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UNITED STATES BANKRUPTCY COURT COURT  
DISTRICT OF ARIZONA

In Re:  
MORTGAGES LTD.,  
Debtor.

Chapter 11 Proceedings  
Case No. 2:08-bk-07465  
**JOINT PRETRIAL STATEMENT RE  
CONTESTED MATTER: FINAL FEE  
APPLICATION OF MCA FINANCIAL  
GROUP, LTD. (Docket Item 1953)**  
Hearing Date: January 12, 2010  
Hearing Time: 1:30 p.m.

The parties hereto, appearing by and through their counsel undersigned, hereby submit their Joint Pretrial Statement regarding the instant contested matter as follows:

**I. Nature of the Contested Matter:**

This contested matter arises from responses and objections to the First and Final Fee Application of MCA Financial Group, Ltd. (hereafter "MCA").

**II. Uncontested Facts Deemed Material:**

The parties agreed to the following uncontested facts:

1. Debtor sought to employ MCA as its financial advisor on June 24, 2008.
2. The Court approved MCA's employment on an interim basis on June 25, 2008, but objections were filed to the employment.
3. MCA withdrew as the Debtor's financial advisor pursuant to the July 3, 2008 Order and ceased rendering services as of July 18, 2008.
4. MCA filed its First and Final Fee Application which has been objected to on numerous grounds.

1           5.     MCA received interim payment but seeks final approval of fees and  
2 expenses of \$122,131.25 incurred during this period and final payment on its unpaid fees  
3 of \$26,262.64.

4           6.     The Court confirmed the Investors Committee's First Amended Plan of  
5 Reorganization Dated March 12, 2009 (the "Plan") on May 20, 2009. The Plan became  
6 effective June 15, 2009.

7 **III. Contested Facts Deemed Material**

8 **A. Contested Facts Deemed Material by MCA:**

9           1.     MCA is a financial advisor and turnaround management firm in Phoenix,  
10 Arizona, which has extensive experience in workout and bankruptcy matters.

11           2.     On June 5, 2008, MCA entered into a prepetition Consulting Agreement  
12 dated June 5, 2008 with Mortgages Ltd. and Mortgages Limited Securities, LLC .

13           3.     These Chapter 11 proceedings were commenced on June 20, 2008, by way  
14 of an Involuntary Petition against the Debtor under Chapter 7.

15           4.     On June 23, 2008, the Debtor filed a Motion to Convert Involuntary Chapter  
16 7 To Case Under Chapter 11 Pursuant to 11 U.S.C. § 706(a).

17           5.     An Order Converting Case To A Case Under Chapter 11 And Setting  
18 Continued Hearing On First Day Motions And Emergency Motion To Appoint A Chapter  
19 11 Trustee was entered on June 24, 2008.

20           6.     On June 24, 2008, the Debtor as Debtor In Possession (hereafter "DIP")  
21 filed its Application for An Order Under § 327(a) Authorizing Employment of MCA  
22 Financial Group Ltd. as Financial Advisor to Debtor (Docket No. 28) (hereafter  
23 "Employment Application").

24           7.     On June 25, 2008, the Court entered an interim order approving the  
25 Employment Application on an interim basis, effective June 24, 2008. (Docket No. 48).

26           8.     Objections were filed by the Grace and Rightpath entities to the

1 Employment Application. (Docket Nos. 61 and 77).

2 9. The Court resolved the objections by entering the Order Relating To  
3 Emergency Motion For Appointment Of Trustee dated July 3, 2008 (Docket No. 106)  
4 ordering the phased withdrawal of MCA as financial advisor to the estate over a period of  
5 thirty (30) days from July 1, 2008. (Docket No. 106).

6 10. MCA's First and Final Application for Allowance and Payment of Fees for  
7 Services Rendered by MCA Financial Group, Ltd. as Financial Advisor to Debtor dated  
8 September 17, 2008, (Docket Item 517) (hereafter "Application") sought final approval of  
9 \$122,131.25 in professional fees provided to the estate.

10 11. MCA had been paid a prepetition retainer of \$95,868.61 by the Debtor.

11 12. A Stipulated Order Resolving Contested Matter re First and Final Fee  
12 Application of MCA Financial Group, Ltd. was entered on January 14, 2009 (hereafter  
13 "Stipulated Order"). (Docket No. 1263).

14 13. The Stipulated Order made the following disposition of the Application:

15 A. MCA was allowed as an interim allowance pursuant to 11 U.S.C. § 331 the  
16 amount of \$122,131.25 as requested, subject to the terms hereof and subject to final  
17 review and allowance at the conclusion of the case.

