UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. EQUITYBUILD, INC., ET AL., Defendants.	Case No. 1:18-cv-5587 Hon. John Z. Lee

MORTGAGEES' RESPONSE TO RECEIVER'S MOTION FOR APPROVAL TO PAY CERTAIN PREVIOUSLY APPROVED FEES AND COSTS AND FOR INTERIM PAYMENT OF CONTINUING CLAIMS PROCESS FEES AND COSTS PURSUANT TO RECEIVER'S LIEN

The Mortgagees identified on Exhibit A, all of whom are secured creditors, object to the Receiver's requests that the Court authorize him to use the proceeds from the sales of Estate properties to pay his approved and continuing fees and expenses (collectively "Receivership Expenses") on a priority basis and on an interim basis, and the Receiver's proposed order. *First*, most of the Receivership Expenses cannot prime the Mortgagees' mortgages because they were not incurred to benefit the properties or the Mortgagees. The Receivership Expenses incurred toward underwater properties that were subject to disputes between or among secured creditors provided no benefit to the properties or the Mortgagees, and the Receiver opposed state court foreclosure proceedings, which would have efficiently and economically resolved any priority disputes among secured creditors. The Receiver's efforts in connection with the claims resolution process relate only to the resolution of claims and have not benefited and will not benefit the properties and the Mortgagees. *Second*, the Receiver has not furnished sufficient facts to allow a determination on a property-by-property basis whether his efforts resulted in any benefits to the properties or the Mortgagees, or the extent to which those efforts resulted in benefits, to permit Receivership Expenses to prime the Mortgagees' mortgages, and instead relies upon generalized statements of

hypothetical benefits and the Court's prior approval of a receivership lien. The Court, however, found only that the Receiver's acts benefited the *Estate* and did not find that those acts benefited the properties or the Mortgagees. *Third,* the Court can assess the Receiver's requests only on a property-by-property basis after it rules upon the priorities of the creditors in the properties in a tranche because (i) until priorities are determined, the Court cannot determine if the Receiver's administration of the Estate or the claims resolution process benefited the priority lien holder and (ii) without the Receiver's allocation of work and time to individual properties, the Court cannot determine whether specific services benefited specific properties and the Mortgagees who have secured interests in those properties. *Fourth*, the Court should not authorize interim payments until after it resolves the priority disputes in a tranche and determines whether and the extent to which the Receiver's acts bestowed a benefit upon the properties and the Mortgagees because the funds from the sales of the properties are encumbered by secured claims. *Fifth*, the Receiver fails to show that other income to the Estate, including the proceeds from any judgment that the Estate may receive in the Receiver's lawsuit against former EquityBuild attorneys pending in the Circuit Court of Cook County, styled *Kevin B. Duff, Receiver, v. Rock Fusco & Connelly, LLC, et al*., 2020 L 8843 (the "Lawsuit"), will not suffice to pay its fees and expenses. *See* Dkt. 885, p. 13.

I. Receivership Expenses Incurred or That Will Be Incurred in the Administration of the Estate and in Connection with the Claims Resolution Process Should Not Be Paid on a Super Priority Basis Because They Did Not and Will Not Benefit the Properties or the Mortgagees.

Generally, receivership expenses are charged against the *unsecured* assets of a receivership estate. *See MW Capital Funding, Inc. v. Magnum Health & Rehab of Monroe LLC,* 2019 U.S. Dist. LEXIS 127463, *12. Secured claims take priority over those expenses. *Id*., *citing Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A*., 530 U.S. 1, 5, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000) (in bankruptcy "administrative expenses . . . do not have priority over secured claims").

However, receivership expenses may take priority over secured creditors' interests in the property where the receiver's acts have benefited the property. *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994), *citing SEC v. Elliott*, 953 F.2d 1560, 1576-77 (11th Cir. 1992). The court in *Gaskill* emphasized, however, that under Illinois law, "a receiver's lien may be a superior lien on mortgaged property, so long as the receivership benefited the property and the mortgagee acquiesced in, or failed to object to, the receivership." *Id.* No question exists that the Mortgagees did not consent or acquiesce to the Receiver's administration of properties encumbered by their mortgages, and, as recited by the Receiver, objected to his acts concerning properties in which they have an interest.

