

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 18-CV-5587
v.)	
)	Hon. John Z. Lee
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	
)	Magistrate Judge Young B. Kim
Defendants.)	
)	

**ORDER GRANTING RECEIVER’S FIRST MOTION FOR COURT
APPROVAL OF THE SALE OF CERTAIN REAL ESTATE AND AVOIDANCE
OF CERTAIN MORTGAGES, LIENS, CLAIMS, AND ENCUMBRANCES**

WHEREAS, this Court took exclusive jurisdiction and possession of the assets of 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") by Order Appointing Receiver, dated August 17, 2018 ("Order Appointing Receiver") (Dkt. No. 16);

WHEREAS, this Court's Order Appointing Receiver identified Chicago Capital Fund I, LLC; Chicago Capital Fund II, LLC and 5001 S. Drexel LLC as Receivership Defendants;

WHEREAS, the Court now finds that SSDF6 6160 S MLK LLC and 8100 S. Essex, LLC are EquityBuild affiliates and constitute Receivership Defendants under the Order Appointing Receiver;

WHEREAS, the Court now clarifies that the reference to 7927-49 S. Essex, LLC in its Order Appointing Receiver was intended as a reference to SSPH 7927-49 S. Essex LLC and that

SSPH 7927-49 S. Essex, LLC constitutes a Receivership Defendant under the Order Appointing Receiver;

WHEREAS, Chicago Capital Fund I, LLC is reflected as owner of record of the real property and improvements at 7500-06 South Eggleston Avenue, Chicago, Illinois 60620 ("7500-06 South Eggleston Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, Chicago Capital Fund II, LLC is reflected as owner of record of the real property and improvements at 7549-59 South Essex Avenue, Chicago, Illinois 60649 ("7549-59 South Essex Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, SSPH 7927-49 S. Essex, LLC is reflected as owner of record of the real property and improvements at 7927-29 South Essex Avenue, Chicago, Illinois 60617 ("7927-29 South Essex Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, SSPH 7927-49 S. Essex, LLC is reflected as owner of record of the real property and improvements at 7933-35 South Essex Avenue, Chicago, Illinois 60617 ("7933-35 South Essex Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, SSPH 7927-49 S. Essex, LLC is reflected as owner of record of the real property and improvements at 7937-39 South Essex Avenue, Chicago, Illinois 60617 ("7937-39 South Essex Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, SSPH 7927-49 S. Essex, LLC is reflected as owner of record of the real property and improvements at 7943-45 South Essex Avenue, Chicago, Illinois 60617 ("7943-45 South Essex Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, SSPH 7927-49 S. Essex, LLC is reflected as owner of record of the real property and improvements at 7947-49 South Essex Avenue, Chicago, Illinois 60617 ("7947-49 South Essex Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, 5001 S. Drexel LLC is reflected as owner of record of the real property and improvements at 5001 South Drexel Boulevard, Chicago, Illinois 60615 ("5001-05 South Drexel Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, SSDF6 6160 S MLK LLC is reflected as owner of record of the real property and improvements at 6160-6212 South Martin Luther King Drive, Chicago, Illinois 60637 ("6160-6212 South King Drive"), which is legally described on Exhibit A hereto;

WHEREAS, 8100 S. Essex, LLC is reflected as owner of record of the real property and improvements at 8100-14 South Essex Avenue, Chicago, Illinois 60617 ("8100-14 S Essex Avenue"), which is legally described on Exhibit A hereto;

WHEREAS, the Court finds that the sales prices reflected in the Purchase And Sale Agreements that the Receiver has accepted for the conveyances of 7500-08 South Eggleston Avenue, 7549-59 South Essex Avenue, 7927-49 South Essex Avenue, 5001-05 South Drexel Avenue, 6160-6212 South King Drive, and 8100-14 South Essex Avenue are consistent with the fair market value of the properties;

WHEREAS, Kevin B. Duff, as receiver ("Receiver") for the Receivership Defendants, has filed a certain First Motion For Court Approval Of The Sale Of Certain Real Estate And The Avoidance Of Certain Mortgages, Liens, Claims, And Encumbrances (the "Motion"); and

WHEREAS, the Court finds that Receiver has given fair, adequate, and sufficient notice to all interested parties, including all mortgagees affected by the Motion.

