IN THE 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**
Debtor.	

MOTION TO APPROVE SETTLEMENT AGREEMENT BY AND BETWEEN TAYLOR, BEAN & WHITAKER MORTGAGE CORP., THE FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF COLONIAL BANK, AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Taylor, Bean & Whitaker Mortgage Corp., debtor and debtor in possession herein ("TBW" or "Debtor"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby files this motion ("Motion") to approve a settlement as to certain claims and potential causes of action by and among the Debtor, the Federal Deposit Insurance Corporation, as Receiver of Colonial Bank, Montgomery, Alabama ("FDIC-R"), and the Official Committee of Unsecured Creditors of the Debtor ("Committee", and the Debtor, FDIC-R, and the Committee are collectively referred to hereinafter as the "Parties"), and in support of the Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

Background

2. On August 24, 2009 ("Petition Date"), the Debtor filed with this Court its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

3. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. On September 11, 2009, the Office of the United States Trustee appointed the Committee.

5. No trustee or examiner has been appointed in this case.

6. Prior to the Petition Date, TBW had an extensive banking relationship with Colonial Bank, Montgomery, Alabama, N.A. ("Colonial Bank"). TBW maintained operating accounts at Colonial Bank, as well as numerous custodial accounts necessary to its mortgage servicing operation and the appropriate distribution of mortgage payments on behalf of borrowers and investors. Moreover, Colonial Bank provided financing to TBW pursuant to a complex "Colonial Mortgage Warehouse Facility" which included the following agreements:

a. Mortgage Loan Participation and Sale Agreement (AOT Program – Whole Loan Trades and Private Issue Securities), dated as of April 1, 2007, between the Debtor and Colonial Bank (the "Private AOT Agreement");

b. Mortgage Loan Participation and Sale Agreement (AOT Program – Agency Securities), dated as of April 1, 2007, between the Debtor and Colonial Bank (the "Agent AOT Agreement," and together with the Private AOT Agreement, the "AOT Agreements");

c. Loan Participation Sale Agreement (COLB Wet & Dry Mortgage Loans Program), dated as of December 18, 2007, between the Debtor and Colonial Bank (the "Wet & Dry COLB Agreement");

d. Loan Participation Sale Agreement (COLB Wet & Dry Mortgage

Loans Program – Construction Agreement), dated as of December 18, 2007, between the Debtor and Colonial Bank (the "Construction COLB Agreement," and together with the Wet & Dry COLB Agreement, the "COLB Agreements");

e. Amended and Restated Master Repurchase Agreement, dated as of June 30, 2009, between the Debtor and Colonial Bank (the "Master Repurchase Agreement"); and

f. Amended and Restated Mortgage Loan and Warehouse Loan Security Agreement (REO Line of Credit), dated as of June 30, 2009, between the Debtor and Colonial Bank (the "REO Line of Credit.")

TBW serviced mortgage loans financed through the Colonial Warehouse Facility pursuant to various agreements with Colonial Bank.

7. On August 3, 2009, federal law enforcement agencies simultaneously executed search warrants at the Debtor's Ocala, Florida headquarters and at the Orlando, Florida offices of Colonial Bank. On August 4, 2009, TBW was notified that its authority to originate, sell or service mortgages was immediately suspended and/or terminated by the United States Department of Housing and Urban Development, the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation. On August 5, 2009, Colonial Bank placed an administrative hold on all of TBW's accounts. On August 11, 2009, the Federal Deposit Insurance Corporation ("FDIC") issued a temporary order to Colonial Bank directing it to first seek approval from the Regional Director before engaging in any transaction with the Debtor, its affiliates, or related entities. By order dated August 14, 2009, the Alabama State Banking Department closed Colonial Bank and appointed the FDIC-R as the receiver of Colonial Bank.

8. As a result of the above-described events, TBW's business collapsed, which led to the filing its voluntary chapter 11 petition on August 24, 2009 (the "Petition").

