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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In re:

9 MORTGAGES, LTD., an Arizona
10 corporation,

11 Debtor.

12
13 JEFFREY C. STONE, INC., d/b/a
14 SUMMIT BUILDERS, an Arizona
corporation,

15 Plaintiff,

16 vs.

17 CENTRAL AND MONROE, L.L.C.,
18 an Arizona limited liability company, et
19 al.,

20 Defendants.

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22
23
24 SUMMERS GROUP, INC., d/b/a/
REXEL PHOENIX ELECTRIC, a
25 corporation,

26 Cross-Claimant/Counter-claimant,

27 vs.

28 CENTRAL AND MONROE, L.L.C.,
an Arizona limited liability company,

CHAPTER 11 Proceedings

CASE NO. 2:08-BK-07465-RJH

ADV. NO. 2:09-ap-00424-RJH

Consolidated case:

ADV. NO. 2:09-ap-00056-RJH

**KGM BUILDERS, INC.'S REQUEST FOR
NOTICE OF ANY PENDING OR FUTURE
SALE OF THE REAL PROPERTY
KNOWN AS HOTEL MONROE
AND
REQUEST FOR NOTICE OF ANY PAST
OR PENDING MOTION REQUESTING
SUCH SALE BE FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS**

1 Cross-Defendants, and
2 JEFFREY C. STONE, INC., d/b/a
3 SUMMIT BUILDERS, an Arizona
4 corporation
5 Counter-Defendant
6 and related counterclaims and cross-
claims.

7 Counter-defendant and Lien Claimant, KGM Builders, Inc. (“KGM”), hereby
8 submits this request that Mortgages Ltd. and/or its affiliates provide immediate Notice of
9 and pending or future sale of the property commonly known as Hotel Monroe (“the
10 Property”). KGM requests such Notice include the date the Property will close escrow,
11 the title company, the purchase price, closing instructions, preliminary settlement
12 statements, commissions, closing costs, and lien claims to be paid out of the sale. Further,
13 KGM requests that Mortgages Ltd. and/or its affiliates also provide it with immediate
14 Notice of any past or pending motions requesting court approval of the sale of the Hotel
15 Monroe property to occur free and clear of liens, claims, encumbrances, and interests, if
16 such request has been filed.

17 **BACKGROUND**

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21 As set forth in KGM’s Notice and Claim of Mechanics’ and Materialmen’s Lien
22 (“Lien”) recorded September 9, 2008 at Maricopa County Recorder Document No. 2008-
23 01781638, KGM first supplied labor and materials to the construction Project on
24 November 15, 2006, for which it remains unpaid.

25
26 KGM filed a Lien Foreclosure, Breach of Contract and Unjust Enrichment action
27 in Maricopa County Superior Court Case No. CV2009-003800 regarding its unpaid Lien
28 claim, an action that is still pending. It is worth noting that KGM’s superior court action

1 has never been removed to bankruptcy court, and the validity of KGM's Lien claim has
2 never been disputed in either the superior court proceeding or the bankruptcy proceeding.
3 In fact, at the April 26, 2010 status conference in KGM's superior court action, the last
4 hearing held in that matter, the parties represented to the Court that once a determination
5 was made regarding priority in bankruptcy court, the bankruptcy matter would be
6 remanded to superior court for further proceedings. As such, nothing has occurred in the
7 superior court action since that time.
8
9

10 On July 27, 2010, the real property commonly known as Hotel Monroe was sold by
11 Trustee at public auction for the purchase price of \$4,000,000.00. The real property was
12 secured by a loan provided by Mortgages Ltd. to Central and Monroe, LLC, secured by a
13 deed of trust recorded on May 16, 2007 at Maricopa County Instrument No. 2007-
14 0571099 in the amount of \$75.6 million dollars. On August 4, 2011, ML Manager, L.L.C.
15 recorded a Trustee's Deed and Affidavit of Sale.
16

