

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

Civil Action No.: 18-CV-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**VENTUS HOLDINGS, LLC'S AND VENTUS MERRILL, LLC'S COMBINED
EMERGENCY MOTION TO VACATE SALE UNTIL THE COURT RULES ON MOTION
TO STAY**

Ventus Holdings, LLC and Ventus Merrill, LLC (collectively "Ventus") through their attorney, Michael B. Elman & Associates, Ltd., for their Combined Emergency Motion to Vacate Sale Until the Court Rules on the Motion to Stay, states as follows:

PROCEDURAL HISTORY

1. On June 11, 2020 the Receiver filed an eighth motion to confirm sale of certain real estate (Docket No. 712). It is this motion that concerns the Ventus real estate contracts.

2. Objections to the motion were filed (i) by Ventus on July 17, 2020 (Docket No. 746), (ii) secured lender Thorofare Asset Based Lender REIT on July 2, 2020 (Docket No. 730) and (iii) secured lender Liberty EBCP, LLC on July 2, 2020 (Docket No. 728). The Receiver filed a reply to the motion on July 8, 2020 (Docket No. 739).

3. On October 26, 2020 an order was entered granting the motion (Docket No. 825) and on October 30, 2020 an order was entered authorizing the sale of the real estate (Docket No. 841).

4. On November 2, 2020 Ventus filed a motion to stay enforcement of the orders entered on October 26 and 30, 2020 (Docket No. 848). A copy of the motion is attached hereto as Exhibit A. Also on November 2, 2020, Ventus filed a Notice of Appeal seeking review of the October 26 and October 30, 2020 orders (Docket No.847).

5. On November 5, 2020 an order was entered stating that the Court would take Ventus' motion to stay under advisement (Docket No. 860). A copy of this order is attached hereto as Exhibit B.

6. On November 11, 2020 the Receiver filed an opposition to the motion to stay. (Docket No. 869).

7. On November 13, 2020 Ventus filed a motion seeking leave to file a response to the Receiver's opposition (Docket No. 875).

8. On November 16, 2020 an order was entered directing the Receiver to delay the sales for 14 days (Docket No. 877). A copy of this order is attached hereto as Exhibit C.

9. On November 18, 2020 Ventus filed its response to the Receiver's opposition (Docket No. 879).

10. Earlier today, December 3, 2020, the Receiver filed a Notice of Sales, advising the Court that the properties subject to the motion to stay had been sold (Docket No. 889). A copy of this notice is attached hereto as Exhibit D.

ARGUMENT

11. The Court has not issued a ruling on the pending motion to stay.

12. Despite the Receiver having knowledge of the pending motion to stay as well as the pending appeal, the Receiver never sought permission of the Court to proceed with the sale, even though the Receiver was aware of the Court's orders, specifically addressing the issue of the sale, namely:

A. The order entered on November 5, 2020 wherein the motion to stay was taken under advisement and to date, not ruled upon; and

B. The order entered on November 16, 2020 delaying the sale for 14 days.

13. Unless the sales are vacated, Ventus, as well as the secured creditors and the Receivership Estate, may suffer irreparable harm.

14. Balancing the equities, the purchasers will incur minimal, if any, harm but the harm suffered by Ventus may be irreversible. Its motion to stay, as well as its appeal rights may be mooted.

WHEREFORE, Ventus Holdings, LLC and Ventus Merrill, LLC respectfully request that the Court enter an order granting the following relief:

A. Vacate the sales identified in the Receiver's Notice of Sale filed on December 3, 2020;

B. Prohibit the Receiver from selling the properties until (i) the Court issues an order in connection with the pending motion to stay; and (ii) advance notice is

served to Ventus and all other interested parties.

Respectfully submitted

s/Michael B. Elman
Attorney for
Ventus Holdings, LLC
Ventus Merrill, LLC

Michael B. Elman & Associates, Ltd.
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CERTIFICATE OF SERVICE

I hereby certify on December 3, 2020, the undersigned electronically filed Ventus Holdings, LLC's and Ventus Merrill, LLC's Combined Motion to Vacate Sale Until the Court Rules on the Motion to Stay, via the CM/ECF system and copies thereof were served to counsel of record via the CM/ECF system.