18 B. MCA was permitted to draw down upon the \$95,868.61 retainer in its  
19 possession immediately upon the Stipulated Order.

20 C. The \$26,262.64 balance of MCA's fee claim shall be allowed as an interim  
21 Chapter 11 administrative fee claim to be paid if and when the other Chapter 11  
22 administrative fee claims are paid and on the same parity as the other holders of claims  
23 within that class, subject to final review and allowance at the conclusion of the case.

24 D. All contested proceedings with regard to MCA's Application shall be  
25 deemed dismissed without prejudice with the parties to bear their own costs and attorneys'  
26 fees.

1           14.    A First Amended Chapter 11 Plan of Reorganization dated March 12, 2009,  
2 was filed on behalf of the Official Committee of Creditors on April 6, 2009. (Docket No.  
3 1532).

4           15.    An Order confirming the First Amended Chapter 11 Plan of Reorganization  
5 was entered on May 20, 2009. (Docket No. 1755).

6           16.    A Final Fee Application of MCA Financial Group, Ltd. was filed herein on  
7 July 14, 2009 (“Final Fee Application”). (Docket No. 1953).

8           17.    A Joinder of Liquidating Trust to Objections Filed to First and Final  
9 Application for Allowance and Payment of Fees for Services Rendered by MCA Financial  
10 Group, Ltd. As Financial Advisor to Debtor and Objection of Liquidating Trust to Final  
11 Fee Application of MCA Financial Group was filed on August 14, 2009 on behalf of  
12 Kevin T. O’Halloran, Trustee. (Docket No. 2083).

13           **B. Contested Material Facts of the Objectors:**

14           1.    MCA was employed only on an interim basis on June 25, 2008. Objections  
15 to the employment of MCA were filed and a final employment was not approved. On  
16 July 3, 2008, before the 30 day objection period had passed on the June 25, 2008 Order,  
17 MCA withdrew as financial advisor for the Debtor pursuant to an agreed Order dated July  
18 3, 2008. MCA rendered services through July 18, 2008.

19           2.    MCA needs to completely account for all the fees and payments received  
20 prepetition, during the gap period and post petition and the sources of all proceeds,  
21 including funds paid from impounds and escrows, and identify if it rendered services for  
22 non-debtor affiliates, such as Mortgages Ltd. Securities, that were paid for by the Debtor.  
23 Statements made in various pleadings have been inconsistent and need to be reconciled  
24 before the final order can be entered.

25           3.    During MCA’s employment, Debtor employed a chief financial officer, a  
26 controller, an accounting staff, kept accurate and complete books and records and

1 employed employees to handle the loan administration and investor relations. The  
2 employees had significant knowledge of Debtor's loan portfolio and experience with  
3 workouts and collections, including Laura Martini, Nechelle Wimmer, Chris Welch, Sarah  
4 Lisa-Petrauschke and others.

5 4. MCA spent a significant portion of its services on loan portfolio analysis  
6 and loan collection activities. The services were unnecessary and duplicative of the  
7 services of the employees and of the Debtor's other professionals. The services did not  
8 provide a value to the Debtor. After MCA's withdrawal Debtor had to employ other  
9 professionals and had to incur additional fees bringing them up to speed thus duplicating  
10 fees and services. Services rendered particularly between July 3 and July 18, 2008 were  
11 unnecessary and not reasonably likely to benefit the estate.

12 5. Debtor's professionals that rendered similar duplicative services for loan  
13 portfolio analysis and evaluation were Jennings Strouss, DLA Piper, Greenberg Traurig,  
14 FTI Consulting, Paul Johnson, among others. Debtor should not have to pay multiple  
15 times for the same review and analysis and work.

16 6. MCA spent a significant portion of its services on the Southwest Value  
17 Partners DIP financing. The DIP financing drew significant and strenuous objections from  
18 the creditors and parties in interest and was withdrawn by Southwest Value on July 18,  
19 2008 and Debtor requested that the DIP Financing hearing be vacated. The MCA fees  
20 spent on the DIP Financing with Southwest Value Partners were unnecessary,  
21 unreasonable and were not reasonably likely to benefit the estate.

22 **IV. Contested Issues of Fact and Law Counsel Agree Are Material:**

23 A. Were the terms and conditions upon which MCA was employed reasonable  
24 within the scope of 11 U.S.C. § 327(a)?

25 B. Were the billings of MCA reasonable?

26 C. Were the services provided by MCA reasonably necessary under the

1 circumstances in prospect at the time?

