

**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

Magistrate Judge Young B. Kim

**MOTION TO APPROVE DISTRIBUTION OF PROCEEDS FROM
THE SALE OF PROPERTY 3 (5001 S DREXEL BOULEVARD)**

Kevin B. Duff, as receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc. (“EquityBuild”), EquityBuild Finance, LLC (“EquityBuild Finance”), their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), hereby moves for approval of a plan for the distribution of proceeds from the sale of 5001 S Drexel Boulevard (the “Subject Property”). In support of his motion, the Receiver states as follows:

I. Procedural Background

1. In 2019, the Receiver initiated a claims process whereby, *inter alia*, he:

- (a) researched mortgagees of record and EquityBuild records to identify potential claimants;
- (b) served all known potential claimants by email and/or regular mail with notice of the bar date, procedures for submitting proofs of claim, and a link to a third-party portal to submit claims;
- (c) sent multiple follow-up emails reminding potential claimants of the bar date (and the extended bar date); and
- (d) established a webpage (<http://rdaplawn.net/receivership-for-equitybuild>) for

claimants and other interested parties which prominently displayed the claims bar date and provided copies of the claims notice, instructions, proof of claim forms, a link to the claims portal, and copies of certain court filings related to the claims process. All claimants were notified that the failure to submit a claim verification form by the bar date would be a basis for denial of that claim. (*See, e.g.*, Dkt. 241, 302, 349, 468, 548, 638, 693, 720) The Court's orders with respect to the claims process were also served upon claimants and potential claimants and posted on the Receiver's website. (*See, e.g.*, Dkt. 349, 574, 940, 941)

2. In February 2021, following briefing and hearings, the Court entered two orders establishing a process for the resolution of disputed claims. (Dkt. 940, 941)

3. With the Court's approval and over the objection of claimant Wilmington Trust, National Association, As Trustee For the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16 ("Wilmington Trust"), on May 22, 2019, the Receiver sold the property located 5001 S Drexel Boulevard. (Dkt. 346 at 6-7) Prior to the sale, the Court found that the Receiver gave fair, adequate, and sufficient notice to all interested parties, including all mortgagees affected by the Receiver's 1st Motion to Confirm the Sale of this and other properties. (*Id.* at 3) The sale was free and clear of all mortgages and encumbrances, and the net proceeds of sale for the Subject Property were deposited into a separate interest-bearing account held by the Receiver pursuant to court order, with all mortgages, liens, claims, and encumbrances attaching to the sales proceeds with the same force, validity, status, and effect, if any, as they had against the property being sold. (*Id.* at 15) Additional deposits and withdrawals have been made to and from this property account, 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, 1722)

4. Beginning in February 2021, the Receiver filed a series of motions to approve the payment of certain previously approved fees and costs pursuant to the Receiver's lien on the properties of the receivership estate that had been granted by the Court. (Dkt. 947, 981, 1107, 1321) Following proceedings on the Receiver's specific fee allocations before Magistrate Judge Kim, the Court granted the Receiver's fee allocation motions over the objections of the Wilmington Trust, and other Institutional Lenders,¹ except that the Court ordered a 20% holdback in the payment of allocated fees. (Dkt. 1469, 1511)

5. Subsequent orders approving the Receiver's quarterly fee applications also approved payment pursuant to the Receiver's lien of fees (subject to a 20% holdback) and costs over the objections of Wilmington Trust and other Institutional Lenders. (Dkt. 1372, 1452, 1510, 1539, 1573, 1618) Claimants and potential claimants have received notice of these motions relating to the Receiver's lien and the Receiver's fee applications, and the foregoing motions, fee applications, and the Court's orders have been posted to the Receiver's website.

6. As of August 2, 2024, the property account established for the Subject Property held \$2,850,639.53. An additional \$12,188.22 in fees were allocated to the Subject Property in the Receiver's pending 24th Fee Application. (Dkt. 1732, Ex. K)

¹ "Institutional Lenders" refers to the entities listed on Exhibit 1 to Dkt. 1501.

II. The Receiver Has Recommended That Wilmington Trust Be Found To Have Priority Over Other Claimants In Regards To 5001 S Drexel Boulevard And That The Investor Lenders Be Found To Have Unsecured Claims Against The Receivership Estate.

