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6 Counsel to Radical Bunny, L.L.C. and  
7 Special Counsel to G. Grant Lyon, Chapter 11  
8 Trustee of Radical Bunny, L.L.C.

9 **IN THE UNITED STATES BANKRUPTCY COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 In re:

12 MORTGAGES LTD.,

15 Debtor.

Chapter 11

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

**RADICAL BUNNY, L.L.C.'S:**  
**(1) OBJECTION TO THE FORM OF**  
**ORDER RE: LIQUIDATING TRUST'S**  
**MOTION FOR EXPEDITED HEARING**  
**ON ITS MOTION FOR STAY PENDING**  
**APPEAL; AND**  
**(2) RESPONSE AND OBJECTION TO**  
**MOTION FOR EXPEDITED HEARING**  
**ON LIQUIDATING TRUST'S MOTION**  
**FOR STAY PENDING APPEAL**

Hearing Date: TBD  
Hearing Time: TBD  
Location: TBD

Related Docket Nos. 2537 & 2538

24 Radical Bunny, L.L.C. ("RBLLC"), secured creditor and party in interest, by  
25 and through undersigned counsel, hereby objects to (1) the form of "Order Re:  
26 Motion For Expedited Hearing On Liquidating Trust's Motion For Stay Pending  
27 Appeal" ("Trust Form of Order") filed by Kevin T. O'Halloran, Trustee of the  
28

1 Liquidating Trust of Mortgages Ltd. (“Liquidating Trustee”) at Docket No. 2538  
2 and (2) responds and objects to Liquidating Trustee’s “Motion For Expedited  
3 Hearing On Liquidating Trust’s Motion For Stay Pending Appeal” (“Expedited  
4 Hearing Motion”) filed at Docket No. 2537.

5 This Court entered its “Order Granting Radical Bunny’s Administrative  
6 Claim for Substantial Contribution” (Docket No. 2514)(“Granting Order”). On  
7 December 21, 2009, this Court entered its “Order Approving Allowance &  
8 Payment Of Substantial Contribution Claim Pursuant To 11 U.S.C. § 503(b)(3)(D)  
9 And (4)” (Docket No. 2521) (“Payment Order”). Pursuant to the Payment Order,  
10 this Court ordered the immediate payment in the amount of **\$595,798.25** to  
11 DeConcini McDonald Yetwin & Lacy, P.C. (“DMYL”), as Counsel for RBLLC.

12 A. Liquidating Trustee Has Misrepresented Communications

13 The Expedited Hearing Motion cites one e-mail communication from DMYL  
14 out of context. On December 18, 2009, when RBLLC’s Counsel, DMYL, learned  
15 that this Court had granted RBLLC’s Substantial Contribution Claim, DMYL  
16 immediately contacted counsel for the Liquidating Trust and counsel for  
17 ML Manager LLC to ensure that payment of the Substantial Contribution Amount  
18 was forthcoming. The confirmed plan of reorganization in this case provides for  
19 payment of Administrative Claims that are Allowed Claims through the Exit  
20 Financing. That financing requires the joint request of both the Liquidating  
21 Trustee and ML Manager LLC for an advance to comply with the Payment Order.  
22 See Docket Entry 2265, Ex. 2, §§ 2.1 & 2.2.

23 In response to DMYL’s request, both Mark Dorval and Cathy Reece  
24 indicated that they needed to consult with their clients. When DMYL had heard  
25 nothing further by December 23, 2009, DMYL sent another e-mail asking about  
26 the status of payment and sufficiency of funds for payment. Mark Dorval and  
27 Cathy Reece did not respond to this request for information. DMYL also  
28

1 attempted to schedule a telephone conference with Mark Dorval to discuss  
2 payment. After those attempts were also unsuccessful, DMYL then advised Mr.  
3 Dorval that DMYL would pursue its remedies if the Liquidating Trustee did not  
4 intend to make the ordered payment. See e-mails attached as **Exhibit 1**.

5 While the Liquidating Trustee misrepresents DMYL's request to obtain  
6 payment of ordered amounts as a "threat", DMYL had requested a response to (1)  
7 whether the Liquidating Trust and ML Manager LLC intended to comply with the  
8 Payment Order, and (2) if there are actually funds available to pay DMYL, as  
9 ordered.

