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.	Case No. 1:18-cv-5587 Hon. John Z. Lee Magistrate Judge Young B. Kim

MORTGAGEES' RESPONSE TO RECEIVER'S MOTION FOR APPROVAL OF PROCESS OF RESOLUTION OF DISPUTED CLAIMS

The Mortgagees[1] object to the Receiver's proposed claims resolution process for lien priority and fraudulent transfer disputes.

[1] The Mortgagees are Freddie Mac; Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB30; U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB41; U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB50; Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16; Wilmington Trust, National Association, as Trustee for the benefit of the registered holders of UBS Commercial Mortgage Trust 2017-C1, Commercial Mortgage Pass-Through Certificates, Series 2017-C1; Federal National Mortgage Association ("Fannie Mae"); BMO Harris Bank N.A.; Midland Loan Services, a Division of PNC Bank, National Association; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Colony American Finance 2015-1; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Registered Holders of Corevest American Finance 2017-2 Trust, Mortgage Pass-Through Certificates, Series 2017-2; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Benefit of Corevest American Finance 2017-1 Trust Mortgage Pass-Through Certificates; BC57, LLC; UBS AG; Thorofare Asset Based Lending REIT Fund IV, LLC; and Liberty EBCP, LLC.; Direct Lending Partner LLC (successor to Arena DLP Lender LLC and DLP Lending Fund LLC)

INTRODUCTION

The Mortgagees recognize and support the Court's determination to streamline the dispute resolution process by avoiding unnecessary procedural steps. Unfortunately, the process proposed by the Receiver goes too far. It eliminates so many standard procedural requirements that it denies the claimants their basic due process rights. It also creates inefficiencies that will cause the claimants to do more rather than less work, increasing the costs for all parties.

As discussed in detail below, the Receiver's proposal is flawed because:

1. The proposal does not appear to require the Receiver to bring the estate's claims or objections as part of this process. If the Receiver intends to assert that a lien is invalid (e.g., because it was a fraudulent transfer or it was not properly recorded), he should do so as part of this process. Otherwise, claimants might find themselves needlessly litigating the priority of a lien before addressing a challenge to the validity of their liens, wasting the Court's time and the parties' funds.

2. The proposal does not provide adequate notice.

    a. The procedures do not require the Receiver to state his position until discovery is complete and the parties have stated their positions, effectively preventing the parties from defending against the Receiver's objections or claims.

    b. The proposal to use the claimants' proofs of claim in lieu of complaints or answers is unworkable. The proofs, which are largely devoted to a financial accounting of transactions between the claimant and EquityBuild, are not an adequate substitute. Using proofs as substitutes for pleadings will only confuse matters leading to higher costs, as the parties must either take discovery simply to understand the claims against them or risk litigating matters that are not actually at issue.

3. The proposal does not provide adequate discovery. Claims are to be resolved without access to the most critical source of evidence – EquityBuild's records. Additionally, discovery is too limited –sixty days, ten interrogatories and ten production requests are not sufficient to garner evidence regarding hundreds of claimants, multiple properties, competing lien claims, and lien avoidance actions.

4. The proposal does not provide procedures for determining when a hearing is required and how that hearing is to proceed.

5. The proposal provides for outsized and unauthorized roles for the Receiver and the SEC. The Receiver should be limited to pursuing the estate's claims and objections. The SEC should have no role whatsoever in disputes among the estate's secured creditors.

6. The proposal seeks pre-approval of a surcharge on mortgaged property for the Receiver's fees relating to the claims process. Surcharging the Mortgagees' collateral for conduct adverse to them is entirely inappropriate. In any event, the Court can best evaluate a surcharge request at the completion of the process when it has all of the relevant facts.

In light of the complexities inherent in the disputes at issue here, the Court should simply use the existing Federal Rules of Civil Procedure rather than attempting to create a substitute for those rules.

ARGUMENT AND AUTHORITIES

I. The claims resolution process must satisfy the litigants' due process rights.

The Receiver proposes that this Court summarily resolve issues concerning the validity and priority of over $100 million in lien claims based on the creditors' not yet disclosed proofs of claims (Motion, ¶1) and the Receiver's unspecified fraudulent transfer claims and other lien challenges (Motion, ¶21). These disputes involve issues that require disclosure, discovery, investigation, and hearing to satisfy due process requirements. Therefore, to protect all litigants, the Court should not adopt the proposed summary procedures, which do not provide meaningful notice of issues, preclude discovery of the Receiver's extensive records, unreasonably limit the scope and duration of discovery, and lack a well-defined hearing process.

The proposed summary procedures should apply to two types of disputes: (a) disputes between secured creditors as to lien priority and payment; and (b) disputes between the Receiver and secured creditors as to lien validity based on allegations of fraudulent transfer or other misconduct. Neither is amenable to the type of summary adjudication proposed by the Receiver. Indeed, they are unlike the disputes that courts, even in receivership cases, typically adjudicate summarily.

The lien priority claims are significantly more complicated than the Receiver's Motion suggests. The Court cannot resolve these disputes by simply reviewing the Cook County

Recorder's records to determine whose lien was filed first. Instead, it must evaluate the underlying transactions between the Investor Lenders and EquityBuild, as well as the Mortgagees' transactions with EquityBuild and the servicing entities that the Investor Lenders empowered to act on their behalf.

According to the SEC,[2] EquityBuild raised money for projects by borrowing money from investors. For many of its projects, EquityBuild initially issued a note payable to a group of participant investors secured by a first lien on the project. To service their loans and receive payments on their behalf, the investors retained an EquityBuild affiliate (usually either EquityBuild Finance, LLC or Hard Money Company LLC d/b/a Venture Hard Money Capital, LLC) as loan servicer.

At some point, EquityBuild switched from this fractionalized mortgage model to a fund model in which investors owned an interest in an entity that owned properties. Allegedly as part of this process, EquityBuild obtained loans from the Mortgagees, the proceeds of which were disbursed to pay off any existing mortgages against the properties, such as those allegedly held by the Investor Lenders. These payoffs were made in accordance with instructions issued by the Investor Lenders' retained loan servicer.[3] In some cases, the loan servicer filed a release of lien and in other cases it did not. Allegedly, the retained loan servicer did not remit the payoff proceeds to the Investor Lenders.

Under Illinois law, payment to the lienholder's agent is payment to the lienholder and extinguishes the lien regardless of the existence of a release. *Hoiden v. Kohout*, 12 Ill. App. 2d

[2] The Mortgagees have had no discovery or other access to EquityBuild's records and have no insight into the accuracy of the SEC's allegations.

[3] *See* Collateral Agency and Servicing Agreements (the "Servicing Agreements"). (SEC's Memorandum in Support of its Emergency Motion for a Temporary Restraining Order (the "Memorandum"), Dkt. 4, pp 4-5.

161, 164, 138 N.E.2d 852, 854 (1956) ("Payment to a duly authorized agent is payment to the principal."). That the loan servicer allegedly breached its duty to the Investor Lenders and embezzled the payment does not affect the extinguishment of the Investor Lenders' mortgage or the Mortgagees' resulting priority. *Id.*; *also Rockford Life Ins. Co. v. Rios*, 128 Ill. App. 2d 190, 193-194, 261 N.E.2d 530, 531-32 (1970).

Thus, at a minimum, the parties will need to address the loan servicer's express, implied, and apparent authority to issue loan payoff letters, to receive loan proceeds from a refinance transaction, and to release mortgages upon receipt of payments made in accordance with authorized payoff letters. In addition, the parties may need to trace funds to determine whether the Investor Lenders actually or constructively received those payoffs, authorized the servicer or another party to release their liens, or consented to EquityBuild's "roll[ing] the anticipated proceeds of their loans into new offerings rather than retiring the debt at maturity." [4] Motion, ¶5. Resolving these issues will require an examination of EquityBuild's business and accounting records, as well as its communications with the Investor Lenders. The Court cannot simply rely on the filing dates contained in the Cook County deed records to determine lien priority.

The threatened fraudulent transfer claims are equally complicated. If the Receiver argues that a given lien was a constructive fraudulent transfer, then the parties must examine the financial state of the borrowing EquityBuild entity at the time and its future prospects, and the value given in exchange for the lien. 740 ILCS 160/5(a)(2). If the Receiver argues that a given lien was an actual fraudulent transfer, then the parties must examine EquityBuild's intent in granting the lien (including the existence of the statutory badges of fraud), the value given in exchange for the lien, and the Mortgagee lender's good faith. *Id.* at 160/5(a)(1).

[4] *See also* SEC's Memorandum, Dkt. 4, pp 4-5.

Both the complexity inherent in dealing with, and the factual underpinnings involved in, these transactions preclude a summary approach. In *SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992), the Court of Appeals held that the procedures necessary for due process varied depending upon the complexity of the dispute. For simple disputes with uncontested facts, a simple summary procedure such as the Receiver proposes would suffice. *Id*. at 1568-69. However, for more complicated disputes such as those at issue here, much greater procedural protections are required. *Id.* at 1567-68.

A. To ensure due process for all involved, the Court should utilize the processes set forth in the Federal Rules rather than designing new processes for this case.

As discussed below, the process necessary to meet the requirements of due process in this case is that set forth in the Federal Rules of Civil Procedure. Rather than attempting to reinvent the decades of work by the Judicial Conference, the Court should require the use of plenary proceedings. Such procedures not only are appropriate for complex lien priority disputes, but they are required where a party is accused of wrongdoing, as the Receiver and SEC repeatedly have suggested here through allegations of bad faith.[5] *SEC v. Ross*, 504 F.3d 1130, 1142–44 (9th Cir. 2007) (holding that claims implicating a defendant's conduct require plenary proceedings).

Moreover, even in a non-plenary proceeding, the Court should use the procedures set forth in the Federal Rules with their robust and well-developed case law. *SEC v. Universal Financial*, 760 F.2d 1034, 1037 (9th Cir. 1985) (holding that the distinction between plenary and summary proceedings was of no consequence where the trial court applied the Federal Rules of Civil Procedure and Federal Rules of Evidence to the proceeding). In so doing, the Court can still achieve efficiency by consolidating discovery and certain pre-trial proceedings in a manner akin

[5] *See, e.g.*, Motion, ¶¶ 21, 50; SEC's Response to Freddie Mac's Motion to Divert Assets from Receivership (ECF No. 114) at 5-6, 8.

to an MDL proceeding, while at the same time furnishing the litigants a fair and reasonable opportunity to address the complicated issues presented by the claim disputes in this case.

If the Court decides to use a summary proceeding and forgo use of the Federal Rules, it must design its own rules to govern the proceedings. Any such rules must comport with "the Due Process Clause of the Fifth Amendment [which] guarantees that '[n]o person shall ... be deprived of life, liberty, or property, without due process of law.'" *U.S. v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993). This requires an opportunity to be heard "at a meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), and "that the procedures be fair." *Elliott*, 953 F.2d at 1566; *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673, 681 (1930) (fairness of procedure is "due process in the primary sense"). As a result, summary proceedings are "inadequate 'when [the litigants are] deprived of a full and fair opportunity to present their claims and defenses.'" *SEC v. Torchia*, 922 F.3d 1307, 1319 (11th Cir. 2019).

B. The procedures proposed by the Receiver are inefficient and do not satisfy the requirements of due process.

The procedures proposed by the Receiver do not satisfy the requirements of due process. They are also inefficient. In short, the proposed procedures do not provide for meaningful notice, adequate discovery, or a reasonable hearing. As such, this Court should not adopt them.

(1) Any claims resolution procedure adopted by the Court should apply to all claims disputes, including the Receiver's claims objections.

As an initial matter, the Mortgagees are concerned that the summary procedures proposed by the Receiver may not apply to the fraudulent transfer or other claims objections that the Receiver may bring. While the Receiver's Motion (at paragraph 21) suggests that his objections would be part of the proposed process, the procedures do not expressly provide for his objections. As an example, the procedures do not provide a mechanism for the Receiver to assert

an objection. The first time that the Receiver will state his position is after discovery is complete and the parties have stated their positions. Motion, ¶ 40. Allowing the Receiver to initially assert a position or contest a claim at such a late point in the process is so far beyond the pale of any notion of due process, that it cannot have been intended. The implication, thus, is that the Receiver intends to litigate his objections outside of the proposed process. The Court should not allow separate or delayed proceedings for different parties' objections to a claim. All objections to a claim should be resolved in the same proceeding.

Allowing the Receiver to litigate his claims objections outside of the proposed process is both unjust and uneconomical. The Receiver has proposed extremely limited means for the claimants to support their claims and challenge others; he should be similarly limited when asserting his positions. Moreover, it would be grossly inefficient to separate the Receiver's objections from the lenders' priority disputes. It would make no sense to spend months and thousands of dollars litigating lien priority knowing that the Receiver may seek to invalidate one or both competing liens. Nor would it make sense to discover the same evidence and litigate the same facts twice. All objections – whether they relate to priority or validity – regarding a single claim should be litigated in one proceeding, not seriatim.

(2) Due process requires meaningful notice of the objections to creditors' liens.

Notice is a key component of due process. This is why Federal Rule of Civil Procedure 3 requires the filing of a complaint at the commencement of a case. As stated by the Supreme Court, "[n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55 (1993), *quoting Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170-172 (1951) (Frankfurter, J., concurring) (fn. omitted).

The Receiver's proposal contains two fatal failures of notice. First, the procedures do not require the Receiver to state his position until after discovery is complete and the parties have stated their positions. Motion, ¶ 40. Thus, the first time that the Mortgagees or any other party will have notice of a fraudulent transfer claim (or any other objection by the Receiver) is *after* discovery closes. The only opportunity to dispute that claim is in the form of a reply brief that the Mortgagees must file within weeks of the Receiver putting his position on record without the benefit of additional discovery. To avoid this injustice, the Receiver must be required to state his claims at the outset of the process.

Second, the Receiver proposes to use the parties' proofs of claim in lieu of complaints. Motion, ¶ 30. The proofs do not purport to provide the "short and plain statement of the claim showing that the pleader is entitled to relief" required by Federal Rule 8(a). At best, the claim forms provide a template in which to set forth the basis of, and an accounting for, a claim against the estate. *See* Proof of Claim Form attached hereto as Exhibit A, pp. 1, 2 and 16.[6] Nothing in the claim form requires or even seeks the claimant's position as to why its lien should have priority or why a competing lien may be invalid.

The Receiver apparently believes that using the existing proofs of claim as an analogue to a complaint or other "short and plain statement" of a party's position will be more efficient. It will not. The claim forms were not designed for this purpose and are an inadequate substitute. Quite simply, they do not inform the parties of the others' positions and the matters actually in dispute. There is no reason to believe that a pro se or even a represented party would be able to comprehend another party's claim regarding lien priority or validity from the 19-pages of identification and accounting information listed on a claim form. Trying to do so will lead to

[6] Dkt. 241-1 @19-41) *See, e.g.*, Form at pp. 3-6 directing Investor Lenders to set forth the "Amount of Claim."

confusion and additional costs as the parties must take discovery simply to understand the claims against them and risk litigating matters that may not be at issue. Moreover, given the very limited opportunities for discovery, there is a significant likelihood the parties' actual positions may not be revealed in time to take meaningful discovery.

The only way to ensure fair notice and efficient proceedings is to require all parties to state their position at the start of the process. If a Mortgagee bases a lien priority claim on the payoff of a pre-existing debt to the Investor Lenders, it should file a document saying so. Similarly, if an Investor Lender asserts a priority claim based on the purported invalidity of a release, it too should file a document saying so.

Requiring a short and plain statement of their positions should not be an undue burden on the Investor Lenders. As the average claim is about $150,000,[7] most of the Investor Lenders have an incentive to retain counsel as some already have. For those that do not wish to hire counsel, pro se parties routinely appear in court, comply with the Federal Rules and advocate for their positions. *See Greer v. Board of Educ.*, 267 F.3d 723, 727 (7th Cir. 2001)(noting that while courts should liberally construe pro se pleadings, pro se parties must generally follow court rules).

