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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	Chapter 11
MORTGAGES LTD.,	Case No. 2:08-bk-07465-RJH
Debtor.	**ML MANAGER LLC'S OBJECTION TO PROOF OF CLAIM NUMBER 1186-1 FILED BY DENNIS AND MARIA NEWMAN**

ML Manager LLC, pursuant to 11 U.S.C. §§ 502 (a) and 502(c) and Federal Rule of Bankruptcy Procedure 3007(a) and the Investors Committee's First Amended Plan of Reorganization which was confirmed by the Court in this case, hereby objects to proof of claim number 1186-1 filed by Dennis and Maria Newman, and all amendments and supplements thereto ("Claim and Claimant"). Claimant asserts a Claim against Mortgages Ltd. and may assert offset rights against amounts they owe pursuant to promissory notes and deeds of trust to the holders of the notes and deeds of trust for which ML Manager LLC is the agent and/or the manager. Even though the Claimant has failed to repay their secured obligations, they assert that they have claims against Mortgages Ltd for significant amounts, and may assert offset rights against the amounts that they owe.

JURISDICTION AND VENUE

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

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

I. OBJECTION TO CLAIMS

A. General Overview of Objections to Proof of Claims

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

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

> An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing.

See Fed.R.Bankr.P. 3007(a). Additionally, an objecting party must present sufficient evidence and "show facts tending to defeat the claim by probative force equal to the allegations of the proofs of claim themselves." *Wright v. Holm (In re Holm)*, 931 F.2d

620, 623 (9th Cir. 1991); *Abbate v. U.S. (In re Abbate)*, 187 B.R. 9, 12 (D. Nev. 1995). The evidence must be such that "if believed would refute at least one of the allegations that is essential to the claim's legal sufficiency." *See Lundell v. Anchor Constr. Specialist, Inc. (In re Lundell*), 223 F.3d 1035, 1040 n.2 (9th Cir. 2000).

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

B. Claim and Claimant

The Claimant asserts that they hold claims for damages against Mortgages Ltd. arising from the Mortgage Notes and Deeds of Trust. They also may assert rights of offset. Their proofs of claim do not specify the actions, conduct, precise legal theory or the basis for the claim. The proofs of claim are bare bones and are insufficient to establish any of the required elements. The liability and damage amounts are contingent and unliquidated. The stated bases for the Claims are so insufficient that ML Manager is at a loss to respond and adequately defend against such Claims.

Even if the Claimant has any Claim, a fact and legal conclusion that ML Manager disputes, any such claim would be only an unsecured claim under Class 11A or Class 11G of the Plan to be paid in the future by the ML Liquidating Trust. To the extent the Claimant asserts rights of offset against the obligations owed, which ML Manager disputes, such rights must be assert in against the appropriate parties and in the appropriate proceeding.

C. The Claimant Owes the Note Holders Money Based Upon the Notes and Agreements

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

II. CONCLUSION

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

DATED: October 13, 2009

FENNEMORE CRAIG, P.C.

By */s/ Cathy L. Reece*
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