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11
12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF ARIZONA

14 In re
15 MORTGAGES LTD.,
16 Debtor.

Chapter 11

Case No. 2:08-bk-07465-RJH

**REPLY TO OBJECTIONS TO JOINT
MOTION TO SELL REAL PROPERTY FREE
AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND INTERESTS**

**Real Property known as Chateaux on Central,
Phoenix, AZ**

**Hearing Date: February 25, 2010
Hearing Time: 11:00 a.m.**

21 Kevin T. O'Halloran ("Liquidating Trustee"), as Trustee of the ML Liquidating
22 Trust ("Liquidating Trust"), the sole shareholder of ML Servicing Co., Inc. ("ML
23 Servicing Co.") and ML Manager LLC ("ML Manager") hereby file their Reply in
24 support of their Joint Motion ("Motion") (Docket No. 2619). The Motion requested that
25 the Court enter an order authorizing the Liquidating Trustee, on behalf of the Liquidating
26

1 Trust and ML Servicing Co., and ML Manager as the manager for the 9 MP Funds and
2 agent for 3 pass-through investors, to sell the real property located in Phoenix, Arizona at
3 the corner of Central Avenue and Palm Lane, commonly known as Chateaux on Central,
4 together with all of the Sellers' rights, title and interest in and to all equipment, building
5 supplies, and other personal property associated with and located on or about the real
6 property (collectively, the "Property") to MSI West Investments, LLC for the price and on
7 the terms set forth in the Agreement to Purchase Real Property ("Purchase Agreement").

8 The Motion provided for higher and better bids and a sale process. As of today,
9 while there has been interest in the Property and several third parties have sought
10 information, viewed the Property and performed some due diligence, there have been no
11 other bidders who have paid their earnest money and submitted bids. As a result, the
12 Liquidating Trust and the ML Manager request that the Court approve the bid of MSI
13 West Investments as the highest and best bid and approve the sale pursuant to the
14 Purchase Agreement.

15 There were three (3) limited objections filed by alleged mechanics lien holders. A
16 limited objection (Docket No.2654) was filed by Creditor Gold Creek, Inc., a joinder was
17 filed by Sierra Pacific Industries, Inc., (Docket No. 2663) and a response was filed by
18 KCG, Inc. dba REW Materials (Docket No. 2664) (collectively, the "Mechanics Lien
19 Claimants"). No other party filed a response or objection. The Liquidating Trustee, ML
20 Manager and the Mechanics Lien Claimants have agreed upon the concepts but are
21 working through language for a form of Order, which has resolved the concerns of the
22 Mechanics Lien Claimants to the Motion. As reflected in paragraph 7 of the attached
23 form of Order, ML Manager and the Liquidating Trust propose to set aside in escrow the
24 sum of \$3,414,586.20 of the net sale proceeds for the benefit of the Mechanics Lien
25 Claimants with their liens (if any) to attach to the escrowed proceeds. Such escrowed
26 proceeds shall be disbursed only pursuant to further Order of this Court. All parties

1 reserve their arguments and legal positions.

2 In addition, the Liquidating Trustee shall receive ML Servicing Co.'s pro rata
3 portion of the net sale proceeds at closing and shall at closing from its pro rata portion pay
4 FTI Consulting, Inc. the sum of, at least but not less than, \$600,000.00, as set forth and
5 recited in a separate order approving FTI's Fee Application, as modified.

6 In addition to all items mentioned above, the title company asserts that the public
7 record reflects that Ron Kohner has an interest in the amount of .001% in loan no. 857005
8 which represents \$70 of the purchase price. Mr. Kohner has already received full
9 consideration for his interest in loan no. 857005 when on April 9, 2008 his interest was
10 sold and he received an interest of the same amount in loan no. 857106. However due to a
11 rounding error in Mortgages Ltd.'s computer program, the public record did not pick up
12 the transfer of the .001% interest and so the record inaccurately reflects that Mr. Kohner
13 has an interest in the Chateaux. For the reasons cited above, ML Manager disputes that
14 Mr. Kohner has any legal and/or equitable ownership interest in Chateaux, and has
15 tendered a quit claim deed to him which has not been signed and returned. Notice of this
16 Motion and hearing have been provided to Mr. Kohner. No objection has been filed to this
17 Motion by Mr. Kohner. ML Manager continues to be the agent for Mr. Kohner pursuant to
18 the agency agreement. ML Manager seeks in the order for authority to sell the Property
19 free and clear of Mr. Kohner's interest but \$70 shall be set aside to resolve the issue and
20 his interest, if any, shall attach to such \$70 of net sale proceeds.

