

1 FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
2 3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012
3 Telephone: (602) 916-5343
Facsimile: (602) 916-5543
4 Email: creece@fclaw.com

5 Attorneys for ML Manager LLC

6

7

IN THE UNITED STATES BANKRUPTCY COURT

8

FOR THE DISTRICT OF ARIZONA

9

In re

Chapter 11

10

MORTGAGES LTD.,

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

11

Debtor.

**NOTICE OF LODGING ORDER
APPROVING MOTION TO SELL
REAL PROPERTY**

12

13

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

14

15

16

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

17

18

NOTICE IS HEREBY GIVEN THAT ML Manager lodges its proposed form of
19 order for the sale of the 64th Street property which sale was approved on Tuesday
20 September 20. It has been almost 72 hours since the sale hearing and ML Manager's
21 counsel still does not have approval from QC MK Custom's counsel for the form of sale
22 order in the Mortgages Ltd. case. Counsel for ML Manager and QC MK Custom
23 negotiated the order entered by Judge Case on September 13 and included all the issues
24 raised by QC MK Custom (the debtor in that case). Last night for the first time and more
25 than 52 hours after the sale hearing in the Mortgages Ltd. case QC MK Custom's counsel
26 added a new paragraph to the sale order. QC MK Custom's counsel did not discuss it with

1 ML Manager or even raise it at either of the sale hearings. The new proposed paragraph
2 was not acceptable to ML Manager and counsel was so informed. The new paragraph
3 proposed by QC MK Custom's counsel was not about the sale, but was about the post sale
4 process and dictated the selection criteria for the business people, arbitrarily limited the
5 time frames for taking action, required mediation thereby adding another layer of cost,
6 and selected the venue and forum for the litigation, among other things. Such issues
7 should not be included in the sale order and should not be a reason for delay. Such issues
8 should carefully be decided by ML Manager where appropriate and by the business
9 people after advice of counsel, all in the exercise of their business judgment. As a result
10 ML Manager has not included QC MK Custom's proposed post sale process paragraph in
11 the sale order submitted to the Court. ML Manager requests that the Court approve the
12 order as submitted by ML Manager so ML Manager can close the sale. A copy of the
13 Order is attached as Exhibit A.

14 DATED: September 23, 2011

15 FENNEMORE CRAIG, P.C.

16
17 By /s/ Cathy L. Reece

Cathy L. Reece

Attorneys for ML Manager LLC

18
19 Copy of the foregoing emailed this
20 23rd day of September to:

21 Bryce Suzuki
22 BRYAN CAVE LLP
23 Two North Central Ave., Suite 2200
24 Phoenix, AZ 85004
25 Bryce.suzuki@bryancave.com

26 By /s/ Nikki Nolund

EXHIBIT

A

1 FENNEMORE CRAIG, P.C.
Cathy L. Reece (005932)
2 3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85012
3 Telephone: (602) 916-5343
Facsimile: (602) 916-5543
4 Email: creece@fclaw.com

5 MOYES SELLER & HENDRICKS
Keith L. Hendricks (012750)
6 1850 North Central Ave., Suite 1100
Phoenix, Arizona 85004
7 Telephone: (602) 604-2120
Email: khendricks@law-msh.com

8 Attorneys for ML Manager LLC

9
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

14 **ORDER APPROVING MOTION TO SELL
REAL PROPERTY**

15 **Real Property and Improvements located at
6500 and 6516 N. 64th Place, Paradise Valley,
16 Arizona**

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

18 ML Manager LLC ("ML Manager") filed a Motion ("Motion") (Docket No. 3301)
19 requesting that the Court enter an order authorizing ML Manager as the Manager for MK
20 I Loan LLC and MK II Loan LLC and the Agent for the non-transferring pass-through
21 investors to sell the real property and improvements located at 6500 and 6516 N. 64th
22 Place, Paradise Valley, Arizona which is more specifically described in the Sale
23 Agreement (the "Property") for the price and on the terms set forth in the Agreement of
24 Sale and Purchase ("Sale Agreement"). Among other things, the Sale Agreement provides
25 for the sale of the Property for \$2.9 million to CJ Family Revocable Trust ("Purchaser").
26

1 A notice to creditors, interested parties and the non-transferring pass-through investors of
2 the Motion and the hearing date was served. A Reservation of Rights (Docket No. 3307)
3 was filed by QC MK Custom Residential, LLC (the "QC MK Reservation"), the alleged
4 successor to Queen Creek XVIII, LLC, which asserts a 20% interest in the Property (the
5 "Disputed Interest").

6 In addition, in the chapter 11 bankruptcy case of QC MK Custom Residential,
7 LLC, 2:10-bk-36845-CGC, ML Manager filed a Motion to Ratify the Agent's Decision to
8 Sell Property (Docket No. 66). QC MK filed a Limited Objection (Docket No. 70) in that
9 case which was consensually resolved prior to the September 13, 2011 hearing. An Order
10 Granting Motion to Ratify Agent's Decision to Sell Real Property (Docket No.
11 73)("Ratification Order") was entered by Judge Case.

