy, and there is no question the Receiver’s work has benefited the Estate and the claimants. *See* discussion, *infra*, at 8-10. *Taxman* also notes the analysis differs when, like here, “for reasons wholly beyond [the Receiver’s] control the expense skyrocketed-maybe because the defendants put up unforeseeably stubborn, scorched-earth type of defense.” *Taxman*, 49 F.3d at 314; *see Eckert*, 414 B.R. at 411. Reliance on *Eckert* is similarly misplaced. *Eckert* was at a different procedural stage and did not involve the complexities of this case. The “economics of the estate” in *Eckert* occurred because of collectability issues on judgments and other sources of potential recovery had dried up. Even so, the court commended the professionals for their work and found that “denial of all fees requested by the Applicant is overkill. But for the applicant’s efforts, it is doubtful that any funds would have been recovered.” *Eckert*, 414 B.R. at 412.

<sup>3</sup> The objectors have previously argued that the Receiver should disclose the value of each of the properties. But the Court has rejected this demand. *See* Ex. 1, 4/23/19 Tr. 39:13-15 (“I don’t think that, you know, opening the kimono with regard to the value does the receiver or anyone that much service.”).

<sup>4</sup> It should be noted that the objecting lenders are not only objecting to the Receiver’s fee applications but also are attempting to stop the Receiver from selling the properties (*see* R. 514, Ex. 1, 7/2/19 Tr. at 14), all of which has directly impacted the costs of the Receivership.

<sup>5</sup> Following an evidentiary hearing, Judge Kim held that the Naples property is a Receivership Asset. (R. 492) Defendant Cohen objected to that ruling (R. 512), the Receiver has responded (R. 515), and the matter is now pending before Judge Lee.

at least \$4 million of which should be in the account by November 2019.<sup>6</sup> None of these figures include any amounts that the Receiver may recover through claims he is evaluating, investigating, and expecting to bring. The objectors acknowledge none of these efforts and none of this value to the Receivership Estate.

**II. The Receivership Estate’s real estate assets need to be controlled, preserved, and managed by a neutral party until the Court make a priority determination following a fair and orderly claims process.**

As the SEC’s Complaint and Emergency Motion for TRO made clear from the outset of this action, there has been an essential need for a neutral party to control, preserve, and manage the properties. (R. 1 & 3.) Once the Court appointed the Receiver, the properties came under the Court’s control. *See, e.g., Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 370 (1908) (“Immediately upon ... appointment ... of the receiver, the property passed into the custody of the law, and thenceforward its administration was wholly under the control of the court by its officer or creature, the receiver.”); *Booth v. Clark*, 58 U.S. 322, 331 (1854) (“It is the court itself which has the care of the property in dispute.”). The properties remain under the Court’s control until the Court determines how to properly dispose of them. The Receiver has served and will continue to serve at the Court’s pleasure as a neutral fiduciary to oversee the properties and other assets of the Receivership Estate. Though he must advocate to protect the interests of the Estate and to ensure the Estate follows and implements fair processes as to all claimants, he is not a party, but rather an officer of the Court.

In that role, the Receiver has repeatedly made clear that some properties in the Estate cannot afford their costs. (*E.g.*, R. 107, 115, 152, 166, 228, 230, 258, 322, 325, 327, 329, 348,

---

<sup>6</sup> *SEC v. Capital Cove*, cited by Midland, is distinguishable on this issue because the receiver in that case had not provided an explanation as to how expenses would be paid in relation to payment of administrative costs. Here, the Receiver’s sales of unencumbered properties are expected to bring substantial funds into the Estate from which such costs may be paid.

460, 467, 476, and 514) On the other hand, a number of the properties generate positive cash flow, as reflected in the monthly reporting that the Receiver and the property managers share with the institutional lenders. In addition, most of the properties are subject to conflicting claims of priority by the mortgagees. (*E.g.*, R. 107, 115, 152, 258, 329, 348, 467, and 476-77)

Following motion practice (*e.g.*, R. 90, 115, 230, 241, 280, 282, 285, and 302) and discussions at status hearings before the Court (*e.g.*, R. 483, 435, 295, 218, and 164), both this Court and Magistrate Judge Kim have made clear that the Receiver should continue to preserve and maintain the properties, including those that cannot afford their own expenses, while the Receiver implements the two-pronged plan of selling them as expeditiously as possible and conducting a claims process that will allow the Court to determine who has priority to the sales proceeds (*e.g.*, R. 164, 310-11, 223, 344, 349, 352, 378, 381, 382, and 447); *see also, e.g.*, Ex. 1, April 23, 2019 Tr. 14:6-14 (Judge Lee: “I think that it makes sense, as I’ve said it all along, to deal with these claims in an orderly fashion. I think it also not only facilitates the more efficient administration of these proceedings -- over which I have substantial discretion -- but, also, I do think that there are issues of various notice and other things that can be more orderly administered, for the fairness of everyone that would have any sort of stake in these properties, through an orderly claims process.”). That is precisely what the Receiver has done, which is reflected in the fee applications.

And to that point, which the objecting lenders ignore, while protecting the properties, the Receiver has developed and is working to implement a claims process for determining the priority and validity of claims for the benefit of all claimants who have asserted interests in the real estate under the Court’s control. The Court has already indicated that all claimants must have an opportunity to assert their interests and have them adjudicated by the Court, which will be

substantially accomplished by the claims process. (R. 223 at 8-9 (“Given that defrauded investors and creditors may assert interests in the same Rents and subject properties, the claims process should be implemented to ensure that investors and lenders receive due process.”))

**III. The Receiver and his professionals have performed essential, substantial, and valuable work for the Receivership Estate.**

The Receiver has delivered substantial value to the Estate. The objectors’ dismissiveness about the Receiver’s work in relation to the cost fails to “explain[] what therein is unreasonable or, at least, what would be reasonable under the circumstances.” *Capital Acquisitions*, 2005 WL 3676529, \*4. For this reason alone, the Court may overrule the objections.

The record, largely ignored by the objectors, shows the substantial amount of work performed by the Receiver and his team during the period covered by the pending fee petitions. These activities include, among many others: preserving and managing the 115 properties; overseeing and interacting with property managers regarding code compliance, financial reporting, tenant complaints, and property improvements; identifying and communicating with over 1,000 investors, creditors, and other stakeholders regarding their claims, the properties, and sundry other issues; analyzing the chains of title of the properties; preparing properties for sale; communicating with prospective purchasers; working with the real estate broker and asset manager in connection with the operations, evaluation, and sale of the properties; communicating with city officials regarding code compliance and repairs; regularly appearing in housing, administrative, and sanitation court proceedings; addressing real estate taxes and lien issues; recovering records and assets of the Receivership Estate; investigating, evaluating, and pursuing claims for the Receivership Estate; responding to insurance issues and claims; dealing with the Defendants, their assets, and their lack of cooperation; addressing various issues relating to former employees; dealing with state court litigation the court has allowed to proceed; responding to inquiries and



requests for information from litigants in other cases; working with the accounting firms for investigative, financial reporting, and tax purposes; designing and implementing a claims process; reviewing the claims submissions; and preparing reports for the court on status and claims.<sup>7</sup> (E.g., R. 107, 258, 348, 467, 468, 477)

Out of this work, a few examples highlight the indisputable value the Receiver has brought to this Receivership. First, the Receiver has preserved and continues to preserve the properties. Many of the properties were in extreme and desperate circumstances at the time the Receiver was appointed. The following examples make the point, though there are many more: The property at 8100 S. Essex had been ravaged by a tragic fire years before the Receiver was appointed, yet a portion of the roof remained in a dangerous and unrepaired condition. (See, e.g., R. 258, at 17; R. 348, at 10) The Receiver worked with the property manager to ensure that health and safety issues were addressed, and the Receiver sold the property expeditiously. The properties at 8107 S. Ellis and 7760 S. Coles had primary-access porches that were in poor condition and imminently needed to be replaced. (See, e.g., R. 258, at 17; R. 467, at 6) The Receiver worked with city officials, the property manager, neighborhood organizations, and tenants so the porches could be removed and replaced, thus eliminating imminent health and safety issues, resolving code violations, and improving the value of the properties. As another example, the property at 6160 S. Martin Luther King suffered from gang activity on the premises. The Receiver worked with the property manager and city officials to secure the building, which has since been sold. The Receiver also has replaced

---

<sup>7</sup> Midland also cites *In re Alpha Telecom* for the proposition that the results the Receiver obtains is a critical factor in determining whether to make payments. (R. 511, at 3) First, as discussed herein, the results achieved thus far are substantial. In *Alpha*, the receiver was seeking payment of fees *five years* after the inception of the receivership, and after he had endeavored to recover assets for the creditors. That is procedurally different than the Receivership here, which is 13 months old and where the Receiver has not yet pursued third party claims or other sources of recovery for the creditors. Moreover, the court noted, “compensation to investors and creditors is not the only criteria by which a receiver’s performance must be judged.” *In re Alpha Telecom Inc.*, 2006 WL 3085616 at \*5.

and improved heating, water, and electrical systems in several buildings to address health and safety issues, cure code violations, and improve the value of the properties. Moreover, all of this should also be evaluated in context. These are very challenging properties in very challenged neighborhoods. They are occupied by hundreds of Chicago families and individuals, many of whom benefit from government-subsidized housing programs. These tenants cannot be ignored and they cannot be abandoned. Had the properties been shut down, vacated, boarded up, allowed to fall into disrepair, and abandoned,<sup>8</sup> significant life and safety issues would have gone unaddressed and the value of the properties would have fallen markedly.

Second, the Receiver has sold and will continue to sell properties. As discussed herein, the Receiver has already sold, put under contract, listed, marketed, or moved to sell 34 properties.<sup>9</sup> In the coming weeks, he plans to move for approval to sell dozens more properties. As the Court is well aware, the Receiver's efforts have been stymied by various motions and objections. Nevertheless, he has worked diligently to continue to preserve the properties, reduce costs, and manage the portfolio until the properties can be sold.

Third, the Receiver has implemented a claims process that he had worked to develop (and which was approved) and is evaluating claims in order to determine and make recommendations regarding and/or establish rights and priority to the assets and funds of the Estate. Those efforts

---

<sup>8</sup> The objectors again reference their argument that the properties should be abandoned, which has been presented to and rejected by the Court. For example, it was raised and rejected by the Court at the April 23, 2019 hearing. (Ex. 1) Then it was raised again and rejected again by Magistrate Judge Kim at the July 2, 2019 hearing (at which time Judge Kim requested that previous hearing transcripts about that very issue be forwarded to him by e-mail to confirm that the issue had already been vetted by the Court). (*See* Ex. 2, 7/8/2019 email)

<sup>9</sup> Through his efforts, the Receiver has sold six properties for \$7,695,000 (R. 346); has moved for approval to sell another eight properties (R. 524) for \$7,343,000; and has another 19 properties that are either under contract or have been listed for sale in the amount of approximately \$25,553,000, and for which there are certain motions pending relating to those sales. The Receiver will soon file motions for approval to sell approximately 37 single family homes and other similar properties.

have included not only notice and an opportunity to participate to all stakeholders – a process that has resulted in more than 2,000 claims submissions – but also the development of a framework for the Court to address and resolve disputes between competing claims.

Moreover, the complexity of this Receivership cannot be understated. The Defendants perpetrated a massive fraud involving real-estate investments. At the time that the SEC filed this and dislodged them from their positions, the Cohens possessed a portfolio of about 120 properties, containing well more than 1600 units. These properties were in varying states of disrepair, vacancy, mismanagement, and financial distress. Some were generating income to cover their costs, while others were not. Over the course of their scheme, the Cohens ensnared nearly 1,000 investors (both secured and unsecured) and raised well over \$100 million from their victims and creditors.

The Cohens accomplished their fraud with the promise of high-interest loans secured by real estate. The mortgages they gave some investor-lenders were then secretly released, the properties were refinanced, and the Cohens pocketed the cash proceeds while keeping the investor-lenders perpetually at bay. They used the money they received to provide and promote magnificent returns, fuel the marketing machine they had created to bring in more money from investors, and create the illusion of financial legitimacy and success. They used paperwork slights of hand to further muddy the waters, blurring the distinction between secured and unsecured investments to keep investors in the dark about their machinations. They also used the money at their disposal to cover their tracks, spin a complicated web of scores of corporate affiliates, buy-off or tamp down disruptive investors and creditors, and create new ways to solicit and obtain funds from investors.<sup>10</sup>

---

<sup>10</sup> The challenges of this action are exponentially complicated by several variables, any one of which would make a receivership challenging, but with each playing significant roles here, including but not limited to: the number of properties; the distressed nature of many of the properties; the Cohens' deceit, complicated and poor recordkeeping, poor management, and lack of cooperation; the amount of money at stake; the

Over and above the thicket of complications, the Receiver has continually been forced to respond to the institutional lenders by providing financial reporting, answering their inquiries, responding to their motions, and coordinating the listing and sale of properties, and so forth. In less than 13 months (including the time the federal government was partially shut down), the Court's docket on this case has swelled to more than 525 docket entries from their relentless campaign. The Receiver has been forced to devote substantial time and expense to addressing the lenders' litigious, relentless, scorched-earth efforts.<sup>11</sup>

**IV. The Receiver's efforts benefit all claimants, including the objectors, as the record – which the objecting lenders ignore – clearly demonstrates.**

The objectors argue that it is improper for the Receiver's fees to be paid before rent is restored. This is wrong in several respects, including without limitation the following: First, the Court retains the discretion to award compensation to the Receiver and his retained professionals. Second, as discussed below the Receiver is restoring rent to properties to which it is due. Third, their priority has not yet been established. There is a claims process for that purpose. Fourth, the Court can allow a lien on the properties within the Receivership Estate to ensure the Receiver is paid. But, regardless of the Court's discretion, following the sale of the properties that are the

---

number of transactions with investors; the number of claims and complex conflicts between them; and the disparate economic positions of the claimants who are in conflict. In *SEC v. WL Moody*, cited by Midland, the court awarded almost all of the attorneys' fees for the receiver and his counsel, noting that the receiver and his counsel addressed complex and new legal issues and did so in a timely fashion, noting the "Receiver's accomplishments were unusually important here and should considerably influence his compensation." *SEC v. WL Moody*, 347 F. Supp. 465 at 480. That decision supports granting the petitions here.

<sup>11</sup> The objectors' citation to *SEC v. Madison* is misplaced. The *Madison* court did not face priority issues. There, the court considered certain lenders' motions to lift stays in order to foreclose on properties, and all but one were denied as moot. In ruling to lift the stay and allow foreclosure, the *Madison* court determined the receiver was placing the interests of a buyer and the receivership estate ahead of the secured creditor. The same cannot be said here where the Receiver is protecting the interests of all secured creditors (whether institutional or EBF lenders) by segregating sales proceeds – and thus, preserving the collateral in the form of cash. By selling the properties, the Receiver is also protecting each secured creditor's potential rights to the collateral, rather than leaving them exposed to market fluctuation, carrying costs, and other liabilities.

subject of the pending motion for approval, sufficient unencumbered funds will be available to satisfy the requests in the Receiver's fee applications.

Certain mortgagees falsely state that no money has been restored to the properties that are due restoration pursuant to the Court's February 13 Order.<sup>12</sup> This is simply not accurate. First, the institutional lenders have received and are receiving monthly reports indicating the amount of money that the Receiver has restored to each of the properties, as the Receiver has covered certain costs of those properties using funds from the Receiver's Account. Second, between March 31, 2019 and July 31, 2019, the Receiver reduced the restoration amounts due by funding property expenses of approximately \$179,342.22. Third, the Receiver used \$54,102.21 from the sale of a property that had received the benefit of funds from other properties to restore funds in accordance with the February 13 Order. (R. 460, 494) In connection with that effort, the Receiver reported the amounts restored and remaining to be restored for each property as of May 31, 2019 and explained the timing and sequence of future reporting. (R. 460, at 6 & n.1) The Receiver also reported that, as of May 31, 2019, six properties were already fully restored. (R. 460, at 3 n.3) As of July 31, 2019, nine properties were fully restored.<sup>13</sup> (Ex. 3)

---

<sup>12</sup> Midland also argues administrative expenses should not be paid because rents have not yet been restored. (R. 511 at 7) Midland cites *SEC v. Nadel* for the proposition that rents are not part of the Estate and cannot be used to compensate the Receiver. Apart from the factual inaccuracy (the Receiver has not asked to use rents to pay administrative expenses in the pending fee applications), the case has no relevance to payment of administrative fees with funds other than rent monies.

<sup>13</sup> The cases cited by the objectors to support the proposition that rents should be restored before administrative expenses are paid to the Receiver and his professionals are to no avail and ignore that courts have allowed payment of administrative expenses from collateral where the legal services conferred a benefit. In *Javitch v. First Union Securities, Inc.*, 315 F.3d 619 (6th Cir. 2003), there was no mention of precluding payment of administrative expenses until rent restoration (or any other repayment for that matter) occurred. Similarly, *SEC v. Credit Bancorp* is factually distinguishable because the issues also did not involve precluding payment of administrative expenses. Courts have made it clear that a "[district] court in equity may award the receiver fees from property securing a claim if the receiver's acts have benefitted that property." *SEC v. Elliott*, 953 F.2d 1560, 1576 (7th Cir. 1992) (finding secured creditors were properly ordered to pay portion of administrative fees where the receiver and his counsel conferred a benefit on a secured creditor by sorting through a web of competing claims to determine priority); *see also In re Loop Hosp. Partnership*, 50 B.R. 565, 571-72 (N.D. Ill. 1985) (awarding attorneys' fees where the

With the sale of properties that are the subject of the pending motion to approve sales (R. 524), the Receiver anticipates that in excess of \$189,702 in further restoration can be accomplished from sale proceeds, consistent with the Court's August 27 Order (R. 494). And once the sale of the properties that are the subject of the institutional lenders' pending objections are approved for sale, not less than \$630,682 of additional funds would be available to apply towards any further restoration then required, which would be substantially more than the aggregate remaining amount of required restoration presently due. In short, the objections based on the Court's February 13 Order are wholly unfounded and demonstrably untrue.<sup>14</sup> The only thing holding back completion of rent restoration is the objecting lenders themselves.

**V. The Receiver's fee applications are reasonable, comply with SEC billing guidelines, and have the SEC's approval.**

The invoices covered by the fee applications provide extraordinary detail. Time entries are divided into billing categories exactly as described in the SEC's billing guidelines. The time is recorded in tenths of an hour and in virtually every instance reflects who performed the work, the topic to which it relates, and the specific nature of the work performed. The Receivership is leanly staffed. The work load is divided into areas of discipline and focus. The SEC has reviewed the Receiver's fee applications and approves them, to which the Court should give great weight. *See*

---

legal services contributed to producing a return and where the "diligent prosecution of a Chapter 11 by competent counsel ... benefit[ed] the secured creditor").

<sup>14</sup> The lenders also view and express themselves as unquestionably in secured, first position. That is not necessarily so. Nor did the Court's February 13 Order find that the institutional lenders have priority as they suggest. In fact, in the February 13 Order, the Court stated: "The court agrees with the Receiver that it is premature to determine whether the Creditors have preexisting secured interests in the Rents under Illinois law. The court has not yet approved a claims process. And the SEC and Receiver have alleged that Defendants manipulated secured interests as part of their Ponzi scheme. (R. 114, at 1; R. 115, at 7.) Given that defrauded investors and creditors may assert interests in the same Rents and subject properties, the claims process should be implemented to ensure that investors and lenders receive due process." (R. 223 at 8-9) The Court also stated that it "agrees with the Receiver that priority determinations should not be rendered until a claims process has been approved and implemented." (*Id.* at 9, n.3) Finally, it also is beyond ironic that several institutional lenders have joined in the objections about rent restoration when the properties that benefited from the reallocation of rent revenues are ones on which they have asserted liens.

