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COUNTY OF THE PROPERTY OF THE

Dated: July 27, 2010

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.,))
Debtor.)))
ML MANAGER LLC, an Arizona limited liability company, Plaintiff,	ADVERSARY NO. 2:10-ap-00430-RJH (Consolidated with ADVERSARY 2:10-ap-00717)
v.	
WILLIAM L. HAWKINS as Trustee of the CORNERSTONE REALTY AND DEVELOPMENT, INC. DEFINED BENEFIT PLAN AND TRUST, et al.,))) MEMORANDUM DECISION ON APPLICATION) OF TWOMBLY AND IQBAL STANDARDS))
Defendants.	
And Related Counterclaims))
)

The Court has reviewed the Court's opinions and the parties' supplemental memoranda as to whether the $Twombly^1$ and $Iqbal^2$ standards apply to an F.R.Civ.P. Rule 12(c) Motion for Judgment on the Pleadings.

Both *Twombly* and *Iqbal* relied primarily on the Court's determination of what the Rules require to state a claim for relief. That standard is primarily provided by F.R.Civ.P.

¹Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).

²Ashcroft v. Iqbal, 129 Sup.Ct. 1937 (2009).

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Rule 8(a)(2): "A short and plain statement of the claim showing that the pleader is entitled to relief." Here, the Motion for Judgment on the Pleadings primarily tests the sufficiency of the defenses, which are generally governed by the standard of F.R.Civ.P. Rule 8(b)(1)(A): "State in short and plain terms its defenses to each claim asserted against it."

The Court cannot find any material distinction between the requirement that a plaintiff must provide "a short and plain statement of the claim," and the requirement for a defendant to "state in short and plain terms its defenses to each claim asserted against it." Consequently if conclusory allegations that fail to contain "enough facts to state a claim to relief that is plausible on its face" fail to satisfy the former standard, then conclusory denials that fail to contain "enough facts to state a [defense] that is plausible on its face" must fail to satisfy the latter standard.

It is also true, as the Supreme Court and the Seventh Circuit have said, that these determinations must be "context-specific," must be "relative to the circumstances," and require "the reviewing court to draw on its judicial experience and common sense." Here, all of those additional factors weigh in favor of granting judgment on the pleadings. Given the sophistication of the parties and their counsel and the substantial length of time this dispute has been brewing and extensively analyzed, that context, circumstances, judicial experience and common sense all indicate that if there were any facts that could raise a triable issue of fact as to the nature of the agency to which the RevOp Investors agreed, they would have referenced them either in their answer or in response to the Motion for Judgment on the Pleadings. In this specific context, this failure to suggest any plausible factual dispute makes judgment on the pleadings appropriate. This also means there would be no reason to grant leave to amend because there is no curable defect of the pleadings, only a lack of facts to plead that would raise a triable issue of fact.

DATED AND SIGNED ABOVE

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1	Copy of the foregoing emailed this 27 th day of July, 2010, to:
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