UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN, Defendants.

Civil Action No. 18-cv-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

REPLY OF LIBERTY EBCP, LLC TO THE SEC'S AND THE RECEIVER'S REPSONSES TO LIBERTY'S OBJECTIONS TO MINUTE ENTRY DATED AUGUST 19, 2019 (R 483) REGARDING MOTION OF LIBERTY EBCP, LLC RELATED TO CREDIT BID PROCEDURES AND OBJECTION TO 24 HOUR CREDIT BID DEADLINE

Liberty EBCP, LLC ("Liberty"), by its counsel, Jaffe, Raitt, Heuer & Weiss, P.C. files this *Reply of Liberty EBCP, LLC to the SEC's and the Receiver's Responses to Liberty's Objections to Minute Entry Dated August 19, 2019 (R 483) Regarding Motion of Liberty EBCP, LLC Related to Credit Bid Procedures and Objection to 24 Hour Credit Bid Deadline* ("Liberty Reply"), and in support thereof, states as follows:

INTRODUCTION

Liberty previously filed the *Objection of Liberty EBCP, LLC to Minute Entry Dated August 19, 2019 (R 483) Regarding Motion of Liberty EBCP, LLC Related to Credit Bid Procedures and Objection to 24 Hour Credit Bid Deadline* (R 502) ("Liberty's Objection"). The SEC filed the *SEC's Response to Liberty's Objections* (R 513) (the "SEC Response"). The Receiver filed the *Response and Opposition to Liberty's Objections to 8/19/19 Ruling of*

Magistrate Judge (R 514) (the "Receiver's Response" and together with the SEC Response, the "Responses"). Liberty files this Liberty Reply, in response.

ARGUMENT

1. Certain arguments raised in the Responses are irrelevant and false.

Certain arguments in the Responses should be summarily dismissed, as they are irrelevant to the issues noted in the Liberty Objection and are factually false.

a. Liberty is not seeking dissolution or delay.

First, it is alleged that Liberty's Objection is motivated, not by a desire for truthful disclosure of material information relevant to Liberty's credit bid decision, but instead, as an attempt to cause a dissolution of the receivership proceeding or as a stall tactic. The SEC argues that "Liberty's continued attempts to stall the sales process appear to be part of a concerted effort to force the Receivership into dissolution." SEC Response, Page 1. Liberty has never advocated for dissolution of the receivership, making that allegation of the SEC categorically false.

The Receiver states "the lenders' primary goal . . . has been to stop the Receiver from selling properties." Receiver's Response, Page 3. The quote on Page 3, in support of the Receiver's statement, was not made by Liberty's counsel. Liberty has never advocated for the determination of lien rights as a condition precedent to the sale of receivership assets. As noted in the Liberty Objection, Liberty is the lender who proposed Liberty's Interim Resolution[1], so that the real properties could move forward to sale. It is Liberty who requested, within hours of being advised to credit bid under the Receiver's self-created, 24-hour deadline, not an extensive deadline extension, but, rather, the delivery of certain basic information, to assist Liberty in making a quick, but informed credit bid decision. Solely based on the Receiver's refusal to

[1] Terms not defined herein have the meaning given to them in Liberty's Objection.

provide any such information was the Liberty Objection necessitated. So attributing ill will to Liberty's motives is misplaced and should be ignored.

b. *Liberty is not seeking to deny the Receiver of its fees.*

As an additional attempt to divert this Court from the matters at issue in the Liberty Objection, the SEC argues that "Liberty and the other lenders seek to prevent the Receiver from being compensated for his efforts on behalf of all creditors." First, this is irrelevant to Liberty's Objection. Second, it is false. The *Objection of Liberty EBCP, LLC to Receiver's First Interim Application and Motion for Court Approval of Payment of Fees and Expenses of Receiver and Receiver's Retained Professionals* (R414) is premised singularly on the fact that a pre-existing order of this Court, dated February 13, 2019, requires the Receiver to restore, from unencumbered funds of the receivership, to Liberty and to the other lenders, monies diverted from their properties. Before unencumbered funds are used to pay fees of the Receiver and its professionals, the Receiver should be required to use existing unencumbered funds or earmark specific future funds, to return, to Liberty, the rents the Receiver inappropriately diverted.