/s/ Michael B. Elman
Attorney for
Ventus Holdings, LLC
Ventus Merrill, LLC

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UNITED STATES DISTRICT COURT
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UNITED STATES SECURITIES AND
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Civil Action No.: 18-CV-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**VENTUS HOLDINGS, LLC'S MOTION TO STAY ENFORCEMENT OF THE ORDERS
ENTERED ON OCTOBER 26, 2020 AND OCTOBER 30, 2020 AND STAY THE SALE
OF THE REAL ESTATE IDENTIFIED IN THE ORDERS**

Ventus Holdings, LLC ("Ventus"), through its attorney, Michael B. Elman & Associates, Ltd., for its Motion to Stay Enforcement of the Orders Entered on October 26, 2020 and October 30, 2020 and Stay the Sale of the Real Estate Identified in the Orders, states as follows:

BACKGROUND FACTS

1. The real estate that is the subject of these orders consists of three (3) parcels, (i) 6949-59 South Merrill, (ii) 7600-10 South Kingston and (iii) 7656-58 South Kingston, all in Chicago, Illinois (collectively the "Properties").

2. Originally, the Receiver accepted Ventus' bids to purchase the Properties, as well as a fourth property located on Cornell Avenue. On February 21, 2020, the Court confirmed the sale of the property on Merrill and on April 1, 2020, the Court confirmed the sale of the two properties on Kingston and the one on Cornell. On or about April 15, 2020, Ventus was informed by its lender that due to the Covid-19 pandemic financing

was no longer available. On or about April 20, 2020, Ventus informed the Receiver that it was unable to proceed with the transactions. On April 24, 2020 the Receiver sent a letter of default in connection with all four properties. On May 8, 2020 the Receiver accepted alternative bids for the Properties. On May 26, 2020 Ventus received a Term Sheet from a lender concerning the Cornell property. On June 1, 2020 the Receiver agreed to reinstate the contract for the sale of Cornell. On June 11, 2020 the Receiver filed an eighth motion to confirm, which sought confirmation of the new bids. One day later, on June 12, Ventus provided the Receiver with a Term Sheet from a lender willing to finance the Properties. On October 26, 2020 the Court entered an Order confirming the sale of the Properties and on October 30, 2020 the Court entered an Order Granting Receiver's Eighth Motion to Confirm the Sale of Certain Real Estate and for Avoidance of Certain Mortgages, Liens, Claims and Encumbrances. Copies of these two orders are attached hereto as Exhibit A.

3. Ventus' bid and the confirmed bids are:

A. **6949-59 Merrill:** Ventus' bid was \$1,935,200.00 and the Court confirmed the bid of \$1,520,000.00. A loss to the Receivership Estate of \$415,200.00;

B. **7600-10 Kingston:** Ventus' bid was \$1,870,000 and the Court confirmed the bid of \$1,530,000.00. A loss to the Receivership Estate of \$340,000.00; and

C. **7656-58 Kingston:** Ventus' bid was \$510,000.00 and the Court confirmed the bid of \$320,000.00. A loss to the Receivership Estate of \$190,000.00.

4. Accordingly, if the Properties are sold pursuant to the orders entered on October 26 and October 30, 2020 the loss to the Receivership Estate would be \$945,200.00.

5. In connection with the reinstated contract for the Cornell property, Ventus' terms of financing were identical to those for the Properties. Yet, the Receiver agreed to reinstate the Cornell contract and subsequently sold this property to Ventus but refused to reinstate the contracts for the Properties under the identical terms.

ARGUMENT

6. As the Court stated in its order entered on May 2, 2019, "the Receiver must act with due regard to the realization of the true and proper value of such real property".

7. In the order entered on October 26, 2020 the Court's decision was based upon the legal principle that setting aside transactions and disrupting the reasonable expectation of bidders impairs public confidence in the sales process that ensues from lack of finality.

8. In support of this legal principle, the Court referenced two cases, *In re Gil-Bern Indus., Inc.*, 526 F.2d 627 (1st Cir. 1975) and *In re Food Barn Stores, Inc.*, 107 F.3d 558 (8th Cir. 1997).

9. In, *In re Gil-Bern* the court relied on this principal finding that there was a "slight disparity" between the first bid and the accepted bid - \$14,888.00. Significantly, the court recognized that a bid may be set aside where there is a "substantial" disparity. In the facts before this Court, the disparity is \$945,200.00, which is certainly substantial.

10. In, *In re Food Barn Stores*, the court recognized the counter legal principle that the objective of a receiver is to enhance the value of the estate, stating:

As a counterweight, the court must also remain mindful of the ubiquitous desire of the unsecured creditors, and the primary objective of the Code, to enhance the value of the estate at hand (Section 365... advances one of the Code's central purposes, the maximum of the value of the bankruptcy estate for the benefit of creditors. [564-565].

The court also found it significant that the sale had not yet been approved by the court.

