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6  
7 IN THE UNITED STATES BANKRUPTCY COURT  
8 FOR THE DISTRICT OF ARIZONA

9 In re  
10 MORTGAGES LTD.,  
11 Debtor.

Chapter 11

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

**ML MANAGER LLC'S OMNIBUS  
OBJECTION TO PROOFS OF CLAIM  
NUMBERS 725-1 AND 726-1 FILED BY  
SCOTT COLES ESTATE, CLAIM  
NUMBERS 718-1, 724-1 AND 727-1  
FILED BY SMC REVOCABLE TRUST,  
CLAIM NUMBER 719-1 FILED BY  
REALTY, LTD., AND CLAIM NUMBER  
717-1 FILED BY MORTGAGES LTD.  
TITLE AGENCY LLC**

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17 ML Manager LLC, pursuant to 11 U.S.C. §§ 502 (a) and 502(c) and Federal Rule  
18 of Bankruptcy Procedure 3007(a) and the Investors Committee's First Amended Plan of  
19 Reorganization which was confirmed by the Court in this case, hereby objects to proofs of  
20 claim numbers 725-1 and 726-1 filed by the Scott Coles Estate, claim numbers 718-1,  
21 724-1 and 727-1 filed by SMC Revocable Trust, claim number 719-1 filed by Realty Ltd.,  
22 and claim number 717-1 filed by Mortgages Ltd. Title Agency LLC, and all amendments  
23 and supplements thereto ("Claims and Claimants"). The Claimants assert Claims against  
24 Mortgages Ltd. arising from the Arizona Bank and the Artemis Realty loans and  
25 guaranties. No accounting for the sale or the value of the collateral that would resolve or  
26 reduce the Claims has been made. Further, the Investors Committee and Mortgages Ltd.  
27 filed significant claims in the Scott Coles Estate asserting hundreds of millions of dollars  
28 of claims against the probate estate and assert the same claims against the SMC Revocable

1 Trust. Further SMC Revocable Trust, Realty Ltd. and Mortgages Ltd. Title Agency LLC  
2 assert claims as pass-through investors and/or as MP Fund investors which claims ML  
3 Manager asserts would be subject to offset. Claimants are insiders of Mortgages Ltd. and  
4 are potential defendants in law suits to be filed by the ML Liquidating Trust and/or ML  
5 Manager LLC. The Claims should be denied for all these reasons.

## 6 JURISDICTION AND VENUE

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

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

### 12 **I. OBJECTION TO CLAIMS**

#### 13 **A. General Overview of Objections to Proof of Claims**

14 Section 502 of the Bankruptcy Code provides the general procedural mechanism  
15 for a debtor or a party-in-interest to object to a creditor's claim or interest. *See* 11 U.S.C.  
16 § 502(a). Bankruptcy Rule 3001 provides that “[a] proof of claim executed and filed in  
17 accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the  
18 validity and amount of the claim.” *See* Fed.R.Bankr.P. 3001(f). This is true even if the  
19 proof of claim is executed by the creditor's attorney rather than the creditor or a principal  
20 of the creditor. *See Garner v. Shier (In re Garner)*, 246 B.R. 617, 622 (9th Cir. B.A.P.  
21 2000). As such, failure of a debtor or party-in-interest to object would result in such proof  
22 of claim being deemed allowed. *See* 11 U.S.C. § 502(a); *Irvine-Pacific Commercial Ins.*  
23 *Brokers, Inc. v. Adams (In re Irvine-Pacific Commercial Ins. Brokers, Inc.)*, 228 B.R. 245,  
24 246 (9th Cir. B.A.P. 1998).

25 Upon an objection by a debtor or party-in-interest, however, the Court, “after  
26 notice and a hearing, shall determine the amount of such claim in lawful currency of the  
27 United States as of the date of the filing of the petition, and shall allow such claim in such  
28 amount, except to the extent that . . . such claim is unenforceable against the debtor and

1 property of the debtor, under any agreement or applicable law . . . .” See 11 U.S.C.  
2 § 502(b)(1). Basic claim objection procedure requires that an objection to claim be in  
3 writing and be filed. See Fed.R.Bankr.P. 3007. Bankruptcy Rule 3007(a) provides:

4 An objection to the allowance of a claim shall be in writing  
5 and filed. A copy of the objection with notice of the hearing  
6 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.

7 See Fed.R.Bankr.P. 3007(a). Additionally, an objecting party must present sufficient  
8 evidence and “show facts tending to defeat the claim by probative force equal to the  
9 allegations of the proofs of claim themselves.” *Wright v. Holm (In re Holm)*, 931 F.2d  
10 620, 623 (9th Cir. 1991); *Abbate v. U.S. (In re Abbate)*, 187 B.R. 9, 12 (D. Nev. 1995).  
11 The evidence must be such that “if believed would refute at least one of the allegations  
12 that is essential to the claim’s legal sufficiency.” See *Lundell v. Anchor Constr.*  
13 *Specialist, Inc. (In re Lundell)*, 223 F.3d 1035, 1040 n.2 (9th Cir. 2000).

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

#### 24 **B. Claims and Claimants**

25 The Claimants are related parties and assert that they hold claims against  
26 Mortgages Ltd. Their proofs of claim do not specify the actions, conduct, precise legal  
27 theory or the basis for the claim. The proofs of claim are bare bones and are insufficient to  
28 establish any of the required elements. The liability and damage amounts are contingent

1 and unliquidated. The stated bases for the Claims are so insufficient that ML Manager is  
2 at a loss to respond and adequately defend against such Claims.

3 The Claimants assert Claims against Mortgages Ltd. arising from the Arizona Bank  
4 and the Artemis Realty loans and guaranties. No accounting for the sale or the value of the  
5 collateral that would resolve or reduce the Claims has been made. Further, the Investors  
6 Committee and Mortgages Ltd. filed significant claims in the Scott Coles Estate asserting  
7 hundreds of millions of dollars of claims against the probate estate and assert the same  
8 claims against the SMC Revocable Trust. Further SMC Revocable Trust, Realty Ltd. and  
9 Mortgages Ltd. Title Agency LLC assert claims as pass-through investors and as MP  
10 Fund investors which claims ML Manager asserts would be subject to offset. Claimants  
11 are insiders of Mortgages Ltd. and are potential defendants in law suits to be filed by the  
12 ML Liquidating Trust and/or ML Manager LLC. The Claims should be denied for all  
13 these reasons.

14 Even if the Claimants have any Claims, a fact and legal conclusion that ML  
15 Manager disputes, any such claim would be only an unsecured claim under Class 11 of the  
16 Plan to be paid in the future by the ML Liquidating Trust. To the extent the Claimants  
17 assert claims as investors, ML Manager asserts rights of offset against Claimants.  
18 Document review has been on going by the ML Liquidating Trust and ML Manager, and  
19 ML Manager reserves the right to amend this objection to assert additional grounds for  
20 objection.

21 **II. CONCLUSION**

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

24 DATED: October 13, 2009

25 FENNEMORE CRAIG, P.C.

26 By /s/ Cathy L. Reece  
27 Cathy L. Reece  
28 Attorneys for ML Manager LLC