Now we turn to the merits of the Objections.

2. Liberty is not precluded from seeking clarification of or, if necessary, modification of the bid procedures.

The SEC asserts that Liberty is seeking to "move the goalposts" with respect to the bid procedures. SEC Response, Page 2. The Receiver similarly argues that Liberty has waived the right to seek the additional information requested. Receiver Response, Page 8. Neither is the case.

First, the bid procedures have not be subject to final approval of this Court. Liberty's sign-off on the Liberty Interim Resolution was specifically subject to future events, including the

outcome of the other lenders' pending objection to the bid procedures.[2]

Second, it is the Receiver who unilaterally chose to first modify the Liberty Interim Resolution, by imposing a never before stated 24-hour time deadline to credit bid. A breach by one excuses the further performance of another. The Receiver does not have the unilateral right to change what it now asserts is a binding Liberty Interim Resolution, when the Receiver shot first on proposed modifications.

Third, Liberty (maybe naively) never envisioned that the Receiver would refuse to provide a copy of the offer against which a credit bid was to be submitted, so that an apples to apples credit bid could be formulated. Nor did Liberty ever envision that the Receiver would refuse, in conjunction with the credit bid determination, to share the material events related to the marketing of the receivership properties, as part of the high bid notification. That information must be disclosed in conjunction with an eventual approval of the properties' sale. So the debate is not over what must be disclosed, only when.

Fourth, the information requested has never been the subject of a prior negotiation between the Receiver and Liberty, nor has it been denied by Judge Kim in any order or proceeding. In the litigation related to the sale process, Liberty recommended, as is common in bankruptcy cases, that the Receiver meet and confer with the lenders, once the sealed bids were received, to strategize on how to maximize a given property's value, but with the business judgment to remain fully with the Receiver. That suggestion, which in no way harms the sale process, was rejected. That left the parties, as inefficient as it is, to pick apart the sale process

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[2] The interim nature of the Liberty Interim Resolution is noted on Page 21 of the Transcript attached to the Receiver's Response. The Receiver's counsel stated "And Liberty, to its credit, despite, I think it is fair to say, that we have been certainly not on the same footing. On a variety of issues, they have been as a vociferous an objector as anybody here, **we were able to reach agreement on what those credit bid rules *could* look like."** (Emphasis and italics added).

after the fact. That was the Receiver's choice, not Liberty's.

Fifth, Judge Kim recognized that the results of market exposure are relevant to the credit bid puzzle. As noted in the Receiver's Response, Page 8: "[c]redit bidding, as Judge Kim also noted, is an opportunity for the lender to determine, for itself, 'whether is it going to accept the market risk of credit bidding.'" Implicit in Judge Kim's statement is that the lender would have access to what the market had determined. The credit bid fills the gap when the market has failed to express interest in a given property. Here, the background of the marketing process has been excluded. Outside of this singular proceeding, in any other credit bid situation, Liberty would have the benefit of knowing the marketing process, to make its informed credit bid decision. It would be the foreclosing lender, arranging for the sale process, with full exposure to the market's response.

Sixth, had Liberty believed it to be the Receiver's intent to withhold the highest bid documents and requested marketing information, Liberty certainly would have pushed further its agenda for clarity in the sale process, as part of the Liberty Interim Resolution. Liberty believed that the catch all, in Liberty's Interim Resolution, that "additional details governing the terms and conditions of credit bids, including a good-faith estimate of the Seller's expenses at closing, will be made available by the Receiver upon request" was all that was needed. Obviously the Receiver asserts otherwise. Therefore, there was clearly no meeting of the minds on the Liberty Interim Resolution.

