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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	
v.	)	**Case No. 18 C 5587**
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, And SHAUN D. COHEN,	)	**Judge John Z. Lee**
Defendants.	)	

ORDER

Before the Court is the Receiver's consolidated sixth motion for approval of the process for public sale of certain real estate and fifth motion for approval of the sale of certain real estate [618]. For the following reasons, the Court grants the consolidated motion.

Background

On August 15, 2018, the United States Securities and Exchange Commission ("SEC") filed a complaint against Defendants Equitybuild, Inc. ("Equitybuild"); Equitybuild Finance, LLC ("Equitybuild Finance"); Jerome H. Cohen; and Shaun D. Cohen. *See* Compl., ECF No. 1. According to the complaint, Defendants operated a Ponzi scheme through which they fraudulently induced more than 900 investors to invest at least $135 million in residential properties on the south side of Chicago. *Id.* ¶¶ 1–2. Shortly after the filing of the complaint, the

Court appointed a Receiver to marshal and preserve Defendants' assets. *See* Receivership Order, ECF No. 16.

The Receivership Order grants the Receiver "all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, members, and general and limited partners" of the Equitybuild Defendants. *Id.* ¶ 4. It also authorizes the Receiver to "take all necessary and reasonable actions" to sell or lease "all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property." *Id.* ¶ 38.

In January 2020, the Receiver filed a consolidated motion including a sixth motion for approval of a sealed-bid public auction process to market and sell certain properties in the Receivership Estate, as well as a fifth motion for approval of the sale of certain properties in the Receivership Estate. *See* Consolidated Mot., ECF No. 618. Certain non-party creditors ("the Lenders") then filed objections, *see* Obj., ECF No. 628, and the SEC, the Receiver, and investor LMJ Sales, Inc., each filed replies in support of the consolidated motion, *see* SEC's Reply, ECF No. 644; Receiver's Reply, ECF No. 651; LMJ Sales's Reply, ECF No. 637. In February 2020, the Court granted the portions of the consolidated motion that were uncontested. *See* ECF Nos. 632–35. The Court now turns to the remainder of the consolidated motion.

Analysis

I. Sixth Motion for Approval of the Process for Sale of Real Estate

The Receiver moves to list and market 36 multifamily properties pursuant to certain procedures outlined in the consolidated motion. *See* Consolidated Mot. at 4–57. The Court finds the Lender's objections to these procedures unpersuasive and thus grants the motion.

The Lenders argue that, for each of the properties at issue, the Receiver should "provide a full payoff at closing" to a Lender that purportedly has a duly perfected security interest in that property. *See, e.g.*, Obj. at 4–12. There are, however, competing claims to priority with respect to these properties, and the Court has repeatedly stated that priority determinations "must take place in the course of an 'orderly claims process.'" Order of 10/4/19 at 5, ECF No. 540 (quoting 4/23/19 Tr. at 14:3–16, ECF No. 444). As part of this process, the Receiver should segregate the sales proceeds on a property-by-property basis into separate sub-accounts until the Court adjudicates the competing claims. *See, e.g.*, Order of 2/21/20 at 5, ECF No. 633.

The Lenders also raise questions about various details of the proposed marketing process. Why, they ask, does the Receiver intend to publish the notice of sale in the Chicago-Sun Times, as opposed to another publication? *See* Obj. at 12. And what is the "potential benefit" of publishing in the Chicago Sun-Times? *Id.* Moreover, why has the Receiver chosen a marketing period of four weeks, as opposed to a longer period? *See id.*

The Court, however, "does not intend to dictate the Receiver's every move, absent a showing that he is exceeding his [broad grant of] authority or otherwise violating the Receivership Order." Order of 10/4/19 at 4–5 (quoting Magistrate Judge Young B. Kim's Order of 5/2/19, ECF No. 352). And the Court is not persuaded that the details at issue here—which include publishing notice in the Chicago Sun-Times as well as ten online real estate marketing platforms for four weeks, in full compliance with the statute governing public sales, *see* 28 U.S.C. §§ 2001–02—would constitute an abuse of the Receiver's authority or a violation of the Receivership Order. *Accord* SEC's Reply at 2 ("While the [L]enders identify minutia of the Receiver's marketing and sales proposals that they believe are not optimal, the [L]enders do not and cannot show that the Receiver is acting contrary to his reasonable business judgment or the wide discretion afforded him in determining how to liquidate properties."). For example, the Receiver has previously supported his four-week marketing period with the persuasive declaration of an experienced local real estate broker. *See* Decl. of Jeffrey Baasch at 7, ECF No. 537 ("A four week marketing time frame allows time for potential bidders to review the information, but leads prospective purchasers to remain focused, which creates excitement and increases interest in the properties.").

