



Ignoring the disposition of their prior objections, the institutional lenders have largely reasserted the same rejected arguments, yet again impeding the process of marketing and selling apartment buildings that drain the resources of the Receivership Estate, and yet again delaying the ultimate mission of the Receiver. The institutional lenders' objections also frustrate the City of Chicago from meeting an objective to move desirable housing into the hands of new investors incented to make much-needed improvements.

Moreover, the lenders myopically ignore that hundreds of investor lenders have claimed they hold pre-existing mortgages against the same properties, that these mortgages were not properly released, and that the Court will soon begin the process of resolving those priority disputes. Disregarding the existence of competing interests to the same collateral, and the Court's implementation of a claims process, they make bold statements, for example, with respect to 4611-17 South Drexel: "[T]he public record is clear—the [institutional lender's] mortgage is the senior secured mortgage of record . . . and the [lender-investors'] mortgage was released." (Opp. Mem. at 7.) Indeed, Liberty EBCP even goes so far as to claim that it is "the only mortgage holder on its properties" (Opp. Mem. at 21), a contention which dozens of investor lenders have clearly disputed. In the context of the claims process and claims received, these sweeping assertions cannot seriously be supported.

**A. Objections To The Escrowing Of Proceeds Is Not A Valid Objection And Has Been Previously Overruled.**

With respect to both the motion to approve the process of marketing and selling receivership property (Opp. Mem. at 4-7) and the motion to confirm the sales of certain properties already marketed and now under contract (Opp. Mem. at 16), the lenders object to the escrowing of sales proceeds. As for the former motion, an objection to the disposition of sales proceeds prior to the acceptance of a contract to sell and an ensuing motion to confirm is a non-process objection

to a process motion. For that reason alone, it should be rejected. Nonetheless, the Court has already addressed and rejected the objection, authorizing the escrowing of sales proceeds pending further order. (Docket No. 346, Paragraph 14.) In much the same vein, this Court has also already rejected the contention that a sale price must equal a certain minimum amount. (Docket No. 447 at 9; Docket No. 352 at 10.) Further, the Court approved the process by which the properties were sold (*see* Docket Nos. 164, 351, 352, 378, 379, 381, 382, 422, 446, 447, and 540) and the Receiver has accepted, in each instance, the bid received which he believed in his judgment would maximize the sales proceeds for the benefit of the victims and creditors.

Meanwhile, lenders on four properties subject to the motion to confirm the sales of properties already under contract similarly object to the proceeds being escrowed in connection with assets not encumbered by any competing mortgages. (Opp. Mem. at 16-18.) As to these assets, however, other issues remain to be resolved during the soon to be initiated claims resolution process, including without limitation the alleged balance due in connection with the corresponding loan, the propriety of all of the component amounts of the claims asserted, and the entitlement of the Receiver to an administrative lien on a portion of the proceeds, if warranted.

**B. Objections To The Letter Of Credit Requirement Have Been Repeatedly Raised And Rejected.**

Magistrate Judge Kim upheld the institutional lenders' objection to the lack of credit bidding opportunities by Order dated May 2, 2019, in which he crafted a solution requiring successful credit bidders to post a letter of credit in the amount of their winning bid in the event that they were later determined not to be in first priority position. Countless pleadings and motions directed to this issue ensued, and this Court ultimately overruled those objections, stating as follows: “Here, the Court agrees with Magistrate Judge Kim’s conclusion that certain limitations – such as the letter of credit requirement – are warranted.” (Docket No. 540 at 6.) The Receiver’s

proposed process has used and will continue to use the credit bidding process approved by the Court.

Notably, the institutional lenders take issue with new verbiage in the credit bidding procedures pursuant to which the Receiver provided himself the option, exercisable at his reasonable discretion, not to permit title to a property acquired through credit bidding to be conveyed to a nominee. (Opp. Mem. at 14.) This change was made to prevent an institutional lender, Shatar Capital Partners, from acquiring title to a property encumbered by a mortgage recorded in favor of four individual lender-investors from whom Shatar Capital Partners apparently raised the debt. Lest the Receiver fall prey to the same misconduct that allegedly occurred at the hands of the Receivership Defendants and cause the mortgagees' interests to be extinguished while Shatar Capital Partners obtained unencumbered title to the property, the Receiver insisted that the property, 7749-59 South Yates, be conveyed to the actual mortgagees of record as tenants-in-common. Shatar Capital Partners refrained from credit bidding once that requirement was imposed by the Receiver, and, by making the minor alteration to the referenced language of the credit bid procedures, the Receiver has sought to ensure that a similar scenario does not occur again.

**C. Conclusory Assertions Regarding Alleged Inadequacies In The Sales Process Should Be Rejected Again.**

The lenders' various objections to the sales process amount to the recycling of conclusory assertions evidencing a relentless effort to micromanage and control the sales process and an ostensible refusal to accept that the Receiver is attempting to maximize the proceeds of every sale. Those efforts and objections have been rightly rejected before and should be rejected again for all the same reasons. *See, e.g.*, Docket No. 352 at 8 ("The Lenders further argue that they should be permitted to provide input into and be involved with the sale process and have direct access to the

property managers for the properties. [citations omitted] . . . . The court denies the request . . . . The court does not intend to dictate the Receiver's every move"); Docket No. 540 at 4-5.

