

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

MEMORANDUM

TO: Bankruptcy Appellate Panel of the Ninth Circuit
125 S. Grand Avenue
Pasadena, California 91105

FROM: Division / District/Office No.:

DATE:

SUBJECT: Transmittal

Case Name:

Bankruptcy No.:

Adversary No.:

Bankruptcy Judge:

Date Notice of Appeal Filed:

Date Motion for Leave to Appeal Filed:

Date of Entry of Order Appealed:

Date Bankruptcy Filed:

Date Notice of Appeal and Notice of
Objection Period Mailed to Parties:

Appeal Fee Paid:

Date of Transmittal:

Clerk of Court

By: _____
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re	Chapter
	Case No.
Debtor(s)	Adv.
Appellant(s)	
v.	
Appellee(s)	

NOTICE OF FILING OF APPEAL AND NOTICE OF REFERRAL OF APPEAL TO THE BANKRUPTCY APPELLATE PANEL

YOU ARE HEREBY NOTIFIED that a Notice of Appeal has been filed on _____ with the Clerk of the U.S. Bankruptcy Court. By virtue of Orders of the Judicial Council of the Ninth Circuit, the above appeal has been referred to the United States Bankruptcy Appellate Panel of the Ninth Circuit (BAP).

Any party desiring to object to such referral must do so in conformity with the foregoing orders and their provisions for reference to the BAP, a copy thereof being hereto attached.

For further information, you may contact the Clerk of the Bankruptcy Appellate Panel at 125 S. Grand Avenue, Pasadena, California 91105, telephone (626) 229-7225.

NOTICE IS GIVEN TO THE APPELLANT that the Appellant shall, within 14 days of the filing of the Notice of Appeal, (see above), file with the Clerk of the U.S. Bankruptcy Court, 230 N. First Avenue, #101, Phoenix, AZ 85003, the following:

1. A designation of the items to be included in the record on appeal and serve a copy upon the appellee;
2. A statement of the issues to be presented and serve a copy upon the appellee; and
3. A written request for the transcript and deliver a copy to the court reporter where the record designated includes a transcript of any proceeding or a part thereof.

Dated:

CLERK OF COURT

By: _____
Deputy Clerk

Copies to be mailed to attorneys for parties and pro se parties to the appeal by the BNC

Enclosures: Copy of Notice of Appeal
Amended Order Establishing and Continuing the BAP

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

NOTICE TO PARTIES TO APPEAL

1. Appeal is to the Bankruptcy Appellate Panel for the Ninth Circuit:
 - a. Appeals from judgments or orders entered by bankruptcy judges are referred to the BAP unless the appellant has filed a separate written election to have the appeal transferred to the District Court at the time of the filing of the Notice of Appeal. See the November 18, 1988, as amended May 9, 2002, Order Establishing and Continuing the Bankruptcy Appellate Panel of the Ninth Circuit.
 - b. Designation of items to be included in the record on appeal and a statement of issues are to be filed with the bankruptcy clerk within 14 days of the filing of the Notice of Appeal.
 - c. Do not attach copies of the items designated. Copies of the items designated are not needed when the appeal is before the BAP. If the appeal is sent to the District Court, copies of the record are to be provided as set forth in Section 4 below.

2. Procedure When Appeal Remains at the BAP:
 - a. Procedures for the processing of the appeal at the BAP are contained in the Rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit. Copies of those rules are available online at www.ce9.uscourts.gov/bap or the Clerk of the BAP:

Clerk of Court
U.S. Bankruptcy Appellate Panel
125 S. Grand Avenue
Pasadena, CA 91105
626-229-7225

3. Withdrawing consent to the BAP hearing and deciding the appeal:
 - a. Appellant must have filed a separate written election to transfer the appeal to the District Court at the time the Notice of Appeal is filed with the Clerk of the Bankruptcy Court. The Clerk of the Bankruptcy Court will send the appeal directly to the District Court.
 - b. All other parties to the appeal have 30 days from service of the Notice of Appeal to file with the Clerk of the BAP a written election to transfer the appeal to the District Court. The Clerk of the BAP, upon the filing of the election, will transmit the appeal to the District Court.

4. Procedure when an appeal is transmitted or transferred to District Court:
 - a. Upon receipt of an appeal from the Clerk of the Bankruptcy Court or from the Clerk of the Bankruptcy Appellate Panel, the appeal is assigned a civil case number in the District Court. The District Court then sends a “Notice of Receipt of Appeal” to the parties to the appeal advising them of the civil case number assigned in the District Court.
 - b. The bankruptcy appeal in the District Court is governed by the District Court Local Rules of Bankruptcy Appeal Procedure, as adopted on 12/1/2007. Please refer to those rules which are available at www.azd.uscourts.gov.
 - c. When the statement of issues, designation of record and any designated transcripts are filed with the Bankruptcy Court, the Bankruptcy Court Clerk will transmit to the District Court a certificate that the record is complete. The date of transmittal to the District Court constitutes the date of the entry of the appeal on the docket in District Court.
 - d. The record is retained in the Bankruptcy Court. Copies of the record are no longer required to be filed with the District Court. Instead, the parties include copies from the record in their Excerpts of Record filed as appendix to their briefs. See Local District Court Rule 8009-2.