17 On February 15, 2011, this Court entered a Memorandum Decision Granting
18 Partial Summary Judgment in Favor of Mortgages Ltd which can be viewed at Docket No.
19 392. Pursuant to this Court's ruling, the following lien priority was established: (1)
20 Mortgages Ltd. \$7.3 million effective July 1, 2005; (2) KGM Builders, Inc.'s \$277,265.57
21 mechanic's lien effective November 16, 2006; and (3) Mortgages Ltd. \$8.9 million
22 effective May 16, 2007.
23
24

25 It is KGM's position that the non-judicial sale of the Property had no effect on
26 KGM's Lien claim as a matter of law. As set forth in this Court's ruling, KGM's Lien
27 attached for priority purposes on November 16, 2006. Pursuant to A.R.S. § 33-811(E), a
28

1 trustee's sale simply "does not affect the rights of a lienholder whose rights accrued prior
2 to recordation of the deed of trust." *Scottsdale Memorial Health Systems*, 157 Ariz. at
3 468, 759 P.2d at 614.

4
5 KGM has been informed by a real estate agent that a sale is pending on the
6 Property that is scheduled to close escrow in the very near future. At no time during the
7 course of the adversary proceeding or the superior court proceeding against Mortgages
8 Ltd. has it formally disclosed such a sale to KGM.

9
10 As this Court is fully aware, counsel for ML Manager LLC has submitted
11 numerous motions to sell real property free and clear of liens, claims encumbrances and
12 interests. KGM has not received any such motion with regard to the Hotel Monroe
13 property and is certainly entitled to such notice given its Lien claim and priority position.¹

14
15 KGM does not consent to the sale of the Property free and clear of its Lien. In the
16 event Mortgages Ltd. attempts to assert some specific ground for approving a sale free
17 and clear of KGM's Lien, KGM requests Notice of such sale along with additional time to
18 respond such that KGM is provided a fair opportunity to respond. KGM would request
19 this Court does not permit any request for a waiver of the 14-day stay of an order for the
20 sale of the property under Bankruptcy Rule 6004(h) as previously requested by Mortgages
21 Ltd. related to other properties, without the express consent of KGM. Certainly, if a
22 purchase agreement has in fact already been entered into, and if Mortgages Ltd. has failed
23 to file a Notice of such sale with this Court, it certainly should be barred from requesting
24 any waiver of statutory waiting periods given its failure to provide creditors with timely
25
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27

28 ¹ On March 2, 2011, counsel for KGM emailed Cathy Reece, counsel for ML Manager, LLC, a request for information regarding any pending sales, and has not received a response to that email.

1 notice of such a sale.

2 Further, should this Court allow Mortgages Ltd. to sell the Property, KGM requests
3 that its Lien attach to the sale proceeds and the Court order that sufficient collateral, either
4 in the form of sale proceeds or other funds, be set aside in an escrow account to protect
5 KGM to the full extent of its claim. Failure to provide such adequate protection collateral
6 could and would deprive KGM of its due justice and right to recover funds it is owed and
7 the adequate protection of its interest the Bankruptcy Code affords it.
8

9
10 **CONCLUSION**

11 KGM requests Mortgages Ltd. immediately provide it with Notice of any pending
12 or future sale and include the purchase price, the anticipated close of escrow date, closing
13 instructions, parties to be paid out of the sale, and any other pertinent information to such
14 a sale. In the event a Motion to Sell the Hotel Monroe Property free and clear of any
15 liens, claims or encumbrances is submitted to this Court by Mortgages Ltd., and this Court
16 allows such a sale, KGM would then request that this Court order the escrow company to
17 place sufficient sale proceeds into a separate escrow account to ensure full payment to
18 KGM.
19

20
21 **RESPECTFULLY SUBMITTED** this 7th day of March, 2011.

22 **PALECEK & PALECEK PLLC**

23
24 */s/ Karen A. Palecek*

25 Karen A. Palecek, Esq., #011944
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28 Co-Counsel for KGM Builders, Inc.

1 **CERTIFICATE OF SERVICE**

2 KGM BUILDERS, through its undersigned counsel, certifies that on Mach 7, 2011
3 it caused to be served by first class mail, postage prepaid and email, the Request for
4 Notice of Sale of Hotel Monroe upon the parties listed on the below list of Pass Through
5 Investors and emailed to the parties on the Electronic Services List.

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