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

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| UNITED STATES SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>EQUITYBUILD, INC., et al.,<br><br>Defendants. | Case No. 1:18-cv-5587<br><br>Hon. Manish S. Shah<br><br>Magistrate Judge Young B. Kim |

**CLAIMANT SHATAR CAPITAL PARTNERS' MOTION FOR STAY PENDING APPEAL**

Claimant Shatar Capital Partners ("Shatar"), on behalf of 111 Crest Dr. LLC, Abraham Aaron Ebriani, Hamid Esmail and Farsaa Inc., and any subsequent assignees including Pakravan Living Trust, through its undersigned counsel, pursuant to Federal Rule of Civil Procedure 62, hereby moves this Court for a stay, without security, of any distribution or disbursement of the proceeds from the sale of 5450 S. Indiana (Property 4) and 7749 S. Yates (Property 5) to the Individual Investors, pending appeal of the Court's July 15, 2024 Order (Dkt. 1699) (the "Disbursement Order"), thereby bringing up for review the Court's June 20, 2024 Order (Dkt. 1679) (the "Priority Order") determining the priority of mortgages held by a group of individual investor-lenders (the "Individual Investors"). In support thereof, states as follows:

**BACKGROUND**

After Defendants Jerome Cohen and Shaun Cohen allegedly engaged in a securities fraud scheme involving their companies—Equitybuild, Inc. and Equitybuild Finance, LLC ("EBF")—the Court appointed the Receiver to advise the Court on distributing assets. The properties at issue were organized into ten groups for purposes of claims resolution. This matter concerns a

mortgage lien priority dispute concerning two properties from the "Group 2" properties, 5450 S. Indiana and 7749 S. Yates. Specifically, claimants—Shatar and the Individual Investors—each claim their respective mortgage liens have priority to the funds liquidated by the Receiver's sale of these two properties.

On June 20, 2024, the Court issued the Priority Order concluding that the Individual Investors' mortgages have priority over Shatar's mortgages on 5450 S. Indiana and 7749 S. Yates. (Dkt. 1679.) The Court recognized that Shatar's mortgages for 5450 S. Indiana and 7749 S. Yates were recorded on April 4, 2017, almost three months prior to the Individual Investors' mortgages being recorded on June 23, 2017. (*Id.* at 7-8.) Nevertheless, the Court found that Ezri Namvar, one of Shatar's principals, could "be charged with knowledge of an existing lien on 7749 S. Yates, so the Individual Investors' lien takes priority over Shatar's mortgage." (*Id.* at 32.) With respect to 5450 S. Indiana, the Court acknowledged that "there was no signed mortgage in favor of the Individual Investors at the time that Shatar made its loan to Equitybuild, and received and recorded its mortgage against the property." (*Id.* at 33.) But the Court concluded that the Individual Investors had "equitable mortgages in 5450 S. Indiana," (*Id.* at 34-35.), and that Shatar "is charged with knowledge of the Individual Investors' equitable mortgages in 5450 S. Indiana," such that Shatar's mortgage "takes a second-place position." (*Id.* at 36.) The Court concluded the Priority Order with an instruction to the Receiver to "prepare proposed distribution orders consistent with" the Court's opinion and "submit them" to the Court "on or before July 12, 2024." (*Id.* at 43.)

On July 15, 2024, the Court entered the Receiver's proposed disbursement order, "approv[ing] the Receiver's recommendation of final distributions," pursuant to the Court's June 20, 2024 order "determining the priority of claimants to liquidated funds from the sales of" 5450

S. Indiana and 7749 S. Yates. (Dkt. 1699, the Disbursement Order.) Shatar will appeal the Court's Disbursement Order, which brings up for review the Court's priority determination in the Priority Order.[1] For the reasons set forth herein, Shatar now moves for a stay of the Court's Disbursement Order with respect to the proceeds from the sale of 5450 S. Indiana and 7749 S. Yates, to maintain the status quo of the funds liquidated by the Receiver's sale of these two properties until its appeal is resolved.[2]

