UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

RECEIVER'S REPLY BRIEF IN SUPPORT OF MOTION FOR ENTRY OF AN 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 RESPONSE TO CROSS-MOTION TO SET DISCOVERY SCHEDULE AND HEARING ON LIEN PRIORITY ON AN EXPEDITED BASIS AND FOR RELATED RELIEF

Setting aside the institutional lenders' duplicative arguments and ad hominem attacks (which are not only unfounded, but also have nothing to do with the claims process), the Receiver's motion and claims form is largely uncontested.

- The Receiver proposed a detailed Claims Form that comprised 19 pages.[1] No objection was made to that critical submission.
- There also are no objections to the Receiver's proposed form of notice and retention of a third party vendor (Axos Fiduciary Services) to host a claims portal.

[1] The comprehensive Claims Form – when viewed through the Axos Claims Portal – will likely be shorter for most claimants because sections that are inapplicable to a claimant (based on the claimant's nature) are "hidden." The online version is thus more manageable than the print version submitted in connection with the motion to establish the claims process.

The lack of objections to these key components is not surprising, as the Receiver's proposed claims process is fair and reasonable in light of the circumstances of this case and magnitude of potential claimants. The Receiver is well within his discretion to propose and implement this type of a cost-effective, fair, and equitable process.

The sole objection lodged by the institutional lenders relating directly to the proposed claims process is that the process is too long, and does not protect their interests. Specifically, the institutional lenders argue that the Bar Date should be shortened from 120-days (which accounts for a 30-day notice period) to 60-days. But they fail to cite any authority in support of this self-serving proposition or to show that the proposed Bar Date is unreasonable. To be fair, there are other objections – reruns of earlier performances having nothing to do with the claims process itself – posed to spin a narrative criticizing the Receiver's business judgment. Such efforts are not only inappropriate and unfounded, but also repugnant to the efficient administration of the Estate and the Receiver's obligation to propose a claims process that is equitable for all victims of the Cohens' fraud.

ARGUMENT

The Receiver will address common objections raised by Freddie Mac, Citibank N.A., U.S. Bank National Association, Wilmington Trust, Fannie Mae, Midland Loan Services, and BC57, LLC ("Certain Mortgagees'") and its cross-motion for expedited discovery and priority hearing, objections by Liberty EBCP, LLC ("Liberty"), and objections by Wilmington Trust (collectively the "Institutional Lenders") as fully set forth below.[2]

[2] Liberty and Wilmington Trust filed responses separate from the Certain Mortgagees raising nearly identical issues. Such duplicative and inefficient efforts are unnecessary and should be avoided, as the Receiver has been advocating against since the inception of the Receivership.

A. The Receiver's Bar Date Is Fair And Reasonable.

The Institutional Lenders raise only one objection directed specifically to the Receiver's proposed claims process. They argue that the proposed 120-day Bar Date is too long and should be only 60 days. However, they have not set forth any facts or authority to show that 120 days is unreasonable in light of the circumstances of this Receivership, because there are none.[3] It is well settled that this Court has the authority to grant the relief requested herein and allow a 120-day Bar Date where that amount of time is designed to ensure a fair process for the benefit of the potential claimants and administration of the Estate. *See SEC v. Hardy*, 803 F.3d 1034, 1037-38 (9th Cir. 1986) (it was within the court's discretion to conclude a two and a half month period of time to respond to a detailed claims form was reasonable given the complexity of the case); *see also SEC v. Billion Coupons, Inc.*, 2009 WL 2143534, at *4 (D. Haw. July 13, 2009) (approving receiver's claims procedures and bar date); *SEC v. Alanar, Inc.*, 2009 WL 1664443, at *3-4 (S.D. Ind. June 12, 2009) (same).

The Receiver's proposed 120-day Bar Date is designed to provide sufficient time for all interested parties to submit claims and supporting documents regardless of their sophistication, means, or circumstances.[4] It includes a 30-day notice period to ensure notice is given to all potential claimants, which is reasonable given that new creditors continue to come to the Receiver's attention, thus giving all potential claimants at least a full 90-days to submit claims.