Seventh, to the extent Liberty is bound somehow by the Liberty Interim Resolution, Liberty's agreement to the same was expressly conditioned on its review of the total bid procedures, still open to Court determination. Further, a change in circumstance can warrant a change to the bid procedures, especially if they have never been subject to a final determination

of this Court.[3]

Eighth, it is not true, that the "lenders have everything they need" in order to make a credit bid determination. Receiver's Response, Page 8. Historic information does not replace the details of market testing, in making a credit bid determination. How long the property was marketed, in what manner, who requested access for diligence, who conducted diligence, who bid and how multiple bids were maximized by a secondary auction process are all very relevant factual inquires that this Court, the creditors of this estate, Liberty and the Receiver should be most interested in understanding.

Ninth, it would horribly inefficient to require credit bids in an information vacuum, only to have the Court learn, at a subsequent sale hearing, that material information, relevant to the credit bid determination and sale process would have affected the credit bid or sale process, requiring a re-do of a given sale. The goal is to dispose of receivership assets as quickly as possible, at the highest price under the circumstances. Providing an information vacuum does not promote the prompt and informed disposition of receivership estate assets.

3. **Liberty's request is not inconsistent with its repeated requests for a public auction on the courthouse steps and is not limited to that particular defect in the sale procedures.**

On pages 2-3 of the SEC's Response, the SEC argues that a copy of the highest written bid, against which a credit bid would be required, would not be part of a public sale process on the courthouse steps. Liberty disagrees. If an offer is announced at a public sale, the material terms of that offer would be made known by any court officer conducting such a sale. Such an officer's duty is to make sure apples to apples bids are being received. It would certainly be more than a mere dollar amount announced in a vacuum.

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[3] See the discussion *infra* regarding newly discovered information.

More importantly, the need for visibility in the sale process, including receipt of the purchase agreement against which a credit bid is to be placed and the background facts on the sale process (timing of exposure to the marketplace, site visits, offers received, etc.) is critical, as this proceeding, to date, has impermissibly allowed insider property managers to submit offers.[4] In a bankruptcy setting, 18 USC §154 likely would make offers submitted by estate fiduciaries a bankruptcy crime.[5] Minimally, if the fox is permitted to oversee the hen house, then someone has to oversee the fox, to make sure the sale process is robust. If one is under a significant time constraint to make a credit bid decision, having a basic factual understanding of the process which led to the proposed "highest offer" is critical. Any credit bid decision is predicated on a

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[4] With respect to the first sale motion, to which Liberty's properties were not involved, Liberty posed an objection only to the extent the sale procedures which governed the first sale motion would be binding on subsequent sales. Judge Kim held that there would be no binding effect. The issue of insider property manager bidders is still open for review by this Court at the hearing on September 25, 2019, but the Receiver is operating under the assumption that such bids may be accepted, as the Receiver is currently moving forward on such offers. *See*, *Receiver's Second Motion for Court Approval of the Sale of Certain Real Estate and for the Avoidance of Certain Mortgages, Liens, Claims, and Encumbrances* (R 524) (the "Second Sale Motion") which proposes the sale of one of the properties referenced therein to a property manager.

[5] 18 USC §154 states that a "custodian, trustee, marshal or other officer of the court" who "knowingly purchases, directly or indirectly any property of the estate" or "knowingly refuses to permit a reasonable opportunity for inspection by parties in interest of the documents and accounts relating to the affairs of the estate" can be subject to a fine and removed from office. In *Donovan & Schuenke v. Sampsell,* 226 F. 2d 804 (9th Cir. 1955), a sale of real property of the debtor was made to an individual who had served as an officer of debtor during bankruptcy, and then resigned before the sale. The Ninth Circuit set aside the sale, stating:

> It is elementary that a fiduciary cannot deal or receive a transfer of the property which is the subject of the trust. It makes no difference whether the fiduciary be called an agent, custodian, trustee or officer. It makes no difference whether it can be proved that the fiduciary profited by the transaction. The principle is established by general law and does not depend upon the existence of a statute for enforcement. To affirm [such a] sale would seem to place a premium on shady dealings in a court of bankruptcy.

