

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER CASE NO: 09-07047-3F1
MORTGAGE CORP.,

Debtor.

TRANSCRIPT OF PROCEEDINGS

Various motions before the Honorable Jerry A. Funk, U.S. Bankruptcy Judge, to commence at 10:00 a.m., on Thursday, October 8, 2009, at the United States Courthouse, Room 4D, 300 North Hogan Street, Jacksonville, Florida, as reported by Cindy Danese, Notary Public in and for the State of Florida at Large.

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P R O C E E D I N G S1
2 October 8, 2009

11:15 a.m.

3 - - -

4 THE COURT: Good morning. We're here on the
5 case of Taylor, Bean & Whitaker.6 Mr. Blain, if you would, tell me what's going
7 on.8 MR. BLAIN: Good morning, Your Honor. Russ
9 Blain appearing on behalf of the debtor.10 First of all, thanks, Your Honor, for the time
11 the Court has indulged us. There were some
12 questions that had arisen last night and this
13 morning that we have been attempting to resolve,
14 and we're getting an answer from one of the
15 parties' out-of-town clients today that may solve a
16 lot of problems.17 Let me start with the things that have been
18 resolved and that can come off the calendar.19 The first item on the calendar is the motion
20 of Sovereign Bank for adequate protection or relief
21 from stay. That has been resolved, and that can be
22 denied without prejudice.23 THE COURT: Very well. I'll look to you for
24 an appropriate order.

25 MR. BLAIN: The second is item number 2,

1 docket number 95. That is Bank of America's motion
2 for relief from stay relating to the Ocala Funding
3 loans. We are attempting to reach a resolution of
4 that. There has been an agreement with the parties
5 to roll that motion to the next hearing date --
6 well, not the next one, but the next one after
7 that. It will be November 5th, I believe.

8 THE COURT: We will continue that to
9 November 5th.

10 MR. ZARON: October 15.

11 MR. BLAIN: Mr. Zaron has corrected me and
12 said he'd like that to be heard on October 15th. I
13 don't know that there's a lot to discuss on it, but
14 we'll consent to that.

15 THE COURT: October 15th?

16 MR. BLAIN: Yes, sir.

17 THE COURT: Announcement's made in open court,
18 no further notice.

19 MR. BLAIN: Yes, sir.

20 The third is the motion of Natixis -- this is
21 docket number 108, the motion of the Natixis Real
22 Estate Capital. This is also for relief from stay
23 or adequate protection. Natixis is represented by
24 Jeff Rich of New York, and Mr. Rich and I have
25 agreed that this also can be rolled forward and put

1 on the calendar for November 5th.

2 THE COURT: That will be continued to
3 November 5th. Announcement's made in open court,
4 no further written notice required.

5 MR. BLAIN: We can take up all of his, I
6 think, at one time.

7 The next one is item number 5, docket number
8 162. That is a continued hearing on the motion of
9 Nationwide Title Clearing with respect to
10 processing of lien releases. They are represented
11 by the Johnson Pope firm in Clearwater, Angelina
12 Lim.

13 We have spoken with Ms. Lim and that is being
14 resolved, but she has requested and we have agreed
15 that that could be rolled and put on the calendar
16 for October 15th, announcement in open court.

17 THE COURT: Very well. We will continue that
18 to October 15th, an announcement that's made in
19 open court, no further written notice is required.

20 Next?

21 MR. BLAIN: Let's see. Item number 9 on the
22 calendar is docket number 166. This is the motion
23 of Sovereign Bank for reconsideration of the agreed
24 order that was entered with respect to U.S. Bank
25 and Bayview Loan Servicing, this based on a

1 resolution that has been reached with Sovereign
2 Bank. Sovereign has agreed to withdraw this
3 motion, so this motion which Mr. Soriano
4 represents, and he is in court, can be withdrawn in
5 open court and we will provide an order to the
6 Court indicating that it has been withdrawn.

7 THE COURT: Very well. We'll look for that
8 order.

9 MR. BLAIN: Your Honor, that leaves for
10 consideration -- I think the appropriate thing
11 would be to take up the matters related to Bayview,
12 which is item number 4 and number 8.

13 Item number 4 is the motion of Bayview to
14 compel termination with respect to various items,
15 and I believe Mr. Kobert has -- I don't know if he
16 had anything he wanted to say on that, or if we can
17 just roll that to the next hearing date.

18 THE COURT: I think also number 7 has to do
19 with Bayview --

20 MR. BLAIN: That's right.

21 THE COURT: -- objections to various motions.
22 We're talking about 4, 7 and 8.

23 MR. BLAIN: Yes, sir.

24 MR. KOBERT: Just to number 4, Your Honor, we
25 agreed to roll that to November 5.

1 THE COURT: Number 4 goes to November 5.

2 MR. KOBERT: And 7 goes to November 5 as well.
3 They go together.

4 THE COURT: And number 7 goes to November 5.
5 Those will be continued to that date.
6 Announcement's made in open court and no further
7 written --

8 MR. KOBERT: We're not the movant to number 8,
9 just in response to an order entered by the Court.

10 THE COURT: I understand. Okay.

11 MR. BLAIN: Your Honor, I think it would be --
12 there are three things that are left for
13 consideration after that. One of them is the Bank
14 of America's motion for reconsideration with
15 respect to the prior entered Bayview order, cash
16 collateral and a resolution with Wells Fargo.

17 I think it's probably appropriate at this
18 point that we take up item number 10 on the
19 calendar, which is docket number 58, and that is
20 the motion of Wells Fargo for relief from stay.

21 This had come before the Court on two prior
22 occasions, and at the hearing on September 21st the
23 Court set today as a final evidentiary hearing on
24 the motion of Wells Fargo for relief from stay.

25 There were depositions scheduled and there

1 were protective order motions filed that are set
2 for hearing on October 15th.

3 I'm pleased to announce to the Court that we
4 have reached a resolution and an agreement of all
5 issues with Wells Fargo. Those terms are set forth
6 in a written stipulation that was filed yesterday
7 with the Court. That stipulation was provided in
8 various stages to parties in the case, and when we
9 filed it yesterday we served it upon the list of
10 people who have been actively involved in the case,
11 as well as serving it through ECF and direct
12 service.

13 The written stipulation is a simple,
14 straightforward one given the complexity of the
15 relationship between the debtor and Wells Fargo.
16 Essentially, it provides for the turnover of the
17 loans that are still at the debtor that are Wells
18 Fargo loans. Those would be transferred
19 immediately, in any event by October 30th, to Wells
20 Fargo or to a successor servicer that it would
21 name.

22 There is a litany of the various acts that
23 would be done by the debtor to facilitate the
24 transfer of that servicing, including the provision
25 being made for notifying borrowers of what are

1 called the hello and goodbye letters that are sent
2 to borrowers so that they can be advised and know
3 of the transfer of servicing on their loan.

4 To the benefit of the estate, there is an
5 agreement on an accelerated reimbursement for loan
6 advances that have been made by the debtor, and
7 that provides for a payment of \$1,300,000 in weekly
8 sums by Wells Fargo to the debtor. That would be
9 an advance on the advanced amount.

10 There is notably a specific provision in
11 Paragraph 3 that provides for a complete
12 reservation of rights by both parties with respect
13 to all matters between them. There are no waivers,
14 releases, acquiescence of rights, anything. The
15 parties retain all rights with respect to assets
16 that they own, anything that needs further
17 resolution between them. And that is essentially
18 it.

19 We're extremely glad to be able to resolve
20 this. That is a significant portfolio of loans
21 that had been tied up as a result of the litigation
22 with Wells Fargo and this Chapter 11 case, and as a
23 result of this stipulation being reached, we're
24 able to turn these over to Wells Fargo and to
25 assure that they can be serviced from this point

1 forward.

2 This has been negotiated at arm's length with
3 Wells Fargo. I do not believe that this motion --
4 because there is not anything being done other than
5 transfer servicing rights and this is a resolution
6 of a stay motion, that this motion can be and
7 should be approved immediately.

8 There are already steps that have been taken
9 between the debtor and Wells Fargo to be prepared
10 to implement this upon approval by the Court, and
11 this is something that can be done quickly and the
12 principal benefit of this will go to the borrowers
13 whose loans are in the pool that Wells Fargo claims
14 an interest to, and it would be as to which
15 servicing rights would be transferred under the
16 stipulation.

