

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE

**TAYLOR, BEAN & WHITAKER
MORTGAGE GROUP,**

Debtor.

)
)
)
)
)
)

**CASE NO. 3:09-bk-07047-JAF
CHAPTER 11**

EXHIBIT B

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

FIRST AMERICAN TITLE)
INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
TAYLOR, BEAN & WHITAKER)
MORTGAGE CORPORATION, HMC-)
HOME MORTGAGE COMPANY,)
BANCORPSOUTH BANK, SHAF B.)
HOLDEN, and MELINDA B. HOLDEN,)
)
Defendants.)
)

CIVIL ACTION NO. CV-09-_____

COMPLAINT

1. Plaintiff is a California corporation qualified to do business and doing business in Mobile County and elsewhere in Alabama, engaged in the business of title insurance, and which issued commitments to insured Defendants, HMC-Home Mortgage Company and to the Holden Defendants in this matter.

2. Defendant, Taylor, Bean & Whitaker Mortgage Corporation ("TBW"), is a foreign corporation engaged in the business of making loans in Mobile County, Alabama, and elsewhere.

3. Defendant, HMC-Home Mortgage Company ("HMC"), is a foreign corporation engaged in the business of making loans in Mobile County, Alabama, and elsewhere.



4. Bancorpsouth Bank is a foreign corporation in the business of making loans in Mobile County, Alabama, and elsewhere.

5. Defendants, Shaf B. Holden and Melinda B. Holden, are the purchasers of certain property in Mobile County, Alabama, on which they gave a first mortgage to HMC and a second mortgage to Bancorpsouth Bank.

6. Plaintiff's agent, Crane Title, Inc. ("Crane"), handled the transaction on or about July 31, 2009, in which TBW was the named lender and in which HMC was the named first mortgagee.

7. The transaction involved the purchase of real estate in Mobile County, Alabama, located at 563 Shenandoah Road West, Mobile, AL 36608.

8. TBW forwarded its check to Plaintiff's agent in the amount of \$339,025.71 dated July 29, 2009, to partially fund the purchase transaction.

9. Crane deposited in its trust account with Colonial Bank the said TBW check and proceeded to disburse settlement funds to enable the purchase transaction to be completed. These funds included a payoff of previous mortgages to City Mortgage in the amount of \$210,266.88 and to Regions Bank in the amount of \$109,545.81.

10. In connection with the transaction, the purchaser executed a promissory note and mortgage to HMC-Home Mortgage Company in the amount of \$341,600.00, representing the funds provided by TBW as lender.

11. After disbursement of funds at closing, Crane learned that TBW and/or Colonial caused payment to be stopped on TBW's check as aforesaid, and caused the funds previously credited to the Crane's Trust Account Title to be withdrawn.

12. In order to fulfill its obligations to its insureds, Plaintiff made advances to Crane Title in the amount of the funds withdrawn from the account of Crane Title by TBW and/or by Colonial when the check from TBW was dishonored as aforesaid.

13. By virtue of having on hand the funds advanced by Plaintiff, HMC has been enabled to acquire a valid first lien in the amount of \$341,600.00 on the real property made the subject of the transaction, without expending funds of its own or being obligated to any other entity for funds so advanced. Moreover, without the advance of said funds, the purchase transaction could not have occurred, and there would be no property to which the mortgage of HMC could attach.

FIRST CAUSE OF ACTION – EQUITABLE MORTGAGE

14. Plaintiff realleges and incorporates by reference herein the allegations of paragraphs 1-13 hereinabove.

15. The Defendants HMC and/or TBW benefited by virtue of the funds advanced by Plaintiff as aforesaid, in that said Defendants have acquired a valid and enforceable first lien against the property made the subject of the transaction without themselves advancing the funds in question utilized in acquiring the property in question.

16. Plaintiff requests that the Court, in equity, determine and make a declaration as to the invalidity, in whole or in part, of the mortgage so acquired by HMC and/or by TBW.

17. To the extent it is determined that the said mortgage is invalid, Plaintiff is due, in equity, an equitable mortgage against the interest of the Defendants HMC and/or TBW in the property, and having the same priority.

