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DISTRICT OF ARIZONA

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) In Proceedings Under Chapter 11
MORTGAGES LTD.,) Case No. 2:08-bk-07465-RJH
an Arizona corporation,) **ROBERT FURST'S MOTION FOR**
Debtor.) **ENTRY OF ORDER CONFIRMING**
) **THAT (A) THE MORTGAGES LTD.**
) **401(K) PLAN IS NOT SUBJECT TO THE**
) **CHAPTER 11 PLAN OR THE EXIT**
) **FINANCING, AND (B) ML MANAGER**
) **LLC HAS NO DISCRETIONARY**
) **AUTHORITY OVER THE 401(K) PLAN**

Robert G. Furst files this Motion for Entry of Order that (A) the Mortgages Ltd. 401(k) Plan is Not Subject to the Chapter 11 Plan or the Exit Financing, and (B) ML Manager LLC Has No Discretionary Authority Over the 401(k) Plan. Robert G. Furst is a former employee of Mortgages Ltd. (the "Debtor"), and he is a participant in the Mortgages Ltd. 401(k) Plan (the "401(k) Plan").

The confirmed Chapter 11 Plan was authored by the Official Investors Committee ("OIC") and provides that the Chapter 11 Plan will be consummated with Exit Financing. The Chapter 11 Plan also provides that the Exit Financing will be paid off, not by the 401(k) Plan, but by "Investors" who acquired from the Debtor certain interests in "ML Loans" **originated by the Debtor**. Simply stated, according to the Chapter 11 Plan, the Exit Financing will be paid off by the "Investors" out of the cash proceeds from their "ML Loans" (not by the 401(k) Plan, which, by law, could not invest in "ML Loans" at all).

1 Now, however, Cathy Reece, counsel for ML Manager LLC, wants to re-write the Chapter 11
2 Plan (once again) so that she can **retroactively** utilize the assets of the 401(k) Plan (which is not even
3 mentioned in the Chapter 11 Plan) to pay off a portion of the Exit Financing, in a futile effort to
4 resuscitate the flawed Chapter 11 Plan. Fortunately, the facts and law are clearly and unambiguously
5 against her: The 401 (k) Plan is not subject to the Chapter 11 Plan or its Exit Financing because (1)
6 the Chapter 11 Plan expressly states that its consummation will be financed only by “Investors” who
7 acquired ML Loans **originated by the Debtor**; and (2) the 401(k) Plan owns loans which were
8 **originated by the 401(k) Plan**, not by the Debtor (i.e., the loans owned by the 401(k) Plan are not
9 “ML Loans”).

10 11 **I. Argument**

12 A significant portion of the Chapter 11 Plan is devoted to the management and administration
13 of the “ML Loans,” which, by definition, were **originated by the Debtor (Mortgages Ltd.)** and
14 thereafter transferred, in fractional interests, to the Investors in the ordinary course of the Debtor’s
15 business. Specifically, under the Chapter 11 Plan, these fractional interests in the “ML Notes” and
16 “ML Deeds of Trust” were required to be transferred by the “Investors” to newly-formed Loan LLCs,
17 so that 100% of each loan could be owned and administered by a limited liability company set up for
18 each such loan (except for those pass-through investors who elected to “opt out” of the Loan LLCs
19 and continue to hold their fractional interests as a tenant in common).

20 In order consummate the Plan, the Official Investors Committee obtained Exit Financing. The
21 Exit Financing was used to pay the outstanding Stratera Claims, the priority non-tax claims and the
22 allowed administrative claims. In addition, the Exit Financing has been used by ML Manager LLC
23 and the Liquidating Trust to provide working capital for the operations of the ML Manager LLC, the
24 Loan LLCs, the Reorganized Debtor and the Liquidating Trust. To secure the Exit Financing, all of
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1 the "ML Notes" owned by the various Loan LLCs were pledged to the exit financier, and the cash
2 proceeds from the "ML Notes" will be used to ultimately pay off the Exit Financing.

3 The Chapter 11 Plan carefully defines "ML Notes," "ML Deeds of Trust," "ML Loans" and
4 "Investors," so that it was absolutely clear that the Chapter 11 Plan provisions (including those
5 applicable to Exit Financing) apply only to "ML Loans" **originated by the Debtor** that were
6 subsequently sold to "Investors" by the Debtor. The relevant definitions, as set forth in the Chapter
7 11 Plan, are as follows:

- 9 1. "ML Notes" means "the promissory notes evidencing **loans from the Debtor to**
10 **third-party Borrowers.**" Paragraph 2.54 of the Chapter 11 Plan.
- 11 2. "ML Deeds of Trust" means "the deeds of trust and other security documents
12 securing the **ML Notes granted by third party Borrowers to the Debtor.**"
13 Paragraph 2.50 of the Chapter 11 Plan
- 14 3. "ML Loans" means "the loans evidenced by the ML Notes and ML Deeds of
15 Trust." Paragraph 2.52 of the Chapter 11 Plan.
- 16 4. "Investors" means "all Persons holding fractional or participating interests in the
17 ML Loans or in the MP Funds which hold fractional or participating interests in
18 the ML Loans, whether as a pass-through investor or an investor under the MP
19 Funds, excluding the Debtor." Paragraph 2.40 of the Chapter 11 Plan.
- 20 5. "Pass-Through Investors" means "the non-MP Funds Investors, other than the
21 Debtor, that hold a direct fractional or participating interest in the ML Loans
22 whether through Revolving Opportunity Loan Programs, Capital Opportunity
23 Loan programs, Annual Opportunity Loan Programs, Opportunity Plus Loan
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1 Programs, Performance Plus Loan Programs, or other similar programs established
2 by the Debtor. Paragraph 2.63 of the Chapter 11 Plan

