

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

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC and
HOME AMERICA MORTGAGE, INC.

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF

Debtors.

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

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

Applicable Debtor.

**OBJECTION OF LPP MORTGAGE, LTD., LNV CORPORATION AND MGC
MORTGAGE, INC. TO THE SECOND AMENDED AND RESTATED
JOINT PLAN OF LIQUIDATION OF THE DEBTORS AND THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Creditors, LPP Mortgage, Ltd. (“LPP”) and LNV Corporation (“LNV”), as sister companies of MGC Mortgage, Inc. (“MGC”), hereby object to the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the “Plan”). As grounds in support, LPP and LNV state as follows:

Background

1. LPP is a Texas limited partnership owned 1% by Property Acceptance Corporation, a Texas corporation, and 99% by Beal Nevada Corporation, and MGC is a Texas corporation owned 100% by Property Acceptance Corporation. The overall parent company of LPP, LNV, and MGC is Beal Financial Corporation.

2. On or about April 15, 2010, LPP and LNV, sister companies of MGC, filed their secured proof of claim in the amount of \$375,011.89 (Claim No. 1448) (the “Secured Proof of

Claim”). LPP and LNV reserve their rights to continue to assert that they are entitled to be paid in full as secured creditors as required by the Bankruptcy Code.

3. LPP and LNV filed their claim as a secured claim because Taylor, Bean & Whitaker Mortgage Corporation (“**TBW**”) sold certain mortgage loans and servicing rights as set forth in the Secured Proof of Claim, and before the servicing rights were transferred by TBW to LPP and LNV, TBW collected the following payments on those certain mortgage loans for a ninety-day period¹, and maintained them in an account at Colonial Bank for the benefit of LPP and LNV:

- principal and interest in the amount of \$151,592.64 for the period ending July 31, 2009;
- principal and interest in the amount of \$61,191.81 for the period beginning August 1, 2009 and ending August 11, 2009; and
- payments of escrow and other amounts due on the mortgage loans in the amount of \$68,546.55 for the period between June 2009 and August 11, 2009.

4. Taylor Bean failed to pay any of the above amounts to LPP or LNV despite its obligation to do so. All of these funds were held by Taylor Bean as trustee or bailee for LPP and LNV, and do not belong to Taylor Bean or its bankruptcy estate. Notwithstanding that Taylor Bean was contractually obligated to maintain these funds as trustee or bailee, a resulting trust or constructive trust was created when Taylor Bean did not turn over these funds as required by the documents governing the sale of those certain mortgage loans and servicing rights.

5. Although LPP and LNV maintain that they are secured as to these funds, plus interest, TBW takes the position that LPP and LNV are general unsecured creditors and are only entitled to some pro rata distribution that will be determined at some future date.

¹ TBW collected other payments on the same mortgage loans but those payments are not at issue because they were remitted to the proper entities.

6. However, according to the Final Reconciliation Report of Debtor Taylor, Bean & Whitaker Mortgage Corp. (Doc. No. 1644), MGC, the sister company of LPP and LNV, is entitled to recover at least \$50,120, if not more, from TBW. According to page 70 of the Second Amended and Restated Disclosure Statement of the Debtors, Pursuant to Section 1125 of the Bankruptcy Code, with Respect to the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the “**Disclosure Statement**”), “[b]y the Effective Date, all custodial accounts relating to TBW's servicing operations at Colonial and TBW's operating accounts at Colonial will be distributed in accordance with the Reconciliation Report.” The monies due to MGC as set forth in the Reconciliation Report² that were being held in an account at Colonial Bank are in fact due to LPP and LNV and would satisfy some of LPP's and LNV's secured claim. Therefore, MGC, or LPP or LNV if you want to label it in a different way, is entitled, in addition to other rights and remedies, to have the amount set forth in the Reconciliation Report dispersed to it by the Effective Date.

7. LPP, LNV, and MGC object to the Plan to the extent that it attempts to, directly or indirectly, prevent LPP, LNV, and MGC from pursuing any and all remedies against third parties, including, but not limited to the FDIC. LPP, LNV, and MGC reserve their rights to pursue third parties.

8. Despite LPP and LNV, as sister companies of MGC, having a secured claim against TBW, the Plan does not include a class for LPP's and LNV's secured claim nor does it include their claim in an established secured class. To date, TBW has not objected to LPP's and LNV's secured claim, and thus, LPP's and LNV's claim is prima facie valid. Therefore, the Plan

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Disclosure Statement.

fails to comply with the requirements of the Bankruptcy Code, and thus, violates 11 U.S.C. § 1129(a)(1).

9. LPP, LNV, and MGC reserve their rights to raise additional objections to the Plan.

WHEREFORE, LPP, LNV, and MGC respectfully request that this Court deny confirmation of the Debtor Taylor, Bean & Whitaker Mortgage Corporation's Second Amended and Restated Plan of Liquidation unless the objections raised herein are addressed and resolved and grant such other and further relief as this Court deems just and proper.

DATED this 12th day of January, 2011.

/s/ Michael P. Brundage

Michael P. Brundage, FBN 611621
HILL, WARD & HENDERSON, P. A.
101 East Kennedy Blvd., Suite 3700
Tampa, Florida 33602
Telephone: (813) 221-3900
Facsimile: (813) 221-2900
E-mail: mbrundage@hwhlaw.com

*Attorneys for Creditors, LPPMortgage, Ltd.,
LNV Corporation and MGC Mortgage, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the following was filed electronically using the Court's CM/ECF system and/or served on the following parties via U.S. Mail on: The Debtors, c/o Taylor, Bean & Whitaker Mortgage Corporation, 315 N.E. 14th Street, Ocala, FL 34470 (Attn: Neil Luria); Jeffrey W. Kelley and J. David Dantzler, Troutman Sanders, LLP, 600 Peachtree Street NE, Suite 5200, Atlanta, GA 30308; Russell M. Blain, Stichter, Riedel, Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602; Office of United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, FL 32801; and Paul Steven Singerman and Arthur J. Spector, Berger Singerman PA, 200 South Biscayne Blvd., 10th Floor, Miami, FL 33131.

/s/ Michael P. Brundage

Michael P. Brundage