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8 **SUPERIOR COURT OF ARIZONA**
9 **MARICOPA COUNTY**

10 ML SERVICING CO., INC., an Arizona)
11 corporation; and ML LIQUIDATING)
12 TRUST,)

12 Plaintiffs,)

13 v.)

14 GERALD K. SMITH, as Trustee for)
15 THE COLES CHILDREN'S TRUST;)
16 HALEY BROOKE COLES, an)
17 individual; FRANCINE COLES,)
18 individually and as conservator for Z.A.)
19 COLES and S.B. COLES, minors;)
20 JOHN AND JANE DOES 1-30; BLACK)
21 CORPORATIONS 1-30; WHITE)
22 PARTNERSHIPS 1-30; and GRAY)
23 TRUSTS 1-30,)

23 Defendants.)

No. CV2011-005890
COMPLAINT

(Unjust Enrichment, Fraudulent Transfer,
Constructive Trust, Wrongful Distribution,
Aiding and Abetting Conversion, Aiding and
Abetting Breach of Fiduciary Duty)

22 For their Complaint, Plaintiffs, ML Servicing Co., Inc. and ML Liquidating Trust
23 alleges as follows:
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GENERAL ALLEGATIONS

1. Plaintiff, ML Servicing Co., Inc. ("Plaintiff") is an Arizona corporation that was formerly known as Mortgages, Ltd. ("ML").

2. Plaintiff ML Liquidating Trust is a liquidating trust that is organized under the laws of Arizona and the owner of Plaintiff.

3. ML Liquidating Trust was created as part of the Chapter 11 Plan of Reorganization for ML, which was approved by the United States Bankruptcy Court for the District of Arizona on May 20, 2009.

4. Pursuant to the Chapter 11 Plan of Reorganization for ML, ML Servicing Co., Inc. and ML Liquidating Trust are authorized to prosecute the claims asserted herein.

5. Upon information and belief, each of the Defendants received proceeds from life insurance policies in which Scott Coles was the insured party.

6. Upon information and belief, Defendant Gerald K. Smith is the Trustee for The Coles Children's Trust and he resides in Maricopa County, Arizona.

7. Upon information and belief, The Coles Children's Trust is a trust created by Scott Coles for the benefit of his children.

8. Upon information and belief, Defendant Haley Coles is a single woman residing in Maricopa County, Arizona.

9. Defendant Haley Coles is Scott Coles' daughter.

10. Upon information and belief, Defendant Francine Coles is a single woman residing in Maricopa County, Arizona.

11. Upon information and belief, Defendant Francine Coles is the mother of and the conservator for Z.A. Coles and S.B. Coles, who are Scott Coles' children.

12. The true names of all John Doe, Jane Doe, Black Corporation, White Partnership, and Gray Trust Defendants are unknown to Plaintiff at the time of the filing of this Complaint,

1 and Plaintiff, therefore, sues them through fictitious names. Plaintiff will ask leave of Court to
2 amend this Complaint to reflect the true names of these unknown Defendants if and when they
3 have been ascertained.

4 13. Jurisdiction is proper pursuant to A.R.S. § 12-123.

5 **THE LIFE INSURANCE POLICIES**

6 14. For more than 40 years, ML was a private mortgage broker and lender before an
7 involuntary petition for relief under Chapter 11 of the United States Bankruptcy Code was filed
8 by some of ML's creditors in 2008.

9 15. In the years prior to ML's bankruptcy it was owned by SMC Revocable Trust.

10 16. Before 2006, Scott Coles became ML's Chief Executive Officer and he
11 continued to serve in that capacity until his death on June 2, 2008.

12 17. By no later than 2008, ML's financial condition had deteriorated to the point that
13 it was insolvent and lacked sufficient funds to pay its investors and to fund substantial loans
14 that ML had committed to fund.

15 18. In the wake of ML's imminent collapse, on or about June 2, 2008, Scott Coles
16 committed suicide.

17 19. In the two years preceding Scott Coles' suicide, with ML's financial condition
18 rapidly deteriorating and during a time when ML was insolvent, SMC Revocable Trust caused
19 ML to transfer funds to SMC Revocable Trust, for the purpose of paying life insurance
20 premiums on life insurance policies under which Scott Coles was the insured ("the Life
21 Insurance Policies").

22 20. Upon information and belief, the SMC Revocable Trust was established by Scott
23 Coles.

24 21. SMC Revocable Trust was at all relevant times, a shareholder of ML.

1 32. ML received no benefit as a result of SMC Revocable Trust causing ML to pay
2 the premiums on the Life Insurance Policies and as an insolvent corporation, ML owed
3 fiduciary duties to its creditors and investors to refrain from making transfers to Scott Coles or
4 other insiders.

5 33. Because SMC Revocable Trust caused ML to transfer the funds that were used to
6 pay the Life Insurance Policy premiums, ML did not gratuitously or voluntarily pay those
7 premiums for the benefit of Scott Coles or any of the Defendants.

8 34. Defendants were unjustly enriched by receiving the proceeds from the Life
9 Insurance Policies.

10 35. Defendants gave no value to ML in exchange for the benefits they received from
11 the Life Insurance Policies.

12 36. ML's impoverishment and Defendants' enrichment are directly connected.

13 37. As a direct and proximate result of Defendants' unjust enrichment, Plaintiffs
14 have sustained damages in an amount to be proven at trial.

15 38. Plaintiff is entitled to have the Court impose a constructive trust on the proceeds
16 from the Life Insurance Policies that were received by Defendants.

17 **COUNT II – FRAUDULENT TRANSFER**

18 39. Plaintiffs reallege and incorporate by reference the allegations set forth in the
19 preceding paragraphs as if fully set forth herein.

20 40. SMC Revocable Trust caused ML to transfer assets to SMC Revocable Trust for
21 the purpose of purchasing life insurance policies that would benefit Defendants and which
22 would not benefit ML.

23 41. At the time of the transfers, ML had a right of payment against Scott Coles and
24 SMC Revocable Trust for the funds that were transferred for the purpose of purchasing life
25 insurance policies that would benefit Defendants.

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ORIGINAL filed this 28th day of March, 2011:

Clerk of the Court
Maricopa County Superior Court
101/201 West Jefferson
Phoenix, Arizona 85003

Lisa Hamilton