

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

<b>U.S. SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 18-CV-5587</b>
	)	
<b>v.</b>	)	<b>Hon. Manish S. Shah</b>
	)	
<b>EQUITYBUILD, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**SEC’S POSITION STATEMENT FOR GROUP 7 OF THE CLAIMS PROCESS**

Pursuant to the Court’s Orders regarding the Claims Resolution Process (ECF Nos. 941, 1707, 1750), the SEC submits this Position Statement for Group 7. For the following reasons, the Court should find the investors have priority for four of the Group 7 properties: Properties 2, 69, 70, and 73.

The Receiver advises that for Properties 2, 69, 70, and 73, the investors obtained valid first-in-time mortgages that were properly recorded. (See ECF 1772 at 3-4, 7-9).<sup>1</sup> The Receiver further reports that for each of these properties, the investors never released their mortgages and no purported release was ever recorded. (*Id.*). Because the investors’ mortgages were not released, the issue of priority is answered in the investors’ favor by the Seventh Circuit opinion affirming this Court’s Group 1 priority determination. *SEC v. EquityBuild, Inc.*, 101 F.4th 526, 532 (7th Cir. 2024) (“there must be payment and delivery of the release to extinguish a mortgage lien...under the Illinois Mortgage Act, payment alone *does not extinguish any pre-existing*

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<sup>1</sup> The Institutional Lenders who hold later-in-time recorded mortgages on these properties are BMO (Property 2), Citibank (Properties 69 and 73), and Freddie Mac (Property 70). (See ECF 1772 at 3-4, 7-9).

*interest absent a valid release.*”) (emphasis added); *see also Paliatka v. Bush*, 109 N.E.3d 343, 349 (Ill. App. Ct. 2018) (“Generally, the lien that is recorded first in time has priority and is entitled to satisfaction by the property it binds before other claims.”); *Fannie Mae v. Kuipers*, 314 Ill. App. 3d 631, 635 (Ill. App. Ct. 2000) (“A presumption exists that the first mortgage recorded has priority ... Until [a valid] release is filed, the mortgage lien remains in effect.”); *EquityBuild* at 531 (citing *Kuipers* for proposition that “a mortgage lien remains in effect until it is released...Without a properly executed and delivered release, the lien persists.”).

For the foregoing reasons, the SEC respectfully requests the Court find that for Group 7 Properties 2, 69, 70, and 73, the investors have priority and are entitled to a distribution of the proceeds of the properties’ sale.<sup>2</sup>

Dated: November 25, 2024

Respectfully submitted,

/s/ Benjamin Hanauer  
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<sup>2</sup> Per the Court’s November 25, 2024 Minute Order (ECF 1793), the deadline for Group 7 claimant statements for Properties 7 and 64 has been extended to December 9, 2024. The SEC will file any position statement for those properties by that date.

**CERTIFICATE OF SERVICE**

I hereby certify that I provided service of the foregoing Position Statement, via ECF filing, to all counsel of record and Defendant Shaun Cohen, and to all claimants via the Receiver's email distribution list, on November 25, 2024.

/s/ Benjamin Hanauer

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