7. The principal balance of Wilmington Trust's loan secured by the Subject Property is \$2,195,582.51. Additionally, Wilmington Trust is holding \$598,839.11 in reserve. The investor claims submitted against the Subject Property total \$2,162,000.00.

8. On March 20, 2024, the Receiver filed his Submission on Group 5 Claims, which included recommendations as to the claims asserting an interest in the Subject Property. (Dkt. 1626) 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 Wilmington Trust has first position priority to the sales proceeds from the sale of the Subject Property, and that the investor-lenders 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 totaling \$1,763,225.84 after setting off distributions received from EquityBuild on their investment. (*Id.* at 8-10 & Ex. 4²)

9. On April 10, 2024, Wilmington Trust submitted a responsive position statement objecting to the Receiver's recommendations with respect to the Subject Property. (Dkt. 1647) On April 15, 2024, the Receiver filed notice of an objection (submitted by claimant Horst S. Filtzer, Jr.) to the Receiver's recommendation with respect to the Subject Property (Dkt. 1648 at Ex. E). No other claimant submitted objections to the Receiver's recommendations with respect to the Subject Property, the deadline for which was April 10, 2024. (Dkt. 1614)

² There was an error in Exhibit 4 to the Receiver's Group 5 submission where a column of the spreadsheet was inadvertently not included when the PDF exhibit was created. A corrected version of Exhibit 4 is attached hereto as Exhibit B.

III. The Receiver And Wilmington Trust Have Reached An Agreement As To Distributions From The Property Account.

10. Settlement discussions between the Receiver and counsel for Wilmington Trust have taken place. Pursuant to these discussions, the parties reached a negotiated agreement as to the amount of the distribution to be made to Wilmington Trust from the funds held in the property account for the Subject Property. This agreement is contingent on the Court (i) adopting the Receiver's recommendation of priority with respect to the Subject Property made in his Submission on Group 5 Claims (Dkt. 1626), (ii) granting the instant motion, and (iii) approving the proposed distribution plan set forth herein. The proposed distribution plan is attached as Exhibit A, and provides for: (a) Wilmington Trust liquidating and transferring the balance in the reserve and escrow accounts it currently holds for the Subject Property to itself or its chosen designee; (b) a distribution from the property account to Wilmington Trust of the amount negotiated for the settlement of its claim with respect to the Subject Property; (c) payment to the Receiver's law firm for contested and uncontested fees allocated to the Subject Property in the Receiver's pending 24th Fee Application; (d) payment to the Receiver's law firm for contested and uncontested fees allocated to the Subject Property but heretofore held back from payment pursuant to the Court's orders; and (e) transfer of the balance of all remaining funds, including but not limited to any and all residual interest earned, to the Receiver's account for use in the administration of the Receivership Estate and/or as otherwise ordered by the Court.

11. Contingent on the Court granting this Motion, Wilmington Trust and the Receiver (each a "Party" and collectively the "Parties") further agree as follows:

- a. this agreement resolves all disputes of any kind or nature between and among them with respect to the Subject Property only;

b. no Party will appeal from or collaterally attack any rulings associated with the Subject Property; and

c. any and all other claims, objections, or rights that might exist between or among the Parties regarding the Subject Property are hereby compromised and waived, provided however that Wilmington Trust will retain an unsecured claim for amounts it claims are due but not paid as part of the distributions contemplated by this Motion.

12. The foregoing agreement is a compromise of disputes and disagreements among or between the Parties. The agreement does not constitute an admission of the validity of any claim, defense, argument, or position made or taken by any Party. The Parties' agreement with respect to the Subject Property does not establish a precedent as to any other property. Upon entry of an order granting this Motion and distributions consistent with such an order, all objections as to the Receiver's lien on or fees allocated to the Subject Property will be compromised and waived. The Parties' agreement to not seek appeal from any rulings associated with the Subject Property will be a further saving of time and resources for many involved in the Receivership. Effectively, as a result of the agreement and distribution, the claims and issues between Wilmington Trust and the Receivership with respect to the Subject Property have concluded, provided however that Wilmington Trust will retain an unsecured claim for amounts it claims are due but not paid as part of the distributions approved by this Court in granting this Motion. In that regard, it is further understood that nothing herein shall be construed to be a recommendation or concession from the Receiver with respect to whether or not Wilmington Trust will receive any amount, or how much, in any subsequently proposed distribution plan for unsecured funds.

