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: DEs 20, 33, 58, 97, 108, 185
Debtor. _____/	

BANK OF AMERICA'S LIMITED OBJECTION TO (I) MOTIONS FOR RELIEF FROM STAY FILED BY THE FEDERAL HOME LOAN MORTGAGE CORPORATION; SOVEREIGN BANK; WELLS FARGO BANK, N.A.; NATIXIS REAL ESTATE CAPITAL, INC.; AND (II) JOINDER FILED BY MBIA INSURANCE CORPORATION

Bank of America, National Association, as successor in interest through merger to LaSalle Bank, National Association and LaSalle Global Trust Services, and in its capacity as Collateral Agent, Indenture Trustee, and Custodian ("Bank of America") with respect to Ocala Funding, LLC ("Ocala"), files this Limited Objection to (I) the Motions for Relief From Stay filed by the Federal Home Loan Mortgage Corporation [DE 20]; Sovereign Bank [DE 33]; Wells Fargo Bank, N.A**.** ("Wells Fargo") [DE 58]; and Natixis Real Estate Capital, Inc [DE 108]; and (II) the Joinder to Certain Motions Requesting the Lifting of Stay to Transfer Servicing Rights and Related Relief[1] filed by MBIA Insurance Company ("MBIA")[2] [DE 185] (collectively, the "Stay Relief Motions")**,** and states the following:

[1] By the Joinder, MBIA joins with the Motion for (i) Relief From the Automatic Stay and (ii) to Prohibit Use of Certain Funds filed by Wells Fargo (the "Wells Fargo Motion"), and a separate Motion for Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362(d) and Request for Emergency Hearing filed by the FDIC (the "FDIC Motion") [DE 64]. To the extent MBIA joins the Wells Fargo Motion, this limited objection applies to MBIA. Bank of America has filed a separate objection to the FDIC Motion.

[2] Bank of America will hereinafter refer to the Federal Home Loan Mortgage Corporation, Sovereign Bank, Wells Fargo, Natixis Real Estate Capital, Inc., and MBIA collectively as the "Movants".

I. BACKGROUND

A. The MLPSA and the Ocala Loans

1. On June 30, 2008, Ocala entered into a Second Amended and Restated Mortgage Loan Purchase and Servicing Agreement (the "MLPSA") with the Debtor whereby Ocala agreed to purchase certain mortgage loans and related loan documents (collectively, the "Ocala Loans") from the Debtor, as well as the servicing rights associated with the Ocala Loans (the "Servicing Rights"). Bank of America is a third party beneficiary to the MLPSA. A copy of the MLPSA is attached hereto as **Exhibit A** and is incorporated herein by reference.

2. Under the terms of the MLPSA, the Debtor was designated with the right to service the Ocala Loans (the "Designated Rights"). *See* Ex. A at 32, 52.

3. Ocala funded its purchase of the Ocala Loans by issuing subordinated notes and commercial paper. The holders of the subordinated notes and commercial paper will be referred to herein as the "Ocala Secured Parties." Bank of America served as Indenture Trustee, Collateral Agent, and Custodian for the Ocala Secured Parties. Copies of the June 30, 2008 Second Amended and Restated Base Indenture between Ocala, as issuer, and Bank of America, as Indenture Trustee (as amended and supplemented, the "Second Base Indenture"), and supplements thereto, are attached hereto as composite **Exhibit B** and are incorporated herein by reference.

4. Section 14.1 of the MLPSA provides that Ocala "hereby assigns, conveys, transfers, delivers and sets over unto [Bank of America, as Collateral Agent] for the benefit of the [Ocala] Secured Parties, all of its right, title and interest in, to and under, whether now owned or existing, or hereafter acquired, this Purchase Agreement". *See* Ex. A at 65. Section 14.1 additionally provides that Ocala and the Debtor each "consent to such assignment and acknowledge that [Bank of America, as Collateral Agent] shall enjoy [Ocala's] rights under this

Purchase Agreement … [Bank of America, as Collateral Agent] shall have all rights of [Ocala] to enforce the covenants and conditions set forth in this Purchase Agreement with respect to the Mortgage Loans". *See id.* at 65-66.

5. On June 30, 2008, Ocala also entered into an Indenture Agreement and Second Amended and Restated Security Agreement with Bank of America (the "Security Agreement") 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 (the "Ocala Loan Proceeds"); and (d) the servicing rights relating to the Ocala Loans (collectively, the "Ocala Assets"). A copy of the Security Agreement is attached hereto as **Exhibit C** and is incorporated herein by reference.