**UNITED STATES BANKRUPTCY
APPELLATE PANEL OF
THE NINTH CIRCUIT**

Effective November 18, 1988; as amended through May 9, 2002

**AMENDED ORDER CONTINUING
THE BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

**JUDICIAL COUNCIL OF THE NINTH CIRCUIT AMENDED ORDER CONTINUING THE
BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT**

1. Continuing the Bankruptcy Appellate Panel Service.

(a) Pursuant to 28 U.S.C. § 158(b)(1) as amended by the Bankruptcy Reform Act of 1994, the judicial council hereby reaffirms and continues a bankruptcy appellate panel service which shall provide panels to hear and determine appeals from judgments, orders and decrees entered by bankruptcy judges from districts within the Ninth Circuit.

(b) Panels of the bankruptcy appellate panel service may hear and determine appeals originating from districts that have authorized such appeals to be decided by the bankruptcy appellate panel service pursuant to 28 U.S.C. § 158(b)(6).

(c) All appeals originating from those districts shall be referred to bankruptcy appellate panels unless a party elects to have the appeal heard by the district court in the time and manner and form set forth in 28 U.S.C. § 158(c)(1) and in paragraph 3 below.

(d) Bankruptcy appellate panels may hear and determine appeals from final judgments, orders and decrees entered by bankruptcy judges and, with leave of bankruptcy appellate panels, appeals from interlocutory orders and decrees entered by bankruptcy judges.

(e) Bankruptcy appellate panels may hear and determine appeals from final judgments, orders, and decrees entered after the district court from which the appeal originates has issued an order referring bankruptcy cases and proceedings to bankruptcy judges pursuant to 28 U.S.C. § 157(a).

2. Immediate Reference to Bankruptcy Appellate Panels.

Upon filing of the notice of appeal, all appeals are immediately referred to the bankruptcy appellate panel service.

3. Election to District Court - Separate Written Statement Required.

A party desiring to transfer the hearing of an appeal from the bankruptcy appellate panel service to the district court pursuant to 28 U.S.C. § 158(c)(1) shall timely file a separate written statement of election expressly stating that the party elects to have the appeal transferred from the bankruptcy appellate panel service to the district court.

(a) **Appellant:** If the appellant wishes to make such an election, appellant must file a separate written statement of election with the clerk of the bankruptcy court at the time of filing the notice of appeal. Appellant shall submit the same number of copies of the statement of election as copies of the notice of appeal. See Bankruptcy Rule 8001(a). When such an election is made, the clerk of the bankruptcy court shall forthwith transfer the case to the district court. The clerk of the bankruptcy court shall give notice to all parties and the clerk of the bankruptcy appellate panels of the transfer at the same time and in the same manner as set forth for serving notice of the appeal in Bankruptcy Rule 8004.

(b) **All Other Parties:** In all appeals where appellant does not file an election, the clerk of the bankruptcy court shall forthwith transmit a copy of the notice of appeal to the clerk of the bankruptcy appellate panels. If any other party wishes to have the appeal heard by the district court, that party must, within thirty (30) days after service of the notice of appeal, file with the clerk of the bankruptcy appellate panels a written statement of election to transfer the appeal to the district court. Upon receipt of a timely statement of election filed under this section, the clerk of the bankruptcy appellate panels shall forthwith transfer the appeal to the appropriate district court and shall give notice of the transfer to the parties and the clerk of the bankruptcy court. Any question as to the timeliness of an election shall be referred by the clerk of the bankruptcy appellate panels to a bankruptcy appellate panel motions panel for determination.

4. MOTIONS DURING ELECTION PERIOD

All motions relating to an appeal shall be filed with the bankruptcy appellate panel service unless the case has been transferred to a district court. The bankruptcy appellate panels may not dismiss or render a final disposition of an appeal within thirty (30) days from the date of service of the notice of appeal, but may otherwise fully consider and dispose of all motions.

5. PANELS

Each appeal shall be heard and determined by a panel of three judges from among those appointed pursuant to paragraph 6, provided however that a bankruptcy judge shall not participate in an appeal originating in a district for which the judge is appointed or designated under 28 U.S.C. § 152.

6. MEMBERSHIP OF BANKRUPTCY APPELLATE PANELS

The bankruptcy appellate panel shall consist of seven members serving seven-year terms (subject to reappointment to one additional three-year term). The judicial council shall periodically examine the caseload of the bankruptcy appellate panel service to assess whether the number of bankruptcy judges serving should change. Appointment of regular and pro tem bankruptcy judges to service on the bankruptcy appellate panel shall be governed by regulations promulgated by the Judicial Council.

(a) When a three-judge panel cannot be formed from the judges designated under subparagraph (a) to hear a case because judges have recused themselves, are disqualified from hearing the case because it arises from their district, or are otherwise unable to participate, the Chief Judge of the Ninth Circuit may designate one or more other bankruptcy judge(s) from the circuit to hear the case.

(b) In order to provide assistance with the caseload or calendar relief, or otherwise to assist the judges serving, or to afford other bankruptcy judges with the opportunity to serve on the bankruptcy appellate panels, the Chief Judge of the Ninth Circuit may designate from time to time one or more other bankruptcy judge(s) from the circuit to participate in one or more panel sittings.

7. CHIEF JUDGE

The members of the bankruptcy appellate panel service by majority vote shall select one of their number to serve as chief judge.

8. RULES OF PROCEDURE

(a) Practice before the bankruptcy appellate panels shall be governed by Part VIII of the Federal Rules of Bankruptcy Procedure, except as provided in this order or by rule of the bankruptcy appellate panel service adopted under subparagraph (b).

(b) The bankruptcy appellate panel service may establish rules governing practice and procedure before bankruptcy appellate panels not inconsistent with the Federal Rules of Bankruptcy Procedure. Such rules shall be submitted to, and approved by, the Judicial Council of the Ninth Circuit.