*SEC v. First Securities Co. of Chicago*, 528 F.2d 449, 451 (7th Cir. 1976) (citing *SEC v. Fifth Avenue Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973)). See also <https://www.sec.gov/oiea/Article/billinginstructions.pdf>

The objectors take shots at certain aspects of the invoices.<sup>15</sup> For example, they object to the Receiver's time entries relating to office conferences. This objection lacks merit. Not only is the Receiver's speaking with other attorneys and professionals not unreasonable, *see, e.g., SEC v. Custable*, 1995 WL 117935, \*7 (N.D. Ill. Mar. 15, 1995) ("the Court does not find it unreasonable that the Receiver would discuss some issues with another attorney"), *aff'd*, 132 F.3d 36 (7th Cir. 1997), but the entries reflect the Receiver's substantive efforts to address and solve problems, manage the portfolio, delegate work, stay informed, make decisions, and various other substantive activities. The issue is not whether "office conference" is an apt descriptor, but whether the entries reflect legitimate, substantive work that ought to be compensated. The objectors offer no reason, apart from the use of this term which describes the nature (but not the substance) of the communication, to explain why the work performed ought not be compensated. The objection also ignores the explanation provided in the fee application itself. (R. 487, at 18)

The objectors also take aim at small increment time entries. But those entries speak not to a lack of substance, but rather they are indicative of efficiency, the significant number of different tasks undertaken, and the transparency of the billing records. In essence, they are complaining that there is too much detail and, by breaking the descriptions of the work into a greater degree of

---

<sup>15</sup> "A party objecting to a fee application may not do so based on the general proposition that the fee sought is simply too much." *FTC v. Capital Acquisitions & Mgmt. Corp.*, 2005 WL 3676529, \*4 (N.D. Ill. Aug. 26, 2005) (citing *In re Hunt's Health Care*, 161 B.R. at 982; *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992) ("a gestalt reaction that there was too much [time spent or that fees are excessive] ... isn't good enough")). Rather, "[t]he objector must, at some point, identify any allegedly improper, insufficient, or excessive entries and direct the court's attention to them." *Id.*



granularity, the underlying substance is lost. Again, the objectors ignore the explanation for work described in this manner provided in the fee application itself. (R. 487, at 17-18)

The time entries and the invoices have been prepared in good faith, and they accurately and adequately describe substantive professional work performed on behalf of the Receivership Estate. A significant effort has been made to avoid recording time entries that correspond to work that does not require professional skill, experience, or judgment. It may be that a handful of time entries do not adequately convey the substance of the work performed. As the fee application itself notes, no time and billing system is perfect. The Receiver also recognizes that no matter how carefully the time is recorded and the bills prepared, the institutional lenders will find something to criticize, particularly as they have made clear their intention to recover their own very sizable attorneys' fees for their interminable efforts.<sup>16</sup>

The objectors also have criticized the Receiver for not timely filing quarterly fee applications. The Receiver has filed fee applications for the first two quarters of the Receivership. The timing was impacted by the fact that, among other factors, instead of working on the fee applications, the Receiver devoted efforts to the pressing needs of the Estate, including but not limited to property preservation, property sales, and the claims process. It is also reasonable to note that the fee applications are lengthy and detailed documents that the Receiver must carefully review and provide to the SEC for review before they can be filed. That is no small undertaking, as the first two fee applications cover 469 pages. Moreover, the Receiver's efforts were needed to achieve sufficient liquidity in the Estate before it would even be possible for professional fees to

---

<sup>16</sup> It bears noting that the institutional lenders' claimed attorneys' fees only through June 2019 were more than \$1,338,095.15. In contrast to the Receiver and his counsel, who are devoting their time to every aspect of the Receivership, the objectors are only focused on their individual client interests. The comparison of these amounts, in the context of the massive amount of work and results achieved by the Receiver, demonstrates the reasonableness of the Receiver's fee applications.



be paid. That all said, the Receiver will timelier file future fee applications. The Receiver expects the fee applications for the next two quarters to be filed as soon as practical, with one being filed within the next month and another approximately a month later. Moreover, in the most recent status report, the Receiver disclosed and projected fees through March 31, 2019. (R. 467, at 22-23.) The Receiver further expects that fees for Receiver and his counsel for the quarter ending June 2019 will be approximately \$550,000.

For the foregoing reasons, the Receiver respectfully requests that the Court exercise its discretion to award the Receiver the amount of fees and expenses described in the first and second fee applications, and for such other relief as the Court deems just.

Dated: September 16, 2019

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

Michael Rachlis  
Nicole Mirjanich  
Rachlis Duff Peel & Kaplan, LLC  
542 South Dearborn Street, Suite 900  
Chicago, IL 60605  
Phone (312) 733-3950; Fax (312) 733-3952  
mrachlis@rdaplawn.net  
nm@rdaplawn.net

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2019 I provided service of the foregoing Receiver's Combined Response to Objections to Fee Applications, via ECF filing to all counsel of record, and via electronic mail to Defendant Jerome Cohen at jerryc@reagan.com.

By: /s/ Michael Rachlis

Michael Rachlis  
Rachlis Duff Peel & Kaplan, LLC  
542 South Dearborn Street, Suite 900  
Chicago, IL 60605  
Phone (312) 733-3950; Fax (312) 733-3952  
mrachlis@rdaplaw.net

# Exhibit 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES SECURITIES AND	)	Docket No. 18 C 5587
EXCHANGE COMMISSION,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
EQUITYBUILD, INC., EQUITYBUILD	)	
FINANCE, LLC, JEROME H. COHEN,	)	
AND SHAUN D. COHEN,	)	Chicago, Illinois
	)	April 23, 2019
Defendants.	)	11:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiff:	U.S. SECURITIES & EXCHANGE COMMISSION
	BY: MR. BENJAMIN J. HANAUER MR. TIMOTHY J. STOCKWELL
	175 W. Jackson Blvd., Suite 900 Chicago, Illinois 60604
For the Receiver:	RACHLIS, DUFF, PEEL & KAPLAN, LLC
	BY: MR. MICHAEL RACHLIS
	542 South Dearborn, Suite 900 Chicago, Illinois 60605
For USB AG:	PLUNKETT COONEY, P.C.
	BY: MR. JAMES M. CROWLEY
	221 N. LaSalle Street, Suite 1550 Chicago, Illinois 60601
For Citibank, U.S. Bank, Wilmington Trust, and Fannie Mae:	FOLEY & LARDNER
	BY: MR. ANDREW T. McCLAIN
	321 North Clark Street, Suite 2800 Chicago, Illinois 60654

1 APPEARANCES (Cont'd):

2 For Midland Loan Svcs.: AKERMAN, LLP  
3 BY: MR. THOMAS B. FULLERTON  
4 71 South Wacker Drive, 46th Floor  
Chicago, Illinois 60606

5 For Capital Investors, GARDINER, KOCH & WEISBERG  
6 Capital Partners, BY: MS. MICHELLE M. LaGROTTA  
7 6951 S. Merrill I, LLC, 53 W. Jackson Blvd., Suite 950  
5001 S. Drexel Blvd. Fund Chicago, Illinois 60604  
8 II, LLC:

9 For Freddie Mac: PILGRIM CHRISTAKIS, LLP  
10 BY: MS. JENNIFER L. MAJEWSKI  
11 321 North Clark Street, 26th Floor  
Chicago, Illinois 60654

12 For BMO Harris: CHAPMAN & CUTLER  
13 BY: MR. JAMES P. SULLIVAN  
14 111 West Monroe Street, Suite 1600  
Chicago, Illinois 60603

15 For Liberty EBCP: JAFFE, RAITT, HEUER & WEISS  
16 BY: MR. JAY L. WELFORD  
17 27777 Franklin Road  
Southfield, Michigan 48034

18 Also Present: MR. KEVIN B. DUFF, Receiver

19 Court Reporter: MR. JOSEPH RICKHOFF  
20 Official Court Reporter  
21 219 S. Dearborn St., Suite 1224  
Chicago, Illinois 60604  
22 (312) 435-5562

23 \* \* \* \* \*

24 PROCEEDINGS RECORDED BY  
MECHANICAL STENOGRAPHY  
25 TRANSCRIPT PRODUCED BY COMPUTER

1 THE CLERK: Case 18 CV 5587, United States Securities  
2 and Exchange Commission vs. Equitybuild.

3 MR. HANAUER: Good morning, your Honor, Ben Hanauer  
4 and Tim Stockwell for the SEC.

5 MR. RACHLIS: Michael Rachlis on behalf of the  
6 receiver and the receivership. With me is Kevin Duff, the  
7 receiver.

8 MR. DUFF: Good morning, your Honor.

9 THE COURT: Good morning.

10 MR. CROWLEY: Good morning, your Honor, James Crowley  
11 on behalf of UBS AG.

12 MR. McCLAIN: Good morning, your Honor, Andrew  
13 McClain. I'm here on behalf of several lenders: U.S. Bank,  
14 as trustee for the trust ending SB50; Citibank, as trustee for  
15 the trust ending SB48; U.S. Bank, as trustee for the trust  
16 ending SB41; U.S. Bank, as trustee for the trust ending SB30;  
17 Wilmington Trust, as trustee for the trust ending LC16; and,  
18 Fannie Mae.

19 MR. FULLERTON: Good morning, your Honor, Tom  
20 Fullerton on behalf of Midland Loan Services.

21 MS. MAJEWSKI: Good morning, your Honor, Jennifer  
22 Majewski on behalf of Freddie Mac.

23 MR. WELFORD: Good morning, your Honor, Jay Welford  
24 appearing on behalf of Liberty EBCP, LLC.

25 MR. SULLIVAN: Good morning, Judge, James Sullivan on

1 behalf of BMO Harris Bank.

2 MS. LaGROTTA: Michelle LaGrotta on behalf of certain  
3 creditors --

4 THE COURT REPORTER: I'm sorry?

5 MS. LaGROTTA: On behalf of certain creditors and  
6 several LLCs, I guess --

7 THE COURT: We can't hear you.

8 Can you name one or two?

9 MS. LaGROTTA: Yeah. One is Capital Investors, LLC.

10 THE COURT: All right. What brings us here today is  
11 the receiver's motion for approval of interim financing and  
12 request for expedited consideration of this motion, and the  
13 April 8th, 2019, memorandum report and recommendation that was  
14 entered by Magistrate Judge Kim.

15 First of all, with regard to the April 8th, 2019,  
16 report and recommendation, the deadline that Magistrate Judge  
17 Kim set to object to the R&R was yesterday, April 22nd. At  
18 that time, the only objection that was filed with regard to  
19 the April 8th, 2019, R&R was an objection filed by the  
20 Wilmington Trust, as trustee, as well as others. That is  
21 Document 339.

22 Basically, as I understand it, Wilmington just wants  
23 to make sure that to the extent that the 5001-5003 South  
24 Drexel property is sold, that as the mortgage holder, that  
25 they get paid out of the proceeds.

1 Is that correct?

2 MR. McCLAIN: That's correct, your Honor.

3 THE COURT: But I wondered whether the receiver can  
4 clarify to me and for the record whether or not that will, in  
5 fact, take place.

6 MR. RACHLIS: Your Honor, Michael Rachlis again.

7 As we had discussed the matter before Judge Kim,  
8 the -- as a result of the closing on 5001 Drexel, the proceeds  
9 from that would be placed in a sub-account, essentially. They  
10 would not be used or commingled with any other assets of the  
11 estate but would remain there pending various issues that  
12 would be litigated before this Court, which would include the  
13 priority issues. But, most importantly, it would include a  
14 claims process, which hasn't begun yet.

15 I think Judge Kim, in his February 13th order, had  
16 noted the importance of that. And your Honor has noted the  
17 importance of that, as well. We want that claims process to  
18 proceed, to see if there are any claims associated with this  
19 individual property.

20 The receiver is aware of certain loans that appear to  
21 be outstanding from records that are kept by the receivership  
22 at this point. But, obviously, the claims process, we're  
23 going to identify with specificity.

24 So, that's one issue.

25 Separate, there are issues associated with payout in



1 conjunction with prepayment penalties, interest and other  
2 types of monies, that are embedded within the amounts that are  
3 being sought by this lender. And that -- those, too, will be  
4 litigated before the Court in terms of their propriety.

5 So, there are several issues that are out there that  
6 need to be addressed before payment is made.

7 So, for the extent there's clarity, we intend to,  
8 after closing, put the money in a sub-account and let the  
9 claims process play out and other issues be litigated until  
10 those are completed.

11 THE COURT: Does that address your concerns?

12 MR. McCLAIN: Your Honor, no, actually, it does not.

13 One thing, just as an initial matter, the R&R doesn't  
14 directly indicate whether the funds are supposed to be  
15 escrowed. We did indicate in our objection that we sought  
16 clarity on that.

17 And just if I could give you some background on this  
18 property, this property is a little unique here because the  
19 original owner of this property is not an Equitybuild  
20 affiliate. That LLC was not part of the original receiver  
21 order. That LLC was not included in the receiver's motion to  
22 expand the entities included in the receiver order. It's a  
23 wholly unaffiliated third party.

24 So, when the loan at issue was originated, the loan  
25 was made to that third party. The loan was actually used to

1 pay off debt of First Merit Bank, which is also not part of  
2 this receivership, totally unrelated. It is not an  
3 Equitybuild affiliate mortgage that was paid off. It is a  
4 third-party mortgage that was paid off.

5 So, our loan proceeds were used to pay off a prior  
6 loan and given to a borrower that is totally unaffiliated with  
7 this receivership.

8 Three years later, after origination of the loan, the  
9 loan was assumed by an Equitybuild affiliate. So, it's our  
10 position that we have a first lien priority on this property;  
11 the origination of the loan is wholly unrelated to this  
12 receivership; and, that we're entitled to the payoff of the  
13 proceeds.

14 Now, the receiver, apparently, made reference to that  
15 there appear to be outstanding loans on the property. I'm not  
16 sure what he's referring to. We haven't been given any  
17 evidence indicating there's outstanding loans. And in any  
18 event, any outstanding loans would be junior to our position  
19 because our loan was originated to a third party, not  
20 affiliated with this LLC -- or, excuse me, not affiliated with  
21 this receivership.

22 THE COURT: So, counsel, I guess my question is: Why  
23 can't that all be taken care of during the claims process?  
24 Why do I need to decide that now?

25 MR. McCLAIN: Well, your Honor, it can't be taken

1 care of in the claims process because the claims process  
2 proposes pushing out almost a whole year to determine whether  
3 we have priority on this property or not. So, in the  
4 meantime, the funds have been escrowed, and there's a limited  
5 amount of funds that have been escrowed. In the meantime,  
6 we're incurring costs. The loan is continuing to accrue  
7 interest, default interest. We're paying --

8 THE COURT: But I take it that those --

9 MR. McCLAIN: -- attorneys' fees, also.

10 THE COURT: Hold on.

11 I take it that those are arguments that you have made  
12 or will make with regard to the sufficiency of the claims  
13 process. But with regard to the -- and this is something that  
14 I wanted to talk to everyone about, which is: When there's a  
15 motion that's filed, either by the receiver or some other  
16 party, what was most helpful to me is if the arguments  
17 addressed in the new objections and responses deal with the  
18 specific issues that are raised and the requests for relief  
19 that are sought in that particular motion.

20 What I see when I go through these objections -- and  
21 I've gone through the pleadings in this case -- is that every  
22 time the receiver asks for something, one lender or another  
23 files an objection talking about a litany of why they think  
24 the receiver is not being reasonable, not being competent,  
25 just setting forth the history of this case from Day One.

1 That's not helpful. Okay? It's not helpful to me.

2 I read through all the responses for today's motion  
3 and, frankly, 80 percent of it I ignored because it's not  
4 helpful for me to decide the particular issue that is before  
5 me.

6 So, the issue here is why that objection, with regard  
7 to the timing of payment to the lender, is an objection that  
8 would prohibit me from adopting Judge Kim's report and  
9 recommendation. So, that's the issue.

10 MR. McCLAIN: Yeah, if I can address that, your  
11 Honor.

12 The reason the objection -- we request that you don't  
13 adopt the magistrate's -- judge -- recommendation on its face  
14 is because public records indicate we have a first-lien  
15 priority on this property. There's no just reason to delay  
16 paying us off at the closing date. In fact, Illinois law  
17 requires the receiver to do this. And the receiver's even  
18 admitted in pleadings that it appears that we are the only  
19 lienholder on this property. So, he's really just holding us  
20 hostage for no reason.

21 There's no just reason to delay payment to us. And  
22 the public records indicate we're the only mortgage holder on  
23 this property. There's no Equitybuild affiliate debt related  
24 to this property. So, there's no reason to pay -- not to pay  
25 us off at closing.

1           As the R&R indicated, he's required to adhere to the  
2     liens. And the lien in the mortgage states the sale proceeds  
3     are part of our collateral and we're entitled to those on  
4     payment -- or on closing. So, there's no just reason to delay  
5     it. He's even admitted that we're the first lien priority.

6           MR. RACHLIS: I'm not sure that that admission has  
7     been made.

8           All our point is, is that the claims process hasn't  
9     proceeded. And I think that there is a great deal of  
10    knowledge that needs to be obtained from that.

11           Your Honor knows the nature and extent of the fraud  
12    that was engaged in here. And we want -- and as the receiver  
13    believes it appropriate -- to make sure that all of those  
14    victims have an opportunity to voice their claim. If there is  
15    no claim that is voiced at the end of that period -- which the  
16    claims bar date is supposed to be 120 days from the time that  
17    the claims period starts. If there is no claim that is made,  
18    there can be interim payments that are made to this lender, if  
19    there's nobody else that comes up and all other issues are  
20    resolved associated with anyone that may have a right to that  
21    property.

22           Additionally, there are issues associated with  
23    prepayment penalties, with the type of interest that they are  
24    seeking that have not been resolved. There is no harm -- as  
25    the court -- as Judge Kim correctly noted in his report,

1 there's no harm associated with putting this in a sub-account.  
2 It's not being commingled. There is not -- the year point is  
3 correct in terms of the entirety of the process. But we are  
4 looking -- that doesn't preclude looking at these things on  
5 interim bases. And I believe the receiver will be looking at  
6 that to ensure that to the extent that there's no claim that's  
7 made or appropriate type of objection, those can be resolved  
8 earlier in the process than other claims. So --

9 THE COURT: Where are we with regard to the claims  
10 process and getting that on track?

11 MR. RACHLIS: At this point, your Honor, we have sub-  
12 -- I mean, the receiver has submitted a proposal. There have  
13 been -- there's briefing that's transpired before Judge Kim.  
14 I believe the briefing on that is all completed. I don't know  
15 if the court -- the court has held hearings on most matters  
16 before it, so I would anticipate that there would be a hearing  
17 before Judge Kim on that.

18 But at this point, as we stand here today, the  
19 briefing has been completed.

20 THE COURT: Does the SEC have a position on this  
21 matter?

22 MR. HANAUER: We do, your Honor. We think it does  
23 make sense to defer the payment on this until the claims  
24 process.

25 Yes, as of right now, we haven't heard anyone else

1 come up and assert a claim on this property. And if that's  
2 the case, then I think the receiver just represented that  
3 they're going to be more than reasonable in trying to resolve  
4 things.

5 But the position we've articulated from Day One is  
6 there are 900-plus investors in this case and, as far as we  
7 know, none of them have been provided notice of any of these  
8 proceedings or any of these attempts by the institutional  
9 lenders to try and subordinate their interests in these  
10 properties. And we think it just makes sense from, at the  
11 very least, a due process perspective, that investors be given  
12 the opportunity to be heard by the Court on their position,  
13 whatever it may be, regarding this property; certainly, the  
14 other properties where they were the first mortgage holders on  
15 there.

16 But the claims process, it's an orderly process and  
17 we think it just makes sense to wait until then to resolve all  
18 the claims. Let all the investors be heard, let them receive  
19 notice and let the Court resolve it in an orderly fashion.

20 THE COURT: All right.

21 I will give you the last word.

22 MR. McCLAIN: Thank you, your Honor.

23 Just to address a few points, the receiver indicated  
24 that there's no harm to the receivership. I think his most  
25 recent filing highlights the exact harm that is going to

1 occur. He's needlessly incurring additional costs for the  
2 receivership by holding these monies in escrow. And in turn,  
3 our claim is then going to be inflated because we're going to  
4 have to participate in this process; we're going to have to  
5 incur additional fees; interest is continuing to accrue  
6 throughout this entire process. So, there is actually a great  
7 harm here.

8           And the other harm is that it threatens our ability  
9 to fully collect on our collateral.

10           And the SEC indicated, you know, there's 900-plus  
11 investors and we're trying to subordinate, in some instances,  
12 potential Equitybuild investors. But here, your Honor, this  
13 is a very unique property. There are no Equitybuild investors  
14 involved. And if there are any Equitybuild investors, they  
15 didn't come into the picture until more than three years after  
16 origination of the loan, three years after our mortgage was  
17 recorded against this property. So, by operation of law, they  
18 would be subordinate to us. That is not a question of fact.  
19 That is just a matter of fact, and that is pursuant to  
20 Illinois law.

21           So, we have a first lien -- first-priority lien on  
22 this property that is uncontested. It is public record. It  
23 is out there. There is no Equitybuild affiliate debt. And to  
24 delay payoff is not only detrimental to us, but it's  
25 detrimental to the rest of the receivership because it's just



1 unnecessary.

2 THE COURT: Okay. Thank you.

3 So, having considered the objections, the objection  
4 is overruled. Judge Kim's April 8th, 2019, order is hereby  
5 adopted by the Court.

6 I think that it makes sense, as I've said it all  
7 along, to deal with these claims in an orderly fashion. I  
8 think it also not only facilitates the more efficient  
9 administration of these proceedings -- over which I have  
10 substantial discretion -- but, also, I do think that there are  
11 issues of various notice and other things that can be more  
12 orderly administered, for the fairness of everyone that would  
13 have any sort of stake in these properties, through an orderly  
14 claims process.

15 So, accordingly, the objection is overruled and Judge  
16 Kim's report and recommendation of April 8th is adopted.

17 All right. So, having adopted that, we'll now go to  
18 the reporter's request with regard to interim financing. And  
19 there have been a number of objections that were filed, but I  
20 want to focus on the objections with regard to that issue;  
21 that is, the interim financing.

22 Let me hear from, let's say -- there's a group led by  
23 Federal Home Loan Mortgage Corporation. There's another  
24 objection and response that was filed by Liberty EBCP.

25 MR. CROWLEY: Your Honor, if I could, I'll speak

1 on -- James Crowley -- I'll speak on behalf of the group  
2 respondents.

3           Your Honor, first off, the respondents recognize the  
4 receiver is, apparently, facing some health and safety issues  
5 possibly with some of these properties. The concern that the  
6 respondents have is brought by the emergency nature of this  
7 motion.

8           It appears these issues have been existing for some  
9 time. And the dollar amount of these unpaid bills total \$1.3  
10 million, but the receiver has never brought this to the  
11 Court's attention, nor to the respondent's attention, until he  
12 files an emergency motion saying, I need money for certain  
13 safety issues, and says, I've gone out and decided to borrow  
14 \$400,000.

15           This receiver was appointed in August, 2018. As part  
16 of the receivership order, the receiver was obligated to  
17 provide a detailed status of all the properties under his  
18 receivership. And that was supposed to include the value of  
19 each of the assets -- and this is in the receivership order.  
20 Within 30 days after that order was entered, he was supposed  
21 to provide a list of all of the properties under his  
22 receivership, the value of those properties and the liens or  
23 debts against those properties. That's never occurred.

24           And, so, now the receiver -- in addition, the  
25 receiver is supposed to provide detailed reports of what he's

1 collecting from all of those properties and what his expenses  
2 are. We've never received those. That's not been in the  
3 first or second receiver report. Instead, there's been no  
4 transparency on the part of the receiver with respect to his  
5 receivership of these properties.

