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
Debtor.	)	

ASSURED GUARANTY CORP.'S (I) LIMITED OBJECTION TO THE STIPULATION BETWEEN DEBTOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP. AND FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR COLONIAL BANK, AND (II) LIMITED JOINDER IN THE OBJECTION OF WELLS FARGO, N.A.

Assured Guaranty Corp. ("Assured"), the certificate insurer of TBW Mortgage-Backed Trust 2007-2, TBW Mortgage Backed Pass-Through Certificates, Series 2007-2, Class A-4-A, Class A-4-B and Class A-5 Certificates, by and through its undersigned counsel, hereby submits this (i) limited objection (the "Objection") to the stipulation (the "Stipulation") between Taylor, Bean & Whitaker Mortgage, Corp. (the "Debtor" or "TBW") and the Federal Deposit Insurance Corporation (the "FDIC-Receiver"), as receiver for Colonial Bank, N.A ("Colonial Bank") and (ii) limited joinder (the "Limited Joinder") in the limited objection (the "Wells Fargo Objection") of Wells Fargo Bank, National Association ("Wells Fargo") to the order approving the Stipulation. In support of the Objection, Assured respectfully states:

BACKGROUND

1. On August 24, 2009 (the "Petition Date"), TBW filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"). No trustee has been appointed, and the Debtor continues to operate its

business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, pursuant to that certain Purchase, Warranties, and Servicing Agreement, dated as of February 1, 2007, the Debtor sold certain mortgage loans (the "2007-2 Mortgage Loans") to DLJ Mortgage Capital, Inc., ("DLJ"). Thereafter, pursuant to an Assignment and Assumption Agreement dated as of May 1, 2007, DLJ sold its right, title and interest in, to, and under the 2007-2 Mortgage Loans to Credit Suisse First Boston Mortgage Securities Corp. ("Credit Suisse"). Credit Suisse then securitized the 2007-2 Mortgage Loans pursuant to the Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"), dated as of May 1, 2007, among Credit Suisse, as depositor, DLJ, as seller, Wells Fargo as master servicer (in such capacity, "Master Servicer") and trust administrator (in such capacity, "Trust Administrator"), the Debtor, as servicer (in such capacity, "Servicer"), and U.S. Bank National Association ("U.S. Bank"), as trustee (in such capacity, "Trustee"). The securitization created the TBW Mortgage Backed Pass-Through Certificates, Series 2007-2 (the "2007-2 Certificates").

3. Assured is the certificate insurer of Class A-4-A, Class A-4-B and Class A-5 of the 2007-2 Certificates (the "Insured Certificates"), which were issued in the initial aggregate principal balance of $113,204,000. Specifically, Assured issued Financial Guaranty Insurance Policy No. D-2007-90 (the "Policy"), which insures certain payments required to be made in connection with the Insured Certificates. The Policy provides that for each distribution date (other than the final scheduled distribution date), in the event the funds remitted to the Trust Administrator pursuant to the Pooling and Servicing Agreement are insufficient to satisfy the payment of certain accrued interest on the Insured Certificates on such date (pursuant to the

priority of payments set forth in the Pooling and Servicing Agreement), Assured will pay to the Trustee, for the benefit of holders of the Insured Certificates (the "Holders"), certain shortfalls in such accrued amounts. On the final scheduled distribution date, Assured is required to pay the unpaid principal balance of the Insured Certificates (after giving effect to all distributions from the 2007-2 Trust (defined below)). As set forth in the Pooling and Servicing Agreement, the distribution dates with respect to Insured Certificates occur on the 25th day of each month (or the next business day if the 25th day is not a business day). Furthermore, under the terms of the Pooling and Servicing Agreement, Assured is deemed a third party beneficiary of the agreement to the same extent as if it were a party thereto, and has the right to enforce the provisions of the Pooling and Servicing Agreement.

4. The Debtor serviced the 2007-2 Mortgage Loans pursuant to that certain Securitization Servicing Agreement, dated as of May 1, 2007 (the "Securitization Servicing Agreement," and together with the Pooling and Servicing Agreement, the "Servicing Agreements"), between the Debtor, as Servicer, DLJ, as seller, Wells Fargo, as Master Servicer and Trust Administrator, and U.S. Bank, as Trustee. In its capacity as Servicer, the Debtor plays a central role in the day-to-day management of the 2007-2 Mortgage Loans and serves as the primary liaison between the TBW Mortgage-Backed Trust, 2007-2 (the "2007-2 Trust") and the borrowers under the 2007-2 Mortgage Loans. The primary obligations of the Servicer are detailed in the Securitization Servicing Agreement. Those obligations include (a) collecting payments on the 2007-2 Mortgage Loans, including any property taxes and insurance premiums, (b) establishing and maintaining necessary custodial and escrow accounts to be held in trust for the 2007-2 Trust, into which all payments received from the mortgagors are required to be deposited, (c) advancing certain amounts with respect to principal and interest payments that