**GROUNDS FOR RELIEF**

Courts have inherent power to stay proceedings and to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. *Fleury v. Union Pac. R.R.*, No. 20 C 390, 2021 U.S. Dist. LEXIS 117453, at *2 (N.D. Ill. Jun. 23, 2021). In evaluating a motion to stay, courts consider whether the movant has shown "that it has a significant probability of success on the merits; that it will face irreparable harm absent a stay; and that a stay will not injure the opposing party and will be in the public interest." *Hinrichs v. Bosma*, 440 F.3d 393, 396 (7th Cir. 2006). "As with a motion for a preliminary injunction, a 'sliding scale' approach applies; the greater the moving party's likelihood of success on the merits, the less heavily the balance of harms must weigh in its favor, and vice versa." *In re A&F Enters., Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014). For the reasons set out below, each of these factors favors issuance of a stay pending the resolution of appeal.

[1] As described in Shatar's Docketing Statement, Shatar has filed its appeal pursuant to the collateral order doctrine. *See* Dkt. 1709. The Seventh Circuit recognized Shatar's ability to file such an appeal in reviewing BC57 LLC's appeal regarding Group 1, explaining that it had "jurisdiction to consider an interlocutory appeal of a district court's distribution plan under the collateral order doctrine." Panel Opinion ("Panel Op.") at 6. (citing *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 330-31 (7th Cir. 2010).

[2] The SEC and Individual Investors object to the motion. The Receiver asked counsel to convey that he does not support a stay, and may submit a response to this motion.

## I. There is a significant probability of success on the merits of Claimant-Appellant 's appeal.

There is a significant probability of success on the merits of appeal. For the reasons explained below, Shatar respectfully submits that the Court erred in concluding that the Individual Investors' mortgages have priority over Shatar's mortgages in 7749 S. Yates and 5450 S. Indiana, which were recorded almost three months before those of the Individual Investors.[3]

### A. 7749 S. Yates

For 7749 S. Yates, the Court first relied on several pieces of information to determine that Shatar was on inquiry notice that there were other investors who had an interest in 7749 S. Yates:

- An email Shatar received regarding a different property, stating that Equitybuild Finance pooled money from individual investors to invest in a specific property and that it represented to those investors, "[a]s with all other EBF notes," they would have a "first lien position on the property." (Dkt. 1679 at 30.)
- Namvar's awareness that Equitybuild Finance was pooling smaller investors' loans to buy property.(*Id.)*
- Namvar's receipt of Equitybuild's template note, mortgage and servicing arrangements for individual investors, which allegedly gave notice that individual investors were getting a mortgage to secure their loans. (*Id.* at 31.)
- Shatar's knowledge that Equitybuild had already purchased 7749 S. Yates, so Shatar's loan was not being used to purchase the property. (*Id.*)
- Shatar's knowledge that Equitybuild was going to receive money from the closing of Shatar's loan and he previously believed that Equitybuild had to bring money to the table to close the deal for 5450 S. Indiana and 7749 S. Yates. (*Id.*)

[3] Shatar will raise at least the issues detailed in this motion on appeal, but anticipates it will refine and further develop these and other arguments in its briefing before the Seventh Circuit, challenging the various "findings set forth in the Court's" Priority Order that "are expressly incorporated" into the Disbursement Order and that have been "set forth in the Distribution Plan attached" to the Distribution Order. (Dkt. 1699 at 5.).

According to the Court, a "prudent person would have been alarmed to find out one of the properties which was supposed to be purchased with her loan had already purchased—it suggests that the money for the purchase was supplied by someone else." (Dkt. 1679 at 31.) The Court further found that "[a] reasonably prudent person who believed that Shatar's loan was going to be used to purchase 5450 S. Indiana and pay off the purchase loan for 7749 S. Yates, *and* that Equitybuild needed to put up more money to complete the transaction would be alarmed to learn that Equitybuild was actually getting money out of the transaction." (*Id.* at 31-32.)