21 Finally, attached as Exhibit A is a form of Order which is being reviewed by the
22 parties. It is still subject to change as not all parties have approved it yet. However, the
23 parties wanted the Court to see the form of Order in advance of the hearing.

24 WHEREFORE, the Liquidating Trustee and the ML Manager request that the
25 Court approve the sale and the form of Order presented, which they believe resolve all the
26 issues.

1 Dated this 24th day of February, 2010.

2 MYERS & JENKINS, P.C.

3 By /s/ William Scott Jenkins
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17 Copies of the foregoing served by e-mail on:

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Case No. 2:08-bk-07465-RJH

**ORDER APPROVING JOINT MOTION TO
SELL REAL PROPERTY FREE AND CLEAR
OF LIENS, CLAIMS, ENCUMBRANCES,
AND INTERESTS**

**Real Property known as Chateaux on Central,
Phoenix, AZ**

**Hearing Date: February 25, 2010
Hearing Time: 11:00 a.m.**

21 Kevin T. O'Halloran ("Liquidating Trustee"), as Trustee of the ML Liquidating
22 Trust ("Liquidating Trust"), the sole shareholder of ML Servicing Co., Inc. ("ML
23 Servicing Co.") and ML Manager LLC ("ML Manager") filed a Joint Motion ("Motion")
24 (Docket No. 2619) requesting that the Court enter an order authorizing the Liquidating
25 Trustee, on behalf of the Liquidating Trust and ML Servicing Co., and ML Manager as
26

1 the manager for the 9 MP Funds and agent for 3 pass-through investors, to sell the real
2 property located in Phoenix, Arizona at the corner of Central Avenue and Palm Lane,
3 commonly known as Chateaux on Central, together with all of the Sellers' right, title and
4 interest in and to all equipment, building supplies, and other personal property associated
5 with and located on or about the real property (collectively, the "Property") to MSI West
6 Investments, LLC for the price and on the terms set forth in the Agreement to Purchase
7 Real Property ("Purchase Agreement") which is attached to the Motion as Exhibit A,
8 subject to higher and better bids. Among other things, the Purchase Agreement provides
9 for the purchase of the Property for \$7,000,000.00 by MSI West Investments, LLC
10 ("Purchaser").

11 A notice to creditors, interested parties and the 3 pass-through investors of the
12 Motion and the hearing date was served. A limited objection (Docket No.2654) was filed
13 by Creditor Gold Creek, Inc., a joinder was filed by Sierra Pacific Industries, Inc., (Docket
14 No. 2663) and a response was filed by KCG, Inc. dba REW Materials (Docket No. 2664)
15 (collectively, the "Mechanics Lien Claimants"). The Liquidating Trustee, ML Manager
16 and the Mechanics Lien Claimants have agreed upon this form of Order, which has
17 resolved the concerns of the Mechanics Lien Claimants to the Motion. No other party
18 filed a response or objection. The hearing was held on the Motion on February 25, 2010 at
19 11:00 a.m. in Phoenix. No higher and better bids were received at the hearing.

20 Upon consideration of the Motion, the Court hereby finds as follows:

- 21 (a) The Motion and the Court's hearing thereon were duly and properly
22 noticed, and the Court has jurisdiction over the issues presented in the Motion;
- 23 (b) The purchase price offered constitutes fair consideration for the Property
24 and constitutes the highest and best bid for the Property;
- 25 (c) The Purchaser is a good faith purchaser;
- 26 (d) No vote of the MP Fund investors was required for approval of the sale

1 under the applicable Operating Agreements of the 9 MP Funds;

2 (e) The ML Manager LLC, on behalf of the 9 MP Funds and the 3 pass-through
3 investors, and the Liquidating Trustee on behalf of the Liquidating Trust and the ML
4 Servicing Co., Inc., are authorized to proceed with this sale pursuant to the terms and
5 provisions of the Purchase Agreement and this Order; and

6 (f) The sale is supported by sound business justification, so that the ML
7 Manager and the Liquidating Trustee shall be authorized to sell the Property in
8 accordance with the terms and provisions of the Purchase Agreement and this Order.

9 IT IS THEREFORE ORDERED THAT:

10 (1) The Motion is granted subject to the terms of this Order.

