

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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

**OBJECTION OF THOROFARE ASSET BASED LENDING REIT FUND IV, LLC TO  
RECEIVER’S EIGHTH MOTION TO CONFIRM THE SALE OF CERTAIN REAL  
ESTATE AND FOR THE AVOIDANCE OF CERTAIN MORTGAGES, LIENS,  
CLAIMS, AND ENCUMBRANCES**

Creditor, Thorofare Asset Based Lending REIT Fund IV, LLC (“Thorofare”), by and through its attorneys, Taft Stettinius & Hollister LLP, hereby objects to the Receiver’s Eighth Motion to Confirm the Sale of Certain Real Estate and for the Avoidance of Certain Mortgages, Liens, Claims, and Encumbrances (the “Motion”), ECF No. 712, and in support, states as follows:

**BACKGROUND**

Thorofare holds a recorded mortgage against the property located at 6949-59 South Merrill Avenue, Chicago, Illinois 60649 (the “Merrill Property”), one of the three properties subject to the Motion. Mot. ¶ 25. As set forth in the Motion, the Receiver originally accepted a \$2,100,000 offer for the Merrill Property from 3802 LLC. *Id.* ¶¶ 16-17. 3802 LLC, however, terminated the purchase and sale agreement for the Merrill Property after a squatter caused a fire there. *Id.* ¶¶ 18-19. Thereafter, the Receiver accepted the next highest bid for the Merrill Property, which was submitted by Ventus Holdings LLC (“Ventus”) in the amount of \$1,935,200. *Id.* ¶ 20. The

Receiver moved for judicial confirmation of the sale of the Merrill Property to Ventus, and this Court granted that motion on February 21, 2020. *Id.* ¶ 21; Order, ECF No. 633.

The COVID-19 epidemic, however, prevented Ventus from finalizing its funding from its lender, and Ventus was forced to notify the Receiver that it was unable to close on the sale of the Merrill Property. Mot. ¶¶ 22-23. As a result, the Receiver proceeded to accept the next highest bid previously received for the Merrill Property, a \$1,520,000 offer from Pioneer Acquisitions LLC (“Pioneer”). *Id.* ¶ 24. The Receiver now seeks approval of Pioneer’s offer, the third highest bid received on the Merrill Property, which is \$415,200 less than what Ventus had offered to pay.

Subsequent to the filing of the Motion, Ventus filed a motion to intervene (the “Ventus Motion”), ECF No. 721, stating that Ventus has since secured replacement financing for its purchase of the Merrill Property at its original offering price. Ventus seeks to intervene and file its Objection of Intervenor Ventus Holdings, LLC to Receiver’s Eighth Motion to Confirm Sale of Certain Real Estate (the “Ventus Objection”), ECF No. 721-1.

### **ARGUMENT**

Thorofare supports the granting of the Ventus Motion and the Ventus Objection because permitting the sale of the Merrill Property to Ventus would enhance the value of the receivership estate by \$415,200. The approved Sealed Bid Public Sale of Real Estate Terms and Conditions (the “Terms and Conditions”), ECF No. 329, authorizes the Receiver and this Court to allow Ventus to purchase the Merrill Property, and principles of equity dictate that Ventus be permitted to close on its purchase of the Merrill Property. *See, e.g.*, Terms and Conditions ¶ 10(a) (“The Closing [of the purchase of the Merrill Property] shall remain subject to the approval of the Receivership Court.”); *id.* ¶ 10(b) (“The [Receiver] and the Broker reserve the right, in their sole and absolute discretion, to postpone or cancel the sealed-bid public sale of real estate with or

without notice . . . .”); *id.* ¶ 10(c) (“These terms and conditions do not create any legal obligation on the part of the [Receiver] or the Broker. If the sale fails to comply with any of these terms and conditions for any reason, the [Receiver] and the Broker shall have no liability to any unsuccessful bidder.”).

Ventus had a legitimate reason for the delay in obtaining financing to purchase the Merrill Property, given the sweeping effects of the COVID-19 crisis. The Ventus Motion and Ventus Objection appear to have been made in good faith, as Ventus represents that it “has received, and approved, term sheets from a new lender,” and that it is “ready, willing and able to purchase the [Merrill Property]” at the original contract price agreed upon with the Receiver. *See* Ventus Objection ¶ 6. Ventus should be permitted to proceed with its purchase of the Merrill Property because if this Court grants the Motion, Thorofare and all other lien holders on this property would be unnecessarily prejudiced, as Pioneer’s offer is \$415,200 less than what Ventus is ready, willing, and able to pay to purchase the Merrill Property.

### **CONCLUSION**

Thorofare respectfully requests that this Court deny the Motion and permit Ventus to proceed with its purchase of the Merrill Property, subject to any higher or better offers being submitted by Pioneer or another third party.

Dated: July 2, 2020

Respectfully submitted,

**THOROFARE ASSET BASED LENDING REIT  
FUND IV, LLC**

By: /s/ Zachary R. Clark

One of its Attorneys

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