UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	**Civil Action No. 18-cv-5587**
	)	**Hon. Manish S. Shah**
v.	)	**Mag. Judge Young B. Kim**
EQUITYBUILD, INC., et al.,	)	
Defendants.	)	

POSITION STATEMENT OF CLAIMANT BMO BANK N.A. PROPERTY 2 (4533-47 S CALUMET AVENUE)

Claimant BMO Bank N.A. f/k/a BMO Harris Bank N.A. ("BMO"), pursuant to Docket Entry 941, submits this Position Statement demonstrating that BMO holds a first position, perfected security interest in the Group 7 property located at 4533-47 S Calumet Ave ("Property 2"). Based on its first priority position, the proceeds from the sale of Property 2 should first be used to pay off BMO's mortgage.

RELEVANT FACTUAL BACKGROUND

This matter pertains to a mortgage priority dispute between BMO, the mortgagee of a first-priority mortgage against Property 2, and certain individuals and entities who claim an unsecured interest in Property 2.

A. The Property

Property 2 is located at 4533-47 S Calumet Ave, Chicago, Illinois 60653. EquityBuild, Inc. ("EB") acquired Property 2 on July 25, 2016 through borrowing funds from certain individuals.

B. Investor Lender Mortgage

On July 25, 2016, "The Persons Listed on Exhibit A to the Mortgage c/o EquityBuild Finance, LLC" ("Investor Lenders") executed a $2.9 million promissory note secured by a mortgage ("Investor Lender Mortgage") in the name of 44 individuals and entities who were listed in Exhibit A to the Investor Lender Mortgage. *See* BMO Exhibit 1. The Investor Lender Mortgage was recorded on September 8, 2016. The Investor Lender Mortgage provided that upon payment of the sum secured by the mortgage, the Lender shall release the mortgage. *See* BMO Exhibit 1, ¶10. Under the terms of the Investor Lender Mortgage, Investor Lenders received favorable interest rates ranging between 13-18%. *See* BMO Exhibit 7. Additionally, some Investor Lenders received bonuses ranging from $125-$3,000. *Id.*

C. Investor Lender Investment Package

The agreement between Investor Lenders and EB was memorialized in an investment package ("Investment Package"). *See* BMO Exhibit 7. The Investment Package includes: (1) an unexecuted copy of the Note (*see id.* at pp. 1-10); (2) an Exhibit A to the unexecuted Note, executed by the Investor Lender, that identified the Investor Lender, the amount of the investment, the Investor-Lender's percentage of ownership of the entire loan, the amount of the monthly interest payment to be received and the rate of interest (*see id.* at p. 11); (3) an unexecuted copy of the Investor Lender Mortgage (*see id.* at pp. 12-16); (4) an executed untitled document, sometimes referenced as Exhibit A (the "Authorization Document") (*see id.* at p. 17); (6) the executed Collateral Agency and Servicing Agreement ("CASA") (*see id.* at pp. 18-42); (7) Wire Transfer

Instructions (*see id.* at p. 43); and (8) a Certificate of Completion documenting EB and the Investor Lenders' execution of the documents contained in the Investment Package (*see id.* at pp. 44-45).[1]

D. EBF Authority

As set forth below in the CASA and Authorization Document, Investor Lenders designated EquityBuild Finance, LLC ("EBF") as their collateral agent and servicer, expressly granting EBF the authority to issue payoff statements, collect loan payments and receive payoffs, and execute releases of the Investor Lender Mortgage.

1. Collateral Agency and Servicing Agreement

Prior to the Investor Lender Mortgage, on May 27, 2016, EBF and the Investor Lenders entered into a CASA. *See* BMO Exhibit 7, pp. 18-42. This document was not recorded. Under the CASA, the Investor Lenders appointed and designated EBF as the "Collateral Agent" on their behalf and as the "Servicer" of the Investor Lenders' Loan. *Id.* at p. 19 (opening paragraph). The parties recited that the Investor Lenders agreed to make the loan to the borrower, EB, "only upon the condition, among others, that the Borrower grant to the Collateral Agent for the benefit of the Lenders, as security for the Borrower's obligations to the Lenders and the Collateral Agent under or in respect of the Note and the Mortgage (as defined below), a protective lien on, and security interest in, the Collateral (as defined below)." *Id.* at p. 19 (Recital B). The Investor Lenders appointed EBF to act as their agent to collect all scheduled payments on the loan. *Id.* at p. 19 (Recital D).

Among other things, the Investor Lenders agreed as follows:

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[1] This list is representative of what most Investor Lender Investment Packages contain. As BMO obtained these documents from the database, it is possible that there are documents that exist that BMO was unable to locate.

> Section 2(a). The Lenders hereby authorize and direct the Collateral Agent to (a) enter into the Mortgage and the Note for and on behalf of and for the benefit of the Lenders in accordance with the terms hereof and thereof, (b) exercise such rights and powers under this Agreement, the Note or the Mortgage as the case may be, as are specifically granted or delegated to the Collateral Agent by the terms hereof and thereof, together with such other rights and powers as are reasonably incidental thereto or as are customarily and typically exercised by agents performing duties similar to the duties of the Collateral Agent hereunder and under the Collateral Documents, subject, however, to any express limitations set forth herein or in the Mortgage, and (c) perform the obligations of the Collateral Agent thereunder. The Lenders hereby agree to be bound by the provisions of the Mortgage and the Note.
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> Section 2(b). Each Lender does hereby irrevocably delegate to the Collateral Agent all of each such Lender's rights and powers under the Note and the Mortgage and agrees for the benefit of the Collateral Agent and the other Lenders not to exercise any right or power of such Lender under the Note or the Mortgage.
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> Section 3. IN THE ABSENCE OF WRITTEN INSTRUCTIONS FROM THE REQUIRED LENDERS, NEITHER THE COLLATERAL AGENT NOR THE SERVICER SHALL FORECLOSE UPON ANY LIEN WITH RESPECT TO ANY OF THE COLLATERAL OR TAKE ANY OTHER ACTION WITH RESPECT TO THE COLLATERAL OR ANY PART THEREOF.
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> Section 6(a). Unless otherwise excused as provided herein, both the Collateral Agent and the Servicer shall act on all written instructions received from the Required Lenders, with respect to any action to be taken or not to be taken in connection with this Agreement, the Mortgage or the Note, including, without limitation, actions to be taken in connection with an insolvency proceeding in respect of the Borrower; provided, however, that the Collateral Agent shall act only on written instructions from all Lenders with respect to the amendment or termination of the Mortgage, or, except as provided in the Mortgage, any Lien on property of the Borrower granted under the Mortgage.

