IN THE 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.	

MOTION TO APPROVE SETTLEMENT AGREEMENT BY AND AMONG TAYLOR, BEAN & WHITAKER MORTGAGE CORP., SOVEREIGN BANK, AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Taylor, Bean & Whitaker Mortgage Corp., debtor and debtor in possession herein ("TBW" or "Debtor"), pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby files this motion ("Motion") to approve a settlement by and among the Debtor, Sovereign Bank, on its own behalf and as agent for other lenders as described below ("Sovereign"), and the Official Committee of Unsecured Creditors of the Debtor ("Committee", and the Debtor, Sovereign, and the Committee are collectively referred to hereinafter as the "Parties"). The Parties desire to settle their respective claims to the proceeds of a settlement between the Debtor and the Committee, on the one hand, and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), on the other hand. In support of this Motion, the Debtor respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

Background

2. On August 24, 2009 ("Petition Date"), the Debtor filed with this Court its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

3. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. On September 11, 2009, the Office of the United States Trustee appointed the Committee.

5. No trustee or examiner has been appointed in this case.

6. On November 12, 2010, the Debtor and the Committee, as Co-Proponents, filed the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the "Plan"), along with the Second Amended and Restated Disclosure Statement, which was approved pursuant to the Order Approving Second Amended and Restated Disclosure Statement, Scheduling Confirmation Hearing, and Fixing Time for Filing Acceptances or Rejection of Second Amended and Restated Joint Plan of Liquidation entered on November 23, 2010 [Dkt. No. 2200].

7. Prior to the Petition Date, Sovereign was a lender to the Debtor and the agent for various other lenders pursuant to that certain Sixth Amended and Restated Servicing Facility Loan and Security Agreement (the "Servicing Facility Agreement").

8. Sovereign filed Claim No. 1362 in the Chapter 11 Case as a secured creditor in the amount of $168,231,302.17 (the "Sovereign Claim"). Pursuant to the Plan, to the extent the Sovereign Claim is an Allowed Secured Claim (as those terms are defined in the Plan), such Claim will be included in TBW Class 4. The Parties dispute the scope of Sovereign's alleged security interest.

9. The Debtor and the Committee have entered into a comprehensive settlement agreement with Freddie Mac (the "Freddie Mac Settlement Agreement").[1] If approved by the Court, the Freddie Mac Settlement Agreement will, among other things, result in funds paid or made available to the Debtor by Freddie Mac (the "Freddie Mac Settlement Proceeds"). As part of its alleged secured claim, Sovereign claims an interest in, among other things, the Freddie Mac Settlement Proceeds. The Parties dispute the nature and extent of Sovereign's interest.

10. The complexity of the factual and legal issues, the uncertainty of a specific result, and the inherent delay and substantial expense of litigation, have led the Parties to conclude that it is in their respective best interests to resolve their dispute concerning the Freddie Mac Settlement Proceeds.

11. The Parties have memorialized the terms of their compromise in the attached Settlement Agreement, dated June 22, 2011, by and among the Parties (the "Sovereign Settlement Agreement," a copy of which is attached hereto as Exhibit A) and are seeking court approval of the Sovereign Settlement Agreement by this Motion.

12. Among other things, the Sovereign Settlement Agreement:

a. provides for payment in the amount of $15,700,000 of the Freddie Mac Settlement Proceeds to Sovereign in partial satisfaction of Sovereign's TBW Class 4 Claim (the "Sovereign Allocation");

b. provides that 15% of the Sovereign Allocation ($2,355,000) will be released for the exclusive benefit of holders of TBW Class 9 claims under the Plan;

c. provides that Sovereign consents to the sale of the mortgage servicing rights related to the Freddie Mac loan portfolio serviced by TBW (the "MSRs") on terms and conditions agreed upon by Freddie Mac and the Debtor, which includes Navigant Capital

[1] The Debtor is contemporaneously filing a motion seeking approval of the Freddie Mac Settlement Agreement, which describes in more detail the Freddie Mac Settlement Agreement.

