

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE:)
TAYLOR BEAN & WHITAKER,)
MORTGAGE CORP.)
Debtor.)
_____)

Case No. 3:09-bk-07047-JAF

Chapter 11

**GREG STEINMETZ CONSTRUCTION, INC.’S
RESPONSE TO DEBTORS THIRTY SECOND OMNIBUS
OBJECTION: CLAIMS FOR WHICH THE PLAN TRUST IS NOT LIABLE**

Creditor, Greg Steinmetz Construction, Inc. (“GSCI”), responds to *Debtors’ Thirty Second Omnibus Objection (Claims of Greg Steinmetz Construction, Inc.)* (the “Omnibus Objection”) [Docket No. 4109] filed by debtor, Taylor Bean & Whitaker, Mortgage Corp. (“TBW”), as follows:

1. GSCI is Florida Corporation. At all times material to this action, GSCI was general contractor engaged in the construction of residential homes in this State, including but not limited to, Marion County, Florida.

2. Prior to the Petition Date, GSCI entered into 53 separate agreements with individual property owners in Marion County for the construction of certain improvements on their respective parcels. TBW served as the source of funding for the construction of those improvements (the “Loans”). A listing of those individuals is attached hereto as **Exhibit A**.

3. TBW agreed to fund the construction of the improvements pursuant to draw schedules, copies of which are attached to each of GSCI's proofs of claim. GSCI completed *all* construction as required; however, payments due under the draw schedule were not made by TBW.

4. On certain of the parcels, GSCI filed Claims of Lien in accordance with Chapter 713, Florida Statutes with respect to the amounts owed for completion of the improvements on each respective parcel (the "Liens"). Any Liens filed by GSCI have been attached to their respective proof of claim filed in this matter.

5. Prior to the Petition Date, GSCI was involved in Florida State Court litigation with TBW concerning the priority of the Liens and TBW's failure to make draw payments thereunder. In the litigation, GSCI asserted claims to foreclose the Liens and for imposition of equitable liens on the undisbursed proceeds of each respective Loan.

6. Prior to the claims deadline in this matter, GSCI filed 53 proofs of claim with respect to each of the Loans which remained unpaid by TBW as of the Petition Date (the "Claims").

7. Based on the foregoing, GSCI asserts that it has properly asserted entitlement to payment from TBW pursuant to the Loans, and those certain loan agreements, draw schedules, and the Liens.

8. TBW's Omnibus Objection to certain of the Claims is based on the bare allegation that the "supporting documentation attached to the [...] Claims listed on Exhibit A [to the Omnibus Objection] demonstrates that there is no contractual privity between [TBW] and [GSCI] such that [TBW] is responsible for any unpaid draw amounts."

9. Contradictory to its first assertion above, and, alluding to privity of contract, the Omnibus Objection further argues that TBW “does not owe [GSCI] any retainage amounts because the borrower defaulted on the construction loan for each of the loans corresponding to the [...] Claims on Exhibit A [to the Omnibus Objection]. In order for [GSCI] to be entitled to a ten percent retainage fee, the construction has to be completed and the construction loan has to be modified to a permanent mortgage.”

10. Finally, the Omnibus Objection argues that the retainage fees “are not secured by property of [TBW’s] estate and should be classified as general unsecured claims” and that GSCI “has waived secured status by failing to properly enforce its statutory construction liens under section 713.08 of the Florida Statutes.”

11. To the contrary, GSCI has provided sufficient documentation, attached to the Claims, to support their status as secured claims, has completed construction as required for entitlement to retainage fees, and has provided sufficient documentation, also attached to the Claims, in support of the parties contractual privity and entitlement to its unpaid draw amounts.

12. The Debtors’ objection is without merit.

13. In the event the Court determines that the Claims are unsecured, they should be allowed as general unsecured Class 9 trade claims.

14. GSCI requests that this objection be consolidated at trial with the Debtor’s previous objections to GSCI’s claims, which such trial is currently set for March 14 and 15, 2012, pursuant to the Court’s *Order Scheduling Trial* [Docket No. 4175] dated October 12, 2011.

