

**UNITED STATES DISTRICT COURT
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.

Case No. 1:18-cv-5587

Hon. Manish S. Shah

**ORDER APPROVING DISTRIBUTION OF PROCEEDS FROM
THE SALE OF PROPERTY 3 (5001 S DREXEL BOULEVARD)**

WHEREAS, this matter came before the Court in the Group 5 Claims Resolution Process (Dkt. 941, 1551) and on the Motion filed by Kevin B. Duff, as receiver for the Estate of Defendants EquityBuild, Inc., EquityBuild Finance, LLC, their affiliates, and the affiliate entities of Defendants Jerome Cohen and Shaun Cohen (“Receiver”), for approval of an agreed plan and order for the distribution of the proceeds from the sale of 5001 S Drexel Boulevard (“5001 Drexel” or “Property 3” or the “Subject Property”) (Dkt. 1742, the “Motion”);

WHEREAS, with the Court’s approval and over the objection of 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 (“Wilmington Trust”), on May 22, 2019, the Receiver sold the property located at 5001 S Drexel Boulevard. (Dkt. 346 at 6-7) The net proceeds of sale in the amount of \$2,579,171.14 were deposited into an interest-bearing account held by the Receiver, and additional deposits and withdrawals have been made into and out of this property account pursuant to Court orders, as reported in the Receiver’s

quarterly status reports. (Dkt. 757, 839, 930, 985, 1017, 1077, 1164, 1243, 1280, 1328, 1379, 1448, 1516, 1535, 1589, 1652, 1722);

WHEREAS, the Court approved a claims process as to which fair and adequate notice was provided to all potentially interested persons and all were provided a full and fair opportunity to submit claims and supporting information. (*E.g.*, Dkt. 941) The Court also determined that a summary process for adjudication of allegedly competing secured claims as to those properties, addressing claims against groups of properties on a seriatim basis, was necessary, appropriate, and afforded due process to all claimants and interested persons. (*Id.*);

WHEREAS, the Court initiated the summary process for the resolution of Group 5 claims in November, 2023. (Dkt. 1551) Pursuant to that process, on March 20, 2024, the Receiver filed his Submission on Group 5 Claims, which included recommendations as to the claims asserting an interest in the Subject Property. (Dkt. 1626) As explained in that submission, with regard to the priority dispute with respect to the Subject Property, the Receiver recommended that the Court find that the mortgage interest of Wilmington Trust has first position priority to the sales proceeds from the sale of the Subject Property, and that the investor-lenders are not secured lenders holding a lien attached to the proceeds from the sale of the Subject Property but instead have unsecured claims against the Receivership Estate. (*Id.* at 8-10);

WHEREAS, on April 10, 2024, Wilmington Trust filed a position statement objecting to the Receiver's recommendations. (Dkt. 1647) One other claimant asserting an interest in the Subject Property submitted objections to the Receiver's recommendations, which the Receiver filed with the Court on April 15, 2024 (Dkt. 1648);

WHEREAS, settlement discussions occurred between the Receiver and counsel for Wilmington Trust (collectively "the Parties"), and the Parties reached a negotiated agreement as to the amount of the distribution to be made to Wilmington Trust from the funds held in the

property account for 5001 Drexel, in the event the motion was granted consistent with the relief requested;

WHEREAS on September 9, 2024, the Receiver submitted the Motion with recommendations for distributions with regards to the Subject Property as set forth in Exhibits A and B to the Motion (Dkt. 1742);

WHEREAS, the Motion and the agreed distribution plan set forth in Exhibit A to the Motion were served by electronic mail upon all claimants who have asserted claims against the Subject Property, as well as upon all individuals or entities that submitted a proof of claim in this action (sent to the e-mail address each claimant provided on the claim form or subsequently updated);

WHEREAS, on September 11, 2024, the Court entered a minute order granting the Motion (Dkt. 1750);

WHEREAS, the Parties have agreed that the distributions and other relief approved in this Order resolve all disputes of any kind or nature between the Receiver, on the one hand, and Wilmington Trust, on the other hand, with respect to the Subject Property only, that the Parties will not appeal from or collaterally attack any rulings associated with the Subject Property, and that any and all other claims that might exist between or among the Parties regarding the Subject Property are compromised and waived, provided however that Wilmington Trust will retain unsecured claims for amounts it claims are due but not paid as part of the distributions granted by this Order. These agreements are a compromise of disputes and disagreements between and among the Parties, and do not constitute an admission of the validity of any claim, defense, argument, or position made or taken by any Party. The agreements over the Subject Property will not prejudice, impair, or waive any Party's position regarding any other property, and the agreement does not establish a precedent as to any other property;

NOW, THEREFORE, the Court, having considered the Motion and the record of this receivership case and being otherwise duly advised in the premises, hereby finds and ORDERS:

1. The Motion is GRANTED.
2. Wilmington Trust is found to have a first-position secured interest in the Subject Property. The investor-lender claimants asserting an interest in the Subject Property do not have secured interests or a lien on the sales proceeds or funds in the account held by the Receiver for the Subject Property, and the objection made by Horst S. Filtzer, Jr. (Claim 3-1085) is overruled.
3. The distribution plan submitted by the Receiver and agreed to by the Parties is fair, reasonable, and in the best interests of the Receivership Estate.
4. Adequate and fair notice has been provided to all interested and potentially interested parties (including but not limited to all lienholders in the chain of title) of the claims process for the resolution of disputed claims and determination of secured interests, the Receiver's fees and proposed fee allocations, the Receiver's Group 5 submission and recommendations, and the Motion and agreed distributions, and each interested or potentially interested party has had a full and fair opportunity to participate in the claims process and to assert its interests and any objections.
5. No later than five (5) business days after entry of this Order, or as soon as such distributions can be reasonably achieved, the Receiver shall disburse to Wilmington Trust \$1,822,276 from the account held for the Subject Property, as agreed resolution of its secured claim against the Subject Property. Additionally, Wilmington Trust is granted relief from the stay imposed in the Order Appointing Receiver (Dkt. 16) to the extent that it may liquidate any reserve or escrow accounts held with respect to the Subject Property and transfer any remaining balances to itself or its designee(s).

6. Because the Court intends that this be a final distribution, there will not be any holdbacks of professional fees or expenses associated with the Receiver's fee applications or fee allocation motions upon the distribution of proceeds to claimants. Accordingly, no later than five (5) business days after entry of this Order, or as soon as such distributions can be reasonably achieved, the Receiver shall disburse the following amounts from the account held for the Subject Property:

- a) \$12,188.22 to Rachlis Duff & Peel, LLC for payment of fees allocated in the Receiver's 24th Fee Application (Dkt. 1732);
- b) \$24,235.02 to Rachlis Duff & Peel, LLC for Payment of Fees Held Back pursuant to Court Orders (Dkt. 1372, 1452, 1469, 1510, 1511, 1539, 1573, 1618, 1675).

7. Any approved fees that are allocated to the Subject Property in subsequent fee applications for the current quarter and any subsequent quarters may be paid from the Receiver's account;

8. Following the distributions ordered herein, the net of the remaining balance of the property account for the Subject Property, including any interest hereafter accruing, shall be transferred to the Receiver's account for use in the administration of the Receivership Estate and/or as otherwise ordered by the Court.

Entered:



Manish S. Shah
United States District Court Judge

Date: September 12, 2024