

**UNITED STATES DISTRICT COURT  
FOR THE 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. )

Civil Action No. 18-cv-5587

Hon. Manish S. Shah

**GROUP 7 RESPONSIVE POSITION STATEMENT  
OF CERTAIN INDIVIDUAL INVESTORS**

The undersigned Group 7 individual investors (collectively, the “Certain Individual Investors”) jointly submit this Responsive Position Statement in support of their claims and those of the other Individual Investors regarding Properties 2, 69, 70, and 73.

At this point in this Receivership, not much is left to be said. Nearly all of the issues regarding disputes as to the priority of competing mortgages have been fully briefed, multiple times. And so this Responsive Statement will not repeat arguments with which the Court is now very familiar. Rather than repeat those arguments, to conserve their limited litigation resources at this point in this over six-year-old Receivership, the Certain Individual Investors incorporate the arguments they have previously presented to the Court on these issues. ECF Nos. 1151, 1215, 1561, 1582, 1755, 1766. In this, the Certain Individual Investors are mindful of the Court’s statement that, while decisions it reaches on one group of properties are not preclusive on other groups, “applying the law to a similar set of facts will garner a similar result.” ECF No. 1679 at 20, n.11. Because the facts relating to the priority disputes for the mortgages on these four

properties are similar to those in Groups 1 and 2, the application of the law to these facts should yield the same result, namely that the Individual Investors' mortgages has priority.

For the four Group 7 properties now at issue, the facts are simple: the Individual Investors identified on Exhibit A of the valid, first position mortgages had valid liens that were properly recorded and never validly released for a loan for which they were never repaid. *See, e.g.*, ECF No. 1772 at 3-4, 6-9; ECF No. 1795, ECF No. 1796 at 1-2. Indeed, even the Institutional Lenders (BMO Bank N.A., Citibank N.A. as Trustee, and Sabal TL1, LLC) acknowledge this reality. ECF No. 1794 at 2,5, ECF No. 1797 at 2-4, ECF No. 1798 at 1-2. Therefore, as set forth in the recommendations of the Receiver and the Position Statements filed by the SEC and the Certain Individual Investors, ECF Nos. 1772, 1795, 1796, those mortgages and the corresponding liens remain in place, are first in time, and should have priority over those of Institutional Lenders.

Like their counterparts in the other priority disputes in this Receivership, the Institutional Lenders dispute this. ECF Nos. 1794, 1797, 1798. In support, the Institutional Lenders offer arguments that this Court has, by and large, rejected. *Compare, e.g.*, ECF Nos. 1794, 1797, 1798 *and* ECF Nos. 1152, 1217, 1559, 1562, 1563, 1585, 1587, 1588, 1756, 1757, 1767, 1768. Indeed, little in the Institutional Lenders' filings for Group 7 is new or different. As the Court has ruled in considering these arguments previously and applying them to factually similar circumstances, ECF Nos. 1386 and 1679, the facts and law again confirm that the Individual Investors mortgages remain valid, mortgages that have not been released, and so they remain in first position. That, in turn, means that the Individual Investors claims for these four properties should be honored ahead of those of the Institutional Lenders.

To the extent that the Institutional Lenders do present arguments that have not yet been ruled on by the Court, those arguments do not change the outcome. For instance, as their

counterparts argued in a surreply filed in the Group 6 proceedings, ECF No. 1781, the Institutional Lenders argue that the Illinois Mortgage Act provides that a court “shall order” the issuance and delivery of a release when a loan has been repaid and the mortgagee fails to deliver a release. *See, e.g.*, ECF No. 1797 at 10, 1798 at 7-8. This, they argue, somehow favors their priority and empowers the Court to issue such an order now. Their argument, however, first ignores all of the reasons why it is the Individual Investors whose mortgage should have priority. It then also ignores that they failed to initiate actions around the time of their loans seeking the issuances of releases that they claim they expected and were entitled to, but never received – actions that, if brought timely after the releases were not delivered when expected, might have resulted in the EquityBuild Ponzi scheme coming to light and ending much earlier than it otherwise did. Similarly, as the SEC explains, the Institutional Lenders’ reliance on the unpublished decision in *5201 Wash. Investors LLC & Arthur Bertrand v. Equitybuild, Inc.*, 2024 IL App (1st) 231403-U, does not change the outcome here. ECF No. 1806 at 3, 4, n.5.

In sum, for all of the reasons that the Court now knows well, the Court should once again conclude that it is the Individual Investors, not the Institutional Lenders, whose mortgages have priority for the four Group 7 properties now at issue.

Dated: December 16, 2024

WILLIAM H. AKINS;  
THE BE COMPANY LTD. F/K/A  
BLUEBRIDGE PARTNERS LTD.;  
KARL R. DEKLOTZ;  
PAT DESANTIS;  
AMIT HAMMER;  
CONRAD HANNS;  
ROBERT W. JENNINGS;  
TOLU MAKINDE AND TMAKINDE,  
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JOSEPH MCCARTHY;  
RUSS MORELAND;  
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