17 So, with that having been said, we would urge
18 the Court to approve this stipulation. We would
19 submit a proposed order that would be very similar
20 to the one that was entered with respect to Freddie
21 Mac and that was entered with respect to Bayview
22 that approves the stipulation, provides for the
23 reservation of rights as is set forth in the
24 stipulation, and provides for immediate
25 implementation of the procedure that has been

1 agreed to between the debtor and Wells Fargo.

2 THE COURT: Anybody want to make a comment or
3 objection?

4 MR. TESSITORE: Yes, Judge. Mike Tessitore on
5 behalf of Bank of America as collateral agent and
6 indentured trustee.

7 At the last hearing, Judge, this issue of
8 relief from stay, the transferring of servicing of
9 the loans, came up before the Court in the context
10 of the Freddie Mac motion for relief from stay and
11 a stipulation with the debtor, as Mr. Blain
12 mentioned, similar to the stipulation that's before
13 the Court right now.

14 At that time we argued an objection, and we
15 filed an amended objection to all of these motions
16 for relief from stay, and we argued that it was
17 premature for the Court to authorize anything that
18 would encourage the disbursement of loan proceeds
19 until the full reconciliation is done in light of
20 the allegations that we're all aware of that
21 possibly fraud has occurred, possibly commingling
22 of funds has occurred, and in light of all the
23 generally acknowledged uncertainty to who owns what
24 in this case.

25 So, for those reasons, we also object to this

1 stipulation, and we reiterate that objection for
2 the record today.

3 Now, Judge, since that hearing there's been a
4 development that should be mentioned as an
5 additional reason for the Court not to approve that
6 stipulation today, the stipulation with Wells Fargo
7 or any additional relief from stay from any party
8 when it comes to loan servicing.

9 Since the last hearing, the Court entered an
10 order approving the stipulation between the FDIC
11 and the debtor. And then subsequently, in response
12 to objections to that order that were filed by
13 various parties, entered an order scheduling a
14 hearing on those objections and making certain
15 determinations.

16 And specifically in the order scheduling the
17 hearing on the objections to the stipulation
18 between the debtor and the FDIC, the Court found
19 that the following issue was not clearly addressed
20 in that stipulation, and that was whether the
21 servicing and asset reconciliation shall be made
22 available to creditors and parties in interest and
23 subject to objection and approval by the Court
24 prior to the transfer of servicing or the
25 disbursement of any funds.

1 So an issue on the Court's mind is whether
2 it's premature at this point, and obviously the
3 Court hasn't made any ruling, but an issue that the
4 Court is going to consider at the hearing next
5 week.

6 THE COURT: Those were not my feelings. I'm
7 just saying I read the objections. Those are the
8 ones that came to mind. That wasn't the Court
9 saying: This bothers me one way or the other. I
10 just wasn't sure it was covered, and I told the
11 parties to have it worked out by next Thursday and
12 I'm hoping that will be the end of it.

13 But, you're right, those are factors that
14 didn't appear to have been worked out.

15 MR. TESSITORE: And so --

16 THE COURT: But it wasn't my concern. I'm
17 just pointing out that was my observation based on
18 the objections.

19 MR. TESSITORE: Thank you, Judge, and thank
20 you for that clarification.

21 The point I'm making is that that issue is
22 going to be on for hearing. If it's not worked
23 out, that issue will be on for hearing next week.

24 And on the subject of trying to work it out,
25 the Court ordered the parties to meet and confer

1 and try to resolve that issue. And so what has
2 happened, my client and its counsel are working
3 with the FDIC and other parties to try to resolve
4 that issue of having the servicing and asset
5 reconciliation properly done and giving proper
6 notice to all parties, and at the same time being
7 cognizant of the borrower issue and the concerns
8 that borrowers not be harmed in the interim.

9 And so what is currently involved in this
10 discussion is an effort or the idea of coming up
11 with provisions for making sure that the taxes and
12 insurance get paid in the interim and to making
13 sure that the principal and interest payments get
14 applied as an accounting matter so that people are
15 not declared in default when they have in fact made
16 their payments.

17 So those are the issues that are currently
18 being discussed pursuant to the Court's directive,
19 and all of that is on for hearing next week in the
20 event that it's not resolved consensually.

21 In the context of the parties meeting and
22 conferring and discussing those issues and in the
23 context of the Court stating that next week we're
24 going to talk about whether servicing and asset
25 reconciliation shall be made available to creditors

1 and parties in interest, and subject to objection
2 and approval prior to the transfer of servicing
3 disbursements of any funds, we have a stipulation
4 before the Court today that does exactly that. It
5 authorizes the transfer and disbursement of funds
6 without the reconciliation being complete.

7 So for the same reasons we objected to the
8 Freddie Mac stipulation, we're objecting to the
9 Wells Fargo stipulation. This argument is the same
10 argument that I would make, Your Honor, in support
11 of my amended motion for reconsideration of the
12 U.S. Bank's, Mr. Kobert's client, agreed order
13 which provides for the transfer of servicing and
14 the receipt and disbursement of loan proceeds.
15 It's simply premature, Judge.

16 And so what we'd ask, if the Court is not
17 inclined to sustain my objection to the stipulation
18 entirely, that at a minimum this be continued until
19 after the Court has considered the very important
20 issue of the asset reconciliation and the timing of
21 transfer of servicing and disbursement of funds.

22 THE COURT: You represent Bank of America.

23 MR. TESSITORE: Yes, sir.

24 THE COURT: Excuse me. I'm sorry. Bank of
25 America claim that they have some lien or right,

1 title or interest in any of these mortgages that
2 are being transferred, or are you just in
3 general --

4 MR. TESSITORE: In general there's a concern
5 that nobody knows who has an ownership interest in
6 these loans until the reconciliation is complete,
7 and that's true with respect to the Freddie Mac
8 loans, the U.S. Bank loans, and any other loans
9 that people are talking about transferring out.

10 MR. BLAIN: Just briefly, Your Honor.

11 Part of the reconciliation process, to be
12 sure, is to determine who owns what, and no one can
13 be certain of anything with respect to that at this
14 point.

15 But the issues with respect to the Wells Fargo
16 loan package and the matters that have been
17 resolved with the FDIC are drastically different.

18 The stipulation that was reached with the FDIC
19 deals with the substantial numbers of accounts,
20 something like 90-something accounts, at Colonial
21 Bank that the debtor had in that bank, opening the
22 visibility to those accounts and seeking to
23 reconcile the source of funds and the disposition
24 of those funds. And there are certain issues with
25 respect to those funds that Bank of America has

1 specific concerns about. We thought that was
2 resolved.

3 There is one issue that -- those three issues
4 that were identified in the objections that we hope
5 that we can resolve before next week's hearing.

6 In the case of Wells Fargo, on the other hand,
7 these are loans that remain in the debtor's
8 possession at this point. These are not tied up
9 with the FDIC or Colonial Bank.

10 We can't be certain of anything for sure, but
11 there has been no evidence or no reason to believe
12 that any of the Wells Fargo loans are in any way
13 tied up with any disputes between Colonial Bank and
14 Bank of America over the ownership of loans that
15 are subject to the FDIC stipulation.

16 If there is any such thing like that, it's
17 news to us. Hopefully that will not be the case,
18 but there has been no indication of that and
19 nothing asserted other than a broad: Well, we're
20 concerned about it because we don't know for sure
21 what's going on.

22 Bank of America does not have a lien on these
23 loans. Bank of America's only interest and only
24 position is either as a creditor of the estate or
25 as the owner of certain loans that are subject to

1 the issues between itself and Colonial Bank.

2 So, with that in mind, I just think that for
3 them to do that is carrying forward an argument
4 that's just like: We don't want anything to happen
5 in this case until we're absolutely sure of what
6 our position is.

7 The second and most important situation is the
8 fact that in this case we're talking about 14,000
9 loans that are stymied at this point, that if those
10 loans can be turned over to Wells Fargo, the
11 servicing can be turned over to Wells Fargo as this
12 stipulation provides. Those borrowers can begin to
13 have a servicer with whom they can deal on an
14 active basis. That can go forward, those loans can
15 be serviced the way they should be, and we can have
16 those borrower issues behind us.

17 So I think with those two primary responses in
18 mind, there's no reason to delay this. This does
19 not have the same issues and the same complexities
20 that the FDIC stipulation does. It is very similar
21 to the Freddie Mac stipulation which was approved
22 in open court at a hearing on Freddie Mac's motion
23 for relief from stay.