WHEREFORE, Plaintiff requests that the Court determine and declare that by virtue of failure of payment on the check as aforesaid, the mortgage given to HMC and/or TBW is invalid and grant to Plaintiff an equitable mortgage as to the interest of HMC and/or TBW, and grant such other and further relief as is just, together with interest and the cost of this action.

SECOND CAUSE OF ACTION – EQUITABLE LIEN

18. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-13 above.

19. Plaintiff has advanced funds to Crane which were used to replace funds advanced upon the refusal of TBW and/or Colonial to honor the check deposited by Crane as aforesaid.

20. Said funds were used to pay off existing mortgage indebtedness on the property, without which the transaction could not have occurred and without which there would have been no asset to which the lien of HMC and/or TBW could attach.

21. In equity, Plaintiff is entitled to a lien in the amount of funds advanced by it as aforesaid, said lien standing in the position of the mortgage given to HMC and/or TBW, the consideration for which failed upon dishonor of the TBW check as aforesaid.

WHEREFORE, Plaintiff requests that the Court declare and equitable lien in favor of it and against the mortgage asset held by TBW and/or HMC, and having the same priority, together with interest and the cost of this action.

**THIRD CAUSE OF ACTION – UNJUST ENRICHMENT
AND CONSTRUCTIVE TRUST**

22. Plaintiff realleges and incorporates by reference the allegations of paragraph 1-13 above.

23. By virtue of the fact that no funds of HMC and/or TBW have been utilized for the acquisition of the mortgage interest as aforesaid, which funds were entirely supplied by Plaintiff as aforesaid, Defendants TBW and/or HMC would be unjustly enriched if either of them benefited from repayment of any portion of the mortgage interest created at closing of the transaction in question. It would be inequitable to allow HMC and/or TBW to retain their valid first mortgages on the property.

24. Because it would be equitable and unconscionable for Defendants HMC and/or TBW to retain the interest secured by said mortgage and enjoy the beneficial interests thereof, Plaintiff requests that the Court, in equity, impose a constructive trust upon the mortgage interest of HMC and/or TBW to the extent of amounts advanced by Plaintiff as aforesaid.

WHEREFORE, Plaintiff requests that the Court, to prevent unjust enrichment, impose a constructive trust upon the property of the Defendants HMC and/or TBW, and grant to the Plaintiff such other or further relief as is just, together with interest and the cost of this action.

FOURTH CAUSE OF ACTION – EQUITABLE SUBROGATION

25. Plaintiff realleges and incorporates by reference the allegations of paragraph 1-13 above.

26. Plaintiff has advanced funds which satisfied prior mortgages as aforesaid and which created the interest to which Defendants HMC and/or TBW purport to hold a valid first lien.

27. To the extent HMC and/or TBW hold a valid first lien to the property in question, it is only by virtue of funds advanced by Plaintiff to cover the dishonored check of TBW as aforesaid.

28. The mortgage interest held, claimed, and asserted by Defendants TBW and/or HMC should be subrogated, in equity, to the interest of the Plaintiff to the extent of monies advanced by the Plaintiff to cover the withdrawn funds as aforesaid.

WHEREFORE, Plaintiff requests that the Court equitably subrogate the interests of Defendant HMC and/or TBW in the property, to the interests of Plaintiff, and in the same priority, and grant such other or further relief as is just, together with interest and the cost of this action.

FIFTH CAUSE OF ACTION – SUIT ON DISHONORED CHECK

29. Plaintiff realleges and incorporates by reference the allegations of paragraph 1-13 above.

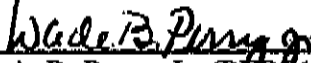
30. Plaintiff, as successor in interest to Crane by virtue of funds advanced as aforesaid, is subrogated to the rights of Crane to bring this action against TBW for wrongful dishonor of its check as aforesaid.

31. TBW gave its check to Crane on July 29, 2009, in the amount of \$339,025.71.

32. In reliance on the availability and collectability of said funds, Plaintiff's agent gave value advancing funds to pay off prior mortgages and creating a mortgage interest in TBW and/or HMC.

33. TBW wrongfully dishonored said check, pursuant to which Plaintiff advanced funds to cover resulting shortages.

WHEREFORE, Plaintiff demands of Taylor, Bean & Whitaker Mortgage Company the sum of \$339,025.71, together with interest and the cost of this action.



