

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re: :
 :
Taylor, Bean & Whitaker Mortgage : 03:09-bk-07047-JAF
Corp., :
 :
 :
Debtor

**U.S. BANK NATIONAL ASSOCIATION’S, AS SUCCESSOR
TRUSTEE FOR BANK OF AMERICA, NA AS SUCCESSOR
BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR FIRST FRANKLIN MORTGAGE LOAN TRUST
2007-1, MORTGAGE LOAN ASSET-BACKED CERTIFICATES,
SERIES 2007-1, MOTION TO RECONSIDER THE COURT’S ORDER
SUSTAINING WITHOUT PREJUDICE THE PLAN TRUSTEE’S
OBJECTION TO ADMINISTRATIVE EXPENSE CLAIM #3355 (DKT NO. 5216)**

U.S. Bank National Association, as Successor Trustee for Bank of America, National Association, as Successor by Merger to LaSalle Bank National Association as Trustee for First Franklin Mortgage Loan Trust 2007-1, Mortgage Loan Asset-Backed Certificates, Series 2007-1 (the “Trust”), hereby moves the Court to reconsider its *Order Sustaining Without Prejudice the Plan Trustee’s Objection to Administrative Expense Claim #3355* (Dkt. No. 5216) (the “Order Sustaining Objection”), pursuant to Rule 3008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, as incorporated by Rules 9023 and 9024 of the Bankruptcy Rules, and in support thereof states as follows:

Summary of Argument¹

1. As this Court knows, the Trust asserts it had a superior interest in the Property compared to the Debtor at the time of the Debtor's sale to Selene, of which the Trust was not provided notice. If the Trust is not granted an administrative expense claim for the Debtor's unjust enrichment from the Sale of the Property, then the Trust will be greatly harmed and prejudiced, especially due to the Agreed Order entered by this Court on April 1, 2011 (Dkt. No. 2887), in which the Court deemed the Trust's request for relief from the Sale Order as withdrawn, and directed the Trust to dismiss the Quiet Title Action.

2. In 2007, the Trust, as a successor in interest, loaned money to an individual, and in turn the Trust received a deed of trust secured by real property with an address of 41009 Knoll Drive, Palmdale, California 95551 ("Property"). Approximately one year later, unbeknownst to the Trust, Yosef Cohen, a third-party lacking any authority on behalf of the Trust or its predecessor in interest, executed a forged document which falsely claimed that the Trust's note and deed of trust had been satisfied in full, which set into motion numerous transfers of the Property and additional loans purportedly secured by the Property. All the while, on April 13, 2009, the Trust received title to the Property through a trustee's deed sale. However, less than a month later on April 21, 2009, and without providing any notice to the Trust, another entity, Federal Home Loan Mortgage Corporation ("Federal Home"), also purported to receive title to the Property through a trustee's deed sale. In May 2009, the Trust filed the Quiet Title Action in California seeking, among other things, to quiet title of the Property, and the Trust also filed the Lis Pendens to provide notice of the action and notice of its claimed interest in the property.

¹ The Trust reincorporates the undisputed facts set forth in its *Verified Motion for Summary Judgment* (Dkt. No. 4916), specifically, ¶¶ 4-42, and any capitalized term not defined herein shall have the meaning set forth in the *Verified Motion for Summary Judgment*.

3. The Debtor filed its bankruptcy petition on August 24, 2009, and then on October 21, 2009, the Debtor filed its Sale Motion proposing to sell various properties, including the “Property”. Oddly, at the time of the Sale Motion and the Sale Order, the Debtor did not even have purported title to the Property, as Federal Home did not deed the Property to the Debtor until January 13, 2010. Also, the Debtor had full knowledge of the Trust’s claimed interest in the Property and the pending Quiet Title Action at the time of the sale auction in December 2009, but the Debtor failed to provide any notice to the Trust, and the Debtor purported to sell the Property in a section 363 sale to Selene. Approximately one year later, the Trust learned of the sale and filed papers in this case to grant it relief from the Sale Order, and/or to receive an administrative expense claim due to the Debtor’s unjust enrichment from the sale of the Property. The Debtor and the Trust agreed that the issue would be dealt with in this bankruptcy action provided that the Trust dismiss the Quiet Title Action in California, and the Debtor reserved the proceeds it received from the sale for a potential administrative claim for the Trust – all of which was pursuant to this Court’s Agreed Order dated April 1, 2011. Over a year passed without any substantial communication from the Debtor regarding the Trust’s administrative expense claim, and therefore to resolve this matter, the Trust filed its Verified Motion for Summary Judgment on its administrative claim. This Court never held a hearing on the matter, rather, merely entered an order sustaining the Debtor’s objection to the Trust’s administrative claim, and found that the more appropriate forum is for the Trust to pursue a quiet title action to receive clear title to the property. Such resolution clearly causes great harm to the Trust given that it dismissed the Quiet Title Action and withdrew its request for relief from the Sale Order over a year ago. The Court erred in finding that the Trust was not entitled to an administrative expense claim, and in finding that the issue before it was not justiciable given that a controversy