10  
11 **B. Assurance of Funds for Payment of Allowed Claim is Needed**

12 The Liquidating Trust has sought a stay on execution of the Payment Order  
13 pending a hearing on its motion for stay pending appeal. That request can only  
14 reasonably be granted, given the Liquidating Trustee's refusal to provide  
15 information on the availability of funds, if no payments are made from the  
16 Liquidating Trust pending the stay hearing. The Liquidating Trustee has not  
17 posted a supersedeas bond pursuant to Rule 8005 of the Federal Rules of  
18 Bankruptcy Procedure, and the issue of whether there are sufficient funds to pay  
19 all allowed administrative claims in this case has already been raised by other  
20 parties in interest.

21 RBLLC is filing a Motion to Compel Immediate Payment along with  
22 RBLLC's response and objection to that requested stay. RBLLC is entitled to  
23 know if the Liquidating Trustee has funds available to pay DMYL as provided in  
24 the Payment Order. In the meantime, no further amounts should be paid from the  
25 Liquidating Trust.

26 **C. Conclusion and Requested Relief**

27 RBLLC requests that this Court deny the Liquidating Trustee's request to  
28 enter the Trust Form of Order in the form attached as Exhibit B to the Expedited

1 Hearing Motion. Instead, RBLLC requests that this Court enter an order in the  
2 form attached as **Exhibit 2**. RBLLC further seeks such additional and other relief  
3 as is just and proper under the circumstances of this case.  
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DATED this 31st day of December, 2009.

DECONCINI McDONALD YETWIN & LACY, P.C.

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8 BY /s/ SHELTON L. FREEMAN  
9 Shelton L. Freeman  
10 Counsel to Radical Bunny, L.L.C. and  
11 Special Counsel to G. Grant Lyon, Chapter  
12 11 Trustee of Radical Bunny, L.L.C.  
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1 **COPIES** served by e-mail  
2 this 31st day of December 2009, to:

3 Sharon B. Shively, Esq.  
4 Sacks Tierney P.A.  
5 [sharon.shively@sackstierney.com](mailto:sharon.shively@sackstierney.com)  
6 Attorneys for Liquidating Trustee

7 Mark J. Dorval, Esq.  
8 Stradley Ronon Stevens & Young LLP  
9 [mdorval@stradley.com](mailto:mdorval@stradley.com)  
10 Attorneys for Liquidating Trustee

11 Cathy L. Reece, Esq.  
12 Fennemore Craig, P.C.  
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14 Attorneys for ML Manger LLC

15 Richard M. Lorenzen, Esq.  
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18 Attorneys for Official Unsecured Creditors Committee  
19 of Radical Bunny, LLC

20 William Scott Jenkins, Esq.  
21 Myers & Jenkins, P.C.  
22 [wsi@mjlegal.com](mailto:wsi@mjlegal.com)  
23 Attorneys for ML Liquidating Trust

24 S. Cary Forrester, Esq.  
25 Forrester & Worth, PLLC  
26 [scf@fwlawaz.com](mailto:scf@fwlawaz.com)  
27 Attorneys for Lewis & Underwood Trust

28 Robert J. Miller, Esq.  
29 Bryan Cave LLP  
30 [rjmiller@bryancave.com](mailto:rjmiller@bryancave.com)  
31 Attorneys for Rev Op Group

32 By /s/ Heidi Cooling Cerf

**EXHIBIT 1**

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**From:** Shelton Freeman [mailto:TFreeman@lawdmyl.com]  
**Sent:** Friday, December 18, 2009 10:44 AM  
**To:** Dorval, Mark; CREECE@FCLAW.com  
**Subject:** ML

Good morning. I am following up on my email from last night about the ruling on our substantial contribution claim. If there is any controversy about having this paid before year end, I would really appreciate addressing it today. I have a conference call at 11:00 and another at 4:00 and a firm gathering at 11:30 but will make myself available for a call between now and 11 and between 1:30-4 Arizona time. While I am hopeful that this matter is now resolved and payment is forthcoming, I really want to avoid any further delays in getting paid and am facing a 12/31 fiscal year end, so I will look forward to your cooperation in accomplishing this result. Please let me hear from you.

Thanks.

**Tony Freeman**  
DeConcini McDonald Yetwin & Lacy, P.C.

**Scottsdale Office**  
6909 East Main Street  
Scottsdale, AZ 85251  
(480) 398-3100 Phone  
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Flagstaff, AZ 86001  
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(928) 214-6212 Fax

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**From:** Dorval, Mark [mailto:MDorval@STRADLEY.COM]  
**Sent:** Friday, December 18, 2009 2:30 PM  
**To:** Shelton Freeman; REECE, CATHY  
**Subject:** RE: ML

Tony:

I have not been able to connect with Kevin yet, so I cannot give you any guidance at this time. Once I speak with Kevin, I will be in touch with you.



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**From:** REECE, CATHY [mailto:CREECE@FCLAW.com].