The Court next concluded that "[t]he facts that Shatar could have learned through a diligent inquiry would have led it to know that other investors already had a mortgage against 7749 S. Yates." (*Id*. at 32.) Specifically, the Court explained that Namvar could have asked for "proof that the prior loan was paid off," and "[i]f he had, he would have learned that the original loan was made by a group of smaller investors and that there were no rollover documents for those investors." (*Id.)* Additionally, the Court found that if Namvar "had spoken with the Individual Investors, he would have learned that they believed they had a first position lien in the property and that a signed mortgage granting a lien to the Individual Investors already existed." (*Id.)*

As an initial matter, Shatar respectfully submits that the information the Court highlighted, much of which is abstract business information, not actually tied in any way to the 7749 S. Yates property, does not provide the "clear proof" required to render Shatar on inquiry notice that there were other investors who had an interest in 7749 S. Yates. *U.S. Bank Nat'l Ass'n v. Villasenor*, 2012 IL App (1st) 120061, ¶ 59. As noted above, there was no recordation of the Individual Investors' mortgages prior to Shatar's closing. Moreover, the fact that Equitybuild had already purchased 7749 S. Yates, such that Shatar's loan was not being used to purchase the property in the first instance, did not put Shatar on inquiry notice. Shatar was promised a first lien position,

regardless of whether Equitybuild had already purchased the property in the first instance. Further, Namvar explained that there were specific steps this information would have caused him to take—and they were taken here. Specifically, Namvar would have wanted the properties to be viewed so as to "determin[e] that the value was there." (Dkt. 1564 at 16.) Namvar's friend carried out this assessment for him as to both properties. (*Id.)* Finally, the fact that Equitybuild received a relatively modest sum of money ***from the 5450 S. Indiana closing***, which was a purchase money mortgage, did not put Shatar on inquiry notice that there were Individual Investors with mortgages on 7749 S. Yates.

Moreover, even if Shatar had reason to question Equitybuild, Shatar would still only be "chargeable with knowledge of facts that a diligent inquiry would have disclosed." *Peoples Nat'l Bank, N.A. v. Banterra Bank*, 719 F.3d 608, 612 (7th Cir. 2013). Importantly, the case law discussing inquiry notice reinforces the necessarily fact specific nature of this analysis, ***including*** a court's consideration of "what further inquiry . . . may have shown." *Stump v. Swanson Dev. Co. LLC*, 2014 IL App (3d) 110784, ¶ 117. Indeed, the case law does not suggest that a Court's determination of "what further inquiry . . . may have shown," (*id.*), should be conducted in the abstract, discounting the realities of the case-specific circumstances. Shatar respectfully submits that the specific circumstances of this case, including observations made by the Seventh Circuit, the SEC and this Court readily demonstrate that "a diligent inquiry" would not have disclosed that "other investors already had a mortgage against 7749 S. Yates." (Dkt. 1679 at 32.)

The Cohens were professional liars, committed to doing whatever they needed to do to keep their scheme going. Indeed, in affirming this Court's determination that discrepancies in releases that BC57, LLC, received from Equitybuild Financial were not mere scrivener's errors, the Seventh Circuit noted, "[w]e find it particularly difficult to fault that determination ***when the***

***Cohens' entire business model operated to purposefully obfuscate responsibility and ownership***." (Panel Op. at 11-12.) (emphasis added). Similarly, the SEC's complaint not only documents the litany of lies the Cohens told and facts they intentionally withheld to execute their scheme,[4] it highlights steps the Cohens took specifically "***to keep the scheme afloat***." (*See* Dkt. 1 at 2.) Furthermore, this Court described concrete steps the Cohens took to facilitate their scheme in analyzing the question of priority in the Group 1 context. (*See* Dkt. 1679.) Specifically, this Court explained that the releases BC57 received from the Cohens "were signed by Equitybuild Finance and Shaun Cohen instead of the individual-investor mortgagees" even though they "***lacked the authority to do so***." (Dkt. 1386 at 14) (emphasis added).

