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10 IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

11 In re  
12 MORTGAGES LTD.,  
13 Debtor.

Chapter 11

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

**REPLY TO RESERVATION OF RIGHTS AS  
TO MOTION TO SELL REAL PROPERTY**

**Real Property and Improvements located at  
6500 and 6516 N. 64<sup>th</sup> Place, Paradise Valley,  
Arizona**

**Hearing Date: September 20, 2011  
Hearing Time: 1:30 p.m.**

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19 ML Manager LLC (“ML Manager”), as the manager for MK I Loan LLC and MK  
20 II Loan LLC and the agent for certain Pass-Through Investors, hereby files this Reply in  
21 support of its Motion to Sell (Docket No. 3301) the real property and improvements  
22 located at 6500 and 6516 N. 64<sup>th</sup> Place, Paradise Valley, Arizona (“Property”). A  
23 Reservation of Rights (Docket No. 3307) was filed by QC MK Custom Residential, LLC,  
24 the alleged successor to Queen Creek XVIII, LLC which asserts a 20% interest in the  
25 Property (the Disputed Interest”). ML Manager believes that all the items raised by QC  
26 MK Custom have and will be resolved in the form of order for this case as they were in

1 the consensual Order entered in the QC MK Custom bankruptcy case.

2 **I. THE RESULTS OF THE LOAN LLC VOTE**

3 The investors in both the MK I Loan LLC and the MK II Loan LLC and all the MP  
4 Funds were asked to vote on this Major Decision. As the Court will recall, the operating  
5 agreements for the Loan LLCs require that Major Decisions (such as selling the property)  
6 must be voted on by the members of the applicable limited liability company and the  
7 investors in the MP Funds and must be approved by a majority in dollars of those who  
8 vote. A vote has been conducted by ML Manager of the members in the Loan LLCs and  
9 MP Funds. Based on the voting results, 100% of the dollars which were voted in MK I  
10 Loan LLC and 78.16% of the dollars which were voted in MK II Loan LLC approved the  
11 sale. In other words, both MK I Loan LLC and MK II Loan LLC voted to sell the  
12 Property.

13 **II. WAIVER BY THE EXIT FINANCIER**

14 One of the contingencies of the Sale Agreement concerns the Exit Financier. This  
15 provision was intended to ensure that the property will not be sold for too low a price.  
16 The Exit Financier has expressed that it does not intend to exercise its right to compete.  
17 So this contingency has been satisfied.

18 **III. EXERCISE OF VALID BUSINESS JUDGMENT**

19 ML Manager, in the exercise of its business judgment, has decided it is in the best  
20 interest of the investors in the loans to sell the Property at this time for \$2.9 million to the  
21 Purchaser on the terms set forth in the Sale Agreement. The Purchaser has posted a  
22 Deposit of \$200,000 and the escrow has been set up at a local title company. The  
23 Purchaser has demonstrated that it has ample funds to purchase the Property. The balance  
24 of the Purchase Price will be payable in cash at closing. The sale is anticipated to close the  
25 end of September or early October 2011.

26 The Property consists of a single family residence on two parcels in Paradise

1 Valley that is not rented or may not even be rentable in its current condition. This sale is  
2 “As Is, Where Is”, “With all faults”, with no warranties and with a prompt all cash  
3 closing. The Purchaser (and the back up purchaser) is a non-related third party with no  
4 connections to ML Manager, the Board members, the investors or the exit lender. ML  
5 Manager asserts it is in the best interest of all investors in both loans for the Property to be  
6 sold at this time for this price.

7 In its decision to sell and enter into the Sale Agreement, ML Manager has  
8 exercised its best business judgment which is consistent with its fiduciary duties and  
9 responsibilities.

10 **IV. RESOLUTION OF ISSUES IN QC MK CUSTOM BANKRUPTCY**

11 Hearings were held before Judge Case on September 13, 2011 in the QC MK  
12 Custom bankruptcy case, Case No. 2:10-bk-36845-CGC, on the ML Manager Motion to  
13 Ratify Agent’s Decision to Sell Real Property (Docket No. 66). Attached as Exhibit A is a  
14 copy of the Order Granting Motion to Ratify Agent’s Decision to Sell Real Property  
15 (Docket No. 73) which was agreed to by QC MK Custom’s counsel and which was signed  
16 by the Court. The Order specifically deals with the use of sale proceeds in which QC MK  
17 Custom asserts an interest at closing and the escrow to be set up to hold the remaining  
18 proceeds in which QC MK Custom asserts an interest. It also provides that ML Manager  
19 is authorized to sign on behalf of QC MK Custom at the closing. The Order resolved all  
20 the issues raised by QC MK Custom in that proceeding.