Courts often look to bankruptcy law to determine whether receivership expenses can surcharge secured property. *See MW Capital Funding*, 2019 U.S. Dist. LEXIS 127463, *13-14; Local Rules of District Court of Northern District, Illinois, LR66.1 ("the administration of estates by receivers or other officers shall be similar to that in bankruptcy cases"). Under Section 506(c) of the Bankruptcy Code, "the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim" may be recovered on a priority basis from secured property. 11 U.S.C. §506(c). Section 506(c) "constitutes an important exception to the rule that secured claims are superior to administrative claims." *Id., citing Hartford Underwriters*, 530 U.S. at 5. It "'was not intended to encompass ordinary administrative expenses that are attributable to the general operation and dissolution of an estate in bankruptcy.'" *Id.* at *16, *quoting United States v. FDIC*, 899 F. Supp. 50, 56 (D. R.I. 1995) (capital gains taxes generated by the receiver's sale of collateral owned by a defunct corporation were not payable from the proceeds of a secured creditor's collateral because there was no direct benefit). Thus, only receivership expenses incurred to preserve, manage and sell the properties, if properly supported and all

requirements are met, may be chargeable against the proceeds from the sales of specific properties on a priority basis, but only where the receiver establishes that his efforts (1) benefited the properties and (2) only to the extent of any benefit to the secured creditor. *See In re Cascade Hydraulics and Utility Serv., Inc.* 815 F.2d 546, 548 (9th Cir. 1987) (surcharge is limited to expenses incurred to protect and preserve the properties to the extent that the secured creditor benefited from the services). The court's exercise of its discretion in granting a priming lien must be in accord with these requirements. *See SEC v. Elliott*, 953 F.2d 1560, 1576 (11th Cir. 1992) (the court's discretion allows the court to pay a receiver from the proceeds of secured property if the receiver has benefitted that property and the creditors).

The Receiver has not shown that his efforts benefited the properties or the Mortgagees and the Court has not found that the Receiver's efforts benefited the properties or the Mortgagees. The Court's approval of the Receivership Expenses and findings that the Receiver's efforts benefited the *Estate* does not demonstrate that his acts benefited the properties or the Mortgagees. Likewise, the Court's grant of a lien on the properties does not justify a priming lien where the Receiver fails to establish the benefit to the properties and the Mortgagees, and the extent of any benefit. The Receiver misplaces reliance upon *SEC v. First Sec. Co*., 528 F.2d 449, 451 (7th Cir. 1975), in requesting a priming lien because the "great weight" a court may give to the SEC's position in determining whether fees should be *awarded* does not apply to the issue of whether the Receivership Expenses should *prime* the Mortgagee's mortgages. The court in that case did not consider whether the receiver was entitled to a priority payment.

A. The Receiver's Administration of the Estate Has Not Benefited the Properties or the Mortgagees.

The Receiver has not and cannot establish that his efforts to "preserve, manage and sell properties" benefited the properties or the Mortgagees where the properties were underwater, not

subject to disputes between or among secured creditors, or where a foreclosure action would have expeditiously resolved disputes between or among secured creditors. The Receiver's general discussion of its activities in "preserving and managing" the properties (Motion, pp. 1-2) fails to show on a property-by-property basis the extent to which his efforts benefited a particular parcel and the Mortgagee whose mortgage encumbers that property.

