

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

NOTICE OF FILING DEMONSTRATIVE EXHIBIT

Midland Loan Services, a Division of PNC Bank, NA hereby provides notice that it is filing the attached demonstrative exhibit and plans to refer to it during the argument scheduled for July 15, 2020 on the Receiver's Motion for Approval of Process for Resolution of Disputed Claims (Dkt. No. 638). Midland has previously provided a copy of the attachment to the Receiver.

July 15, 2020

Respectfully Submitted,

/s/ Michael D. Napoli

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on July 15, 2020 by filing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Michael D. Napoli
Michael D. Napoli

MORTGAGEES' ALTERNATE PROCEDURES

- I. All objections to the validity or priority of a given claim to be decided in a single proceeding.
- II. Application of the Federal Rules
 - A. Each tranche handled in a separate action for declaratory relief
 - B. Failing that, the court should simply apply the Federal Rules of Civil Procedure to the disputes
- III. Alternate Decisional Procedures (without waiving rights of appeal) if the Court determines not to require separate declaratory actions or the application of the Federal Rules of Civil Procedure.
 - A. Categorization of Disputes
 1. Priority only dispute – a dispute among two or more claimants each asserting that its lien properly attached to the property in question and is superior to all other liens on the property. Priority only disputes include claims that a claimant's lien or interest in a property has priority over another claimant. This may be based on arguments that an adverse party's lien was released or satisfied pursuant to law or based on other principles of law. Priority only disputes shall not include fraudulent transfer issues.
 2. Fraudulent transfer disputes – a dispute where the Receiver or any claimant asserts that a claimant's lien or claim is invalid as a fraudulent transfer or should be subordinated for some equitable reason.
 3. No Dispute: The Receiver has stated that there are some claims where there are no lien priority disputes – only a single mortgage against an EquityBuild property. If no fraudulent transfer dispute is asserted, then resolution should be expedited and resolved outside of the claim resolution procedures for disputed claims.
 4. A dispute that includes both priority only disputes and fraudulent transfer disputes shall be treated as a fraudulent transfer dispute.

B. Tranches and Initiation of Process for each tranche

1. The Receiver will segregate the properties as to which more than one claimant has asserted a lien into tranches. To the extent reasonable, the Receiver will not split any claimed lien among more than one tranche.
2. Initiation of tranche
 - a) The Receiver will file a framing report indicating which properties are in the tranche to be initiated. The report will identify all parties asserting claims, their email contact information (the "Email List"), the properties to which their claims relate and the amount of their claims. The Receiver will not otherwise describe or comment upon the claims, other than to state whether the Receiver intends to object to any specific claim on the basis that that said claim is barred based on a fraudulent transfer or otherwise. The Receiver must serve the report on all claimants included in the tranche via the Email List and the tranche information should be available to all claimants via the ECF system. Service of all other pleadings related to the tranche shall be via the Email list and the ECF system.
 - b) Any claimant named in a framing report may object to the inclusion of a property or the exclusion of a property in the tranche by filing a written objection within 14 days of service of the framing report. The Receiver shall have 7 days to file his response.
 - c) After resolving any objections, the Court will enter an order approving the tranche. The Receiver will serve the order on all claimants included in the tranche.

C. Pleadings

1. Claims and Claim Supplements
 - a) For all priority only disputes, Claimants may rely on their proofs of claim.

- b) If any claimant intends to rely on a theory not stated in its proof of claim, then the claimant must file a Claim Supplement stating that theory and the facts supporting it in accordance with Federal Rules 8, 9 and 11. The initial Claim Supplement is due within 14 days of the order approving the tranche.
- c) A claimant may file or amend a Claim Supplement at any time prior to 63 days before the end of the discovery period.
- d) Receiver's Objections – The Receiver may object to a claim on the ground that it is invalid against Equity Build for any reason including that the claimed lien is satisfied, unrecorded or a fraudulent transfer by filing an objection stating that theory and the facts supporting it in accordance with Federal Rules 8, 9 and 11. The Receiver's initial Objection is due within 14 days of the date the Court approves the tranche. The Receiver may amend his objection at any time up to 63 days before the end of the discovery period.

