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9 *Attorneys for Mortgages Ltd. 401(k) Plan*

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:) In Proceedings Under Chapter 11
13 MORTGAGES LTD.,)
14 an Arizona corporation,) **REPLY IN SUPPORT OF APPLICATION FOR**
15) **ORDER TO SHOW CAUSE**
16) Case No. 2:08-bk-07465-RJH
17)
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28)
Debtor.

17 Mortgages Limited 401(K) Plan (“401(K) Plan”), by and through undersigned
18 counsel, hereby files this Reply in support of its Application for Order to Show Cause.
19 As a threshold matter, the 401(K) Plan notes that the Liquidating Trustee, although not
20 agreeing to turn over the funds to the 401(K) Plan, has indicated that he has no interest in
21 the funds that are the subject of this Motion, and has agreed to remit those funds
22 following an Order of this Court. See Exhibit A, letter dated July 12, 2010 from counsel
23 for Liquidating Trustee. The Liquidating Trustee believes that, based on a claim by ML
24 Manager to some right to these funds, he should look “ to the ML Manager for direction
25 as to the proper distribution of said funds.” *Id.* The 401(K) Plan contends that the earlier
26 order of this Court made clear the obligation to turn over to the 401(K) Plan its assets.

27 The other Response to this Application was filed by ML Manager, who is neither
28

1 holding the funds in question nor subject to the previous Order regarding the 401(K) Plan
2 assets, entered at Docket # 2206 (hereafter "Order"). Nevertheless, ML Manager has
3 asserted that it is entitled to these funds, pending a resolution of the disagreement on
4 apportionment for expenses. This argument ignores the plain language of the Order, and
5 glosses over the fact that ML Manager is not in possession of the 401(K) Plan funds in
6 question.
7

8 **Legal Argument**

9 **A) The 401(K) Plan Does Not Seek To Recover Money**

10 The Responses assert that the Application is procedurally improper, and an
11 adversary proceeding should have been commenced pursuant to Fed. R. Bank. P. 7001.
12 However, this Application does not seek to "recover" money, any more than did the
13 proceeding that resulted in the Order. Rather, the 401(K) Plan is seeking to enforce that
14 Order, specifically the provision in Paragraph (iv) which discharges the Liquidating Trust
15 and Liquidating Trustee from "authority over, the 401(K) Plan *and its assets and*
16 *accounts* from the date of this Order forward." Docket No. 2206, Order, ¶ iv (emphasis
17 added). The Application is an attempt to enforce the provisions of this Order, through a
18 subsequent Order directing the turnover of the funds in the impound accounts belonging
19 to the 401(K) Plan.
20

21 **B) The Liquidating Trustee is The Proper Party For The Application**

22 As set forth above, the Application is merely an attempt to effectuate the prior
23 Order, and secure for the 401(K) Plan those funds belonging to it. The 401(K) Plan is
24 mindful that this Court has already established that it has no jurisdiction over the 401(K)
25 Plan. Docket No. 2206, Order, ¶ i. However, the Liquidating Trustee has indicated that
26 he will abide a further Order of the Court directing the payment to the 401(K) Plan of its'
27 funds, so this Application has been brought.
28

1 The Responses raise the question of why the Application was brought as to the
2 Liquidating Trustee, and not as to ML Manager. The simple answer is that it is the
3 Liquidating Trustee who has the legal power (through his signature) to turn over the
4 funds belonging to the 401(K) Plan. *See* Liquidating Trustee’s Response at P. 2, fn. 1.
5 Further, the Liquidating Trustee, and not ML Manager, is the party bound by the Order.
6 Therefore, it is only logical that the 401(K) Plan seek to enforce the Order directing the
7 return of its funds from the party able to (and required to) return them, the Liquidating
8 Trustee.
9

