

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

THE 1031 TAX GROUP, LLC, et al.,

Case No. 07-B-11448 (MG)

Debtors.

Jointly Administered

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GERARD A. McHALE, Jr., not
individually but solely in his capacity as
Chapter 11 trustee for THE 1031 TAX
GROUP, LLC, et al.,

Plaintiffs,

-v-

Adv. Pro. No. 08-01604 (MG)

WACHOVIA BANK, NATIONAL
ASSOCIATION, WACHOVIA EXCHANGE
SERVICES, INC., WACHOVIA CAPITAL
MARKETS, LLC, WACHOVIA FINANCIAL
SERVICES, INC., and WACHOVIA
MORTGAGE CORPORATION,

Defendants.

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SCHEDULING ORDER

WHEREAS, pursuant to Fed. R. Civ. P. 26(f), Gerard A. McHale, Jr. (the
“Trustee”), not individually but solely in his capacity as Chapter 11 trustee for the above-
captioned debtors (the “1301 Debtors”),¹ and the above captioned defendants,

¹ The Debtors (the “1031 Debtors”) are: The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; AEC Exchange Company, LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; and Shamrock Holdings Group, LLC.

(collectively “Wachovia”) held a conference on November 18, 2008 and December 10, 2008 to, among other things, develop a proposed discovery plan;

WHEREAS, the Trustee and Wachovia, in accordance with their conference, stipulated and agreed to this schedule;

NOW, THEN, IT IS HEREBY ORDERED:

1. Trustee and Defendants will serve initial disclosures pursuant to Fed. R. Civ. P. 26(a) by no later than December 19, 2008.

2. All fact discovery shall be completed no later than May 22, 2009.

3. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure (“Civil Rules”), Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and the Local Rules of the Bankruptcy Court for the Southern District of New York (“Local Bankruptcy Rules.”)

4. Expert discovery

a. All expert discovery shall be completed no later than August 7, 2009.

i. Trustee and Defendants will produce expert reports, if any, by June 19, 2009.

ii. Trustee and Defendants will produce rebuttal reports, if any, by July 17, 2009.

iii. Expert depositions will be completed by August 7, 2009.

5. Motions

a. All motions and applications shall be governed by the Civil Rules, Bankruptcy Rules and Local Bankruptcy Rules, including pre-motion conference requirements.

Pursuant to the authority provided by Fed. R. Civ. P. 16(b)(2), a motion for summary judgment will be deemed untimely unless a request for a pre-motion conference relating thereto (*see* Local Bankruptcy Rule 7056-1) is made in writing within fourteen (14) days after the close of expert discovery (*see* paragraph 4(a) hereof). If the Court grants permission to file summary judgment motions, it will set a briefing schedule at that time.

b. Motion papers shall be filed promptly after service. All motions, and courtesy copies of motions, shall include a table of contents listing all affidavits and exhibits. Affidavits and exhibits shall be clearly identified by tabs on both the original and courtesy copies. Exhibits shall be marked sequentially such that no exhibit number or letter repeats, regardless of the affidavit to which it is attached. Exhibits for plaintiffs should be marked by numbers; exhibits for defendants should be marked by letters.

c. Two courtesy copies of all motions papers shall be delivered to chambers as soon as practicable after filing.

d. Prior to filing a motion, counsel for the moving party and moving *pro se* parties shall contact my Courtroom Deputy, Deanna Tetzlaff, to obtain a hearing date for the motion.

6. All counsel and *pro se* parties must meet telephonically to discuss settlement or use of alternative dispute resolution (“ADR”) within fourteen (14) after the date of this Order and, again, within fourteen (14) after the close of fact discovery. Counsel and *pro se* parties shall advise the Court promptly if they agree to use ADR to try to resolve some or all of the claims in the case. The use of any ADR mechanism does not stay or modify any date in this Order unless the Court agrees on the application of any party.

7. Counsel and *pro se* parties shall submit a proposed Joint Pretrial Conference Order within thirty (30) days after the close of fact and expert discovery (whichever is later). The proposed Joint Pretrial Conference Order shall be prepared using the form of order that will be provided to counsel and *pro se* parties by my Courtroom Deputy or law clerks.

8. In the event of any discovery disputes, counsel and *pro se* parties shall first meet and confer in an effort to resolve the dispute. If counsel and *pro se* parties are unable to resolve the dispute, counsel for any party, or any *pro se* party, seeking assistance from the Court shall, before filing any discovery motion, arrange a conference call with the Court with all counsel and *pro se* parties involved in the dispute. The Court will endeavor to resolve the dispute without the filing of any discovery motions.

9. This ORDER may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend any deadline established by this Order shall be made in a written application no less than five (5) days prior to the expiration of the date sought to be extended.

/s/ Martin Glenn
Martin Glenn
United States Bankruptcy Judge

Dated: New York, New York
January 7, 2009