6 THE COURT: And wasn't there an order entered by  
7 Judge Kim with regard to this issue, too?

8 MR. CROWLEY: Judge -- yeah, exactly. Judge Kim's  
9 memorandum order back in February -- it came -- the  
10 respondents brought to Judge Kim's attention that what the  
11 receiver was doing was taking monies from properties that were  
12 performing and using them to prop up or pay expenses for  
13 properties that were not performing or had no value. And  
14 Judge Kim said, that's not appropriate and you're supposed to  
15 segregate.

16 What Judge Kim also said was: Receiver, you're  
17 supposed to disclose to the respondents how much you've used  
18 of their monies to prop up these other properties, and you're  
19 required to reimburse those when you can. That's not  
20 occurred. He's never provided the report notwithstanding  
21 numerous requests from the respondents to provide us with  
22 details of what you've used of our proceeds to pay bills for  
23 other properties. That has not happened.

24 And, that's, again -- we come down this transparency  
25 issue. The receiver is running this -- these properties

1 without regard to court orders, without regard to the order  
2 appointing him receiver, and without regard to the rights of  
3 the respondents and, in fact, possibly the investors in these  
4 properties.

5           Now the receiver comes in and says, I need \$400,000  
6 notwithstanding the fact that there's \$1.3 million in unpaid  
7 bills from these properties. He says, I need \$400,000, but he  
8 doesn't disclose, what am I going to use this \$400,000 for  
9 other than to pay essential costs? Well, that's really vague.  
10 He doesn't say he needs it to make repairs to properties to  
11 repair porches, to pay real estate taxes, to pay gas bills.  
12 He just says the term "essential costs."

13           And the respondents are concerned about that, your  
14 Honor, because, again, we're living -- we're existing here, as  
15 the Court is, in a vacuum. The receiver only tells us what he  
16 wants to tell us and only tells us a very small amount of what  
17 he is required to tell us. Instead, he continues to operate  
18 this and says, well, I'm doing this for the purpose of the  
19 claims process. Well, that's where we get to, your Honor, as  
20 we've raised in our objection.

21           The fact is the receiver, it appears, is trying to  
22 prop up properties that have no value, that have no equity at  
23 all and will bring no value to the receivership estate at the  
24 end of the day.

25           As an example, there may be properties out there --

1 we don't know because the receiver's never given us values of  
2 each of these properties. There may be a property out there  
3 that is worth \$500,000 but has \$600,000 in liens against it,  
4 and is only generating \$10,000 a month in income but requires  
5 20,000 just to maintain -- without debt service, to maintain  
6 -- the expenses for that property.

7 Well, that property shouldn't be part of the receiver  
8 estate. That property will bring no value to the receivership  
9 estate at the end of the day. If that property is sold for  
10 500,000, which at the end of the day it would bring 440 --  
11 440,000 -- after expenses and closing costs -- well, there's a  
12 \$500,000 -- there's a \$600,000 lien against it. There's no  
13 value there. There's no money for other claimants at the end  
14 of the day.

15 So, the receiver, by saying he needs money to pay  
16 expenses for properties, if those properties have no value or  
17 are not performing, that \$400,000 shouldn't be used for those  
18 properties. Those properties, instead, should be abandoned,  
19 as we suggest in our reply.

20 The receiver should be required to provide this  
21 report. He's had the properties now for -- almost nine months  
22 he's had control of these properties. He should know the  
23 value of these properties. In fact, he started to list these  
24 properties for sale. He should be able to provide us the  
25 value of these properties, what the expense -- the debts are

1 against these properties, so that we can look at this and  
2 decide if these properties will not bring any value or money  
3 to the estate, the receiver should abandon them.

4           Otherwise, the receiver is spending limited  
5 resources -- admitted limited resources -- to try and prop up  
6 or maintain these assets. Meanwhile, the assets that may have  
7 some value are suffering because of it because the receiver's  
8 expenses continue to accrue.

9           As of December, the receiver advised everybody in his  
10 second report that he's had over \$900,000 in receiver costs  
11 and his attorneys' fees alone -- that doesn't include the  
12 property management expenses, but receiver costs and his  
13 receiver's attorneys' fees of \$900,000 -- for a four-month  
14 period. We're coming to April 30th, another four-month  
15 period. There could be another million dollars in receiver  
16 costs that are being -- going to be borne by these properties  
17 and could harm the respondents and could harm investors.

18           Meanwhile, the receiver hasn't submitted his fee  
19 petition, which he's required to do under his original order  
20 appointing him receiver. He was required to do that within --  
21 every quarter he was required to submit a fee application.  
22 Has not done it. Again, transparency.

23           We are living in a vacuum. We're not getting  
24 information. The Court's not getting information. Meanwhile,  
25 the receiver comes in and says, I need to borrow money; I need

1 to use a piece of property that is unsecured to secure this  
2 loan.

3 He doesn't come in and tell us, did he seek loans  
4 from other sources? Were these the best loan terms he could  
5 obtain? And why -- what is he going to do with the 400,000 he  
6 borrows? What are the essential costs that he's going to be  
7 paying with this 400,000?

8 Now, we realize there are expenses that need to be  
9 paid. We appreciate that. But the fact that the receiver's  
10 not telling us or the Court what those are, and the fact that  
11 the receiver is not saying, I'm using these to prop up or pay  
12 for expenses to properties that have no value, that's what  
13 we're objecting to.

14 THE COURT: So, remind me, how many properties are  
15 there here?

16 MR. RACHLIS: 113.

17 THE COURT: Okay.

18 And, so, do you have a list of the properties, their,  
19 you know, current valuation, for lack of a better word, the  
20 various -- to the extent you know based upon the information  
21 you have now, what sort of liens there are against the  
22 property, and some of the other information that the  
23 respondents are requesting?

24 MR. RACHLIS: The answer is yes. We have been  
25 working with professionals -- namely, SVN -- to identify

1 exactly that; namely, valuation: To get a value, understand  
2 what either institutional type of loans may be out there or  
3 EBF loans that are out there. We do have those types of  
4 issues.

5           Your Honor does have to, of course, remember the  
6 context that we're in. On the one hand, we do have that  
7 information. On the other hand, we are attempting to bring to  
8 market properties for sale through -- normally through public  
9 sales. So, having information on value that are being placed  
10 internally can create impacts in the marketplace. So, there  
11 are important elements about the way that information is  
12 maintained.

13           But to answer your question directly, yes, we do have  
14 that information.

15           And, indeed, your Honor, we can submit that to the  
16 Court. I mean, again, for purposes of an in camera review, we  
17 are happy to provide that to you so that you do have that.  
18 But I'm happy to address some others, but I wanted to answer  
19 your question directly.

20           THE COURT: All right.

21           I think the concern seems to be -- I mean, with  
22 regard to the valuation of the properties, you know, to the  
23 extent that the properties -- that the lenders hold liens  
24 against certain properties, presumably they can do their own  
25 kind of market analysis. So --



1 MR. RACHLIS: And --

2 THE COURT: Hold on.

3 MR. RACHLIS: -- your Honor -- I'm sorry.

4 THE COURT: So, it would be helpful for the lenders  
5 to at least have a list of the liens that the receiver  
6 believes are existing on those properties so you have kind of  
7 this complete information.

8 But I think what they're concerned about is  
9 information with regard to expenses and where the money is  
10 coming from to pay some of these expenses.

11 Right? That's what I'm getting from you.

12 And, so, does that -- I'm assuming the receiver has  
13 that information.

14 MR. RACHLIS: Sure. The inform- -- every dollar  
15 that's being spent is being accounted for. The issue -- and,  
16 indeed, we have to go back a little bit.

17 The fact of the matter is, as your Honor knows, we've  
18 been before Judge Kim on various matters throughout the last  
19 several months. There is a continual discussion about where  
20 particularly these monies would be spent. So, the idea of  
21 surprise here is feigned.

22 And I would suggest, your Honor, that I personally  
23 have spoken with several of these lenders in regards to issues  
24 associated with -- Mr. Crowley mentions to your Honor the idea  
25 that where is it -- how come there hasn't been a request for a

1 loan from other sources? Well, I can tell you I was on the  
2 phone with several of these lenders asking that they use their  
3 reserves, which we believe come from investor monies -- they  
4 have reserves for insurance; they have reserves for property  
5 taxes; they have reserves for capital expenditures -- and made  
6 a specific request and demand on behalf of the receivership  
7 that that money be utilized for receivership expenses. Those  
8 were largely rejected, other than a couple property tax  
9 payments that were made by certain of the Freddie Mac  
10 entities.

11 So, the idea somehow that there is this surprise as  
12 to what money is out -- needs to be spent and where that money  
13 would come from is inaccurate. And I would suggest they get  
14 the same monthly reports that we get every month in regards to  
15 rent rolls, how much money the tenants -- you know, in terms  
16 of that type of property on the property-level reporting;  
17 dealing with expenses, as well.

18 So, I'm not sure where this comes from, other than  
19 sort of a litany to throw blame on the receivership.

20 As to the February 13th order, there, too, we have  
21 not -- I mean, this is a motion to compel in some sense. One  
22 party cites it directly. I don't need to recite. Everybody  
23 knows Rule 37.2 and the requirement that deal with meet and  
24 confer and things of that nature. Had they engaged in that --  
25 which they didn't -- we would have informed them that we are

1 working on that exact report that Judge Kim had asked be  
2 prepared. We began that almost immediately. It does take  
3 time for 113 properties to be -- to have a separate report  
4 that wasn't created before by anybody; to work with our  
5 professionals to have it created and created accurately,  
6 particularly in the midst of tax season, which just ended, you  
7 know, on April 15th.

8 So, we are working on all of that and --

9 THE COURT: So, at this point, what is your best  
10 estimate of when those reports will be distributed?

11 MR. RACHLIS: I'm hopeful that it would be within the  
12 next 30 days.

13 MR. DUFF: Perhaps even sooner. We're literally  
14 working on it every day -- if you will allow me, your Honor --  
15 and I actually think there's a chance we may have those as  
16 soon as a week or two. But we need to make sure they're  
17 accurate. It won't serve anybody to get out there with a  
18 report that then is -- results in a variety of questions or  
19 concerns.

20 THE COURT: And, finally, what about the concern  
21 about the request that the \$400,000 -- that the use of it be  
22 more specifically identified?

23 MR. RACHLIS: Your Honor, I think that the motion  
24 itself identifies the exigencies that are currently here.  
25 Many of these exigencies are either -- were anticipated

1 before, but there were delays associated with making sure that  
2 the approvals on the other properties were obtained. And --  
3 but a few of them are of recent vintage. And I'll give you an  
4 example, your Honor, dealing with the replacement of two  
5 porches.

6           There was -- the city, you know, dealing with health  
7 and safety issues, had indicat- -- we had been working with  
8 the city on that, but there was a very specific order that  
9 those porches be repaired and all safety issues abated by this  
10 week with an appearance next week. That has -- that's only of  
11 recent vintage.

12           I personally spoke with the lenders who were involved  
13 with that; sent them the orders associated with that. There's  
14 no -- the transparency issue is a false narrative, your Honor,  
15 and it should be abated right now.

16           But that's just an example of a recent event since  
17 the last status report was filed of which notification  
18 virtually immediately was transpired. And a request for  
19 monies were made, which was denied, which is fine. But that's  
20 one exigency that brings us here today. To be fair about  
21 it -- I'm sorry, your Honor.

22           THE COURT: I take it that the \$400,000 that will be  
23 used pursuant to the purposes set forth in the receiver's  
24 motion, that at some point the receiver will then issue a  
25 report detailing where all of those monies went?

1 MR. RACHLIS: Yes, your Honor.

2 THE COURT: Yes?

3 MR. HANAUER: Thank you, your Honor.

4 I think we need to take a step back here and look at  
5 the context of the receiver's request for this financing.  
6 That was in the context of the issue of whether the sale of  
7 these properties -- which would bring all this money into the  
8 receivership estate -- could be consummated. It was in the  
9 context of that issue still being litigated. The Court just  
10 ruled that, yes, these sales can proceed. And, so, it seems  
11 like in the very near future this large infusion of cash is  
12 going to come into the receivership.

13 Had that happened earlier and not been slowed down by  
14 all the litigation over it, I don't think the receiver would  
15 have needed the 400,000. And it sounds like to the extent the  
16 receiver still needs it, it would be for this very short  
17 period before the sales -- which the Court just authorized --  
18 can take place.

19 So, I think what we're seeing here is exactly what  
20 the Court observed at the very start of the hearing, is, you  
21 know, the true concerns about this 400,000, one: It may not  
22 be needed at all; but, to the extent it is, it's going to be  
23 needed for a couple days. And really what's just going on  
24 here is that these institutional lenders are using -- again,  
25 just any time the receiver takes any action, makes any

1 proposal to the Court, requests permission to do anything,  
2 it's just here comes all the complaints, here comes all the  
3 parade of horrors.

4 And really what we're talking about now is if this --  
5 the receiver may not even need to take this loan out. But if  
6 he does, it's going to be like for two or three days, until  
7 these sales are contemplated.

8 So, from our point of view, it just doesn't seem like  
9 there should be a lot of issues associated with whether or not  
10 the receiver can take a bridge loan for a matter of days.

11 MR. RACHLIS: That is accurate, your Honor.

12 THE COURT: Although the bridge loan, I think,  
13 contemplates a minimum interest payment, right?

14 MR. RACHLIS: It does.

15 THE COURT: Of one-and-a-half months?

16 MR. DUFF: Correct.

17 THE COURT: So, whether you take it out for three  
18 days or whether you take it out for a month-and-a-half.

19 MR. RACHLIS: There will be a fee.

20 THE COURT: Right.

21 And, you know, I don't begrudge the lienholders from  
22 expressing their positions with regard to the receiver's  
23 proposed actions to the extent that it impacts their security.  
24 I mean, I understand that. You all have the right -- your  
25 clients have the right -- to do that. I just want to kind of

1 discourage both sides, frankly, from using the "shotgun, throw  
2 the kitchen sink at everything" approach to briefing. Because  
3 it really does not help.

4           And I know that the parties have been before  
5 Magistrate Judge Kim. He has informed me on numerous  
6 occasions that the parties have been before him on various  
7 issues. And we all -- believe it or not, we talk. And, so,  
8 I'm not completely unfamiliar with what is going on before  
9 Judge Kim and the dynamics there.

10           But I am sensitive to the notion that -- so, let me  
11 take a step back now.

12           So, to the extent that the lienholders have a secured  
13 property interest in a particular property, presumably you  
14 have about as much information with regard to that property as  
15 the receiver does, as far as outstanding liens, whatever the  
16 cash flows are, expenses, et cetera, et cetera.

17           Now, to the extent that you need more information  
18 with regard to, for example, whether some of this \$400,000 is  
19 going to be applied to those properties, right, I think that  
20 -- hold on -- I think either that you can get that information  
21 through the receiver, or you'll get that information on how  
22 the \$400,000 is used at some -- when the receiver issues the  
23 receiver's next report with regard to how this money is spent.

24           And, so, I understand the overall -- from the  
25 mortgage holders' standpoint, the overall -- frustration or

1 desire to have more information with regard to exactly how the  
2 money is flowing; and, particularly, in light of the  
3 receiver's prior position that the receivership could use cash  
4 from certain areas for other certain properties, et cetera, et  
5 cetera. Right? I understand. Because your clients see,  
6 basically, the lien on Property A and that's really all they  
7 care about. Right? I get that.

8           But I guess with regard to this particular motion,  
9 given the fact that Judge Kim's April order has now been  
10 entered -- or will be entered by me today -- and the pending  
11 sale, and given the fact that the receiver will be able to  
12 disclose kind of where that money went, with regard to the  
13 \$400,000, can you kind of explain to me or help me understand  
14 what the exact concern is?

15           MR. CROWLEY: Your Honor, a couple -- if I could take  
16 a couple minutes to address some of the matters raised.

17           Initially, the concern is that the receiver's motion  
18 does not say where the \$400,000 is going. The receiver's  
19 motion lists, I've got a million-three in outstanding debt or  
20 outstanding bills against this property, including taxes, gas  
21 bills, other expenses, which doesn't include receiver's fees  
22 and costs of -- quote-unquote, known of -- 904,000, plus  
23 additional costs.

24           And he says that, I'm looking to get this money and  
25 all I'm going to use it for is to pay essential costs in the



1 coming weeks until the other properties are closed. And  
2 that's on Page 5, Paragraph 8. That's all he says. He  
3 doesn't say, I'm using it specifically to pay these bills  
4 because it's an emergency.

5 And he brings this motion as an emergency. But he  
6 doesn't say why it's an emergency and what needs to be paid  
7 immediately. And are those funds going to be used to make  
8 repairs to two porches? That's fine. It's a safety issue.  
9 But are those properties -- do those properties have value?

10 And we get back to the point, your Honor, that we  
11 tried to raise in this motion and the receiver is ignoring, as  
12 is the SEC; but, it's part of his order appointing him  
13 receiver, Paragraph 65. The receiver's recommendations to  
14 continue it or discontinuation of the receivership and the  
15 reasons why, he's supposed to put those in the reports.

16 Our position is: Do these properties have value? Is  
17 the receiver using limited resources -- now a \$400,000 loan --  
18 to pay for expenses on properties that have no value, at the  
19 end of the day will be sold and will not bring dollars into  
20 the estate to benefit any of the claimants; and, if so, why is  
21 the receiver spending this kind of money?

22 It's not in the best interest of anybody in this  
23 receivership, it's not in the best interest of the  
24 respondents, it's not in the best interest of other lien  
25 claimants, including investors, that the receiver use limited

1 resources to pay expenses and to keep in his receivership  
2 properties that have no value or are not performing. And  
3 that's what we're trying to get across.

4           And we've said to the receiver time and time again,  
5 it doesn't make economic sense. The only one benefitting,  
6 with all due respect, is the receiver because he's incurring  
7 costs -- and his property manager. They're incurring costs  
8 and expenses that are being paid for, or will be paid for, by  
9 the claimants. And that's not fair. That's not the  
10 receiver's duty.

11           The receiver is supposed to come in and say, here's  
12 what I think the receivership value is, if it has any. If it  
13 doesn't have any, then he should take the appropriate steps  
14 and abandon those properties that have no value and let the  
15 lien claimants, whoever they might be, including investors,  
16 fight priority in a separate courtroom. Because that's the  
17 appropriate thing to do. That's in the best interest of the  
18 receivership estate. And the receiver refuses to recognize  
19 that and refuses to talk to us about that.

20           And that's why we're saying his order, your Honor,  
21 doesn't say you've got to provide each of these respondents  
22 with just information on their properties. No. That was his  
23 order prepared by the receiver. None of us were even in the  
24 case at the time. We didn't have a chance to object or raise  
25 a question or put input into this order. That order was

1 prepared by the SEC and the receiver. And that order required  
2 the receiver to do these things within a time period, and he's  
3 never done it.

4 THE COURT: Okay.

5 So, what about the argument that if a property  
6 doesn't have any kind of value beyond what is currently valid  
7 liens, that the property should no longer be part of the  
8 receivership?

9 MR. RACHLIS: There are, for example, some properties  
10 that have what we have styled EBF investor types of  
11 obligations on them. So, there could be, say, 80 different  
12 mortgagees out there, of which -- you know, we can see from a  
13 mortgage -- from the mortgage statement at least. We'll let  
14 the claims process go through, see if there's anything else.  
15 But let's say that there's those 80.

16 The property that they hold is not valueless. There  
17 is value to the -- when it is sold, it will have value. And  
18 we're not aware of a property that has -- somehow is vacant  
19 and useless. When that property is sold and placed into, say,  
20 a sub-account, just like we had suggested with the 5001  
21 Drexel, those 80 mortgagees will be able to have recovery from  
22 that property -- from that sub-account. So, there is value  
23 that they will achieve from there.

24 There is no way, practically or efficiently, to say,  
25 with that property, here is your -- here, to you 80 people,

1 without the claims process -- we don't even know what else is  
2 going on with that property or that there may be priority  
3 issues or whatnot -- for us to do anything with that property  
4 other than the effort to liquidate it, put it in monetary sum.  
5 There's no one to turn over to. If there are 80 people with  
6 varying interests going on, you can't just say, here, fight  
7 for the keys.

8 THE COURT: But the point is that the -- if the point  
9 of the -- if the purpose of the receivership is to preserve  
10 assets and maximize what's available to the claimants  
11 eventually, right, that if it's uncontested that Property A,  
12 say, has a market value of \$50,000 but has \$300,000 in a first  
13 and second mortgage that's uncontested, the question is: Why  
14 keep it around?

15 MR. HANAUER: May I address that, your Honor?

16 So, here's the problem. With a property like that  
17 that you're talking about, you're saying there's 200,000,  
18 300,000 debt on it. Well, who were the first people that had  
19 mortgages on those properties? They were the investors.

20 And we know that while the institutional lenders  
21 subsequently recorded mortgages on those properties, those  
22 investors were never paid and they never voluntarily released  
23 the mortgages. And further down in this litigation, there is  
24 going to ultimately come to a head, and the Court will decide,  
25 what to do about this issue. But we aren't there yet.

1           Here's what counsel wants to do. Here's what the  
2 institutional lenders want to do. They want to say, oh, well,  
3 there's no value in the property. Well, that's not true.  
4 When those properties are sold, yes, there will be a pot of  
5 money. And if the investors are decided that -- to have first  
6 priority, they're going to get paid before the second-in-time  
7 lenders will be.

8           But if the Court goes with what the lenders want and  
9 have the properties be abandoned, here's what's going to  
10 happen. All these well-funded institutional lenders are going  
11 to race to the Cook County courthouse and say, oh, we should  
12 have the properties.