These observations underscore the practical reality of the circumstances of this case that should be taken into account in assessing the facts Shatar supposedly would have learned pursuant to a diligent inquiry. Specifically, these observations demonstrate that the Cohens would never have simply admitted that the Individual Investors had mortgages against 7749 S. Yates, much less provided Shatar with the names of such individuals so they could be contacted. There was no means for Shatar to determine who the Individual Investors were, let alone obtain their contact information, aside from Equitybuild. With Equitybuild having promised Shatar a first lien position in order to get Shatar's loan funds, there is no realistic argument that the Cohens would have admitted their scheme and acknowledged the Individual Investors existed, let alone given

[4] *See, e.g.*, SEC Complaint (¶ 1, "Defendants raised these funds by ***falsely promising*** safe investments, secured by income-producing real estate . . . ."); (¶ 3, "Defendants ***falsely told investors*** that their impressive returns would be generated by profitable real estate."); (¶ 5, "But Defendants ***concealed from new investors*** that most of the properties supposedly being acquired and renovated by new investor proceeds were the very same properties "securing" the investments of earlier investors."); (¶ 7, "Defendants recently started coming clean about their financial distress and inability to repay investors . . . . ***But Defendants limited these disclosures only to earlier investors whose interest payments Defendants could no longer afford to make***.").

out their names and contact information. Instead, just as they did in every other instance, the Cohens would have continued "to purposefully obfuscate responsibility and ownership." (Panel Op. at 12.) The Cohens would have told Shatar whatever lies they needed to tell them to alleviate any concerns. This is not speculation. It is reality based on the Cohens' actual conduct.

Nor is such a conclusion somehow giving Shatar a "pass" on not having conducted the inquiry the Court concluded was necessary. The Cohens lied to everyone involved in this case. The facts actually imputed to Shatar should be based on the reality of the situation, not hypothetical possibilities that conflict with the documented behaviors of the parties involved. Here, Shatar was promised a first lien position, the land records reflected Shatar was receiving a first lien position, and as discussed above, there was no realistic way for Shatar to uncover the Cohen's scheme and determine they were lying to Shatar.

**B. 5450 S. Indiana**

For 5450 S. Indiana, the Court recognized that "there was no signed mortgage in favor of the Individual Investors at the time that Shatar made its loan to Equitybuild, and received and recorded its mortgage against the property." (Dkt. 1679 at 33.) Nevertheless, the Court found that the Individual Investors "had equitable mortgages in 5450 S. Indiana," prior to Shatar's mortgage being recorded in April 2017. (*Id.*) Specifically, the Court pointed to the fact that Equitybuild solicited investments from Individual Investors as early as December 2016, and returned a signed servicing agreement and unsigned mortgage and promissory note dated February 2017 to these investors. (*Id.*) The Court found these documents to be "clear and convincing evidence that the parties intended that 5450 S. Indiana secure the Individual Investors' mortgage." (*Id.* at 34-35.) The Court further found that Shatar was "charged with knowledge of the Individual Investors' equitable mortgages in 5450 S. Indiana," based on the inquiry notice analysis described *supra* in

connection with 7749 S. Yates. (*Id.* at 36.) Shatar respectfully submits that the Court erred in finding the Individual Investors had equitable mortgages in 5450 S. Indiana, and that Shatar should be charged with knowledge of such equitable mortgages.

