

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division**

United States Securities and Exchange Commission,
et al.

Plaintiff,

v.

Case No.:
1:18-cv-05587
Honorable John Z. Lee

Equitybuild, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, February 17, 2022:

MINUTE entry before the Honorable Young B. Kim: The motion for appointment of a fee examiner [1177] is denied. In response to the court's direction, the Receiver filed a motion for approval of allocation of fees and payment on December 22, 2021. The motion poses the issues of whether the identified fees are subject to interim payment and whether the fees are being paid out from appropriate accounts. On January 5, 2022, this court scheduled a motion hearing to take place on January 12, 2022, and noted for the parties that "the purpose of the hearing is to determine the best way forward to resolve the motion," (R. 1116). Having reviewed the motion and the voluminous nature of its attachments and data included therein, the court was indeed looking for guidance from the parties on how best to tackle the Receiver's motion. The motion hearing took place as scheduled and the Institutional Lenders who addressed the court asked for an opportunity to file their objections and contest the various entries. They did not offer any other suggestions. No Individual Investor appeared and objected to the Receiver's motion or sought leave to file objections. The court granted the request of the Institutional Lenders and provided them until February 18, 2022, to file their objections. Then a week before this filing deadline, the Institutional Lenders (including other Institutional Lenders who did not address the court on January 12, 2022) filed the present motion. It seeks to put in place a wholly new process for resolving the interim payment issue and to pay for the costs associated with this new review process using the Receivership Estate's funds. The Institutional Lenders reason that the task at hand is too daunting and too expensive for them to perform, and that having a fee examiner review the motion and the associated attachments would be more cost effective for them. The court does not disagree that Institutional Lenders must expend substantial resources to file meaningful objections to the Receiver's motion. This court must also expend substantial resources to resolve all disputes presented to it in connection with the Receiver's motion. But, while the court is obligated to expend the necessary resources to resolve all objections, even if the task of doing so is daunting and time consuming, the Institutional Lenders are not obligated to file objections. If the Institutional Lenders are of the opinion that the cost of filing meaningful objections to the Receiver's motion overwhelms any expected benefit from such exercise---which is what they are saying in their motion---they are free to decide

not to file any objections. The Individual Investors made this calculation and have decided not to challenge the motion. Furthermore, even after having heard additional information from the Institutional Lenders during yesterday's motion hearing, the court is not persuaded that they have established the "benefit" to be derived from appointing a fee examiner with any clarity or reasonable certainty. The court has every incentive to make the task before it easier, but it is not convinced that appointment of a fee examiner is the answer. In fact, this proposal has the propensity to further delay the resolution of the pending motion for approval and trigger multiple rounds of additional litigation surrounding the issue of which funds are to be used for the interim payments. The institutional lenders must also keep in mind that---as to the issue of whether the allocations are reasonable---if the Institutional Lenders object and the court agrees, the court would allow the Receiver to re-do the allocations so that his reimbursements are paid out of the correct funds. The Institutional Lenders take the position that each itemized charge must have specifically benefited the subject property. While the court agrees that interim payments should be satisfied from appropriate accounts, the court will not demand mathematical precision or clear and convincing evidence when assessing whether the allocations are reasonable. The court finds that having a single Receiver work to systematically unravel the estate benefits all creditors. Accordingly, the court is unwilling to deviate from the process already established. In light of this detour, the Institutional Lenders now have until March 4, 2022, to file their objections. This is a firm deadline and it will not be extended or stayed as a result of any objections filed with the assigned District Judge. The Receiver then has until April 1, 2022, to file his reply. Depending on the number of objections filed, the court may stagger the Receiver's reply deadline.

Mailed notice (ec)

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