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9 Attorney for Plaintiff KGM Builders, Inc.

10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF ARIZONA

12 In re:

13 MORTGAGES, LTD., an Arizona
14 corporation,

15 Debtor,

16 CHAPTER 11 Proceedings

17 CASE NO.: 2:08-BK-07465-RJH

18 Consolidated Case:

19 ADV. NO.: 2:09-ap-00424-RJH

20 ADV. NO.: 2:09-ap-00056-RJH

21 **KGM'S OBJECTION TO THE MOTION
22 TO SELL REAL PROPERTY**

23 Plaintiff KGM Builders, Inc. ("KGM") hereby files its objection to ML Manager,
24 LLC's ("ML") Motion to Sell Real Property filed in this court on February 20, 2012.
25 Theoretically, KGM does not oppose the sale of the real property at issue, it would like to
26 raise the following objections to points in ML's Motion. In addition, KGM joins in Jeffrey
27 C. Stone, Inc. dba Summit Builders' ("Summit") Objection to Motion to Sell Real
28 Property in its specific objections to ML's Motion.

In addition to the points raised by Summit, KGM raises the following objections.

1. ML proposes to sell the property to Evergreen Devco, Inc. for the price of



1 \$7,000,000, on the terms set forth in the Exhibit A Agreement of Sale and Purchase and
2 all amendments (“Sale Agreement”), or “to another buyer upon the same or better terms
3 as determined by ML Manager in its sole discretion.” (ML’s Motion, p. 1).
4

5 KGM agrees with Summit, that the net sale proceeds should be held in escrow until
6 the priority and extent of the mechanics’ and materialmen’s liens are determined. KGM
7 opposes the sale of the property before any detailed breakdown is provided to, or by, the
8 court on how the escrow proceeds will be allocated. KGM proposes that the allocation of
9 the sale proceeds be formalized in an escrow holdback agreement, and as an addendum to
10 the Sale Agreement in advance of any sale.
11

12 Furthermore, KGM opposes any entry of an Order that would permit ML to
13 consider any other sale of the property in ML’s sole discretion without an opportunity for
14 KGM to object/agree to, or comment on the terms of such other sale.
15

16 2. ML proposes to sell the property in the sequence described on page 2 of
17 ML’s Motion (“Motion”). The purchase price will be paid as follows: “Purchaser will
18 deposit \$50,000 and open escrow at Thomas Title & Escrow. The Purchaser will deposit
19 an additional \$100,000 at the end of the 90-day Feasibility Period.” The balance of the
20 purchase price will be paid at close of escrow.
21

22 KGM opposes this sale procedure to the extent that no timeline (beside the 90-day
23 “Feasibility Period”) is established for the escrow period and subsequent release of the
24 sale funds. A time period for the escrow holdback to be distributed should be delineated in
25 an agreement, prior to the sale of the property.
26

27 3. ML proposes what will occur when the “extent and priority of liens is
28

1 determined,” assuming that the ruling favors ML’s priority over the mechanics’ and
2 materialmen’s lienholders. (ML’s Motion, p.5).

3 KGM agrees with Summit that the net proceeds must stay in escrow until any
4 Court determines priority on a final and non-appealable basis. KGM also concurs with
5 Summit that no course of action is proposed in the event that the ruling favors KGM,
6 Summit and the other mechanics’ lienholders priority over ML. These procedures must be
7 determined prior to the sale of the property.
8
9

10 4. ML’s Motion references the July 27, 2010 settlement deed of trust in the
11 amount of \$615,000. (ML’s Motion, p. 2). The Motion also refers to the dispute “as to the
12 extent and priority of the liens of the General Contractors, mechanics and materialmen,
13 the priority of the \$615,000 settlement deed of trust and the interest of the investors.”
14 (ML’s Motion, p. 5).
15

16 Throughout the litigation, the issue of priority has involved ML and the mechanics’
17 lienholders. The settlement agreement deed of trust recorded on July 27, 2010 in no way
18 can have priority over the earlier recorded mechanics’ liens and deeds of trust. The court
19 does not have the power to retro-actively prioritize a later-filed deed of trust. Any priority
20 dispute must first determine the priority between ML and the mechanics’ lien holders, and
21 then, any subsequent lienholders.
22

23 Therefore, assuming the court approves, and ML agrees to a sale on the terms in
24 the Sales Agreement, and in the foregoing Opposition Motion, KGM is agreeable to a sale
25 of the property.
26
27
28



1 RESPECTFULLY SUBMITTED this 5th day of March, 2012.

2 PALECEK & PALECEK PLLC

3
4 /s/ Karen A. Palecek

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9 ORIGINAL of the foregoing
10 E-filed via AZTurbo Court
11 this 5th day of March, 2012, to:

12 Maricopa County Superior Court
13 The Honorable Linda H. Miles

14 COPIES of the foregoing Emailed and Mailed
15 this 5th day of March, 2012, to:

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