

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN, and
SHAUN D. COHEN,

Defendants.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

Magistrate Judge Young B. Kim

**MOTION TO APPROVE DISTRIBUTION OF PROCEEDS FROM
THE SALE OF PROPERTY 63 (4520-26 S DREXEL BOULEVARD)**

Kevin B. Duff, as receiver (“Receiver”) for the Estate of Defendants EquityBuild, Inc. (“EquityBuild”), EquityBuild Finance, LLC (“EquityBuild Finance”), their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (collectively, the “Receivership Defendants”), hereby moves for approval of a plan for the distribution of proceeds from the sale of 4520-26 S Drexel Boulevard (the “Subject Property”). In support of his motion, the Receiver states as follows:

Procedural Background

1. In 2019, the Receiver initiated a claims process whereby, *inter alia*, he: (a) researched mortgagees of record and EquityBuild records to identify potential claimants; (b) served all known potential claimants by email and/or regular mail with notice of the bar date, procedures for submitting proofs of claim, and a link to a third-party portal to submit claims; (c) sent multiple follow-up emails reminding potential claimants of the bar date (and the extended bar date); and (d) established a webpage (<http://rdaplawnet.com/receivership-for-equitybuild>) for claimants and other interested parties which prominently displayed the claims bar date and

provided copies of the claims notice, instructions, proof of claim forms, a link to the claims portal, and copies of certain court filings related to the claims process. Investors were notified that the failure to submit a claim verification form by the bar date would be a basis for denial of that claim. (*See, e.g.*, Dkt. 241, 302, 349, 468, 548, 638, 693, 720) The Court's orders with respect to the claims process were also served upon claimants and potential claimants and posted on the Receiver's website. (*See, e.g.*, Dkt. 349, 574, 940, 941)

2. In February 2021, following briefing and hearings, the Court entered two orders establishing a process for the resolution of disputed claims. (Dkt. 940, 941)

3. With the Court's approval and over the objection of claimant U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Multifamily Mortgage Pass-Through Certificates, Series 2017-SB41 ("U.S. Bank"), on May 21, 2020, the Receiver sold the property located 4520-26 S Drexel Boulevard. (Dkt. 680 at 3) Prior to the sale, the Court found that the Receiver gave fair, adequate, and sufficient notice to all interested parties, including all mortgagees affected by the Receiver's 5th Motion to Confirm the Sale of this and other properties. (*Id.* at 3) The sale was free and clear of all mortgages and encumbrances, and the net proceeds of sale for the Subject Property were deposited into a separate interest-bearing account held by the Receiver pursuant to court order, with all mortgages, liens, claims, and encumbrances attaching to the sales proceeds with the same force, validity, status, and effect, if any, as they had against the property being sold. (*Id.* at 15) Additional deposits and withdrawals have been made to and from this property account, as reported in the Receiver's quarterly status reports. (Dkt. 757, 839, 930, 985, 1017, 1077, 1164, 1243, 1280, 1328, 1379, 1448, 1516, 1535, 1589, 1652)

4. As of May 1, 2024, the property account held for the Subject Property contains \$6,511,102.10. An additional \$16,731.10 fees were allocated to the Subject Property in the Receiver's pending 23rd Fee Application. (Dkt. 1660 at Ex. J)

5. Beginning in February 2021, the Receiver filed a series of motions to approve the payment of certain previously approved fees and costs pursuant to the Receiver's lien on the properties of the Receivership Estate that had been granted by the Court. (Dkt. 947, 981, 1107, 1321) Following proceedings on the Receiver's specific fee allocations before Magistrate Judge Kim, the Court granted the Receiver's fee allocation motions over the objections of the U.S. Bank, and other Institutional Lenders,¹ except that the Court ordered a 20% holdback in the payment of allocated fees. (Dkt. 1469, 1511)

6. Subsequent orders approving the Receiver's quarterly fee applications also approved payment pursuant to the Receiver's lien of fees (subject to a 20% holdback) and costs over the objections of U.S. Bank and other Institutional Lenders. (Dkt. 1372, 1452, 1510, 1539, 1573, 1618) Claimants and potential claimants have received notice of these motions relating to the Receiver's lien and the Receiver's fee applications, and the foregoing motions, fee applications, and the Court's orders have been posted to the Receiver's website.

I. The Receiver Has Recommended That U.S. Bank Be Found To Have Priority Over Other Claimants In Regards To 4520-26 S Drexel Boulevard And That The Investor Lenders Be Found To Have Unsecured Claims Against The Receivership Estate.

7. The principal balance of U.S. Bank's loan secured by the Subject Property is \$4,400,000. Additionally, U.S. Bank is holding a total of \$156,220.59 in reserve. The investor claims submitted against the Subject Property total \$5,443,590.

¹ "Institutional Lenders" refers to the entities listed on Exhibit 1 to Dkt. 1501.