A court may find an equitable mortgage when "a written agreement evinces an intent that 'the property therein described is to be held, given, or transferred as security for the obligation.'" (Dkt. 1679 at 33) (*quoting Hibernian Banking Ass'n v. Davis, 295 Ill. 537, 543 (Ill. 1920)* However, in the case of 5450 S. Indiana, Equitybuild did not own or have any interest in this property when it provided the written materials to the Individual Investors "stat[ing] that the debt would be secured by a mortgage in 5450 S. Indiana." (*Id*. at 34.) Instead, Equitybuild used Shatar's funds to purchase 5450 S. Indiana in March 2017, and, executed its mortgage with Shatar prior to executing its mortgages with the Individual Investors.

In cases (including *Grigaitis*, which the Court cited) where a party pledging the underlying property does not yet own the property being pledged, and the party that provided the funds was found to have a "springing" equitable mortgage after the property was in fact purchased, importantly, the funds provided ***were actually used to purchase the property being pledged***. *See, e.g*., *Grigatis* (finding there to be an equitable mortgage where plaintiff loaned defendants $1,500 to purchase real estate, defendants promised to either repay the loan or execute and deliver a mortgage on the property to secure the loan, and defendants used the $1,500 to purchase the property); *Boucek v. Pondelicek*, 259 Ill. App. 59, 63-64 (finding there to be an equitable mortgage after plaintiff loaned defendant's husband $2,000 to purchase real estate, defendant's husband promised to execute a note for $2,000 and a mortgage on the property to secure the same, and defendant's husband used the $2,000 to purchase the land, of which defendant and her husband took title as joint tenants).

Indeed, the Court's reliance on *Grigaitis* underscores Shatar's point. The Court quotes *Grigaitis*' explanation that "[p]ursuant to the maxim that equity will consider that which ought to be done as already in being, the promise to give a mortgage to secure a loan may be treated as an actual mortgage." (Dkt. 1679 at 33-34). *Grigatis* cites *Lohmeyer v. Durbin* in making this statement. In *Lohmeyer*, the Illinois Supreme Court explained that if Durbin bought the land in question from another individual, and "agreed with him to execute and deliver back a mortgage ***to secure the unpaid purchase money***," then, as against Durbin, "a court of equity could properly treat that as done which was agreed to be done, and render a decree subjecting the premises to the payment of the amount remaining due and unpaid. . . . Under the maxim that equity will treat that as done which ought to be done, ***the agreement to execute a mortgage to secure the payment of the purchase money*** could be treated as such a mortgage." *Lohmeye v. Durbin,* 206 Ill. 574, 580, 69 N.E. 523 (1903) (emphasis added).

*Lohmeyer* and other case law cited herein highlight the fact that equitable mortgages are primarily found in instances where a party that agrees to provide a mortgage to secure the receipt of funds ***actually already owns the property***, but when that is not the case, such equitable mortgages are found in instances where the funds were ***actually used to purchase the property*** being pledged. In this case, Equitybuild did not use the Individual Investors funds to purchase 5450 S. Indiana. Instead, Shatar's funds were used to purchase this property. As such, the Individual Investors did not have equitable mortgages in 5450 S. Indiana.[5]

[5] In the event a "springing" equitable mortgage is found, despite the Individual Investors' funds not going to the purchase of the property, there is no support in the law or equity for giving that "springing" equitable mortgage priority over an actual purchase money mortgage where the purchase funds were sent through escrow directly to the third party seller of the property. Indeed absent Shatar's purchase of the property, there would be nothing to which the Individual Investors' equitable mortgages could attach.

Because the Individual Investors did not have equitable mortgages in 5450 S. Indiana, this Court need not address inquiry notice—Shatar has priority with its recorded purchase-money mortgage. However, given the Court's ruling, Shatar will briefly address why it respectfully submits the Court erred in concluding that Shatar was "charged with knowledge" of the Individual Investors' equitable mortgages in 5450 S. Indiana. (Dkt. 1679 at 36).