11 (2) ML Manager, on behalf of the 9 MP Funds and the 3 pass-through investors,
12 and the Liquidating Trustee, on behalf of ML Servicing Co., are authorized to enter into
13 the Purchase Agreement and consummate the sale of the Property pursuant to the terms of
14 the Purchase Agreement and to execute any and all documents needed to consummate the
15 sale of the Property.

16 (3) Effective as of the closing, the sale and transfer of the Property to the
17 Purchaser shall be free and clear of all liens, claims, encumbrances and interests with such
18 liens, claims, encumbrances and interests to attach to the sale proceeds.

19 (4) Effective as of the closing, ML Servicing Co., the 9 MP Funds and the 3
20 pass-through investors who presently have an undivided ownership interest in the
21 Property shall have an undivided ownership interest in the sale proceeds from the sale of
22 the Property to the same percentage as set forth in the public records.

23 (5) The Purchaser is a good faith purchaser for fair consideration of the
24 Property.

25 (6) The Liquidating Trustee and ML Manager are authorized to pay out of the
26 gross sale proceeds at closing all direct costs of sale, including real property taxes,

1 assessments, broker's fees, title insurance or other closing costs.

2 (7) The Liquidating Trustee and ML Manager at closing shall escrow the sum
3 of \$3,414,586.20 for the benefit of the Mechanics Lien Claimants, with their mechanics
4 and materialmen liens (if any) to attach to the escrowed proceeds and subject to the
5 undivided ownership interests of ML Servicing Co., the 9 MP Funds and the 3 pass-
6 through investors. Such escrowed proceeds shall be disbursed only pursuant to further
7 Order of the Court. All disputes, arguments, claims, and defenses between ML Manager,
8 Liquidating Trust and the Mechanics Lien Claimants are reserved.

9 (8) The Liquidating Trustee shall receive ML Servicing Co.'s pro rata portion
10 of the net sale proceeds at closing and shall at closing from its pro rata portion pay FTI
11 Consulting, Inc. the sum of, at least but not less than, \$600,000.00, as set forth and recited
12 in a separate order approving FTI's Fee Application, as modified. The Liquidating
13 Trustee shall receive the remaining portion to which it is entitled from the net sale
14 proceeds for deposit into its bank account.

15 (9) The ML Manager shall receive the pro rata portion of the net sale proceeds
16 attributable to the 9 MP Funds and the 3 pass-through investors for deposit into the
17 accounts as designated and directed by ML Manager, subject to the liens of Universal-
18 SCP 1, L.P.

19 (10) The Court reserves jurisdiction to resolve any and all disputes that may arise
20 in connection with this specific transaction and the distribution of net proceeds from this
21 transaction.

22 (11) Pursuant to Section 1146(a) of the Bankruptcy Code and the confirmed
23 Plan of Reorganization, all mortgage recording tax, stamp tax, real estate transfer tax,
24 speculative builder, transaction privilege or other similar tax imposed by federal, state or
25 local law are hereby waived.

26 (12) In addition to all items mentioned above, the title company asserts that the

1 public record reflects that Ron Kohner has an interest in the amount of .001% in loan no.
2 857005 which represents \$70 of the purchase price. Mr. Kohner has already received full
3 consideration for his interest in loan no. 857005 when on April 9, 2008 his interest was
4 sold and he received an interest of the same amount in loan no. 857106. However due to a
5 rounding error in Mortgages Ltd.'s computer program, the public record did not pick up
6 the transfer of the .001% interest and so the record inaccurately reflects that Mr. Kohner
7 has an interest in the Chateaux. For the reasons cited above, ML Manager disputes that
8 Mr. Kohner has any legal and/or equitable ownership interest in Chateaux, and has
9 tendered a quit claim deed to him which has not been signed and returned. Notice of this
10 Motion and hearing have been provided to Mr. Kohner. No objection has been filed to this
11 Motion by Mr. Kohner. ML Manager continues to be the agent for Mr. Kohner pursuant to
12 the agency agreement. ML Manager is authorized to sell the Property free and clear of Mr.
13 Kohner's interest but \$70 shall be set aside to resolve the issue and his interest, if any,
14 shall attach to such \$70 of net sale proceeds.

15 (13) This Order shall become effective ten (10) business days after entry of the
16 Order on the docket of the Clerk of this Court. The closing shall occur as set forth in the
17 Purchase Agreement.

18 DATED AND ORDERED AS STATED ABOVE.

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