

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

MEMORANDUM

TO: Bankruptcy Appellate Panel of the Ninth Circuit
125 S. Grand Avenue
Pasadena, California 91105

FROM: Division / District/Office No.: 0970-2 / Phoenix

DATE: December 30, 2009

SUBJECT: Transmittal

Case Name: MORTGAGES LTD

Bankruptcy No.: 2-09-bk-07465-RJH

Adversary No.: N/A

Bankruptcy Judge: Randolph J Haines

Date Notice of Appeal Filed: 12/28/2009

Date Motion for Leave to Appeal Filed: *N/A*

Date of Entry of Order Appealed: 12/17/2009 and *12/01/2009*

Date Bankruptcy Filed: 6/20/2008

Date Notice of Appeal and Notice of
Objection Period Mailed to Parties: December 30, 2009

Appeal Fee Paid: YES

Date of Transmittal: December 30, 2009

Clerk of Court

By: H Diane Lewis
Deputy Clerk
602-682-4216

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

| | |
|--|--|
| In Re | Chapter 11 |
| MORTGAGES LTD | Case No. 2-09-bk-07465-RJH |
| Debtor(s) | Adv. N/A |
| KEVIN T O'HALLORAN, TRUSTEE OF ML LIQUIDATING TRUST | |
| Appellant(s) | |
| v. | |
| G GRANT LYON, CH 11 TRUSTEE FOR RADICAL BUNNY, LLC, | NOTICE OF FILING OF APPEAL AND NOTICE OF REFERRAL OF APPEAL TO THE BANKRUPTCY APPELLATE PANEL |
| Appellee(s) | |

YOU ARE HEREBY NOTIFIED that a Notice of Appeal has been filed on 12/28/2009 with the Clerk of the U.S. Bankruptcy Court. By virtue of Orders of the Judicial Council of the Ninth Circuit, the above appeal has been referred to the United States Bankruptcy Appellate Panel of the Ninth Circuit (BAP).

Any party desiring to object to such referral must do so in conformity with the foregoing orders and their provisions for reference to the BAP, a copy thereof being hereto attached.

For further information, you may contact the Clerk of the Bankruptcy Appellate Panel at 125 S. Grand Avenue, Pasadena, California 91105, telephone (626) 229-7225.

NOTICE IS GIVEN TO THE APPELLANT that the Appellant shall, within 14 days of the filing of the Notice of Appeal, (see above), file with the Clerk of the U.S. Bankruptcy Court, 230 N. First Avenue, #101, Phoenix, AZ 85003, the following:

1. A designation of the items to be included in the record on appeal and serve a copy upon the appellee;
2. A statement of the issues to be presented and serve a copy upon the appellee; and
3. A written request for the transcript and deliver a copy to the court reporter where the record designated includes a transcript of any proceeding or a part thereof.

Dated: December 30, 2009

CLERK OF COURT

By: H Diane Lewis
Deputy Clerk

Copies to be mailed to attorneys for parties and pro se parties to the appeal by the BNC

Enclosures: Copy of Notice of Appeal
Amended Order Establishing and Continuing the BAP

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

NOTICE TO PARTIES TO APPEAL

1. Appeal is to the Bankruptcy Appellate Panel for the Ninth Circuit:
 - a. Appeals from judgments or orders entered by bankruptcy judges are referred to the BAP unless the appellant has filed a separate written election to have the appeal transferred to the District Court at the time of the filing of the Notice of Appeal. See the November 18, 1988, as amended May 9, 2002, Order Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit.
 - b. Designation of items to be included in the record on appeal and a statement of issues are to be filed with the bankruptcy clerk within 14 days of the filing of the Notice of Appeal.
 - c. Do not attach copies of the items designated. Copies of the items designated are not needed when the appeal is before the BAP. If the appeal is sent to the District Court, copies of the record are to be provided as set forth in Section 4 below.