24 With that mind, we would again urge the Court
25 to approve the stipulation and allow this process

1 to go forward.

2 THE COURT: Thank you.

3 Anybody else?

4 MR. WEITNAUER: May it please the Court, my
5 name is Kit Weitnauer, I'm from Alston & Bird in
6 Atlanta, Georgia, representing Wells Fargo as
7 master servicer.

8 For the reasons stated by debtor's counsel, we
9 also urge the Court to approve the stipulation. It
10 wasn't easy to get here. We think it's very
11 important for all these borrowers.

12 And, as counsel has admitted, there's no
13 specific allegation that there's any claim to any
14 of these loans, and so an unspecified concern
15 should not disrupt what needs to happen to get this
16 moving along.

17 So we'd ask the Court to approve this right
18 away.

19 We've had discussions already with the
20 debtor's folks about how to get ready to transfer
21 once this Court has entered an order and we can
22 start making things clear for all those borrowers
23 out there the sooner we get authority from the
24 Court. We hope you'll authorize it.

25 Thank you.

1 THE COURT: Thank you.

2 You already talked. There's nothing else for
3 you to say. (Indicating Mr. Tessitore.)

4 Anybody else want to say anything?

5 MR. SPECTOR: Good morning, Your Honor. My
6 name is Arthur Spector, I'm with the law firm of
7 Berger Singerman. We, until the Court orders
8 otherwise, are tentatively preliminarily counsel
9 for the unsecured creditors committee. We have a
10 hearing next week.

11 THE COURT: We'll take care of that,
12 hopefully. I haven't seen objections yet, but
13 we'll see.

14 MR. SPECTOR: Let's not advertise it.

15 (General laughter.)

16 MR. SPECTOR: I rise, Your Honor, to support
17 the stipulation with Wells Fargo and the debtor.
18 This is probably the first position we're really
19 taking before the Court, and it's in support of a
20 resolution. We'd like to be able to take a lot
21 more positions like that as the case progresses.

22 I reiterate what was stated by counsel for the
23 debtor and will be stated, I'm sure, by counsel for
24 U.S. Bank, N.A., Bayview when they come up and
25 argue their matter, because it involves the same

1 argument from Bank of America consistently
2 throughout, and that is: There may be problems, we
3 don't know, and therefore the world should stop
4 until we have our answers.

5 The asset reconciliation that's going on
6 between the FDIC and the debtor, I'm given to
7 understand is not something that's likely to end at
8 the end of October, it may go for several months,
9 and I don't think that the Court or parties in
10 interest can tolerate a delay of that long before
11 we know who exactly has which loans or title to it
12 if there was a problem.

13 That is an overriding concern with all the
14 objections that Bank of America is going to be
15 making. We can't stop the world from turning as we
16 go through these things. We can be cautious, we
17 can be certain of certain things to some level of
18 degree of certainty, but we can't not do things on
19 account of their lack of evidence.

20 Secondly and more practically, I'm given to
21 understand as well that the servicing rights are
22 rights, but they're also, to a large extent in this
23 estate at this point, a liability of the estate
24 and, of course, as creditors with the last rung, we
25 are concerned that there not be further liabilities

1 incurred by the estate. And if this is a
2 liability, as I'm understanding it might be, let's
3 get it off the books as quickly as possible.

4 And, finally, I given to understand that
5 there's a regulatory issue. As I read the papers,
6 everybody's been touting the fact that regulators
7 have given cease and desist orders to the estate to
8 stop servicing. And, as I understand, the debtor
9 is doing its best try to give back, as the
10 creditors have asked for in the various motions for
11 relief from stay, give back the servicing rights
12 and get what I perceive to be a liability off their
13 hand and commit their integrity to the regulators
14 when they say they're trying to do that.

15 So I think there's a lot of reasons why the
16 stipulation makes sense, and the committee supports
17 it.

18 THE COURT: Thank you.

19 MS. LAUKITIS: Lisa Laukitis from Jones Day on
20 behalf of MBIA Insurance Corporation.

21 MBIA is an insurer of two of the trusts where
22 Wells Fargo is the master servicer and, as the
23 insurer, bears the first risk of loss with respect
24 to those trusts.

25 MBIA has been involved in the negotiations of

1 the stipulation and supports it, believes that the
2 servicing of these trusts needs to transfer
3 immediately, and would like to reiterate the need
4 for ACH payments to be cleared as soon as possible
5 and for the uncashed checks that are sitting at the
6 lockbox at Colonial Bank to be transferred so that
7 we don't have further risk of those checks going
8 stale.

9 All parties' rights with respect to a final
10 determination on whether the servicing rights have
11 been terminated are reserved under the stipulation,
12 and though MBIA believes that the rights with
13 respect to its trusts were properly terminated
14 under the terms of the document, they support the
15 stipulation because of the need to transfer
16 servicing, but reserve rights to ask this Court to
17 make a final determination in the future, if it's
18 necessary, to protect their interest.

19 THE COURT: Thank you.

20 MR. TESSITORE: Your Honor, can I make one
21 clarification?

22 THE COURT: Sure.

23 MR. TESSITORE: I compared this stipulation to
24 the stipulation between the debtor and Freddie Mac.
25 The truth is that this stipulation with Wells Fargo

1 does not provide that the parties' rights in the
2 loans, whatever they might be, are preserved, nor
3 does it provide for a make-whole type agreement
4 whereby which, if somebody were improperly receive
5 a loan that didn't belong to it, they would agree
6 to do what is necessary to make the other party
7 whole.

8 This stipulation provides even a lesser level
9 of protection for Bank of America and for any other
10 party that might end up having its loan turned over
11 to Wells Fargo.

12 THE COURT: One thing that all of you have
13 convinced me of, because that's what all these
14 emergency hearings are about, that these poor
15 borrowers out there, we're protecting them. But as
16 soon as I want to do something, everybody says:
17 Oh, it can wait.

18 Well, I think that's wrong. I don't know
19 about your offices, but we are getting called
20 continuously from these borrowers who had various
21 servicers, and they're complaining that they made
22 their payment and the creditor says you haven't
23 made it and they're getting default notices.

24 And the biggest offender is Bank of America.
25 They are not nice to people whatsoever. This is

1 what I'm hearing. It's not evidence. And not
2 taking any position like: We're not going to
3 foreclose any of these mortgages, we're not going
4 to add late charges or any of that until we get
5 this resolved.

6 So I think it's disingenuous, not you but your
7 client, come over and taking the position, when
8 you're causing the trouble and making me feel like
9 it's even more important to get these mortgages
10 serviced by people who at least can give an
11 accounting.

12 We're not transferring the title. The
13 servicing is going out there. The ownership will
14 stay where it is. And if the debtor doesn't claim
15 an interest, this is a court of competent
16 jurisdiction, that you or whoever claims an
17 interest in those rights can litigate it.

18 And I don't see a problem here. They're not
19 going down a dark hole. There's going to be
20 records, there's going to be a paper trail or
21 computerized trail, a digitalized trail I guess
22 you'd call it, where all these things go.

23 I think it's appropriate to get the transfer.
24 I'm not crazy about entering an order approving
25 stipulations. I can grant relief from the stay.

1 Two parties, I assume, have made this agreement.
2 There's mutuality of obligation, there's I guess
3 adequate consideration; therefore, they got a
4 contract. And if there's a breach of the contract,
5 then I can maybe deal with that or some other court
6 rather than every item of that agreement becoming a
7 court order which is enforceable by contempt. That
8 scares me a little bit.

9 But we're here in the scope of a motion for
10 relief from stay, and I think it's appropriate
11 under the circumstances to grant the motion. The
12 stay will be lifted to allow those mortgages or
13 servicing rights to be transferred so the mortgages
14 can be serviced effectively.

15 With that being said, somebody's on the edge
16 of their seat there. Yes, sir.

17 MR. ZARON: Your Honor --

18 THE COURT: You stayed so quiet the whole
19 time.

20 (General laughter.)

21 MR. ZARON: Andy Zaron on behalf of Bank of
22 America as indentured trustee, custodian and
23 collateral agent.

24 I've been quiet because Mr. Tessitore is
25 representing Bank of America because we have

1 certain conflicts, so he's representing Bank of
2 America where we have those conflicts.