6. Bank of America, as Collateral Agent for the holders of commercial paper and subordinated notes, perfected its first priority security interest in the Ocala Assets pursuant to the terms of a Second Amended and Restated Custodial Agreement, dated as of June 30, 2008, among Ocala as issuer, the Debtor, as seller and servicer, and Bank of America, as Custodian and Collateral Agent (the "Custodial Agreement"). Among other things, Bank of America filed a UCC-1 financing statement with respect to the Ocala Assets. A copy of the Custodial Agreement is attached hereto as **Exhibit D** and is incorporated herein by reference.

7. The Debtor subsequently undertook the servicing of the Ocala Loans in accordance with the Designated Rights provided for in the MLPSA. Specifically, the Debtor accepted payments of principal, interest, taxes and insurance from borrowers under the Ocala Loans (the "Ocala PITI"), handled escrow funds and the release thereof, dealt with loan forbearance and modification requests, and evaluated and facilitated refinancing and sale

transactions. Upon information and belief, the Debtor and/or Colonial Bank is in possession of the Ocala PITI.

B. The Collapse of Colonial Bank and the Debtor

8. Pursuant to certain regulations of the United States Department of Housing and Urban Development ("HUD"), as well as agreements with the Government National Mortgage Association ("Ginnie Mae"), Freddie Mac and various lenders, the Debtor was required to deliver year-end audited financial statements to these agencies and lenders.[3] Deloitte LLP ("Deloitte") served as the Debtor's auditor. On June 16, 2009, members of Deloitte's team expressed concerns that they were encountering delays in obtaining information and documentation from the Debtor regarding certain assets on the Debtor's balance sheet. Deloitte refused to issue a clean audit of the Debtor's financial statements.

9. On August 3, 2009, federal investigators, including agents of the United States Federal Bureau of Investigation, raided the Debtor's headquarters in Ocala, Florida.

10. On August 4, 2009, HUD suspended the Debtor's HUD/FHA origination and underwriting approval. In a press release announcing this suspension, HUD stated that this action was taken as a result of, among other things, its discovery that the Debtor's auditor ceased its financial examination after discovering certain irregular transactions that raised concerns of fraud, and that the Debtor failed to disclose, and falsely concealed, that it was the subject of two examinations into its business practices in the past year. In addition, Freddie Mac and Ginnie Mae terminated the Debtor's rights to issue and service loans for them.

11. On August 5, 2009, the Debtor laid off approximately 2,000 employees, or approximately 80% of its workforce, and significantly reduced its business operations.

[3] The Debtor's fiscal year ended March 31, 2009.

12. On August 6, 2009, Colonial Bank, the Debtor's principal bank, froze all of the Debtor's accounts and refused to accept deposits, honor checks, receive wire transfers, or permit disbursements. According to the Debtor, it has not received information from Colonial Bank since that time that would allow it to determine who owns the funds in the custodial accounts at Colonial Bank (the "Colonial Account Funds") or the loans that were sold to investors of TBW mortgage loans (the "Investor Loans").

13. On August 14, 2009, the State of Alabama Department of Banking Regulation appointed the FDIC as receiver of Colonial Bank.

14. On August 21, 2009, the State of Florida Office of Financial Regulation issued its Second Emergency Order to Cease and Desist against the Debtor (the "Cease and Desist Order"). A copy of the Cease and Desist Order is attached as **Exhibit E** hereto. The Cease and Desist Order reflects that the Debtor was using a "single bank account" to deposit operating funds and custodial funds, which "intermingling of funds poses a serious risk to Florida consumers." *See* Ex. E at ¶¶ 10 - 12.

15. In addition, "following the precipitous events of early August, the members of the [Debtor's] board of directors and the company's corporate officers, including the Chairman, Vice Chairman, Chief Executive Officer, and Chief Financial Officer, resigned...On or about August 20, 2009, the [Office of Thrift Supervision] approved Mr. Luria [of Navigant Consulting] to serve as [Chief Restructuring Officer] ... of the Debtor." *See* Case Management Summary filed by the Debtor [DE 4]. Neither Navigant nor its team of consultants can currently identify with certainty who owns the Colonial Account Funds or the Investor Loans.

16. Furthermore, the FDIC, as receiver for Colonial Bank, has alleged that the Debtor "double pledged" the Investor Loans, and the Debtor has admitted uncertainty regarding ownership of the Investor Loans, which has caused confusion among borrowers.

C. The Stay Relief Motions

17. On August 24, 2009 (the "Petition Date"), the Debtor filed in this Court a voluntary petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code").

