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7 Lead Counsel for the ML Liquidating Trust

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

10 In re:

11 MORTGAGES LTD., an Arizona
12 corporation,

13 Debtor.

14 Proceedings Under Chapter 11

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

16 **LIQUIDATING TRUST'S MOTION FOR**
17 **STAY PENDING APPEAL AND FOR**
18 **STAY OF SUPPLEMENTAL**
19 **APPLICATION PURSUANT TO 11**
20 **U.S.C. § 503(b)(3)(D) AND (4) FOR**
21 **ALLOWANCE AND PAYMENT OF**
22 **ADMINISTRATIVE CLAIM OF**
23 **CREDITOR RADICAL BUNNY**

24 **(Re: Docket No. 3018, 3021)**

25 The Liquidating Trust of Mortgages, Ltd. ("Liquidating Trust"), by and through its counsel,
26 hereby moves this honorable Court to impose a stay of (1) this Court's Findings of Fact and
27 Conclusions of Law and Amended Order Granting Radical Bunny's Administrative Claim for
28 Substantial Contribution, [Docket # 3018] (the "Order on Remand"); and (2) the Supplemental
Application Pursuant to 11 U.S.C. § 503(b)(3)(D) and (4) for Allowance and Payment of
Administrative Claim of Creditor Radical Bunny, [Docket # 3021] (the "Supplemental
Application") pending the Liquidating Trust's appeal of this Order on Remand for the reasons set
forth in the accompanying Memorandum of Law.

1 WHEREFORE, the Liquidating Trust respectfully requests the Court to issue an order,
2 substantially in the form filed herewith , staying the enforcement of the Order on Remand and
3 staying the Supplemental Application pending the determination of the appeal.

4 Dated: January 5, 2011

STRADLEY RONON STEVENS & YOUNG, LLP

5 By: /s/ Mark J. Dorval
6 Mark J. Dorval, Esquire
7 Lead Counsel for the ML Liquidating Trust
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9 **FOR THE DISTRICT OF ARIZONA**

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12 corporation,

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14 Proceedings Under Chapter 11

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

16 **MEMORANDUM OF LAW IN SUPPORT**
17 **OF LIQUIDATING TRUST'S MOTION**
18 **FOR STAY PENDING APPEAL AND**
19 **FOR STAY OF SUPPLEMENTAL**
20 **APPLICATION PURSUANT TO 11**
21 **U.S.C. § 503(b)(3)(D) AND (4) FOR**
22 **ALLOWANCE AND PAYMENT OF**
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Application Pursuant to 11 U.S.C. § 503(b)(3)(D) and (4) for Allowance and Payment of
Administrative Claim of Creditor Radical Bunny, [Docket # 3021] (the "Supplemental
Application") pending the Liquidating Trust's appeal of this Order on Remand, and in support
thereof avers as follows:

1 **I. BACKGROUND**

2 On July 6, 2009, Radical Bunny, LLC (“Radical Bunny”) filed its Application
3 Pursuant to 11 U.S.C. § 503(b)(3)(D) and (4) for Allowance and Payment of Administrative Claim
4 [Docket # 1888] (the “Application”). On July 27, 2009, the Liquidating Trust filed an Omnibus
5 Objection to Motion for Allowance and Payment of Administrative Claim [Docket # 2014].

6 On November 12, 2009, the parties entered into and filed a Joint Statement of
7 Material Facts of Radical Bunny and the Liquidating Trust For Application Pursuant to 11 U.S.C.
8 § 503(b)(3)(D) and (4) for Allowance and Payment of Administrative Claim [Docket # 2395] (the
9 “Joint Stipulation”). On November 16, 2009, the parties entered into a Supplemental Statement of
10 Facts of Radical Bunny and the Liquidating Trust For Application Pursuant to 11 U.S.C.
11 § 503(b)(3)(D) and (4) for Allowance and Payment of Administrative Claim [Docket # 2407] (the
12 “Supplemental Stipulation” together with the Joint Stipulation, the “Stipulations”).

13 On December 17, 2009, this Court entered an Order Granting Radical Bunny’s
14 Administrative Claim for Substantial Contribution [Docket # 2514] and an Order Approving
15 Allowance and Payment of Substantial Contribution Claim Pursuant to 11 U.S.C. § 503(b)(3)(D)(
16 and (4) [Docket # 2521] (together, the “Orders”). The Orders awarded Radical Bunny, LLC
17 (“RBLLC”) \$572,945.50 in attorneys’ fees and \$22,852.75 in costs, and directed the immediate
18 payment of the full amount, \$595,798.25 (the “Fee Award”).