The explanation provided *supra* for why Shatar could not "be charged with knowledge of an existing lien on 7749 S. Yates" applies with even greater force to 5450 S. Indiana. (*Id.* at 32.) Indeed, Shatar knew that it was providing money to purchase 5450 S. Indiana ***in the first instance***. That is undisputed. And those funds went directly from Shatar's lenders, through escrow, to the third-party seller of the 5450 S. Indiana Property, which was unaffiliated with Equitybuild. This context demonstrates that Shatar would have had no reason to doubt that it was getting the first lien position it was promised, when it funded the purchase of the property by utilizing escrow wherein its funds went directly to the third-party seller. This is true regardless of whether Equitybuild was receiving approximately $100,000 as an "overdeposit to borrower." (Dkt. 1587-7, at 3). Thus, even if this Court were to find that the Individual Investors had equitable mortgages in 5450 S. Indiana, there is no realistic timeframe in which those mortgages could or should attach to the property prior to Shatar's purchase money mortgage procured using escrow procedures. Nor should Shatar be "charged with knowledge" of such mortgages. Here, Shatar's money was actually used to purchase the 5450 S. Indiana property utilizing escrow, and this Court has emphasized that its "primary job" in this equitable context is to reach a result that is "fair and reasonable." (*Id.* at 9.) The fair, reasonable and just result here is for Shatar's purchase-money mortgage to be found in first lien position.

## II. Claimant-Appellant Shatar will face irreparable harm absent a stay.

Even if the Court were inclined to disagree as to Shatar's likelihood of success on appeal, the risk of harm to Shatar weighs heavily in its favor and therefore necessitates a stay. *See A&F Enters., Inc. II*, 742 F.3d at 766; *see also Prudential Ins. Co. of Am. v. Kamrath*, No. 4:03-CV-1736 (CEJ), 2006 U.S. Dist. LEXIS 87471, at *8 (E.D. Mo. Dec. 4, 2006) (granting stay pending appeal, notwithstanding that "[m]ovant] is not likely to succeed on the merits" because "the remaining factors … weigh in [movant's] favor. If the Court allows the disbursement of funds… and [movant] prevails on appeal, [movant] will be irreparably injured."). Without a stay, the Receiver will disburse $1,789,813.98 and $564,284.59 from the proceeds for the sale of 5450 S. Indiana and 7749 S. Yates respectively to the Individual Investors pursuant to the Court's Disbursement Order, in response to dozens of claims for each property.[6] (*See* Dkt. 1451-1.) These distributions will all but exhaust the proceeds of the property sales other than amounts held back for the Receiver's approved fees. (Dkt. 1699-1.) Thus, as it stands, Shatar will receive no proceeds pursuant to the Disbursement Order due to the Individual Investors' priority status, as determined by the Court's June 20, 2024 Priority Order.

If Shatar is successful on appeal, and the Court of Appeals determines that Shatar has priority over the Individual Investors, obtaining the distributed funds from these various claimants presents a serious "practical question" as to "how that ruling may be carried out." *Wells Fargo Bank, N.A. v. ESM Fund I, LP*, 2012 U.S. Dist. LEXIS 102940, at *13 (S.D.N.Y. Apr. 3, 2012); Beyond the very real administrative challenges of executing a clawback during the pendency of

[6] The Receiver identified 64 and 62 claimants who will receive payment for claims associated with 5450 S. Indiana and 7749 S. Yates respectively. *See* Dkt. 1697 at Exs. 2 and 3.

Shatar's appeal may likely render such an effort futile. For example, while every appeal is obviously different, BC57's appeal related to Group 1 was decided approximately one year from when it was filed with the Seventh Circuit. (*See* Panel Op.) Any number of the Individual Investors could spend the proceeds from the sale of 5450 S. Indiana and 7749 S. Yates during that extended period of time, effectively putting the funds beyond the reach of both the parties and the Court.

This Court recognized these practical realities, and the resulting harm in granting BC57's motion for stay, without security, of any distribution of the proceeds from the sale of the Group 1 properties pending appeal:

> Once money goes out the door to victims or investors or lenders, it will be effectively impossible to pull that money back. . . . I do have a concern that erroneous distributions to investors or claimants will be too difficult to unwind, and that is a harm to BC57.

