

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

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., et al.,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

**SURREPLY IN SUPPORT OF CLAIMANTS MIDLAND AND UBS AG’S POSITION
STATEMENTS (DKTS. 1756, 1757)**

Claimants Midland¹ and UBS AG submit this Surreply in support of their respective Position Statements in response to a new issue raised in the Group 6 Responsive Position Statement of Certain Individual Investors (Dkt. 1766). In their Responsive Position Statement, the Individual Investors argue for the first time that *Rockford Life Ins. Co. v. Rios*, 128 Ill. App. 2d 190 (3d Dist. 1970), is “wholly inapplicable” because Midland and UBS AG failed to request the releases to which they are entitled as a matter of law. (Dkt. 1766 at 3.) As a threshold matter, as discussed in the Responsive Position Statements, Illinois law does not require such a request for payoffs made after September 1973. Moreover, notwithstanding that no such request is required, Claimants have formally requested releases in this litigation. The Individual Investors further wrongly suggest Midland and UBS AG should have pursued those releases in some litigation

¹ Midland refers to Midland Loan Services, a Division of PNC Bank N.A., as servicer for (i) Wilmington Trust, N.A., as Trustee for the Benefit of CoreVest American Finance 2017-1 Mortgage Pass-Through Certificates and (ii) Wilmington Trust, N.A., as Trustee for the Registered Holders of CoreVest American Finance 2017-2 Trust, Mortgage Pass-Through Certificates 2017-2.

outside of this Receivership. To the contrary, Claimants—like all other claimants in this litigation—are restrained from pursuing their rights other than through this Receivership. Accordingly, the Illinois Appellate Court’s holding in *Rockford* remains directly relevant to the Court’s consideration of the Group 6 priority dispute.

I. No Request for Release is Required, but Claimants Have Nevertheless Requested Releases.

In *Rockford Life Ins. Co. v. Rios*, 128 Ill. App. 2d 190 (3d Dist. 1970), the Illinois Appellate Court “ordered the release of a mortgage after it determined that the note securing the mortgage had been properly paid to the mortgagee’s authorized agent.” *SEC v. Equitybuild, Inc.*, 101 F.4th 526, 532 (7th Cir. 2024). Given that Midland (through its assignors) and UBS AG paid the amounts outstanding under the prior Individual Investors’ mortgages to the Individual Investors’ agent authorized to receive such payments (Equitybuild Finance (“EBF”)), Midland and UBS AG are entitled to releases consistent with the court’s order in *Rockford*. (See Dkts. 1756, 1757 at 10-12; see also Dkts. 1767, 1768 at 6-7.) To avoid the consequences of *Rockford*’s ruling, the Individual Investors argue Midland and UBS AG never “did anything . . . to obtain the releases they claim their loans required.” (Dkt. 1766 at 3.) This argument lacks merit.

Illinois law does not require a request for release in these circumstances. While the Illinois Mortgage Act (“IMA”), which controls the release of all mortgages, requires mortgagors to request releases following payment of the debt underlying a prior mortgage for payoffs made before September 1973, ***there is no such requirement for payoffs made after September 1973.*** (See 765 ILCS 905/2.). Rather, for payoffs made after September 1973—as is the case here—the IMA does not require a mortgagor to request a release. Instead, the IMA’s requirements that a release be issued are automatic upon payment of the debt underlying the mortgage. The IMA provides “every mortgagee of real property, his or her assignee of record, or other legal representative, **having**

received full satisfaction and payment of all such sum or sums . . . really due . . . **shall make, execute and deliver** . . . an instrument in writing releasing such mortgage.” (See 765 ILCS § 905/2 (emphasis added).) The IMA further ties a mortgagee’s obligation to execute and deliver a valid release to the mortgagor’s payment of the debt, *not* the mortgagor’s request for a release. (See *id.* at § 905/4.)

Rockford therefore remains instructive to the Court’s analysis of the Group 6 claims. Moreover, and in any event, Midland and UBS AG have made requests for releases in this litigation—their only avenue for such relief, as explained further below. (See Dkt. 1757 at 6-7, 10-12); Dkt. 1768 at 2-9; Dkt. 1756 at 10-12; Dkt. 1767 at 2-9.)

II. Claimants, including Midland and UBS AG, are Restrained from Enforcing their Rights Outside this Receivership.

The Individual Investors further suggest Midland and UBS AG failed to pursue their rights to releases in litigation outside of this Receivership. Specifically, the Individual Investors argue “UBS and Midland effectively assume the entitlement they now claim makes it as if they prevailed in a non-existent, hypothetical litigation in which they brought claims under the Illinois Mortgage Act seeking issuance of the releases No such litigation ever occurred.” (Dkt. 1766 at 3.)

This argument ignores the existence of the procedural limitations created by this Receivership. Importantly, the Court’s Order Appointing the Receiver bars any party from taking any action that would interfere with the Receivership, including “executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process . . . or creating or enforcing a lien upon any Receivership Assets.” (Dkt 16, at 15, ¶ 29(A).) The Order similarly restrains anyone from “enforcing judgments, assessments or claims against any Receivership Assets . . . attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date) of any lease, loan, mortgage, indebtedness, security agreement or other

agreement executed by any Receivership Defendant or which otherwise affects any Receivership Assets.” (*Id.* at ¶ 29(C).)

Further, and importantly, though the institutional lenders involved in this Receivership (including Midland and UBS AG), repeatedly weighed in with objections as to how priority disputes would be resolved, (*see, e.g.*, Dkts. 285, 317, 538, and 708), the Court ultimately overruled these objections in imposing the claims resolution process (*see* Dkt. 941). Specifically, paragraph 5 of the Claims Resolution Process Order confirms “[a]ll objections to the legality, validity, classification, amount, or priority of claims against the same property, and all other related issues which are subject to further review and discovery, will be decided in a single summary proceeding involving that property.” (*Id.* at ¶ 5.)

Accordingly, the Individual Investors’ suggestion that Midland and UBS AG should have initiated separate litigation for “claims under the [IMA] seeking issuance of the releases” runs directly contrary to the Court’s Orders restricting the parties from engaging in any activity to enforce their rights outside of the Receivership. In other words, once the Receivership started, the lenders’ only avenue to pursue their rights—including making any request for release—was within the claims process set forth in the Receivership, which leads the parties to the position statements now being filed.

CONCLUSION

For the aforementioned reasons, and for the reasons stated in Midland and UBS AG’s Position Statements (Dkts. 1756, 1757), and Responsive Position Statements (Dkts. 1767, 1768), Midland and UBS AG are entitled to releases from the Individual Investors of their prior (and paid off) mortgages, and therefore priority, and any such relief the Court deems necessary.

Dated: November 4, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2024, I electronically filed the foregoing **SURREPLY IN SUPPORT OF CLAIMANTS MIDLAND AND UBS AG'S POSITION STATEMENTS**, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record, and further caused the foregoing to be served upon all members of Claims Group 6 by email to the distribution list via equitybuildclaims@rdaplawn.net.

/s/ Andrew R. DeVooght

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