

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|--|---|----------------------------|
| U.S. SECURITIES AND EXCHANGE COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case Action No. 18 CV 5587 |
| v. |) | |
| |) | Judge John Z. Lee |
| EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, And SHAUN D. COHEN |) | |
| |) | |
| Defendants. |) | |
| |) | |

1111 CREST DR., LLC, PAKRAVAN LIVING TRUST, HAMID ISMAIL, AND FARSAA, INC. OPPOSITION TO RECEIVER’S SECOND MOTION FOR RESTORATION OF FUNDS EXPENDED FOR THE BENEFIT OF OTHER PROPERTIES

1111 Crest Dr., LLC, Pakravan Living Trust, Hamid Ismail and Farsaa, Inc. (collectively, “Indiana/Yates Mortgagees”), by their undersigned attorney, and in Opposition to the Receiver’s Second Motion for Restoration of Funds Expended for the Benefit of Other Properties (Doc #749), states as follows:

1. The Indiana/Yates Mortgagees are the mortgagees to the real properties located at 5450-52 S. Indiana Avenue (“Indiana”) and 7749-59 S. Yates (“Yates”).
2. The Indiana/Yates Mortgagees object to the Receiver’s Second Motion for Restoration for Funds Expended for the Benefit of Other Properties for three reasons: (1) the Receiver’s request is in direct contravention to the Order entered by Magistrate Judge Young B. Kim on February 13, 2019 not to commingle funds (Doc #223); (2) the Receiver failed to request in advance Court approval to expend funds for the benefit of other property; and (3) the spreadsheets of the alleged costs incurred for the properties are merely summaries with no

backup or justification of necessity of an expenditure. (Doc #749-1, Exs. 14, 19)

3. As to the Indiana property, the Indiana/Yates Mortgagees are the mortgagees and 5450 S., Indiana LLC as mortgagor on a certain Mortgage, Assignment of Leases And Rents, Fixture Filing, And Security Agreement recorded April 4, 2017 as Document No. 1709445116. (Receiver's Mot., ECF No. 618, Ex. 159).

4. In or around August 2018, Mortgagors defaulted on both Mortgages by failing to make the monthly mortgage payment. Indiana/Yates Mortgagees have not received any mortgage payments in subsequent months.

5. On June 16, 2020 the sale was approved by this Court, with a separate escrow account established for the net proceeds from the sale which as of June 30, 2020 and according to the Receiver, holding funds in the amount of \$1,656,669.04. (Receiver's Mot., ECF No. 749-1, Ex. 2)

6. The Receiver is now requesting a reimbursable amount to be taken from Indiana escrow account of \$8,679.15. (Receiver's Mot., ECF No. 749-1, Ex. 2) If said amount was taken from another properties' rent or other income it was done so without court order granting such action.

7. As to the Yates property, the Indiana/Yates Mortgagees are the mortgagees and 7749-59 S. Yates LLC as mortgagor on a certain Mortgage, Assignment of Leases and Rents, Fixture Filing, and Security Agreement recorded April 4, 2017 as Document No. 1709445117 (Receiver's Mot., ECF No. 618-4, Ex. 197)

8. On February 21, 2020 the sale of Yates was approved by this Court, with a separate escrow account established for the net proceeds from the sale, which as of June 30, 2020 and according to the Receiver, holding funds in the amount of \$785,940.70. (Receiver's Mot.,

ECF No. 749-1, Ex. 2)

9. The Receiver is now requesting a reimbursable amount to be taken from the Yates escrow account of \$139,383.80. (Receiver's Mot., ECF. N0. 749-1, Ex. 2) If said amount was taken from another properties' rent or other income it was done so absent a court order granting such action.

10. The Indiana/Yates Mortgagees' recorded Mortgages on the 2 properties contain rights of the mortgagee to collect and receive rents pursuant to and under Illinois statute. There has been no order entered in this matter extinguishing or setting any other parties' rights superior to Indiana/Yates Mortgagees' rights to those rents.

11. The Memorandum and Order of February 13, 2019, was clear, the Receiver was "... not to comingle the Rents but rather to use the Rents from each property solely for the benefit of that property..." This order clearly has not been followed.

WHEREFORE, 1111 Crest Dr., LLC, Pakravan Living Trust, Hamid Ismail and Farsaa, Inc. respectfully requests this Court enter an Order denying request to transfer funds from the 5450-52 S. Indiana Avenue and 7749-59 S. Yates escrow accounts to restore funds to the Receiver's account for continued administer of the receivership and for such further relief as this Court deems just and equitable.

Respectfully submitted,

Dated: August 24, 2020

/s/William D. Cherny
William D. Cherny
Cherny Law Offices, P.C.
111 E. Jefferson Ave.
Naperville, IL 60540
(630) 219-4381
bill@chernylaw.com
*Counsel for 1111 Crest Dr., LLC, Pakravan
Living Trust, Hamid Ismail and Farsaa, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2020, I served the foregoing 1111 Crest Dr., LLC, Pakravan Living Trust, Hamid Ismail, and Farsaa, Inc. Opposition To Receiver's Second Motion For Restoration Of Funds Expended For The Benefit Of Other Properties electronically via the Court's ECF system on all counsel of record.

/s/William D. Cherny