

1 James J. Sienicki (#009294)
Steven Jerome (#018420)
2 Joshua Grabel (#018373)
Donald F. Ennis (#025986)
3 SNELL & WILMER L.L.P.
One Arizona Center
4 400 E. Van Buren
Phoenix, AZ 85004-2202
5 Telephone: (602) 382-6000
jsienicki@swlaw.com
6 sjerome@swlaw.com
jgrabel@swlaw.com
7 dfennis@swlaw.com

8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

11 In re

12 MORTGAGES LTD.,

14 Debtor

Chapter 11

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

SUN VALLEY MASONRY, INC.'S
REPLY TO GOLD CREEK INC.'S
RESPONSE, AND REQUEST FOR
HEARING, ON NOTICE OF LODGING
ORDER GRANTING STIPULATED
ORDER APPROVING THE RELEASE
OF MONEY FROM CHATEAUX SALE
ESCROW

Relates to Docket Entry: 2779

19
20 On January 29, 2010, ML Manager LLC (“ML Manager”) and ML Liquidating
21 Trust filed a joint motion (the “Sale Motion,” Docket Entry 2619) to sell the property
22 commonly known as Chateau on Central (“the Property”) free and clear of all liens and
23 encumbrances, with Gold Creek, Inc.’s (“Gold Creek”) disputed lien to attach to the net
24 proceeds from the sale, which were to be placed in escrow. More generally, the Motion
25 stated that “all lien interests [were] to attach to the net proceeds to the extent of such
26 liens.” Motion at 5:15. ML Manager and ML Liquidating Trust also filed that same day a
27 notice of a February 25, 2010 hearing on the Sale Motion (“Notice of Hearing,” Docket
28 Entry 2620). As reflected in the service lists included in each document, Sun Valley

1 Masonry, Inc. (“Sun Valley”), a subcontractor of Gold Creek on the Property, was not
2 served with either the Sale Motion or the Notice of Hearing.

3 Gold Creek filed a limited objection (Docket Entry 2654) to the Sale Motion, in
4 which it asserted that it was owed \$3,046,126.71 for work done on the property, and
5 stated that it did not object to the sale provided that \$3,424,586.20 of the net proceeds
6 were placed in escrow pending the resolution of the dispute over its claim and lien. Sun
7 Valley was not served with Gold Creek’s objection. ML Manager and ML Liquidating
8 Trust filed a reply (“Reply,” Docket Entry 2673) in which they agreed to set such sum
9 aside in escrow, noting that “[a]ll parties reserve their arguments and legal positions.”
10 Reply at 2:26-3:1.

11 Following a hearing on February 25, 2010, the Court entered an order that day
12 approving the Sale Motion.

13 On June 11, 2010, ML Manager lodged a proposed “Stipulated Order Approving
14 the Release of Money from Chateaux Sale Escrow” (the “Proposed Stipulated Order” or
15 “Order”) and filed the Notice of Lodging the Order that appears at Docket Entry 2779.
16 Despite not being served with the prior Sale Motion or Notice of Hearing, Sun Valley
17 Masonry was served by mail with the Proposed Stipulated Order.

18 Having been pulled into this proceeding at this stage despite not being given notice
19 of earlier proceedings, Sun Valley, out of an abundance of caution, filed a limited
20 objection (“Limited Objection,” Docket Entry 2780) to the Proposed Stipulated Order to
21 the extent that the Order could be misconstrued in any way to adversely affect Sun
22 Valley’s rights in its pending litigation against Gold Creek and its payment bond sureties.
23 To prevent the Order from being so misconstrued, Sun Valley respectfully requested that
24 the Order be modified to include a new Paragraph (12) that simply states as follows: “This
25 Order shall not be construed in any way to constitute a waiver of, or otherwise affect, the
26 claims, complaints, causes of action or rights of Sun Valley against Gold Creek or its
27 payment bond sureties, related to the Property.”