WHEREFORE, GSCI requests that this Court (i) deny the Omnibus Objection with respect to GSCI's claims on the Loans, (ii) in the alternative, if the Court is not inclined to deny the Omnibus Objection with respect to GSCI's claims, allow same as Class 9 general unsecured trade claims, (iii) consolidate hearing on this objection with the prior objections filed by Debtor against GSCI's claims, and (iv) grant any other relief this Court may deem appropriate.

STUTSMAN THAMES & MARKEY, P.A.

/s/ Robert A. Heekin, Jr.

By _____

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Certificate of Service

I hereby certify on October 28, 2011 the foregoing pleading was transmitted to the Clerk of the Court for uploading to the Case Management/Electronic Case Filing System which will send a notice of electronic filing to all parties that have consented to electronic notice, and by U.S. Mail to the entities and persons listed on the attached service list.

/s/ Robert A. Heekin, Jr.

Attorney

Exhibit “A”

GSC #	Name	LOAN SETTLEMENT		LAST DRAW RECEIVED	CO DATE	Super	NOTES	Overages	Total of 5th & 10% TBW
		DATE	DATE						
1049	Persaud, Sase ***	11/25/2005	4/9/2007	4th	4/9/2007	Ken		1,000.00	17,809.50
1053	Abel, Milrose	12/5/2005	3/13/2007	4th	3/13/2007	Paul		2,072.00	18,054.00
1059	Shulichenko, Elena	12/9/2005	1/18/2007	4th	1/18/2007	Ken		1,487.20	24,210.70
1062	Teloma, Derby	12/28/2005	3/6/2007	4th	3/6/2007	Paul		1,180.00	20,830.00
1063	Antoine, Durozier	1/25/2006	1/2/2007	4th	1/2/2007	Jeremy		2,478.29	21,594.00
1067	Francois Fong	2/2/2006	1/18/2007	4th	1/18/2007	Greg B		645.05	20,854.00
1070	Roman Lamothé	1/6/2006	3/1/2007	4th	3/1/2007	Paul		1,776.25	21,041.25
1072	Antoine, Marguerite	1/25/2006	2/1/2007	5th	2/1/2007	Jeremy		2,111.59	16,980.00
1074	Sylvania Jean	1/11/2006	1/19/2007	4th	1/19/2007	Paul		1,557.50	20,369.50
1076	Pierre St. Pierre	12/19/2005	2/5/2007	4th	2/5/2007	Ken		2,764.35	24,440.40
1080	Jean Joseph	1/8/2006	3/15/2007	5th	3/15/2007	Ken		1,080.00	19,285.00
1081	Francoeur, Marie ***	1/10/2006	6/22/2007	4th	6/22/2007	Paul		2,772.03	19,988.00
1084	Celise Maimé	1/25/2006	3/21/2007	4th	3/21/2007	Greg B		1,715.00	21,594.90
1085	Luis Gonzalez	1/27/2006	1/26/2007	4th	1/26/2007	Jeremy		1,735.00	22,068.50
1087	Wilfred Mondeshtin ***	1/27/2006	NO	3rd	NO	Greg B		1,095.00	22,742.00
1088	Sylvia Joseph	1/25/2006	2/12/2007	4th	2/12/2007	Jeremy		1,605.00	25,471.00
1090	Bethy Joseph	1/25/2006	1/128/2006	4th	1/128/2006	Jeremy		1,904.00	25,561.00
1093	Myriam Suifra	2/3/2006	3/8/2007	4th	3/8/2007	Ken		1,565.00	23,194.00
1097	Elourdes Bazile	2/28/2006	1/26/2007	4th	1/26/2007	Greg B		1,736.45	26,007.00
1098	Juda Carstyle ***	1/8/2006	NO	4th	NO	Jeremy		325.00	23,134.00
1099	Nikette Supreme	2/10/2006	1/26/2007	4th	1/26/2007	Greg B		2,262.03	22,625.00
1101	Joseph Charlot	2/10/2006	2/1/2007	4th	2/1/2007	Greg B		2,195.05	24,634.50
1104	Craig Ziadie ***	2/10/2006	5/14/2007	4th	5/14/2007	Paul		925.00	24,019.50
1109	Marie Beaubrum	3/15/2006	4/6/2007	4th	4/6/2007	Jeremy		2,870.00	21,901.50
1111	Louissalnt Paraison	3/10/2006	1/26/2007	5th	1/26/2007	Greg B		325.00	18,475.00
1112	Clothaire Thelémaque	3/24/2006	1/26/2007	5th	1/26/2007	Jeremy		925.00	18,380.00
1115	Merphln Deslien	4/4/2006	2/22/2007	5th	2/22/2007	Jeremy		1,812.63	17,155.00
1116	Anne Bellevue ***	3/24/2006	5/29/2007	4th	5/29/2007	Jeremy		3,675.78	22,505.50
1117	Louise Forte	3/15/2006	2/19/2007	5th	2/19/2007	Greg B		325.00	18,380.00
1118	Peta Gave Duin	3/23/2006	4/11/2007	4th	4/11/2007	Paul		1,320.00	23,331.50
1119	Earnestine Smith	3/23/2006	6/7/2007	4th	6/7/2007	Greg B		3,943.19	37,131.00
1124	Brutus, Marie Alice	4/7/2006	2/27/2007	5th	2/27/2007	Greg B		1,262.15	17,290.00
1133	Louise Azor	6/1/2006	3/21/2007	5th	3/21/2007	Jeremy		2,945.05	20,900.00
1139	Florestal, Dupuy	4/6/2006	1/17/2007	5th	1/17/2007	Jeremy		3,499.79	17,380.00
1144	Joseph Dorvil	4/19/2006	4/6/2007	5th	4/6/2007	Paul		925.00	17,385.00
1148	Pierre Simeus	5/15/2006	4/18/2007	5th	4/18/2007	Paul		1,895.00	19,380.00
1149	Jean Julianise	4/28/2006	5/8/2007	4th	5/8/2007	Paul		2,865.00	25,841.00
1150	Wilner Charles	4/24/2006	4/27/2007	5th	4/27/2007	Paul		1,320.00	17,695.00