13           Well, on any given property, there are going to be 80  
14 investors who own a fractional interest on that mortgage, who  
15 have no way to take collective action and are going to be  
16 forced to defend themselves without a lawyer -- they don't  
17 have a lawyer now, but at least they have an advocate with the  
18 SEC. They'll be forced to defend themselves without a lawyer,  
19 and we know how that's going to shake out. If the creditors  
20 can just run to Cook County court, they're going to get the  
21 properties and the investors are going to lose.

22           What the SEC has been suggesting the whole time is  
23 keep this all under the Court's jurisdiction. Let's have an  
24 orderly process where once all the parties -- the investors,  
25 the creditors, get to submit all their information. Once the

1 parties get to take some discovery to see, okay, what is the  
2 real impact of these investors who were there first, never  
3 getting paid and never releasing the properties, what's the  
4 impact on who has priority -- that's going to happen in this  
5 court. But let that process just play out. Because if it's a  
6 race to the Cook County courthouse, we know exactly how that's  
7 going to shake out.

8 THE COURT: Okay. I understand.

9 MR. CROWLEY: Your Honor, to address those brief  
10 points that counsel's -- first, the question of whether it has  
11 value. Well, you know, its value is ten dollars, it has  
12 value. The question is: Does it have equity, and should it  
13 be maintained in the receivership estate for purposes of  
14 keeping the ten dollars? No. That makes no sense when it's  
15 going to cost significantly -- a significant amount of money  
16 in receiver fees, receiver expenses, including attorneys.

17 THE COURT: But what the SEC is telling me is that  
18 with regard to priority -- who has priority with regard to  
19 whatever the ten dollars is, that that might be a disputed  
20 issue later on between the investors who are the victims of  
21 this scheme and the institutional lenders.

22 MR. CROWLEY: And, your Honor, they have a remedy  
23 available to them in state court. And it would move faster in  
24 state court than the process going on right now in this  
25 receivership, and it would be a lot less expensive. Because

1 right now this process has gone on nine months almost and  
2 we're no closer to the process. It would be easier. It would  
3 be more economic for everybody. Because we appreciate what  
4 you said earlier -- I appreciate what you said earlier -- that  
5 we're spending a lot of monies on behalf of everybody.

6           And we're not doing it on purpose, your Honor. It's  
7 not the intent of the respondents to fight the receiver on  
8 every single matter. In fact, his first tries to sell  
9 properties, there really wasn't an objection to that. The  
10 only objection was, what are you going to do with the funds?  
11 So, that statement was wrong.

12           Our concern is this is getting very expensive. It's  
13 not moving. It doesn't seem to make economic sense to keep in  
14 the receivership estate properties that have no equity, if  
15 that's a better word for the SEC and the receiver. No equity.  
16 Because at the end of the day, those properties -- those funds  
17 will be depleted even more by the time you get to -- after  
18 sale, you get to -- the disbursements and no one wins.

19           Instead, if those properties have no equity, they  
20 should be released. The parties can battle. The investors  
21 have a right to retain counsel. They've got the legal system.  
22 It's a pretty good system that they have a right to utilize in  
23 order to enforce their position in the property. And to say  
24 otherwise, I think, is a disservice to our court system. But  
25 they have a right to utilize the court system to establish

1 their priorities.

2           And we're only saying that the receiver should put  
3 this report together as he -- as the order said he was going  
4 to do. Give us these values. Not just to the re- -- the  
5 values of the properties to the respondents. He was required  
6 to do it to all properties in his control, both values and the  
7 claims -- debts against them. Then the Court and the rest of  
8 the parties can determine, is it in the best interest of this  
9 receivership to go forward with these properties in there?  
10 Because, clearly, they're not -- a large portion of these  
11 properties are not able to pay their expenses.

12           And, so, I mean, you've got a million-three in debt  
13 right now for properties. The receiver wants to use a  
14 million-nine from the sale of properties that had no expenses  
15 against them, to prop up properties that are under water.  
16 That makes no sense to the estate.

17           THE COURT: Right. Look, I understand the concern.  
18 But from what the receiver is saying, is that those types of  
19 reports are going to be provided to the respondents soon, in  
20 the next couple of weeks.

21           MR. CROWLEY: Only as to our properties, not all  
22 properties. That's what the -- that's the problem. He's  
23 saying, I will only give you what I think the value of your  
24 property is; I'm not going to tell you what the value of these  
25 other 130 properties are.



1           And that's not what the order requires him to do.  
2 He's supposed to issue a report as to the value of all  
3 properties. Transparency. The Court has a right to know  
4 that. We have a right to know that. Because we've got to  
5 figure out is -- as the order requires, is -- the receiver  
6 making the correct recommendations for this receivership.

7           THE COURT: What's the problem with -- why just limit  
8 it to the particular lenders of the properties?

9           MR. RACHLIS: For the reasons that they've  
10 articulated themselves, your Honor. With respect to the rents  
11 is a good example. The rent motions that were out there were  
12 related solely to their properties. They're, basically,  
13 saying that they have an interest in that -- in those rents as  
14 collateral under their agreements and things of that nature.  
15 So --

16           THE COURT: No, no, I understand.

17           But what's the harm in giving a copy of all the  
18 reports to all of the institutional investors?

19           MR. RACHLIS: I don't believe that -- I mean, up  
20 until right now, each lender for every property that they  
21 claim an interest in has been getting reports for those  
22 properties. Each property -- your Honor's suggesting each  
23 lender here would get 113 different reports for each property.  
24 I mean --

25           THE COURT: Well, presumably, they can share with one

1 another.

2 MR. CROWLEY: And, your Honor, we're not even saying  
3 that. We're saying he's got to give us a value. He's  
4 required to give a value of each of the properties and what  
5 the expenses are. I mean --

6 THE COURT: All right.

7 MR. CROWLEY: -- is it worth --

8 THE COURT: Listen, listen, I'm not going to require  
9 the -- I mean, let's see what these reports say. Because with  
10 regard to the value of the properties, I think there is a  
11 concern with -- I mean, they're trying to market them.  
12 They're trying to sell them. They're trying to get as much  
13 money as possible out of them. I don't think that, you know,  
14 opening the kimono with regard to the value does the receiver  
15 or anyone that much service.

16 But let's see what these reports say, what kind of  
17 information they go into; and, then, if there's any concern,  
18 you can raise them. Okay?

19 With regard to the \$400,000, I want the receiver to  
20 file an interim report in seven days giving me some more  
21 detail on what the \$400,000 is going to go to. All right?  
22 And you can file it. Everyone will get a sense of -- everyone  
23 will look at it. Obviously, they may not be exact figures,  
24 but I want a better sense.

25 MR. RACHLIS: If we -- if the closings occur on the

1 other properties and it moots the need for the 400,000, we can  
2 submit a report, basically, saying that none was -- none of  
3 the 400,000 was -- used? That's all right, your Honor?

4 THE COURT: That would be fine.

5 But I'm going to approve the \$400,000 --

6 MR. WELFORD: Your Honor, may I be heard on my  
7 objection?

8 THE COURT: Which was, what?

9 MR. WELFORD: Liberty, on the borrowing of 400,000.

10 THE COURT: I thought he was going to speak on behalf  
11 of everyone. That's what he said.

12 MR. WELFORD: No --

13 MR. CROWLEY: Liberty's was separate -- I'm sorry,  
14 your Honor.

15 MR. WELFORD: It's a separate objection, your Honor.

16 THE COURT: Go ahead.

17 MR. WELFORD: I'm sorry. May I?

18 Your Honor, I represent Liberty EBCP, LLC. Liberty  
19 holds the mortgage on 17 different properties. We have a  
20 mortgage, and we have an assignment of leases and rents. As  
21 to the 17, they're all apartment buildings. They're all in  
22 the Chicago area.

23 We do not take issue with the lender -- the  
24 receiver's business judgment here today about the need for  
25 emergency funding. Our concern is that the lender -- the

1 receiver is proposing to put a \$400,000 lien on unencumbered  
2 proceeds ahead of what we believe is Liberty's right.

3           The reason I say that is that Liberty and the other  
4 lenders here previously went before this Court, and it was  
5 referred down to Magistrate Kim. And our concern was that  
6 Peter was being robbed to pay Paul; that our rents were being  
7 used to prop up other properties. And that happened for a  
8 five or six-month period of time.

9           And as a result, there were deficiencies in our  
10 accounts to pay taxes, to pay insurance and other expenses --  
11 and maybe even property management fees -- that occurred. And  
12 Judge Kim properly ruled that you can't do that. You can't  
13 take the rents that someone has a perfected lien on and take  
14 them and use them on a different property.

15           THE COURT: I understand that, counsel. We've  
16 covered this ground.

17           MR. WELFORD: Okay.

18           THE COURT: So, what's the objection?

19           MR. WELFORD: So, here's my objection:

20           And those rents had to be accounted for. How much  
21 did you take from each of the lenders? 75 days almost have  
22 elapsed. We've never gotten that accounting. I understand  
23 there's tax season. I understand issues. It doesn't take 75  
24 days to determine, based on the ruling of Judge Kim -- to tell  
25 us how much of our money was taken. And we still to this day

1 don't have it.

2 THE COURT: So, how is that an objection to the  
3 current motion asking my approval for the \$400,000 --

4 MR. WELFORD: I will --

5 THE COURT: -- interim financing?

6 MR. WELFORD: I will explain it, your Honor.

7 So, we have a right to whatever money's owed. I  
8 don't know how much money is owed to my client. And all these  
9 lenders don't know how much is owed to them. But I'm focusing  
10 on my client.

11 We don't know how much is owed. What we have been  
12 told is that the pool of assets to reimburse us are  
13 unencumbered properties. And in this motion, we were advised  
14 there are three unencumbered properties so far. One of them  
15 is being encumbered by a \$400,000 mortgage. So, that is  
16 taking -- priming us, taking \$400,000 out of the pool.

17 We've also been told by virtue of the motion -- which  
18 was a complete surprise to many of us -- that the receivership  
19 estate is at least a million-three upside down. They can't  
20 pay current expenses out of current revenues on the properties  
21 respecting, as they are required to do, expenses versus  
22 revenue.

23 And they're saying that they're going to take that  
24 million-three and pay it out of two other properties that are  
25 about to close, that your Honor just approved for sale.

1           So, the question is: How are we, the lenders, who we  
2 have -- who are holding a court order that says: A, account  
3 to them; and, B, reimburse them out of proceeds when they  
4 become available -- how are we to be repaid?

5           Now, we don't know whether there are going to be more  
6 than enough proceeds out of all these unencumbered properties  
7 that have not been identified for all the reasons you just  
8 heard. We don't know if there's going to be enough proceeds  
9 out of all of those properties to pay all of these unpaid  
10 expenses and to reimburse Liberty, who I care about -- and I'm  
11 sure all the other lenders care about -- the rents that were  
12 diverted. We don't know. If there's no shortfall, we don't  
13 have a problem. If there's a shortfall, we have a problem.  
14 Because what's happening then is \$400,000 is going out the  
15 door --

16           THE COURT: So, what would you propose -- since we  
17 don't know at this time, what would you propose that I do?

18           MR. WELFORD: Simply, number one, have them account  
19 to Liberty for how much of our rents were diverted. Number  
20 one.

21           THE COURT: But Judge Kim has already ordered that,  
22 right?

23           MR. WELFORD: But they haven't done it.

24           THE COURT: So, why don't you go to Judge Kim and ask  
25 him to --

1 MR. WELFORD: I filed --

2 THE COURT: -- enforce his order?

3 MR. WELFORD: -- my -- I filed a cross-motion to  
4 compel that that information --

5 THE COURT: And that should go before Judge Kim.

6 MR. WELFORD: Okay. And that will go before Judge  
7 Kim, then.

8 But I've asked for that --

9 THE COURT: What I would say --

10 MR. WELFORD: -- relief, and I recognize --

11 THE COURT: Hold on, counsel. Don't talk over me.

12 So, what I would say is go ahead and file that motion  
13 before Judge Kim because he is the one that entered that  
14 order. So, to the extent that you want Judge Kim to enforce  
15 his prior orders, he's the proper forum to take it to.

16 Okay. Go ahead.

17 MR. WELFORD: And, then, the second thing we would  
18 like, your Honor, is that before liens are placed on assets  
19 and another million-three goes out the door, that the receiver  
20 identify from which unencumbered property Liberty is going to  
21 be repaid. At some point in time, this merry-go-round is  
22 going to stop; and, we don't want to be the ones on the  
23 merry-go-round or the musical chairs event where all the  
24 monies were taken to prop up other properties -- which  
25 Magistrate Kim said you can't do -- and then there's no money

1 to pay Liberty, to reimburse Liberty for the rents that were  
2 diverted.

3           So, all we're saying is before you put a lien on  
4 these assets -- you can put a lien on it, but tell us how  
5 we're going to get paid. Show us that we're going to get paid  
6 out of the properties closing tomorrow or the day after, and  
7 then we don't care what the receiver does with the money.

8           But if you can't demonstrate to us that we're going  
9 to be protected in this process, that all this money is just  
10 going to keep going out the door, out the door, out the  
11 door -- notwithstanding an order of Judge Kim that says: A,  
12 account; and, B, repay out of available proceeds -- my client  
13 is going to be harmed.

14           Now, will we be harmed today if a \$400,000 lien comes  
15 on? I don't know because I don't know whether that in  
16 combination with the million-three is going to result in that  
17 my client's not going to be paid.

18           And my client is not the only one whose rents were  
19 diverted. All of these lenders here, I think, have not been  
20 accounted to and their rents have not been reimbursed.

21           And we may very well have an insolvent -- overly  
22 insolvent -- receivership estate. We may get reports that say  
23 we're owed a hundred, they're owed three hundred, they're owed  
24 a million and there isn't enough money out of the unencumbered  
25 properties to reimburse the lenders and pay all of these other



1 expenses.

2           So, at some point we have to come before your Honor  
3 to say we already have in hand an order that says reimburse  
4 the lenders. And, so, we can't sit by idly and just say put  
5 more liens on the property, go ahead and pay the expenses you  
6 want, without making arrangements to protect, at least as to  
7 my client, Liberty. And if I had a dollar amount, I could  
8 just walk in here and say, your Honor, it's 75,000. Just tell  
9 me which property we're going to get 75,000 from. Then I  
10 don't care. But it's a complete black box. There's been zero  
11 accounting for 75 days?

12           THE COURT: No, I understand.

13           So, can you respond to Liberty's --

14           MR. RACHLIS: Yes.

15           THE COURT: -- concerns?

16           MR. RACHLIS: I'm sorry. Go ahead, Ben.

17           MR. HANAUER: May I, your Honor?

18           THE COURT: Yes.

19           MR. HANAUER: This argument just ignored everything  
20 that happened in court for the past hour. Counsel says, I'm  
21 so concerned about this lien being put on assets. One, it  
22 totally presupposes that Liberty is the senior lender on those  
23 properties. We filed a motion with the Court saying -- or not  
24 a motion, but a response -- saying for every single one of  
25 those properties, the investors were there first.

1           But even supposing Liberty is first for the sake of  
2 argument, this whole lien that counsel is talking about,  
3 that's not going to happen. The Court approved the sale of  
4 the properties. So, the only reason there's going to be --  
5 there would need to be a loan is if that sale just takes a day  
6 or two longer than what happened.

7           Given that that sale is going to be forward, even if  
8 there is a lien placed on those properties, the money is going  
9 to come in from the sale and extinguish that lien within a  
10 matter of days.

11           So, everything that counsel is complaining about, it  
12 doesn't actually have to do with the receiver taking  
13 short-term financing, which he probably doesn't need anymore.  
14 It's just, again, restating all in all of these complaints  
15 counsel has been articulating to both the Court and to Judge  
16 Kim for the past, you know, five or six months.

17           MR. WELFORD: Your Honor, may I respond --

18           MR. RACHLIS: May I --

19           MR. WELFORD: -- briefly?

20           MR. RACHLIS: Can I --

21           THE COURT: Briefly.

22           MR. RACHLIS: Yes.

23           Two things. The idea that they can walk in in this  
24 context is also -- based on Judge Kim's order I don't think is  
25 an accurate reading of the order, for two reasons. Number

1 one, it violates 37.2. If they want a motion to compel, what  
2 they've filed, they could be rejected on that ground alone.  
3 But let's put that aside.

4           There's nothing in the order that says that they have  
5 a lien or that they have a right to the restoration. The  
6 court actually very expressly states that -- restore the rents  
7 to the extent -- to the extent -- that there are enough funds  
8 now or later. He doesn't create an additional right, putting  
9 aside the question of whether they even have any right at  
10 all -- lien right -- that they would be entitled to. This  
11 doesn't create some type of separate right to them. And to  
12 the extent that they're trying to create that now, I agree  
13 with your Honor a hundred percent. They'd have to go back to  
14 Judge Kim and explain why that's the case.

15           Putting all that aside, we've already indicated that  
16 we intend on providing -- we have been working to get these  
17 new types of accountings in place. And we will be presenting  
18 that as soon as we have them available, to Mr. Welford and to  
19 the other lenders that have been impacted.

20           MR. WELFORD: Your Honor, there are sufficient funds  
21 available to repay Liberty should the receiver choose to pay  
22 Liberty. What has happened -- and with all due respect, I can  
23 only respond to the motion that's been filed. The motion  
24 that's been filed has requested to put a \$400,000 lien on an  
25 unencumbered asset. That's why we're here today.

1           And they've advised they're going to spend another  
2 million-three of the unencumbered proceeds from the two sales  
3 that your Honor just approved.

4           And I have a determination of Judge Kim that says to  
5 the extent funds are available, we are to be made whole. So,  
6 this is an issue of priority. Unfortunately, it is.

7           And what is happening is that all of this other money  
8 is going out the door for taxes, insurance for a variety of  
9 properties. And what we were already instructed to do is to  
10 deal with each property on a property-by-property basis.

11           And, so, if they're taking portions of our funds that  
12 are due to us to go pay the taxes on another property, to go  
13 pay the water bill on another property, it's just perpetuating  
14 what has already been ordered that cannot happen. We have a  
15 right to reimbursement from available funds. It's a matter of  
16 when someone sits down, puts their foot down and says, okay,  
17 it's time to examine and make sure that these lenders are made  
18 whole by virtue of this order.

19           THE COURT: Okay, counsel. Thank you.

20           So, that time may come, but it's not here yet. I  
21 think that the duty of the receiver, first and foremost, is to  
22 ensure the viability of and the value of the receivership  
23 estate. I believe that the receivership is exercising  
24 reasonable business judgment in making that determination, as  
25 far as making payments where he deems it necessary in order to



1 I certify that the foregoing is a correct transcript from the  
2 record of proceedings in the above-entitled matter.

3  
4 /s/ Joseph Rickhoff  
5 Official Court Reporter

July 5, 2019

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# Exhibit 2

**From:** Michael Rachlis mrachlis@rdaplawnet   
**Subject:** EquityBuild -- Response To Direction In July 2, 2019 Order  
**Date:** July 8, 2019 at 1:02 PM  
**To:** Young\_B\_Kim@ilnd.uscourts.gov  
**Cc:** mlandman@lcbf.com, amclain@foley.com, jwelford@jaffelaw.com, skitei@honigman.com, jnicholson@foley.com, jcrowley@plunkettcooney.com, jwalker@plunkettcooney.com, jsgroi@honigman.com, michael.napoli@akerman.com, thomas.fullerton@akerman.com, jsulliva@chapman.com, Benjamin J. Hanauer HanauerB@sec.gov, Kevin Duff kduff@rdaplawnet, Nicole Mirjanich nm@rdaplawnet

MR

Dear Judge Kim:

Pursuant to the Court's request of July 2, 2019, the Receiver provides the following information to Your Honor in regard to lien priority and abandonment discussions that transpired before Judge Lee and Your Honor.

Priority issues were raised before Judge Lee on April 23, 2019 in conjunction with the Receiver's motion for approval of interim financing and expedited consideration of Your Honor's April 8th Report and Recommendation (which related to approval of the first sale of properties). The Receiver's motion is Docket No. 322. A combined objection of certain Lenders is Docket No. 342 (including reference on page 11 to request for "prompt determination of the nature and amount of secured interests"). The transcript from that hearing reflects discussion of addressing liens and priority issues before the claims process. (*See* 4/23/19 Tr. at 7-14, 32-36, 49, attached hereto.) Over those and various other objections, Judge Lee granted the Receiver's motion on April 23, 2019. (Docket No. 344; *see also* 4/23/19 Tr. at 14)

Judge Lee's discussion during the April 23rd hearing and rejection of the objections that were raised both in writing and orally are consistent with Your Honor's subsequent determination to grant the Receiver's motion to establish the claims process. In granting the motion to establish the claims process, Your Honor rejected the request for immediate priority hearing that were included in the institutional investors' responses (*See* Docket No. 349). Such actions were also consistent with the discussion that took place before Judge Lee on October 23, 2018, when this issue was first raised and Judge Lee was advised of the position from the SEC and Receiver that priority issues needed to be determined at later date. Judge Lee asked for briefing on issues including priority. (*See* 10/23/18 Tr. at 11-12, also attached.) After briefing and argument held on January 31, 2019 before Your Honor (Docket No. 218), Your Honor issued an Order on February 13, 2019 (Docket No. 223) regarding segregation of rents, which addressed issues of priority (and which was *not* appealed or challenged by the lenders). In that Order, Your Honor stated:

**"The court agrees with the Receiver that it is premature to determine whether the Creditors have preexisting secured interests in the Rents under Illinois law. The court has not yet approved a claims process. And the SEC and Receiver have alleged that Defendants manipulated secured interests as part of their Ponzi scheme. (R. 114, SEC's Resp. at 1; R. 115, Receiver's Resp. at 7.) Given that defrauded investors and creditors may assert interests in the same Rents and subject properties, the claims process should be implemented to ensure that investors and lenders receive due process."** (Docket No. 223 at 8-9) (emphasis added)

This Court also has stated that it **"agrees with the Receiver that priority determinations should not be rendered until a claims process has been approved and implemented."** (Docket No. 223 at 9, n.3) (emphasis added)

While the April 23rd Order adopting the April 8th Report and Recommendation approved of sales without any credit bidding at all, the Lenders did make arguments for credit bidding. However, the Lenders did not raise the issue of priority as a requirement of the credit bid process as part of their objections to the first sales process motion (Docket Nos. 143, 148) nor in their objections to the second sales process motion (Docket Nos. 232, 235, 240).