Id. at pp. 21-23.

2. The Authorization Document

The Investor-Lenders also executed an untitled document, sometimes referenced as Exhibit A, ("Authorization Document"), which provided:

> EquityBuild Finance, LLC, as agent and trustee has been authorized by the above listed lenders to receive the payoff in its name and issue and execute a release of said mortgage, upon payment in full of any outstanding balance.

BMO Exhibit 7, p. 17.

E. BMO's Interest

BMO is a claimant holding a first position, perfected security interest in Property 2 as the mortgagee of a mortgage against Property 2 in the amount of $1,510,000, recorded with the Cook County Recorder of Deeds on February 23, 2017 as Document No. 170542901 ("BMO Mortgage"). *See* BMO Exhibit 2. On February 10, 2017, Jerome H. Cohen, on behalf of 4533-37 S. Calumet LLC, executed a promissory note to BMO for Property 2 in the principal amount of $1,510,000. *See* BMO Exhibit 9. Concurrently therewith, Jerome H. Cohen, on behalf of 4533-37 S. Calumet LLC, executed a construction loan agreement for Property 2 in the principal amount of $1,510,000. *See* BMO Exhibit 10. At closing, $628,000 of the principal was funded and the balance was retained in a construction escrow. *See* BMO Exhibit 8. The principal amount of the loan was increased as construction draws were paid and the $274,800 balance that remained in the escrow account after the final draw was paid was turned over to EB on August 10, 2018. *See* BMO Exhibit 11.

F. Payoff and Release of Investor Lender Mortgage

Prior to closing, Primary Title received a payoff statement for the Investor Lender Mortgage so that BMO would have a first position secured interest in Property 2. *See* BMO Exhibit 3. In accordance with the payoff statement, Primary Title remitted $584,031.06 to EBF to payoff the Investor Lender Mortgage. *See* BMO Exhibits 3, 8. After closing, a release was executed, but never recorded. *See* BMO Exhibit 4. The unrecorded release ("Investor Lender Release") was signed by Shaun Cohen for EBF, as agent for the Investor Lenders on April 4, 2017. *See id*. The

Investor Lenders authorized EBF to release the mortgage pursuant to the Authorization Document. *See* BMO Exhibit 7, p. 17.

F. Receivership

On October 28, 2024, the Receiver filed his Submission on Group 7 Claims. Dkt. 1722. As to Property 2, the Receiver recommends that the individual investor lender claimants have priority over BMO. *Id*. For the foregoing reasons, BMO disagrees with the Receiver's priority recommendation and proposed distribution.

ARGUMENT

I. BMO is Entitled to Priority Over Other Claimants.

BMO is entitled to priority over other claimants because it holds a first position, perfected security interest in Property 2. Determination of priority between parties' respective security interests is a question of law. *Travelers Ins. Co. v. First Nat'l Bank*, 250 Ill. App. 3d 641, 644-45 (1st Dist. 1993). General priority rules provide that: (1) the first secured party who files or perfects has priority; (2) a perfected security interest has priority over an unperfected one; and (3) if both security interests are unperfected, the first to attach has priority. *First Bank v. Unique Marble and Granite Corp.*, 406 Ill. App. 3d 701, 708 (2010). A lien upon the property is created once a mortgage is recorded. 735 ILCS 5/15-1301.

When considering the priority of mortgages, the governing rule states that mortgages become effective upon being recorded. *Firstmark Standard Life Ins. Co. v. Superior Bank FSB*, 271 Ill. App. 3d 435, 439 (1st Dist. 1995). This longstanding rule, which was codified in Illinois' Conveyances Act, gives rise to a presumption that the first mortgage recorded has priority. *Id*., citing 765 ILCS 5/30. However, under the Illinois Mortgage Act (the "Act"), a pre-existing interest is extinguished upon payment and delivery of a valid release. *See SEC v. EquityBuild, Inc.,* 101

F.4th 526, 532 (7th Cir. 2024); *see also* 765 ILCS 905/2. The Act does not require a release to be recorded to be valid. 765 ILCS 905/2.

Here, BMO recorded its mortgage secured by Property 2 on February 23, 2017 with the Cook County Recorder of Deeds. *See* BMO Exhibit 2. BMO's mortgage was never released and remains of record. Accordingly, BMO has a perfected security interest in Property 2. By contrast, Investor Lenders extinguished their secured interest when the balance was paid and the Investor Lender Release was signed by Shaun Cohen for EBF, as agent for the Investor Lenders on April 4, 2017. Therefore, BMO's secured interest in Property 2 takes priority over Investor Lender's unsecured interest.

A. The Investor Lenders' reported non-receipt of the payoff funds does not negate BMO's priority.

After BMO and Primary Title released the payoff funds to EBF (*see* BMO Exhibit 8), they did not have any obligation to ensure that EBF remitted the payoff funds to the Investor Lenders. Therefore, the release of the Investor Lender's mortgage was valid. Under Illinois law, once payment is made to a legal representative, the burden does not shift back to the payor to confirm that the legal representative remits those funds to its principal. *See Rockford Life Ins. Co. v. Rios,* 128 Ill. App. 2d 190, 195 (1970). In *Rockford*, the Illinois Appellate Court ordered the release of a mortgage after it determined that the note securing the mortgage had been properly paid to the mortgagee's authorized agent. *Id.* The written service agreement conferred the requisite authority upon the agent because the servicing agreement revealed the intention of the parties that the servicing agent was not only authorized but also required to collect and receive all payments on the mortgage. *Id.* at 193-94. The court concluded that having paid the authorized agent, "the payor [was] not bound to inquire into the application of such payment. The default of such agent is the responsibility of the principal." *Id.* at 195.

Here, just as the servicing agreement in *Rockford* conferred the requisite authority to the servicing agent to collect and receive all payments on the mortgage, the Investor Lenders expressly authorized EBF to act as their agent to "issue payoff demands" and "demand, receive and collect all Loan payments." BMO Exhibit 7, p. 26, ¶ 9(a). The Investor Lenders empowered EBF to act as the collateral agent and servicer of their loan for which they must bear the responsibility for their agent's wrongful conduct. Because payment was made to an authorized agent, BMO was not bound to inquire into the application of such payment.