were due on the 2007-2 Mortgage Loans during the applicable period and which were delinquent at the close of business on the immediately preceding determination date, (d) monitoring and identifying delinquencies under the 2007-2 Mortgage Loans, and taking all relevant action related to such delinquent loans, including participation in foreclosure proceedings, (e) remitting funds collected on the 2007-2 Mortgage Loans to the Master Servicer or securities administrator of the 2007-2 Trust, and (f) providing specific reports, data, and information regarding the 2007-2 Mortgage Loans to the Master Servicer and others. As Servicer, the Debtor has no beneficial interest in the mortgages being serviced, any payments received thereon, any custody accounts in which such payments are deposited, and any other deposits arising from such payments. Under the terms of the Securitization Servicing Agreement, the Servicer owes the same obligations to Assured as if they were a party to the agreement, and Assured has the same rights and remedies to enforce the provisions of the agreement as if they were a party thereto.

5. The Securitization Servicing Agreement lists certain circumstances which constitute an event of default on the part of the Servicer (each, an "Event of Default"). If an Event of Default occurs, the Debtor may be removed as Servicer in accordance with the terms of the applicable Servicing Agreements. As part of its oversight responsibilities as Master Servicer, Wells Fargo is one of the parties authorized to remove the Debtor as Servicer under the Servicing Agreements upon the occurrence of an Event of Default.

6. One of the Events of Default listed in section 8.01 of the Securitization Servicing Agreement is the failure of the Debtor to maintain certain minimum eligibility criteria. Such eligibility criteria require, among other things, that the Debtor not cease for more than a period of thirty days to be approved by the Federal Home Loan Mortgage Corporation ("Freddie Mac") as a mortgage loan seller and servicer.

7. On August 4, 2009, Freddie Mac notified the Debtor that it was being terminated as an approved seller and/or servicer of Freddie Mac mortgages.

8. Wells Fargo, in its capacity as Master Servicer, is also responsible for monitoring, overseeing and enforcing the Debtor's obligation to service the 2007-2 Mortgage Loans in accordance with the terms of the Securitization Servicing Agreement. Upon information and belief, Wells Fargo, for the benefit of, among others, Assured, notified the Debtor in writing on August 13, 2009 that the Debtor was terminated as Servicer under the Securitization Servicing Agreement (the "Initial Termination Notice").

9. Under the terms of the Servicing Agreements, upon the termination of the Debtor as Servicer, Wells Fargo became the successor servicer of the 2007-2 Mortgage Loans. Notwithstanding its termination as a Freddie Mac-approved servicer and its termination as the Servicer, the Debtor was required under the Servicing Agreements, as a replaced servicer, to cooperate with, among other things, the transfer to the successor servicer of all cash amounts that the Debtor held or received with respect to the 2007-2 Mortgage Loans. Thus, in accordance with such obligations, the Debtor was required to remit to Wells Fargo, as successor servicer of the 2007-2 Mortgage Loans, all amounts held or received in connection with the 2007-2 Mortgage Loans. Upon information and belief, the Debtor failed to remit any such amounts to Wells Fargo as required under the Servicing Agreements.

10. The Securitization Servicing Agreement states that any failure by the Servicer to timely remit any payment due, which continues for a period of one business day after the date upon which written notice of such failure to remit is delivered, shall also constitute an Event of Default. Upon information and belief, on August 20, 2009, as a result of the Debtor's failure to

remit funds to Wells Fargo, the Debtor was provided a second notice of termination (the "Second Termination Notice").

11. Despite its prepetition termination as Servicer, the Debtor has failed and refused to facilitate a servicing transfer. Accordingly, thousands of monthly mortgage principal, interest, insurance and tax payments that have been paid by borrowers to the Debtor under the 2007-2 Mortgage Loans have not been deposited and transferred by the Debtor to Wells Fargo as successor servicer (for remittance to the Master Servicer and Trust Administrator). Consequently, the Trust Administrator did not have sufficient funds to make payments to holders of the Insured Certificates.

12. On August 24, 2009, as a result of the Debtor's continued failure to act upon the Initial Termination Notice and Second Termination Notice, Wells Fargo provided notice to U.S. Bank, as Trustee, of the termination of the Debtor as Servicer. The notice also explained the Debtor's recent financial difficulties, including the freeze of the Debtor's accounts at Colonial by the FDIC-Receiver, and explained that Wells Fargo would not make advances with respect to the 2007-2 Mortgage Loans because it believed there to be good-faith reasonable grounds to find that the advances would be non-recoverable.

