

cc: RJH-CD
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CLERK
U.S. BANKRUPTCY COURT
DISTRICT OF ARIZONA
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

7 In re:
8
9 **MORTGAGES LTD.,**
10 an Arizona corporation,
11 Debtor.

) In Proceedings Under Chapter 11
) Case No. 2:08-bk-07465-RJH
) **STATEMENT OF ROBERT G. FURST**
) **AND THE ROBERT G. FURST &**
) **ASSOCIATES, LTD. DEFINED BENEFIT**
) **PENSION PLAN REGARDING**
) **ML LIQUIDATING TRUST'S**
) **OBJECTION TO DISTRIBUTION OF**
) **PROCEEDS TO INSIDERS PURSUANT**
) **TO THE NOTICE OF INTENT TO**
) **DISTRIBUTE PROCEEDS IN**
) **ACCORDANCE WITH ALLOCATION**
) **MODEL AND JOINDER TO MOTION TO**
) **APPROVE TREATMENT OF**
) **DISTRIBUTION OF DISPUTED**
) **PROCEEDS**

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23 Robert G. Furst ("Furst") and the Robert G. Furst & Associates, Ltd. Defined Benefit Pension
24 Plan (the "Pension Plan") file this Statement Regarding the ML Liquidating Trust's Objection to
25 Distribution of Proceeds to Insiders Pursuant to the Notice of Intent to Distribute Proceeds to Insiders
26 in Accordance With the Allocation Model and Joinder to Motion to Approve Treatment of
27 Distribution of Disputed Proceeds ("ML Liquidating Trust's Objection").
28

1 The matter before the Court is the Notice of Intent to Distribute Proceeds In Accordance With
2 Allocation Model and Motion to Approve Treatment of Distribution of Disputed Proceeds (“ML
3 Manager’s Distribution Notice”). The Distribution Notice pertains to the contemplated distribution
4 of principal with respect to six loans identified in ML Manager’s Distribution Notice, as well as the
5 distribution of certain escrowed funds. Neither Furst nor the Pension Plan has an interest in any of
6 the six subject loans or the escrowed funds, and therefore neither Furst nor the Pension Plan takes a
7 position with respect to ML Manager’s Distribution Notice.
8

9 In its Objection, the Liquidating Trustee appears to attempt to seek additional relief beyond
10 the subject loan proceeds and escrowed funds. Specifically, the Liquidating Trustee appears to
11 request an order enjoining *any distributions* (not just those which are the subject of ML Manager’s
12 Distribution Notice) to persons the Liquidating Trustee “identifies” as “insiders” at Pages 2-3 of his
13 Objection. While the Liquidating Trustee couches his request in terms of the Court “continuing in
14 place” its August 28, 2008 Interim Order (Dkt. 458) with respect to distributions to certain insiders,
15 in fact the Liquidating Trustee seeks a substantial and unwarranted expansion of that Order.
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18 Specifically, the August 28, 2008 Interim Order Concerning Payment of Interest Collected
19 from Borrowers to Investors (the “Interim Order”), reads in relevant part as follows:

20 Until further order of this Court, Debtor shall not pay any payments of
21 principal due on account of such Investors’ ownership interest in any
22 Borrower payments, shall not make any payments to the Value-To-
23 Loan Fund or investors in the Value-To-Loan Fund, shall process, but
24 hold in escrow and not pay, **any insiders of the Debtor who are or**
25 **were officers (other than Chris Olson, George Everette and**
26 **Nechelle Wimmer, Ron Anatole and Ann Flaherty and their**
27 **related trusts or entities), directors, shareholders of the Debtor or**
28 spouses, relatives, trusts or other entities that may have been formed on
behalf of, associated with or otherwise related to such insiders, and
shall continue to hold the principal portion of such Borrower payments
in the appropriate Borrower segregated account and not disburse them
at this time. (Emphasis added)

