

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

Taylor, Bean & Whitaker Mortgage Corporation,

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

Debtor.

MOTION TO LIFT, MODIFY OR ANNUL AUTOMATIC STAY
OR FOR ADEQUATE PROTECTION

AMERICAN HOME MORTGAGE SERVICING, INC., as servicing agent for, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR TBW MORTGAGE-BACKED TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-3, by and through its undersigned attorneys, moves the Court for an Order lifting, modifying or annulling the automatic stay, and in support thereof would show:

1. This is a Motion pursuant to §362(d)(1) of the Bankruptcy Code and Bankruptcy Rule 4001(a) for modification of, or relief from, the automatic stay entered pursuant to §362(a) of the Bankruptcy Code.
2. Movant is a secured creditor holding a promissory note ('Note') secured by a first mortgage ('Mortgage') on property now owned by the Debtor, located at 4327 N 28th Street, Unit 110, Phoenix, AZ 85016, more particularly described as follows:

Unit 111, THE MEWS ON 28TH STREET, as set forth in Declaration of Horizontal Property Regime recorded at Recorder`s No. 83-352517 and as shown in Book 256 of Maps, page 32, records of Maricopa County, Arizona;
TOGETHER WITH the right to use assigned parking spaces; and
TOGETHER WITH an undivided interest in the common elements, as set forth in Declaration of Horizontal Property Regime recorded at Recorder`s No. 83-352517, records of Maricopa County, Arizona.

A/K/A 4327 N 28TH ST 110, PHOENIX, AZ 85016

2. The First Mortgage has been recorded in Official Record Instrument # 20060434181, of the Public Records of Maricopa County, Arizona. A copy of the Note and of the Mortgage are attached hereto as Exhibits "A" and "B", respectively, and made a part hereof.
4. Movant owns and holds the Note and the Mortgage.
5. On August 24, 2009, a voluntary petition under Chapter 11 of the Bankruptcy Code was filed, which is now pending as the above-styled case.
6. The property has not been claimed as exempt.

Our File No: CA11-03912 /SH

This Communication is from a Debt Collector

7. Debtor's Plan does not provide for pre or post-petition payments to Movant.
8. Taylor, Bean & Whitaker Mortgage Corporation holds a second mortgage on the property.
9. The Note and Mortgage are in default by reason of a failure to pay the installment of principal and interest due on July 1, 2010, and all subsequent installments.
10. The Debtor is indebted to Creditor in the amount of \$222,728.23, with interest accruing at the rate set forth in the Note, plus other fees and costs advanced pursuant to the Note and First Mortgage.
11. Movant has incurred court costs and attorney's fees in this proceeding and will incur additional costs, fees and expenses in foreclosing the First Mortgage and in preserving and protecting the property, all of which additional sums are secured by the lien of the First Mortgage.
12. Movant has previously accelerated the Note and First Mortgage, declaring the entire principal balance, interest and all sums otherwise due thereunder to be immediately due and payable.
13. Movant has brought a foreclosure action in the state court and has incurred attorney's fees and costs both in the state court action and in this Court.
14. There is little or no equity for the benefit of other creditors; Movant contends that any equity over and above the indebtedness, should it exist, does not constitute adequate protection as contemplated by the U.S. Bankruptcy Code.
15. Pursuant to the Appraisal website Zillow.com, the property is valued at \$86,300.00.
16. Creditor's post-petition address is American Home Mortgage Servicing, Inc., 1525 S. Beltline Road, Suite 100 N, Coppell, TX 75019.
17. Movant's interest in the property is not adequately protected.
18. Movant is stayed from proceeding to foreclose the Mortgage in the state court pursuant to Bankruptcy Code §362(a). Unless the Court lifts, modifies or annuls the stay to allow Movant to prosecute its foreclosure action, or conditions continuation of the stay upon payment of adequate protection to Movant, Movant's security will be significantly jeopardized.
19. Movant requests that they be able to have future communications to offer and provide Debtor with information in regards to a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss Mitigation Agreement, and the obtaining of a deed in lieu of foreclosure, including authorization to negotiate inferior liens, and may enter into such agreement with Debtor. However, Movant may not enforce, or threaten to enforce, any personal liability against Debtor if Debtor's personal liability is discharged in this bankruptcy case.

