

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC, and
HOME AMERICA MORTGAGE, INC.

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF

Debtors.

Jointly Administered Under
Case No. 3:09-bk-07047-JAF

**DEBTOR'S RESPONSE AND OBJECTION TO MOTION FOR
RELIEF FROM AUTOMATIC STAY FILED BY MICHAEL D. WATTS**

TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION (“**TBW**” or the “**Debtor**”), by and through its undersigned counsel, files its response and objection to the Motion for Relief from Stay and Request for Waiver of Rule 4001(a)(3) (Dkt. No. 1245) (the “**Motion**”) filed by Michael D. Watts (the “**Movant**”), on the following grounds:

Introduction

The Movant requests that this Court enter an order granting relief from the stay to allow the Movant to proceed with a civil action (the “**Action**”) currently pending in the Superior Court of Jones County, Georgia (the “**Superior Court**”). On or about October 27, 2009, approximately two months after the Debtor filed for bankruptcy protection, the Movant filed a complaint (the “**Complaint**”) with the Superior Court requesting declaratory relief on a note and mortgage that have been service released to Ocwen Loan Servicing, LLC (“**Ocwen**”). The Debtor and Ocwen are named as defendants in the Action. A true and correct copy of the Complaint is attached hereto as **Exhibit A** and

incorporated herein by reference. Additionally, in the prayer for relief section of the Motion, the Movant seeks “a Temporary Injunction against Ocwen Loan Servicing and Ocwen Federal Bank in the state.” The servicing of the underlying note and mortgage has been released to Ocwen and therefore TBW has no further interest in either the underlying loan or the mortgage. In paragraph three of the Complaint, the Movant indicates that he has named TBW in the Complaint solely as a nominal party. It is unclear in the Motion whether the Movant wants to continue the Action against TBW. It appears that he has filed the Motion because he wants to continue the Action to obtain declaratory relief with respect to whether Ocwen Federal Bank or Ocwen Loan Servicing, LLC is the current owner of the note and mortgage. *See* p. 3 of the Motion. That issue presumably can be resolved through a phone call between the parties. Further, the automatic stay does not apply to a resolution of the rights between related Ocwen entities or to any causes of action against Ocwen. However, TBW objects to any lifting of the automatic stay to continue the Action against TBW.

Argument

The automatic stay should not be lifted

The burden is on the Movant to make an initial showing that “cause” exists to lift the automatic stay under Section 362(d)(1) of the Bankruptcy Code. *See, In re Bogdanovich*, 292 F. 3d 104, 110 (2d Cir. 2002). “Absent such showing, relief from the effect of a stay will be denied.” *Id.* 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 Sonmax 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 at 110. 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.

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 ("FDIC") 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.

As a specialized tribunal has not been established, this factor militates against lifting the stay.

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 is one of two defendants named in the Action. As discussed above, the underlying note and mortgage have been service released to Ocwen, the other defendant named in the Action, and therefore TBW has no further interest in the underlying note and mortgage. The automatic stay does not apply to actions against Ocwen. However, for the reasons further stated herein, the stay should not be lifted to allow the Movant to proceed against TBW.

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 reconciliation with the FDIC and other major creditors in this case. 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 Movant obtains a judgment for punitive damages, such a judgment would subject to equitable subordination.

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 Complaint was filed two months after the Debtor's bankruptcy filing and has been stayed as to TBW since then. Again, this factor militates against lifting the stay.

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

As discussed above, the parties are not ready for trial. On information and belief, the parties have not commenced discovery. Indeed, the Complaint was filed two months after the Debtor's bankruptcy filing and has been stayed as to TBW since then. 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 maintaining the automatic stay in place with respect to the Debtor. The Action is in its infancy. The Debtor is in the process of liquidating its assets and completing a global reconciliation with the FDIC and other major 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, general counsel, and financial advisors at this very important stage in this case. The Movant will be able to file a proof of claim in this case and litigate its claim in this bankruptcy case. Any judgment obtained by the Movant would be an unsecured claim in any event. Requiring the Movant to proceed through the claims objection process would not result in prejudice for the Movant. 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.

The Movant is not entitled to injunctive relief

Although styled as simply a motion to lift stay, in the prayer for relief, the Movant also asks that the Court issue a temporary injunction against Ocwen. Such a request is defective on three fronts: First, the Movant has not satisfied his burden of proof to show that a temporary injunction is appropriate. Second, there is no certificate of service attached to the Motion indicating that Ocwen has received any notice of this request for a temporary injunction. Ocwen is entitled to such notice prior to the issuance of a temporary injunction against it. *See* Fed. R. Civ. P. 65(a)(1) ("The court may issue a preliminary injunction only to notice to the adverse party"). Third, a request for

injunctive relief must be brought as an adversary proceeding. *See* Fed. R. Bankr. 7001

(7). Accordingly, the request for injunctive relief should be denied.

WHEREFORE, 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 15th day of April, 2010.

/s/ Edward J. Peterson, III

Russell M. Blain (FBN 236314)

rblain@srbp.com

Edward J. Peterson, III (FBN 014612)

epeterson@srbp.com

Stichter, Riedel, Blain & Prosser, P.A.

110 East Madison Street, Suite 200

Tampa, Florida 33602

Telephone: (813) 229-0144

Facsimile: (813) 229-1811

Attorneys for Debtors

IN THE SUPERIOR COURT OF JONES COUNTY
STATE OF GEORGIA

Michael D. Watts,)
667 Altman Road)
Gray, Georgia 31032)
808-426-4131)

Plaintiff,)

vs)

TAYLOR, BEAN & WHITAKER)
MORTGAGE CORP., and)
OCWEN LOAN SERVICING, LLC.,)

Defendants,)

vs)

CIVIL ACTION NO. 08-CV-23573,)
Being Collaterally Attacked)

C/A No. 09-CV-869

FILED IN OFFICE
JONES COUNTY
09 OCT 27 AM 11:19
CLERK
SUPERIOR COURT

**A BILL AT LAW COMPLAINT
FOR
DECLARATORY JUDGMENT
"Seeking Declaratory and Injunctive Relief"
Georgia Code O.C.G.A. § 9-4-1
With Jury Demand**

To validate the Original Contract
by: *Judicial Notice and all Oaths of Offices*

Introduction

1. NOW COMES THE Plaintiff to invoke provision under Georgia Law; Title 9 Civil Practice, Chapter 4 Declaratory Judgments, sighted at O.C.G.A. § 9-4-1 (2007) for the expressed purpose of invoking remedy

and to settle and afford relief from uncertainty and insecurity with respect to Plaintiff's rights, status, and other legal relations surrounding the contract between the parties; and the aforesaid chapter is to be liberally construed and administered as authorized.

Towit O.C.G.A. § 9-4-2 Declaratory judgments being authorized; with the following force and effect:

(a) In cases of actual controversy, the respective superior courts of this state shall have power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed; and the declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(b) In addition to the cases specified in subsection (a) of this Code section, the respective superior courts of this state shall have power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for the declaration, whether or not further relief is or could be prayed, in any civil case in which it appears to the court that the ends of justice require that the declaration should be made;

and the declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(c) Relief by declaratory judgment shall be available, notwithstanding the fact that the complaining party has any other adequate legal or equitable remedy or remedies.

2.

