

Additional Record Citations

In his prior replies, the Receiver described the substantial work performed during the third and fourth quarters of 2020, citing to the record showing the nature and benefits of such work, including without limitation with respect to asset preservation, property sales, and the claims process. (Dkt. Nos. 923, 971) Those descriptions are equally applicable for the first quarter of 2021. In addition to the record cites set forth on pages 2-3, 7-9 of the Ninth Reply and on page 2 of the Tenth Reply, the Receiver references the following record cites supporting the same points for the current period: *see, e.g.*, Dkt. Nos. 921, 938, 940, 941, 949, 953, 962, 964, 972, 985.¹

UPDATED DISCUSSION POINTS

The discussion of invoices, fees, and efficiencies achieved that appears in the Receiver's previous reply briefs (*e.g.*, Dkt. 923, at 7-11) also applies with respect to the invoices that are the subject of the current fee application (Dkt. 993, Exs. F-J). But those efficiencies are even more pronounced for the current fee application. The average billing rate achieved for Receiver and his firm for the first quarter of 2021 was \$213 per hour (not including the Receiver's time) and \$236 per hour (including the Receiver's time), which are the lowest average billing rates achieved for any quarter for this receivership. In addition, the total amount of the current fee application is the lowest for any quarter for this receivership. Cash on hand in the Receiver's accounts totaled \$1,041,405.13, as of May 31, 2021.

The objecting lenders' foreclosure argument (Dkt. 1000, at 3; *compare* Dkt. 960, at 4) has been repeatedly addressed by the Receiver, opposed by the SEC, and rejected by the Court. (*See, e.g.*, Dkt. 971, at 3-4; Dkt. 790, at 6-11; Dkt. 800 at 6-7; Dkt. 474, at 5; Dkt. 444, 4/23/19 Tr. at

¹ Although some docket references relate to items that were filed after the fourth quarter (*e.g.*, Dkt. Nos. 972, 985), they involved work performed during the period that is the subject of this fee application.

14:3–16 (“priority determinations must take place in the course of an ‘orderly claims process’”); Dkt. 514, Ex. 1, at 10 (“This is not a foreclosure situation. . . . We are doing what we can to balance the interest of everyone involved.”); Dkt. 540, at 5-6 (same); *see also* Dkt. 971, at 3-4; Dkt. Nos. 799, 911, 928, 953, 972, 985 (at 10, 15-17), 996 (for related points made in prior reply briefs about the claims process, the Receiver’s role, and the objectors’ participation))

The objectors also overstate the amounts actually sought by the Receiver’s third, fourth, and tenth fee applications by \$38,932.47. It appears that they failed to deduct amounts the Receiver indicated would be deducted from the amounts sought for the third and fourth fee applications (relating to payments received for title examination work), and, in connection with the tenth fee application, have misstated the actual amounts in the Receiver’s fee applications. (*See* Dkt. 1000, at 8-9)

The objecting lenders also include a new argument that asserts that the Receiver has included misleading information about net sales proceeds. (Dkt. 1000, at 10) This assertion is wrong on multiple levels. The information reported by the Receiver is accurate. The objectors do not dispute the accuracy of the amounts reported by the Receiver; nor could they. The argument is premised on the priority of the objecting lenders’ liens, a matter which the Court has repeatedly said will be determined within the claims process. Additionally, the record is replete with the institutional lenders attempts to stop, stay, and delay the Receiver’s efforts which have driven up the costs of this receivership and greatly increased the length of time carrying the properties. The objectors’ argument also ignores that the Receiver not only achieved the accurately-reported net sales proceeds, but he also eliminated substantial further costs (*e.g.*, taxes, insurance, litigation, and other carrying costs) and risks (*e.g.*, fires, other casualties, and market fluctuation) by selling the properties. By ensuring all parties receive due process and access to records and information

for the claims process, the Receiver also contributed to the integrity and fairness of the process by which the Court will determine who will be entitled to distribution of those funds.