**Sent:** Friday, December 18, 2009 2:38 PM

**To:** Dorval, Mark; Shelton Freeman

**Subject:** RE: ML

Tony-- same here. I have a Board meeting on Tuesday but tried to do a conference call with Elliott and Mark Winkleman today without success. I will keep trying to talk with them about it and will get back with you. No doubt Elliott and Kevin will also need to talk. Cathy

## **FENNEMORE CRAIG**

**IRS CIRCULAR 230 DISCLOSURE:** To ensure compliance with requirements imposed by the IRS, we inform you that, to the extent this communication (or any attachment) addresses any tax matter, it was not written to be (and may not be) relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter addressed herein (or in any such attachment). For [additional information](#) regarding this disclosure please visit our web site.

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**From:** Shelton Freeman  
**Sent:** Friday, December 18, 2009 2:46 PM  
**To:** 'REECE, CATHY'; Dorval, Mark  
**Subject:** RE: ML

Thank you for the response. I'll look forward to hearing from you both early next week and appreciate the prompt attention to this matter by you and your clients.

**Tony Freeman**  
DeConcini McDonald Yetwin & Lacy, P.C.

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**From:** Shelton Freeman  
**Sent:** Wednesday, December 23, 2009 11:52 AM  
**To:** REECE, CATHY; mdorval@stradley.com  
**Subject:** ML/RB

Cathy and Mark, any updates on payment? I would appreciate hearing from you today since Christmas is Friday. Santa's sleigh is going to be pretty empty without funding on this.

I also would like to hear your response to Dale about whether there are sufficient funds to pay allowed administrative claims. It would be nice to confirm to him that the prior representations about having enough funds to pay allowed claims has not changed.

Please let me know.

Thanks.

**Tony Freeman**  
DeConcini McDonald Yetwin & Lacy, P.C.

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**From:** Shelton Freeman [mailto:TFreeman@lawdmyl.com]  
**Sent:** Thursday, December 24, 2009 1:38 PM  
**To:** Dorval, Mark  
**Subject:** Thank You and Merry Christmas!

Mark, I really appreciate you getting back to me. Thanks and have a great holiday!

**Tony Freeman**  
DeConcini McDonald Yetwin & Lacy, P.C.

**Scottsdale Office**  
6909 East Main Street  
Scottsdale, AZ 85251  
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**From:** Dorval, Mark [MDorval@STRADLEY.COM]  
**Sent:** Thursday, December 24, 2009 1:28 PM  
**To:** Shelton Freeman  
**Subject:** RE: Thank You and Merry Christmas!

You do the same.

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**From:** Dorval, Mark [mailto:MDorval@STRADLEY.COM]  
**Sent:** Monday, December 28, 2009 2:30 PM  
**To:** Shelton Freeman  
**Subject:** FW: 2:08-bk-07465-RJH Notice of Appeal (255.00 fee)

Tony:

I'm sorry you got this via e-mail before you heard from me. I have been stuck in a hearing in DE all day, and my colleague filed this before I could call you. I will be in the office tomorrow if you'd like to talk.

Regards,  
Mark

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**From:** ecf\_support@azb.uscourts.gov  
**Sent:** Monday, December 28, 2009 2:12 PM  
**To:** Courtmail@azb.uscourts.gov  
**Subject:** 2:08-bk-07465-RJH Notice of Appeal (255.00 fee)

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**U.S. Bankruptcy Court**

**District of Arizona**

Notice of Electronic Filing

The following transaction was received from MARK J. DORVAL entered on 12/28/2009 at 2:11 PM AZ and filed on 12/28/2009

**Case Name:** Mortgages Ltd.  
**Case Number:** 2:08-bk-07465-RJH  
**Document Number:** 2529

**Docket Text:**

Notice of Appeal (255.00 fee) filed by MARK J. DORVAL of STRADLEY RONON STEVENS & YOUNG LLP on behalf of Kevin T. O'Halloran (related document(s)[2514] Order on Application for Administrative Expenses, [2521] Order on Application for Administrative Expenses).(DORVAL, MARK)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\Documents and Settings\nmo\Desktop\Notice of Appeal .PDF

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=875559564 [Date=12/28/2009] [FileNumber=16221936-0] [8c13dac1fe14bad6b06cd28081a36a974d46b5bd0ca926dfc62d6423e870a82c11dd1141e4a8060ceb631524ab6498f8908d229aa8d497d2bcbb2508234edbad]]

**2:08-bk-07465-RJH Notice will be electronically mailed to:**

TODD M. ADKINS on behalf of Debtor Mortgages Ltd.  
tadkins@jsslaw.com, bstevens@jsslaw.com;dsharp@jsslaw.com;mgoudreau@jsslaw.com

MICHAEL P ANTHONY on behalf of Creditor Harold S. Jalowsky & Thelma D. Jalowsky, Trustees of Jalowsky Trust dated 5/31/89  
manthony@carsonlawfirm.com, lreining@carsonlawfirm.com

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**From:** Shelton Freeman  
**Sent:** Monday, December 28, 2009 3:11 PM  
**To:** 'Dorval, Mark'  
**Subject:** RE: 2:08-bk-07465-RJH Notice of Appeal (255.00 fee)

I'm available at 10:00 a.m. AZ time.

