

**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. Manish S. Shah

**ORDER APPROVING DISTRIBUTION OF PROCEEDS FROM  
THE SALE OF PROPERTY 101 (6949-59 S. MERRILL AVENUE)**

WHEREAS, this matter came before the Court in the Group 2 Claims Resolution Process (Dkt. 941, 1476) and on the Notice filed by Kevin B. Duff, as receiver for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (“Receiver”) regarding the settlement related to 6949-59 S Merrill Avenue, (“6949 Merrill” or “Property 101” or the “Subject Property”) (Dkt. 1678, the “Notice of Settlement”);

WHEREAS, with the Court’s approval, the Receiver sold the Subject Property. (Dkt. 841 at 4-5) The net proceeds of sale in the amount of \$1,404,824.55 were deposited into an interest-bearing account held by the Receiver, and additional deposits and withdrawals have been made into and out of this property account pursuant to Court orders, as reported in the Receiver’s quarterly status reports. (Dkt. 757, 839, 930, 985, 1017, 1077, 1164, 1243, 1280, 1328, 1379, 1448, 1516, 1535, 1589, 1652);

WHEREAS, the Court approved a claims process as to which fair and adequate notice was provided to all potentially interested persons and all were provided a full and fair opportunity to submit claims and supporting information. (*E.g.*, Dkt. 941) The Court also determined that a summary process for adjudication of allegedly competing secured claims as to those properties, addressing claims against groups of properties on a seriatim basis, was necessary, appropriate, and afforded due process to all claimants and interested persons. (*Id.*);

WHEREAS, the Court initiated the summary process for the resolution of Group 2 claims in May, 2023, setting a claims process schedule that was later extended by Court order. (Dkt. 1476, 1532), and pursuant to that process:

- on November 29, 2023, Thorofare Asset Based Lending REIT Fund IV, LLC (“Thorofare”) filed a position statement asserting a first lien position on the Subject Property. (Dkt. 1554);

- on December 20, 2023, the Receiver filed his Submission on Group 2 Claims, which included recommendations as to the claims asserting an interest in the Subject Property (Dkt. 1571), and on January 5, 2024, the Receiver filed an Amended Exhibit 9 to his Group 2 Submission, which related to Thorofare’s claim against the Subject Property (Dkt. 1577). As explained in that submission, with regard to the priority dispute with respect to the Subject Property, the Receiver recommended that the Court find that the mortgage interest of Thorofare has first position priority to the sales proceeds from the sale of the Subject Property, and that the other claimants asserting an interest in the Subject Property are not secured lenders holding a lien attached to the proceeds from the sale of the Subject Property but instead have unsecured claims against the Receivership Estate. (*Id.* at 10-11);

- on January 10, 2024, Thorofare filed its reply to the Receiver’s Submission (Dkt. 1581) and claimant Capital Investors, LLC also filed a response to the Receiver’s Submission (Dkt. 1586); and

- on February 22, 2024, the Receiver moved for leave to file a Sur-Response (Dkt. 1602), which motion was granted by the Court on March 1, 2024. (Dkt. 1614);

WHEREAS, settlement discussions subsequently occurred between the Receiver and counsel for Thorofare (collectively the “Parties”), and the Parties reached a negotiated agreement as to the amount of the distribution to be made to Thorofare from the funds held in the property account for 6949 Merrill, to the extent that the Court determines that Thorofare has priority;

WHEREAS on June 14, 2024, the Receiver submitted the Notice of Settlement with recommendations for distributions agreed upon by the Parties with regards to the Subject Property (Dkt. 1678), which was served by electronic mail upon all claimants who have asserted claims against the Subject Property, as well as upon all individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form or subsequently updated);

WHEREAS, on June 20, 2024, the Court issued a Memorandum Opinion and Order regarding the Group 2 claims. (Dkt. 1679) In this Order, the Court indicated that the resolution of the claims against the Subject Property would wait until claimants had an opportunity to object to the settlement, and gave claimants until July 5, 2024 to do so (*Id.* at 2, 42);

