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

10 In re

11 MORTGAGES LTD.,

12 Debtor.

Chapter 11

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

**ML MANAGER LLC'S OMNIBUS  
OBJECTION TO PROOFS OF CLAIM  
NUMBER 305-1 AND 566-1 FILED BY  
HH 20 LLC, 302-1 AND 568-1 FILED BY  
JASON AND KRISTINA SAVELL, AND  
308-1 AND 567-1 FILED BY ERIC AND  
CHERYL FAAS**

16 ML Manager LLC, pursuant to 11 U.S.C. §§ 502 (a) and 502(c) and Federal Rule  
17 of Bankruptcy Procedure 3007(a) and the Investors Committee's First Amended Plan of  
18 Reorganization which was confirmed by the Court in this case, hereby objects to proofs of  
19 claim number 305-1 and 566-1 filed by HH 20 LLC, 302-1 and 568-1 filed by Jason and  
20 Kristina Savell, and 308-1 and 567-1 filed by Eric and Cheryl Faas, and all amendments  
21 and supplements thereto, ("Claims and Claimants"). Each of the Claimants assert Claims  
22 against Mortgages Ltd. and may assert offset rights against amounts they owe pursuant to  
23 promissory notes and deeds of trust to the holders of the notes and deeds of trust for which  
24 ML Manager LLC is the agent and/or the manager. Even though these Claimants have  
25 failed to repay any of their secured obligations, they assert that they have claims against  
26 Mortgages Ltd for significant amounts, and may assert offset rights against the amounts  
27 that they owe.  
28

1 JURISDICTION AND VENUE

2 1. This Court has jurisdiction to hear this Omnibus Objection pursuant to 28  
3 U.S.C. §§ 157 and 1334. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This  
4 is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B).

5 2. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 501  
6 and 502, and Bankruptcy Rule 3007.

7 **I. OBJECTION TO CLAIMS**

8 **A. General Overview of Objections to Proof of Claims**

9 Section 502 of the Bankruptcy Code provides the general procedural mechanism  
10 for a debtor or a party-in-interest to object to a creditor's claim or interest. *See* 11 U.S.C.  
11 § 502(a). Bankruptcy Rule 3001 provides that “[a] proof of claim executed and filed in  
12 accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the  
13 validity and amount of the claim.” *See* Fed.R.Bankr.P. 3001(f). This is true even if the  
14 proof of claim is executed by the creditor's attorney rather than the creditor or a principal  
15 of the creditor. *See Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (9th Cir. B.A.P.  
16 2000). As such, failure of a debtor or party-in-interest to object would result in such proof  
17 of claim being deemed allowed. *See* 11 U.S.C. § 502(a); *Irvine-Pacific Commercial Ins.*  
18 *Brokers, Inc. v. Adams (In re Irvine-Pacific Commercial Ins. Brokers, Inc.)*, 228 B.R. 245,  
19 246 (9th Cir. B.A.P. 1998).

20 Upon an objection by a debtor or party-in-interest, however, the Court, “after  
21 notice and a hearing, shall determine the amount of such claim in lawful currency of the  
22 United States as of the date of the filing of the petition, and shall allow such claim in such  
23 amount, except to the extent that . . . such claim is unenforceable against the debtor and  
24 property of the debtor, under any agreement or applicable law . . . .” *See* 11 U.S.C.  
25 § 502(b)(1). Basic claim objection procedure requires that an objection to claim be in  
26 writing and be filed. *See* Fed.R.Bankr.P. 3007. Bankruptcy Rule 3007(a) provides:

27 An objection to the allowance of a claim shall be in writing  
28 and filed. A copy of the objection with notice of the hearing  
thereon shall be mailed or otherwise delivered to the claimant,

1 the debtor or debtor in possession and the trustee at least 30  
2 days prior to the hearing.

3 See Fed.R.Bankr.P. 3007(a). Additionally, an objecting party must present sufficient  
4 evidence and “show facts tending to defeat the claim by probative force equal to the  
5 allegations of the proofs of claim themselves.” *Wright v. Holm (In re Holm)*, 931 F.2d  
6 620, 623 (9th Cir. 1991); *Abbate v. U.S. (In re Abbate)*, 187 B.R. 9, 12 (D. Nev. 1995).  
7 The evidence must be such that “if believed would refute at least one of the allegations  
8 that is essential to the claim’s legal sufficiency.” See *Lundell v. Anchor Constr.*  
9 *Specialist, Inc. (In re Lundell)*, 223 F.3d 1035, 1040 n.2 (9th Cir. 2000).

10 A “properly filed” proof of claim, as proscribed by the Judicial Conference in  
11 Official Form 10, consists of “(1) a creditor’s name and address, (2) basis for claim, (3)  
12 date debt incurred, (4) amount of claim, (5) classification of claim, and (6) supporting  
13 documents.” *In re Armstrong*, 320 B.R. 97, 104 (Bankr. N.D. Tex. 2005) (citations  
14 omitted). The documentation required by Bankruptcy Rule 3001 and Official Form 10  
15 allows the debtor to have enough information to fully determine whether or not a valid  
16 claim in the proper amount has been filed. *Id.* at 104-05. If the proof of claim lacks  
17 *prima facie* validity, objections that raise a factual or legal ground will likely prevail  
18 absent an adequate response by the claimant. See *Campbell v. Verizon Wireless S-CA (In*  
19 *re Campbell)*, 336 B.R. 430, 436 (9th Cir. B.A.P. 2005).

20 **B. Claims and Claimants**

21 The Claimants are related parties and assert that they hold claims for damages  
22 against Mortgages Ltd. arising from the Mortgage Note, Loan Agreements and Deed of  
23 Trust. They also may assert rights of offset. Their proofs of claim do not specify the  
24 actions, conduct, precise legal theory or the basis for the claim. The proofs of claim are  
25 bare bones and are insufficient to establish any of the required elements. The liability and  
26 damage amounts are contingent and unliquidated. The stated bases for the Claims are so  
27 insufficient that ML Manager is at a loss to respond and adequately defend against such  
28 Claims.

1 Even if the Claimants have any Claims, a fact and legal conclusion that ML  
2 Manager disputes, any such claim would be only an unsecured claim under Class 11A or  
3 Class 11G of the Plan to be paid in the future by the ML Liquidating Trust. To the extent  
4 the Claimants assert rights of offset against the obligations owed, which ML Manager  
5 disputes, such rights must be assert in against the appropriate parties and in the  
6 appropriate proceeding.

7 **C. The Claimants Owe the Note Holders Money Based Upon the Notes and**  
8 **Agreements**

9 There is no explanation even proffered of how the Claimants' claims equal or  
10 exceed the amount that they owe, and clearly no explanation of how their claims if any  
11 could be offset against the obligations they owe. In short, there is nothing in the proof of  
12 claim or documentation filed with the Court that demonstrates Claimants hold such  
13 claims.

14 **II. CONCLUSION**

15 This Court should hold an evidentiary hearing, grant the Objection and deny any  
16 claim asserted by the Claimants.

17 DATED: October 13, 2009

18 FENNEMORE CRAIG, P.C.

19 By /s/ Cathy L. Reece  
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