Id. at 812.

determination whether the property was properly exposed to the marketplace, such that value was maximized. There are a variety of factors which could lead to depressed pricing on the bids against which a credit bid might be required, such as an insufficient period of marketing of the property, a lack of marketing, a lack of visitors to the due diligence room, a lack of site visits, a lack of offers, a failure to shop received offers off one another and the existence, as was the case with the first grouping of property sales, of two out of six highest offers being submitted by a property manager. Worse would be a knowing refusal to permit inspection of relevant information, proscribed by 18 U.S.C. 154.

Therefore, the need for the background information is rooted mostly in the unorthodox and proven realities of this case, where a third of the properties sold, to date, have been sold to an insider property manager, who, as a fiduciary, should be seeking to maximize value, but at the same time was seeking to personally benefit by purchasing the properties at values it deemed attractive.

4. The Receiver and the SEC have failed to set forth any logical or legal reason to deny Liberty the information requested.

Conspicuously absent from the Responses is an articulated logical or legal basis supporting a denial of Liberty's information requests, with respect to furthering the sales process. The first excuse given is that the Receiver has provided other information, in status reports, at hearings or in the web site. Receiver's Response, Page 12-13. At no time, however, has the Receiver provided the requested information in any of those forums. The provision of certain information does not excuse the non-disclosure of other very relevant information, at a critical juncture intended to expedite a credit bid determination and ultimate sale.

The second excuse given, per the Receiver is that "[w]hat Liberty really wants to have is the complete purchase and sale agreement of the highest bidder(s), effectively forcing the

Receiver to shop those offers around." Receiver's Response, Page 9. Liberty's request for the sale agreement of the highest bidder is predicated on Liberty's need to make sure its credit bid is apples to apples, other than having an overall higher value to the estate.

However, as part of Liberty's sales process request, Liberty has requested disclosure on whether, once the sealed bids were received, the Receiver shopped a given offer against other bidders interested in the same property. In fact, the "Sealed Bid Public Sale of Real Estate Terms and Conditions", set forth on Page 63 of the Receiver's Response, states that "at the Seller's sole discretion, a best and final round may be conducted. In that event, the Seller will select the most competitive bids and the corresponding bidders will be invited to participate in the best and final round to be conducted by the Broker." What property seller would not undertake that additional step, specifically a fiduciary whose duty is to maximize value? This is not "an assault on the approved upon *sealed* bid process" (Receiver's Response, Page 9), but the logical next step, not heretofore addressed in any iteration of the bid procedures, that one would only assume the Receiver would undertake.

5. To bring the relevancy of Liberty's request for sales and marketing information, as a condition to its credit bid into focus, one only need review the Affidavit attached hereto and the facts set forth in the Second Sale Motion.

The Receiver is correct that Liberty does want the Receiver to report on whether it has taken steps to "shop those offers around," along with the other sales information requested, before being obligated to credit bid. As definitive proof of the need for such a requirement, attached hereto, as **Exhibit A,** is the Affidavit of Raphael Lowenstein of Lowenstein Capital, LLC, an Illinois limited liability company ("Lowenstein Capital").[6] Lowenstein Capital is the manager of

[6] This was an unsolicited affidavit and Liberty's counsel played no role, whatsoever, in its drafting or editing, other than to provide the case caption.

4520-26 S. Drexel Residences, LLC, an Illinois limited liability company, a bidder on the property located at 4520-26 S. Drexel Avenue, Chicago Illinois (the "Interested Purchaser"). Per the Affidavit, during the sealed bid process, the Interested Purchaser submitted a total of four bids for the S. Drexel property. The first was for $5,400,000.00, submitted at 12:18 p.m. on August 14, 2019 (the sealed bid deadline date), using the approved form of purchase agreement and without a financing or other added contingencies. At that time, the Interested Purchaser was advised its offer was a strong offer, but that there was "a lot of bidding activity for the Property." The Interested Purchaser advised the broker, at that time, that it was "willing to pay more if necessary to be the successful bidder."

