

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

Case No. 1:18-cv-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**EMERGENCY MOTION FOR EXTENSION OF DEADLINE TO SUBMIT CREDIT
BIDS SET BY RECEIVER'S REAL ESTATE BROKER**

The following mortgagees (collectively, "Movants") respectfully submit this Emergency Motion for Extension of Deadline to Submit Credit Bids Set by Receiver's Real Estate Broker ("Motion"): (1) 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 (2) 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; and (3) 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. In support of the Motion, the Movants state as follows:

INTRODUCTION

On May 2, 2019, Magistrate Judge Young B. Kim entered a Memorandum Opinion and Order [Dkt 352] ("May 2 Order") granting the Receiver's Second Motion for Court Approval of

the Process for Public Sale of Real Property by Seal Bid [Dkt 228] (“Second Sale Motion”) and granting the Movants the right to credit bid on the properties at issue in the Second Sale Motion on which the Movants hold a lien. On May 22, 2019, Magistrate Judge Kim entered an Order [Dkt 382] (“May 22 Order”) granting the Receiver’s Fifth Motion for Court Approval of the Process of Public Sale of Real Property by Sealed Bid [Dkt 329] (“Fifth Sale Motion”, together with the Second Sale Motion, the “Sale Motions”) and granting the Movants the right to credit bid on the properties at issue in the Fifth Sale Motion on which the Movants hold a lien.

Since entry of the May 2 Order and May 22 Order, the Movants and Receiver attempted to negotiate mutually agreeable credit bid procedures. However, the parties were unsuccessful. One unrelated lender, Liberty EBCP, LLC (“Liberty”), apparently reached an agreement with the Receiver as to certain terms of the credit bid procedure between Liberty and the Receiver [Dkt 415] (“Liberty Credit Bid Procedures”). On July 9, 2019, Magistrate Judge Kim denied the Movants’ Motion to Amend the May 2 Order [Dkt 447]. It is unclear from the Court’s July 9 Order whether the Liberty Credit Bid Procedures control all credit bidding in this case. In fact, a Rule 72 Objection is currently pending before District Court Judge Lee seeking clarification on this point [Dkt 455]. It is the Receiver’s position that the Liberty Credit Bid Procedures govern this case [Dkt 476].

Notwithstanding, the Receiver moved forward with the sale of the properties subject to the Sale Motions. The call for bid date for third party bidders to submit their offers was August 14, 2019. Pursuant to the Liberty Credit Bid Procedures, the Receiver and/or broker are to advise the Movants of the highest offer received. At 3:43 p.m. on August 15, 2019, having not received any information from the Receiver or the broker regarding the highest offers, Movants’ counsel called Ellen Duff, counsel for the Receiver, to determine (1) the highest bid amounts; and (2) what

procedures the Receiver proposes for submission of the credit bids because neither the May 2 Order nor the Liberty Sale Procedures provide for the timing, manner, or requirements of submission of a credit bid. Movants' counsel was advised that the Receiver was considering the offers and will give written details of the highest offer and procedures as soon as possible. Beginning at 5:03 p.m. on Thursday, August 15, 2019, Movants' counsel received four emails from the Receiver's real estate broker providing the highest bid offer and **requesting Movants' respond with their credit bid offer by close of business on Friday, August 16, 2019.** Attached hereto as **Group Exhibit A** are redacted copies of the emails.

Counsel for Movants requested the Receiver and broker extend the deadline for bids. The Receiver has agreed to extend the deadline to close of business Tuesday, August 20. Movants require additional time beyond August 20. Therefore, Movants are compelled to file this Motion on an emergency basis.

ARGUMENT

1. **The Deadline Imposed By the Receiver's Real Estate Broker is Unreasonable.**

The original deadline imposed by the real estate broker gave Movants **less than 24-hours** to review and evaluate the highest offer and to decide whether to credit bid. Movants were also expected to calculate a credit bid amount and seek all necessary approvals within less than 24-hours. This is procedurally impossible and blatantly prejudicial to the Movants. Moreover, the extension to August 20 does not alleviate the unreasonableness of the Receiver's demand.

The loans at issue are commercial mortgage-back securities ("**CMBS**") loans that are pooled together in a trust with other CMBS loans. Investors purchase certain interests in these trusts and are entitled to receive payments from the trust. Decisions related to the loans within a CMBS trust are governed by a pooling and servicing agreement ("**PSA**"). The decision whether

to credit bid and the amount of the credit bid must be submitted to and is made by the controlling certificate holders of investors. Pursuant to at least one PSA at issue, the controlling certificate holders are entitled to ten (10) days to evaluate and decide whether to credit bid.¹ The broker's proposed 24-hour deadline and the new August 20 deadline are incompatible with the Movants' duties and obligations under the PSAs.