9. PLACES OF HOLDING COURT.

Bankruptcy appellate panels may conduct hearings at such times and places within the Ninth Circuit as it determines to be appropriate.

10. CLERK AND OTHER EMPLOYEES.

(a) **Clerk's Office.** The members of the bankruptcy appellate panel service shall select and hire the clerk of the bankruptcy appellate panel. The clerk of the bankruptcy appellate panel may select and hire staff attorneys and other necessary staff. The chief judge shall have appointment authority for the clerk, staff attorneys and other necessary staff. The members of the bankruptcy appellate panel shall determine the location of the principal office of the clerk.

(b) **Law Clerks.** Each judge on the bankruptcy appellate panel service shall have appointment authority to hire an additional law clerk.

11. EFFECTIVE DATE

This Order shall be effective as to all appeals originating in those bankruptcy cases that are filed after the effective date of this Order. For all appeals originating in those bankruptcy cases that were filed before October 22, 1994, the Judicial Council's prior Amended Order, as revised October 15, 1992, shall apply. This Order, insofar as just and practicable, shall apply to all appeals originating in those bankruptcy cases that were filed after the effective date of the Bankruptcy Reform Act of 1994, October 22, 1994, but before the date of this Order.

IT IS SO ORDERED.

DATE: April 28, 1995; amended May 9, 2002.

**United States Bankruptcy Court
District of Arizona**

APPEALS

ORDERING AN OFFICIAL TRANSCRIPT

An official transcript is a transcript that has been prepared by a designee of the Bankruptcy Court. (For appeal purposes, a tape cassette is not acceptable as a part of the Designation of Record.)

If you have designated a transcript of a Court proceeding in your Appeal documents, **it is your responsibility to order it** from the Bankruptcy Court ECR Operator (see list below). The order should be placed at the time you file your Statement of Issues and Designation of Record.

If you have filed an appeal and need a transcript of a hearing, please follow the steps below to obtain an "OFFICIAL" transcript:

1. Determine the date of the hearing.
2. Determine what portion of the hearing is needed. Do you need the entire hearing or only a specific portion of the hearing, (i.e., the judge's ruling).
3. Determine if the transcript is already on file with the Court. Any ECR Operator can advise you of this. If the transcript is already on file, the Court will determine if your check should be made payable to the Bankruptcy Court. If it is not on file, the ECR Operator can tell you who to contact to obtain one.
4. Each transcript ordered requires a deposit. This deposit varies and is dependent upon the estimated length of the transcript. If the transcript needs to be ordered, the ECR Operator will advise you of the correct way to issue your check and where to make payment.
5. Place your request for the transcript. File a "Notice of Request for Transcript" with the Bankruptcy Court. Be sure to indicate if the transcript was requested from the Court or the Court Reporting Agency.
6. When you receive the transcript, retain it to be included as part of your Designation of Record. Follow the procedures listed in the "Notice To Parties to Appeal" included in this packet. Because a courtesy copy of every transcript ordered is sent to the Court, it is not necessary for you to file the transcript with the Court.

Ordering Transcripts

PHOENIX OFFICE CASES

Judge Baum (RTB)	Juanita Pierson-Williams	(602) 682-4200
Judge Case (CGC)	Melanie Riskus	(602) 682-4200
Judge Curley (SSC)	Andamo Purvis	(602) 682-4200
Judge Haines (RJH)	Sheri Fletcher	(602) 682-4200
Judge Hollowell (EWH)	Transcript Request Line	(602) 682-4200
Judge Marlar (JMM)	Transcript Request Line	(602) 682-4200
Judge Nielsen (GBN)	Jo-Ann Stawarski	(602) 682-4200

TUCSON OFFICE CASES

Judge Marlar (JMM)	Bev Granillo	(520) 202-7990
Judge Hollowell (EWH)	Eunice Stroud	(520) 202-7568

YUMA OFFICE CASES

Judge Hollowell (EWH)	Pat Hall	(928) 783-2288
Judge Marlar (JMM)	Pat Hall	(928) 783-2288
Judge Haines (RJH)	Sheri Fletcher	(602) 682-4200

**IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.**

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: October 28, 2009



Randolph J. Haines

**RANDOLPH J. HAINES
U.S. Bankruptcy Judge**

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

In re:

MORTGAGES LTD.,

Debtor.

In Proceedings Under Chapter 11

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

**ORDER REGARDING MOTION TO
CLARIFY**

Date of Hearing: 10/08/09

Time of Hearing: 11:00 a.m.

This matter came before the Court pursuant to that certain motion for clarification filed by the Rev Op Group dated September 14, 2009. On October 21, 2009, the court issued its Memorandum Decision ("Memorandum Decision"). Based on the foregoing, the Court hereby orders as follows:

1. The motion for clarification and joinders of Mr. Sternberg and Mr. Furst are granted in part and denied in part, all as set forth in the Memorandum Decision as amended on October 27, 2009 (dkt # 2338).

2. So ordered.

SIGNED, DATED, AND ORDERED AS SET FORTH ABOVE.