At 5:03 p.m. on August 14, 2019, a second offer was submitted by the Interested Purchaser, this time for $5,475,000.00. The broker advised that the offer was a strong offer, but other bids were still coming in.

At 8:30 p.m. on August 14, 2019, a third offer was submitted by the Interested Purchaser for $6,000,000.00. The Interested Purchaser believed it had submitted the highest offer.

On August 15, 2019, the broker advised the Interested Purchaser that it was extending the sealed bid process. At that time, the Interested Purchaser made clear to the broker that it "did not want to lose the Property because we guessed wrong on the purchase price by $50,000 or $100,000 or so." At that time, the Interested Purchaser was advised that it was one of the two highest bids and received the impression that it was, in fact, the highest bid.

The Interested Purchaser became concerned that the "blind auction process being used by the Receiver and the Broker was designed to enable the Receiver and/or the Broker to steer the sale of the Property to a preferred buyer rather than a buyer willing to pay the highest price for the Property." The Interested Purchaser "emphasized to the Broker once again that the Interested

Purchaser was very interested in acquiring the Property and had the financial resources and willingness to pay more for the Property if necessary to become the successful high bidder."

At 11:48 a.m. on August 15, 2019, a fourth offer was submitted by the Interested Purchaser, all cash, for $6,110,000.00. The Interested Purchaser was notified 25 days later, on September 10, 2019, that the Interested Purchaser's fourth offer was not accepted but that the Receiver had accepted an alternative offer that the Receiver considered "highest and best."

Per the Affidavit, each of the bids was in conformity with the form of purchase agreement required; each of the bids was without any disqualifying condition; the Interested Purchaser has $250,000,000.00 of funding available to it; and the Interested Purchaser is an experienced property owner, with similar properties in the vicinity of the S. Drexel property.

In the Affidavit, the Interested Purchaser further states that:

> 21. If given the opportunity to bid for the property through a public open bidding process, the Interested Purchaser would be willing to offer and pay a higher price. Without wishing to be placed in a position of bidding against itself, the Interested Purchaser confirms that it is ready, willing, and able to increase its bid by a meaningful amount if necessary to be the successful bidder to purchase the Property through a fair and transparent public bidding process.
>
> 22. The Interested Purchaser believes the sealed and nontransparent bidding process used by the Receiver in the SEC Action is unfair to prospective purchasers, including the Interested Purchaser, and is not reasonably calculated or well-suited to maximize recovery from sale of the property for the benefit of stakeholders in the Receiver's estate."

While Liberty is not a lender against the S. Drexel property, certainly if it was, it should not be required to make a credit bid determination until the complete details of the marketing process are disclosed, including whether a final round of bidding had or should be conducted, thereby maximizing value and possibly obviating the need for a credit bid. Equally important is why a sale process is being run in a manner that a highly interested bidder, who has expressed

through its actions and words that it is willing to bid higher, was denied the opportunity to do so.[7]

There is nothing in the concept of a sealed bid process that is inconsistent with additional rounds of bidding, once the sealed bids are received. In fact, the published sealed bid procedures so provide. A second, third, fourth or even fifth round of bidding does not chill bidding in the first instance. One need only require a bidder to submit an initial sealed bid, as a prerequisite to potential subsequent rounds of bidding. In the bankruptcy context, higher and better offers are mandated in an open forum, to maximize estate value.

In this particular instance, if Liberty was the lender of record, required to bid against a vacuum of information regarding a lack of additional bidding and then placed a credit bid, only to learn of the defect in the sale process at the time of approval of the hearing on the sale, where would be parties be? Back to square one, with a requirement that the Receiver first conduct an additional round of bidding, which information would then provide greater clarity to Liberty on the extent to which market exposure had been maximized. The Receiver's refusal to come forward with the specifics of the sale process is inexplicable, as a component of the credit bid determination.

