

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.

Case No. 3:09-BK-07047-JAF
Chapter 11

Debtor.
_____ /

**RBC BANK (USA) SUCCESSOR BY MERGER TO FLORIDA CHOICE BANK'S
OBJECTION TO DEBTOR'S EMERGENCY MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS AUTHORIZING USE OF CASH COLLATERAL AND
GRANTING REPLACEMENT LIENS**

RBC BANK (USA), Successor By Merger to FLORIDA CHOICE BANK ("RBC"), objects to the Debtor's Emergency Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens pursuant to 11 USC §105(a), 361, 363, 541 and 522, and Bankruptcy Rule 4001 ("Cash Collateral Motion"), and in support thereof states as follows:

BACKGROUND

1. RBC is the successor by merger to the interests of Florida Choice Bank, which entity entered into a Loan Agreement ("Loan Agreement") and related Commercial Line of Credit Demand Note for Business and Commercial Loans on or about August 31, 2005, with the Debtor ("LOC Note"). A true and correct copy of said Loan Agreement is attached hereto as Exhibit "A" and of said LOC Note is attached hereto as Exhibit "B", and are incorporated herein by reference.

2. Pursuant to the terms of the Loan Agreement and LOC Note, which incorporated a security agreement thereunder, the Debtor granted RBC's predecessor a security interest in certain of its assets, which interest was perfected by the filing of a UCC-1, filed on about October 26, 2005, having file number 200501018385 ("UCC"). A true and correct copy of said UCC filing is attached hereto as Exhibit "C."

3. Under this facility, the Debtor made use of the related funding in order to finance the origination of single-family residential construction-to-permanent mortgage loans. The primary secured collateral generated by such fundings, which would flow back to RBC in connection with this business relationship, was the assignment of the underlying construction loan notes and related mortgage instruments.

4. In addition to this set of obligations, RBC acquired the interest of Georgia State Bank, which entity had an ongoing Loan Servicing Agreement in place with the Debtor, dated October 28, 1997 ("LSA"). A true copy of said LSA is attached hereto as Exhibit "D".

5. Under this SLA, the Debtor acted as servicer for other underlying loans and mortgages held by RBC's predecessor.

6. As described in the Case Summary Report of the Debtor, at the time of the filing of the Petition, the Debtor owed RBC approximately Seven Hundred Thousand Dollars (\$700,000.00), under the Loan Agreement, LOC Note and LSA relationships. The Debtor's obligations under these instruments are secured by liens on the underlying construction loan notes and mortgages, as well as all cash and related proceeds being generated from those instruments (the "Collateral").

7. On or about August 19, 2009, RBC sent a letter to the Debtor ("Termination/Demand Letter") informing them that the credit facility reflected under the LOC

Note had been closed, advising them to cease drawing upon that line, and further advising them that all remaining sums due under the LOC Note were then due and payable at the highest rate allowed by law. A true and correct copy of said Termination/Demand Letter is attached hereto as Exhibit "E".

8. On August 24, 2009, the Debtor filed its voluntary petition ("Petition") for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage its property as a Debtor-in-Possession. No trustee or examiner has been appointed in this case, and no official committee has been appointed pursuant to Section 1102 of the Bankruptcy Code.

9. On the Petition date, the Debtor filed various "First Day" motions, including the Cash Collateral Motion.

RBC'S RESPONSE TO THE CASH COLLATERAL MOTION

10. RBC objects to the Debtor's Cash Collateral Motion on a number of grounds. Firstly, the Debtor seeks to possibly use RBC's Cash Collateral, but fails to inform RBC or this Court of the value of the collateral. In requesting to use cash collateral of the numerous secured creditors, it is the Debtor's job to elucidate the value of the pre-petition and post-petition collateral owned by each of such creditors. RBC cannot make any decision about its consent to use of cash collateral without knowing the value of collateral, both prior to and subsequent to the filing of the Chapter 11 case.

