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11 Builders

12 **IN THE UNITED STATES BANKRUPTCY COURT**  
13 **FOR THE DISTRICT OF ARIZONA**

14  
15 In re:  
16 MORTGAGES LTD.,  
17 Debtor.

No. 2:08-bk-07465-RJH

**SUMMIT'S OBJECTION TO MOTION  
TO SELL REAL PROPERTY**

**Real property and improvements located  
at the southeast corner of Central Ave. and  
Monroe St., Phoenix, Arizona**

**Hearing Date: March 8, 2012  
Hearing Time: 11:30 a.m.**

22  
23  
24 Plaintiff Jeffrey C. Stone, Inc. dba Summit Builders ("Summit") hereby files its  
25 objection to ML Manager, LLC's ("ML") Motion to Sell Real Property filed in this Court  
26 on February 20, 2012. While Summit is not opposed conceptually to a sale of the Property,  
27 it does have the following several objections to ML's filing.

28 1. ML requests authorization to sell the Property on the terms set forth in the

1 attached Proposed Sales Agreement or “to another buyer upon the same or better terms as  
2 determined by ML Manager in its sole discretion.” (Motion, p.1, lines 25-26.)

3 Summit strongly opposes the entry of any Order that permits ML to consider any  
4 other sale of this Property without a full opportunity for the Court and Summit to review,  
5 comment and/or object to such other sale.

6 2. ML proposes to “hold all the net sale proceeds in escrow until the priority and  
7 extent of the General Contractors and mechanics and materialmen liens and the settlement  
8 deed of trust are determined.” Motion, p. 2, lines 1 – 3.

9 Summit agrees that the net sale proceeds should be held in an interest bearing  
10 account in escrow, but believes that the escrow agreement among all interested parties  
11 should be formalized prior to the time that the sale closes. In the event the parties cannot  
12 agree on the terms and conditions of the escrow agreement, it is suggested that a procedure  
13 be designed in advance for resolution of any such disagreement.

14 3. ML proposes what will occur after “the extent and priority of liens is  
15 determined,” assuming the ruling favors ML. Motion p.5, lines 11-22.

16 First, Summit assumes, but is not certain, that ML is describing what may occur  
17 after a final, non-appealable ruling on the extent and priority of liens. Of course, the net  
18 proceeds need to stay in escrow until any Court ruling becomes final and non-appealable  
19 and should only be disbursed on further Order of this Court. Second, ML does not propose  
20 what will occur in the event the ruling favors Summit. This Court has ordered that this case  
21 is to be remanded to the Maricopa County Superior Court for further proceedings once the  
22 priority dispute is resolved. *See* Case 2:09-ap-00424-RJH Docket 248 (9/10/09).

23 Assuming agreement can be reached on these issues, Summit is agreeable to a sale  
24 of the property on the terms and conditions set forth in the Sale Agreement attached to the  
25 Motion, but not to any other sale.

26  
27  
28

1 DATED this 5<sup>th</sup> day of March, 2012.

2 SACKS TIERNEY P.A.

3  
4 By: /s/ Sharon B. Shively

5 Sharon B. Shively

6 Julianne C. Wheeler

7 Attorneys for Jeffrey C. Stone, Inc. dba

8 Summit Builders

9 CERTIFICATE OF SERVICE

10 I hereby certify that on March 5, 2012, I electronically transmitted the attached  
11 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
12 Notice of Electronic Filing to the following CM/ECF registrants:

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By: /s/ Toni Cooper