3 But with regard to comments that Your Honor
4 made regarding Bank of America and the servicing
5 that they're doing, just to clarify, we're not
6 actually representing Bank of America in its
7 capacity as a servicer for certain loans.

8 Bank of America is a subservicer for Ginnie
9 Mae loans, which is a substantial number of loans.
10 And we did mention this to the client, because I
11 believe the U.S. Trustee mentioned the same concern
12 at the creditors meeting about a week ago. And in
13 discussing it with the client, what the client did
14 tell us is that they are receiving calls from a lot
15 of borrowers who are not actually having their
16 loans serviced by Bank of America, as if Bank of
17 America is the sole servicer. They think it's
18 because of the publicity, although they're not
19 certain.

20 The other thing that they mentioned to me is
21 that, with regard to the Ginnie Mae loans, with the
22 consent of Ginnie Mae they have agreed to a 30-day
23 moratorium on declaring defaults.

24 I just want the record to be clear that Bank
25 of America is a good guy. After all, they are the

1 Bank of America.

2 (General laughter.)

3 MR. ZARON: And I know that it's not
4 necessarily relevant to the proceedings before Your
5 Honor specifically today, but I couldn't help but
6 sit on the edge of my seat and point that out to
7 Your Honor.

8 THE COURT: They're a good guy, and I
9 understand now.

10 MR. ZARON: Thank you, Your Honor.

11 (General laughter.)

12 THE COURT: Anyway, prepare me an order --

13 MR. BLAIN: Yes, Your Honor.

14 THE COURT: -- submit it, and then, if there's
15 a problem, we'll meet next week and every Thursday
16 thereafter, I guess, until we get all this stuff
17 resolved.

18 Objection overruled.

19 Next item?

20 MR. BLAIN: Your Honor, I think the next thing
21 to take up would be item number 8, which is docket
22 287, which is Bank of America's motion for
23 reconsideration of the agreed order that was
24 entered based upon an agreement reached between
25 U.S. Bank, Bayview and the debtor, and that is, I

1 believe, a dispute primarily between U.S. Bank and
2 Bank of America.

3 THE COURT: Very well.

4 MR. BLAIN: Although I would point out to the
5 Court that this was the first agreement that the
6 debtor reached with one of the parties in this
7 case, and it has formed not exactly the model but
8 it has set a pace for some of the other things in
9 the case.

10 So we clearly stand by the agreement that was
11 reached and believe that this has been beneficial
12 to the estate. Not only has it brought money into
13 the estate, but it's brought an orderly transition
14 of the loans that were transferred to U.S. Bank and
15 Bayview. So there has been no change in that
16 circumstance.

17 THE COURT: And that was an agreement between
18 debtor and U.S. Bank and Bayview, right?

19 MR. BLAIN: Yes, Your Honor, that's right.

20 THE COURT: Bank of America wasn't a party to
21 that agreement.

22 MR. BLAIN: That is correct.

23 THE COURT: Did they object at the time?

24 MR. BLAIN: Your Honor, what had happened,
25 that was a little bit of an unusual procedure early

1 in the case. There was a motion for relief from
2 stay that was set on an emergency basis, and we
3 reached terms and submitted to the Court an agreed
4 order. That agreed order was entered by the Court,
5 and I believe that this motion for reconsideration
6 is directed to that agreed order.

7 THE COURT: Okay. I'm ready.

8 MR. TESSITORE: Your Honor, the motion for
9 reconsideration is really just reassertion in a
10 different form of the arguments I made earlier,
11 that is, we believe that it's premature to
12 authorize the transfer of the rights for the
13 reasons I mentioned.

14 So I would just incorporate those arguments by
15 reference rather than having the Court listen to
16 them again.

17 Your Honor has made your view pretty clear
18 that you would like the servicing to be
19 transferred.

20 I would point out that the agreed order that
21 was entered pursuant to the stipulation once again
22 does not expressly provide for a reservation of
23 rights, does not expressly provide for a make-whole
24 agreement such as is provided in the stipulation
25 with Freddie Mac.

1 So we believe, at least to that extent, our
2 motion for reconsideration should be granted and
3 the order should be set aside until those issues
4 are dealt with.

5 But, generally speaking, the grounds for
6 reconsideration is that the order was entered, it
7 provides for the transfer of these loans and for
8 the transfer of the proceeds associated with those
9 loans going forward, and, once again, we believe
10 this is an issue that should be dealt with after
11 the reconciliation, or, at a minimum, until the
12 Court has considered the issue of the
13 reconciliation at the hearing next week on the
14 15th.

15 Thank you.

16 THE COURT: Mr. Kobert, that sounds reasonable
17 to me. Now you'll explain to me why it isn't,
18 right?

19 MR. KOBERT: Yes, Your Honor. I hate to take
20 victory from the jaws of defeat or vice-versa.
21 But, Your Honor, this one's different. I think
22 it's even a stronger case for what Your Honor did
23 several times before and will give Your Honor more
24 solace and comfort to reaffirm and affirm yourself.

25 Your Honor, this was one done back on

1 August 31st, so we've been operating under this
2 premise for six weeks, and now they want to --
3 before they want to stop the bell from ringing,
4 they want to unring the bell here. And it's clear
5 in our agreement, which is the template that Mr.
6 Blain described, that the issue of whether
7 servicing was terminated appropriately prepetition
8 -- we think it was -- is preserved.

9 We did agree, when Bank of America first filed
10 their objection, docket entry 201, that they were
11 concerned that this would somehow work as some sort
12 of an adjudication of ownership tacitly, and that
13 was not the intent of my client or the debtor.

14 So we agree, to the extent it's not clear,
15 that the fact that we believe we now have the
16 servicing of our own loans, there is no
17 adjudication by this Court of ownership of those
18 loans. And that was fine.

19 But then Bank of America filed an amended
20 objection, 287, the night before the last hearing
21 bringing up this double pledging issue and concerns
22 that went well beyond the pale in terms of Judge
23 Jordan's order.

24 You've heard other counsel come up here and
25 talk about some of those issues, and Your Honor did

1 approve the Wells Fargo stipulation over Bank of
2 America's objection today, docket 412, and then
3 Freddie Mac at docket 288, and then an order at
4 docket 350.

5 Ours is a little bit different as well, Judge,
6 and with more confidence for the Court, because as
7 other parties and lawyers like to argue or at least
8 proffer facts regarding the fact that whether these
9 reasons were double pledged and are these loans
10 that we are servicing truly owned by our client.

11 Your Honor did shorten at our request
12 discovery that we took before coming to court
13 today, and we served very simple, straightforward
14 requests for admissions, interrogatories and
15 requests to produce, and we did get responses
16 timely back from Bank of America.

17 The first, Judge, very quickly, being
18 interrogatories, we asked a few questions regarding
19 these allegations: Explain with specificity Bank
20 of America's belief the debtor double pledged
21 certain investor loans that have been transferred
22 to us, and the response basically gives us no
23 information.

24 Identify by account number double-pledged
25 loans that have been transferred to us. We got

1 back an objection and a reservation.

2 And then identify any records or evidence of
3 Bank of America's allegation that there has been
4 double pledging of loans that have been transferred
5 to my client, and again we got the same
6 reservation.

7 Other than repeating what the FDIC has said in
8 the pleadings or other allegations of third
9 parties, and I realize it's premature, it may be
10 true in the future, we don't know and Bank of
11 America, candidly, doesn't know.

12 We asked for request for admissions very
13 simply, Judge. We only had two: Admit or deny
14 that Bank of America does not have any evidence or
15 support that the debtor double pledged certain of
16 the investor loans that were transferred to our
17 client. And the answer very simply from the Bank
18 of America is that they're without sufficient
19 information to admit or deny that admission.

20 The same thing with the inability to admit or
21 deny the admission whether they have any evidence
22 regarding the double pledging of loans that were
23 transferred to my client.

24 And then to round out the triangle on
25 production of documents regarding double pledging

1 of loans that were transferred to us that we
2 believe and have evidence we own, there is no
3 documents or evidence to support that.

4 So I think it's stronger now, even with
5 discovery from the party objecting and moving for
6 reconsideration, that they have no evidence.

