UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In. re:

Chapter 11

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,

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

Debtor.
_____/

EMERGENCY JOINT MOTION OF U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE, MANUFACTURERS AND TRADERS TRUST CO., AND BAYVIEW LOAN SERVICING, LLC TO COMPEL POST TERMINATION TRANSFER OF THOSE RESIDENTIAL CONSUMER LOAN MORTGAGE PORTFOLIOS PREVIOUSLY SERVICED BY THE DEBTOR

(Emergency Hearing Requested per Local Rule 9004-2(d) Certification)

U.S. Bank National Association, as Trustee, not in its individual capacity, but solely as Trustee, with respect to eight residential mortgage-backed securities transactions ("U.S. Bank"), Manufacturers and Traders Trust Co. ("M&T") and Bayview Loan Servicing, LLC's ("Bayview") (collectively "Movants")[1] hereby file their *Emergency Joint Motion Of U.S. Bank National Association As Trustee, Manufacturers And Traders Trust Co., And Bayview Loan Servicing, LLC To Compel Post Termination Transfer Of Those Residential Consumer Loan Mortgage Portfolios Previously Serviced By The*

[1] Manufacturers and Traders Trust Co. ("M&T") was selected to serve as its successor servicer for 6 trusts and Bayview Loan Servicing, LLC ("Bayview") was selected to serve as sub servicer assuming primary contact with the general public for those 6 trusts and successor servicer for 2 trusts. M&T and Bayview ("Successor Servicers") join in the relief sought in this Emergency Motion.

Debtor pursuant to 11 U.S.C. §§ 105(a) and 362(d) and in support thereof would state as follows:

BRIEF ARGUMENT

1. The Debtor, which at one point was the servicer for loans owned by eight securitization trusts for which U.S. Bank as trustee acts, was validly and indisputably terminated prepetition. Yet it refuses to facilitate a servicing transfer to the designated Successor Servicers. At the same time, the Debtor is refusing to, or simply is incapable of, responding to an avalanche of consumer inquiries and complaints[2] that have resulted from the complete breakdown of the Debtor's operations. Meanwhile, the Debtor continues to improperly collect and retain payments from Loan Portfolio consumers.

2. Until very recently, the Debtor was the largest independent mortgage lender in the United States[3].

3. On August 5, 2009, U.S. Bank terminated the Debtor as loan servicer with respect to six securitization trusts owning 1,936 individual residential mortgage loans, with an aggregate principal balance in approximate excess of $170 million. U.S. Bank directed the Debtor to timely and orderly transfer such loan portfolios to the Successor Servicers.

4. On August 12, 2009, Bayview Financial, L.P., with U.S. Bank's consent, terminated the Debtor, as its servicer, for individual residential mortgage loans included in two additional loan portfolios owned by securitization trusts for which U.S. Bank acts as Trustee. Bayview Financial, L.P directed the Debtor to timely and orderly

[2] See composite Exhibit "A" Wall Street Journal and various blog excerpts of recent consumer complaints about the lack of service by the Debtor.
[3] According to admissions contained in the Debtor's Case Management Summary (DE #4) filed August 24, 2009.

transfer the Bayview loan portfolios to the Bayview Successor Servicers. The U.S. Bank loan portfolios and the Bayview loan portfolios are collectively referred to as the "Loan Portfolios."

5. On August 20, 2009, the Debtor confirmed with the State of Florida, Office of Financial Regulation, its intention to transfer its servicing rights to other companies[4].

6. On Friday, August 21, 2009, the State of Florida, Office of Financial Regulation, issued its *Second Emergency Order to Cease and Desist and Notice of Rights*[5] against the Debtor ("Second Emergency Order"). This Second Emergency Order modified the August 7, 2009 Emergency Cease and Desist Order[6] ("First Emergency Order"), which initially precluded the Debtor from processing new mortgage loans already in its pipeline.

7. The Second Emergency Order went further and required the Debtor to FORTHWITH:

> (i) **commence the transfer of all servicing to other licensed or exempt servicers**; (*emphasis added)*
>
> (ii) **forward all payments received from consumers to the successor servicer within three business days**; and (*emphasis added)*
>
> (iii) for the temporary benefit of consumers, cease all foreclosure actions as a servicer and not initiate any new foreclosure actions; not assess late fees for payments received after July 15, 2009, not report consumers to credit bureaus after August 1, 2009, and forthwith place the

[4] See Exhibit "B" – Second Emergency Order

[5] The Second Emergency Order was issued in the case of State of Florida, Office of Financial Regulation Petitioner vs. Taylor, Bean & Whitaker Mortgage Corp., Respondent; Administrative Proceeding No. 2561 -F-08/09 and attached hereto as Exhibit "B."

