

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

Case No. 3:09-bk-07047-JAF

Debtor.

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.'S RESPONSE TO  
MOTION TO AMEND ORDER DENYING MOVANT'S MOTION FOR  
RELIEF FROM STAY

COMES NOW Taylor, Bean & Whitaker Mortgage Corp. ("TBW") and files this Response ("Response") to the Motion to Amend Order<sup>1</sup> Denying Movant's Motion for Relief from Stay [Doc. No. 951] (the "Motion") filed on January 26, 2010 by Movant Joe Johnson ("Movant"). This Court should deny the Motion because it is substantively inadequate, serves no useful or legitimate purpose, and is an abuse of Rule 59 of the Federal Rules of Civil Procedure (the "Federal Rules") and Rule 9023 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). In support of this Objection, TBW shows the court the following:

1. Movant asks this Court, out of an alleged "abundance of caution," to amend the Order to specify that "the Movant can proceed with the Litigation<sup>2</sup> against the Debtor and others in the Circuit Court for Prince George's County, Maryland" (the "Proposed Amendment"). *See* Motion ¶ 5 and attached order. Movant seems to argue that, absent the Proposed Amendment,

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<sup>1</sup> Order Denying Motion for Relief from Stay as Moot entered by this Court on January 12, 2010 [Doc. No. 871] (the "Order").

<sup>2</sup> There is no case between Movant and TBW pending in the Circuit Court for Prince George's County, Maryland (the "State Court"). The Litigation was pending in the State Court at the time of Movant's Motion for Relief from Stay [Doc. No. 760], but on December 30, 2009, TBW removed the Litigation to the United States Bankruptcy Court for the District of Maryland ("Maryland Bankruptcy Court"), thus terminating any further proceedings in the State Court and divesting the State Court's jurisdiction over the Litigation. *See* Fed. R. Bankr. P. 9027(c); *In re Si Yeon Park, Ltd.*, 198 B.R. 956 (Bankr. C.D. Cal. 1996). In this Objection, TBW's use of the term "Litigation" refers to Movant's case currently pending against TBW and other defendants in the Maryland Bankruptcy Court, Case No. 09-00867.

the Order is somehow ineffective for the purpose of allowing the Litigation to proceed, or that Movant may somehow still be subject to the automatic stay. But the Order is clear: the automatic stay does not apply to the Litigation. Thus, there is no room for doubt that the Litigation may proceed without violating the automatic stay, and the Order is more than enough to assuage any “caution” that Movant or any court might have. Amending the Order serves no useful purpose, and the Motion should be denied.

2. Instead of serving a legitimate purpose, the Motion is little more than a disingenuous request by Movant to serve the ulterior motive of bolstering his arguments for remand in the underlying Litigation. TBW removed the Litigation to the Maryland Bankruptcy Court on December 30, 2009 [Litigation Doc. No. 1]. Movant filed a Motion to Remand back to the State Court on January 4, 2010 [Litigation Doc. No. 3] (“Motion to Remand”). TBW filed its response on January 21, 2010 [Litigation Doc. No. 13], and Movant replied on January 22, 2010 [Litigation Doc. No. 16] (“Reply”). Movant later filed a Notice of Supplemental Filing of Transcript and in Support of Plaintiff’s Motion to Remand [Litigation Doc. No. 18] (the “Supplemental Filing”), attaching the transcript (the “Transcript”) of the hearing held in this Court on January 8, 2010 (the “Hearing”), regarding, *inter alia*, Movant’s Motion for Relief.<sup>3</sup> A true and correct copy of relevant excerpts of the Reply and Supplemental Filing, including the attached Transcript, are attached hereto at Exhibit A. The Motion to Remand, along with other pending motions, is currently set for a hearing in the Maryland Bankruptcy Court on March 1, 2010.