11. It is Ventus' position that as between these two competing principles, enhancing the value of the estate should be applied to the facts before this Court. This is not a bankruptcy case where the objective is to reimburse creditors. Here, the Receiver is seeking to enhance the value of an estate for the benefit of numerous, innocent victims of a securities fraud. In such a situation, which is extraordinary, the finality of the bid process should not be as important as reimbursing the victims of fraud.

12. In **Corporate Assets, Inc. v. Paloian**, 368 F.3d 761 (7th Cir., 2004), a bankruptcy proceeding, the plaintiff submitted the winning bid for the purchase of real estate. After the auction was closed a new bid was submitted. The court then ordered the plaintiff to conduct a new auction. The plaintiff submitted a new bid in an amount that was \$352,500.00 higher than its earlier bid. The court confirmed the higher bid. The plaintiff appealed, arguing that the court erred in ordering a second auction.

13. The Appellate court affirmed the confirmation of sale. In so doing, it analyzed two competing principles. The governing principle at a confirmation proceeding is to secure the highest price for the estate. But, there is also an interest in the finality and integrity of the process. Significantly, the court held that the trial court has more discretion to reject a bid prior to, rather than after, confirmation because consideration of a late bid would not unduly frustrate the reasonable expectations of the participants or compromise the integrity of the process.

14. Significantly, the Court decided not to reinstate the Ventus bids even though the decision was prior to confirmation and the Receiver agreed to reinstate Ventus' bid for the Cornell property after the default.

15. In **JP Morgan Chase Bank v. Fankhauser**, 383 Ill.App.3d 254, 890 N.E.2d 592 (2nd Dist. 2008), the appellate court reversed a confirmation of sale, finding that the sale price was unconscionable. The fair market value of the real estate was \$385,000.00 (or \$325,000.00) and the sale price was \$32,212.40.

16. By granting the eighth motion to confirm, the Receivership Estate lost \$945,200.00 and, based on fair market value, accepted unconscionable bids that took advantage of the Covid-19 pandemic.

17. Furthermore, if the Court does not grant the stay, Ventus will be denied its right to appeal because the Property will have been sold rendering the appeal moot.

18. Based upon the doctrine of mootness, Ventus will also be irreparably harmed if the Property is sold prior to the decision of the reviewing court.

19. Because there are two valid but competing legal principles that will be reviewed, Ventus has a meritorious claim that is likely to prevail.

20. Based upon the undersigned's research, the facts of this case are unique and implicate an important legal issue, namely, the balancing of the two legal principles when a receivership estate consists of victims of securities fraud. In addition, the effect of the Covid-19 pandemic to Ventus' transactions is also a unique fact underlying this transaction.

VENTUS SEEKS A WAIVER OF THE BOND REQUIREMENT

21. A District Court has the discretion to waive the bond requirement and may look to the following criteria when making its determination: (i) complexity of the collection process; (ii) the amount of time required to obtain the judgment; (iii) the degree of confidence that funds are available to pay the judgment; (iv) the defendant's ability to pay the judgment rendering the bond requirement a waste of money; and (v) whether a waiver of the bond requirement would put the creditors in an insecure position. *Dillon v. City of Chicago*, 866 F.2d 902 (7th Cir. 1988).

22. In this proceeding the security is the Property and therefore, the criteria stated above either, does not apply or, should be applied in favor of waiving the bond requirement. The "creditors" (who are the purchasers of the Property) are secured through the Properties by virtue of the orders entered on October 26 and October 30, 2020.

CONCLUSION

Ventus Holdings, LLC respectfully requests that the Court enter an order granting this Motion to Stay Enforcement of the Orders Entered on October 26, 2020 and October 30, 2020 and Stay the Sale of the Real Estate Identified in the Orders, and grant the following relief:

- A. Stay the sale of the Property; an

B. Waive the requirement to post a bond.

Respectfully Submitted,

s/Michael B. Elman
Attorney for
Ventus Holdings, LLC

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CERTIFICATE OF SERVICE

I hereby certify on November 2, 2020, the undersigned electronically filed Ventus Holdings, LLC's Motion to Stay Enforcement of the Orders Entered on October 26, 2020 and October 30, 2020 and Stay the Sale of the Real Estate Identified in the Orders, via the CM/ECF system and copies thereof were served to counsel of record via the CM/ECF system.

/s/ Michael B. Elman
Attorney for
Ventus Holdings, LLC

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**IN THE UNITED STATES DISTRICT COURT
FOR THE 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. 18 C 5587

Judge John Z. Lee

ORDER

Before the Court are the Receiver’s eighth and ninth motions to confirm the sale of certain real estate and for the avoidance of certain mortgages, liens, claims, and encumbrances [712] [749]; and the Receiver’s second motion for restoration of funds expended for the benefit of other properties [749]. For the following reasons, these motions are granted.

