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

9 In re

10 MORTGAGES LTD.,

11 Debtor.

Chapter 11

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

12 MATTHEW HARTLEY, Successor
Liquidating Trustee of the ML
Liquidating Trust,

13 Plaintiff,

14 v.

15 CRAIG A. FORTE and LAURI T.
FORTE, Trustees of the Forte
Family Revocable Living Trust
Dated May 30, 2001,

16 Defendants.

No. 2:10-ap-1095-RJH

**MOTION TO QUASH SUBPOENA DUCES
TECUM OF HENRY & HORNE LLP
CONCERNING PRODUCTION OF ML
MANAGER'S TAX VALUATIONS AND
RELATED INFORMATION**

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19 ML Manager LLC ("ML Manager"), a non-party to this adversary proceeding,
20 hereby files this Motion to Quash ("Motion") the Subpoena Duces Tecum ("Subpoena")
21 of Henry and Horne LLP ("H&H") issued by the Defendants Craig and Lauri Forte,
22 Trustees of the Forte Revocable Living Trust ("Defendants") in this adversary proceeding.
23 The tax valuations and related information subpoenaed from H&H belong to ML
24 Manager, is subject to the accountant-client privilege that exists between H&H and ML
25 Manager and is confidential, proprietary, private and sensitive. Counsel for ML Manager
26 has talked with Defendants' counsel about the Subpoena prior to filing this Motion to try

1 and resolve the concerns raised in this Motion but has not been able to resolve it.

2 Rule 45(c)(3)(A)(iii) of the Federal Rules of Civil Procedure made applicable by
3 Bankruptcy Rule 9016 allows for a motion to quash a subpoena that “(iii) requires
4 disclosure of privileged or other protected material” and under Rule 45(c)(3)(B)(i) that
5 requires disclosing confidential or commercial information. In addition A.R.S. §32-749
6 provides for an accountant-client privilege and provides that the confidential information
7 shall not be divulged and shall be protected. ML Manager asserts that the requested
8 information falls within both protections.

9 First, the tax valuations prepared for ML Manager are subject to the accountant-
10 client privilege under A.R.S. §32-749 and are confidential and privileged. H&H as the
11 accountant subject to this statutory privilege can not be forced to produce the privileged
12 information and ML Manager is not willing to waive the privilege. Second, the
13 information concerning the tax valuation of the loans and the information used for the tax
14 valuations is private, sensitive, proprietary and confidential. The tax valuations were
15 created for ML Manager as the client and are not available to the public. Third, the
16 information is also sensitive and disclosure could be prejudicial to the investors and ML
17 Manager. There is a significant danger that the tax valuations, if used in isolation from the
18 entire report, could create a false and misleading portrait of the values and could disclose
19 information that is private and sensitive with respect to the tax information or interest held
20 by investors.

21 Defendants have subpoenaed the tax valuations and related information prepared
22 by H&H for ML Manager on four loans. In mid-2010 ML Manager employed H&H to
23 conduct and prepare the tax valuations of various investments in its role as manager and
24 agent for the investors who needed this information for tax purposes or for transferring
25 their interests from their IRA into a Roth IRA. The tax valuations belong to ML Manager
26 and the information used to prepare them also belong to ML Manager. The tax valuations

1 were for the limited purpose of valuing a 1% interest in the MP Funds, the Loan LLCs and
2 the non-transferring pass-through interests at a certain point in time. The tax valuations
3 prepared for ML Manager are not available to the public or to non-investors such as the
4 Defendants. The tax valuations and the related information are confidential, proprietary
5 and privileged. As a result the tax valuations and related information cannot be produced
6 by H&H to the Defendants in the adversary proceeding.

7 Further, upon information and belief, the tax valuations are not relevant or will not
8 lead to the discovery of admissible evidence and do not address the issues in the adversary
9 proceeding. Defendants cannot show a substantial need for the tax valuations or related
10 information. H&H cannot be forced to produce this confidential and privileged
11 information.

12 WHEREFORE, ML Manager requests that the Court enter an order quashing the
13 subpoena of H&H issued by the Defendants and grant such other and further relief as is
14 just and proper under the circumstances.

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16 DATED: October 5, 2012

17 FENNEMORE CRAIG, P.C.

18 By /s/ Cathy L. Reece
19 Cathy L. Reece
20 Attorneys for ML Manager LLC

21 COPY to the foregoing this
22 5th day of October, 2012 via email.

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