3. In both the Reply and the Supplemental Filing, Movant seizes on this Court’s statement made during the Hearing that the Court would enter an order “so [Movant will] have

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<sup>3</sup> Motion for Relief from Automatic Stay filed by Movant in this Court on December 10, 2010 [Doc. No. 760] (the “Motion for Relief”).

an order to show the judge in the state court,” and argues to the Maryland Bankruptcy Court that this statement makes it “abundantly clear” that this Court “intended” the Litigation to proceed in the State Court as opposed to Bankruptcy Court, and that his Motion to Remand should therefore be granted. *See* Reply pp. 13-15; Supplemental Filing pp. 1-2. In other words, the Motion is simply Movant’s attempt to bolster his argument that this Court has somehow blessed his Motion to Remand.

4. TBW respectfully submits that this Court’s statement at the Hearing was not meant to pass judgment or send any signal that the Litigation should be remanded to the State Court, and the Court should not countenance Movant’s request to amend the Order so that Movant can twist the Court’s statements to Movant’s self-serving ends in a matter pending in another court.

5. Movant’s attempts to do so constitute an abuse of Federal Rule 59 and Bankruptcy Rule 9023. *Cf.*, *In re Homestead Partners*, 201 B.R. at 1017 (“Attempts to take a ‘second bite at the apple,’ to introduce new legal theories, or to pad the record for an appeal, constitute an abuse of the Rule 59(e) motion which the Court normally will not condone.”).

6. The only grounds for granting a motion to alter or amend a judgment under Federal Rule 59(e), made applicable to this proceeding by Bankruptcy Rule 9023, are newly-discovered evidence or manifest errors of law or fact. *See Kellogg v. Schreiber (In re Kellogg)*, 197 F.3d 1116, 1119 (11th Cir. 1999); *Blue Dream Pools, Inc. v. Ross (In re Ross)*, 379 B.R. 207, 213 (Bankr. M.D. Fla. 2007); *see also In re CHC Indus.*, 381 B.R. 385, 389 (Bankr. M.D. Fla. 2007) (“a judgment may be altered or amended if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court entered judgment; or (3) the

need to correct a clear error of law or fact or to prevent manifest injustice”). “Motions for reconsideration should be granted sparingly due to the extraordinary nature of the remedy. . . . The criteria by which such motions are evaluated are strictly construed against the moving party.” *In re CHC Indus.*, 381 B.R. at 289 (citations omitted). Movant has not shown, nor does he even attempt to show, any of the grounds necessary to grant the Motion. There is no intervening change in the controlling law; there is no newly-discovered evidence; there is no indication that the Order contains any manifest error of fact or law; and there is no indication that amending the Order will prevent any manifest injustice.

7. Moreover, “a judgment will not be amended or altered if to do so would serve no useful purpose.” *McNair v. Campbell*, 315 F. Supp. 2d 1179, 1182 (M.D. Ala. 2004). “The Court’s decisions are ‘not intended as mere first drafts, subject to revision and reconsideration at a litigant’s pleasure.’” *Condor One v. Homestead Partners (In re Homestead Partners)*, 201 B.R. 1014, 1018 (Bankr. N.D. Ga. 1996) (citations omitted). Movant makes no showing that his proposed amendment would serve any useful purpose.

#### **Conclusion**

For the foregoing reasons the Court should deny the Motion and grant such further relief as the Court deems just and proper.

Respectfully submitted this 15th day of February, 2010.

*[signature on following page]*

/s/ Jeffrey W. Kelley

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **TAYLOR, BEAN & WHITAKER MORTGAGE CORP.'S RESPONSE TO MOTION TO AMEND ORDER DENYING MOVANT'S MOTION FOR RELIEF FROM STAY** has been provided by the Court's CM/ECF electronic mail system to those parties registered to receive electronic notice service, and via U.S. Mail on this 15<sup>th</sup> day of February 2010, to:

Joe Johnson  
2600 Brinkley Road PH 1005  
Fort Washington, MD 20744

/s/ Jeffrey W. Kelley  
Jeffrey W. Kelley (Ga Bar 412296)