STATEMENT

I. The Receiver’s Eighth Motion to Confirm the Sale of Certain Real Estate [712]

The Receiver moves to confirm the sale of three apartment buildings in Chicago, located at 6949-59 South Merrill Avenue; 7600-10 South Kingston Avenue; and 7656-58 South Kingston Avenue. Eighth Mot. Confirm Sales at 3, ECF No. 712. Ventus Holdings, LLC (“Ventus”) objects on the basis that it is willing to pay higher prices for the apartment buildings than those agreed to by

the Receiver and the proposed buyers. *See* Ventus’s Obj., ECF No. 721; Ventus’s Reply, ECF No. 746; Ventus’s Supplemental Reply, ECF No. 763; *see also* Liberty EBCP, LLC’s Obj., ECF No. 728 (objecting on the same basis); Thorofare Asset Based Lending REIT Fund IV, LLC’s Obj., ECF No. 730 (objecting on the same basis).

In October and December 2019, the Receiver accepted contracts to sell the buildings at issue to Ventus for a total of \$4,315,200, and the Court confirmed those sales in February and April 2020. *See* Feb. 21, 2020 Order, ECF No. 633; Apr. 1, 2020 Order, ECF No. 680. Ventus tendered ten percent of that amount—\$431,520.00—as an earnest money deposit. Ventus’s Obj. at 3. On April 20, 2020, however, Ventus informed the Receiver that it was unable to secure acquisition financing, that it could no longer raise the required equity from its investors, and that it “[could not] proceed with the acquisition of [the] properties.” Apr. 20, 2020 Letter from Ventus to Receiver, ECF No. 739 at 13. Ventus added that it was “quite unfortunate that we could not complete these transactions.” *Id.*

From there, the Receiver solicited and accepted the next best bids, ultimately signing contracts to sell the three properties for a total of \$945,200 less than Ventus had agreed to pay for them. Reply Supp. Eighth Mot. Confirm Sales at 3, 6, ECF No. 739. On June 11, 2020, the Receiver moved to confirm the sales. Ventus subsequently objected, seeking to reinstate its old contracts in light of new financing it was pursuing. Ventus Obj. at 3 (“Ventus is in the process of securing alternative financing and has received, and approved, term sheets from a new

lender.”). Ventus did not indicate that it could honor the earlier sale terms until two months after it backed out of the earlier deal, and over six weeks after the Receiver had found new purchasers for the buildings.

As the Receiver notes, Courts have consistently warned against setting aside transactions and disrupting the reasonable expectation of bidders, given the impairment of public confidence in the sales process that ensues from a lack of finality. *See, e.g., In re Gil-Bern Indus., Inc.*, 526 F.2d 627, 628–29 (1st Cir. 1975) (reversing the decision to set aside a sale merely because a higher offer was received after the bidding deadline because, in the long run, this practice would be “penny wise and pound foolish” as creditors would suffer if “unpredictability discouraged bidders altogether” or at least “encourage[d] low formal bids.”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 565 (8th Cir. 1997).

After Ventus stated unequivocally in April that it was backing out of the sale for the three apartment buildings, the Receiver acted reasonably in soliciting and accepting new, competitive bids. Given the need to maintain public confidence in the sales process relating to the Receivership Estate—to say nothing of continuing uncertainty that Ventus could go through with a sale this time around, *see* Pioneer Acquisitions’ Mem. Supp. Eighth Mot. Confirm Sales at 2, ECF No. 748—the objections to the Receiver’s eighth motion to confirm sales are overruled.¹

The motion is granted.

¹ Southside Property Group, LLC and Pioneer Acquisitions, LLC filed a joint motion requesting that the Court either strike Ventus’s supplemental reply in opposition to the eighth motion to confirm sales, ECF No. 763, or else entertain Southside and Pioneer’s arguments in response to that supplemental reply. Southside and Pioneer’s Joint Motion

With that said, Ventus is granted leave to file a motion for return of its earnest money deposit within two weeks from the date of this order. *See* Ventus Obj. at 6. Responses to the motion will be due two weeks after that.

II. The Receiver's Ninth Motion to Confirm the Sale of Certain Real Estate [749]

Objections were filed against two of the fourteen properties contained in the Receiver's ninth motion for confirmation of sales.² *See* Obj. Ninth Mot. Confirm Sales at 6, ECF No. 769 (objecting to the sales of 1131-41 E. 79th Place and 6250 S. Mozart Avenue in Chicago). Here too, the Court finds the Lenders' objections unpersuasive and, therefore, grants the motion.

