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11 Attorneys for Appellees-Debtors and Debtors-in-Possession

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14
15 In re:
16 USA COMMERCIAL MORTGAGE CO.; USA
17 CAPITAL REALTY ADVISORS, LLC; USA
18 CAPITAL DIVERSIFIED TRUST DEED FUND,
19 LLC; USA CAPITAL FIRST TRUST DEED
20 FUND, LLC, and USA SECURITIES, LLC,
21
22 Debtors.

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR
Chapter 11
Jointly Administered Under
Case No. BK-S-06-10725 LBR

21 USA INVESTMENT PARTNERS, LLC, JOSEPH
22 MILANOWSKI, AND THOMAS HANTGES,
23
24 Appellants,
25
26 v.
27 USA COMMERCIAL MORTGAGE CO., et al.,
28
29 Appellees.

Case No. 2:07-cv-00138
AMENDED
**ORDER GRANTING EMERGENCY
MOTION TO DISMISS APPEAL AND
DISMISSING APPEAL**

Hearing Date: February 9, 2007
Hearing Time: 10:00 a.m.

1 The matter before the Court is the Emergency Motion to Dismiss Appeal filed by the
 2 Appellee-Debtors, USA Commercial Mortgage Company (“USACM”), USA Capital First Trust
 3 Deed Fund, LLC, USA Capital Diversified Trust Deed Fund, LLC, USA Capital Realty Advisors,
 4 LLC and USA Securities, LLC (collectively, the “Appellee-Debtors”) (“Motion to Dismiss”),
 5 which was joined by the Official Unsecured Creditors’ Committee for USA Commercial
 6 Mortgage Company (“USACM Committee”), the Official Committee of Equity Security Holders
 7 of USA Capital First Trust Deed Fund, LLC (“FTDF Committee”), the Official Committee of
 8 Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (“DTDF
 9 Committee”), the Official Committee of Holders of Executory Contracts Rights through USA
 10 Commercial Mortgage Company (“Direct Lenders Committee”) (collectively, the “Appellee-
 11 Committees”).

12 The Motion to Dismiss seeks to dismiss the Appellants’ above-captioned appeal, before
 13 this Court pursuant to 28 U.S.C. § 158(a)-(c), from an “Order Confirming the ‘Debtors’ Third
 14 Amended Joint Chapter 11 Plan of Reorganization,’ as Modified Herein” (“Confirmation Order”)
 15 entered by the United States Bankruptcy Court for the District of Nevada. By entering the
 16 Confirmation Order, the Bankruptcy Court confirmed the “Debtors’ Third Amended Joint Chapter
 17 11 Plan of Reorganization” (the “Confirmed Plan”) proposed by the Appellee-Debtors in the
 18 chapter 11 cases filed April 13, 2007 (“Petition Date”), with the bankruptcy case numbers set forth
 19 in the caption above. The Appellants objected to the Motion to Dismiss.

20 A hearing on Motion to Dismiss was held by this Court on February 7, 2007. Annette W.
 21 Jarvis of Ray Quinney & Nebeker, P.C. and Jeanette E. McPherson of Schwartzer & McPherson
 22 Law Firm appeared on behalf of the Appellee-Debtors; Russell S. Walker of Woodbury & Kesler,
 23 P.C. appeared on behalf of the Appellants; Robert M. Charles of Lewis and Roca, LLP appeared
 24 on behalf of the USACM Committee; Frank A. Merola of Stutman, Treister & Glatt, P.C. and
 25 Candace C. Carlyon of Shea and Carlyon, Ltd. appeared on behalf of the FTDF Committee; Bob
 26 L. Olson of Beckley Singleton, Chtd. appeared on behalf of the DTDF Committee; and Gerald M.
 27 Gordon of Gordon and Silver, Ltd. appeared on behalf of the Direct Lenders Committee.

28 The Court has considered the Motion to Dismiss, the Memorandum of Law in support of

1 the Motion to Dismiss, the Summary of Appendix Contents and Statement of Record on Appeal
2 filed by the Appellee-Debtors in support of the Motion to Dismiss, including the Exhibits attached
3 thereto, the Joinders in the Motion to Dismiss filed by each of the Appellee-Committees,
4 Appellants' Memorandum in Opposition to the Motion to Dismiss, the Appellee-Debtors' Reply to
5 the Memorandum in Opposition to the Motion to Dismiss, the Appellants' Amended
6 Memorandum in Opposition to the Motion to Dismiss, the oral arguments of counsel made on the
7 record and the applicable law, and based thereon

8 IT IS HEREBY ORDERED as follows:

- 9 (1) The Motion to Dismiss is GRANTED.
10 (2) Grounds exist to consider the Motion to Dismiss on an emergency basis.
11 (3) The Appellants are not person aggrieved and, therefore, do not have standing to

12 appeal the Confirmation Order on each of the following three grounds:

13 (A) As holders of "Subordinated Claims" (as that term is defined in the Confirmed
14 Plan) against USACM and equity interests in the Appellee-Debtors, the Appellants are not
15 entitled to and will not receive any distribution under the Confirmed Plan because the
16 Appellee-Debtors are hopelessly insolvent.

17 (i) the only evidence in the record is that the Appellee-Debtors are
18 insolvent and were insolvent prior to the Petition Date;

19 (ii) neither the Appellants nor any other party in interest objected to the
20 admission of evidence or introduced any contradictory evidence in the Bankruptcy
21 Court regarding the Appellee-Debtors' insolvency; and

22 (iii) the Appellants did not object below to the subordination of any
23 claims that they may have against USACM or to the treatment of Subordinated
24 Claims in the Confirmed Plan.

25 (B) The Appellants did not establish that they have a sufficient interest in the
26 property to be treated under the Confirmed Plan that is the subject of their appeal. The
27 only interest that the Appellants have asserted in such property is that its treatment under
28 the Confirmed Plan may increase their potential alleged liability in answering causes of

1 action that may be brought against them. That the Confirmed Plan directs assets of
2 USACM's bankruptcy estate in ways other than in a direction that would reduce the
3 Appellants' potential alleged liability does not make the Appellants persons who are
4 directly and adversely affected pecuniarily by the Confirmation Order.

5 (C) The Appellants did not present any evidence in the Bankruptcy Court or
6 otherwise adequately preserve their objections below on any of the issues that they have
7 raised on appeal.

8 (4) The above-captioned appeal shall be DISMISSED forthwith.

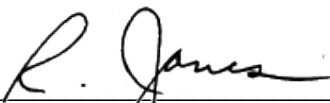
9 *Order prepared and submitted by:*

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28

IT IS SO ORDERED.


HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

DATED this 20th day of March, 2007

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