[6] The First Emergency Order is attached hereto as Exhibit "C" and is incorporated by reference as part of the Second Emergency Order.

payments from consumers [not being forwarded to a successor servicer] in a segregated account.

8. Despite bilateral efforts over the past three weeks to accomplish an orderly transfer to the Successor Servicers of all of the personal and financial information necessary for the Successor Services to effectively service the Loan Portfolios (the "Financial Information"), the Debtor has yet to effectuate such transfer[7] in direct contravention of the Second Emergency Order, as highlighted in Paragraph 7 *supra*. **As a result, the Successor Servicers do not have the records[8] of individual consumers that would allow them to commence loan servicing.**

9. Because the Debtor has failed to deliver the Financial Information to the Successor Servicers, the mortgage loans that are subject to the Servicing Agreements (as defined herein) are not being serviced, to the detriment of consumers. Besides the obvious risk to investors, the status quo presents unacceptable risk and unnecessary inconvenience to residential borrowers. Among other things, a borrower's financial interest in their own home is endangered by the Debtors' systematic failure to release escrow payments[9]; the inability of consumers to either secure timely refinancing, complete sales of their homes, or successfully negotiate loan modifications or forbearances during a time of unprecedented crisis in the credit markets and a

[7] At the end of the day on August 25, 2009, the Debtor did send limited electronic information to Bayview. The information transmitted is woefully inadequate and precludes Bayview from servicing the Loan Portfolios, or providing competent and useful mortgage loan servicing information to the consumer as required under Florida law.

[8] Though the Financial Information is paramount, the Successor Servicers require transfer of the funds collected by the Debtor in order to process escrow and other third party disbursements for the benefit of the consumers.

[9] According to the Exhibit "B" Order, "during the month of August, the Office of Financial Regulation received twenty-five written complaints regarding the [Debtor], including complaints about the funding of loans, servicing problems, and issues with loan modifications and foreclosures. Additionally, just during the time period between August 14-18, 2009, the Office of Financial Regulation received 116 phone call inquires about problems with Debtor's funding and servicing of loans. Many of these phone calls have been from consumers who have had problems contacting the Debtor and determining where their mortgage payments need to be sent. Others have indicated that Debtor failed to make escrow payments."

general economic recession[10]. These and other immediate and adverse consequences to borrowers are described in further detail in the *Local Rule Certificate of Necessity for Emergency Hearing,* incorporated herein by reference.

10. By and through this emergency motion, the Movants seek to compel the Debtor to immediately transition the Financial Information to the Successor Servicers.

PROCEDURAL HISTORY

11. On May 1, 2007, U.S. Bank, as Trustee or Indenture Trustee, entered into a series of contracts in connection with six mortgage backed securities transactions ("U.S. Bank Servicing Agreements")[11] with the Debtor to provide critical day to day management of its Loan Portfolios and to act as a direct liaison with the borrowing public. On November 1, 2003 and March 1, 2004, Bayview Financial, L.P. entered into two separate contracts (the "Bayview Servicing Agreements,"[12] and together with the U.S. Bank Servicing Agreements, the "Servicing Agreements") with the Debtor, whereby the Debtor agreed to perform the same functions on behalf of two securitization trusts for which U.S. Bank acts as Trustee.

12. On August 3, 2009[13], in connection with an ongoing federal investigation of Colonial Bank, the FBI raided the Debtor's headquarters in Ocala, Florida. Previously, in the Spring of 2009, the Debtor,

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[10] See also Composite Exhibit "A."

[11] Bayview Asset-Backed Securities Trust 2007-13; Bayview Asset-Backed Securities Trust 2007-13NP; Bayview Asset-Backed Securities, Series 2007-13(1); Bayview Asset-Backed Securities, Series 2007-13(2); Bayview Asset-Backed Securities, Series 2007-13(3); Bayview Asset-Backed Securities, Series 2007-13(4); Bayview Asset-Backed Securities, Series 2003-6; and Bayview Asset-Backed Securities, Series 2004-1.

[12] Bayview Asset-Backed Securities, Series 2003-6; and Bayview Asset-Backed Securities, Series 2004-1

[13] According to admissions contained in the Debtor's Case Management Summary (DE #4) filed August 24, 2009.

> executed a definitive agreement with Colonial Banc Group, Inc. the holding company of Colonial Bank to participate in a $300 million equity infusion into BancGroup. BancGroup is a publicly held bank holding company that is the parent of Colonial. Colonial was struggling, and the $300 million equity investment would make BancGroup eligible to receive federal Troubled Asset Relief Program ("TARP") fund pursuant to an application previously filed by BancGroup and could be eligible to receive funds from the Federal Troubled Asset Relief Program ("TARP") under its pending application[14].

13. On August 4, 2009, the United States Department of Housing and Urban Development ("HUD") suspended[15] the Debtor's HUD/FHA origination underwriting approval; Ginnie Mae terminated the Debtor's authority to act as its issuer and service its $26 billion mortgage portfolio; and Freddie Mac terminated the Debtor's ability to sell loans and service its $51.2 billion loan portfolio.

14. On August 5, 2009[16], Colonial Bank froze all of the Debtor's accounts and refused to: (i) accept deposits; (ii) honor checks; (iii) receive wire transfers; and (iv) permit disbursements.

15. On August 5, 2009, upon information and belief, the Debtor closed its mortgage lending operations, ceased all mortgage loan origination operations and stopped funding mortgage loans in its pipeline.

16. On August 5, 2009, the *Fitch Rating Service* reduced the Debtor's credit rating to "unacceptable."

17. On August 5, 2009, U.S. Bank exercised its rights under Section 4.2 of the U.S. Bank Servicing Agreements and notified the Debtor that the servicing relationship had been terminated[17].

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[14] Id.
[15] Id.
[16] Id.

18. On the afternoon of August 5, 2009[18], the Debtor summarily laid off approximately 2,000 employees and apparently began planning for reorganization or liquidation of its company which led to this bankruptcy filing.

19. On August 6, 2009, cease and desist orders or restraining orders[19] were entered by (i) the Commonwealth of Massachusetts through its Commissioner of Banks; (ii) the State of New Jersey's Department of Banking and Insurance, Division of Banking and (iii) the Commonwealth of Pennsylvania, Department of Banking, all issued their respective.

20. That same day, the Debtor advised the State of Florida that its lines of credit had been suspended[20].

21. In early August[21], the Debtor's Board of Directors, including its Chairman, Vice-Chairman, Chief Executive Officer and Chief Financial Officer all resigned.

22. On August 7, 2009, the State of Florida, Office of Financial Regulation issued its First Emergency Order [22].

23. On August 10, 2009, the Debtor admitted, in a case pending in the U.S. Middle District of Florida, Orlando Division, that it was insufficiently solvent to address a $4.7 million adverse award[23].

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[17] See Exhibit "D" attached hereto.
[18] According to admissions contained in the Debtor's Case Management Summary (DE #4) filed August 24, 2009.
[19] See Exhibits "E", "F", and "G" attached hereto.
[20] Id.
[21] Id.
[22] See Exhibit "C"
[23] Henley Holdings, LLC v. Taylor, Bean & Whitaker Mortgage Corp., et al., Case No. 6:09-CV-1395, Middle District of Florida, Orlando Division

24. On August 10, 2009, the State of Florida, Office of Financial Regulation, filed an Administrative Complaint seeking to revoke the Debtor's mortgage lender's license.

25. On August 11, 2009, the Debtor circulated a letter[24] announcing that it had "ceased operations and is winding down its servicing portfolio." The letter went on to request that an alternate servicer be put in place and that the transfer to a alternate servicer be coordinated with the Debtor.

26. On August 11, 2009, U.S. Bank renewed its demand[25] for the Debtor to comply with its post termination responsibilities (as further described herein) along with an accounting, and to facilitate turnover to the Successor Servicers.

27. On August 12, 2009, Bayview Financial, L.P, an Affiliate of Bayview with U.S. Bank's consent, sent a notice[26] to the Debtor terminating the Bayview Servicing Agreements, appointing Bayview as successor servicer, and demanding that the Debtor comply with its post-termination obligations under the Bayview Servicing Agreements.

