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6 IN THE UNITED STATES BANKRUPTCY COURT
7 FOR THE DISTRICT OF ARIZONA

8 In re

9 MORTGAGES LTD.,

10 Debtor.

Chapter 11

Case No. 2:08-bk-07465-RJH

11 **ML MANAGER LLC'S RESPONSE TO
ROBERT FURST'S MOTION**

12 **Hearing Date: November 18, 2009**

13 **Hearing Time: 1:30 p.m.**

14 ML Manager LLC hereby responds to Robert Furst's "Motion for Entry of Order
15 Requiring (A) Immediate Distribution of Five Monthly Interest Payments Received From
16 the Borrower of the 300 East Camelback Road Loan, (B) 17.5% Interest on all Withheld
17 Amounts, (C) Determination of the Amount of "Interest Rate Spread" Owed to ML
18 Manager and (D) Determination that ML Manager is a Fiduciary" (the "Furst Motion")
19 and requests that the Court deny the Furst Motion. ML Manager requests that the Court
20 deny the Furst Motion as it is not ripe and is premature and is based on a basic
21 misunderstanding of the facts.

22 Since taking over after June 15, 2009, the ML Manager has received several
23 payments from borrowers of 5 loans, including the 300 East Camelback Loan (Loan No.
24 794402). All of those payments have been deposited in the Fennemore Craig PC Trust
25 Account pursuant to the Court's Order. It is an IOLTA account required by the State Bar
26 of Arizona. As the Court will remember Mortgages Ltd. lost its license in the end of July.

1 ML Manager is not a licensed servicer nor was it ever contemplated to be under the Plan.
2 While ML Manager was looking for a new licensed servicing company the Arizona
3 Department of Financial Institutions agreed that it would be appropriate for the payments
4 of borrowers to be deposited into the attorney's trust account and held until a licensed
5 entity could be obtained to process the payments to the investors. The Court entered such
6 an order approving this arrangement.

7 ML Manager then interviewed several companies that could serve in this capacity.
8 Initially ML Manager selected Stewart Title to serve and started to negotiate an
9 appropriate contract. After months of negotiations and working with the legal department
10 at Stewart Title, the parties never reached a final agreement and ML Manager decided not
11 to pursue this licensed service company. It then opened negotiations with another licensed
12 servicer Canyon State Servicing Co., LLC ("Canyon State") and eventually entered into a
13 contract around the end of October 2009. Since that time ML Manager has been working
14 with Canyon State to set up the needed accounts and provide the requested original
15 documentation as well as the appropriate percentages and distribution amounts. Canyon
16 State does not want the money transferred to them until all the accounts and work have
17 been done. Fennemore Craig continues to hold the proceeds in its Trust Account and is
18 ready and prepared to wire the proceeds as soon as Canyon State indicates it is ready to
19 receive the proceeds. As a result no relief is needed based on the Furst Motion.

20 After the effective date of the Plan, a Loan LLC was set up on this loan — 300EC
21 Loan LLC. Almost 2/3 of the fractional interests of the total loan were transferred into the
22 new Loan LLC. There are 8 pass-through investors remaining in the loan and some may
23 have transferred their interests into the Loan LLC as well. Those transfers need to be
24 recorded and the records provided to the servicer and a new list of fractional interest
25 holders generated and provided to the servicer.

26 The proceeds held in the Fennemore Craig Trust Account are not held in an interest

1 bearing account, but pursuant to the Court's Order were placed in the firm's IOLTA
2 account. The funds are still there and have not been distributed. The funds have not been
3 used for Exit Financing payments. As a result the Furst Motion request is based on a
4 misunderstanding of the facts and the relief requested is inappropriate. There is no basis
5 for payment of interest of 17.5% to anyone, pass-throughs or the Loan LLC.

6 ML Manager has not yet determined or informed the 8 pass-through investors in
7 the loan what if any servicing costs will be assessed to the pass-throughs in that loan. No
8 decisions have been made. Thus any issues related to the interest spread or servicing costs
9 are not ripe and are premature. The Court has already indicated that ML Manager is
10 entitled to exercise its business judgment with regards to these types of issues. No
11 advisory decision should be made by this Court at this time on such an issue.

12 As for the remaining issues, any rulings on fiduciary duty are premature, not ripe
13 and not properly before the Court. Any such a ruling would be advisory. ML Manager has
14 never taken a position that it does not intend to or will not comply with the legal and
15 contractual obligations associated with its relationship with any investor. Further any
16 ruling about indemnity obligations of the pass-through investor to the Agent would be
17 premature and not ripe. While the Agency Agreement expressly includes an indemnity by
18 the investor of the Agent no circumstance has arisen that would make this issue ripe or
19 mature for resolution by the Court.

20 Wherefore, ML Manager LLC requests that the Court deny the Furst Motion.

21 Respectfully dated November 11, 2009.

22 FENNEMORE CRAIG, P.C.

23 By /s/ Cathy L. Reece
24 Cathy L. Reece
25 Attorneys for ML Manager LLC
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1 COPY of the foregoing emailed to:

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6 /s/ Susan Stanczak-Ingram

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