1 Robert J. Miller, Esq. (#013334)
2 Bryce A. Suzuki, Esq. (#022721)
3 **BRYAN CAVE LLP**
4 Two North Central Avenue, Suite 2200
5 Phoenix, Arizona 85004-4406
6 Telephone: (602) 364-7000
7 Facsimile: (602) 364-7070
8 Internet: rjmiller@bryancave.com
9 bryce.suzuki@bryancave.com

7 Counsel for the Rev Op Group and
8 Sternberg Enterprises Profit Sharing Plan

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

11 In re:
12 MORTGAGES LTD.,
13
14 Debtor.

In Proceedings Under Chapter 11
Case No. 2:08-bk-07465-RJH
NOTICE OF APPEAL

15
16 AJ Chandler 25 Acres, L.L.C., Bear Tooth Mountain Holdings, L.L.P., Brett M.
17 McFadden, Cornerstone Realty and Development, Inc., Cornerstone Realty and
18 Development, Inc. Defined Benefit Plan and Trust, Evertson Oil Company, Inc., James C.
19 Schneck Rev. Trust, Louis B. Murphey, Michael Johnson Investments II, L.L.C., Morley
20 Rosenfield, M.D. P.C. Restated Profit Sharing Plan, Pueblo Sereno Mobile Home Park,
21 L.L.C., Queen Creek XVIII, L.L.C., Revocable Living Trust of Melvin L. Dunsworth, Jr.,
22 Ronald Kohner, The Lonnie Joel Krueger Family Trust, Trine Holdings, L.L.C., Weksler-
23 Casselman Investments, William L. Hawkins Family L.L.P., and Yuval Caine and Mirit
24 Caine (collectively, the “Rev Op Group”) and Sternberg Enterprises Profit Sharing Plan
25 hereby appeal, pursuant to 28 U.S.C. § 158(a) and (b), to the Bankruptcy Appellate Panel
26 for the Ninth Circuit from the Bankruptcy Court’s Order Regarding Motion to Clarify
27 [Docket #2345] (the “Order”), which incorporated the Bankruptcy Court’s Memorandum
28 Decision [Docket #2323] as amended by the Bankruptcy Court’s Order Granting ML
Manager LLC’s Emergency Motion and Amending the Court’s October 21, 2009

1 Memorandum Decision [Docket #2338].¹ True and accurate copies of the Order and the
2 Memorandum Decision, as amended, are attached hereto as Exhibit “A” and incorporated
3 by reference herein.

4 The parties to the Order appealed from and the names, addresses and telephone
5 numbers of their respective attorneys are as follows:

6 **ML Manager, LLC**

7 Cathy Reece, Esq.
8 Keith Hendricks, Esq.
9 Fennemore Craig, P.C.
10 3003 North Central Avenue, Suite 2600
11 Phoenix, Arizona 85012-2913
12 Telephone: (602) 916-5000
13 creece@fclaw.com
14 khendric@fclaw.com

12 **ML Liquidating Trust**

13 William S. Jenkins, Esq.
14 Myers & Jenkins, Esq.
15 One East Camelback Road, Suite 500
16 Phoenix, Arizona 85012
17 Telephone: (602) 200-7190
18 wsj@mjlegal.com

17 **Official Committee of Unsecured Creditors**

18 Richard Lorenzen, Esq.
19 PERKINS COIE BROWN & BAIN P.A.
20 2901 North Central Avenue, Suite 2000
21 Phoenix, Arizona 85012-2788
22 Telephone: (602) 351-8405
23 rlorenzen@perkinscoie.com

The Rev Op Group

**and Sternberg Enterprises Profit
Sharing Plan**
Robert J. Miller, Esq.
Bryce A. Suzuki, Esq.
BRYAN CAVE LLP
Two North Central Avenue, Suite 2200
Phoenix, Arizona 85004-4406
Telephone: (602) 364-7000
rjmiller@bryancave.com
bryce.suzuki@bryancave.com

The Lewis and Underwood Trusts

S. Cary Forrester, Esq.
FORRESTER & WORTH, PLLC
3636 North Central Avenue, Suite 700
Phoenix, Arizona 85012
Telephone: (602) 258-2728
scf@fwlawaz.com

Robert G. Furst

Pro Per
4201 North 57th Way
Phoenix, Arizona 85018
Telephone: (602) 377-3702
RGFURST@aol.com

24 _____
25 ¹ Subsequent to entry of the Order, the Rev Op Group and Sternberg Enterprises
26 Profit Sharing Plan filed motions to reconsider, pursuant to Federal Rules of Bankruptcy
27 Procedure 9023 and 9024. The Bankruptcy Court denied the motions to reconsider in
28 their entirety. [Docket #2369] This appeal of the Order is timely pursuant to Federal
Rule of Bankruptcy Procedure 8002(b), as it is made within ten days of the entry of the
order disposing of the motions to reconsider.

1 If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each
2 party has a right to have the appeal heard by the district court. The appellant may
3 exercise this right only by filing a separate statement of election at the time of the filing
4 of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C.
5 § 158(c), to have the appeal heard by the district court.

6 RESPECTFULLY SUBMITTED this 13th day of November, 2009.

7 BRYAN CAVE LLP

8
9 By /s/ RJM, #013334

10 Robert J. Miller

11 Bryce A. Suzuki

12 Two North Central Avenue, Suite 2200

13 Phoenix, AZ 85004-4406

14 Counsel for the Rev Op Group and
15 Sternberg Profit Sharing Plan
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1 COPY of the foregoing served via email
2 this 13th day of November, 2009, upon:

3 Cathy Reece, Esq.
4 Keith Hendricks, Esq.
5 Fennemore Craig, P.C.
6 3003 North Central Avenue, Suite 2600
7 Phoenix, Arizona 85012-2913
8 Counsel for the ML Manager, LLC
9 creece@fclaw.com
10 khendric@fclaw.com

11 Larry Watson
12 Office of the United States Trustee
13 230 N. First Avenue, Suite 204
14 Phoenix, Arizona 85003
15 larry.watson@usdoj.gov

16 William S. Jenkins
17 Myers & Jenkins
18 One East Camelback Road, Suite 500
19 Phoenix, Arizona 85012
20 Counsel For ML Liquidating Trust
21 wsj@mjlegal.com

22 _____
23 /s/ Sally Erwin
24
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S. Cary Forrester
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Robert G. Furst
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Phoenix, Arizona 85018
RGFURST@aol.com

EXHIBIT “A”

IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: October 28, 2009



Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

MORTGAGES LTD.,

Debtor.