The Illinois Fiduciary Obligations Act ("IFOA") offers similar protection in these circumstances. *See* 760 ILCS 65. The purpose of the IFOA is "to facilitate the fiduciary's performance of his responsibilities by limiting the liability of those who deal with him." *Praither v. Northbrook Bank & Tr. Co.,* 2021 IL App (1st) 201192, ¶ 27 (citations omitted). When a party honestly deals with another knowing him to be a fiduciary, the honest party is relieved of the duty to ensure that the funds are properly applied because it is the principal who bears the burden to employ honest fiduciaries. *Id.* Conversely, liability only is imposed when the party **has actual knowledge** the conduct constitutes a breach of fiduciary obligation or there is bad faith. *Cnty. of Macon v. Edgcomb*, 274 Ill. App. 3d 432, 435 (4th Dist. 1995). "An example of bad faith is where the taker suspects that the fiduciary is acting improperly and deliberately refrains from investigating in order that he may avoid knowledge that the fiduciary is acting improperly." *Id.* However, "mere suspicious circumstances are not enough to require a creditor to inquire about the fiduciary's actions." *Hosselton v. K's Merchandise Mart*, 247 Ill. App. 3d 808, 810 (1993). Here, no facts indicate that BMO had reason to suspect that EBF was acting improperly or had reason to know EBF was breaching its fiduciary obligations.

The IFOA broadly defines "fiduciary" to include an agent, which EBF undoubtedly was on behalf of the Investor Lenders. *See* 760 ILCS 65/1(1) (including "agent" as a "fiduciary" within the meaning of IFOA). While it is true that the CASA indicates "neither the Collateral Agent nor the Servicer shall have . . . a fiduciary relationship with any Lender," such an advance waiver of fiduciary duties is disfavored by Illinois courts. *See Labovitz v. Dolan*, 189 Ill. App. 3d 403 (1st Dist. 1989) ("Defendants cite no authority, and we find none, for the proposition that there can be an *a priori* waiver of fiduciary duties in a partnership—be it general or limited."). In a similar vein, fiduciary relationships are created by the conduct of the parties, not the labels assigned. *See, e.g., McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶ 69. Specific conduct can demonstrate, by inference, the existence of an agency relationship despite contractual evidence to the contrary. *Id*. As discussed in Section B below, an agency relationship, and thus a fiduciary relationship, existed between EBF and the Investor Lenders. Therefore, the IFOA applies to protect BMO's payment of the loan proceeds to EBF.

This conclusion is also consistent with the established precedent that "[w]here one of two innocent persons must suffer by reason of the fraud or wrong conduct of another, the burden must fall upon him who put it in the power of the wrongdoer to commit the fraud or do the wrong." *M&T Bank v. Mallinckrodt*, 2015 IL App (2d) 141233, ¶ 52, citing *Connor v. Wahl*, 330 Ill. 136, 146, 161 N.E. 306 (1928). Because the Investor Lenders put EBF in the power to commit the fraud, the burden is theirs to bear. Accordingly, the Investor Lenders are estopped from challenging the validity of the mortgage release.

Ultimately, it is Investor Lenders who must bear the burden of EBF's fraud because they expressly authorized EBF to act as their agent. It would be contrary to established law to shift this

burden onto BMO by stripping them of their first priority lien. Therefore, BMO is entitled to retain its first priority lien of Property 2.

B. EBF had express authority to issue a payoff statement, collect the payoff amount, and release Investor-Lender mortgage, which binds the Investor-Lenders to its acts.

The Investor Lenders are bound by EBF's actions because they authorized their agent EBF to issue payoff statements, collect payoff amounts, and release mortgages. A principal is bound not only for the precise act which he expressly authorized the agent to do, but also for whatever belongs to the doing of it or is necessary to its performance. *See Advance Mortg. Corp. v. Concordia Mut. Life Ass'n*, 135 Ill. App. 3d 477, 481-82 (1985) (noting that a "Purchase and Servicing Agreement" that expressly authorized a servicing agent "to cause" a mortgaged premise to be insured and taxes levied, gave the agent authority to pay for insurance premiums and taxes from its own funds when the agreement only required those funds be paid either by the mortgagor or by the investor).

A principal may be bound by his agent's actions where the principal actually authorizes his agent to act, where the agent has apparent authority, and where the agent exercises an inherent power stemming from the agency relationship. *Advance Mortg. Corp.,* 135 Ill. App. 3d at 481. Implied authority is "'actual authority circumstantially proved' and is regarded as authority implied from the facts and circumstances." *Granite Props. L.P. v. Granite Inv. Co*., 220 Ill. App. 3d 711, 714 (1991), quoting *Devers v. Prudential Property & Casualty Insurance Co*., 86 Ill. App. 3d 542, 546 (1980).

Whether an agency relationship exists and the scope of the purported agent's authority are questions of fact. *Amcore Bank, N.A. v. Hahnaman-Albrecht, Inc*., 326 Ill. App. 3d 126, 135 (2001). Circumstantial evidence may be used to establish the existence and extent of an agent's authority.

Wadden v. Woodridge, 193 Ill. App. 3d 231, 238-39 (1990). Only the alleged principal's words and conduct, not those of the alleged agent, establish the agent's authority, whether actual or apparent. *Zahl v. Krupa*, 365 Ill. App. 3d 653, 661 (2006); *First Am. Title Ins. Co. v. TCF Bank, F.A.,* 286 Ill. App. 3d 268, 274 (1997). The party alleging an agency relationship must prove it by a preponderance of the evidence. *Granite Props. L.P. v. Granite Inv. Co*., 220 Ill. App. 3d 711, 714 (1991); *Hofner v. Glenn Ingram & Co*., 140 Ill. App. 3d 874, 881 (1985).

An agency is a consensual relationship in which a principal has the right to control an agent's conduct and an agent has the power to affect a principal's legal relations. *Sperl v. C.H. Robinson Worldwide, Inc*., 408 Ill. App. 3d 1051, 1057 (2011). Express authority in the form of a written contract creates an agency relationship. *See Advance Mortg. Corp*., 135 Ill. App. 3d at 481-82 (noting that only the scope of an agency relationship was at issue when a written servicing agreement existed that established plaintiff was the mortgage servicing agent for the defendant); *see also Rockford Life Ins. Co. v. Rios*, 128 Ill. App. 2d 190, 193 (1970) ("In our view, the written servicing agreement confers the requisite authority…").