Jurisdiction of the Parties

NOW COMES Michael D. Watts, hereinafter, Plaintiff, appearing upon the record *sui juris*, (his right) to COMPLAIN of the Defendants; TAYLOR, BEAN & WHITAKER MORTGAGE CORP., & OCWEN LOAN SERVICING, LLC., who is a lenders and a sub-corporations of THE UNITED STATES, "INCORPORATED", a/k/a the U.S. INC.. And who have been doing so prior to the commencement of this action, wherein Defendant, TAYLOR, BEAN & WHITAKER MORTGAGE CORP., did conduct business with the Plaintiff within the corporate limits of the state of GEORGIA, whereby said Defendant, TAYLOR, BEAN & WHITAKER MORTGAGE CORP., issued and set up service for the loan to Plaintiff that was recorded in the official records of JONES COUNTY, that now requires proof of the Note to ensure it has been well

maintained as required by law, along with the enforceability is the material alteration does not exist.

3.

Defendant, TAYLOR, BEAN & WHITAKER MORTGAGE CORP., has file for Bankruptcy protection within the United States District Court, but not before assigning its loss of rights to Defendant, OCWEN LOAN SERVICING, LLC.. Whereby both Defendants, TAYLOR, BEAN & WHITAKER MORTGAGE CORP., and OCWEN LOAN SERVICING, LLC., did do business within the state which would give this jury (court) jurisdiction over the Defending parties and this Plaintiff. HOWEVER, due to the fact that TAYLOR, BEAN & WHITAKER MORTGAGE CORP., is under bankruptcy protection, [the Plaintiff are not seeking any direct claim against TAYLOR, BEAN & WHITAKER MORTGAGE CORP., but must name TAYLOR, BEAN & WHITAKER MORTGAGE CORP. to show the relations and reason how and why Defendant, OCWEN LOAN SERVICING, LLC. was brought into the affairs of the Plaintiff, to show personal jurisdiction is complete over OCWEN LOAN SERVICING, LLC., and the Plaintiff.]

4.

Subject Matter Jurisdiction

Towit, the aforesaid loan which was paid off in full, was duly issued holding the subject property **667 Altman Road,**

Gray, Georgia 31032, within JONES COUNTY, as collateral that is within JONES COUNTY, GEORGIA, and was duly recorded in the COUNTY official records department, whereby this (jury) court has jurisdiction of the subject matter. And under the Georgia Code O.C.G.A. § 9-4-1 through O.C.G.A. § 9-4-3 this court must compel the note before its table to do justice; seeking declaratory and injunctive relief at law.

5.

Reason for this Action

Due to the enumerable amount of foreclosures taking place in the financial market caused by greed, displaying the bad banking and lending practices exposed by the media and other publication; Banks buying up other banks, while on the other hand, many banks have filed bankruptcy, just like the Defendant, TAYLOR, BEAN & WHITAKER MORTGAGE CORP. [who is just named (only) herein to show who the key players among those who received bail-out from the Citizens of the United States. The Plaintiff realizes that many HANDS may have already handled his note.] And because of that reason Plaintiff demands to know with certainty the whereabouts and the current condition of his original note versus the executed state, and to have such findings of fact and

conclusions of law declared upon the record, as required under the Georgia Code.

6.

The Plaintiff determines to exercise this right to view and inspect the original note to see whether it has been deposited and monetized into a secret account not disclosed to Plaintiff which would at once be deemed material. Moreover, such a change in the operation and function of the instrument IS A Genuine issue of a material fact within itself, seeing this is the core of this matter before the court.

7.

Declaratory Relief Sought

Due to the many uncertainties surrounding the obligations and rights disclosed in the banking contracts, of which also are actions prohibited. However, there is nothing in the writing (note) between the parties which prohibits the Plaintiff from having the court declare Plaintiff's rights under the contract and the status of the contract in its current state and condition. This may be achieved upon the official record by the Holder bringing "in hand" the "original note", to have such declared without waiving any right of equity, consideration, or due

diligence, latches, to secure Plaintiff wealth as required by Almighty God.

Imminent Injury Sustained

8.

The Plaintiff is believed to be in harms-way of injury if he does not exercise this right under Georgia Law. For if Plaintiff's Note is sold and the purchaser claims an amount higher than what is rightfully due and owing, or if the purchaser or assignee alters the note further, this would reduce the value of equity in the instrument by undisclosed monetizing. This will at once effect the value and rights of Plaintiff to his ill and detriment.

