

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	No. 18 C 5587
v.)	
)	Judge John Z. Lee
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	
)	
Defendants.)	

ORDER

Before the Court is the Receiver’s eleventh motion to confirm the sale of 7237-43 South Bennett Avenue, Chicago, Illinois (“7237-43 South Bennett” or “the Bennett Property”), and for the avoidance of certain mortgages, liens, claims, and encumbrances.¹ Paper Street Realty, LLC (“Paper Street”), which has served as the property manager for 7237-43 South Bennett since November 2016, has objected to the sale insofar as the Receiver seeks the avoidance of Paper Street’s lien² on the property for the work and repairs it performed as property manager.

¹ The Receiver also sought Court approval to use a portion of the proceeds from the sales of certain other properties to pay third-party obligations relating to those properties. Because that relief was not objected to, the Court already granted that portion of the eleventh sales motion. *See* 4/30/21 Order, ECF No. 984.

² Paper Street characterizes its interest as a lien, *see* Paper Street’s Obj. Eleventh Sales Mot. at 4–5, but in his eleventh sales motion, the Receiver states that Paper Street’s interest is unsecured, *see* Receiver’s Eleventh Mot. Confirm Sales ¶ 18, ECF No. 902. For convenience, the Court will use the term “lien”; however, this order should not be construed as an adjudication of the secured status or the priority of Paper Street’s claim.

See Paper Street's Obj. Eleventh Sales Mot. ("Paper Street's Obj.") at 4–5, ECF No. 918. For the following reasons, Paper Street's objection is overruled, and the Receiver's motion is granted.

STATEMENT

On August 15, 2018, the Securities and Exchange Commission ("SEC") filed a complaint against Defendants Equitybuild, Inc., Equitybuild Finance, LLC (collectively, "Equitybuild"), Jerome H. Cohen, and Shaun D. Cohen (collectively, "the Cohens"). See Compl., ECF No. 1. According to the complaint, the Cohens used the Equitybuild entities to operate a Ponzi scheme through which they fraudulently induced more than 900 investors to invest at least \$135 million in residential properties on the south side of Chicago. *Id.* ¶ 1. Shortly after the SEC filed its complaint, the Court appointed a Receiver to marshal and preserve Defendants' assets. See Order Appointing Receiver, ECF No. 16.³ 7237-43 South Bennett is one such asset. See Magistrate Judge Young B. Kim's 5/21/19 Order, ECF No. 378.

Paper Street has acted as the property manager for 7237-43 South Bennett since 2016, when the Cohens controlled Equitybuild. See Paper Street's Obj., Ex. A, Abraham Aff. ¶¶ 3–8, ECF No. 918-1. In 2017, the City of Chicago filed a

³ The Receivership Order grants the Receiver "all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, members, and general and limited partners" of the Equitybuild Defendants. Order Appointing Receiver ¶ 4. It also authorizes the Receiver to "take all necessary and reasonable actions" to sell or lease "all real property in the Receivership Estate, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property." *Id.* ¶ 38.

complaint in Cook County Circuit Court alleging various code violations relating to 7237-43 South Bennett. *Id.* ¶¶ 3–4. Equitybuild (while managed by the Cohens) authorized Paper Street to perform the work necessary to bring certain areas of the Bennett Property up to code. *Id.* ¶ 6. Paper Street asserts that the City informed it that if the repairs had not been made, the City would have requested that the Bennett Property be vacated, or the City would have sought the appointment of a receiver under Illinois law to make the repairs. *Id.* ¶ 7. Paper Street contends that, had the building been vacated, the Bennett Property likely would have been vandalized and stripped, causing a significant reduction in value. *Id.* ¶ 9. Furthermore, Paper Street states, the repairs added value to the property. *Id.* ¶ 10.

When the Receiver was appointed, he asked Paper Street to continue performing the role of property manager, in accordance with the Receiver’s “intention . . . to continue operating the [Equitybuild] portfolio consistent with maximizing its value.” Paper Street’s Obj., Ex. 3, 8/22/18 Letter from A. Porter to A. Staes (“8/22/18 Letter”), ECF No. 918-1. But, the Receiver noted, he would treat Paper Street’s “outstanding receivable” for work authorized by the Cohens “as something akin to a ‘prepetition claim.’” *Id.* Paper Street claims that the “inference” it formed based on those statements “was that Paper Street would be paid the sums due it, if it continued on as property manager for the Bennett Property.” Abraham Aff. ¶ 12.

