

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

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., et al.,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**CLAIMANT BC57'S MOTION TO WITHDRAW
MOTION FOR STAY PENDING APPEAL**

Claimant BC57, LLC ("BC57"), through its undersigned counsel, hereby moves this Court to withdraw its Motion for Stay (Dkt. 1405), in light of the Court of Appeals' March 15, 2023 order.¹ In support thereof, BC57 states as follows:

On February 15, 2023, this Court entered its order ruling that the Investor-Lenders' mortgages have priority over BC57's mortgage. (Dkt. 1386.) On March 7, 2023, BC57 filed its notice of appeal of the February 15, 2023 order, pursuant to the collateral order doctrine and the Court of Appeals' decision in *SEC v. Wealth Management, LLC*, 628 F.3d 323 (7th Cir. 2010). (Dkt. 1403.) The same day, BC57 filed a motion before this Court asking the Court to enter a stay, without security, of any distribution or disbursement of the proceeds from the sale of the Group 1 properties to the Investor-Lenders pending appeal. (Dkt. 1405.) On March 13, 2023, this Court issued a briefing schedule on BC57's motion for stay (Dkt. 1417), and updated that schedule on

¹ Consistent with this Court's standing order regarding motion practice, counsel for BC57 asked opposing counsel whether there is any objection to this Motion. The SEC, the receiver, the Investor-Lenders, Leroy and Martha Johnson, LMJ Sales, and Kirk Road Investments do not oppose this motion. Counsel for Creditor 1839 Fund I LLC did not respond to BC57's request.

March 20, 2023 per an unopposed motion for an extension of time to file from the SEC (Dkt. 1421), such that responses to the motion for a stay pending appeal are due March 24, 2023, and the reply is due March 31, 2023 (Dkt. 1425).

On March 10, 2023, the Court of Appeals docketed BC57's appeal. (*SEC, et al. v. Equitybuild, Inc., et al.*, Case No. 23-1450, Dkt. 1.) On March 15, 2023, the Court of Appeals issued an order acknowledging BC57's intent to appeal this Court's February 15, 2023 order that "established a priority of claimants as to the proceeds from the sale of various investment properties," indicating that this Court's February 15, 2023 order directed the receiver to "submit a proposed order for disbursement of the proceeds." (*Id.* at Dkt. 2.) The Court of Appeals further stated "[a]s such, it appears that the district court has more work to do before the order is final and appealable." *Id.* The Court of Appeals then directed BC57 to submit briefing stating why this appeal should not be dismissed for lack of jurisdiction in light of this District Court's pending disbursement order, explaining that "[a] motion for voluntary dismissal pursuant to Fed. R. App. P. 42(b) will satisfy this requirement." (*Id.*)

Today, pursuant to the Court of Appeals' March 15, 2023 order, BC57 has filed a motion for voluntary dismissal of its appeal from this District Court's February 15, 2023 order. (*Id.* at Dkt. 5) Accordingly, BC57 now moves to withdraw its motion for stay pending appeal in light of the voluntary dismissal. Consistent with the Court of Appeals' March 15, 2023 order, BC57 will timely file a notice of appeal following this District Court's disbursement order and a corresponding motion before this Court asking the Court to enter a stay, without security, of any disbursement of the proceeds from the sale of the Group 1 properties to the Investor-Lenders pending appeal from this District Court's disbursement order, whenever such disbursement order is entered.

WHEREFORE, Claimant BC57, LLC, through its undersigned counsel, respectfully requests that this Court grant BC57's motion to withdraw its motion for stay pending appeal (Dkt. 1405).

Dated: March 22, 2023

Respectfully submitted,

/s/ Andrew R. DeVooght

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2023, I electronically filed the foregoing MOTION TO WITHDRAW MOTION FOR STAY PENDING APPEAL with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record.

/s/ Andrew R. DeVooght
Andrew R. DeVooght