

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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U.S. SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
	Plaintiff,)	Civil Action No. 18-CV-5587
)	
	v.)	Judge John Z. Lee
)	
EQUITYBUILD, INC., <i>et al.</i> ,)	Magistrate Judge Young B. Kim
)	
	Defendants.)	
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SEC’S REPLY SUPPORTING RECEIVER’S TENTH MOTION TO CONFIRM SALES

The SEC supports the Receiver’s Tenth Motion to Confirm the Sale of Real Estate (ECF No. 809). Three institutional lenders – Citibank, Freddie Mac, and UBS – lodge objections for eight of the fourteen properties the Receiver’s Motion seeks to sell. (ECF No. 820).

These objecting lenders’ arguments are virtually identical – in fact, mostly verbatim – to the objections lodged in opposition to the Receiver’s previous motion to confirm property sales. (Compare ECF No. 820 and ECF No. 769). Rather than simply incorporate the earlier objections, the current objectors burden the parties and the Court by filing a 30-page brief that merely cuts and pastes prior objections. Because the SEC and Receiver have already responded to identical objections (ECF Nos. 787, 790), the SEC hereby incorporates its and the Receiver’s prior responses.

The SEC further incorporates the Court’s recent Order granting the Receiver’s Ninth Sales Motion. (ECF No. 825). Because that Order rejected the identical arguments contained in the lenders’ current objections, the Order’s reasoning should be dispositive in regards to the present Tenth Sales Motion.

Additional Grounds for Overruling the Lenders' Objections

In addition to the reasons cited in the SEC's and Receiver's prior responses, and the Court's Order granting the Ninth Sales Motion, the SEC offers the following two points in support of the Receiver's Tenth Sales Motion.

First, with one minor exception, for the properties subject to the lenders' objections, the Receiver has obtained purchase prices that significantly exceed the prices at which those properties were marketed. As the below table demonstrates, the Receiver's competitive bid process resulted in market-driven prices well in excess of the asking prices determined by the Receiver's real estate professionals:

Property	Asking Price	Sales Price
4611-17 South Drexel Boulevard	\$3,300,000	\$4,900,000
6217-27 South Dorchester Ave.	\$1,750,000	\$2,116,000
7024-32 South Paxton	\$1,550,000	\$1,775,000
7255-57 South Euclid Avenue	\$800,000	\$970,000
4750-52 South Indiana Avenue	\$570,000	\$697,000
1422-24 East 68th Street	\$450,000	\$400,000
2800-06 East 81st Street	\$400,000	\$460,000
7840 South Yates Avenue	\$250,000	\$350,000

(See ECF No. 809, pp. 7-27).

While claiming that the Receiver did not obtain prices reflecting "the true and proper value of the properties" (ECF No. 820, p. 28), the objecting lenders offer no evidence that the competitive bid process the Receiver employed resulted in properties being sold for less than their true market price.

Second, as described in the Receiver’s Motion, with the exception of 6217 South Dorchester, each of the properties at issue in the lenders’ objections is subject to competing mortgages held by investors. (ECF No. 809, pp. 7-27). As detailed in earlier briefing, the fact that both investors and institutional lenders claim priority on these properties necessitates an orderly claims process that provides due process to all parties.¹ Moreover, the Receiver represents that the proceeds from the sale of properties at issue in his Motion “will be held in separate subaccounts established by the Receiver...and will not be available to pay operating expenses of the Receivership.” (ECF No. 809, p. 30). Accordingly, there is no prejudice to the lenders, since the proceeds of the sales will be segregated until the claims resolution process has concluded.²

Conclusion

The Court has repeatedly voiced approval for the sales processes the Receiver has chosen to employ and has authorized the property sales that have resulted. The lenders’ current objections are merely recitations of previous objections that the Court has already overruled. For these and the foregoing reasons, the Court should overrule the objections, grant the Receiver’s motion, and allow the Receiver’s liquidation efforts to continue.

¹ While the 6217 South Dorchester property does not appear to be encumbered by any investor mortgages, at least 50 investors have submitted claims related to that property. (See ECF No. 693, pp. 18-19). In overruling the institutional lenders’ prior objections, the Court held that “a claims process is appropriate even for properties where a Lender has a recorded mortgage but the investors do not.” (ECF No. 825, p. 5). For the same reasons, the Court should likewise deny Citibank’s request for an “immediate disbursement” (ECF No. 829, p. 33) of the sales proceeds for the 6217 South Dorchester property.

² The fact that the Receiver will segregate the sales proceeds until further order of the Court establishes that proceeding with the sales – as opposed to the lenders’ request to stay the process pending their recently filed appeal – would not cause irreparable harm to any party.

Dated: November 2, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I provided service of the foregoing Reply, via ECF filing, to all counsel of record and Defendant Shaun Cohen, on November 2, 2020. I further certify that I caused the foregoing Response to be served on Defendant Jerome Cohen, via email at jerryc@reagan.com.

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