

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

Kim M Hefty

Creditors/Defendants.

VS.

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP:

CASE NO. 3:09-BK-7047-JAF

HOME AMERICA MORTGAGE,  
INC.

CASE NO. 3:09-BK-10023-JAF

REO SPECIALTIES, LLC

CASE NO. 3:09-BK-10022-JAF

Debtors/Plaintiffs

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**FILED**  
JACKSONVILLE, FLORIDA  
JUN 14 2010

CLERK, U. S. BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA

**DEFENDANT'S MOTION TO SET AMOUNT OF REDEMPTION**

Comes now Defendants/Creditors Kim M Hefty, Pro Se, seeking an amount of redemption to be set on the following:

A. NEGLIGENCE

Defendants/Creditors state that Plaintiff/Debtors "owed a duty to Defendants/Creditors to perform their professional services in a manner which placed Plaintiff/Debtors interests above the Defendants/Creditors and to deal honestly, directly, and accurately with the Defendants/Creditors, the documents, and each other."

1. Plaintiff is claiming fees and costs that were not provided by contract nor disclosed in the Good Faith Estimate nor in any other document relating to the subject loan and or subject litigation.
2. The Originating "Lender" on the subject Note and Mortgage is "Taylor, Bean and Whitaker Mortgage Company". The mortgage note and Deed on file for the property is "U.S. Bank National Association as trustee for TBW Mortgage Backed trust series 2006-3 Mortgage Backed Pass-Through Certificates, series 2006-3."
3. The subject Note and Mortgage was transferred to: American Home Mortgage Servicing, Inc. Loan Servicing on October 17 2009, following a public FBI raid in August on Taylor, Bean and Whitaker Mortgage Corp., as well as Colonial Bank.

4. No assignment has been produced or recorded.

**B. INTENTIONAL MISREPRESENTATION**

The Federal Court System in a Bankruptcy trial treats intentional misrepresentation as equivalent to a claim for fraud. (1) a representation; (2) concerning a presently existing material fact; (3) which was false; (4) which the Plaintiff/Debtor (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge on which to base such representation; (5) for the purpose or inducing the other party to act upon it; (6) that the other party, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his injury and damage.

1. According to the statement of document presented by the U.S. Department of Housing and Urban Development and presented to this Court, the subject mortgage or note was transmitted, transferred or assigned to a trustee serving unknown third parties in combination with other assets including mortgages or notes from unrelated borrowers in combination with mortgages, notes or property unrelated to the subject property. The property was transferred from "MERS" to "MERS" et al, not a Financial Institution or Corporation.

2. According to said documentation the pool of assets was divided by an undisclosed formula in which the subject mortgage or note was included in a segment of the aforesaid pool that was allocated to one or more of the divisions a special purpose vehicle whose name has never been disclosed and which issued certificates of asset backed securities each of which represented a share of the mortgage or note. A Copy of a letter is attached hereto requesting original documentation of the said loan; with response regarding said loan and made a part hereof.

3. Therefore the only parties possessing a possible claim for non-payment is the owner of said certificates of asset backed securities (mortgage backed securities), not a "MERS".

**C. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING.**

Defendants/Creditors state they had various written agreements and each agreement required that the Plaintiff/Debtor deal fairly and in good faith with Defendants/Creditors and not seek to take an undue advantage of Defendants/Creditors in their weakened bargaining position and with their lesser knowledge, skill, education and ability regarding the loan transactions.

1. Movant possesses standing under the law of this case, and asserts rights of redemption subject to affirmative defenses and counter claims under the Federal Truth In Lending Act (TILA) which has not been waived and is not subject to res judicata.

2. Movant asserts and swears that Debtor/Plaintiff Taylor, Bean & Whitaker Mortgage Corp., Home America Mortgage, Inc., and REO Specialists, LLC have committed fraud

upon this court by asserting and alleging its ownership of the subject mortgage and note despite its actual knowledge that said ownership had been pledged to the owners of the aforementioned certificates of asset backed securities.

