

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. John Z. Lee

Magistrate Judge Young B. Kim

MORTGAGEES' MOTION TO INTERVENE

Pursuant to Fed. R. Civ. Pro. 24(a)(2), the Mortgagees¹ move to intervene in this matter. In support hereof, the Mortgagees state as follows:

1. Mortgagees file this Motion as a precaution to preserve their right to appeal in light of potentially inapposite and conflicting Seventh Circuit case law regarding certain classes of parties' rights in the context of receivership proceedings.

¹ The Mortgagees are Freddie Mac; Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB30; U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB41; U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB50; 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, National Association, as Trustee for the benefit of the registered holders of UBS Commercial Mortgage Trust 2017-C1, Commercial Mortgage Pass-Through Certificates, Series 2017-C1; Federal National Mortgage Association (“Fannie Mae”); BMO Harris Bank N.A.; Midland Loan Services, a Division of PNC Bank, National Association; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Colony American Finance 2015-1; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Registered Holders of Corevest American Finance 2017-2 Trust, Mortgage Pass-Through Certificates, Series 2017-2; Midland Loan Services, a Division of PNC Bank, N.A. as servicer for Wilmington Trust, N.A., as Trustee for the Benefit of Corevest American Finance 2017-1 Trust Mortgage Pass-Through Certificates; BC57, LLC; UBS AG; Thorofare Asset Based Lending REIT Fund IV, LLC; and Liberty EBCP, LLC.

2. The Seventh Circuit case law referenced *supra* currently includes both *S.E.C. v. Enterprise Trust Co.*, 559 F.3d 649 (7th Cir. 2009) and *S.E.C. v. First Choice Mngmt. Serv. Inc.*, 767 F.3d 709 (7th Cir. 2014). In *Enterprise*, the court held that parties affected by a receiver's plan of distribution may appeal adverse distribution decisions without intervening. *Enterprise*, 559 F.3d at 652. In contrast, the court in *First Choice* held that a party claiming an interest in property held by a receiver had to intervene in order to appeal an adverse decision regarding that property. *First Choice*, 767 F.3d at 710-11.

3. *Enterprise* and *First Choice* are distinguishable in that the appellant in *First Choice*, unlike Mortgagees here, was not actively involved in the case and sat on its rights for ten years. *Id.* at 710. Nevertheless, Mortgagees are asserting an interest in property held by the Receiver. Thus, *First Choice* could erroneously be read to require Mortgagees to intervene in order to preserve their right to appeal a contrary ruling in this matter. Accordingly, there is risk to the Mortgagees that would be mitigated by intervention.

4. To avoid that risk, and the attendant waste of resources by this Court and the Parties, out of an abundance of caution, the Mortgagees seek to intervene in this action.

5. Because the Mortgagees are participating actively in this proceeding, the Mortgagees do not contemplate that their roles in this matter will substantively or procedurally change upon entry of an order allowing intervention.

6. F.R.C.P. 24 provides:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a federal statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) ...

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

7. Mortgagees are recognized as Creditors here with interests relating to property that is claimed to be property of the Receivership as contemplated by F.R.C.P. 24(a)(2).

8. The disposition of claimed Receivership property may impede the Mortgagees' respective abilities to protect their interests in the subject properties.

9. No other parties to this Receivership represent the interests of the Mortgagees in the properties in which they claim security interests, but certain parties have challenged the Mortgagees' secured status in said properties.

10. The Mortgagees' respective claims and defenses are set forth in their previously filed Response to the Receiver's Motion for Disputed Claims Procedure and their respective Proofs of Claim, which are adopted and incorporated as part of this Motion.

WHEREFORE, The Mortgagees respectfully request that this Court grant the Mortgagees' Motion and enter an order allowing the Mortgagees to intervene as a matter of right.

Dated: July 24, 2020

Respectively Submitted:

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NA, acting under authority designated by Colony American Finance Lender, LLC, assignee Wilmington Trust, N.A. as Trustee for the benefit of registered holder of Colony American Finance 2015-1

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