

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
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In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

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

Debtor.

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO THE STIPULATION AND AGREED ORDER
BETWEEN THE DEBTOR AND THE FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR COLONIAL BANK, N.A.**

The Official Committee of Unsecured Creditors (the “Committee”) of Taylor, Bean & Whitaker Mortgage Corp. (the “Debtor”), submits this limited objection to the *Stipulation and Agreed Order Between Debtor Taylor, Bean & Whitaker Mortgage Corp. and Federal Deposit Insurance Corporation, as Receiver for Colonial Bank* [D.E. #202] (the “FDIC Stipulation”) filed on September 11, 2009. On September 11, 2009, the United States Trustee constituted the Committee pursuant to its powers in 11 U.S.C. § 1102(a). [D.E. # 203]. Pursuant to 11 U.S.C. § 1103 (a) at a scheduled meeting of the Committee, on September 14, 2009, the Committee retained the undersigned and the firm of Berger Singerman, P.A. as its counsel, subject to the Court’s approval. (An application for the approval of the Committee’s retention of counsel will be filed shortly.) The Committee is filing this Limited Objection pursuant to the Court’s oral ruling during the course of the hearings before the Court on September 14, 2009, by which, the Court, *inter alia*, preliminarily approved the FDIC Stipulation, as modified by the Court’s statements on the record, and set September 17, 2009, as the deadline for the filing objections to the FDIC Stipulation.

The Committee objects to provision number 10 of the FDIC Stipulation (“Provision 10”) which allows funds from the Regions Reconciliation Account to be turned over to the FDIC-Receiver without further order of this Court if the Debtor and the FDIC-Receiver agree that such funds are property of Colonial Bank, N.A. The Committee has requested and the Debtor has agreed that the Debtor will not consent to any turnover of funds from the Regions Reconciliation Accounts without the express consent of the Committee. The FDIC, through its counsel, has agreed to the foregoing. Accordingly, the Court’s order approving the FDIC Stipulation should reflect the foregoing agreements.

Second, the Committee conditionally objects to the proposed release (the “Release”) contained in provision number 14 of the FDIC Stipulation (“Provision 14”). The Release would absolve the FDIC-Receiver from “any and all liability for any acts done in furtherance of this Stipulation (except for willful misconduct and gross negligence) by the Debtor, all parties with any interest in the Mortgage Loans and all parties that receive notice of this Stipulation.” With the understanding that the Release contained in Provision 14 pertains only to those actions taken by the FDIC-Receiver in furtherance of the FDIC Stipulation, the Committee does not object to the Release or Provision 14; provided, however, the Court’s order approving the FDIC Stipulation should confirm that Provision 14 does not preclude the Committee from investigating, and if warranted, prosecuting any claims or causes of action for any other conduct by the FDIC that occurred prepetition, or for conduct by the FDIC that has occurred or hereafter may occur post-petition.

Lastly, the Committee wishes to make clear that it does not agree that the prepetition alleged termination of the right to service the mortgage loans under the Colonial Bank Mortgage Purchase Agreements by Colonial Bank, N.A. or by the FDIC-Receiver was in any sense “valid”

as recited in the recitals contained in the FDIC Stipulation. The fifth recital in the FDIC Stipulation, on page 3 of the document, states: “**WHEREAS**, prepetition both Colonial Bank and the FDIC-Receiver **validly** terminated the Debtor’s right to service the mortgage loans under the Mortgage Purchase Agreements.” (emphasis added) (the “Recital”). Normally, one would not be concerned about recitals in a stipulation being construed as binding on a non-party to the stipulation. However, the Committee believes that the FDIC-Receiver will or may take the position that the Recital and the other recitals in the FDIC Stipulation are binding not only on the Debtor, but also on the Committee and its constituents. Whether or not the alleged termination was valid is an issue of substantial importance in this case. The Committee lacks sufficient information at this time to take a position regarding the validity of the alleged termination, and it would be manifestly unjust for it to be deprived of the opportunity to carefully consider and examine the issues further before its right to challenge the validity of the termination of the servicing arrangements and the substance of the other recitals in the FDIC Stipulation is irretrievably lost. If the Court agrees with the Committee’s position that parties in interest, including and specifically the Committee, who are not signatories to the FDIC Stipulation, are not bound by the Recital and the other recitals, then (assuming the other matters addressed above are also resolved to the Committee’s satisfaction), the Committee does not object to entry of an order approving the Stipulation. On the other hand, if the Recital or the other recitals are read to be binding on the Committee, then the Committee objects to the approval of the Stipulation.

WHEREFORE, the Committee respectfully requests that the Court:

- a. Sustain the Committee’s Limited Objection to Provisions 10 and 14;

b. Determine that the Committee is not bound by the recitals in the FDIC Stipulation; and

c. Grant any other such relief that the Court deems just.

Dated: September 17, 2009

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served electronically via the Court's CM/ECF system, and via electronic notice/service to those parties registered, and via U.S. Mail to all parties who are not on the list to receive electronic/notice service as stated on the attached service list on September 17, 2009.

/s/ Paul Steven Singerman
Paul Steven Singerman