7 We've also asked them for the loans they've
8 identified with Judge Jordan -- I think it's
9 approximately 9,000 loans identified in one of
10 Judge Jordan's injunction orders -- whether any of
11 those loans were transferred and servicing was
12 transferred to my client, and they don't believe --
13 Bank of America asked me to -- correct me if I'm
14 wrong -- doesn't believe that any of those loans
15 that are the subject of that order by Judge Jordan
16 involve any loans that were transferred to us that
17 we in fact claim an ownership interest in.

18 So other than -- Your Honor, just to clarify,
19 if Bank of America wants that this stipulation from
20 August 31st does not adjudicate ownership of the
21 loans, we're happy to do that.

22 And, Your Honor, as you pointed out, the key
23 thing is the consumers. When everyone else asked
24 for a day hearing or half-a-day hearing on their
25 emergency stay relief, I caused a couple of guffaws

1 and laughs in the audience when I asked for a 15-
2 minute hearing to push the button. And as a result
3 of that Your Honor set us on a fast track. We went
4 first on August 31st because we wanted to get the
5 servicing transferred, we wanted to set those
6 customers straight.

7 We're one of the smallest ones. We have less
8 than 2,000 loans at issue. It's amazing to stand
9 here and talk about \$200 million and talk about
10 being a small creditor in a bankruptcy case, but
11 that's what we are, and we wanted that to happen
12 first to take care of those customers and to
13 protect ourselves by telling people where to make
14 the September payment and the October payment, et
15 cetera.

16 And we are paying -- we just paid another
17 \$200,000 this week to the debtor. We're paying a
18 million dollars -- I guess after hearing Wells
19 Fargo's deal, maybe we're overpaying -- but we're
20 paying a million dollars in terms of economics of
21 accelerated reimbursements because it was important
22 to jump-start the wheel.

23 As you can imagine, the debtor is being pulled
24 in different directions, and hopefully for a
25 million dollars we get them to focus a little bit

1 more our way, as they're clearly understaffed and
2 trying to meet all of those needs.

3 So I think with the discovery we've undertaken
4 from Bank of America and the responses we've
5 gotten, I think it's more clear than ever that the
6 relief and the transition of servicing is so
7 important in this case, important to your Chapter
8 13 docket, especially we've been doing it for six
9 weeks, that to stop even for a week or unring the
10 bell would be a nightmare and virtually impossible
11 and would do more damage to the same customers
12 we're servicing now.

13 So, Your Honor, I'd ask you to deny the motion
14 for reconsideration. We have no problem as part of
15 the denial indicating in writing in that order that
16 the settlement or the first stipulation template
17 reached with the debtor does not adjudicate
18 ownership of the loans that have in fact been
19 transferred to my client.

20 Thank you, Judge.

21 MR. TESSITORE: Judge, I'd like to correct one
22 statement by Mr. Kobert, and that is that when he
23 referenced the loans that are the subject of the
24 preliminary injunction, I believe he said that Bank
25 of America has indicated that they do not claim an

1 ownership interest in those loans, but the fact is,
2 Judge, that they don't know, and they have not so
3 indicated.

4 THE COURT: I understand. And they can't
5 prove it right now, but they may down the road once
6 the reconciliation is done.

7 I think the appropriate thing to do is to
8 overrule the objection, with the understanding in
9 the order overruling that this Court -- it was a
10 consent order and it's not something that the Court
11 came up with on its own. And it's my understanding
12 in this and the other orders that the Court has not
13 determined ownership of these loans, and that, at
14 such time that it appears appropriate, any party
15 claiming an interest in any of those mortgages can
16 take whatever action they deem necessary to
17 establish the validity and extent of their interest
18 in one or any number of those mortgages. But that
19 order does not prohibit and was not between any
20 other parties other than the two that signed it,
21 and therefore is not binding on anybody other than
22 the stay being lifted so they can get transferred.

23 So I'm not going to unring the bell, we're not
24 going to stop the transition, we're just clarifying
25 it so that your rights and hopefully anybody else

1 that may have an interest, their rights are
2 protected.

3 Mr. Kobert, prepare an order on that.

4 What else do you want in there?

5 MR. KOBERT: I will do so, Judge. And I think
6 your point was that, if in fact it turns out that
7 we have a loan that's owned by Bank of America, the
8 bottom line, there will be no economic benefit for
9 the debtor. It's a battle between two creditors,
10 was the point you were making -- that's what I took
11 away from it -- was that clearly it's either ours,
12 and if it's not ours it's someone else's, but it's
13 never coming back to Taylor Bean as an asset.

14 THE COURT: I don't think they want it back.

15 (General laughter.)

16 THE COURT: That's the way it appears to me at
17 this point, that it may be a related matter, but
18 it's not a matter that I have to deal with.

19 MR. KOBERT: If you have time to hear matters
20 between battling between the creditors, let us
21 know, Judge. But I know you're doing a hearing
22 viewed from the bench, so I presume your calendar
23 is very packed.

24 THE COURT: Very packed.

25 MR. TESSITORE: Yes, Your Honor, I heard you

1 say something different. I thought I heard you
2 say: At any time, in any appropriate way, the
3 parties can assert their rights without --

4 THE COURT: Yes, in whatever forum is --

5 MR. TESSITORE: Whatever forum is appropriate.

6 THE COURT: Yes.

7 MR. TESSITORE: Thank you.

8 MR. KOBERT: We like this forum, Your Honor.

9 THE COURT: Well, I know that, but you may get
10 faster service somewhere else, get a magistrate
11 judge to handle it up there in the District Court.

12 Anyway, prepare that order, pass it by Bank of
13 America, make sure they approve the form. If you
14 have a problem, each of you submit your orders and
15 I'll pick the one I like.

16 MR. KOBERT: Your Honor, I don't expect it to
17 be a problem. Mr. Tessitore is very reasonable.

18 THE COURT: Thank you very much. That matter
19 is concluded.

20 Next.

21 MR. BLAIN: Your Honor, I believe the last
22 matter on the calendar for this morning is item
23 number 6, which is docket number 5. This is the
24 debtor's motion for authorization to use cash
25 collateral.

1 The cash collateral motion initially came
2 before the Court at a hearing on August 27th, and
3 at that hearing there were a number of arguments
4 that were made about various issues, and at the
5 conclusion of that hearing the Court authorized
6 cash collateral to be used on an interim basis for
7 purposes that are necessary to prevent immediate
8 and irreparable harm to the estate, and the cash
9 collateral was extended, and a second hearing was
10 scheduled for September 21st.

11 We came on September 21st and at that time
12 there were various arguments that were raised, and
13 the Court overruled the objections to cash
14 collateral that were then before the Court and said
15 that if a party wanted to assert an objection to
16 final use of cash collateral, that they had to file
17 an objection by midnight this past Friday, which
18 was October 2nd.

19 Based upon that, there were three objections
20 that were filed: one by Sovereign Bank, one by Bank
21 of America and one by the Federal Home Loan
22 Mortgage Corporation, otherwise known as Freddie
23 Mac.

24 With respect to those objections, we are here
25 back before the Court today. This is scheduled

1 actually as a final hearing on cash collateral, and
2 subject to whatever comments the other parties may
3 have here, I believe that we have resolutions for
4 today's purpose that have been reached with
5 Sovereign Bank and with Freddie Mac.

6 Essentially, with respect to -- let me deal
7 with Sovereign first, because Sovereign is what I
8 would call a traditional creditor in the sense that
9 it was a lender to the debtor and claims a security
10 interest in various matters.

11 There are disputes with respect to some of the
12 asserted security interests and there are some
13 issues that the creditors committee is looking at,
14 and for purposes of today's hearing we are not
15 trying to adjudicate the secured positions or the
16 rights of the parties.

17 But because of the fact that money that the
18 debtor is spending, if in fact it is subject to
19 liens of Sovereign Bank, it would be eating into
20 their cash collateral, so it is the protection of
21 their position that they were looking to afford.

22 What we have agreed with respect to that is,
23 as adequate protection to Sovereign Bank, they
24 would be given a replacement lien in the nature of
25 a lien to the extent of postpetition expenditures

1 that depleted their collateral, if it is determined
2 they have collateral and that it has been depleted,
3 in a pool of loans that are actually owned by
4 Taylor, Bean & Whitaker as to which none of the
5 other investors or other parties claim ownership
6 interest.

7 Those loans have an approximate unpaid
8 principal balance, which I have come to learn is
9 the way that you measure the number with respect to
10 loans, of approximately \$150 million.