For example, the lenders conclusorily argue that four weeks of marketing is inadequate, a decision that rests squarely within the business judgment of the Receiver, whose professionals have advised him that four weeks is more than adequate for maximizing the sales prices of the properties. (Docket No. 537, Baasch Affidavit, ¶ 26.) The statute governing public sales provides that publication of the sale must occur for four consecutive weeks, *see* 28 U.S.C. § 2002, and the Receiver has proposed a process that fully complies with the law.

The lenders also object to the Receiver's choice of publication for announcing the sales. Again, the Receiver has complied with the express language of the statute, which provides that "publication is to occur in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated." *Id.* There is no dispute that the Chicago Sun-Times qualifies as such a publication. While nothing precludes the same advertisement from also being purchased to run in a competing newspaper, the Receiver has reached the conclusion, based on the advice of his brokerage professionals, that other real estate marketing platforms, far more frequently consulted by industry investors, will yield better results in view of the relative costs. (Docket No. 618 at 7.)

In any event, local investors in multifamily apartment product have presumably become aware that the EquityBuild properties are being marketed and sold, independent of the Receiver's marketing efforts. *See, e.g.*, Crain's Chicago Business, "First South Side buildings in alleged Ponzi scheme go up for sale" (Nov. 28, 2018) (<https://www.chicagobusiness.com/commercial-real-estate/first-south-side-buildings-alleged-ponzi-scheme-go-sale>); Crain's Chicago Business, "More South Side apartment sales coming in Ponzi scheme suit" (Mar. 4, 2019)

*(<https://www.chicagobusiness.com/commercial-real-estate/more-south-side-apartment-sales-coming-ponzi-scheme-suit>); Crain's Chicago Business, "Distressed properties hitting market on South Side" (Feb. 14, 2020) (<https://www.chicagobusiness.com/commercial-real-estate/distressed-properties-hitting-market-south-side>). Moreover, the Receiver and his brokers are regularly contacted by prospective new purchasers seeking information about the next tranche of properties to reach the market.*

In the opposition memorandum (Opp. Mem. at 22-24), UBS takes specific aim at the process by noting that 7450 South Luella appraised for \$440,000 in "as is" market value in November 2018, but was ultimately sold by the Receiver for only \$278,000 (subject to confirmation by the Court. In addition, 7450 South Luella is located in the challenging South Shore neighborhood and situated directly on 75th Street, which creates additional difficulties for attracting renters. Moreover, at the time of marketing, 35% of the 13 studio apartments and all four retail units were vacant. As a result of these conditions and not the Receiver's efforts, the market of potentially interested investors was thin.

**D. The Failure to Specify Closing Dates Is Not A Valid Basis For Objecting To The Motion To Confirm The Sales.**

The lenders object on the basis that the Receiver's motion does not specify closing dates for the sales of the properties under contract. As a preliminary matter, a closing date cannot be designated when the seller requires judicial approval of the sale – a process subject to lender objections and the establishment of a briefing schedule (as the lenders' objections themselves demonstrate). Moreover, in view of the delay triggered by the requirement of Court approval and the virtual certainty of lender objections, as their track record has shown, the Receiver cannot apply for full payment water certificates from the City of Chicago, which are needed to purchase transfer stamps, which, in turn, are needed to record the deed. Those certificates contain expiration dates,

and the Receiver prefers not to purchase them twice. Nonetheless, the Receiver is clearly incented and working to close the sales of these properties as soon as practicable, a fact made clear in the record which cannot be disputed.

In that vein, the lenders' implication that the Receiver tarried in filing the consolidated motion is audacious, considering their collective objections not just to the consolidated motion, but to essentially every motion, which objections appear to be interposed for the sole purpose of wearing down the Receiver by multiplying the cost and expense to the receivership estate and retarding the sales approval and confirmation processes. In order to file the motion and ensure that sufficient notice was accorded to all interested parties in such fashion as to ensure the delivery of a title commitment, the Receiver was forced to navigate and resolve hundreds of title issues associated with the properties, to secure the deletion of dozens and dozens of special exceptions, and to confirm that all potential lienholders had been identified. Moreover, all remaining properties were grouped into a single consolidated motion in compliance with this Court's prior directions, which prevented a staggered start to the next phase of the sales and marketing process. That said, the Receiver requests that the objections be addressed at this point as quickly as possible so that the sales process can proceed on the remaining properties, and other properties closed as soon as possible.

WHEREFORE, Kevin B. Duff, Receiver, respectfully requests that the Sixth Motion For Court Approval Of The Process For Public Sale Of Real Estate By Sealed Bid And The Fifth Motion For Approval Of The Sale Of Certain Real Estate And For The Avoidance Of Certain Mortgages, Liens, Claims, And Encumbrances be granted and for such other relief as the Court deems just and equitable.

Dated: March 6, 2020

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2020, I provided service of the foregoing **Reply of Receiver In Support Of Sixth Motion For Court Approval Of The Process For Public Sale Of Real Estate By Sealed Bid**, via ECF filing to all counsel of record, and via electronic mail to the following individuals:

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