2 D. Were the expenses for which MCA seeks reimbursement reasonable?

3 E. Were the expenses for which MCA seeks reimbursement necessary?

4 F. Were the services duplicative of other professionals or employees of the  
5 Debtor?

6 G. Because MCA withdrew as the financial advisor, MCA's employment was  
7 not approved pursuant to a final order and is subject to disgorgement.

8 H. MCA might be the subject of a Cause of Action by the Liquidating Trust  
9 and so no final order should be entered until those issues have been resolved.

10 **V. List of Witnesses to Be Used by Each Party:**

11 **A. MCA Witnesses**

- 12 i. Morris C. Aaron
- 13 ii. Laura Martini
- 14 iii. John Clemency
- 15 iv. Chris Olsen
- 16 v. George Everett
- 17 vi. Gerald Smith
- 18 vii. Keith Bierman
- 19 viii. Any witness listed by any other party

20 **B. Objectors Witnesses**

- 21 i. Nechelle Wimmer
- 22 ii. Veronica Sas
- 23 iii. Sarah Lisa-Petrauschke
- 24 iv. Chris Welch
- 25 v. Kevin O'Halloran
- 26 vi. Any witness listed by any other party

1 **VI. List of Witness Declarations That Each Party Has Filed or Intends to File**

2 A. MCA does not intend to file any witness declarations.

3 B. Objectors do not intend to file any witness declarations.

4 **VII. Depositions to Be Offered at Trial**

5 A. MCA does not intend to offer any depositions at trial.

6 B. Objectors do not intend to offer any depositions at trial.

7 **VIII. Each Parties Estimation of Time Required for Trial:**

8 A. MCA estimates three (3) hours are required for trial.

9 B. Objectors estimate five (5) hours are required.

10 **IX. Trial Exhibits:**

11 All parties reserve all objections to the various exhibits listed. Some of MCA's  
12 exhibits may contain confidential or sensitive information and should be redacted or used  
13 under seal.

14 **A. MCA Trial Exhibits**

15 1. Invoice #1861 dated July 10, 2008, for the post-petition period from  
16 June 24, 2008, to June 30, 2008.

17 2. Personnel list and rate chart re Invoice #1861.

18 3. Detailed Time Entries re Invoice #1861.

19 4. Invoice #1896 dated August 10, 2008, for the post-petition period  
20 from July 1, 2009, to July 18, 2008.

21 5. Personnel list and rate chart re Invoice #1896.

22 6. Detailed Time Entries re Invoice #1896.

23 7. Firm information brochure re MCA.

24 8. CV of Morris A. Aaron.

25 9. CV of Keith Bierman.

26 10. Document "ACTIVE - DON'T EXPECT PAYMENT"

- 1 11. Document "FORECLOSURE"
- 2 12. Document "REO"
- 3 13. MCA - Mortgages Ltd. and Mortgages Limited Securities, LLC
- 4 Consulting Agreement dated June 5, 2008.
- 5 14. Invoice #1822 dated June 14, 2008, for the pre-petition period ending
- 6 June 13, 2008.
- 7 15. Personnel list and rate chart re Invoice #1822.
- 8 16. Detailed Time Entries re Invoice #1822.
- 9 17. Invoice #1823 dated June 20, 2008, for the pre-petition period ending
- 10 June 20, 2008.
- 11 18. Personnel list and rate chart re Invoice #1823.
- 12 19. Detailed Time Entries re Invoice #1823.
- 13 20. Invoice #1906 dated June 23, 2008, for the pre-petition period ending
- 14 June 23, 2008.
- 15 21. Personnel list and rate chart re Invoice #1906.
- 16 22. Detailed Time Entries re Invoice #1906.
- 17 23. Mortgages, Ltd. DIP Contact Sheet.
- 18 24. MCA Financial Group, Ltd. Fee Analysis for Mortgages, Ltd.
- 19 25. Application for An Order Under § 327(a) Authorizing Employment
- 20 of MCA Financial Group Ltd. as Financial Advisor to Debtor
- 21 (Docket No. 28) (hereafter "Employment Application").
- 22 26. Interim order approving the Employment Application on an interim
- 23 basis, effective June 24, 2008. (Docket No. 48).
- 24 27. Order Relating To Emergency Motion For Appointment Of Trustee
- 25 dated July 3, 2008 (Docket No. 106)
- 26 28. MCA's First and Final Application for Allowance and Payment of

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Fees for Services Rendered by MCA Financial Group, Ltd. as Financial Advisor to Debtor dated September 17, 2008, (Docket Item 517)

