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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

REV OP GROUP,	)	
	)	
Plaintiff,	)	
	)	2:11-cv-00853-RCJ
vs.	)	
	)	
ML MANAGER LLC,	)	<b>ORDER</b>
	)	
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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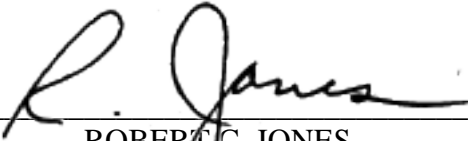
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**CONCLUSION**

IT IS HEREBY ORDERED that the bankruptcy court is AFFIRMED.

IT IS SO ORDERED.

DATED: This 10th day of January, 2012.

  
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ROBERT C. JONES  
United States District Judge