
Appeal No. 21-2664

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

<p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff-Appellee,</p> <p>and</p> <p>KEVIN B. DUFF, RECEIVER, Appellee,</p> <p>v.</p> <p>EQUITYBUILD, INC., et. al.,</p> <p>And</p> <p>VENTUS HOLDINGS, LLC, Defendant-Appellant.</p>	<p>DOCKETING STATEMENT</p> <p>Appeal from the United States District Court for the Northern District of Illinois, Case No. 18-CV-5587, Honorable Judge John Z. Lee</p>
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DOCKETING STATEMENT

Intervenors, Ventus Holdings, LLC and Ventus Merrill, LLC (collectively, “Ventus”), by and through their attorneys, Robert S. Minetz, Saskia Nora Bryan, and Latimer LeVay Fyock LLC, hereby file their Docketing Statement pursuant to Circuit Rule 3(c):

I. JURISDICTION OF THE DISTRICT COURT

The United States District Court for the Northern District of Illinois had jurisdiction over this civil action pursuant to 15 U.S.C. Section 77t(b), 15 U.S.C. Section 78u(d), and 15 U.S.C. Section 78u(e).

II. JURISDICTION OF THE APPELLATE COURT

This appeal is taken from the interlocutory decision of the U.S. District Court for the Northern District of Illinois entered on August 13, 2021, by the Honorable John Z. Lee. The United States Court of Appeals for the Seventh Circuit has jurisdiction to decide this appeal pursuant to 28 U.S.C. Section 1292(a)(2), based on the following history and facts:

On August 18, 2018, the Plaintiff initiated this proceeding by filing a complaint against four defendants, alleging fraud through a Ponzi Scheme involving over 900 investors (Docket No. 1). On August 17, 2018 Kevin B. Duff was appointed as the Receiver in this proceeding (Docket No. 16).

In December 2019, the Receiver accepted Ventus' bids to purchase four parcels of real property (the "Properties") (Docket No. 739). In or about March, 2020 the world was shut down due to the Covid-19 pandemic, the credit market seized-up, and Ventus was unable to secure financing to purchase the Properties (Docket No. 746). On April 20, 2020, Ventus notified the Receiver that due to its inability to secure financing, Ventus would be unable to proceed with the transactions (Docket No. 746).

On May 8, 2020, the Receiver accepted alternate bids for three of the four properties at a combined sale price of \$945,200.00 less than Ventus' bids (Docket No. 746). On June 11, 2020, the Receiver filed a motion to confirm the sales to the third-party bidders (Docket No. 712). On June 23, 2020, Ventus filed a motion to Intervene (Docket No. 721), which was granted, and an attached objection to the Receiver's motion to confirm. Following briefing on Ventus' objection, the District Court entered an order granting the Receiver's motion to confirm sale and on October 30, 2020, entered an order authorizing the sales (Docket Nos. 825 & 841).

As a result, on November 9, 2020, Ventus filed a motion for return of its earnest money for the three properties not sold to it (Docket No. 861). On August 13, 2021, the District Court denied the motion (Docket No. 1025). Ventus now appeals this order. No motion to reconsider or reverse this order was filed in the District Court.

Ventus' Notice of Appeal was filed on September 10, 2021 (Docket No. 1043).

This appeal is brought pursuant to 28 U.S.C. Section 1292(a)(2), which provides that the Appellate Court has jurisdiction over “(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property...” This Court has jurisdiction pursuant to 28 U.S.C. Section 1292(a)(2) because it concerns the wind up of the Receivership Estate. The Order appealed from is interlocutory, and in it the District Court declines to direct the Receiver to return the earnest money deposited by Ventus.

III. ADDITIONAL PRIOR OR RELATED APPELLATE PROCEEDINGS

On October 27, 2020, the Federal National Mortgage Association and CitiBank, N.A., as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2018-SB48, filed a Notice of Appeal that was assigned case no. 20-3114. That appeal was dismissed for want of jurisdiction on December 11, 2020.

On November 2, 2020, Ventus filed a Notice of Appeal (Docket No. 847) of the orders granting the Receiver's motion to confirm sale (Docket No. 825) and authorizing the sales of the Properties (Docket No. 841), which was assigned case no. 20-3155. The Receiver filed a Motion to Dismiss that Appeal (App. Docket No. 10), and Ventus did not file any response. On December

11, 2020, the Seventh Circuit noted that Ventus had not filed a timely response and dismissed that appeal for lack of appellate jurisdiction (App. Docket No. 16).

IV. ADDITIONAL REQUIREMENTS OF CIRCUIT RULE 3(C)(1)

This case does not (i) involve a criminal matter; (ii) has not been designated by the District Court as satisfying the criteria of 28 U.S.C. Section 1915(g); (iii) concern any parties appearing in their official capacities; and (iv) involve a collateral attack on a criminal conviction.

Respectfully submitted,

By: /s/ Robert S. Minetz

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Robert S. Minetz