That omission is significant because the Receivership Expenses include the Receiver's administration of properties that should not have been subjected to his administration. For example, the Receiver should have abandoned properties that were underwater. Nearly two and one-half years ago, the Mortgagees requested that the Receiver abandon underwater properties because they were not a benefit to the Estate. *See* Dkt. 140, p. 16-18, 23. The Mortgagees also showed that Equitybuild is a "no asset" case. For example, Fannie Mae and Citibank established[1] that the property located 6250 S. Mozart Avenue was subject to liens far in excess of its value:

Citibank Property	
Citibank as Trustee Lien (as of June 28, 2019)	$1,461,176.83
Other Investor Claimed Lien[2]	$2,684,539.00
Proposed Sale Proceeds	($831,324.00)
Shortfall	**$1,908,254.83**

Given the magnitude of the shortfall, there was no reason that the Receiver should have spent any time on this or any similar underwater asset of the Estate, and any time he spent did not benefit the underwater asset or the Mortgagees.

[1] Certain Mortgagees' Objection To Receiver's (1) Second Motion For Restoration Of Funds Expended For The Benefit Of Other Properties; And (2) Ninth Motion To Confirm The Sale Of Certain Real Estate And For The Avoidance Of Certain Mortgages, Claims, Liens, And Encumbrances [Dkt. 769], p. 15.

[2] Note this chart does not even include all of the investor liens asserted against the property, only the largest investor lien. *See* Receiver's Eighth Status Report [Dkt. 757], Ex. 8.

The Receivership Expenses also include the Receiver's administration of properties where no priority disputes exist, such as (1) properties encumbered by Mortgagees' mortgages recorded prior to any Receivership Defendant or Investor Lender acquiring any interest in the property, (2) properties encumbered by mortgages recorded prior to any Receivership Defendant or Investor Lender acquiring any interest in the property, (3) properties not encumbered by an Investor Lender's mortgage, (4) properties encumbered by Mortgagees' mortgages that secure loans that paid off a prior Institutional Lender who does not assert any claim, and (5) properties that have no competing claims as shown on the Receiver's table of claims. Those properties should not have been subjected to the Receiver's administration of the Estate. Instead, the Receiver should have agreed to the Mortgagees' requests to proceed with foreclosure actions.

The Receiver not only vigorously opposed the Mortgagees' requests, but infused Estate assets into and sold these underwater properties, none of which generated a benefit to the properties or the Mortgagees, and instead created a burden on them. A chapter 7 bankruptcy trustee will not administer or sell assets where there will be no recovery other than for secured creditors, and will abandon those assets. Moreover, a bankruptcy trustee will call a chapter 7 case a "no asset" case when there is no recovery for unsecured creditors. Under such circumstances, the trustee does not incur further expenses because there is no recovery available to the estate. The Receiver's contention that the properties were subject to special circumstances because they house low-income tenants and were subject to continuing costs and risks does not mean that his efforts were required to benefit the properties or the Mortgagees, especially where the properties were underwater.

The Receiver also resisted the Mortgagees' efforts to: (a) address lien priority disputes in this Court without further delay, as they are threshold determinations in the case[3] [Dkt. 115, p. 12]; (b) foreclose their mortgages and name competing lien claimants as defendants in State court to promptly and efficiently resolve priority disputes and dispose of the properties, without incurring unnecessary administrative expenses in this insolvent Estate [*see e.g.* Dkt. 115, p. 9]; (c) transfer this case to the bankruptcy court for the Northern District of Illinois for a more efficient administration and for oversight by the Office of the United States Trustee.[4] [Dkt. 564]; and (d) pursue declaratory judgment actions as an efficient and streamlined vehicle to address lien priority [*see e.g.* Dkt. 638].

The Receiver further seeks to surcharge the properties for Receivership Expenses incurred to oppose the Mortgagees' objections to his administration of these properties and appeals, none of which efforts benefited the properties or the Mortgagees. (Motion, pp. 5-6.) *See SEC v. Elliott*, 953 F.2d 1560, 1578 (11th Cir. 1992) (secured creditors are not liable for the receiver's time spent on activities adverse to them because "these activities benefited the unsecured creditors").