Moreover, the Court should not allow Receiver to try his objections by ambush. If he wants to pursue fraudulent transfer or similar claims, the Receiver should plead it up front and "state with particularity the circumstances constituting fraud" as required by Federal Rule 9(b), rather than after the other litigants have asserted their claims, conducted discovery, and filed their respective briefing. *See* Motion, ¶40 (stating the Receiver may file his own "submission regarding the claims" after close of discovery and the filing of the Mortgagees' position papers).

[7] The SEC alleged that EquityBuild raised $135 million from 900 investors. Complaint (ECF No. 1) at ¶1. This works out to an average investment of $150,000.

Due process and efficiency considerations require advance notice and orderly adjudication of all competing claims.

(3) The proposed discovery limits do not satisfy the requirements of due process.

In order to have a meaningful opportunity to present evidence, litigants must have access to documents and other evidence to support their claims or defenses. This requires discovery sufficient to address the issues at hand. The proposed procedures do not meet this standard.

The Receiver has not committed to making EquityBuild's documents available to the parties. In fact, he has affirmatively stated that they will not be available for the first tranche. (Motion, ¶40, n.1). Such documents are relevant to both the lien priority and fraudulent transfer disputes. For example, the following documents (to name just a few) will need to be reviewed and analyzed to address many of the competing lien priority claims:[8]

a. EquityBuild's offering materials/private placement memorandum (the structure of the transactions and the role and functions of the servicer);

b. Servicing and other agreements and communications between the Investor Lenders and EquityBuild concerning the Investor Lender mortgage loans and the servicing of those loans;

c. Powers of attorney executed by Investor Lenders in favor of EquityBuild affiliates;

d. EquityBuild's records of bank accounts into which loan payments and payoffs on the Investor Lenders' loans were deposited and/or transferred;

e. Records of amounts and methods of payments to, or at the direction of, the Investor Lenders from monies received on their loans by EquityBuild and related entities;

f. Documents concerning the Investor Lenders' notice and knowledge of the proposed refinancing of their mortgage loans by the Mortgagees;

g. Investor Lenders' receipts of membership interests in EquityBuild investments in lieu of a cash payment from loan payments;

[8] Resolution of the fraudulent transfer claims will require access to a similar and equally extensive list of EquityBuild's records.

h. Correspondence/e-mails between the Investor Lenders and EquityBuild;

i. Title company records concerning the payoff statements and instructions, compliance with the payoff instructions and concerning the closings, including account records, communication with the servicers, and estoppel letters; and

j. Communications and agreements relating to Investor Lenders' decisions to roll over their investments.

All of these documents are within EquityBuild's records and, thus, in the Receiver's possession. Neither the Mortgagees nor the Investor Lenders can adequately assert and defend their claims without access to these records. Moreover, to the extent that the Receiver is allowed to take an active part in these proceedings or pursues fraudulent transfer claims to avoid liens based on EquityBuild's intent and financial status,[9] the Receiver cannot be allowed to gain an unfair advantage by having exclusive access to key documents.

Requiring litigants to try their cases without available documents deprives them of "necessary information [and] a meaningful opportunity to argue the facts and their claims and defenses," *Torchia*, 922 F.3d at 1319. In *Torchia*, the claimants did not have access to the Receiver's records and data necessary to challenge the Receiver's determination of their claims. The court held that this violated their due process rights. *Id.* at 1316–17 (holding that summary proceedings were not sufficient where a claimant was deprived the opportunity to substantively challenge the receiver's determinations); *see also, Elliott*, 953 F.2d at 1572 (summary proceedings are improper where a claimant is deprived of an opportunity to discover and present facts to support his claim or defense).

Beyond the lack of access to EquityBuild's records, the proposed discovery is too limited. The Receiver proposes a mere 60 days for discovery. It will be an undue burden on all

[9] As stated below, the Mortgagees object to the Receiver's involvement in the lien priority disputes but recognize that he is entitled to make fraudulent transfer claims and lien validity objections.

parties to gather, produce, and review relevant documents in such a limited time. This is particularly true in light of the delays and disruptions occasioned by the global COVID-19 pandemic. Currently and for the next several months at least, necessary persons – clients, lawyers, staff – are working from home without access to paper files. But, even in the best of times, the discovery period is too short.

Moreover, ten production requests, ten interrogatories and three depositions per claimant are not sufficient to obtain the necessary evidence. When viewed in the context of the first proposed tranche, the inadequacy of the proposed discovery limitations is abundantly clear. The first tranche involves five properties against which Mortgagee BC57, LLC/Bloomfield Capital Partners, LLC ("BC57") and 185 Investors have asserted claims. Motion, ¶49. The Receiver proposes that discovery be completed within 60 days, with a limit ***per claimant*** of 10 interrogatories and 10 requests for production of documents, three depositions, and no third party discovery. Motion, ¶38.

For example, in dealing with its five property disputes under the Receiver's proposal, BC57 effectively will be limited to two interrogatories and two production requests per property, while potentially having to respond to discovery requests from 185 separate Investor Lenders. This is inadequate as well as one-sided. Moreover, it will be impossible even to complete written discovery within 60 days, particularly given the fact-intensive issues identified above concerning agency, authority, acquiescence, consent, ratification, estoppel, waiver, the tracing of payoff proceeds, the yet-to-be disclosed fraudulent transfer claims, the complications posed by the COVID-19 pandemic, and the potential need to subpoena documents from third-parties. Similarly, three depositions will not be sufficient to address the issues and documents described

above. The Mortgagees anticipate needing to depose the Investor Lenders, former EquityBuild employees, loan brokers, and originators.

As a result, the litigants will be prejudiced by their inability to obtain evidence to support their claims and defenses, and by the Receiver's exclusive access to EquityBuild's documents in advancing his own adverse claims.

(4) The procedure for adjudicating claims is not defined.

Finally, the Receiver's proposal does not include any rules governing the adjudication of claims, except that the claimants will have an opportunity to present evidence "if necessary" and "to the extent factual disputes exist." Motion, ¶42. Left unresolved are the rules the Court will use to determine if factual disputes exist. Will the Court make this decision *sua sponte*? Must the parties move for summary judgment or for an evidentiary hearing? What standard will the Court use to determine if factual disputes exist – the Rule 56 standard or some other standard? And, if the Court determines to hear evidence, what will the order of proceedings be? Who goes first and last? Will the Court allow live testimony or rely solely on documents and transcripts?

Unlike the accounting disputes that summary procedures are typically used to resolve, the disputes here are more complicated and likely will require the Court to resolve factual disputes on uncertain evidence. The Federal Rules have mechanisms to deal with these issues – if the material facts are truly undisputed, the Court can grant a summary judgment and, if not, the Court must try the case. The proposed procedures lack similar mechanisms. As such, the proposal fails to define how the litigants will have "a full and fair opportunity to present their claims and defenses," *Elliott*, 953 F.2d at 1567, thereby violating a "fundamental requirement of due process [which] is the opportunity to be heard at a *meaningful time* and in a *meaningful manner*." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (emphasis added).

In sum, the proposed procedures do not satisfy the requirements of due process. In addition, they threaten to promote inefficiencies rather than efficiencies. The Court, therefore, should not approve them. The Mortgagees respectfully request that the Court use the Federal Rules to adjudicate all disputes regarding the validity and priority of secured claims.

II. The Receiver's substantive role should be limited to litigating claims and objections that belong to the estate.

Through his Motion, the Receiver seeks to perform three functions. In particular, the Receiver wants to (a) avoid certain liens for the benefit of the estate (*see* Motion, ¶21), (b) file submissions in private disputes between the Mortgagees and third parties regarding competing lien claims (Motion, ¶¶40, 51), and (c) recommend claims dispositions to the Court (Motion, ¶¶ 51-52). Only the first of these tasks falls within the scope of his receivership duties, and he lacks standing and is disqualified as to the rest. As the SEC's counsel previously advised the Court: "My job is to protect investors. But I'm a securities fraud prosecutor. I don't engage in commercial disputes. And I cannot represent the investors. The receiver can't either." Transcript of Proceeding at 36, SEC v. Equitybuild, Inc., No. 18-cv-05587 (N.D. Ill. August 22, 2019), attached hereto as Exhibit B.

A. The Receiver's role is to preserve and enhance the assets of the receivership estate not to intervene in disputes among secured creditors.

The Receiver stands in the shoes of EquityBuild and is charged with preserving its assets for the benefit of the estate. In fact, as the Seventh Circuit held in *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995), the Receiver's "only object is to maximize the value of the corporations for the benefit of their investors and any creditors." Thus, the Receiver can challenge a potentially unperfected or allegedly fraudulently transferred lien claim to preserve equity for the

estate. Disputing lien priority among private litigants, however, does not fall within the purview of receiver duties defined in *Scholes* as it does not maximize value to the estate.

The estate has no interest in which secured creditor prevails in a lien priority dispute. Once the lien priority dispute is resolved, one of the creditors will have a superior lien and the other will have a junior lien, but the property will remain subject to both liens. The estate neither gains nor loses in this dispute. Accordingly, the Receiver should play no part in it.

B. The Receiver lacks standing to advocate on behalf of the Investor Lenders.

Although the Receiver claims that he is not an advocate for the Investor Lenders (Motion, ¶¶ 37, 40), his actions suggest otherwise. For instance, the Receiver plans to take discovery, which can have no purpose other than advocacy. *See Bond v. Utreras*, 585 F.3d 1061, 1075 (7th Cir. 2009) (holding that "discovery is provided for the sole purpose of assisting in the preparation and trial, or the settlement, of litigated disputes."). The Receiver also plans to file a "submission" to inform the Court of facts or evidence that the parties do not bring to the Court's attention -- a classic act of advocacy. Motion, ¶¶ 40, 51. The Mortgagees do not need the Receiver's assistance in this regard because their counsel fully and adequately represent them. Instead, the Receiver's acts are for the benefit of the Investor Lenders on whose behalf the Receiver focuses his pleadings.[10] Such a one-sided approach creates an untenable conflict of interest because a receiver must be impartial among the creditors and cannot favor one at the expense of another. *SEC v. Schooler*, 2015 WL 1510949, *3, No. 3:12–cv–2164–GPC–JMA (S.D. Cal. March 4, 2015).

[10] Both the SEC and the Receiver have filed pleadings advancing arguments in favor of the Investor Lenders' positions and contrary to the Mortgagees' positions. *E.g.*, Receiver Response to Liberty Rent Motion (ECF No. 152) at 9-10; Receiver Response to BC57 Rent Motion (ECF No. 163) at 2; SEC's Response to Freddie Mac's Motion to Divert Assets from Receivership (ECF No. 114) at 5-6, 8; SEC's Response to Certain Mortgagee's Motion to Expedite Discovery (ECF No. 300) at 2-4.

Even if that were not the case, the Receiver lacks standing to assert the rights or legal interests of others. *Warth v. Seldin*, 422 U.S. 490, 509 (1975). He has no right or ability to assert claims personal to individual creditors. As explained in *Troelstrup v. Index Futures Group, Inc.*, 130 F.3d 1274, 1277 (7th Cir. 1997), while there "is a sense in which he [the receiver] is the investors' agent, for he is trying to maximize the value of their debtor's … assets," a receiver may only act on behalf of the entity for which he was appointed receiver. He cannot act on behalf of a creditor, because in so doing he is not "trying to build up [the estate's] assets" but instead is enforcing the creditor's personal rights. *Id.* The receiver lacks standing to engage in such advocacy and, since standing is an inherent part of a court's subject-matter jurisdiction, such conduct could invalidate this Court's judgment. *See Davis v. Federal Election Comm'n*, 554 U.S. 724, 733 (2008).

C. By virtue of his duties, the Receiver is disqualified from assisting the Court in adjudicating claims.

The Receiver proposes to make a recommendation to the Court concerning the resolution of a particular dispute. (*see, e.g.*, Motion, ¶¶ 51-52) Permitting him to do so would impermissibly make the Receiver the equivalent of a magistrate judge or master. For instance, under F.R.C.P. 53, a master, and not a receiver, reviews the parties' submissions and files a report to which the parties can object before the Court reviews his factual findings and legal conclusions *de novo*. The delegation of these tasks to the Receiver is improper because they involve a judicial role. *See In re Kempthorne*, 449 F.3d 1265, 1269 (D.C. Cir. 2006) ("We have held that a special master is subject to the same ethical restrictions as a judge when the special master serves as the 'functional equivalent' of a judge even though the special master is under a judge's 'control.'").

In this regard, chief among the obligations of a judicial officer is impartiality. 28 U.S.C. § 455(a) ("Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."). However, by definition, a receiver is not impartial because he owes a fiduciary duty to preserve and protect the estate for the benefit of the persons entitled to it. *SEC v. Schooler*, 2015 WL 1510949, *3, No. 3:12–cv–2164–GPC–JMA (S.D. Cal. March 4, 2015). "As the receiver owes a fiduciary duty, the receiver *cannot be impartial* towards the receivership estate *and is obligated to advocate* to the court what he or she believes to be the best course of action to protect, preserve, administer, and distribute the receivership estate's assets." *Id.* (emphasis added). Because of his financial interest in the estate as a fiduciary, the Receiver cannot act as a master. *See* 28 U.S.C. § 455(b)(4) (requiring disqualification of a judge who "individually or as a fiduciary" has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding").

The conflict between the Receiver's duties as receiver and potential duties as a judicial officer is real, not theoretical. As set forth in the Order Appointing Receiver, the Receiver is obligated to contest claims where he has an objectively reasonable basis to do so. This could include claims based on unrecorded, unsigned, equitable, or potentially released mortgages, or claims that may be avoidable as fraudulent transfers or otherwise. The Receiver cannot advocate for his such an objection (like the potential fraudulent transfer claim against BC57 in the first tranche, Motion, ¶ 50) and contemporaneously make impartial recommendations involving that very same creditor's lien priority dispute. The Receiver cannot act as a judicial officer.

Moreover, having the Receiver act as a judicial officer is expensive. There is no reason to have the estate or the prevailing creditor pay the Receiver and his counsel to assist the Court in

adjudicating disputes. If needed, a far more efficient and practical source of help for these disputes is Magistrate Kim. This is the very reason the District Court relies upon magistrates – to sift through complicated facts and make recommendations to the Court. Having Magistrate Kim review and make recommendations to the Court - rather than the Receiver - eliminates duplicative and wasteful fees used to pay the Receiver to do the job that Magistrate Kim can competently and efficiently perform.

In addition, getting involved in inter-creditor disputes will distract the Receiver from his actual duties – liquidating and enhancing the value of the estate. The Receiver should concentrate on rehabilitating and selling properties, and pursuing claims against third parties that received funds or other property from EquityBuild.

III. The SEC cannot participate in, or advocate for any particular result in, the secured creditors' disputes.

The Receiver proposes that the SEC take discovery and advocate against claims asserted by various creditors including the Mortgagees. (Motion, ¶¶ 39, 40). As the SEC itself has noted, however, "the SEC's counsel does not and cannot represent any investor in this matter."[11] Similarly, the SEC cannot assert fraudulent transfer claims that belong to the estate. Only, the Receiver has standing to do so. This Court should not allow the SEC to exceed its statutory role.

The SEC cannot participate in a contested proceeding where it has no pecuniary or regulatory interest. *See In re Sherman*, 491 F.3d 948, 957-58 (9th Cir. 2007). Here it has neither. In particular, the SEC has not asserted a claim to a lien on any particular property[12] and will not

[11] SEC's Response to Certain Mortgagees' Motion to Expedite Discovery and Hearing on Lien Priority (ECF No. 300) at 5 n.4. In this footnote, the SEC noted that the "Receiver likewise does not represent any investor." *Id.*

[12] Although it may have a disgorgement or penalty claim against EquityBuild, that claim is merely an unsecured claim. *SEC v. Spongetech Delivery Sys.*, 98 F. Supp. 3d 530, 534-35 (E.D. N.Y. 2014)(holding that SEC could not subordinate secured claim to its subsequent disgorgement judgment).

receive any financial benefit from the Court's determination of the claimant's private lien priority dispute. Further, neither the enforcement of the securities laws nor the regulation of financial markets – the SEC's statutory roles – depends on the resolution of any such dispute.