2. Procedure When Appeal Remains at the BAP:
 - a. Procedures for the processing of the appeal at the BAP are contained in the Rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit. Copies of those rules are available online at www.ce9.uscourts.gov/bap or the Clerk of the BAP:

Clerk of Court
U.S. Bankruptcy Appellate Panel
125 S. Grand Avenue
Pasadena, CA 91105
626-229-7225

3. Withdrawing consent to the BAP hearing and deciding the appeal:
 - a. Appellant must have filed a separate written election to transfer the appeal to the District Court at the time the Notice of Appeal is filed with the Clerk of the Bankruptcy Court. The Clerk of the Bankruptcy Court will send the appeal directly to the District Court.
 - b. All other parties to the appeal have 30 days from service of the Notice of Appeal to file with the Clerk of the BAP a written election to transfer the appeal to the District Court. The Clerk of the BAP, upon the filing of the election, will transmit the appeal to the District Court.

4. Procedure when an appeal is transmitted or transferred to District Court:
 - a. Upon receipt of an appeal from the Clerk of the Bankruptcy Court or from the Clerk of the Bankruptcy Appellate Panel, the appeal is assigned a civil case number in the District Court. The District Court then sends a "Notice of Receipt of Appeal" to the parties to the appeal advising them of the civil case number assigned in the District Court.
 - b. The bankruptcy appeal in the District Court is governed by the District Court Local Rules of Bankruptcy Appeal Procedure, as adopted on 12/1/2007. Please refer to those rules which are available at www.azd.uscourts.gov.
 - c. When the statement of issues, designation of record and any designated transcripts are filed with the Bankruptcy Court, the Bankruptcy Court Clerk will transmit to the District Court a certificate that the record is complete. The date of transmittal to the District Court constitutes the date of the entry of the appeal on the docket in District Court.
 - d. The record is retained in the Bankruptcy Court. Copies of the record are no longer required to be filed with the District Court. Instead, the parties include copies from the record in their Excerpts of Record filed as appendix to their briefs. See Local District Court Rule 8009-2.

**UNITED STATES BANKRUPTCY
APPELLATE PANEL OF
THE NINTH CIRCUIT**

Effective November 18, 1988; as amended through May 9, 2002

**AMENDED ORDER CONTINUING
THE BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

**JUDICIAL COUNCIL OF THE NINTH CIRCUIT AMENDED ORDER CONTINUING THE
BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT**

1. Continuing the Bankruptcy Appellate Panel Service.

(a) Pursuant to 28 U.S.C. § 158(b)(1) as amended by the Bankruptcy Reform Act of 1994, the judicial council hereby reaffirms and continues a bankruptcy appellate panel service which shall provide panels to hear and determine appeals from judgments, orders and decrees entered by bankruptcy judges from districts within the Ninth Circuit.

(b) Panels of the bankruptcy appellate panel service may hear and determine appeals originating from districts that have authorized such appeals to be decided by the bankruptcy appellate panel service pursuant to 28 U.S.C. § 158(b)(6).

(c) All appeals originating from those districts shall be referred to bankruptcy appellate panels unless a party elects to have the appeal heard by the district court in the time and manner and form set forth in 28 U.S.C. § 158(c)(1) and in paragraph 3 below.

(d) Bankruptcy appellate panels may hear and determine appeals from final judgments, orders and decrees entered by bankruptcy judges and, with leave of bankruptcy appellate panels, appeals from interlocutory orders and decrees entered by bankruptcy judges.

(e) Bankruptcy appellate panels may hear and determine appeals from final judgments, orders, and decrees entered after the district court from which the appeal originates has issued an order referring bankruptcy cases and proceedings to bankruptcy judges pursuant to 28 U.S.C. § 157(a).

2. Immediate Reference to Bankruptcy Appellate Panels.

Upon filing of the notice of appeal, all appeals are immediately referred to the bankruptcy appellate panel service.

3. Election to District Court - Separate Written Statement Required.

A party desiring to transfer the hearing of an appeal from the bankruptcy appellate panel service to the district court pursuant to 28 U.S.C. § 158(c)(1) shall timely file a separate written statement of election expressly stating that the party elects to have the appeal transferred from the bankruptcy appellate panel service to the district court.

(a) **Appellant:** If the appellant wishes to make such an election, appellant must file a separate written statement of election with the clerk of the bankruptcy court at the time of filing the notice of appeal. Appellant shall submit the same number of copies of the statement of election as copies of the notice of appeal. See Bankruptcy Rule 8001(a). When such an election is made, the clerk of the bankruptcy court shall forthwith transfer the case to the district court. The clerk of the bankruptcy court shall give notice to all parties and the clerk of the bankruptcy appellate panels of the transfer at the same time and in the same manner as set forth for serving notice of the appeal in Bankruptcy Rule 8004.

(b) **All Other Parties:** In all appeals where appellant does not file an election, the clerk of the bankruptcy court shall forthwith transmit a copy of the notice of appeal to the clerk of the bankruptcy appellate panels. If any other party wishes to have the appeal heard by the district court, that party must, within thirty (30) days after service of the notice of appeal, file with the clerk of the bankruptcy appellate panels a written statement of election to transfer the appeal to the district court. Upon receipt of a timely statement of election filed under this section, the clerk of the bankruptcy appellate panels shall forthwith transfer the appeal to the appropriate district court and shall give notice of the transfer to the parties and the clerk of the bankruptcy court. Any question as to the timeliness of an election shall be referred by the clerk of the bankruptcy appellate panels to a bankruptcy appellate panel motions panel for determination.

4. MOTIONS DURING ELECTION PERIOD

All motions relating to an appeal shall be filed with the bankruptcy appellate panel service unless the case has been transferred to a district court. The bankruptcy appellate panels may not dismiss or render a final disposition of an appeal within thirty (30) days from the date of service of the notice of appeal, but may otherwise fully consider and dispose of all motions.

5. PANELS

Each appeal shall be heard and determined by a panel of three judges from among those appointed pursuant to paragraph 6, provided however that a bankruptcy judge shall not participate in an appeal originating in a district for which the judge is appointed or designated under 28 U.S.C. § 152.

6. MEMBERSHIP OF BANKRUPTCY APPELLATE PANELS

The bankruptcy appellate panel shall consist of seven members serving seven-year terms (subject to reappointment to one additional three-year term). The judicial council shall periodically examine the caseload of the bankruptcy appellate panel service to assess whether the number of bankruptcy judges serving should change. Appointment of regular and pro tem bankruptcy judges to service on the bankruptcy appellate panel shall be governed by regulations promulgated by the Judicial Council.

(a) When a three-judge panel cannot be formed from the judges designated under subparagraph (a) to hear a case because judges have recused themselves, are disqualified from hearing the case because it arises from their district, or are otherwise unable to participate, the Chief Judge of the Ninth Circuit may designate one or more other bankruptcy judge(s) from the circuit to hear the case.

(b) In order to provide assistance with the caseload or calendar relief, or otherwise to assist the judges serving, or to afford other bankruptcy judges with the opportunity to serve on the bankruptcy appellate panels, the Chief Judge of the Ninth Circuit may designate from time to time one or more other bankruptcy judge(s) from the circuit to participate in one or more panel sittings.

7. CHIEF JUDGE

The members of the bankruptcy appellate panel service by majority vote shall select one of their number to serve as chief judge.

8. RULES OF PROCEDURE

(a) Practice before the bankruptcy appellate panels shall be governed by Part VIII of the Federal Rules of Bankruptcy Procedure, except as provided in this order or by rule of the bankruptcy appellate panel service adopted under subparagraph (b).

(b) The bankruptcy appellate panel service may establish rules governing practice and procedure before bankruptcy appellate panels not inconsistent with the Federal Rules of Bankruptcy Procedure. Such rules shall be submitted to, and approved by, the Judicial Council of the Ninth Circuit.

9. PLACES OF HOLDING COURT.

Bankruptcy appellate panels may conduct hearings at such times and places within the Ninth Circuit as it determines to be appropriate.

10. CLERK AND OTHER EMPLOYEES.

(a) Clerk's Office. The members of the bankruptcy appellate panel service shall select and hire the clerk of the bankruptcy appellate panel. The clerk of the bankruptcy appellate panel may select and hire staff attorneys and other necessary staff. The chief judge shall have appointment authority for the clerk, staff attorneys and other necessary staff. The members of the bankruptcy appellate panel shall determine the location of the principal office of the clerk.

