

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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<b>UNITED STATES SECURITIES</b>	)	
<b>AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 18-cv-5587</b>
	)	
<b>v.</b>	)	<b>Judge John Z. Lee</b>
	)	
<b>EQUITYBUILD, INC., EQUITYBUILD</b>	)	<b>Magistrate Judge Young B. Kim</b>
<b>FINANCE, LLC, JEROME H. COHEN,</b>	)	
<b>and SHAUN D. COHEN,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

**OPPOSITION TO INSTITUTIONAL LENDERS’  
MOTION FOR ORAL ARGUMENT AND TO STAY**

The Receiver objects to the institutional lenders’ latest motion, which seeks a stay of the Court’s ruling on the Consolidated Motion pending oral argument (Docket No. 668). The lenders, ostensibly without any sense of irony, are again objecting to the sales of receivership property, as they have done at every conceivable juncture, while simultaneously complaining that the process of selling receivership properties has become too protracted.

The Receiver filed the Consolidated Motion on January 24, 2020 (Docket No. 618). The institutional lenders filed their objections on February 17, 2020 (Docket No. 628). A ruling on the motion is expected on or about April 1, 2020 (Docket No. 665). Meanwhile, ten prospective purchasers of receivership properties have been waiting since mid-October 2019 for judicial confirmation of the purchase and sale contracts accepted by the Receiver so their transactions can finally close. For more than six months, the Receiver has endured repeated delays attempting to consummate the closings of these sales (delays primarily attributable to repeated lender objections

that merely recycle previously-rejected arguments), and the buyers whose earnest money has been tied up during this entire period, for good reason, are growing impatient.

The procedures employed by the Receiver have been repeatedly affirmed by both the Magistrate Judge and the District Court despite more than a year's worth of litigation, and the Court has recognized these procedures as falling squarely within the business judgment of the Receiver. (*See, e.g.*, Docket No. 352 (“The court does not intend to dictate the Receiver’s every move, absent a concrete showing that he is exceeding his authority or otherwise violating the Receivership Order.”).)

Moreover, as further articulated in the Declaration of Jeffrey Baasch (attached as Exhibit 1), it is absolutely critical that the remaining properties be marketed and sold without any further delay. In his Declaration, Mr. Baasch, the lead real estate brokerage consultant and advisor regarding the marketing and sale of the properties, also responds to the baseless and misleading assertions contained in the institutional lenders’ motion.

Oral argument (a practice rarely employed in this district) is not needed, as the issues raised in the institutional lenders’ latest motion have already been litigated. There are no grounds for either a stay or an evidentiary hearing. To the extent that the real estate market may now be suffering from the effects of the COVID-19 crisis, the institutional lenders have only themselves to blame. The subject properties could have been sold by now had the lenders refrained from relitigating the same objections at every opportunity. They maneuvered themselves directly into their own imposition.

On a separate note, the Receiver also wishes to make the following correction relative to the separate pending motion with respect to the process for the sale of the Single Family Residences (the “SFR Motion”). (Docket No. 645) In the Receiver’s motion for partial relief from

Amended General Order 20-0012 (Docket No. 663), there is a misstatement in regard to the interest of Midland with respect to the Single Family Residences. (*Id.* at 4) Midland has indicated that it is the servicer for 36 of the 37 properties at issue in the SFR Motion (*i.e.*, 97%), and not 28 of 37 as had been noted in the Receiver's more recent motion (*i.e.*, Docket No. 663, at 4). And, Midland's counsel has informed the Receiver that Midland has no objection to the SFR Motion (Docket No. 645).

For all the foregoing reasons, the Receiver respectfully requests that: (i) the Motion Of Certain Mortgagees For Stay Of Ruling And For Oral Arguments On Receiver's Consolidated Motion be denied; (ii) the Receiver's Consolidated Sixth Motion For Court Approval Of The Process For Public Sale Of Real Estate By Sealed Bid, Fifth Motion For Approval Of The Sale Of Certain Real Estate And For The Avoidance Of Certain Mortgages, Liens, Claims, And Encumbrances, and Motion To Amend The August 17, 2018 Order Appointing Receiver (Docket No. 618) be granted; and (iii) for such other relief as the Court deems just and equitable.