Although the SEC has raised a concern about the Investor Lenders' representation,[13] the SEC's role is to enforce the securities laws, not to equalize a presumed (but unproven) gap in the quality of representation between the competing lien creditors. The Investor Lenders are capable of retaining counsel (as many have done) and have sufficient financial incentive to do so. And, if they choose not to hire counsel, the Investor Lenders must defend their own claims. Pro se parties regularly do so in this and other courts across the country. The Investor Lenders do not need the federal government to represent them in this proceeding. And, the federal government is not empowered to do so.

By analogy, the SEC could not intervene in a private lien priority dispute. First, intervention as of right is unavailable because (a) no federal statute grants the SEC an unconditional right to intervene and (b) the SEC lacks a direct, significant and legally protectable interest in the properties at issue sufficient to justify intervention, *i.e.*, an interest belonging to it, not the creditor, and the right to sue for that relief on its own. *See* F.R.C.P. 24(a) and *Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985). Second, permissive intervention is unavailable because the outcome of the lien priority disputes depends on state law, not a statute or regulation administered by the SEC. *See* F.R.C.P. 24(b)(2). As such, there is no basis for the SEC's involvement in the private litigation between the competing lien creditors.

[13] *See, e.g.*, SEC's Response to Liberty's Objections (ECF No. 513) at 3 (worrying about the fate of "victimized investors … forced to fend for themselves against the well-funded lenders").

IV. The Receiver cannot recover his fees ahead of security interests, thereby subordinating prior perfected liens.

The Receiver seeks to recover his fees related to the lien priority dispute "as an administrative lien on the subject real estate properties and the proceeds of sale of those properties." (Motion, ¶53). In support of his claim, the Receiver relies on the proposition set forth in *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994) that a court "has the authority to impose a lien on the property in a receivership to satisfy the receivership expenses." (Motion, ¶55). However, as stated in *Gaskill*, such is only the case if "the receivership benefited the property and the mortgagee acquiesced in, or failed to object to, the receivership." *Id.*

The Receiver asserts that the "benefit" to the secured creditors is based on their right to "participate in and enjoy the benefits of the claims process." Motion, ¶56. But the Court, not the Receiver, provides the claims process. If the Court needs assistance in administering that process, the Magistrate Judge can supply the needed assistance at no additional cost to the claimants. Moreover, this sort of "general assertion" of benefit is insufficient to surcharge a secured creditor's collateral. *MW Capital Funding, Inc. v. Magnum Health and Rehab of Monroe LLC*, 2019 WL 3451221, *6, Case No. 16-14459 (E.D. Mich. July 31, 2019).

In addition, a surcharge is unavailable when a receiver's actions are adverse to the lien claimant whose collateral is sought to be surcharged, including specifically "time the Receiver spent opposing their claims" as secured because "these activities benefited the unsecured creditors" and not the secured creditor. *Elliott*, 953 F.2d at 1578. The *Elliott* court relied on *South County Sandy & Gravel Co., Inc. v. Bituminous Pavers Co.*, 274 A.2d 427 (R.I. 1971), in which the court refused to allow the receiver to collect a fee from a creditor's collateral where the receiver unsuccessfully contested the creditor's security interest in that collateral. *Id.* at 430-31 (reasoning that "under no conceivable theory was [the] secured position in any way benefited or

advantaged by the receivers' antagonism, and it would be a harsh and manifestly unjust rule which in such circumstances would require the trust company to pay reparations to the receivers for their unsuccessful attempt to cut down its contractual rights").

The Receiver's position does not improve if he is on the winning side. Both the Mortgagees and the Investor Lenders are capable of advocating for themselves. They can take discovery, present evidence, and make arguments on their own. The Receiver confers no benefit on the prevailing secured creditor by reporting "to the Court all of the information bearing on the claims the Receiver believes in his judgment and discretion to be reasonably necessary for the Court to resolve any disputes with respect to, including between, the submitted claims." Motion, ¶51. Presumably, the parties would have done so already, or would have made a tactical decision to present only certain evidence or argument. Not surprisingly, the Receiver has not cited to a single case in the claims litigation context supporting the surcharge he seeks.

In any event, the Receiver's request is premature, as it seeks an advisory opinion that is not ripe for adjudication for this Court. The only way to determine if the Receiver's efforts benefited a particular property is to examine the results of the Receiver's work after it occurs. Then, the Court can evaluate any request for a surcharge based on the nature and extent of the actual benefit. To award fees in advance would be purely speculative, without a basis in fact. Put simply, a party seeking a surcharge 'does not satisfy [his or] her burden of proof by suggesting hypothetical benefits." *MW Capital Funding, supra,* *6.

V. The Court should require the Receiver to address the undisputed secured claims in short order.

Although this Response deals primarily with contested lien claims, in paragraph 23 of his Motion, the Receiver states that there are "a small number of properties for which there may be no dispute as to the priority of the claimants' secured interest… [and that he] anticipates either

filing a separate motion to address any issues that the Receiver identifies with respect to the claims associated with those properties and/or requesting a referral to the Magistrate Judge for settlement purposes to address issues with those properties." However, the Receiver neither identifies these properties nor proposes a reasonable time period for addressing them.

In the absence of priority disputes, the Receiver should pay senior lien claims, rather than holding them in limbo pending the lengthy adjudication of tranches of contested lien claims. Even if the Receiver contends that these properties involve issues other than lien priority, he should identify those issues on a property-by-property basis, and a procedure should be established for resolving them. Accordingly, in ruling on the Receiver's Motion, the Court should set a short deadline for the Receiver to address these largely undisputed claims.

CONCLUSION

The claim disputes at issue here involve complicated issues of fact that will require significant discovery and development. They are not suited for the type of summary adjudication that the Receiver has proposed.

The Receiver's procedure fails to provide for adequate notice, sufficient discovery or a defined hearing process. Moreover, it reserves an extraordinarily large role for the Receiver and the SEC – neither of which has a role in inter-creditor disputes -- and will generate substantial additional costs, which the Receiver wrongfully proposes to impose on the prevailing creditors' collateral. Accordingly, to comport with due process and promote judicial fairness and efficiency, the Mortgagees respectfully request that the Court deny the Receiver's motion and utilize the Federal Rules of Civil Procedure and of Evidence to resolve the claims disputes.

Dated: June 8, 2020

Respectively Submitted:

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PROOF OF CLAIM FORM

TO BE ELIGIBLE FOR A DISTRIBUTION YOU MUST SUBMIT ALL COMPLETED SECTIONS OF THIS CLAIM FORM AND ALL SUPPORTING DOCUMENTS OR OTHER EVIDENCE TO SUBSTANTIATE YOUR CLAIM ON OR BEFORE THE BAR DATE, WHICH IS _____, 2019.

Regardless of whether you previously submitted documentation to the Receiver, or whether you are submitting documentation with this proof of claim, you must submit a sworn statement consistent with Section 10, verifying and attesting to the accuracy and completeness of all documentation you submit.

Claims lacking sufficient supporting documentation may be disallowed.

SECTION 1
Claimant Contact Information
(TO BE COMPLETED BY ALL CLAIMANTS)

A Claimant should set forth on the claim form all claims that belong to him, her, or it. Please review Section 3 of the General Background & Instructions at the beginning of this Notice of Bar Date & Proof of Claim Form.

NOTE: ALL CLAIMANTS MUST PROMPTLY NOTIFY THE RECEIVER IN WRITING OF ANY CHANGES TO THE CONTACT INFORMATION PROVIDED BELOW THROUGHOUT THE DURATION OF THE RECEIVERSHIP. FAILURE TO NOTIFY THE RECEIVER OF SUCH CHANGES MAY RESULT IN YOUR NOT RECEIVING FUNDS TO WHICH YOU MAY OTHERWISE BE ENTITLED. CHANGES TO CLAIMANT CONTACT INFORMATION MAY BE EMAILED TO equitybuildclaims@rdaplaw.net **OR MAILED TO THE ADDRESS BELOW:**

Kevin B. Duff, Receiver
EquityBuild, Inc., et al.
c/o Rachlis Duff Peel & Kaplan, LLC
542 S. Dearborn Street, Suite 900
Chicago, IL 60605

A. Claimant Contact Information. *(Provide the name and address of the actual person or entity that made the loan/investment or is making the claim):*

Claimant Name(s): _____

Address: _____

_____

_____

Exhibit A

Telephone Number(s): _____

Email Address(s): _____

*Social Security/Tax I.D. Number(s): _____

**The Internal Revenue Service (IRS) requires that all U.S. recipients of distribution checks provide social security or tax identification numbers to the Receiver. No check will be issued without a corresponding social security or tax identification number.*

B. Secondary Contact Information

Check all that apply for the person or entity named as the Claimant in Section A above. (You may list only one Secondary Contact):

_____Primary contact for Claimant

_____Attorney representing Claimant

_____Person completing this form for Claimant

_____Successor in interest

Executor of Estate of _____

Legal successor in interest to a person or entity that is or claims to be owed money by one or more Receivership Defendants. Describe _____

Trustee of a trust that is or claims to be owed money by one or more Receivership Defendants. Identify trust _____

_____ Alternate Contact. Describe _____

Secondary Contact Name: _____

Address: _____

_____

Telephone Number: _____

Email Address: _____

SECTION 2
Type of Claim
(TO BE COMPLETED BY ALL CLAIMANTS)

Please review the descriptions of the various claimant classes contained in the General Background & Instructions at the beginning of this Notice of Bar Date & Proof of Claim Form and complete the appropriate section below based upon the nature of your claim.

Each Claimant must submit his, her, or its own proof of claim form. A Claimant should set forth on the claim form all claims that belong to him, her, or it. Please review Section 3 of the General Background & Instructions at the beginning of this Notice of Bar Date & Proof of Claim Form.

Review and Determination of Claim

If you are unsure which type of claim you are filing, select the category that you believe most closely describes the nature of your claim. Descriptions of the Claimant categories can be found in the General Background & Instructions accompanying this form.

Prior to submitting his recommendation to the Court regarding distributions to Claimants, the Receiver will review and determine whether any claims need to be reclassified. Please note that a time frame has not yet been set for the processing of claims. The Receiver will process the claims as expeditiously as possible.

A. Type of Claimant (check all that apply)

____ Investor-Lender (Must complete Sections 1, 2, 3, 9, and 10.)

____ Equity Investor (Must complete Sections 1, 2, 4, 9, and 10.)

____ Institutional Lender (Must complete Sections 1, 2, 5, 9, and 10.)

____ Trade Creditor (Must complete Sections 1, 2, 6, 9, and 10.)

____ Employee (Must complete Sections 1, 2, 7, 9, and 10.)

____ Independent Contractor (Must complete Sections 1, 2, 7, 9, and 10.)

____ Other _____ (Must complete Sections 1, 2, 8, 9, and 10.)

B. Receivership Defendant Against Whom Claim Is Asserted.

_____ EquityBuild, Inc.

_____ EquityBuild Finance, LLC

_____ Other Affiliate Entity (Identify): _____

SECTION 3
Amount of Claim
(TO BE COMPLETED BY INVESTOR-LENDERS)*

* Descriptions of the Claimant categories can be found in the General Background & Instructions accompanying this form.

A. Claim Details

For this Section, if you are an Investor-Lender, you must provide the total amount you contend you are owed, along with details about the money you loaned, the nature of any security for your loan(s) (if applicable), and all money returned or paid to you.

Claimant's EquityBuild Account Number(s) (if known): _____

Total amount you loaned to the Receivership Defendants: $_____

Total amount you received from the Receivership Defendants: $_____

$_____ Cumulative interest you received on your loan (if known)
$_____ Principal returned to you (if known)
$_____ Other amounts you received. Describe: _____

Other amounts you claim: $ _____

Describe the basis for the other amounts you claim: _____

Total amount of claim (as of August 18, 2018): $_____

Loan number (if known)	Property address(es) associated with loan	Was your loan secured? Y / N**	Borrower (i.e., Receivership Defendant you loaned funds to) (if known)	Amount of loan	Total Amount of interest you received	Amount of principal returned to you	All other amounts received (and reason(s) for payment, such as dividends, fees, penalties, or bonus payments)	Date of loan (mm/dd/yyyy)
				$	$	$	$	__/__/____
				$	$	$	$	__/__/____

** A claim may be secured if you are the beneficiary under a deed of trust or mortgage relating to the debt owed to you or if specific collateral has been pledged to secure payment of a debt owed to you. If you contend that your claim relating to any loan is secured, you must identify all collateral that allegedly secures your claim and provide copies of all supporting documentation, including, but not limited to, mortgages, promissory notes, and collateral agency and servicing agreements.

B. Rollover

If you "rolled over" any proceeds of your loan(s) at maturity by extending a new loan (secured and/or unsecured), on new terms, to the same or a different entity, you must complete this Section. If you "rolled over" any proceeds of your loan(s) into an investment in a fund sponsored by EquityBuild or another Receivership Defendant, you must also complete Section 4 below (the Section for Equity-Investors).

Original loan number (if known)	Original loan amount	Amount converted or rolled over	Date converted or rolled over (mm/dd/yyyy)	New loan (including the new loan number, property address, and terms of the new loan or note, if available) into which original loan was rolled over
	$	$	__ /__ /____	
	$	$	__ /__ /____	

C. Buyouts / Loan Purchases

Did you purchase another investor-lender's interest or note? Y__ / N __

If you purchased or bought out another investor-lender's interest or note, then you must complete the table below:

Name of the investor-lender whose interest you purchased	Amount you paid for the loan	Terms of the loan you purchased	Was the loan you purchased secured? Y / N **	Date of purchase (mm/dd/yyyy)	Other information pertinent to the purchase
	$		Y __ / N __		
	$		Y __ / N __		

** A claim may be secured if you are the beneficiary under a deed of trust or mortgage relating to the debt owed to you or if specific collateral has been pledged to secure payment of a debt owed to you. If you contend that your claim relating to any loan is secured, you must identify all collateral that allegedly secures your claim and provide copies of all supporting documentation, including, but not limited to, mortgages, promissory notes, and collateral agency and servicing agreements.

D. Other Payments, Property, or Items you Received from any Receivership Defendant

If not set forth in your response to earlier questions, provide information regarding any other payment, property, or other consideration you received from any Receivership Defendant in partial or full satisfaction of any obligation of any Receivership Defendant to you (such as property or funds you received that you understood were intended to be applied to repay amounts that were due to you from a Receivership Defendant):

_____

_____

_____

Total value of such other payment, property, or consideration you received from any Receivership Defendant: $_____

YOU ARE REQUIRED TO PROVIDE COPIES OF ALL DOCUMENTATION SUPPORTING YOUR CLAIM. PLEASE SUBMIT COPIES AND RETAIN THE ORIGINALS FOR YOUR RECORDS. FAILURE TO SUBMIT SUPPORTING DOCUMENTATION MAY RESULT IN YOUR CLAIM BEING REJECTED OR REDUCED.

IF THE INFORMATION ABOVE INCLUDES ALL OF YOUR CLAIMS, YOU MUST PROCEED TO SECTIONS 9 AND 10.

SECTION 4
Amount of Claim
(TO BE COMPLETED BY EQUITY INVESTORS)*

* Descriptions of the Claimant categories can be found in the General Background & Instructions accompanying this form.

A. Claim Details

For this Section, if you are an Equity-Investor, you must provide the total amount you contend you are owed along with details about the money you invested and any money returned or paid to you.

Claimant's EquityBuild Account Number(s) (if known): _____

Total amount you invested directly with the Receivership Defendants: $_____

Total amount you rolled over (from Section 3(B)): $_____

Total amount you received from the Receivership Defendants: $_____

Other amounts you claim: $ _____

Describe the basis for the other amounts you claim: _____

Total amount of claim (as of August 18, 2018): $_____

Name of fund or entity in which you invested	Property address(es) associated with fund (if applicable)	Amount you invested	Date of investment (mm/dd/yyyy)	Monies received from this investment (i.e., distributions and/or return of capital)	Reason for payment (if known)	Entity making payment (if known)
		$	__/__/____			
		$	__/__/____			

B. Rollover

Individuals and entities who became equity investors by rolling the proceeds of a loan into a fund offering must complete this Section.