**Tony Freeman**  
DeConcini McDonald Yetwin & Lacy, P.C.

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(928) 214-6212 Fax



**From:** Dorval, Mark [mailto:MDorval@STRADLEY.COM]

**Sent:** Tuesday, December 29, 2009 6:53 AM

**To:** Shelton Freeman

**Subject:**

Tony:

I will need to move our call until tomorrow due to some emergencies here. Unfortunately, other than me, our bankruptcy department is out of town this week. Apparently, I did not get the memo. I should be here most of the day tomorrow if there is a time that you are available.

Regards,  
Mark

**Mark J. Dorval**

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**From:** Shelton-Freeman [mailto:TFreeman@lawdmyl.com]

**Sent:** Tuesday, December 29, 2009 11:18 AM

**To:** Dorval, Mark

**Subject:** RE:

Mark, how about 10 AZ time tomorrow?

**Tony Freeman**

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**From:** Dorval, Mark [MDorval@STRADLEY.COM]  
**Sent:** Tuesday, December 29, 2009 4:02 PM  
**To:** Shelton Freeman  
**Subject:** RE:

Tony:

Will you be in on Thursday? I understand if you are not and can't talk then - I apologize that I have changed this twice, now. It really has been day-to-day to get everything done with so many people out of the office. However, that is my issue, and I don't want to keep pushing off our call. If you have time Thursday, I'm available until 2:00 p.m. EST.

Thanks.  
Mark



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**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 RE: LIQUIDATING TRUST'S  
MOTION FOR EXPEDITED HEARING**

The Court having reviewed (1) the "Motion For Expedited Hearing On Liquidating Trust's Motion For Stay Pending Appeal" ("Expedited Hearing Motion") filed by Kevin T. O'Halloran, Trustee of the Liquidating Trust of Mortgages Ltd. ("Liquidating Trustee"); (2) "Radical Bunny, L.L.C.'s (1) Objection To The Form Of Order Re: Liquidating Trust's Motion For Expedited Hearing On Its Motion For Stay Pending Appeal; And (2) Response And Objection To Motion For Expedited Hearing On Liquidating Trust's Motion For Stay Pending Appeal"; and (3) this Court's "Order Approving Allowance & Payment Of Substantial Contribution Claim Pursuant To 11 U.S.C. § 503(b)(3)(D) And (4)" (Docket No. 2521) ("Payment Order"), and being fully apprised of the matter, and for good cause shown, orders as follows:

1 IT IS HEREBY ORDERED that the Liquidating Trust's Expedited Hearing  
2 Motion is granted subject to the additional conditions of this Order;

3 IT IS FURTHER ORDERED that no party shall execute on the Payment  
4 Order, and that Liquidating Trustee shall not disburse any funds from the  
5 Liquidating Trust (including disbursement of any advances from the Exit Financing)  
6 for any purpose, without approval of this Court, until a hearing on the Liquidating  
7 Trust's Motion for Stay Pending Appeal ("Stay Motion"), and Radical Bunny  
8 L.L.C.'s response and objection to that Stay Motion, and related Motion to Compel  
9 Immediate Payment ("Payment Motion"), is held;

10 IT IS FURTHER ORDERED that responses or objections to the Liquidating  
11 Trust's Stay Motion and responses or objections to Radical Bunny L.L.C.'s  
12 Payment Motion shall be filed no later than January \_\_\_\_, 2010;

13 IT IS FURTHER ORDERED that a hearing is set on January \_\_, 2010, at \_\_:  
14 \_\_ .m., United States Bankruptcy Court, 230 N. First Avenue, Courtroom 603, 6th  
15 Floor, Phoenix, Arizona 85003, on the Stay Motion and Payment Motion; and

16 IT IS FURTHER ORDERED that Radical Bunny L.L.C. shall immediately  
17 serve a copy of this Order on all interested parties and file a Certificate of Service  
18 for same.

19 ORDERED, DATED AND SIGNED ABOVE.  
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