

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 22-3073

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

and

KEVIN B. DUFF, in his capacity as receiver,
Appellee,

v.

EQUITYBUILD, INC., *et al.*,
Defendants.

APPEAL OF: FEDERAL HOUSING FINANCE AGENCY,
as conservator for Fannie Mae and Freddie Mac.

On Appeal from the United States District Court
for the Northern District of Illinois

DOCKETING STATEMENT

Appellant the Federal Housing Finance Agency (“FHFA”), as Conservator for Fannie Mae and Freddie Mac (the “Enterprises”), respectfully submits this docketing statement under Seventh Circuit Rules 3(c)(1) and 28(a).

I. Jurisdictional Statement

1. On August 15, 2018, the United States Securities and Exchange Commission (“SEC”) filed a civil Complaint in the United States District Court for the Northern District of Illinois (the “District Court”) against EquityBuild, Inc., EquityBuild Finance, LLC, Jerome H. Cohen, and Shaun D. Cohen alleging violation of federal securities laws, along with a

motion for entry of an asset freeze, preliminary injunction, and other ancillary relief. Dkts. 1 & 3. The District Court has jurisdiction under Section 22 of the Securities Act (15 U.S.C. § 77v) and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

2. On August 17, 2018, at the SEC's request, the District Court entered an order appointing Appellee Kevin B. Duff (the "Receiver") as receiver. Dkt. 16. The receivership initially consisted primarily of real property, against which the Receiver was granted a lien to secure its fees and costs. In 2020, with the District Court's approval, and over objection by the Enterprises and without knowledge of FHFA, the Receiver sold properties at 1131-41 East 79th Place in Chicago and 7024-32 South Paxton Avenue in Chicago (the "Enterprise Properties"), which were encumbered by first-lien mortgages owned by Fannie Mae and Freddie Mac respectively, with the proceeds deposited into accounts against which the corresponding Enterprise was granted a lien equivalent to its pre-sale interest in the property. Dkt. 618 at 40-43; Dkt. 681.
3. In due course, the Receiver moved to allocate certain of its accrued fees and costs to specific properties and to receive an interim payment from the corresponding accounts. Dkt. 1107. Of particular relevance here, the Receiver sought to allocate \$93,564.69 to the 79th Street Property and \$54,966.96 to the Paxton Property. *See* Dkt. 1107-5 at 243, 1233. FHFA, citing 12 U.S.C. §§ 4617(f), 4617(b)(2), and 4617(j)(3), objected to those allocations because they would dissipate the Enterprises' collateral, thereby impairing the Conservator's statutory powers to collect on the obligations secured by the properties and to preserve and conserve the Enterprises' assets. Dkt. 1209. The Magistrate Judge overruled FHFA's objections and granted the Receiver's motion. Dkt. 1258 ("MJ

Decision”).

4. FHFA timely objected, Dkt. 1266, and on October 17, 2022, the District Court issued an oral ruling (the “Ruling”) affirming the Magistrate Judge’s order, albeit on slightly different grounds. Dkt. 1327. Because the Ruling allows the Receiver to move forward over FHFA’s objections with actions that restrain and affect FHFA’s statutory powers as Conservator, as a practical matter the Rule is equivalent to an order denying an injunction against those actions.
5. On November 16, 2022, FHFA timely filed a combined notice of appeal under 12 U.S.C. § 1292(a) and motion to certify the Ruling for interlocutory appeal under 12 U.S.C. § 1292(b). Dkt. 1336. If the district court certifies the Ruling under Section 1292(b), FHFA will petition this Court to accept a discretionary appeal and consolidate it with this appeal.
6. This appeal is taken from the Ruling, an interlocutory order with practical effects that are functionally equivalent to denying an injunction. The United States Court of Appeals for the Seventh Circuit has jurisdiction under 28 U.S.C. §§1292(a)(1) and 1294. *See Jamie S. v. Milwaukee Pub. Sch.*, 668 F.3d 481, 485, 490 (7th Cir. 2012); *Jones-El v. Berge*, 374 F.3d 541, 544 (7th Cir. 2004).

II. Related Appeals

The docket indicates that there was a prior appeal (21-2664), which was filed on September 13, 2021, and disposed of on November 4, 2021. FHFA was not a party to that appeal.

III. Designation of Counsel of Record

FHFA designates Michael A.F. Johnson of Arnold & Porter Kaye Scholer LLP as counsel of record. Mr. Johnson's postal address and telephone number are included in the signature block below.

Dated: November 23, 2022

Respectfully submitted,

/s/ Michael A. F. Johnson
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Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2022, I caused the foregoing **Federal Housing Finance Agency's Docketing Statement** to be electronically filed through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record.

/s/ Michael A.F. Johnson