(See Tr. at 19:7-15.) Consistent with this Court's determination, courts in the Seventh Circuit and across the country regularly order stays in similar circumstances involving pools of funds for distribution to avoid the irreparable harm Shatar faces in this case absent a stay. *See, e.g.*, *United States SEC v. ISC, Inc.*, No. 15-cv-45-jdp, 2017 U.S. Dist. LEXIS 139258, at *19 (W.D. Wis. Aug. 30, 2017) (authorizing receiver's distribution plan but ordering "the distribution will have to wait at least until the dispute over the APA [on appeal] is resolved, because that will affect the funds available for distribution."); *In re Wolf*, 558 B.R. 140, 144 n.5 (Bankr. E.D. Pa. 2016) (collecting authority "suggest[ing] that when an existing fund has been dedicated to satisfaction of competing claims, distribution of the fund before the court's determination is final and no longer subject to modification or reversal on appeal may constitute irreparable harm to the appellant.").

The risk of irreparable harm to Shatar is immediate and concrete. Further, "the potential inability of" Shatar "to recover some portion of the entire corpus at issue," "as well as the potential loss of the underlying entitlement that might otherwise be enforced if" Shatar "prevails, which is

priority vis-à-vis" the Individual Investors, is "far more extensive tha[n] what the" Individual Investors "face from the grant of a stay." *Wells Fargo*, 2012 U.S. Dist. LEXIS 102940 at *22-23.

**III. A stay will not injure any of the parties or claimants in this matter.**

A stay will not injure any of the parties or claimants in this matter, including the Individual Investors. The disputed funds are in the Receiver's possession, so there is no risk of injury to any party or claimant's interest in those funds. As long as the funds stay in the Receiver's possession, "[i]n the event of an affirmance by our circuit court, there is no danger, even with a stay, that" the Individual Investors "will not be paid the full amounts of which they have been deprived." *Wells Fargo*, 2012 U.S. Dist. LEXIS 102940 at *18. What is more, the funds are in interest-bearing accounts and will continue to accrue interest as long as the funds remain in those accounts. (*See* Dkt. 1451 at 5.) Thus, there is no risk of the funds diminishing in value during the pendency of Shatar's appeal. As such, there is no risk of injury to the Individual Investors or any other parties or claimants.

**IV. A stay is in the public interest.**

Public interest also favors a stay in this case. The public interest is served in accurately distributing the proceeds from the sale of 5450 S. Indiana and 7749 S. Yates. *See Life Ins. Co. of N. Am.*, 2007 U.S. Dist. LEXIS 64454 at *5 ("[A]n erroneous distribution of the money that is not corrected might tend to undermine confidence in courts, the public interest points in the direction of making sure that the courts decide the case correctly.").

Shatar faces a serious risk of irreparable harm absent a stay, while the Individual Investors are protected from harm by maintaining the status quo until the appeal is resolved. Moreover, given that Shatar is likely to succeed on appeal, and the public's interest in accurate distributions of receivership funds, a stay is appropriate in this matter.

## V. A supersedeas bond is not required.

The purpose of a supersedeas bond is to protect an appellee from loss should the judgment debtor become insolvent. Here, such a bond is unnecessary because the funds to pay the Individual Investors are already securely in receivership until distribution. Accordingly, Shatar respectfully requests that this Court grant its motion without requiring a bond.

WHEREFORE, Claimant Shatar, through its undersigned counsel, respectfully requests that this Court issue a stay, without security, of any distribution or disbursement of the proceeds from the sale of 5450 S. Indiana and 7749 S. Yates to the Investor-Lenders pending appeal.

Dated: July 17, 2024

Respectfully submitted,

*/s/ Andrew R. DeVooght*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 17, 2024, I electronically filed the foregoing MOTION FOR STAY PENDING APPEAL with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

*/s/ Andrew R. DeVooght*
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