The Lenders also take issue with the credit-bidding[1] provisions in the consolidated motion, noting that they are slightly different than provisions

[1] As the Court has previously noted, credit bidding is a "means [for lenders] to protect themselves from the risk that the winning auction bid will not capture the asset's actual value. If a secured lender feels that the bids that have been submitted in an auction do not accurately reflect the true value of the asset and that a sale at the highest

previously approved by the Court in this action. *See, e.g.*, Obj. at 13–14. Specifically, the Court has approved terms stating that a credit bid lender could, at its own discretion, assign its right to title pursuant to the credit bid to a third party, *see* Notification of Liberty EBCP, LLC Regarding Status of Negotiations at 4, ECF No. 415, whereas the consolidated motion proposes that "*at the reasonable discretion of the Receiver*, a [c]redit [b]id [l]ender may nominate a third party . . . to acquire title as a grantee," Consolidated Mot. Ex. 1 at 5, ECF No. 618-1 (emphasis added).

Apart from noting that this language has been revised, the Lenders offer no argument as to why this revision exceeds the Receiver's broad grant of authority under the Receivership Order. *Cf.* Order of 10/4/19 at 6 ("[N]either Illinois nor federal law 'mandates the right to credit bid *along with the procedures the lenders propose* . . . in a Receivership case." (alteration omitted) (quoting Magistrate Judge Young B. Kim's Order of 7/9/19 at 7, ECF No. 447)). Furthermore, the Court is persuaded that the revision is sensible in light of the Receiver's valid objective of preventing potential misconduct by credit bid lenders. *See* Receiver's Reply at 3–4. The Court additionally notes that, given the terms of the revision, credit bid lenders may challenge as unreasonable instances of the Receiver blocking them

bid price would leave them undercompensated, then they may use their credit to trump the existing bids and take possession of the asset. In essence, by granting secured creditors the right to credit bid, the [Bankruptcy] Code promises lenders that their liens will not be extinguished for less than face value without their consent." *River Road Hotel Partners, LLC v. Amalgamated Bank*, 651 F.3d 642, 650 (7th Cir. 2011); *see* Order of 10/4/19 at 2 n.2.

from conveying title acquired through credit bidding. *See* Consolidated Mot. Ex. 1 at 5.

Finally, the Lenders contend that they should not be required to post a letter of credit before they credit bid. *See* Obj. at 14–16. But the Court concludes, as it did when assessing earlier proposed sales procedures, that "certain limitations" to the credit-bidding process, including "a letter-of-credit requirement," are warranted to balance the interests of investors and creditors asserting competing claims. *See* Order of 10/4/19 at 6.

II. Fifth Motion for Approval of the Sale of Certain Real Estate

The Receiver moves to close on the sale of 15 multifamily properties as outlined in the consolidated motion. *See* Consolidated Mot. at 57–81. Here too, the Court finds the Lender's objections unpersuasive and thus grants the motion.

The Lenders argue that the sales proceeds should not be held in escrow pending a claims process, and rather should be immediately disbursed to various Lenders that purportedly have first-priority liens. *See, e.g.*, Obj. at 16–18. As the Court has repeatedly stated—including *supra* in discussing the sixth motion for approval of the process for sale of certain real estate—an orderly claims process is the proper way of adjudicating competing claims that exist as to the properties.[2]

[2] Though there are no competing mortgages for four of the properties at issue, Obj. at 16–18, the Court is persuaded that, with respect to these properties, "other issues remain to be resolved during the initiated claims resolution process, including without limitation the alleged balance due in connection with the corresponding loan, the propriety of all of the component amounts of the claims asserted, and the entitlement of the Receiver to an administrative lien on a portion of the proceeds, if warranted." Receiver's Reply at 3.

Accordingly, and as the SEC suggests, the order approving the individual sales at issue will specifically note that the Receiver shall segregate sales proceeds until the competing claims are resolved for the properties at issue, *see* SEC's Reply at 2.

Next, Lender UBS objects that Receiver is arranging to sell the property at 7450 South Luella for only 62% of the Receiver's initial list price. *See* Obj. at 25. But the Court is not persuaded that this amount is "grossly inadequate," *id.*, nor is it persuaded by UBS's vague contentions that a better marketing and sales process would have fetched a higher price. *See id.* at 23–28. Relatedly, the Court finds compelling the Receiver's explanation for why the market of potentially interested investors for 7450 South Luella was thin. *See* Receiver's Reply at 6.

Finally, the Lenders complain that the consolidated motion fails to specify a definite closing date for the properties at issue. *See* Obj. at 19. However, the Court is assured that the Receiver fully appreciates the cost of delays to the Receivership Estate and will thus close on the properties "as soon as possible." Receiver's Reply at 7.

Conclusion

For the foregoing reasons, the Receiver's consolidated sixth motion for approval of the process for sale of certain real estate and fifth motion for approval of the sale of certain real estate [618] is granted. The Receiver is instructed to send the Court a proposed order that is consistent with this order.

ENTERED: 3/31/20

John Z. Lee
United States District Court Judge