Original loan number (if known)	Original investment (i.e., amount of original loan, including property address(es)	Amount converted or rolled over	Date converted or rolled over (mm/dd/yyyy)	Name of fund or entity into which original loan was rolled over
		$	__/__/____	
		$	__/__/____	

C. Buyout

Did you purchase or buy out another equity investor's interest in any Receivership Defendant? Y__ / N __

If you purchased or bought out another equity-investor, then you must complete the table below:

Name of equity-investor whose interest you purchased	Purchase price	Description of the interest you purchased	Date of purchase (mm/dd/yyyy)	Other pertinent information
	$			
	$			

D. Other Payments, Property, or Items you Received from any Receivership Defendant

If not set forth in your response to earlier questions, provide information regarding any other payment, property, or other consideration you received from any Receivership Defendant in partial or full satisfaction of any obligation of any Receivership Defendant to you (such as property or funds you received that you understood were intended to be applied to repay amounts that were due to you from a Receivership Defendant):

_____

_____

_____

Total value of such other payment, property, or consideration you received from any Receivership Defendant: $_____

YOU ARE REQUIRED TO PROVIDE COPIES OF ALL DOCUMENTATION SUPPORTING YOUR CLAIM. YOU SHOULD SUBMIT COPIES AND RETAIN THE ORIGINALS FOR YOUR OWN RECORDS. FAILURE TO SUBMIT SUPPORTING DOCUMENTATION MAY RESULT IN YOUR CLAIM BEING REJECTED OR REDUCED.

IF THE INFORMATION ABOVE INCLUDES ALL OF YOUR CLAIMS, YOU MUST PROCEED TO SECTIONS 9 AND 10.

SECTION 5
Amount of Claim
(TO BE COMPLETED BY INSTITUTIONAL LENDERS)*

* Descriptions of the Claimant categories can be found in the General Background & Instructions accompanying this form.

A. Total Amount of Claim

For this Section, if you are an Institutional Lender, you must itemize all components of your claim and specify the total amount you contend you are owed. Any outstanding principal amount you list below must be net of the amount of each principal payment you received on that loan.

For any loan interest you claim, describe the basis on which you calculated that amount, including references to specific sections of any documents supporting your calculations. For each other amount you claim, describe the nature of the amount sought (for example, fees, penalties, other costs) and the basis on which you are claiming the amount (including references to specific sections of any documents supporting your claim).

Address(es) of propert(ies) serving as collateral	Outstanding principal balance	Contract interest accrued before August 18, 2018	Contract interest accrued on or after August 18, 2018	Default rate interest accrued before August 18, 2018	Default rate interest accrued on or after August 18, 2018	Other amounts claimed	Basis of each other amount claimed
	$	$	$	$	$	$	
	$	$	$	$	$	$	
	$	$	$	$	$	$	

If you are an Institutional Lender, you may submit an Excel spreadsheet (in native format) in lieu of completing the foregoing chart in the Axos Claims Portal. You must name the spreadsheet as follows: "[NAME OF CLAIMANT]: AMOUNTS CLAIMED" and submit it as provided in Section 9 below.

You must check this box ____ if you are submitting a native Excel spreadsheet in lieu of completing the foregoing chart in the Axos Claims Portal.

B. Details about Money you Loaned

If you are an Institutional Lender, you must provide details regarding each loan you made to any Receivership Defendant, including the amount you loaned. Do not include any amounts of interest, fees, or other sums you are claiming in this table.

Loan number	Date of loan (mm/dd/yyyy)	Borrower (Receivership Defendant to which funds were sent)	Original amount you loaned	Is loan secured? Y/N	Property address(es) associated with loan (if applicable)
	__/__/____		$		
	__/__/____		$		

If you are an Institutional Lender, you may submit an Excel spreadsheet (in native format) in lieu of completing the foregoing chart in the Axos Claims Portal. The spreadsheet must be in format identical to the chart below. You must name the spreadsheet as follows: "[NAME OF CLAIMANT]: MONEY LOANED" and submit it as provided in Section 9 below.

You must check this box ____ if you are submitting a native Excel spreadsheet in lieu of completing the foregoing chart in the Axos Claims Portal.

C. Details about Security for your Loan(s)

If you are an Institutional Lender and you contend your claim relating to any loan is secured, you must identify any collateral that you contend secures your claim and the basis for your contention (*i.e.,* a claim may be secured if you are the beneficiary under a deed of trust or mortgage relating to the debt owed to you, or if specific collateral has been pledged to secure payment of a debt owed to you):

Description of Collateral	Describe the contractual or other basis for contention that loan is secured (list contract or other written basis, including section references)

If you are an Institutional Lender, you may submit an Excel spreadsheet (in native format) in lieu of completing the foregoing chart in the Axos Claims Portal. The spreadsheet must be in format identical to the chart below. You must name the spreadsheet as follows: "[NAME OF CLAIMANT]: SECURITY FOR LOAN(S)" and submit it as provided in Section 9 below.

You must check this box ____ if you are submitting a native Excel spreadsheet in lieu of completing the foregoing chart in the Axos Claims Portal.

D. Details about Money Returned and/or Paid to you

If you are an Institutional Lender making a claim, you must complete this Section.

Have you received any payment of monies including interest, principal, fees, or other sums from any Receivership Defendant?

_____ Yes / _____ No

If you answered "YES" you must provide the following information for each payment and amount received:

Loan number	Date of payment (mm/dd/yyyy)	Name of entity making payment	Amount of interest	Amount of principal	Other amounts (i.e., fees, reimbursements)	Description of other amounts (fees, reimbursements, etc.)
	__ /__ /____		$	$	$	
	__ /__ /____		$	$	$	

If you are an Institutional Lender, you may submit an Excel spreadsheet (in native format) in lieu of completing the foregoing chart in the Axos Claims Portal. The spreadsheet must be in format identical to the chart below. You must name the spreadsheet as follows: "[NAME OF CLAIMANT]: MONEY RETURNED AND OR PAID" and submit it as provided in Section 9 below.

You must check this box ____ if you are submitting a native Excel spreadsheet in lieu of completing the foregoing chart in the Axos Claims Portal.

E. Other Payments, Property, or Items you Received from any Receivership Defendant

If not set forth in your response to earlier questions, provide information regarding any other payment, property, or other consideration you received from any Receivership Defendant in partial or full satisfaction of any obligation of any Receivership Defendant to you (such as property or funds you received that you understood were intended to be applied to repay amounts that were due to you from a Receivership Defendant):

_____

_____

_____

Total value of such other payment, property, or consideration you received from any Receivership Defendant: $_____

F. Amounts of any Reserve, Escrow, or Other Funds you hold Relating to your Loan(s)

If you hold any funds that constitute reserves, escrows, deposits, or other amounts that relate to your loan(s), whether or not the documents relating to your loan(s) describe any such funds as under your control as lender, you must complete the following information:

Loan number	Borrower	Debt service reserve or escrow	Capital expenditure reserve or escrow	Tax reserve or escrow	Insurance reserve or escrow	Other funds	Describe amounts listed under "other funds"
		$	$	$	$	$	
		$	$	$	$	$	

If you are an Institutional Lender, you may submit an Excel spreadsheet (in native format) in lieu of completing the foregoing chart in the Axos Claims Portal. The spreadsheet must be in format identical to the chart below. You must name the spreadsheet as follows: "[NAME OF CLAIMANT]: RESERVE, ESCROW, AND OTHER FUNDS" and submit it as provided in Section 9 below.

You must check this box ____ if you are submitting a native Excel spreadsheet in lieu of completing the foregoing chart in the Axos Claims Portal.

If you have submitted a certified statement concerning receivership assets ("Statement") pursuant to Paragraph 17(C) of the Order Appointing Receiver (Docket No. 16), you do not need to complete the chart above if the Statement includes all of the information requested in the chart above and you complete the following two items:

Claimant has submitted to the Court and served on the Receiver a Statement (as defined above) _____ (check if yes)

Date Statement was filed and served: _____

YOU ARE REQUIRED TO PROVIDE COPIES OF ALL DOCUMENTATION SUPPORTING YOUR CLAIM. IF YOU ARE AN INSTITUTIONAL LENDER AND YOU PREVIOUSLY SUBMITTED DOCUMENTS TO THE RECEIVER OR HIS COUNSEL ELECTRONICALLY, YOU DO NOT HAVE TO RE-SUBMIT DOCUMENTS TO THE AXOS CLAIMS PORTAL BUT YOU MUST PROVIDE A LIST OF ALL DOCUMENTS SUBMITTED AND WHEN. YOU MUST RE-SUBMIT DOCUMENTS TO THE AXOS CLAIMS PORTAL IF YOU PREVIOUSLY SUBMITTED HARD COPY DOCUMENTS. YOU MUST SUBMIT COPIES AND RETAIN ORIGINAL DOCUMENTS FOR YOUR OWN RECORDS.

IF THE INFORMATION ABOVE INCLUDES ALL OF YOUR CLAIMS, YOU MUST PROCEED TO SECTIONS 9 AND 10.

SECTION 6
Amount of Claim
(TO BE COMPLETED BY TRADE CREDITORS)*

* Descriptions of the Claimant categories can be found in the General Background & Instructions accompanying this form.

A. Claim Details

If you are a Trade Creditor (including actual or potential lienholders), you must provide the information below:

1. This claim arose from:

____ Services provided

____ Goods supplied / provided

____ Contract

____ Other _____

2. Total amount of claim as of August 18, 2018: _____

You must complete the chart below if you are a Trade Creditor:

Date of service/delivery of goods/contract (mm/dd/yyyy)	Invoice number	Amount of invoice	Description of contract and/or services or goods provided
__ / __ / ____		$	
__ / __ / ____		$	

YOU ARE REQUIRED TO PROVIDE COPIES OF ALL DOCUMENTATION SUPPORTING YOUR CLAIM. PLEASE MUST SUBMIT COPIES AND RETAIN THE ORIGINALS FOR YOUR RECORDS. FAILURE TO SUBMIT SUPPORTING DOCUMENTATION MAY RESULT IN YOUR CLAIM BEING REJECTED OR REDUCED.

IF THE INFORMATION ABOVE INCLUDES ALL OF YOUR CLAIMS, YOU MUST PROCEED TO SECTIONS 9 AND 10.

SECTION 7
Amount of Claim
(TO BE COMPLETED BY EMPLOYEES AND INDEPENDENT CONTRACTORS)*

* Descriptions of the Claimant categories can be found in the General Background & Instructions accompanying this form.

A. EMPLOYEE SECTION

If you were an Employee of EquityBuild, Inc., EquityBuild Finance LLC, and/or any other Receivership Defendant, you must provide the information below:

1. Position(s) held: _____

2. First day of employment: _____

   Last day of employment: _____

3. Total amount you claim to be owed: _____

You must specify the amounts you claim to be owed based on the following categories:

a. Wages: $_____

b. Commissions: $_____

c. Expenses: $_____

d. Other: $_____ Describe: _____

4. Period(s) for which compensation is owed: _____

5. At any time, did you receive any real or personal property from any of the Receivership Defendants? ___ Y / ___ N

If you answered yes, you must provide the following information:

a. Description of such real or personal property _____

b. Identify Receivership Defendant from which you received such real or personal property: _____

c. Specify the last known or approximate value of such realty or personal property: _____

d. Do you still possess any or all of such real or personal property? ___ Y / ___ N

B. INDEPENDENT CONTRACTOR SECTION

If you were an Independent Contractor for EquityBuild, Inc., EquityBuild Finance LLC, and/or any Receivership Defendant, you must provide the information below:

1. Total amount of claim as of August 18, 2018: _____

3. Description of services provided: _____

4. Date of contract/agreement for services: _____

5. Name of Receivership Defendant or other person or entity that engaged you to provide services: _____

6. At any time, did you receive any real or personal property from any of the Receivership Defendants? ___ Y / ___ N

If you answered yes, you must provide the following information:

a. Description of such real or personal property _____

b. Identify Receivership Defendant from which you received such real or personal property: _____

c. Specify the last known or approximate value of such realty or personal property: _____

d. Do you still possess any or all of such real or personal property? ___ Y / ___ N

You must complete the chart below if you were an Independent Contractor:

Date of services (mm/dd/yyyy)	Invoice number	Amount of invoice	Description of contract and/or services provided
__ / __ / ____		$	
__ / __ / ____		$	

YOU ARE REQUIRED TO PROVIDE COPIES OF ALL DOCUMENTATION SUPPORTING YOUR CLAIM. PLEASE SUBMIT COPIES AND RETAIN THE ORIGINALS FOR YOUR RECORDS. FAILURE TO SUBMIT SUPPORTING DOCUMENTATION MAY RESULT IN YOUR CLAIM BEING REJECTED OR REDUCED.

IF THE INFORMATION ABOVE INCLUDES ALL OF YOUR CLAIMS, YOU MUST PROCEED TO SECTIONS 9 AND 10.

SECTION 8
Amount of Claim
(TO BE COMPLETED BY ONLY BY CLAIMANTS NOT REQUIRED TO FILE UNDER A PRIOR SECTION OF THIS PROOF OF CLAIM)*

* Descriptions of the Claimant categories can be found in the General Background & Instructions accompanying this form.

A. Claim Details

If you have a claim that you do not believe fits within one of the categories described elsewhere, you must submit a detailed description of your claim together with all supporting documentation.

Amount claimed as of August 18, 2018: $ _____

Explain the basis for your claim (*i.e.,* how did your claim arise?):

_____

_____

YOU ARE REQUIRED TO PROVIDE COPIES OF ALL DOCUMENTATION SUPPORTING YOUR CLAIM. PLEASE SUBMIT COPIES AND RETAIN THE ORIGINALS FOR YOUR RECORDS. FAILURE TO SUBMIT SUPPORTING DOCUMENTATION MAY RESULT IN YOUR CLAIM BEING REJECTED OR REDUCED.

IF THE INFORMATION ABOVE INCLUDES ALL OF YOUR CLAIMS, YOU MUST PROCEED TO SECTIONS 9 AND 10.

SECTION 9
Documents Supporting Claim
(TO BE COMPLETED BY ALL CLAIMANTS)

IMPORTANT: You are required to upload copies of all documents supporting your claim. Failure to submit supporting documentation may result in your claim being rejected or reduced. There are no limitations on the size of documents that can be uploaded. Acceptable file types include .xls, .xlsx, .doc, .docx, .ppt, .pptx, .pdf, and .jpg. You must upload each document or category of documents separately.

Documents that can be submitted to support your claim include copies of contracts, invoices, canceled checks (front and back), account statements, accrual reports, investment profiles, appraisals, loan agreements, mortgages, deeds in trust, assignments of rent, promissory notes, collateral agency and servicing agreements, mortgage releases, operating agreements, offering memoranda, private placement memoranda, and reinvestment forms.

If you are an investor-lender and/or equity investor, submitting only an EquityBuild lender statement of account to support a claim may not be sufficient without additional documentation. You must also provide documentation such as bank records to show withdrawals, transfers, and deposits of funds, to the extent available.

If you are an institutional lender, you must also submit copies of all loan applications, appraisals, underwriting files, loan documents, closing statements, wiring instructions, title commitments, and title insurance policies. To the extent that you previously submitted these documents to the Receiver or his counsel electronically, you do not have to re-submit those documents through the Axos Claims Portal, but you must submit through the Axos Claims Portal a list of each previously submitted document and the date and manner in which you submitted it (for example, "Attachment to email sent 9/1/2018 to EquityBuildReceiver@rdaplaw.net by [identify sender]"). Any documents that you provided to the Receiver only in hard copy form must be re-submitted to the Axos Claims Portal as provided in this Section 9.