As to the issue of abandonment, the Lenders raised that objection before Judge Lee with respect to approval of Your Honor's April 8th Report and Recommendation. *See, e.g.*, Docket No. 342 at page 10 (arguing that, "Abandonment on the other hand would relieve the Receiver of the need to borrow funds, which will incur unnecessary interest and legal costs.") Those issues were raised both directly and indirectly for much of the April 23, 2019 hearing (*see, e.g.*, 4/23/19 Tr. at 15-19, 31-34), which did not alter the Court's decision to adopt Your Honor's April 8th Report and Recommendation and other relief requested by the Receiver.

The Receiver also believes that priority and abandonment issues were also discussed at some length before this Court on March 18, 2019 (Docket No. 296), although the transcript from that hearing is not currently available.

Please advise if there is any additional information that the Court would like provided at this time.

Respectfully submitted,

Michael Rachlis





181023 Hearing  
(Motio...ts).pdf



SEC vs.  
EQUIT...AL.pdf

Michael Rachlis  
**Rachlis Duff Peel & Kaplan, LLC**  
542 S. Dearborn Street, Suite 900  
Chicago, IL 60605  
312-733-3955 direct  
312-733-3952 fax  
[mrachlis@rdaplawn.net](mailto:mrachlis@rdaplawn.net)  
[www.rdaplaw.net](http://www.rdaplaw.net)

RACHLIS DUFF PEEL & KAPLAN, LLC  
E-MAIL CONFIDENTIAL NOTICE

This transmission may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify the sender (only) and delete the message. Unauthorized interception of this e-mail is a violation of federal criminal law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	Docket No. 18 C 5587
	)	
Plaintiff,	)	
	)	
v.	)	Chicago, Illinois
	)	October 23, 2018
EQUITYBUILD, INC., et al.,	)	9:00 o'clock a.m.
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiff:	U.S. SECURITIES AND EXCHANGE COMMISSION, by MR. BENJAMIN J. HANAUER MR. TIMOTHY JON STOCKWELL 175 West Jackson Boulevard Suite 900 Chicago, Illinois 60604
--------------------	--

For the Receiver:	RACHLIS DUFF ADLER PEEL & KAPLAN, LLC, by MR. MICHAEL RACHLIS MR. KEVIN B. DUFF 542 South Dearborn Street Suite 900 Chicago, Illinois 60605
-------------------	---

ALSO PRESENT:	MR. CLIFFORD C. HISTED MR. JAMES CROWLEY MS. JILL L. NICHOLSON MR. THOMAS BUSHNELL FULLERTON
---------------	---

ALEXANDRA ROTH, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street  
Room 1224  
Chicago, Illinois 60604  
(312) 408-5038

1 (Proceedings had in open court:)

2 THE CLERK: 18 CV 5587, United States Securities and  
3 Exchange Commission versus Equitybuild.

4 MR. HANAUER: Good morning, your Honor. Ben Hanauer  
5 and Tim Stockwell for the SEC.

6 MR. RACHLIS: Good morning, your Honor. Michael  
7 Rachlis on behalf of the receiver, the people, companies. And  
8 the receiver Kevin Duff is here as well.

9 MR. DUFF: Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. HISTED: Good morning, your Honor. Cliff Histed  
12 for the creditor Freddie Mac.

13 MR. CROWLEY: Good morning, your Honor. James Crowley  
14 on behalf of the creditor trust, Trust No. 2017-C1.

15 MS. NICHOLSON: Good morning, your Honor. Jill  
16 Nicholson on behalf of the secured lender creditor Wilmington  
17 Trust, as well as secured lender creditor Fannie Mae.

18 MR. FULLERTON: Good morning, your Honor. Tom  
19 Fullerton on behalf of secured creditor Midland Loan Services.

20 THE COURT: All right. So this is a motion by Freddie  
21 Mac regarding rents that have been collected by the receiver in  
22 this case. Has the SEC and the receiver had an opportunity to  
23 review the motion?

24 MR. HANAUER: Yes, your Honor. May the SEC be heard?

25 THE COURT: Yes.

1 MR. HANAUER: Thank you.

2 Freddie Mac's motion is based on the factual predicate  
3 that Freddie Mac is somehow the bona fide senior lender, senior  
4 secured lender, on these properties. The SEC believes that  
5 that factual predicate is suspect at best.

6 May I approach, your Honor?

7 THE COURT: Just tell me why you think so.

8 MR. HANAUER: I think so because -- sorry.

9 What I was going to show the Court, I have already  
10 shown to Freddie Mac, is two years before Freddie Mac issued  
11 the mortgages at issue, all the Equitybuild -- not all. Many,  
12 many, well over a hundred, Equitybuild investors also  
13 obtained -- or not obtained, provided secured mortgages on  
14 these very same properties and filed them with the Cook County  
15 recorder of deeds.

16 These mortgages -- these secured instruments that were  
17 filed by the investors have the very same assignment of rent  
18 provision that the Freddie Mac bases its motion on. So this  
19 whole notion that Freddie Mac is first in line, I don't think  
20 that's established whatsoever.

21 What we do know, your Honor, is that the investors  
22 have not received notice of this motion. They have no way to  
23 come in and try and present their position to the courts. We  
24 also know there will be a time when the investors and all of  
25 the other creditors will have an opportunity, will have notice,

1 and will have an opportunity to be heard. That is going to be  
2 the claims process that's contemplated by the receivership  
3 order. And the receiver has told me that he is diligently  
4 working towards that goal.

5           So what the SEC would suggest, your Honor, is this  
6 motion, it simply be held in abeyance until the time that all  
7 the interested parties, the creditor -- the investors, Freddie  
8 Mac -- I don't know if the Court has been monitoring the  
9 docket. But a whole bunch of other institutional lenders have  
10 also entered appearances in this case. I am sure that they  
11 have a view on what should happen to these properties or their  
12 interest in these properties. And the SEC submits that the  
13 most efficient way to handle this is all at once in an orderly  
14 claims process that the Court already has contemplated.

15           And I would simply ask, even requiring the receiver to  
16 brief this present motion right now, it's a complex issue.  
17 It's going to require spending a lot of money that we would  
18 argue would be better spent ultimately towards recompensing  
19 the -- the investors and the other creditors.

20           MR. HISTED: Yes, your Honor. I understand that they  
21 don't want to deal with the issues that -- that we find before  
22 us here, Judge. But this is a very important legal issue. And  
23 it is a legal issue only.

24           First of all, I will represent to you, Judge, that the  
25 recorded instrument that the SEC just handed to me has been

1 paid in full. It's extinguished. We are in fact a first lien  
2 holder on this property that Mr. Hanauer just gave to me.

3           And I understand that he doesn't want to brief it. I  
4 mean, he doesn't even want to have to deal with the legalities  
5 of it. But this is the point, plain and simply: These  
6 rents -- and we are only here to talk about the ten properties,  
7 the Freddie Mac properties. The rents collected from them are  
8 not part of the receivership estate. He is missing the point  
9 completely.

10           We are not trying to stand in front of the line. We  
11 are not trying to be preferentially treated over the other  
12 investors. What we are saying is, we are not investors in the  
13 first place. These rents are separate and apart from  
14 receivership assets. They are presently our property. And  
15 they were never part of the receivership estate. That's the --  
16 that's the black letter legal issue that needs to be decided.

17           They are commingling property that simply doesn't  
18 belong to them. The receiver has taken non-receivership assets  
19 and is just chucking them into a pool, commingling them, and  
20 asking that we stand our place in line with all the people that  
21 the Cohens apparently have defrauded.

22           We are separate and apart from them. Our position is  
23 distinct from theirs.

24           THE COURT: And what's the basis for your position  
25 that they are not part of the receivership estate?

1           MR. HISTED: Because these assignment of rents, Judge,  
2 are automatic. So they -- the rents were assigned to us. And  
3 the moment there is an event of default -- and there have been  
4 multiple events of default in this case -- those rents belong  
5 exclusively to us. That's -- that's rooted in state law. We  
6 cite a state statute that gives these assignments of rents to  
7 us directly and gives us a superior lien over all other people.  
8 A federal statute, the federal statute that empowers the  
9 receiver to come into this case also says, he must respect,  
10 must respect, preexisting state law rights, which is what this  
11 is.

12           We have a preexisting state law right. The cases we  
13 cited, the statutes we cited, are unequivocal on this issue.  
14 The receiver cannot come in after the fact and interrupt with  
15 and interfere and grab, and most importantly commingle, assets  
16 that are not part of the receivership estate. That's what's  
17 happening here.

18           We don't want to jump in front of the investors. We  
19 are not standing with the investors. We are separate and  
20 apart. And at this point, Judge, all we're asking is that the  
21 rents from the ten Freddie Mac properties be segregated, not  
22 used for somebody else's obligations. Segregated, separately  
23 accounted for. We are not asking for them to cut us a check  
24 today. Separately account and segregate our money and stop the  
25 commingling that the Cohens apparently have started and that is

1 continuing right now.

2 MR. HANAUER: May --

3 THE COURT: So what's the basis for your belief that  
4 the prior interests or the mortgages that were recorded have  
5 been paid off in full?

6 MR. HISTED: Because we checked, your Honor. We have  
7 checked that. We verified that. They have all been paid off  
8 in full.

9 MR. HANAUER: And, your Honor, I think we know there's  
10 historically been some issues with due diligence in the  
11 mortgage industry. And I think that's the case here. Because  
12 if Freddie Mac did perform its due diligence on these  
13 properties, they would see this long list of investors attached  
14 to the mortgage, those recorded with the Cook County recorder  
15 of deeds. Those investors were never paid in full. They were  
16 never paid anything.

17 That's why we are here, why the SEC brought this  
18 lawsuit in the first place.

19 THE COURT: Let me ask you this: What's the harm in  
20 keeping those funds, those rents, from the Fannie Mae  
21 properties separate?

22 MR. RACHLIS: There are a few issues here, your Honor.  
23 And I want -- few points to complement what -- the SEC's  
24 position here on that.

25 Beyond the fact that there are a host of investors,



1 creditors, who are making -- or have the -- should have the  
2 opportunity to make claims for interests that they have on  
3 these and other properties through a claims process, here there  
4 is an -- another assumption that's being made by the Freddie  
5 Mac motion is that this is a valid secured interest. And the  
6 fact of the matter is is that there are issues associated with  
7 that assumption that would ultimately need -- potentially  
8 through a claims process will be litigated before your Honor.

9           For example, some of these properties we are aware  
10 through the diligence of the receivership, that when the loans  
11 were initiated they were -- the properties were under water to  
12 start. As a result of that fact, we need to understand more  
13 about the underwriting process that it was engaged in. We need  
14 to know more about what was being conveyed and what information  
15 they had relative to the Cohens and these properties.

16           Bottom line is, as counsel for SEC alluded to, we  
17 learned a lot from the 2008-2009 period about these types of  
18 loans. The underwriting here will provide -- is important to  
19 understand. And that will have to be looked at.

20           So I don't think that this motion can be ruled on as a  
21 legal matter because of the questions about the validity itself  
22 of the instrument that they are seeking to basically enforce.

23           THE COURT: So I --

24           MR. RACHLIS: That's one issue. There is a few  
25 others, your Honor, if I -- if I might.

1 THE COURT: I guess I am trying to figure -- I guess  
2 that doesn't really answer my question.

3 MR. RACHLIS: No, I was trying to --

4 MR. HANAUER: May I answer your question, your Honor?  
5 Here is the issue about, yeah, on concept just segregating the  
6 money, putting it in a lockbox, that sounds fine. There are so  
7 many creditors in this case that have filed appearances, let  
8 alone the investors who could actually come in with their own  
9 secured instruments.

10 If everyone came in right now, Judge, we just want our  
11 money segregated and untouched and that's it, the receiver is  
12 not going to have any money to operate. He is not going to be  
13 able to actually pay any of the mortgages, the taxes, the water  
14 bill, the gas, the other things that need -- these are  
15 residential properties where people are living there.

16 If the receiver has to start segregating all his money  
17 and not being able to spend it in the normal course of what a  
18 real property manager should, he is not going to be able to run  
19 this receivership. And people who actually live in these  
20 properties are going to suffer.

21 And we're just saying, there is going to be a time  
22 hopefully in the not too distant future in this case, where  
23 everybody is going to get a seat at the table and get a chance  
24 to make their case. But if we allow it to just happen  
25 piecemeal, it's going to prevent the receiver from acting

1 efficiently. And it may just prevent him from operating these  
2 properties whatsoever.

3 MR. HISTED: Your Honor, I'm sorry. I think we're  
4 seeing what's happening here. Several times this fund -- these  
5 funds have been referred to as, his money, the receivership's  
6 money. This is the fundamental philosophical problem that  
7 faces us.

8 First of all, we have no objection to using the rents  
9 to maintain the properties. We say that. We asked that he be  
10 allowed to maintain the properties using our rent, our  
11 properties, which are our properties, using our rents. And  
12 then otherwise segregating and separately accounting for. But  
13 the money is not the receiver's money. They keep saying that,  
14 and that's the fundamental point. It needs to be segregated.

15 As a creature of state law and federal statute, this  
16 money does not belong to the receivership. Standing here and  
17 arguing about what the receiver should or should not do misses  
18 the point entirely.

19 It's not his money. It's not receivership money.

20 MR. HANAUER: I'm sorry. Even if counsel is right,  
21 it's not receivership money because investors filed secured  
22 instruments first with the very same rent language that Freddie  
23 Mac invokes, by counsel's logic it's not Freddie Mac's money  
24 either because the investors had secured instruments. They  
25 were never paid off. And by that very same logic, well, the

1 investors can say, it's not the receiver's money. It's not  
2 Freddie's money.

3 All we are asking, your Honor, is let all the parties,  
4 including everyone, have the opportunity to get notice on this  
5 issue. And let's just sort it out at once, like the  
6 receivership order contemplates.

7 MR. HISTED: Your Honor --

8 THE COURT: Hold on. I think I have heard enough for  
9 now.

10 So I would like, whether it's the SEC or the receiver,  
11 to provide a short written response in 14 days, addressing two  
12 issues: One is, who has priority. Okay? And two is,  
13 addressing the specific argument made by Freddie Mac with  
14 regard to whether or not this is or is not part of the  
15 receivership estate. Those are the only two issues I need  
16 addressed. Okay?

17 I understand the efficiencies, et cetera, et cetera.  
18 But those are the two issues that I like addressed. Can you do  
19 that in 14 days?

20 MR. RACHLIS: We can, your Honor.

21 THE COURT: Okay. And then I am going to give Freddie  
22 Mac seven days for reply by the 13th. And we will set this  
23 case for further status the week of November 26.

24 Carmen, give me a date?

25 THE CLERK: November 27 at 9:00 o'clock.

1 THE COURT: And I will have a ruling by that time.

2 MR. HISTED: Your Honor --

3 MR. CROWLEY: If I could --

4 MR. HISTED: Before the non-movants jump in, Judge, in  
5 the intervening time can we --

6 THE COURT: No.

7 MR. HISTED: -- segregate the money?

8 THE COURT: No.

9 MR. CROWLEY: Your Honor, James Crowley on behalf of  
10 the Wilmington trust. The -- we were here to in part support  
11 Freddie Mac's motion. In part, I have a problem or an issue  
12 with my client in that the receiver is holding my client's  
13 money, supposedly collecting the rents, not providing any --  
14 any information on what has been collected, who -- who is  
15 managing the properties.

16 We have asked to have the right to go in and appraise  
17 the properties, which we're required to do upon a default. The  
18 default didn't occur until the SEC took over from the Cohens.

19 We are not even party to the complaint, and they are  
20 not providing anything to us. They are demanding information  
21 which we provided them. They gave all the loan histories, the  
22 loan documents, a copy of the special -- of the agreement that  
23 my client controls servicing the loan. We've asked for  
24 information. We've asked for the right to conduct an appraisal  
25 of the properties which secure my client's loans. And we're

1 told no.

2           So I've got an issue where I am going to be filing a  
3 similar motion to what was filed by Freddie Mac, and also a  
4 demand for appraisal, which we think we should have a right to  
5 do. We are not even a party to the complaint, and yet they are  
6 taking the position that you -- we -- they don't have to give  
7 us anything. And we'd like to know why.

8           MS. NICHOLSON: And, your Honor, this is Jill  
9 Nicholson on behalf of the separate property involving  
10 Wilmington trust and also on behalf of Fannie Mae. We reached  
11 out to receiver's counsel for two weeks now to be able to get  
12 access to the property, simply to conduct an appraisal. We  
13 need that access. We need to know if there are life safety  
14 issues. We need to know if there are anything that impacts the  
15 tenants' ability to live there.

16           We can only do that if we have access to rent rolls  
17 and access to the property to get somebody on site to even tell  
18 us if this property should be abandoned by the receiver or if  
19 there is equity in it that the receiver might have it. And we  
20 are going two, three weeks, and my client keeps asking me, do  
21 you have a response? I don't have a response.

22           All we want is access. And we are in the same  
23 position to be filing a motion. And I think it's critical. We  
24 talk about those people who live there. You know, representing  
25 Fannie Mae, representing Wilmington, one way to be able to do

1 that is to go in and get an appraisal and do a site inspection.  
2 And that's not very difficult. And that's not going to cost  
3 the estate anything. Those responsibilities are borne by the  
4 lender, and charged to the party collateral package.

5 So we would ask, at least today -- I know there is not  
6 many before the Court, that somebody gets back to us and says,  
7 okay, here is your property manager for these properties. You  
8 can contact that property manager, and you can get somebody on  
9 site to do a physical inspection of the property.

10 MR. CROWLEY: And, your Honor, just one thing. We  
11 told the receiver that we will share the appraisals with the  
12 receiver. It's not like we are going to have the appraisals  
13 done and not share them. We are willing to share our  
14 appraisals with the receiver.

15 MR. FULLERTON: Your Honor, Midland Loan Services,  
16 same exact issue. We -- three of our four loans are included  
17 in the complaint, one is not. But same issue. We don't have  
18 access to the properties. We don't have any reporting.

19 MR. DUFF: It's not exactly accurate, your Honor. In  
20 each instance where the lenders have requested rent rolls, we  
21 provided it. There may be -- there was one week when the  
22 person in my firm who was handling that was out, and there may  
23 have been a little slow response in one week.

24 But in each instance we have agreed and we will  
25 continue to agree to provide rent rolls on a timely basis. The

1 institutional lenders need to understand that those don't come  
2 to us maybe as quickly as they would require. As soon as we  
3 get them we are turning them over to them, and we will continue  
4 to do that.

5 As far as gaining access to appraisals, it's my  
6 intention to do that in an orderly fashion. It's very  
7 important that I not overburden the property managers who are  
8 managing all these properties. I have no problem with these  
9 appraisals being conducted, but they need to be done in an  
10 orderly fashion.

11 THE COURT: So what is your view of what an orderly  
12 fashion is?

13 MR. DUFF: I think that those appraisals can be done  
14 in the next 30 days.

15 THE COURT: So --

16 MR. DUFF: -- prepared to make the property manager  
17 make those properties available in the next 30 days.

18 THE COURT: So the receiver has offered to make the  
19 properties available for an inspection and appraisal in the  
20 next 30 days.

21 MR. CROWLEY: Your Honor, just one thing. I've never,  
22 despite repeated requests, received a rent roll or updated  
23 information from the receiver's office.

24 MS. NICHOLSON: Nor have I.

25 MR. CROWLEY: The other question, your Honor, is,



1 Local Rule 66.1 requires the receiver file a report within 21  
2 days of their appointment. That's never been -- of the  
3 properties under his control. That's never been done. There  
4 has no motion ever been filed requesting an extension of time  
5 to file that report.

6 And again, that report will be helpful for all  
7 creditors, and probably the investors as well. So probably  
8 wanted to get a -- something on file that requires the receiver  
9 to get that report. He's had the properties now for three  
10 months.

11 MR. RACHLIS: Well, that's inaccurate. It's two  
12 months. But, your Honor, we do intend -- we are cognizant of  
13 the rule. We thought the most efficient way to go about doing  
14 this is part of our status report, which will be submitted to  
15 your Honor and to everybody next week, we will include that  
16 information. So we thought that would be most efficient way of  
17 addressing -- of addressing that issue.

18 THE COURT: Okay. All right. Well, to the extent you  
19 need more information, just provide the rent rolls, if they  
20 haven't received it already, and make the properties available  
21 for inspection and appraisal in the next 30 days.

22 MR. DUFF: Just one point, your Honor. For any lender  
23 that has not cooperated, and there have been several, in  
24 providing the receivership documentation so that we can confirm  
25 what they are telling us that they have a position, I am not

1 providing information back to them. They need in the first  
2 instance to cooperate. The order appointing me requires them  
3 to give me that information.

4 So there were few instances, and I can't tell you if  
5 it was any of the lenders who are represented here before. But  
6 that was one issue. So we want to make sure that they actually  
7 provided the records so we can assure the receivership what  
8 loans are out there.

9 But in all those instances where we received that  
10 cooperation we are prepared to provide that information back.

11 THE COURT: All right. Very good.

12 MR. CROWLEY: Last thing, your Honor. Based on what  
13 has happened here, I feel we are going to have to file a  
14 petition to intervene because, again, we are not party to the  
15 complaint. And also a similar motion to that of Freddie Mac,  
16 we probably can have it on file by Wednesday.