In Proceedings Under Chapter 11

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

**ORDER REGARDING MOTION TO
CLARIFY**

Date of Hearing: 10/08/09

Time of Hearing: 11:00 a.m.

This matter came before the Court pursuant to that certain motion for clarification filed by the Rev Op Group dated September 14, 2009. On October 21, 2009, the court issued its Memorandum Decision ("Memorandum Decision"). Based on the foregoing, the Court hereby orders as follows:

1. The motion for clarification and joinders of Mr. Sternberg and Mr. Furst are granted in part and denied in part, all as set forth in the Memorandum Decision as amended on October 27, 2009 (dkt # 2338).

2. So ordered.

SIGNED, DATED, AND ORDERED AS SET FORTH ABOVE.

SIGNED.



Dated: October 21, 2009

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.,)	
)	MEMORANDUM DECISION
Debtor.)	

The Rev Op Group's motion for clarification, and the joinders of Mr. Sternberg and Mr. Furst, are granted in part and denied in part, as follows.

The Court will address the issues according to the numbers identified in the Reply filed by the Rev Op Group on October 8. According to the Reply, issues 1, 2, 7, 9 and 10 have been resolved. As to those issues, therefore, the motion for clarification is denied.

Issue number 3 is the Rev Op Group's argument that it has a right to set off claims the Pass Through Investors may have against the Debtor against any of the liquidating fund's expenses. The right of such set off is governed by Bankruptcy Code § 553 and the Ninth Circuit case of *DeLaurentiis*. This therefore does not require any clarification of what the Plan provides, and therefore this motion for clarification is denied.

Issues 4 and 5 concern the right to charge a proportionate share of the exit financing and other liquidating fund expenses back against the Pass Through Investors who not opt in. The motion for clarification is granted, to the extent any clarification is needed. Paragraph U of the confirmation order permits the ML Manager to charge back to the non-opt-in participating investors their proportionate share of all of its expenses, including but not limited to the exit financing. This Plan does impose a limitation that such charge back be fair, equitable and proportional, but within those limitations the ML Manager can exercise his

1 business judgment whether to obtain financing to cover exit costs and operational expenses,
2 and when to make the charge backs.

3 Issue 6, 7 and 8 relate to the ML Manager's authority to deal with the loans and
4 the fractional interests in the notes. The motion for clarification is granted to the following
5 extent. The ML Manager has no authority to sell or encumber the non-opt-in Pass Through
6 Investors' fractional interest in their notes. The ML Manager does have authority to deal with
7 the loans and the collateral securing the loans to the extent provided by the governing
8 documents including but not limited to the applicable subscription agreements and agency
9 agreements.

10 In all other respects, the motion for clarification is denied.

11 DATED AND SIGNED ABOVE

12 Copy of the foregoing e-mailed/mailed
13 this 21st day of October, 2009, to:

14 Robert J. Miller, Esq.
15 Bryan Cave LLP
rjmiller@bryancave.com
16 Attorneys for Rev Op Group

17 Cathy L. Reece, Esq.
18 Fennemore Craig, P.C.
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19 Attorneys for ML Manger LLC

20 Richard M. Lorenzen, Esq.
21 Perkins Coie Brown & Bain P.A.
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22 Attorneys for Official Unsecured Creditors Committee
23 of Radical Bunny, LLC

24 William Scott Jenkins, Esq.
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26 Attorneys for ML Liquidating Trust

27 S. Cary Forrester, Esq.
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Attorneys for Lewis & Underwood Trust

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Pro Se

1 Robert G. Furst
2 4201 North 57th Way
3 Phoenix, Az 85018
4 Pro Se

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 /s/ Pat Denk
Judicial Assistant

**IT IS HEREBY ADJUDGED
and DECREED this is SO
ORDERED.**

The party obtaining this order is responsible for
noticing it pursuant to Local Rule 9022-1.

Dated: October 27, 2009



1 FENNEMORE CRAIG, P.C.
2 Cathy L. Reece (005932)
3 Keith L. Hendricks (012750)
4 3003 North Central Avenue, Suite 2600
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8 Attorneys for ML Manager LLC

Randolph J. Haines

**RANDOLPH J. HAINES
U.S. Bankruptcy Judge**

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re
Mortgages Ltd.,
Debtor.

Chapter 11

Case No. 2-08-BK-07465-RJH

**ORDER GRANTING ML MANAGER
LLC'S EMERGENCY MOTION AND
AMENDING THE COURT'S
OCTOBER 21, 2009 MEMORANDUM
DECISION**

ML Manager LLC having filed an "Emergency Motion to Amend the Court's Memorandum Decision dated October 21, 2009" ("Emergency Motion") which the Court finds is well taken, and the Court having considered the Response filed by Robert Furst, and the Court noting that Mr. Furst has misunderstood or is mistaken in his interpretation of the Court's Memorandum Decision, and the Court having overruled Mr. Furst's Response, and for good cause shown,

IT IS HEREBY ORDERED that the Emergency Motion is granted and that the October 21, 2009 Memorandum Decision is hereby amended to delete the words "sell or" on page 2, line 5. The rest of the Memorandum Decision remains unchanged and is in full force and effect. This Order is without prejudice to appropriate contested matters or actions filed by the parties raising issues concerning the agency not previously decided by the Court.

