

**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

**NOTICE OF SETTLEMENT RELATED TO
PROPERTY 101 (6949-59 S MERRILL AVENUE)**

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 submits this notice of a settlement agreement between the Receiver and Thorofare Asset Based Lending REIT Fund IV, LLC (“Thorofare”) with respect to the distribution of proceeds from the sale of 6949-59 S Merrill Avenue (“Property 101” or the “Subject Property”).

1. On December 20, 2023, the Receiver filed its Group 2 Submission. (Dkt. 1571) On January 5, 2024, the Receiver filed an Amended Exhibit 9 to its Group 2 Submission, which related to Thorofare’s claim against the Subject Property. (Dkt. 1577) With respect to the Subject Property, the Receiver has recommended that Thorofare be found to have priority over other claimants in regards to the Subject Property, and that the other claimants be found to have unsecured claims against the receivership estate. (Dkt. 1571 at 10-11, 21, and Ex. 5; Dkt, 1577)

2. On January 10, 2024, Thorofare submitted a Reply Position Statement objecting to the Receiver’s recommendations with respect to the Subject Property. Specifically, Thorofare

argued that if the Court finds that Thorofare has a first priority claim against the net proceeds of sale of the Subject Property, then these net proceeds should be disbursed to Thorofare in their entirety, which would leave no remaining funds to be transferred to the Receiver's account.¹ (Dkt. 1581 at 6-13)

3. Subsequent to these filings, Thorofare and the Receiver engaged in settlement discussions. Pursuant to these discussions, the parties reached a negotiated agreement as to the amount of the distribution to be made to Thorofare from the funds held in the property account for the Subject Property to the extent that it is determined that Thorofare has priority (the "Settlement").

4. The principal balance of Thorofare's loan secured by the Subject Property is \$1,540,000. Additionally, Thorofare is holding a total of \$446,736.45 in reserve.

5. The terms of the Settlement, which is contingent on the Court finding that Thorofare has a first position security interest in the funds held for the Subject Property and no other claimant has a secured interest in these funds, as recommended by the Receiver in his Submission on Group 2 Claims, are as follows:

- a. Thorofare would recover the entirety of its \$1,540,000.00 principal loan balance, with \$1,093,263.551 of that amount to be distributed from the segregated account held by the Receiver for Property 101, and \$446,736.45 paid from the liquidation and transfer of the balance in the reserve accounts it currently holds for the Subject Property to Thorofare or its chosen designee;
- b. Rachlis, Duff & Peel would be paid \$24,709.37 from the segregated account held by the Receiver for Property 101 for approved fees allocated to the Subject Property

¹ Claimant Capital Investors, which asserts a claim against the property account held for the Subject Property, also filed a response to the Receiver's Group 2 Position Statement. (Dkt. 1568)

but heretofore held back from payment pursuant to the Court's orders granting the Receiver's interim fee applications 1-23;

- c. Remaining funds in the amount of \$390,462.35, plus any residual interest, would be transferred to the Receiver's account for use in the administration of the Receivership Estate and/or as otherwise ordered by the Court.;
 - d. The Settlement would resolve all disputes of any kind or nature between and among Thorofare and the Receiver with respect to the Subject Property only;
 - e. Thorofare would compromise and waive all claims, objections, or rights that might exist with respect to the Subject Property, and would not appeal from or collaterally attack any rulings associated with the Subject Property that have been made up to and including the Court's order approving distributions of proceeds from the sale of the Subject Property; and
 - f. The Settlement does not constitute an admission of the validity of any claim, defense, argument, or position made or taken by any party. The Settlement with respect to the Subject Property will not prejudice, impair, or waive Thorofare's position regarding any other property, and the Settlement does not establish a precedent as to any other property.
6. Thorofare's agreement to not seek appeal from any rulings associated with the Subject Property will be a saving of time and resources for many involved in the Receivership.
7. The Receiver will seek an order authorizing the payment of fees allocated to the Subject Property during the current quarter and any subsequent quarters to be paid from the

Receiver's account because the Receiver's efforts to negotiate the Settlement benefits the Receivership Estate and the unsecured creditors.

8. The Receiver will serve this Notice upon each of the claimants asserting a claim against the Subject Property, as well as to each of the other claimants who have submitted claims in this matter. In addition, this Notice will be made publicly available to all interested and potentially interested parties by posting a copy of it to the Receivership web site.

Dated: June 14, 2024

Respectfully submitted,

s/ Michael Rachlis

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Attorneys for Kevin B. Duff, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2024, I cause to be filed the foregoing **Notice of Settlement Related To Property 101 (6949-59 S Merrill Avenue)** 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 a true and correct copy of the foregoing **Notice** to be served by electronic mail upon all claimants who have asserted claims against the property located at 6949-59 S Merrill, 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 **Notice** will be posted to the Receivership webpage at: <http://rdaplawnet.com/receivership-for-equitybuild>.

/s/ _____

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