28. On August 14, 2009, U.S. Bank once again made demand[27] on the Debtor to comply with post termination obligations by (i) taking all specified actions by the close of business that day and (ii) by Noon on August 15, 2009, requiring the Debtor to initiate the physical transfer of servicing.

[24] See Exhibit "H"
[25] See Exhibit "I"
[26] See Exhibit "J"
[27] See Exhibit "K"

29. On August 17, 2009, the State of Florida, Office of Financial Regulation, received notice that the Debtor's Surety Bond was being canceled[28].

30. On August 17, 2009, U.S. Bank sought further relief via a Verified Complaint for Injunctive and other Relief, a Motion Temporary Restraining Order with related supporting documents and exhibits in the U.S. Middle District, Ocala Division, Case No. 5:09-cv-357-Oc-23GRJ.

31. On August 18, 2009, U.S. Bank's request for a Temporary Restraining Order was construed as a Motion for Preliminary Injunction and set for an expedited hearing on August 26, 2009.

32. On August 18, 2009, the State of Florida, Office of Financial Regulation learned[29] that the Debtor's business practice was to utilize a single bank account. The use of a "bank account silo" is specifically prohibited by State law[30].

33. On August 19, 2009, in a meeting between the Debtor and the State of Florida, Office of Financial Regulation, the Debtor "admitted to depositing the operating funds and custodial funds, including mortgage and escrow payments, into the single account. [The Debtor] also admitted that it was paying its employees with funds from this account[31]."

34. On Monday, August 24, 2009 (the "Petition Date"), the Debtor commenced the instant Chapter 11 case.

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[28] Exhibit "B" Second Emergency Order
[29] Exhibit "B" Second Emergency Order
[30] Pursuant to Fla. Stat. 494.0072(2)(e)&(p) and Fla. Stat. 494.0076(1)(a)2.
[31] Exhibit "B" Second Emergency Order

PREPETITION TERMINATION OF SERVICING

35. On August 5, 2009, U.S. Bank, served its termination notice with the grounds more specifically described in the Exhibit "D" default letter. On August 12, 2009, Bayview Financial, L.P served its termination notice with the grounds more specifically described in the Exhibit "J" default letter.

36. Pursuant to Sections 4.2 of each of the Servicing Agreements entered into between the Debtor and U.S. Bank as well as the Debtor and Bayview Financial, L.P, upon termination, the Debtor must "immediate[ly] transfer all Mortgage Loans, Mortgage Loan documents and data."

37. Further, Section 4.4 of each of the Servicing Agreements provides that, upon termination, the Debtor must:

> account for and turn over to [U.S. Bank or its designee], as applicable, all funds collected [under the Servicing Agreements], less the compensation then due the [Debtor], and deliver to [U.S. Bank or its designee], as applicable, all records and documents relating to each Mortgage Loan then serviced and will advise the Mortgagors that their mortgages will henceforth be serviced by [U.S. Bank or its designee.]

38. Also, under Section 4.4 of each of the Servicing Agreements, the Debtor is required, upon termination, "to use its best efforts to effect the prompt, orderly and efficient assumption of its duties as Servicer to any assuming party."

39. As more specifically described in the Servicing Agreements, the Debtor is responsible for a myriad of crucial tasks, including the following:

> (i) collecting payments under the Mortgage Loans, including certain Escrow Payments (as defined in the Servicing Agreements), such as property taxes and insurance premiums;

(ii) applying and accounting for all such payments by Mortgagors;

(iii) establishing and maintaining an account, held in trust for U.S. Bank for each Transaction, into which all payments received under the Mortgage Loans are required to be deposited (such account, the "Custodial Account");

(iv) establishing and maintaining one or more accounts into which all Escrow Payments are to be deposited (each such account, a "Servicing Account");

(v) making payments as required out of the Servicing Accounts for, among other things, insurance premiums and property taxes;

(vi) monitoring and identifying delinquent Mortgage Loans, and taking actions related to such delinquent Mortgage Loans, including negotiating modifications to certain Mortgage Loans, sending late notices, applying late fees, and foreclosing on the properties securing the Mortgage Loans;

(vii) managing and disposing of properties to which the Trusts have taken title by means of foreclosure or deed-in-lieu of foreclosure (such properties, "REO Properties"), including maintaining appropriate insurance on and paying property taxes and other costs incurred in maintaining such REO Properties; and

(viii) remitting funds collected on the Mortgage Loans to U.S. Bank, as well as providing specific reports, data, and information to U.S. Bank related to the Mortgage Loans and payments made thereon, which reports, data and information are relied upon by U.S. Bank in making distributions on the Securities.