9.

Moreover, due to TAYLOR, BEAN & WHITAKER MORTGAGE CORP., assigning to OCWEN LOAN SERVICING upon filing bankruptcy, certainly OCWEN LOAN SERVICING LLC., will attempt to set up an attempt to foreclose upon the Plaintiff without PRODUCING THE NOTE!

10.

Inasmuch as the fact that banks pass around notes; buying and selling them even at the point of closing their doors where anything could happen, even under the table, where

if it does go bad it may not hit the news until all credits/money are gone. This is why declaratory and injunctive relief must issue at law. Notwithstanding, the Plaintiff reserve all rights at all times, waiving none at any time, whether known or not even the liberties bestowed by Almighty God himself. Amen.

**For the First Cause of Action
(Non-Disclosure)**

11.

The Plaintiff incorporates paragraph 1 through 10 into this cause of action by reference herein, as if repeating them all over again verbatim, along with the Constitution of the United State of America, et seq., and all Oaths of Offices, even against non-disclosure of a material facts stamped right on the instrument causing declaratory relief to be sought.

12.

JUDICIAL NOTICE OF

THE JURY TRIAL DEMAND AT LAW

Based upon information and belief, Plaintiff have a right to a full jury trial to determine the issues of who the true holder of the note is as well as whether the original note remains enforceable or not at law,

by a jury seeing that the amount in controversy exceeds the constitutional limits.

13.

COLLATERAL ATTACK

The Plaintiff collaterally attacks the matter of the CIVIL ACTION NO. 08-CV-23573, which is still pending, whereby the court of Judge James L. Cline, Jr., dismissed CIVIL ACTION NO. 08-CV-23573 for no cause, and upon Plaintiff's reconsideration, Judge James L. Cline, Jr. recused himself from the matter for being partial and bias toward Plaintiff to further the fraud perpetrated by the banking and lending market.

14.

WHEREFORE, the Defendant, OCWEN LOAN SERVICING LLC., now claims to hold the power and authority, (note) to exercise any and all rights remaining under the instrument. HOWEVER, such must be proven upon the record, in plan-sight before the table of the court,

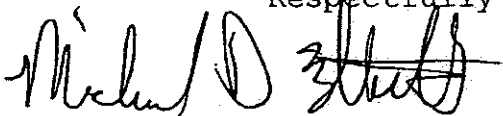
15.

Remedy Sought with Prayer

The Plaintiff pray that the Honorable Court orders Defendants to bring to the table, the original note to see who is proper before the court, and to have declared its finding of fact in favor of the Plaintiff grant such

declaration according to the law, and grant such relief which is just and proper unto the Plaintiff by this court, to ADJUDGE AND DECREE at law for this action brought in equity which is legal and compulsory in nature. Amen.

Respectfully submitted, **for I Am**

A handwritten signature in cursive script, appearing to read "Michael D. Watts", written over a horizontal line.

Michael D. Watts
667 Altman Road
Gray, Georgia 31032
808-426-4131

Certificate of Service:

I, Michael D. Watts do hereby declare by certification that I have caused to be served a true and correct copy of the Plaintiff's Summons, and Complaint upon the Defendant's registered agents by ordering the Sheriff of Fulton & Gwinnett County to complete such service of process as a rule and matter of law this 27 day of October, 2008 upon the following addresses below.

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,
c/o CT CORPORATION
1201 Peachtree Street NE
Atlanta, GA 30361
FULTON COUNTY

OCWEN LOAN SERVICING, LLC.
c/o CORPORATION SERVICE CO.
40 Technology PKWY South, #300
Norcross, GA 30092
GWINNETT COUNTY

Respectfully submitted, for I Am



Michael D. Watts
667 Altman Road
Gray, Georgia 31032
808-426-4131