Now, Paper Street objects to the avoidance of its lien for the work and repairs authorized by the Cohens. *See* Paper Street’s Obj. at 4–5. It argues that it should be treated like a receiver appointed by the City of Chicago under 65 Ill. Comp. Stat. 5/11-31-1(a). *See* Abraham Aff. ¶¶ 3–8. Illinois law provides that

[i]f a municipality or a person or persons other than the owner or owners of record pay the cost of . . . repair, . . . pursuant to a court order, the cost, including court costs, attorney’s fees, and other costs related to the enforcement of this subsection, is recoverable from the owner or owners of the real estate and is a lien on the real estate; the lien is superior to all prior existing liens and encumbrances, except taxes, if, within 180 days . . . , the . . . person . . . who paid the costs of . . . repair, . . . file[s] a notice of lien.

65 Ill. Comp. Stat. 5/11-31-1(a). As such, Paper Street argues, its claim for the costs incurred performing repairs has first priority, and Paper Street should be paid out of the proceeds from the sale of the Bennett property, or its lien should not be avoided by the sale. Moreover, Paper Street claims, if it is not paid now, then “[s]uch outcome unjustly enriches the creditors of [the Bennett Property] at Paper Street’s expense.” Paper Street’s Obj. ¶ 16.

The Receiver counters that Paper Street’s claim will attach to the sale proceeds, which will be placed in a separate account pending the outcome of the claims process. The Receiver notes that Paper Street already submitted proofs of claim within the claims process for this pre-Receiver’ship work, and the security and priority status of Paper Street’s lien will be adjudicated in the summary claim-

priority process that is slated to begin on June 1, 2021. *See* Receiver’s Eleventh Mot. Confirm Sale ¶ 29.⁴

Although Paper Street’s objection is difficult to follow given the cursory and unsupported nature of its arguments,⁵ the Court finds that Paper Street’s claim for amounts due to it for the work and repairs it performed as property manager must be adjudicated as part of the summary adjudication process that the Court, Receiver, and other claimants have been working to initiate. Paper Street has cited no authority that would distinguish its claim from the dozens of other allegedly first-priority secured liens that the Court has ruled will be dealt with as part of that process. *See, e.g.*, 3/31/31 Order Granting Tenth Sales Motion at 3, ECF No. 964 (“an orderly claims process is the most efficient and equitable method to resolve competing claims” (quoting 10/26/20 Order at 4–5, ECF No. 825)); 12/11/20 Order at 12, ECF No. 899 (“[W]hether Fannie Mae or Citibank are first-priority secured creditors remains an open question. In this case, there are approximately 2,000 claims submissions whose priority is yet to be determined.”). And the Court has previously approved the sale of properties “free and clear of any liens or encumbrances” and overruled other claimants’ protests that their allegedly first-priority secured liens must be paid immediately, “provided that

⁴ The Receiver has represented to the Court that amounts due to Paper Street associated with *post*-Receivership services have been or will be paid to Paper Street at or prior to the closing. Receiver’s Eleventh Mot. Confirm Sale ¶ 29.

⁵ The Court also notes that “[p]erfunctory and undeveloped arguments” may be considered “waived, as [may] arguments unsupported by legal authority.” *See United States v. Barr*, 960 F.3d 906, 916 (7th Cir. 2020).

those liens attach to the ultimate sales proceeds of the properties.” *See* 3/31/31 Order Granting Tenth Sales Motion at 3 (quoting 10/26/20 Order at 4–5).

Furthermore, to the extent that Paper Street seeks to assert a right to immediate payment based on the “inference . . . that Paper Street would be paid the sums due it, if it continued on as property manager for the Bennett Property,” *see* Abraham Affidavit ¶ 12, or the “unjust[] enrich[ment] [of] the creditors of [the Bennett Property],” *see* Paper Street’s Obj. ¶ 16, Paper Street has cited no authority for the proposition that such a right must be adjudicated before the sale of the Bennett Property. Nor has Paper Street cited any authority that such claims would fall outside the stay of litigation imposed by the order appointing the Receiver. *See* Order Appointing Receiver ¶¶ 32, 33; *see also id.* ¶ 17(B) (persons with notice of the Order Appointing Receiver are prohibited from “exercis[ing] any form of set-off, alleged set-off, lien, or any form of self help whatsoever”); *id.* ¶ 29(A), (C) (persons with notice of the Order Appointing Receiver are prohibited from “creating or enforcing a lien upon any Receivership Assets” and from enforcing a claim against any Receivership Assets or attempting to accelerate any indebtedness affecting any Receivership Asset); *id.* ¶ 55 (“No action shall be filed or proceeding commenced against the Receiver or the Retained Personnel arising out of or in any way related to this receivership or their duties or work performed in connection with the receivership without obtaining an order from the Court based upon a showing of good cause.”).

Thus, Paper Street's objection to the sale of 7237-43 South Bennett is overruled, and the remainder of the Receiver's eleventh sales motion is granted.

IT IS SO ORDERED.

ENTERED: 5/13/21

A handwritten signature in black ink, appearing to read "John Z. Lee", written in a cursive style.

John Z. Lee
United States District Judge