NOW, THEREFORE, it is hereby ORDERED that:

1. The Receiver's Motion is GRANTED.
2. The Receiver is authorized to sell the real property and improvements at 7500-06 South Eggleston Avenue free and clear of any and all mortgages, liens, claims, and encumbrances,

with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale, provided, however, that the lien created by that certain construction loan mortgage recorded on April 24, 2007, as Document No. 0711439127 shall not be affected by this Order.

3. The Receiver is authorized to sell the real property and improvements at 7549-59 South Essex Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale.

4. The Receiver is authorized to sell the real property and improvements at 7927-29 South Essex Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale.

5. The Receiver is authorized to sell the real property and improvements at 7933-35 South Essex Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale, provided, however, that the notice of *lis pendens* recorded on January 17, 2019, as Document No. 1901742010 in connection with Circuit Court of Cook County Case No. 19-M1-000091, the notice of *lis pendens* to be recorded in connection with Circuit Court of Cook County Case No. 19-M1-400057, and the notice of *lis*

pendens recorded by the City of Chicago on September 19, 2017, as Document No. 1726212091 shall not be affected by this Order.

6. The Receiver is authorized to sell the real property and improvements at 7937-39 South Essex Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale, provided, however, that the notice of statutory lien in favor of the City of Chicago Department of Water Management recorded June 24, 2009, as Document Number 0917512146 shall not be affected by this Order.

7. The Receiver is authorized to sell the real property and improvements at 7943-45 South Essex Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale, provided, however, that the mortgage dated September 28, 2007, and recorded December 12, 2007, as Document No. 0734615054 and the construction loan mortgage and security agreement with collateral assignment of leases and rents recorded July 20, 2012, as Document No. 1220242052 shall not be affected by this Order.

8. The Receiver is authorized to sell the real property and improvements at 7947-49 South Essex Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale.

9. The Receiver is authorized to sell the real property and improvements at 5001-05 South Drexel Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale, such liens, claims, and encumbrances to include:

- a. that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 22, 2014, and recorded April 23, 2014, as Document No. 1411318041, executed by Ohio Commons LLC and given to Wells Fargo Bank, N.A. to secure a note in the amount of \$2,300,000.00 and such other sums as provided therein;
- b. that certain Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded as Document No. 1411318041 by Wells Fargo Bank, N.A. to Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16, dated June 12, 2014, and recorded June 27, 2014 as Document No. 1417808032;
- c. that certain Assignment of Leases and Rents dated April 22, 2014 and recorded April 23, 2014 as Document No. 1411318042, executed by Ohio Commons LLC and given to Wells Fargo Bank, N.A.;
- d. that certain Assignment of Assignment of Leases and Rents recorded as Document No. 1411318042 by Wells Fargo Bank, N.A. to Wilmington

Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16, dated June 12, 2014, and recorded June 27, 2014 as Document No. 1417808033;

- e. that certain Assumption Agreement dated December 1, 2017, and recorded December 12, 2017, as Document No. 1734606050, executed by Ohio Commons LLC and 5001 S. Drexel LLC and given to Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16;
- f. that certain Assumption Agreement dated December 1, 2017, and recorded December 13, 2017, as Document No. 1734742026, executed by Ohio Commons LLC and 5001 S. Drexel LLC and given to Wilmington Trust, National Association, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Trust 2014-LC16, Commercial Mortgage Pass-Through Certificates, Series 2014-LC16;

provided, however, that the notice of *lis pendens* filed by the City of Chicago and recorded on May 23, 1986, as Document No. 86206513 shall not be affected by this Order.

