

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

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

**U.S. BANK’S MOTION FOR LEAVE TO TAKE DISCOVERY RELATED TO THE
RECEIVER’S AVOIDANCE CLAIM**

Creditor 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-SB30 (“U.S. Bank”), by and through its undersigned counsel, and pursuant to the Court’s Order Regarding Summary Proceedings for Group 7 (Dkt. 1638) and the schedule set by the Court regarding Group 7 (Dkt. 1707), requests leave to take discovery with respect to the allegations set forth in the Receiver’s Submission on Group 7 Claims (“Group 7 Submission,” at Dkt. 1772), and in support states as follows:

1. U.S. Bank is classified as an Institutional Lender with a secured claim on a property to be adjudicated in Group 7 of the claims process, specifically 7109-7119 S. Calumet Avenue (“Property 7” or “7109 Calumet”).

2. On April 1, 2024, the Court entered an Order Regarding Summary Proceedings for Group 7. (Dkt. 1638.) On July 16, 2024, the Court entered a minute entry setting the deadline for the Receiver to file his Group 7 recommendations to October 28, 2024 and also setting the deadline

of November 12, 2024 to request additional Group 7 discovery related to avoidance claims. (Dkt. 1707.) On September 11, 2024, the Court entered a minute entry ordering the Receiver to “provide a preview of possible avoidance claims as to Group 7 in his opening Group 7 brief.” (Dkt. 1750.) On November 4, 2024, the Court entered a minute entry stating “[t]he current Group 7 schedule remains in place.” (Dkt. 1780.)

3. On October 28, 2024, the Receiver filed the Group 7 Submission. (Dkt. 1772.) In addressing priority on 7109 Calumet, the Receiver determined that the investor lenders are unsecured and not entitled to any portion of the proceeds from the sale of 7109 Calumet because “the investor lenders who have made claims on this property have either rolled into other investments or otherwise do not have secured claims, such that the maximum recommended distribution to all investor lenders would be zero.” (*Id.*, at 5.) The Receiver further states “[i]f the Court agrees with the Receiver’s recommendation and finds that the individual investor lenders no longer have secured claims, there will not be any distribution to such investor lenders from the proceeds of the sale of 7109 Calumet.” (*Id.*)

4. U.S. Bank is the only other creditor for 7109 Calumet. The Receiver’s conclusions regarding the investor lenders is a judicial admission that U.S. Bank is the sole secured creditor entitled to all proceeds from the sale of 7109 Calumet. In an effort to ensure no funds are distributed to a so-called Institutional Lender, the Receiver makes a threadbare assertion that U.S. Bank’s lien is an avoidable fraudulent transfer. The Receiver also hedges his bet and states in the alternative that in the event “the Court were to disagree with the recommendations . . . the Receiver recommends that the investor lenders’ first-in-time (and never released) mortgage is properly found to have priority over the later-recorded U.S. Bank loan.” (*Id.*)

5. The Receiver relies on the fraud-in-fact provision of the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1, *et seq.* (the “Act”) and argues there is sufficient evidence of a Ponzi scheme to establish actual fraud. (*Id.*, at 11.) The Receiver goes on to acknowledge that a finding of actual fraud will not void the transfer if the security interest had been accepted in good faith and for reasonably equivalent value. (*Id.*, at 11-12.)

6. In support of his possible avoidance claim, the Receiver relies on the Ponzi scheme presumption and discloses certain “facts”—which are no more than hearsay and conjecture—to argue that the mortgage given to Red Mortgage Capital LLC (“7109 Calumet Mortgage”) is voidable as a fraudulent transfer because Red Mortgage Capital LLC (“Red Mortgage”)¹ and the title company Primary Title “were aware of facts that would have led a reasonable person to inquire further into the validity of the EquityBuild’s purported grant of first-position security interests in the property [and] such inquiry would have led to the discovery of the fraudulent purpose of EquityBuild’s actions. . .” (*Id.*, at 18.) Importantly, U.S. Bank was not involved in the origination of the loan secured by the 7109 Calumet Mortgage. Instead, U.S. Bank is the assignee of the 7109 Calumet Mortgage by virtue of two subsequent assignments. It appears the Receiver is arguing that U.S. Bank is liable for the actions (or omissions) of Primary Title, a third-party title company, with whom U.S. Bank has no interaction with at the time of origination. (*Id.*, at 18-22.) The Receiver cites no legal authority to impute such alleged liability on U.S. Bank.

7. Moreover, the Receiver’s “facts” for his avoidance claim are wholly insufficient to provide the basis for a fraudulent transfer claim. In fact, the Receiver’s own “facts” show that Red Mortgage *did* inquire as to facts surrounding the investor’s loan and did act in good faith. (*Id.*, at 19.) The Receiver fails to explain how Red Mortgage’s actions do not constitute good faith or

¹ Red Mortgage was the originator of the U.S. Bank loan secured by a mortgage on 7109 Calumet.

what other “inquiry” Red Mortgage should have undertaken. Glaringly absent from the Group 7 Submission is how U.S. Bank, a twice removed assignee in the chain of mortgage assignments, can be subject to a fraudulent transfer claim.

8. Moreover, the Receiver relies on email communications and title-related documents to support his inquiry notice argument, however, his argument is wholly conclusory and fails to explain how *U.S. Bank* can be held liable for the actions of a third-party title company or how an inquiry into such “facts” would have brought to light EquityBuild’s fraudulent behavior. (*Id.*, at 18-22.)

9. The Receiver’s threadbare claim necessitates additional discovery to defend against the claim. U.S. Bank requests a period of 90 days to obtain discovery pertaining to the Receiver’s fraudulent transfer allegations and U.S. Bank’s defenses thereto. During that 90-day period, U.S. Bank may seek discovery on the following, including, but not limited to:

- a. Interrogatories and document requests to the Receiver to learn the evidence and facts the Receiver believes supports all elements of his claim;
- b. Interrogatories and document requests to various third parties, including Red Mortgage Capital, LLC and Primary Title Services, LLC;
- c. Oral discovery of the Receiver and third parties, including Red Mortgage Capital, LLC, Primary Title Services, LLC, and EquityBuild employees;
- d. Oral discovery of investor lenders to understand their role and participation in the underlying investor lender loan, the payoff of that loan by Red Mortgage Capital, LLC, their understanding of the overall EquityBuild portfolio, and their knowledge regarding the alleged scheme;

- e. Investigate, identifying, and disclose an expert witness to testify regarding the fair market value of the 7109 Calumet property at the time of the 7109 Calumet Mortgage; and
- f. Any additional oral or written discovery that may be necessary as a result of the forgoing discovery.

10. The Court should grant U.S. Bank’s request for leave to conduct further discovery because denying that request would be tantamount to depriving U.S. Bank of its due process rights—especially in light of the fact that the Receiver was permitted to raise his avoidance claims for the first time he engaged in discovery, but no discovery has been taken on by U.S. Bank on the specific issue of a fraudulent transfer. U.S. Bank further states that allowing such discovery would not hinder or delay resolution of the other properties that are part of Group 7.

WHEREFORE, Creditor 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-SB30 respectfully requests that the Court grant its request for leave to take further discovery on the Receiver’s possible avoidance claim, allowing 90 days for such discovery, and such further and other relief as this Court deems just and proper.

Dated: November 12, 2024	Respectfully submitted, 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-SB30 /s/ Andrew T. McClain _____ Jill Nicholson Andrew T. McClain Dentons US LLP 233 S. Wacker Drive
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