Regardless of whether you previously submitted documentation to the Receiver, or whether you are submitting documentation with this proof of claim, you must submit a sworn statement consistent with Section 10, verifying and attesting to the accuracy and completeness of all documentation you submit.

Claims lacking sufficient supporting documentation may be disallowed.

IF THE INFORMATION ABOVE INCLUDES ALL OF YOUR CLAIMS, YOU MUST PROCEED TO SECTION 10.

SECTION 10
Representations
(TO BE COMPLETED BY ALL CLAIMANTS)

By signing and submitting this proof of claim, all claimants make the following representations:

a) Claimant/creditor acknowledges and agrees that by submitting this proof of claim, claimant/creditor subjects his/her/its claim to the jurisdiction of the United States District Court for the Northern District of Illinois, Eastern Division, which is administering the Receivership Estate ("Receivership Court"). Claimant/creditor further agrees that his/her/its claim shall be adjudicated, determined, and paid as ordered by the Receivership Court. Claimant/creditor further consents to, and understands that the Receivership Court will determine, (i) his/her/its right to any money from the Receivership Estate, if any is available; (ii) the priority of his/her/its claim; (iii) the scheduling and allocation of any assets to be distributed; and (iv) all objections and disputes regarding the allowance of his/her/its claim by the Receiver, which shall be submitted to and subject to review by the Receivership Court for a final ruling without a jury.

b) The undersigned represents that he or she possesses the authority to sign this proof of claim on behalf of the person(s) or entit(ies) for whom this proof of claim is submitted.

c) Claimant/creditor represents that claimant/creditor has not sold, assigned, transferred, or in any way conveyed any interest in his/her/its claim against the Receivership Estate. From the date of this form, claimant/creditor agrees not to sell, convey, assign, or transfer any interest in his/her/its claim against the Receivership Estate prior to the date(s) of distribution. In the event that his/her/its interest is transferred prior to the date of any distribution, except by operation of law, claimant/creditor agrees that such transfer or assignment shall be null and void and unenforceable by any successor third party.

d) Claimant/creditor hereby affirms and attests, under penalty of perjury, that all of the information set forth herein and submitted to the Receiver in connection with this proof of claim is truthful, accurate, complete, and presented in a manner so as to not be misleading, to the best of claimant's/creditor's knowledge and belief. Claimant/creditor further affirms and attests, under penalty of perjury, that all documentation submitted in connection with this proof of claim is genuine, authentic, accurate, and complete, to the best of claimant's/creditor's knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that all of the statements made in this Proof of Claim are true and correct.

Claimant Name(s)

_____

Authorized Signature (Proof of claim not valid unless signed)

_____

Print Name

_____

Date

_____

YOU SHOULD RETAIN THE CONFIRMATION EMAIL YOU RECEIVE ALONG WITH YOUR REFERENCE NUMBER AND THE ORIGINALS OF ALL SUPPORTING DOCUMENTATION SUBMITTED HEREWITH. YOU SHOULD RETAIN YOUR CONFIRMATION EMAIL AND REFERENCE NUMBER TO BE USED IN THE EVENT YOUR CLAIM IS NOT RECEIVED.

EXHIBIT A
RECEIVERSHIP DEFENDANTS

The Receivership Defendants include but are not limited to the entities listed below. Parenthetical information reflects state of organization.

- EquityBuild, Inc.
- EquityBuild Finance LLC
- 109 N. Laramie, Inc.
- 400 S. Kilbourn LLC
- 1422 E68 LLC
- 1632 Shirley LLC
- 1700 Juneway LLC
- 2136 W 83RD LLC
- 2537 N McVicker LLC
- 3400 Newkirk, LLC
- 4520-26 S. Drexel LLC - n/k/a SSDF1 4520 S Drexel LLC
- 4528 Michigan LLC
- 4533-37 S. Calumet LLC
- 4611-17 S. Drexel, LLC
- 4750 Indiana LLC – n/k/a 4750 S Indiana, LLC
- 4755 S Saint Lawrence Association Co.
- 5001 S. Drexel LLC (DE)
- 5001 S. Drexel LLC (IL)
- 5411 W Wrightwood LLC
- 5450 S. Indiana LLC
- 5618 S MLK LLC
- 5955 Sacramento, Inc.
- 6001 Sacramento, Inc.
- 6217-27 S. Dorchester LLC
- 6250 S. Mozart, LLC
- 6356 California, Inc.
- 6437 S Kenwood, LLC
- 6951 S Merrill LLC
- 7024 S. Paxton LLC
- 7026 Cornell, Inc.
- 7107-29 S Bennett LLC
- 7109 S. Calumet LLC
- 7201 Constance Inc.
- 7201 S Constance LLC
- 7304 St. Lawrence, Inc.
- 7450 Luella LLC
- 7546 Saginaw, Inc.
- 7546 S. Saginaw LLC

- 7600 S Kingston, LLC
- 7625 East End, Inc.
- 7625-35 S. East End LLC
- 7760 Coles, Inc.
- 7635 East End, Inc.
- 7748 S. Essex LLC
- 7749-59 S. Yates LLC
- 7752 S. Muskegon LLC
- 7823 Essex LLC
- 7922 S Luella LLC
- 7927-49 S Essex LLC
- 7933 S Kingston LLC
- 7945 S Kenwood LLC
- 8000 Justine, Inc.
- 8100 S. Essex LLC
- 8104 S Kingston LLC
- 8153 S Avalon LLC
- 8209 S. Ellis, LLC
- 8214 Ingleside, Inc.
- 8217 Dorchester LLC
- 8311 S Green LLC
- 8432 S Throop Associates
- 8725 S Ada LLC
- 8745 S Sangamon LLC
- 8801 S Bishop LLC
- 8809 S Wood Associates
- 9158 S Dobson LLC
- 11318 S Church St Associates
- Amalgamated Capital Fund II LLC
- Amalgamated Capital Fund III LLC
- Chicago Capital Fund I LLC
- Chicago Capital Fund II LLC
- Chief Management LLC
- EB 6558 S. Vernon LLC
- EB Property Holdings LLC
- EB South Chicago 1, LLC
- EB South Chicago 2, LLC
- EB South Chicago 3 LLC
- EB South Chicago 4 LLC
- EB South Chicago 1 Manager, LLC
- EB South Chicago 2 Manager, LLC
- Eretz Private Capital LLC
- Friendship LLC
- Great Lakes Development Corp LLC

- Hard Money Company, LLC
- Heartland Capital Fund I LLC
- Heartland Capital Fund II, LLC
- Heartland Development Fund I LLC
- Heartland Private Capital, LLC
- Hybrid Capital Fund LLC
- Offsite Asset Management I LLC
- Offsite Asset Management II LLC
- Offsite Asset Management LLC
- Phoenix Capital Finance LLC
- Portfolio Asset Holdings LLC
- Portfolio Mezzanine Lender, LLC
- Rothbard Equity Fund LLC
- South Shore Property Holdings LLC (DE)
- South Shore Property Holdings LLC (WY)
- South Shore Property Holdings I LLC
- South Shore Property Holdings II LLC (DE)
- South Shore Property Holdings II LLC (WY)
- South Shore Property Holdings III LLC
- South Side Development Fund 1 LLC
- South Side Development Fund 2 LLC
- South Side Development Fund 3 LLC
- South Side Development Fund 4 LLC
- South Side Development Fund 5 LLC
- South Side Development Fund 6 LLC
- South Side Development Fund 7 LLC
- South Side Development Fund 8, LLC
- SSDF1 4611 S. Drexel LLC
- SSDF1 6751 S Merrill LLC
- SSDF1 7110 S Cornell LLC
- SSDF1 Holdco 1, LLC
- SSDF1 Holdco 2 LLC
- SSDF1 Holdco 3 LLC
- SSDF1 Holdco 4 LLC
- SSDF2 1139 E 79th LLC
- SSDF2 Holdco 1 LLC
- SSDF2 Holdco 2 LLC
- SSDF2 Holdco 3 LLC
- SSDF3 Holdco 1 LLC
- SSDF3 Holdco 2 LLC
- SSDF4 638 N Avers LLC
- SSDF4 701 S 5th LLC
- SSDF4 6217 S. Dorchester LLC
- SSDF4 6250 S. Mozart LLC

- SSDF4 7024 S Paxton LLC
- SSDF4 7255 S. Euclid LLC
- SSDF4 Holdco 1 LLC
- SSDF4 Holdco 2 LLC
- SSDF4 Holdco 3 LLC
- SSDF4 Holdco 4 LLC
- SSDF4 Holdco 5 LLC
- SSDF4 Holdco 6 LLC
- SSDF5 Holdco 1 LLC
- SSDF5 Portfolio 1 LLC
- SSDF6 6160 S MLK LLC
- SSDF6 6244 S MLK LLC
- SSDF6 Holdco 1 LLC
- SSDF6 Holdco 2 LLC
- SSDF7 2453 E 75TH LLC
- SSDF7 7600 S Kingston LLC
- SSDF7 Holdco 1 LLC
- SSDF7 Holdco 2 LLC
- SSDF7 Holdco 3 LLC
- SSDF7 Holdco 4 LLC
- SSDF7 Marquette Park LLC
- SSDF7 Portfolio 1 LLC
- SSDF8 Holdco 1 LLC
- SSDF8 Portfolio 1 LLC
- SSPH 6951 S Merrill LLC
- SSPH 7927-49 S. Essex LLC
- SSPH 11117 S Longwood LLC
- SSPH Holdco 1 LLC
- SSPH Holdco 2 LLC
- SSPH Portfolio 1 LLC
- SSPH Springer LLC
- Tikkun Holdings, LLC
- Any affiliate entity of EquityBuild Inc., EquityBuild Finance LLC, Jerome Cohen, and/or Shaun Cohen

TRANSCRIBED FROM DIGITAL RECORDING

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. EQUITYBUILD, INC., et al, Defendants.	)	No. 18 C 5587 Chicago, Illinois August 22, 2019 9:59 A.M.

TRANSCRIPT OF PROCEEDINGS - Motion
BEFORE THE HONORABLE YOUNG B. KIM, Magistrate Judge

APPEARANCES:

For the Plaintiff: U.S. SECURITIES & EXCHANGE COMMISSION
175 West Jackson Boulevard, Suite 900
Chicago, Illinois 60604
BY: MR. BENJAMIN J. HANAUER

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

PAMELA S. WARREN, CSR, RPR
Official Court Reporter
219 South Dearborn Street
Room 2342
Chicago, Illinois 60604
(312) 408-5100

NOTE: Please notify of correct speaker identification. FAILURE TO SPEAK DIRECTLY INTO THE MICROPHONE MAKES PORTIONS UNINTELLIGIBLE.

APPEARANCES: Continued

For the FNMC:	FOLEY & LARDNER LLP 321 North Clark Street Suite 2800 Chicago, Illinois 60654 BY: MS. JILL L. NICHOLSON
For UBS:	PLUNKETT COONEY 221 North LaSalle Street Suite 1550 Chicago, Illinois 60601 BY: MS. JAMES M. CROWLEY
For Liberty EBCP, LLC:	JAFFE, RAITT, HEUER & WEISS, P.C. 27777 Franklin Road Southfield, Michigan 48034 BY: MR. JAY L. WELFORD
For BMO Harris:	CHAPMAN AND CUTLER LLP 111 West Monroe Street Chicago, Illinois 60603 BY: MR. JAMES P. SULLIVAN
For Freddie Mac:	CORSI BALLAINE & FORD, P.C. 120 South Broadway 27th Floor New York, New York 10271 BY: MR. MARK S. LANDMAN

(Proceedings held in open court:)

THE CLERK: 18 C 5587, United States Securities and Exchange Commission versus Equitybuild, Inc., et al.

MR. HANAUER: Good morning, your Honor. Ben Hanauer for the SEC.

MR. RACHLIS: Good morning, your Honor. Michael Rachlis on behalf of the --

THE COURT: I'm sorry.

MR. RACHLIS: -- receivership.

THE COURT: Hold on a second.

MR. RACHLIS: Okay.

THE COURT: Rather than having everyone stand up in front of me, why don't you all take a seat. And if you need to address the Court, please raise your hand. I will recognize you and allow you an opportunity to talk.

Sounds god?

MR. RACHLIS: Thank you.

MR. HANAUER: Sounds goods, your Honor.

THE COURT: All right. So, I'm sorry, we have Mr. Hanauer, Mr. Rachlis.

MR. RACHLIS: Right.

With me is Kevin Duff, the receiver --

MR. DUFF: Good morning, your Honor.

MR. RACHLIS: -- and on her way is our -- one of our co-counsel Nicole Mirjanich.

THE COURT: Okay.

MR. HANAUER: And was the Court's guidance there for just the lenders or both parties?

THE COURT: Mr. Hanauer and Mr. Duff, if you wish to take a seat, go ahead. I do have some questions for Mr. Rachlis to begin.

We did set the status hearing to follow up on the claims process and to see what the receiver has been able to identify in terms of disputed and undisputed claims for benefits.

So let's start -- and I'm really focusing in on the second status report.

Let's see.

(Brief interruption.)

THE COURT: My first question is, there are 115 properties. And through the claims process, the receiver has been able to identify approximately 934 potential claimants. And there may be more --

MR. RACHLIS: There are -- yeah, that's right, your Honor.

THE COURT: -- but something under a thousand.

But according to the status report, there are 2000 -- more than 2000 claims.

MR. RACHLIS: Yes.

THE COURT: Is there an inconsistency there or --

MR. RACHLIS: No.

THE COURT: -- or am I missing something?

MR. RACHLIS: No, it -- you could have one claimant making multiple claims. You can have, for example, a claimant that has an IRA or something to that effect, and then submits a claim on behalf of the -- you know, their status as a, you know, trustee of an IRA or another type of corporate or shell entity, if you will.

So you can have -- the bottom line you can have multiple claims from an individual claimant.

THE COURT: Got it.

Tell me, on page 5 of the second status report, you say here there are 71 properties in the receivership estate for which claims have been submitted that are the subject of cross collateralization.

Can you explain to me what that means?

MR. RACHLIS: Yes. So there are certain, particularly in the institutional lenders, who had made loans to Equitybuild or refinanced loans at certain times where the loans were collateralized not by one property but by several properties. And so the 71 references the total number of properties that are subject to cross collateralized claims.

THE COURT: On page 7 you say that there are two properties where the only secured claim asserted against the properties were by institutional lenders.

Does that mean that there are unsecured claims against these two properties?

MR. RACHLIS: Yeah, it only means -- the report really focused on secured claims for purposes of trying to comply with the Court's order. There are unsecured claims that we haven't even, you know, attempted to sort of marshal at this point in time.

THE COURT: And if it is your conclusion that the claim -- the other claims are unsecured, does that mean that secured claims have priority over the unsecured claims?

MR. RACHLIS: Well, there is an issue here. The one issue -- and even on these two properties, which we allude to in the next sentence that follows where your Honor was reading dealing with the questions of the validity of the security interest. And that deals with the questions on the deepening insolvency that have been raised before. If there are -- if that ultimately comes to -- comes out to be proven, then those claims could lose their status as secured and become unsecured.

THE COURT: So if the secured claims are in fact valid.

MR. RACHLIS: If they are in fact found valid, then there would be no priority -- right, there is no priority dispute at this point.

THE COURT: And who are the -- who filed the two secured claims?

MR. RACHLIS: Those are both, I believe --

THE COURT: I'm sorry, I shouldn't -- I'm sorry. I didn't mean to say two claims. But looks like maybe only one claim for two properties.

MR. RACHLIS: No, I'm not sure that that's -- I'm not prepared to address that directly. But I do believe that those are Freddie Mac or fanny May related claimants. I'm sure that will be affirmed by lenders in court here.

THE COURT: So on page 8 there is a reference here that as to 13 properties, only EBF affiliate debt was asserted against each property.

So what does that mean? What's the significance of that?

MR. RACHLIS: That means that there is no -- that there is not a competing secured claim. In other words, there is not a competing institutional lender that is seeking the same property for purposes of satisfying a loan or some type of instrument that they may hold.

