

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER
MORTGAGE CORPORATION,

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

Debtor.

**DEBTOR'S RESPONSE AND OBJECTION TO
MOTION FOR RELIEF FROM AUTOMATIC STAY FILED BY
SCOTT ALLAN SCHLEDWITZ AND ROXANNE JOHNSON SCHLEDWITZ**

COMES NOW Taylor, Bean & Whitaker Mortgage Corporation (“**TBW**”), by and through its undersigned counsel, and files this objection to the Motion for Relief from Stay (Dkt. No. 965) (the “**Motion**”) filed by Scott Allan Schledwitz and Roxanne Johnson Schledwitz (the “**Movants**”), on the following grounds:

Introduction

The Movants request that this Court enter an order granting relief from the stay to allow the Movants to proceed with a Motion for Violation of Automatic Stay and Creditor Misconduct, pending in their chapter 13 case in the United States Bankruptcy Court for the District of South Carolina (the “**Action**”). The Movants seek damages arising from an alleged violation of the automatic stay for their out of pocket expenses, emotional distress damages, and punitive damages. Additionally, the Movants seek reformation of the Debtor’s prior lien interests on the Movants’ property. The Movants’ loan with the Debtor has been “service released” to Bayview Loan Servicing (“**Bayview**”) and therefore the Debtor has no further interest in the loan or in the property. The Action was filed on September 29, 2009, more than a month after the Debtor’s bankruptcy case was filed.

Argument

The Movants appear to seek relief from the automatic stay based on cause under Section 362(d)(1) of the Bankruptcy Code. Although the term “for cause” is not defined in the Bankruptcy Code, courts have adopted twelve factors to consider when deciding whether or not to lift the stay so that litigation may continue to completion in another tribunal. The factors that courts consider in this analysis are as follows:

(1) Whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor’s insurer has assumed full responsibility for the defense; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interest of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether the movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interest of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) the impact of the stay on the parties and the balance of harms. *See, e.g., In re Sonnox Industries*, 907 F. 2d 1280, 1285-86 (2d Cir. 1990); *In re Beane*, 404 B.R. 942 (M.D. Fla. 2008).

Not every one of these factors will be relevant in every case. *See, In re Bogdanovich*, 292 F. 3d 104, 110 (2d Cir. 2002). As discussed above, TBW no longer has an interest in the underlying loan and property. Accordingly, any action for reformation or other equitable relief would be directed at Bayview, the current servicer and therefore not technically stayed. However, any action against the Debtor for monetary relief is stayed. An analysis of the relevant factors below leads to the conclusion that the automatic stay should not be lifted to allow the Action to go forward

against the Debtor.

1. Lack of any connection with or interference with the bankruptcy case.

As this Court is aware, the Debtor is in the process of completing a global reconciliation with the Federal Deposit Insurance Corporation and other major creditors in this case. Allowing the Action to go forward will result in great interference with the Debtor's efforts to liquidate its assets and successfully complete the reconciliation. Accordingly, this factor militates against lifting the stay.

2. Whether the other proceeding involves the debtor as a fiduciary.

This factor does not appear to be applicable.

3. Whether a specialized tribunal with the necessary expertise has been established to hear the cause of action.

Both the South Carolina bankruptcy court and this Court are tribunals that specialize in issues involving the automatic stay. This Court is just as equipped as the South Carolina bankruptcy court to address the issues raised by the Movants in the claims objection process that will take place in this Court.

4. Whether the debtor's insurer has assumed full responsibility for defense.

If the automatic stay is lifted, the Debtor will be required to pay the costs of defense. Indeed, on information and belief, an insurer has not assumed full responsibility for the defense. The costs associated with defending the Action militate against lifting the automatic stay.

5. Whether the action primarily involves third parties.

The Debtor appears to be the only defendant in the Action. Again, this factor militates against lifting the automatic stay.

6. Whether litigation in another forum would prejudice the interest of other creditors.

As discussed above, the Debtor is in the process of liquidating its assets for the benefit of creditors and completing a global resolution of accounts located at Colonial Bank. Requiring the Debtor to litigate in another forum would greatly prejudice the interests of other creditors. Again, this factor militates against lifting the automatic stay.

7. Whether the judgment claim arising from the other action is subject to equitable subordination.

To the extent that the automatic stay is lifted and the Movants obtain a judgment for punitive damages, such a judgment would be subject to equitable subordination. This factor also supports keeping the automatic stay in place.

8. Whether the movant's success in the other proceeding would result in a judicial lien avoidable by the debtor.

This factor does not appear to be applicable.

9. The interest of judicial economy and the expeditious and economical resolution of litigation.

The Debtor submits that the interest of judicial economy would be best served by not lifting the automatic stay at this time. The Action is not ready for trial and discovery has not been completed. Indeed, the Action was filed more than a month after

the Debtor filed its bankruptcy petition.

10. Whether the parties are ready for trial in the other proceeding.

As discussed above, the parties are not ready for trial. This factor militates against lifting the stay.

11. The impact of the stay on the parties and the balance of harms.

The balance of the harms favors keeping the automatic stay in place. The Action is in its infancy. The Debtor is in the process of liquidating its assets and completing a global reconciliation of its accounts at Colonial Bank and elsewhere for the benefit of its creditors. Lifting the automatic stay would result in the outlay of great costs for the Debtor to defend the Action and will result in a distraction of the Debtor's CEO and financial advisors at this very important stage in this case. The Movants will be able to file a proof of claim in this case and litigate their claim in this bankruptcy case. Any judgment obtained by the Movants would be a prepetition unsecured claim in any event. Requiring the Movants to proceed through the claims objection process would not result in prejudice for the Movants. The balance of harms favors the Debtor and therefore the automatic stay should remain in place.

Accordingly, based on the factors discussed above, the automatic stay should remain in place.

WHEREFORE, premises considered, the Debtor respectfully requests the Court enter an order denying the Motion and granting such other and further relief as may be just and proper.

Dated this 18th day of February, 2010.

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