(b) Law Clerks. Each judge on the bankruptcy appellate panel service shall have appointment authority to hire an additional law clerk.

11. EFFECTIVE DATE

This Order shall be effective as to all appeals originating in those bankruptcy cases that are filed after the effective date of this Order. For all appeals originating in those bankruptcy cases that were filed before October 22, 1994, the Judicial Council's prior Amended Order, as revised October 15, 1992, shall apply. This Order, insofar as just and practicable, shall apply to all appeals originating in those bankruptcy cases that were filed after the effective date of the Bankruptcy Reform Act of 1994, October 22, 1994, but before the date of this Order.

IT IS SO ORDERED.

DATE: April 28, 1995; amended May 9, 2002.

**United States Bankruptcy Court
District of Arizona**

APPEALS

ORDERING AN OFFICIAL TRANSCRIPT

An official transcript is a transcript that has been prepared by a designee of the Bankruptcy Court. (For appeal purposes, a tape cassette is not acceptable as a part of the Designation of Record.)

If you have designated a transcript of a Court proceeding in your Appeal documents, **it is your responsibility to order it** from the Bankruptcy Court ECR Operator (see list below). The order should be placed at the time you file your Statement of Issues and Designation of Record.

If you have filed an appeal and need a transcript of a hearing, please follow the steps below to obtain an "OFFICIAL" transcript:

1. Determine the date of the hearing.
2. Determine what portion of the hearing is needed. Do you need the entire hearing or only a specific portion of the hearing, (i.e., the judge's ruling).
3. Determine if the transcript is already on file with the Court. Any ECR Operator can advise you of this. If the transcript is already on file, the Court will determine if your check should be made payable to the Bankruptcy Court. If it is not on file, the ECR Operator can tell you who to contact to obtain one.
4. Each transcript ordered requires a deposit. This deposit varies and is dependent upon the estimated length of the transcript. If the transcript needs to be ordered, the ECR Operator will advise you of the correct way to issue your check and where to make payment.
5. Place your request for the transcript. File a "Notice of Request for Transcript" with the Bankruptcy Court. Be sure to indicate if the transcript was requested from the Court or the Court Reporting Agency.
6. When you receive the transcript, retain it to be included as part of your Designation of Record. Follow the procedures listed in the "Notice To Parties to Appeal" included in this packet. Because a courtesy copy of every transcript ordered is sent to the Court, it is not necessary for you to file the transcript with the Court.

Ordering Transcripts

PHOENIX OFFICE CASES

| | | |
|-----------------------|--------------------------|----------------|
| Judge Baum (RTB) | Juanita Pierson-Williams | (602) 682-4200 |
| Judge Case (CGC) | Marco Garcia | (602) 682-4200 |
| Judge Curley (SSC) | Andamo Purvis | (602) 682-4200 |
| Judge Haines (RJH) | Sheri Fletcher | (602) 682-4200 |
| Judge Hollowell (EWH) | Kayla Morgan | (602) 682-4200 |
| Judge Marlar (JMM) | Kayla Morgan | (602) 682-4200 |
| Judge Nielsen (GBN) | Jo-Ann Stawarski | (602) 682-4200 |

TUCSON OFFICE CASES

| | | |
|-----------------------|---------------|----------------|
| Judge Marlar (JMM) | Bev Granillo | (520) 202-7990 |
| Judge Hollowell (EWH) | Eunice Stroud | (520) 202-7568 |

YUMA OFFICE CASES

| | | |
|-----------------------|----------------|----------------|
| Judge Hollowell (EWH) | Aida Urbalejo | (928) 783-2288 |
| Judge Marlar (JMM) | Aida Urbalejo | (928) 783-2288 |
| Judge Haines (RJH) | Sheri Fletcher | (602) 682-4200 |

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10 Trustee of ML Liquidating Trust

