

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

UNITED STATES SECURITIES AND)	
EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	No. 18-CV-5587
)	
EQUITYBUILD, INC. EQUITYBUILD)	
FINANCE., LLC, JEROME H. COHN, and)	
SHAUN D. COHEN,)	
)	
Defendants.)	

**RESPONSE TO OBJECTIONS OF CERTAIN MORTGAGEES TO RECEIVER'S
CONSOLIDATED SIXTH MOTION FOR COURT APPROVAL OF THE PROCESS
FOR PUBLIC SALE OF REAL ESTATE BY SEALED BID, FIFTH MOTION FOR
APPROVAL OF THE SALE OF CERTAIN REAL ESTATE AND FOR THE
AVOIDANCE OF CERTAIN MORTGAGES, LIENS, CLAIMS, AND
ENCUMBRANCES, AND MOTION TO AMEND THE
AUGUST 17, 2018 ORDER APPOINTING RECEIVER**

Claimant, Creditor, Investor-Lender and/or Equity Investor, LMJ Sales, Inc.,
(hereinafter "LMJ"), by its attorneys Jerome F. Crotty, Kevin P. Brown, and Rieck and
Crotty P.C., as and for its Response To Objections Of Certain Mortgagees To Receiver's
Consolidated Sixth Motion For Court Approval Of The Process For Public Sale Of Real
Estate By Sealed Bid, Fifth Motion For Approval Of The Sale Of Certain Real Estate And
For The Avoidance Of Certain Mortgages, Liens, Claims, And Encumbrances, And
Motion To Amend The August 17, 2018 Order Appointing Receiver, states as follows:

ARGUMENT

Presently before the Court is the Receiver's Consolidated Sixth Motion For Court Approval Of The Process For Public Sale Of Real Estate By Sealed Bid, Fifth Motion For Approval Of The Sale Of Certain Real Estate And For The Avoidance Of Certain Mortgages, Liens, Claims, And Encumbrances, And Motion To Amend The August 17, 2018 Order Appointing Receiver (hereinafter "Sixth Motion"). In the Sixth Motion, the Receiver requests the approval to sell certain receivership properties, including 7201 South Constance, Chicago, Illinois ("7201 Constance"), pursuant to sealed bid. Certain Mortgagees have filed an Objection to the Sixth Motion. See Doc. No. 628.

In their Objection, Certain Mortgagees assert that the sale should be rejected because the sale does not pay the Certain Mortgagees in full. Objection, Pg. 11 to 12. The Certain Mortgagees then argue that, if the Court allows the sale to proceed, they are summarily entitled to an immediate distribution of the sales proceeds from the sale of the properties in which they hold an interest, including 7201 Constance, because they have a first priority lien on such properties. Objection, Pg. 16. In making this argument, however, the Certain Mortgagees ignore the fact that the release of the mortgage of certain EquityBuild investors, which include LMJ, was not executed by the investors. Sixth Motion, Pg. 40, Par. 155. Accordingly, there is an issue regarding whether the release of the EquityBuild investors mortgage was effective since it was not executed by the mortgagees as stated by the Receiver in the Sixth Motion. Under Illinois law, such a

release may put the Certain Mortgagees on inquiry notice preventing their mortgage interest from taking a priority over the mortgage interest of the EquityBuild investors in 7201 Constance.

As the Certain Mortgagees state in their Objection, the Receiver “takes the property subject to all liens, priorities, or privileges existing or accruing under the laws of the state.” *S.E.C. v. Credit Bankcorp, Ltd.*, 386 F.3d 438 (2nd Cir. 2004). Objection, Pgs. 5 to 6. Under Illinois law, the EquityBuild investors mortgage would take priority over the subsequent Certain Mortgagees’ mortgage if there was anything in the chain of title to put the subsequent purchaser on inquiry notice regarding whether the release was valid. *Polish National Alliance of the United States of North America v. Lipinski*, 288 Ill. App. 234, 244, 6 N.E.2d 320 (1937) (“If facts appear in the chain of title which would cause an ordinary prudent man to investigate, he cannot close his eyes and refuse to go further than the release deed.”) Clearly, a release of mortgage which is not executed by the mortgagees would put the prudent man on notice to investigate whether the release was affective. Accordingly, there should not be an immediate distribution of the sales proceeds from 7201 Constance to the Certain Mortgagees if the Court allows the sale of 7201 Constance to proceed.

CONCLUSION

For the reasons set forth above, the Objection of the Certain Mortgagees should be overruled to the extent it seeks to have the proceeds of the sale of 7201 Constance

distributed to the Certain Mortgagees prior to a evidentiary hearing before the Court to determine the priority of all the parties claiming an interest in 7201 Constance.

Respectfully submitted,

LMJ Sales, Inc.,

By: /s/ Kevin P. Brown
One of Its Attorneys

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CERTIFICATE OF SERVICE

Kevin P. Brown, an attorney, certifies that he caused the within and foregoing **RESPONSE TO OBJECTIONS OF CERTAIN MORTGAGEES TO RECEIVER'S CONSOLIDATED SIXTH MOTION FOR COURT APPROVAL OF THE PROCESS FOR PUBLIC SALE OF REAL ESTATE BY SEALED BID, FIFTH MOTION FOR APPROVAL OF THE SALE OF CERTAIN REAL ESTATE AND FOR THE AVOIDANCE OF CERTAIN MORTGAGES, LIENS, CLAIMS, AND ENCUMBRANCES, AND MOTION TO AMEND THE AUGUST 17, 2018 ORDER APPOINTING RECEIVER** to be served upon counsel of record by electronically filing the same via the Northern District of Illinois ECF Service and e-mailing counsel to the e-mail address provided herein on or before the hour of 5:00 p.m. on the 21st day of February, 2020.

/s/ Kevin P. Brown