

FILED

SEP 23 2009

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION
CLERK U.S. BANKRUPTCY,
ORLANDO DIVISION

IN RE:
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.

CASE NO: 3:09-bk-07047-JAF
CHAPTER: 11

#37351
150⁰⁰

W. SCOTT WYNN'S MOTION FOR RELIEF FROM
AUTOMATIC STAY

W. SCOTT WYNN (hereinafter referred to as "WYNN"), respectfully moves this Court for an Order modifying the automatic stay pursuant to 11 U.S. C. Section 362, to the extent applicable.

In support of it's Motion WYNN states as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a) and 362(d) of Title 11, United States Code (hereinafter referred to as "Code"). Furthermore, this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).
2. On or about August 24, 2009, TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION(hereinafter referred to as "Debtor") petitioned this Court for relief pursuant to Chapter 11 of the Bankruptcy Code, 11 U.S.C. Section 101, *et seq.*
3. On or about March 22, 2005 WYNN executed a Mortgage and Note in the principal amount of \$200,000.00 in which Debtor was the lender and holder of the Note. A true and correct copy is attached hereto as Exhibit "A".
4. The property upon which the mortgage encumbered is located in Lake County, Florida.
5. On or about April 20, 2009, WYNN filed a civil action against the Debtor in the Circuit Court of the Fifth Judicial Circuit in and for Lake County, Florida seeking declaratory relief and an accounting . The Complaint was amended on May 12,

2009. A true and correct copy of said Amended Complaint is attached as Exhibit "B".

6. The civil action seeks a declaratory judgment as to the rights and obligations of the Debtor and WYNN under the terms of the mortgage and note.
7. WYNN does not seek a judgment for monetary damages against debtor.
8. WYNN does not seek a discharge that would be a release nor does he seek to impose a charge on the property of the Debtor.
9. Section 362(d)(1) of the Bankruptcy code provides that a court shall, upon motion, grant relief from the automatic stay for cause.
10. WYNN's lack of knowledge as to his rights and/or obligations to Debtor constitutes good cause to lift the automatic stay.
11. The automatic stay provisions in the Bankruptcy Code must be lifted to adequately inform both the Debtor and WYNN of their respective rights and obligations with respect to the mortgage and note.
12. Furthermore, the amount of unpaid balance, late fees and interest rate remain in dispute and unknown to the parties without allowing the State court to make a judicial determination and enter a declaratory judgment.
13. WYNN is desirous of fulfilling his obligation to Debtor but is unsure of the extent of said obligation without allowing the State court to enter an appropriate declaratory judgment.
14. Attached hereto as Exhibit "C" is WYNN's Affidavit in Support of Motion for Relief from Automatic Stay.

WHEREFORE, WYNN respectfully requests:

- A. That the Automatic Stay, pursuant to 11 U.S.C. Section 362, be modified to permit WYNN to seek a declaratory judgment in State court in accordance with the applicable principles of non-bankruptcy law.
- B. Ordering such other and further relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Taylor, Bean & Whitaker Mortgage Corporation, 1417 N. Magnolia Ave., Ocala, FL 34475; Edward J. Peterson III, Esquire, Strichter, Riedel, Blain & Prosser, 110 E. Madison St., Ste. 200, Tampa, FL 33602-4718; U.S. Trustee-Elena L. Escamilla TB, 135 W. Central Blvd., Suite 620, Orlando, FL 32801; Bryce W. Ackerman, Esquire, Gray, Ackerman & Haines, P.A., 125 NE 1 Avenue, Ste. 1, Ocala, FL 34470 and to the parties on the Local Rule 1007-2 Parties in Interest List attached hereto on this 2nd day of September, 2009.



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Label Matrix for local noticing
113A-3
Case 3:09-bk-07047-JAF
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Jacksonville
Tue Sep 1 14:47:38 EDT 2009

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