Advisors, LLC and Milestoen Advisors, LLC acting as co-brokers in the sale;[2]

d. provides for Sovereign's potential receipt of proceeds from the sale of the MSRs (the "Sovereign MSR Participation");

e. provides that the Sovereign Allocation and Sovereign MSR Participation shall constitute the entire distribution to which Sovereign is entitled on its Class 4 Claim, with the exception of amounts to which Sovereign may become entitled under certain adversary proceedings;

f. provides that Sovereign agrees to enter into mutual releases with Freddie Mac with respect to the MSRs; and

g. provides that Sovereign will support and vote in favor of the Plan, as amended, and will not object to the Freddie Mac Settlement Agreement, the Wells Settlement Agreements (as defined in the Sovereign Settlement Agreement) or the Bayview Settlement Agreement (as defined in the Sovereign Settlement Agreement).[3]

13. The Sovereign Settlement Agreement shall only become effective upon: (a) the Bankruptcy Court's approval of the Sovereign Settlement Agreement by granting this Motion; (b) the Bankruptcy Court's approval of the Freddie Mac Settlement Agreement; and (c) the Debtor's receipt of the Freddie Mac Settlement Proceeds.

14. In addition to forming the basis of the Sovereign Settlement Agreement, the Freddie Mac Settlement Agreement, if approved, forms the basis for a similar settlement agreement with Natixis Real Estate Holdings LLC (successor-by-merger to Natixis Real Estate Capital, Inc.) (the "Natixis Settlement Agreement") regarding the allocation and use of the Freddie Mac Settlement Proceeds and proceeds of the sale of the MSRs, if any. A motion

[2] Because the terms of the sale are commercially sensitive, the specifics are set forth in Exhibit A to the Settlement Agreement, which has been redacted from the filed version of the Settlement Agreement attached to this motion. Upon moton of a party-in –interest and order of the Court, the Debtor will make this Exhibit available to the Court under seal or in some other confidential manner.

[3] Sovereign has previously filed its Wells Objection and Bayview Objection (both further identified and defined in the Sovereign Settlement Agreement). Under the Sovereign Settlement Agreement, the Parties agree to segregate, as set forth in the Wells Objection and the Bayview Objection, respectively, the proceeds of the Wells Settlement Agreements and the Bayview Settlement Agreement until further agreement of the Parties or order of this Court.

seeking the approval of the Natixis Settlement Agreement is being filed contemporaneously with the filing of this Motion.

Relief Requested

15. By this Motion, the Debtor respectfully requests that the Court authorize the Debtor to enter into the Sovereign Settlement Agreement pursuant to Bankruptcy Rule 9019.

16. Compromises are generally favored in Chapter 11 cases. *See e.g., Barry v. Smith (In re New York, New Haven and Hartford R.R. Co.)*, 632 F.2d 955, 959 (2d Cir. 1980). Approval of a settlement is left to the sound discretion of the court based upon the particular circumstances of the proposed settlement and the case as a whole. *See Langes v. Green*, 282 U.S. 531, 541 (1931).

17. The Debtor is obligated to maximize the value of the estate and make its decisions in the best interests of all of the creditors of the estate. *See e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). Courts generally defer to a Debtor's business judgment when there is a legitimate business justification for the decision to compromise a dispute. *Id.* at 395.

18. In determining whether a settlement should be approved under Bankruptcy Rule 9019, the court must consider: "(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990) (internal citations omitted).

19. As reiterated by numerous courts, "a bankruptcy court is not required to hold a mini-trial on the merits of the settlement. Instead, it is charged with 'canvassing the issues to

determine whether the settlement falls below the lowest point in the range of reasonableness.'" In re Enron Corp., 2003 U.S. Dist. LEXIS 1383 at*6 (S.D.N.Y. Jan. 31, 2003) (affirming bankruptcy court order approving settlement) (quoting In re Interstate Cigar Co., 240 B.R. 816, 822 (E.D.N.Y. 1999)); Abeles v. Infotechnology (In re Infotechnology), 1995 U.S. App. LEXIS 39883 at *4-5 (2d Cir. Nov. 9, 1995) (the court should not substitute its business judgment for that of the debtor in possession).

20. A review of the above considerations demonstrates that a settlement of the issues addressed in the Sovereign Settlement Agreement and on the terms contained therein, is in the best interests of the estate and all of the creditors, is fair and reasonable, and is within the Debtor's sound business judgment.

21. The Sovereign Settlement Agreement is of paramount importance to the Debtor's chapter 11 case. Without a compromise of the issues and claims contained therein, the Debtor will be forced to expend significant resources on protracted litigation, resulting in a significantly diminished distribution to creditors.

WHEREFORE, the Debtor respectfully requests that the Court enter an order: (i) authorizing the Debtor to enter into the compromise described above with the Parties; (ii) approving the Sovereign Settlement Agreement; and (iii) granting such other and further relief as is just and equitable.

Respectfully submitted, this 22nd day of June, 2011.

Respectfully submitted,

/s/ Jeffrey W. Kelley

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