- 29. Stipulated Order Resolving Contested Matter re First and Final Fee Application of MCA Financial Group, Ltd. was entered on January 14, 2009 (Docket No. 1263).
- 30. First Amended Chapter 11 Plan of Reorganization dated March 12, 2009, filed on behalf of the Official Committee of Creditors on April 6, 2009. (Docket No. 1532).
- 31. Order confirming the First Amended Chapter 11 Plan of Reorganization entered on May 20, 2009. (Docket No. 1755).
- 32. Final Fee Application of MCA Financial Group, Ltd. filed July 14, 2009 ("Final Fee Application"). (Docket No. 1953).
- 33. Emergency Motion for Appointment of Interim Trustee.
- 34. Affidavit of Morris C. Aaron in Support of Debtor's Application for an Order Under 11 U.S.C. § 327(A) Authorizing the Employment of MCA Financial Group, LTD. as Financial Advisor to the Debtor.
- 35. Opposition to Application for an Order Under 11 U.S.C. § 327(A) Authorizing the Employment of MCA Financial Group, LTD. as Financial Advisor to the Debtor.
- 36. Declaration of Morris C. Aaron in Support of Interim Motion for an Order: (I) Authorizing Secured and Super-Priority Post-Petition Financing Pursuant to 11 U.S.C. §§ 364 and 507(b); (II) Modifying Automatic Stay Pursuant to 11 U.S.C. § 362; (III) Granting Other Related Relief; and (V) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001.

- 1 37. Mortgages Ltd. Nonperforming Loans Report.
- 2 38. Mortgages Ltd. Loan Funding reports: 856905 - Central PHX
- 3 Partners, L.L.C.; 857005 - Central PHX Partners, LLC.
- 4 39. Construction Draw Log.
- 5 40. Rick Burton / Rightpath & Maryland Way Loan Summary.
- 6 41. Construction Loan Portfolio Summary.
- 7 42. Loan Summary.
- 8 43. Inland American Purchase Offer.
- 9 44. Consolidated Financial Statements Mortgages Ltd. and Affiliates
- 10 Two Months Ended 12/31/06 and Years Ended 10/31/06 and 2005
- 11 Dated 03/26/07.
- 12 45. Consolidated Financial Statements Mortgages Ltd. and Affiliates For
- 13 the Year Ended 12/31/07 Dated 03/28/08.
- 14 46. Mortgages Ltd. Balance Sheet Actual to Prior Month Comparison -
- 15 Unaudited.
- 16 47. Mortgages Ltd. Securities LLC For the Month Ending 04/30/08:
- 17 Profit & Loss Statement; Condensed Balance Sheet; Inventory
- 18 Position Statement; Aggregate Indebtedness Computation; Net
- 19 Capital Computation;
- 20 48. Mortgages Ltd. Balance Sheet dated 05/31/08 Actual to Prior Month
- 21 Comparison, Unaudited.
- 22 49. Balance Sheets and Income Statements for the Month Ending
- 23 05/31/08 for the following entities:MP122030.LLC; Mortgages Ltd.
- 24 Opportunity Fund MP12, LLC; Mortgages Ltd. Opportunity Fund
- 25 MP13, LLC;
- 26 Mortgages Ltd. Opportunity Fund MP14, LLC; Mortgages Ltd.

- 1 Opportunity Fund MP15, LLC; Mortgages Ltd. Opportunity Fund  
2 MP16, LLC; and Mortgages Ltd. Opportunity Fund MP17, LLC;  
3 50. Mortgages, Ltd. Accounts Payable Ledger (Excel Spreadsheet).  
4 51. "Vento" Settlement Proposal.  
5 52. List of Guarantors.  
6 53. List of Investors and Holdings; By Investor and By Loan.  
7 54. Master Investors List (#1) - Original; All Investors and Sum by  
8 Investment.  
9 55. Master Investors List (#2) - Original; All Investors; and Sum by  
10 Investment.  
11 56. List of Investors All Funds - By Dollar; and By Investor.  
12 57. List of Borrowers.  
13 58. Lender Listing Mortgages, Ltd. DIP Contact Sheet.  
14 59. Lender Listing (Autosaved) Mortgages, Ltd. DIP Contact Sheet .  
15 60. Lender Listing Mortgages, Ltd.  
16 61. Loan Balances (Excel Spreadsheet).  
17 62. Loans By Funds (Excel Spreadsheet).  
18 63. Loan Portfolio Review - Status Mortgages Limited Dated 07/07/08  
19 (Excel Spreadsheet).  
20 64. Loan Portfolio Review - Status (# 2) -Mortgages Limited Dated  
21 07/07/08 (Excel Spreadsheet).  
22 65. Construction Loan Portfolio Summary As of 06/16/08 (Excel  
23 Spreadsheet).  
24 66. Nonperforming Loan Reports Mortgages, Ltd. Printed 06/11/08.  
25 67. Data Analysis of 06/07/08 (Excel Spreadsheet) RevOp Investors  
26 Investor Balances by Loan Loan Balance M002 Loan Payments

