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8
9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF ARIZONA

11 In re:
12 MORTGAGES LTD., an Arizona
corporation,
13
Debtor.

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

**GRACE ENTITIES' RESPONSE TO ML
LIQUIDATING TRUST'S OMNIBUS
OBJECTION TO CLAIMS AND
MOTION TO EXPUNGE, REDUCE OR
RECLASSIFY SUCH CLAIMS**

Related Docket Entries: 2306, 2371

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18 Central & Monroe, LLC, Osborn III Partners, LLC, 44th & Camelback Property, LLC,
19 70th Street Property, LLC, and Portales Place Property, LLC (collectively, the "Grace Entities")
20 hereby respond to "ML Liquidating Trust's Omnibus Objection to Claims and Motion to
21 Expunge, Reduce or Reclassify Such Claims" ("Omnibus Objection") and to the "Notice to
22 Claimants Listed on Exhibit K to ML Liquidating Trust's Omnibus Objection to Claims and
23 Motion to Expunge, Reduce or Reclassify Such Claims and Notice of Bar Date to Respond to
24 Omnibus Objection" ("Bar Date Notice"). Because the Omnibus Objection lacks any substantive
25 objection to the Grace Claims (as hereinafter denied), and because the objection as to the Grace

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1 Claims is barred by the Plan Confirmation Order (as hereinafter denied), the Omnibus Objection
2 must be denied as to the Grace Entities.

3 **A. The Liquidating Trustee Has Asserted No Substantive Objection to the Grace**
4 **Claims.**

5 On October 6, 2008, each of the Grace Entities filed a proof of claim herein, designated on
6 the Court's claims docket as Claim Numbers 239-243 (the "Grace Claims"). Each of the Grace
7 Claims was amended through the filing of amended proofs of claim on May 5, 2009.

8 On October 13, 2009, Kevin T. O'Halloran ("Liquidating Trustee") filed the Omnibus
9 Objection on behalf of the ML Liquidating Trust. The Grace Claims were among the hundreds of
10 claims objected to by the Liquidating Trustee in the Omnibus Objection, and appear on the chart
11 attached as Schedule K thereto. In that chart, under the column "Reason for Objection," the
12 Liquidating Trustee lists the "Reason for Objection" to the Grace Claims simply as "Borrower
13 Claim" with no further explanation.

14 Within the body of the Omnibus Objection, the Liquidating Trustee explains his basis for
15 objecting to the claims on Exhibit K as follows:

16 **11. Exhibit K – Borrower Claims**

17 The ML Liquidating Trustee objects to the Claims listed on
18 Exhibit K attached hereto and incorporated by reference and titled
19 "Borrower Claims for Objection" and incorporate by reference
20 those objections being raised by the Board of the ML Manager
21 LLC. Accordingly, the ML Liquidating Trustee requests that each
22 Claim listed on Exhibit K be disallowed in its entirety for all
23 purposes and expunged. This objection will be supplemented when
24 more information is available.

25 Omnibus Objection at 12:3-9. To the Grace Entities' knowledge, no objection to the Grace
26 Claims has been filed by ML Manager LLC. Therefore, there is no objection to the Grace Claims
for the Liquidating Trustee to incorporate by reference into the Omnibus Objection. Without any
such reference point, the Omnibus Objection is completely devoid of any substantive objection to
the Grace Claims, and must be denied on that basis.

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1 **B. The Omnibus Objection as to the Grace Entities is Barred by the ADR Procedure**
2 **Set Forth in the Plan Confirmation Order**

3 Even more fatal to the Liquidating Trustee’s objection to the Grace Claims than the lack
4 of any substantive objection are the terms of the order entered herein on May 21, 2009,
5 confirming the plan of reorganization in this case (the “Plan Confirmation Order,” Docket Entry
6 1755). Section V of the Plan Confirmation Order sets forth the agreement between the Grace
7 Entities and plan proponent Official Committee of Investors (“Investors Committee”), approved
8 by this Court, to exclusively resolve the Grace Entities through a two-step alternative dispute
9 resolution (“ADR”) process that first requires, mediation, then if mediation is unsuccessful,
10 binding arbitration.¹ That exclusive ADR Process for resolving the Grace Claims precludes the
11 Liquidating Trustee from objecting to the Grace Claims and seeking any ruling thereon from this
12 Court. The pertinent part of Section V of the Plan Confirmation reads as follows:

13 Pursuant to the agreement of the Grace Entities and the Plan
14 Proponent, the following is added as a modification to the Plan:

15 ADR Procedures for Grace Entity Claims

16 For purposes of this section of the Order and the Alternative
17 Dispute Resolution Procedures (“ADR Procedures”) with the Grace
18 Entities, the following terms shall have the indicated defined
19 meanings. Other capitalized words and phrases shall have the
20 meanings set forth in the Plan.

