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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	Chapter 11
MORTGAGES LTD.,	Case No. 2:08-bk-07465-RJH
Debtor.	**ML MANAGER'S OBJECTION TO THE MOTION FOR ORDER PURSUANT BANKRUPTCY RULE 3020 REQUIRING SEGREGATION OF FUNDS AND FOR COMPLIANCE WITH CONFIRMED PLAN OF REORGANIZATION** **Hearing Date: January 27, 2010** **Hearing Time: 8:30 a.m.**

ML Manager LLC ("ML Manager"), through counsel, hereby objects to the Motion for Order Pursuant to Bankruptcy Rule 3020 Requiring Segregation of Funds and for Compliance with Confirmed Plan of Reorganization ("Motion") filed by FTI Consulting Inc. ("FTI"). Through the Motion, FTI seeks an Order directing that funds in an amount equal to the disputed fee application request of FTI be immediately segregated and deposited pending resolution of FTI's pending Fee Application [Docket No. 1896].

FTI's request should be denied for several reasons. First, FTI seeks relief through Federal Rule of Bankruptcy Procedure 3020. FTI suggests that subsection (d) of the Rule allows access to subsection (a) which permits the court to direct the deposit. This argument is flawed. By its plain language, Bankruptcy Rule 3020(a) may only be utilized prior to confirmation. Fed. R. Bank. P. 3020(a) ("In a chapter 11 case, prior to entry of

the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation.") (emphasis added). *See* 9 Collier on Bankruptcy, § 3020, p. 3020.01 (15th ed. rev.) ("The deposit should be ordered prior to entry of the order confirming the plan."). *See also Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1213 (9th Cir. 2002) (The court's "inquiry ceases if from the plain meaning of the statute the congressional intent is unambiguous, and the statutory scheme is coherent and consistent."). Moreover, Bankruptcy Rule 3020(d) does not expand the Court's authority under Bankruptcy Rule 3020(a); instead, Bankruptcy Rule 3020(a) simply provides the Court with a procedural mechanism parallel to the Court's post-confirmation powers under 11 U.S.C. § 1142(b)(2). *See* 9 Collier on Bankruptcy, § 3020, p. 3020.04 (15th ed. rev.) ("The power retained by the court [under Bankruptcy Rule 3020(d)] is parallel to the power retained under section 1142(b)(2) of the Code."). The Advisory Committee Notes to Bankruptcy Rule 3020 clarify that this grant of post-confirmation authority only applies "to conclude matters pending before [the court] prior to confirmation and to continue to administer the estate as necessary, *e.g.*, resolving objections to claims." Fed. R. Bankr. P. 3020 advisory committee's note. Here, the plan is already confirmed, and Bankruptcy Rule 3020 does not provide the statutory predicate to require a deposit from the post-confirmation estate.

Second, FTI's request is not ripe since its administrative claim is currently not allowed and, until it is allowed, there is no need or requirement that funds sufficient to pay it be posted as a deposit. *See Clinton v. Acequia, Inc.*, 94 F.3d 568, 572 (9th Cir. 1996) ("The basic rationale of Article III ripeness doctrine is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. Accordingly, ripeness is peculiarly a question of timing, ... and a federal court normally ought not resolve issues involving contingent future events that may not occur as anticipated, or indeed may not occur at all.") (internal quotations and citations

omitted).

Third, by its misguided resort to Bankruptcy Rule 3020(d), FTI essentially suggests that if sufficient funds are not immediately posted, then the Court should impose the dramatic remedy of disgorgement by those administrative claimants who have already received payment on their administrative claims. Assuming, for example, that there are insufficient funds available to cover the full amount claimed by FTI, it would still be premature for the Court to begin ordering or directing disgorgement until such time as the FTI claim is fully and finally adjudicated. And even assuming a lack of liquidity to pay the claim immediately, there are assets sufficient to pay all administrative claims once the assets are properly liquidated. In that context, this case becomes much like many estate cases where administrative claims may be allowed, due and owing, but assets have not yet been liquidated to pay those claims in cash or cash equivalent. In such instances over and over again, allowed claimants necessarily wait until appropriate liquidation events before payment of their claims.

FTI's request has no basis in rule or law, is premature and the concern expressed is manufactured in the context of this case. The Court should deny the Motion.

DATED: January 19, 2010

FENNEMORE CRAIG, P.C.

By */s/ Cathy L. Reece*
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COPY of the foregoing emailed
to the parties on the Service List.

/s/ Gidget Kelsey-Bacon

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