Here, the CASA expressly appoints EBF as the Investor Lenders' agent. The CASA states that "[t]he Lenders . . . desire to retain EBF as the loan servicer to act as their agent to employ commercially reasonable and prudent practices to collect all scheduled payments on the Loan, and to protect to the best of the Servicer's ability, the security for the Loan," BMO Exhibit 7, p. 19 (Recital D), thus evidencing the agency and fiduciary relationship between the Investor Lenders and EBF. Under the CASA, the Investor Lenders also limited EBF's discretion and established their control of EBF where, for example, they required EBF to receive instructions before taking action that affected the collateral and to terminate the mortgage. BMO Exhibit 7, p. 22. The CASA shows that the Investor Lenders had the right to control EBF's conduct, and that EBF had the

authority to act on behalf of the Investor-Lenders and thereby affect the Investor-Lenders' legal relations.

Additionally, in the Authorization Document, the Investor Lenders acknowledged that EBF served as their agent and trustee, authorizing EBF to issue payoff statements, collect payoff funds, and release the mortgages. *See* BMO Exhibit 7, p. 17. Consequently, when EBF furnished the payoff statement, collected the payoff funds and released the Investor Lender Mortgage, it acted squarely within the scope of its agency relationship with the Investor Lenders. Thus, the Investor Lenders are bound by EBF's issuance of the payoff statement, the collection of the payoff funds, and the execution of the release.

However, even if the Court concludes that EBF's actions went beyond the authority granted by Investor Lenders, Investor Lenders are still bound by EBF's actions. BMO and Primary Title had no knowledge of the CASA. At the time of executing the BMO Mortgage, the existence of the CASA was not disclosed to BMO or Primary Title, and it was not recorded. Consequently, BMO and Primary Title had no reason to know that EBF may be exceeding its authority. When an agent acts on behalf of his principal, he binds the principal even if the agent exceeds the principal's instructions. *See Hartmann v. Prudential Ins. Co. of Am.,* 9 F.3d 1207, 1210 (7th Cir. 1993) ("[the agent] might be a collection agent and resort to methods that his principal would not have authorized and may even have forbidden; nevertheless the principal is bound."). Therefore, Investor Lenders are the ones who must bear the burden and be bound by their agent's actions.

C. Any fraud in the payoff statement or the release does not defeat BMO's priority because BMO and Primary Title reasonably relied upon the payoff statement and release.

Despite any assertion that EBF misrepresented the payoff amount within the payoff statement that it was authorized to issue, BMO and Primary Title reasonably relied upon the payoff

statement to release BMO's loan proceeds to EBF. A refinancing lender's reasonable reliance upon a loan payoff statement, which is ultimately determined to be incorrect or fraudulent, and payment pursuant to that payoff statement, allows that lender to assert a priority position over the prior mortgagee. *See generally, M&T Bank v. Mallinckrodt*, 2015 IL App (2d) 141233. This follows the long established principle that a party must bear responsibility for the fraudulent acts of its agent, as discussed above. *See also Letsos v. Century 21 - New West Realty*, 285 Ill. App. 3d 1056, 1069 (1996); *National Acceptance Co. v. Coal Producers Association, Inc.,* 604 F.2d 540, 543 (7th Cir. 1979), quoting Restatement of the Law of Agency, Second, § 261 (1958).

In *Mallinckrodt,* suit was brought involving a lien priority dispute in mortgage foreclosure proceedings on a residential property. *Mallinckrodt*, 2015 IL App (2d) 141233 at ¶1. A title company had disbursed refinancing loan proceeds in reliance on a payoff statement that ultimately was determined to be fraudulent. *Id.* at ¶8. Based upon that reliance, the trial court entered partial summary judgment of priority in favor of the refinancing lender. *Id.* at ¶19. On appeal, the court recognized the established principle that "[w]here one of two innocent persons must suffer by reason of the fraud or wrong conduct of another, the burden must fall upon him who put it in the power of the wrongdoer to commit the fraud or do the wrong." *Id.* at ¶52, quoting *Connor v. Wahl*, 330 Ill. 136, 146, 161 N.E. 306 (1928). The key inquiry was whether the refinancing lender's reliance on the mortgagor's payoff statement was reasonable. *Id.* Ultimately, the court determined that there was genuine issue of material fact as to whether the assignee of the second mortgage and its closing agent reasonably relied on the mortgagor's payoff statement for the first mortgage on the property at the time of closing on the second mortgage, even though the payoff statement was later proven to be fraudulent, by a third party, and did not actually pay off the first mortgage. *Id.*

Here, there is no question of material fact whether BMO and Primary Title reasonably relied on the payoff statement. The facts here are distinguishable from *Mallinckrodt.*

First, EBF issued the payoff statement. *See* BMO Exhibit 3. EBF was identified in the recorded mortgage as the Investor Lenders' contact and the likely servicer of the Investor Lender loans, and thus the entity that would furnish the payoff statements. Further, the CASA and Authorization Document, although not provided to BMO or Primary Title when the refinance closed, confirm EBF's express authority to issue payoff statements and collect all payments on the Investor Lender loans. *See* BMO Exhibit 7, p. 26, ¶9(a) ("EBF shall . . .issue payoff demands, . . . [and] demand, receive and collect all Loan payments"); and *see* BMO Exhibit 7, p. 17 ("[EBF], as agent and trustee has been authorized by the above listed lenders to receive the payoff in its name and issue and execute a release of said mortgage, upon payment in full of any outstanding balance."). Given this, it was reasonable to conclude that EBF would furnish the Payoff Statements on behalf of the Investor-Lenders and receive the funds that BMO provided to pay off the Investor Lenders' loans.

Second, BMO and Primary Title had no basis for which they would have questioned EBF's authority in issuing the payoff statement or requested proof of EBF's authority. However, even if BMO and Primary Title had requested proof of authority, EBF would have produced the CASA and the Authorization Document, confirming EBF's authority. Based on these documents, it would not have been reasonable to infer that EBF did not have proper authority.