21 Judge Case also issued his rulings on the pending matters in that case. He denied  
22 QC MK Custom’s Motion for Turnover re Property Interest and to Reject Agency  
23 Agreement as Executory Contract. Attached as Exhibit B is a copy of Judge Case’s Order  
24 (Docket No. 74). In addition, in the pending adversary proceeding wherein QC MK  
25 Custom filed suit against MK I Loan LLC, MK II Loan LLC and all other investors in  
26 both loans Adversary No. 2:10-ap-02252-CGC, Judge Case dismissed the adversary

1 proceeding expressing that ML Manager had sole and exclusive discretion to bring such a  
2 suit. Attached as Exhibit C is a copy of that Order (Docket No. 26). In order to resolve the  
3 dispute between the first deed of trust and the owners, as stated in the pleadings and  
4 before that Court and this Court, ML Manager will hire separate counsel for each loan and  
5 will use a separate business person to make decisions on each loan. They will have an  
6 opportunity to try and settle the dispute and if they do not resolve it consensually then  
7 they will proceed with litigation. Judge Case expressed that this was an appropriate  
8 resolution of the conflict between the two loans.

9 **V. PROPOSED ESCROW**

10 Because of the alleged dispute that exists over the validity of the first deed of trust,  
11 ML Manager proposes that the property be sold, that the certain net sales proceeds be held  
12 in escrow and that no distributions be made to investors pending the resolution of the  
13 dispute and further order of the Bankruptcy Court. The Order entered in the QC MK  
14 Custom bankruptcy case provides for payment of specific closing costs and  
15 reimbursement of expenses at the closing with the escrow of about \$512,000 for the  
16 Disputed Interest of QC MK Custom and a reservation of rights and arguments to charge  
17 or dispute additional expenses. The parties have agreed to include the provisions in the  
18 QC MK Custom Order concerning the Disputed Interest in the order to be presented to  
19 this Court.

20 ML Manager proposes to handle the sale proceeds for MK I Loan LLC and MK II  
21 Loan LLC and the other investors as set forth in the Motion. ML Manager proposes to pay  
22 the same closing costs and expenses as for QC MK Custom's Disputed Interest but may  
23 pay additional expenses in its discretion. In addition, as set forth in the Motion, ML  
24 Manager proposes to pay exit financing and the Permitted Reserve from the Loan LLC  
25 portion of the sale proceeds. The remaining portion of about \$477,000 will be escrowed.  
26 ML Manager will include a provision to this effect in the sale order to be presented to this

1 Court.

2 WHEREFORE, ML Manager LLC requests that the Court enter an order  
3 authorizing and approving the sale as requested by ML Manager, and for such other and  
4 further relief as is just and proper under the circumstances.

5 DATED: September 20, 2011

6 FENNEMORE CRAIG, P.C.

7 By /s/ Cathy L. Reece  
8 Cathy L. Reece

9 Attorneys for ML Manager LLC

10 Copy of the foregoing emailed this  
20<sup>TH</sup> day of September to:

11 Bryce Suzuki  
12 BRYAN CAVE LLP  
13 Two North Central Ave., Suite 2200  
Phoenix, AZ 85004  
[Bryce.suzuki@bryancave.com](mailto:Bryce.suzuki@bryancave.com)

14 /s/ Gidget Kelsey-Bacon

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# EXHIBIT

# A

Dated: September 14, 2011



*Charles G. Case, II*

Charles G. Case, II, Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re  
QC MK CUSTOM RESIDENTIAL,  
LLC,  
  
Debtor.

Chapter 11  
Case No. 2:10-bk-36845-CGC

**ORDER GRANTING MOTION TO RATIFY  
AGENT’S DECISION TO SELL REAL  
PROPERTY**

**Real Property and Improvements located at  
6500 and 6516 N. 64<sup>th</sup> Place, Paradise Valley,  
Arizona**

**Hearing Date: September 13, 2011  
Hearing Time: 11:00 a.m.**

ML Manager LLC (“ML Manager”) filed a Motion to Ratify the Agent’s Decision to Sell Property (“Motion to Ratify”)(Docket No. 66) requesting that the Court enter an order ratifying ML Manager’s decision to sell the property located at 6500 and 6516 N. 64<sup>th</sup> Place, Paradise Valley, Arizona (the “Property”) which is more specifically described in the Motion to Ratify for the price and on the terms set forth in the Motion to Ratify and the Sale Agreement attached to the Motion to Ratify (“Sale Agreement”) to the Purchaser, and to approve a back up offer as set forth therein (“Back Up Offer”). A notice of the hearing and the Motion to Ratify were served on creditors, interested parties and the Debtor. A Limited Objection (Docket No. 70) was filed by Debtor (“Limited Objection”). The hearing was held on the Motion to Ratify on September 13, 2011 at 11:00 a.m. and the Court at the conclusion of the hearing made findings of fact and conclusions of law on

1 the record.