GSC #	Name	LOAN SETTLEMENT		CO	Super	NOTES	Overages	Total of 5th & 10% TBW
		DATE	LAST DRAW RECEIVED					
1153	Ostac Vincent	5/5/2006	5th	4/2/2007	Greg B		3,955.54	16,955.00
1154	Callicourt, Jean	5/3/2006	5th	2/8/2007	Jeremy		1,740.99	17,145.50
1158	Nicolle St.Felix	5/9/2006	5th	5/29/2007			1,680.00	17,695.00
1159	Jean Gerlin	5/18/2006	5th	3/30/2007	Greg		3,275.00	17,810.00
1160	Danton Nicolas	5/19/2006	4th	6/15/2007			1,225.00	22,608.00
1161	Marcelle Forte	6/2/2006	5th	3/28/2007	Jeremy		1,996.19	17,480.00
1162	Forte Jocelyne	6/5/2006	5th	3/16/2007	Jeremy		2,045.00	17,575.00
1164	Ramses Bataille	6/2/2006	5th	2/7/2007	Jeremy		728.99	17,790.00
1168	Guytho Cesar	6/16/2006	5th	3/21/2007	Jeremy		925.00	17,480.00
1176	Jack Pierre Louis	7/6/2006	5th	5/29/2007	Jeremy		1,438.70	17,480.00
1178	Kathely Edouard	7/26/2006	5th	4/9/2007	Jeremy		925.00	17,810.00
1179	Myriam Nouges	7/26/2006	5th	4/9/2007	Jeremy		925.00	17,810.00
1180	Mane Fleurime	7/12/2006	5th	5/29/2007	Greg		1,828.46	17,800.00
1181	Eva Bazile	7/13/2006	5th	4/25/2007	Greg		925.00	17,810.00
1194	Kelly Bernard	10/10/2006	3rd	7/25/2007			2113.01	40,225.00
							93,422.26	\$1,111,109.75