> Inquiry notice describes the situation where the transferee has been made aware of facts or circumstances from which the existence or possibility of a prior claim might reasonably be inferred. If so, the purchaser then has a duty to verify or dispel the inference through further inquiry. If he fails to make inquiry, he is nonetheless chargeable with knowledge of facts that a diligent inquiry would have disclosed, the same as if he had acquired actual knowledge of those facts.

Peoples Nat'l Bank, N.A. v. Banterra Bank, 719 F.3d 608, 612 (7th Cir. 2013), quoting *In re Shara Manning Properties, Inc.,* 475 B.R. 898, 906 (Bankr. C.D.Ill. 2010).

Third, EBF had express authority to issue and execute a release of the Investor Lenders' mortgage. While EBF had authority to execute the release, Investor Lenders may argue that suspicion should have been raised when the release identified EB as the releaser, not EBF. That, however, is not sufficient enough to undermine reliance evidencing fraud, but rather evidence of a clerical error. It cannot be disputed that EBF, being Investor Lender's expressly authorized agent, intended to release the mortgage. If the mortgage was not going to be released, the title company would not have issued a title insurance policy, BMO would not have closed, and EBF would not have accepted the BMO loan proceeds. It is fundamental that only the mortgagee or its agent, not the mortgagor, can execute an effective release of a mortgage. Thus, it is frivolous to assert that EB, the mortgagor, intended to release the mortgage. Accordingly, the error would have been corrected if discovered.

To the extent the Investor Lenders argue that the error renders the release ineffective, BMO would still be entitled to a valid release under the Illinois Mortgage Act ("IMA"). The IMA states "every mortgagee of real property, his or her assignee of record, or other legal representative, having received full satisfaction and payment of all such sum or sums of money as are really due to him or her . . . shall make, execute and deliver to the mortgagor . . . an instrument in writing releasing such mortgage . . . or shall deliver that release to the recorder or registrar for recording or registering." 765 ILCS 905/2. The IMA further requires that a court order the issuance and delivery of a release when a prior mortgagee fails to deliver a release within 30 days after the payment of the debt secured by such prior mortgage. *See* 765 ILCS 905/4 ("Upon a finding for the party aggrieved, the court shall order the mortgagee . . . to make, execute, and deliver the release

as provided in Section 2 of [the IMA].") Finally, the IMA further confirms that "introduction of a loan payment book or receipt which indicates that the obligation has been paid shall be sufficient evidence to raise a presumption that the obligation has been paid." *Id.* The IMA does not require anything further from the "party aggrieved."

Here, having met the requirements under the IMA—by issuing payment of the amounts due under the prior liens to the Investor Lenders' agent authorized (actually and apparently) to receive those payments—BMO is entitled to valid releases under the IMA. *See Franz v. Calaco Dev. Corp.,* 352 Ill. App. 3d 1129, 1150-1152 (2d Dist. 2004) (recognizing "the [IMA] unambiguously requires a mortgagee to release his mortgage upon receiving full payment under the mortgage" and ordering plaintiff to "execute and deliver a release of the mortgage as required by section 2 of the [IMA]."); *In re Estate of Schroeder*, 2022 IL App (5th) 210163-U (ordering bank to execute and deliver a release pursuant to Section 2 of the IMA). Accordingly, having satisfied its obligations under the IMA, BMO is entitled to a valid release.

D. BMO's secured interest has priority over certain individual Group 7 claimants.

If the Court chooses to strip BMO of its first priority lien by concluding that the Investor Lender Mortgage has priority, BMO still retains a priority interest over certain individual Group 7 claimants. BMO has priority over the claimants discussed *infra*, and as such, the proceeds from the sale of Property 2 should first be used to pay off the BMO Mortgage.

1. Claimants who do not appear on the Investor Lender Mortgage do not have priority over BMO's secured interest.

BMO has priority over unsecure claimants not listed on the Investor Lender Mortgage. It is well-established that the holder of a perfected security interest has priority over the interests of unsecured creditors. *See White v. Funeral Fin. Sys*., 2022 IL App (1st) 201385-U, ¶ 31; *see also Prairie Prod. Credit Ass'n v. Bianucci*, 273 Ill. App. 3d 181, 185–86 (1995) ("When secured and

unsecured claims are brought in the bankruptcy proceeding, the secured claims are paid first."). While a mortgage creates a secured property interest, "[t]he mortgage instrument is merely a contract as between the immediate parties." *Resol. Tr. Corp. v. Holtzman*, 248 Ill. App. 3d 105, 111 (1993). Generally, third-parties do not have rights under a contract when they are not an immediate party. *See Wheeling Tr. & Sav. Bank v. Tremco Inc*., 153 Ill. App. 3d 136, 140 (1987) (holding that third parties only have enforcement rights in the narrow circumstance when parties intentionally enter into a contract for the direct benefit of the third party).

Here, BMO holds a superior interest over the Group 7 claimants not listed on the Investor Lender Mortgage because they are unsecured parties. The Receiver recommends that six claimants not listed on the Investor Lender Mortgage have priority over BMO – Amit Hammer; iPlanGroup Agent for Custodian FBO Laura Dirnberger Roth IRA; iPlanGroup Agency for Custodian FBO Charles Powell IRA; Michael C. Jacobs; Koates LLC; and Neil R. Martin. Dkt. 1772 at p. 4, Exhibit 1. However, these six claimants do not have a secured interest in Property 2, because the Investor Lender Mortgage only extends a secured interest to the parties of the agreement. Accordingly, the Receiver's recommendation that these unsecured claimants have priority over BMO's secured interest is a clear contradiction of established Illinois case law. Furthermore, the Receiver contends that the Investor Lender Mortgage was not valid because EBF executed the release, not the Investor Lenders. *See* Dkt. 1772 at p. 3. By making this conclusion, the Receiver declines to bind those who he considers not a party to an agreement to the terms of that agreement. Following this logic, it would be completely contradictory for the Receiver to then extend a secured interest to claimants that are not a party to the Investor Lender Mortgage. Rather than basing priority recommendations on contradictory logic, such determinations should be rooted in well-established law. Therefore, in accordance with established principles of Illinois law, BMO's

secured interest has priority over the unsecure claimants not listed on the Investor Lender Mortgage.

2. Vladimir Matviishin and Joshua Mora's claims have been fully satisfied and no further distribution from the proceeds of Property 2 is warranted.