THE COURT: And as to these 13 properties, so we do have claims from investors.

MR. RACHLIS: Yes.

THE COURT: And these 13 properties are ready to be sold or where are they in this stage of the liquidation?

MR. RACHLIS: You know, let's see -- you know, if you give me -- your Honor gives me a chance to speak with the

receiver on that, I might be able to follow up with you in regards to that issue. I don't know -- recall if any of those 13 are currently part of the 17 that are being advertised right now or not, but I can -- we can huddle up and look in our notes and provide your Honor with an answer to that.

(Discussion off the record.)

THE COURT: So are you still -- on page 9 I think there is some reference to claims still being submitted.

MR. RACHLIS: Yes, your Honor.

THE COURT: And what is the deadline currently?

MR. RACHLIS: Well, there are a few issues associated with that. In fact, you know, we were talking this morning. We are in the process of obviously through the claim -- through the review of the claims, there are issues that do arise with respect to just sort -- what appear to be called plain errors, you know, just in terms of numbers and things like that. We need to follow up with those investors to ensure that those are taken care of.

There is at least one individual we know right now that didn't receive notice because we didn't have their name available. We now know it, and they got notice, I believe, yesterday.

There are an another 10, I believe, claimants that have extensions that are outstanding because of exigencies that they were dealing with.

We are also in the process of looking through all information that we have to ensure that anyone who needs notice will be getting that.

So there is an all-out effort at a minimum to try and have at least that completed, we hope, by the beginning of October in terms os -- because as your Honor knows there is a 40-day window -- once they have that, if there are others that are going to need to get noticed, I'll need the 40 days. But the hope is is that, one, they are not a large number; and, two, that that will be completed soon.

I mean, obviously this is -- you know, we know the bar date has passed. But exigencies from individuals that have contacted us, realizations of names that may have been missed, and other issues certainly as a matter of equity and fairness the effort is being made to make sure that all claimants are getting those.

THE COURT: But I guess the comment I can make about that is that we do need some closure. We can't just keep shifting the deadline based on exigent circumstances.

MR. RACHLIS: Well your Honor is -- I mean, look, we know that the July 1 date, you know, is present. And that's certainly a date that we all have in mind. But I don't believe, based on the information that we currently have, that the numbers that we're talking about are large. But there is a balance that needs to be struck.

So far, you know, I'm aware of the 11. But -- you know, that I have identified. But we are still wanting to look through and make sure not -- for the interest of all parties here, I mean, this is important because -- for purposes of the sales that are ultimately going to be approved for distributions that will occur. Everybody will want finality. Everyone will want to know that all parties who may have had a claim had notice of that claim and had their rights adjudicated to comply with due -- to comport with due process requirements and otherwise. So there is a balance to be struck.

And we're well aware that the July date is there, and we are working hard to try and have that accomplished. I think that part of our recommendation at the end of our report was to come back at the beginning of October and let your Honor know that that process has been completed in terms of having those individuals identified, served with notice, and that those who are currently dealing with those exigencies and -- you know, are kind of in process, that those processes have been completed.

THE COURT: So now I want to ask a question regarding page 12. Essentially on page 12 the receiver says that he needs essentially additional time to go through the material that claimants have submitted. Are you in any way prioritizing or grouping these claims? Can you share with me how you are doing so?

MR. RACHLIS: Yes, we are making that effort. There is -- it is parallel tracks. But the effort -- clearly your Honor sees here that there are certain buckets or certain categories where there may not be as many or any priority type of -- potential priority disputes. Right? I mean, we said the 13 EBF properties, for example, appear not to have any other secured claims filed against them.

So where there are limited numbers of claims or no claims that have been, you know, asserted against that property, we are certainly trying to prioritize those. That is at least, you know, one effort here. And we thought that that certainly was consistent with what your Honor's direction was from your prior order on May 1st.

THE COURT: Correct. But we don't have a list of, you know, undisputed and contested claims yet.

MR. RACHLIS: Well, I -- that is complete. It is preliminary, right. Your Honor, that's fair to say.

We do need to look at the actual information that's been submitted in order to be able to give that information to your Honor. This is preliminary. But when you look at the effort on Exhibit 1 that's attached thereto, you can see at least on a preliminary basis where there have been multiple claims filed against the properties and where there haven't been, in this terms of these -- you know, as it is classified as secured.

The other issue that needs to be looked at for purposes of determining this, is whether or not those that are claiming secured interests are actually secured versus equity -- versus an unsecured type of claim, an equity investment. And that will also help us in terms of narrowing the scope of properties that can be, you know, kind of bumped up if you will for purposes of disposition or claims that -- dealing with them for disposition.

THE COURT: Okay. Those are the questions that I had.

You know, one of the other things that we need to address today -- at least my plan was to discuss discovery schedule. But I take it your position is that without having a completed list of disputed and undisputed claims, it is premature to have any kind of discovery.

MR. RACHLIS: It is not only premature, it is -- it would be cost ineffective. Because the hope would be, certainly for from the receivership perspective, if we can narrow, you know, with all fairness to all the claimants, if we can ultimately narrow the areas and properties that had disputes, there may not be a need for any discovery on those. And so it would be premature and cost inefficient to go through that process until we have a better -- sort of have narrowed -- gone through the funnel, if you will, and let out those claims that would be -- that don't need any discovery at this point. And it would be sort of unfair really to all of

the investors here for us not to be able to do that.

THE COURT: Okay. I'm going to allow the others to address the Court if they wish. Who would like to go first?

Mr. Welford.

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

Your Honor, we certainly appreciate what the receiver has in front of him. But we believe -- at least Liberty believes that there are three steps that could be taken now that would help accelerate this process.

The first is is that we would like the receiver to put together a list on a property-by-property basis of those claimants, either investor claimants, construction lien claimants, unsecured claimants, institutional lenders that are asserting rights against a given property. So that we know as to Property A we have these 11 or three or however many it is competing claims. So we would like that list assembled with names.

And then we would like access to the claims portal so that we could access the claims that had been filed on our given properties. That would be made available to all the creditors claiming an interest in each of the 115 properties.

THE COURT: So are you suggesting that the receiver should basically amend Exhibit 1 to the second status report with names of claimants?

MR. WELFORD: Correct.

THE COURT: Okay.

MR. WELFORD: And then Number 2 provide us -- we're not asking that the receiver assemble the documents -- provide us access to the claims portal so that we can go find Joe Smith's claim against a given property. And then it can be evaluated by the other competing lenders on that property. That's number one.

What this will allow us to do, your Honor, is to begin to understand what we're looking at. It could very well be that, for example, Liberty has a million dollar property, and there is one investor creditor 20,000. If that's what we're looking at, that may resolve differently than 20 investor creditors adverse to Liberty seeking $2 million.

So having that information is going to be beneficial to defining the scope of the dispute and the dollars involved on a given property. That's number one.

And so, your Honor, just as heads-up, behind all of the lenders are title companies. And at some point the title companies are going to be coming in and defending the challenges to the priority of the institutional lender claims, if challenges are made.

So as much as you love to see us every day, you're probably going to see an additional set of faces on behalf of the title companies. And this information the title companies

certainly want to have so that they understand what they're facing, and that will get them up to speed in their ability to start to digest this information and participate in a potential resolution of the competing claims on a given property.

So that's our first request. We don't think it is a large burden on the receivership estate. We think it will certainly streamline the process, and so that's request number one.

Request number two is we want the receiver to report to us on which OF these properties the receiver believes that the receivership estate has equity. And what DO I mean by that? The receiver has a pretty good idea of what the value of the properties are give or take. We have certain properties that have sold. We have certain properties that are -- are subject to a sale process now. We're in the credit bid arena.

We have other properties that have not yet sold but are -- have listing prices. And we believe that the receiver has done its homework with respect to proposed sale prices and given properties. The receiver knows that they are going for so much per square foot or they are going through so much per unit, and I think that there is a range of value that can be assigned to each property.

Once you assign a value to given property, you can then overlay on that property the claims that are of record. And if you look at the claims of record and determine that

there is nothing in it for the receivership estate, then those disputes really are not receiver versus the world, those are Investor A against Investor B. And it becomes a zero sum gain for purposes of the receivership estate because they will never see a dime out of that priority dispute.

All of the institutional lenders have recorded mortgages. We all gave consideration. I don't think that's subject to dispute.

What's subject to dispute is that discharges may have been improperly -- the allegation is im- -- discharges by equity investor finance participants may not have been properly -- they didn't properly participate in authorizing the discharge of the underlying mortgage.

So what do you end up with? You end up with a Liberty claim, and you end up with a series of investor claims. Either Liberty wins or the investor wins as far as priority. But the Liberty claim does not vanish into thin air. It doesn't become unsecure, you just have two competing sets of creditors going after a limited pool of dollars.

And so we believe that it would be very helpful for your Honor and for us to be able to categorize these properties and say, the receiver is in the money on these, the receiver is out of the money on these. And if there is nothing in it for the receivership estate, then the receiver shouldn't have to spend another minute on that particular set of claims because

no upside.

THE COURT: Well, what happens to the competing claims?

MR. WELFORD: So then we come before your Honor, and there are a variety of mechanisms to deal with resolving the two-party dispute. If the receiver is no longer a party to the dispute, nothing can ever enter the receivership estate, then we could lift the stay and litigate in the state court as between the claimants. We could bring declaratory judgment actions before your Honor and bring to resolution who has priority on each of those properties.

Or there may be an even more creative method. In the bankruptcy context priority disputes are dealt with in what are called adversary proceedings within the umbrella of the bankruptcy case. And they are nothing more than declaratory judgment actions to determine priority between Creditor A and Creditor B.

So -- and if you step back, your Honor, what bankruptcy trustees do is they look at the pool of assets and they say who is secured and who is not. And then they look at how much does the secured creditor owe. And is there any equity, if I continue to administer this particular asset and spend estate dollars on that process?

And those that they are out of the money on, the stay is lifted, the lenders take their property back. If there are

competing lenders, they go have their day in another court. Or if the property has been liquidated through the bankruptcy court already, with liens transferred to proceeds, then maybe the bankruptcy court will continue to administer that dispute, although really it is not for the benefit of the bankruptcy estate any longer.

THE COURT: But isn't there a possibility that the -- if some of the competing claims are submitted by individual investors, that they are not in a position to actually have any legal representation in that type of scenario. That's a possibility, right?

MR. WELFORD: That's a possibility, and that's my third point to your Honor. That's one of the underlying themes of this whole case is that we have this group of potential investors who claim that they invested in a manner where their mortgages were improperly discharged. And we have different investors, like Liberty, who invested a different way, who claimed to have priority.

Now the question is who has standing to litigate the claims of the inventor creditors? I would submit to your Honor that we have to bring to resolution that issue of standing if it in fact is the receiver's position that the receiver is the one who has standing to litigate an individual creditor's priority vis-a-vis another individual creditor.

That never happens in a bankruptcy setting, your

Honor. The reason it never happens in a bankruptcy setting or in a receivership setting is that the receiver is a fiduciary to all creditors. The receiver is an officer of the court. The receiver can't take a position, Liberty's position, adverse to an investor creditor. It cannot walk into court and say, I believe that I am here today and I am representing this construction lien claimant, and I think their claim is superior to that of Liberty.

The receiver can make a determination as to whether it is secure. But if there are two competing claims as to security, that's not within the purview of the receiver into (unintelligible).

Let's take a situation where there is equity in a property. The property is worth a million dollars. Liberty has got a $500,000 mortgage. There are competing lien claimants with another hundred investors. There is 400,000 of equity. What would the receiver be doing normally? The receiver would come to court and advocate on behalf of the receiver that the receivership estate should get that 400,000.

And then what the receiver is going to do is the receiver is going to say, and, by the way, I believe Liberty, you have too much default interest. And I believe Investor Number 2, who is making a claim, you actually in fact got some of the proceeds that Liberty advanced, and so you're not entitled to a claim of that magnitude. Your claim is smaller.

And so there is an inherent conflict with having the receiver take the position of one individual creditor over another. They do not get engaged in priority disputes among creditors. It is only do I as the estate have a priority over you other people. If I do, the receiver should be all in and fighting Liberty, fighting the investors, and that's how it goes.

THE COURT: But if the receiver has a fiduciary obligation to all of the creditors and those who have submitted claims, I take it then the receiver should be able to identify bad claims that should not be paid out, right, for the benefit of all others?

MR. WELFORD: What the receiver identifies is priority, whether it is secured or unsecured, and how much the claim is. That's what the receiver does to determine if there is equity in the estate under any scenario.

If there is no equity under any possible scenario, I think Liberty's claim -- I knock out all the default interests. I knock out all the attorneys's fees. And I look at the investor claims. And none of them are paid out of Liberty's advance. I add the two numbers up. There is no money. There is no equity in the property. Why would the receiver spend five minutes litigating on behalf of one class of creditors? Where is the money going to come from to do that?

The other trade creditor, the construction lien

creditor, Liberty, is going say, maybe I'm under secured on a property all of a sudden. Liberty has a -- we lose. We have a $9 million unsecured claim. Are we to pay the costs of the receiver to litigate on behalf of an individual creditor's claim against a Bank of America mortgage? No. We want that -- those dollars to stay in the estate so they flow to our benefit.

THE COURT: So let me get this -- from your perspective, the receiver does have the obligation to identify whether a claim is secured or unsecured.

MR. WELFORD: Clearly.

THE COURT: And then that would mean that the receiver then has an obligation to determine whether someone's alleged secure claim is valid.

MR. WELFORD: Correct.

THE COURT: Okay.

MR. WELFORD: And if -- I will tell you in a normal bankruptcy case what a -- what a trustee would do is it would be in the trustees's best interest to say, Liberty, you have a recorded mortgage under the laws of the United States. Investor creditors, you do not have a mortgage against the property. Therefore, your Honor, there is equity in that property, and I want that equity. Actually the receiver would be adverse to the investor creditors with the unrecorded mortgage because their duty is not to represent those investor

creditors with the unrecorded mortgage.

There are a multitude of reasons why their mortgage is no longer of record. We have no idea what their diligence was. We have no idea how much money they received. And so logic dictates the receiver's job is to figure out is there equity. And actually his role should be adverse to every unrecorded mortgage holder if you follow this to the logical conclusion. And to reverse it on -- on its head and say not only is the receiver not supposed to do that, but he's supposed to become the champion of an individual creditor against another turns it upside down.

THE COURT: Thank you.

MR. WELFORD: So if we have a standing issue, your Honor, because it will be an issue in every -- however we get to a resolution of priority dispute, the first question is going to be when the receiver walks in, if he does, and says I'm here on behalf of not the receiver, but I'm here on behalf of Joe Smith, investor, under Claim Number 12, there is going to be an objection as to standing, and then your Honor is going to have to determine it.

So I think that we have a preliminary overriding issue that this Court has to determine, and that is does the receiver have standing to act on behalf of an individual creditor. And the way we get to that funnel and we get to that conclusion is to look at the claims against each property, the second step,

what's the equity in each of those properties, and then we ask ourselves who is to be prosecuting that.

I'm sympathetic to the fact that the individual investors at this moment are unrepresented. The individual investors have the ability to go get a lawyer on a collective basis and have that lawyer represent their interests on a collective basis or on an individual basis. But the receiver does not become the policeman of every creditor whose claim is subject to a dispute. Construction lien claimants may have an issue with their claims.

Thank you.

THE COURT: Thank you.

Anyone else? Among the lenders.

Yes.

MS. NICHOLSON: Your Honor, Jill Nicholson on behalf of a series of lenders, Citibank, U.S. Bank, Wilmington Trust who are trustees for the securitized holders as well as Fannie Mae.

Just a couple of things. I would absolutely echo what Mr. Welford said. I have been an SEC receiver. And he's absolutely right, we don't administer assets that don't have equity in them for the benefit of the estate because you're spending administrative expenses purely for the fact that there will be no recovery for anybody who is unsecured.