3 From the outset, it was clear that these provisions did not apply to the Mortgages Ltd. 401(k)
4 Plan (the "401(k) Plan") because the 401(k) Plan invested in loans **originated by the 401(k) Plan,**
5 not ML Loans **originated by the Debtor.** Stated differently, the 401(k) Plan is not an "Investor"
6 within the meaning of the Chapter 11 Plan because it does not own "ML Notes" or "ML Loans."
7 Equally important, the Chapter 11 Plan does not even mention the 401(k) Plan at all in its 58-page
8 text.
9

10 What is extremely disappointing is that Cathy Reece, Esq., when she was soliciting support
11 for the confirmation of the Chapter 11 Plan, together with at least one OIC member, repeatedly
12 assured the plan participants and the plan trustees that (1) the 401(k) Plan would not be affected at all
13 by her Chapter 11 Plan, and (2) in particular, the 401(k) Plan would not be charged for any costs
14 incurred by "Investors" to consummate the Chapter 11 Plan. As Cathy Reece stated over and over
15 again, the 401(k) Plan was not an "Investor" owning "ML Notes" or "ML Loans" **originated by the**
16 **Debtor.** Similarly, after the Plan was confirmed, Cathy Reese, Esq. and at least one OIC member
17 repeated these statements over and over again.
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20 With regard to the management control of the loans owned by the 401(k) Plan, Cathy Reece,
21 Esq. has consistently (and correctly) stated that the Trustees of the 401(k) Plan would continue to
22 hold and manage the pension assets totally independent of ML Manager LLC, the Liquidating Trust
23 and the Reorganized Debtor (as required by ERISA). In fact, Cathy Reece, Esq. even added a
24 footnote to the Disclosure Statement expressly stating that "[t]he Loans in which the Mortgages Ltd.
25 401(k) Plan holds the ownership interest will not be transferred to Loan LLCs. Instead the trustee(s)
26 of the Mortgages Ltd. 401(k) Plan shall make their own decisions and decide who will service their
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1 Loans.” Now, however, Cathy Reece wants to improperly seize discretionary control of the plan
2 assets from the plan trustees and bestow those fiduciary responsibilities on the ML Manager Board,
3 which has conflicting interests with the 401(k) Plan, to the detriment of the plan participants.
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5 The timing of Cathy Reece’s maneuverings is particularly suspicious. Within the past few
6 weeks, ML Manager LLC has notified the “Investors” that it is almost out of money because the
7 accounting projections upon which the Chapter 11 Plan was based have grossly overstated revenues
8 (i.e., there are virtually no revenues) and grossly understated expenses. ML Manager LLC is now
9 seeking an additional \$6 million in Exit Financing just to keep the company alive until the end of the
10 year, without any concrete business plan for survival beyond 2010.
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12 In this factual setting, Cathy Reece, Esq. has unilaterally decided that, in order to try to
13 salvage her failed Chapter 11 Plan, she will re-construe its provisions so that ML Manager LLC can
14 gain access to the legally-protected assets of the 401(k) Plan. Unfortunately, there is a striking
15 similarity between (1) Cathy Reece’s actions when confronted with the reality that her Chapter 11
16 Plan will soon collapse under the weight of the Exit Financing, and (2) the misdeeds of Scott Coles
17 when he realized that his company was in dire straits. Cathy Reece, Esq. has justifiably criticized
18 Scott Coles for wrongfully taking funds from one loan account to put out a “fire” in another account.
19 Yet, now put in an identical situation, she appears willing to do the same thing. There is no
20 justification for her actions.
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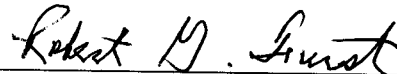
22 **Throughout this Motion, the undersigned has directed his comments at Cathy Reece,**
23 **Esq., not the ML Manager Board. That is because Cathy Reece, Esq. does not speak for the**
24 **ML Manager Board and has not accurately presented their views to the Court in the past. If**
25 **given the opportunity, a majority of the original board members will testify that, since the**
26 **confirmation of the Chapter 11 Plan, they have understood and believed that the 401(k) Plan**
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1 was not subject to the Chapter 11 Plan and Exit Financing in any respect. To establish that
2 point, the undersigned requests a full evidentiary hearing on this Motion, because he intends to
3 call the original five board members as witnesses.

4 **II. Conclusion**

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6 In conclusion, the undersigned requests that the Court issue an order confirming that (a) the
7 401 (k) Plan is not subject to the Chapter 11 Plan or the Exit Financing, and (b) ML Manager LLC
8 has no discretionary authority over the 401(k) Plan. An evidentiary hearing is requested in which the
9 original members of the ML Manager Board be required to attend.

10 DATED: March 24, 2010

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