Wade B. Perry, Jr. (PER 18)
Attorney for Plaintiff
Post Office Box 1988
Mobile, Alabama 36633
Telephone (251) 432-7682
Facsimile (251) 432-2800
wbp@johnstoneadams.com

OF COUNSEL:

JOHNSTONE, ADAMS, BAILEY, GORDON & HARRIS, L.L.C.

Defendants may be served as follows:

By Certified Mail

Taylor, Bean & Whitaker Mortgage Corporation
315 N.E. 14th Street
Ocala, FL 34470

By Certified Mail

HMC-Home Mortgage Company
7500 San Felipe, Suite 500
Houston, TX 77063

By Personal Service

Shaf B. Holden
563 Shenandoah Road West
Mobile, AL 36608

By Personal Service

Melinda B. Holden
563 Shenandoah Road West
Mobile, AL 36608

By Certified Mail

Bancorpsouth Bank
P. O. Box 4360
Tupelo, MS 38803

464602.doc

State of Alabama
Unified Judicial System
Form ARCiv-93 Rev.5/99

COVER SHEET
CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

Case Number:
02-CV-2009-56900
Date of Filing:
08/13/2009

ELECTRONICALLY FILED
8/13/2009 5:26 PM
2009-901569 00
CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
JOJO SCHWARZAUER, CLERK

GENERAL INFORMATION

IN THE CIRCUIT OF MOBILE COUNTY, ALABAMA
FIRST AMERICAN TITLE INSURANCE COMPANY v. TAYLOR, BEAN & WHITAKER MORTGAGE

First Plaintiff: Business Individual Government Other
First Defendant: Business Individual Government Other

NATURE OF SUIT:

- TORTS: PERSONAL INJURY**
- WDEA - Wrongful Death
 - TONG - Negligence: General
 - TOMV - Negligence: Motor Vehicle
 - TOWA - Wantonnes
 - TOPL - Product Liability/AEMLD
 - TOMM - Malpractice-Medical
 - TOLM - Malpractice-Legal
 - TOOM - Malpractice-Other
 - TBFM - Fraud/Bad Faith/Misrepresentation
 - TOXX - Other: _____
- TORTS: PERSONAL INJURY**
- TOPE - Personal Property
 - TORE - Real Property
- OTHER CIVIL FILINGS**
- ABAN - Abandoned Automobile
 - ACCT - Account & Nonmortgage
 - APAA - Administrative Agency Appeal
 - ADPA - Administrative Procedure Act
 - ANPS - Adults in Need of Protective Services
- OTHER CIVIL FILINGS (cont'd)**
- MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
 - CVRT - Civil Rights
 - COND - Condemnation/Eminent Domain/Right-of-Way
 - CTMP - Contempt of Court
 - CONT - Contract/Ejectment/Writ of Seizure
 - TOCN - Conversion
 - EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division
 - CVUD - Eviction Appeal/Unlawful Detainer
 - FORJ - Foreign Judgment
 - FORF - Fruits of Crime Forfeiture
 - MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
 - PFAB - Protection From Abuse
 - FELA - Railroad/Seaman (FELA)
 - RPRO - Real Property
 - WTEG - Will/Trust/Estate/Guardianship/Conservatorship
 - COMP - Workers' Compensation
 - CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F INITIAL FILING A APPEAL FROM DISTRICT COURT O OTHER
R REMANDED T TRANSFERRED FROM OTHER CIRCUIT COURT

HAS JURY TRIAL BEEN DEMANDED? Yes No

RELIEF REQUESTED: MONETARY AWARD REQUESTED NO MONETARY AWARD REQUESTED

ATTORNEY CODE: PER018 8/13/2009 5:25:05 PM /s WADE B. PERRY JR.

MEDIATION REQUESTED: Yes No Undecided



AlaFile E-Notice

02-CV-2009-901569.00

To: WADE B. PERRY JR.
wbp@johnstoneadams.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

FIRST AMERICAN TITLE INSURANCE COMPANY v. TAYLOR, BEAN & WHITAKER MORTGAGE
CORPORATION

The following complaint was FILED on 8/13/2009 5:26:53 PM

Notice Date: 8/13/2009 5:26:53 PM

JOJO SCHWARZAUER
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
205 GOVERNMENT STREET
MOBILE, AL 36644

251-574-8420
jo.schwarzauer@alacourt.gov