[3] It is worth noting that had the institutional lenders kept their powder dry such that the Receiver's plan could have been implemented without delay, the actual Bar Date likely would have been essentially the same as it would be if the Court were to agree with their objection – thereby accomplishing nothing. Such overzealous advocacy should not be countenanced.

[4] In addition to the handful of multi-billion dollar institutional lenders who are most vociferous in their objections to the efforts of the Receiver, the claims process also must be fair for the hundreds of investor-lenders, many of whom lost their life savings to the Cohens' fraud and who have had little voice, comparatively, in this action to date.

That time frame also allows the Receiver to provide follow-up notifications to investors who have not submitted claims forms as a way of improving the likelihood they will receive actual notice by email and also providing a more reasonable time frame for their receipt of constructive notice as through the Receivership web page established for this action.

The Receiver is also aware that his proposed claims form – to which no objection has been raised – is detailed. But he has determined in his sound business judgment that this type of claim form is necessary given the complexity of the transactions and fraud at issue and determinations the Receiver will need to make during the claims process. *See Hardy*, 803 F.3d at 1038. A 120-day Bar Date allows sufficient time for claimants to gather and submit documentation to support their claims, some of which may require them to obtain records from third parties such as account custodians and banks. Given the length and detail required by the claims form, the proposed Bar Date is not only reasonable but also necessary to protect the due process interests of all potential claimants. *Id.; see also SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992) (due process requires that all potential claimants be given an adequate opportunity to submit claims and rebut any characterizations therein).

B. The Other Objections Are Not Related To The Claims Process And Are Irrelevant, Unfounded, Or Premature.

The remainder of the Institutional Lenders' objections are either irrelevant, or at best, tangentially related to the substantive claims process motion set forth by the Receiver. The lenders' cross-motion asks for: expedited discovery; a priority hearing 30 days after the Bar Date; that this Court require the Receiver to segregate principal and interest payments and escrow for taxes, insurance, and reserves as required under the loan documents; and for a prohibition on the use of such funds for administrative expenses during the pendency of the claims process. These objections largely have been raised (some more than once) by these same lenders in response to

virtually any action proposed by the Receiver, and to the extent supported, rely upon a similar compilation of incomplete statements to advance the same narrative: to wit, that the lenders, who are unabashedly pushing their own agenda, should dictate the claims process for all victims and creditors rather than leaving the process to the business judgment of the Court-appointed Receiver. And so they argue that their interests are not protected because: (a) the Receiver has not made principal and interest payments; (b) the Receiver did not pay property taxes in full by March 1, 2019; and (c) while litigation ensues over priority there will theoretically not be enough sales proceeds to cover the full cost of indebtedness. Not to be left out, the Certain Mortgagees' also assert: (a) the Receiver has not yet filed a fee application; (b) there are purported conflicts of interest in selling properties to the current property managers; and (c) the Receiver has not provided a valuation for the properties within the Estate.

At the heart of the Institutional Lenders' objections is the false premise that the claims process should be designed to solely protect their interests. Instead, the claims process should be a fair and equitable process for *all victims* and provide for the orderly administration of the Estate for the Court to whom the Receiver reports.

Here, the claims process must allow all interested parties (including more than 700 investor-lenders and equity investors) to submit claims, and provide the Receiver the necessary information to undertake a priority determination.[5] This Court has expressed a similar view,

[5] Common sense dictates that the Receiver cannot know who has competing claims on a property until all claims as to that property are submitted, particularly where the Receiver already knows many investor-lenders will assert they have priority over the institutional lenders. And to the extent certain claims are tied to certain properties (as opposed to against the Receivership Estate as a whole), the Receiver needs to see and evaluate those claims before any proceeds corresponding to that property can be distributed.

stating in its February 13, 2019 Memorandum Order and Opinion on the creditors' rents motion (hereinafter "Rents Ruling"):

