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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

**ML MANAGER'S REPLY TO ROBERT
FURST'S RESPONSE TO MOTION TO
APPROVE SETTLEMENT WITH
MORTGAGES LTD 401K PLAN**

**Hearing Date: December 11, 2012
Hearing Time: 11:00 a.m.**

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18 Robert G. Furst has filed a response to the Motion to Approve Settlement with
19 Mortgages Ltd 401(k) Plan. It is unclear in what capacity Mr. Furst has filed his
20 Response.¹ More important, Mr. Furst's Response shows, at best, one (distorted) side of
21 the disputed facts and arguments that led the parties to the bargaining table and ultimately
22 this settlement, but does not remotely address both sides of the disputed facts. Mr. Furst's

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24 ¹ Mr. Furst has often improperly appeared on behalf of his own Retirement Plan, which
25 was an investor with Mortgages Ltd. His prior appearances have been improper because
26 he was not acting as a licensed attorney representing a separate entity. It is unclear whom
Mr. Furst purports to represent. It is unclear if Mr. Furst is attempting to represent
himself with regard to this Response, or another entity, and it is unclear in what capacity
he claims an interest that gives him standing to file a Response.

1 conclusion is correct. The Court should approve this settlement. But his analysis is
2 hopelessly one-sided, distorted and often wrong. Fortunately, none of that matters in
3 connection with the question pending before the Court, which is simply whether this
4 settlement should be approved.

5 **I. THE SETTLEMENT IS A NEGOTIATED COMPROMISE ARISING OUT**
6 **OF NUMEROUS DISPUTED FACTS.**

7 ML Manager agrees with Mr. Furst's conclusion that the Court should approve the
8 pending settlement, but the distorted and one-sided explanation of the facts fail to
9 accurately or adequately explain why the parties engaged in the litigation or why this
10 heavily negotiated settlement agreement was reached. Simply stated, there are clearly two
11 sides to this dispute.

12 Furst asserts that this settlement is not a compromise of claims. Furst is
13 categorically wrong. Of course, if only one side of the evidence and arguments is
14 examined and if it is assumed that one side will prevail on every single disputed issue,
15 then it is difficult to understand why a settlement is necessary. In other words, if a party
16 ignores the complexity and legitimacy of the issues presented, then the fantasy
17 constructed to address only a few issues may not match reality.² It is simply disingenuous
18 in the context of analyzing the merits of a settlement proposal to ignore every single
19 competing fact or argument. Yet, that is what Furst does.

20 In this case, there were extremely strong facts that support the position that ML
21 Manager took. Judge Jones recognized this when he found:

22 ² Furst's repeated personal attacks against Cathy Reece are inappropriate and are based on
23 false or distorted statements and arguments. These personal attacks are obviously
24 motivated by the numerous instances where the Court has rejected Furst's desperate
25 attempts to modify or thwart the Confirmed Plan where ML Manager, through Ms.
26 Reece's representation, has opposed Furst's attempts. Significantly, the personal attacks
against Ms. Reece have no relevance with regard to the current issues before the Court.
As such, ML Manager simply notes that these personal attacks are irrelevant and it rejects
all such arguments and reserves the right to assert any claim, argument, defense or cause
of action as may be justified at the applicable time.

1 The Confirmation Plan defined “Investors” as “all persons
2 holding fractional or participating interests in the ML Loans
3 ... excluding the Debtor.” [] The Plan is therefore probably
an Investor under the Confirmation Plan by virtue of its
interests in eight ML Loans.

4 2:11-ap-02053-RJH, Document 43-13 Filed 02/24/12, page 4 of 7.³ There was and is
5 substantial evidence to support ML Manager’s position that the loans in which the 401(k)
6 Plan had an interest were indeed “ML Loans.” *See e.g.*, ML Manager’s Statement of
7 Facts filed in Support of its Motion for Summary Judgment. 2:11-ap-02053-RJH,
8 Document 43 Filed 02/24/2012. For example, the 401(k) Plan was a creditor listed in
9 Schedule F of the Debtor’s Schedules. The 401(k) Plan’s Existing Investor Account
10 Agreement was also listed in its Schedules. All of the 401(k) Plan Loans were listed in
11 Schedule G2 as being managed by and subject to the servicing of the Debtor. There was a
12 proof of claim filed by the 401(k) Plan. The 401(k) Plan executed an Existing Investor
13 Account Agreement. The Debtor held the original Notes and Deeds of Trust at issue.
14 There were issues litigated during the bankruptcy by the Debtor purportedly acting as the
15 agent for the 401(k) Plan. The 401(k) Plan’s trustee testified during the course of the
16 bankruptcy under questioning by Mr. Furst, that the Debtor made the loans at issue and
17 that the 401(k) Plan was merely an investor. Most importantly, the 401(k) Plan’s
18 ownership of the Notes and Deeds of Trust were questioned during the bankruptcy and
19 resolved by the Confirmed Plan. *See id.* As a result, ML Manager, on behalf of the other
20 investors was also asserting *quantum meriut* claims because the 401(k) Plan received the
21 same benefit as the other investors with regard to the ownership of the Notes and Deeds of
22 Trust, and argued that the 401(k) Plan should bear the same proportionate burden as the
23 other investors. These and many other facts clearly supported ML Manager’s claims in
24 this case.

25 ³ Indeed, the 401(k) Plan moved to reconsider this statement. Judge Jones stated:
26 “Plaintiffs argue that this statement is incorrect, because the Plan’s loans were not ML
Loans. The Court denies the motion.” *Id.* at p. 5.