currently exists between the Trust and the Debtor with respect to whether an administrative expense should be awarded to the Trust to prevent the Debtor from being unjustly enriched.

Procedural History

4. On May 8, 2009, the Trust initiated its Quiet Title Action by filing a verified complaint in the Superior Court of the State of California County of Los Angeles (the “California Court”), Case No. BC413430, seeking to quiet title as related to the Property, among other relief. The Trust subsequently filed an amended complaint on November 23, 2010, naming Selene as an additional defendant.

5. Simultaneously to filing the Quiet Title Action, the Trust’s California counsel, Wolfe & Wyman, LLP (“W&W”), filed a Notice of Pendency of Action (Lis Pendens) (the “Lis Pendens”), which was filed in the Official Records of Los Angeles County as Instrument No. 20090691202.²

6. On December 16, 2010, the Trust filed its *Motion for Relief as to a Portion of the Sale Order (Dkt. No. 802), And in the Alternative, Application for Allowance and Payment of an Administrative Expense Claim* (the “Motion for Relief from Sale and Motion for Administrative Claim”), in which the Trust requested this Court, among other things, (i) grant it relief from the Sale Order because the order was entered in error or because the Sale Order was void with respect to the Property because the Debtor never had legal title to the Property; (ii) enter an order directing the Debtor to distribute the net proceeds from the sale of the Property to the Trust, to the extent not disbursed by the Debtor, or if the proceeds were already disbursed, to require the Debtor to pay the amount of net sale proceeds to the Trust, and in the alternative, and/or grant

² A copy of the Lis Pendens was attached to the Verified Summary Judgment Motion as Exhibit I.

(iii) an administrative expense claim in the amount of the net sale proceeds from the Debtor's sale of the Property or the fair market value of the Property at the time of the sale.

7. On March 28, 2011, the Trust filed its *Clarification to its Motion for Relief as to a Portion of the Sale Order and in the Alternative, Application for Allowance and Payment of an Administrative Expense Claim* (Dkt. No. 2863) (the "Clarification").

8. On April 1, 2011, this Court entered the *Order on Bank of America's Motion for Relief as to Portion of Sale Order and Alternative Application for Allowance and Payment of Administrative Expense* (the "Agreed Order") (Dkt. No. 2887), which was agreed to by the Trust and the Debtor, which ruled that (i) to the extent the Trust seeks relief from the Sale Order, the Trust's motion is withdrawn and the Trust will dismiss its Quiet Title Action, (ii) but the Trust's dismissal of the Quiet Title Action and withdrawing its request for relief from the Sale Order is without prejudice to the Trust's assertions that (a) it held an interest in the Property superior to Debtor; (b) the Trust is entitled to receive the REO sale proceeds allocable to the Property; and (c) the Trust's request for an administrative expense is not limited to the net sales proceeds but should be based on the market value of the Property or the amount for which the Property could have been sold had the Trust been able to sell it, and (iii) the Debtor shall reserve the \$272,182.05 in REO sales proceeds allocable to the Property, without prejudice to the determination of the amount of the administrative expense, if any, to which the Trust is entitled.

9. Based on the Agreed Order, the Trust dismissed the Quiet Title Action pending in Los Angeles County, California pursuant to the *Request for Dismissal* filed by the Trust on April 18, 2011. A true and correct copy of the *Request for Dismissal* is attached hereto as **Exhibit 1**.