Moreover, neither the Receiver nor the Receiver's broker ever informed Movants a 24-hour timeframe to submit credit bids would be imposed. The Receiver or broker could have informed the parties weeks in advance with a simple telephone call or email. Instead, the Receiver's broker waited until after 5:00 p.m. to convey the request. Trying to jam the Movants with such an impossible deadline is nothing more than a clear attempt to chill credit bidding.

Furthermore, consistent with this Court's prior order (*see* Dkt 447, n. 2), Movants requested the total amount of closing costs for each property so that Movants can evaluate whether to credit bid. As of the time of filing this Motion, the Receiver has not responded to this request.

The May 2 Order unequivocally granted the Movants' the right to credit bid. The arbitrary and irrational deadlines set by the Receiver and his broker eliminates this court-ordered right. Such an outcome cannot be countenanced by this Court.

WHEREFORE, for each of the reasons asserted herein, the Movants respectfully request that this Court: (1) enter an order extending the deadline to submit credit bids to 11:59 p.m. CST August 30, 2019; and (2) and grant all other just relief.

¹ Given the time constraints, the Movants were not able to verify the deadlines for all governing PSAs, however, it is highly likely each PSA has the same or similar deadline.

Dated: August 16, 2019

Respectfully submitted,

/s/ Jill L. Nicholson

Jill Nicholson (jnicholson@foley.com)

Andrew T. McClain (amclain@foley.com)

Foley & Lardner LLP

321 N. Clark St., Ste. 2800

Chicago, IL 60654

Ph: (312) 832-4500

Fax: (312) 644-7528

*Counsel for 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*

GROUP EXHIBIT A

Steffel, Eileen

From: Jeffrey Baasch <jeffrey.baasch@svn.com>
Sent: Thursday, August 15, 2019 5:07 PM
To: John Piewa; Mike_Jenkins@keybank.com
Cc: McClain, Andrew T.
Subject: Notification of Highest Bid 6749-57 S Merrill
Attachments: EB Receivership Estate Special Credit Bid Procedures.pdf

Follow Up Flag: Follow up
Flag Status: Completed

**** EXTERNAL EMAIL MESSAGE ****

With regard to the EquityBuild Receivership Estate and per Freddie Mac's notification of intent to credit bid, please be advised of the highest bid received after completion on the bid process is [REDACTED].

Please note the special rules regarding credit bids terms and conditions have been attached.

As time is of the essence, we request that you respond with your Credit Bid, or notify us that you will not be submitting a credit bid, by the close of business, tomorrow, August 16, 2019.

Regards,

Jeffrey P. Baasch | Director of Multifamily Sales
SVN | Commercial Real Estate

940 W Adams, Suite 200 | Chicago, IL 60607
C: (312)286-0141 | O: (312)676-1873
jeffrey.baasch@svn.com | www.svn.com

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Steffel, Eileen

From: Jeffrey Baasch <jeffrey.baasch@svn.com>
Sent: Thursday, August 15, 2019 5:08 PM
To: John Piewa; Mike_Jenkins@keybank.com
Cc: McClain, Andrew T.
Subject: Notification of Highest Bid 7110 S Cornell
Attachments: EB Receivership Estate Special Credit Bid Procedures.pdf

Follow Up Flag: Follow up
Flag Status: Completed

**** EXTERNAL EMAIL MESSAGE ****

With regard to the EquityBuild Receivership Estate and per Freddie Mac's notification of intent to credit bid, please be advised of the highest bid received after completion on the bid process is [REDACTED].

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jeffrey.baasch@svn.com | www.svn.com

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Steffel, Eileen

From: Jeffrey Baasch <jeffrey.baasch@svn.com>
Sent: Thursday, August 15, 2019 5:04 PM
To: Peggy DeMuth; mike.angles@ngkf.com
Cc: McClain, Andrew T.
Subject: RE: Notification of Highest Bid 7109-19 S Calumet
Attachments: EB Receivership Estate Special Credit Bid Procedures.pdf

Follow Up Flag: Follow up
Flag Status: Completed

**** EXTERNAL EMAIL MESSAGE ****

With regard to the EquityBuild Receivership Estate and per Freddie Mac's notification of intent to credit bid, please be advised of the highest bid received after completion on the bid process is [REDACTED].

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jeffrey.baasch@svn.com | www.svn.com

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Steffel, Eileen

From: Jeffrey Baasch <jeffrey.baasch@svn.com>
Sent: Thursday, August 15, 2019 5:03 PM
To: Peggy DeMuth; mike.angles@ngkf.com
Cc: McClain, Andrew T.
Subject: Notification of Highest Bid 4520-26 S Drexel
Attachments: EB Receivership Estate Special Credit Bid Procedures.pdf

Follow Up Flag: Follow up
Flag Status: Completed

**** EXTERNAL EMAIL MESSAGE ****

With regard to the EquityBuild Receivership Estate and per Freddie Mac's notification of intent to credit bid, please be advised of the highest bid received after completion on the bid process is [REDACTED].

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