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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:
MORTGAGES, Ltd.
Debtor.

Chapter 11

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

**RESPONSE AND LIMITED
OBJECTION TO PROPOSED
STIPULATED ORDER APPROVING
THE RELEASE OF MONEY FROM
CHATEAUX SALE ESCROW**

KCG, Inc. dba Rew Materials ("KCG") is a creditor in this case, which held a mechanic's and materialmen's lien on Chateaux on Central (the "Property"), which was sold pursuant to this Court's Order enter on February 25, 2010 (the "Sale Order"). The Sale Order, among other things, directed that the sum of \$3,414,586.20 be escrowed (the "Escrow") for the benefit of what is referred to as the Mechanics Lien Claimants, of which KCG is one. The amount placed in the Escrow was sufficient to pay the Mechanics Lien Claimants in full, if their claims were ultimately allowed in the amounts asserted. The Sale Order provided that funds from the Escrow may be distributed only upon further order of the Court.

On October 7, 2008, KCG filed its Proof of Claim in the amount of not less than \$90,330.42, which is listed on the claims register as Claim No. 183-1. KCG recorded its Arizona Notice to Claim of Materialman's Lien on June 6, 2008 in the Office of the Recorder, Maricopa County, Arizona as Document No. 2008-0501290.

On September 11, 2008, Gold Creek, Inc. ("Gold Creek"), the general contractor

1 for the construction of the project on the Property, filed a Proof of Claim in the amount
2 of \$3,046,126.71, which is listed on the claims register as Claim No. 113-1 (the "Gold
3 Creek Proof of Claim"). The Gold Creek Proof of Claim included the claim of KCG
4 and the claims of other of the Mechanics Lien Claimants. The total claim amount
5 asserted by these other Mechanics Lien Claimants, as set forth in the Gold Creek Proof
6 of Claim, was \$932,484.14.

7 On June 11, 2010, ML Manager LLC lodged a proposed Stipulated Order
8 Approving the Release of Money from Chateaux Sale Escrow (the "Escrow Order").
9 The Notice accompanying the proposed Escrow Order states that "Notice of the lodging
10 of this Stipulated Order is being served upon the various Mechanics Lien Claimants . .
11 . so they can review and object to the Proposed Stipulated Order if they so choose." No
12 further information is given as to how or when any concerns regarding the Escrow
13 Order will be addressed.

14 While the Escrow Order is characterized as a "stipulated order," it appears that,
15 of the Mechanics Lien Claimants, only Gold Creek has agreed to the Escrow Order.
16 The Escrow Order describes a Settlement Agreement and Release (the "Gold Creek
17 Settlement Agreement"), which resolved "all of Gold Creek's and the Mechanics Lien
18 Claimants claims against the ML Parties." [Escrow Order, page 2, lines 16 – 17.] The
19 Escrow Order further provides that "any valid liens of Gold Creek and the other
20 Mechanics Lien Claimants shall attach solely to the Mechanic Lien Escrow, and all
21 other claims by Gold Creek and the Mechanics Lien Claimants shall be released and
22 discharged." [Escrow Order, page 3, lines 4 – 6.]

23 KCG is not a party to this Gold Creek Settlement Agreement and has not
24 otherwise agreed to the resolution of any claims that it might have against the ML
25 Parties. Indeed, KCG has not even been provided with a copy of the Gold Creek
26 Settlement Agreement. Therefore, it is unclear how either the ML Parties or Gold
27 Creek are in a position to resolve the claims, if any, which KCG has against the ML
28 Parties.

1 Under the Gold Creek Settlement Agreement, it appears that the ML Parties are
2 releasing any claims to what is referred to as the Mechanic Lien Escrow, which will be
3 preserved and retained for the benefit of the Mechanics Lien Claimants, including
4 certain claims of Mechanics Lien Claimants purchased by the Liquidating Trustee. The
5 amount of the Mechanics Lien Escrow is \$1,600,000.00, of which \$77,000.00 is
6 reserved for the sole benefit of Gold Creek's Counsel. The balance of the Escrow, in the
7 original amount of \$3,414,586.20, will be released to the ML Parties.

