

IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: July 01, 2010



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U.S. Bankruptcy Judge

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13 IN THE UNITED STATES BANKRUPTCY COURT FOR
14 THE DISTRICT OF ARIZONA

15 In re
16 MORTGAGES LTD.,
17 Debtor.

Chapter 11

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

**STIPULATED ORDER APPROVING
THE RELEASE OF MONEY FROM
CHATEAUX SALE ESCROW**

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

21 Kevin T. O'Halloran ("Liquidating Trustee"), as Trustee of the ML Liquidating Trust
22 ("Liquidating Trust"), the sole shareholder of ML Servicing Co., Inc. ("ML Servicing"), and
23 the ML Manager LLC as Manager of the MP Funds, and as agent for certain Pass-Through
24 Investors who held interests in the property at issue, and for itself (collectively, "ML
25 Manager") (ML Manager, the Liquidating Trustee, the Liquidating Trust, and ML Servicing
26 are collectively, the "ML Parties") filed a Joint Motion ("Motion") (Docket No. 2619)

1 requesting that the Court enter an order authorizing the Liquidating Trustee, on behalf of the
2 Liquidating Trust and ML Servicing Co., and the ML Manager to sell the real property located
3 in Phoenix, Arizona at the corner of Central Avenue and Palm Lane, commonly known as
4 Chateaux on Central, free and clear of all liens. This Motion was granted and an Order
5 approving the Sale was entered by the Court (the "Sale Order") (Docket No. 2676). Pursuant to
6 the Sale Order, the Liquidating Trustee and ML Manager were required at closing to escrow
7 the sum of \$3,414,586.20 (the "Escrow") for the benefit of Gold Creek, Inc. ("Gold Creek")
8 and the other mechanics and materialmen lien holders of record (collectively, the "Mechanics
9 Lien Claimants"), with their mechanics and materialmen liens (if any) to attach to the escrowed
10 proceeds. The Sale Order further provided that the Escrow was to be deposited with First
11 American Title Insurance Company (the "Escrow Agent") in an interest bearing account for the
12 benefit of the ML Parties, Gold Creek and the other Mechanics Lien Claimants, and be
13 disbursed only pursuant to further Order of the Court.

14 The ML Parties and Gold Creek have now reached and entered into a Settlement
15 Agreement and Release ("Settlement Agreement") to resolve all of Gold Creek's and the
16 Mechanics Lien Claimants' claims against the ML Parties, except that to the extent there is an
17 Allowed Unsecured Claim of KCG Inc., dba Rew Materials ("KCG") in the Bankruptcy Estate
18 as provided for under the confirmed Plan such claim is being reserved and is not impacted by
19 this Order, and to provide for the distribution of the Escrow as follows: (i) \$1,523,000 of the
20 amount in the Escrow will continue to be held by the Escrow Agent for the sole benefit of Gold
21 Creek and the Mechanics Lien Claimants, and \$77,000 will be held for the sole benefit of Gold
22 Creek's counsel (collectively, the "Mechanic Lien Escrow"). Any claims by the ML Parties to
23 the Mechanic Lien Escrow shall be released except for those contract and lien claims purchased
24 by the Liquidating Trustee as described in Paragraph 7 of the Settlement Agreement, and to
25 secure Gold Creek's Indemnity Obligations to the ML Parties as described in Paragraph 6 of the
26 Settlement Agreement, (ii) other than the Mechanic Lien Escrow, the remaining amount in the