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

8 In re:

9 MORTGAGES LTD., an Arizona
10 corporation,
11 Debtor.

Proceedings Under Chapter 11
Case No. 2:08-bk-07465-RJH

NOTICE OF APPEAL
(Re Docket Nos. 2514 & 2521)

12
13
14 Kevin T. O'Halloran, Trustee of the Liquidating Trust of Mortgages, Ltd. ("Liquidating Trust"),
15 by and through his counsel, hereby appeal, pursuant to 28 U.S.C. § 158(a) and (b), to the Bankruptcy
16 Appellate Panel for the Ninth Circuit from the Bankruptcy Court's Order Granting Radical Bunny's
17 Administrative Claim for Substantial Contribution [Docket # 2514] (the "Order Granting"), which
18 incorporated the Bankruptcy Court's Order Approving Allowance & Payment of Substantial
19 Contribution Claim Pursuant to 11 U.S.C. § 503(b)(3)(D) and (4), [Docket # 2521] (the "Order
20 Approving") (collectively, the "Orders"). True and accurate copies of the Orders are attached hereto as
21 Exhibit A and incorporated by reference herein.

22
23 The parties to the Orders appealed from and the names, addresses and telephone numbers of their
24 attorneys, are as follows:
25
26

Liquidating Trust of Mortgages, Ltd.

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Radical Bunny

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**Official Unsecured Creditors
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Lewis & Underwood Trust

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ML Liquidating Trust

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Phoenix, AZ 85012
wsj@mjlegal.com
Tel. 602-200-7900

RESPECTFULLY SUBMITTED this 28th day of December, 2009.

STRADLEY RONON STEVENS & YOUNG, LLP

By: /s/ Mark J. Dorval

Mark J. Dorval, Esquire
Julie Murphy, Esquire
Lead Counsel for Kevin T. O'Halloran,
Trustee for the Liquidating Trust

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

1 COPY of the foregoing
2 sent by facsimile or e-mail
3 this 28th day of December to:

4 Shelton L. Freeman, Esq.
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EXHIBIT A

SIGNED.



Dated: December 17, 2009

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

| | | |
|-----------------|---|--------------------------------|
| In re |) | Chapter 11 |
| |) | CASE NO. 2:08-bk-07465-RJH |
| MORTGAGES LTD., |) | ORDER GRANTING RADICAL BUNNY'S |
| Debtor. |) | ADMINISTRATIVE CLAIM FOR |
| |) | SUBSTANTIAL CONTRIBUTION |

Radical Bunny, L.L.C., seeks an award of \$572,945 in attorneys' fees and \$22,852.75 in costs as a substantial contribution administrative claim pursuant to Bankruptcy Code § 503(b)(3)(D). The Liquidating Trustee and others objected.

Although "substantial contribution" is not defined by the Code, the Ninth Circuit has set forth the governing standard in both *Cellular 101*¹ and *Christian Life*.² *Cellular 101* reiterated that "the principal test of substantial contribution is 'the extent of benefit to the estate.'"³ In that case, after noting that a substantial contribution need not lead to confirmation of a plan, the creditor was held to have "substantially contributed to the estate by developing the only plan that was presented to the bankruptcy court and by waiving its pre-petition claim."⁴ The opinion also noted a conflict among the circuits as to the relevance or importance of a creditor's self interest, with the Fifth and Eleventh Circuits holding that the creditor's

¹*Cellular 101, Inc. v. Channel Communications, Inc. (In re Cellular 101, Inc.)*, 377 F.3d 1092 (9th Cir. 2004).

²*Christian Life Center Litigation Defense Committee v. Silva (In re Christian Life Center)*, 821 F.2d 1370 (9th Cir. 1987).

³377 F.3d at 1096.

⁴*Id.* at 1097.

