

Unlike the 12 Group 6 properties at issue here, in Group 1 BC57 actually obtained (fraudulent) releases. *See EquityBuild*, 101 F.4th at 529. However, because those releases did not satisfy the requirements of the Illinois Mortgage Act, the releases “were facially invalid” and “had no effect,” such that the investors “maintain their interests in” the Group 1 properties. *Id.* at 532-33. Nevertheless, Midland and UBS claim that, per *EquityBuild*, once they paid money to Equitybuild Finance (“EBF”), “the prior investors and EBF were obligated to issue valid releases...as a matter of Illinois law.” (ECF 1756 at 12; ECF 1757 at 12).

Midland and UBS may be correct that *EquityBuild* held the Illinois Mortgage Act “obligates a mortgagee to issue a release of the mortgage upon full satisfaction of the debt underlying the lien.” *See EquityBuild*, 101 F.4th at 531.¹ But that holding does not support the conclusion Midland and UBS demand: that the Court retroactively order the filing of releases that result in the Institutional Lenders having priority. Indeed, if Midland and UBS’s desired outcome was the proper one, the Seventh Circuit would have ordered it, and not reached the opposite finding that the investors have priority. Instead, the Seventh Circuit was explicit that “[b]ecause payment alone cannot extinguish a preexisting security interest without a valid release under the Illinois Mortgage Act, and because no valid release occurred,” the investors’ first-in-time mortgages had priority. *Id.* at 533.

Midland and UBS’s reliance on the unpublished *5201 Washington* decision is similarly misplaced. In that case, unlike the 12 Group 6 properties, *a release was publicly recorded*, and the question facing the court was whether the release was valid and authorized. *5201 Wash. Invs. LLC v. Equitybuild, Inc.*, 2024 IL App (1st) 231403-U, *P28-*P32 (Aug. 14, 2024). Thus, the threshold inquiry – the existence of a release – was already met when the court opined on the

¹ As in Group 1, because the Group 6 investors were not repaid, their debt was never satisfied.

release's validity. Here, there were never releases, rendering *5201 Washington's* analysis of the release's validity and authorization irrelevant.²

In short, the Seventh Circuit's *EquityBuild* opinion squarely holds that investors have priority in the absence of recorded releases. Accordingly, 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.

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Respectfully submitted,

/s/ Benjamin Hanauer
Benjamin J. Hanauer (hanauerb@sec.gov)
175 West Jackson Blvd., Suite 1450
Chicago, IL 60604
Phone: (312) 353-7390
Facsimile: (312) 353-7398

Attorney for Plaintiff
U.S. Securities and Exchange Commission

² Even if the issue of authority mattered here, this Court has already thoroughly analyzed the same documents Midland and UBS cite (the Collateral Agency and Servicing Agreements) and considered the same arguments Midland and UBS rehash, to unambiguously hold that “Equitybuild Finance lacked the authority to release the individual investors' mortgages.” (ECF 1386 at 1, 14-28).

CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Position Statement Response, via ECF filing, to all counsel of record and Defendant Shaun Cohen, and to all claimants via the Receiver's email distribution list, on October 15, 2024.

/s/ Benjamin Hanauer

Benjamin J. Hanauer
175 West Jackson Blvd., Suite 1450
Chicago, IL 60604
Phone: (312) 353-7390
Facsimile: (312) 353-7398

One of the Attorneys for Plaintiff