A second reality related to the reason for full disclosure of the sales and marketing process, before a credit bid determination should be required, is borne out by the Receiver's

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[7] Also, the Receiver and the Court should take note of Paragraph 11 of the Affidavit, where the broker encouraged the Interested Purchaser to exclude the Interested Purchaser's broker from the transaction because "it would be problematic and would interfere with the likelihood of success of the Interested Purchaser's offer." This is quite disturbing, because the broker for the Receiver is attempting to reserve more commission for itself, by excluding buyer broker participation, under a veil of "interference" and a smaller likelihood of "success." This is despite the fact that the "Sealed Bid Public Sale of Real Estate Terms and Conditions" Paragraph 8, provide that "[a] cooperating commission will be paid to a qualified, licensed real estate broker that procures the bidder who closes on the property." Receiver Response, Page 64. The Court should scrutinize those situations where the broker is receiving a full commission, to ensure no undue influence or promises are being made by the broker.

Second Sale Motion. In this Second Sale Motion, the Receiver, for the first time, publicly discloses certain information related to the sale of properties to which the Receiver is seeking approval to sell. While, again, Liberty's properties are not implicated, if they were, under the protocol advocated by the Receiver, this motion would be Liberty's first exposure to the certain of the sales and marketing information, revealed after its credit bid determination was required. On pages 5-8 of the Second Sale Motion, the Receiver discloses the listing price, the number of bids received, the highest bid and the bidder's name and affiliation, if any, to the receivership estate. This information is known to the Receiver as of the time it sends out its credit bid deadline notification and there is no just reason to withhold this vital information to Liberty, in conjunction with its credit bid determination.

Further, while some information is provided in the Second Sale Motion, not all, as requested by Liberty, is set forth. For instance, paragraph 26 describes the sale of 7301-09 South Stewart, listed for $975,000, for which three bids were received, the highest being from the insider property manager for $650,000. In this instance, additional disclosure, such as the marketing time period, the number of site visits and whether a secondary round of bidding was undertaken would all be material to not only a credit bid determination by Liberty, but also the Court approval process of this given property. If Liberty was the secured lender on this property who placed a credit bid, only to learn of an insufficient marketing period, a lack of site visits and the absence of a secondary round of bidding, the sale approval process would be pushed back to square one.

Efficiency dictates that information known to the Receiver, at the time a credit bid determination is to be made, should be fully disclosed, to streamline the ultimate sale approval process for each of these properties. Such disclosure in no way delays the sale process. It only

expedites it, which has been Liberty's request from the date it requested that this pertinent information be disclosed as part of the credit bid process.

CONCLUSION

Liberty's Objection should be sustained. The Receiver must be required to be completely open and honest with the constituents in this case and this Court regarding the timing of market exposure; the number of interested parties who entered the due diligence room, conducted site visits and presented offers; whether the offers were from insiders or outsiders; and whether the Receiver shopped any of the offers to finality, based on competing interest in the properties. And in balancing the need for this information, why should the scales tip in favor of secrecy in a federal receivership action, aimed at market value maximization? Neither the SEC nor the Receiver have answered these very relevant questions.

As a condition precedent to its obligation to credit bid, Liberty is seeking information mandated under the required federal receivership statutory sale framework governing public sales and necessitated by a prior ruling, still subject to challenge, allowing insiders, who control the due diligence process, to themselves credit bid. The information would also be available to Liberty in a credit bid scenario under a state law foreclosure sale. Liberty's rights should not be diminished by virtue of the fact that the parties are operating under a federal receivership proceeding. In fact, like a bankruptcy proceeding, information sharing should be heightened.

Respectfully Submitted,

/s/ Jay L. Welford

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Date: September 18, 2019

EXHIBIT A

See attached

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

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Civil Action No. 18-cv-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Affidavit

The undersigned, Raphael Lowenstein, hereby certifies under penalties of perjury that the facts set forth herein are true and correct.

