

IT IS HEREBY ADJUDGED and
DECREED this is SO ORDERED.

The party obtaining this order is responsible
for noticing it pursuant to Local Rule 9022-1.

Dated: September 26, 2011



Randolph J. Haines

Randolph J. Haines, Bankruptcy Judge

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

12 In re
13 MORTGAGES LTD.,
14 Debtor.

Chapter 11

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

**ORDER APPROVING MOTION TO SELL
REAL PROPERTY**

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

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

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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").
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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. 73)
11 (“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.¹

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 \$121,414²

20 Broker Commission \$174,000

21 ¹ Nothing herein shall be deemed to affect any of the pending appeals, any other
22 contested matters, or any other litigation in which ML Manager and QC MK Custom
Residential, LLC or Queen Creek XVIII, LLC are involved.

23 ² 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 Title fees and insurance and other customary closing costs \$7,500
2 Insurance \$11,055.02
3 Repair/maintenance \$7,185.67
4 Utilities \$9,544.90
5 Trustee Sale expenses \$6,387.95

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

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

1 escrow company pending resolution upon further order of the Court of the dispute over
2 the validity and enforceability of the MK I deed of trust which MK I lien if valid attaches
3 to escrowed funds.

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

8 (7) The 14 day stay of an order for the sale of property under Bankruptcy Rule
9 6004(h) (to the extent it applies) is hereby waived and shall not be applied to this Order.

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

17 DATED AND ORDERED AS STATED ABOVE.

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