WHEREAS no objections to the Notice of Settlement were filed on or before the July 5, 2024 deadline;

WHEREAS, Thorofare and the Receiver have agreed that the distributions and other relief approved in this Order resolve all disputes of any kind or nature between the Receiver, on the one hand, and Thorofare, on the other hand, with respect to the Subject Property only, that the Parties

will not appeal from or collaterally attack any rulings associated with the Subject Property, and that any and all other claims that might exist between or among the Parties regarding the Subject Property are compromised and waived. These agreements are a compromise of disputes and disagreements between and among the Parties, and do not constitute an admission of the validity of any claim, defense, argument, or position made or taken by any Party. The agreements over the Subject Property will not prejudice, impair, or waive any Party's position regarding any other property, and the agreement does not establish a precedent as to any other property;

NOW, THEREFORE, the Court, having considered each of the pleadings referenced herein and the record of this receivership case and being otherwise duly advised in the premises, hereby finds and ORDERS:

1. Thorofare is found to have a first-position secured interest in the Subject Property.
2. The other claimants asserting an interest in the Subject Property do not have secured interests or a lien on the sales proceeds or funds in the account held by the Receiver for the Subject Property, as follows:
  - a) The claim of Capital Investors, LLC (101-1490) relates to an equity investment in a limited liability company created by EquityBuild, and is therefore an unsecured claim that will be considered in Group 10;
  - b) The claim of Doron Reichenberg (101-708) relates to an equity investment in the South Side Development Fund 4 ("SSDF4"), and is therefore an unsecured claim that will be considered in Group 10;
  - c) CLD Construction, Inc. (101-1454) and CLC Electric, Inc. (101-1477) are each unsecured trade creditors who failed to submit documentation supporting their claims. These unsecured claims will be disallowed because claimants provided insufficient records to support their claim.

3. The court finds that the terms outlined in the Settlement Notice are fair, reasonable, and in the best interests of the Receivership Estate.

4. Adequate and fair notice has been provided to all interested and potentially interested parties (including but not limited to all lienholders in the chain of title) of the claims process for the resolution of disputed claims and determination of secured interests, the Receiver's fees and proposed fee allocations, the Receiver's Group 2 submissions and recommendations, and the Notice of Settlement, and each interested or potentially interested party has had a full and fair opportunity to participate in the claims process and to assert its interests and any objections.

5. No later than five (5) business days after entry of this Order, or as soon as such distributions can be reasonably achieved, the Receiver shall disburse to Thorofare \$1,093,263.55 from the account held for the Subject Property, as agreed resolution of its secured claim against the Subject Property. Additionally, Thorofare is granted relief from the stay imposed in the Order Appointing Receiver (Dkt. 16) to the extent that it may liquidate any reserve or escrow accounts held with respect to the Subject Property and transfer any remaining balances to itself or its designee(s).

6. Because the Court intends that this be a final distribution, there will not be any holdbacks of professional fees or expenses associated with the Receiver's fee applications or fee allocation motions upon the distribution of proceeds to claimants related to the Subject Property. Accordingly, no later than five (5) business days after entry of this Order, or as soon as such distributions can be reasonably achieved, the Receiver shall disburse \$24,709.37 to Rachlis Duff & Peel, LLC for payment of fees held back pursuant to Court Orders related to the Subject Property (Dkt. 1372, 1452, 1469, 1510, 1511, 1539, 1573, 1618, 1675).

7. Any approved fees that are allocated to the Subject Property in subsequent fee applications for the current quarter and any subsequent quarters may be paid from the Receiver's account;

8. Following the distributions ordered herein, the net of the remaining balance of the property account for the Subject Property, including any interest hereafter accruing, shall be transferred to the Receiver's account for use in the administration of the Receivership Estate and/or as otherwise ordered by the Court.

Entered:



Manish S. Shah  
United States District Court Judge

Date: July 15, 2024