13. On August 24, 2009, Wells Fargo, in its capacity as Trust Administrator, made a claim under the Policy and sent Assured a notice of nonpayment and demand for payment of insured amounts ("Notice of Claim"). The total insured amount requested pursuant to the Notice of Claim was $312,334.49. Assured timely paid the total insured amount requested pursuant to the Notice of Claim, and, as a result thereof, is subrogated to the rights of the Trustee of the 2007-2 Trust, the Trust Administrator and all Holders of the Insured Certificates with respect to

the insured amount paid and is assigned all rights, title and interest of the Trustee and the Holders with respect to the Insured Certificates to the extent of any payments under the Policy.

14. On August 28, 2009, the FDIC-Receiver filed a Motion for Relief from the Automatic Stay pursuant to section 362(d) of the Bankruptcy Code (the "Stay Relief Motion").

15. On August 31, 2009, the Debtor filed an Emergency Motion for Turnover, Approval of Procedures for the Maintenance and Use of Borrower Payments, and Immediate Resolution of Related Issues (the "Turnover Motion" and together with the Stay Relief Motion, the "Motions")).

16. A hearing was set for the Motions on September 11, 2009 (the "Hearing"). Immediately prior to the Hearing, the Debtor and the FDIC-Receiver provided Assured with a draft of the Stipulation, giving Assured no ability to review the Stipulation and determine whether it had any objections to the same. In recognizing the due process concerns, the Bankruptcy Court preliminarily approved the Stipulation and provided all parties with the opportunity to object to the Stipulation by September 17, 2009.

LIMITED OBJECTION

17. Assured, as a creditor and party in interest in this case, a third party beneficiary under the Servicing Agreements, and assignee of certain rights of the Trustee, the Trust Administrator and the Holders, files this Objection to the Stipulation. Although Assured appreciates and supports the efforts of the Debtor and the FDIC-Receiver to restore order and reconcile accounts that may be in disarray, the procedures with respect to such efforts should be clearly established and transparent to all parties in interest in this case.

A. The Stipulation Violates Due Process and Section 363(b) of the Bankruptcy Code

18. The Stipulation contemplates (a) further agreements between the Debtors and the FDIC-Receiver; (b) the allocation and movement of funds; and (c) the movement of accounts, all of which affect the rights of third parties and could constitute the use of certain estate property under section 363 of the Bankruptcy Code. The Stipulation, however, fails to provide third parties with notice and the opportunity to object to such actions that might be taken by the Debtor or the FDIC-Receiver under the terms of Stipulation.

19. For example, the Stipulation provides that through agreement of the Debtor or the FDIC-Receiver in connection with the Servicing Reconciliation[1] "the borrower payments can be reconciled and allocated to the appropriate Mortgage Investor custodial accounts and other accounts at Colonial Bank . . . ." Stipulation at para. 4. Thus, certain funds may be allocated to certain Mortgage Loans without notice to other Mortgage Investors or certificate insurers, like Assured, who might oppose such allocation.

20. Further, in paragraph ten (10), the Stipulation provides that "[t]o the extent that such funds are agreed by the FDIC-Receiver and TBW to be property of Colonial Bank, or determined as such by a court of competent jurisdiction, they shall be turned over to the FDIC-Receiver without further order of this Court." As a result, the Debtor and the FDIC-Receiver can make certain determinations with respect to the ownership of funds held in Regions Reconciliation Accounts without putting any other parties on notice of such determination.

21. Moreover, to the extent any of the funds are property of the Debtor's estate, use of such funds are governed by section 363. Section 363(b)(1) of the Bankruptcy Code provides that the debtor in possession "after notice and a hearing, may use sell, or lease, other than in the

[1] Capitalized terms utilized, but not defined herein, shall have the meanings ascribed to such terms in the Stipulation.

ordinary course of business, property of the estate…." Section 363(b)(1) "requires notice and a hearing *before* the debtor can use estate property in transactions outside of the ordinary course of business so that the objections of creditors and other interested parties can be heard, and to reduce the need for *ex parte* communications between the court and the debtor regarding administration of the estate." In re Continental Air Lines, Inc., 61 B.R. 758, 783 (S.D. Tex. 1986) (emphasis in original). The purpose of "[a] hearing [under section 363(b)] is to provide a fair forum which allows interested parties to be heard concerning the propriety of contemplated actions…." Id.; see also In re Crystal Apparel, Inc., 220 B.R. 816, 830 (Bankr. S.D.N.Y. 1998) (the purpose of requiring notice and a hearing for transactions that are not in the ordinary course of business is "so that creditors, who have a vital interest in maximizing realization from assets of the estate, have an opportunity to review the terms of the proposed transaction and to object if they deem the terms and conditions are not in their best interest.").