10. After dismissing the Quiet Title Action, counsel for the Trust and the Debtor communicated in furtherance of a potential settlement, but the communications stalled and

therefore, in accordance with the Agreed Order, on or about February 15, 2012, the Trust filed its *Verified Motion for Summary Judgment*. (Dkt. No. 4916).

11. On or about March 8, 2012, the Plan Trustee filed its *Response to U.S. Bank National Association Verified Motion for Summary Judgment* (Dkt. No. 5006), and its *Objection to Request for Allowance and Payment of Administrative Expense Claimed in Claim # 3355*. (Dkt. No. 5005).

12. On or about April 26, 2012, this Court entered the Order Sustaining Objection, of which the Trust is seeking reconsideration.

Basis for Relief

I. The Standard to Grant a Motion to Reconsider

13. Rule 3008 of the Bankruptcy Rules states that “a party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.” FED. R. BANKR. P. 3008. Reconsideration of a claim allows a bankruptcy court to reexamine a claim on its merits. *See Karen-Richard Beauty Salon, Inc. v. Fontainebleau Hotel Corp.*, 36 B.R. 896 (S.D. Fla. 1983). Further, Rule 59(e)³ of the Federal Rules of Civil Procedure, made applicable through Bankruptcy Rule 9023, permits the Court to reconsider an order “to correct a clear error of law or fact or to prevent manifest injustice.” *See In re CHC Indus., Inc.*, 381 B.R. 385, 389 (Bankr. M.D. Fla. 2007) (quotation marks omitted). Rule 59(e) was adopted in order to “‘make clear that the district court possesses the power’ to rectify its own mistakes in the period immediately following the entry of

³ Some courts have held that a motion to reconsider a claim is timely if filed within the time period permitted under Bankruptcy Rule 9024, while other courts determined that a motion to reconsider is a motion for relief from under Rule 9023, except that the time limitation in Rule 9023 does not apply. *See U.S. v. Boyd*, 1995 WL 790049, *1-2 (M.D. Fla. 1995)

judgment.” See *White v. N.H. Dep’t of Employment Sec.*, 455 U.S. 445, 450 (1982). The decision to grant relief under Rule 59(e) is within the sound discretion of the court, especially when “the interests of justice” demand the correction of an error. See *Prudential Securities, Inc. v. Emerson*, 919 F. Supp. 415, 417-18 (M.D. Fla. 1996). Additionally, Rule 60(b) of the Federal Rules of Civil Procedure permits the Court to relieve a party from a “final judgment, order or proceeding” for any of several reasons, including “mistake, inadvertence, surprise, or excusable neglect” or “any other reason that justifies relief.” See FED. R. CIV. P. 60(b) (emphasis added). Rule 60(b)(6) is a catchall rule giving a court “ample power to vacate judgments whenever such action is appropriate to accomplish justice.” *Menier v. U.S.*, 405 F. 2d 245, 248 (5th Cir. 1968).

II. The Interests of Justice and the Court’s Errors Demand Reconsideration of and Relief from the Order Sustaining Objection, and Granting the Trust an Administrative Expense Claim

14. In the instant case, the “interests of justice” demand that the Court reconsider, and grant the Trust relief from, the Order Sustaining Objection in order to prevent the Debtor from being unjustly enriched by the sale of the Property without providing notice to the Trust. Therefore, the Trust should be granted an administrative expense claim in the greater amount of either the market value of the Property at the time of the Sale, the amount for which the Property could have been sold had the Trust been able to sell the Property, or the net proceeds the Debtor received from the sale of the Property to Selene. Furthermore, the Trust has been harmed, and may be further harmed in future litigation, by its dismissal of the Quiet Title Action and withdrawal of its initial request to modify the Sale Order (in the Motion for Relief from Sale Order and Motion for Administrative Claim).

15. The Court incorrectly noted that the Trust’s requested admin claim would only serve to compensate the Trust for its loss; rather, an administrative expense claim would prevent

the Debtor from being unjustly enriched. Granting the Trust an administrative expense claim would not fully compensate the Trust as it is owed more than \$800,000 on the Lender Note from Julfayan. See ¶ 16 of the *Verified Motion for Summary Judgment*.