BMO holds a priority position over Vladimir Matviishin – iPlanGroup Agent for Custodian FBO Vladimir Matviishin IRA ("Vladimir Matviishin") and iPlanGroup Agent for Custodian FBO Joshua Mora IRA Account #3300975's ("Joshua Mora") claims because their interest in Property 2 was fully satisfied. Consistent with the Receivers' recommendation that claims where a claimant's secured interest was paid off should be considered fully satisfied (Dkt. 1772 at p. 33), the Court should find that Vladimir Matviishin and Joshua Mora's claims are fully satisfied and that no further distribution is warranted from the proceeds of Property 2. On December 1, 2017, Vladimir Matviishin received a $51,000 pay down, bringing his principal investment in Property 2 to zero dollars. *See* BMO Exhibit 5. On May 2, 20218, Joshua Mora received a $57,000 pay down, bringing his principal investment in Property 2 to zero dollars. *See* BMO Exhibit 6, p. 1. Additionally, emails exchanged between EB employees confirm that Joshua Mora's $57,000 interest in Property 2 was fully bought out. *See id.* at pp. 12-16. Despite this, the Receiver failed to follow his own reasoning and conclude that these buyouts fully satisfied the claims. No further distribution for Vladimir Matviishin and Joshua Mora's claims are warranted from the proceeds of Property 2, because Vladimir Matviishin and Joshua Mora's interests in Property 2 were fully satisfied. Therefore, BMO takes priority over Vladimir Matviishin and Joshua Mora's fully satisfied claim.

3. Joshua Mora's claim should be disqualified.

If the Court declines to extinguish Joshua Mora's interest based on the buyout, Joshua Mora's claim should nonetheless be disqualified based on his association with promoter claimant, Christopher Mora. The Receiver recommended that the claim of Christopher Mora, Joshua Mora's brother, "be disqualified because [Christopher] Mora was an EquityBuild employee who actively participated in the marketing of the fraudulent scheme and in recruiting, retaining, and/or for providing false information to other claimants." Dkt. 1772 at p. 34. In support of this recommendation the Receiver cited *In re Hedged-Investments Associates*, which states "Where the claimant is an insider…, the party seeking subordination need only show some unfair conduct, and a degree of culpability, on the part of the insider." 380 F.3d 1292, 1301 (10th Cir. 2004). Given the familial relationship between Joshua and Christopher Mora, along with Joshua Mora's involvement in Property 2, it is reasonable to attribute Christopher Mora's insider culpability to Joshua Mora. Furthermore, as can be seen from the emails, Christopher Mora was using his inside information to help his brother and put him in a better position than the other investors. *See* Exhibit 6, pp. 2-11. These emails show that Christopher Mora was really the one controlling Joshua Mora's investment. *Id.* Therefore, Joshua Mora's claim in Property 2 should be disqualified based on his association with promoter claimant, Christopher Mora.

II. BMO is Entitled to Full Satisfaction of its Secured Lien.

The Receiver recommends that post-receivership interest, penalties, fees, and other such amounts be disallowed and any recovery limited to the principal. Equity—whether under the Court's equitable discretion or pursuant to the purported Ponzi scheme presumption—does not authorize the Court to limit BMO's recovery of the entirety of its secured interest in Property 2, because no other claimant has a superior secured interest in the property's sale proceeds.

A. Equity does not permit the Court to limit BMO's recovery of its secured interest.

Under Illinois law, BMO is entitled to complete recovery of its secured interest. When choosing to employ equitable power, the court must adhere to the fundamental principal that equity must follow the law. *Fed. Nat'l Mortg. Ass'n v. Altamirano*, 2020 IL App (2d) 190198, ¶ 18. The Receiver's position that the Court may override a secured mortgagee's rights in the name of equity violates such a principle. Applying the Receiver's recommendation would violate basic tenets of secured transactions law, along with notions of fairness and equity. Nonetheless, the Receiver cites to principles of equity to support the position that post-receivership interest, penalties, fees, and other such amounts be disallowed. The authorities relied upon, however, do not lead to such a conclusion.

1. The Court does not have authority to limit BMO's recovery of interest.

The Receiver argues that BMO is not entitled to recover post-receivership interest, explaining that "[a]s a general rule, in equity receiverships, interest on a debtor's obligations ceases to accrue at the inception of the proceeding." Dkt. 1772 at 24, *citing Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 163 (1946). *Vanston*, however, is unpersuasive because it was limited to a challenge to the potential recovery of interest on interest, which is not sought here. *Id.* at 162-63. Furthermore, "two major exceptions" to the general rule against post-receivership interest exist. *In re Fesco*, 996 F.2d 152, 155 (7th Cir 1993). Notably, one of those exceptions "allowing post-petition interest for secured creditors whose security is worth more than the sum of the principal and all interest due" is "codified at 11 U.S.C. § 506(b)" of the Bankruptcy Code. *Id.* at 156. Although *Vanston* "has never . . . been legislatively or judicially overruled," it has been "superseded in the respects that section 506(b) provides." *In re Urban Communicators PCS Ltd. P'ship*, 379 B.R. 232, 252-53 (Bankr. S.D.N.Y. 2007), rev'd on other grounds.

Section 506(b) states that "[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim," a secured claimant is allowed "interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose." 11 U.S.C. § 506(b). Section 506(b) is applicable here, with Local Rule 66.1 providing "the administration of estates by receivers or other officers shall be similar to that in bankruptcy cases." Thus, Section 506(b) is an appropriate consideration for this Court. Moreover, as the Seventh Circuit has recognized, "when a specific [Bankruptcy] Code section addresses an issue, a court may not employ its equitable powers to achieve a result not contemplated by the Code." *In re Fesco Plastics Corp*., 996 F.2d 152, 154 (7th Cir. 1993).

This is not the first instance where a court has explicitly considered whether the law permits a court to ignore or override state law entitlements, including the right to interest, in the name of equity in the context of a receivership. *In re Real Prop. Located at [Redacted] Jupiter Drive* concluded that courts do not have such broad authority. No. 2:05-CV-01013-DB, 2007 WL 7652383, 2007 U.S. Dist. LEXIS 65276 (D. Utah June 7, 2007); *see also SEC v. Madison Real Estate Grp.,* LLC, 647 F. Supp. 2d 1271 (D. Utah 2009) (holding that a receiver takes subject to all existing liens accruing under state law and refusing to apply principles of equity to put the interest of unsecured creditors over secured creditors).