1 This Order was jointly sought by the Debtor, Mortgages Ltd., and the Official Investors
2 Committee, in order to allow for the recommencement of interest (but not principal) payments to
3 investors (other than insiders who were officers, directors or shareholders) approximately two months
4 after the bankruptcy proceedings had begun. **Importantly, at no time since the Order was entered**
5 **has any party asserted that the Order required the escrowing of payments due to either Furst**
6 **or the Pension Plan; rather for the past 28 months, Furst and the Pension Plan have received**
7 **all interest payments paid to them by third-party performing borrowers, just like all of the**
8 **other non-insider investors.**

10 By its terms, the Interim Order applies only to “insiders of the Debtor who are, or were,
11 officers, directors and shareholders” of Mortgages Ltd. As a result, no distributions have been made
12 to (1) the Estate of Scott Coles, who was the Chief Executive Officer, sole director and sole
13 shareholder of Mortgages Ltd; (2) Michael Denning, who was the President of Mortgages Ltd.; (3)
14 Philip Sollomi, who was Senior Vice President of Mortgages Ltd.; and (4) Todd Brown, who was
15 Chief Operations Officer of Mortgages Ltd. **Importantly, Furst and the Pension Plan were not**
16 **officers, directors or shareholders of Mortgages Ltd. at any time. See the organizational chart of**
17 **Mortgages Ltd. attached hereto as Exhibit 1.**

20 Now, the ML Liquidating Trustee appears to ask the Court to expand the Order to Furst, who
21 was a registered representative at Mortgages Ltd. Securities, L.L.C., and the Pension Plan, simply
22 because the ML Liquidating Trustee has re-labeled Furst (but not the Pension Plan) as an “insider” in
23 an adversarial preferential action, with no factual support, and now “identifies” Furst *and* the Pension
24 Plan as “insiders.” **In effect, the Liquidating Trustee seeks the entry of an injunction against**
25 **payments to Furst and the Pension Plan without any showing of irreparable injury or**
26 **likelihood of success on the merits. Due process demands more, much more.**

1 Furst and the Pension Plan have filed a motion to dismiss the Liquidating Trustee's hopeless,
2 flawed preference and fraudulent transfer complaint against them. The lack of any plausible
3 allegations of insider status against either of them is one of the primary reasons that dismissal of that
4 action is warranted.¹ The Liquidating Trustee's attempt to expand the August 28, 2008 Interim Order
5 to enjoin future payments to Furst and the Pension Plan is even further afield. Not only were Furst
6 and the Pension Plan not insiders of Mortgages Ltd., but also neither of them was an "officer, director
7 or shareholder" of Mortgages, Ltd. at any time.

9 **I. CONCLUSION**

10 Furst and the Pension Plan request that ML Liquidating Trustee's attempt to expand the
11 August 28, 2008 Interim Order be rejected. Robert Furst and the Pension Plan were not insiders and
12 were not officers, directors or shareholders of Mortgages Ltd. They have received interest payments
13 from performing loans for the past 28 months because they are not covered by the Interim Order, and
14 nothing in the Liquidating Trustee's objection approaches a legitimate basis to change that.
15 Alternatively, if any principal or interest payments are escrowed, Furst and the Pension Plan should
16 be paid interest at the rate of 17-1/2% per annum, which is the interest rate paid to investors whose
17 funds have been withheld for other purposes.

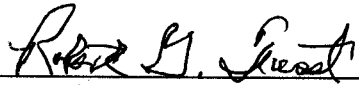
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20 ML Manager's Distribution Notice is the only motion before the Court, and it addresses the
21 distribution of sales proceeds six properties, none of which were owned by Furst or the Pension
22 Plan. ML Liquidating Trustee's attempt to expand the August 28, 2008 Interim Order goes way
23

24
25 ¹ Furst and the Pension Plan strenuously dispute any contention that either of them was an insider of Mortgages Ltd. In
26 his Complaint, the Liquidating Trustee simply included a conclusory allegation that Furst was an insider. While there is
27 no doubt that Furst and the Pension Plan would prevail on this issue on the merits, unless and until the Liquidating
28 Trustee presents to the Court sufficient plausible allegations so as to trigger an inquiry on the merits, the Liquidating
Trustee's conclusory assertions of insider status must simply be rejected out of hand.