B. The Claims Resolution Process Has Not Benefited and Will Not Benefit the Properties or the Mortgagees.

The Court's establishing a claims resolution process, ruling that the Receiver can participate in that process (Dkt. 941), and approving Receivership Expenses incurred in connection with the that process does not mean that those Receivership Expenses are to be paid on a priority basis from

[3] *See* Certain Mortgagees' (I) Response to Motion for Entry of and Order (1) Establishing Claims Bar Date; (2) Finding That the Receiver Gave Fair, Adequate, and Sufficient Notice to All Interested Parties and (3) Approving Proof of Claim Form and Summary Procedures and (II) Cross Motion to Set Discovery Schedule and Hearing on Lien Priority on an Expedited Basis and for Related Relief [Dkt. 285]; *see also*, Reply In Support of Motion of Creditor Federal Home Loan Mortgage Corporation Concerning Rents Collected by the Equity Receiver [Dkt. 140].

[4] *See* Motion of Certain Lenders for Leave to Permit Bankruptcy Cases for Receivership Entities [Dkt. 538], p. 8.

the proceeds of the sales of the properties. Indeed, the Court stated that it would determine priority in connection with claims process. Dkt. 824, pp. 5-6. Nor should they be paid on a priority basis because Receivership Expenses incurred in connection with the claims resolution process did not benefit the properties or the Mortgagees. The claims resolution process has absolutely no connection with maintaining or managing the properties. It relates solely to determining which creditors will receive sales proceeds and the distribution of those proceeds to secured creditors.

The Receiver contends that the claims resolution process benefits all claimants by bringing all parties before the Court and providing them with a full and fair opportunity to assert their claims. He cites no cases that hold that those efforts support a priming lien and fails to show in quantifiable terms that those Receivership Expenses were incurred to protect and preserve specific properties. *See In re Cascade Hydraulics and Utility Serv., Inc*. 815 F.2d 546, 548 (9th Cir. 1987) (general assertions of benefits and suggestions of hypothetical benefits are insufficient: "We allow payment of administrative expenses from the proceeds of secured collateral when incurred primarily for the benefit of the secured creditor or when the secured creditor caused or consented to the expense."). And, he fails to show what time and services were devoted to the secured collateral and what part of the Receivership Expenses benefited it. *See Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281, 284 (5th Cir. 1933) (the court rejected as arbitrary an allocation based upon ratio of the value of the secured creditor's fund and unsecured creditor's fund).

Further, the Receiver fails to show that his efforts were and will be beneficial for the Mortgagees because the disputes could be resolved in foreclosures actions filed in state or federal courts or the Federal bankruptcy court, as requested by the Mortgagees. Indeed, the advancement of one creditor's lien priority over another is the responsibility of private litigants, not of a receiver whose only duty is to benefit the Estate. *SEC v. Schooler*, 2015 WL 1510949, *3, No. 3:12–cv–

2164–GPC–JMA (S.D. Cal. March 4, 2015). The Mortgagees objected to the claims resolution process on the grounds that it did not provide the due process required under the facts and limited their ability to develop their cases, and argued that the disputes could be readily resolved in foreclosures actions filed in state or federal courts or the Federal bankruptcy court. Dkt 708.

The Receiver alleges that EquityBuild's fraud created confusion and obfuscation and "propagated and perpetuated confusion and uncertainty over those allegedly competing secured interests," but fails to show that the claim resolution process or his participation serves to clarify and elucidate the facts. Indeed, the Receiver will only make recommendations regarding the claims, but will not serve as an advocate. Dkt. 941, p.7. The Court will determine the priorities based upon the facts and the law, not the efforts of the Receiver. And, the Receiver does not show that any benefit to the Individual Investors will inure to the benefit of the Mortgagees.