Jupiter[2] conducted an in-depth analysis regarding the role of equity in the context of a receivership with specific regard to entitlement to interest.[3] *Jupiter* begins by acknowledging it is "well-established that a 'receiver appointed by a federal court takes [a] property subject to all liens, priorities or privileges existing or accruing under the laws of the State.'" *Id.* at *10, quoting *Marshall v. New York*, 254 U.S. 380, 385 (1920). *Jupiter* then notes that "[j]ust as the state law right of Lenders to the relative priority of their liens does not change because of the creation of a receivership, the general rule is that the right of the Lenders to receiver interest on the loans that are secured by those liens also is not affected. 'The appointment of a receiver of the property of the litigant by a court of equity . . . does not deprive a claim of any interest bearing rights it may have.'" *Id.* at *21 (quoting Clark on Receivers § 660 (1959)). Further, *Jupiter* recognizes that the "United States Constitution specifically states that contractual rights are not to be impaired" and "are not to be lightly disregarded." *Id.* at *26. Thus having "reviewed the cases and the treatises," *Jupiter* concludes "it appears that the applicable law is as follows: The institution of a receivership does not stop the running of interest contracted for by a secured party any more than it interferes with the priority afforded such a party by state law. A general call on the 'equitable' powers of the

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[2] The opinion in *Jupiter* is based on a report and recommendation drafted by a Special Master, appointed by the court to determine which investors were entitled to what portion of what remained in the investment pool. After conducting "a de novo review of the [Special Master's] Report and Recommendation and the objections to it," the court adopted the Special Master's report. (*See* In re Real Prop. Located at [Redacted] Jupiter Drive, No. 2:05-CV-01013-DB (D. Utah Sept. 4, 2007), "Order Adopting the First Report and Recommendation of the Special Master," Dkt. 272 at 1-2.) Given the court's adoption of the Special Master's report, BMO refers to the *Jupiter* opinion as coming from the court.

[3] Other district courts have favorably cited *Jupiter*'s discussion regarding the role of equity in the context of a receivership since its publication. *See SEC v. Detroit Mem'l Partners, LLC*, 2016 U.S. Dist. LEXIS 15444 (N.D. Ga. Nov. 8, 2016); *SEC v. Mgmt. Solutions*, 2013 U.S. Dist. LEXIS 21552 (D. Utah Feb. 15, 2013); *SEC v. Madison Real Estate Grp., LLC*, 647 F. Supp. 2d 1271 (D. Utah 2009).

court is insufficient to override clear state law entitlements." *Id.* at *23 (citing *Grubb v. FDIC*, 833 F.2d 222 (10th Cir. 1987) and Clark on Receivers § 660).

Following the analysis in *Jupiter*, the Court should dismiss the Receiver's position that BMO's rights as a secured creditor under Illinois Law should be dismissed in favor to equity. The recording of a mortgage creates a security interest in real estate for the payment of the underlying indebtedness. See 765 ILCS 5/11 ("Such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient mortgage in fee to secure the payment of the moneys therein specified."); *see also Ogle v. Koerner*, 140 Ill. 170, 179 (1892) ("A mortgage. . . vests in the party secured a lien upon the mortgaged premises" and "[b]y virtue of that lien the mortgagee is entitled to . . . the proceeds of the sale [of the property in foreclosure] applied to the payment of the debt secured."). BMO is entitled to the entirety of its secured debt specified in its loan documents, which expressly imposes interest. BMO is thus entitled to interest on its loan.

2. The Court does not have authority to limit BMO's recovery of other amounts specified in its mortgage, including fees.

Separately, and based on the authorities relied upon regarding post-receivership interest, the Receiver recommends that requests for late fees, penalties (pre-payment or otherwise), attorneys' fees, and all such other costs also be denied for all claimants. Dkt. 1772 at 27. Such authorities, however, do not discuss other amounts beyond post-receivership interest. *Jupiter*, on the other hand, does conduct such an analysis.

Jupiter recognizes that "'to the extent that one debt is secured and another is not there is manifestly an inequality of rights between the secured and unsecured creditors, which cannot be affected by the principal of equality of distribution.'" *Id.* at *11, *quoting Ticonic Nat'l Bank*, 303 U.S. at 411-12. This principle forms the basic right of a secured lender versus an unsecured claimant. To hold otherwise renders a security interest meaningless. *Jupiter* also referenced the

general rule that "[w]here there are claims of different rank or dignity and there are sufficient assets of the estate available to pay claims of a higher rank in full interest accruing during receivership, interest will be paid on such claims to the date of payment, even though what remains is insufficient to pay claims of a lower rank." *Id.* at *25, citing *Board of Comm'rs of Sweetwater County Wyo. v. Bernardin's quotation of Am. Iron & Steel Mfg. Co. v. Seaboard Air Line Railway,* 233 U.S. 261, 268 (1914). Further, where "[t]he facts are clear, the rights of the parties under the law certain, and the only real inequity is that [the defrauding party] was able to persuade [unsecured lenders] to give him money for his project without their demanding security . . . [t]he consequences may be harsh for the [unsecured lenders], but the law is clear. Equity has its limits." *Id.* at *27.

Given these authorities, the only recovery limitations imposed by *Jupiter* in the name of equity were fees as among the same class of secured creditors. Specifically, *Jupiter* found "it equitable that each secured creditor only be able to recover simple interest" notwithstanding "that some of the lenders [in the same secured class] are contractually entitled to additional penalties." *Id.* at *28. This conclusion supports the principle that secured lenders should recover all amounts to which they are contractually entitled, including all fees and other amounts, over unsecured claimants who have "manifestly [unequal] rights . . . which cannot be affected by the principal of equality of distribution." *Id.* at *11, quoting *Ticonic Nat'l Bank*, 303 U.S. at 411-12.

