

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

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

Chapter 11

Debtor.

**LIMITED OBJECTION OF SOVEREIGN BANK, AS AGENT,
TO CERTAIN MOTIONS FOR RELIEF FROM STAY IN THE AGGREGATE**

Sovereign Bank, in its capacity as agent (in such capacity, “**Sovereign**”) for various lenders under a pre-petition Servicing Facility Agreement (as defined below) with Taylor, Bean & Whitaker Mortgage Corp. (the “**Debtor**”), files this limited objection (the “**Objection**”) to the Motion of Wells Fargo Bank, National Association for (i) Relief From the Automatic Stay and (ii) to Prohibit Use of Certain Funds (Doc. No. 58) (the “**Wells Fargo Motion**”), the Motion of Federal Deposit Insurance Corporation, as Receiver for Colonial Bank, for Relief from the Automatic Stay Pursuant to 11 U.S.C. §362(d) and Request for Emergency Hearing (Doc. No. 64) (the “**FDIC Motion**”), the Emergency Motion of Bank of America for Relief From the Automatic Stay Relating to Servicing of Ocala Loans (Doc. No. 95) (the “**Bank of America Motion**”); the Limited Joinder of Assured Guaranty Corp. in Support of Wells Fargo Motion (Doc. No. 181) (the “**Assured Joinder Motion**”); and the Joinder of MBIA Insurance Corporation to Wells Fargo Motion and FDIC Motion (Doc. No. 185) (the “**MBIA Joinder Motion**”). In support hereof, Sovereign respectfully represents as follows:

Background

1. Sovereign is the agent under that certain Sixth Amended and Restated Servicing Facility Loan and Security Agreement dated as of May 15, 2009 by and among the Debtor, the lenders party thereto and their successors (the “**Lenders**”), and Sovereign, as Agent (the “**Servicing Facility Agreement**”). Pursuant to previous versions of the Servicing Facility Agreement, the Lenders established a servicing line of credit for the Debtor, whereby each Lender advanced (the “**Advances**”) proceeds to the Debtor based on receivables due to the Debtor as servicer for certain mortgage loans.

2. As of the date of the commencement of this case, the Debtor owed the Lenders approximately \$164.9 million under the Servicing Facility Agreement. The Debtor’s obligations under the Servicing Facility Agreement are secured by liens on substantially all of the Debtor’s assets deriving from its servicing contracts and agreements and servicing rights (the “**Collateral**”). The servicing rights that are collateralized under the Servicing Facility Agreement relate to pools of mortgages owned by the Government National Mortgage Association (“**Ginnie Mae**”), the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”), and private investors (including the FDIC and Bank of America for loans in warehouse pending sale, servicing-retained to future investors). Upon information and belief, the outstanding balance of the pools of mortgages constituting the Collateral as of June 30, 2009 owned by (a) Ginnie Mae is approximately \$26 billion, (b) Freddie Mac is approximately \$15-16 billion, (c) private investors is approximately \$3 billion and (d) warehouse loans held for sale to future investors, servicing-retained, is approximately \$6 billion.

3. On August 4, 2009, the United States Department of Housing and Urban Development sent a letter informing the Debtor that its HUD/FHA origination and underwriting approval had been suspended. On that same day, Ginnie Mae and Freddie Mac each sent a letter terminating the Debtor's eligibility to sell and service mortgage loans under their respective agreements.

4. On or about August 6, 2009, Colonial Bank ("**Colonial**"), the Debtor's primary deposit institution, denied the Debtor access to its bank accounts. The Debtor maintained approximately 108 accounts with Colonial including custodial accounts containing principal and interest and tax and insurance payments of mortgagors and operating accounts that contained, among other things, servicing fees earned by the Debtor.

5. On August 7, 2009, Sovereign sent a letter to the Debtor notifying the Debtor that it was in default under the Servicing Facility Agreement and declaring the entire outstanding amount owed under the Servicing Facility Agreement to be immediately due and payable (the "**Default Letter**"). Since receiving the Default Letter, the Debtor has failed to make any payments to Sovereign, as Agent for the Lenders.

6. On August 24, 2009 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage its property as a debtor-in-possession. No trustee or examiner has been appointed in this case and no official committee has been appointed pursuant to Section 1102 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**").

7. Since the Petition Date, many parties in interest have filed motions for relief from stay. In virtually every relief from stay motion, the movants are asking that this Court authorize the transfer of servicing rights from the Debtor to a successor servicer without compensating the Debtor for the loss of the servicing rights.

