

SIGNED.



Dated: January 04, 2010

*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 IN PART AND DENYING
Debtor.	)	IN PART MOTION FOR STAY PENDING
	)	APPEAL

The Trustee of the Liquidating Trust of Mortgages Ltd. has filed a motion for stay pending appeal of this Court’s December 21 money judgment in favor of Radical Bunny for substantial contribution. The motion is granted in part, by granting a stay of the enforcement of that judgment until 5:00 p.m. Tuesday, January 19, 2010, and is otherwise denied.

This Court’s Order of December 21 found that Radical Bunny made a substantial contribution to this bankruptcy case and therefore is entitled to an award of a portion of its costs and attorney’s fees. In effect, that December 21 Order is a money judgment. The Liquidating Trust’s motion for stay pending appeal does not, however, seek a supersedeas stay as of right by posting a supersedeas bond. Nor does it even seek the modified supersedeas described in *Wymer*<sup>1</sup> by proposing some substitute security that would furnish equal protection to the judgment creditor. Consequently the motion is subject to the normal discretionary stay rules, which include sustaining the burden of demonstrating both a “high probability of success on appeal and irreparable injury.”<sup>2</sup>

<sup>1</sup>*In re Wymer*, 5 B.R. 802, 806 (9<sup>th</sup> Cir. BAP 1980).

<sup>2</sup>*Id.* at 807.

1           The motion fails to demonstrate either a probability of success or irreparable  
2 injury.

3           The motion attempts to demonstrate probability of success on appeal by arguing  
4 that the Court’s findings and ruling are purely legal in nature and that they misapplied the  
5 applicable Ninth Circuit legal standard. Both of these arguments fail. First, the Court’s finding  
6 of substantial contribution is a factual determination reviewable under the “clearly erroneous”  
7 standard.<sup>3</sup> The Court’s findings were not based solely upon the facts stipulated by the parties  
8 but also on the Court’s extensive experience with the conduct of this bankruptcy case and, most  
9 importantly, the negotiation and ultimate confirmation of the plan of reorganization.

10           More importantly, however, even as to the legal issues involved, the Liquidating  
11 Trust has failed to demonstrate any likelihood of error in this Court’s application of the  
12 governing Ninth Circuit law. The motion makes no attempt to demonstrate how this Court’s  
13 ruling and interpretation and application of the Ninth Circuit standard are at all contrary to  
14 either the rationale or the holding of the Ninth Circuit in *Cellular 101*.<sup>4</sup>

15           And the attempt to demonstrate irreparable injury is far weaker. Although the  
16 motion questions whether the Liquidating Trust would be able to recover approximately  
17 \$600,000 from the substantial law firm of DeConcini McDonald Yetwin & Lacy, P.C., the  
18 raising of that question falls far short of demonstrating actual existence of irreparable injury.  
19 And the cost of funds to satisfy the money judgment is classically *not* the form of irreparable  
20 injury that authorizes equity to intervene and supersede legal judgments without a supersedeas  
21 bond.

22           Finally, the motion for stay does nothing to demonstrate good cause why the  
23 Court should depart from the general rule requiring the posting of a supersedeas bond, or some  
24 substitute form of adequate protection, to stay the enforcement of a money judgment.

25           For these reasons, the motion for stay pending appeal is denied except to the

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27           <sup>3</sup>*Cellular 101, Inc. v. Channel Communications, Inc.*, 377 F.3d 1092, 1095 (9th Cir. 2004).

28           <sup>4</sup>*Id.*

1 extent that the enforceability of this Court's December 21 judgment is stayed until 5:00 p.m.  
2 Tuesday, January 19, 2010.

3 DATED AND SIGNED ABOVE  
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