40. The Financial Information is not property of the Debtor's estate. Rather, the Debtor continues to hold the Financial Information without any authority or justification. Once the Servicing Agreements were effectively terminated pre-petition, the Debtor was obligated to transfer to U.S. Bank or the Subsequent Servicers the Financial Information as required under the Servicing Agreements.

RELIEF SOUGHT

41. Neither the funds, nor the Financial Information have been transferred, despite the representation by the Debtor that the transition to the Successor Servicers had been initiated. As of the Petition Date, neither the funds nor the requisite servicing records were transferred, let alone initiated with the Successor Servicers.

42. Movants are presently unaware if the borrowing public has been notified of the official change in servicing or whether future payments and inquiries have been redirected to the Successor Servicers.

43. The Debtor's failure to comply with the post-termination obligations under the Servicing Agreements prevents the Successor Servicers from addressing concerns of 1639 loan and 392 REO customers. Unless this Court immediately compels the Debtor to provide the Successor Servicers with the relevant data, records, and documents[32], the Successor Servicers will not be able to perform the extensive and vital tasks required of them, let alone meet the minimum level of service and accountability mandated by State and Federal Law.

44. Specifically, the Successor Servicers have been prevented from:

> (i) collecting payments on the Mortgage Loans, including the Escrow Payments;
>
> (ii) accounting for and depositing such payments on the Mortgage Loans in the Custodial Accounts;
>
> (iii) making the required payments out of the Servicing Accounts for, among other things, property tax payments and insurance premiums;
>
> (iv) taking necessary actions related to delinquent Mortgage Loans; and

[32] A complete list of what minimum documentation is required by the Successor Servicers has previously been provided to the Debtor and is attached hereto as Exhibit "L".

(v) managing, securing and maintaining REO Properties, including maintaining appropriate insurance and making required tax payments.

45. Finally, due to the Debtor's inability or refusal to provide notice to the public of the transition to the Successor Servicers, (or to provide the Successor Servicers with the contract information so it can send such notice at its own expense) at least 1639 loan and 392 REO customers are being harmed. The public is left in a state of limbo -- that is, they do not know to whom to send their Mortgage Loan payment or to contact about their Mortgage Loan.

46. Unless this Court immediately compels the Debtor to perform its post-termination obligations[33], this uncertainty will continue to result in a substantial increase in delinquent payments on the Mortgage Loans, thereby impairing the anticipated cash flows to the Trusts and holders of the Securities issued by the Trusts, which losses will likely never be recoverable against the Debtor.

47. Moreover, those losses likely will result in claims that will be asserted against the Debtors as administrative priority claims under 11 U.S.C. §§507(a)(2) and 503(b), all to the detriment of the unsecured creditors.

A. THE FINANCIAL INFORMATION IS NOT PROPERTY OF THE DEBTOR'S ESTATE

(i) At best, the Debtor holds a mere possessory interest in the underlying loan files which would not preclude the granting of relief from stay.

[33] The Movants acknowledge that the Debtor is short staffed and is presently pulled in a myriad of directions. Bayview, as sub servicer or servicer, as applicable has repeatedly volunteered to organize a team of experienced servicers to go to the Debtor's place of business and facilitate the transfer of data, under the supervision of the Debtor.

48. Pursuant to 11 U.S.C. §§ 362 and 541 of the Bankruptcy Code, the commencement of a chapter 11 case creates an estate comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case" and "automatically stays" actions against the debtor "to obtain possession of property of the estate or of property from the estate ...." 11 U.S.C. §§ 362(a)(3) and 541 (a)(1) (emphasis added). Thus, even without any ownership interest, the simple fact that the Debtors are in physical possession of the loan files arguably stays any non-consensual actions to recover them.