Dated: March 30, 2020

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

Michael Rachlis (mrachlis@rdaplawn.net)  
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**CERTIFICATE OF SERVICE**

I hereby certify that I provided service of the foregoing Opposition To Institutional Lenders' Motion For Oral Argument And To Stay, via ECF filing, to all counsel of record on March 30, 2020.

I further certify I caused to be served the Defendant Jerome Cohen via e-mail at [jerryc@reagan.com](mailto:jerryc@reagan.com).

/s/ Michael Rachlis

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# Exhibit 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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UNITED STATES SECURITIES		)	
AND EXCHANGE COMMISSION,		)	
		)	<b>Civil Action No. 18-CV-5587</b>
	<b>Plaintiff,</b>	)	
	<b>v.</b>	)	
		)	<b>Hon. John Z. Lee</b>
EQUITYBUILD, INC.,		)	
EQUITYBUILD FINANCE, LLC,		)	
JEROME H. COHEN, and		)	<b>Magistrate Judge Young B. Kim</b>
SHAUN D. COHEN,		)	
		)	
	<b>Defendants.</b>	)	
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**DECLARATION OF JEFFREY BAASCH**

I, Jeffrey Baasch, under penalty of perjury and in accordance with the requirements of 28 U.S.C. § 1746, hereby declare and state as follows:

1. I am over 18 years of age and a resident of the State of Illinois.
2. I have personal knowledge of the facts stated herein and if called as a witness could testify competently thereto.
3. I am Senior Vice President at SVN Chicago Commercial. Prior to working for SVN, I worked for JMB Institutional Realty/Heitman Capital Management, Transwestern Commercial Services, and KPMG Peat Marwick.
4. I am a licensed real estate broker in Illinois. I am a Certified Public Accountant (CPA). I have a Master of Business Administration (MBA) degree and a Bachelor of Science degree in Accounting.

5. I possess more than 30 years of experience in commercial real estate. I specialize in the sale of multifamily property in the greater Chicagoland area. My experience allows me to oversee all aspects of the transactional process including valuation, marketing, due diligence, and negotiations. I am not just real estate a real estate broker. I am a real estate expert with significant experience in asset management, property management, accounting, and strategic planning.

6. I lead one of the most active brokerage teams in the South Side multifamily market. Over the last five years we have sold, procured contracts to sell, or are now actively marketing over \$100 million in South Side multifamily properties containing in excess of 2,700 dwelling units.

7. I was recognized as the top multifamily broker in Chicago in 2019 by the Chicago Association of Realtors, which bestowed upon me the Commercial Forum Platinum Sales Award for Multi-Family 5+ Sales Dollar Volume.

8. SVN maintains strong relationships and possesses experience with all known active buyers of multifamily properties in the Chicago south side market. SVN also operates a leading national marketing platform that it uses to reach potential buyers. SVN fully cooperates with other brokerage firms and uses its cooperation policies as a strength to maximize marketing exposure nationally and to provide increased access to less active local buyers.

9. The Receiver, Kevin B. Duff, retained SVN to serve as real estate broker in connection with the marketing and sale of the Chicagoland properties within the EquityBuild Receivership Estate, and I am the broker principally responsible for providing real estate services to the Receiver in connection with his efforts to market and sell those properties. I have actively participated in the development and execution of the marketing strategies for the properties in the

EquityBuild portfolio, including the pricing of the properties and the preparation of the bid procedures.