1. I am an adult with personal knowledge of the facts set forth herein and am available and competent to testify.

2. I am a principal and manager of Lowenstein Capital LLC, an Illinois limited liability company, which is the manager of 4520-26 S. Drexel Residences LLC, an Illinois limited liability company, each having its principal office at 1912 S. State St., Chicago, Illinois.

3. 4520-26 S. Drexel Residences LLC is an interested purchaser ("**Interested Purchaser**") of property located at 4520-26 South Drexel, Chicago, Illinois (the "**Property**").

4. The Property is reportedly owned by 4520-26 S. Drexel LLC n/k/a SSDF1 4520 S. Drexel LLC ("**Seller**"), and is part of the receiver's estate in *United States Securities Exchange Commission vs. EquityBuild, Inc. et al* pending in the United States District

Court for the Northern District of Illinois, Eastern Division, as Civil Action No. 1:18-cv-05587 (the "**SEC Action**").

5. I understand that the Seller is controlled by Kevin B. Duff (the "**Receiver**"), as Federal Equity Receiver for the Seller, and that the Receiver has retained the services of Jeffrey Baasch of SVN Commercial, Chicago, Illinois (the "**Broker**") to facilitate a sale of the Property.

6. Neither the Interested Purchaser nor I have any direct or indirect interest in or affiliation with the Seller or the Broker, and neither the Interested Purchaser nor I hold any lien or other interest in the Property.

7. Through the Broker, the Receiver offered the Property for sale requiring prospective purchasers to use a specified form of contract prepared by or for the Receiver ("**Receiver's Form Contract**").

8. The Receiver, acting through the Broker, required that prospective purchaser's submit their offers to purchase through the Broker pursuant to a secret sealed-bid sale process, advising that the highest sealed-bid from a qualified buyer would be accepted by the Receiver. The Property was listed for sale for Five Million One Hundred Thousand Dollars ($5,100,000.00) and the Broker advised that any bid should be at or above that amount. The final bid was due by the end of the day on August 14, 2019.

9. The Interested Purchaser is a qualified buyer and has as its members and investors a group of very high net worth individuals and family offices with a combined net worth well in excess of Two Hundred Fifty Million Dollars ($250,000,000) and is readily capable of fulfilling the purchaser's obligations under any contract to acquire the Property.

10. The principals and manager of the Interested Purchaser are experienced in acquiring and owning properties of the type and character of the Property, and in fact own though wholly owned and controlled affiliates several substantially similar properties in the immediate vicinity of the Property. As such, the Interested Purchaser is well-suited and prepared to acquire the Property.

11. At the initial Property showing we arrived with another licensed real estate broker we frequently use. The Broker made clear to us that if the Interested Purchaser were to use a real estate broker other than the Broker it would be problematic and would interfere with the likelihood of success of the Interested Purchaser's offer. We found that a bit troubling but accepted that condition and worked solely through the Broker.

12. On August 14, 2019, at 12:18 PM, I submitted an initial offer on behalf of the Interested Purchaser, 4520-26 S. Drexel Residences LLC, to purchase the Property using the Receiver's Form Contract, with no financing contingency and no other added contingencies, amounting to a cash offer to purchase the Property for Five Million Four Hundred Thousand Dollars ($5,400,000.00) (the "**Interested Purchaser's Initial Offer**").

13. Through my inquiries to the Broker I was informed that the Interested Purchaser's Initial Offer was a strong bid but that there was a lot of bidding activity for the Property. I advised the Broker that the Interested Purchaser was very interested in acquiring the Property and that the Interested Purchaser was willing to pay more if necessary to be the successful bidder. I further advised the Broker that the absence of specific information concerning the amount of competing bids made it difficult to make an intelligent offer. The Broker declined to provide further details.

14. At 5:03 PM on August 14, 2019, I submitted on behalf of the Interested Purchaser an increased offer for the Property using the same form of contract as Interested Purchaser's Initial Offer but increasing Interested Purchaser's offered purchase price to Five Million Four Hundred Seventy Five Thousand Dollars ($5,475,000.00) (the "**Interested Purchaser's Second Offer**").

