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9 Counsel for the Rev Op Group

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

12 In re:

Case No. 2:11-cv-00853-RCJ

13 MORTGAGES LTD.,

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

14 Debtor.

17 REV OP GROUP,

**APPELLANTS' NOTICE OF APPEAL
 TO UNITED STATES COURT OF
 APPEALS FOR THE NINTH CIRCUIT**

18 Appellant,

REPRESENTATION STATEMENT

19 vs.

20 ML MANAGER LLC,

21 Appellee.

22
 23
 24 Appellants AJ Chandler 25 Acres, L.L.C., Bear Tooth Mountain Holdings, L.L.P.,
 25 L.L.J. Investments, LLC (as successor in interest to Louis B. Murphey, James C. Schneck
 26 Rev. Trust, and The Lonnie Joel Krueger Family Trust), Queen Creek XVIII, L.L.C.,
 27 and/or their successors and assigns (collectively, the "Rev Op Investors"), appeal to the
 28 United States Court of Appeals for the Ninth Circuit from the *Order* ("Order") and the

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1 *Judgment in a Civil Case* (“Judgment”) of the district court for the district of Arizona
2 entered in this case on January 10, 2012 affirming the judgment of the bankruptcy court
3 for the district of Arizona. Copies of the Order and the Judgment are attached hereto as
4 Exhibit A and Exhibit B, respectively.

5 **REPRESENTATION STATEMENT**

6 Pursuant to Fed. R. App. P. 12(b) and Circuit R. 3-2(b), the parties to the Order
7 and the Judgment appealed from and the names, addresses, and telephone numbers of
8 their respective counsel are as follows:

9 **ML Manager LLC**

10 Cathy Reece, Esq.
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The Rev Op Investors

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RESPECTFULLY SUBMITTED this 2nd day of February, 2012.

BRYAN CAVE LLP

By: /s/ Justin A. Sabin
Robert J. Miller
Bryce A. Suzuki
Justin A. Sabin
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CERTIFICATE OF SERVICE

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ORIGINAL of the foregoing
electronically filed with the Court
this 2nd day of February, 2012.

COPY of the foregoing served via email
this 2nd day of February, 2012, upon:

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/s/ Robyn L. Kerns _____

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EXHIBIT "A"

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

REV OP GROUP,)	
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Plaintiff,)	
)	2:11-cv-00853-RCJ
vs.)	
)	
ML MANAGER LLC,)	ORDER
)	
Defendant.)	
_____)	

This bankruptcy appeal arises out of the bankruptcy judge’s approval of the sale of Debtor’s real property. The Court denied Defendant’s motion to dismiss the appeal for mootness and has affirmed a related appeal of the same bankruptcy case in Case No. 2:11-cv-00200. For the reasons given herein, the Court affirms the bankruptcy court in the present appeal, as well.

I. FACTS AND PROCEDURAL HISTORY

Debtor Mortgages, Ltd. originated, serviced, and sold fractional interests in mortgages. In response to defaults or mismanagement of assets, it allegedly transformed itself into a Ponzi scheme, paying old investors with the funds it received from new investors. Eventually, it filed for bankruptcy. The Confirmation Order created single-purpose entities (the “Loan LLCs”) to hold Debtor’s interests (fractional ownership and/or servicing rights) in various loans, and it created ML Manager LLC to implement the Confirmation Plan. The Confirmation Order required ML Manager to obtain a \$20 million “Exit Loan” to pay the expenses of the bankruptcy

1 administration, and each investor was required to repay the Exit Loan pro-rata via the liquidation
2 of Debtor's loan portfolio, in which the investors had interests, with any surplus to be returned to
3 the investors pro-rata. Over 1500 investors have received distributions under this provision of
4 the Confirmation Order.

5 There are several related appeals pending before the Court. The present appeal concerns
6 the bankruptcy court's approval of ML Manager's post-confirmation sale of foreclosed real
7 property in Phoenix, Arizona (the "Property") held mainly by U&A Loan LLC.

8 **II. STANDARD OF REVIEW**

9 The bankruptcy court's conclusions of law, including its interpretations of the bankruptcy
10 code, are reviewed de novo, and its factual findings are reviewed for clear error. *See Blausey v.*
11 *U.S. Trustee*, 552 F.3d 1124, 1132 (9th Cir. 2009). A reviewing court must accept the
12 bankruptcy court's findings of fact unless it is left with the definite and firm conviction that a
13 mistake has been committed. *See In re Straightline Invs., Inc.*, 525 F.3d 870, 876 (9th Cir. 2008).

14 **III. ANALYSIS**

15 Although Appellant lists nine issues in the present appeal, those issues overlap, and
16 Appellant argues essentially three points or error: (1) the bankruptcy court had no post-
17 confirmation jurisdiction to approve ML Manager's sale of real property; (2) that the bankruptcy
18 court erred in finding that ML Manager's agency authority under the Agency Agreements
19 ("AA") was irrevocable, because it did not in fact have an agency coupled with an interest; and
20 (3) that ML Manager's sale of real property violated its fiduciary duties to Rev Op Group, and
21 the bankruptcy court erred in making no findings of fact as to whether the sale constituted a fair
22 price under the business judgment rule.

23 **A. Post-Confirmation Jurisdiction**

24 Appellant notes that the bankruptcy code does not directly provide for post-confirmation
25 jurisdiction, and that confirmation plans and orders providing for the retention of jurisdiction to

1 implement a plan do not in fact create jurisdiction, but that “the essential inquiry [is] whether
2 there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court
3 jurisdiction over the matter.” *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005)
4 (quoting *In re Resorts Int’l, Inc.*, 372 F.3d 154, 166–67 (3d Cir. 2004)). The Court finds that
5 there is such a nexus here. The sale of Debtor’s real property by an entity created under the Plan
6 for the sole, express purpose of disposing of the Debtor’s assets under the Plan has a “close
7 nexus” to the Plan under any reasonable interpretation.

8 **B. ML Manager’s Irrevocable Agency**

9 The Court also finds that ML Manager in fact had an irrevocable agency under the AA.
10 The interest with which its agency as a loan servicer was coupled, making the agency
11 irrevocable, *see, e.g., Trickey v. Crowe*, 71 P. 965, 968 (Ariz. Terr. 1903) (citing *Hunt v.*
12 *Rousmanier’s Adm’rs*, 21 U.S. 174 (1823) (Marshall, C.J.)), was a direct ownership interest in
13 the Property via its control of U&A Loan LLC. ML Manager is listed as the sole manager of
14 U&A Loan LLC on the Arizona Corporation Commission’s website, and Mortgages Ltd.
15 Opportunity Fund MP15, L.L.C. is listed as the sole member. *See* Business Entity Search (Dec.
16 13, 2011, 2:57 p.m. PDT), [http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/
17 names-detail.p?name-id=L15300100&type=L.L.C.](http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-id=L15300100&type=L.L.C) Mortgages Ltd. Opportunity Fund MP15,
18 L.L.C. in turn has ML Manager as its sole manager and member, *see* Business Entity Search
19 (Dec. 13, 2011, 3:02 p.m. PDT), [http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/
20 names-detail.p?name-id=L13556725&type=L.L.C.](http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/names-detail.p?name-id=L13556725&type=L.L.C) Therefore, ML Manager not only manages,
21 but also owns, 100% of U&A Loan LLC (for the benefit of Debtor per the Plan).

22 Appellant argues that the bankruptcy court erred in finding that ML Manager’s interest in
23 certain payment rights under the U&A Loan was a sufficient interest in the subject matter of the
24 agency to make that agency irrevocable, and that even if it was, those rights to payment were
25 extinguished upon foreclosure such that the agency became decoupled from the interest and

1 hence revocable. But even assuming *arguendo* that its interest in certain payments was
2 insufficient, ML Manager not only controls U&A Loan LLC, it owns a 100% interest in it
3 according to the public records of the State of Arizona, of which the Court may take judicial
4 notice, *see Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), and
5 Appellant admits that at least some investors had actually transferred their fractional ownership
6 interests in the note and deed of trust to U&A Loan LLC under the Plan, (*see* Opening Br. 7:4–6,
7 Sept. 19, 2011, ECF No. 22), apparently in exchange for certificates representing their right to
8 receive their proportionate share of the proceeds of sale, whether an equity sale, a short sale, or a
9 trustee’s sale upon foreclosure. Therefore, U&A Loan LLC, and hence ML Manager, had
10 fractional ownership interests in the Property before foreclosure. Nor did foreclosure extinguish
11 this interest. In Arizona, a deed of trust follows the note it secures by operation of law. *Hill v.*
12 *Favour*, 84 P.2d 575, 578 (Ariz. 1938) (“The mortgage goes with the note. If the latter is
13 transferred or assigned, the mortgage automatically goes along with the assignment or
14 transfer.”). Therefore, U&A Loan LLC, and hence ML Manager, also obtained a fractional
15 interest in the deed of trust, and hence an interest in the proceeds of the trustee’s sale.

16 C. Fiduciary Duties and the Business Judgment Rule

17 Finally, Appellant argues that ML Manager violated its fiduciary duties to Appellant by
18 selling the Property at approximately ten percent of the amount then due and \$27 per square foot
19 less than comparable sales. ML Manager responds that it accepted the highest of eight offers
20 after aggressively marketing the Property, and that 82.3% of the ownership interests in U&A
21 Loan LLC voted to accept the offer. ML Manager also notes that Appellant proffered no
22 evidence in the bankruptcy court that the sale price was inadequate apart from counsel’s own
23 unsworn arguments and inadmissible newspaper clippings about the recovery of the economy,
24 which report is doubtful.

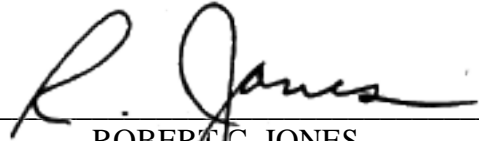
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1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the bankruptcy court is AFFIRMED.

3 IT IS SO ORDERED.

4 DATED: This 10th day of January, 2012.

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7 ROBERT C. JONES
8 United States District Judge

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EXHIBIT “B”

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In the matter of:

Mortgages LTD,

Debtor.

Rev Op Group,

Plaintiff/Appellant,

v.

ML Manager LLC.

Defendant/Appellee.

JUDGMENT IN A CIVIL CASE

CV 10-0853-PHX-RCJ

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

 Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

 X **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED affirming the decision of the Bankruptcy Court. Dismissing the appeal.

January 10th 2012
Date

BRIAN D. KARTH
District Court Executive/Clerk

cc: (all counsel)

Kathy Gerchar
(By) Deputy Clerk