

CURTIS J. TIMM, *et al.*,

Plaintiffs,

v.

**IMPAC MORTGAGE HOLDINGS,
INC., *et al.*,**

Defendant.

IN THE

CIRCUIT COURT

FOR BALTIMORE CITY

Case No. 24-C-11-008391

ORDER TO SEGREGATE FUNDS AND/OR STOCK

Defendant Impac Mortgage Holdings, Inc. (“Impac”) has proposed a restructuring arrangement that, if approved, will affect Impac’s Series B Preferred stock, Series C Preferred stock, and a promissory note (the “Restructuring”). The Restructuring is not part of the claims in this action. By letter dated August 15, 2022 (Paper No. 172), Impac proposed that the Court should require it to segregate certain funds and/or stock in the event that the Restructuring is approved because Plaintiffs Curtis J. Timm and Camac Fund LP (“Camac”) both have requested attorneys’ fees, expenses, and/or other awards that, if granted, would award portions of the amounts included in the Restructuring to them.

The Court conducted a conference off the record with counsel for all parties on August 19, 2022. At that conference, Plaintiff Timm objected to Impac’s proposed segregation of funds and/or stock in connection with the Restructuring. The Court directed Defendant Impac to provide a draft order to the Court and all parties on August 22, 2022, which it did. The Court then directed Plaintiffs to file either objections or consent to Impac’s request by August 24, 2022. Plaintiff Timm has filed Objections (not yet docketed), and Plaintiff Camac by email to the Court has indicated its consent. Defendant Timm has submitted a letter response to Plaintiff Timm’s objections that will be docketed.

The Restructuring is described in a preliminary S-4 registration statement and proxy solicitation Impac filed with the Securities & Exchange Commission on July 15, 2022, and amended on August 1, 2022 (SEC Commission File No. 333-266167). Impac proposes to make an exchange offer to holders of its Series B Preferred and Series C Preferred stock (“Exchange Offer”) and to solicit their consent to amendment of the respective Series B Preferred and Series C Preferred Articles Supplementary. In the Restructuring, Impac has proposed to offer, in exchange for each share of Series B Preferred stock, \$5 in cash (or fifty (50) shares of new Series D Preferred stock in lieu of cash if Impac determines that it is not legally able to pay cash near the closing time of the Exchange Offer), plus twenty (20) shares of Impac’s common stock. If the Exchange Offer is accepted and closes, then Impac intends to redeem promptly any and all untendered Series B Preferred stock pursuant to amended Articles Supplementary for the same consideration. If the Exchange Offer and subsequent redemption close, there will be no accrued or future dividends payable to holders of the Series B Preferred stock (other than the 2009 Dividend Amount, which has already been deposited in the Registry of the Court) and there will be no outstanding Series B Preferred or Series C Preferred stock. Impac has announced that it seeks to complete the Exchange Offer and provide notice of redemption of any remaining shares of Series B Preferred stock prior to October 31, 2022 as part of the Restructuring. This means the Restructuring, if approved, will likely close before the December 5, 2022 Final Hearing scheduled in this action.

Plaintiffs consider the amounts involved in the Restructuring, if it is approved, to be part of a common fund attributable to this action and therefore available for payment of any Plaintiffs’ awards and expenses. Both Plaintiffs have framed their requests for payment of

attorneys' fees, expenses, and other awards to include significant portions of the amounts involved in the Restructuring, if approved. It is therefore appropriate to require Defendant Impac to set aside a portion from the consideration to be paid to the Series B Preferred shareholders in the Exchange Offer and subsequent redemption.

The Court has considered and rejects Plaintiff Timm's objections to the relief requested by Defendant Impac. Plaintiff Timm objects generally to the Restructuring. The Court does not in any way adjudicate the legitimacy, necessity, or desirability of the Restructuring. The Court similarly does not endorse approval or disapproval of the Restructuring by any shareholder. Rather, the Court by this Order seeks only to preserve the practical ability to grant relief if the Restructuring is approved. The Court does not see any improper motivation in Defendant Impac's request or any conflict in Plaintiff Camac's consent to it. To the extent that any party's position influences the position any shareholder takes with respect to the Restructuring, that is part of the judgment each shareholder must make. The proceedings have been expedited because of the need to ensure that the mechanism for segregation of these funds and/or stock is in place before the Restructuring proceeds.

The Court recognizes that if both Plaintiffs' petitions for payment of attorneys' fees, expenses, and other awards were approved in full and if the Restructuring is approved, then the awards would amount to more than fifty percent of the amounts to be paid in the Restructuring. The Court determines that forty percent (and one third of any common stock) is an appropriate amount to set aside in consideration of the practical need to preserve the ability to provide final relief and the nature of the Plaintiffs' requests.

Accordingly, it is this 25th day of August, 2022, by the Circuit Court for Baltimore City, Part 26, hereby **ORDERED** that, if the Exchange Offer closes prior to December 5, 2022, then

within five (5) business days after such closing date, Defendant Impac shall deposit, in a manner compliant with all applicable securities laws, the following amounts to be held pending the finality of the Court's final resolution of all issues and final determination of the appropriate distribution at or after the Final Hearing in this action:

1. If Impac determines to pay cash consideration to the tendering Series B Preferred shareholders in the Exchange Offer and for redemption of any non-tendered shares, then Impac shall deposit forty percent (40%) or \$1,331,184.00 into the Registry of the Court.
2. If Impac determines to pay new Preferred D stock in lieu of a cash payment to the tendering Series B Preferred stockholders in the Exchange Offer and for redemption of any non-tendered shares, Impac shall, subject to compliance with applicable securities laws, cause forty percent (40%) of the Series D stock, represented to be 13,311,840 shares, to be held in the custody of a suitable third-party custodian or escrow holder, approved by Class Counsel.
3. In either event, Impac shall, subject to compliance with applicable securities laws, cause thirty-three and one-third percent (33 1/3%) of the common stock, represented to be 4,437,280 shares, to be held in the custody of a suitable third-party custodian or escrow holder, approved by Class Counsel.
4. Any costs associated with such deposits or escrows and subsequent distributions shall be borne by Impac.

It is further **ORDERED** that if, after the finality of the Court's final determination of the amounts, if any, awarded to Class Counsel, Camac, and/or Mr. Timm, there remains any excess cash, Preferred D stock, or common stock (as described in paragraphs 1, 2, and 3, above), such

excess shall be promptly distributed, in a manner that complies with all applicable securities laws, to the former record holders of Series B Preferred stock as of the close of business on the date that the Exchange Offer expired. Upon deposit to the registry or transfer to the custody of a third-party custodian or escrow holder, as Ordered in paragraphs 1, 2, and 3 above, Impac shall have no further right or obligation with respect to such funds and stock, except to pay the costs described in paragraph 4 and as necessary to effectuate the final determination of the Court.

It is further **ORDERED** that this Order is subject to modification as circumstances may require.

***Judge Fletcher-Hill's signature appears on
the original document in the court file.***

Judge Lawrence P. Fletcher-Hill