3. Further movant asserts and swears that Taylor, Bean & Whitaker Mortgage Corp., Home American Mortgage, Inc., and REO Specialists, LLC have committed a fraud upon this court when it had actual knowledge that the subject note had been transferred without certificate on more than one instance, and the said note had been paid in full and nonetheless alleged that it had not been transferred. Further more, movant asserts and swears that Taylor, Bean and Whitaker Mortgage Corp. and Home American Mortgage, Inc., falsified information regarding insurance verification and placed "forced insurance" with their sister Companies: (a) Maslow Insurance Agency, LLC; (b) CDF Tax, Flood & Insurance LLC without notification to the Defendants/Creditors increasing the amounts of escrow payment and penalties.

4. Further movant asserts and swears that Debtor/Plaintiff has committed fraud upon this court by asserting and alleging non-payment when it had actual knowledge of the existence of over collateralization and cross collateralization in which the payments from subject borrower on the subject note were pledged to cover deficiencies in the payments due from unrelated borrowers on unrelated notes, placed in the accounts of employees and the Officials of the Company in direct breach of the terms of the subject mortgage and note. Payment transaction verification is in non existence.

5. Therefore the value of the redemption is the amount due Taylor, Bean & Whitaker Mortgage Corp., Home America Mortgage, Inc., REO Specialists, LLC, as "lender" in this court action and said amount is zero.

6. Movant advises the Court that Taylor, Bean and Whitaker Mortgage Corp., Home America Mortgage, Inc. and REO Specialists, LLC have been found to have committed exactly the kind of acts under virtually the same conditions in dozens of cases across the country and the State of Florida and that numerous criminal investigations and /or civil suits have been launched by the Attorney Generals of multiple states alleging these facts along with other breaches of statutory and common law duties.

**7. If this Court were to grant the relief sought by the Debtor/Plaintiff, the Debtor/Plaintiff will have obtained title and possession of real property for which it has paid nothing.**

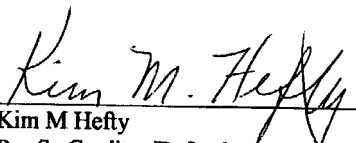
8. Even if the Debtor/Plaintiff wishes to plead that it represents the originating lender, there is no such agreement or document before the court, no authorized person who has testified, or been subjected to cross examination, (although Taylor, Bean and Whitaker Mortgage Corp., Home America Mortgage, Inc., and REO Specialists, LLC have

affidavits in other states) and even if the Debtor/Plaintiff had fulfilled those premises, it cannot overcome the fact that other companies have been paid in full plus fees long before the alleged default by the borrower(s) in this cause.

Wherefore Creditors/Defendants, Kim M Hefty, hereby demands the court to enter an order declaring the amount of redemption to be \$0 (zero) and the judgment, mortgage and note to be fully satisfied with title reverting to the Creditors/Defendants Kim M Hefty.

CERTIFICATE OF SERVICE

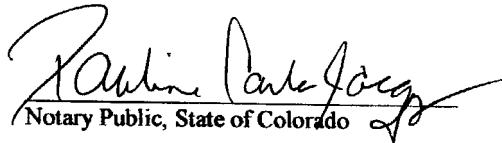
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via certified mail to: Elena Escamilla, Trial Attorney, Office of the United States Trustee.  
U.S. Department of Justice Florida Bar No: 898414,  
United States Bankruptcy Court  
Middle District of Florida  
Jacksonville Division  
Bryan Simpson United States Courthouse  
300 North Hogan Street  
Jacksonville, Florida 32202  
and served to via USPS return receipt signature to: Edward J. Peterson, III (FBN 014612)  
**STRICHTER, RIEDEL, BLAIN & PROSSER, P.A. (Attorneys for the Debtor/Plaintiff)** 110  
East Madison Street, Suite 200 Tampa, FL 33602.

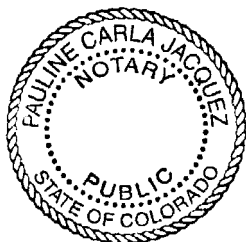
  
Kim M Hefty  
Pro Se Creditor/Defendant  
P.O. Box 814  
Gypsum, CO 81637  
Phone: 970-471-5263

AFFIDAVIT

STATE OF COLORADO §  
  §  
COUNTY OF EAGLE                           §

This instrument was acknowledged before me on the 11 day of June, 2010, by Kim M Hefty *in the capacity stated therein.*

  
Notary Public, State of Colorado



My Commission Expires 10/24/2011