8. On March 20, 2024, the Receiver filed his Submission on Group 5 Claims, which included recommendations as to the claims asserting an interest in the Subject Property. (Dkt. 1626) As explained in that submission, with regard to the priority dispute with respect to the Subject Property, the Receiver recommended that the Court find that the mortgage interest of U.S. Bank has first position priority to the sales proceeds from the sale of the Subject Property, and that the investor-lenders are not secured lenders holding a lien attached to the proceeds from the sale of the Subject Property but instead have unsecured claims against the Receivership Estate. (*Id.* at 5-8)

9. On April 10, 2024, U.S. Bank submitted a position statement objecting to the Receiver's recommendations with respect to the Subject Property. (Dkt. 1646) No other claimant has submitted objections to the Receiver's Group 5 recommendations, although the deadline to do so was April 10, 2024. (Dkt. 1614)

II. The Receiver And U.S. Bank Have Reached An Agreement As To Distributions From The Property Accounts.

10. Settlement discussions between the Receiver and counsel for U.S. Bank have taken place. Pursuant to these discussions, the parties reached a negotiated agreement as to the amount of the distribution to be made to U.S. Bank from the funds held in the property account for the Subject Property. This agreement is contingent on the Court (i) adopting the Receiver's recommendation of priority with respect to the Subject Property made in his Submission on Group 5 Claims, (ii) granting the instant motion and, (iii) approving the proposed distribution plan set forth herein. The proposed distribution plan provides for: (a) U.S. Bank liquidating and transferring the balance in the reserve and escrow accounts it currently holds for the Subject Property to itself or its chosen designee; (b) a distribution from the property account to U.S. Bank of the amount negotiated for the settlement of its claim with respect to the Subject Property; (c)

payment to the Receiver's law firm for contested and uncontested fees allocated to the Subject Property in the Receiver's pending 23rd Fee Application; (d) payment to the Receiver's law firm for contested and uncontested fees allocated to the Subject Property but heretofore held back from payment pursuant to the Court's orders; and (e) transfer of the balance of all remaining funds, including but not limited to any and all residual interest earned, to the Receiver's account for use in the administration of the Receivership Estate and/or as otherwise ordered by the Court.

11. Contingent on the Court granting this Motion U.S. Bank and the Receiver (each a "Party" and collectively the "Parties") further agree as follows:

a. this agreement resolves all disputes of any kind or nature between and among them with respect to the Subject Property only;

b. no Party will appeal from or collaterally attack any rulings associated with the Subject Property; and

c. any and all other claims, objections, or rights that might exist between or among the Parties regarding the Subject Property are hereby compromised and waived, provided however that U.S. Bank will retain an unsecured claim for amounts it claims are due but not paid as part of the distributions contemplated by this Motion.

12. The foregoing agreement is a compromise of disputes and disagreements among or between the Parties. The agreement does not constitute an admission of the validity of any claim, defense, argument, or position made or taken by any Party. The Parties' agreement with respect to the Subject Property will not prejudice, impair, or waive U.S. Bank's position regarding any other property, and the agreement does not establish a precedent as to any other property. Upon entry of an order granting this Motion and distributions consistent with such an order, all objections as to the Receiver's lien on or fees allocated to the Subject Property will be compromised and

waived. The Parties' agreement to not seek appeal from any rulings associated with the Subject Property will be a further saving of time and resources for many involved in the Receivership. Effectively, as a result of the agreement and distribution, the claims and issues between U.S. Bank and the Receivership with respect to the Subject Property have concluded, provided however that U.S. Bank will retain an unsecured claim for amounts they claim are due but not paid as part of the distributions approved by this Court in granting this Motion. In that regard, it is further understood that nothing herein shall be construed to be a recommendation or concession from the Receiver with respect to whether or not U.S. Bank will receive any amount, or how much, in any subsequently proposed distribution plan for unsecured funds.

III. The Court Has The Authority To Make The Distributions Recommended By This Motion.

13. It is well-settled that the district courts have broad equitable powers and are afforded wide discretion in approving a distribution plan of receivership funds. *See, e.g., SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001); *SEC v. Enterprise Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009) ("District judges possess discretion to classify claims sensibly in receivership proceedings."); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992).

14. Because the Receiver is a fiduciary and officer of this Court, the Court may give some weight to the "...Receiver's judgment of the most fair and equitable method of distribution." *CFTC v. Eustace*, No. 05-2973, 2008 WL 471574, at *5 (E.D. Pa. Feb. 19, 2008) (approving receiver's pro-rata distribution plan and recognizing that the receiver does not represent a particular group of investors or claimants but rather proposes a plan that is fair to all investors).

15. Based on the facts and circumstances, the Receiver believes that the distribution plan with respect to the Subject Property as described in this motion is fair and equitable. The recommended distribution amounts represent a substantial payment of the principal amount of the

loans to those claimants found to be first-priority secured lenders for the Subject Property. The Receiver has further determined that there are no other issues that he is aware of that would necessitate any further holdback from the amounts set forth above.

