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

9
10 In re MORTGAGES, LTD.,
11 Debtor.

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

Chapter 11

**EMERGENCY REQUEST FOR STAY AND
OBJECTION TO NOTICE OF NON-
COMPLIANCE AND LODGING A BENCH
WARRANT**

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18 Ron Barness, by and through his attorney undersigned, hereby requests that the Court not sign
19 the draft bench warrant lodged on July 25, 2011 by ML Manager (Docket No. 3275) and, in addition,
20 requests that the Court stay its order dated June 21, 2011 (the "Order") (Docket 3251) until such time
21 that the Court can hear further evidence and argument concerning this matter.

22 **A. Issuance of a Bench Warrant is Optional not Mandatory**

23 Pursuant to the Order prepared by ML Manager, if Ron Barness cannot return \$112,075.31 to
24 ML Manager on or before June 30, 2011, he would, at that point, then be found in contempt and a
25 civil arrest warrant "may" be issued by this Court. By the very terms of the Order upon which ML
26 moves, issuance of a civil arrest warrant lies within the discretion of this Court based upon whatever
27 factors the Court deems appropriate. Barness respectfully submits the civil arrest warrant should not
28 be issued and instead, the Court should stay the Order upon consideration of further evidence and
arguments including, but not limited to, those set forth in this Motion.

1 **B. Ron Barness was never served with the Order**

2 It is axiomatic that before somebody can be in contempt of a Court's order, it must be served.
3 In this case, the only Order which Mr. Barness could have arguably disobeyed is that of June 21,
4 2011. As it turns out, however, that Order was never served on Mr. Barness. The docket indicates
5 that the Order was signed on June 21st and entered on the docket on June 22nd, there is absolutely no
6 evidence, however, that Mr. Barness was ever served with a copy of the Order. The lack of such
7 evidence is because he, in fact, was not served with a signed Order. Mr. Barness had no knowledge
8 that the Court had signed an Order and that therefore the deadline for payment contained in the
9 Order was running against him. Mr. Barness should not be deprived of his liberty based on an Order
10 that was never served upon him.

11 **C. Subsequent Events Prove It is Impossible for Mr. Barness' to Comply with the**
12 **Order**

13 Mr. Barness requests that the Court stay enforcement of the Order until such time it has
14 considered certain compelling new evidence. Mr. Barness can and will prove that, based upon
15 events subsequent to the June 15 hearing, he is unable to repay ML Manager. Specifically, there is a
16 fatal defect in ML Manager's case for contempt. At the hearing on June 15. ML Manager presented
17 evidence that Mr. Barness had available credit on multiple credit cards. Mr. Barness answered
18 truthfully that indeed to the best of his knowledge, he carried an available balance on those credit
19 cards in excess of \$112,000.

20 Critically, however, Mr. Barness was never asked if he could still obtain a cash advance
21 against those credit cards to pay a bill such as the one presented by ML Manager. While it is true
22 that Mr. Barness had the capability to obtain a cash advance in the form of a balance transfer check
23 in the past, that is no longer the case. When Mr. Barness went back to his bank, shortly after the
24 hearing on June 15, he discovered that his cash advance privileges had been cancelled without any
25 notice to him or request by him. Therefore, Mr. Barness learned after the June 15 hearing that he
26 cannot draw cash against his credit cards as ML Manager assumed. It is now impossible for him to
27 pay the \$112,075 owed to ML Manager.

28 Mr. Barness will, within the next couple of days file a motion more fully addressing these
 issues. In the present time, however, Mr. Barness ask that this Court at least stay entry of its Order
 until this evidence can be presented and the Court can consider this development. Mr. Barness

1 requests, therefore, that the Court not sign the bench warrant and instead stay this matter briefly until
2 it can consider this matter more completely.

3 DATED this 26th day of July, 2011.

4 AIKEN SCHENK HAWKINS & RICCIARDI P.C.

5
6 By 

7 Philip R. Rupperecht
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10 Attorneys for Ron Barness

11 COPY of the foregoing mailed and served
12 via electronic notification, this 26th day
13 of July, 2011, to:

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