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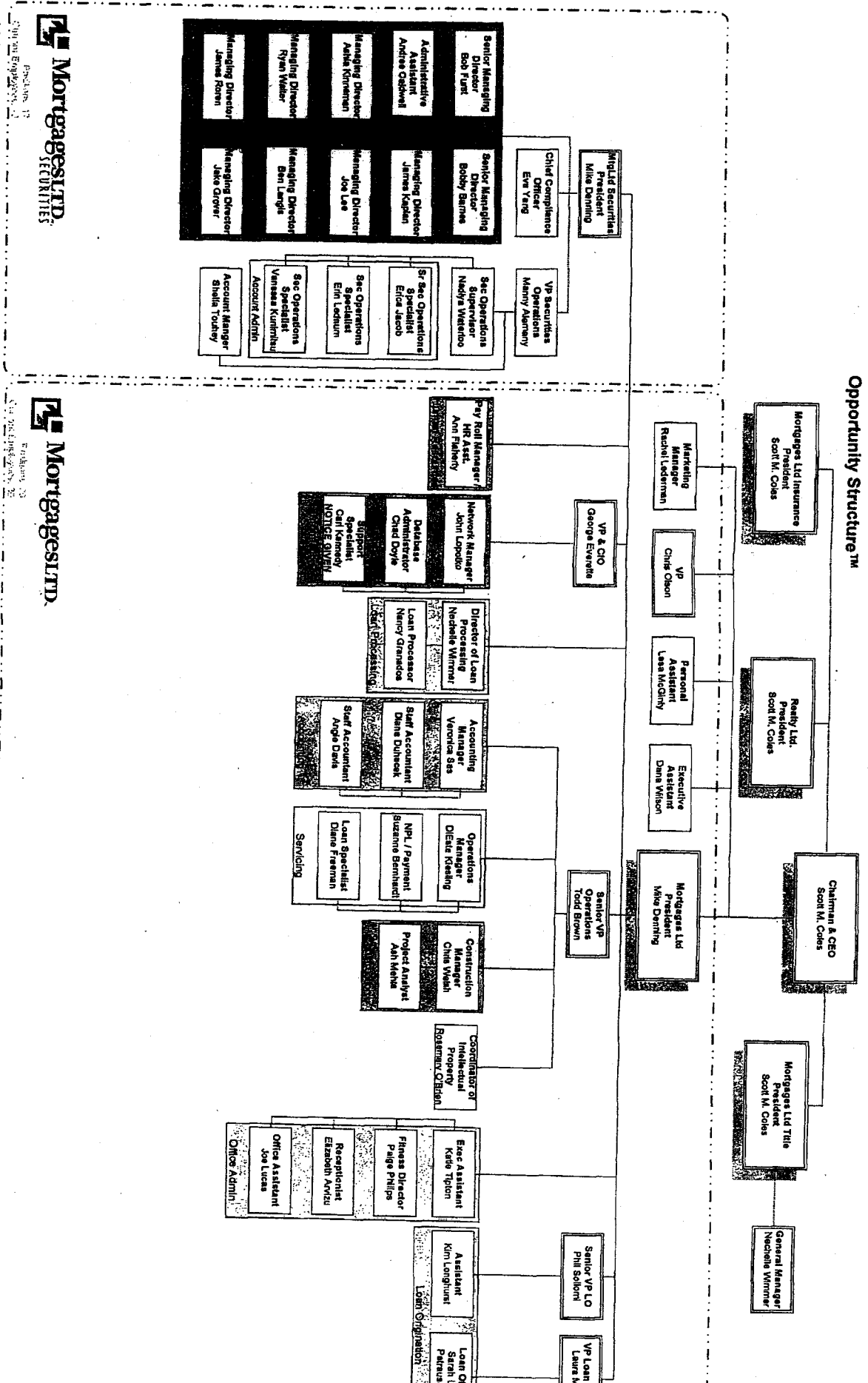
beyond that, by seeking additional injunctive relief for unrelated interest payments, and should be rejected.

DATED: January 10, 2011



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Opportunity Structure™



Mortgages Ltd. SECURITIES

Mortgages Ltd.

EXHIBIT A

DEFS000001

December 10, 2007