IV. The Court Has The Authority To Make The Distributions Recommended By This Motion.

13. It is well-settled that the district courts have broad equitable powers and are afforded wide discretion in approving a distribution plan of receivership funds. *See, e.g., SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Enterprise Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009) (“District judges possess discretion to classify claims sensibly in receivership proceedings.”); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992).

14. Because the Receiver is a fiduciary and officer of this Court, the Court may give some weight to the “...Receiver’s judgment of the most fair and equitable method of distribution.” *CFTC v. Eustace*, No. 05-2973, 2008 WL 471574, at *5 (E.D. Pa. Feb. 19, 2008) (approving receiver’s pro-rata distribution plan and recognizing that the receiver does not represent a particular group of investors or claimants but rather proposes a plan that is fair to all investors).

15. Based on the facts and circumstances, the Receiver believes that the distribution plan with respect to the Subject Property as described in this motion is fair and equitable. The recommended distribution amounts represent a substantial payment of the principal amount of the loans to those claimants found to be first-priority secured lenders for the Subject Property. The Receiver has further determined that there are no other issues that he is aware of that would necessitate any further holdback from the amounts set forth above.

16. There are also additional savings of time and resources achieved based on the agreements reached between and among the Receiver and Wilmington Trust. As a result of the agreements set forth in this motion, there are no objections that remain associated with the Receiver’s lien or fees allocated to the Subject Property, and Wilmington Trust’s agreement to not seek appeal from any rulings associated with the Subject Property will further save time and resources for many involved in the Receivership. Effectively, if the Court grants this Motion, then

as a result of the agreement and distribution, the claims and issues with respect the Subject Property will have concluded.

V. The Receiver Requests Authorization To Pay Fees Incurred In And After The Third Quarter 2024 From The Receiver's Account.

17. The Receiver requests that the Court authorize the payment of fees allocated to the Subject Property during and after the Third Quarter of 2024 from the Receiver's account. Throughout the negotiations with Wilmington Trust, the Receiver endeavored to secure the largest amount of funds possible to be transferred to the Receiver's account for unsecured claims and administration of the Estate.

18. If the Court grants this Motion and the property accounts are distributed in accordance with the distribution schedules described herein, then approximately \$1 million will be transferred to the Receiver's account for the benefit of the unsecured creditors of the Estate. Accordingly, the Receiver requests authorization to pay the fees allocated to the Subject Property during this period from the Receiver's account.

VI. The Receiver Has Provided Reasonable And Fair Notice Of This Motion.

19. Notice of this motion is being given to each of the claimants asserting a claim against the Subject Property or claiming a membership interest in SSDF2 Holdco 2, LLC, which purports to hold an equity interest in the Subject Property, as well as to each of the other claimants who have submitted claims in this matter. In addition, this motion will be made publicly available to all interested and potentially interested parties by posting a copy of it to the Receivership web site.

Prayer for Relief

WHEREFORE, the Receiver seeks the following relief:

- a) a finding that adequate and fair notice has been provided to all interested and potentially interested parties of the claims process, the Receiver's recommendations with respect to the Subject Property, the Receiver's and attorneys' fees and proposed fee allocations, and the current Motion;
- b) an order finding that the agreement between the Parties is fair, reasonable, and in the best interests of the Receivership Estate;
- c) a finding that the distribution schedule described herein and submitted herewith is fair and reasonable;
- d) approval of the payment from the account held for the Subject Property of the Receiver's and attorneys' fees the Receiver has allocated to the Subject Property in the Second Quarter of 2024 (Dkt. 1732);
- e) approval of payment from the account held for the Subject Property of the Receiver's and attorneys' fees the Receiver allocated to the Subject Property that have been heretofore held back from payment pursuant to the Court's Orders;
- f) approval of payment from the Receiver's account of the Receiver's and attorneys' fees allocated to the Subject Property in the current quarter and any subsequent quarters;
- g) an order authorizing Wilmington Trust to liquidate the reserve and escrow accounts held for the Subject Property and transfer any remaining balances to itself or its chosen designee;

- h) approval of the distribution of funds as set forth in Exhibit A to this motion, with distributions to be made within five (5) business days of the Court's approval of this motion, or as soon as such distributions can be reasonably achieved;
- i) approval to transfer to the Receiver's account any residual interest earned on the account held for the Subject Property, after the distributions that the Court orders pursuant to this motion have been made; and
- j) such other relief as the Court deems fair and equitable.