11 So what we would propose as adequate
12 protection and as a replacement lien to Sovereign
13 Bank is a first-position lien to the extent that
14 their collateral position is depleted in other
15 assets of the debtor by those funds being expended,
16 without prejudice to the rights of any of the
17 parties to take whatever positions are appropriate
18 to determine the extent, validity and priority of
19 Sovereign Bank's liens.

20 With that in mind, my understanding is that
21 Sovereign has agreed to withdraw its objection to
22 use of cash collateral and to permit us to go
23 forward and use cash collateral on an ongoing
24 basis.

25 It would probably be best to deal with that

1 first, and then we'll talk about the other issues.

2 THE COURT: Very well.

3 MR. SORIANO: Thank you, Your Honor. Actually
4 I've been fairly quiet through this case so far,
5 but not because we're not interested.

6 We represent a bank group. Sovereign Bank is
7 the agent for a number of banks, and part of our
8 bank group, interestingly, is FDIC as receiver for
9 about three banks, including Colonial, and the
10 banks are owed about \$165 million. The loans are
11 secured by a number of things, but primarily all
12 rights derived from the service agreements. And
13 these include these advances that you're hearing
14 about and some of these settlements. So, for
15 example, when Bayview paid the debtor a million
16 dollars in exchange for this transferring of
17 servicing, that would be -- it's an advance on
18 advances that the debtor made on behalf of the
19 mortgages. That's part of our collateral.

20 And obviously the debtor is not creating new
21 replacement collateral these days, so we were
22 concerned. The objection we filed was conditional.
23 We understand the value of this reconciliation
24 process and the value hopefully of using this Court
25 to realize some of the value that the debtor has in

1 these assets.

2 So we're supportive of the debtor's efforts,
3 but we wanted to make sure, on the other hand, that
4 our collateral wasn't being used. And from our
5 perspective, just about all the cash that's been
6 used thus far in this case, we believe, is our cash
7 collateral.

8 We also have a lien on hedge arrangements.
9 The debtor indicated at the first hearing on cash
10 collateral that they had a lot of funds that were
11 free and clear of liens, and we thought -- well,
12 I'm not sure where we all thought they came from,
13 but it turns out they did come from hedge
14 agreements, breaking hedge agreements. So we think
15 we have a lien on that.

16 And I know there may be parties who dispute,
17 and we're not saying anybody can't take a position,
18 take a crack at what we have a lien on and what we
19 don't have a lien on, but the purpose of this is to
20 protect us from diminution during the estate. And
21 obviously if it turns out to be insufficient that
22 we have 503(b) (9), but we think based on our
23 analysis of this collateral pool it is sufficient.

24 So, based on that, our objection was
25 conditional and it's been satisfied.

1 THE COURT: Thank you.

2 MR. BLAIN: I just want to clarify for the
3 record, respecting Mr. Soriano's comments on that,
4 there is probably -- there is a dispute as to the
5 lien rights with respect to the funds that the
6 debtor held in its accounts at the first cash
7 collateral hearing and as to whether Sovereign has
8 a security interest in those or not. But that's
9 not needed to resolve today.

10 As I indicated, the purpose of this is to
11 grant a replacement lien to the extent that it's
12 determined that one is needed and that their cash
13 collateral is ultimately expended. But I don't
14 want the debtor to be presumed to be acquiescing in
15 any of the statements with respect to what
16 Sovereign's liens are and are not.

17 We are not taking issue today, but there is a
18 dispute that is attempting to be resolved over
19 various issues, and that includes hedge funds as
20 well as other assets of the debtor in which
21 Sovereign Bank claims a security interest.

22 There's not a need to tee that up today, and
23 we're attempting to move forward on that without,
24 but, since that has been mentioned, I just need to
25 make sure that's clear on the record.

1 MR. SPECTOR: I guess now exactly, good
2 afternoon, Your Honor. I rise again to support the
3 resolution that was stated, but again to stake out
4 the same territory that Mr. Blain just staked out
5 on behalf of the committee.

6 The committee has been leading the
7 investigation of the validity, extent and priority
8 of the liens of Sovereign Bank as agent for the
9 group that Mr. Soriano explained. We have, as a
10 committee, serious issues about whether the liens
11 extend as far as Sovereign Bank thinks they extend,
12 whether they're properly perfected and the like.

13 We are working cooperatively with all
14 constituents, with Navigant, debtor's special
15 counsel, debtor's general counsel, and Mr. Soriano
16 and his client as well. We have promised to give
17 preliminary indications of the nature of our issues
18 sometime next week, I think it's perhaps Monday,
19 assuming we get all the information that we need to
20 gather together in time to do the proper analysis.

21 But notwithstanding that and saying the same
22 thing that Mr. Brain has said, we reserve the
23 rights -- and part of the stipulation that you've
24 heard about is a reservation of rights.

25 We want to let you know, though, we do not

1 agree necessarily at this point with the recitation
2 of rights that Sovereign Bank may or may not have,
3 as related by Mr. Soriano a short time ago. So we
4 may be seeing things coming down in that area.

5 THE COURT: Thank you.

6 MR. BLAIN: Your Honor, the next matter for
7 consideration on the cash collateral motion is the
8 objection of the Federal Home Loan Mortgage
9 Corporation.

10 For purposes of today's hearing, although this
11 has been scheduled as a final hearing on use of
12 cash collateral and we were prepared to go forward
13 on that basis, we have agreed, based upon the
14 objection of Freddie Mac and extensive
15 conversations that have been held with them, and
16 the conversations that led to delaying the start of
17 this morning's hearing were with Freddie Mac.

18 Rather than turning this into a full-fledged,
19 line-by-line, cash collateral type of evidentiary
20 hearing, we have agreed to ask the Court to approve
21 cash collateral again on an interim basis based
22 upon the budget that has been provided to the
23 parties, of which Your Honor has a copy.

24 And rather than seeking to prove this on a
25 final basis, the agreement with Freddie Mac for

1 purposes of today's hearing is that the cash
2 collateral would be extended, that the cash
3 collateral motion -- that the final hearing would
4 be continued over to the hearing on November 5th,
5 that between now and November 5th the parties would
6 agree to work together to resolve the issues
7 between them, and that includes an anticipated
8 meeting with their business and legal people
9 between now and the November 5th hearing.

10 We have also agreed as part of that
11 arrangement to give them a final budget on a going-
12 forward basis that would be approved at the
13 November 5th hearing by October 26th.

14 In addition to that, the objections that are
15 set forth that were -- the points that are set
16 forth in Freddie Mac's objection would be preserved
17 for that hearing on November 5th.

18 As a result of the fact that the Court made it
19 very specific that the only objections that it
20 would consider today would be those that were filed
21 in writing by October 2nd, and because we're
22 dealing with those three objections, we have dealt
23 with Sovereign Bank's objection as has been
24 previously recited, this would be a resolution of
25 Freddie Mac's objection which would be held over

1 for the hearing on November 5th. We will also
2 hear from Bank of America as to its objection.
3 But the hearing on November 5th we would ask again
4 be restricted to those two objections that are
5 outstanding and not to any newly filed ones.

6 Again, we would provide all the parties with a
7 copy of the final budget by that October 26th date,
8 and hopefully, based upon the conversations that
9 have gone on in anticipation of today's hearing, we
10 could reach agreement on a final basis on the
11 budget that could be approved as part of the final
12 hearing on cash collateral on that date.

13 MR. JOHNSON: Jason Johnson for Federal Home
14 Loan Mortgage Corporation.

15 Mr. Blain has accurately stated the basis and
16 substance of our agreement today. I would like to
17 state for the record that part of our objection
18 that we filed by the Court's deadline included a
19 basis that there had been no final budget presented
20 by the debtor.

21 One was presented last night. We had
22 extensive discussions with the debtor this morning,
23 and some points were made last night in response to
24 that.

25 We would like to have the right to further

1 amend our objection to state any objections that
2 were raised by the filing of that final budget,
3 Your Honor. But, other than that, we're okay with
4 what Mr. Blain stated.

5 THE COURT: Next.

6 MR. BLAIN: Your Honor, that's satisfactory.
7 Mr. Weitnauer just mentioned to me that he thought
8 that Wells Fargo had filed a limited objection. I
9 did not see one. If I overlooked one, that is my
10 fault.