A. The Court Erred in Not Granting the Trust an Administrative Expense Claim Under 11 U.S.C. § 503(b)

16. Without a doubt, the Debtor benefited from the sale of the Property without providing notice of the sale or properly satisfying the Trust's lien on, and interest in, the property. In the instant case, the Debtor acted negligently, at a minimum, when it sold the Property knowing that the Trust claimed an interest in the Property, and failed to give notice to the Trust or satisfy its lien through the sale. Additionally, the Debtor would be unjustly enriched if it were allowed to keep the sale proceeds from the sale of the Property, as the Debtor knew that the Trust claimed an interest in the Property due to the Title Report.

17. In *Hillsborough Holdings Corp.*, 207 B.R. 299 (Bankr. M.D. Fla. 1997), the Bankruptcy Court granted the claimant an administrative expense claim because the debtor benefited from the sale of property in which the claimant held an interest. In *Hillsborough Holdings*, CTC Minerals, Inc. ("CTC") filed an administrative expense claim for the debtor's sale of methane gas, in which CTC had a 22.5% ownership interest, and the gas was located on the debtor's property. The debtor was the lessee of coal pursuant to a lease with Center Coal, the owner of the coal. Under applicable state law, the debtor had the right to extract gas in order to ventilate the coal mines, and therefore the debtor had the gas extracted and sold. According to the Bankruptcy Court, (i) CTC had a right to share in the profits from the debtor's sale of the gas, and (ii) it was undisputed that CTC had been paid nothing for the methane gas extracted and sold, and therefore the debtor was unjustly enriched. The Court also held that the debtor used CTC's property – the gas which was extracted – and the debtor received concrete benefits from

such extraction. According to the Bankruptcy Court, a “primary purpose of according administrative priority to claims is to prevent unjust enrichment of the bankruptcy estate, not merely to compensate creditors.” *Id.* (citing *Matter of Restod, Inc.*, 99 B.R. 499 (Bankr. M.D. GA. 1989)); *see also Matter of Restod, Inc.*, 99 B.R. 499 (Bankr. M.D. Ga 1989) (granting an administrative expense claim to the purchaser of the debtor’s assets for delinquent lease payments paid by the purchaser, which accrued after the purchasers agreed to purchase the property but before the closing of the sale, as the debtor was benefited from the leases during this time period. The Court also noted that denying the movants’ claims for an administrative expense would unjustly enrich the debtor).

18. Furthermore, the United States Supreme Court has recognized a tort claimant’s right to an administrative expense, if such claim is incidental to the operation of a business – and such administrative expense claims cannot be limited to only those costs without which, rehabilitation would be impossible. *See Reading Co. v. Brown*, 391 U.S. 471 (1968) (a pre-Code case in which the Court held that damages resulting from the negligence of a receiver appointed under the Bankruptcy Act gave rise to “actual and necessary costs” of administration in a Chapter XI matter, thus giving rise to priority status).

19. Therefore, the Court erred in denying the Trust an administrative expense claim to avoid the Debtor and its estate from being unjustly enriched by selling the Property with knowledge that the Trust claimed an ownership interest in the Property. The negligence of the Debtor harmed the Trust, and the Debtor should not be enriched for doing so.

B. The Bankruptcy Court Erred by Failing to Prevent Unjust Enrichment Even Though the Debtor Knowingly Failed to Provide the Trust or its Counsel Notice of the Sale of the Property in the Bankruptcy Action

20. The Court made an error and harmed the Trust by allowing the Debtor to sell the Property free and clear of liens without providing notice to the Trust, and such error and harm was further compounded by the Court denying the Trust an administrative expense claim to prevent unjust enrichment in lieu of vacating the Debtor's sale of the Property to Selene.

21. On October 21, 2009, the Debtor filed its Sale Motion.

22. Through the Sale Motion, the Debtor sought to conduct a bulk sale of approximately 1046 foreclosed real property assets, defined in the Sale Motion as the "REO Assets."

23. Neither the Trust nor its California counsel, W&W, was served the Sale Motion, even though ¶13 of the Sale Motion stated that it would serve the Sale Motion to the "REO Parties," which is merely defined as the "parties having an interest in the Property." *See* the Certificate of Mailing dated October 22, 2009 (Dkt. No. 509) & the Sale Motion (Dkt. No. 495).

24. The Property is one of the REO Assets included in the Sale Motion, specifically property #7070511 (which is listed on p. 6 of Exhibit A to the Sale Motion). *See* Dkt. No. 495, Exhibit A, p. 6.

