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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 195-1 FILED BY FOOTHILLS
PLAZA IV LLC AND DOUGLAS
DRAGOO AND 875-1 FILED BY THE
DRAGOO FAMILY TRUST**

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 195-1 filed by Foothills IV LLC¹ and Douglas Dragoo and 875-1 filed by
20 the Dragoo Family Trust, and all amendments and supplements thereto, ("Claims and
21 Claimants"). Each of the Claimants assert Claims against Mortgages Ltd. and may assert
22 offset rights against amounts they owe pursuant to promissory notes and deeds of trust to
23 the holders of the notes and deeds of trust for which ML Manager LLC is the agent and/or
24 the manager. Even though these Claimants have failed to repay any of their secured
25 obligations, they assert that they have claims against Mortgages Ltd for significant
26 amounts, and may assert offset rights against the amounts that they owe.

27 ¹ML Manager files this objection against Foothills to preserve the objection and asserts that it does not
28 violate the automatic stay imposed by Foothills bankruptcy. A proof of claim has been filed in the
Foothills bankruptcy to preserve the underlying amounts owed by the borrower.

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, Breach of Contract and
23 Misrepresentation. They also may assert rights of offset. Their proofs of claim do not
24 specify the actions, conduct, precise legal theory or the basis for the claim. Further the
25 Drago Family Trust was paid and no moneys are owed by Mortgages Ltd. to them. The
26 proofs of claim are bare bones and are insufficient to establish any of the required
27 elements. The liability and damage amounts are contingent and unliquidated. The stated
28 bases for the Claims are so insufficient that ML Manager is at a loss to respond and

1 adequately defend against such Claims.

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

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

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

15 **II. CONCLUSION**

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

18 DATED: October 13, 2009

19 FENNEMORE CRAIG, P.C.

20 By /s/ Cathy L. Reece
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22 Attorneys for ML Manager LLC