Likewise, the Receiver's contention that his efforts are of "particular import and benefit to the properties and the claimants" because there are "competing allegedly secured claims that the Court must sort out prior to any distribution, turnover, or other remedy or result" states only that priority disputes must be resolved, not that his efforts are required. His efforts are not needed because the Mortgagees' rights, and the rights of the Individual Investors, are governed by Illinois state law concerning, among other things, conveyances, recording acts, and priority. *See SEC v. Wells Fargo Bank, N.A.*, 848 F.3d 1339, 1341 (11th Cir. 2017). In *Wells Fargo,* the court stated that State law determines security interests in real property, and "a receiver appointed by a federal court takes property subject to all liens, priorities, or privileges existing or accruing under the laws of the state." *Id*. (internal citation and quotations omitted). A district court "does not have the authority to extinguish a creditor's pre-existing state law security interest." *Id.* at 1344. In fact, this Court agreed with this principle when ruling on the Rents Motion and in its Memorandum Report and

Recommendation. Dkt. 311; *See also* Dkt. 352 (Magistrate Kim's Memorandum Opinion and Order), pp. 9-10; Dkt. 223 (Magistrate Kim's Memorandum Opinion and Order), pp. 5-6. The application of state law will resolve the competing claims and the sales proceeds will need to be distributed accordingly, something that could be accomplished entirely without this receivership.

The Receiver claims that he has assisted by identifying persons claiming interests in the properties, but that effort does not benefit the properties or the Mortgagees. A foreclosing mortgagee joins all necessary and permissible parties in any foreclosure action to terminate their interests in the property. *See* the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1501. A title search discloses those parties. Also, the procedures established in the claims resolution process do not benefit the properties or the Mortgagees and were not necessary because the existing Illinois Civil Practice Law, 735 ILCS 5/2-101, and the Federal Rules of Civil Procedure, designed to promote the fair and efficient resolution of disputes, adequately serve that function. Likewise, the Receiver's collection and distribution of claim information did not benefit the properties or the claimants and could have been obtained through normal discovery pursuant discovery rules.

The Receiver cites to *Gaskill* to argue that a benefit to the property may arise even if the receiver's efforts do not increase the value or prevent the decrease of the value of the property. (Motion, p. 9.) In *Gaskill*, the court found that the receiver improved the property by straightening out the records and finances, and winning higher rates in a rate case which would benefit the creditor the future. *Id.* at 252. Here, the Receiver's efforts in connection with the claims resolution process will not better the property in anyway. Further, the *Gaskill* court relied, in part, *Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 28 S. Ct. 406, 52 L.Ed. 528 (1908), where the Supreme Court acknowledged that cases "tend to support the rule that cases may arise in which, because of their special circumstances, it is equitable to require the parties*, at whose instance a receiver of property*

was appointed, to meet the expenses of the receivership, when the fund in court is ascertained to be insufficient for that purpose [emphasis added].” 208 U.S. at 375. The Mortgagees did not request the appointment of a receiver.

The Receiver misplaces reliance upon *SEC v. Elliott*, 953 F.2d 1560, 1576-77 (11th Cir. 1992). In *Elliott,* certain investors who were determined to be secured investors as a result of the receiver’s efforts appealed from the district court’s order surcharging their secured interests with the receiver’s fees. The court of appeals approved the district court’s award of some of the receiver’s fees because the district court found that:

> As a result of substantial work, the Receiver established the appellants’ perfected security interest in the collateral. . . . The Receiver spent a majority of his time cutting through this web to determine who really was entitled to the collateral. In some cases, the Receiver brought lawsuits defeating other investors’ claims to the collateral at issue here, thus perfecting the appellants’ security interest.
>
> Generally, a receiver is nothing more than an opponent of one who claims secured status, but this scenario envisions only a one-on-one contest. In this case, the Receiver opposed many competing claims of secured status to the same property. Although the prevailing secured claimant had to fight the Receiver’s opposition to his claim, he reaped benefits when the Receiver defeated competing claims. By combatting competing claims, the Receiver became his ally. We find that, with these type of activities, the Receiver conferred a benefit on the secured creditors and merits fees from their collateral.

Id. at 1577.

In this case, the Mortgagees, unlike the creditors in *Elliott*, objected to the receivership. And, the Receiver has not and will not perform any function to establish the Mortgagees’ secured interests or bring actions to defeat claims to the Mortgagees’ benefit. The disputes concern the priority of secured interests, not whether the Mortgagees have secured interests in the properties. The Mortgagees, not the Receiver, will be tasked to establish their priority.