11 But, in any event, the only purpose for the
12 objection, if I understand him correctly, is to
13 object to the extent that the debtor intends to use
14 what has been called borrower funds. There is no
15 intent to use borrower funds -- I can clarify that
16 on the record -- so that we don't need to even
17 worry about whether there is a filed objection or
18 not, because the point that was raised on his part,
19 which is a valid concern, is something that is a
20 non problem.

21 MR. WEITNAUER: Your Honor, Kit Weitnauer
22 again for Wells Fargo. It's docket entry 375, and
23 that was our key point, that --

24 THE COURT: It's there.

25 MR. WEITNAUER: I don't think there's a

1 dispute, but we wanted to be sure it was mentioned.
2 I know the Court was sensitive to it before.

3 THE COURT: Thank you.

4 You want to talk about Bank of America before
5 I talk?

6 MR. KOBERT: No. I'll let Mr. Zaron talk.
7 Sorry.

8 MR. ZARON: Good afternoon, Your Honor. Andy
9 Zaron again for Bank of America as indentured
10 trustee, custodian and collateral agent.

11 It was our understanding that we were here
12 today on a final hearing on the motion to use cash
13 collateral. That motion was filed on August 24th,
14 and there was a budget attached to that motion that
15 went through October 9th.

16 The hearing on that motion was on August 27th,
17 and at the August 27th hearing Your Honor mentioned
18 that maybe we set the hearing on the motion a
19 little too soon because of all the questions that
20 people had, especially regarding the budget.

21 Last night at about 8:30, while I was on a
22 plane coming up and therefore didn't get a chance
23 to see until about 11:00 o'clock, the debtor served
24 a budget that went through December 25th of 2009 as
25 the budget that would go with the cash collateral

1 motion.

2 Now, as you know, you set a deadline of
3 October 2nd to object to the cash collateral
4 motion, and yet we didn't get a copy of his budget
5 until 8:30 last night, which gave people 13 hours
6 in effect to consider the objection. If you back
7 out eight hours of sleep, that's five hours.

8 It's really just not enough time, Your Honor,
9 for people to consider the budget, to talk to
10 constituents, talk to their clients and so forth.

11 So, as an initial matter, we object to the
12 Court going forward with the hearing on cash
13 collateral, because there's just not enough notice.
14 Even in this case, this is just very short notice
15 to be provided with this type of budget.

16 The second point, Your Honor, having looked at
17 the budget, is the same point that we've made
18 throughout, and that is that it's not entirely
19 clear who owns what assets. We've heard a lot
20 about how the books and records of the debtor may
21 not have been accurate, how their auditors wouldn't
22 give them a clean audit, and the allegations of
23 double pledging of loans and so forth, and that
24 there hasn't been a reconciliation of who actually
25 owns what.

1 This budget assumes that monies are owned by
2 TBW, but it's really not clear to us that that's
3 the case. And we've heard what Your Honor has said
4 about asset reconciliations and the importance of
5 protecting borrowers, but in this instance this is
6 the debtor using cash to not protect borrowers
7 necessarily, but to pay professionals and things
8 along those lines, and I think that distinction
9 should be noted for the record.

10 The third point, Your Honor, is the issue of
11 adequate protection. And if it turns out that some
12 of the money that the debtor is using actually
13 belongs to Bank of America through this Ocala line,
14 and whether or not it's our quote, unquote
15 collateral -- Mr. Spector mentioned that it may not
16 be our collateral, it may be that we own the money
17 or we don't have any interest in the money -- but
18 if they use money that belongs to us, we should be
19 given adequate protection.

20 The motion that was filed on August 24th
21 provides adequate protection in the form of what
22 the debtor referred to as a replacement lien.
23 Again, I'm not clear on exactly what that means.

24 Today I've heard about an agreement that the
25 debtor reached with Sovereign Bank that, to the

1 extent that the debtor owns certain assets -- I
2 think that Mr. Blain mentioned that the debtor,
3 according to their records, owns \$150 million of
4 loans -- that to the extent that Sovereign's cash
5 collateral is used, Sovereign Bank would get a lien
6 on that pool of loans.

7 What we would request for Bank of America is
8 that, to the extent that the debtor uses cash that
9 belongs to us through this Ocala line, that we get
10 not a replacement lien but an adequate protection
11 lien as well.

12 If the debtor is right and they're not using
13 any of our cash, it's really not an issue. But if
14 the debtor is wrong and it turns out they are using
15 our cash, we should have adequate protection as
16 well.

17 When I asked Mr. Blain about it this morning,
18 he said he wasn't in a position to agree, and
19 frankly I find that frustrating in this situation
20 where we only get this budget late last night,
21 don't really have an opportunity to object, and all
22 we're asking for is adequate protection, which we'd
23 be entitled to if they're using our money. We
24 think that we should get the same level of
25 protection.

1 And the final thing that I would note is that
2 there is this assumption that the debtor owns these
3 \$150 million worth of loans. As I think I
4 mentioned, we should have a right to challenge that
5 if it turns out that we think we own it after
6 reconciliations are performed.

7 THE COURT: Thank you.

8 MR. SPECTOR: Arthur Spector on behalf of the
9 committee.

10 I rise to oppose what I just heard, and that
11 is the sound of somebody coming to the trough and
12 trying to get his belly full when there are other
13 people here who haven't had their first taste. I
14 use that advisedly because what you heard Mr. Zaron
15 quote was a conversation we had in the hallway.
16 You haven't heard this in court.

17 I believe the correct way of looking at Bank
18 of America is they own a body of assets, and if the
19 assets aren't there, they're an unsecured creditor
20 in this estate and we're working for them as well
21 as other unsecured creditors, and other unsecured
22 creditors will not be getting liens on assets.

23 The \$150 million face value of loans is a
24 source of payment one day we propose for the
25 unsecured creditors to get paid.

1 In this case at the outset, the unsecured
2 creditor pool isn't an enormous number based on the
3 numbers you've heard from the folks that say they
4 have positions of ownership in the assets, not the
5 assets of the estate but assets in the control of
6 Colonial Bank and so forth.

7 But if the worst actually is affirmed through
8 reconciliation and there's a dearth of assets to
9 cover those investments, then we've got a lot of
10 unsecured creditors and the unsecured creditors
11 committee has a very, very big constituency.

12 Bank of America is worried about joining our
13 constituency, and I don't blame them. But the
14 answer to that is to not give them a lien on
15 something that's free and clear for everybody else,
16 and that's what I just heard and why I rose so
17 quickly.

18 They, as are many of the parties in the
19 courtroom, are owners of a pool of assets, or
20 they're unsecured creditors. The secured
21 creditors, if their liens are valid, would be
22 people like Sovereign that actually made a loan to
23 the debtor and a company you haven't heard from
24 today, Natixis, that has a similar position, it
25 loaned to the debtor on the servicing rights. They

1 would have a complaint about use of cash collateral
2 because that is what the debtor is proposing to
3 use.

4 The debtor is not proposing to use principal
5 and interest payments or money held aside for the
6 investors. They're proposing to use what appears
7 plainly in their books as their own assets, like
8 this \$150 million of loans, real estate that is
9 titled solely in the name of TBW without any
10 complications on the 541(d).

11 People can spin theories, and Bank of America
12 I'm sure will, that: Oh, my goodness, if there's a
13 shortage and some of those funds went to TBW and
14 TBW bought this or bought that and we have a
15 constructive trust for those assets or equitable
16 lien for those assets.

17 Who knows where the case will eventually lead?
18 They'll have to prove that, and it's not an easy
19 thing to prove with the intermingling that we
20 understand took place. But we can't stop
21 everything because they may be able to come up with
22 a theory. You've heard before they haven't any
23 evidence of anything.

24 We've hoping that the fears that people are
25 expressing that there are insufficient assets to

1 cover all the investors, that the reconciliation
2 proves that those were overblown. And that's fine,
3 we don't want a bigger pool of unsecured creditors
4 with us.

5 But we have to rise to object to other parties
6 trying to get their hands on what are free and
7 clear assets at this time. Are they all owned, for
8 example, by the TBW, these loan owned by TBW?
9 That's what we're looking at, first line, of
10 getting a recovery.

11 In addition, as I said, maybe Sovereign Bank
12 doesn't have the kind of security interest it has
13 in their servicing rights, then supplement the pool
14 that we could be looking to. But, again, we don't
15 have anything today we want to bring on that.
16 That's why I rose, Your Honor.

