

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 LIMITED OBJECTION TO THE
DEBTOR’S EMERGENCY MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS AUTHORIZING USE OF CASH
COLLATERAL AND GRANTING REPLACEMENT LIENS PURSUANT TO
11 U.S.C. §§ 105(A), 361, 363, 541 AND 552 AND BANKRUPTCY RULE 4001**

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 limited objection (the “Objection”) to the motion (the “Motion”) of Taylor, Bean & Whitaker Mortgage, Corp. (the “Debtor” or “TBW”) for entry of interim and final orders authorizing use of cash collateral and granting replacement liens pursuant to 11 U.S.C. §§ 105(a), 361, 363, 541 and 552 and Bankruptcy Rule 4001.

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. On September 11, 2009, the statutory committee of unsecured creditors was appointed in the Debtor’s chapter 11 cases.

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 Debtor filed the Motion seeking the authority to use Cash Collateral.¹ On August 27, 2009 (as reflected in the interim cash collateral order (the “Interim Order”) entered by the Court on September 9, 2009), the Bankruptcy Court granted the Motion on an interim basis. The Interim Order provides, among other things, that the Debtor may use “available funds,” including cash collateral, in accordance with a budget attached to the Interim Order, “but shall not expend receipts from individual borrowers’ mortgage payments.” Interim Order at 2. The Bankruptcy Court set a final hearing on the Motion for September 21, 2009 at 1:00 p.m.

LIMITED OBJECTION

15. 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 Motion.

16. The Motion defines Cash Collateral as “funds on deposit in various bank accounts as well as various accounts/notes receivable,” and the Interim Order permits use of “available funds” except for “receipts from individual borrowers’ mortgage payments.” See Motion at para. 31; Interim Order at 2. A significant portion of the funds in the Debtor’s possession, however, are not property of the Debtor’s estate, and it is not clear from the Motion and Interim Order whether use of those funds is prohibited or restricted.

17. The Debtor is contractually obligated pursuant to the Servicing Agreements to deposit funds received with respect to the 2007-2 Mortgage Loans into custodial or escrow accounts, and such funds may be directed or utilized only pursuant and subject to the terms of the Servicing Agreements. The Debtor and its estate have no beneficial interest in such funds.

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

Therefore, any order with respect to the Debtor's use of Cash Collateral should clarify that funds held in trust by the Debtor (in custodial and similar accounts) are not available for use by the Debtor.

WHEREFORE, Assured respectfully requests that if the Court grants the relief sought in the Motion on either a further interim or final basis, that the order granting such relief clearly specify that (a) the estate has no beneficial interest in borrower payments that are held in custodial accounts or escrow accounts; and (b) the authorization to use Cash Collateral does not include the use of borrower payments, except as specified in the governing agreements.

Dated: September 18, 2009
Miami, Florida

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