1 Escrow, including all interest earned on the amount on deposit in the Escrow through the day
2 prior to the disbursement, (the "ML Escrow Portion"), shall be immediately released and
3 disbursed to the ML Parties per their joint direction to the Escrow Agent, free and clear of
4 the Gold Creek lien and the Mechanics Lien Claimants liens, (iii) any valid liens of Gold
5 Creek and the other Mechanics Lien Claimants shall attach solely to the Mechanic Lien
6 Escrow, and all other claims by Gold Creek and the Mechanics Lien Claimants against the
7 ML Parties shall be released and discharged, except that to the extent there is an Allowed
8 Unsecured Claim of KCG in the Bankruptcy Estate as provided for under the confirmed Plan
9 such claim is being reserved and is not impacted by this Order, (iv) upon delivery to the
10 Escrow Agent of a fully executed Release of Mechanic's and Materialmen's Lien ("Lien
11 Release") and instruction letter by Gold Creek, the Escrow Agent shall immediately
12 disburse to Gold Creek from the Mechanic Lien Escrow the sum of \$509,225.30, (v) upon
13 delivery to the Escrow Agent of a fully executed Lien Release by the Liquidating Trustee
14 relating to the Assigned Subcontracts acquired by the Liquidating Trustee, the Escrow
15 Agent shall immediately disburse to the Liquidating Trustee from the Mechanic Lien
16 Escrow the sum of \$42,725.38; (vi) the Escrow Agent shall immediately disburse to
17 counsel for Gold Creek from the Mechanic Lien Escrow the sum of \$77,000.00 as and for
18 the attorneys' fees owing by Gold Creek; (vii) upon delivery to the Escrow Agent of a fully
19 executed Lien Release from any Mechanics Lien Claimant, the Escrow Agent shall
20 immediately disburse to such Mechanics Lien Claimant from the Mechanic Lien Escrow
21 the amount stated in said Lien Release, and concurrently with such disbursement, the
22 Escrow Agent shall, as permitted in this Order, immediately disburse to Gold Creek from
23 the Mechanic Lien Escrow the difference between the Mechanics Lien Holdback calculated
24 with respect to such Mechanics Lien Claimant as described in the Settlement Agreement
25 and the payment made to the releasing Mechanics Lien Claimant; and (viii) at such time as
26 fully executed Lien Releases have been delivered to the Escrow Agent respecting all

1 Mechanics Lien Claimants, the Escrow Agent shall immediately disburse to Gold Creek all
2 remaining monies in the Mechanic Lien Escrow.

3 Upon consideration of the Stipulated Order filed by the ML Parties and Gold Creek,
4 notice of which was sent to all Mechanics Lien Claimants, the Court hereby finds as follows:

5 (a) This Stipulated Order was properly lodged with the Court and properly
6 noticed to all parties in interest, including the Mechanics Lien Claimants, and the Court has
7 jurisdiction over the issues presented;

8 (b) The Court has jurisdiction to enter this Stipulated Order and authorize the
9 release of the ML Escrow Portion to the ML Parties, and to confirm that all of the claims
10 and liens held by Gold Creek and the Mechanics Lien Claimants are released from the ML
11 Escrow Portion and any valid lien held by Gold Creek and the Mechanics Lien Claimants
12 shall solely attach to the Mechanic Lien Escrow; and

13 (c) Gold Creek and the other Mechanics Liens Claimants shall resolve, in good
14 faith, through agreement, stipulation or binding arbitration/litigation their respective lien
15 rights to the proceeds in the Mechanics Lien Escrow, at which time, the proceeds in the
16 Mechanic Lien Escrow may be disbursed in accordance with the terms of this Order.

17 IT IS THEREFORE ORDERED THAT:

18 (1) The Escrow shall be disbursed or continue to be held as set forth by the terms
19 of this Order.

20 (2) \$1,523,000 of the amount in the Escrow will continue to be held by the
21 Escrow Agent for the sole benefit of Gold Creek and the Mechanics Lien Claimants, and
22 \$77,000 will be held for payment of attorneys owed to Gold Creek's counsel, (collectively,
23 the "Mechanic Lien Escrow"). Any claims by the ML Parties to the Mechanic Lien Escrow
24 are hereby be released and discharged except for those contract and lien claims purchased
25 by the Liquidating Trustee and to secure Gold Creek's Indemnity Obligations to the ML
26 Parties ("Indemnity Obligations") as set forth in the Settlement Agreement.

