UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
JACKSONVILLE, FLORIDA
JUL 11 2011
CLERK, U.S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

Jay D Oyler

Creditor/Defendant

VS.

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE CORP:

Debtors/Plaintiffs

Chapter 11

CASE NO. 3:09-BK-7047-JAF

_____)

(i) OBJECTION 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;

(ii) OBJECTION TO THE CONFIRMATION OF THE SECOND AMENDED AND RESTATED JOINT PLAN OF LIQUIDATION OF THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS DOCKET 2143.

Creditor/Defendant Jay D Oyler hereby files this objection for the following:

1. Motion to Approve Settlement Agreement By and Among Taylor, Bean and Whitaker Mortgage Corp., Federal Home Loan Mortgage Corporation and the Official Committee of Unsecured Creditors;
2. Motion for Approval to the Confirmation of the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors.

VENUE

This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Objection 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

On August 31, 2009, Taylor Bean and Whitaker Mortgage Corp. (the Debtor or "TBW"), by and through its counsel, filed an Emergency Motion for Turnover, Approval of Procedures for Maintenance and use of Borrower Payments, and Immediate Resolution of Related Issues (the "Motion"), and requested the entry of an order requiring the Federal Deposit Insurance corporation ("FDIC") to turn over certain TBW assets to the Debtor estate and approve procedures and represented their case to the court. Prior to the filing *The FHA acknowledged Taylor Bean failed to submit its required annual financial report and failed to inform the FHA that TBW's independent auditors ended their examination of the company when they found* ***"certain irregular transactions that raised concerns of fraud."***

On August 24, 2009, (the "Petition Date"), TBW filed a voluntary petition for relief under Chapter 11 of the Bankruptcy code. Taylor Bean and Whitaker continues to operate its remaining business and manage its properties as a debtor-in-possession pursuant to Section 1107 (a) and 1108 of the Bankruptcy code. 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. § 1348.

BASIS FOR OBJECTION

The Debtor and the Committee have requested approval for a comprehensive settlement agreement with Freddie Mac as well as Approval of the Plan. If approved by the Court, the Said Settlement Agreement and said Plan will, among other things, result in funds paid or made available to the Debtor by Freddie Mac including payments which, were never accounted for by the Creditors in Class 8. The complexity of the factual and legal issues would assist the Parties in their continued interests to bypass the best interests of resolve to the Class 8 Creditors who have lost money and or property.

An Approval of said Agreement And Approval of The Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors will release Taylor, Bean and Whitaker of all claims for fraudulent transfers received by the Trusts, all other claims seeking the avoidance of transfers under state or federal law and any claims that could have been asserted in this case with respect to the Trusts. The Settlement Agreements also provide for injunctions that would prohibit the prosecution of any released claim. Given the scope of the releases and injunctions, the Court should not approve the Settlement Agreements or the Approval to the Confirmation of the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors.

If said Agreements are approved then the Plan can be accepted by vote of large Creditors, leaving the Class 8 Creditors upon effective date in a situation which nullifies the need for the execution and delivery of additional documentation or the entry of any additional orders of the Bankruptcy Court, the Debtor, the Debtor's estate, any predecessors, successors and assigns of any of them and any other person that claims or might claim through, on behalf of or for the benefit of any of the foregoing, whether directly or derivatively, and (b) the Committee (collectively, the "Plan Releasing Parties") shall be deemed to have irrevocably and unconditionally, fully, finally, and forever waived, released, acquitted and discharged Taylor, Bean and Whitaker, the Trustee, the past, present and future Certificateholders, and the Trust, their respective past or present parent entities, subsidiaries, affiliates, agents, directors, officers, employees, professionals and the predecessors, successors and assigns of any of these (collectively, the "Trust Released Parties") from any and all claims, demands, rights, obligations, liabilities, promises, agreements, damages, actions, suits, losses, expenses (including attorneys fees) or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, now accrued or which may hereafter accrue, whether asserted or unasserted (each a "Claim" and collectively, the "Claims"), which the Plan Releasing Parties or any of them have or may have, or claim to have, now or in the future, against any Trust Released Party based in whole or in part on any facts, conduct, activities, transactions, events, or occurrences, known or unknown, which have or allegedly have existed, occurred, happened, arisen, or transpired from the beginning of time to the date hereof that relate to or arise from or in connection with TBW's rights to fees to fees incurred or reimbursement of advances made by

TBW in connection with the Trust, in its role as servicer or otherwise, or the termination or attempted termination of TBW as servicer by Freddie Mac; relate to or arise out of TBW's failure to perform any of its undertakings, obligations, covenants, representations, warranties, and agreements under the Agreement, or to Creditors/Defendants in Class 8; relate to or arise under 11 U.S.C. § 547, 11 U.S.C. § 548, or any other avoiding powers under the Bankruptcy Code or similar federal or state laws which arise out of or are related to any obligations or transfers made to, from, or in connection with the Trust; relate to or arise under any other federal or state laws (including common law claims) which arise out of or are related to any obligations or transfers made to, from, or in connection with the Trust; or were asserted or could have been asserted by any Plan Releasing Party in or in connection with the Bankruptcy Case, Plan Releasing Parties will be permanently enjoined, except for those Class 8 Claimants, from taking any of the following actions against any Trust Released Party or any property of a Trust Released Party on account of Debtor Released Claims: commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind with respect to any Debtor Released Claim; enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order with respect to any Debtor Released Claim; creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien with respect to any Debtor Released Claim; asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due a Class 8 Claim Party with respect to any Debtor Released Claim; and commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with Federal and Local Law of Civil Procedures.

The Settlement Agreement compels releases by individuals and entities who include the Debtor's creditors such as Freddie Mac (with the exception of Class 8) and their respective subsidiaries and affiliates and any predecessors, successors and assigns of any of them and any other person that claims or might claim through, on behalf of or for the benefit of any of the Creditors (with the exception of Class 8). The Court lacks subject matter to approve releases such as these for various reasons.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via mail to: Elena Escamilla, Trial Attorney, Office of the United States Trustee. U.S. Department of Justice Florida Bar No: 898414, 135 W. Central Blvd., Suite 620 Orlando FL. 32801 and served to via mail to: Edward J. Peterson, III (FBN 014612) **STRICHTER, RIEDEL, BLAIN & PROSSER, P.A.** ***(Attorneys for the Debtor/Plaintiff)*** 110 East Madison Street, Suite 200 Tampa, FL 33602.

Jay D Oyler

AFFIDAVIT

STATE OF Georgia §

COUNTY OF Bartow §

This instrument was acknowledged before me on the 6 day of July, 2011 by Jay D Oyler in the capacity stated therein.

Notary Public, State of Georgia

Notary Public, Bartow County, Georgia
My Commission Expires July 17, 2014