> The court agrees with the Receiver that it is premature to determine whether the Creditors have preexisting secured interests in the Rents under Illinois law. The court has not yet approved a claims process. And the SEC and Receiver have alleged that Defendants manipulated secured interests as part of their Ponzi scheme. (R. 114, SEC's Resp. at 1; R. 115, Receiver's Resp. at 7.) Given that defrauded investors and creditors may assert interests in the same Rents and subject properties, ***the claims process should be implemented to ensure that investors and lenders receive due process***. (Docket No. 223 at 8-9) (emphasis added)

The Court also has stated that it "***agrees with the Receiver that priority determinations should not be rendered until a claims process has been approved and implemented***." (Docket No. 223 at 9, n.3) (emphasis added) Despite these clear statements from the Court, the lenders have forged ahead to criticize the Receiver both for acting consistent with the Court's statements and for exercising his discretion in doing so.

The Court's statements and the Receiver's proposed process are well grounded in law, logic, and basic fairness and equity. These lenders are sophisticated enough to recognize the challenges that an expedited discovery and priority hearing will pose in this case. Such an expedited process would undermine the ability of many victims to protect their interests as well as the Receiver's ability to make an informed recommendation to the Court as to priority. A priority hearing 30 days after the Bar Date is effectively a sham that appears purposefully proposed because in such narrow time frame it would be virtually impossible, absent an army of lawyers and accountants, to analyze, understand, effectively communicate, and ensure a fair and equitable process that could protect the interests of the more than 800 other potential claimants.

The Institutional Lenders also wrongly assert that the Receiver ignored Judge Lee's directive to build discovery into the claims process. To the contrary, the Receiver expressly stated in his motion to establish a claims process that he would propose a discovery schedule to the Court

at a status conference 30-days after the Bar Date and intends on consulting with the institutional lenders as to reasonable discovery that is necessary and appropriate. (Docket No. 241 at 9-10) Any discovery at this time (*i.e.*, before the Bar Date) is premature and improperly shifts the Receiver's focus from his duties at hand to fielding costly and burdensome requests for discovery, all the while diminishing the limited financial resources available in the Estate.

The lenders' argument also presumes that the Receiver's ultimate report on claims and eventual distribution plan will conclude that all of the institutional lenders are not in first position, which is speculative and unknown at this time. The lenders' approach further overlooks that there would be a need to provide notice to and a like opportunity to conduct discovery by investor lenders. Due to their sheer number, such discovery would be an exorbitantly expensive and extraordinarily cumbersome process that would exponentially increase the costs of administering the Estate. While the Receiver (and the SEC) have identified issues that exist with respect to priority among lenders, if he ultimately determines that any of these institutional lenders sits in first position after the claims process is completed, then the discovery and efforts to address such issues that the lenders are pushing for now will prove to be a waste of limited resources.

Moreover, the Receiver anticipates making a priority determination on a property-by-property basis as part of that process, consistent with procedures allowed by other courts where there were similar competing claimant issues to resolve. *See, e.g., SEC v. Vescor Capital Corp.*, 599 F.3d 1189 (10th Cir. 2010).[6] To that end, after the Bar Date has passed and all claims have

[6] The appropriate time for a creditor to make any "argument[s] as to its distribution priority" is after the Receiver has proposed a distribution plan, not like here where a claims process has not been established yet, let alone a distribution plan. *Vescor Capital Corp.*, 599 F.3d at 1194 (noting that any party's perfected security interests were not impacted or invalidated where the receiver was authorized to sell property with liens attaching to the proceeds and determinations as to validity and priority were to occur at a later date); *see also Commodities Futures Trading Comm'n v. Topworth Int'l, Ltd.,* 205 F.3d 1107, 1115 (9th Cir. 1999) (affirming denial of investor's

been submitted, the Receiver may identify a small number of properties (either with the same institutional lender or different lenders) that can serve as bellwethers with respect to the priority issue. At that time, those with an interest in the selected test properties could participate in narrowed and focused discovery.[7] This type of process may allow for a precedential analysis and determination as to priority that could be used as a basis for resolving similar priority issues with other properties in the Estate. The Receiver may also seek the Court's approval to make interim distributions as his property-by-property analysis progresses. As a result, the presumption of prejudice from the duration of the claims process may never come to pass either because the Receiver is successful at reducing the length of the process, or because he is able to make interim distributions. For these reasons, it is misleading at best to suggest that no lien priority determination will be made for at least two years from the Receiver's appointment.[8]