10. The Receiver is authorized to sell the real property and improvements at 6160-6212 South King Drive free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if

any, as they had against the property prior to the sale, such liens, claims, and encumbrances to include:

- a. that certain Mortgage dated November 9, 2016, and recorded on January 13, 2017 as Document No. 1701318125, executed by EquityBuild, Inc. and given to the "Persons Listed on Exhibit A" c/o EquityBuild Finance, LLC to secure a note in the amount of \$4,370,000.00 and other such sums provided therein;
- b. and that certain Construction Mortgage and Security Agreement dated June 7, 2018, and recorded June 11, 2018, as Document No. 1816219041, executed by SSDF6 6160 S MLK LLC and given to Arena DLP Lender, LLC to secure a note in the amount of \$9,375,000.00 and such other sums as provided therein;

provided, however, that the notice of *lis pendens* filed by the City of Chicago and recorded on February 22, 1993, as Document No. 93165739 shall not be affected by this Order.

11. The Receiver is authorized to sell the real property and improvements at 8100-14 South Essex Avenue free and clear of any and all mortgages, liens, claims, and encumbrances, with all such mortgages, liens, claims, and encumbrances avoided from title and attaching to the sales proceeds (net of accrued sales commissions) with the same force, validity, status, and effect, if any, as they had against the property prior to the sale, such liens, claims, and encumbrances to include:

- a. that certain Mortgage dated April 20, 2016, and recorded June 27, 2016, as Document No. 1617919109 executed by EquityBuild, Inc. and given to

EquityBuild Finance, LLC to secure a note in the amount of \$3,300,000.00 and such other sums as provided therein;

- b. that certain notice of *lis pendens* dated April 23, 2018 filed by Anson Markell, as Trustee for the Amark Investment Trust against EquityBuild, Inc. d/b/a EquityBuild Capital, Inc.; Hard Money Company, LLC d/b/a Venture Hard Money Company, LLC; EquityBuild Finance, LLC; Jerry H. Cohen; Shaun D. Cohen; SSDF4 6250 S. Mozart, LLC; SSDF4 638 N. Avers, LLC; SSDF4 701 5th, LLC; SSDF4 7024 S. Paxton, LLC; SSDF4 7255 S. Euclid, LLC; SSDF5 Portfolio 1, LLC; SSDF7 Portfolio 1, LLC; 4533-37 S. Calumet, LLC; 6437 S. Kenwood, LLC; 7026 Cornell, Inc.; 7109 S. Calumet, LLC; 8100 S. Essex, LLC; EB South Chicago 4, LLC; and SSPH Portfolio 1, LLC, *et al.* in the United States District Court for the Southern District of Texas, Houston Division, Case No. 4:18-cv-01274, and recorded on July 2, 2018, as Document No. 1818318076;
- c. and that certain mechanic's lien recorded by Fields Loss Consultants, LLC on August 20, 2018, as Document No.1823219581.

provided, however, that the memorandum of lease recorded July 30, 2010, as Document No. 1021134027 and the notice of *lis pendens* filed by the City of Chicago and recorded September 28, 2016, as Document No. 1627241178 shall not be affected by this Order.

12. The Receiver has full power and authority to execute any and all closing documents associated with the conveyances of 7500-08 South Eggleston Avenue, 7549-59 South Essex Avenue, 7927-49 South Essex Avenue, 5001-05 South Drexel Avenue, 6160-6212 South King

Drive, and 8100-14 South Essex Avenue, including, but not limited to, deeds, bills of sale, affidavits of title, and settlement statements.

13. The proceeds from the sales of 7500-06 South Eggleston Avenue, 7547-59 South Essex Avenue, 7927-29 South Essex Avenue, 7933-35 South Essex Avenue, 7937-39 South Essex Avenue, 7943-45 South Essex Avenue, and 7945-47 South Essex Avenue shall be held in the Receiver's account and remain available for operating expenses associated with the Receivership.

14. The proceeds arising from the sales of 5001-05 South Drexel Boulevard, 6160-6212 South King Drive, and 8100-14 South Essex Avenue shall be held by the Receiver in separate subaccounts, for which the Receiver shall maintain an accounting as to all sums deposited therein, and shall not be available for operating expenses of the Receivership nor for any other expense or distribution, absent further order of Court.