17 THE COURT: What I would suggest is, why don't you  
18 wait and see how I rule on Freddie Mac's motion before you do.  
19 That might save your clients and you some time. Okay?

20 All right. Thank you.

21 (Which were all the proceedings heard in this case.)  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct and complete transcript of the proceedings had at the hearing of the aforementioned cause on the day and date hereof.

/s/Alexandra Roth

12/20/2018

\_\_\_\_\_  
Official Court Reporter  
U.S. District Court  
Northern District of Illinois  
Eastern Division

\_\_\_\_\_  
Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES SECURITIES AND	)	Docket No. 18 C 5587
EXCHANGE COMMISSION,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
EQUITYBUILD, INC., EQUITYBUILD	)	
FINANCE, LLC, JEROME H. COHEN,	)	
AND SHAUN D. COHEN,	)	Chicago, Illinois
	)	April 23, 2019
Defendants.	)	11:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiff:	U.S. SECURITIES & EXCHANGE COMMISSION
	BY: MR. BENJAMIN J. HANAUER MR. TIMOTHY J. STOCKWELL
	175 W. Jackson Blvd., Suite 900 Chicago, Illinois 60604
For the Receiver:	RACHLIS, DUFF, PEEL & KAPLAN, LLC
	BY: MR. MICHAEL RACHLIS
	542 South Dearborn, Suite 900 Chicago, Illinois 60605
For USB AG:	PLUNKETT COONEY, P.C.
	BY: MR. JAMES M. CROWLEY
	221 N. LaSalle Street, Suite 1550 Chicago, Illinois 60601
For Citibank, U.S. Bank, Wilmington Trust, and Fannie Mae:	FOLEY & LARDNER
	BY: MR. ANDREW T. McCLAIN
	321 North Clark Street, Suite 2800 Chicago, Illinois 60654

1 APPEARANCES (Cont'd):

2

For Midland Loan Svcs.: AKERMAN, LLP  
BY: MR. THOMAS B. FULLERTON  
71 South Wacker Drive, 46th Floor  
Chicago, Illinois 60606

5

For Capital Investors, GARDINER, KOCH & WEISBERG  
Capital Partners, BY: MS. MICHELLE M. LaGROTTA  
6951 S. Merrill I, LLC, 53 W. Jackson Blvd., Suite 950  
7 5001 S. Drexel Blvd. Fund Chicago, Illinois 60604  
II, LLC:

8

9 For Freddie Mac: PILGRIM CHRISTAKIS, LLP  
BY: MS. JENNIFER L. MAJEWSKI  
10 321 North Clark Street, 26th Floor  
Chicago, Illinois 60654

10

11

12 For BMO Harris: CHAPMAN & CUTLER  
BY: MR. JAMES P. SULLIVAN  
13 111 West Monroe Street, Suite 1600  
Chicago, Illinois 60603

14

15 For Liberty EBCP: JAFFE, RAITT, HEUER & WEISS  
BY: MR. JAY L. WELFORD  
16 27777 Franklin Road  
Southfield, Michigan 48034

17

18 Also Present: MR. KEVIN B. DUFF, Receiver

19

Court Reporter: MR. JOSEPH RICKHOFF  
Official Court Reporter  
20 219 S. Dearborn St., Suite 1224  
21 Chicago, Illinois 60604  
(312) 435-5562

20

21

22

23

\* \* \* \* \*

24

PROCEEDINGS RECORDED BY  
MECHANICAL STENOGRAPHY  
25 TRANSCRIPT PRODUCED BY COMPUTER

25

1 THE CLERK: Case 18 CV 5587, United States Securities  
2 and Exchange Commission vs. Equitybuild.

3 MR. HANAUER: Good morning, your Honor, Ben Hanauer  
4 and Tim Stockwell for the SEC.

5 MR. RACHLIS: Michael Rachlis on behalf of the  
6 receiver and the receivership. With me is Kevin Duff, the  
7 receiver.

8 MR. DUFF: Good morning, your Honor.

9 THE COURT: Good morning.

10 MR. CROWLEY: Good morning, your Honor, James Crowley  
11 on behalf of UBS AG.

12 MR. McCLAIN: Good morning, your Honor, Andrew  
13 McClain. I'm here on behalf of several lenders: U.S. Bank,  
14 as trustee for the trust ending SB50; Citibank, as trustee for  
15 the trust ending SB48; U.S. Bank, as trustee for the trust  
16 ending SB41; U.S. Bank, as trustee for the trust ending SB30;  
17 Wilmington Trust, as trustee for the trust ending LC16; and,  
18 Fannie Mae.

19 MR. FULLERTON: Good morning, your Honor, Tom  
20 Fullerton on behalf of Midland Loan Services.

21 MS. MAJEWSKI: Good morning, your Honor, Jennifer  
22 Majewski on behalf of Freddie Mac.

23 MR. WELFORD: Good morning, your Honor, Jay Welford  
24 appearing on behalf of Liberty EBCP, LLC.

25 MR. SULLIVAN: Good morning, Judge, James Sullivan on

1 behalf of BMO Harris Bank.

2 MS. LaGROTTA: Michelle LaGrotta on behalf of certain  
3 creditors --

4 THE COURT REPORTER: I'm sorry?

5 MS. LaGROTTA: On behalf of certain creditors and  
6 several LLCs, I guess --

7 THE COURT: We can't hear you.

8 Can you name one or two?

9 MS. LaGROTTA: Yeah. One is Capital Investors, LLC.

10 THE COURT: All right. What brings us here today is  
11 the receiver's motion for approval of interim financing and  
12 request for expedited consideration of this motion, and the  
13 April 8th, 2019, memorandum report and recommendation that was  
14 entered by Magistrate Judge Kim.

15 First of all, with regard to the April 8th, 2019,  
16 report and recommendation, the deadline that Magistrate Judge  
17 Kim set to object to the R&R was yesterday, April 22nd. At  
18 that time, the only objection that was filed with regard to  
19 the April 8th, 2019, R&R was an objection filed by the  
20 Wilmington Trust, as trustee, as well as others. That is  
21 Document 339.

22 Basically, as I understand it, Wilmington just wants  
23 to make sure that to the extent that the 5001-5003 South  
24 Drexel property is sold, that as the mortgage holder, that  
25 they get paid out of the proceeds.

1 Is that correct?

2 MR. McCLAIN: That's correct, your Honor.

3 THE COURT: But I wondered whether the receiver can  
4 clarify to me and for the record whether or not that will, in  
5 fact, take place.

6 MR. RACHLIS: Your Honor, Michael Rachlis again.

7 As we had discussed the matter before Judge Kim,  
8 the -- as a result of the closing on 5001 Drexel, the proceeds  
9 from that would be placed in a sub-account, essentially. They  
10 would not be used or commingled with any other assets of the  
11 estate but would remain there pending various issues that  
12 would be litigated before this Court, which would include the  
13 priority issues. But, most importantly, it would include a  
14 claims process, which hasn't begun yet.

15 I think Judge Kim, in his February 13th order, had  
16 noted the importance of that. And your Honor has noted the  
17 importance of that, as well. We want that claims process to  
18 proceed, to see if there are any claims associated with this  
19 individual property.

20 The receiver is aware of certain loans that appear to  
21 be outstanding from records that are kept by the receivership  
22 at this point. But, obviously, the claims process, we're  
23 going to identify with specificity.

24 So, that's one issue.

25 Separate, there are issues associated with payout in



1 conjunction with prepayment penalties, interest and other  
2 types of monies, that are embedded within the amounts that are  
3 being sought by this lender. And that -- those, too, will be  
4 litigated before the Court in terms of their propriety.

5 So, there are several issues that are out there that  
6 need to be addressed before payment is made.

7 So, for the extent there's clarity, we intend to,  
8 after closing, put the money in a sub-account and let the  
9 claims process play out and other issues be litigated until  
10 those are completed.

11 THE COURT: Does that address your concerns?

12 MR. McCLAIN: Your Honor, no, actually, it does not.

13 One thing, just as an initial matter, the R&R doesn't  
14 directly indicate whether the funds are supposed to be  
15 escrowed. We did indicate in our objection that we sought  
16 clarity on that.

17 And just if I could give you some background on this  
18 property, this property is a little unique here because the  
19 original owner of this property is not an Equitybuild  
20 affiliate. That LLC was not part of the original receiver  
21 order. That LLC was not included in the receiver's motion to  
22 expand the entities included in the receiver order. It's a  
23 wholly unaffiliated third party.

24 So, when the loan at issue was originated, the loan  
25 was made to that third party. The loan was actually used to

1 pay off debt of First Merit Bank, which is also not part of  
2 this receivership, totally unrelated. It is not an  
3 Equitybuild affiliate mortgage that was paid off. It is a  
4 third-party mortgage that was paid off.

5 So, our loan proceeds were used to pay off a prior  
6 loan and given to a borrower that is totally unaffiliated with  
7 this receivership.

8 Three years later, after origination of the loan, the  
9 loan was assumed by an Equitybuild affiliate. So, it's our  
10 position that we have a first lien priority on this property;  
11 the origination of the loan is wholly unrelated to this  
12 receivership; and, that we're entitled to the payoff of the  
13 proceeds.

14 Now, the receiver, apparently, made reference to that  
15 there appear to be outstanding loans on the property. I'm not  
16 sure what he's referring to. We haven't been given any  
17 evidence indicating there's outstanding loans. And in any  
18 event, any outstanding loans would be junior to our position  
19 because our loan was originated to a third party, not  
20 affiliated with this LLC -- or, excuse me, not affiliated with  
21 this receivership.

22 THE COURT: So, counsel, I guess my question is: Why  
23 can't that all be taken care of during the claims process?  
24 Why do I need to decide that now?

25 MR. McCLAIN: Well, your Honor, it can't be taken

1 care of in the claims process because the claims process  
2 proposes pushing out almost a whole year to determine whether  
3 we have priority on this property or not. So, in the  
4 meantime, the funds have been escrowed, and there's a limited  
5 amount of funds that have been escrowed. In the meantime,  
6 we're incurring costs. The loan is continuing to accrue  
7 interest, default interest. We're paying --

8 THE COURT: But I take it that those --

9 MR. McCLAIN: -- attorneys' fees, also.

10 THE COURT: Hold on.

11 I take it that those are arguments that you have made  
12 or will make with regard to the sufficiency of the claims  
13 process. But with regard to the -- and this is something that  
14 I wanted to talk to everyone about, which is: When there's a  
15 motion that's filed, either by the receiver or some other  
16 party, what was most helpful to me is if the arguments  
17 addressed in the new objections and responses deal with the  
18 specific issues that are raised and the requests for relief  
19 that are sought in that particular motion.

20 What I see when I go through these objections -- and  
21 I've gone through the pleadings in this case -- is that every  
22 time the receiver asks for something, one lender or another  
23 files an objection talking about a litany of why they think  
24 the receiver is not being reasonable, not being competent,  
25 just setting forth the history of this case from Day One.

1 That's not helpful. Okay? It's not helpful to me.

2 I read through all the responses for today's motion  
3 and, frankly, 80 percent of it I ignored because it's not  
4 helpful for me to decide the particular issue that is before  
5 me.

6 So, the issue here is why that objection, with regard  
7 to the timing of payment to the lender, is an objection that  
8 would prohibit me from adopting Judge Kim's report and  
9 recommendation. So, that's the issue.

10 MR. McCLAIN: Yeah, if I can address that, your  
11 Honor.

12 The reason the objection -- we request that you don't  
13 adopt the magistrate's -- judge -- recommendation on its face  
14 is because public records indicate we have a first-lien  
15 priority on this property. There's no just reason to delay  
16 paying us off at the closing date. In fact, Illinois law  
17 requires the receiver to do this. And the receiver's even  
18 admitted in pleadings that it appears that we are the only  
19 lienholder on this property. So, he's really just holding us  
20 hostage for no reason.

21 There's no just reason to delay payment to us. And  
22 the public records indicate we're the only mortgage holder on  
23 this property. There's no Equitybuild affiliate debt related  
24 to this property. So, there's no reason to pay -- not to pay  
25 us off at closing.

1           As the R&R indicated, he's required to adhere to the  
2    liens. And the lien in the mortgage states the sale proceeds  
3    are part of our collateral and we're entitled to those on  
4    payment -- or on closing. So, there's no just reason to delay  
5    it. He's even admitted that we're the first lien priority.

6           MR. RACHLIS: I'm not sure that that admission has  
7    been made.

8           All our point is, is that the claims process hasn't  
9    proceeded. And I think that there is a great deal of  
10   knowledge that needs to be obtained from that.

11           Your Honor knows the nature and extent of the fraud  
12   that was engaged in here. And we want -- and as the receiver  
13   believes it appropriate -- to make sure that all of those  
14   victims have an opportunity to voice their claim. If there is  
15   no claim that is voiced at the end of that period -- which the  
16   claims bar date is supposed to be 120 days from the time that  
17   the claims period starts. If there is no claim that is made,  
18   there can be interim payments that are made to this lender, if  
19   there's nobody else that comes up and all other issues are  
20   resolved associated with anyone that may have a right to that  
21   property.

22           Additionally, there are issues associated with  
23   prepayment penalties, with the type of interest that they are  
24   seeking that have not been resolved. There is no harm -- as  
25   the court -- as Judge Kim correctly noted in his report,

1 there's no harm associated with putting this in a sub-account.  
2 It's not being commingled. There is not -- the year point is  
3 correct in terms of the entirety of the process. But we are  
4 looking -- that doesn't preclude looking at these things on  
5 interim bases. And I believe the receiver will be looking at  
6 that to ensure that to the extent that there's no claim that's  
7 made or appropriate type of objection, those can be resolved  
8 earlier in the process than other claims. So --

9 THE COURT: Where are we with regard to the claims  
10 process and getting that on track?

11 MR. RACHLIS: At this point, your Honor, we have sub-  
12 -- I mean, the receiver has submitted a proposal. There have  
13 been -- there's briefing that's transpired before Judge Kim.  
14 I believe the briefing on that is all completed. I don't know  
15 if the court -- the court has held hearings on most matters  
16 before it, so I would anticipate that there would be a hearing  
17 before Judge Kim on that.

18 But at this point, as we stand here today, the  
19 briefing has been completed.

20 THE COURT: Does the SEC have a position on this  
21 matter?

22 MR. HANAUER: We do, your Honor. We think it does  
23 make sense to defer the payment on this until the claims  
24 process.

25 Yes, as of right now, we haven't heard anyone else

1 come up and assert a claim on this property. And if that's  
2 the case, then I think the receiver just represented that  
3 they're going to be more than reasonable in trying to resolve  
4 things.

5 But the position we've articulated from Day One is  
6 there are 900-plus investors in this case and, as far as we  
7 know, none of them have been provided notice of any of these  
8 proceedings or any of these attempts by the institutional  
9 lenders to try and subordinate their interests in these  
10 properties. And we think it just makes sense from, at the  
11 very least, a due process perspective, that investors be given  
12 the opportunity to be heard by the Court on their position,  
13 whatever it may be, regarding this property; certainly, the  
14 other properties where they were the first mortgage holders on  
15 there.

16 But the claims process, it's an orderly process and  
17 we think it just makes sense to wait until then to resolve all  
18 the claims. Let all the investors be heard, let them receive  
19 notice and let the Court resolve it in an orderly fashion.

20 THE COURT: All right.

21 I will give you the last word.

22 MR. McCLAIN: Thank you, your Honor.

23 Just to address a few points, the receiver indicated  
24 that there's no harm to the receivership. I think his most  
25 recent filing highlights the exact harm that is going to

1 occur. He's needlessly incurring additional costs for the  
2 receivership by holding these monies in escrow. And in turn,  
3 our claim is then going to be inflated because we're going to  
4 have to participate in this process; we're going to have to  
5 incur additional fees; interest is continuing to accrue  
6 throughout this entire process. So, there is actually a great  
7 harm here.

8           And the other harm is that it threatens our ability  
9 to fully collect on our collateral.

10           And the SEC indicated, you know, there's 900-plus  
11 investors and we're trying to subordinate, in some instances,  
12 potential Equitybuild investors. But here, your Honor, this  
13 is a very unique property. There are no Equitybuild investors  
14 involved. And if there are any Equitybuild investors, they  
15 didn't come into the picture until more than three years after  
16 origination of the loan, three years after our mortgage was  
17 recorded against this property. So, by operation of law, they  
18 would be subordinate to us. That is not a question of fact.  
19 That is just a matter of fact, and that is pursuant to  
20 Illinois law.

21           So, we have a first lien -- first-priority lien on  
22 this property that is uncontested. It is public record. It  
23 is out there. There is no Equitybuild affiliate debt. And to  
24 delay payoff is not only detrimental to us, but it's  
25 detrimental to the rest of the receivership because it's just



1 unnecessary.

2 THE COURT: Okay. Thank you.

3 So, having considered the objections, the objection  
4 is overruled. Judge Kim's April 8th, 2019, order is hereby  
5 adopted by the Court.

6 I think that it makes sense, as I've said it all  
7 along, to deal with these claims in an orderly fashion. I  
8 think it also not only facilitates the more efficient  
9 administration of these proceedings -- over which I have  
10 substantial discretion -- but, also, I do think that there are  
11 issues of various notice and other things that can be more  
12 orderly administered, for the fairness of everyone that would  
13 have any sort of stake in these properties, through an orderly  
14 claims process.

15 So, accordingly, the objection is overruled and Judge  
16 Kim's report and recommendation of April 8th is adopted.

17 All right. So, having adopted that, we'll now go to  
18 the reporter's request with regard to interim financing. And  
19 there have been a number of objections that were filed, but I  
20 want to focus on the objections with regard to that issue;  
21 that is, the interim financing.

22 Let me hear from, let's say -- there's a group led by  
23 Federal Home Loan Mortgage Corporation. There's another  
24 objection and response that was filed by Liberty EBCP.

25 MR. CROWLEY: Your Honor, if I could, I'll speak

1 on -- James Crowley -- I'll speak on behalf of the group  
2 respondents.

3           Your Honor, first off, the respondents recognize the  
4 receiver is, apparently, facing some health and safety issues  
5 possibly with some of these properties. The concern that the  
6 respondents have is brought by the emergency nature of this  
7 motion.

8           It appears these issues have been existing for some  
9 time. And the dollar amount of these unpaid bills total \$1.3  
10 million, but the receiver has never brought this to the  
11 Court's attention, nor to the respondent's attention, until he  
12 files an emergency motion saying, I need money for certain  
13 safety issues, and says, I've gone out and decided to borrow  
14 \$400,000.

15           This receiver was appointed in August, 2018. As part  
16 of the receivership order, the receiver was obligated to  
17 provide a detailed status of all the properties under his  
18 receivership. And that was supposed to include the value of  
19 each of the assets -- and this is in the receivership order.  
20 Within 30 days after that order was entered, he was supposed  
21 to provide a list of all of the properties under his  
22 receivership, the value of those properties and the liens or  
23 debts against those properties. That's never occurred.

24           And, so, now the receiver -- in addition, the  
25 receiver is supposed to provide detailed reports of what he's

1 collecting from all of those properties and what his expenses  
2 are. We've never received those. That's not been in the  
3 first or second receiver report. Instead, there's been no  
4 transparency on the part of the receiver with respect to his  
5 receivership of these properties.

6 THE COURT: And wasn't there an order entered by  
7 Judge Kim with regard to this issue, too?

8 MR. CROWLEY: Judge -- yeah, exactly. Judge Kim's  
9 memorandum order back in February -- it came -- the  
10 respondents brought to Judge Kim's attention that what the  
11 receiver was doing was taking monies from properties that were  
12 performing and using them to prop up or pay expenses for  
13 properties that were not performing or had no value. And  
14 Judge Kim said, that's not appropriate and you're supposed to  
15 segregate.

16 What Judge Kim also said was: Receiver, you're  
17 supposed to disclose to the respondents how much you've used  
18 of their monies to prop up these other properties, and you're  
19 required to reimburse those when you can. That's not  
20 occurred. He's never provided the report notwithstanding  
21 numerous requests from the respondents to provide us with  
22 details of what you've used of our proceeds to pay bills for  
23 other properties. That has not happened.

24 And, that's, again -- we come down this transparency  
25 issue. The receiver is running this -- these properties

1 without regard to court orders, without regard to the order  
2 appointing him receiver, and without regard to the rights of  
3 the respondents and, in fact, possibly the investors in these  
4 properties.

5           Now the receiver comes in and says, I need \$400,000  
6 notwithstanding the fact that there's \$1.3 million in unpaid  
7 bills from these properties. He says, I need \$400,000, but he  
8 doesn't disclose, what am I going to use this \$400,000 for  
9 other than to pay essential costs? Well, that's really vague.  
10 He doesn't say he needs it to make repairs to properties to  
11 repair porches, to pay real estate taxes, to pay gas bills.  
12 He just says the term "essential costs."

13           And the respondents are concerned about that, your  
14 Honor, because, again, we're living -- we're existing here, as  
15 the Court is, in a vacuum. The receiver only tells us what he  
16 wants to tell us and only tells us a very small amount of what  
17 he is required to tell us. Instead, he continues to operate  
18 this and says, well, I'm doing this for the purpose of the  
19 claims process. Well, that's where we get to, your Honor, as  
20 we've raised in our objection.

21           The fact is the receiver, it appears, is trying to  
22 prop up properties that have no value, that have no equity at  
23 all and will bring no value to the receivership estate at the  
24 end of the day.

25           As an example, there may be properties out there --

1 we don't know because the receiver's never given us values of  
2 each of these properties. There may be a property out there  
3 that is worth \$500,000 but has \$600,000 in liens against it,  
4 and is only generating \$10,000 a month in income but requires  
5 20,000 just to maintain -- without debt service, to maintain  
6 -- the expenses for that property.

7 Well, that property shouldn't be part of the receiver  
8 estate. That property will bring no value to the receivership  
9 estate at the end of the day. If that property is sold for  
10 500,000, which at the end of the day it would bring 440 --  
11 440,000 -- after expenses and closing costs -- well, there's a  
12 \$500,000 -- there's a \$600,000 lien against it. There's no  
13 value there. There's no money for other claimants at the end  
14 of the day.

15 So, the receiver, by saying he needs money to pay  
16 expenses for properties, if those properties have no value or  
17 are not performing, that \$400,000 shouldn't be used for those  
18 properties. Those properties, instead, should be abandoned,  
19 as we suggest in our reply.

20 The receiver should be required to provide this  
21 report. He's had the properties now for -- almost nine months  
22 he's had control of these properties. He should know the  
23 value of these properties. In fact, he started to list these  
24 properties for sale. He should be able to provide us the  
25 value of these properties, what the expense -- the debts are

1 against these properties, so that we can look at this and  
2 decide if these properties will not bring any value or money  
3 to the estate, the receiver should abandon them.

4           Otherwise, the receiver is spending limited  
5 resources -- admitted limited resources -- to try and prop up  
6 or maintain these assets. Meanwhile, the assets that may have  
7 some value are suffering because of it because the receiver's  
8 expenses continue to accrue.

9           As of December, the receiver advised everybody in his  
10 second report that he's had over \$900,000 in receiver costs  
11 and his attorneys' fees alone -- that doesn't include the  
12 property management expenses, but receiver costs and his  
13 receiver's attorneys' fees of \$900,000 -- for a four-month  
14 period. We're coming to April 30th, another four-month  
15 period. There could be another million dollars in receiver  
16 costs that are being -- going to be borne by these properties  
17 and could harm the respondents and could harm investors.

18           Meanwhile, the receiver hasn't submitted his fee  
19 petition, which he's required to do under his original order  
20 appointing him receiver. He was required to do that within --  
21 every quarter he was required to submit a fee application.  
22 Has not done it. Again, transparency.

23           We are living in a vacuum. We're not getting  
24 information. The Court's not getting information. Meanwhile,  
25 the receiver comes in and says, I need to borrow money; I need

1 to use a piece of property that is unsecured to secure this  
2 loan.

3 He doesn't come in and tell us, did he seek loans  
4 from other sources? Were these the best loan terms he could  
5 obtain? And why -- what is he going to do with the 400,000 he  
6 borrows? What are the essential costs that he's going to be  
7 paying with this 400,000?

8 Now, we realize there are expenses that need to be  
9 paid. We appreciate that. But the fact that the receiver's  
10 not telling us or the Court what those are, and the fact that  
11 the receiver is not saying, I'm using these to prop up or pay  
12 for expenses to properties that have no value, that's what  
13 we're objecting to.

14 THE COURT: So, remind me, how many properties are  
15 there here?

16 MR. RACHLIS: 113.

17 THE COURT: Okay.

18 And, so, do you have a list of the properties, their,  
19 you know, current valuation, for lack of a better word, the  
20 various -- to the extent you know based upon the information  
21 you have now, what sort of liens there are against the  
22 property, and some of the other information that the  
23 respondents are requesting?

24 MR. RACHLIS: The answer is yes. We have been  
25 working with professionals -- namely, SVN -- to identify

1 exactly that; namely, valuation: To get a value, understand  
2 what either institutional type of loans may be out there or  
3 EBF loans that are out there. We do have those types of  
4 issues.

5           Your Honor does have to, of course, remember the  
6 context that we're in. On the one hand, we do have that  
7 information. On the other hand, we are attempting to bring to  
8 market properties for sale through -- normally through public  
9 sales. So, having information on value that are being placed  
10 internally can create impacts in the marketplace. So, there  
11 are important elements about the way that information is  
12 maintained.

13           But to answer your question directly, yes, we do have  
14 that information.

15           And, indeed, your Honor, we can submit that to the  
16 Court. I mean, again, for purposes of an in camera review, we  
17 are happy to provide that to you so that you do have that.  
18 But I'm happy to address some others, but I wanted to answer  
19 your question directly.

20           THE COURT: All right.

21           I think the concern seems to be -- I mean, with  
22 regard to the valuation of the properties, you know, to the  
23 extent that the properties -- that the lenders hold liens  
24 against certain properties, presumably they can do their own  
25 kind of market analysis. So --



1 MR. RACHLIS: And --

2 THE COURT: Hold on.

3 MR. RACHLIS: -- your Honor -- I'm sorry.

4 THE COURT: So, it would be helpful for the lenders  
5 to at least have a list of the liens that the receiver  
6 believes are existing on those properties so you have kind of  
7 this complete information.

8 But I think what they're concerned about is  
9 information with regard to expenses and where the money is  
10 coming from to pay some of these expenses.

11 Right? That's what I'm getting from you.

12 And, so, does that -- I'm assuming the receiver has  
13 that information.

14 MR. RACHLIS: Sure. The inform- -- every dollar  
15 that's being spent is being accounted for. The issue -- and,  
16 indeed, we have to go back a little bit.

17 The fact of the matter is, as your Honor knows, we've  
18 been before Judge Kim on various matters throughout the last  
19 several months. There is a continual discussion about where  
20 particularly these monies would be spent. So, the idea of  
21 surprise here is feigned.

22 And I would suggest, your Honor, that I personally  
23 have spoken with several of these lenders in regards to issues  
24 associated with -- Mr. Crowley mentions to your Honor the idea  
25 that where is it -- how come there hasn't been a request for a

1 loan from other sources? Well, I can tell you I was on the  
2 phone with several of these lenders asking that they use their  
3 reserves, which we believe come from investor monies -- they  
4 have reserves for insurance; they have reserves for property  
5 taxes; they have reserves for capital expenditures -- and made  
6 a specific request and demand on behalf of the receivership  
7 that that money be utilized for receivership expenses. Those  
8 were largely rejected, other than a couple property tax  
9 payments that were made by certain of the Freddie Mac  
10 entities.

11 So, the idea somehow that there is this surprise as  
12 to what money is out -- needs to be spent and where that money  
13 would come from is inaccurate. And I would suggest they get  
14 the same monthly reports that we get every month in regards to  
15 rent rolls, how much money the tenants -- you know, in terms  
16 of that type of property on the property-level reporting;  
17 dealing with expenses, as well.

18 So, I'm not sure where this comes from, other than  
19 sort of a litany to throw blame on the receivership.

20 As to the February 13th order, there, too, we have  
21 not -- I mean, this is a motion to compel in some sense. One  
22 party cites it directly. I don't need to recite. Everybody  
23 knows Rule 37.2 and the requirement that deal with meet and  
24 confer and things of that nature. Had they engaged in that --  
25 which they didn't -- we would have informed them that we are

1 working on that exact report that Judge Kim had asked be  
2 prepared. We began that almost immediately. It does take  
3 time for 113 properties to be -- to have a separate report  
4 that wasn't created before by anybody; to work with our  
5 professionals to have it created and created accurately,  
6 particularly in the midst of tax season, which just ended, you  
7 know, on April 15th.

8 So, we are working on all of that and --

9 THE COURT: So, at this point, what is your best  
10 estimate of when those reports will be distributed?

11 MR. RACHLIS: I'm hopeful that it would be within the  
12 next 30 days.

13 MR. DUFF: Perhaps even sooner. We're literally  
14 working on it every day -- if you will allow me, your Honor --  
15 and I actually think there's a chance we may have those as  
16 soon as a week or two. But we need to make sure they're  
17 accurate. It won't serve anybody to get out there with a  
18 report that then is -- results in a variety of questions or  
19 concerns.

20 THE COURT: And, finally, what about the concern  
21 about the request that the \$400,000 -- that the use of it be  
22 more specifically identified?

23 MR. RACHLIS: Your Honor, I think that the motion  
24 itself identifies the exigencies that are currently here.  
25 Many of these exigencies are either -- were anticipated

1 before, but there were delays associated with making sure that  
2 the approvals on the other properties were obtained. And --  
3 but a few of them are of recent vintage. And I'll give you an  
4 example, your Honor, dealing with the replacement of two  
5 porches.

6           There was -- the city, you know, dealing with health  
7 and safety issues, had indicat- -- we had been working with  
8 the city on that, but there was a very specific order that  
9 those porches be repaired and all safety issues abated by this  
10 week with an appearance next week. That has -- that's only of  
11 recent vintage.

12           I personally spoke with the lenders who were involved  
13 with that; sent them the orders associated with that. There's  
14 no -- the transparency issue is a false narrative, your Honor,  
15 and it should be abated right now.

16           But that's just an example of a recent event since  
17 the last status report was filed of which notification  
18 virtually immediately was transpired. And a request for  
19 monies were made, which was denied, which is fine. But that's  
20 one exigency that brings us here today. To be fair about  
21 it -- I'm sorry, your Honor.

22           THE COURT: I take it that the \$400,000 that will be  
23 used pursuant to the purposes set forth in the receiver's  
24 motion, that at some point the receiver will then issue a  
25 report detailing where all of those monies went?

1 MR. RACHLIS: Yes, your Honor.

2 THE COURT: Yes?

3 MR. HANAUER: Thank you, your Honor.

4 I think we need to take a step back here and look at  
5 the context of the receiver's request for this financing.  
6 That was in the context of the issue of whether the sale of  
7 these properties -- which would bring all this money into the  
8 receivership estate -- could be consummated. It was in the  
9 context of that issue still being litigated. The Court just  
10 ruled that, yes, these sales can proceed. And, so, it seems  
11 like in the very near future this large infusion of cash is  
12 going to come into the receivership.

13 Had that happened earlier and not been slowed down by  
14 all the litigation over it, I don't think the receiver would  
15 have needed the 400,000. And it sounds like to the extent the  
16 receiver still needs it, it would be for this very short  
17 period before the sales -- which the Court just authorized --  
18 can take place.

19 So, I think what we're seeing here is exactly what  
20 the Court observed at the very start of the hearing, is, you  
21 know, the true concerns about this 400,000, one: It may not  
22 be needed at all; but, to the extent it is, it's going to be  
23 needed for a couple days. And really what's just going on  
24 here is that these institutional lenders are using -- again,  
25 just any time the receiver takes any action, makes any

1 proposal to the Court, requests permission to do anything,  
2 it's just here comes all the complaints, here comes all the  
3 parade of horrors.

4 And really what we're talking about now is if this --  
5 the receiver may not even need to take this loan out. But if  
6 he does, it's going to be like for two or three days, until  
7 these sales are contemplated.

8 So, from our point of view, it just doesn't seem like  
9 there should be a lot of issues associated with whether or not  
10 the receiver can take a bridge loan for a matter of days.

11 MR. RACHLIS: That is accurate, your Honor.

12 THE COURT: Although the bridge loan, I think,  
13 contemplates a minimum interest payment, right?

14 MR. RACHLIS: It does.

15 THE COURT: Of one-and-a-half months?

16 MR. DUFF: Correct.

17 THE COURT: So, whether you take it out for three  
18 days or whether you take it out for a month-and-a-half.

19 MR. RACHLIS: There will be a fee.

20 THE COURT: Right.

21 And, you know, I don't begrudge the lienholders from  
22 expressing their positions with regard to the receiver's  
23 proposed actions to the extent that it impacts their security.  
24 I mean, I understand that. You all have the right -- your  
25 clients have the right -- to do that. I just want to kind of

1 discourage both sides, frankly, from using the "shotgun, throw  
2 the kitchen sink at everything" approach to briefing. Because  
3 it really does not help.

4           And I know that the parties have been before  
5 Magistrate Judge Kim. He has informed me on numerous  
6 occasions that the parties have been before him on various  
7 issues. And we all -- believe it or not, we talk. And, so,  
8 I'm not completely unfamiliar with what is going on before  
9 Judge Kim and the dynamics there.

10           But I am sensitive to the notion that -- so, let me  
11 take a step back now.

12           So, to the extent that the lienholders have a secured  
13 property interest in a particular property, presumably you  
14 have about as much information with regard to that property as  
15 the receiver does, as far as outstanding liens, whatever the  
16 cash flows are, expenses, et cetera, et cetera.

17           Now, to the extent that you need more information  
18 with regard to, for example, whether some of this \$400,000 is  
19 going to be applied to those properties, right, I think that  
20 -- hold on -- I think either that you can get that information  
21 through the receiver, or you'll get that information on how  
22 the \$400,000 is used at some -- when the receiver issues the  
23 receiver's next report with regard to how this money is spent.

24           And, so, I understand the overall -- from the  
25 mortgage holders' standpoint, the overall -- frustration or

1 desire to have more information with regard to exactly how the  
2 money is flowing; and, particularly, in light of the  
3 receiver's prior position that the receivership could use cash  
4 from certain areas for other certain properties, et cetera, et  
5 cetera. Right? I understand. Because your clients see,  
6 basically, the lien on Property A and that's really all they  
7 care about. Right? I get that.

8           But I guess with regard to this particular motion,  
9 given the fact that Judge Kim's April order has now been  
10 entered -- or will be entered by me today -- and the pending  
11 sale, and given the fact that the receiver will be able to  
12 disclose kind of where that money went, with regard to the  
13 \$400,000, can you kind of explain to me or help me understand  
14 what the exact concern is?

15           MR. CROWLEY: Your Honor, a couple -- if I could take  
16 a couple minutes to address some of the matters raised.

17           Initially, the concern is that the receiver's motion  
18 does not say where the \$400,000 is going. The receiver's  
19 motion lists, I've got a million-three in outstanding debt or  
20 outstanding bills against this property, including taxes, gas  
21 bills, other expenses, which doesn't include receiver's fees  
22 and costs of -- quote-unquote, known of -- 904,000, plus  
23 additional costs.

24           And he says that, I'm looking to get this money and  
25 all I'm going to use it for is to pay essential costs in the



1 coming weeks until the other properties are closed. And  
2 that's on Page 5, Paragraph 8. That's all he says. He  
3 doesn't say, I'm using it specifically to pay these bills  
4 because it's an emergency.

5 And he brings this motion as an emergency. But he  
6 doesn't say why it's an emergency and what needs to be paid  
7 immediately. And are those funds going to be used to make  
8 repairs to two porches? That's fine. It's a safety issue.  
9 But are those properties -- do those properties have value?

10 And we get back to the point, your Honor, that we  
11 tried to raise in this motion and the receiver is ignoring, as  
12 is the SEC; but, it's part of his order appointing him  
13 receiver, Paragraph 65. The receiver's recommendations to  
14 continue it or discontinuation of the receivership and the  
15 reasons why, he's supposed to put those in the reports.

16 Our position is: Do these properties have value? Is  
17 the receiver using limited resources -- now a \$400,000 loan --  
18 to pay for expenses on properties that have no value, at the  
19 end of the day will be sold and will not bring dollars into  
20 the estate to benefit any of the claimants; and, if so, why is  
21 the receiver spending this kind of money?

22 It's not in the best interest of anybody in this  
23 receivership, it's not in the best interest of the  
24 respondents, it's not in the best interest of other lien  
25 claimants, including investors, that the receiver use limited

1 resources to pay expenses and to keep in his receivership  
2 properties that have no value or are not performing. And  
3 that's what we're trying to get across.

4           And we've said to the receiver time and time again,  
5 it doesn't make economic sense. The only one benefitting,  
6 with all due respect, is the receiver because he's incurring  
7 costs -- and his property manager. They're incurring costs  
8 and expenses that are being paid for, or will be paid for, by  
9 the claimants. And that's not fair. That's not the  
10 receiver's duty.

11           The receiver is supposed to come in and say, here's  
12 what I think the receivership value is, if it has any. If it  
13 doesn't have any, then he should take the appropriate steps  
14 and abandon those properties that have no value and let the  
15 lien claimants, whoever they might be, including investors,  
16 fight priority in a separate courtroom. Because that's the  
17 appropriate thing to do. That's in the best interest of the  
18 receivership estate. And the receiver refuses to recognize  
19 that and refuses to talk to us about that.

20           And that's why we're saying his order, your Honor,  
21 doesn't say you've got to provide each of these respondents  
22 with just information on their properties. No. That was his  
23 order prepared by the receiver. None of us were even in the  
24 case at the time. We didn't have a chance to object or raise  
25 a question or put input into this order. That order was

1 prepared by the SEC and the receiver. And that order required  
2 the receiver to do these things within a time period, and he's  
3 never done it.

4 THE COURT: Okay.

5 So, what about the argument that if a property  
6 doesn't have any kind of value beyond what is currently valid  
7 liens, that the property should no longer be part of the  
8 receivership?

9 MR. RACHLIS: There are, for example, some properties  
10 that have what we have styled EBF investor types of  
11 obligations on them. So, there could be, say, 80 different  
12 mortgagees out there, of which -- you know, we can see from a  
13 mortgage -- from the mortgage statement at least. We'll let  
14 the claims process go through, see if there's anything else.  
15 But let's say that there's those 80.

16 The property that they hold is not valueless. There  
17 is value to the -- when it is sold, it will have value. And  
18 we're not aware of a property that has -- somehow is vacant  
19 and useless. When that property is sold and placed into, say,  
20 a sub-account, just like we had suggested with the 5001  
21 Drexel, those 80 mortgagees will be able to have recovery from  
22 that property -- from that sub-account. So, there is value  
23 that they will achieve from there.

24 There is no way, practically or efficiently, to say,  
25 with that property, here is your -- here, to you 80 people,

1 without the claims process -- we don't even know what else is  
2 going on with that property or that there may be priority  
3 issues or whatnot -- for us to do anything with that property  
4 other than the effort to liquidate it, put it in monetary sum.  
5 There's no one to turn over to. If there are 80 people with  
6 varying interests going on, you can't just say, here, fight  
7 for the keys.

8 THE COURT: But the point is that the -- if the point  
9 of the -- if the purpose of the receivership is to preserve  
10 assets and maximize what's available to the claimants  
11 eventually, right, that if it's uncontested that Property A,  
12 say, has a market value of \$50,000 but has \$300,000 in a first  
13 and second mortgage that's uncontested, the question is: Why  
14 keep it around?

15 MR. HANAUER: May I address that, your Honor?

16 So, here's the problem. With a property like that  
17 that you're talking about, you're saying there's 200,000,  
18 300,000 debt on it. Well, who were the first people that had  
19 mortgages on those properties? They were the investors.

20 And we know that while the institutional lenders  
21 subsequently recorded mortgages on those properties, those  
22 investors were never paid and they never voluntarily released  
23 the mortgages. And further down in this litigation, there is  
24 going to ultimately come to a head, and the Court will decide,  
25 what to do about this issue. But we aren't there yet.

1           Here's what counsel wants to do. Here's what the  
2 institutional lenders want to do. They want to say, oh, well,  
3 there's no value in the property. Well, that's not true.  
4 When those properties are sold, yes, there will be a pot of  
5 money. And if the investors are decided that -- to have first  
6 priority, they're going to get paid before the second-in-time  
7 lenders will be.

8           But if the Court goes with what the lenders want and  
9 have the properties be abandoned, here's what's going to  
10 happen. All these well-funded institutional lenders are going  
11 to race to the Cook County courthouse and say, oh, we should  
12 have the properties.

13           Well, on any given property, there are going to be 80  
14 investors who own a fractional interest on that mortgage, who  
15 have no way to take collective action and are going to be  
16 forced to defend themselves without a lawyer -- they don't  
17 have a lawyer now, but at least they have an advocate with the  
18 SEC. They'll be forced to defend themselves without a lawyer,  
19 and we know how that's going to shake out. If the creditors  
20 can just run to Cook County court, they're going to get the  
21 properties and the investors are going to lose.

22           What the SEC has been suggesting the whole time is  
23 keep this all under the Court's jurisdiction. Let's have an  
24 orderly process where once all the parties -- the investors,  
25 the creditors, get to submit all their information. Once the

1 parties get to take some discovery to see, okay, what is the  
2 real impact of these investors who were there first, never  
3 getting paid and never releasing the properties, what's the  
4 impact on who has priority -- that's going to happen in this  
5 court. But let that process just play out. Because if it's a  
6 race to the Cook County courthouse, we know exactly how that's  
7 going to shake out.

8 THE COURT: Okay. I understand.

9 MR. CROWLEY: Your Honor, to address those brief  
10 points that counsel's -- first, the question of whether it has  
11 value. Well, you know, its value is ten dollars, it has  
12 value. The question is: Does it have equity, and should it  
13 be maintained in the receivership estate for purposes of  
14 keeping the ten dollars? No. That makes no sense when it's  
15 going to cost significantly -- a significant amount of money  
16 in receiver fees, receiver expenses, including attorneys.

17 THE COURT: But what the SEC is telling me is that  
18 with regard to priority -- who has priority with regard to  
19 whatever the ten dollars is, that that might be a disputed  
20 issue later on between the investors who are the victims of  
21 this scheme and the institutional lenders.

22 MR. CROWLEY: And, your Honor, they have a remedy  
23 available to them in state court. And it would move faster in  
24 state court than the process going on right now in this  
25 receivership, and it would be a lot less expensive. Because

1 right now this process has gone on nine months almost and  
2 we're no closer to the process. It would be easier. It would  
3 be more economic for everybody. Because we appreciate what  
4 you said earlier -- I appreciate what you said earlier -- that  
5 we're spending a lot of monies on behalf of everybody.

6 And we're not doing it on purpose, your Honor. It's  
7 not the intent of the respondents to fight the receiver on  
8 every single matter. In fact, his first tries to sell  
9 properties, there really wasn't an objection to that. The  
10 only objection was, what are you going to do with the funds?  
11 So, that statement was wrong.