As noted in the motion, it is the Receiver's position that discovery should wait until the Bar Date has passed and the Receiver has an opportunity to propose a discovery plan that is narrowly and efficiently tailored to the claims that have been received. However, in the event that

challenge to distribution plan where investor seeking information like a "schedule proposing the treatment of each claim" logically "could only be provided to him *after* the plan was approved by the district court").

[7] The Receiver will only know who those interested parties are after submission of their claims, further underscoring the need to implement a claims process first.

[8] The suggestion by the Certain Mortgagees that the claims process motion should have been filed sooner ignores the realities of this case (including the impact of the federal government shutdown) and represents another attempt to substitute their highly partial business judgment for that of the Receiver (and the broad discretion of the Court). The Receiver was appointed "to promote orderly and efficient administration of the estate by the district court for the benefit of creditors," such that "reasonable procedures instituted by the district court" that ultimately serve these basic principles are generally upheld. *Hardy*, 803 F.3d at 1038. The Court and the Receiver has "broad powers and wide discretion." *Id.* The Receiver needs an opportunity to administer the Estate without constant interference from the Institutional Lenders. Courts have recognized this need noting that "[w]e would be remiss were we to interfere with a district court's supervision of an equity receivership absent a clear abuse of discretion." *Id.*

this Court were to allow for the initiation of some limited discovery prior to then, such discovery should be allowed only between the SEC and the institutional lenders. Such discovery should not embroil or sidetrack the Receiver. Requiring the Receiver to engage in discovery with the institutional lenders at present would result in further waste of limited resources and would ultimately delay completion of the claims process as well as his asset preservation and liquidation efforts. An expedited claims process and priority determination also would further waylay the Receiver's ability to recover, preserve, and liquidate the assets of the Receivership Estate.

* * * *

While the remainder of the Institutional Lenders' objections are compiled criticisms that have nothing to do with claims process, the Receiver will briefly address those issues, many of which he has already responded to in open court and in other filings.

1. Nonpayment Of Principal And Interest Is Reasonable Given The Need To Preserve The Properties, Lack Of Funds, And Uncertainty As To Priority.

The Institutional Lenders' reliance on the district court's ruling on a motion to lift the stay in order to foreclose on property in *SEC v. Madison, LLC*, 647 F. Supp. 2d 1271 (D. Utah 2009) is inapposite. The *Madison* court appointed a receiver on March 28, 2008 and the decision relied on so heavily was decided on August 13, 2009 some ***fifteen months*** after the appointment of a receiver. *Id.* at 1275. Here, the Receivership has only been in place for seven months. That is half the time of the *Madison* court when it resolved more limited issues raised by certain creditors; the *Madison* court also did not need to determine similar priority issues that will ultimately have to be determined in the Receivership at bar. Moreover, there was no liability determination at the

time of the *Madison* opinion[9] (which effectively exists here with regard to the Consent Judgment that has been entered).

Courts facing similar priority issues have found that keeping those properties (or the proceeds of their sales, as proposed here) in the receivership estate while preparing "test cases" for trial on these issues preserves the status quo and protects the interests of all. *See SEC v. Universal Fin.*, 760 F.2d 1034, 1037-39 (9th Cir. 1985); *see also Vescor Capital Corp.*, 599 F.3d at 1189-94. The Receiver's focus, in the interim, should be on safeguarding and liquidating all assets in the Estate. *Vescor Capital Corp.*, 599 F.3d at 1194.