49. But "while a possessory interest is sufficient to prevent [a creditor] from taking further action in the absence of the automatic stay being lifted, it is not a sufficient basis to deny [a stay relief] motion." *In re Mizuno*, 288 B.R. 45, 49-50 (Bankr. E.D.N.Y. 2002). The automatic stay is not absolute, and, in appropriate instances, the bankruptcy court may, pursuant to section 362(d), terminate, annul, modify or condition the stay on the request of a party in interest and after notice and a hearing. See 11 U.S.C. § 362(d); see also *Matter of R.R.S., Inc.,* 7 B.R. 870, 873 (Bankr. M.D. Fla. 1980) ("[T]he automatic stay provision of section 362 of the Bankruptcy Code does protect the debtor's naked right of possession of the premises, but for a very limited time only.")

50. An order vacating the stay is appropriate here because the loan servicing files that the Debtor merely has in its possession, but does not own, is not property of the estate. 11 U.S.C. § 541(d); cf. *In re Edison Bros.,* 243 B.R. 231, 235 (Bankr. D. Del. 2000) ("[C]ourts have concluded that property which a debtor holds in

trust (express or constructive) for another does not become property of the estate when the debtor files for bankruptcy.").

51. Courts have also used section 105(a) as an adjunct to section 362(d) to provide appropriate relief from the stay. "Section 105 gives bankruptcy courts the broad power to implement the provisions of the bankruptcy code and to prevent an abuse of the bankruptcy process." *In re Haque,* 395 B.R. 799, 804 (Bankr.S.D. Fla. 2008). It "is a powerful, versatile tool ... [that] empowers bankruptcy courts and district courts sitting in bankruptcy to fashion orders in furtherance of Bankruptcy Code provisions." *In re Joubert,* 411 F.3d 452, 455 (3d Cir. 2005). Thus, a bankruptcy court's equitable powers enable it to "sift the circumstances... to see that injustice or unfairness is not done in [the] administration of the bankrupt estate," as "[i]t is not the objective of the bankruptcy laws to confer windfalls on debtors." *Pepper v. Litton*, 308 U.S. 295, 308 (1939) (pre-Code decision affirming district court's use of its equitable powers); *In re Cybridge Corp.,* 312 B.R. 262, 272-73 (D.N.J. 2004) (citations omitted); see *Sears Roebuck & Co. v. Spivey,* 265 B.R. 357,371 (E.D.N.Y. 2001) ("Section 105(a) of the Bankruptcy Code bestows on bankruptcy courts a specific equitable power to act in accordance with principles of justice and fairness ....[and gives] [b]ankruptcy courts broad latitude in exercising this power"; finding bankruptcy court had discretion under section 105 to require judicial approval of redemption agreement, but remanding due to bankruptcy court's mistaken view of law).

52. At bar, the Servicing Agreements establish that the loan files being serviced for U.S. Bank remain U.S. Bank's property and thus could never be property of the bankruptcy estate. The Debtor has, if anything, a mere possessory interest in these

documents. A mere possessory interest in the loan files is not, however, sufficient to place them in the Debtor's estate. Consequently, the Court should require the Debtor to immediately deliver all loan documentation to the Successor Servicers. See *In re Malmart Mortgage Co.,* No. 87-11681-K, 1988 WL 1004731, at *3 (Bankr. D. Mass. Jan. 25, 1988) (requiring debtor to transfer all notes, mortgages, books and records of mortgage loans not being serviced by debtor); see also *In re Cambridge Mortgage Corp.,* 92 B.R. 145, 152 (Bankr. D.S.C. 1988); *In re Fid. Standard Mortgage Corp.,* 36 B.R. 496, 500-501 (Bankr. S.D. Fla. 1983) ("Plaintiffs' interests in the various mortgages should be protected under 541(d)").

53. The Debtor continues to withhold the Financial Information without any authority or justification, as the Debtor's right to possess such information was effectively terminated prior to the Petition Date. Relief is sought from the application of 11 U.S.C. §362(a)(3) in order to effectuate the transfer of the servicing.

(ii) Contracts Terminated Pre-Petition Cannot Be Reinstated

54. Pre-petition, U.S. Bank and Bayview Financial, L.P terminated the Debtor's Servicing Agreements under applicable non-bankruptcy law. Contractual termination provisions are unaffected by the filing of a bankruptcy petition and such provisions are enforceable against a debtor-in-possession. See Matter of Fontaine Janitorial Supply & Service, Inc., 17 B.R. 322 (Bankr M D. Fla. 1982). A contract which is validly terminated pursuant to state law may not be resurrected by a debtor's subsequent bankruptcy filing. *See In re Hickory Point Industries, Inc.*, 83 B.R 805 (Bankr. M,D Fla 1988), *In re Atkins*, 237 B.R. 816 (Bankr M.D. Fla 1999); *In re GISC, Inc.*, 130 B R 346 (Bankr M.D. Fla 1991).