Further, the receiver is, as echoed by Mr. Welford,

not an employee of the SEC as the SEC's own guidelines provide but as an independent fiduciary and doesn't have the legal standing to go ahead -- and I'm not going to reiterate because you have heard very eloquently. But that has been my position as well as an SEC receiver. So I understand full well, and that is that in fact exactly true.

Let's talk about a couple things. One question you asked, which I believe is spot on, your Honor, was what efforts are being made to prioritize disputes regarding claims? And my colleague Andrew McClain was in front of you a couple weeks ago -- and this is regarding the 5001 South Drexel property, where that property has already been sold. The Court has -- the receiver is sitting on funds, and those funds have not been turned over.

You, your Honor, instructed the receiver to provide us with copies of those competing claims. We reached out to the receiver and said, when can we get those from you? Just simply to figure out that we don't think there are competing claims. And we were told the receiver was not in a position to share that with you.

Now your Honor expressly said, share those claims on this property. That property has long been sold. We have yet to see that information. And I don't know when, and I'm just asking the Court, if it would set a deadline by which we could get that information because we have asked and we have not

received that.

The Court also raised a second question, which related to page 7 and the two properties that Mr. Rachlis was referring to where there were no institutions -- there only claims by institutional investors. Those -- that particular client is my client, and I have those two properties.

I have asked for information regarding claims because it appears that there are no secured claims. I was told, well -- I said, this will help us in terms of credit bidding. Are you not disputing our priority? And said -- because we need to know. It seems clear from the face of the receiver report that there is no other secured mortgages on this property. And I said, are you taking -- we're going to take the position we're secured. I received a response from the receiver saying you have misread that. And I responded, well, what part of it have I misread for purposes of credit bidding? I received no response.

Today for the first time I hear some theory about -- I'm not even sure what it is -- a depending insolvency. I have no idea.

All I want to know for those two properties is what's the receiver's position. Are there competing mortgages or they are not? Just very simple. And that will inform our credit bidding strategy.

I think that's really all I have to address, your

Honor, at this point.

THE COURT: Can I go back to the first point you were raising that I ordered the disclosure of competing claims with respect to 5001 Drexel.

MS. NICHOLSON: South Drexel.

THE COURT: South Drexel?

I -- I don't remember doing it. I don't know whether it was in court because I usually if I --

MS. NICHOLSON: It was in court, your Honor.

THE COURT: If I ordered it, I usually put it in writing --

MS. NICHOLSON: You were --

THE COURT: -- with a follow-up minute order.

And it is also in there as well?

MS. NICHOLSON: I'm happy to -- I don't believe it is, but I'll double check. I know we can order the transcript. And you requested that the receiver share that information with us.

THE COURT: It was certainly (unintelligible) you know, submitted -- a simple motion just letting me know exactly what happened --

MS. NICHOLSON: Sure.

THE COURT: -- and whether that's been complied with so that we have a record of it.

MS. NICHOLSON: Happy to do that, your Honor.

THE COURT: But your second point is really being addressed by step two that Mr. Welford is proposing, right?

Oh, no, I'm sorry. Is step one that Mr. Welford is proposing --

MS. NICHOLSON: Yes.

THE COURT: -- that we have a more robust Exhibit 1.

MS. NICHOLSON: That's exactly right, your Honor.

THE COURT: Thank you.

Anyone else?

MR. CROWLEY: Your Honor?

THE COURT: Mr. Crowley?

MR. CROWLEY: Yes, your Honor.

THE COURT: It is a bad sign when I start noticing your last names. But go ahead.

(Laughter.)

MR. CROWLEY: Thank you, your Honor.

Again we agree with what Mr. Welford laid out as a -- the issues here and the issues that need to be addressed.

I do want to address two -- one point that the Court made, which was the question of whether the receiver could determine that a claim wasn't a valid claim. That's exactly what the receiver -- that's really what the receiver's limited role should be here. The receiver should be looking at these claims and making a determination or recommend -- strike that -- a recommendation that these claims are not valid claims

and the receiver contest them.

The receiver should make a recommendation that these claims are valid claims and either are secured or not secured. The receiver should make a recommendation that these claims are valid claims and assert security against properties.

If the receiver makes a determination that a claim is not valid, then that party will have a right to come in and contest that before you, your Honor. That's who should be making the determination on whether a claim is valid or not valid.

You're the party that makes -- should be making a determination of whether a claim is secured or not secured -- or a priority lien or not a priority lien or a secured lien or not a secured lien.

All the receiver should be doing is making recommendations that the parties can review. And then if they oppose that recommendation, they should be -- have a right to come in and address those issues with the Court because the Court is the ultimate party to make the decision, not the receiver in this case.

And so we just want to be clear that the process will go that way. And that's the way it was, I think, laid out earlier on, that if there is a contested claim, all the receiver is going to do is say this is a contested claim, and the Court will make that decision.

Secondly, your Honor, you make -- raise the issue of standing. I don't think it is going to be that complicated. At least with respect to the mortgages that assert that -- are recorded against the UBS properties for investors, those mortgages identify specifically who the mortgagees are in addition -- so -- so they will be named in any kind of action to determine priority. So those parties will have then the right to come in and defend their claim, whatever it might be. And they have the right. They can come in pro se. They can retain counsel. So there is not going to be this much of an issue on standing.

Although we do agree with Mr. Welford and Ms. Nicholson, it shouldn't be the receiver making that argument, or the SEC in fact, it should be the individual claimants. And that really needs to be accepted by the -- you know, by all parties here going forward because otherwise -- because the receiver clearly, as Mr. Welford said, would be conflicted out. He's got a fiduciary duty to all parties, all parties asserting a claim against Equitybuild and therefore cannot take the position of one claimant over another.

That's all I say.

THE COURT: Thank you.

MR. CROWLEY: Now, your Honor, I will circle back on one other item with respect to the order you entered a couple

of days ago. But let's do that at the end.

MR. LANDMAN: Your Honor, Mark Landman on behalf of Freddie Mac.

Just very briefly, we're here today because the Court had previously said that discovery schedule would be ordered at this hearing with regard to -- now that they have the proof of claims. I think what Mr. Welford has proposed is extremely reasonable, not a burden on the receiver whatsoever. They already prepared Exhibit A, so they know the names of the individual investors that are making claims against the properties that we have -- that we have security interest in. And all we're asking for is those names and then access to the proof of claims through the portal. That's no administrative burden at all.

They have known about this issue about priority, competing priorities, since last fall because as you recall, your Honor, when we filed our motion, Freddie Mac didn't get the rents that were being taken from our property inappropriately and commingled with us to support other properties, that their opposition was that we couldn't show that we have a priority because there were competing claims. So they have known about this for nearly a year. And there is no reason that there shouldn't be discovery with regard to what those competing claims are.

We have given them a tremendous amount of information,

every institutional lender, because the proof of claim process was very burdensome. And we provided all the data we have, all the information. In fact, Freddie Mac provided it shortly after the receivership order was issued almost a year ago when we turned over all our information.

Discovery in this case has all been one way. That's simply unfair. And today is the time to turn that around, and we should get access to that information.

Thank you.

THE COURT: Thank you. Okay.

I will -- Mr. Hanauer had his hand up, so I will give you that opportunity to address the Court.

But I want to say I -- let's just step back. The reason why I am still dealing with this issue is because I -- I was the one who ruled on the motion for the claims process and -- in terms of dealing with discovery schedule. I don't have any authority to rule on any standing. So let's just put it out there. So if you are going to be talking about standing, save your time.

MR. HANAUER: I won't be, your Honor.

THE COURT: Go ahead.

MR. HANAUER: So speaking of taking a step back, I think that actually really is appropriate here. Who are the interested parties? In this room we have large financial institutions that are very well funded and have employed very

capable sophisticated counsel. Who we don't have in the room are the hundreds of investors who were defrauded by the Cohens. And what we know about these investors, at least for a large group of them, is they did have mortgages on the property, properties that the lenders claim an interest, those mortgages were actually filed with the Cook County Recorder, and those investors never authorized the release of their mortgage. And they were never paid when the lenders came in and gave money to the Cohens in the course of refinancing.

So where are those lenders in -- or those investors and who are they? On any given property you have five, ten, 20, 30 investors on those properties who may have invested as little as five, ten, 15,000 dollars, to a point of where investor is not going to run off and get a lawyer right now. It is just -- it is not cost effective.

Those investors also have no idea that any of this is going on right now, except for they have submitted -- they know they have had an opportunity to submit claims, and they have -- know that the judicial process is allowing those claims to be reviewed. Those are the investors.

Third party is the receiver. The receiver, contrary to what the lenders are claiming, he's not an advocate for any one party, for investors for lenders, he's an agent of the court, a fiduciary of the court, a fiduciary of the credit pool -- creditors as a whole.

And the way that this claims process -- the way this claims process was designed and contemplated and ultimately approved by both you and Judge Lee was that the receiver would compile all this information and then make an initial recommendation to the Court as to priority that -- and that recommendation would then be distributed, be noticed to all the affected parties so -- including, including the investors.

I don't think the receiver's job is to advocate for any one particular party. But as an agent of the court, the receiver does have a quasi adjudicatory function in this claims process, at least to review the information and make a recommendation based on his best judgment.

And then at that point the -- all the investors will have an opportunity to be heard. And who knows, for some of these properties, the receiver may, as an initial judgment, say, you know what, the lenders have priority. They have the secured interest. There is no reason that investors should move before them. And that is a very reasonable outcome, at least for certain of these properties where -- at least based on what we know. But we don't have all of the information yet.

So let's talk about what the lenders want to do right now. They want to jump into expensive and time-consuming discovery. They want to jump in --

THE COURT: Well, let me stop you and push back a little bit. They are not asking to engage in formal discovery.

They are simply asking access to the claims portal so that once the -- once Exhibit 1, attached to status report -- the second status report is more robust, where we have identity of the claimants for each property, whoever wishes to can then access the portal to figure out who these folks are, what documents they have submitted. So essentially the receiver is simply providing or actually just making information available which doesn't cost the receiver any money.

MR. HANAUER: Well, that ask is something different. Right? But what I am hearing, not just from Liberty, but from the lenders as a whole, and certainly as part of the lenders's, you know, initial motion was they did want discovery. They do want the Court to set a discovery schedule. And the problem with it -- so they want that. That's expensive in the first instance.

As the Court very well knows from refereeing discovery disputes, there are a million different ways that a party can say they are aggrieved to try to get in front of the Court. And that's going to cost money, and that's going to burden the receivership.

It would also be, if we do it now before the receiver makes his initial determination and gives that determination to all the investors, it will be -- any discovery the Court orders is going to be one sided discovery in which the investors can't meaningfully participate.

On the other side of the ledger, at the same time, is the creditor -- the lenders are asking for expensive discovery, are asking for expensive time-consuming lien priority process. They are objecting to the receiver selling properties. They are objecting to the receiver bringing money into the receivership. They are rejecting the receiver's fee applications. They are trying to prevent the receiver from getting paid and from growing the receivership at the exact same time that they are advocating for a process that will only cost the receiver more time and money.

And I think the last time we were here, the Court was -- say, well, I don't think there is any reason behind that other than they are looking out for their interest. But we actually just heard what the creditors ultimately want. They want the receiver to go away. They want him to abandon the properties. They want the properties to be funneled into the state court foreclosure process where you would then have well heeled, hell financed institutional lenders, with sophisticated counsel, going up against hundreds of investors who may have such a small fractional interest in a property that they can't afford to hire a lawyer to defend against that.

And the lenders actually raised this issue with Judge Lee the last time they were in front of them, and he quickly realized the problem with that. He said, no, we're going to keep everything in the process that we have.

And that's what the claims process contemplates, let all the information come in, let the receiver make that initial determination. And at that point, that's when the investors, frankly, are going to have to get involved because at some point they are going to have to advocate for their interest. But right now no one is representing them.

My job is to protect investors. But I'm a securities fraud prosecutor. I don't engage in commercial disputes. And I cannot represent the investors. The receiver can't either.

So what I am saying is we should not be jumping into a process that is going to cost the receiver more time and more money at the same time as the lenders are preventing the receiver from either bringing more money into the receivership or getting paid.

So, again, I'll just continue with my refrain, let the claims process run its course the way that the receiver presented it to both your Honor to Judge Lee and both courts have allowed that to go forward and -- said it should could go forward, and we submit it should continue to go forward.

THE COURT: Thank you.

MR. HANAUER: Thank you.

THE COURT: Mr. Rachlis.

I would like for you to simply address the first two points raised by Mr. Welford and echoed by others. The first point was Mr. Welford would like for me to enter an order

requiring the receiver to amend Exhibit 1 to include not only whether certain claims have been filed, but the identity of the claimants, as well as the value of the properties that are still in the portfolio. So 115 properties. So that one could look at the exhibit and figure out which properties are under water and which properties are not. At least in the context of the receivership.

MR. RACHLIS: In response to that, in terms of identifying names, we have obviously thought about this issue before, and in other receiverships because we too have handled other receiverships as well. And many claimants do not want their names out there. Many claimants have confidentiality concerns, whether they be based on their embarrassment, whatever it may be. If they make a determination ultimately to appear, as everyone has indicated, the issue of standing will come later. But issues on the claims, on the actual claims and what they have submitted, is not something. And so whether you start with the names or whether they're -- this idea of the production of them is not anything that we have experienced before, and the request for those names is unnecessary.

You could identify them by numbers. I mean, that would -- you know, that's done. The numbers, 1043 or 1044. If they choose later to appear and, you know, could deal with other rulings that your Honor may make, that may be one thing. But identifying a list right now that has all those names and

not like, just even, like, number one, number two, number three is unnecessary. There is no reason to have that.

And there is -- but there is a supplemental reason to that, and that goes to perhaps the valuation and perhaps the production of the claims. The valuation issue that your Honor has referenced came up before Judge Lee as well. And at that time the argument was made to him that talking about these types of things in this context and identifying values is an issue when we're trying to sell the properties. And it affects the market. People will be reviewing those. And that's why they haven't been part of prior submissions, and they shouldn't be part of them now.

We're in the middle of trying to sell the portfolio of those properties. And when you start putting publicly stated valuations on those, without having control over them, that's all a part of the sales process that your Honor is very well familiar with, and an issue that it was absolutely discussed at the same hearing where the abandonment issue was discussed and rejected. These are recycled arguments in many different respects and should not be, you know, now with an opportunity to raise them again, be treated any differently as they have been treated before.

With regards to submitting and just giving access to the claims portal, the problem, of course, with that is then the Court will not have one receiver in front of it whose

duties are as articulated, but you'll have eight receivers, 12 receivers, 15 receivers going ahead and making their own determinations and coming to the Court and hyper critically analyzing, if they haven't done already, every move, every statement that's set forth in there. And who will end up paying for that? That will be the receivership estate. That's the expense that Mr. Hanauer is talking about.

The expense of providing all of those claims and all of that issue and all of those -- particularly now when the process is not complete -- is that every bill that will be provided will be loaded, overloaded with time and expense over jobs that aren't theirs.

The job of evaluating those claims belongs to the receiver. They are talking about what's the receiver's job, what's not the receiver's job. It is the receiver's job to evaluate those claims. It is the receiver's job to come in with recommendations to the Court on various issues. It is not their job. And that will come at a huge expense. That's where the huge expense, if it is not already visible given the length of the docket, given every motion, every item that's filed, that will -- that will just bury, bury the receivership and bury the Court.

One other issue related to that. 5001 Drexel, I have no memory whatsoever, your Honor, that your Honor ordered the receivership to distribute claims to any party. That's exactly

what we're talking about now in terms of they want access to the portal. So there has not been non-compliance. There has not been an order that has identified it. Whether it was discussed as something that they had wanted to that effect, we are -- there is no order that has -- that that has transpired. And were that to be the case, we'd be having the discussion we're having right now; namely, that submitting those claims for them to evaluate is not neither proper in terms of time and nor is it their role in that respect. So --

THE COURT: Let me ask you, with respect to their claims submitted by investors and creditors, they must have placed the value of their claim, right?