Contrary to the Institutional Lenders' baseless assertions, the Receiver is not using expenses that could otherwise pay debt service for an "administrative war chest." He has abided by the Rents Ruling since it was decided and is using any excess rents from a property to safeguard the asset and address pressing expenses on that specific property, such as unpaid real estate taxes and capital expenditures necessary to address life and safety issues. Moreover, the Receiver has proposed segregating the proceeds from sales of the properties associated with the Institutional Lenders' as well as the investor-lenders secured liens, leaving for another day whether or not such proceeds should be used for any administrative costs of the Receivership. (Docket No. 230 at 9-12, 17-18)

[9] In *Madison*, final judgment of permanent injunction was entered as to three defendants in August 2010 and as to the remaining defendant in November 2010, which is at least a year after the decision the lenders rely on. (*See SEC v. Madison*, Case No. 2:08-cv-00243 (D. Utah), Docket Nos. 419-21, 434) Moreover, the *Madison* receivership involved 42 investors (as compared to over 700 here) and 15 properties (as compared to 113 here). (*Id.* Docket Nos. 1, 45)

2. Certain Real Estate Taxes Were Paid By March 1, 2019 And Rents Will Be Restored When Sufficient Funds Are Available To Do So.

Prior to the Rents Ruling on February 13, 2019, the Receiver was not prohibited by the Court from using rents to stabilize the Receivership's properties on a portfolio basis. As the Receiver has repeatedly stated, the challenged status of the portfolio of properties necessitated using rent monies to address life and safety issues and preserve the assets for 113 properties and nearly 1,700 units.

The Rents Ruling requires the Receiver to furnish certain accounting information, which he is presently working to prepare along with the property managers and his retained accountants. The Receiver plans to provide a report to each institutional lender for each of the properties on which a lien has been asserted within the next few weeks, which will thereafter be updated as monthly property management reports are received. Moreover, the Rents Ruling also says the Receiver must "restore the Rents, to the extent that there are enough funds now or later, if they have been used for the benefit of other properties." (Docket No. 258) Funds are not available now to restore the Rents, but they will be later, as the Receiver intends on using proceeds from the sale of unencumbered properties towards restoration of rents.

The Receiver has paid some of the real estate taxes that were due March 1, 2019 and has subsequently paid additional taxes for certain properties that had enough cash flow from last month to do so. The Receiver's plan for the payment of the remaining outstanding real estate taxes not only includes payment of certain amounts by the Receiver, but also from institutional lenders holding reserves (comprised of Investor Monies) who the Receiver requested (and continues to request) to use those funds to pay certain amounts. To the extent there remain outstanding taxes after payment in accordance with the foregoing, the Receiver again plans to use funds from future rents (for corresponding properties), proceeds from the sale of unencumbered properties, or

through sales proceeds at closing to pay any outstanding real estate taxes. To suggest that the Receiver has done anything but put forth a workable plan for payment of real estate taxes is a plain mischaracterization of the record. There is nothing impermissible about the Receiver's actions as stated herein, and the Institutional Lenders have cited no authority to suggest the Receiver's business judgment and administration of the Estate along these lines (particularly in light of significant liquidity constraints, which he has been working to address through the sale of the first two tranches of properties) is a breach of fiduciary duty or otherwise impermissible.

3. A Fair And Equitable Evaluation And Determination As To Priority Is Necessary Even Though The Process May Diminish Available Funds For Distribution.

The issue the Institutional Lenders raise is that sales proceeds may not be enough to cover the full amount of indebtedness, which includes interest, attorneys' fees, and other fees that the Receiver disputes are properly charged against the Estate.[10] But the Receiver and the Court cannot avoid the need to evaluate and make a determination as to priority, where there is dispute as to priority (revealed by the claims process), even though the available proceeds from the sale of any such property may be diminished as a result of the need for that evaluation and determination. The Institutional Lenders – along with any other potential claimant – have a right to dispute any proposed distribution amounts but cannot do so until a distribution plan is in place. Any challenges at this time, and any subsequent discovery, are premature at best and may ultimately be moot (depending on the distribution plan and amounts therein). *Vescor Capital Corp.*, 599 F. 3d at 1193-95; *Topworth Int'l, Ltd.,* 205 F.3d at 1115.