28 It would be difficult to imagine a more neutral or less controversial provision to

1 simply acknowledge the fact that despite having been served with the Proposed Stipulated
2 Order, nothing in the Order would affect Sun Valley’s ongoing legal dispute with Gold
3 Creek. Nevertheless, Gold Creek filed a response (“Response,” Docket Entry 2783) in
4 which it makes two contradictory arguments. First, Gold Creek inaccurately states that
5 “Sun Valley has no standing to insert itself into the parties’ settlement” because it has no
6 claim relating to the escrowed monies and it not a party to the settlement or the Stipulated
7 Order. Response at 1:20. In other words, this portion of Gold Creek’s Response is
8 consistent with Sun Valley’s contention that nothing in the Proposed Stipulated Order
9 should be deemed to affect Sun Valley or its rights in any way whatsoever. However,
10 later and inconsistently in the same Response, Gold Creek then urges that if someone
11 (logically, this would be Gold Creek itself) later argues that Sun Valley was somehow
12 affected by the Proposed Stipulated Order, “Sun Valley can then (in the appropriate
13 forum) argue how it feels the Stipulated Order should be properly construed.” Response
14 at 2:21-22. This inconsistently is troubling to Sun Valley (and should be troubling to this
15 Court) and points out the very reason Sun Valley filed its Limited Objection in the first
16 place. Fundamental notions of due process require notice and an opportunity to be heard.

17 As described above, Sun Valley has not “inserted itself” into the parties’
18 settlement. At some point between the time the Court approved the sale of the Property,
19 and the lodgment of the Proposed Stipulated Order, someone saw fit to add Sun Valley to
20 the service list to give it notice that the Order had been lodged for entry by the Court. As
21 a party to pending state court litigation with Gold Creek, Sun Valley acted prudently in
22 seeking the insertion into the Order of specific additional language to protect itself.
23 Despite the hyperbole in the Response, inclusion of this language in the Proposed
24 Stipulated Order will not “delay consummation of the settlement” in any way.

25 Second, if Gold Creek disagrees with the additional language that Sun Valley has
26 proposed because Gold Creek contends or will later contend that the Order, once entered,
27 **shall** “be construed . . . to constitute a waiver of, or otherwise affect, the claims,
28 complaint, causes of action or rights of Sun Valley against Gold Creek or its payment

1 bond sureties, relating to the Property,” then Gold Creek should be required to step
2 forward at this time and explain, with specificity, exactly how the Order will act as a
3 waiver or otherwise affect Sun Valley’s rights, and provide Sun Valley with an
4 opportunity to respond. Gold Creek should not be permitted to hide any such waiver or
5 effect inside the Trojan Horse of a proposed order that it later presents to a different court
6 as some defense to Sun Valley’s claims and rights. Concealment and subterfuge should
7 not be tolerated by this Court. If that is not what is happening, Gold Creek should consent
8 and allow the additional language Sun Valley has requested to be added the Order. Any
9 delay of consummation of the settlement is entirely within Gold Creek’s control at this
10 point.

11 WHEREFORE, Sun Valley respectfully requests that the Court either enter the
12 Proposed Stipulated Order with the additional language Sun Valley has requested be
13 added as a new Paragraph (12), or set the matter for hearing so the parties may be heard
14 on this issue.

15 DATED this 21st day of June, 2010.

16 SNELL & WILMER L.L.P.

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18 By /s/ DFE (#025986)

19 James J. Sienicki
20 Steven Jerome
21 Joshua Grabel
22 Donald F. Ennis
23 One Arizona Center
24 400 E. Van Buren
25 Phoenix, AZ 85004
26 Attorneys for Plaintiff

27
28 **COPY** sent via U.S. Mail this 21st
day of June, 2010 to:

Honorable J. Kenneth Mangum
Maricopa County Superior Court
101 West Jefferson - 514
Phoenix, AZ 85003

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COPY of the foregoing e-mailed and mailed this 21st day of June, 2010, to:

Cathy L. Reece, Esq.
Keith L. Hendricks, Esq.
FENNEMORE CRAIG, P.C.
3003 N. Central Ave., Suite 2600
Phoenix, AZ 85012
Email: creece@fclaw.com
Attorneys for ML Manager LLC

William Scott Jenkins
Jill M. Hulsizer
MYERS & JENKINS, P.C.
One East Camelback Rd., Suite 500
Phoenix, AZ 85012
Email: wsj@mjlegal.com
Attorneys for Kevin T. O'Halloran,
Trustee of the ML Liquidating Trust

Robert Shull, Esq.
J. Gregory Cahill
MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A.
2901 North Central Avenue, Suite 200
Phoenix, AZ 85012-2705
Email: rob.shull@mwmf.com
Attorneys for Gold Creek, Inc. and
John and Melissa Addison

David W. Kash, Esq.
Molly A. Newburn, Esq.
RYLEY CARLOCK & APPLEWHITE
One North Central Ave, Suite 1200
Phoenix, AZ 85004
Attorneys for NAS Surety

Neal H. Bookspan, Esq.
JARBURG & WILK, P.C.
3200 N Central Ave Ste 2000
Phoenix AZ 85012-2440
Attorneys for Underwood Bros.

/s/ Deborah Yanazzo