8 From the Mechanics Lien Escrow: (i) \$509,225.30 is to be disbursed to Gold
9 Creek upon execution and delivery of a Lien Release; (ii) \$77,000.00 is to be paid to the
10 attorney's for Gold Creek; and (iii) \$42,725.38 will be paid the Liquidating Trustee
11 upon delivery of Lien Releases relating to the claims of Mechanics Lien Claimants
12 purchased the Liquidating Trustee. The balance after these disbursements remaining for
13 the other Mechanic's Lien Claimants will be \$971,049.32, plus any interest that has
14 accrued on the Mechanics Lien Escrow.

15 Pursuant to paragraph 8 of the Escrow Order, it appears that Gold Creek will
16 receive additional interim distributions from the Mechanics Lien Escrow, as the claims
17 of individual Mechanics Lien Claimants are resolved. The amounts of these interim
18 distributions are based on what is referred to a Mechanics Lien Holdback. [Escrow
19 Order, page 5, lines 19 – 25.] After all Mechanic's Lien Claimants have been paid,
20 Gold Creek will receive any amounts remaining in the Mechanics Lien Escrow.

21 The Escrow Order directs Gold Creek and the other Mechanics Liens Claimants
22 to "resolve, in good faith, through agreement, stipulation or binding arbitration/litigation
23 their respective lien rights to the proceeds in the Mechanics Lien Escrow, . . ."
24 [Escrow Order, page 4, lines 11 – 14.] Paragraph 10 of the Escrow Order provides that
25 this Court shall reserve jurisdiction regarding "disputes relating to: (i) the determination
26 of the validity or amount of the Mechanics Lien Claimants lien rights or claims, (ii) Gold
27 Creek's and the Mechanics Lien Claimants rights in and to the Mechanic Lien Escrow, .
28 . . ." [Escrow Order, page 6, lines 3 – 7.]

1 KCG objects to the proposed Escrow Order and requests clarification regarding
2 certain matters, including, without limitation:

3 1. KCG was not a party to the Gold Creek Settlement Agreement and KCG
4 has not agreed to waive or release any claims that it has against any party. Therefore,
5 the rights, claims, defenses and interests of KCG cannot be affected or impaired by way
6 of the Gold Creek Settlement Agreement or any order that may be entered as a result
7 thereof. Therefore, KCG objects to the Escrow Order to the extent it impairs any rights,
8 claims, defenses and interests of KCG.

9 2. KCG objects to the Escrow Order, subject to proof that the amount
10 retained in the Mechanics Lien Escrow is sufficient and adequate to ensure payment of
11 the full amount of KCG's claim in whatever amount allowed. As part of such proof, the
12 total amount of the claims of all remaining Mechanics Lien Claimants must be disclosed
13 and confirmed to be less than the amount retained in the Mechanics Lien Escrow. In
14 addition, KCG has no information regarding the amounts allocated for the Mechanics
15 Lien Holdback and objects to any interim distributions to Gold Creek until KCG's claim
16 has been resolved and paid in full. In addition, Gold Creek must indemnify KCG,
17 should there be any shortfall in the Mechanics Lien Escrow.

18 3. KCG requests clarification regarding the procedures available to resolve
19 claims to the Mechanics Lien Escrow. Under the proposed Escrow Order, it appears
20 that the ML Parties are releasing all interests in the Mechanics Lien Escrow. Therefore,
21 disputes regarding the entitlement of the Mechanics Lien Claimants to the Mechanics
22 Lien Escrow will involve exclusively non-debtor parties, with the result of the
23 resolution of any claim having no impact on any of the ML Parties or their estates.
24 Accordingly, KCG requests confirmation that jurisdiction of this Court over these
25 matters is appropriate (See Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984) and
26 that the Court is prepared to assume such jurisdiction and, if so, whether this Court is
27 the only court in which proceedings to resolve claims to the Mechanics Lien Escrow
28 may be brought. KCG reserves all rights regarding any potential jurisdictional issues.

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WHEREFORE, KCG requests the Court to:

- 1. Deny the request to enter the proposed Escrow Order;
- 2. Condition entry of the Escrow Order on the foregoing; and
- 3. Award other and further relief as the Court deems just and proper.

DATED: June 20, 2010

SHERMAN & HOWARD L.L.C.

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