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

8 In re

9 MORTGAGES LTD.,

10 Debtor.

Chapter 11

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

11 **OBJECTION TO FORM OF ORDER**
12 **LODGED BY MCA FINANCIAL GROUP,**
13 **LTD. RELATING TO MCA'S FINAL FEE**
14 **APPLICATION**

14 ML Manager LLC ("ML Manager"), appearing by and through its counsel, hereby
15 objects to the form of Order (Docket No. 2645) (the "MCA Proposed Order") lodged with
16 this Court by MCA Financial Group, Ltd. ("MCA") relating to MCA's Final Fee
17 Application. For the reasons set forth in ML Manager's Notice of Lodging of Proposed
18 Order and the memorandum of points and authorities in support thereof (Docket No.
19 2636) (the "ML Manager Order"), the facts and arguments of which are incorporated
20 herein by reference, the Court's Order (Docket No. 2604) denying in part MCA's Final
21 Fee Application disallowed "the amount sought for work on DIP Financing from and after
22 July 1, 2008." As stated and supported by the fee application itself, the invoice and the
23 trial testimony and as explained in ML Manager's Notice (Docket No. 2636), the amount
24 which MCA sought for work on DIP Financing from and after July 1, 2008 was \$24,960,
25 Mr. Aaron testified that all the time from and after July 1 was on the SVP financing and
26 thus that is the amount which was disallowed.

1 The MCA Proposed Order ignores the Court’s clear directive and incorrectly states
2 that only \$2,590 in fees was disallowed.¹ The exhibit A and B which MCA attaches to its
3 Objection to the ML Manager Order (Docket No. 2644) are brand new exhibits and
4 breakdowns that were not presented at trial. MCA appears to have taken the time in the
5 original category 3 for DIP Financing and further broken down the entries into 10
6 additional subcategories within the DIP Financing category. MCA to reach their small
7 number reflected above only pulls out a few of their obvious time entries from their
8 otherwise vague and lumped time entries concerning SVP but fails to include others that
9 are equally as obvious. For example and among others, all of the new subcategory code 6
10 and 9 time entries in their bill (which alone add another \$4,760 of fees to their small
11 number) concern meetings and discussions with the investors committee which were only
12 about the SVP financing and include a meeting with SVP, MCA and the committee chair.
13 Similarly, all the time in the new subcategory code 10 (which add another \$5,780 to their
14 small number) appears to be incurred in preparing the DIP Loan Analysis which had to
15 have been based on the SVP loan because it was the only set of numbers and proposed
16 loan on hand during that time frame and was prepared and used to support the SVP DIP
17 Financing Motion and Mr. Aaron’s affidavit which were filed on July 14, 2008. Another
18 obvious omitted grouping of fees which should be disallowed (and which makes up
19 almost \$11,000) concern their meetings with the new counsel Jennings Strouss and the
20 debtor’s management about the SVP DIP Loan, additional meetings with the key
21 borrowers (such as Centerpoint) about the SVP DIP Loan, and work on the SVP DIP
22 Financing Motion and exhibits, and work on Mr. Aaron’s July 14 affidavit. This is an
23 obvious mistake because on July 14 Jennings Strouss prepared and filed the new SVP DIP
24 Financing Motion (which was withdrawn on July 18) and included Mr. Aaron’s affidavit

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26 ¹ MCA previously represented to ML Manager that only \$2,730 in fees were disallowed.
The MCA Proposed order now apparently reduces this figure to \$2,590.

1 dated July 14 in support of the Motion. So clearly MCA spent significant time between
2 July 1 and July 14 working on the SVP DIP loan analysis, SVP DIP Financing Motion
3 and Affidavit yet MCA has not subtracted any of the time from its bills and has not
4 identified it as disallowed. The burden is on MCA through sufficient time entries to
5 demonstrate what is disallowed. Lumping and vague entries for DIP Financing are their
6 own fault and they should not be able to take advantage of it at this point. As reflected in
7 the fee application and bills, the total spent on DIP Financing from and after July 1, 2008
8 is \$24, 960 and that is the amount that should be disallowed.

9 ML Manager further objects to the MCA Proposed Order since it fails to include
10 provisions similar to those provided in previous Court orders relating to professional fee
11 applications concerning potential disgorgement and no preclusive effect in matters against
12 MCA. *See, e.g.*, Order Allowing Fees and Costs of DLA Piper LP (US) and Authorizing
13 and Directing Payment Thereof (Docket No. 2470). Those two paragraphs are included in
14 ML Manager's Order as the last two paragraphs.

15 For the reasons set forth above, the MCA Proposed Order must not be adopted and
16 signed by the Court. Instead ML Manager requests that the Court adopt and sign the ML
17 Manager Order.

18 DATED: February 12, 2010

19 FENNEMORE CRAIG, P.C.

20 By /s/ Cathy L. Reece
21 Cathy L. Reece
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23 COPY of the foregoing emailed
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