MR. RACHLIS: Oh, it -- we have the values of the claims. And my colleagues can correct me if I am wrong, there -- I believe that the total value is 235 million, total. I don't have a spreadsheet, your Honor, to break it down per property. But it is $235 million.

THE COURT: So let me ask you, is it possible for Exhibit 1 to include not only the number of claims filed for each property, but the value of the claims filed for each property?

Yes, Mr. Duff.

MR. RACHLIS: I'm going to defer perhaps on that question.

MR. DUFF: Your Honor, may I address that?

THE COURT: Yes.

MR. DUFF: And just for context and clarification, the $235 million number, there are some duplication to some of the claims that have been submitted. And one of the efforts that we're currently undertaking and actively undertaking is to make sure we know exactly what the amount is as to all the claims. That's in the status report. The second status report we put, if you look at the end of the report, the things that we said we would expect to have any position to report to the Court by early October. It would be so that we would actually know who the claimants are and exactly what the amount of that claim is.

But until we get through the effort of deduplication of some of the claims. Because some folks submitted through the same claims portal. Some gave us a hard copy submission. Some submitted and identified themselves as a secured investor, and at the same time submitted a second claim as an unsecured investor. Some folks, as Mr. Rachlis previously said, you know, individual capacity, (unintelligible) capacity. So there is a lot of this type of analysis that we're actively involved in to make sure that we can get to that number.

But right now, today, we are not there. And that's why we need time to make sure that we get through all the claims. Some of the claims -- as I say we have over 150 submissions that did not come through the portal. So we need to get through those.

And to be clear, many of those, we have binders an binders for one claim. Sometimes we have as many as 1500 pages that we need to get through. And the continuity that one would expect, as though if it was put through the portal, it automatically populates a number into a place in the spreadsheet so we could see that list, that's not the way it works. And so we need to make sure that we got those numbers right.

We have identified just as recently as this week, yesterday or the day before, one claimant had put an error, a clear error, in the amount that they were claiming. Literally to a magnitude of probably, you know, 10,000 times more than they intended to. But we had -- we would have gone back to that claimant to ask them to correct the error. So we need to do those types of administrative tasks so that we can be in a position to report to your Honor who the claimants are and what the amounts are.

THE COURT: Thank you. Did the receiver make any representation to the folks who are submitting claims of confidentiality?

MR. RACHLIS: You know, I would have to ask on the portal side.

Is the portal something that is confidential?

I would have to -- I certainly don't believe that -- I believe that they were informed that they would go to a portal.

You know, that we were basically in charge of or supervised. We're not doing the portal. As your Honor knows, it is a third-party vendor. So that third-party vendor would not release that information to anybody other than -- than the receiver. So I would have to check in terms of that.

But I think there is an expectation when that's being made that that's not going to be published anywhere as far as I understand. But I don't -- I don't know that there -- you know, the -- in terms of the claims form whether there is something further in that respect.

THE COURT: But as a judicial process, I can't see how the information should be maintained as confidential.

MR. RACHLIS: I -- I don't know that, your Honor. I mean, there is financial information that's obviously put forward in there. There is bank account information, social securities, and all that type of thing would definitely be subject to normal -- a layperson would not normally believe that that will be published in -- you know, for full view.

THE COURT: Thank you.

We have somebody in the back.

MR. RACHLIS: Yeah, before that may I --

THE COURT: Yes.

MR. RACHLIS: One point. One point further, your Honor.

In terms of letting this process play out, you know,

your Honor, we were here earlier in the week where the lenders were asking for additional time to make their credit bids on -- so one issue on one property, one narrow issue on one property that they have been monitoring for months.

We have 115 properties. We have 2000 claims. And we have 900 claimants or more than that. So the idea somehow that if ten days is what -- they needed more time with all the work that they have put in for months and somehow expect now, since July 1st, that we have had these in our possession, more or less, and now to be able to spit out fully analyzed and have everything available for purposes of all the things that they wish do is highly unreasonable. And it is certainly completely inconsistent with the idea that they just came here ten -- with the idea that they needed ten days over something that they have been advertising to your Honor that they want for months. So there is a high degree of inconsistency about that.

The point of it is this, we need to allow this process to go forward. This claims review process has been going on for about 45 days, and that's an overstatement. That's just 45 days from the bar date. So that needs to be remembered and put in some context as we're moving forward.

THE COURT: Thank you.

We have somebody in the back.

MR. SULLIVAN: Judge, James Sullivan on behalf of BMO Harris Bank.

Just with regard to the confidential aspect, I understand social security numbers, bank account numbers, I get that. But these claimants, their names and the amount they invested in the property are -- are listed on the mortgages that were recorded with the Cook County Recorder's Office. Their names are already out there. The amounts they invested were already out there.

We just want to know how many claimants there are, who they are, and how much they're claiming. It is not -- that information is already out there recorded with the Cook County Recorder. Everyone can see that information.

Thank you.

THE COURT: Mr. Rachlis, one question. Actually this could be for anyone who willing -- who has any idea. I think it was Mr. Welford who brought up title company.

Are the title companies, are they the ones who ensure the -- who ensure the mortgages or that the title is free and clear?

MR. RACHLIS: Yes.

THE COURT: And if --

MR. RACHLIS: Generally speaking.

THE COURT: And if a title is in dispute, are they then on the hook --

MR. RACHLIS: Yes.

THE COURT: -- for the amount of the mortgage?

MR. RACHLIS: I would -- I don't want to speak for the lenders, but I imagine that the lenders are suggesting that the title companies made -- make mistakes in regards to whether or not the title was clear and did the work that they needed to do. That's -- that is not our issue, but that would be the lender's job.

I believe -- but I do believe your Honor is correct in that respect.

THE COURT: Mr. Crowley.

MR. CROWLEY: Your Honor, if I could just clarify one point.

Number one, the title companies are not present yet. The issue is because the title companies's position is that there has been no determination by the Court that any of the -- at least with respect to my client -- and I can speak for my client, but I'm assuming it is the same for others -- that no determination has been made by a Court that either my client's mortgage is not valid or that my client's mortgage is not a prior recorded mortgage. That issue has to come to the forefront, and we hope to have that come to the forefront soon so that the title company can make a determination to come in and defend.

THE COURT: Okay.

MR. CROWLEY: On the value --

THE COURT: I'm sorry. Hold on a second.

Can you check and see if the other parties are here?

THE CLERK: Yes, I saw them outside. I'll go out.

THE COURT: Thank you.

Go on.

MR. CROWLEY: As to the issue of the amount of our claim or what the title company might be on the hook for, if it is determined that a lenders's lien is not a prior lien, that is in dispute. The title company may very well claim that the exposure for any property is the value that the property is sold for by the receiver.

So as an example, I may have a piece of property that's worth fair market value -- well, an example, I'm not going to -- I'll give you what's going on right now. My -- the -- the Louella property, which my client has a lien against, it is --

THE COURT: I'm sorry, which property?

MR. CROWLEY: Louella.

It is in Exhibit B, your Honor. Exhibit 1, I'm sorry. Exhibit 1. And it is the property -- I believe, it is on page 2. I apologize. Right here.

But with respect to that property, the receiver says there are no competing secured EBF liens against it. The receiver marketed that property for sale at $450,000. The receiver told us on Saturday that he accepted a bid of the highest bid of $278,000.

That property -- the title company -- strike that. If it is determined that my client's lien is not first, the amount that my client -- that the title company would have to reimburse my client may only be that $278,000, not the face amount of the policy. And it actually may be less than that after the receiver takes out (unintelligible) costs. So we don't have that number.

Which actually brings, again, the point that Ms. Nicholson was making because, again, the receiver has this property for sale. It has accepted a bid of 278. The receiver's second report says that there is no other EBF lien that's recorded against this property asserting priority.

Well, my client -- but then it says in the report that all seven properties securing my client's lien are disputed as to priority. So my client's now at a -- we're knocking our -- scratching our heads saying, well, can we submit a bid now? Because in one instance the exhibit says, there is no prior recorded lien against this property and no EBF claimant has asserted a claim against this property. And therefore maybe we should credit bid. But then we have got the receiver's statement in here that all seven properties have competing claims against them.

And the reason that's important, your Honor, is if we submit a bid for one of these properties, it may adversely impact my title claim. So this information is important to all

of these creditors. I mean, the claims, the amount of the claims, as Mr. Welford rightly pointed out. Because if a claim against this property is only for 15,000, well, maybe there is a way we can resolve that claim between the institutional investor or -- I'm sorry -- the institutional lender and the individual investors. So that information is important.

And I realize the receiver is saying it is a burden, but that's what (unintelligible) is there for. They have got a claim form. They could provide a lot of this information very easily without any expense to the receiver. So hopefully that addressed --

THE COURT: Yes.

MR. CROWLEY: -- the questions related to title.

THE COURT: Thank you.

So -- yes.

MR. RACHLIS: If I could very quickly address the title company issue, your Honor. What we heard a couple times now from the institutional lenders is throwing these title companies out there as some boogeyman where, oh, at the end of the day there is going to be another group of well heeled entities in here with sophisticated lawyers further slowing down the Court and adding costs to the receivership. That's not the way I think it would play out, your Honor.

At the end of the process there will be ultimate determinations by Judge Lee as who gets the properties. And at

the end of the day, if a lender feels that that determination injured them and they need to fight the title company on it, they will do that in court, and they won't have to -- in a different court and won't have to bother you, Judge Lee or the receiver about that. So I don't think the Court should factor in the role a title company is going to play in deciding how and when we move forward.

THE COURT: Okay. Mr. Welford, just -- you do need to be quick, I have another matter.

MR. WELFORD: I will, your Honor. A few things. Your Honor, we're not suggesting -- this isn't the grand scheme to move litigation to state court.

What I think your Honor is beginning to realize is that there would be 115 different declaratory judgment actions that somebody is going to have to determine on priority. And it is not only was a mortgage discharged properly or not, but if a lender advanced money on a property, where did the money go? You have a whole tracing issue.

So you actually are going to end up with 115 different trials on the various issues regarding who is first whose second and how much is a subordinate claim versus a senior claim.

So we're not here today to slow down the process, we're here today to try to assist your Honor, the court system, the receiver, everyone to say that if it is black and white,

that there is no upside in the receivership on a given property, then let's figure out if there is a different mechanism to deal with it. Your Honor may want to keep it for the benefit of those claimants and do it through the declaratory judgment actions. Or your Honor may say, you know what, this is where the state court action. We don't know what the answer is. But we're not trying here to complicate the process, we're trying here to streamline, number one.

Number two, as to the secrecy of the claims, we have a local rule that says you follow bankruptcy procedure. In every bankruptcy case people file proofs of claim. They are counseled against disclosing personally identifiable information, PII. And hopefully when they submitted their bids -- I mean, their proofs of claim, they blacked it out. If they don't black it out, it is the role of the claims administrator to redact that information before it is uploaded to the public forum.

In every bankruptcy case, once a claim is of record, you either file it with the bankruptcy court, you file it with the third-party administrator. The administrator goes through, blocks out bank account numbers, whatever is needed. The information is made available to the public. There is absolutely no protective order, no agreement that says that these documents have to remain private.

And, your Honor, if we're concerned about privacy, the

lenders have already entered into a confidentiality agreement with the receiver and the SEC on top of everything else, that your Honor may not even be aware of, because we were attempting to begin discovery. And they were concerned, the receiver was concerned, about information in investor files. We have it covered. We need the information in order to begin to narrow the funnel as to where we are.

The same can be said for the valuations of the properties. If the receiver doesn't want to file it in a public forum, the receiver can put an indication of value down, and it is confidential. But at least we have an understanding, won't use it for any other purpose, but we have an understanding of whether they're in the money or out of the money on a given property.

And we simply can't resolve a case if everybody is a secret creditor. Your Honor will never get to a conclusion. It cannot be the rule of law.

THE COURT: Okay. I'll have to cut you off there.

Here's what we're going to do. In terms of next status hearing, it will be October 22 at 11:00 A.M.

In terms of the three items that the institutional lenders have discussed today, I can't address the standing issue. And it appears from the representation -- from the arguments of both sides there is no dispute as to whether there -- the receiver's -- receiver has a standing to argue in

favor of certain creditors. That's not in dispute.

With respect to the second item that the institutional lenders discussed, having a report prepared by the receiver showing the valuation of each property, that request is denied. I do agree with Mr. Rachlis that that is going to be injurious to the actual estate, that valuation should be discussed during sales of properties.

However as to step one or the first item that the institutional lenders are asking for, property-by-property analysis with the claims identified, I think that is in fact reasonable. While PII is confidential, and certainly even if a court proceeding that type of information can be redacted or placed under seal. But given that, at least, according -- you know, my perception of the claims portal, my guess is that some people did in fact submit financial records and may not be redacted. I'm not going to burden the receiver to actually segregate sensitive information from non-sensitive information.

So they -- I'm not going to require the receiver to provide access to the claims portal. Quite frankly I think we should wait for the receiver's determination as to what claims are viable before we get into what information should be shared with the claimants.

So the objective here is by -- I'll have to set a date. But something before October 22nd. Let me take a look at the calendar and come up with the date for the third status

hearing -- status report. And that status report should have an exhibit, very similar to Exhibit 1 that's attached to the status -- the second status report, with added information regarding the names of the claimants or identity of the claimants and the value of each claim submitted so that we have a universe of claims per property. I think that information can be useful.

I know we talked a lot about whether a property should be divested by the receiver and whether certain -- certain issues should be taken outside this claims process. That's beyond my jurisdiction.

With respect to the credit bidding timing, based on the email that I received yesterday, what I will do is go back and issue another order clarifying that it will be certain number of days after the good faith estimate is turned over so that we don't have a specific deadline by when the credit bidding has to be submitted. But I will keep intact the fact that the subsequent credit bids must be submitted within 24 hours.

MR. CROWLEY: Your Honor, may I address one other --

THE COURT: Mr. Crowley?

MR. CROWLEY: On that (unintelligible) order, your Honor, the way the minute order reads it always directs to the movants, and the movants were Ms. Nicholson's client and Mr. Welford's client. But during the argument, you indicated

that it was going to relate to all institutional lenders, this procedure.

And Mr. Rachlis, I think, or Mr. Duff confirmed that to me in writing by email. So --

THE COURT: All right. I'll clarify. Certainly that's not -- I don't think I said that, but I'll clarify in the minute order to make sure that that process is applicable to all others.

MR. RACHLIS: We understood that, your Honor, that based on the -- I know there were only two parties in front of you at that time having this discussion, but I had certainly walked away understanding that your Honor's intent was to have that apply to all of those who are intending on making -- you know, who were intending on making a credit bid.

THE COURT: Okay.

MR. RACHLIS: And we also noted in that email that we sent to your Honor that Mr. Segroy (phonetic), who had not been -- we weren't able to reach at that time, but he has agreed as well. So we understand that everyone has agreed to that.

THE COURT: Okay. Thank you.

MR. CROWLEY: Lastly, your Honor, with respect to the amended schedule, will they also include whether a claim is a secured or unsecured claim against that property? Because I think that does make a (unintelligible) --

THE COURT: Well, that's what we're ultimately looking forward to. But I'm not sure that we're going to get to that point by October because --

MR. CROWLEY: Well, a party may submit a claim against the property saying I'm an investor in the entity that at one time (unintelligible) or owned the property, and that would be unsecured creditor versus a secured creditor. I think that information would be helpful.

THE COURT: Let me stop you. For right now exactly what I said on the record, claims submitted.

Okay. I need to be -- I need to go and do the other case. I'm sorry.

MR. WELFORD: Your Honor, I just want to clarify that the date for the credit that falls on a Saturday or Sunday --

THE COURT: Of course.

MR. WELFORD: -- to just -- thank you.

THE COURT: Of course.

MR. RACHLIS: Thank you, your Honor.

(Which concluded the proceedings.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the digital recording of proceedings in the above-entitled matter to the best of my ability, given the limitation of using a digital-recording system.

/s/ Pamela S. Warren August 22, 2019
Official Court Reporter Date
United States District Court
Northern District of Illinois
Eastern Division