1 motive or self interest has little to no relevance, with the Third and Tenth Circuit holding that
2 creditors' efforts that are solely or primarily self interested are not compensable. Ultimately,
3 the Ninth Circuit said it need not choose between those competing approaches and need not
4 decide "whether a creditor's motivation may ever be relevant or dispositive," because in the
5 case before it the benefit to the creditor from its own efforts "is outweighed by the extent of the
6 benefit those efforts conferred on the estate."⁵ Yet although the opinion stated the court was
7 not deciding among the conflicting views, that conclusion does seem to conclusively reject any
8 analysis that the benefit to a creditor constitutes a per se disqualification or limitation of a
9 substantial contribution claim. Instead, it seems to be a holding that a substantial contribution
10 claim may be awarded in its entirety so long as the benefit to the estate outweighs the benefit to
11 the creditor. The only restriction or limitation the opinion seems to impose in that regard is that
12 the contribution to the reorganization must be substantial and not "incidental" or "minimal."⁶
13 The concurring opinion elaborated that neither the language of the Code nor its legislative
14 history gave any indication that a creditor's motivation has any relevance at all, and that such
15 consideration of a creditor's motivation would effectively "add" an "altruistic requirement into
16 the statute."⁷

17 Radical Bunny has asserted that it provided a substantial contribution by
18 proposing, outlining, negotiating and ultimately drafting the initial draft of the plan in this case,
19 by permitting the use of what it claimed as cash collateral, by insisting upon and negotiating
20 much more favorable post petition financing than the Debtor proposed and then agreeing to
21 subordination to such financing, and by various other actions to conserve assets and negotiate
22 resolution of disputes.

23 As reflected in their joint statement of material facts, the Liquidating Trustee
24 does not significantly dispute these facts that Radical Bunny alleges as the basis for its

25
26 ⁵*Id.* at 1097-98.

27 ⁶*Id.* at 1098.

28 ⁷*Id.* at 1099 (Brunetti, J., concurring).

1 substantial contribution claim. In particular, the Liquidating Trustee agrees that Radical Bunny
2 “began drafting a joint plan” in October of 2008, and thereafter “worked cooperatively” with
3 the Official Investors Committee to formulate, draft and negotiate that plan. The Liquidating
4 Trustee also agrees that under the plan, Radical Bunny agreed to pledge its claimed interest in
5 the various loans for the exit financing that is the source of payment of all post confirmation
6 expenses, and that without its pledge of those interests the exit financing would not have been
7 available without a ruling as to whether Radical Bunny was secured or unsecured. Ultimately,
8 however, the Liquidating Trustee contends that Radical Bunny’s efforts in preparing and
9 negotiating the plan were duplicative and were performed to protect Radical Bunny’s own
10 interest.

11 The Liquidating Trustee also agrees that Radical Bunny “helped structure
12 agreements on financing, cash collateral and the Plan that insured the cash flow to allow the
13 Debtor to continue operation during and after the Chapter 11 case,” and that counsel for
14 Radical Bunny and counsel for the Official Investors Committee “divided work based upon
15 strength and resources in dealing with these financing issues.” The Liquidating Trustee also
16 agrees that Radical Bunny’s primary attorney “was routinely requested to participate in
17 meetings with the Official Investors Committee, which sometimes requested that Radical
18 Bunny lead the charge on issues that would have adversely affected the estate if the Debtor’s
19 acts went unchallenged.” The Liquidating Trustee also agrees that Radical Bunny allowed the
20 Debtor to use cash collateral that Radical Bunny claimed an interest in, for which Radical
21 Bunny received no adequate protection. And the Liquidating Trustee agrees that Radical
22 Bunny’s “legally presumed first priority security interest” in approximately \$13 million of
23 assets was subordinated to the interim working capital DIP loan to fund the Debtor’s
24 operations, and to a \$5 million final working capital loan, and that no other creditor’s lien or
25 security interest or investor’s ownership interests was subordinated to such loans.

26 Notwithstanding such agreement on the fundamental facts, the Liquidating
27 Trustee opposes the substantial contribution claim on essentially three grounds: (1) because
28 Radical Bunny’s “actions have been motivated only by its own self interest,” (2) because

1 Radical Bunny's efforts "were duplicative of the work" of the Official Investors Committee,
2 and (3) because after the efforts through December 2008 that Radical Bunny claims provided a
3 substantial contribution, Radical Bunny's own trustee took control of Radical Bunny, changed
4 its position, hired new counsel, and opposed confirmation of the plan, although it ultimately
5 dropped such opposition.