[10] As has already been indicated, issues will need to be addressed as part of a distribution plan in regards to any lenders' alleged entitlement to prepayment penalties, default interest, and the like.

Moreover, the Receiver is not yet in a position to distribute any sales proceeds because – in connection with a distribution plan or otherwise – he may ask this Court to require secured creditors to bear a portion of administrative fees to pay for the benefits they received from the Receiver's work. *See, e.g., Elliott*, 953 F.2d at 1576-79 (finding that "it would be inequitable for the burden of the receivership to fall solely on the unsecured investors since the secured investors had substantially benefitted from the Receiver's work"). In *Elliott*, the court found that the secured creditors who benefited from the receiver's efforts "should bear a portion of the administrative expenses," stating further that:

> As a result of substantial work, the Receiver established the appellants' perfected security interest in the collateral. Part of Elliott's fraud was convincing investors they were collateralized when they really were not. Often, Elliott attempted to use the same securities as collateral for several different investors. 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. *Id.* at 1578.

Here, the Receiver will have to untangle similar webs in order to determine which claimants are entitled to what funds. In doing so, the Receiver will confer a benefit on all creditors and as such, each creditor may be required to pay a proportionate amount of administrative fees making all objections relating to hypothetical distribution amounts premature and unsupported. The presence of this issue (and possibility that a secured claimant may need to pay its proportionate share of expenses from its collateral) does not make a claims process improper. Instead, it supports its implementation and further underscores the benefit to all interested parties that will result from a fair and equitable claims process.

4. The Receiver Has Not Filed Quarterly Fee Applications Because There Are Not Yet Sufficient Funds.

The Receiver has not filed a fee application yet because there have not been sufficient funds to pay for those fees and expenses. In his second status report, the Receiver disclosed the amount

of professional fees through the most recent quarter and intends on filing a fee application for the third and fourth quarter of 2018 by the end of April. (Docket No. 258 at 22-23) Again, this objection has no bearing on the claims process.

5. There Are No Conflicts Of Interest By Selling To The Property Managers.

There is no conflict of interest in selling property to any of the property managers. Not only does this objection have no bearing on the claims process, it has already been addressed at length in regards to the Receiver's first motion for approval of sales (Docket No. 230), and second motion for approval of sales process (Docket No. 228).[11] Further, contrary to the Certain Mortgagees' assertions, the property managers are not in a favored position because the Receiver (*not* the property managers) makes decisions with respect to what properties to improve and when. The Receiver controls when funds are disbursed to make capital improvements on properties. The Receiver's real estate broker (SVN), in conjunction with its work with the Receiver, selects the units that each potential buyer will view during a property tour, schedules the property tours directly with each potential buyer, takes each potential buyer on said property tours, and answers all questions regarding marketing information provided by SVN. The property managers limited role in the sales process includes providing SVN with keys to the selected units and furnishing the due diligence information provided to all potential purchasers and interested parties (much of which is the same information the Institutional Lenders receive on a monthly basis from the property managers). And, the property manager has no information about other bidders and thus no insider advantage because the Receiver has conducted a sealed bid process to sell the properties.

[11] Having to address what is a constant onslaught of objections over every activity is expensive in resources and time, but to have duplicative objections magnifies even greater the unnecessary and inefficient waste of Receivership resources.

6. Providing A Real Estate Valuation Would Not Maximize Value To The Estate.

The Receiver has not provided a valuation for the real estate in the portfolio because doing so would undermine his plan, informed by his real estate advisors, for pricing real estate for sale as part of an orderly and strategic plan of disposition that maximizes value to the Estate.[12] The Receiver, in his sound business judgment, retained a real estate broker (SVN) to assist him in implementing an orderly plan of disposition. The Receiver has this authority pursuant to the Order Appointing Receiver. (Docket No. 16, Order Appointing Receiver, ¶ 8) (the Receiver shall have the power to, *inter alia*, "engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to … real estate agents … [and] brokers…") The Receiver has also submitted a written liquidation plan that provides additional detail in regards to the portfolio and its disposition.