9. Given the nature of the relationship between TBW and Colonial, it was important to establish an interface between the discrete insolvency proceedings of the two institutions. As the result of extensive negotiations that began prior to the filing of the Petition, the FDIC-R and the Debtor entered into a Stipulation dated September 10, 2009 [Docket Nos. 202 and 222] (the "Stipulation"). The Stipulation was approved by this Court in orders entered on September 29, 2009 and October 16, 2009 [Docket Nos. 348 and 468].

10. In accordance with the Stipulation, the Debtor has performed a Servicing Reconciliation and an Asset Reconciliation, the results of which are set forth in the Debtor's Final Reconciliation Report filed on July 1, 2010 [Doc. No. 1644]. Throughout, the Debtor has worked closely with the FDIC-R.

11. During the course of the reconciliation process, issues surfaced regarding the relationship between TBW and Colonial Bank, especially with respect to the agreements identified in Paragraph 6, above, and related assets. The Debtor and the FDIC-R developed differing positions regarding how certain of these issues should be resolved.

12. As the disputed issues were identified and the reconciliation process progressed, the Parties engaged in ongoing negotiations in an effort to resolve the disputed issues. The substantive and jurisdictional issues, coupled with the complexity, inherent delay, and substantial expense of litigation, has led the Parties to conclude that it is in their respective best interests to resolve their disputes through a comprehensive compromise.

13. The Parties have memorialized the terms of their compromise in the attached Settlement Agreement, dated August 11, 2010, by and among the Parties (the "Settlement Agreement", a copy of which is attached hereto as Exhibit A) and are seeking court approval of the Settlement Agreement by this Motion.

14. In summary, the Settlement Agreement provides, among other things:

a. resolves the issue of ownership of the COLB Loans[1] by recognizing the FDIC-R's ownership of Colonial Bank's 99% participation interests in those loans and the method of payment to the Debtor's estate for its 1% interest;

b. resolves the issue of ownership and manner of liquidation of the AOT Loans and the Overline by transferring them to the Debtor, subject to a first-priority security interest in favor of the FDIC-R securing payment of the AOT Balance and Overline Balance, respectively, with all collections and receipts related to the AOT Loans and the Overline Loans from and after the AOT Effective Date to be distributed according to the priorities set forth in the AOT Waterfall and the Overline Waterfall, respectively;

c. resolves in favor of the Debtor the issue of entitlement to the AOT REO and the Overline REO (as a result of which, ***inter alia***, the Debtor's estate will have available to it approximately $78 million in proceeds from AOT and Overline REO that has already been liquidated through the court-approved bulk sale as well as ordinary course sales;

d. resolves in favor of the Debtor the issue of ownership of the Selene Loans;

e. provides for distribution in accordance with the Final Reconciliation Report filed on July 1, 2010, of all custodial accounts relating to Debtor's servicing and the Debtor's corporate accounts;

f. provides that the FDIC-R will release its hold on approximately $13.8 million in TBW II Funds so that those funds will likely be available to the Debtor's estate;

g. provides for the possible eventual turnover by the FDIC-R of the BB&T Funds to the Debtor's estate to be used to resolve certain investor and borrower issues, with any excess available to the Debtor's estate;

h. grants the FDIC-R a substantial contribution claim in the amount of $1.75 million;

i. sets the procedure for determining the allowed amount of the FDIC-R general unsecured claim;

[1] All capitalized terms not defined herein shall have the meaning ascribed thereto in the Settlement Agreement, attached hereto as Exhibit A.

j. provides that the FDIC-R will make available to Trade Creditors up to $15 million from the FDIC-R's recovery on its unsecured claim;

k. provides for mutual releases, including agreement that the Debtor's Plan will include a release of the FDIC-R and the FDIC in its corporate capacity by the Debtor's estate, creditors and parties-in-interest;

l. provides that the Debtor will withdraw all claims it has filed in the Colonial Bank Receivership;

m. contains a disclaimer by the FDIC-R in the 160 Ocala Loans; and,

n. provides for the FDIC-R's support and vote in favor of a joint plan of liquidation to be proposed by the Debtor and the Committee consistent with the terms of the Settlement Agreement.