Further, the objecting lenders' sweeping, indiscriminate, and disingenuous arguments ignore other results the Receiver has achieved and information that is placed in their hands every month. By way of example only, as of the end of May 2021, the remaining properties under management with one property manager had at least \$1,115,424.16 in accumulated net income (*i.e.*, profit achieved by the Receiver above operating costs). For illustration, 4611-17 S Drexel Boulevard had accumulated net income of \$211,568.18; and 6217 S Dorchester Avenue had accumulated net income of \$201,002.45. (*See also, e.g.*, Dkt. 858, at 3; Dkt. 870, at 14)

The objecting lenders also simply ignore that many of the substantial efforts undertaken by the Receiver during the period at issue resulted from collaboration with the institutional lenders' counsel, responsiveness to claimants' requests, and/or efforts for the benefit of the claimants. For example, the Receiver and his counsel undertook substantial efforts to work with the institutional lenders and the vendors they selected to establish an EquityBuild documents database and work on the claims process. (*See, e.g.*, Dkt. 993, Ex. G, at 70-85, 108-17, 135-44 (Claims billing category; time entries of J. Wine & M. Rachlis); *id.*, Ex. F, at 25-28, 37-39, 48-51 (Claims billing category; time entries of K. Duff)) As another example, the Receiver and his counsel worked to prepare the portfolio of 37 single family residence properties for a single sale, which included substantial collaboration with the institutional lenders' counsel; and ultimately resulted in a motion to approve the sale of those properties without an objection from the institutional lender. (*See, e.g.*, Dkt. 993, Ex. G, at 59-64, 94-102, 124-30 (Asset Disposition billing category; time entries of A. Porter and J. Rak); *id.*, Ex. F, at 21-23, 32-34, 44-46 (Asset Disposition billing category; time entries of K. Duff). *See also, e.g.*, Dkt. 967, at 1 & ¶¶ 36-37) Thus, the objecting lenders' new

argument is inaccurate, disingenuous, made with unclean hands, and fails to acknowledge actual value and benefit provided by the Receiver and his retained professionals. And, significantly, the argument ignores the actual standard that the Court uses to determine whether to approve the Receiver's fee applications:

“[T]he court may consider all of the factors involved in a particular receivership in determining an appropriate fee.” *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994). In making this determination, courts consider that the benefits provided by a receivership “may take more subtle forms than a bare increase in monetary value.” *Id.* (quoting *S.E.C. v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992)). Accordingly, “[e]ven though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation.” *Id.* (quoting *Elliott*, 953 F. 2d at 1577).

(*E.g.*, Dkt. Nos. 614 (at 2), 710 (at 2) & 824 (at 2))

The SEC has supported and approved the Receiver's fee applications, including this one.

(*See* Dkt. 1002)

CONCLUSION

For the foregoing reasons, as well as those set forth in the Receiver's ninth, tenth, and eleventh fee applications, the supporting briefs filed by the SEC and the Receiver, and in the Receiver's motion for approval to pay certain previously approved fees and costs, the Receiver respectfully requests that the Court exercise its discretion to:

(i) find that the Receiver has preserved, enhanced, or otherwise benefited the properties and the claimants in connection with the work performed and expenses incurred as reflected in the eleventh fee application;

(ii) approve the Receiver's eleventh fee application and payment of all fees and expenses described therein out of the funds in the Receiver's account, including as to any such future funds that come into the Receiver's account;

(iii) impose a first priority receiver's lien on the properties and proceeds of sale to satisfy the receivership expenses; and

(iv) grant such other relief as the Court deems equitable and just.

Dated: June 28, 2021

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis
Michael Rachlis (mrachlis@rdaplawn.net)
Jodi Rosen Wine (jwine@rdaplawn.net)
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2021, I electronically filed the foregoing **Receiver's Reply in Support of His Eleventh Interim Application and Motion for Court Approval of Payment of Fees and Expenses of Receiver and Receiver's Retained Professionals** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. A copy of the foregoing was served upon counsel of record via the CM/ECF system.

/s/ Michael Rachlis _____

Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
mrachlis@rdaplaw.net