55. U.S. Bank and Bayview Financial, L.P terminated the Servicing Agreements pre-petition. As of the Petition Date the Servicing Agreements are not executory contracts subject to being assumed or rejected by the Debtor. *See Matter of American Ship Building Co., Inc.*, 164 B.R. 358 (Bankr. M.D. Fla 1994); and *In re Gande Restaurants, Inc.,* 162 B.R. 345 (Bankr. M.D. Fla 1993).

WHEREFORE, the Movants respectfully requests the following relief:

(a) An Order compelling the Debtor to (i) transfer all documents and records relating to the Mortgage Loans to Bayview; (ii) provide all of the documents and records required by the Successor Servicers which list has previously been provided to the Debtor and is attached hereto as Exhibit "L" ; (iii) take any and all actions necessary to transfer and/or convey the REO Properties to Bayview; and (iv) account for, and transfer to U.S. Bank or Bayview as appropriate, all funds held by Debtor in its prior capacity as servicer;

(b) an Order granting Bayview immediate access to the data, documents, and records relating to the Mortgage Loans to enable Bayview, under the supervision of the Debtor, to complete the transfer of servicing and

(c) Such other relief as the Court may deem appropriate.

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- and –

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Admission *Pro Hoc Vice* Will Be Applied For

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by CM/ECF noticing or overnight mail to Attorney for Debtor: (also via hand delivery) ***Edward J. Peterson, III,*** Stichter, Riedel, Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, FL 33602; Debtor: ***Taylor, Bean & Whitaker Mortgage Corp.,*** 315 N.E. 14th Street, Ocala, FL 34470; (also via hand delivery) the ***United States Trustee***, 135 W. Central Blvd., Room 620, Orlando, FL 32801; the ***Twenty Largest Unsecured Creditors***; and to the ***Local Rule 1007-2*** Mailing Matrix, this 27th day of August, 2009.

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Draper, UT 84020-8368

Hadlock Title Services, Inc.
679 Worcester Road
Natick, MA 01760-1824

Iron Mountain Information Management, Inc.
c/o Frank F. McGinn, Esq.
Bartlett Hackett Feinberg P.C.
155 Federal Street, 9th Floor
Boston, MA 02110-1610

James G. Hicks
950 Grayson Highway
Lawrenceville, GA 30046-6340

Lamb & Browne
531 Concord Street
Holliston, MA 01746-3312

LandAmerica Tax and Flood
1123 S Parkview Drive
Accounting Department
Covina, CA 91724-3748

Locke Lord Bissell & Liddell LLP
111 S. Wacker Dr.
Chicago, IL 60606-4302

McKenna Long & Aldridge, LLP
P.O. Box 116573
Atlanta, GA 30368-6573

NDS USA LLC
406 E Silver Springs Blvd
Ocala, FL 34470-5828

RBC Bank successor
to Florida Choice Bank
c/o James W. Carpenter
515 East Las Olas Blvd., Ste 850
Fort Lauderdale, FL 33301-2277

RBC Capital Markets
One Liberty Plaza
165 Broadway
New York, NY 10006-1428

Sam Solutions
11511 Abercorn Box 285
Savannah, GA 31419-1901

Sovereign Bank
c/o Robert Soriano, Esq.
625 E. Twiggs St., #100
Tampa, FL 33602-3925

TN Dept. of Financial Institutions
c/o Gill Geldreich, Asst. Atty. General
Bankruptcy Division
P.O. Box 20207
Nashville, TN 37202-4015

Tennessee Dept. of Financial Instutions
Attn: Gill Geldreich
c/o TN Atty General's Office, Bankruptcy
PO Box 20207
Nashville, Tennessee 37202-4015

United States Trustee - Jax
135 W Central Blvd, Suite 620
Orlando, FL 32801-2440

Wright Express Financial
33548 Treasury Center
Chicago, IL 60694-3500

End of Label Matrix

Mailable recipients	30
Bypassed recipients	0
Total	30