II. THE BENEFIT TO THE PROPERTIES OR THE MORTGAGEES CANNOT BE DETERMINED ANY EARLIER THAN AFTER THE COURT RULES ON PRIORITIES IN A PARTICULAR TRANCHE.

The Court previously stated that it would determine the priority of the Receiver's lien in connection with the claims process. (Dkt. 824, pp. 5-6.) The Receiver now requests that the Court authorize him to pay at this time Receivership Expenses that have been previously approved and to pay future Receivership Expenses on an interim basis pursuant to the schedule contain in the Receiver's proposed order, Exhibit 1. Those requests should be denied for several reasons.

First, as shown above, the Receiver has not established that his lien should prime the Mortgagees' mortgages and the record does not support surcharging the properties encumbered by the Mortgagees' mortgages with Receivership Expenses. The proposed order does not require the Receiver to establish the benefit to the properties and the Mortgagees on a property-by-property basis in order to prime the secured creditors. To surcharge property, the Court must determine who benefitted from the Receiver's work, and allocate the costs accordingly. *See Elliott*, 953 F.2d at 1578 (the court remanded the case for "a fuller and more accurate inquiry into the services the Receiver provided to these secured creditors who appealed"); *Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281, 283 (5th Cir. 1933) (a fund comprised of the proceeds of the sale of mortgaged property is liable only for such service and expense as pertained specially to the mortgaged property and its preservation and sale).

Second, the Receiver requests the surcharging of Receivership Expenses before the results are known. Whether a receiver merits a fee is based on the circumstances surrounding the receivership, and "results are always relevant." *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992), *citing SEC v. Moody*, 374 F. Supp. 465 (S.D.Tex.1974), *aff'd*, 519 F.2d 1087 (5th Cir.1975). Here, the results will not be known until the Court resolves the priority disputes and the Receiver establishes that his efforts benefitted the property and the Mortgagee.

For example, 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 to be secured, their objections to the administrative fees, and their appeal to this Court" because "these activities benefited the unsecured creditors" and not the secured creditor. *Elliott*, 953 F.2d at 1578. Here, the Receiver seeks to surcharge the properties for time he incurred responding to the Mortgagees' objections to the Receiver's motions and applications, including their objections to the claims resolution process, and appeals. In *South County Sandy & Gravel Co., Inc. v. Bituminous Pavers Co.*, 274 A.2d 427 (R.I. 1971), the court refused to allow the receiver to collect a fee from a creditor's collateral where the receiver contested the creditor's security interest in that collateral. *Id.* at 430-31. The court reasoned 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." *Id.*

Third, the Receiver incorrectly assumes that the claimant who successfully establishes first secured priority status will be the benefited party. The mere fact that the Court determines that a claimant has the first priority interest in a parcel of property does not mean that the claimant "most benefitted" from the Receiver's efforts. That claimant will not have benefited where, for example, the Receiver should have abandoned the property or agreed that the dispute should have been resolved by a foreclosure action. Further, the Court may make its ruling despite the Receiver's efforts. And, a priming lien could also deny the second priority secured creditor any surplus after the claim of the party having a first secured priority position has been satisfied.

Fourth, the loan proceeds are encumbered by competing secured claims. The Receiver relies upon *SEC v. Capital Cove Bancorp LLC*, No. SACV 15-980, 2016 U.S. Dist. LEXIS 194834 (C.D. Cal June 29, 2016), to argue for the interim payment of his fees from the sales proceeds, but the receiver in that case acknowledged that it was holding *unencumbered* cash and funds that were subject to disputed liens and was therefore unavailable for distribution at this time. The court agreed that funds subject to disputed liens and is therefore unavailable for distribution. *Id.* at *19.

Here, there are priority disputes over the sales proceeds held by the Receiver. Because the Receiver has failed to establish that his efforts benefited the properties and the extent to which his services benefited a particular parcel of property and the Mortgagee, those funds cannot be used at this time to pay Receivership Expenses.

