UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION,)))
Plaintiff,) Civil Action No. 18-CV-5587
v.) Hon. Manish S. Shah
EQUITYBUILD, INC., et al.,)
Defendants.)))

SEC'S POSITION STATEMENT FOR GROUP 6 OF THE CLAIMS PROCESS

Pursuant to the Court's Orders regarding the Claims Resolution Process (ECF Nos. 941, 1091, 1532), the SEC submits this Position Statement for Group 6. For the following reasons, the Court should find the investors have priority for 12 of the Group 6 properties.

The Receiver advises that for 12 properties in Group 6, the investors obtained valid first-in-time mortgages that were properly recorded. (*See* ECF 1740 at 4-5, 6-7). The Receiver further reports that for each of these 12 properties, the investors never released their mortgages and no purported release was ever recorded. (*Id.*). Because the investors' mortgages were not released, the issue of priority is answered in the investors' favor by the Seventh Circuit opinion affirming this Court's Group 1 priority determination. *SEC v. EquityBuild, Inc.*, 101 F.4th 526, 532 (7th Cir. 2024) ("there must be payment and delivery of the release to extinguish a mortgage lien...under the Illinois Mortgage Act, payment alone *does not extinguish any pre-existing interest absent a valid release.*") (emphasis added).

¹ The Institutional Lenders who recorded later-in-time mortgages on these properties are Midland (properties 50-51, 53-57) and UBS (properties 108, 110-113). (*See* ECF 1740 at 1-2, 3-4).

Compared to Group 1, for the 12 unreleased properties in Group 6, the analysis is even more straightforward. In Group 1, the investors had priority because the fraudulently recorded releases were defective and did not satisfy the requirements of the Illinois Mortgage Act.

EquityBuild, 101 F.4th at 533. Here, for the 12 properties, there are no releases whatsoever.

(See ECF 1740 at 4-5, 6-7). An original mortgage recorded prior in time has priority over a later recorded mortgage on the same property. See, e.g., Paliatka v. Bush, 109 N.E.3d 343, 349 (Ill. App. Ct. 2018) ("Generally, the lien that is recorded first in time has priority and is entitled to satisfaction by the property it binds before other claims."); see also Fannie Mae v. Kuipers, 314 Ill. App. 3d 631, 635 (Ill. App. Ct. 2000) ("A presumption exists that the first mortgage recorded has priority ... Until [a valid] release is filed, the mortgage lien remains in effect."); EquityBuild at 531 (citing Kuipers for proposition that "a mortgage lien remains in effect until it is released...Without a properly executed and delivered release, the lien persists."). As with Group 1, absent any valid releases on the 12 Group 6 properties, the investors should have priority.

For the foregoing reasons, the SEC respectfully requests that the Court find that for any Group 6 property – including properties 50-51, 53-57, 108, and 110-113 – where the investors' valid prior-in-time mortgages were never released, the investors have priority and are entitled to a distribution of the proceeds of the property's sale.

Dated: September 24, 2024 Respectfully submitted,

/s/ Benjamin Hanauer

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CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Position Statement, via ECF filing, to all counsel of record and Defendant Shaun Cohen, and to all claimants via the Receiver's email distribution list, on September 24, 2024.

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