12 Our concern is this is getting very expensive. It's  
13 not moving. It doesn't seem to make economic sense to keep in  
14 the receivership estate properties that have no equity, if  
15 that's a better word for the SEC and the receiver. No equity.  
16 Because at the end of the day, those properties -- those funds  
17 will be depleted even more by the time you get to -- after  
18 sale, you get to -- the disbursements and no one wins.

19 Instead, if those properties have no equity, they  
20 should be released. The parties can battle. The investors  
21 have a right to retain counsel. They've got the legal system.  
22 It's a pretty good system that they have a right to utilize in  
23 order to enforce their position in the property. And to say  
24 otherwise, I think, is a disservice to our court system. But  
25 they have a right to utilize the court system to establish

1 their priorities.

2           And we're only saying that the receiver should put  
3 this report together as he -- as the order said he was going  
4 to do. Give us these values. Not just to the re- -- the  
5 values of the properties to the respondents. He was required  
6 to do it to all properties in his control, both values and the  
7 claims -- debts against them. Then the Court and the rest of  
8 the parties can determine, is it in the best interest of this  
9 receivership to go forward with these properties in there?  
10 Because, clearly, they're not -- a large portion of these  
11 properties are not able to pay their expenses.

12           And, so, I mean, you've got a million-three in debt  
13 right now for properties. The receiver wants to use a  
14 million-nine from the sale of properties that had no expenses  
15 against them, to prop up properties that are under water.  
16 That makes no sense to the estate.

17           THE COURT: Right. Look, I understand the concern.  
18 But from what the receiver is saying, is that those types of  
19 reports are going to be provided to the respondents soon, in  
20 the next couple of weeks.

21           MR. CROWLEY: Only as to our properties, not all  
22 properties. That's what the -- that's the problem. He's  
23 saying, I will only give you what I think the value of your  
24 property is; I'm not going to tell you what the value of these  
25 other 130 properties are.



1           And that's not what the order requires him to do.  
2 He's supposed to issue a report as to the value of all  
3 properties. Transparency. The Court has a right to know  
4 that. We have a right to know that. Because we've got to  
5 figure out is -- as the order requires, is -- the receiver  
6 making the correct recommendations for this receivership.

7           THE COURT: What's the problem with -- why just limit  
8 it to the particular lenders of the properties?

9           MR. RACHLIS: For the reasons that they've  
10 articulated themselves, your Honor. With respect to the rents  
11 is a good example. The rent motions that were out there were  
12 related solely to their properties. They're, basically,  
13 saying that they have an interest in that -- in those rents as  
14 collateral under their agreements and things of that nature.  
15 So --

16           THE COURT: No, no, I understand.

17           But what's the harm in giving a copy of all the  
18 reports to all of the institutional investors?

19           MR. RACHLIS: I don't believe that -- I mean, up  
20 until right now, each lender for every property that they  
21 claim an interest in has been getting reports for those  
22 properties. Each property -- your Honor's suggesting each  
23 lender here would get 113 different reports for each property.  
24 I mean --

25           THE COURT: Well, presumably, they can share with one

1 another.

2 MR. CROWLEY: And, your Honor, we're not even saying  
3 that. We're saying he's got to give us a value. He's  
4 required to give a value of each of the properties and what  
5 the expenses are. I mean --

6 THE COURT: All right.

7 MR. CROWLEY: -- is it worth --

8 THE COURT: Listen, listen, I'm not going to require  
9 the -- I mean, let's see what these reports say. Because with  
10 regard to the value of the properties, I think there is a  
11 concern with -- I mean, they're trying to market them.  
12 They're trying to sell them. They're trying to get as much  
13 money as possible out of them. I don't think that, you know,  
14 opening the kimono with regard to the value does the receiver  
15 or anyone that much service.

16 But let's see what these reports say, what kind of  
17 information they go into; and, then, if there's any concern,  
18 you can raise them. Okay?

19 With regard to the \$400,000, I want the receiver to  
20 file an interim report in seven days giving me some more  
21 detail on what the \$400,000 is going to go to. All right?  
22 And you can file it. Everyone will get a sense of -- everyone  
23 will look at it. Obviously, they may not be exact figures,  
24 but I want a better sense.

25 MR. RACHLIS: If we -- if the closings occur on the

1 other properties and it moots the need for the 400,000, we can  
2 submit a report, basically, saying that none was -- none of  
3 the 400,000 was -- used? That's all right, your Honor?

4 THE COURT: That would be fine.

5 But I'm going to approve the \$400,000 --

6 MR. WELFORD: Your Honor, may I be heard on my  
7 objection?

8 THE COURT: Which was, what?

9 MR. WELFORD: Liberty, on the borrowing of 400,000.

10 THE COURT: I thought he was going to speak on behalf  
11 of everyone. That's what he said.

12 MR. WELFORD: No --

13 MR. CROWLEY: Liberty's was separate -- I'm sorry,  
14 your Honor.

15 MR. WELFORD: It's a separate objection, your Honor.

16 THE COURT: Go ahead.

17 MR. WELFORD: I'm sorry. May I?

18 Your Honor, I represent Liberty EBCP, LLC. Liberty  
19 holds the mortgage on 17 different properties. We have a  
20 mortgage, and we have an assignment of leases and rents. As  
21 to the 17, they're all apartment buildings. They're all in  
22 the Chicago area.

23 We do not take issue with the lender -- the  
24 receiver's business judgment here today about the need for  
25 emergency funding. Our concern is that the lender -- the

1 receiver is proposing to put a \$400,000 lien on unencumbered  
2 proceeds ahead of what we believe is Liberty's right.

3           The reason I say that is that Liberty and the other  
4 lenders here previously went before this Court, and it was  
5 referred down to Magistrate Kim. And our concern was that  
6 Peter was being robbed to pay Paul; that our rents were being  
7 used to prop up other properties. And that happened for a  
8 five or six-month period of time.

9           And as a result, there were deficiencies in our  
10 accounts to pay taxes, to pay insurance and other expenses --  
11 and maybe even property management fees -- that occurred. And  
12 Judge Kim properly ruled that you can't do that. You can't  
13 take the rents that someone has a perfected lien on and take  
14 them and use them on a different property.

15           THE COURT: I understand that, counsel. We've  
16 covered this ground.

17           MR. WELFORD: Okay.

18           THE COURT: So, what's the objection?

19           MR. WELFORD: So, here's my objection:

20           And those rents had to be accounted for. How much  
21 did you take from each of the lenders? 75 days almost have  
22 elapsed. We've never gotten that accounting. I understand  
23 there's tax season. I understand issues. It doesn't take 75  
24 days to determine, based on the ruling of Judge Kim -- to tell  
25 us how much of our money was taken. And we still to this day

1 don't have it.

2 THE COURT: So, how is that an objection to the  
3 current motion asking my approval for the \$400,000 --

4 MR. WELFORD: I will --

5 THE COURT: -- interim financing?

6 MR. WELFORD: I will explain it, your Honor.

7 So, we have a right to whatever money's owed. I  
8 don't know how much money is owed to my client. And all these  
9 lenders don't know how much is owed to them. But I'm focusing  
10 on my client.

11 We don't know how much is owed. What we have been  
12 told is that the pool of assets to reimburse us are  
13 unencumbered properties. And in this motion, we were advised  
14 there are three unencumbered properties so far. One of them  
15 is being encumbered by a \$400,000 mortgage. So, that is  
16 taking -- priming us, taking \$400,000 out of the pool.

17 We've also been told by virtue of the motion -- which  
18 was a complete surprise to many of us -- that the receivership  
19 estate is at least a million-three upside down. They can't  
20 pay current expenses out of current revenues on the properties  
21 respecting, as they are required to do, expenses versus  
22 revenue.

23 And they're saying that they're going to take that  
24 million-three and pay it out of two other properties that are  
25 about to close, that your Honor just approved for sale.

1           So, the question is: How are we, the lenders, who we  
2 have -- who are holding a court order that says: A, account  
3 to them; and, B, reimburse them out of proceeds when they  
4 become available -- how are we to be repaid?

5           Now, we don't know whether there are going to be more  
6 than enough proceeds out of all these unencumbered properties  
7 that have not been identified for all the reasons you just  
8 heard. We don't know if there's going to be enough proceeds  
9 out of all of those properties to pay all of these unpaid  
10 expenses and to reimburse Liberty, who I care about -- and I'm  
11 sure all the other lenders care about -- the rents that were  
12 diverted. We don't know. If there's no shortfall, we don't  
13 have a problem. If there's a shortfall, we have a problem.  
14 Because what's happening then is \$400,000 is going out the  
15 door --

16           THE COURT: So, what would you propose -- since we  
17 don't know at this time, what would you propose that I do?

18           MR. WELFORD: Simply, number one, have them account  
19 to Liberty for how much of our rents were diverted. Number  
20 one.

21           THE COURT: But Judge Kim has already ordered that,  
22 right?

23           MR. WELFORD: But they haven't done it.

24           THE COURT: So, why don't you go to Judge Kim and ask  
25 him to --

1 MR. WELFORD: I filed --

2 THE COURT: -- enforce his order?

3 MR. WELFORD: -- my -- I filed a cross-motion to  
4 compel that that information --

5 THE COURT: And that should go before Judge Kim.

6 MR. WELFORD: Okay. And that will go before Judge  
7 Kim, then.

8 But I've asked for that --

9 THE COURT: What I would say --

10 MR. WELFORD: -- relief, and I recognize --

11 THE COURT: Hold on, counsel. Don't talk over me.

12 So, what I would say is go ahead and file that motion  
13 before Judge Kim because he is the one that entered that  
14 order. So, to the extent that you want Judge Kim to enforce  
15 his prior orders, he's the proper forum to take it to.

16 Okay. Go ahead.

17 MR. WELFORD: And, then, the second thing we would  
18 like, your Honor, is that before liens are placed on assets  
19 and another million-three goes out the door, that the receiver  
20 identify from which unencumbered property Liberty is going to  
21 be repaid. At some point in time, this merry-go-round is  
22 going to stop; and, we don't want to be the ones on the  
23 merry-go-round or the musical chairs event where all the  
24 monies were taken to prop up other properties -- which  
25 Magistrate Kim said you can't do -- and then there's no money

1 to pay Liberty, to reimburse Liberty for the rents that were  
2 diverted.

3           So, all we're saying is before you put a lien on  
4 these assets -- you can put a lien on it, but tell us how  
5 we're going to get paid. Show us that we're going to get paid  
6 out of the properties closing tomorrow or the day after, and  
7 then we don't care what the receiver does with the money.

8           But if you can't demonstrate to us that we're going  
9 to be protected in this process, that all this money is just  
10 going to keep going out the door, out the door, out the  
11 door -- notwithstanding an order of Judge Kim that says: A,  
12 account; and, B, repay out of available proceeds -- my client  
13 is going to be harmed.

14           Now, will we be harmed today if a \$400,000 lien comes  
15 on? I don't know because I don't know whether that in  
16 combination with the million-three is going to result in that  
17 my client's not going to be paid.

18           And my client is not the only one whose rents were  
19 diverted. All of these lenders here, I think, have not been  
20 accounted to and their rents have not been reimbursed.

21           And we may very well have an insolvent -- overly  
22 insolvent -- receivership estate. We may get reports that say  
23 we're owed a hundred, they're owed three hundred, they're owed  
24 a million and there isn't enough money out of the unencumbered  
25 properties to reimburse the lenders and pay all of these other



1 expenses.

2           So, at some point we have to come before your Honor  
3 to say we already have in hand an order that says reimburse  
4 the lenders. And, so, we can't sit by idly and just say put  
5 more liens on the property, go ahead and pay the expenses you  
6 want, without making arrangements to protect, at least as to  
7 my client, Liberty. And if I had a dollar amount, I could  
8 just walk in here and say, your Honor, it's 75,000. Just tell  
9 me which property we're going to get 75,000 from. Then I  
10 don't care. But it's a complete black box. There's been zero  
11 accounting for 75 days?

12           THE COURT: No, I understand.

13           So, can you respond to Liberty's --

14           MR. RACHLIS: Yes.

15           THE COURT: -- concerns?

16           MR. RACHLIS: I'm sorry. Go ahead, Ben.

17           MR. HANAUER: May I, your Honor?

18           THE COURT: Yes.

19           MR. HANAUER: This argument just ignored everything  
20 that happened in court for the past hour. Counsel says, I'm  
21 so concerned about this lien being put on assets. One, it  
22 totally presupposes that Liberty is the senior lender on those  
23 properties. We filed a motion with the Court saying -- or not  
24 a motion, but a response -- saying for every single one of  
25 those properties, the investors were there first.

1           But even supposing Liberty is first for the sake of  
2 argument, this whole lien that counsel is talking about,  
3 that's not going to happen. The Court approved the sale of  
4 the properties. So, the only reason there's going to be --  
5 there would need to be a loan is if that sale just takes a day  
6 or two longer than what happened.

7           Given that that sale is going to be forward, even if  
8 there is a lien placed on those properties, the money is going  
9 to come in from the sale and extinguish that lien within a  
10 matter of days.

11           So, everything that counsel is complaining about, it  
12 doesn't actually have to do with the receiver taking  
13 short-term financing, which he probably doesn't need anymore.  
14 It's just, again, restating all in all of these complaints  
15 counsel has been articulating to both the Court and to Judge  
16 Kim for the past, you know, five or six months.

17           MR. WELFORD: Your Honor, may I respond --

18           MR. RACHLIS: May I --

19           MR. WELFORD: -- briefly?

20           MR. RACHLIS: Can I --

21           THE COURT: Briefly.

22           MR. RACHLIS: Yes.

23           Two things. The idea that they can walk in in this  
24 context is also -- based on Judge Kim's order I don't think is  
25 an accurate reading of the order, for two reasons. Number

1 one, it violates 37.2. If they want a motion to compel, what  
2 they've filed, they could be rejected on that ground alone.  
3 But let's put that aside.

4           There's nothing in the order that says that they have  
5 a lien or that they have a right to the restoration. The  
6 court actually very expressly states that -- restore the rents  
7 to the extent -- to the extent -- that there are enough funds  
8 now or later. He doesn't create an additional right, putting  
9 aside the question of whether they even have any right at  
10 all -- lien right -- that they would be entitled to. This  
11 doesn't create some type of separate right to them. And to  
12 the extent that they're trying to create that now, I agree  
13 with your Honor a hundred percent. They'd have to go back to  
14 Judge Kim and explain why that's the case.

15           Putting all that aside, we've already indicated that  
16 we intend on providing -- we have been working to get these  
17 new types of accountings in place. And we will be presenting  
18 that as soon as we have them available, to Mr. Welford and to  
19 the other lenders that have been impacted.

20           MR. WELFORD: Your Honor, there are sufficient funds  
21 available to repay Liberty should the receiver choose to pay  
22 Liberty. What has happened -- and with all due respect, I can  
23 only respond to the motion that's been filed. The motion  
24 that's been filed has requested to put a \$400,000 lien on an  
25 unencumbered asset. That's why we're here today.

1           And they've advised they're going to spend another  
2 million-three of the unencumbered proceeds from the two sales  
3 that your Honor just approved.

4           And I have a determination of Judge Kim that says to  
5 the extent funds are available, we are to be made whole. So,  
6 this is an issue of priority. Unfortunately, it is.

7           And what is happening is that all of this other money  
8 is going out the door for taxes, insurance for a variety of  
9 properties. And what we were already instructed to do is to  
10 deal with each property on a property-by-property basis.

11           And, so, if they're taking portions of our funds that  
12 are due to us to go pay the taxes on another property, to go  
13 pay the water bill on another property, it's just perpetuating  
14 what has already been ordered that cannot happen. We have a  
15 right to reimbursement from available funds. It's a matter of  
16 when someone sits down, puts their foot down and says, okay,  
17 it's time to examine and make sure that these lenders are made  
18 whole by virtue of this order.

19           THE COURT: Okay, counsel. Thank you.

20           So, that time may come, but it's not here yet. I  
21 think that the duty of the receiver, first and foremost, is to  
22 ensure the viability of and the value of the receivership  
23 estate. I believe that the receivership is exercising  
24 reasonable business judgment in making that determination, as  
25 far as making payments where he deems it necessary in order to



1 I certify that the foregoing is a correct transcript from the  
2 record of proceedings in the above-entitled matter.

3  
4 /s/ Joseph Rickhoff  
Official Court Reporter

July 5, 2019

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# Exhibit 3

<b>Property</b>	<b>Remaining Amount to be Restored to Property (as of February 28, 2019)</b>	<b>Remaining Amount to be Restored to Property (as of July 31, 2019)</b>	<b>Restored to Property from Contributions In to 6160 S MLK Dr</b>	<b>Remaining Amount to be Restored to Property (as of July 31, 2019 ) minus amount restored from 6160 S MLK Dr</b>
7304 S. St Lawrence	5,924.77	4,150.76	382.01	3,768.75
9610 S. Woodlawn	3,351.08	2,999.89	276.09	2,723.80
1401 W. 109th	5,757.11	5,396.09	496.62	4,899.47
6807 S. Indiana	7,024.98	6,493.37	597.61	5,895.76
6250 S. Mozart/ 2832-36 W 63rd Street	37,501.98	28,652.99	2637.05	26,015.94
6751 S. Merrill/ 2136 East 68th Street	38,459.18	28,709.26	2642.23	26,067.03
7255 S. Euclid/ 1940-44 E 73rd Street	38,931.63	33,146.34	3050.59	30,095.75
6355-59 S Talman/ 2616-22 W 64th Street	4,470.89	1,048.56	96.50	952.06
4317 S Michigan	9,403.85	6,454.02	593.99	5,860.03
1700 W Juneway	25,936.81	10,929.97	1005.93	9,924.04
5618 S Martin Luther King Dr	34,025.77	29,437.61	2709.26	26,728.35
5001-5005 S. Drexel Blvd. / 909 E 50th St	55,990.01	55,990.01	5152.98	50,837.03
7625 S. East End Ave	30,083.12	25,555.99	2352.02	23,203.97
4533-37 S. Calumet Ave	14,884.98	8,512.40	783.43	7,728.97
1131-41 E. 79th Place	21,116.52	13,566.48	1248.58	12,317.90
7024 S. Paxton Ave.	60,903.01	55,882.61	5143.10	50,739.51
4520-26 S. Drexel Blvd.	90,676.96	79,896.57	7353.20	72,543.37
6217-27 S. Dorchester Ave	26,823.15	21,304.44	1960.73	19,343.71
4611-17 South Drexel Blvd.	65,710.84	58,264.55	5362.32	52,902.23
7110 S. Cornell Ave	7,581.42	1,306.25	120.22	1,186.03
7051 S. Bennett Ave	8,894.45	1,399.01	128.76	1,270.25
7701 S. Essex Ave	14,667.32	10,491.17	965.54	9,525.63
816 E. Marquette Road	11,225.91	8,725.76	803.07	7,922.69
2800 E. 81st St	10,111.91	8,259.29	760.14	7,499.15
4750 S Indiana	18,475.17	16,677.27	1534.88	15,142.39
1422 E 68th St	8,120.02	5,410.30	497.93	4,912.37
7840 S. Yates Blvd	13,406.28	11,729.44	1079.51	10,649.93
8405 South Marquette Ave	3,439.53	2,581.22	237.56	2,343.66
8529 S Rhodes	2,459.91	1,561.99	143.76	1,418.23
417 South Oglesby	1,144.56	817.53	75.24	742.29
8403 South Aberdeen Ave	3,666.97	2,988.35	275.03	2,713.32
8104 South Kingston Ave	4,355.29	3,460.73	318.50	3,142.23
8030 South Marquette Ave	2,772.17	1,997.65	183.85	1,813.80
7925 South Kingston Ave	3,218.53	2,641.65	243.12	2,398.53
7933 South Kingston Ave	736.90	124.53	11.46	113.07
1017 West 102nd Street	5,826.23	5,298.91	487.68	4,811.23
7922 South Luella Ave	996.33	652.65	60.07	592.58
1516 East 85th Street	4,564.46	3,647.27	335.67	3,311.60
9212 S Parnell Ave	3,855.00	3,063.50	281.95	2,781.55
10012 S. LaSalle St	2,883.69	2,590.95	238.46	2,352.49
8517 S. Vernon Ave	1,999.76	1,685.07	155.08	1,529.99
6554 S Rhodes Unit 1&2	2,202.73	1,755.49	161.56	1,593.93
8346 S. Constance	2,257.58	1,973.27	181.61	1,791.66
8107 S. Kingston Ave	1,214.49	855.32	78.72	776.60
7953 S. Woodlawn	1,149.71	530.33	48.81	481.52
8432 S. Essex	1,058.04	780.78	71.86	708.92
7712 S. Euclid	2,572.52	2,257.83	207.80	2,050.03
6825 S. Indiana	2,166.92	1,719.68	158.27	1,561.41
11318 S. Church	2,141.87	1,757.19	161.72	1,595.47
7210 S. Vernon	1,256.00	808.76	74.43	734.33
406 E. 87th Place	842.32	449.26	41.35	407.91
2129 W. 71st St.	2,283.68	1,460.22	134.39	1,325.83



2736 W. 64th	11,351.05	0.00	0.00	0.00
5450 S. Indiana Ave / 118-132 E Garfield	6,039.51	0.00	0.00	0.00
6949-59 S. Merrill Ave	8,423.71	0.00	0.00	0.00
8800 S Ada St	205.15	0.00	0.00	0.00
7442 S. Calumet Ave	3,449.00	0.00	0.00	0.00
7760 S. Coles	149.01	0.00	0.00	0.00
6759 S. Indiana	811.37	0.00	0.00	0.00
6558 S. Vernon / 416-24 E. 66th St	4,271.61	0.00	0.00	0.00
6356-58 S. California / 2804 W. 64th St	1,968.03	0.00	0.00	0.00
	<hr/>			
	767,192.75	587,850.53	54102.21	533,748.32
	<hr/>	<hr/>	<hr/>	<hr/>