

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

**BANK OF AMERICA'S LIMITED OBJECTION TO THIRD AMENDED JOINT PLAN
OF LIQUIDATION AND SETTLEMENT AGREEMENT AMONG DEBTOR, THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND
FEDERAL HOME LOAN MORTGAGE CORPORATION**

Bank of America, National Association, successor in interest by merger to LaSalle Bank, National Association and LaSalle Global Trust Services, in its capacity as Collateral Agent, Indenture Trustee, Custodian, and Depositary ("BofA") with respect to Ocala Funding, LLC ("Ocala"), by and through its undersigned counsel, hereby files this limited objection to the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* (Docket # 3240, "Third Amended Plan") and *Motion to Approve Settlement Agreement by and among Taylor, Bean & Whitaker Mortgage Corp., Federal Home Loan Mortgage Corporation and the Official Committee of Unsecured Creditors* (Docket # 3237") and says:

I. INTRODUCTION

Debtor and the Official Committee of Unsecured Creditors ("Committee") have reached a settlement agreement with the Federal Home Loan Mortgage Corporation which is the subject of a motion filed by Debtor pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (Docket # 3237, "Freddie Mac Settlement"). Debtor and the Committee have also filed their Third Amended Plan which incorporates the Freddie Mac Settlement and seeks approval of the

settlement agreement as an integral part of confirmation of the Third Amended Plan. The effectiveness of the Freddie Mac Settlement is expressly conditioned on, *inter alia*, confirmation of the Third Amended Plan.

The Freddie Mac Settlement includes a release of claims in favor of Freddie Mac to be given by Debtor and Debtor's estate, on behalf of themselves and each of their respective subsidiaries and affiliates. BofA is filing this limited objection to obtain clarification in the confirmation order that no provision of the Freddie Mac Settlement or Third Amended Plan is intended to or shall be interpreted to limit, waive or release any claim of Ocala Funding, LLC, the Ocala Funding asset backed commercial paper facility ("OF Facility") or the creditors of Ocala Funding, LLC.

II. BACKGROUND

On June 30, 2008, Ocala Funding, LLC, ("Ocala"), a special-purpose commercial paper and financing conduit, agreed to purchase certain mortgage loans and related loan documents (collectively, "Ocala Loans") from Debtor pursuant to a Second Amended and Restated Mortgage Loan Purchase and Servicing Agreement (the "MLPSA"). Ocala funded its purchase of the Ocala Loans under the MLPSA by issuing subordinated notes and commercial paper, for which BofA served as Indenture Trustee, Collateral Agent, Depositary and Custodian. Among other things, on June 30, 2008, Ocala issued notes pursuant to a Second Base Indenture between Ocala, as issuer, and BofA, as Indenture Trustee (as amended and supplemented, the "Second Base Indenture").

On June 30, 2008, Ocala also entered into a Seconded Amended and Restated Base Indenture Agreement ("Second Amended Base Indenture") and Second Amended and Restated Security Agreement with BofA whereby Ocala, to secure its obligations under the Second

Amended Base Indenture, pledged to BofA, as Collateral Agent, among other things: (a) the Ocala Loans; (b) the principal and interest paid under the Ocala Loans; (c) any proceeds from the sale of the Ocala Loans to investors; and (d) the servicing rights relating to the Ocala Loans.

As of the date hereof, the outstanding balance of commercial paper and subordinated notes issued by Ocala, and for which BofA serves as indenture trustee, is at least \$1.75 billion.

On June 22, 2011, Debtor and the Committee filed their motion to approve the Freddie Mac Settlement and the Third Amended Plan. The settlement agreement includes a release by Debtor of claims in favor of Freddie Mac. Specifically, Section 2.1 of the Settlement Agreements provides:

Section 2.1. Release of Freddie Mac. Upon the Settlement Effective Date and subject to Section 2.3, below, the Debtor and the Debtor's estate, on behalf of themselves, each of their respective subsidiaries and affiliates (except as provided in Section 2.3 with respect to Ocala Funding, LLC) and their respective predecessors, successors and assigns, and any other person or entity that claims or might claim through, on behalf of or for the benefit of any of the foregoing, whether directly or derivatively, and the Committee (the "**Estate Releasers**") irrevocably and unconditionally, fully, finally, and forever waive, release, acquit and discharge Freddie Mac, its current and former subsidiaries, affiliates, directors, officers, employees, conservator, receiver, liquidator, trustee, professionals and the predecessors, successors and assigns of any of these (collectively, the "**Freddie Mac Releasees**") from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, which the Estate Releasers, or any of them, or anyone claiming through them, on their behalf or for their benefit, have or may have or claim to have, now or in the future, against any of the Freddie Mac Releasees that: (i) arise in, relate to or have been or could have been asserted in the Chapter 11 Case or otherwise are based upon, related to, or arise out of or in connection with any of the Debtor's assets or any assets to be received by the Debtor as provided herein; (ii) concern any and all rights, claims or interests that TBW has or may have had in the MSR; or (iii) are based upon, related to, or arise out of or in connection with any claim, act, fact, transaction, occurrence, statement or omission in connection with, or alleged or that could have been alleged in connection with the relationship between Freddie Mac and TBW, including without limitation, the Debtor's Claims and any other such claim, demand, right, liability, or cause of action for indemnification, contribution, or any other

