

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

Taylor, Bean & Whitaker Mortgage Corp.

Debtor(s).

Case No. 3:09-bk-07047-JAF
Chapter 11

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND FOR ORDER
DIRECTING EXECUTION AND RECORDATION OF ASSIGNMENT OF MORTGAGE
AND
WAIVER OF 30-DAY RULE PURSUANT TO 11 U.S.C. §362(e)
RE: 42 South Forest Beach, Hilton Head, SC 29928**

Comes now, JP Morgan Chase Bank, N.A. (“Movant”), by and through the undersigned attorney and requests the Court for entry of an Order Granting Relief from the Automatic Stay, and as grounds would show:

1. That Debtor filed a petition under Chapter 11 Bankruptcy Code on August 24, 2009.
2. That the Bankruptcy Court has jurisdiction over this proceeding pursuant to 11 U.S.C., § 362(d) and Bankruptcy Rule 4001(a).
3. That Movant a secured creditor by virtue of a Note, Mortgage and Assignment of Mortgage on real property located at 42 South Forest Beach, Hilton Head, SC 29928 and bearing the following legal description:

ALL THAT CERTAIN APARTMENT, LYING AND BEING ON HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, KNOWN AS APARTMENT 3204 OF SEASCAPE VILLAS SECTION ONE HORIZONTAL PROPERTY REGIME AND BEING MORE PARTICULARLY SHOWN AND DESCRIBED BY REFERENCE TO THE MASTER DEED ESTABLISHED SAID HORIZONTAL PROPERTY REGIME, AND RECORDED IN THE OFFICE OF THE ROD FOR

BEAUFORT COUNTY, SOUTH CAROLINA, IN DEED BOOK 199 AT PAGE 611 AS AMENDED IN DEED BOOK 202 AT PAGE 1615 AND PLAT BOOK 20 AT PAGE 21.

ALSO, ALL OF THE RIGHTS, PRIVILEGES AND COMMON ELEMENTS APPERTAINING TO THE ABOVE DESCRIBED APARTMENT AS SET FORTH IN THE MASTER DEED AND BY-LAWS DESCRIBED ABOVE.

SUBJECT TO, ALL RIGHTS, RESTRICTIONS, CONDITIONS, ETC. CONTAINED IN THAT CERTAIN DECLARATION OF THIS HILTON HEAD COMPANY, RECORDED IN THE ROD OFFICE FOR BEAUFORT COUNTY, SOUTH CAROLINA IN DEED BOOK 78 AT PAGE 306 AND TO ALL EASEMENTS AS SHOWN ON PLATS OF RECORD AS RECORDED IN PLAT BOOK 20 AT PAGE 21.

THIS BEING THE SAME PROPERTY CONVEYED TO THE WITHIN NAMED MORTGAGORS BY DEED OF GERHARD M. KOENIG AND MAGDALENA A. KOENIG DATED MAY 12, 1999 AND RECORDED MAY 21, 1999 IN THE REGISTER OF DEEDS OFFICE FOR BEAUFORT COUNTY, SOUTH CAROLINA IN RECORD BOOK 1173 AT PAGE 540.

THIS INSTRUMENT WAS PREPARED IN THE LAW OFFICE OF HENRI ANN LOGAN, POST OFFICE BOX 1008, BEAUFORT, SOUTH CAROLINA 29901

(the "Subject Property")

4. Copies of the above-referenced documents are attached hereto and made a part hereof, as Exhibit "A".
5. That the aforementioned documents create a first mortgage position on the Subject Property.
6. That the Movant also holds a second mortgage on the Subject Property with a loan amount of \$30,000.00 and recorded on January 19, 2006 as Instrument No. 2006005827 in Book 02307, pages 430-0441 as evidenced on the attached Exhibit "B".
7. On October 2, 2002, an Assignment of Mortgage was executed by original mortgagee Crosswinds Mortgage assigning the Mortgage to the Debtor. The Assignment of Mortgage was recorded on October 2, 2002. See Exhibit "A".
8. On October 15, 2002, the Debtor transferred physical possession of the Note to Movant. However, the Debtor did not execute and record a corresponding Assignment of

Mortgage to Movant. Movant requires the execution and recordation of an Assignment of Mortgage in order to commence and/or continue a foreclosure action in the State Court with regards to the subject property.

9. Movant is unable to commence and/or complete a foreclosure action in the State Court unless and until the Court enters its Order 1) authorizing and directing the Debtor to execute and record and Assignment of Mortgage to in favor of Movant with regards to the Mortgage on the subject property, and 2) allowing the Movant to proceed with the Foreclosure action.
10. Debtor is not personally liable to Movant as a Debtor and Movant seeks only in rem relief to foreclose upon the Subject Property.
11. Movant hereby waives the thirty (30) day rule set forth in 11 U.S.C. §362(e) and consents to the Court setting a hearing on this Motion on or within thirty (30) days after March 4, 2011.

Wherefore, JP Morgan Chase Bank, N.A. moves this court to enter an order granting Movant relief from the Automatic Stay or, in the alternative, to enter an Order determining that the Subject Property is not property of the estate and that the automatic stay in this case does not bar the Movant from foreclosing or continuing to foreclose its interest in the Subject Property. Furthermore, Movant moves the Court to enter an order authorizing and directing the Debtor to execute an Assignment of Mortgage in favor of Movant with regards to the mortgage on the Subject Property and authorizing the recordation of such Assignment of Mortgage.

/s/ Kevin L. Hing
Kevin L. Hing
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Relief from the Automatic Stay and Waiver of 30-day Rule Pursuant to 11 U.S.C. § 362(e) and all Exhibits have been served by either electronic or standard first class mail on February 3, 2011 to:

Taylor, Bean & Whitaker Mortgage Corp., 315 Northeast 14th Street, Ocala, FL 34470
Edward J. Peterson, III, 110 East Madison Street, Suite 200, Tampa, FL 33602;
Amy Denton Harris, 110 East Madison Street, Suite 200, Tampa, FL 33602
Russell M. Blain, 110 East Madison Street, Suite 200, Tampa, FL 33602
Richard C. Prosser, 110 East Madison Street, Suite 200, Tampa, FL 33602
United States Trustee, 135 West Central Blvd., Suite 620, Orlando, FL 32801
Elena L. Escamilla, 135 West Central Boulevard, Suite 620, Orlando, FL 32801
All other interested parties and creditors listed on the 1007(d) parties in interest list

/s/ Kevin L. Hing
Kevin L. Hing
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