Fifth, the Receiver states that he is preparing and will submit schedules that allocate Receivership Expenses for certain approved fees to specific properties offers to update the allocation schedules to improve their accuracy. Those schedules, which have not been filed as of the filing date of this response, are essential for even a preliminary assessment of whether the fees as allocated show that the Receiver's efforts benefited specific properties and the Mortgagees whose mortgages encumber those properties. And, while the allocation may be sufficient to support a lien on unsecured funds, they do not apply to funds that are subject to secured claims because that allocation does not show that the Receiver's efforts benefited the properties or the Mortgagees.

Sixth, the Receiver's asserted hardship caused by the lack of Estate funds to pay the Receivership Expenses does not permit the use of the sales proceeds as a source of payment. *See Bank of Commerce & Trust Co. v. Hood*, 65 F.2d 281, 283 (5th Cir. 1933) (the mere exhaustion of the general fund does not permit the surcharging of the mortgage fund). The Receiver unfairly blames the amount of the Receivership Expenses, in part, on the Mortgagees' exercise of their due

process rights to protect and preserve their rights. In *Gaskill*, the court stated that the failure to object constitutes, in essence, acquiescence. 27 F.3d. at 251. Although litigation increases the expenses of "doing business" and may result in delay, it is the means by which parties advance their rights and resolve disputes. Further, the Receiver could have avoided the amount of the Receivership Expenses if he had acknowledged that the Receivership was insolvent and did not resist the Mortgagees' reasonable alternatives to avoid unnecessary costs and expenses.

Further, the Receiver understood that his lien may not prime the Mortgagees' mortgages. The Mortgagees repeatedly contested his fee applications on the grounds that his efforts did not benefit the properties or the Mortgagees. And, despite the Receiver's earlier requests for a priming lien, the Court did not grant the Receiver a priming lien. Instead, the Court said it would consider the request in connection with the claims resolution process. That process has not commenced and, as stated above, until the claims at issue in a tranche are resolved, this Court does not have sufficient facts to rule upon the Receiver' request.

Seventh, the Receiver's inclusion of fees and expenses for vendors involved in the claims resolution process, claiming that their activities were demanded by the claimants and are for the benefit of the claimants, does not warrant payment from the sales proceeds. The Receiver is incurring those expenses as part of his duties and status as a Receiver. The claimants requested the EquityBuild documents as part of normal discovery. And, because the claims resolution proposal deems the claim documents to be the pleadings, the Receiver has an obligation to furnish them as part of due process. And, the Receiver is participating in the Cloud Nine because he wants to use the documents for his own benefit.

CONCLUSION

For the reasons set forth above, the Court should deny the Receiver's request for a priming lien, for payment of Receivership Expenses now from the sales proceeds, and for the entry of the proposed order. Instead, the Court should require the Receiver to submit his request for a priming lien on the properties included in tranche after the Court rules on the priorities of the secured creditors asserting an interest in those properties, and require the Receiver to show on a property-by-property basis the benefit his efforts bestowed upon each property in that tranche and the secured creditors asserting an interest in that property, including his allocation of work and time to each property in that tranche.