DATED AND SIGNED AS ABOVE.

220553

1 FENNEMORE CRAIG, P.C.
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2 Keith L. Hendricks (012750)
Gerald L. Shelley (010453)
3 3003 N. Central Ave., Suite 2600
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6 Attorneys for ML Manager LLC
7

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

10 In re

11 MORTGAGES LTD.,

12 Debtor.

Chapter 11

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

**ELECTION TO HAVE APPEAL HEARD BY
DISTRICT COURT**

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15 ML Manager, LLC through counsel hereby elects pursuant to 28 U.S.C.
16 §158(c)(1)(B) to have the appeal, filed by the Rev Op Group as set forth in its Notice of
17 Appeal filed November 13, 2009 at Doc 2401, heard by the District Court.

18 Respectively submitted this 1st day of December, 2009.

19 FENNEMORE CRAIG, P.C.

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21
22 By /s/ Gerald L. Shelley
Cathy L. Reece
Keith L. Hendricks
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24 Attorneys for ML Manager LLC
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26

1 COPY of the foregoing sent via email
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8 Sternberg Enterprises Profit Sharing Plan

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

11 In re:
12 MORTGAGES LTD.,
13

14 Debtor.

In Proceedings Under Chapter 11
Case No. 2:08-bk-07465-RJH

**APPELLANTS' DESIGNATION
OF RECORD AND STATEMENT
OF ISSUES TO BE PRESENTED
ON APPEAL**

Date of Hearing: N/A
Time of Hearing: N/A

19 Appellants AJ Chandler 25 Acres, L.L.C., Bear Tooth Mountain Holdings, L.L.P.,
20 Brett M. McFadden, Cornerstone Realty and Development, Inc., Cornerstone Realty and
21 Development, Inc. Defined Benefit Plan and Trust, Evertson Oil Company, Inc., James
22 C. Schneck Rev. Trust, Louis B. Murphey, Michael Johnson Investments II, L.L.C.,
23 Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan, Pueblo Sereno Mobile Home
24 Park, L.L.C., Queen Creek XVIII, L.L.C., Revocable Living Trust of Melvin L.
25 Dunsworth, Jr., Ronald Kohner, The Lonnie Joel Krueger Family Trust, Trine Holdings,
26 L.L.C., Weksler-Casselmann Investments, William L. Hawkins Family L.L.P., Yuval
27 Caine and Mirit Caine, and David S. Elton and Siva G. Elton (collectively, the "Rev Op
28 Group") and Sternberg Enterprises Profit Sharing Plan (collectively with the Rev Op

1 Group, “Appellants”), pursuant to Federal Rule of Bankruptcy Procedure 8006, hereby
2 submit their designation of items to be included in the record on appeal and their
3 statement of the issues to be presented on appeal.

4 **I. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD.**

5 Appellants designate the items set forth in Exhibit A, attached hereto, for inclusion
6 in the record on appeal.

7 **II. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL.**

8 Appellants present the following issues on appeal:

9 1. Whether the Bankruptcy Court erred in denying in part the Rev Op Group’s
10 Emergency Motion for Entry of Order: (I) Clarifying Chapter 11 Plan, Confirmation
11 Order, and Other Matters Relevant to Transfer Decision of Pass-Through Investors; and
12 (II) Extending the Transfer Decision Deadline [Docket #2168], which was joined by
13 Sternberg Enterprises Profit Sharing Plan [Docket #2275].¹

14 2. Whether the Bankruptcy Court erred in ruling that non-opt-in investors
15 could be held responsible for any of the principal, interest, fees and any other charges
16 associated with the exit financing provided for under the confirmed plan.

17 3. Whether the Bankruptcy Court erred in finding that Paragraph U of the
18 Order Confirming Investors Committee’s First Amended Plan of Reorganization Dated
19 March 12, 2009 “permits the ML Manager to charge back to the non-opt-in participating
20 investors their proportionate share of all of its expenses, including but not limited to the
21 exit financing.”

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25 ¹ The Bankruptcy Court denied in part the above-referenced motion pursuant to the
26 Order Regarding Motion to Clarify [Docket #2345] (the “Order”), which incorporated the
27 Bankruptcy Court’s Memorandum Decision [Docket #2323] as amended by the
28 Bankruptcy Court’s Order Granting ML Manager LLC’s Emergency Motion and
Amending the Court’s October 21, 2009 Memorandum Decision [Docket #2338].

1 COPY of the foregoing served via email
2 this 23rd day of November, 2009, upon:

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Pro Per

EXHIBIT "A"

