

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

**MOTION FOR EXPEDITED HEARING ON CERTAIN OBJECTIONS
MADE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 72**

The following mortgagees (collectively, “Movants”, and each individually a “Mortgagee”) respectfully move for expedited hearing of (i) *Objection of Liberty EBCP, LLC to Memorandum Opinion and Order Dated May 2, 2019* [Dkt 359] (“First May 2 Order Objection”); (ii) *Objection of Certain Lenders to Memorandum Opinion and Order dated May 2, 2019* [Dkt 363] (“Second May 2 Order Objection”); and (iii) *Objection to Order Dated July 9, 2019* [Dkt 455] (“July 9 Order Objection”, together with First May 2 Order Objection and Second May 2 Order Objection, collectively the “Objections”): (1) Citibank N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48; (2) 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; (3) 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; (4) 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; (5) 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; (6) Federal National Mortgage Association (“Fannie Mae”); (7) Federal Home Loan Mortgage Corporation (“Freddie Mac”); (8) UBS AG; (9) BMO Harris Bank N.A.; (10) Midland Loan Services, a Division of PNC Bank, National Association; and (11) BC57, LLC. In support of the Motion, Movants state as follows:

BACKGROUND

1. On May 2, 2019, Magistrate Judge Young B. Kim entered a Memorandum Opinion and Order [Dkt 352] (“May 2 Order”) granting the Receiver’s Second Motion for Court Approval of the Process for Public Sale of Real Property by Seal Bid [Dkt 228] (“Second Sale Motion”) and sustaining certain Movants’ objections to the Second Sale Motion [Dkt 232, 235, 240]. Specifically, the May 2 Order provided Movants with the right to credit bid on the properties at issue in the Second Sale Motion. The May 2 Order imposed certain conditions on Movants’ right to credit bid, including the posting of a letter of credit “drawn on another bank.” May 2 Order, p. 7.

2. Pursuant to Fed. R. Civ. P. 72(a), Liberty EBCP, LLC (“Liberty”) filed the First May 2 Order Objection and certain Movants joined the First May 2 Order Objection [Dkt 363]¹. Similarly, Movants filed the Second May 2 Order Objection. The Court set a briefing schedule on

¹ Liberty filed a *Notification of Liberty EBCP, LLC Regarding Notification of Docket Entry (R. 458) Setting Hearing on Pending Objections to May 2, 2019 and May 22, 2019 Orders* [Dkt 463] indicating the First May 2 Order Objection was moot as to Liberty because Liberty apparently reached an agreement with the Receiver on credit bid procedures. The First May 2 Order Objection is **not** moot as to the certain Movants that joined.

the First May 2 Order Objection and the Second May 2 Order Objection with responses due August 14, 2019, replies due August 28, 2019, and hearing on September 25, 2019 [Dkt 458].

3. On May 22, 2019, Magistrate Judge Kim entered an Order [Dkt 382] ("May 22 Order") granting the Receiver's Fifth Motion for Court Approval of the Process of Public Sale of Real Property by Sealed Bid [Dkt 329] ("Fifth Sale Motion"), over objections of certain Movants [Dkt 364, 370]. In regards to the Fifth Sale Motion, Movants objected on the basis that the Receiver had not proposed an acceptable protocol under which Movants could execute on the credit bid rights the Court granted in the May 2 Order. Accordingly, the May 22 Order instructed the lenders to file a "a joint motion to amend [the May 2 Order] to establish procedures for submitting credit bids" if the lenders were unable to reach an agreement with the Receiver on the manner, timing, and methodology for placing credit bids. May 22 Order, p. 5.

4. Movants filed their Consolidated Motion to Amend May 2, 2019 Memorandum Opinion and Order [Dkt 418] ("Motion to Amend") to establish the procedures for submitting credit bids. On July 9, 2019, Magistrate Judge Kim entered an Order denying the Motion to Amend [Dkt 447] ("July 9 Order"). On July 22, 2019, Movants filed the July 9 Order Objection. The Court set a briefing schedule on the July 9 Order Objection with responses due August 14, 2019 and replies due August 28, 2019. A hearing was not scheduled.

ARGUMENTS

5. Movants respectfully file this Motion because delay in ruling on the Objections will result in prejudice to Movants. The properties subject to the Second Sale Motion and Fifth Sale Motion are currently marketed for sale and third party bidders were required to submit bids on August 14, 2019. Beginning on August 15, certain Movants were notified of the highest bid offers and were instructed to submit their credit bid by close of business on August 16, giving the Movants less than 24-hours to evaluate and determine whether to credit bid. This unreasonable

and arbitrary deadline created a flurry of back and forth between certain Movants and the Receiver, whereby the Movants requested additional time to submit credit bids and additional information necessary to determine whether to credit bid, as instructed by the Court. Despite the Movants' best efforts to resolve the dispute without court intervention, certain Movants were forced to file an emergency motion and motion with Magistrate Judge Kim. [Dkt 478, 481] A hearing was held on August 19, 2019, whereby Magistrate Judge Kim granted the Movants until August 30, 2019 to submit credit bids and ordered the Receiver to supply the Movants certain requested information. [Dkt 483]

6. As discussed at length on August 19, the May 2 Order and July 9 Order do not set forth specific and necessary procedures for submission of credit bids, which necessitated court intervention in the form of emergency motions. [Dkt 478, 481]

7. As more fully set forth in the Objections, the May 2 Order and July 9 Order do not set forth a credit bid protocol that would permit Movants to execute on a credit bid granted in the May 2 order. Issues with the May 2 Order and July 9 Order, include failure to determine lien priority and lien amount; failure to provide the "indubitable equivalent" or other protections; and the posting a letter of credit "drawn on another bank." Moreover, it is unclear what terms and conditions currently control credit bidding. The manner, timing, and methodology for placing a credit bid has not determined by the Court. Therefore, time is of the essence to resolve these issues so Movants may properly consider credit bidding on properties subject to the Second Sale Motion and Fifth Sale Motion and to avoid further court intervention.

8. Furthermore, consistent with the July 9 Order² and prior instructions of the Court, certain Movants have requested additional documentation from the Receiver to help determine

² See July 9 Order, n. 2.

whether those certain Movants should credit bid. The Receiver has not supplied any requested information.

9. Any further delay in resolution of these issues will prejudice Movants. Movants, therefore, respectfully request that the this Court set the Objections for hearing and ruling as soon as practicably possible after the Movants file their reply in support of the Objections. Neither the SEC nor the Receiver are prejudiced by this revised briefing schedule because the response due date of August 14, 2019 remained the same.

10. The purpose of filing objections to a magistrate's decision with the district court is "to provide the district court with the opportunity to consider the specific contentions of the parties and to correct any errors immediately." *Neuman v. Rivers*, 125 F.3d 315, 322 (6th Cir. 1997) (internal citation omitted). Expedited hearing on the Objections will fulfill this purpose because this Court can resolve any errors immediately and minimize prejudice to the parties.

CONCLUSION

WHEREFORE, Movants respectfully request that the Court grant the Motion for Expedited Hearing on Certain Objections Pursuant to Federal Rule of Civil Procedure 72 and set the Objections for hearing and ruling as soon as practicably possible after the Movants file their reply in support of the Objections.

Dated: August 21, 2019

Respectfully submitted,

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Commercial Mortgage Trust 2014-LC16,
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