6 Some of the Liquidating Trustee's arguments are contrary to the facts to which it
7 has agreed. For example, the argument that Radical Bunny's efforts were "duplicative" cannot
8 stand with the admission that Radical Bunny proposed and drafted the initial plan, was actually
9 requested to and did take the lead in making arguments to preserve the Debtor's assets, and
10 subordinated its claimed security interest to permit the use of cash collateral, DIP loans and exit
11 financing. The other arguments – that Radical Bunny's efforts were motivated by self interest,
12 and that Radical Bunny subsequently changed position – are not recognized by *Cellular 101* as
13 bases for denying a substantial contribution claim. Indeed, the *Cellular 101* opinion makes
14 clear that the substantial contribution need not lead to confirmation of a plan, although here it is
15 undisputed that Radical Bunny proposed, negotiated and drafted the essential form of the plan
16 that was ultimately confirmed.

17 Finally, there does not appear to be any factual or legal objection to Radical
18 Bunny's argument that it alone subordinated its claimed security interest to permit the use of
19 cash collateral, to permit DIP loans and ultimately to permit exit financing, and that no other
20 secured creditor or investor-owner similarly did so. The only implicit argument is that Radical
21 Bunny's claim was never finally allowed as a secured claim, but it is admitted that Radical
22 Bunny's concessions meant its secured status did not need to be litigated and it is undisputed
23 that Radical Bunny had a substantial basis to claim secured status, based upon a timely signed
24 and filed UCC-1 financing statement.

25 Based on the stipulated facts, the Court finds and concludes that Radical
26 Bunny's claim very closely approximates that which was approved by the Ninth Circuit in
27 *Cellular 101*, and that the amount claimed provided a benefit to the estate that was neither
28 incidental or minimal and that exceeded the benefit to Radical Bunny. Radical Bunny's claim

1 for substantial contribution should therefore be granted. The Court will sign a formal form of
2 order when one is uploaded.

3 DATED AND SIGNED ABOVE

4 Copy of the foregoing e-mailed/mailed
5 this 17th day of December, 2009, to:

6 Shelton L. Freeman, Esq.
7 DeConcini McDonald Yetwin & Lacy, P.C.
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26 of Radical Bunny, LLC

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26 /s/ Pat Denk
27 Judicial Assistant

IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: December 21, 2009



Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

MORTGAGES LTD.,

Debtor.

Chapter 11

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

**ORDER APPROVING ALLOWANCE &
PAYMENT OF SUBSTANTIAL
CONTRIBUTION CLAIM PURSUANT TO
11 U.S.C. § 503(b)(3)(D) AND (4)**

(Related Docket Entries 1888, 2014, 2027, 2028,
2088, 2395, 2398 & 2407)

This matter having come before the Court upon the "Application Pursuant to 11 U.S.C. §503(b)(3)(D) and (4) for Allowance and Payment of Administrative Claim of Creditor Radical Bunny" (DE 1888) ("Application"), objections thereto (DE's 2014 & 2028), the parties having submitted stipulated facts (DE's 2395 & 2407) and oral argument having been held, based upon the record in these proceedings and as set forth in this Court's "Order Granting Radical Bunny's Administrative Claim for Substantial Contribution" dated December 17, 2009, and good cause appearing,

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IT IS HEREBY ORDERED THAT:

1. The Application, which seeks an award of **\$572,945.50** in attorneys' fees and **\$22,852.75** in costs incurred by DeConcini McDonald Yetwin & Lacy, P.C. as a substantial contribution administrative claim is approved in its entirety.

2. Directing the immediate payment in the amount of **\$595,798.25** to DeConcini McDonald Yetwin & Lacy, P.C. as Counsel for Radical Bunny, LLC.

ORDERED, DATED AND SIGNED ABOVE.

Notice Recipients

District/Off: 0970-2
Case: 2:08-bk-07465-RJH

User: lewisd
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Date Created: 12/30/2009
Total: 9

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TOTAL: 9