basis in law or equity for damages, costs or fees incurred by the Estate Releasers (collectively, the “**Freddie Mac Released Claims**”).

The release of Section 2.1 is expressly limited by the exception set forth in Section 2.3(d) which deals with the claims of Ocala. Section 2.3(d) provides:

Section 2.3. Retained Claims and Defenses. Notwithstanding anything contained in this Agreement to the contrary:

(d) Nothing herein shall be construed to limit, waive or release any claims, demands, rights, liabilities or causes of action that Ocala Funding, LLC (“**Ocala**”) may have against Freddie Mac, except for Debtor’s Claims as described in Recital K and Section 1.6 above. Nothing herein or in any other provision of this Agreement is intended or should be construed to limit, waive or release any claims, demands, rights, liabilities or causes of action that Ocala or its creditors (except for the Debtor) may have arising from or relating to transfers of money from Ocala to custodial accounts maintained at Colonial Bank by TBW on behalf of Freddie Mac.

After discussions with Debtor, BofA has determined that the purpose of Section 2.3 (d) is to make clear that, notwithstanding Section 2.1 or any other provision of the settlement agreement, all claims of the OF Facility, Ocala and its creditors (collectively, “Ocala Claims”) are fully preserved and are not limited, waived or released in any way.

Although the purpose of Section 2.3 is to make clear that all Ocala Claims are preserved, BofA submits that the Section lacks clarity. The Section first clearly states the parties’ agreement that nothing in the agreement will be construed to limit or release any of Ocala’s claims. However, the Section then continues to specifically identify only one type of claim that is not being released: “any claims ... that Ocala or its creditors (except for the Debtor) may have arising from or relating to transfers of money from Ocala to custodial accounts maintained at Colonial Bank by TBW on behalf of Freddie Mac.” There is no reason to identify only one type of claim that is being preserved when all of the Ocala Claims are being preserved.

The Section also lack clarity in that it fails to clearly state the parties' agreement that not only are the claims of Ocala fully preserved but also the claims of Ocala's creditors and the OF Facility.

III. ARGUMENT

While BofA understands that the parties did not intend to release any of the Ocala Claims, it is in the interest of all parties that lack of clarity as to the scope of releases be eliminated. Based on the foregoing, BofA submits that an order should be entered clarifying that nothing in the Freddie Mac Settlement or the Third Amended Plan will limit, waive or release any claim of the OF Facility, Ocala or its creditors. BofA objects to the Third Amended Plan and the Freddie Mac Settlement to extent that approval of either of them is sought without entry of a confirmation order containing this clarifying language. Absent entry of such an order, BofA seeks denial of confirmation and denial of the motion to approve the Freddie Mac Settlement.

WHEREFORE Bank of America, National Association, successor in interest by merger to LaSalle Bank, National Association and LaSalle Global Trust Services, in its capacity as Collateral Agent, Indenture Trustee, Depositary and Custodian, with respect to Ocala Funding, LLC, respectfully requests the entry of an order sustaining this limited objection, granting the relief requested above and granting such further relief as the Court deems just and proper.

Respectfully Submitted,

TESSITORE LAW FIRM

/s/ Michael A. Tessitore

Michael A. Tessitore

Florida Bar No.: 0948039

612 E. Colonial Drive, Suite 150

Orlando, Florida 32803

mtessitore@tess-law.com

Phone & Fax: (407) 304-8220

Counsel for Bank of America, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been served either electronically or by United States Mail on the 7th day of July 2011 to the following:

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

Elena Escamilla, Esq., Office of the United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, FL 32801

Jeffrey W. Kelley, Esq., Troutman Sanders LLP, 600 Peachtree Street, Suite 5200, Atlanta, GA 30308-2216

James Berger, Esq., Berger Singerman PA, 350 East Las Olas Blvd, 10th Floor., Fort Lauderdale, Florida 33301

Federal Home Loan Mortgage Corporation, c/o Jason Ward Johnson, P.O. Box 2809, Orlando, FL 32802-2809

Paul D. Moak, Esq., McKool Smith PC, 600 Travis Street, Suite 7000, Houston, TX 77002

/s/ Michael A. Tessitore