Dated: September 6, 2024

Respectfully submitted,

/s/ Michael Rachlis

Michael Rachlis
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Attorneys for Kevin B. Duff, Receiver

Exhibit A - Distribution Plan

Property #	3	
Account #	0033	
PROPERTY ADDRESS	5001 S Drexel Blvd.	
Balance of Receivership Account for Property (as of 8/2/2024)	\$	2,850,639.53
Payment of Fees Allocated in Receiver's 24th Fee Application (Dkt. 1732)	\$	12,188.22
Payment of Fees Held Back pursuant to Court Orders (Dkt. 1372, 1452, 1469, 1510, 1511, 1539, 1573, 1675) Fee applications 1-23	\$	24,235.02
Distribution to Wilmington Trust (\$,2421,115.00 less \$598,839 reserves/escrows)	\$	1,822,276.00
Transfer to Receiver's Account	\$	991,940.29

Exhibit**A**

exhibitmaker.com

Exhibit B (Revised Ex. 4 to Dkt. 1626)

5001 S Drexel (Property 3)

Receiver's Recommendations - Individual Investors

Claimant Name	Lender Name	Claim Number	Claimant Submissions	Amount Claimed (Invested in Property)	Secured Claim Remaining	Unsecured Claim (This Investment)	Pre-Rollover Distributions	Distributions Received on Property	Source of Distribution	Total Distributions Recvd on Investment	Max Potential Dist (Proceeds of Sales)	Max Potential Dist. (Unencumbered)	Notes
Adir Hazan	Adir Hazan	3-143	POC	\$ 50,000.00	\$ -	\$ -		\$ 56,258.33	POC	\$ 56,258.33	\$ -	\$ -	LLC membership interest
Alan Schankman	Alan Schankman	3-2096	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,754.17	LSA	\$ 3,754.17	\$ -	\$ 46,245.83	LLC membership interest
Asians Investing In Real Estate LLC	Asians Investing In Real Estate LLC	3-503	POC	\$ 95,000.00	\$ -	\$ 95,000.00		\$ 7,125.00	POC	\$ 7,125.00	\$ -	\$ 87,875.00	LLC membership interest
Benjamin J Serebin		3-1288	POC	\$ 300,000.00	\$ -	\$ 150,000.00		\$ 10,263.89	POC	\$ 10,263.89	\$ -	\$ 139,736.11	LLC membership interest
Bernadette Chen Eleven St. Felix Street Realty Corp.	Bernadette Chen (Eleven St Felix St. Realty)	3-2012	POC	\$ 200,000.00	\$ -	\$ 200,000.00		\$ 15,016.67	LSA	\$ 15,016.67	\$ -	\$ 184,983.33	LLC membership interest
Bright Venture, LLC	Bright Venture, LLC	3-84	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,754.17	POC; LSA	\$ 3,754.17	\$ -	\$ 46,245.83	LLC membership interest
Bryan Corey Purkis, Trustee Vivant Ventures Trust		3-1413	POC	\$ 150,000.00	\$ -	\$ 150,000.00		\$ 13,500.00	POC; LSA	\$ 13,500.00	\$ -	\$ 136,500.00	LLC membership interest
Capital Investors, LLC	Capital Investors, LLC	3-1490	POC	\$ 295,000.00	\$ -	\$ 275,000.00		\$ -		\$ -	\$ -	\$ 275,000.00	LLC membership interest
Consuelo V Needs-Medical		3-541	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,025.00	POC; LSA	\$ 3,025.00	\$ -	\$ 46,975.00	LLC membership interest
Dictation Services, Inc.													
Doron Reichenberg	Doron Reichenberg	3-708	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ -		\$ -	\$ -	\$ 50,000.00	LLC membership interest
Horst Siegfried Filtzer Jr.	Horst S. Filtzer Jr.	3-1085	POC	\$ 100,000.00	\$ -	\$ 100,000.00		\$ 9,016.67	POC; LSA	\$ 9,016.67	\$ -	\$ 90,983.33	LLC membership interest
LEVENT KESEN	Levent Kesen	3-1078	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,754.17	POC; LSA	\$ 3,754.17	\$ -	\$ 46,245.83	LLC membership interest