If this were not enough, any objections to the valuation of any specific property can be raised in connection with any motion to sell that specific property. Indeed, as this Court is aware, a lengthy hearing was held on March 18, 2019 where the process for the sale of the second tranche of properties was vetted and where objections were invited and heard in regards to the approval of the sale of the first tranche of properties. As that process revealed, the public sale process allowed the market to set a valuation for property based on what potential purchasers are willing to pay;

[12] There are a number of potential pitfalls from disclosing a valuation for the properties in the Estate. Real estate is an ever-changing market and property values can increase or decrease with time, through changes in the market, capital improvements, or for a variety of other reasons. The value of a property today may not be its value at the time it is selected for sale. Because of the possibility of a rise in property values over time that would maximize value to the Estate, the Receiver should be allowed to continue with an orderly disposition of the assets where he and his retained professionals determine a listing price (or valuation) based on market conditions at that point in time and allow the market at the time of sale to further inform all interested parties of that valuation. Only then can the Receiver ensure he maximized the value of the Estate.

and here, achieving sales prices at or above the list prices indicates the Receiver's valuations thus far are consistent with market valuations.[13]

C. All Other Points Liberty And Wilmington Trust Separately Raise Are Duplicative.

Liberty's assertion that the Receiver has failed and refused to provide information obtained from the property managers and as requested by Liberty (Resp. at 2) is not only wrong, it is duplicative of objections Liberty raised in connection with the motion to approve the process for the second tranche of properties. For efficiency purposes, to limit the burden on the property managers, and for continuity of communications, the Receiver has asked all institutional lenders to contact his counsel directly with questions or information requests (many of which are duplicative). The Receiver has regularly provided the lenders with requested information and has done so as expeditiously as practicable.

Wilmington Trust wrongly asserts that of the six properties under contract, five are unsecured. (Resp. at 3) As stated before, three properties in the first tranche are unencumbered and three properties are encumbered with debt. Moreover, Wilmington Trust's suggestion that the Receiver should not be able to liquidate any real estate where a conventional loan secures the property during the claims period is unworkable and unreasonable because of the carrying costs associated with holding certain properties. Moreover, the Receiver has authority under the Order Appointing Receiver to sell property and Wilmington Trust cites no authority to the contrary.

CONCLUSION

This Receivership has provided significant administrative challenges because the Defendants bled the portfolio of cash before they got caught and "part [of the] con was to create a

[13] It should be noted that many of the Institutional Lenders have aggressively sought and conducted inspections and appraisals of properties, so the notion that they lack information about valuation is somewhat disingenuous.

paper trail that made claimants believe they were secured when in fact they [may not have been.]" *Elliott*, 953 F.2d at 1583. In light of the circumstances of the case, the Receiver's proposed claims process is fair, reasonable, and necessary to protect the due process interests of all potential claimants and as such, the Receiver's motion should be granted. Efforts to suggest otherwise are unsupported by the facts and the law. The Receiver has the authority to request the Court to set a priority hearing (or, multiple priority hearings) and any reasonable discovery on a timeframe he determines (using his sound business judgment and discretion) is reasonable and fair to all interested parties and will do consistent with the claims process he has proposed.

Dated: March 29, 2019

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

Michael Rachlis
Nicole Mirjanich
Rachlis Duff Peel & Kaplan, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950; Fax (312) 733-3952
mrachlis@rdaplaw.net
nm@rdaplaw.net

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2019, I electronically filed the with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. A copy of foregoing pleading was served upon counsel of record via the CM/ECF system. I further certify I caused to be served the Defendant Jerome Cohen via e-mail.

/s/ Michael Rachlis
Michael Rachlis
Rachlis Duff Peel & Kaplan, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
Fax (312) 733-3952
mrachlis@rdaplaw.net