18. Between August 25, 2009 and September 10, 2009, the Movants[4] filed the Stay Relief Motions. By the Stay Relief Motions, the Movants seek essentially the same relief, namely, an order (a) compelling the Debtor to transfer to the Movants documents and records relating to the Investor Loans arising from their investments; (b) compelling the Debtor to transfer to the Movants all funds held by the Debtor in its capacity as servicer of such Investor Loans, and (c) granting the Movants immediate access to the data, documents, and records relating to such Investor Loans to complete the transfer of servicing rights relating to those mortgage loans.

II. LIMITED OBJECTION TO STAY RELIEF MOTIONS

Bank of America objects to the Stay Relief Motions on a limited basis solely to protect Bank of America's potential interest in the Investor Loans, proceeds, and servicing rights sought to be turned over to the Movants and related claims against the Movants. As noted above, the FDIC has raised allegations that the Debtor "double pledged" certain of the Investor Loans.

[4] For the purposes of this Objection, the "Movants" shall including the moving parties as well as any investors or third parties on whose behalf the moving parties are seeking relief.

Therefore, it is possible that certain Investor Loans that are booked as belonging to the Movants may in fact belong to Bank of America. In addition, there have been allegations that the Debtor has commingled funds. It is therefore possible that the funds turned over to the Movants under the terms of any order on the Stay Relief Motions may belong to Bank of America. Bank of America files this limited objection in an abundance of caution to clarify that, to the extent that it owns the Investor Loans that are the subject of the Stay Relief Motions, it retains its rights to pursue the Movants to recover those loans. Similarly, Bank of America files this limited objection to clarify that, to the extent that it is entitled to or owns any of the funds turned over to the Movants under any order on the Stay Relief Motions, it retains its rights to pursue the Movants to recover those funds.

Bank of America does not believe that the Stay Relief Motions were intended to prejudice its rights to pursue the Movants, if it is deemed the owner of the Investor Loans at issue, or related payments thereon. The relief sought by the stay Relief Motions should not affect Bank of America's rights. Nevertheless, Bank of America files this motion as a protective measure in the event any order on the Stay Relief Motions could be read to have a broader meaning that would affect Bank of America's possible rights against the Movants.

WHEREFORE Bank of America respectfully requests that any order on the Stay Relief Motions indicate that the relief granted therein does not prejudice Bank of America's rights

against the Movants, and grant such other and further relief as is just and proper.

Dated: September 10, 2009

Respectfully Submitted,

THE TESSITORE LAW FIRM, P.A.

/s/ Michael A. Tessitore
Michael A. Tessitore
Florida Bar No.: 0948039
612 E. Colonial Drive, Suite 150
P.O. Box 2351 (32802)
Orlando, Florida 32803
(407) 304-8220
Special Counsel for Bank of America, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been served either electronically or by United States Mail on the 10th day of September 2009 to the following:

Roy S. Kobert, P.A. and Nicolette C. Vilmos, Esq., (Florida Counsel to U.S. Bank National Association as Trustee, Manufacturers and Traders Trust Co., and Bayview Loan Servicing, LLC) Broad and Cassel, P.O. Box 4961, Orlando, Florida 32802-4961.

Jeffrey R. Waxman, Esq., (co-counsel to Manufacturers and Traders Trust Co.), Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801-1494

Kathleen LaManna, Esq., Ira Goldman, Esq. and Corrine Burnick, Esq., (co-counsel to U.S. Bank National Association as Trustee), Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103

Edward J. Peterson, III, Esq. and Russell M. Blain, Esq. (Counsel to the Debtor), Stichter, Riedel Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602

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

Elena Escamilla, Esq., Office of the United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, FL 32801

James H. Post, Esq, (counsel for Wells Fargo Bank), 225 Water Street, Suite 1800, Jacksonville, FL 32202

John C. Weitnauer, Esq., (counsel for Wells Fargo Bank), 1201 West Peachtree Street, One Atlantic Center, Atlanta, Georgia 30309-3424

Jeffrey T. Kucera, Esq. (counsel for Natixis Real Estate Capital, Inc.), Miami Center, 20th Floor, 201 South Biscayne Boulevard, Miami, Florida 33131

Jeffrey N. Rich, Esq. (counsel for Natixis Real Estate Capital, Inc.), 599 Lexington Avenue, New York, New York 10022

Robert A. Soriano, Esq (counsel for Sovereign Bank, as Agent . Greenberg Traurig, P.A., 625 East Twiggs Street, Suite 100, Tampa, Florida 33602, Telephone: (813) 318-5700, Facsimile: (813) 318-5900

Betsy C. Cox, Esq., Rogers Towers, P.A., 1301 Riverplace Blvd., Suite 1500, Jacksonville, FL 32207

Lisa Laukitis, Jones Day, 222 East 41st Street, New York, New York 10017

Jason Ward Johnson, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., 215 North Eola Drive, Orlando, Florida 32801

/s/ Michael A. Tessitore