16. There are also additional savings of time and resources achieved based on the agreements reached between and among the Receiver and U.S. Bank. As a result of the agreements set forth in this motion, there are no objections that remain associated with the Receiver's lien or fees allocated to the Subject Property, and U.S. Bank's agreement to not seek appeal from any rulings associated with the Subject Property will further save time and resources for many involved in the Receivership. Effectively, if the Court grants this Motion, then as a result of the agreement and distribution, the claims and issues with respect the Subject Property will have concluded.

IV. The Receiver Requests Authorization To Pay Fees Incurred In And After The Second Quarter 2024 From The Receiver's Account.

17. The Receiver requests that the Court authorize the payment of fees allocated to the Subject Property during and after the Second Quarter of 2024 from the Receiver's account. Throughout the negotiations with U.S. Bank, the Receiver endeavored to secure the largest amount of funds possible to be transferred to the Receiver's account for unsecured claims and administration of the Estate.

18. If the Court grants this Motion and the property funds are distributed in accordance with the distribution schedules described herein, then approximately \$2,000,000.00 will be transferred to the Receiver's account for the benefit of the unsecured creditors of the Estate. Accordingly, the Receiver requests authorization to pay the fees allocated to the Subject Property during this period from the Receiver's account.

V. The Receiver Has Provided Reasonable And Fair Notice Of This Motion.

19. Notice of this motion is being given to each of the claimants asserting a claim against the Subject Property or claiming an interest in the South Side Development Fund 1, which purports to hold an equity interest in the Subject Property, as well as to each of the other claimants who have submitted claims in this matter. In addition, this motion will be made publicly available to all interested and potentially interested parties by posting a copy of it to the Receivership web site.

Prayer for Relief

WHEREFORE, the Receiver seeks the following relief:

- a) a finding that adequate and fair notice has been provided to all interested and potentially interested parties of the claims process, the Receiver's recommendations with respect to the Subject Property, the Receiver's fees and proposed fee allocations, and the current Motion;
- b) an order finding that the agreement between the Parties is fair, reasonable, and in the best interests of the Receivership Estate;
- c) a finding that the distribution schedule described herein and submitted herewith is fair and reasonable;
- d) approval of the payment from the account held for the Subject Property of the receiver and attorneys' fees the Receiver has allocated to the Subject Property in the First Quarter of 2024 (Dkt. 1660);
- e) approval of payment from the account held for the Subject Property of the receiver and attorney's fees the Receiver allocated to the Subject Property

that have been heretofore held back from payment pursuant to the Court's Orders (Dkt. 1618);

- f) approval of payment from the Receiver's account of receiver's and attorneys' fees allocated to the Subject Property in the current quarter and any subsequent quarters;
- g) an order authorizing U.S. Bank to liquidate the reserve and escrow accounts held for the Subject Property and transfer any remaining balances to itself or its chosen designee;
- h) approval of the distribution of funds as set forth in Exhibit 1 to this motion, with distributions to be made within five (5) business days of the Court's approval of this motion, or as soon as such distributions can be reasonably achieved;
- i) approval to transfer to the Receiver's account any residual interest earned on the account held for the Subject Property, after the distributions that the Court orders pursuant to this motion have been made; and
- j) such other relief as the Court deems fair and equitable.

Dated: May 30, 2024

Respectfully submitted,

s/ Michael Rachlis

Michael Rachlis
Jodi Rosen Wine
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
mrachlis@rdaplawn.net
jwine@rdaplawn.net

Attorneys for Kevin B. Duff, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2024, I cause to be filed the foregoing **Receiver's Motion to Approve Distribution of Proceeds from the Sale of Property 63 (4520-26 S Drexel Boulevard)** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. Copies of the foregoing were served upon counsel of record via the CM/ECF system.

I further certify that I caused true and correct copy of the foregoing **Motion**, to be served by electronic mail upon all claimants who have asserted claims against the property located at 4520-26 S Drexel Boulevard and/or the South Side Development Fund 1, and upon all individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form or subsequently updated).

I further certify that the **Motion** will be posted to the Receivership webpage at: <http://rdaplawnet.com/receivership-for-equitybuild>

/s/ Michael Rachlis _____

Michael Rachlis
Rachlis Duff & Peel, LLC
542 South Dearborn Street, Suite 900
Chicago, IL 60605
Phone (312) 733-3950
Fax (312) 733-3952
mrachlis@rdaplawnet.com

Property #	63
Account #	0256
PROPERTY ADDRESS	4520-26 S Drexel Blvd.
Balance of Receivership Account for Property (as of 5/1/2024)	\$ 6,511,102.10
Payment of Fees Allocated in Receiver's 23rd Fee Application (Dkt. 1660)	\$ 16,731.10
Payment of Fees Held Back pursuant to Court Orders (Dkt. 1372, 1452, 1469, 1510, 1511, 1539, 1573) Fee applications 1-22	\$ 30,020.74
Distribution to U.S. Bank (\$4,650,000 less \$156,220.59 reserves/escrows)	\$ 4,493,779.41
Transfer to Receiver's Account	\$ 1,970,570.85