21 1. **“Grace Entities”** means Central & Monroe, LLC;
22 Osborn III Partners, LLC; 44th & Camelback Property, LLC; 70th
23 Street Property, LLC; and Portales Place Property, LLC.

24 . . .

25 4. **“Grace ADR”** means the alternative dispute
26 resolution procedure described herein.

5. **“Grace Dispute”** means all Claims and Causes of
Action against ML held by one or more of the Grace Entities, and
all Claims and Causes of Action against the Grace Entities and/or
the Grace Guarantors held by ML or the ML Investors

¹ As of the date of the filing of this Response, the ADR process is still in the mediation stage.

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The Grace ADR shall be implemented as follows:

In lieu of litigation in the Bankruptcy Court or any other court or tribunal, the Grace Dispute shall be resolved through the following alternative dispute resolution procedure, defined herein as the "Grace ADR." During the mediation and arbitrations to be conducted hereunder, no litigation or enforcement action (including but not limited to foreclosure actions or trustee's sales) shall be taken against the Grace Entities, the Grace Guarantors, or any property (real or personal) that serves as collateral for any loan made by ML to any of the Grace Entities, and any litigation or other enforcement actions currently pending shall be immediately dismissed or withdrawn as appropriate in light of the parties' agreement to conduct the Grace ADR.

...

The Grace ADR shall consist of an initial mediation, and shall be followed by binding bifurcated arbitration, as described below, if mediation fails to result in a written settlement agreement mutually acceptable to all of the parties that resolves some or the entirety of the Grace Dispute. . . .

Plan Confirmation Order, § V, at 12:22 -15:10.

Upon learning of the filing of the Omnibus Objection to the Grace Claims, the undersigned contacted the Liquidating Trustee's counsel, advised of the above-quoted provisions of the Plan Confirmation Order, and cautioned that the Omnibus Objection should be withdrawn as to the Grace Entities. The email sent by the undersigned on October 23, 2009 confirming that conversation read, in part, as follows:

Finally, with respect to the Grace Entities, I have advised you that the Plan Confirmation Order in the Mortgages Ltd. case bound the Grace Entities and Mortgages Ltd. (and its various successors and spin-offs under the confirmed plan) to resolve all disputes between them through a two-part alternative dispute resolution process that began with mediation (which is still ongoing), and if no agreement is reached through mediation, through binding arbitration. Our position is that the plan confirmation order precludes the filing or prosecution of the Omnibus Objection as to the Grace Entities. To the extent that ML Liquidating Trust does not simply withdraw the Omnibus Objection as to the Grace Entities, and before any response deadline is triggered, I would like to work with you to resolve this issue in advance, and thus avoid having to spend time and money preparing and filing a response to the Omnibus Objection that simply points out to the Court that the objection can't

1 be prosecuted as to the Grace Entities in light of the Plan
2 Confirmation Order.

3 Notwithstanding the foregoing, the Liquidating Trustee did not withdraw its objection to the
4 Grace Claims, and instead proceeded forward by including the Grace Claims in the Bar Date
5 Notice, thus necessitating the filing of this Response.

6 By filing this Response, the Grace Entities are in no way waiving any of their rights or
7 protections under the Plan Confirmation Order, but rather are seeking to preserve those rights and
8 protections by ensuring that the Court take no action with respect to the Grace Claims other than
9 denying the Liquidating Trustee's Omnibus Objection thereto.

10 **CONCLUSION**

11 For the reasons set forth herein, the Grace Entities respectfully request that the Court
12 enforce the Plan Confirmation Order by denying the Omnibus Objection as to the Grace Claims.

13 RESPECTFULLY SUBMITTED, this 13th day of November, 2009.

14 SNELL & WILMER L.L.P.

15
16 By /s/ DFE (#025986)

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COPY of the foregoing served by
email on July 13, 2009 to:

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/s/ Debra Lee Bokich
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