DESIGNATIONS OF RECORD ON APPEAL

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

DOCKET NO.	DATE ENTERED	DOCUMENT DESCRIPTION
--	--	Copy of Bankruptcy Court Docket
1297	01/21/2009	Chapter 11 Plan The Official Committee of Investors' Plan of Reorganization Dated January 21, 2009 filed by Official Committee of Investors
1298	01/21/2009	Disclosure Statement in Support of The Official Committee of Investors' Plan of Reorganization Dated January 21, 2009
1427	03/03/2009	Statement of Position Concerning the Status and Request for Short Continuance to Allow Radical Bunny's Trustee to Join as Plan Proponent in the Investors Committee's Disclosure Statement in Support of the Investors Committee's Plan of Reorganization Dated January 21, 2009
1439	03/06/2009	ORDER, Minute Entry signed on 3/6/2009 (re: Docket # 1298, Disclosure Statement)
1466	03/12/2009	Notice of Filing of New or Changed Exhibits to the Investors Committee's Amended Disclosure Statement
1467	03/13/2009	Notice of Filing Redline Version of Investors Committee's First Amended Plan of Reorganization
1468	03/13/2009	First Amended Chapter 11 Plan The Official Committee of Investors' First Amended Plan of Reorganization dated March 12, 2009
1469	03/13/2009	Notice of Filing Redline Version of Investors Committee's Amended Disclosure Statement
1471	03/13/2009	Amended Disclosure Statement in Support of the Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009 Without Exhibits
1474	03/13/2009	Notice of Filing Exhibit 1 to Investors Committee's First Amended Plan of Reorganization and Exhibit E to Investors Committee's Amended Disclosure Statement
1479	03/16/2009	Minutes of Hearing held on: 03/16/2009, Subject: HEARING ON DISCLOSURE STATEMENT FILED BY THE INVESTORS COMMITTEE

DOCKET NO.	DATE ENTERED	DOCUMENT DESCRIPTION
1484	03/18/2009	Notice of Lodging Proposed Order Notice of Lodging Forms of Ballots to Investors Committee's First Amended Plan of Reorganization and to Investors Committee's Amended Disclosure Statement
1489	03/24/2009	Notice of Lodging Redlined Versions of Investors Committee's First Amended Plan of Reorganization and Investors Committee's Amended Disclosure Statement and the Ballot for Classes 11A through 11G for General Unsecured Creditors
1493	03/24/2009	ORDER signed on 3/24/2009 (re: Docket # 1471, Amended Disclosure Statement)
1510	03/31/2009	Notice of Lodging Redlined Versions of Investors Committee's First Amended Plan of Reorganization and Investors Committee's Amended Disclosure Statement and Certain Ballots
1522	04/02/2009	Notice of Lodging Proposed Order Approving Investors Committee's Amended Disclosure Statement and Fixing Time for Returning Ballots for Acceptances or Rejections and Notice of Confirmation Hearing for Investors Committee's First Amended Plan of Reorganization Dated March 12, 2009
1523	04/03/2009	Motion to Set Hearing on Amended Disclosure Statement Filed By Investor's Committee and (2) Set Deadlines For Filing Objections Thereto
1527	04/03/2009	ORDER Approving Disclosure Statement and Setting Confirmation Hearing signed on 4/3/2009
1531	04/06/2009	Amended Disclosure Statement In Support of The Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009
1532	04/06/2009	The Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009
1601	04/27/2009	Certificate of Service filed by CATHY L. REECE of FENNEMORE CRAIG on behalf of Official Committee of Investors
1649	05/05/2009	Joint Objection to OIC Chapter 11 Plan of Liquidation filed by Rev Op Group and Lewis Trust
1662	05/05/2009	Objection to Confirmation filed by Sheldon Sternberg

DOCKET NO.	DATE ENTERED	DOCUMENT DESCRIPTION
1677	05/08/2009	Report of Ballots on Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009
1684	05/11/2009	Motion to Determine that the Ballots of MP Fund Investors in Class 8 and Class 11C Should Be Counted and Not the Ballots of the Debtor as Manager
1691	05/11/2009	Rev Op Group's Supplemental Plan Objection
1696	05/11/2009	Brief in Support of Official Committee of Investors' First Amended Plan of Reorganization and Reply to Objections
1713	05/12/2009	Debtor's Objection to Ballot Report of Voting on Official Committee of Investors' First Amended Plan of Reorganization Dated March 12, 2009
1719	05/12/2009	Minutes of Hearing held on 05/12/2009, Subject: PRETRIAL CONFERENCE ON CONFIRMATION OF INVESTORS COMMITTEE'S PLAN
1721	05/13/2009	Minutes of Hearing held on 05/13/2009, Subject: EVIDENTIARY HEARING ON CONFIRMATION OF INVESTORS COMMITTEE'S PLAN
1744	05/18/2009	Minutes of Hearing held on 05/18/2009, Subject: CONTINUED HEARING ON PLAN CONFIRMATION
1750	05/19/2009	Minutes of Hearing held on 05/19/2009, Subject: CONTINUED HEARING ON PLAN CONFIRMATION
1755	05/21/2009	Order Confirming Investors Committee's First Amended Plan of Reorganization Dated March 12, 2009
1807	06/16/2009	Notice of Filing Notice of Effective Date of Investors Committee's First Amended Plan of Reorganization Dated March 12, 2009 and Notice of Administrative Claims Bar Date
2050	08/06/2009	Emergency Motion to Extend Deadline for Pass-Through Investors to Transfer Their Fractional Interests in ML Notes and Deeds of Trust into Loan LLCs
2055	08/07/2009	Order Approving an Extension of the Deadline for Pass-Through Investors to Transfer Their Fractional Interests in Notes and Deeds of Trust Into the Loan LLCs
2136	08/27/2009	Transcript of Hearing or Trial on 5/18/2009
2158	09/08/2009	Transcript of Hearing or Trial on 5/19/2009