15. I inquired of the Broker as to whether the Interested Purchaser Second Offer was the highest offer and was again led to believe that it was a strong, competitive offer but that other bids were still coming in.

16. At 8:30 PM on August 14, 2019, I submitted on behalf of the Interested Purchaser an increased offer for the Property using the same form of contract as Interested Purchaser's Initial Offer but increasing Interested Purchaser's offered purchase price to Six Million Dollars ($6,000,000.00) (the "**Interested Purchaser's Third Offer**"), which I believe was the highest offer received by the Broker and Receiver on August 14, 2019, the advertised cut-off day for bids on the Property. The Broker acknowledged receipt of the Interested Purchaser's Third Offer via text message.

17. The next day, the Broker advised me that the bidding process had changed, that the Receiver would now be accepting additional offers, and that the Receiver would accept what the Receiver considered to be the "highest and best offer". I told the Broker I wasn't sure what he meant by "highest and best offer" because I was using the Receiver's Form Contract without contingencies. I told the Broker that I did not want to lose the Property because we guessed wrong on the purchase price by $50,000 or $100,000, or so. The

Broker informed me that Interested Purchaser's Third Offer was one of the two highest bids but would not tell me more. I pressed the Broker for information as to whether the Interested Purchasers' Third Offer was, in fact, the highest bid received by the August 14, 2019 cut- off date and got the impression that it was.

18. I grew concerned that the blind auction process being used by the Receiver and the Broker was designed to enable the Receiver and/or the Broker to steer the sale of the Property to a preferred buyer rather than to a buyer willing to pay the highest price for the Property. I emphasized to the Broker once again that the Interested Purchaser was very interested in acquiring the Property and had the financial resources and willingness to pay more for the Property if necessary to become the successful high bidder.

19. Although I thought it was unfair that the bidding process had been changed after it appeared that the Interested Purchaser's Third Offer had been the highest offer, at 11:48 AM on August 15, 2019 I submitted on behalf of the Interested Purchaser an increased offer to purchase the Property using the same form of contract as the Interested Purchaser's Initial Offer but increasing the Interested Purchaser's bid to a cash offer of Six Million One Hundred Ten Thousand Dollars ($6,110,000.00) (the "**Interested Purchaser's Fourth Offer**").

20. On or about September 10, 2019 I was advised by the Broker that the Interested Purchaser's Fourth Offer was not accepted by the Receiver but that, instead, the Receiver had accepted an alternate offer that the Receiver considered "highest and best".

21. If given the opportunity to bid for the Property through a public open bidding process, the Interested Purchaser would be willing to offer and pay a higher purchase price. Without wishing to be placed in a position of bidding against itself, the Interested Purchaser confirms that it is ready, willing, and able to increase its bid by a meaningful amount if necessary to be the successful bidder to purchase the Property through a fair and transparent public bidding process.

22. The Interested Purchaser believes the sealed and nontransparent bidding process used by the Receiver in the SEC Action is unfair to prospective purchasers, including the Interested Purchaser, and is not reasonably calculated or well-suited to maximize recovery from sale of the Property for the benefit of the stakeholders in the Receiver's estate.

23. Further affiance sayeth not.

I hereby certify pursuant to 28 USC §1746, under penalty of perjury, that the foregoing is true and correct.

Executed on September 17, 2019

Raphael Lowenstein

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2019, I provided service of the foregoing *Reply of Liberty EBCP, LLC to the SEC's Response to Liberty's Objections to Minute Entry Dated August 19, 2019 (R 483) Regarding Motion of Liberty EBCP, LLC Related to Credit Bid Procedures and Objection to 24 Hour Credit Bid Deadline*, via ECF filing to all counsel of record, and via electronic mail or U.S. mail to the following individuals and entities:

Jerome and Patricia Cohen
1050 8th Avenue N.
Naples, FL 34102
jerryc@reagan.com
Defendant

First Bank
Client Contact Center
600 James S. McDonnell Blvd.
St. Louis, MO 63042

/s/ Jay L. Welford

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