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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF ARIZONA**

10 In re
11 MORTGAGES LTD., an Arizona
12 corporation,
13 Debtor.

Chapter 11

Case No. 2-08-07465-RJH

**MOTION OF DLA PIPER LLP (US)
TO PRECLUDE USE OF EXHIBITS
DUE TO NON-COMPLIANCE WITH
RULE 7016-1(A)(9), LOCAL RULES
OF BANKRUPTCY PROCEDURE
FOR THE DISTRICT OF ARIZONA**

(The Honorable Randolph J. Haines)

17 The Court has scheduled an evidentiary hearing on DLA Piper LLP (US)'s, First And
18 Final Fee Application For Allowance And Payment Of Fees [Docket No. 1873] for November
19 25, 2009. Rule 7016-1(c), Local Rules of Bankruptcy Procedure for the District of Arizona,
20 requires that in connection with a pretrial statement, the parties must certify that they have
21 exchanged exhibits and made them available to one another. The Pretrial Statement in this
22 case was due on November 18, 2009. On that date, DLA Piper moved to file a unilateral
23 pretrial statement due to lack of cooperation. [Docket No. 2412] The Court granted DLA
24 Piper's motion to file its unilateral pretrial statement [Docket No. 2434].

25 In advance of the filing of the unilateral pretrial statement, DLA Piper had delivered
26 copies of its exhibits to ML Manager, LLC ("ML Manager"), ML Liquidating Trust

1 (“Liquidating Trust”), and G. Grant Lyon, in his capacity as duly appointed Chapter 11
2 Trustee (“RB LLC Trustee”) for Radical Bunny, LLC (collectively “the Objectors”). One
3 week before the due date for the pretrial statement, on November 11, 2009, DLA Piper
4 requested that the Objectors advise whether they were in a position to exchange exhibits on
5 November 16, 2009. DLA Piper never received a response and delivered its exhibits on that
6 date.¹ Now, 48 hours before the scheduled hearing, the Objectors have provided a partial set
7 of their exhibits to DLA Piper (omitting exhibits that are not on the docket or public record
8 even though DLA Piper provided such documents to the Objectors). As a consequence, DLA
9 Piper has not been afforded the opportunity provided by the Rules to review the Objectors’
10 exhibits or to discuss those exhibits with prospective witnesses.²

11 Stated simply, the Objectors cannot satisfy their obligation under Local Rule 7016-
12 1(a)(9) to certify to the Court that they have exchanged exhibits with the adverse party (DLA
13 Piper) prior to the due date for the joint pretrial statement. Pursuant to Local Rule 7016-1(c),
14 the Court has the authority to preclude the use of exhibits due to the lack of cooperation and
15 non-compliance. Exercise of that authority in this case is clearly warranted; failure to enter
16 an order precluding the use of non-exchanged exhibits will deprive DLA Piper of a fair
17 hearing.

21 ¹ Objectors did not timely comply with their obligations regarding the filing of a joint pretrial
22 statement, thus requiring DLA Piper’s filing of a unilateral statement. Thereafter, the
23 Objectors submitted their own proposed joint pretrial statement [Docket No. 2414], without
24 leave of court and without DLA Piper’s signature or consent. Significantly, for present
25 purposes, the Objectors’ proposed pretrial statement lacks the required certification of exhibit
26 exchange. See Local Rule 7016-1(a)(9).

² Some of the exhibits are pleadings in this case. However, many are summaries that were
never been provided to DLA Piper before today (e.g., “Summary comparison of the various
fee applications of the Debtor’s professionals and the overlaps and duplication of services”) and others are generic designations of documents with no specificity (e.g., “Various e-mails to and from DLA and counsel for OIC about discussions and proposals.”)

1 For the foregoing reasons, DLA Piper moves the Court for entry of an Order
2 precluding the Objectors from introducing exhibits at the November 25, 2009 Hearing.

3 **DATED** this 23rd day of November, 2009.

4 **MARISCAL, WEEKS, MCINTYRE**
5 **& FRIEDLANDER, P.A.**

6 Robert A. Shull/3467
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15 Copy of the foregoing sent by electronic
16 mail on November 23rd, 2009, to:

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s/ Barry R. Sanders

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