22. As such, the Stipulation should be modified to include notice procedures that require the Debtor and the FDIC-Receiver to provide any party that appears in the Chapter 11 case and requests notice with notice and an opportunity to object. Assured notes that although the Stipulation provides a broad reservation of rights in paragraph eighteen (18) with respect to parties other than the Debtor and the FDIC-Receiver as well as certain additional reservations throughout, see Stipulation at para. 5, such reservations are not sufficient to warrant the exclusion of notice procedures. Instead, all parties requesting notice in the Chapter 11 case should be given notice and an opportunity to object to any agreement or determination made by the Debtor and the FDIC-Receiver before any such agreement or determination is made or implemented, not after. Absent modification to the Stipulation to include adequate notice procedures, the Stipulation would permit the Debtor to circumvent basic due process

requirements and the requirements of section 363(b)(1), and approval of the Stipulation should therefore be denied.

B. The Stipulation Excludes Other Parties in Interest from Participating in the Reconciliation Process

23. Further, the Stipulation is silent as to whether Assured (or any other party) has the right to (a) participate in discussions that may affect the various securitizations related to the Debtor, including with respect to the 2007-2 Mortgage Loans, and (b) receive copies of any work product or reports developed through the information exchange processes envisioned by the Stipulation, including the Reconciliation Report. As agreed on the record of the Hearing and in order to protect its interests, Assured must be entitled to (and insists upon its ability to) participate in the foregoing reconciliation processes provided for in the Stipulation to the extent they involve the 2007-2 Trust, the 2007-2 Mortgage Loans, and/or the Insured Certificates. If Assured cannot participate in the reconciliation processes and is forced to stand by and wait until the Reconciliation Report is filed with the Bankruptcy Court before having a meaningful opportunity to review and comment on such report, it may be too late to undo any prejudice suffered by Assured through allocations made pursuant to the Reconciliation Report. Thus, the Stipulation should be denied absent modification.

C. The Stipulation Ignores Other Servicers Affected by the Reconciliation of the Colonial Accounts

24. Given the apparent disarray with respect to the Debtor's finances and records, including the fact that the Colonial Accounts are still currently under the control of the FDIC-Receiver, in addition to any contractual obligations the Debtor may already have with respect to any mortgage loans serviced by the Debtor for parties other than Colonial Bank ("Non-Colonial Mortgage Loans"), the Stipulation should also include a commitment on the part of both the FDIC-Receiver and the Debtor to work together to (a) prepare an accounting regarding any

mortgage payments made or scheduled to have been made in July, August and September 2009 in respect of any Non-Colonial Mortgage Loans serviced by the Debtor; (b) release to the appropriate servicer, or any person designated by the appropriate servicer, all payments made in July, August, and September 2009 in respect of any Non-Colonial Mortgage Loans which neither the FDIC-Receiver nor any other Mortgage Investor claims an ownership interest; and (c) cooperate with the servicer or successor servicer in delivering to each borrower under the Non-Colonial Mortgage Loans new payment instructions specified by the servicer or successor servicer with respect to such Non-Colonial Mortgage Loans.

D. The Stipulation is Unclear as to the Effects of Creating New Custodial Accounts

25. The Stipulation contemplates the creation of new custodial accounts, but is silent as to how such custodial accounts relate to the Debtor and the FDIC-Receiver. By definition, custodial accounts are accounts that are held for the benefit of another. The Stipulation should be modified to reflect that the Debtor and the FDIC-Receiver do not receive an interest in any funds or assets merely by moving such funds or assets from existing custodial accounts to new ones.

26. Assured has revised the Stipulation (the "Revised Stipulation") to address the concerns contained in this Objection. The Revised Stipulation is attached hereto as Exhibit A and a blackline comparison of the Stipulation and the Revised Stipulation is attached hereto as Exhibit B.

LIMITED JOINDER

27. Assured also files this Limited Joinder and hereby joins in and supports the relief requested by Wells Fargo in the Wells Fargo Objection to the extent that it relates to the 2007-2 Trust, the 2007-2 Mortgage Loans (including payments thereon and documents and records relating thereto) and the Insured Certificates.

WHEREFORE, Assured respectfully requests that the Court enter an order (i) denying the Stipulation or, in the alternative (ii) modifying the Stipulation to reflect the Revised Stipulation and the concerns reflected in this Objection and in the Wells Fargo Objection, and (iii) granting such other and further relief as may be just and proper.

Dated: September 17, 2009
Miami, Florida

WHITE & CASE LLP

By: */s/ Linda M. Leali*

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