15. Although not expressly provided for in the Settlement Agreement, the resolution of the issues between the Debtor and the FDIC-R will provide other benefits to the Debtor's estate, including:

a. FDIC-R has acknowledged that it has no interest in the MBS Auction Proceeds so that the assets will be available to the Debtor's estate; and,

b. FDIC-R may require that, as a condition of receiving any distribution from the CB Deposit Accounts (as defined in the Settlement Agreement) some or all recipients of distributions from the CB Deposit Accounts have: (i) complied with the terms of the Borrower Protocol approved by this Court in an order dated February 24, 2010 [Doc. No. 1079]: and, (ii) agreed that within sixty (60) days of receipt of funds, they will: (1) correct their records and account for the receipt of funds, (2) communicate with their respective borrowers concerning the receipt of funds and the correction of their records, and (3) disburse any received funds owed to borrower to the respective borrowers.

Relief Requested

16. By this Motion, the Debtor respectfully requests that the Court authorize the Debtor to enter into the Settlement Agreement pursuant to Bankruptcy Rule 9019.

17. Compromises are generally favored in Chapter 11 cases. *See e.g., Barry v. Smith (In re New York, New Haven and Hartford R.R. Co.)*, 632 F.2d 955, 959 (2d Cir. 1980). Approval of a settlement is left to the sound discretion of the court based upon the particular circumstances of the proposed settlement and the case as a whole. *See Langes v. Green*, 282 U.S. 531, 541 (1931).

18. The Debtor is obligated to maximize the value of the estate and make its decisions in the best interests of all of the creditors of the estate. *See e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). Courts generally defer to a Debtor's business judgment when there is a legitimate business justification for the decision to compromise a dispute. *Id.* at 395.

19. In determining whether a settlement should be approved under Bankruptcy Rule 9019, the court must consider: "(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990) (internal citations omitted).

20. As reiterated by numerous courts, "a bankruptcy court is not required to hold a mini-trial on the merits of the settlement. Instead, it is charged with 'canvassing the issues to determine whether the settlement falls below the lowest point in the range of reasonableness.'" In re Enron Corp., 2003 U.S. Dist. LEXIS 1383 at*6 (S.D.N.Y. Jan. 31, 2003) (affirming bankruptcy court order approving settlement) (quoting In re Interstate Cigar Co., 240 B.R. 816, 822 (E.D.N.Y. 1999)); Abeles v. Infotechnology (In re Infotechnology), 1995 U.S. App. LEXIS

39883 at *4-5 (2d Cir. Nov. 9, 1995) (the court should not substitute its business judgment for that of the debtor in possession).

21. A review of the above considerations demonstrates that a settlement of the issues addressed in the Settlement Agreement and on the terms contained therein, is in the best interests of the estate and all of the creditors, is fair and reasonable, and is within the Debtor's sound business judgment.

22. The Settlement Agreement is of paramount importance to the Debtor's chapter 11 case. Without a compromise of the issues and claims contained therein, the Debtor will be forced to expend significant resources on protracted litigation, resulting in a significantly diminished distribution to creditors.

23. Simply put, without the Settlement Agreement, and the cooperation of the FDIC-R in the Debtor's case, there can be no plan of liquidation on terms as favorable to the Debtor's estate as the current plan.

WHEREFORE, the Debtor respectfully requests that the Court enter an order: (i) authorizing the Debtor to enter into the compromise described above with the Parties; (ii) approving the Settlement Agreement; and (iii) granting such other and further relief as is just and equitable.

Respectfully submitted, this 11th day of August, 2010.

Respectfully submitted,

/s/ J. David Dantzler, Jr.

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