25. However, the description of the Property only refers to an address and does not reference a legal description, a tax identification number or parcel identification number. *Id.*

26. An auction to sell the REO Assets was conducted on December 11, 2009.

27. However, prior to the auction, the Debtor received a *Property Information Report* with respect to the Property, issued November 13, 2009 (as of October 30, 2009) (the "Title Report"). The Title Report clearly reflected that under the "Judgments/Liens/Additional

Information” section, there was a *Notice of Pendency of Action* recorded on May 11, 2009 (previously defined as the Lis Pendens), as Instrument No. 20090691202, naming the Trust’s predecessor, Bank of America as successor by Merger to LaSalle Bank National Association as Trustee for First Franklin Mortgage Loan Trust 2007-1 Mortgage Loan-Asset Backed Certificates, Series 2007-1, as the plaintiff and Federal Home and other parties as the defendants.⁴

28. Therefore, before the auction the Debtor was fully aware that the Trust claimed an ownership interest in the Property, and yet, the Debtor failed to give the Trust notice of the impending sale.

29. This Court cannot set precedent which violates due process and the requirements of the Bankruptcy Code and the Bankruptcy Rules. More specifically, Bankruptcy Code section 363(b) requires “notice and a hearing” before selling property other than in the ordinary course of business. Bankruptcy Rule 6004(c) requires that a “motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold.” In general, due process requires “notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

⁴ A true and correct copy of the Title Report was attached to the Trust’s *Verified Motion for Summary Judgment* as Exhibit K.

C. The Bankruptcy Court Has Severely Prejudiced the Trust by Entering an Order Directing it to Dismiss its Quiet Title Action, Followed by its Denial of an Administrative Expense Claim on the Basis that the Issue Should be Dealt with Through a Quiet Title Action

30. As stated above, on April 1, 2011, this Court entered the Agreed Order, pursuant to which, on April 18, 2011, the Trust filed its *Request for Dismissal* with the California Court, thereby dismissing the Quiet Title Action.

31. Selene, the purchaser of the Property from the Debtor, also argued in the Quiet Title Action that it had free and clear title to the Property according to section 363(f) of the Bankruptcy Code, that the California Court was not the proper court to determine the title issues, and that the Trust's request to quiet title was trumped by the Bankruptcy Court's Sale Order. Selene also argued that the California Court must give full faith and credit to the Sale Order, and therefore, the Trust could not pursue a quiet title action. *See Selene's Notice of Motion and Motion to Expunge Lis Pendens; Memorandum of Points and Authorities in Support of Motion to Expunge Lis Pendens and Selene's Demurrers to First Amended Complaint & Supporting Memorandum of Points and Authorities*, true and correct copies of which are attached hereto as **Composite Exhibit 2**.

32. Additionally, on or about April 26, 2011, the California Court entered its *Order Granting Selene RMOF REO Acquisition II, LLC's Motion to Expunge Notice of Pendency of Action (Lis Pendens)*, in which the California Court stated that "[t]he Lis Pendens is ordered expunged because Selene purchased the real property free and clear of any interest whatsoever pursuant to an order, dated December 17, 2009, of the United States Bankruptcy Court for the Middle District of Florida, Jacksonville, Division, in the matter entitled *In re Taylor Bean & Whitaker Mortgage Corp.*, Case Number 3:09-bk-07047-JAF authorizing a sale of the real

property in accordance with 11 U.S.C. §363(f).” A true and correct copy of the April 26, 2011 order is attached hereto as **Exhibit 3**.

33. Notably, the Debtor did not even have purported title to the Property as of the date of the Sale Order, but the California Court expunged the Lis Pendens due to the Sale Order.

34. However contrary to the positions taken by Selene and the California Court’s order, in the Order Sustaining Objection, this Court stated that “[a]t present, a cloud remains on the title to the Property. As such, the holder of superior title to the Property under California law has yet to be determined.”

35. Therefore, the Trust would be extremely prejudiced, and the Debtor unjustly enriched, if it were denied an administrative expense claim given that the Debtor and the Trust agreed that this Court should adjudicate the matter, the Trust withdrew its request for relief from the Sale Order, this Court directed the Trust to dismiss the Quiet Title Action, Selene argued that this Court is the proper forum for the Trust’s claims, and finally, the California Court found that the Sale Order granted Selene free and clear title to the Property.