10 **C) ML Manager Does Not Hold The Funds**

11 The ML Manager Response points out that the Application made no mention of
12 the claims of ML Manager as to the right to receive payment from the 401(K) Plan. The
13 Response characterizes this claim for payment due (although in a heretofore unknown
14 and unproven amount) by the ML Manager as “an interest” in the funds belonging to the
15 401(K) Plan. *See* ML Manager Response P. 5. This “interest” of ML Manager is not in
16 these specific funds, which belong entirely to the 401(K) Plan. Rather, ML Manager
17 asserts, at best, a right to submit a bill to the 401(K) Plan for what it claims as the 401(K)
18 Plan’s liability for costs and expenses related to the bankruptcy. The 401(K) Plan
19 submits that the proper course to follow is for the Court to enforce the Order, allow the
20 401(K) Plan access to its assets, and allow ML Manager to submit a bill to the 401(K)
21 Plan for claimed expenses.
22

23 ML Manager’s Response goes on to suggest that the 401(K) Plan is attempting to
24 mislead the Court by not bringing to the Court’s attention in the Application that some
25 party aside from the 401(K) Plan wants some portion of the 401(K) Plan’s money. The
26 Response is correct in stating that counsel for the 401(K) Plan spoke to counsel for ML
27 Manger regarding the turnover of the funds the 401(K) Plan claims. In the course of
28 those discussions, the 401(K) Plan was informed that ML Manager did not in fact have

1 possession or control of the funds in question. In fact, it was counsel for ML Manager
2 who informed the 401(K) Plan that the funds were under the control of accounts which
3 the Liquidating Trustee could access. Therefore, since it was he who had access to the
4 funds, and he who was subject to the Order, it was he against whom the Application was
5 brought.

6
7 Perhaps ML Manager means to suggest that the proper course for the 401(K) Plan
8 to follow was to ask that the funds belonging to the 401(K) Plan be turned over to ML
9 Manager. This argument begs the question of why, if ML Manager asserts rights to the
10 401(K) Plan's funds, it waited until after the Application was filed to assert such rights to
11 the Court. It is only when it appears that the 401(K) Plan may get the funds, rather than
12 leave them under the direction of the Liquidating Trustee, that ML Manager steps
13 forward to request the funds in which it claims an interest.

14 ML Manager is not a party to the Application, because ML Manager is not a party
15 to the Order. The 401(K) Plan merely seeks a return of those "assets and accounts"
16 which are under the control of the Liquidating Trustee and are the subject of the Order.
17 The only other party with any ability to access the funds is the Liquidating Trustee. He
18 has indicated he has no interest in the funds, his only role is to sign the checks allowing
19 the 401(K) Plan to have those funds. The simplest course of action, and the course in
20 keeping with the Order, is to issue a further Order directing the Liquidating Trustee to
21 remit the funds in the Ecco impound account, and 93.52% of the funds in the Hurst
22 impound account, to the 401(K) Plan, the true owner of these funds.

23 24 CONCLUSION

25
26 The Liquidating Trustee has indicated he claims no interest in the 401(K) Plan funds
27 being held in the Ecco and Hurst accounts. Those funds are assets of the 401(K) Plan, and
28 pursuant to the Order should have been turned over to the 401(K) Plan. ML Manager is

1 attempting to usurp this process by claiming it has some interest in the apportionment of
2 those funds. Any amount allegedly owed to ML Manager by the 401(K) Plan is not relevant
3 to this Application. Whatever bill ML Manager wants to submit, if and when it determines
4 what allocation it wants to use as to the claims for expenses due from the 401(K) Plan, is the
5 subject for another day. The Court should enforce the Order as written, and direct the
6 Liquidating Trustee to provide the 401(K) Plan its funds.
7

8
9 DATED: July 14, 2010
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13
14 /s/ Thomas S. Moring

15 Thomas S. Moring,
16 **PAK & MORING PLC**

17 *Attorneys for Mortgages Ltd. 401(k) Plan*

18 COPY of the foregoing served
19 by email this 14th day of July, 2010 on:

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8
9 /s/ Thomas S. Moring

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Exhibit A

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William Scott Jenkins

July 12, 2010

VIA E-MAIL – Thomas.Moring@azbar.org
and Regular Mail

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Pak & Moring
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Suite 100
Scottsdale, Arizona 85260

Re: In re Mortgages Ltd. (Case No.: 2:08-bk-07465-RJH)
401(k) Plan Application for Order to Show Cause (Application)

