

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

RE: DE 1283

Debtor

**BANK OF AMERICA'S MOTION TO JOIN MOTION OF
CREDITORS COMMITTEE FOR CLARIFICATION OF ORDER
AUTHORIZING RULE 2004 EXAMINATION OF FEDERAL
HOME LOAN MORTGAGE CORPORATION**

Bank of America, National Association, successor in interest by merger to LaSalle Bank, National Association and LaSalle Global Trust Services, in its capacity as Collateral Agent, Indenture Trustee, and Custodian ("Bank of America"), by and through its undersigned counsel, hereby files this motion to join in the motion of the Official Committee of Unsecured Creditors ("Committee") for clarification of the Court's ruling authorizing the Rule 2004 Examination of the Federal Home Loan Corporation (Docket # 1283, "Clarification Motion"). In support of this motion, Bank of America states as follows:

BACKGROUND

1. On June 30, 2008, Ocala Funding, LLC, ("Ocala"), a special-purpose commercial paper and financing conduit, agreed to purchase certain mortgage loans and related loan documents (collectively, "Ocala Loans") from the Debtor pursuant to a Second Amended and Restated Mortgage Loan Purchase and Servicing Agreement (the "MLPSA").

2. Ocala funded its purchase of the Ocala Loans under the MLPSA by issuing subordinated notes and commercial paper, for which Bank of America served as Indenture

Trustee, Collateral Agent, and Custodian. Among other things, on June 30, 2008, Ocala issued notes pursuant to a Second Base Indenture between Ocala, as issuer, and Bank of America, as Indenture Trustee (as amended and supplemented, the "Second Base Indenture").

3. On June 30, 2008, Ocala also entered into an Indenture Agreement and Restated Security Agreement with Bank of America whereby Ocala, to secure its obligations under the Second Base Indenture, pledged to Bank of America, as Collateral Agent, among other things: (a) the Ocala Loans; (b) the principal and interest paid under the Ocala Loans; (c) any proceeds from the sale of the Ocala Loans to investors; and (d) the servicing rights relating to the Ocala Loans.

4. As of the date hereof, the outstanding balance of commercial paper and subordinated notes issued by Ocala, and for which Bank of America serves as indenture trustee, is approximately \$1.75 billion. Because this \$1.75 billion outstanding balance gives rise to claims against the Debtor's estate, Bank of America has a pressing need to obtain information regarding, *inter alia*, the assets, liabilities and financial affairs of the Debtor and any right to recover assets that might exist in favor of the bankruptcy estate.

THE RULE 2004 EXAMINATION OF FREDDIE MAC

5. According to the Debtor, the Debtor and the Federal Home Loan Corporation ("Freddie Mac") have had an extensive business relationship dating back to about 2002. By August 2009, the Debtor was one of Freddie Mac's largest sellers, with annual sales to Freddie Mac of billions of dollars in mortgages in recent years. Freddie Mac purchased mortgages directly from the Debtor, as well as from Ocala. The Debtor reports that by August 2009 it was one of Freddie Mac's largest mortgage servicers, servicing over 295,000 mortgages for Freddie Mac.

6. As a result of extensive and prolonged business relationship with the Debtor, Freddie Mac possesses a substantial amount of documents and information that is directly relevant to the assets, liabilities and financial affairs of the Debtor.

7. On March 26, 2010, the Court entered an order (“Order”) authorizing the Debtor and certain joining parties, including Bank of America and the Committee, to conduct a Rule 2004 examination of Federal Home Loan Corporation (“Freddie Mac”) and to obtain documents from Freddie Mac in connection with the examination.

8. Under the procedure set forth in the Order, the Debtor is permitted to subpoena categories of documents from Freddie Mac, and Freddie Mac is permitted to assert objections to categories of documents requested in the subpoena. To the extent Freddie Mac does not object or to the extent an objection is overruled, Freddie Mac is required to produce the responsive documents to the Debtor. The Debtor is then required to share all such documents with the joining parties, unless Freddie Mac designates the documents as confidential and produces a corresponding log of all documents so designated. The Debtor is not permitted to share any documents designated as confidential with the joining parties unless the joining parties file a motion and obtain an order compelling production of the documents.

9. Freddie Mac has indicated that it will designate a substantial portion of the documents as confidential and thereby prevent the Debtor from sharing documents with the joining parties. Freddie Mac contends that the documents should be kept confidential so that information in the documents is not shared with Freddie Mac’s competitors.

THE COMMITTEE’S CLARIFICATION MOTION

10. The Committee filed the Clarification Motion seeking immediate access for the Committee’s counsel to all documents produced by Freddie Mac to the Debtor irrespective of

any confidentiality designation. As the Clarification Motion makes clear, Freddie Mac's concern about sharing information with competitors is not implicated if the documents are made available to counsel on an "attorney's eyes only" basis and with a customary confidentiality agreement in place. The Committee therefore seeks "an order authorizing and directing the production of or access to documents identified by Freddie Mac as confidential to the Committee subject to an Order from this Court restricting access to attorney's eyes only."

11. The rationale on which the Clarification Motion is based applies equally to Bank of America's efforts to obtain documents from Freddie Mac. Freddie Mac's concern about sharing information with competitors is not implicated if the documents are made available to Bank of America's counsel on an "attorney's eyes only" basis and with a confidentiality agreement in place. In addition, sharing documents with Bank of America's counsel at the same time they are shared with the Committee's counsel will cause no delay in the document production process. Bank of America therefore seeks to join in the relief sought by the Committee so that Bank of America's counsel also may have immediate access to all documents produced by Freddie Mac irrespective of any confidentiality designation.

12. The relief sought by Bank of America herein is especially important given the delay it is experiencing with respect to obtaining access to Freddie Mac's documents. More than a month has passed since the hearing on March 17, 2010 when the Court authorized the Rule 2004 examination of Freddie Mac. To date, Freddie Mac has not produced a single document.¹

13. When the production of documents does occur, it is expected that Freddie Mac will object to producing a substantial portion of the documents and will designate a substantial

¹ In light of Freddie Mac's failure to produce any documents and the Debtor's apparent inaction in pursuing document production or witness examinations, Bank of America is filing concurrently herewith its own independent motion for a Rule 2004 examination of Freddie Mac.

portion of the documents as confidential. These objections and confidentiality designations will cause significant further delay. Under the Order, the Debtor may not obtain documents until the objections raised by Freddie Mac are resolved. Then, to the extent the Debtor obtains documents from Freddie Mac and they are designated as confidential, the Debtor may not share the documents with Bank of America until a motion to compel is filed and resolved in favor of Bank of America. This process of resolving objections and confidentiality designations will undoubtedly take many weeks if not months to complete. Given this delay, it is critical for Bank of America's counsel to have access to the documents as soon as they are produced to the Debtor.

14. In addition, if Bank of America's counsel is denied access to the documents as soon as they are produced, a uneven playing field will be created where the Debtor and (if the Clarification Motion is granted) the Committee's counsel will have access to all the documents produced by Freddie Mac while Bank of America's counsel will not. This result would be inequitable given the tremendous stake that Bank of America has in this matter and the fact that disclosure to Bank of America's counsel on an "attorney's eyes only" basis will not cause delay or prejudice to any party.

WHEREFORE Bank of America respectfully requests the entry of an order allowing Bank of America to join in the Clarification Motion, granting Bank of America the same relief that the Committee obtains pursuant to the Clarification Motion and granting such further relief as the Court deems just and proper.

Dated: April 20, 2010.

Respectfully Submitted,

TESSITORE LAW FIRM

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