

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

CASE NO. 3:09-bk-7047-JAF  
CHAPTER 11

\_\_\_\_\_  
Debtor. \_\_\_\_\_/

OBJECTION TO FEE CLAIMANT, LENDER PROCESSING SERVICES, INC.  
APPLICATION FOR PAYMENT FOR SERVICES  
RENDERED PURSUANT TO THE CONFIRMED PLAN

COMES NOW, Donald F. Walton, United States Trustee for Region 21, by and through undersigned counsel, and objects to the Application for Payment for Services Rendered Pursuant to the Confirmed Plan (Dkt. No. 4140) (the “Application”) filed by Lender Processing Services, Inc. (“LPS” or “Applicant”).

The Application should be denied because the confirmed plan, when read as a whole, does not provide a basis for the award of attorney’s fees to a member of the Committee of Unsecured Creditors. Furthermore, Baker Hostetler is not otherwise entitled to fees under any provision of the bankruptcy code. Finally, Baker Hostetler has not made a substantial contribution to the estate but has only advanced the interests of one creditor. The United States Trustee sets forth his arguments in greater detail as follows.

1. LPS is a creditor in this case and sits on the Committee of Unsecured Creditors. LPS is represented in this case by Baker & Hostetler, LLP (“Baker Hostetler”). Baker Hostetler only represents the interests of LPS. It does not represent the Committee of Unsecured Creditors as a whole.

2. On July 21, 2011, the Court confirmed the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors. (the “Order Confirming Third Amended Plan”)(Dkt. No. 3240)

3. The Applicant asserts that the Order Confirming Third Amended Plan provides a basis for an award of fees and expenses separate from any need to demonstrate substantial contribution.

4. Two provisions from the Order Confirming Third Amended Plan are relevant. First, the Order Confirming Third Amended Plan provides as follows:

**BAR DATE FOR PROFESSIONAL CLAIMS.** All Professionals, other Persons requesting compensation or reimbursement of expenses pursuant to any of sections 327, 328, 330, 331, 503(b) and 1103, *and certain creditors who engaged in conduct, through their counsel, that maximized recovery on Claims in their Class(es)* (each, a “Fee Claimant”), seeking payment for services rendered on or before the Confirmation Date (including any compensation requested by any Professional or Person other than the FDIC for making a substantial contribution in the Chapter 11 Cases) shall File and serve on counsel for the Debtors or the Plan Trustee (as applicable) an application for final allowance of compensation and reimbursement of expenses accruing from the Petition Date to the Confirmation Date . . . . *Fee Claimants shall receive reimbursement of their reasonable fees and expenses. Resolution of the requests for reimbursement of fees and expenses of the Fee Claimants in this manner is in the best interests of the Estates . . .*

(Order Confirming Third Amended Plan, ¶ 94 (italics added)). The Application cites the italicized text to justify the request for fees.

5. Second, the following provision of the Order Confirming Third Amended Plan is relevant.

**NO EFFECT ON OBJECTIONS TO FEE APPLICATIONS.** Except as provided in Article 3.A.(3).(b) of the Plan,<sup>1</sup> nothing contained in the Plan

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<sup>1</sup>Article 3.A.(3).(b) sets the bar date for objections to fees.

shall affect the rights of parties in interest to object to fee applications or limit the power of the Bankruptcy Court to issue orders with respect to Fee Applications.

(Order Confirming Third Amended Plan, ¶ 61).

6. When read as a whole, the Order Confirming Third Amended Plan does permit the attorneys for individual creditors to be paid from estate assets. The language cited by the Applicant in the section entitled “Bar Dates for Professional Claims” is vague and inconspicuous, whereas the language in the section entitled “No Effect on Objections to Fee Applications” is specific and highly conspicuous and provides that “nothing contained in the Plan shall affect the rights of parties in interest to object to fee applications or limit the power of the Bankruptcy Court . . . .”

7. A provision in a chapter 11 plan allowing the payment of fees and expenses to individual creditor’s attorneys would be an extraordinary provision. Such a provision would allow an entity to receive compensation from estate without proving that it provided the estate with value circumventing the requirements of the bankruptcy code. Such a provision would be expected to appear prominently and unambiguously in the text of the plan as was done with FDIC. No such provision appears in the Order Confirming Third Amended Plan.

8. In the absence of a clear specific plan provision and specific findings relating to substantial contribution provided by Baker Hostetler, (that would arguably allow payments not authorized under the bankruptcy code), it has no right to compensation under any provision of the bankruptcy code. Pursuant to 11 U.S.C. § 503(b)(3)(f) and (b)(4), an attorney for member of a creditor’s committee is not entitled to compensation for professional services. Section 503(b)(3) lists parties that are entitled to compensation, and section 503(b)(4) specifies which of

the parties in section 503(b)(3) are entitled to pay professionals from estate assets. Members of a creditor's committee are entitled to expenses under section 503(b)(3) but are not permitted to pay professionals from estate assets under section 503(b)(4).

9. The Application requests \$553,451.50 in fees for 863.10 hours which results in a blended hourly rate of \$641.24. The Application also requests \$10,872.98 in expenses for a total award of \$564,324.48. The time entries in the Application indicate that the majority of counsel's time was spent reviewing filings for the benefit of its client. The Application does not specify which, if any, of the time entries refer to services that provided value to the estate as a whole but includes all fees and expenses incurred relating to its representation of LPS.

10. For the above reasons, the Application should be denied in its entirety.

DATED: November 8, 2011

DONALD F. WALTON  
United States Trustee, Region 21

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Objection was served electronically to CM.ECF subscribers as well as first class mail postage prepaid to those parties listed below on this the 8<sup>th</sup> day of November 2011:

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