D. Documents in Receiver's possession

- 1. Equity Build documents – At or before the time of filing the first Framing Report, the Receiver will provide access to all non-privileged Equity Build records to all claimants (even if they are not included in the first tranche), together with a guide or site map to the documents (e.g., accounting and bank records; emails; servicing agreements) to the extent the documents are so organized.
- 2. At the time of filing the Framing Report, the Receiver will make the proofs of claim and supporting documents submitted by each claimant included in the tranche available to all other claimants in the tranche.

E. Discovery

- 1. The Court should determine the exact discovery period and limits for a given tranche after the parties have had a chance to make initial Claim Supplements or Objections. The parties should confer and provide the Court with a joint discovery plan. Otherwise, the Court should impose the discovery period and limits set forth herein.

2. By non-claimants

- a) Unless the Receiver files an Objection based on a theory that the claimed lien is satisfied, unrecorded or is invalid as a fraudulent transfer or otherwise, the Receiver may not take discovery. If the Receiver files an Objection, then his discovery is limited to the subject of that Objection and he is subject to the same limitations as the claimants.
- b) The SEC may not participate in discovery in connection with any claim dispute.

3. Interrogatories

- a) Priority only disputes – Each side can issue 15 interrogatories per property to each adverse claimant or to the Receiver if the Receiver filed an Objection.
- b) Fraudulent transfer disputes – Each side can issue 25 interrogatories to each adverse claimant and the Receiver if the Receiver filed an Objection.
- c) “Side” refers to all the litigants with generally common interests in the tranche.

4. Requests for production

- a) Priority only disputes – Each side can issue 15 requests for production per property to each adverse claimant or to the Receiver if the Receiver filed an Objection.
- b) Fraudulent transfer disputes – Each side can issue 25 requests for production to each adverse claimant or to the Receiver if the Receiver filed an Objection.

5. Depositions

- a) The number of depositions will be determined during the course of written discovery based on the agreement of the parties or, in the event of a dispute, by the Court based on the nature and extent of the issues involved in any given tranche.

- b) No witness may be deposed more than one time in a given tranche except by leave of court or unless the dispute became a fraudulent transfer dispute after that witness's deposition was taken.

6. Third-party discovery

- a) Priority only disputes – claimants may not seek discovery of any third party other than a title company that handled the closing of any secured transaction at issue. Former employees or principles of Equity Build are not considered to be third parties.
- b) Fraudulent transfer and equitable subordination disputes – third party discovery is allowed.
- c) The parties may use any method allowed by the Federal Rules of Civil Procedure for discovery of third parties.

7. Expert witnesses

- a) Priority only disputes – A party must make the disclosures required by Rule 26(a)(2)
 - (1) at least 45 days before the end of the discovery period; or
 - (2) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure
- b) Fraudulent transfer and equitable subordination disputes – A party must make the disclosures required by Rule 26(a)(2)
 - (1) at least 90 days before the end of the discovery period; or
 - (2) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure

8. Discovery period
 - a) Priority only disputes – The discovery period begins on the date that the Receiver serves the Court’s order approving the tranche on the claimants and ends 120 days later.
 - b) Fraudulent transfer and equitable subordination disputes – The discovery period begins on the date when the Receiver or any claimant initially asserts that any claimant’s lien or claim is invalid as a fraudulent transfer or should be subordinated for some equitable reason and ends 270 days later.
9. Trial Briefs & Motions for Summary Judgment.
 - a) Within 30 days of the close of discovery, any party asserting a claim or an objection to a claim must file a trial brief setting forth the factual and legal arguments in support of its position and attaching evidence supporting its position. A claimant can include a motion for summary judgment in its trial brief.
 - b) Within 30 days of the filing of the trial brief or motion for summary judgment, any party asserting a claim or an objection to a claim may file a responsive brief and attach additional evidence.
10. Trial
 - a) If after reviewing the trial briefs and responses, the Court determines that no issue of material fact exists, then the Court will grant a summary judgment for the prevailing party.
 - b) Otherwise, the Court will set the matter for an evidentiary hearing.