Madison Trust Company FBO Judy Newton IRA		3-533	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,600.00	POC; LSA	\$ 3,600.00	\$ -	\$ 46,400.00	LLC membership interest
Michael Alden Schankman		3-2052	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,754.17	LSA	\$ 3,754.17	\$ -	\$ 46,245.83	LLC membership interest
Nancy Lynn Cree Cree Capital Ventures, LLC		3-2014	POC	\$ 300,000.00	\$ -	\$ 300,000.00		\$ 22,525.00	POC; LSA	\$ 22,525.00	\$ -	\$ 277,475.00	LLC membership interest
Rachael B Curcio		3-292	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,675.00	POC; LSA	\$ 3,675.00	\$ -	\$ 46,325.00	LLC membership interest
Scott Eaton	Scott H. Eaton	3-1470	POC	\$ 100,000.00	\$ -	\$ 100,000.00		\$ 7,508.33	LSA	\$ 7,508.33	\$ -	\$ 92,491.67	LLC membership interest
Tiger Chang Investments LLC	Tiger Chang Investments LLC	3-164	POC	\$ 5,000.00	\$ -	\$ 5,000.00		\$ 375.42	POC; LSA	\$ 375.42	\$ -	\$ 4,624.58	LLC membership interest
US Freedom Investments, LLC	US Freedom Investments, LLC	3-1234	POC	\$ 17,000.00	\$ -	\$ 17,000.00		\$ 1,181.50	LSA	\$ 1,181.50	\$ -	\$ 15,818.50	LLC membership interest
Victor Esposito T/A 2E-LLC	2E, LLC	3-308	POC	\$ 50,000.00	\$ -	\$ 49,925.00	\$ 9,190.00	\$ 3,930.00	POC	\$ 13,120.00	\$ -	\$ 36,805.00	LLC membership interest; prerover distributions from loan secured by 7107 S Bennett
Victor Esposito T/A 2E-LLC	2E, LLC	902-308	POC	\$ 50,000.00	\$ -	\$ -		\$ -		\$ -	\$ -	\$ -	Duplicate of claim 3-308
Victor Shaw	Victor M. Shaw and Jane R. Shaw, Trustees, or their Successor(s) in Trust of the Shaw Family Trust	3-1040	POC	\$ 50,000.00	\$ -	\$ 50,000.00		\$ 3,750.00	POC; LSA	\$ 3,750.00	\$ -	\$ 46,250.00	LLC membership interest
				\$2,162,000.00	\$ -	\$ 1,891,925.00					\$ -	\$ 1,763,225.84	

Exhibit

B

exhibitsticker.com

**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. Manish S. Shah
)	
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	Magistrate Judge Young B. Kim
)	
Defendants.)	
)	

NOTICE OF MOTION

Please take notice that on Wednesday, September 11, 2024 at 10:30 a.m., the undersigned will appear before the Honorable Manish S. Shah, or any judge sitting in his stead, in Courtroom 1919, and present **Receiver’s Motion To Approve Distribution Of Proceeds From The Sale Of Property 3 (5001 S Drexel Boulevard).**

Dated: September 6, 2024

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis
Michael Rachlis
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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2024, I electronically filed the foregoing **Notice Of Motion** and **Receiver's Motion To Approve Distribution Of Proceeds From The Sale Of Property 3 (5001 S Drexel Boulevard)** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system, which provided service to all counsel of record.

I further certify that I caused true and correct copy of the foregoing **Motion**, to be served by electronic mail upon all claimants who have asserted claims against the property located at 5001 S Drexel Boulevard (sent to the e-mail address each claimant provided on the claim form or subsequently updated).

I further certify that the **Motion** will be posted to the Receivership webpage at: <http://rdaplawnet/receivership-for-equitybuild>.

/s/ Michael Rachlis _____

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