WHEREFORE, AMERICAN HOME MORTGAGE SERVICING INC., as servicing agent for, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR TBW MORTGAGE-BACKED TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-3, prays that the Court:

A. Lift, modify or annul the automatic stay as it applies to Movant, granting Movant leave to proceed in the state court, and waive the stay provisions of Rule 4001(a)(3); or

B. That Movant be allowed future communications to offer and provide Debtor with information in regards to a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss Mitigation Agreement, and the obtaining of a deed in lieu of foreclosure, including authorization to negotiate inferior liens, and may enter into such agreement with Debtor. However, Movant may not enforce, or threaten to enforce, any personal liability against Debtor if Debtors personal liability is discharged in this bankruptcy case: and,

C. Grant such other relief as may be just.

Respectfully submitted this 13th day of July, 2011.

FLORIDA FORECLOSURE ATTORNEYS, PLLC




____ Roger D. Bear, Esquire (SPN 299511, FBN 304212)
____ Klarika J. Caplano, Esquire (FBN 43496)
____ Jacqueline J. Brown, Esquire (FBN 58879)
 Jerrold J. Golson, Esquire (FBN 233072)
601 Cleveland Street, Suite 690
Clearwater, FL 33755
(727) 446-4826

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Lift, Modify or Annul Automatic Stay or for adequate protection with attachments was furnished by First Class U.S. Mail on this 13th day of JULY, 2011 to Taylor, Bean & Whitaker Mortgage Corp. , 4901 Vineland Road, Ste 120 , Orlando, FL 32811, Debtor; Ronald D. Seiber and Sharon Lee Seiber, 8505 E Bowline Road, Tucson, AZ, 85710, Mortgagors; and the following parties were served by Notice of Electronic Transmission on this 13th day of JULY, 2011 to: EDWARD J. PETERSON III, AMY DENTON HARRIS, RUSSELL M BLAIN, RICHARD C. PROSSER, Attorneys for the Debtor, 110 East Madison Street, Suite 200, Tampa, FL 33602, and United States Trustee, Orlando, 135 W. Central Boulevard, Orlando, FL 32801; and the attached parties in interest per Local Rule 1007.02

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FAIR DEBT COLLECTION PRACTICES ACT - This is an attempt to collect a debt and any information obtained will be used for that purpose. Unless you dispute the validity of this debt, or any portion of it, within 30 days of receipt of this notice, Creditor's attorney will assume the debt to be valid as stated. If you notify Creditor's attorney in writing that you dispute the debt, or any portion of it, or that you request the name and address of the original creditor, Creditor's attorney will obtain and mail to you verification of the debt, or a copy of the judgment, or the name and address of the original creditor if different from the current creditor.

Our File No: CA11-03912 /SH

This Communication is from a Debt Collector

Label Matrix for local noticing
113A-3
Case 3:09-bk-07047-JAF
Middle District of Florida
Jacksonville
Wed May 11 14:48:08 EDT 2011

American Home Mortgage Servicing, Inc.
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100 Cypress Creek Road, Suite 1045
Ft. Lauderdale, FL 33309-2191

Craig & Lyndsi Crowell
c/o Schuyler Smith
118 W. Adams Street, #800
Jacksonville, FL 32202-3866

John A. Crain
PO Box 13
Melbourne, FL 32902-0013

Land Settlement Services, Inc.
107 S. 4th Street
Lebanon, PA 17042-6108

Oakland County Treasurer
c/o Richardo Kolpatrick
903 North Opdyke Rd., Ste C
Auburn Hills, MI 48326-2693

The Bank of New York Mellon Corporation
JOHN C. BROCK, JR.
Albertelli Law
P.O. Box 23028
Tampa, FL 33623-2028

U.S. Bank National Association
JOHN C. BROCK, JR.
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Attorney for Secured Creditor
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End of Label Matrix
Mailable recipients 23
Bypassed recipients 0
Total 23

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Bank of the Ozarks as Successor†
c/o Patti W. Halloran, Esq.
Gibbons, Neuman et al.
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