Respectfully submitted,

/s/ Michael Gilman Michael Gilman (6182779) (mgilman@dykema.com) Dykema Gossett PLLC 10 S. Wacker Drive Suite 2300 Chicago, Illinois 60606 (312) 627-5675 *Federal Home Loan Mortgage Corporation 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 Registered Holders of UBS Commercial Mortgage Trust 2017-C1,Commercial Mortgage Pass-Through Certificates, Series 2017-C1; Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; Federal National Mortgage Association; U.S. Bank National Association, as Trustee for the registered Holders of J.P. Morgan Chase*	s/ James P. Sullivan James P. Sullivan James P. Sullivan (6256746) CHAPMAN AND CUTLER LLP 111 W. Monroe Street Chicago, Illinois 60603-4080 312.845.3445 (P) 312.701.2361 (F) jsullivan@chapman.com *Counsel for BMO Harris Bank N.A.* s/ Jill L. Nicholson Jill L. Nicholson (jnicholson@foley.com) Andrew T. McClain (amcclain@foley.com) Foley & Lardner LLP 321 N. Clark St., Ste. 3000 Chicago, IL 60654 Ph: (312) 832-4500 Fax: (312) 644-7528 *Counsel for 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-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;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 Sabal TL1 LLC; 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; 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; BC57, LLC; UBS AG; 1111 Crest Dr., LLC, Pakravan Living Trust, Hamid Ismail, Farsaa, Inc.; Direct Lending Partner LLC, successor to Arena DLP Lender LLC and DLP Lending Fund LLC; Thorofare Asset Based Lending REIT Fund IV LLC	*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; Federal National Mortgage Association; and Sabal TL1, LLC*
s/Jay L. Welford Jay L. Welford jwelford@jaffelaw.com JAFFE RAITT, HEUER & WEISS, P.C. Jay L. Welford (P34471) 27777 Franklin Road, Suite 2500 Southfield, Michigan 48034 (248) 351-3000 s/ Mark S. Landman mlandman@lcbf.com Landman Corsi Ballaine & Ford P.C. 120 Broadway, 13th Floor	s/ William J. Serritella, Jr. William J. Serritella, Jr. wserritella@taftlaw.com Zachary R. Clark zclark@taftlaw.com Taft Stettinius & Hollister LLP 111 East Wacker Drive, Suite 2800 Chicago, IL 60601 (312) 527-4000 /s/ James M. Crowley James M. Crowley jcrowley@plunkettcooney.com Plunkett Cooney, PC

New York, NY 10271
Ph: (212) 238-4800
Fax: (212) 238-4848
Counsel for Freddie Mac

/s/ Thomas B. Fullerton
Thomas B. Fullerton (6296539)
Akerman LLP
71 S. Wacker Drive, 47th Floor
Chicago, IL 60606
(312) 634-5700
thomas.fullerton@akerman.com

Michael D. Napoli (TX 14803400)
Akerman LLP
2001 Ross Avenue, Suite 3600
Dallas, TX 75201
(214) 720-4360
michael.napoli@akerman.com
Counsel for Midland Loan Services, a Division of PNC Bank, National Association

/s/ Jason J. DeJonker
Jason J. DeJonker (6272128)
(jason.dejonker@bclplaw.com)
BRYAN CAVE LEIGHTON PAISNER LLP
161 N. Clark Street, Suite 4300
Chicago, IL 60601
(312) 602-5000
Counsel for Direct Lending Partner LLC (successor to Arena DLP Lender LLC and DLP Lending Fund LLC)

221 N. LaSalle Street, Ste. 1550
Chicago, IL 60601
Ph: (312) 970-3410
Fax: (248) 901-4040
Counsel for UBS AG

/s/Scott Mueller
Scott B. Mueller, #6294642
(Scott.Mueller@stinson.com)
7700 Forsyth Blvd., Suite 1100
St. Louis, MO 63105
Phone: (314) 863-0800
Fax: (314) 259-3931
Attorneys for BMO Harris Bank, N.A., and Midland Loan Services, a division of PNC Bank, NA, acting under authority designated by Colony American Finance Lender, LLC, assignee Wilmington Trust, N.A. as Trustee for the benefit of registered holder of Colony American Finance 2015-1

/s/ David Hart
David Hart
(dhart@maddinhauser.com)
Maddin, Hauser, Roth & Heller, P.C.
28400 Northwestern Highway
Suite 200-Essex Centre
Southfield MI 48034
Phone: (248) 827-1884
Fax: (248) 359-6184
Counsel for BC57, LLC

EXHIBIT A

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) 1111 Crest Dr., LLC, Pakravan Living Trust, Hamid Esmail, and Farsaa, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2021, I caused the foregoing **Mortgagees' Response to Receiver's Motion for Approval to Pay Certain Previously Approved Fees and Costs and For Interim Payment of Continuing Claims Process Fees and Costs Pursuant to Receiver's Lien** to be electronically filed with the Clerk of Court through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record.

/s/ Michael A. Gilman

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