Consistent with *Jupiter's* conclusion, Section 506(b) also requires a secured claimant, such as BMO, to receive all amounts due under its loan agreement, up to the amount of its secured collateral. *See* 11 U.S.C. § 506(b); *see also In re Cella III*, LLC, 625 B.R. 19, 25–26 (Bankr. E.D. La. 2020) (holding secured creditors are secured and entitled to recover interest up to the value of the property); *In re Croatan Surf Club, LLC*, No. 11-00194-8-SWH, 2012 Bankr. LEXIS 2369, at *6 (Bankr. E.D.N.C. May 25, 2012) (holding same); *In re Broomall Printing Corp.,* 131 B.R. 32,

35–37 (Bankr. D. Md. 1991) (holding same); *Liberty Nat. Bank & Tr. Co. of Louisville v. George*, 70 B.R. 312, 313 (W.D. Ky. 1987) (holding same).

BMO has a first position secured interest in Property 2. Thus, the "general theme [that] seems to ground all the case law and the treatises on receiverships" that "equity can be relied upon as a basis for declining to make minute calculations of legal rights in the face of overriding complexity and a lack of certainty regarding the facts," does not apply here because BMO's rights are clear as a matter of law. *See Jupiter*, 2007 U.S. Dist. LEXIS 65276, at *26-27. Therefore, BMO is entitled to recover its entire secured interest—including principal, interest, and all amounts and fees as articulated in the loan agreement for Property 2.

B. The Receiver Has Not Met His Burden of Proving that the Ponzi Scheme Presumption Applies as to BMO's Loan.

The Receiver improperly invokes the Ponzi scheme presumption to trigger the "netting rule." *See In re Taneja*, 2012 Bankr. LEXIS 3554, *14 (Bankr. E.D. Va. July 30, 2012) ("A party seeking to raise a [Ponzi scheme] presumption has the burden of proving the predicate facts that give rise to the presumption."). Specifically, the Receiver asserts that the "netting rule" applies, under which "amounts transferred by the Ponzi scheme perpetrator to the investor are netted against the initial amounts invested by that individual." Dkt. 1772 at 28.

The Receiver bases this conclusion on two cases that purportedly support the notion that netting should apply without the Receiver having met his burden of proof. Dkt. 1772 at 28-29. These cases, however, are not instructive because both analyze whether netting was appropriate assuming proof and application of the applicable Uniform Fraudulent Transfer statute had already been established. *See Scholes v. Lehmann*, 56 F.3d 750, 757-58 (7th Cir. 1995) (analyzing whether netting was appropriate by applying predecessor statute to Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160, while also discussing analysis under current statute); *Donell v. Kowell*, 533

F.3d 762 (9th Cir. 2008) (analyzing netting while applying California's Uniform Fraudulent Transfer Act).

Rather, to establish the Ponzi scheme presumption, "the Receiver must prove that a Ponzi scheme existed." *SEC v. Mgmt. Solutions, Inc.*, 2013 U.S. Dist. LEXIS 120277, *26 (D. Utah Aug. 22, 2013). Accordingly, the Receiver "must prove by a preponderance of the evidence the *sine qua non* of a Ponzi scheme: that returns to earlier investors were paid by funds from later investors." *Id.* at *66. Notably, "[a]n effort to apply such a 'Ponzi presumption' in <u>all</u> securities fraud cases which have some Ponzi scheme characteristics is inappropriate." *Id.* at *70 (emphasis in original). "[P]roposed blanket finding[s]" that a Ponzi scheme existed in complex cases such as this where "it is difficult to characterize all of [the] transactions as Ponzi-related" may unfairly "penalize innocent action . . . not for Ponzi-related and inappropriate action on their part, if any, but for the [Cohens'] actions, not their own." *Id.* at *70-71. Accordingly, the "time, context, the nature of the specific transactions, and the knowledge of the parties" need "to be examined on an individual basis" before the Receiver has met his burden to establish the existence of a Ponzi scheme. *Id.* at *82. This receivership is complex and involves numerous properties, parties, and entities. Allowing the Receiver to summarily conclude that the Ponzi-scheme presumption applies without meeting his burden contradicts the purpose and requirements of the Ponzi presumption.

The Receiver has not proven by a preponderance of the evidence that BMO's transaction was Ponzi-related. Rather, the Receiver contends the "Court has repeatedly found that the Cohens engaged in [a] Ponzi scheme," referencing the Cohens' consent judgment and a handful of facts specific to properties unrelated to Group 7 or Property 2. *See* Dkt. 1772 at 10. This limited evidence is insufficient to meet his burden. While the Cohens' consent judgment is potentially sufficient to establish proof the Cohens engaged in some Ponzi activity, it does not remove the need for

"examin[ation] on an individual basis" as "to intervening objectors and others who may be subject to claw back," such as BMO. *Management Solutions*, 2013 U.S. Dist. LEXIS 120277 at *72. Similarly, evidence of Ponzi-like activity in relation to other transactions does not suffice. As the court in Management Solutions described:

> Burdensome as it may be, fairness demands individual examination. Due process does as well. Presumption is but a tool. It is not a shortcut or substitute for proof. In the finding of Ponzi schemes, it is applicable where appropriate and if not, then proof of inappropriate activity on the part of a target, not the mere affixing of a label by the Receiver, is required.

Id. at *82.

Thus, limiting distributions on Property 2 to the return of principal less any amounts already recovered from EB is premature given that the Receiver has not met his burden in establishing the Ponzi scheme presumption applies under the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160 *et seq*., to the reserves and distributions made to BMO in connection Property 2 to trigger the "netting rule."

CONCLUSION

For the aforementioned reasons, BMO's assigned mortgage interest in Property 2 is the first secured interest and therefore entitled to priority as a matter of law. EBF, the Investor-Lenders' authorized agent, executed the release that released Property 2 from the Investor Lender Mortgage. Following execution of the release, EBF issued a payoff statement, thus binding the Investor Lenders. Notwithstanding reports that EBF committed fraud, the Investor Lenders are bound by EBF's acts and estopped from challenging BMO's priority because EBF was acting as the Investor-Lenders' agent when it committed the fraud and because BMO and Primary Title reasonably relied upon the payoff statement. Therefore, BMO holds a first position, perfected security interest in Property 2.

Respectfully Submitted,

BMO BANK N.A. f/k/a BMO HARRIS BANK, N.A.

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2024 I caused BMO Harris Bank N.A.'s Position Statement to be electronically filed with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record, and emailed to the Receiver at equitybuildclaims@rdaplaw.net.

BMO BANK N.A. f/k/a BMO HARRIS BANK, N.A.

By: /s/ *Bradley S. Anderson*
One of its attorneys