19 On December 28, 2009, the Liquidating Trust filed a Notice of Appeal of the Orders
20 (the “Appeal”) [Docket # 2529].

21 On January 13, 2010, this Court entered the Order Granting Radical Bunny,
22 L.L.C.’s Motion to Compel Immediate Payment (Or Provide Security for Administrative Claim
23 Pending Appeal) and Denying Liquidating Trust’s Motion to Approve Modified Supersedeas,
24 [Docket #2595], which ordered that the Liquidating Trust (1) provide a supersedeas bond to secure
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1 payment of the RBLLC, or (2) deposit the Security Amount into the trust account of RBLLC's
2 counsel to be held in trust pending disposition of the appeal, or (3) deposit the Security Amount
3 with an Arizona-licensed escrow agent to be held in escrow until the date that escrow agent
4 receives a further Order of this Court or notice from counsel that such funds should be disbursed.

5 The Liquidating Trust deposited the Security Amount with an Arizona-licensed
6 escrow agent, First American Title Insurance Company (the "Agent"), with an office in Phoenix,
7 Arizona. Upon information and belief, the escrowed funds have not been released by the Agent.
8

9 On August 4, 2010, upon review of briefs submitted by the parties, review of the
10 designated record and after oral argument before the three-judge panel, the Bankruptcy Appellate
11 Panel for the Ninth Circuit reversed the Fee Award and remanded the matter to this Court.

12 On September 21, 2010, this Court held a status hearing and on December 6, 2010,
13 this Court held an additional hearing on the matter. On December 22, 2010, the Court entered the
14 Order on Remand, and on January 3, 2011, RBLLC filed the Supplemental Application. Finally,
15 on January 5, 2011, the Liquidating Trust filed its Notice of Appeal with respect to the Order on
16 Remand (the "Order on Remand Appeal").
17

18 **II. RELIEF SOUGHT**

19 The Liquidating Trust seeks a stay of enforcement of the Order on Remand and stay
20 of the Supplemental Application pending resolution of the Order on Remand Appeal.
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22 **III. BASIS FOR RELIEF**

23 Bankruptcy Rule 7062(d) provides, in pertinent part, "If an appeal is taken, the
24 appellant may obtain a stay by supersedeas bond . . . The bond may be given upon or after filing
25 the notice of appeal . . . The stay takes effect when the court approves the bond." Further,
26 Bankruptcy Rule 8005 provides that the bankruptcy court has jurisdiction to grant a stay during the
27 pendency of an appeal to approve any supersedeas bond or other security.
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1 Per the Court's order of January 13, 2010, which required the posting of funds to
2 secure the payment of attorney's fees to counsel for RBLLC, the Liquidating Trust has posted the
3 Security Amount in an escrow account with the Agent. Disbursement of the proceeds of such
4 account are controlled by the escrow agreement. Accordingly, payment to counsel of RBLLC
5 pursuant to the Order on Remand is adequately secured by the amounts held in the escrow account.
6 Because payment to counsel for RBLLC is adequately secured by the Security Amount, this Court
7 should again approve this security and grant a stay of enforcement of the Order pending the
8 outcome of the Appeal.
9

10 If the Liquidating Trust is successful in appealing the Order on Remand, and the
11 Fee Award is again reversed, counsel for RBLLC will not be entitled to recover the fees incurred in
12 connection with litigating the Application. See e.g., In re Riverside-Linden Investment Co., 945
13 F.2d 320 (9th Cir. 1991) (denying fees for litigation of fee application where proponent of the fee
14 application did not prevail in litigation). Further, the Ninth Circuit does not recognize a *per se*
15 award of fees incurred in connection with the litigation over a fee application for fear that such fees
16 will encourage frivolous fee requests. In re Wind N' Wave, 509 F.3d 938, 943-44 (9th Cir. 2007)
17 (citing In re Smith, 305 F.3d 1078, 1085-86 (9th Cir. 2002)); see also In re Smith, 305 F.3d at
18 1088. Accordingly, until such time as an order is entered on the Order on Remand Appeal, the
19 Supplemental Application is not yet ripe for decision and consideration of the Supplemental
20 Application should be stayed.
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1 **IV. CONCLUSION**

2 WHEREFORE, on the basis of the foregoing, the Liquidating Trust respectfully requests
3 that this Court grant the relief sought herein and enter an order substantially in the form of the
4 attached proposed order.

5
6 RESPECTFULLY SUBMITTED this 5th day of January, 2011

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8 STRADLEY RONON STEVENS & YOUNG, LLP

9 By: /s/ Mark J. Dorval _____
10 Mark J. Dorval, Esquire
11 Lead Counsel for the ML Liquidating Trust

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CERTIFICATE OF SERVICE

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2 I, Julie M. Murphy, certify, that on January 5, 2011, I electronically transmitted the attached
3 documents to the Clerk's Office, using the CM/ECF System for filing, which transmitted a Notice
4 of Electronic Filing to the parties in interest via the Court's ECF System, and also served a copy of
the documents on the following parties via a separate e-mail:

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/s/Julie M. Murphy

Julie M. Murphy