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DOCKET NO.	DATE ENTERED	DOCUMENT DESCRIPTION
2168	09/14/2009	Rev Op Group's Emergency Motion for Entry of Order: (I) Clarifying Chapter 11 Plan, Confirmation Order, and Other Matters Relevant to Transfer Decision of Pass-Through Investors; and (II) Extending the Transfer Decision Deadline
2197	09/21/09	Order Approving an Extension of the Deadline for Pass-Through Investors to Transfer Their Fractional Interests in Notes and Deeds of Trust Into the Loan LLCs and Setting Hearing
2219	09/25/2009	Notice of Filing Notice of Filing Rev Op Group's Appendix of Mortgages Ltd. Investment Documents
2229	09/28/2009	Transcript of Hearing or Trial on 5/13/2009
2260	10/02/2009	The Lewis and Underwood Trusts' Joinder in Emergency Motion for Entry of Order Clarifying Chapter 11 Plan, Confirmation Order, and Other Matters Relevant to Transfer Decision of Pass-Through Investors
2265	10/02/2009	Response and Objection to Rev-Op Group's Emergency Motion for Entry of Order: (I) Clarifying Chapter 11 Plan, Confirmation Order, and Other Matters Relevant to Transfer Decisions of Pass-Through Investors; and (II) Extending the Transfer Decision
2269	10/07/2009	Response to Motion/Application Filed by the Lewis Trust, Underwood Trust and Sternberg, and ML Manager's Supplement to the Response to the Objection to Rev Op Group's Emergency Motion
2275	10/09/2009	Sternberg Enterprises Profit Sharing Plan's Joinder in Rev Op Groups Emergency Motion for Order Clarifying Chapter 11 Plan
2277	10/09/2009	Robert Furst's Response to Rev-Op Group's Emergency Motion for Entry of Order: (I) Clarifying Chapter 11 Plan, Confirmation Order, and Other Matters Relevant to Transfer Decision of Pass-Through Investors; and (II) Extending the Transfer Decision
2279	10/08/2009	Minutes of Hearing held on 10/08/2009, Subject: HEARING ON THE REV OP GROUP'S MOTION FOR ENTRY OF ORDER CLARIFYING CHAPTER 11 PLAN, CONFIRMATION ORDER
2323	10/22/2009	Memorandum Decision

DOCKET NO.	DATE ENTERED	DOCUMENT DESCRIPTION
2327	10/22/2009	ML Manager LLC's Emergency Motion to Amend the Court's October 21, 2009 Memorandum Decision
2338	10/28/2009	Order Granting ML Manager LLC's Emergency Motion and Amending the Court's October 21, 2009 Memorandum Decision
2343	10/28/2009	Robert Furst's Response to ML Manager LLC's Emergency Motion to Amend the Court's October 21, 2009 Memorandum Decision
2345	10/29/2009	Order Regarding Motion to Clarify
2352	10/30/2009	The Rev Op Group's Motion to Reconsider Amended Memorandum Decision and Order
2353	10/30/2009	Notice of Filing Declaration of Louis B. Murphey in Support of Motion to Reconsider Amended Decision and Order
2356	11/02/2009	Sternberg Enterprises Profit Sharing Plan's Motion to Reconsider the Courts October 21, 2009 Memorandum Decision [sic] as Amended
2369	11/05/2009	Order Denying Sternberg and Rev Op Group's Motions to Reconsider memorandum Decisions and Orders of October 21 and October 27
--	--	Transcript of initial confirmation hearing held on 5/12/09
--	--	Transcripts of complete hearings to the extent necessary where only partial transcripts have been filed.

From Claims Register for Bankruptcy Case No. 2:08-bk-07465-RJH

CLAIM NO.	DATE ENTERED	DOCUMENT DESCRIPTION
570	10/30/2008	Ronald L. Kohner's Proof of Claim
688	11/10/2008	David S. Elton and Siva G. Elton's Proof of Claim
876	11/19/2008	AJ Chandler 25 Acres, LLC's Proof of Claim
878	11/19/2008	Bear Tooth Mountain Holdings, L.L.P.'s Proof of Claim
879	11/19/2008	Yuval Caine and Mirit Caine's Proof of Claim
880	11/19/2008	Weksler-Casselmann Investments' Proof of Claim

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CLAIM NO.	DATE ENTERED	DOCUMENT DESCRIPTION
882	11/19/2008	Cornerstone Realty & Development, Inc.'s Proof of Claim
883	11/19/2008	Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust's Proof of Claim
885	11/19/2008	Revocable Living Trust of Melvin L. Dunsworth, Jr., dated December 23, 2003's Proof of Claim
886	11/19/2008	Revocable Living Trust of Melvin L. Dunsworth, Jr., dated December 23, 2003's Proof of Claim
887	11/19/2008	Evertson Oil Company, Inc.'s Proof of Claim
891	11/19/2008	Louis B. Murphey's Proof of Claim
892	11/19/2008	William L. Hawkins Family L.L.P.'s Proof of Claim
893	11/19/2008	Pueblo Sereno Mobile Home Park, L.L.C.'s Proof of Claim
894	11/19/2008	Queen Creek XVIII, L.L.C.'s Proof of Claim
895	11/19/2008	Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan's Proof of Claim
896	11/19/2008	Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan's Proof of Claim
897	11/19/2008	James C. Schneck and Jason C. Schneck's Proof of Claim
898	11/19/2008	The James C. Schneck Revocable Trust's Proof of Claim
899	11/19/2008	The James C. Schneck Revocable Trust's Proof of Claim
902	11/19/2008	Trine Holdings, L.L.C.'s Proof of Claim
925	11/20/2008	The Lonnie Joel Krueger Family Trust's Proof of Claim
926	11/20/2008	Brett M. McFadden's Proof of Claim
927	11/20/2008	Michael Johnson Investments II, L.L.C.'s Proof of Claim
1091	11/20/2008	Sternberg Enterprises Profit Sharing Plan's Proof of Claim

Notice Recipients

District/Off: 0970-2
Case: 2:08-bk-07465-RJH

User: estrellam
Form ID: pdf008

Date Created: 12/3/2009
Total: 7

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