Dear Tom:

Pursuant to our telephone conversation earlier this afternoon, this is to confirm our discussion and resolution of the aforementioned Application as it relates to your efforts to impose sanctions against the ML Liquidating Trustee. As I re-confirmed, the funds in question have always been in the possession of Mortgages, Ltd./ML Servicing Co., Inc. and not the ML Liquidating Trustee. As set forth in the ML Liquidating Trustee's Response to the Application, neither ML Servicing Co., Inc. nor the ML Liquidating Trustee have ever claimed an interest in the funds in question. Instead, ML Servicing Co., Inc. has looked to the ML Manager LLC for direction as to the proper disposition of said funds. Until very recently, neither ML Servicing Co., Inc. nor the ML Liquidating Trustee had ever received any direction from ML Manager LLC regarding the disposition of said funds.

My client understands that it is and will remain the 401(k) Plan's position that the ML Liquidating Trustee was obligated to turn over the funds in question under the Bankruptcy Court's Stipulated Order dated September 23, 2009 ("Order"). As set forth in the Response to the Application filed by the ML Liquidating Trustee, we disagree with the 401(k) Plan's interpretation of such Order. Nonetheless, because the ML Liquidating Trustee was not aware of the ongoing discussions/dispute with the ML Manager LLC regarding the funds at issue, and was not intentionally withholding funds from any party or parties claiming entitlement to said funds, since no demand was ever specifically made upon ML Servicing Co., Inc. or the Liquidating Trustee for the turnover of said funds,

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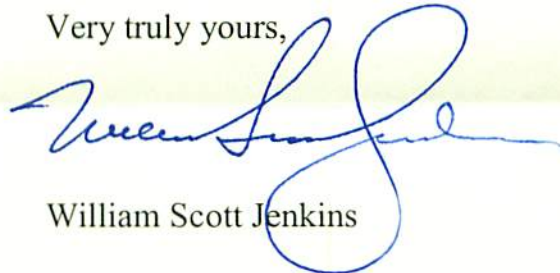
July 12, 2010
Page 2

your client has agreed not to seek a contempt citation against the ML Liquidating Trustee for violation of the Order or otherwise seek to impose sanctions against him.

As we further discussed today, the funds are being held in separate accounts at Chase Bank as specifically described in the ML Liquidating Trustee's Response to the Application. The ML Liquidating Trustee has agreed that no disbursements of any of the funds in question will be made pending further order of the Bankruptcy Court in consideration for your client's agreement to withdraw its request for contempt/sanctions against the ML Liquidating Trustee. Based upon such agreement, it is understood that the ML Liquidating Trustee will not have to fly from Atlanta to attend the scheduled hearing on Thursday of this week. However, it is further understood that your client will proceed with the hearing for the purpose of obtaining an Order from the Bankruptcy Court regarding the disposition of the funds in question.

It is clear that the dispute regarding entitlement to the funds in question is between the 401(k) Plan and ML Manager LLC, and it will be up to the Bankruptcy Court to determine how it wishes to address such question. I appreciate your client's willingness to resolve this controversy as it applies to the withdrawal of your Application for Contempt/Sanctions against the ML Liquidating Trustee. If you believe there is anything set forth in this letter that does not accurately reflect our discussion and agreement, please let me know as soon as possible, since the ML Liquidating Trustee will need to purchase airline reservations on very short notice if you advise me that we have not agreed as set forth above.

Very truly yours,



William Scott Jenkins

WSJ:ah

c: Kevin O'Halloran (via e-mail)

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The following information was obtained from the records of the Department of Health and Human Services, Office of Inspector General, regarding the activities of the [redacted] during the period [redacted].

The [redacted] was found to have engaged in [redacted] activities, which are prohibited under [redacted] regulations. The [redacted] is currently under [redacted] supervision.

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The [redacted] is currently under [redacted] supervision. The [redacted] is currently under [redacted] supervision. The [redacted] is currently under [redacted] supervision.

[Handwritten signature]

Date: [redacted]

Telephone: (800) 500-5000
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Medical Records