11. The Debtor may not use cash collateral unless each entity that has an interest in such cash collateral consents or the Court, after noticing the hearing, authorizes such use in accordance with the provisions of the Section. See, 11 U.S.C. §363(c)(2). If the Debtor uses cash collateral of a third party, it must provide that party with adequate protection. See, 11 U.S.C.

§363(e). Further, the Debtor is required to segregate and account for any cash collateral in its possession or control. See, 11 U.S.C. §363(c)(4).

12. In this regard, the Debtor should have to identify what the collateral was secured by prior to the Petition date and what RBC will have a security interest in going forward. This is because it is not clear from the Cash Collateral Motion whether the cash the Debtor seeks to use is actually “cash collateral” as defined by Bankruptcy Law. The Debtor’s motion does not identify where the bank accounts are located containing the alleged cash collateral, nor any identification of the source of cash in such accounts.

13. The Budget attached as Exhibit “A” to the Cash Collateral Motion makes reference to “management” designations of operating cash, yet it is evident from the other filings of the Debtor that its “management” was compromised by certain alleged improprieties, and that its existing “management” could not possibly have assessed or analyzed the actual character and nature of funds that may be on deposit of accounts of the Debtor, and labelling it as “operating cash”. To the extent that certain cash may actually belong to RBC in certain accounts domiciled at RBC and elsewhere, such cash does not belong to the Debtor and does not constitute “cash collateral” subject to use by the Debtor under 11 U.S.C. §363 (a).

14. As raised by another secured creditor herein under their objection to the Cash Collateral Motion, even assuming the cash sought to be used by the Debtor qualifies as “cash collateral”, the Debtor does not provide sufficient adequate protection to protect the interest of the parties whose cash collateral the Debtor may use. Upon information and belief, the collateral upon which the Debtor seeks to impose “replacement liens” is already subject to pre-petition liens, protected by §552(b) of the Bankruptcy Code. In this respect, replacement liens from the

Debtor would not constitute adequate protection to the parties whose cash collateral the Debtor may use.

15. Finally, the Debtor's apparent intention is to use the "cash collateral" to finance payment of certain on-going operational expenses which seem quite extravagant and overbroad, and which relate to anticipated payments to a re-organizational entity for the Debtor that has not yet been approved for retention by this Court.

16. To that extent, RBC joins in the objections thereto previously put before this Court on behalf of secured creditors Sovereign Bank, as agent, and Bank of America, N.A., as successor-in-interest through merger to LaSalle Bank, in this Estate.

CONCLUSION

RBC has a concern that the Debtor has failed to identify the nature of cash collateral it intends to use and that RBC's cash collateral may somehow be used contrary to its interests. RBC is presently attempting to obtain loan closing payoff proceeds from at least one loan made under the Loan Agreement that the Debtor received and deposited it into its accounts at Colonial Bank, and holds a right to setoff sums it may hold in order to payoff the LOC Note. RBC needs to know its cash collateral, intended to satisfy the related sub-borrowers' note and mortgage obligations, is safe and not being used by the Debtor, since there presently exists a clear possibility such funds could be taken and applied by the Debtor under a potential cash collateral Order. It is similarly possible that other sums on deposit at RBC and elsewhere, to which RCB is properly secured, could be utilized without providing adequate protection to RBC. As a result, RBC respectfully requests that the Court enter an Order either denying the present motion as framed, conditioning any use of cash collateral after proper designation of the sources and uses

of such cash collateral, and granting RBC such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded on this 27th day of August, 2009 via U.S. Mail and electronically to Debtor in Possession, Taylor, Bean & Whitaker Mortgage Corp., 315 N.E. 14th Street, Ocala, Florida 34470; Counsel for Debtor in Possession, Edward J. Peterson, III, Stichter, Riedel, Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602; and, U.S. Trustee, United States Trustee-JAX, 135 W Central Blvd., Suite 620, Orlando, Florida 32801.

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