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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

**ML MANAGER'S RESPONSE TO THE
REV OP GROUP'S MOTION TO
COMPEL**

13 The Rev Op Group filed a motion to compel (the "Motion") seeking to compel ML
14 Manager to produce a privilege log eight days before ML Manager is required to produce
15 any documents under the rules of civil procedure. Although ML Manager was not
16 required to produce any documents until July 15, 2010, in an effort to be reasonable and
17 facilitate a resolution of this matter, ML Manager produced the relevant documents last
18 week. However, a day before the hearing when the parties were preparing for the hearing,
19 the Rev-Op Group then demanded the immediate production of a privilege log.
20 Furthermore, the Rev Op Group failed to reasonably consult with counsel for ML
21 Manager before filing the untimely Motion. For those reasons, ML Manager requests that
22 the Court deny the Motion and award ML Manager its expenses incurred in responding to
23 Motion.

24 **I. THE REV OP GROUP'S MOTION TO COMPEL IS UNTIMELY**

25 The Motion arises out of the Rev Op Group's allegations that ML Manager failed
26 to respond adequately to its First Requests for Production of Documents ("Requests").
27 Rule 7034, Federal Rules of Bankruptcy Procedure governs requests for production of
28 documents. Rule 7034 rule applies Rule 34, Federal Rules of Civil Procedure to contested

1 matters in the Bankruptcy Court. *See* Fed. R. Bankr. P. 7034, 9014. Rule 34(b)(2)(A)
2 states the response time for a request for production. Specifically this rule states: “*Time*
3 *to Respond*. The party to who the request is directed must respond in writing within 30
4 days after beings served. A shorter or longer time may be stipulated to under Rule 29 or
5 be ordered by the court.” Fed. R. Bankr. P. 7034(b)(2)(A). Here there was no stipulation
6 or court order shortening the response time for the Rev Op Group’s Requests.
7 Accordingly, ML Manager’s response is due thirty days after the Requests were served.
8 The Rev Op Group served the Requests on June 11, 2010 by email. Pursuant to Rule 34,
9 ML Manager’s response to the Requests is due on July 15, 2010. Thus, the Motion is
10 untimely as the time because ML Manager’s response has not yet run.

11 However, in the Requests the Rev Op Group sought to unilaterally impose a more
12 stringent deadline on ML Manager. Specifically, the Requests require that ML Manager
13 respond by June 25, 2010, fourteen days after service of the Requests. However, based on
14 the language of Rule 34, the Rev Op Group cannot unilaterally shorten the time for the
15 response to the Requests. If the Rev Op Group desired a response prior to July 15, 2010,
16 it could have issued the discovery request sooner, or petitioned this Court for such relief
17 demonstrating why it neglected to issue a timely discovery request. It did neither. Now,
18 the Rev Op Group is attempting to blame ML Manager for its error.

19 Despite the untimely nature of the requests, ML Manager attempted to work with
20 the Rev Op Group in responding to the Requests within the deadline unilaterally created
21 by the Rev Op Group. It produced about 6,700 pages of documents. Production of these
22 documents required ML Manager to quickly review thousands of pages of electronic
23 communications and other documents, many of which were subject to attorney-client or
24 other privileges. As such, it is simply incorrect to imply that ML Manager has not been
25 diligent in working with the Rev-Op Group.

26 **II. THE REV OP GROUP FAILED TO REASONABLY CONSULT WITH ML**
27 **MANAGER**

28 Additionally, the Motion is improper because it failed to reasonably consult with

1 counsel for ML Manager. Exhibit C to the Motion is the Rev Op Group's counsel's
2 certificate that he has made "sincere efforts" to consult with counsel for ML Manager to
3 resolve the discovery dispute. Presumably, counsel for the Rev Op Group is referring to
4 the one email he sent on July 5, 2010 (a federal holiday) to counsel for ML Manager. A
5 copy of Counsel's email is attached as Exhibit A. In that email, counsel imposed a
6 deadline of 10:00 a.m. the next day to resolve this dispute. No other action was taken to
7 consult with counsel for ML Manager regarding this dispute. These minimal efforts are
8 insufficient to demonstrate the good faith attempts that are required by Rule 7037, Federal
9 Rules of Bankruptcy Procedure.

10 **III. ML MANAGER IS ENTITLED TO ITS FEES IN RESPONDING TO THIS**
11 **MOTION**

12 As noted above, the Motion was unjustified as the time for response has not yet
13 passed. Fed. R. Bankr. P. 7034(b)(2)(A). Rule 7037(a)(5)(B), Federal Rules of
14 Bankruptcy Procedure, requires the Court to award reasonable expenses to the responding
15 party if the motion to compel is denied. Accordingly, ML Manager requests an award of
16 fees in responding to this untimely Motion.

17 **IV. CONCLUSION**

18 The Motion is premature and untimely and an unsubstantiated attempt to blame
19 ML Manager for the Rev Op Group's tactical errors. Accordingly, it must be denied.

20 DATED: July 6, 2010

FENNEMORE CRAIG, P.C.

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22
23 By /s/ Keith L. Hendricks
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25 COPY emailed
26 this 6th day of July, 2010, to:

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