Most of the arguments by the two objecting Lenders, Citibank and Fannie Mae, were previously rejected by the Court. For instance, in the face of nearly identical challenges, the Court already approved the Receiver's credit bidding procedures, Oct. 4, 2019 Order at 4–6, ECF No. 540; approved the sales of properties for prices amounting to less than the mortgages securing them, Mar. 31, 2020 Order at 7, ECF No. 676; approved the sales of properties free and clear of any liens or encumbrances provided that those liens attach to the ultimate sales proceeds of the properties, Dec. 12, 2019 Minute Entry, ECF No. 601; and

at 3, ECF No. 772. The joint motion is granted to the extent that the Court considered the substantive arguments contained therein before ruling on the Receiver's eighth motion to confirm sales.

² On September 14, 2020, the Court entered an order granting the motion as to the twelve properties to which no objection was filed. Order Partially Granting Receiver's Ninth Mot. Confirm Sales, ECF No. 789.

permitted the Receiver's property managers to bid for properties, Oct. 4, 2019 Order at 4–5.

The Court also has ruled that an orderly claims process is the most efficient and equitable method to resolve competing claims of investors and institutional lenders, *id.* at 5; Mar. 31, 2020 Order at 6; and that a claims process is appropriate even for properties where a Lender has a recorded mortgage but the investors do not. *Id.* at 6 n.2 (“Though there are no competing mortgages for four of the properties at issue . . . the Court is persuaded that, with respect to these properties, ‘other issues remain to be resolved during the initiated claims resolution process, including without limitation the alleged balance due in connection with the corresponding loan, the propriety of all of the component amounts of the claims asserted, and the entitlement of the Receiver to an administrative lien on a portion of the proceeds, if warranted.’” (citation omitted)). The objectors have raised nothing that would change this conclusion.

While Citibank and Fannie Mae additionally object that the Receiver's sales have not “generated the true and proper value of the properties,” Obj. Ninth Mot. Confirm Sales at 25–28, they offer no evidence that the bid process the Receiver employed resulted in properties being sold for less than their true value. *Cf.* Mar. 31, 2020 Order at 7 (“The Court is not persuaded that [the sales] amount is ‘grossly inadequate,’ . . . nor is it persuaded by UBS's vague contention that a better marketing and sales process would have fetched a higher price.”). Indeed, the proposed sales prices for 1131-41 E. 79th Place and 6250 S. Mozart Avenue

represent 92% and 109% of their list prices, respectively. Receiver's Reply Supp. Ninth Mot. Confirm Sales at 12, ECF No. 790.

Finally, Citibank and Fannie Mae offer no legal authority to support their novel argument that the sale of the two properties here would invoke the Fifth Amendment's Takings Clause. Obj. Ninth Mot. Confirm Sales at 20–22. Their failure to provide apposite legal support is unsurprising, as courts have recognized that “adjudication of disputed and competing claims cannot be a taking.” *In re Lazy Days' RV Ctr., Inc.*, 724 F.3d 418, 425 (3d Cir. 2013).

For the foregoing reasons, the entirety of the Receiver's ninth motion to confirm sales is granted.

III. The Receiver's Second Motion for Restoration of Funds Expended for the Benefit of Other Properties [749]

Finally, objections were filed against two of the twenty-four properties contained in the Receiver's second motion for restoration of funds.³ *See* Obj. Second Mot. Restoration at 1, ECF No. 764 (objecting to using proceeds from the sales of 5450-52 S. Indiana Avenue and 7749-59 S. Yates (the “Indiana/Yates properties”) to restore funds those properties received from other properties or the Receiver's account). The arguments made by the objecting Mortgagees are overruled.

³ On September 21, 2020, the Court entered an order granting the motion as to the twenty-two properties to which no objection was filed. Order Partially Granting Receiver's Second Mot. Restoration, ECF No. 796.

First, the Receiver's request is not inconsistent with Magistrate Judge Kim's February 13, 2019 order, which stated, *inter alia*, that the Receiver should use the rent from each property solely for the benefit of that particular property. *See* Obj. Second Mot. Restoration at 1; Feb. 13, 2019 Mem. Op. and Order at 9, ECF No. 223. It is undisputed that the Receiver has only used rents from the Indiana and Yates properties for the benefit of those properties, and the funds that are the subject of the Receiver's restoration motion either came from the rents of other properties prior to the February 13, 2019 order, or else came from the Receiver's account. Receiver's Reply Supp. Second Mot. Restoration at 4, ECF No. 791.