1 (3) The Escrow Agent shall immediately disburse to the ML Parties per their
2 joint direction the ML Escrow Portion, free and clear of the Gold Creek lien and the
3 Mechanics Lien Claimants liens, and all claims against the ML Parties by Gold Creek and
4 the Mechanics Lien Claimants arising out of the Chateaux Project are released and
5 discharged, except that to the extent there is an Allowed Unsecured Claim of KCG in the
6 Bankruptcy Estate as provided for under the confirmed Plan such claim is being reserved and is
7 not impacted by this Order.

8 (4) Any valid liens of Gold Creek and the Mechanics Lien Claimants shall attach
9 solely to the Mechanic Lien Escrow, and all other claims by Gold Creek and the Mechanics
10 Lien Claimants against the ML Parties shall be released and discharged, except that to the
11 extent there is an Allowed Unsecured Claim of KCG in the Bankruptcy Estate as provided for
12 under the confirmed Plan such claim is being reserved and is not impacted by this Order, .

13 (5) Upon delivery to the Escrow Agent of a fully executed Release of Mechanic's
14 and Materialmen's Lien and instruction letter by Gold Creek, the Escrow Agent shall
15 immediately disburse to Gold Creek from the Mechanic Lien Escrow the sum of \$509,225.30.

16 (6) Upon delivery to the Escrow Agent of a fully executed Lien Release by the
17 Liquidating Trustee relating to the Assigned Subcontracts acquired by the Liquidating
18 Trustee, the Escrow Agent shall immediately disburse to the Liquidating Trustee from the
19 Mechanic Lien Escrow the sum of \$42,725.38.

20 (7) The Escrow Agent shall immediately disburse to counsel for Gold Creek
21 from the Mechanic Lien Escrow the sum of \$77,000.00 in payment of the attorneys' fees
22 owed by Gold Creek to its counsel.

23 (8) Upon delivery to the Escrow Agent of a fully executed Lien Release from
24 any Mechanics Lien Claimant, the Escrow Agent shall immediately disburse to such
25 Mechanics Lien Claimant from the Mechanic Lien Escrow the amount stated in said Lien
26

1 Release, and concurrently with such disbursement, the Escrow Agent shall immediately
2 disburse to Gold Creek from the Mechanic Lien Escrow the difference between the
3 Mechanics Lien Holdback calculated with respect to such Mechanics Lien Claimant and
4 the payment made to the releasing Mechanics Lien Claimant, provided that the funds
5 remaining in the Mechanics Lien Escrow after such distribution is equal to or greater than
6 the sum of all the Mechanics Lien Holdback amounts for the Mechanics Lien Claimants
7 whose claims have not yet been resolved plus \$35,000.00 relating to the Indemnity
8 Obligation provided for in Paragraph 6 of the Settlement Agreement.

9 (9) At such time as fully executed Lien Releases have been delivered to the
10 Escrow Agent respecting all Mechanics Lien Claimants, the Escrow Agent shall immediately
11 disburse to Gold Creek all remaining monies in the Mechanic Lien Escrow.

12 (10) The Court reserves jurisdiction to resolve any and all disputes relating to: (i) the
13 determination of the validity or amount of the Mechanics Lien Claimants lien rights or claims,
14 (ii) Gold Creek's and the Mechanics Lien Claimants rights in and to the Mechanic Lien Escrow,
15 (iii) the Indemnity Obligations under the Settlement Agreement, and (iv) the meaning, effect or
16 enforcement of the Settlement Agreement.

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

21 (12) Nothing in this Order shall impact or alter, in any way, the rights, claims or
22 defenses under non-bankruptcy law of Gold Greek, Gold Creek's surety, Sun Valley Masonry,
23 Inc. or any other subcontractor on the Chateaux Project.

24 DATED AND ORDERED AS STATED ABOVE.
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