- 1 Legend (Investment Type) MP09 MP10 MP11 MP12 MP13 MP14  
2 MP15 MP16 MP17 Safes No. Identifies Excel program "Data  
3 06072008.xls".
- 4 68. Centerpoint Data Analysis (Excel Spreadsheet) Safes No. Identifies  
5 Excel program "Centerpoint Analysis (7-11-08)(2).xls" .
- 6 69. Centerpoint Analysis (Excel Spreadsheet)  
7 Safes No. Identifies Excel program "Copy of Centerpoint Analysis  
8 (7-11-08).xls" .
- 9 70. Centerpoint Cashflow Forecast (Excel Spreadsheet) Bates No.  
10 Identifies Excel program "Copy of Centerpoint Cashflow Sent to  
11 MCA
- 12 71. Centerpoint Condominiums Contracts (Excel Spreadsheet).
- 13 72. Mortgages Limited Centerpoint Condominiums Summary MCA
- 14 73. MCA Financial Property Review Summary re "Hotel Monroe".
- 15 74. Self-Contained Appraisal Report "Portales Place".
- 16 75. UCC Financing Statement L.L.J. Investments, Dated 03/21/07.
- 17 76. Promissory Note Date: 01-15-08 / Amount \$1,130,000.00 / Maker:  
18 Mortgages Ltd. / Holder: Radical Bunny, LLC.
- 19 77. Investor List.
- 20 78. Investor List By Amount.
- 21 79. Mortgages Ltd. Nonperforming Loans Report .
- 22 80. Mortgages Limited Loan Portfolio Review - Status Dated: 07/07/08.
- 23 81. Mortgages Ltd. Loan Funding 855102 The Zacher Development  
24 Company, L.L.C.
- 25 82. Mortgages Ltd. Securities Investment Portfolio - Group.
- 26 83. Mortgages Ltd. Securities Investor Statements of Account Dated:

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06/07/08 for: MP09; MP10; MP11; MP12; MP13; MP14; MP15;  
MP16; and MP17.

- 84. PERFORMING.
- 85. ACTIVE – UNSURE

**B. Objectors Exhibits**

- 1. All Affidavits and Declarations filed in the case of any of the witnesses who provide testimony
- 2. Debtor’s Schedules of Assets and Liabilities and Statements of Financial Affairs and all amendments thereto
- 3. Fee Application, declarations and supplements thereto of FTI Consulting
- 4. Fee Application, declarations and supplements thereto of Paul Johnson
- 5. Fee Application, declarations and supplements thereto of DLA Piper
- 6. Fee Application, declarations and supplements thereto of Gust Rosenfeld
- 7. Fee Application, declarations and supplements thereto of Greenberg Traurig
- 8. Fee Application, declarations and supplements thereto of Jennings Strouss
- 9. Fee Application, declarations and supplements thereto of MCA
- 10. Fee Applications, declarations and supplements thereto of other professionals used by the Debtor
- 11. Charts prepared by Objectors
- 12. All objections and responses and other pleadings related to the employment of MCA and objections to the fee application of MCA

1           13. All DIP Financing pleadings concerning Southwest Value Partners,  
2 including the emergency motion and declarations, the objections, and the  
3 withdrawal by Southwest Value Partners and the Debtor's Request to vacate  
4 Hearing

5           14. Chart of moneys paid to MCA from impounds and escrows

6           15. Letters reflecting use of impound and escrow funds to pay MCA

7           16. All exhibits listed or used by any party

8           17. All impeachment exhibits

9 **X. Certification of the Parties re Exhibits**

10 All parties hereto certify that all listed exhibits have been exchanged or made  
11 available to all other parties for inspection and copying.

12 DATED this 5<sup>th</sup> day of January, 2010.

14 BURCH & CRACCHIOLO, P.A.

FENNEMORE CRAIG, P.C

15 By: /s/ Andrew Abraham  
16 Andrew Abraham  
17 Howard C. Meyers, of Counsel  
Attorneys for MCA Financial Group,  
Ltd.

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

18 STRADLEY, RONON, STEVENS &  
19 YOUNG, LLP

DECONCINI MCDONALD YETWIN &  
LACY, PC

20 By: Mark Dorval  
21 Attorneys for Kevin O'Halloran,  
22 Trustee of ML Liquidating Trust

By: Shelton L. Freeman  
Attorneys for G. Grant Lyon, Chapter 11  
Trustee for Radical Bunny LLC