Sovereign's Limited Objection to the Motions

The Debtor's Servicing Rights are Valuable

8. As of June 30, 2009, the Debtor serviced approximately 488,000 loans with a combined unpaid principal balance (“UPB”) of approximately \$80 billion. The servicing fees paid to the Debtor are based on the UPB of the mortgage pools serviced by the Debtor.

9. The loans that the Debtor serviced were sold on a “servicing retained” basis, which meant that when the mortgage loans were sold by the Debtor, the Debtor retained the right to be the servicer of the loans. Upon information and belief, servicing retained loans are sold at a discount because the seller retains the right to earn fees from the servicing of the mortgage. *See In re American Home Mortgage, Inc.*, 379 B.R. 503, 522 (Bankr. D. Del. 2008) (finding that a buyer will pay a higher price for a servicing released loan because it includes the right of the buyer to receive payments for the servicing of the loan).

10. Each of the agreements discussed in the Wells Fargo Motion, the FDIC Motion, the Bank of America Motion, the Assured Joinder Motion, and the MBIA Joinder Motion (collectively, the “**Motions**”) provided for the Debtor to service the mortgage loans. In each case, the Movant is now asking the Court to allow it to transfer the Debtor's servicing rights with respect to each respective agreement to a successor servicer without compensating the Debtor for the value of the servicing rights. *See In re Adana Mortgage*

Bankers, Inc., 12 B.R. 977, 980 (Bankr. N.D. Ga. 1980) (explaining that the collection of fees associated with the servicing of mortgages is a valuable right that can be sold to another servicer), *vacated by agreement of the parties, In re Adana Mortgage Bankers, Inc.*, 687 F.2d 344 (11th Cir. 1982).

11. If the Court allows the servicing rights discussed in the Motions to be transferred then such rights should be sold, *not given*, to successor servicers. Given that the transfer has occurred prior to a Court-sanctioned sales process, such successor servicers should be viewed as interim, contract sub-servicers (“**Interim Servicers**”) not owners of the servicing rights since no value has been paid to the Debtor for the transfer of the servicing. In each case, the servicing rights should be auctioned off to the highest bidder to allow the Debtor to realize the value of the “servicing retained” agreements for the benefit of its creditors, and the Interim Servicers shall be subsequently paid reasonable compensation for their services performed during the period between transfer from the Debtor until the post-auction transfer to the successful bidder (or its designee). Otherwise, the purchasers of the mortgages would receive a windfall because they will be receiving the right to designate a servicer without paying the premium placed on “servicing retained” loans. *See In re American Home Mortgage, Inc.*, 379 B.R. at 522 (finding that purchasers who did not initially pay higher price for servicing retained mortgage loans would receive a windfall if they were permitted to designate a servicer without compensating the debtor).

Servicing Rights Cannot Be Transferred Without Reimbursement

12. The Debtor has made advances as servicer in excess of \$220 million. Those advances are a part of the Collateral and have to be returned to the Debtor by any successor servicer so as to pay down the debt owed to the Lenders.

13. None of the Motions address how the Debtor will be reimbursed for the amounts it has advanced on behalf of investors and mortgagors after the servicing rights are transferred to a successor servicer. The successor servicers must be required to delineate how they will reimburse the Debtor for the servicing advances made by the Debtor prior to the transfer.

14. If the Court approves the Motions and allows the transfer of the Debtor's servicing rights to the Interim Servicers, Sovereign requests that such Interim Servicers (or the Movants on behalf of their designated Interim Servicer) be required to pay an advance on the reimbursements (as approved in the U.S. Bank Agreed Order) and establish a mechanism for the Debtor to receive reimbursements on the advances the Debtor made pursuant to the respective agreements.

WHEREFORE, Sovereign respectfully requests that this Court enter an order conditioning any relief from stay as set forth herein, and granting it such other and further relief as the Court deems just.

Dated: September 21, 2009

Respectfully submitted,

/s/ Robert A. Soriano

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Limited Objection to Certain Motions for Relief from Stay in the Aggregate has been served this 21st day of September, 2009 to all parties participating in CM/ECF Electronic Noticing and by U.S. Mail to:

Taylor, Bean & Whitaker Mortgage Corp.
315 N.E. 14th Street
Ocala, FL 34470

Edward J. Peterson, III
Stichter, Riedel, Blain & Prosser, P.A.
110 East Madison Street, Suite 200
Tampa, FL 33602

United States Trustee - JAX
135 West Central Boulevard, Suite 620
Orlando, FL 32801

and the 1007D list of unsecured creditors and parties listed on the attached matrix.

/s/ Robert A. Soriano

Attorney