

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE)	CHAPTER 11
)	
TAYLOR, BEAN & WHITAKER)	CASE NO. 3:09-bk-07047-JAF
MORTGAGE CORP., REO SPECIALISTS,)	CASE NO. 3:09-bk-10022-JAF
LLC, and HOME AMERICA MORTGAGE,)	CASE NO. 3:09-bk-10023-JAF
INC.,)	
)	
Debtors.)	Jointly Administered Under
		CASE NO. 3:09-bk-07047-JAF

**OBJECTION OF FIRST AMERICAN TITLE INSURANCE COMPANY
TO DEBTORS' SECOND AMENDED AND RESTATED JOINT PLAN OF
LIQUIDATION**

Comes now First American Title Insurance Company ("First American"), a creditor in the above-styled Chapter 11 case, and objects to the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors ("the Plan") [Doc. No. 2143-1], and as grounds for such objection shows as follows:

1. Debtor, Taylor, Bean & Whitaker Mortgage Group ("TBW") filed its Voluntary Petition under Chapter 11 of the United States Bankruptcy Code on August 24, 2009.

2. First American is a California corporation engaged in the business of title insurance, and which issued commitments to HMC-Home Mortgage Company ("HMC"), as lender, and Shaf B. Holden and Melinda B. Holden (collectively "the Holdens"), as purchasers, in connection with the purchase of certain real property ("the Purchase

Transaction”) situated in Mobile County, Alabama at 563 Shenandoah Road West, Mobile, Alabama (“the Property”).

3. Upon information and belief, HMC is a wholly-owned subsidiary of TBW.

4. The Purchase Transaction described above was closed on July 31, 2009, which closing was handled by First American’s agent, Crane Title, Inc. (“Crane”).

5. Prior to the closing of the Purchase Transaction, TBW forwarded to Crane its check dated July 29, 2009, in the amount of \$339,025.71 to partially fund the Purchase Transaction. Crane deposited the check from TBW in its trust account with Colonial Bank and proceeded to disburse settlement funds to enable the Purchase Transaction to be completed. Subsequent to the closing of the Purchase Transaction, however, TBW’s check for the loan amount was dishonored. In order to fulfill its obligations to its insureds, First American made advances to Crane in the amount of the funds withdrawn from the Crane trust account, as aforesaid.

6. In connection with the Purchase Transaction, the Holdens executed a promissory note to HMC in the amount of \$341,600.00 (“the Note”), representing the funds to have been provided by TBW. To secure such indebtedness, the Holdens contemporaneously executed a mortgage of the Property (“the Mortgage”) to MERS, as nominee for the lender, HMC, or its successor or assigns.

7. By virtue of having on hand the funds advanced by First American, HMC was enabled to acquire a valid first lien in the amount of \$341,600.00 on the Property without expending any of its own funds or becoming obligated to any other entity for funds so advanced.

8. On or about October 22, 2009, First American filed a Motion for Relief from Stay [Doc. No. 502] with respect to claims asserted in pending litigation in the Circuit Court of Mobile County, Alabama, styled *First American Title Insurance Company v. Taylor, Bean & Whitaker Mortgage Corporation, et al.*, and bearing Case No. CV-2009-901569 (“the Mobile County Litigation”), for the purpose of establishing First American’s rights, relative to TBW and HMC, in and to the note and mortgage given by the Holdens.

9. In its response to First American’s Motion for Relief from Stay, TBW represented, both in its written response [Doc. No. 636] and in oral argument before the Court, that TBW had no interest in the loan and mortgage given by the Holdens. Based upon these representations, the Court denied First American’s Motion for Relief from Stay by Order dated November 23, 2009 [Doc. No. 688]. The Court’s Order further provided that First American shall be entitled to an allowed general unsecured claim in the amount of its actual damages that it has incurred in connection with the Purchase Transaction in an amount not to exceed \$350,000.00.

10. First American filed its proof of claim against TBW on or about June 15, 2010, asserting an unsecured claim in the amount of \$342,722.96, based upon the dishonored check from TBW.

11. Following entry of the Court’s Order, First American engaged in discovery in the Mobile County Litigation, but was unable to obtain from HMC copies of any documents relating to the Purchase Transaction. Undersigned counsel discussed with counsel for TBW the possibility of a Rule 2004 Examination of TBW for the purpose of

obtaining such documents, and counsel for TBW offered instead to provide the requested documents voluntarily from TBW, subject to a confidentiality agreement for the protection of the Holdens' personal information.

12. Undersigned counsel received production of documents from TBW on December 23, 2010, at which time it was learned that (1) the Note executed by the Holdens in favor of HMC had been assigned to TBW on an unspecified date; and (2) by virtue of such assignment, TBW, in fact, was the nominor of MERS under the Mortgage given by the Holdens, *making TBW the effective mortgagee*.¹

13. The assignment of the Note and Mortgage to TBW from HMC was without consideration.

14. The assignment of the Note and Mortgage represent undisclosed assets held by TBW which were not discovered until after approval of Debtors' Second Amended Disclosure Statement, despite diligent efforts by First American to obtain documentation which would have revealed that they were held by TBW.

15. As a result of the non-disclosure of these assets, First American has been thwarted from asserting its equitable right to be subrogated to TBW's position as holder of the Note and Mortgagee of the Property.

16. Debtors' Plan is not proposed in good faith, as required under 11 U.S.C. § 1129(a)(3), by reason of TBW's failure to disclose its interest in the Note and

¹ First American does not mean to assert or imply that representations by TBW's counsel in response to the Motion for Relief from Stay were intentionally false. Nevertheless, both parties and the Court acted in reliance upon, at best, the mistaken belief that TBW held no interest in the note or mortgage.

Mortgage. Further, the Plan proposes to dispose of assets which are not rightfully held by TBW, in derogation of First American's rights therein.

17. Debtors' Plan does not meet the requirements of 11 U.S.C. § 1129(a)(7)(A) in that the value of property to be received by First American thereunder is less than First American would have received if the Debtors were liquidated under Chapter 7.

WHEREFORE, the foregoing premises considered, First American objects to the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors, and prays that this Court will enter an order denying confirmation thereof, and for such other and further relief as may be just and proper.

SCHUYLER STEWART SMITH

/s/ Schuyler Smith

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon counsel for all parties to this proceeding by mailing the same by United States Mail, first class postage prepaid, overnight, or electronic mail on this 11th day of January, 2011, as follows:

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Local Rule 1007-2 Parties in Interest
See attached mailing matrix

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