Entered: 4/24/19



The Honorable John Z. Lee

EXHIBIT A

7500 South Eggleston Avenue

Permanent Index No. 20-28-305-001-0000

Chicago Capital Fund I, LLC

LOTS 1 AND 19 IN BLOCK 4 IN AUBURN PARK IN THE EAST 1/2 OF THE WEST 1/2 OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

7547 South Essex Avenue

Permanent Index No. 21-30-302-011-0000

Chicago Capital Fund II, LLC

LOTS 18, 19 AND 20 IN BLOCK 2 IN SOUTH SHORE PARK, BEING A SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 (EXCEPT STREETS) IN SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

7927-29 South Essex Avenue

Permanent Index No. 21-31-102-007-0000

SSPH 7927-49 S. Essex LLC

LOTS 16 AND 17 (EXCEPT THE SOUTH 5 FEET) IN BLOCK 2 IN 79TH STREET ADDITION TO CHELTENHAM BEACH, SAID ADDITION BEING A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD COMPANY IN COOK COUNTY, ILLINOIS

7933-35 South Essex Avenue

Permanent Index No. 21-31-102-008-0000

SSPH 7927-49 S. Essex LLC

THE SOUTH 5 FEET OF LOT 17 AND ALL OF LOT 18 AND THE NORTH 22 1/2 FEET OF LOT 19 IN BLOCK 2 IN 79TH STREET ADDITION TO CHELTENHAM BEACH, SAID ADDITION BEING A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD COMPANY IN COOK COUNTY, ILLINOIS

7937-39 South Essex Avenue

Permanent Index No. 21-31-102-009-0000

SSPH 7927-49 S. Essex LLC

THE SOUTH 2-1/2 FEET OF LOT 19 AND ALL OF LOTS 20 AND 21 IN BLOCK 2 IN 79TH STREET ADDITION TO CHELTENHAM BEACH, SAID ADDITION BEING A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD COMPANY, IN COOK COUNTY, ILLINOIS

7943-45 South Essex Avenue

Permanent Index No. 21-31-102-010-0000
SSPH 7927-49 S. Essex LLC

LOTS 22 AND 23 AND 24 (EXCEPT THE SOUTH 20 FEET THEREOF) IN BLOCK 2 IN 79TH STREET ADDITION TO CHELTENHAM BEACH, SAID ADDITION BEING A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHEASTERLY OF THE RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD COMPANY IN COOK COUNTY, ILLINOIS

7947-49 South Essex Avenue

Permanent Index No. 21-31-102-011-0000
SSPH 7927-49 S. Essex LLC

THE SOUTH 20 FEET OF LOT 24, LOT 25 AND THE NORTH 5 FEET OF LOT 26 IN BLOCK 2 IN THE 79TH STREET ADDITION TO CHELTENHAM BEACH, BEING A SUBDIVISION OF THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS, LYING NORTHEASTERLY OF THE RIGHT OF WAY OF THE BALTIMORE AND OHIO RAILROAD COMPANY IN COOK COUNTY, ILLINOIS

5001 South Drexel Boulevard

Permanent Index No. 20-11-114-001-0000
5001 S. Drexel LLC

LOTS 9 AND 10 IN THE SUBDIVISION OF LOTS 1 TO 4 INCLUSIVE IN BLOCK 8 IN DREXEL AND SMITH'S SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

6160 Martin Luther King Boulevard

Permanent Index Nos. 20-15-317-039-0000 , 20-15-317-040-0000
SSDF6 6160 S MLK LLC

PARCEL 1:

THE SOUTH 1 AND 3/4 INCHES OF LOT 9 IN BLOCK 1 IN ISAAC PFLAUM'S SUBDIVISION OF LOT 6 AND THAT PART OF LOT 12 LYING NORTH OF THE SOUTH LINE OF LOT 6 IN WILSON, HEALD AND STEBBIN'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 15 TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOTS 1 TO 8 IN BLOCK 1 IN DAVIDSON SUBDIVISION OF BLOCKS 7 AND 8 AND PART OF BLOCK 12 IN WILSON, HEALD AND STEBBIN'S SUBDIVISION OF THE EAST 1/2 OF SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

8100 South Essex Avenue

Permanent Index No. 21-31-117-018-0000

8100 S. Essex LLC

LOTS 1 TO 6, INCLUSIVE, AND THE NORTH 10 FEET OF LOT 7 IN BLOCK 1 IN JAMES MCCORTNEY'S SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS