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12 Counsel for the Rev Op Group and QC-MK
13 Custom Residential, LLC

14 **IN THE UNITED STATES BANKRUPTCY COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 In re:
17 MORTGAGES LTD.,
18 Debtor.

19 In Proceedings Under Chapter 11
20 Case No. 2:08-bk-07465-RJH

21 **MOTION FOR ENTRY OF AN ORDER**
22 **COMPELLING ML MANAGER LLC TO**
23 **(1) DISBURSE UNDISPUTED FUNDS,**
24 **AND (2) RESOLVE ITS CONFLICT OF**
25 **INTEREST WITH RESPECT TO THE**
26 **PROCEEDS OF THE MK I AND MK II**
27 **LOANS**

28 Hearing Date: March 14, 2011
Hearing Time: 11:00 a.m.
Location: Courtroom 603

21 Pursuant to Sections 105(a) and 1142(b) of the Bankruptcy Code, AJ Chandler 25 Acres,
22 L.L.C., Bear Tooth Mountain Holdings, L.L.P., Brett M. McFadden, Cornerstone Realty and
23 Development, Inc., Cornerstone Realty and Development, Inc. Defined Benefit Plan and Trust,
24 Evertson Oil Company, Inc., L.L.J. Investments, LLC (as successor in interest to Louis B.
25 Murphey, James C. Schneck Rev. Trust, and The Lonnie Joel Krueger Family Trust), Michael
26 Johnson Investments II, L.L.C., Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan,
27 Pueblo Sereno Mobile Home Park, L.L.C., Revocable Living Trust of Melvin L. Dunsworth, Jr.,
28 William L. Hawkins Family L.L.P., Sternberg Enterprises Profit Sharing Plan, QC MK Custom

1 Residential, L.L.C. ("QCMK") (as successor in interest to Queen Creek XVIII, L.L.C.), and/or
2 their successors and assigns (collectively, the "Rev Op Investors"), by and through their duly
3 authorized counsel, hereby file this Motion for entry of an order compelling ML Manager LLC
4 ("ML Manager") to (i) distribute certain funds indisputably owing to the Rev Op Investors in
5 compliance with the confirmed plan, and (ii) resolve its conflict of interest in connection with the
6 proceeds of the MK I and MK II loans. In support of this Motion, the Rev Op Investors submit
7 as follows:

8 **A. ML Manager's Failure To Distribute The Rev Op Investors' Funds.**

9 1. On June 20, 2008, an involuntary Chapter 7 bankruptcy petition was filed against
10 Mortgages Ltd., the debtor in the above-captioned case ("Debtor"), which case this Court
11 subsequently converted to a Chapter 11 bankruptcy case.

12 2. Prior to the involuntary filing, each of the Rev Op Investors purchased fractional
13 interests in various loans originated by the Debtor pursuant to the so-called "Rev Op Program."
14 The Rev Op Investors (or their respective principals) are largely retired individuals who hold in
15 excess of \$50 million in investments in loans originated by the Debtor, only a fraction of which
16 the Rev Op Investors are likely to recover. For many of the Rev Op Investors, their investments
17 with the Debtor constitute their sole source of income.

18 3. On or around March 12, 2009, the Official Investors Committee filed its *First*
19 *Amended Plan of Reorganization Dated March 12, 2009* (the "Plan") in the Debtor's bankruptcy
20 case, which the Court confirmed as amended by order dated May 20, 2009. The Plan provided
21 for the creation of Loan LLCs to hold various loans originated by the Debtor, and allowed
22 investors in the loans the option to transfer their respective interests to the Loan LLCs.

23 4. However, the Rev Op Investors declined to transfer their respective interests in
24 the loans to the Loan LLCs, opting instead to retain such interests as allowed under the Plan.
25 Indeed, the Rev Op Investors continue to own such interests or, in many cases, are now tenants
26
27
28

1 in common with other investors in real property that formerly served as collateral for liquidated
2 loans and/or are owed their proportional share of the proceeds of the sale of such property.¹

3 5. After confirmation of the Plan, ML Manager began servicing and managing many
4 of the loans in which the Rev Op Investors hold interests. In connection with its asserted agency
5 authority under the Plan, ML Manager has liquidated and continues to liquidate such loans and
6 hold the proceeds thereof, pending an arbitrary and unilateral decision to distribute such funds to
7 investors.

8 6. The Rev Op Investors are informed and believe that ML Manager has liquidated
9 several loans in which they hold ownership interests amounting to millions of dollars to be
10 distributed to investors, of which an estimated \$1-2 million in undisputed funds is owing to the
11 Rev Op Investors. ML Manager has been “sitting” on these funds for several months with no
12 distributions to investors. After inquiry, the Rev Op Investors have simply been informed that
13 ML Manager plans to distribute these funds “sometime in 2012.”

14 7. On December 15, 2011, counsel for the Rev Op Investors sent a letter to counsel
15 for ML Manager demanding disclosure of ML Manager’s plans with respect to accounting and
16 distribution of the Rev Op Investors’ funds, as well as confirmation that the Rev Op Investors’
17 funds are deposited in a segregated and appropriate interest-bearing account. A true and correct
18 copy of the December 15, 2011 letter is attached hereto as Exhibit A. As of the date hereof, ML
19 Manager has failed to provide any response to the letter or otherwise disclose the information
20 requested therein.

21 8. Pursuant to Section 4.13 of the Plan, ML Manager is obligated to distribute to the
22 Rev Op Investors any funds in which they have an undisputed ownership interest. *See* Plan, §
23 4.13. Furthermore, as the Rev Op Investors’ self-declared agent, ML Manger has undisputed
24 fiduciary duties to act with loyalty, care, competence, and diligence with respect to the Rev Op
25 Investors’ investments. *See Musselman v. Southwinds Realty, Inc.*, 146 Ariz. 173, 175, 704 P.2d
26

27 ¹ Several sale issues remain pending on appeal. The Rev Op Investors reserve all rights
28 with respect to these issues.

1 814, 816 (Ct. App. 1984); *Standard Chartered, PLC v. Price Waterhouse*, 190 Ariz. 6, 945 P.2d
2 317 (App. 1997).

3 9. ML Manager’s failure to promptly distribute millions of dollars in undisputed
4 funds owned by the Rev Op Investors or even to provide minimal information regarding its plans
5 for any such distribution or how such funds are being held despite demand is a clear breach of
6 Section 4.13 of the Plan and ML Manager’s fiduciary duties with respect to the Rev Op
7 Investors.

8 10. Moreover, the Rev Op Investors have received various 1099-S tax forms from
9 Lawyer’s Title Company for “proceeds for real estate transactions.” Thus, the Rev Op Investors
10 have potential tax obligations on transactions for which they have received no distributions. ML
11 Manager continues to hold such funds, at its whim, despite due demand for an accounting and
12 distribution.

13 11. It is reprehensible that ML Manager would sit on millions of dollars owned by the
14 Rev Op Investors for many months, knowing that many are retired individuals whose livelihoods
15 rely solely upon such income.

16 **B. ML Manager’s Failure To Resolve Its Conflict Of Interest Regarding Disputed**
17 **Ownership Of Funds From The MK I And MK II Loans.**

18 12. In May of 2005, the Debtor made a loan to MK Custom Residential Construction,
19 LLC (“MK”) in the original principal amount of \$7,495,000 evidenced by a promissory note and
20 deed of trust, which loan is commonly referred to as the “MK I Loan.” The MK I Loan was
21 secured by certain residential real property located at 6500 North 64th Place and 6516 North
22 64th Place in Paradise Valley, Arizona (the “Property”).

23 13. In January of 2006, the Debtor made an additional loan to MK in the original
24 principal amount of \$2,500,000 evidenced by a promissory note and a second position deed of
25 trust, which loan is commonly referred to as the “MK II Loan.” The MK II Loan was also
26 secured by the Property.

27
28

1 14. QCMK’s predecessor in interest, Queen Creek XVIII, L.L.C., purchased from the
2 Debtor a 20% undivided interest in the promissory note and deed of trust evidencing the MK II
3 Loan.

4 15. Pursuant to the Plan, certain investors in the MK I Loan transferred their
5 ownership interests to MK I Loan LLC, and certain investors in the MK II Loan transferred their
6 ownership interests to MK II Loan LLC. Queen Creek XVIII, L.L.C., as predecessor in interest
7 to QCMK, opted to retain its 20% undivided interest in the MK II Loan.

8 16. In or about January of 2010, MK alleged that the deed of trust securing the MK I
9 Loan was invalid due to improper acknowledgement. However, despite this knowledge, ML
10 Manager commenced a non-judicial foreclosure of the MK I Loan deed of trust, which would
11 have foreclosed any interest of QCMK and other investors under the MK II Loan deed of trust.

12 17. To prevent ML Manager from making the outright forfeiture of QCMK’s interest
13 in the Property, QCMK filed a petition for relief under Chapter 11 of the Bankruptcy Code on
14 November 15, 2010. QCMK’s Chapter 11 case is pending before the Judge Case, Bankruptcy
15 Court for the District of Arizona, Case No. 10-bk-36845-CGC (the “QCMK Bankruptcy Case”).

16 18. Subsequent to the commencement of QCMK’s Chapter 11 case, QCMK and ML
17 Manager stipulated to relief from the automatic stay to allow ML Manager to foreclose on the
18 deed of trust securing the MK II Loan and to subsequently market and sell the Property while
19 preserving the dispute over the priority of the deeds of trust securing the MK I Loan and the MK
20 II Loan. ML Manager thereafter foreclosed on the deed of trust securing the MK II Loan thereby
21 converting QCMK’s interest into a 20% tenant-in-common ownership interest in the Property.

22 19. QCMK commenced an adversary proceeding in connection with the QCMK
23 Bankruptcy Case contesting the disputed lien of the deed of trust securing the MK I Loan.
24 QCMK also sought turnover of the Property and other remedies in the QCMK Bankruptcy Case
25 in an effort to determine the lien priority issue and to control the disposition of its interest in the
26 Property for the benefit of its estate. Despite ML Manager’s clear conflict of interest as the
27 asserted agent of the investors in the MK I Loan and the MK II Loan, ML Manager sought to
28 dismiss the adversary proceeding and otherwise opposed QCMK’s efforts to determine the lien

1 priority issue on the basis that it retained the sole right, in its absolute discretion, to seek such a
2 determination pursuant to its asserted agency authority powers.

3 20. In the meantime, on August 31, 2011, ML Manager filed its motion in this Court
4 seeking authority to sell the Property for \$2.9 million. [DE #3301]

5 21. On September 13, 2011, Judge Case held a hearing in the QCMK Bankruptcy
6 Case on various motions with respect to the lien avoidance litigation and other issues.
7 Recognizing its insurmountable conflict of interest, ML Manager advised Judge Case that it
8 would appoint separate business representatives and counsel for the investors in the MK I Loan
9 and the MK II Loan and that neither ML Manager nor its counsel would be involved in any
10 decisions or litigation regarding the priority dispute or settlement of these claims. *See* Transcript
11 of September 13, 2011 Hearing, pp.7, 16–17 [QCMK DE #77]² (the “Hearing Transcript”),³ a
12 true and correct copy of which is attached hereto as Exhibit B. Furthermore, ML Manager
13 agreed that it would escrow approximately \$512,000⁴ of the proceeds of the sale of the Property
14 pending resolution of the lien priority dispute. *See* Hearing Transcript, p.9.

15 22. Counsel for QCMK noted at the hearing, however, that ML Manager had
16 proposed such an arrangement on several occasions but had failed to act upon it for more than
17 eight months. *See* Hearing Transcript, p.12–13. Indeed, QCMK expressed great concern that
18 ML Manager would not take any steps toward implementing the procedures it described at the
19 hearing. *See* Hearing Transcript, pp.13, 15.

20
21 _____
22 ² References to docket entries in the QCMK Bankruptcy Case shall be “[QCMK DE #__].”

23 ³ The Hearing Transcript was originally filed in the QCMK Bankruptcy Case. The Rev Op
24 Investors request that this Court take judicial notice of the Hearing Transcript and its contents
25 and substance. *See* Fed. R. Bankr. P. 9017; Fed. R. Evid. 201; *Smith v. Duncan*, 297 F.3d 809,
26 815 (9th Cir. 2002) (taking judicial notice of state court documents); *Burbank-Glendale-
Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial
27 notice of state court filings); *MGIC Indemnity Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir.
1986) (taking judicial notice of motion to dismiss and supporting memorandum filed in a
28 separate case).

⁴ This sum represents the 20% portion of the proceeds of the sale of the Property owing to
QCMK, or \$580,000, less certain costs associated with the sale of the Property chargeable to
QCMK.

1 23. After the hearing, Judge Case read his ruling in open court. With respect to ML
2 Manager's representations regarding resolution of its conflict of interest, Judge Case stated:

3 ML [Manager] . . . can deal with the conflict of interest issue as it has stated on
4 the record that it will do by hiring independent counsel for both groups that it
5 otherwise would be the agent for and also to have separate business
6 representatives representing the agency position with regard to those different
7 groups.

8 . . .

9 I've noted that what QC MK claims to be an irreconcilable conflict of interest can
10 be resolved and frankly I fully expect that to be done based upon representations
11 of counsel in the hearings this morning. If it turns out that this is not done, then I
12 will leave it to the parties to decide if there's appropriate relief that needs to be
13 sought back here *because that's part of the basis of my ruling today.*

14 . . .

15 [A]ny potential conflict of interest as I previously discussed can be avoided or
16 cured by ML Manager's proposal to leave the proceeds from the sale of the
17 property in escrow . . . , while the relative rights of the parties are finally
18 determined and also to engage both separate business and legal counsel, business
19 people and legal counsel, to address how to best resolve the interest between the
20 two competing claims to the proceeds.

21 *See* Transcript of September 13, 2011 Hearing, pp.10, 14–15 (emphasis added) [QCMK DE #75]
22 (the "Ruling Transcript"),⁵ a true and correct copy of which is attached hereto as Exhibit C.

23 24. Accordingly, Judge Case dismissed the adversary proceeding based in part upon
24 ML Manager's representations that it would remedy its conflict of interest in the manner
25 described at the hearing.

26 25. Thereafter, ML Manager sold the Property pursuant to this Court's order dated
27 September 26, 2011. [DE #3321] Pursuant to the order and ML Manager's representations to
28 the Court in connection with its motion to sell the Property, ML Manager was required to escrow

⁵ The Hearing Transcript was originally filed in the QCMK Bankruptcy Case. The Rev Op Investors also request that this Court take judicial notice of the Ruling Transcript and its contents and substance.

1 \$512,000 of the proceeds of the sale of the Property and to remedy its conflict of interest in the
2 manner described at the September 13, 2011 hearing in the QCMK Bankruptcy Case.

3 26. On December 19, 2011, ML Manager circulated “ML Manager LLC Loan
4 Portfolio Newsletter #21” to investors, wherein it stated with respect to the MK I Loan and the
5 MK II Loan: “We have adopted a process to resolve the dispute regarding the validity of the lien
6 of the first loan. Once the dispute is resolved, the sale proceeds can be distributed to the
7 appropriate investors.” A true and correct copy of the December 19, 2011 newsletter is attached
8 hereto as Exhibit D.

9 27. On December 22, 2011, counsel for QCMK sent an email to counsel for ML
10 Manager requesting information regarding the process adopted by ML Manager as stated in the
11 newsletter. A true and correct copy of the December 22, 2011 email is attached hereto as Exhibit
12 E. ML Manager’s counsel never responded to the email or otherwise provided any information
13 regarding the alleged process.

14 28. Nearly five months have passed since ML Manager represented to Judge Case and
15 this Court that it would take the steps outlined at the September 13, 2011 hearing, and ML
16 Manager has wholly failed to make any progress toward remedying its conflict of interest.
17 Moreover, ML Manager’s failure to act has deprived QCMK of the ability to pursue its rights
18 with respect to the lien priority dispute or to otherwise realize upon its valuable interests. This
19 too constitutes a breach of ML Manager’s duties and obligations under the Plan and fiduciary
20 duties to QCMK.

21 **C. ML Manager Should Be Ordered To Comply With Its Plan Obligations.**

22 29. Pursuant to Sections 105(a) and 1142(b) of the Bankruptcy Code, and relevant
23 case law binding in this Circuit, this Court has the power and jurisdiction to enforce the Plan and
24 otherwise order ML Manager to perform any act necessary for the consummation of the Plan. 11
25 U.S.C. §§ 105(a), 1142(b); *see also Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195, 2205 (2009)
26 (“[T]he Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders.”);
27 *Hawaiian Airlines, Inc. v. Mesa Air Group, Inc.*, 355 B.R. 214, 218 (D. Hawaii 2006) (“The law
28

1 is clear that “[a] bankruptcy court retains post-confirmation jurisdiction to interpret and enforce
2 its own orders, particularly when disputes arise over a bankruptcy plan of reorganization.””).

3 30. As set forth herein, ML Manager has clearly failed to comply with its obligations
4 under the Plan and its fiduciary duties to the Rev Op Investors. Indeed, the Rev Op Investors are
5 entitled to a prompt distribution of their undisputed funds under the Plan, particularly in light of
6 the fact that (i) many of them rely upon such funds as their sole source of income and (ii) many
7 of them now have tax obligations related to property sales and no funds with which to pay such
8 tax obligations. Furthermore, ML Manager has an affirmative obligation under the Plan and this
9 Court’s orders to promptly appoint and/or hire business and legal representatives to the investors
10 in the MK I Loan and the MK II Loan to determine the priority issues with respect thereto.

11 WHEREFORE, the Rev Op Investors request that the Court enter an order:

12 (A) Requiring ML Manager to immediately account for and distribute all undisputed
13 loan proceeds owned by the Rev Op Investors;

14 (B) Requiring ML Manager to appoint and/or hire business and legal representatives
15 to the investors in the MK I Loan and the MK II Loan to determine the priority issues with
16 respect thereto, and to confirm that the proceeds to which QCMK’s lien attached are currently
17 deposited in a segregated and appropriate interest-bearing account; and

18 (C) Granting any other and further relief as may be just and proper under the
19 circumstances of this Chapter 11 case.

20 DATED this 7th day of February, 2012.

21 BRYAN CAVE LLP

22
23 By: /s/ JAS, #026359

24 Robert J. Miller
25 Bryce A. Suzuki
26 Justin A. Sabin
27 Two North Central Avenue, Suite 2200
28 Phoenix, AZ 85004-4406
Counsel for the Rev Op Group

1 COPY of the foregoing served by email
2 this 7th day of February, 2012 upon:

3 Cathy L. Reece, Esq.
4 Fennemore Craig, P.C.
5 3003 North Central Avenue, Suite 2600
6 Phoenix, Arizona 85012
7 creece@fclaw.com
8 Attorney for ML Manager LLC

9 Keith L. Hendricks, Esq.
10 Moyes Sellers & Hendricks
11 1850 North Central Avenue, Suite 1100
12 Phoenix, Arizona 85004
13 khendricks@law-msh.com
14 Attorney for ML Manager LLC

15 /s/ Robyn L. Kerns _____
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EXHIBIT A



Bryce A. Suzuki
 Direct: (602) 364-7285
 bryce.suzuki@bryancave.com

December 15, 2011

VIA E-MAIL AND U.S. MAIL

Cathy L. Reece, Esq.
 Fennemore Craig, P.C.
 3003 North Central Avenue, Suite 2600
 Phoenix, AZ 85012-2913

Re: Mortgages Limited

Dear Cathy:

As you know, this law firm represents the individuals and entities known as the Rev Op Group. It has come to our attention that ML Manager LLC ("ML Manager") is holding a significant sum of money -- at least \$1 million -- owed to the Rev Op Group. We also understand that ML Manager does not intend to turn over those funds to the Rev Op Group until "sometime in 2012." While the Rev Op Investors maintain that they are entitled to more funds than those currently designated for distribution by ML Manager, there is no contention that they are entitled to any less. Accordingly, ML Manager's refusal to distribute such funds until a later date is both puzzling and problematic.

Many members of the Rev Op Group had a substantial portion of their net worth tied up in Mortgages Ltd. They already face massive losses, and now are being forced to await distributions until ML Manager makes an arbitrary decision about the timing of disbursement. ML Manager's flippant approach in handling other people's property is not only troubling, it is a breach of its fiduciary duties. Based ML Manager's current refusal to deal with these distribution issues, the Rev Op Group hereby demands that ML Manager disclose its plans for accounting and distribution of the Rev Op Group's funds, and whether ML Manager intends to seek bankruptcy court approval prior to distribution.

The Rev Op Investors are also concerned about how their funds are (or are not) being safeguarded. Given the length of time ML Manager insists on holding the Rev Op Group's cash, one would assume that ML Manager, as their fiduciary, has placed their funds in an interest-bearing account and that such interest will be paid to the Rev Op Group. One also would assume that ML Manager does not have the Rev Op Group's funds commingled with operating and other types of funds. Please confirm that my clients' funds are segregated in an appropriate interest-bearing account.

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Cathy L. Reece, Esq.
December 15, 2011
Page 2

Bryan Cave LLP

The Rev Op Group reserves all rights, and nothing herein shall be construed to affect any of the pending appeals or any other matters.

Sincerely,



Bryce A. Suzuki
FOR THE FIR

cc: The Rev Op Group (via email)

EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:)
RADICAL BUNNY, LLC CH: 11) 2:08-bk-13884-CGC
RB LIQUIDATION, LLC vs QUARLES & BRADY) ADV: 2-10-02104
LLP & ROBERT MOYA & SARA DREIER-MOYA &)
ROBERT BORNHOFT & BRANDIE BORNHOFT &)
CHRISTIAN HOFFMAN & SALLY ROOF & GARY)
SHULLAW & MARY SHULLAW)
DECISION ON THE RECORD MOTION TO)
DISMISS COMPLAINT FOR PROFESSIONAL)
(LEGAL) NEGLIGENCE FILED BY SCOTT B)
GARNER OF MORGAN, LEWIS & BOCKIUS, LLP)
ON BEHALF OF QUARLES & BRADY LLP)

In re:)
QC MK CUSTOM RESIDENTIAL LLC CH: 11) 2:10-bk-36845-CGC
DECISION ON THE RECORD MANAGER'S)
OBJECTION TO MOTION TO TURNOVER)
PROPERTY AND REJECT AGENCY AGREEMENT)

U.S. Bankruptcy Court
230 N. First Avenue, Suite 101
Phoenix, AZ 85003-1706

September 13, 2011
11:31 a.m.

BEFORE THE HONORABLE CHARLES G. CASE II, Judge

APPEARANCES:

For The Official Committee of Cathy L. Reece
Investors of Mortgages, Ltd. FENNEMORE CRAIG
Bankruptcy: 3003 N. Central Ave., #2600
Phoenix, AZ 85012-2913

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APPEARANCES: (Continued)

For QC MK Custom Residential
LLC:

Richard E. Chambliss
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-and-

Alan A. Meda
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1850 N. Central Ave. #2100
Phoenix, AZ 85004

Proceedings recorded by electronic sound technician, Kayla
Colasont; transcript produced by AVTranz.



E-Reporting and E-Transcription

1 THE CLERK: 08-13884, Radical Bunny, LLC.

2 THE COURT: Shall we call the QC MK matter at the
3 same time?

4 MS. REECE: Sounds good, Your Honor.

5 THE CLERK: 10-36845, QC MK Custom Residential.

6 THE COURT: Good afternoon. Appearances, please.

7 MR. LORENZEN: Hello, Your Honor. Richard Lorenzen
8 for RB Liquidation Manager Corp.

9 MS. REECE: Good afternoon -- or good morning, Your
10 Honor. Cathy Reece on behalf of ML Manager in both of the
11 cases that you called.

12 MR. CHAMBLISS: Good morning. Richard Chambliss for
13 QC MK.

14 MR. MEDA: Good morning, Judge. Alan Meda on behalf
15 of the debtor, QC MK.

16 THE COURT: All right. Well, let's take up the issue
17 having to do with the motion to vote in favor of the sale in
18 the Radical Bunny case to begin with.

19 MR. LORENZEN: Thank you, Your Honor. I don't think
20 this is too controversial. We filed the motion, copies of the
21 order setting this hearing and the motion were sent to all
22 creditors and interested parties. No objections have been
23 received. It's fairly straightforward. Radical Bunny has a
24 majority interest in an entity that holds a lien against the
25 property. The proposed sale is for 2.9 million in cash and a

1 backup offer of 2,850,000. It's been marketed -- it's a house
2 in Paradise Valley, it's been marketed for some period of time,
3 and there's a dispute -- there were two ML liens on the
4 property, so it created two loan LLCs. One of the loan LLCs
5 has foreclosed its deed of trust and the one in which Radical
6 Bunny has an interest still asserts a lien against the property
7 and there's a disagreement between those two parties as to the
8 relative priority of those liens.

9 So if the sale occurs --

10 THE COURT: Isn't there a disagreement as to the
11 validity of the lien -- one of the liens?

12 MR. LORENZEN: Validity and hence priority. What you
13 said is more accurate. And we believe that the lien is valid
14 and that because it was recorded first in time, it is -- it was
15 senior to the MK -- the other MK lien that foreclosed its
16 interest. So that needs to be resolved.

17 If the sale occurs, then closing costs will be paid.
18 And as with other sales, the exit financier will receive its
19 share and the balance will be escrowed until that dispute is
20 resolved.

21 THE COURT: Okay. This is being sold to the CJ
22 Family Irrevocable Trust, is that Ms. Johnson? I don't think
23 so.

24 MR. LORENZEN: I don't think so.

25 THE COURT: I was just -- I was making a joke, I

1 guess. I guess she already left.

2 MR. LORENZEN: She left. And then the backup is
3 Daniel Adhoot or nominee.

4 THE COURT: Right. I see that. And as I understand
5 it, there's no objection, including no objection from QC MK; is
6 that correct?

7 MR. CHAMBLISS: No objection to the sale, Your Honor.

8 THE COURT: Okay. Now --

9 MR. CHAMBLISS: Objection as to where the money goes
10 after the sale.

11 THE COURT: All right. Well, the proposal is that
12 the money be held in escrow and not distributed until the
13 underlying dispute between the lienholders is resolved. Do you
14 have an objection to that, Mr. Chambliss?

15 MR. CHAMBLISS: Your Honor, Ms. Reece and Mr. Meda
16 have met this morning and I think we've worked out how we can
17 escrow those proceeds. We are going to be representing a
18 stipulated order to the Court. I'm taking Cathy's thunder from
19 her and I apologize.

20 MS. REECE: The 20 percent interest that this
21 debtor's estate is alleging is what we're working out --

22 THE COURT: This debtor being QC MK?

23 MS. REECE: Correct. Not the other potential 80
24 percent or the potential 93.377 percent that would belong to
25 the loan LCs and other investors. So to be conservative, we're

1 working off of 20 percent interest for this particular debtor,
2 the QC --

3 THE COURT: What's the 93.37 percent?

4 MS. REECE: Oh, the -- when you look at the two LLCs
5 that are involved, the exit financing applies only to the loan
6 LLCs portion, not to the other investors.

7 So let me start afresh. The 20 percent interest, out
8 of \$2.9 million is approximately -- is \$580,000. That would be
9 the maximum, assuming they won on all of the issues, the
10 maximum that this debtor, QC MK Custom Residential LLC would be
11 entitled to --

12 THE COURT: That's if they jump over the first lien?

13 MS. REECE: Assuming that they -- the first lien is
14 not valid, right. And so that would be the maximum that they
15 would be entitled to.

16 THE COURT: And just so I understand, this is -- if
17 the first lien is not valid, let's just make that assumption,
18 does everybody agree that the result is then that the second
19 lien -- or now actually the holder -- the owner of the
20 property, I take it, having foreclosed the second lien, would
21 then be senior to and "jump over" the first lien?

22 MS. REECE: That is the premise that we have been
23 working under. I'm not prepared to admit it, but that is the
24 premise that we we're working under, yes.

25 THE COURT: If we were in a bankruptcy case and the

1 trustee were avoiding the first lien, we would have a 551 issue
2 and the -- about whether or not the lien was being avoided for
3 the benefit of the estate, as opposed to the benefit of any
4 junior creditors who would jump up, but I take it since we're
5 talking about -- I guess I'm asking the question, is whether --
6 because we're talking about a trust set up -- a liquidating
7 trust set up post-confirmation as opposed to a debtor-in-
8 possession or trustee exercising the avoiding powers, does --
9 do we have a 551 issue here?

10 MS. REECE: I don't think any of that is even
11 relevant because the liquidating trust is not involved in this
12 specific property or the management or in ML Manager at all.
13 So real -- and the reason I'm hedging, without admitting that
14 what you've posed is correct is because, remember in the
15 adversary proceeding which was brought by QC -- that's the
16 shorthand, we needed to talk about it -- brought by QC against
17 both loan LLCs and all of the other investors, what ML Manager
18 did was merely file a motion to dismiss because the agency
19 agreement is irrevocable, they don't have standing or the
20 ability to pursue it.

21 And so the position is going to be, if you were to
22 grant that motion to dismiss, which is under advisement right
23 now, it would then allow both loans to have their own
24 independent counsel to be able to then pursue whatever they
25 understand the claims are going to be. And it may be that when

1 independent counsel represents MK1, which is the one that still
2 has the deed of trust on the property they may have other
3 theories and I'm not in a position to be able to say what those
4 would be or what their legal positions would be.

5 THE COURT: Okay.

6 MS. REECE: I'm just trying to be very limited and
7 caution --

8 THE COURT: MK1, the one in which QC MK has its 20
9 percent?

10 MS. REECE: MK2 is the one that it has --

11 THE COURT: Okay.

12 MS. REECE: -- its 20 percent interest in.

13 So for the purpose of being conservative, what we're
14 trying to do is not give away or make any admissions or
15 anything of that nature --

16 THE COURT: Or affect whatever those rights -- the
17 rights of those parties are at a later time?

18 MS. REECE: Exactly. And so those don't have to be
19 determined right now. And what we're trying to do now is take
20 the alleged 20 percent interest that QC has and that would be a
21 maximum, based on the sale price, of 580,000. We would
22 subtract from the 580,000 the 20 percent interest of the real
23 estate taxes, the commission that has to be paid at close, the
24 customary closing costs and the insurance that had been
25 advanced by ML Manager, the repairs and maintenance that had

1 been advanced, the utilities and I believe the trustee sales
2 expenses. We have agreed that we're going to provide invoices
3 to Mr. Meda, so that he can review all of that with his client
4 and go through that and make sure that these third party costs
5 are -- have, in fact, been incurred, but it's going to be 20
6 percent of these third-party costs at the time of closing.

7 And that percentage and that amount would be held --
8 would actually be used at the closing and by ML Manager to pay
9 those types of things. It's approximately \$68,000 of the
10 \$580,000 that would be the 20 percent interest here. And then
11 the rest of it, approximately \$512,000, is going to then be
12 escrowed at the escrow company that does the closing or at
13 another title company the parties -- another escrow company the
14 parties -- the mutual parties agreement. And then it's going
15 to be pending the dispute.

16 The other 80 percent then when we go to Judge Haines'
17 courtroom on the Mortgages Ltd. case on September 20th, we will
18 deal with the remaining issues there because that's the Court
19 that deals with the loan LLCs and the expenses and the exit
20 financing. So we would basically deal with the 20 percent here
21 and the 80 percent there for purposes of the sale. Again, the
22 net proceeds there are also going to be escrowed. There we
23 would take whatever their amount is, which is approximately
24 \$2.32 million, we'll take off the 80 percent of the various
25 closing, and the costs that I just went through, we'll take off

1 the exit financing from that amount, which is owed to the loan
2 LLCs and we'll take off the reserve that's allowed under the
3 loan documents and then we'll escrow the net amount for that 80
4 percent. So we're going to be escrowing approximately a
5 million dollars and not disbursing that at this point.

6 And so that is how we propose to proceed. And I
7 already presented a form of order to Mr. Meda for his review.
8 I don't know what the Court schedule is, in terms of when
9 you're available to sign this. We are -- obviously both the
10 Radical Bunny approval and the QC approval are going to be
11 contingent upon normal things that we have in this case, which
12 is that the loan LLCs have to vote in favor of the sales or
13 they can't happen. That ballot closes the 19th of September
14 and the Radical Bunny vote will carry MK1 Loan LLC. The other
15 votes in MK2 LLC right now, which are all nine of the funds,
16 plus another nine -- five individuals, that is running 95
17 percent in favor of doing the sale, so -- but there's still
18 another week-and-a-half of voting -- or a week of voting, so
19 that still has to come in, but when it comes in we then go to
20 the hearing so the other contingency of course is Judge Haines'
21 approval in the Mortgages Ltd. case.

22 So with all of those contingencies satisfied that we
23 need to satisfy, we then like your order to have been entered
24 and these other orders to be entered and then we will be in
25 position to close probably before the end of September,

1 beginning of October; it's that quick of a close. The deposits
2 have been made. This particular purchaser, this CJ Family
3 Trust -- Irrevocable Trust, has already posted their \$200,000
4 earnest money and the backup bidder has posted its \$250,000
5 earnest money and we'd like permission to be able to do the
6 higher bid first. If it doesn't close pursuant to the sale
7 agreement, we would then move on to the backup bidder. And so
8 that's what we have proposed in our form of order with Mr.
9 Meda.

10 MR. MEDA: Judge, I'd like to address a couple things
11 quickly and then I'll get to the sale itself.

12 Yes, there is a dispute over the lien positions. My
13 client is a 20 -- is an interest holder in the second lien
14 position. My client asserts a 20 percent -- the debtor asserts
15 a 20 percent interest in the property and the sale proceeds.
16 Yes, there is a pending adversary proceeding --

17 THE COURT: A 20 percent interest in the -- I guess
18 now the ownership of the property, whether or not it is subject
19 to this first lien or not.

20 MR. MEDA: Yes.

21 THE COURT: And if it's subject to the first lien,
22 and that's valid, everybody would agree that the first lien is
23 underwater -- the property is underwater and there is no value
24 then left for QC MK?

25 MR. MEDA: That would be correct.

1 THE COURT: But if that's wiped out, or subordinated
2 or whatever happens, then that would not be true?

3 MR. MEDA: That is correct. And that dispute is the
4 subject of a pending adversary proceeding.

5 THE COURT: I understand that.

6 MR. MEDA: While counsel would like to suggest that
7 independent counsel should step in and try to resolve the
8 dispute, I think it's important to point out, Judge, that we've
9 been told that for over eight months and yet, there is no
10 independent counsel. ML Manager had an opportunity to bring
11 this lawsuit -- the adversary proceeding. It chose not to, so
12 we brought it.

13 So, you know we've been hearing about this for a long
14 time, but the bottom line is that ML Manager has a conflict of
15 interest. They've had a conflict of interest for a long time.
16 They noticed up simultaneous trustee sales of the first and
17 second lien position. We went forward, we filed bankruptcy
18 petition, we filed the adversary proceeding to preserve the
19 second lien position on our deed of trust, which has
20 subsequently now been turned into an ownership interest.

21 THE COURT: You didn't file the adversary proceeding
22 to preserve that, you filed the bankruptcy to preserve that?

23 MR. MEDA: Right. That's correct.

24 THE COURT: The adversary proceeding has to do with
25 the validity of the first lien.

1 MR. MEDA: That is correct. So we've been acting
2 promptly to preserve our interest in this property, we believe
3 there's a conflict of interest. Yes, we do believe that there
4 should be some independent counsel for ML Manager, but in the
5 meantime we have to take action, we have to proceed. We've
6 been promised this for a long, long time, over eight months,
7 and this is where we are today.

8 So getting to the present motion. We agree, the
9 property should be sold. We agree to the purchase price of
10 \$2.9 million. We agree that our potential 20 percent interest
11 comes to \$580,000. And we agree that that amount of money can
12 be escrowed pending resolution of the adversary proceeding. We
13 do also believe that out of that \$580,000 the ML Manager can
14 pay 20 -- our 20 percent share -- pro rata share of certain
15 expenses relating to the sale.

16 What are those expenses? Real estate taxes, we're
17 told that through September 1 the taxes are \$121,414 up to the
18 closing that number will increase slightly, but we agree to pay
19 our share of those taxes out of the sale proceeds. We're told
20 that the commission is \$174,000. We agree to pay our share of
21 that out of the sale proceeds. We're told that title
22 insurance, closing costs and escrow fees comes to \$7500 and
23 again, we agree to pay our share of that. Those three items,
24 Judge, comes to \$302,914. Obviously some of those costs will
25 increase slightly based on the closing date, but our share of

1 that is estimated to be \$60,582.80. So we agree that our
2 share, our 20 percent share -- pro rata share of those costs
3 can come out of the \$580,000.

4 There are a number of other items that have been
5 identified for us, such as property insurance. We're told
6 that's \$11,055. Utilities that are due and owing of \$9,544.90,
7 repair and maintenance items, \$7,185.67 and certain trustee
8 sale costs, which we've been told include publication, the
9 guarantee report and posting, comes to \$6,387.95. The total of
10 those four items is \$34,173.54 and our 20 percent share of that
11 would come to \$6,834.71. That means, Judge, that based on
12 these items that I have identified our estimated share of these
13 expenses comes to a total of \$67,417.51, which means that there
14 would be a balance in escrow pending resolution of the
15 adversary proceeding of approximately \$512,582.49.

16 We have received a form of order. I have reviewed
17 it. I have certain revisions to the order, which I will make
18 as soon as I get back to the office, but subject to the balance
19 of the sale proceeds, other than what I've identified, subject
20 to those proceeds being escrowed, we do not object to the sale.

21 THE COURT: Okay. All right. It's ordered approving
22 then the vote by Radical Bunny in favor of the sale by ML
23 Manager. Mr. Lorenzen can submit a form of order on that.

24 MR. LORENZEN: I'll do that this afternoon, Your
25 Honor.

1 THE COURT: So, Ms. Reece, what happens if I grant
2 your motion to dismiss for the reasons that are stated in your
3 motion to dismiss with regard to the litigation that's pending?
4 Presuming the litigation gets dismissed, Mr. Meda says ML
5 Manager has declined to bring that action to resolve that
6 issue, ML Manager is taking the position that QC MK cannot
7 prosecute that itself, that that's ML Manager's sole
8 prerogative and they've alleged that you have this conflict of
9 interest and you say you're going to solve that by appointing
10 independent counsel, Mr. Meda says yeah, you know, you've been
11 telling me that for months and months and months and nothing
12 has happened. So let's play out that scenario, what happens
13 here so that the issue of the validity of the lien actually
14 does get decided by a court of competent jurisdiction, whether
15 here or someone else, how is that going to play out?

16 MS. REECE: Well, first of all, ML Manager hasn't
17 declined to bring the litigation or hasn't refused to bring it.
18 We preferred to sell the house first, have the money escrowed
19 so the parties could then deal with the money and the proceeds,
20 but to answer the precise question, if the motion to dismiss is
21 granted in this adversary proceeding, it is our intention to go
22 ahead and hire independent counsel for both sides of the -- for
23 both loan transactions.

24 The other -- you know, but the huge percentage of the
25 loan that QC is involved in is all of the funds. That's about

1 1500 --

2 THE COURT: Is all of what?

3 MS. REECE: All of the MP Funds, Funds 9 through 17,
4 they have about 1500 investors in them. It's a large number of
5 people and there's the one that have the right to vote on what
6 happens with regards to their portion of their interest.

7 So what we would propose to do is to have independent
8 counsel represent 100 percent of the ownership of that specific
9 interest, we would have other counsel -- independent counsel,
10 would not be Fennemore Craig or anyone else that is
11 representing ML Manager, to represent then the MK2 -- 1 loan
12 interest, so that you'd have 1 and 2 separately being
13 represented. We would have a business person for each one
14 being able to help make the decision. The LLCs ultimately have
15 to vote on however it's resolved.

16 Our first effort is going to be to try and settle it
17 because this is an issue over -- rather than litigating 100
18 percent loss on both sides, we will attempt to settle.

19 THE COURT: When you say -- you know, when you say
20 your preference would be that, what you really mean is --
21 actually, you don't really know what the preference be --

22 MS. REECE: True.

23 THE COURT: -- presumably because somebody else is
24 going to be advising them and somebody else will be making the
25 business calls.

1 MS. REECE: That is true. I misspoke when I said
2 that my preference would be because I'm not going to be
3 involved in the process and neither is Fennemore Craig going to
4 be involved in the process, but I'm assuming that reasonable
5 business people will want to try and settle it before they
6 spend a whole lot of time and money litigating over these
7 interests.

8 So that would mean then that if the right -- if they
9 cannot settle it, given a reasonable period of time, if they
10 cannot settle it then it needs to be brought somewhere. The
11 Mortgages Ltd. plan has a retention of jurisdiction and a
12 channeling injunction. It would seem to me that the Mortgages
13 Ltd. court is the one that really should decide the dispute
14 between all of the investors and all of the plan interests that
15 were set up and based on that retention of jurisdiction, that
16 would be a logical place to bring it.

17 THE COURT: And your position is that this case
18 simply has the wrong plaintiff, because QC MK is 20 percent
19 holder, but really the -- I guess is it MK2 --

20 MS. REECE: MK2 Loan LLC owns 80 percent.

21 THE COURT: -- is -- owns --

22 MS. REECE: Eighty percent.

23 THE COURT: And you think there should be one counsel
24 for MK2 and QC MK?

25 MS. REECE: Correct.

1 THE COURT: Representing whose interests are aligned
2 as the owners by virtue of foreclosing the second deed of
3 trust?

4 MS. REECE: Correct. And then similarly on the MK1
5 Loan LLC side, a very large portion, almost 94 percent, is
6 owned by the loan LLC and then there are five individuals. So
7 again, there would be one counsel representing MK1 Loan LLC and
8 those investors. And then that's why a mechanism would work,
9 they will, of course -- which probably discuss how you -- it
10 should be resolved and where it should be resolved and whether
11 it's a declaratory judgment proceeding or where it might be
12 appropriate and we'll decide the right forum in the courtroom.

13 THE COURT: Again, the --

14 MS. REECE: But that won't be my decision.

15 THE COURT: -- using the royal "We."

16 MS. REECE: Yes, exactly.

17 THE COURT: In other words, somebody --

18 MS. REECE: The client, yes.

19 THE COURT: The client and independent counsel will
20 make those decisions?

21 MS. REECE: And I think that is appropriate. That's
22 how we're trying to resolve the conflict in a rational,
23 reasonable way. And even the plan of reorganization and the
24 disclosure statement in the Mortgages Ltd. case recognizes
25 there could be conflicts and there is a rational way for the

1 parties to be able to proceed to resolve the conflict between
2 the different interests. And Judge Haines has seen that from
3 time to time and commented on it and so he's aware of the
4 conflict that exists as well.

5 THE COURT: Okay.

6 MS. REECE: Now, Mr. Meda's last comment was -- and I
7 just want to make sure -- I'm trying to be precise, because the
8 approximate amount to be escrowed is about \$512,000. The
9 numbers are what they're going to be. When you get to the
10 closing the taxes will be a precise amount, it won't be the
11 numbers that he said here, but it's going to be close to it.
12 The utilities are going to have to be prorated right up until
13 the date of closing with the buyer, the insurance will be the
14 same way. So these are approximate amounts, but I will provide
15 invoices and the calculations to Mr. Meda so that he has that
16 information as we get there. So the form of order might very
17 well say approximately. It won't even be capped, it will be
18 approximate amounts that can be updated until the closing.

19 Any other questions, Your Honor?

20 THE COURT: No.

21 MS. REECE: Okay. Thank you.

22 THE COURT: Just give me one second here.

23 Mr. Chambliss, you have something you want to add?

24 MR. CHAMBLISS: I just was going to respond briefly
25 to the last ten minutes or so of appointing independent counsel

1 for both of these entities. The essential problem that we've
2 had is two-fold. One, this conflict interest of QC MK has been
3 pending for over a year. We've got communications that are
4 going back eight months of appointing counsel, tendering it to
5 the title company and ultimately we had to file the adversary
6 action.

7 The problem that we are running to is the ML Manager
8 position is that they have the absolute authority to make every
9 decision and QC MK has no authority to be heard. If we don't
10 have a forum like this courtroom to protect QC MK's interest,
11 then we're back to letting other people decide the interest of
12 this debtor and I guess if we don't like that decision, we have
13 to come back and file another lawsuit. It seems to me, Judge,
14 you have a motion to dismiss pending that's been filed by ML
15 Manager -- the first issue of which ML Manager is saying we're
16 not the right plaintiff, based on prior rulings we have no
17 position whatsoever. You need to make a decision about that
18 issue. If you decide it favorably to ML Manager, then we're
19 going to be playing catch up.

20 If you decide it unfavorably, we now have an
21 adversary action that is not on all fours with what the facts
22 will be, assuming that the property gets sold. The present
23 pending adversary has two counts to it. One is declaratory
24 action regarding the validity of the first lien deed of trust
25 and the second is a declaratory action against ML Manager

1 because they refuse to acknowledge QC MK's interest in the
2 property when QC MK's predecessor, Queen Creek, transferred it
3 to QC MK. If the property gets sold, Count II goes away. We
4 don't need to fight with ML Manager about who has a property
5 interest. We then have cash to fight about. And if the
6 property gets sold, I suspect the complaint should be revised
7 to reflect the sale and focus the issue then on the validity of
8 the first lien deed of trust and the proceeds payable to QC MK.

9 THE COURT: All right. Well, what I would like to do
10 is -- unfortunately we've run out of time this morning. I'm
11 prepared to rule on all of the pending motions and I'm prepared
12 to do that on the record. I'll do that per -- if it works for
13 the parties at 1:30. You can call in if you don't want to be
14 here, you know, if you want to hear it by phone. I know it'd
15 be more convenient for everybody to hear it now, but
16 unfortunately I've got a conflict at -- over the noon hour that
17 makes it impossible for me to take the time to do it and I want
18 to be able to take the time so that we understand that.

19 So I'll give you the option, we can do it at 1:30, we
20 can do it at 2:30, we can do it -- anybody can be available
21 over the telephone so you don't have to come down and spend
22 your afternoon here with me, although you're of course welcome
23 to be here if you want to.

24 MS. REECE: I would like to be present in the
25 courtroom because sometimes when you make a ruling there may be

1 a question or two afterwards and that would give us the
2 opportunity to do that.

3 THE COURT: Well, so --

4 MS. REECE: So 1:30 is just fine.

5 MR. CHAMBLISS: Mr. Meda and I can be here at 1:30
6 also, Your Honor.

7 THE COURT: All right. So we'll start first thing --
8 we have a 1:30 calendar, but we'll put this first at 1:30 and
9 then we'll take that up.

10 MR. LORENZEN: Your Honor, if I wanted to listen by
11 telephone could you give me the number?

12 THE COURT: Rhonda will give you the call in number.
13 Okay.

14 MR. LORENZEN: Thank you.

15 THE COURT: All right. Thank you.

16 MS. REECE: So does that mean, Your Honor, that even
17 at 1:30 you are then going to rule on the motion regarding the
18 sale or can we just work on our form of orders?

19 THE COURT: The motion regarding the sale I thought I
20 already granted.

21 MS. REECE: Okay.

22 THE COURT: Is there another -- I mean, with regard
23 to the -- the real issue here was Radical Bunny and to the
24 extent that you need -- QC filed a second motion to "ratify"
25 the ML sale, so to the extent that we need a second order, I

1 guess that is implicated by this notion of who is actually in
2 charge of doing it, but normally what happens is, Radical Bunny
3 comes in and wants to get authority to be able to vote in favor
4 or against whatever its people want to do in the ML case, which
5 is the primary issue that I thought we were deciding this
6 morning. To the extent --

7 MR. LORENZEN: And I'll lodge an order on that.

8 THE COURT: To the extent that there's this separate
9 issue because QC MK filed its motion to ratify agent's decision
10 to sell real property --

11 MS. REECE: That was ML Manager's motion, not QC's
12 and QC filed a limited objection to it.

13 THE COURT: Oh, okay.

14 MS. REECE: So that's why we were going to do a form
15 of order approving the sale and authorizing the signatures
16 and --

17 THE COURT: It doesn't sound to me like we need
18 anything -- would you agree, Mr. Chambliss and Mr. Meda?

19 MS. REECE: I believe the title company is going to
20 need an order that authorizes us to sign.

21 THE COURT: Okay. And -- but it doesn't sound like
22 anybody has an objection to that?

23 MR. CHAMBLISS: We have no objection. We were
24 exchanging the form of order and we'll probably reach an
25 agreement --

1 THE COURT: All right. So all that we'll talk about
2 then at 1:30 are the three pending motions, okay?

3 MS. REECE: Thank you, Your Honor.

4 THE COURT: The turnover motion, the rejection motion
5 and the motion to dismiss, I think, are the three pending
6 motions, okay?

7 MS. REECE: Thank you.

8 THE COURT: Thank you.

9 (Proceedings Concluded)

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Dated: September 21, 2011

Stephanie McMeel

AVTranz, Inc.
845 North 3rd Avenue
Phoenix, AZ 85003

UNITED STATES BANKRUPTCY COURT
District of Arizona

NOTICE OF FILING TRANSCRIPT

CASE NAME: QC MK CUSTOM RESIDENTIAL LLC

CASE NUMBER/ADVERSARY NUMBER: 2:10-bk-36845-CGC

Notice is hereby given that an official transcript of a court proceeding conducted on 9/13/2011 has been filed this date in the above-captioned matter. In accordance with the attached information Re: Judicial Conference Privacy Policy and Electronic Availability of Transcripts of Court Proceedings, the parties have seven days from the date of this notice to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely, electronically available to the public without redaction after 90 days.

Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter/transcriber or view the document at the clerk's office public terminal.

Date: September 21, 2011

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U.S. Bankruptcy Court, Arizona
230 North First Avenue, Suite 101
Phoenix, AZ 85003-1727
Telephone number: (602) 682-4000
www.azb.uscourts.gov

Clerk of the Bankruptcy Court:

Brian D. Karth

JUDICIAL CONFERENCE PRIVACY POLICY
and ELECTRONIC AVAILABILITY OF TRANSCRIPTS
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This court provides public access to transcripts of court proceedings. In doing so, it follows the Judicial Conference Privacy Policy as revised March 2008, before making official transcripts electronically available to the public. The policy will apply to all transcripts of proceedings or parts of proceedings ordered on or after August 1, 2007, regardless of when the proceeding took place. The complete Judicial Conference Privacy Policy may be reviewed at the court's web site, www.azb.uscourts.gov.

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Social Security Numbers
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Names of Minor Children

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If request for redaction is filed, the redacted transcript is due 31 days from the date the transcript was filed which is also the date of this notice.

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TOTAL: 3

EXHIBIT C

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:)
RADICAL BUNNY, LLC CH: 11) 2:08-bk-13884-CGC
RB LIQUIDATION, LLC vs QUARLES & BRADY) ADV: 2-10-02104
LLP & ROBERT MOYA & SARA DREIER-MOYA &)
ROBERT BORNHOFT & BRANDIE BORNHOFT &)
CHRISTIAN HOFFMAN & SALLY ROOF & GARY)
SHULLAW & MARY SHULLAW)
DECISION ON THE RECORD MOTION TO)
DISMISS COMPLAINT FOR PROFESSIONAL)
(LEGAL) NEGLIGENCE FILED BY SCOTT B)
GARNER OF MORGAN, LEWIS & BOCKIUS, LLP)
ON BEHALF OF QUARLES & BRADY LLP)

In re:)
QC MK CUSTOM RESIDENTIAL LLC CH: 11) 2:10-bk-36845-CGC
DECISION ON THE RECORD MANAGER'S)
OBJECTION TO MOTION TO TURNOVER)
PROPERTY AND REJECT AGENCY AGREEMENT)

U.S. Bankruptcy Court
230 N. First Avenue, Suite 101
Phoenix, AZ 85003-1706

September 13, 2011
1:33 p.m.

BEFORE THE HONORABLE CHARLES G. CASE II, Judge

APPEARANCES:

For The Official Committee of Cathy L. Reece
Investors of Mortgages, Ltd. FENNEMORE CRAIG
Bankruptcy: 3003 N. Central Ave., #2600
Phoenix, AZ 85012-2913



E-Reporting and E-Transcription

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APPEARANCES: (Continued)

For QC MK Custom Residential Richard E. Chambliss
LLC: BROENING, OBERG, WOODS
& WILSON, P.C.
1122 East Jefferson
Phoenix, AZ 85034
-and-
Alan A. Meda
STINSON MORTISON HECKER LLP
1850 N. Central Ave. #2100
Phoenix, AZ 85004

Proceedings recorded by electronic sound technician, Kayla Colasont; transcript produced by AVTranz.



E-Reporting and E-Transcription

Phoenix (602) 253-0885 / Tucson (520) 493-8024

1 THE COURT: Please be seated.

2 THE CLERK: I don't know the adversary numbers on
3 these, Judge. So I'm just going to call the admin case on
4 08-13884, Radical Bunny and 10-36845, QC MK Custom Residential.

5 THE COURT: All right. Good afternoon. This is the
6 time for a ruling on the record. May I have the appearance of
7 counsel please?

8 MS. REECE: Good afternoon, Your Honor, Cathy Reece
9 on behalf of ML Manager, LLC.

10 MR. MEDA: Alan Meda and Richard Chambliss on behalf
11 of the Debtor.

12 THE COURT: All right. Pending before the Court are
13 three motions. Debtor's motion to turn over property and to
14 reject an agency agreement and ML Manager's motion to dismiss
15 the Debtor's adversary complaint seeking a declaration that the
16 first deed of trust on the property on which the Debtor
17 previously held a second deed of trust is invalid. Because the
18 first deed of trust was not properly acknowledged.

19 The Debtor subsequently foreclosed its second deed of
20 trust and is now the owner of the property. The Debtor alleges
21 to be the owner of a 20 percent interest in this property at
22 6500 and 6516 North 65th Place -- 64th Place, Paradise Valley,
23 Arizona and its interest arises from a 20 percent interest in
24 the second deed of trust on the property which resulted from an
25 investment by the Debtor's predecessor Queen Creek XVIII LLC.

1 And that investment was entered into through ML which was what
2 we can call a hard money lender originating loans which had
3 been sold subscriptions to investors who were called
4 participants. And as part of the investment process, Queen
5 Creek signed an agency agreement authorizing ML to take certain
6 actions on its behalf.

7 Queen Creek purchased then a 20 percent interest in
8 the loan secured by the second deed of trust and the other 80
9 percent in the second deed of trust is owned by several other
10 parties. The property is also subject to a first deed of trust
11 in the substantial amount of approximately seven and a half
12 million dollars, which the holders of the second deed of trust
13 or the owners having foreclosed the second deed of trust claim
14 to be invalid.

15 During the course of the Mortgages Ltd. bankruptcy,
16 disputes arose as to the scope of the agency agreement whether
17 it was executory and whether it was revocable. As a result of
18 those disputes in March of 2010 after confirmation of the plan
19 in the ML case, ML Manager which is the entity created to
20 liquidate ML commenced a declaratory judgment action seeking to
21 clarify its authority under the agency agreement. This was a
22 proceeding in which QC MK participated. Judge Haines' decision
23 in the declaratory judgment action forms the basis of several
24 of the parties' arguments as discussed below.

25 Thereafter, the Debtor QC MK filed a Chapter 11

1 petition on November 15th of last year to stop a foreclosure
2 sale on the 1st wanting to preserve the second lienholder's
3 ability to challenge the deed of trust and preserve the
4 position represented by that second deed of trust. The Court
5 granted a relief from stay to permit foreclosure of the second
6 deed of trust. And after the sale, the Debtor QC MK along with
7 the other owners of the interest in the second deed of trust
8 became the owners of the property.

9 QC MK, the Debtor, then MK then filed the current
10 adversary proceeding seeking a determination that the first
11 deed of trust is invalid due to the failed acknowledgment. ML
12 Manager as agent and manager for the Defendants has filed a
13 motion to dismiss the adversary proceeding arguing that it has
14 the sole authority to bring the claims asserted by Debtor's
15 adversary proceeding pursuant to an irrevocable agency
16 agreement entered into by each investor including the Debtor
17 here.

18 The Debtor has also filed a motion to compel turnover
19 of its 20 percent undivided interest in the property pursuant
20 to § 543 and to reject the agency agreement under § 365.

21 Now the parties' positions are the following. On the
22 motion to compel turnover, the Debtor argues that ML Manager is
23 required to turn over property under the clear language of 543
24 and that ML Manager has failed to do so and did not seek to be
25 excused from that obligation prior to the filing of the motion.

1 And that even if ML requested to be excused, the Debtor argues
2 it should not be granted because ML Manager cannot show that it
3 meets the requirements of 543(d) which provides for excusal if
4 quote the interest of creditors and if the debtor is not
5 insolvent, equity security holders would be better served by
6 permitting a custodian to continue in possession, custody or
7 control.

8 In this case, the Debtor argues that ML Manager
9 suffers from an irreparable conflict of interest because it
10 purports to act as the agent and representative of both the
11 first lienholders and the former participants in the second
12 lien. ML Manager takes the position that 543 does not apply
13 because it is not acting as a custodian and that even if 543
14 applies, excusal should be granted because of the relationship
15 between the parties and the operation of the confirmed ML plan
16 and in effect the need for the matter to be handled on a
17 unitary basis for the benefit of all of the interest holders in
18 the various loans.

19 With regard to the rejection of the agency agreement,
20 the Debtor requests approval to reject it as an executory
21 contract. Frankly, it's not clear to me why the Debtor
22 believes that the agency agreement is executory or why it
23 believes rejection is appropriate other than the conflicts of
24 interest that have been alleged above. And during the course
25 of its argument, it argues not so much that the agency

1 agreement is executory as that it is not exclusive and that it
2 provides that ML Manager may take certain actions related to
3 the property after foreclosure and may do so in ML Manager's
4 sole discretion. But not to the exclusion of the second
5 lienholder's rights to pursue their own interests.

6 ML Manager argues that the agency agreement is not
7 executory, cannot be rejected and contends that this matter has
8 been fully and exclusively decided by Judge Haines in the ML
9 bankruptcy case. And that since Queen Creek was a part to the
10 disputes holding that the agency agreements were not executory
11 contracts, that QC MK is bound by those decisions under
12 theories of res judicata.

13 Now with regard to the motion to dismiss the present
14 adversary proceeding, ML Manager argues that the complaint
15 should be dismissed because the Debtor is bound by the agency
16 agreement and the agency agreement, the plan confirmation and
17 the other orders by Judge Haines established that ML Manager
18 has the sole and exclusive authority to act on behalf of the
19 second lien participants including the Debtors. The Debtor
20 counters that ML Manager has at best concurrent authority to
21 administer the property. And in any event, because of its
22 alleged conflict of interest, the Court should permit the
23 Debtor to act on its own behalf in this particular case even if
24 I were to find that the agency agreement is exclusive.

25 Now with regard to the motion to compel turnover, it

1 generally requires that any custodian in possession of any
2 property of the Debtor is to turn over the property unless the
3 Court excuses the turnover. So the first question presented is
4 whether ML fits within the definition of custodian under § 543.
5 ML Manager argues that it does not because it doesn't meet the
6 definition of custodian under 10111(c). It argues that its
7 role is to liquidate ML's interest in its loan portfolio for
8 the benefit of ML creditors and that this is a different role
9 than a custodian which is defined quote as an agent under
10 applicable law or under contract that is appointed or
11 authorized to take charge of property of the debtor for the
12 purpose of enforcing a lien against such property or for the
13 purpose of general administration of such property for the
14 benefit of the Debtor's creditors. And the key ML Manager
15 argues is that the duty is to ML's creditors, not to the
16 Debtor's creditors.

17 Frankly, I found this argument interesting because it
18 seems to me that it is contradictory to the other arguments
19 that are made by ML Manager that it is an agent under an
20 irrevocable agency agreement. The only party entitled to
21 enforce the liens on the property is it for the benefit of the
22 security holders. And so while ML Manager's role may be to
23 liquidate ML's loan portfolio, seems to me that it stepped into
24 the shoes of ML under the agency agreement and has at least --
25 it does have agency authority for the purpose of enforcing the

1 liens or administering the property. And according to ML
2 Manager itself, it has the right to quote take charge of the
3 property close quote for the purpose of enforcing the liens.

4 It seems to me that this set of rights and
5 obligations has ML Manager fit within the definition of a
6 custodian under the facts that are present here. The real
7 question is whether or not ML Manager is entitled to be excused
8 from turnover under 543(d) and I conclude that the answer to
9 that is yes. 543(d) provides that the Court may excuse
10 turnover if the interest of creditors would be better served by
11 permitting a custodian to continue in possession. And here ML
12 argues that it should be excused because the Debtor has only a
13 minority interest in a second deed of trust on an uncompleted
14 single family residence which I'll also note for the record is
15 subject to a sale motion by ML in the ML case, ML Manager in
16 the ML case and that we had a hearing this morning in which I
17 also approved and ratified -- I approved Radical Bunny's voting
18 in favor of that motion and ratified the decision of ML to
19 proceed with the sale as to which there is no objection raised
20 by QC MK as more fully reflected on the record of that hearing
21 this morning.

22 And that therefore ML Manager argues that a
23 centralized sale process will be the best way to maximize the
24 return for all of the security holders. Frankly, I find that
25 argument persuasive. Even if the first deed of trust is

1 invalid, it's better to have a centralized process for not only
2 sale but distribution of the proceeds and that ML is in the
3 best position to do so and can deal with the conflict of
4 interest issue as it has stated on the record that it will do
5 by hiring independent counsel for both groups that it otherwise
6 would be the agent for and also to have separate business
7 representatives representing that agency position with regard
8 to those different groups.

9 So it seems to me in effect this has become modestly
10 moot because we've approved the sale although it hasn't closed
11 yet. But nevertheless it seems to me that ML's in a better
12 position to liquidate the collateral, sell it, than it would be
13 to have a partial interest of a junior deed of trust turnover
14 to this particular Debtor.

15 I've noted that what QC MK claims to be an
16 irreconcilable conflict of interest can be resolved and frankly
17 I fully expect that to be done based upon representations of
18 counsel in the hearings this morning. If it turns out that
19 this is not done, then I will leave it to the parties to decide
20 if there's appropriate relief that needs to be sought back here
21 because that's part of the basis of my ruling today.

22 What about the agency agreement? Seems to me that
23 it's not rejectable because it's not executory. Why is it not
24 executory? Because Judge Haines has found it not to be
25 executory very explicitly in his declaratory judgment action.

1 And I will not allow the relitigation of issues that were
2 raised or could have been raised in a previous action where
3 there's an identify of claims, final judgment on the merits and
4 identity or privity between the parties. There's a recent
5 Ninth Circuit case of 2011, United States v. Liquidators of
6 European Federal Credit Bank, 630 F.3d 1139 as well as a
7 previous Ninth Circuit case, Owens v. Kaiser Foundation Health
8 Plan, 244 F.3d 708, standing for that proposition.

9 Judge Haines determined that the agency agreement was
10 binding on those who entered into it. He did so in a
11 declaratory judgment order as I noted. And specifically found
12 in paragraph 71 that the plan and confirmation order provide
13 that among other things, the agency agreements were not
14 executory contracts and were to be assigned to ML Manager.
15 This matter having been decided in an action in which the
16 Debtor's predecessor in interest had the opportunity to argue
17 that the agreement was executory precludes further litigation
18 on that issue in my judgment.

19 So on these two administrative matters, I conclude
20 therefore that although ML Manager is a custodian, it will be
21 excused from compliance with § 543 for the reasons stated on
22 the record and that the agreement may not be rejected in this
23 case because it is not an executory agreement or contract and
24 that that issue has been previously found and determined.

25 What about the motion to dismiss? This is a slightly

1 different proposition. The question here is whether the agency
2 agreement gives ML Management sole and exclusive authority to
3 act on behalf of the Debtor. The relevant part of the agency
4 agreement states that if the ownership of any trust property
5 becomes vested in participant, a defined term, either in whole
6 or in part by trustee sale, judicial foreclosure or otherwise,
7 agent may enter into one or more real estate brokers
8 agreements, enter into a management maintenance agreement or if
9 applicable may acquire insurance, make take such other actions,
10 et cetera, et cetera, all as agent deems appropriate in its
11 sole discretion.

12 Now, ML Manager argues that the Debtor lacks standing
13 to bring the adversary proceeding which challenges the validity
14 of the first deed of trust on its behalf as a 20 percent holder
15 of an interest in the junior second deed of trust, now
16 foreclosed. The result of that would be -- I won't opine as to
17 what the result of that would be, but presumably what the
18 Debtor here expects that the result would be is that if the
19 first lien is invalidated in these post confirmation, post-
20 bankruptcy proceedings, that it would rise to -- its ownership
21 interest would rise to the top and would be senior to the
22 inappropriately acknowledged first lien position.

23 But ML Management says -- Manager says that it lacks
24 standing to bring that under the agency agreement because ML
25 Managers has the ability to act on behalf of the participants

1 in its sole discretion. I mean according to ML Manager, this
2 gives it the exclusive ability to act and that exclusive
3 authority is evidenced by several decisions of Judge Haines
4 including his declaratory judgment order in the ML case.

5 The Debtor here, on the other hand, argues that the
6 agency agreement is permissive and allows ML Manager to act in
7 certain matters in its sole discretion without having to worry
8 about participants forcing it to do something it does not feel
9 appropriate. However, Debtor argues that the language of the
10 agreement which grants ML Manager sole discretion to take
11 certain action should not be read to provide ML Manager with
12 sole and exclusive discretion to take those actions.

13 Now in connection with this matter, I've carefully
14 reviewed the language of the agency agreement, the language of
15 the declaratory judgment order and in my view, the declaratory
16 judgment order and the language of the agency agreement itself
17 make it clear that ML Manager as agent does have the sole
18 authority to make decisions regarding the participant's
19 interests in the ML loans. The declaratory judgment order
20 states clearly that number one, the agency between ML and
21 Debtor under the agency agreement was an agency coupled with an
22 interest that it was therefore irrevocable, that it was not
23 executory, that allegations of breach of fiduciary duty or
24 breach of contract do not affect the operation of the agency
25 agreement and that all authorized actions can be taken within

1 the sole discretion of the agent.

2 The agency agreement further makes ML Manager's sole
3 authority clear by providing for a grant of broad authority
4 subject to a carve out of rights in favor of the Debtor and
5 other participants in very limited circumstances, one of which
6 is not this, providing sole discretion to ML Manager in
7 execution of all authorized actions under the agreement and
8 providing a mechanism by which participants could regain
9 control of the property, decision making regarding the
10 property, but only upon becoming the sole owner of the property
11 which is also not the facts here.

12 Therefore, it seems to me in conclusion that the
13 agency agreement in accordance with the declaratory judgment
14 order make clear taken together that the Debtor granted ML the
15 sole authority to act on behalf of the Debtor with regard to
16 its loan participation interest. And as a result, ML Manager
17 by assignment of the agency is the proper party to initiate any
18 action to determine the relative rights of the various
19 participating parties. And that any potential conflict of
20 interest as I previously discussed can be avoided or cured by
21 ML Manager's proposal to leave the proceeds from the sale of
22 the property in escrow which will be approved by order
23 submitted later on today, while the relative rights of the
24 parties are finally determined and also to engage both separate
25 business and legal counsel, business people and legal counsel,

1 to address how best to resolve the interest between the two
2 competing claims to the proceeds.

3 So that will be the ruling on the record today on the
4 pending motions in the QC MK case and I'll ask that counsel for
5 ML Manager submit brief orders not reciting all of the reasons
6 but simply reciting the conclusions to be entered on the record
7 to the extent that any party aggrieved wishes to take any post
8 decision action either in terms of rehearing or appeal.

9 That clear enough to everybody? All right. I'll
10 sign those orders when submitted. Thank you all for coming
11 back.

12 (Proceedings Concluded)

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16 I certify that the foregoing is a correct transcript from
17 the record of proceedings in the above-entitled matter.

18
19
20 Dated: September 15, 2011

Dianna Aldom

AVTranz, Inc.
845 North 3rd Avenue
Phoenix, AZ 85003

UNITED STATES BANKRUPTCY COURT
District of Arizona

NOTICE OF FILING TRANSCRIPT

CASE NAME: QC MK CUSTOM RESIDENTIAL LLC

CASE NUMBER/ADVERSARY NUMBER: 2:10-bk-36845-CGC

Notice is hereby given that an official transcript of a court proceeding conducted on 9/13/11 AT 1:30 PM has been filed this date in the above-captioned matter. In accordance with the attached information Re: Judicial Conference Privacy Policy and Electronic Availability of Transcripts of Court Proceedings, the parties have seven days from the date of this notice to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely, electronically available to the public without redaction after 90 days.

Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter/transcriber or view the document at the clerk's office public terminal.

Date: September 15, 2011

Address of the Bankruptcy Clerk's Office:

U.S. Bankruptcy Court, Arizona
230 North First Avenue, Suite 101
Phoenix, AZ 85003-1727
Telephone number: (602) 682-4000
www.azb.uscourts.gov

Clerk of the Bankruptcy Court:

Brian D. Karth

JUDICIAL CONFERENCE PRIVACY POLICY
and ELECTRONIC AVAILABILITY OF TRANSCRIPTS
OF COURT PROCEEDINGS

This court provides public access to transcripts of court proceedings. In doing so, it follows the Judicial Conference Privacy Policy as revised March 2008, before making official transcripts electronically available to the public. The policy will apply to all transcripts of proceedings or parts of proceedings ordered on or after August 1, 2007, regardless of when the proceeding took place. The complete Judicial Conference Privacy Policy may be reviewed at the court's web site, www.azb.uscourts.gov.

The policy establishes a procedure for counsel and pro se parties to request the redaction from the transcript of specific personal data identifiers before the transcript is made electronically available to the general public. A party must file a notice of intent to request redaction within seven days of the filing of the official transcript by the court reporter/transcriber. If a party fails to request redaction within this time frame, the transcript may be made electronically available without redaction. A copy of the officially filed transcript will be available for review at the clerk's office during this seven day period or may be purchased from the transcription service.

If a party files a redaction notice, the transcript is not to be made remotely electronically available to the general public until the redactions are performed. A copy of the officially filed transcript will be available for review at the clerk's office or may be purchased from the transcription service during this time. Within 21 days from the filing of the transcript with the clerk, or longer if ordered by the court, the parties must submit to the court reporter/transcriber a statement indicating where the personal identifiers appear in the transcript by page and line and how they are to be redacted. For example, if a party wanted to redact the Social Security number 123-45-6789 appearing on page 12, line 9 of the transcript, the statement would read: "Redact the Social Security number on page 12, line 9 to read xxx-xx-6789." Parties are only responsible for reviewing and indicating the redactions in the testimony of the witnesses they called and their own statements (e.g. opening statements and closing arguments). Only the following personal identifiers listed in the Judicial Conference Privacy Policy may be redacted by this process.

Social Security Numbers
Financial Account Numbers
Dates of Birth
Names of Minor Children

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If request for redaction is filed, the redacted transcript is due 31 days from the date the transcript was filed which is also the date of this notice.

Notice Recipients

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TOTAL: 3

EXHIBIT D

From: Bill Hawkins [bill@pentadholdings.com]
Sent: Wednesday, December 21, 2011 7:35 AM
To: 'Suzuki, Bryce A.'; Bob J. Miller; 'Louis B. Murphey'; Jeff Schneidman; Rick E. Chambliss
Subject: FW: ML Manager Newsletter # 21

FYI

From: mortgagesinfo@mtgltld.com [mailto:mortgagesinfo@mtgltld.com]
Sent: Tuesday, December 20, 2011 3:16 PM
To: Bill@pentadholdings.com
Subject: ML Manager Newsletter # 21

ML MANAGER LLC
14050 N.83rd Ave., Suite 180
Peoria, AZ 85381

December 19, 2011

ML MANAGER LLC LOAN PORTFOLIO NEWSLETTER #21

Dear Investors:

The following are the significant events that have occurred since our last newsletter.

IRS Ruling

As reported in previous newsletters, ML Manager retained PricewaterhouseCoopers ("PWC") to represent us in seeking assistance from the IRS relating to potential theft loss deductions in connection with investments in Mortgages Ltd. We are pleased to inform you that the IRS just issued Revenue Procedure 2011-58 that we believe will significantly benefit many investors. As with most tax matters numerous, complex issues arise in connection with this new revenue procedure. We have retained PWC to provide us with a formal professional opinion and advice on several issues. Some of the issues that PWC will address are which investors' returns can and should be amended to claim a theft loss (i.e., should it be the pass-through investors' individual returns, the returns filed by the Loan LLCs and/or the returns filed by the MP Funds) and, if amendments are appropriate, for which tax years should they be filed. The work of PWC has already begun and we will update you as this work progresses.

As always, we urge you to discuss this and all tax matters with your own professional tax advisors. **We do, however, ask that you refrain from filing amended returns until PWC completes its work.** We are placing more detailed information concerning the tax matters on our web page:

<http://www.mtgltld.com/webs/MLMNews/IRS%20Theft%20Loss%20Tax%20Information/>

You can review a memorandum from our tax attorney, Gregg Hanks, both of the relevant IRS revenue procedures and documents from the Arizona Department of Financial Institutions and the Securities and Exchange Commission. We realize that you and your tax advisors may have many questions. We will attempt to answer the questions as best we can, but ask that you hold your questions until PWC is able to analyze the numerous issues and provide guidance. Again, we believe the action by the IRS to be a very positive result and we are anxious to complete the necessary analysis and work so that the investors can benefit from this new revenue procedure.

PDG Los Arcos, LLC (Los Arcos Crossing) (Loan 859305)

The sale of this property was consummated on November 30th for the sales price of \$6,400,000.

VCB (Loan 856805)

The sale of this property was consummated on December 8th for a sales price of \$1,200,000.

Rodeo Ranch Estates (Loan 857906)

The sale of the fourth house within this subdivision in Casa Grande was consummated on December 8th for a price of \$250,000.

Exit Loan Balance

The principal balance of the exit loan has now been paid down to zero. Under the terms of the loan agreement we remain obligated to pay a disposition fee to the exit lender that is capped at \$7.5M. The current remaining balance of this fee is approximately \$3.5M. No additional interest is payable on this remaining balance to the exit lender. Recall that most of the funds otherwise payable to the Loan LLCs upon the sales of each property were used to pay down the exit loan. The amounts that exceed the proportionate share of each Loan LLCs share of the exit loan will be repaid to the investors in the Loan LLCs. We generally refer to these obligations as replacement loans. These amounts will be repaid to the Loan LLCs as future properties are sold and interest is accruing on these loans at a rate of 17.5%.

MK Custom (Loans 839506 and 845006)

We have adopted a process to resolve the dispute regarding the validity of the lien of the first loan. Once the dispute is resolved, the sale proceeds can be distributed to the appropriate investors.

Portales Place (Loan 852606)

The buyer elected to terminate the sale agreement for this property in central Scottsdale due to issues with the adjoining property owner. We are asserting our legal rights against the adjoining property owner and hope to resolve this issue in our favor. Additionally, the buyer is still making efforts to resolve the issues and continues to desire to purchase the property. The sale of the property may not occur until the legal dispute is resolved, which may take several months.

Foothills Plaza (Loan 853106)

After entering into a sale agreement for the purchase of this property in southeast Mesa, the exit lender elected to terminate the agreement and not proceed with the purchase. We are currently working with another buyer and hope to have the property back under contract shortly.

Northern 120 (Loan 849206) and Citrus 278 (Loan 849306)

We have entered into a sale agreement for these adjoining properties consisting of 392 acres northwest of Phoenix. The sales price is approximately \$5.79M (\$14,750/acre). The sale agreement is subject to the affirmative vote of the members of Citno Loan LLC, the Nocit Loan LLC and the Bankruptcy Court. The Bankruptcy Court hearing to approve the sale is December 19th. The buyer's feasibility period expires on January 4th and closing would occur on January 19th.

National Retail (Loan 860905)

We have entered into a sale agreement for this property near Dysart and Camelback. The sales price is \$2,300,000. The sale agreement is subject to the affirmative vote of the members of NRDP Loan LLC and the Bankruptcy Court. The Bankruptcy Court hearing to approve the sale is December 19th. The closing is scheduled to occur in mid January.

Zacher Maryland (Loan 857802)

The sale of this property in central Phoenix received the affirmative vote of the members of ZDCIII Loan LLC and the approval of the Bankruptcy Court. We are working with the buyer to attempt to close the sale within the next few weeks.

HH20 (Loan 858305)

We have entered into a sale agreement to sell 5 of the 20 acres of this property located in Pinal County. The sales price is \$300,000. The sale agreement will be subject to the affirmative vote of the members of the HH Loan LLC and the Bankruptcy Court. If the buyer elects to proceed with the purchase, the sale is scheduled to close in early April.

SOJAC I (Loan 857106)

This property in downtown Phoenix was been marketed for sale for the past many weeks. We have just received

several offers and are engaged in the process of identifying the highest and best offer.

Metropolitan Lofts (Loan 860706)

We have reached a settlement with the bankruptcy trustee that will allow us to foreclose upon the property. The Bankruptcy Court hearing to approve the settlement is scheduled for December 19th. The settlement is subject to the affirmative vote of the members of Metro Loan LLC. The foreclosure will occur shortly after the approval of the Bankruptcy Court and investors. We have resumed our efforts to market the property for sale.

Town Lake Development Partners (Loan 861305)

This property is subject to a significant amount of assessments, which have gone unpaid for the past few years. The City of Tempe attempted to foreclose the lien of one of the assessments. In order to stop the City from foreclosing on the property, TLDP Loan LLC filed for bankruptcy protection under Chapter 11. Notwithstanding the bankruptcy filing we continue our efforts to identify a purchaser for the property.

Riverfront Commons/Cottonwood (Loan 853705)

The trustee's sale for this property occurred on November 10th. We are currently in discussions with a potential purchaser of the property.

Next Distribution to Investors

Funds are being held in separate accounts for the Arizona Commercial, PDG Los Arcos, Rodeo Ranch, Bisontown, and VCB properties and are available for distribution. We are waiting to see if the Zacher Maryland and Portales sales are consummated in the near term. We are reviewing the allocation model against actual expenses to verify that the assumptions remain valid. The appropriate share of costs attributable to each loan will be deducted from the proceeds prior to distribution. ML Manager LLC intends to make the distributions through our servicing agent, Canyon State Servicing Co., LLC, as soon as practical during the first quarter of 2012.

Number of Properties Sold

So far we have sold approximately fifteen properties, seven are currently in escrow and approximately twenty remain to be sold

Valuation of Interests

Several of you have contacted us about the need to value your investments. As you should recall, ML Manager retained Henry & Horne, LLP, Certified Public Accountants, to prepare valuations of the investments approximately one year ago. The Henry & Horne, LLP valuations continue to be available on a secure website and by regular mail for your use. There are security procedures in place to protect the information. If you would like to obtain a valuation of an investment by mail for your use or the use of a tax advisor, you may complete the required written request form and mail it to ML Manager LLC. Upon receipt of the completed and signed form, you will receive log in information to access the valuations online on a secure website or you may request the information be sent to you by mail. Please keep in mind the valuations are dated October, 2010 and are the only valuations available.

If you have any questions, you may contact our office at 623-234-9560 or via email at mortgagesinfo@mtgltd.com. Please also feel free to contact Karen Epstein at 480-948-6777 or kme818@cox.net. It is much more efficient for us to respond to written questions and we ask whenever possible, please communicate with us via email.

Thank you for your support of our efforts.

Best Regards,

Elliott Pollack
Chairman

EXHIBIT E

Rick E. Chambliss

From: Rick E. Chambliss
Sent: Thursday, December 22, 2011 2:02 PM
To: 'REECE, CATHY'
Cc: 'Bill Hawkins'; Wesley S. Loy
Subject: QC MK; ML Manager Newsletter # 21

Good Afternoon Cathy,

ML Manager Newsletter # 21 states that ML Manager has adopted a process to resolve the dispute regarding the validity of the lien of the first loan. Please advise of the process that ML Manager has adopted.

Richard E. Chambliss
Broening, Oberg, Woods & Wilson, P.C.
P.O. Box 20527
Phoenix, Arizona 85036
Phone: (602) 271-7774
Fax: (602) 258-7785