12 The hearing was held on the Motion on September 20, 2011 at 1:30 p.m. in
13 Phoenix and the Court at the conclusion of the hearing made findings of fact and
14 conclusions of law on the record.

15 Upon consideration of the Motion and statements and arguments of counsel at the
16 hearing; it appears to the Court and the Court finds that:

17 (a) This Court has jurisdiction over the issues presented in the Motion, and the
18 Motion and the Court's hearing thereon were duly and properly noticed;

19 (b) The purchase price constitutes fair consideration for the Property;

20 (c) The investors in MK I Loan LLC, MK II Loan LLC and the applicable MP
21 Funds have agreed by the applicable dollar vote to the sale terms;

22 (d) The ML Manager LLC is authorized to enter into the Sale Agreement, to
23 sell the Property pursuant to the terms of the Sale Agreement to Purchaser, to proceed
24 with this sale and to execute all necessary documents to implement the sale;

25 (e) The decisions to sell and enter into the Sale Agreement as proposed in the
26 Motion and to establish certain escrows are supported by the best exercise of business

1 judgment of ML Manager which is consistent with ML Manager's fiduciary duties and
2 responsibilities.

3 IT IS THEREFORE ORDERED THAT:

4 (1) The Motion is granted and approved and the QC MK Reservation is
5 resolved as set forth in this Order.

6 (2) ML Manager, as the Manager of MK I Loan LLC and MK II Loan LLC and
7 as Agent for the pass-through investors, including QC MK Custom Residential, LLC or
8 Queen Creek XVIII, LLC, has authority and is directed to enter into the Sale Agreement,
9 to consummate the sale, to sell the Property pursuant to the terms of the Sale Agreement,
10 to execute the conveyance deed to the Purchaser and to execute any and all documents
11 needed to consummate the sale.

12 (3) ML Manager is authorized to pay out of the sale proceeds the costs of sale,
13 including real property taxes, assessments, broker's fees, title insurance or other closing
14 costs, and to reimburse ML Manager for Insurance, Repair/maintenance, Utilities, and
15 Trustee sale expenses, provided such pay out from the QC MK's Disputed Interest of
16 approximately \$580,000 shall be a 20% prorata portion of the estimated costs of sale as
17 follows (which amounts are estimates and will be updated and prorated with the purchaser
18 at the closing):

19 Real property taxes \$121,414¹
20 Broker Commission \$174,000
21 Title fees and insurance and other customary closing costs \$7,500
22 Insurance \$11,055.02

23 ¹ Since the tax amount will need to be adjusted at closing, QC MK Custom 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 QC MK Custom 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 QC MK Custom or do not exceed the estimated amounts
by more than 10% in the aggregate.

1 Repair/maintenance \$7,185.67
2 Utilities \$9,544.90
3 Trustee Sale expenses \$6,387.95

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

12 (5) Further, as provided in the Motion and in addition to the costs and expenses
13 stated above in paragraph 3 and other reimbursement of expenses to ML Manager, ML
14 Manager is authorized to pay out of the MK I Loan LLC and MK II Loan LLC proceeds
15 the liens or encumbrances on the Property owed to the current exit lender pursuant to the
16 Loan Agreement, and to create and use any Permitted Reserves out of the MK I Loan
17 LLC and MK II Loan LLC proceeds pursuant to the Loan Agreement As proposed in the
18 Motion ML Manager shall use a conservative approach and assume initially for purposes
19 of paying the exit lender and escrowing funds that the MK II investors succeed on the
20 attack of the first deed of trust held by the MK I investors. After such payment to the exit
21 lender, the closing costs and reimbursement of expenses and the Permitted Reserve, the
22 net sale proceeds of the MK I and MK II Loan LLCs of approximately \$477,000 shall be
23 escrowed and held at the title company handling the sale or another mutually acceptable
24 escrow company pending resolution of the dispute over the validity and enforceability of
25 the MK I deed of trust which MK I lien if valid attaches to escrowed funds.

26 (6) The purchase price is fair consideration for the Property.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

(7) Pursuant to Section 1146(a) of the Bankruptcy Code and Section 10.5 of the confirmed Plan of Reorganization, any and all mortgage recording tax, stamp tax, real estate transfer tax, speculative builder, transaction privilege or other similar tax imposed by federal, state or local law are hereby waived.

(8) The 14 day stay of an order for the sale of property under Bankruptcy Rule 6004(h) (to the extent it applies) is hereby waived and shall not be applied to this Order.

(9) In the event that the sale to the Purchaser does not close and the Sale Agreement is terminated, ML Manager in its sole discretion shall be authorized to close a sale of the Property without further order of the Court on the back up offer either to Doug Barkdull and/or assignee as set forth in the signed Sale Agreement for \$2.995 million or to Daniel Ahdoot and/or nominee as set forth in the Sale Agreement for \$2.85 million. All of the provisions of this Order shall be effective and apply to the sale to the back up purchaser and shall continue to be binding on the parties.

DATED AND ORDERED AS STATED ABOVE.

2493434