17 MR. ZARON: Your Honor, just a quick point.
18 What we're saying at this point is that we don't
19 know what we own, what money belongs to us, what
20 loans the debtor owns, what money belongs to the
21 debtor.

22 The simple point is, if it turns out that the
23 debtor is using money that does in fact belong to
24 us, it's not an issue of our being an unsecured
25 creditor. We're simply saying in that instance, if

1 the debtor uses our money, we're entitled to
2 adequate protection, not in the context of quote,
3 unquote, cash collateral, but in the context of
4 equity, because if they're using our money, money
5 as it turns out is our money, we should be
6 protected. If it's not our money and we're a
7 simple unsecured creditor, we don't get a
8 replacement lien.

9 THE COURT: Excuse me. What do you mean by
10 your money? Because every creditor, they're using
11 their money.

12 MR. ZARON: Let me give you an example. Let's
13 say there is a loan that currently is booked as a
14 TBW loan and proceeds come in on that loan, and it
15 turns out that the loan, after the reconciliation
16 is performed, is actually a loan that's owned by
17 Ocala and Bank of America. That loan, as I
18 understand it, would belong to us and not to the
19 debtor, and so the proceeds of that loan would
20 belong to us and not to the debtor.

21 THE COURT: The principal and interest
22 payments belong to you, but not the taxes and
23 insurance and not the servicing fee. So, if
24 they're using principal and interest which they're
25 not supposed to be doing because I'll get mad --

1 you know, have you made a loan to them and have an
2 overall lien on it, a UCC filed or anything like
3 that --

4 MR. ZARON: Another example then. If there
5 was a loan that belonged to us that was sold to a
6 third party and the proceeds came in, and it's
7 determined that we were the rightful owner of those
8 proceeds -- I'm just giving examples, because we
9 don't know what's going to be shown at the end of
10 the day because we have been told about this
11 overall fraud, and there is a possibility that
12 we're not just an unsecured creditor, that we
13 actually have an ownership interest in certain
14 monies, and really that's all we're seeking to
15 protect. And I don't think that's an unreasonable
16 request if it turns out that that's what we're
17 entitled to.

18 THE COURT: Well, it sounds like we're going
19 to continue the hearing to November 5th anyway, so
20 you can renew those objections maybe at that point
21 and let's deal with it if it can't be resolved
22 between now and then.

23 MR. ZARON: Thank you, Your Honor.

24 THE COURT: I'm not going to shut them down
25 today. I think that would not be a good idea.

1 MR. ZARON: Thank you.

2 MR. JOHNSON: Your Honor, Jason Johnson for
3 Federal Home Loan Mortgage Corporation.

4 As I understood Mr. Zaron's objection -- and I
5 think I can put it in simpler terms -- if it turns
6 out that the debtor is using funds that turn out to
7 be borrower funds, then that money will be out the
8 door. It can't come back.

9 The only way to protect those investors whose
10 funds were used would be to grant those investors
11 liens on the assets that the debtor holds free and
12 clear.

13 I thought that was what Mr. Zaron's objection
14 was, and Freddie Mac would support that position.

15 If it's not a cash collateral issue, to the
16 extent they aren't borrower funds, then it's cash
17 collateral that's covered by Sovereign's arguments.

18 But if it turns out that these funds that the
19 Court has already told them, you can't use them if
20 they're borrower funds, right now they're saying:
21 We don't think they are. But if it turns out
22 through the reconciliation processs that they used
23 some funds that were attributable to borrower funds
24 that are owned by the investors, then those
25 investors have to be protected somehow. And the

1 only way to do that is to give them a replacement
2 lien -- or not even a replacement lien, because we
3 don't have a lien right now on it, it's our money,
4 to give us some sort of protection, and that would
5 be the simplest way --

6 THE COURT: They don't become the
7 administrative claim because they made an
8 involuntary loan to the estate so they have to get
9 paid off the top, if there's anything to get paid
10 off the top by the time the attorneys and the --
11 they always get that second notch after that.

12 MR. JOHNSON: And --

13 THE COURT: We're just talking --

14 MR. JOHNSON: -- there's the issue, Your
15 Honor, is what happens with -- you've seen the
16 budget -- with all these professionals being paid,
17 that is there going to be enough money to
18 replace --

19 THE COURT: I'm hoping to wrap them up real
20 soon once this reconciliation is done, and those
21 fees will start slipping down. You know, we aren't
22 going to have to --

23 MR. JOHNSON: I hope that's right, Your Honor.
24 Your point is made, I just wanted to --

25 THE COURT: I understand. I think I do.

1 Mr. Blain, anything you want to add?

2 MR. BLAIN: No, Your Honor. I think it's all
3 been well covered again.

4 First of all, in this budget, this budget
5 doesn't introduce any new concepts that have not
6 been before the Court in previous budgets. This
7 extends it out for a 13-week period.

8 We are not using this budget as a means for
9 getting approval of things that require Court
10 approval otherwise. This Court has approved
11 various things that the debtor is doing with these
12 funds. This is solely for the purpose of using
13 cash collateral. And based on what has been said
14 before, that the two parties who have an interest
15 in that are Natixis and Sovereign, and we have
16 resolved issues -- Natixis has none and we resolved
17 those with Sovereign.

18 So at this point we're just simply asking the
19 Court to go forward. There are no new concepts
20 that are introduced. As the debtor finds new
21 assets, those will be incorporated into the
22 process.

23 This is completely transparent. I would just
24 assure the Court that the debtor has made itself
25 available to meet with every one of the

1 constituencies that the Court has heard from, and
2 there have been substantial meetings. This is not
3 a situation where people have to come into court to
4 get information they want, because we're always
5 there for it. And it brought all kinds of people
6 to the debtor's facility in Ocala, have met with
7 them on request numerous times, and, in addition,
8 are providing this information through monthly
9 operating reports and every other means that we can
10 devise to make sure that the parties know
11 everything that's going on to assure that untoward
12 things are not happening and that the estate is
13 being managed properly.

14 So, with that in mind, we would ask the Court
15 to authorize cash collateral to continue on the
16 terms that we had previously stated.

17 THE COURT: Thank you.

18 I appreciate, notwithstanding some of my
19 comments, Bank of America's position here. We need
20 vigilant creditors. That's what makes these big
21 cases work a lot easier, takes pressure off the
22 U.S. Trustee and a lot of pressure off the Court,
23 because we've got somebody looking at it.

24 So I'm not discouraging you from objecting and
25 staying on top of things and keeping people

1 straight. I think that's appropriate.

2 It appears, based on what I previously
3 learned, that I'm denying the motion for final
4 approval of cash collateral and agreeing that the
5 existing preliminary order or whatever will
6 continue in effect until the hearing set on
7 November 5th. Objections will carry forward at
8 that time.

9 In the event there's a amendment or
10 modification to the budget, that amendment should
11 be furnished to all parties, let's say, five days
12 before the hearing so they have an opportunity to
13 review that and file any objections based on
14 changes in that budget, or they can amend their
15 objections, the few people that did object, based
16 on this budget which they just got yesterday. I
17 want everybody to have time to file those specific
18 objections.

19 As to Bank of America's arguments of some kind
20 of replacement lien or a lien, unless they can show
21 me what it's replacing, that they do have in fact
22 some kind of a lien on money that's being used, or
23 possibly do, then I'll entertain that at that
24 November 5th hearing. But I need some kind of
25 documents or evidence showing that other than a

1 speculative: If this may happen. If it turns out
2 their money is spent, they'll probably have an
3 administrative claim.

4 That being said, I'll look to you for the
5 order, Mr. Blain. Put as much of that in there as
6 you think is appropriate, and this portion of the
7 hearing is concluded.

8 Anything further?

9 MR. BLAIN: Your Honor, I believe that
10 concludes all the items on the calendar for today,
11 and we appreciate the Court's time and patience.

12 THE COURT: My pleasure.

13 (Thereupon, at 12:30 p.m., the hearing was
14 concluded.)

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C E R T I F I C A T E

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STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Cindy Danese, Notary Public, State of Florida at Large, do hereby certify that the attached represents the proceedings before the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, before the Honorable Jerry A. Funk, Bankruptcy Judge, in the matter of In Re: Taylor, Bean & Whitaker; such transcript is an accurate recordation of the proceedings which took place. A transcript of this proceeding has been produced on October 13, 2009.

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CINDY DANESE