Second, the Mortgagees argue that the Receiver failed to request Court approval to expend funds for the benefit of the Indiana and Yates properties. *See* Obj. Second Mot. Restoration Funds at 1, 2. But the Court appointed the Receiver to preserve the properties in the Receivership Estate, and the Receiver subsequently reported over the course of two years that he was using funds from the Receivership account for the benefit of underperforming properties. *See, e.g.*, Receiver's Oct. 31, 2019 Status Report at 2–4, ECF No. 567. The Mortgagees never objected to the Receiver using funds from the Receiver's account to preserve, maintain, and improve the Indiana/Yates properties, despite receiving monthly reports detailing these activities and stating that the Receiver intended to restore the funds. *See* Exs. to Second Mot. Restoration at 39, 49, ECF No. 749–1. Moreover, the Court, including when approving a previous restoration motion, has

not required the Receiver to seek approval before expending funds on a given property. *See* Aug. 27, 2019 Order, ECF No. 494.

Finally, the Mortgagees argue that the Receiver's spreadsheets regarding the costs incurred for the Indiana/Yates properties are "merely summaries with no backup or justification of necessity of an expenditure." Obj. Second Mot. Restoration Funds at 1–2. It is undisputed, however, that those spreadsheets collect and recite expense information that was previously produced to the Mortgagees. *See* Receiver's Reply Supp. Second Mot. Restoration at 5–6; Exs. to Second Mot. Restoration at 14–15. The Mortgagees have not objected to the monthly reports for the Indiana/Yates properties, which reflect operating expenses and the accumulated restoration amount due. *Id.*

For these reasons, the Receiver's second motion for restoration of funds is granted in its entirety.

IT IS SO ORDERED.

ENTERED: 10/26/20



John Z. Lee
United States District Judge

EXHIBIT "A"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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UNITED STATES SECURITIES)		
AND EXCHANGE COMMISSION,)		
)		Civil Action No. 18-CV-5587
Plaintiff,)		
v.)		Hon. John Z. Lee
)		
EQUITYBUILD, INC.,)		
EQUITYBUILD FINANCE, LLC,)		
JEROME H. COHEN, and)		Magistrate Judge Young B. Kim
SHAUN D. COHEN,)		
)		
Defendants.)		
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**ORDER GRANTING RECEIVER’S EIGHTH MOTION TO CONFIRM
THE SALE OF CERTAIN REAL ESTATE AND FOR THE AVOIDANCE
OF CERTAIN MORTGAGES, LIENS, CLAIMS, AND ENCUMBRANCES**

WHEREAS, by Order Appointing Receiver, dated August 17, 2018 (Docket No. 16) this Court took exclusive jurisdiction and possession of the assets of all Receivership Defendants;

WHEREAS, by Order entered March 14, 2019 (Docket No. 290), this Court identified SSDF7 Portfolio 1 LLC ("SSDF7") and SSPH 6951 S Merrill LLC ("SSPH 6751 S Merrill) as Receivership Defendants;

WHEREAS, SSDF7 is the owner of record of the real property and improvements located at 7600-10 South Kingston, Chicago, Illinois 60649 ("7600-10 South Kingston") and 7656-58 South Kingston Avenue, Chicago, Illinois 60649 ("7656-58 South Kingston"), for which the legal descriptions and permanent index numbers are contained on Tab A hereto;

WHEREAS, SSPH 6751 S Merrill is the owner of record of the real property and improvements located at 6949-59 South Merrill Avenue, Chicago, Illinois 60649 ("6949-59");

South Merrill"), for which the legal description and permanent index number is contained on Tab A hereto;

WHEREAS, Kevin B. Duff, as receiver ("Receiver") for the Receivership Defendants, filed an Eighth Motion To Confirm The Sale Of Certain Real Estate And For The Avoidance Of Certain Mortgages, Liens, Claims, And Encumbrances (the "Motion"); and

WHEREAS, the Court finds that the Receiver has given fair, adequate, and sufficient notice to all interested parties, including all mortgagees and other encumbrancers affected by the Motion;

NOW, THEREFORE, it is hereby ORDERED that:

1. The Motion is GRANTED.
2. The Receiver is authorized to sell the real property and improvements at 7600-10

South Kingston free and clear of:

- a. that certain Mortgage recorded February 4, 2016 as Document No. 1603550265 in favor of Equity Trust Company Custodian FBO John Allred IRA Account No 125952, as to a 1.39% interest; Equity Trust Company FBO Glenda K. Allred IRA Account No. 187991, as to a 0.19% interest; Equity Trust Company Custodian FBO Carly A. Allred Roth IRA Account No. 163781, as to a 0.14% interest; Fraser Realty Capital, LLC, as to a 0.70% interest; Spectra Investments, LLC, as to a 4.43% interest; Quest IRA Inc. FBO Rebeca E. Savory-Romero IRA Account No. 15528-11, as to a 1.40% interest; iPlanGroup Agent for Custodian FBO Frank Sohm IRA, as to a 0.55% interest; Private Finance Solutions, LLC, as to a 0.82% interest; Arthur Bertrand, as to a 0.61% interest; Equity Trust Company Custodian FBO Paula Levand CESA, as to a 0.65% interest; Don Minchow, as to a 3.86% interest; Asians Investing in Real Estate, LLC, as to a 5.26%

interest; iPlanGroup Agent for Custodian FBO Jason Ragan IRA, as to a 1.04% interest; NuView IRA Inc. FBO Janet Eileen Taylor IRA, as to a 12.63% interest; Towpath Investments, LLC, as to a 0.88% interest; AdvantIRA Trust, LLC FBO Terry Merrill No. 6820601, as to a 2.11% interest; Equity Trust Company Custodian FBO David M. Williams IRA No. Z51886, as to a 0.26% interest; TruStar Real Estate, LLC, as to a 7.37% interest; Vantage FBO Joseph S. Ratkovic IRA No. 16325, as to a 5.26% interest; David Marcus, as to a 31.42% interest; Paul N. Wilmesmeier, as to a 0.88% interest; CM Group, LLC, as to a 3.86% interest; Uyen Dinh, as to a 0.25% interest; Timothy Sharp, as to a 1.75% interest; iPlanGroup Agent for Custodian FBO Stephen J. Apple ROTH IRA, as to a 1.53% interest; Charwin Properties, LLC, as to a 0.18% interest; Nehasri Ltd., as to a 1.86% interest; Janet Eileen Taylor, as to a 1.75% interest; Robert Maione, as to a 3.86% interest; and EquityBuild, Inc., as to a 3.10% interest, to secure a promissory note in the originally stated principal amount of \$2,850,000;

b. that certain Mortgage, that certain Assignment Of Leases And Rents, and that certain Financing Statement recorded May 7, 2018, as Document Nos. 1812734048, 1812734049, and 1812734050, respectively, in favor of Liberty EBCP, LLC to secure a promissory note in the originally stated principal amount of \$18,400,000 (collectively, the "Liberty Security Documents"); and

c. that certain notice of lis pendens recorded August 15, 2018, as Document No. 1822706116 in connection with the case captioned *Michigan Shore Apartments, LLC v. EquityBuild, Inc., SSDF7 Portfolio 1, LLC, [and] Liberty EBCP LLC*, Circuit Court of Cook County, Case No. 2018-CH-09098.

3. The Receiver is authorized to sell the real property and improvements at 7656-58 South Kingston free and clear of:

a. that certain Mortgage recorded January 8, 2015, as Document No. 1500616026 in favor of "The Persons Listed on Exhibit A"; and

b. the Liberty Security Documents.

4. The Receiver is authorized to sell the real property and improvements at 6949-59 South Merrill free and clear of:

a. that certain Mortgage, Assignment Of Leases And Rents, Security Agreement And Fixture Filing recorded September 14, 2017, as Document 1725729063 in favor of Thorofare Asset Based Lending REIT Fund IV, LLC to secure a promissory note in the originally stated principal amount of \$1,540,000;

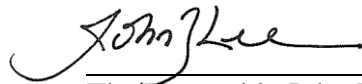
b. that certain Amendments To Mortgages And Cross-Collateralization Agreement dated July 21, 2017, and recorded September 14, 2017, as Document No. 1725729064, entered into by and between SSPH 6951 S Merrill LLC and 1700 Juneway LLC, on the one part, and Thorofare Asset Based Lending REIT Fund IV, LLC, on the other part; and

c. that certain Financing Statement evidencing an indebtedness from SSPH 6951 S Merrill LLC to Thorofare Asset Based Lending REIT Fund IV, LLC, filed September 14, 2017, as Document No. 1725729065.

5. The Receiver is hereby vested with full power and authority to execute any and all closing documents associated with the conveyances of the Properties, including, but not limited to, deeds, bills of sale, affidavits of title, and settlement statements.

