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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 OBJECTION TO
PROOF OF CLAIM NUMBER 113-1
FILED BY GOLD CREEK INC.**

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14 ML Manager LLC, pursuant to 11 U.S.C. §§ 502 (a) and 502(c) and Federal Rule
15 of Bankruptcy Procedure 3007(a) and the Investors Committee's First Amended Plan of
16 Reorganization which was confirmed by the Court in this case, hereby objects to proof of
17 claim number 113-1 filed by Gold Creek Inc., and all amendments and supplements
18 thereto ("Claims and Claimant"). The Claimant asserts Claims against Mortgages Ltd.
19 arising from the Chateaux on Central property. Under the Investors Committee's Plan,
20 Gold Creek Inc. and the Investors Committee agreed to a procedure to resolve the lien
21 priority of the Claims. This proof of claim asserts a secured claim for the full amount.
22 Previously on August 14, 2009, ML Manager filed a Notice of Objection to Gold Creek's
23 Mechanics Liens (Docket No. 2089). This objection is filed as an additional precaution in
24 the event that a formal objection to the proof of claim is necessary. If the Gold Creek's
25 lien priority is upheld then all or a portion of the Gold Creek Claim may be secured and a
26 portion may be unsecured under Class 11 of the Plan. If the Gold Creek lien priority is not
27 upheld then all of Gold Creek's Claims would be unsecured and treated under Class 11 of
28 the Plan.

1 JURISDICTION AND VENUE

2 1. This Court has jurisdiction to hear this Objection pursuant to 28 U.S.C. §§
3 157 and 1334. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This is a core
4 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 Claimant**

21 The Claimant asserts Claims against Mortgages Ltd. arising from the Chateaux on
22 Central property. Under the Investors Committee’s Plan, Gold Creek Inc. and the
23 Investors Committee agreed to a procedure to resolve the lien priority of the Gold Creek
24 Claims. This proof of claim asserts a secured claim for the full amount. Previously on
25 August 14, 2009, ML Manager filed a Notice of Objection to Gold Creek’s Mechanics
26 Liens (Docket No. 2089). This objection is filed as an additional precaution in the event
27 that a formal objection to the proof of claim is necessary. If the Gold Creek’s lien priority
28 is upheld then all or a portion of the Gold Creek Claim may be secured and a portion may

1 be unsecured under Class 11 of the Plan. If the Gold Creek lien priority is not upheld then
2 all of Gold Creek's Claims would be unsecured and treated under Class 11 of the Plan.

3 The Claims should be denied or realigned for all these reasons.

4 **II. CONCLUSION**

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

7 DATED: October 13, 2009

8 FENNEMORE CRAIG, P.C.

9 By /s/ Cathy L. Reece
10 Cathy L. Reece
11 Attorneys for ML Manager LLC

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