10. With respect to properties currently under contract, the buyers reach out frequently and are actively seeking to close on those sales. As to the properties for which approval to commence the marketing process is currently awaiting the Court approval, it is my opinion that those properties must be marketed as quickly as possible given concerns about the health of the rental market in the wake of the COVID-19 crisis and the fact that many of the properties do not currently generate sufficient income to pay the operating expenses and therefore constitute a continuing drain on the receivership estate. Despite this, however, there remains an active market of investors for these properties, buttressed by a low interest rate environment.

11. The Receiver provided me a copy of the motion filed by certain institutional lenders to which was attached the Declaration of Antje Gehrken. Despite thirty years of commercial real estate experience and lengthy and active involvement in the multifamily brokerage market in Chicago, I have come to know essentially all of my competitors, but have never heard of Ms. Gehrken.

12. I have reviewed her website, and it is apparent that she focuses overwhelmingly on the sale of non-luxury single-family homes and individual condominium units. The most expensive commercial property listed on her website portfolio is a single-unit retail space in South Holland, Michigan that sold for \$495,000.

13. Although Ms. Gherkin states that she has represented buyers, sellers, developers, and institutional investors in connection with the evaluation, purchase, sale, and leasing of multifamily, mixed use, and commercial real estate throughout Chicago, including the South



Shore neighborhood, in the 18 months that I have been working with the Receiver to market and sell the EquityBuild properties (at this point I have marketed 43 of the multifamily properties in the EquityBuild portfolio), Ms Gehrken has not once reached out to request any information or to indicate that she had a prospective buyer. I have also marketed other South Side properties during this period and likewise never received any inquiry from Ms. Gehrken.

14. I disagree with Ms. Gherken's assertion that the EquityBuild properties require four to six months of marketing. To the contrary, in my experience properties properly priced when brought to the market will sell within the first few weeks, and four to five weeks is more than adequate for SVN to reach a broad universe of potentially interested local buyers and to address any concerns raised by the prospective purchasers.

15. Thus far, the majority of the properties that SVN has marketed for the Receiver have garnered contracts at or above the asking price, and most of the sales have been to local buyers. Our marketing effort is designed to create buyer urgency, generate competition, and allow all offers to be reviewed at the same time to maximize offer prices. Moreover, in the current economic environment, waiting four to six months will actually undermine, not enhance, the ability to sell these properties, which, due to a lack of operating capital, are not receiving the routine maintenance they require.

16. In addition, contrary to Ms. Gehrken's assertion, the websites that SVN has used, and continues to use, to market the EquityBuild properties are indisputably recognized as the best sources of listing information in the multifamily commercial real estate industry.

17. Moreover, the SVN marketing effort is not confined to listing services, as SVN maintains an extensive database of local, national, and international owners and investors in multifamily properties to whom we consistently transmit marketing information.

18. Although Ms. Gehrken devotes considerable attention to the alleged lack of due diligence inspection opportunity accorded to prospective buyers, she apparently fails to realize that the purchase and sale contracts disseminated to prospective bidders permit a twenty-day inspection contingency period following acceptance by the Receiver, during which time the prospective purchaser may conduct whatever inspections it deems necessary in order to satisfy itself that there are no patent or latent defects in any substantial component of the property. The Receiver has even agreed to lengthen the inspection period when necessary to ensure that the prospective purchaser has had a full and fair due diligence opportunity.

19. Ms. Gehrken's reference to potential zoning issues as a basis for requiring a longer marketing period is also misplaced. None of the properties in the EquityBuild portfolio implicates zoning concerns to prospective purchasers.

20. Ms. Gehrken also erroneously asserts that the "timing and structure" of the Receiver's marketing and sale procedures render it virtually impossible for a bidder to procure conventional financing due to the short window of time between the property tour and the offer submission deadline. Bidders, however, do not procure binding commitments for conventional financing prior to submitting an offer. Although they may discuss financing options with prospective lenders, no lender will commit to acquisition financing until a property is under contract. Moreover, the purchase and sale agreement disseminated to prospective bidders allows for a financing contingency, and a number of the properties sold by the Receiver to date have been acquired with conventional loans.

  
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Jeffrey Baasch