2 Upon consideration of the Motion to Ratify and the arguments of counsel at the  
3 hearing, and for good cause appearing therefore,

4 IT IS HEREBY ORDERED as follows:

5 1. The Motion to Ratify is hereby granted and approved and the Limited  
6 Objection of Debtor is resolved as set forth herein and on the record in open court.

7 2. ML Manager is authorized to sell QC MK Custom Residential, LLC's  
8 alleged 20% interest, or Queen Creek XVIII, LLC's 20% interest, in the Property  
9 ("Disputed Interest"), to consummate the sale pursuant to the terms of the Motion to  
10 Ratify to the Purchaser or back up purchaser, to execute the conveyance deed and any and  
11 all other documents needed to consummate the sale on behalf of QC MK Custom  
12 Residential, LLC or Queen Creek XVIII, LLC.

13 3. ML Manager is authorized to pay out of the Disputed Interest in the gross  
14 sale proceeds of \$580,000 a 20% prorata portion of the estimated costs of sale as follows  
15 (which amounts are estimates and will be updated and prorated with the purchaser at the  
16 closing):

- 17 Real property taxes \$121,414<sup>1</sup>
- 18 Broker Commission \$174,000
- 19 Title fees and insurance and other customary closing costs \$7,500
- 20 Insurance \$11,055.02
- 21 Repair/maintenance \$7,185.67

22 \_\_\_\_\_  
23 <sup>1</sup> Since the tax amount will need to be adjusted at closing, the Debtor agrees that ML  
24 Manager shall pay the exact amount of all unpaid real property taxes as of close of escrow  
25 in the amount required by the title company and increase and pay the above estimate  
26 accordingly. ML Manager agrees to provide Debtor's counsel with evidence of and an  
itemization of the other expenses. Such amounts shall be paid at closing as long as the  
actual expenses are approved by Debtor or do not exceed the estimated amounts by more  
than 10% in the aggregate.



1           Utilities \$9,544.90

2           Trustee sale expenses \$6,387.95

3   The remaining portion of the Disputed Interest in the net sale proceeds of approximately  
4   \$512,000 shall be escrowed and held at the title company handling the sale or another  
5   mutually acceptable escrow company pending resolution of the dispute over the validity  
6   and enforceability of the MK I deed of trust which MK I lien if valid attaches to the  
7   Disputed Interest in the net sale proceeds. ML Manager and Debtor reserve their rights  
8   and arguments to pursue or dispute reimbursement and payment of other expenses and  
9   additional amounts of the estimated expenses from such escrowed proceeds of the  
10  Disputed Interest.

11           DATED AND SIGNED ABOVE

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# **EXHIBIT**

# **B**

SO ORDERED.

Dated: September 14, 2011



*Charles G. Case, II*

Charles G. Case, II, Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re  
QC MK CUSTOM RESIDENTIAL,  
LLC,  
  
Debtor.

Chapter 11  
Case No. 2:10-bk-36845-CGC

**ORDER DENYING DEBTOR'S MOTION  
FOR TURNOVER RE PROPERTY INTEREST  
AND TO REJECT AGENCY  
AGREEMENT GAS EXECUTORY  
CONTRACT**

Debtor filed a Motion for Turnover re Property Interest and to Reject Agency Agreement as Executory Contract ("Motion") (Docket No. 57). ML Manager LLC filed an Objection to the Motion (Docket No. 62). A hearing was held on the Motion and Objection on July 28, 2011 at 1:00 p.m. and the Court heard arguments of counsel. The Court at a hearing on September 13, 2011 at 1:30 p.m. made findings of fact and conclusions of law and read his ruling on the record which are incorporated in this Order.

IT IS THEREFORE ORDERED that the Motion is denied.

DATED AND SIGNED ABOVE

2492263

# EXHIBIT C

Dated: September 19, 2011



*Charles G. Case, II*

Charles G. Case, II, Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re	Chapter 11
QC MK CUSTOM RESIDENTIAL, LLC,	Case No. 2:10-bk-36845-CGC
Debtor.	
QC MK CUSTOM RESIDENTIAL, LLC, a Arizona limited liability company,	Adv. Pro. No. 2:10-ap-02252-CGC
Plaintiff,	<b>ORDER GRANTING MOTION TO DISMISS</b>
v.	
MK I LOAN, LLC, et al.,	
Defendants.	

Debtor filed a First Amended Complaint against the Defendants (Docket No. 4). ML Manager LLC filed a Motion to Dismiss First Amended Complaint on behalf of all Defendants (Docket No. 11). A hearing was held on the Motion on July 28, 2011 at 1:00 p.m. and the Court heard arguments of counsel. The Court at a hearing on September 13, 2011 at 1:30 p.m. made findings of fact and conclusions of law and read his ruling on the record which are incorporated in this Order.

IT IS THEREFORE ORDERED that the Motion to Dismiss is granted and this Order shall constitute a final judgment as to all defendants on all counts.

DATED AND SIGNED ABOVE

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