

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

U.S. SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
	)	
Plaintiff,	)	
	)	Case Action No. 18 CV 5587
v.	)	
	)	Judge Manish S. Shah
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN	)	
	)	Magistrate Judge Young B. Kim
	)	
Defendants.	)	

**NOTICE OF CLAIMANT DIRECT LENDING PARTNER LLC’S  
MOTION FOR LEAVE TO TAKE FURTHER DISCOVERY**

Now comes Claimant Direct Lending Partner LLC’s (“Direct Lending”), by and through its counsel, and pursuant to the Court’s Order Regarding Claims Resolution Process No. 2 (Dkt. 941) and the schedule set by the Court regarding Group 2 as amended (Dkt. 1532) provides notice of its request for leave to take further discovery on the Receiver’s Group 2 Disclosure (Dkt. 1537) (the “Notice”). In support of the Notice, Direct Lending states as follows:

1. Direct Lending is classified as an Institutional Lender with a secured claim on a property to be adjudicated in Group 2 of the claims process, specifically 6160 – 6212 S. Martin Luther King Drive (Property 79)(the “MLK Property”). There are a significant number of competing claims to the MLK Property by Investor-Lenders. (Dkt. 1535, Ex. 5)

2. On May 15, 2023, this Court entered an Order Regarding Summary Proceedings for Group 2 (Dkt. 1476). On September 12, 2023, this Court entered a minute entry extending fact discovery deadline as to Group 2 to October 25, 2023. Disclosure as to the avoidance claims was due November 8, 2023, with Notice of Claimants requesting further discovery as to the avoidance

disclosure due November 15, 2023. (Dkt.1532)

3. After being allowed to take significant discovery, the Receiver filed his disclosure of an avoidance claim on November 8, 2023 (the “Receiver’s Group 2 Disclosure”). (Dkt. 1537). In the Receiver’s Group 2 Disclosure, the Receiver alleges that the MLK Property which is the subject of the security interest given by EquityBuild, Inc. to Direct Lending, constitutes a voidable fraudulent transfer under the Illinois Fraudulent Transfer Act, 740 ILCS 160 (“Act”), or is otherwise voidable under some undisclosed “applicable law”. The Receiver further acknowledges that “if the investor-lenders’ mortgages are deemed to be in first position, the fraudulent conveyance issues to which this disclosure relates will essentially be moot and neither the participants nor the Court should devote time or expense to the matter.” (*Id.* at 2)

4. The Act requires the Receiver to prove, among other things, that EquityBuild made a transfer or incurred an obligation “with actual intent to hinder, delay, or defraud any creditor of the debtor...”. 740 ILCS 160/5(a)(1). In addition, even if the Receiver were to prove a fraudulent transfer, Direct Lending’s security interest would remain valid if it accepted the security interest in good faith and for reasonably equivalent value. 740 ILCS 160/9(a).

5. In the Receiver’s Group 2 Disclosure, the Receiver alleges, via hearsay and conjecture, that Direct Lending was aware of numerous “facts” that would have led a reasonable person to inquire further into the validity of the grants of security interests (Dkt 1537, at 12). Although the Receiver calls his assertions “facts” that would have led a reasonable person to inquire further, he fails to adequately show how an inquiry of those “facts” would have revealed that EquityBuild was engaged in fraud. (Dkt. 1537 at 12-15)

6. Through this request for further discovery, Direct Lending requests a period of 60 days to (a) identify and properly disclose individuals or corporate representatives who may need

to provide testimony in regard to either the Receiver's new allegations or Direct Lending's defenses thereto and (b) actually conduct examinations of those individuals or corporate representatives.

7. While Direct Lending is not certain it will need any further written discovery, Direct Lending also requests that it be granted leave to serve interrogatories and supporting document requests on the Receiver to learn the evidence the Receiver believes he has to support all of the elements of the newly disclosed claim under the Act. The focus of that discovery would be a further inquiry into the bullet point "facts" that would allegedly have revealed that EquityBuild was engaged in fraud on the investor-lenders of the MLK Property. (Dkt. 1537, at 12-15)

8. The discovery requested by Direct Lending should be allowed as denying the request would deprive Direct Lending of its due process rights, particularly given that the Receiver was permitted to plead his claim after engaging in discovery. Direct Lending further states that allowing discovery to proceed on the Receiver's newly asserted voidable transfer claim would not delay the Court's existing schedule on the Receiver's other claims against Group 2 Claimants and would thus not prejudice the Receiver.

WHEREFORE, Claimant Direct Lending Partner LLC respectfully requests this Court grant its request for leave to take further discovery on the Receiver's newly filed avoidance disclosure, allowing 60 days for such discovery, and such further relief as this court deems just and proper.

Dated: November 15, 2023

DIRECT LENDING PARTNER LLC

By: /s/ William S. Hackney  
One of its Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2023, I served the foregoing NOTICE OF CLAIMANT DIRECT LENDING PARTNER LLC'S MOTION FOR LEAVE TO TAKE FURTHER DISCOVERY electronically via the Court's ECF system on all counsel of record and all members of Claims Group 2 by email to the distribution list at [ebgroup2@rdaplawn.net](mailto:ebgroup2@rdaplawn.net)

*/s/ William S. Hackney* \_\_\_\_\_