UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,

Debtor.
_____/

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

Chapter 11

MOTION OF SOVEREIGN BANK, AS AGENT, UNDER BANKRUPTCY RULE 9023 FOR RECONSIDERATION AND CLARIFICATION OF AGREED ORDER APPROVING PROCEDURE FOR TRANSFER OF RESIDENTIAL CONSUMER LOAN MORTGAGE PORTFOLIOS TO U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE, MANUFACTURERS AND TRADERS TRUST CO., AND BAYVIEW LOAN SERVICING, LLC

Sovereign Bank, in its capacity as agent (in such capacity, "**Sovereign**") for various lenders under a pre-petition Servicing Facility Agreement (as defined below) with Taylor, Bean & Whitaker Mortgage Corp. (the "**Debtor**"), hereby moves the Court pursuant to Bankruptcy Rule 9023 for reconsideration and clarification of Agreed Order Approving Procedure for Transfer of Residential Consumer Loan Mortgage Portfolios to U.S. Bank National Association as Trustee, Manufacturers and Traders Trust Co., and Bayview Loan Servicing, LLC (the "**Agreed Order**") (Doc. No. 76). In support hereof, Sovereign respectfully represents as follows:

Background

1. Sovereign is the agent under that certain Sixth Amended and Restated Servicing Facility Loan and Security Agreement dated as of May 15, 2009 by and among the Debtor, the lenders party thereto and their successors (the "**Lenders**") and Sovereign, as Agent (the "**Servicing Facility Agreement**"). A copy of the Servicing Facility Agreement

(without exhibits) was attached to Sovereign's Motion for Adequate Protection (Doc. No. 33). Pursuant to previous versions of the Servicing Facility Agreement, the Lenders established a servicing line of credit for the Debtor, whereby each Lender advanced (the "**Advances**") proceeds to the Debtor based on receivables due to the Debtor as servicer for certain mortgage loans.

2. As of the date of the commencement of this case, the Debtor owed the Lenders approximately $164.9 million under the Servicing Facility Agreement. The Debtor's obligations under the Servicing Facility Agreement are secured by liens on substantially all of the Debtor's assets deriving from its servicing contracts and agreements and servicing rights (the "**Collateral**").

3. Until very recently, the Debtor was the largest independent (i.e., non-depository owned) mortgage lender in the United States. Its business consisted of (a) originating, underwriting, processing, and funding conforming conventional and government-insured residential mortgage loans; (b) selling mortgage loans into the secondary market to government-sponsored enterprises such as the Federal Home Loan Mortgage Corporation ("**Freddie Mac**") and the Governmental National Mortgage Association ("**Ginnie Mae**"), as well as to certain private investors; and (c) servicing payments on mortgage loans. It is those payments for servicing mortgage loans (the "**Servicing Fees**") that constitute the Collateral. Upon information and belief, cash flows from the Servicing Fees constitute approximately 75% of the Debtor's revenue. The Servicing Fees are derived from pools of mortgages owned by the Ginnie Mae, Freddie Mac, and private investors. Upon information and belief, the outstanding balance of the pools of mortgages constituting

the Collateral as of June 30, 2009 owned by (a) Ginnie Mae is approximately $26 billion, (b) Freddie Mac is approximately $15-16 billion, (c) private investors (including the Bayview servicing) is approximately $3 billion, and (d) warehouse loans held for sale to future investors, servicing-retained, is approximately $6 billion.

4. On August 24, 2009 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage its property as a debtor-in-possession. No trustee or examiner has been appointed in this case and no official committee has been appointed pursuant to Section 1102 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**").

5. The Debtor has interim and limited right to use cash collateral pending a final hearing on its Emergency Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens Pursuant to 11 U.S.C. §§ 105(a), 361, 363, 541 and 552 and Bankruptcy Rule 4001 (Doc. No. 5).

6. On August 27, 2009, U.S. Bank National Association as Trustee, Manufacturers and Traders Trust Co., and Bayview Loan Servicing, LLC filed the Emergency Joint Motion of U.S. Bank National Association as Trustee, Manufacturers and Traders Trust Co., and Bayview Loan Servicing, LLC to Compel Post Termination Transfer of Those Residential Consumer Loan Mortgage Portfolios Previously Serviced by the Debtor (the "**U.S. Bank Motion**") (Doc. No. 44) requesting, among other things, that the Court issue an order (a) compelling the Debtor to transfer documents and records relating to the Mortgage Loans (as defined in the U.S. Bank Motion) to Bayview Loan Servicing, LLC

("**Bayview**"), (b) compelling the Debtor to transfer to U.S. Bank or Bayview all funds held by the Debtor in its capacity as servicer of the Mortgage Loans, and (c) granting Bayview immediate access to the data, documents, and records relating to the Mortgage Loans to complete the transfer of servicing.

7. The U.S. Bank Motion was schedule to be heard on August 31, 2009. That hearing was canceled, however, when on the day of the hearing, counsel for the Debtor, U.S. Bank National Association as Trustee ("**U.S. Bank**"), Manufacturers and Traders Trust Co. ("**M&T**"), and Bayview presented the Court with the Agreed Order, which was entered by the Court on the same day.

8. Pursuant to ¶ 3 of the Agreed Order, M&T was acknowledged as the successor servicer for six mortgage-backed securities transactions (as more fully described in ¶ 11 of the U.S. Bank Motion) that the Debtor had previously serviced.

9. The Agreed Order permitted, among other things, M&T to remit to the Debtor the aggregate sum of $1,000,000 (the "**Early Reimbursement Amount**") as an advance against future reimbursement obligations of M&T for servicing advances previously made by the Debtor. *See* Agreed Order ¶ 5.

Relief Requested and the Reasons Therefor

10. Sovereign requests that the Court enter an order modifying the Agreed Order so as to clarify that the Early Reimbursement Amount is the cash collateral of Sovereign, as Agent, and may not be used by the Debtor without Sovereign's consent or the Court's order.

11. The definition of Collateral under the Servicing Facility Agreement is broad and it encompasses, among other things, all servicing contracts, servicing rights, servicing

receivables, servicing sale agreements and servicing sale receivables. *See* Servicing Facility Agreement § 4.2.

12. Any servicing reimbursements that the Debtor receives in connection with the Servicing Agreements (as defined in the U.S. Bank Motion) are Collateral.

13. A debtor may not use a secured party's cash collateral unless the secured party consents to its use or the court authorizes such use after the debtor demonstrates that the creditor's interest in the cash collateral is adequately protected. 11 U.S.C. § 363(c)(2).

14. Sovereign, as Agent, is owed approximately $164.9 million. Given the precarious nature of the Debtor's case, with creditors seeking to obtain property which may be property of the estate and may be Collateral, the Debtor should not be permitted to use any servicing reimbursements until Sovereign, as Agent, is paid in full or Sovereign's secured claim is truly protected.

Reservation of Rights

15. Sovereign reserves all rights with respect to the U.S. Bank Motion, including, without limitation, whether or not the servicing rights the Debtor transferred to M&T were part of the Collateral.

WHEREFORE, Sovereign requests that the Court enter an order modifying the Agreed Order so as to clarify that the Early Reimbursement Amount is the cash collateral of Sovereign, as Agent, and for such other and further relief as is just.

Dated: September 8, 2009

Respectfully submitted,

/s/ Robert A. Soriano

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing [Emergency] Motion of Sovereign Bank, as Agent, Under Bankruptcy Rule 9023 for Reconsideration and Clarification of Agreed Order Approving Procedure for Transfer of Residential Consumer Loan Mortgage Portfolios to U.S. Bank National Association as Trustee, Manufacturers and Traders Trust Co., and Bayview Loan Servicing, LLC has been served this 8th day of September, 2009 to all parties participating in CM/ECF Electronic Noticing and by U.S. Mail to:

Taylor, Bean & Whitaker Mortgage Corp.
315 N.E. 14th Street
Ocala, FL 34470

Edward J. Peterson, III
Stichter, Riedel, Blain & Prosser, P.A.
110 East Madison Street, Suite 200
Tampa, FL 33602

United States Trustee - JAX
135 West Central Boulevard, Suite 620
Orlando, FL 32801

and the 1007D list of unsecured creditors and parties listed on the attached matrix.

/s/ Robert A. Soriano
Attorney