6. The proceeds from the sales of the Properties shall be held by the Receiver in separate subaccounts for which the Receiver shall maintain an accounting as to all sums deposited therein, with all mortgages, liens, claims, and encumbrances attaching to the sales proceeds with the same force, validity, status, and effect, if any, as they had against the properties being sold, and the sums in the separate subaccounts shall not be available to pay operating expenses of the Receivership nor for any other expense or distribution, absent further order of Court.

Entered: 10/30/20



The Honorable John Z. Lee

TAB A

7600-10 SOUTH KINGSTON, CHICAGO, ILLINOIS 60649

LOTS 1, 2 AND 3 IN BLOCK 7 IN SOUTH SHORE PARK, BEING A SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER (EXCEPT STREETS) OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

21-30-309-030-0000

7656-58 SOUTH KINGSTON AVENUE, CHICAGO, ILLINOIS 60649

LOT 18 IN BLOCK 7 IN SOUTH SHORE PARK, BEING SUBDIVISION OF THE WEST HALF OF THE SOUTHWEST QUARTER IN SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

21-30-309-026-0000

6949-59 SOUTH MERRILL AVENUE, CHICAGO, ILLINOIS 60649

LOTS 29 AND 39, IN FIRST ADDITION TO BRYN MAWR HIGHLANDS, A SUBDIVISION OF NORTH $\frac{3}{4}$ OF WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

20-24-417-014-0000

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

United States Securities and Exchange Commission,
et al.

Plaintiff,

v.

Case No.:
1:18-cv-05587
Honorable John Z. Lee

Equitybuild, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, November 5, 2020:

MINUTE entry before the Honorable John Z. Lee: Motion hearing held on 11/5/20. Movant's response to the motions to stay is due by 11/12/20. The motion for certain mortgagees to stay sales pending appeal to the United States Court of Appeals for the Seventh Circuit [832], Certain mortgagees' motion for certification of interlocutory appeal [833] and Ventus Holdings, LLC's motion to stay enforcement of the orders entered on October 26, 2020 and October 30, 2020 and stay the sale of the real estate identified in the orders [848] are taken under advisement. Mailed notice(ca,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

EXHIBIT "B"

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

United States Securities and Exchange Commission,
et al.

Plaintiff,

v.

Case No.:
1:18-cv-05587
Honorable John Z. Lee

Equitybuild, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, November 16, 2020:

MINUTE entry before the Honorable John Z. Lee: Ventus's motion [875] for leave to file a response to Receiver's opposition to Ventus's motion to stay [848] by November 18, 2020 is granted. The Receiver is directed to hold off on the sales of 6949-59 Merrill, 7600-10 Kingston and 7656-58 Kingston for 14 days. Mailed notice(ca,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

EXHIBIT "C"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)	
UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 18-cv-5587
)	
v.)	Judge John Z. Lee
)	
EQUITYBUILD, INC., EQUITYBUILD)	Magistrate Judge Young B. Kim
FINANCE, LLC, JEROME H. COHEN,)	
and SHAUN D. COHEN,)	
)	
Defendants.)	
)	

**RECEIVER’S NOTICE OF PROPERTY SALES AND
SUPPLEMENT IN OPPOSITION TO VENTUS’ MOTION TO STAY**

In reference to Ventus Holdings, LLC’s Motion To Stay (Dkt. No. 848), Receiver Kevin B. Duff provides notice that the real property and improvements located at 7600-10 S. Kingston, 7656-58 S. Kingston, and 6949-59 S. Merrill have been sold. In accordance with the Court’s order of November 16, 2020 (Dkt. No. 877), the Receiver allowed 14 days to elapse before closing the sale of 6949-59 S. Merrill on December 1, 2020 and the two Kingston properties on December 2, 2020. Accordingly, and in addition to the reasons previously articulated in opposition, Ventus’ motion should now be denied as moot.

Dated: December 3, 2020

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis
Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
mrachlis@rdaplawn.net
jwine@rdaplawn.net

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2020, I electronically filed the foregoing **Receiver's Notice of Property Sales and Supplement in Opposition to Ventus' Motion to Stay** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. A copy of the foregoing was served upon counsel of record via the CM/ECF system.

I further certify that I caused a true and correct copy of the foregoing **Notice**, to be served upon the following individuals or entities by electronic mail:

- Defendant Jerome Cohen (jerrycohen@reagan.com);
- All known EquityBuild investors; and
- All known individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form).

I further certify that the **Notice** will be posted to the Receivership webpage at: <http://rdaplawnet.com/receivership-for-equitybuild>

/s/ Michael Rachlis _____

Rachlis Duff & Peel, LLC
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Chicago, IL 60605
Phone (312) 733-3950
Fax (312) 733-3952
mrachlis@rdaplawnet.com