36. Additionally, at the time this Court entered the Ordered Sustaining Objection, this Court was fully aware that the Trust dismissed the Quiet Title Action, as this Court entered the Agreed Order on April 1, 2011, directing the Trust to dismiss its Quiet Title Action. The Agreed Order further stated that that “neither the [Trust’s] act of withdrawing its request for relief from the Sale Order nor its act of dismissing the Los Angeles County lawsuit shall constitute grounds to defeat the request for allowance of an administrative expense.” *See* Agreed Order ¶ 3 (Dkt. No. 2887).

37. Now, over a year later and long after the Trust dismissed its Quiet Title Action, this Court ruled that the Trust must litigate this issue through a quiet title action and the action is

not justiciable, wholly ignoring the Trust's request to prevent the Debtor from being unjustly enriched. The Trust will be greatly prejudiced if it is forced to reinitiate a quiet title action after this Court entered an order directing it to dismiss the action, without providing any type of relief through an administrative expense claim based on the Debtor's post-petition conduct.

D. The Court Erred in Finding that the Trust's Request for an Administrative Claim Was Not Justiciable

38. The Court erred in finding that the matter before it was not justiciable because there currently is a "case or controversy" with respect to whether the Trust should be granted an administrative expense claim based on the Debtor's unjust enrichment from the sale of the Property to Selene. *See FL Pub. Interest Research v. E.P.A.*, 386 F.3d 1070 (11th Cir. 2004) (to have standing a claimant must establish that they have suffered a concrete injury, the injury is traceable to the challenged action, and that the injury may be redressed by judicial action).

39. It is undisputed that the Trust was harmed, including but not limited to, by the Debtor selling the Property without providing notice to the Trust, and by the Debtor pocketing the proceeds of sale with full knowledge that the Trust claimed an ownership interest in the Property. The Trust is still owed more than \$800,000 on the Lender Note from Julfayan. Such injury could, and should, be addressed by granting the Trust an administrative expense claim to prevent the Debtor from being unjustly enriched by the Sale. Granting an administrative expense claim to the Trust is fully within this Court's jurisdiction and Selene is not a necessary party to such an action. This matter is solely related to the Debtor's post-petition conduct, and how such conduct unjustly enriched the Debtor and harmed the Trust.

III. In the Alternative, the Court Should Vacate the Portion of the Agreed Order in which the Trust Waived its Request for Relief From the Sale Order and in Which the Trust Agreed to Dismiss the Quiet Title Action

40. In the alternative, if this Court denies the Trust's request to reconsider its application for an administrative expense claim, then the Court should vacate the portion of the Agreed Order in which the Trust withdrew its request for relief from the Sale Order (and deem the Trust's Motion for Relief from the Sale Order reinstated), and the portion of the Agreed Order in which the Court directed the Trust to dismiss the Quiet Title Action. Given this Court's statement in the Order Sustaining Objection that "under 11 U.S.C. § 363, a purchaser takes only such interest, if any, that the trustee is able to convey," *see* p. 7 of the Order Sustaining Objection, the Trust may need a determination of what was transferred to Selene pursuant to the Sale Order. Additionally, to the extent the Trust chooses to re-file a quiet title action, the Trust requests that the Court stay a determination of the Trust's Motion for Relief from the Sale Order during the pendency of such action. The Bankruptcy Code cannot be used as a sword and a shield by the Debtor and Selene. Selene can only have free and clear title, if that is what the Debtor had prior to the sale, if notice was provided to the Trust as required under 11 U.S.C. § 363(m).

CONCLUSION

THEREFORE, the Trust respectfully requests that this Court either (i) reconsider its application for an administrative expense claim and enter an order granting the Trust an administrative expense claim in the greater amount of either the (a) market value of the Property at the time of the Sale, (b) the amount for which the Property could have been sold had the Trust been able to sell the Property, or (c) the net proceeds the Debtor received from the sale of the Property to Selene; (ii) reconsider its application for an administrative expense claim and schedule a final evidentiary hearing to determine the amount of an administrative expense claim

owed to the Trust; or in the alternative (iii) relieve the Trust from the portion of the Agreed Order in which the Trust withdrew its request for relief from the Sale Order (and deem the Trust's Motion for Relief from the Sale Order reinstated), and the portion of the Agreed Order in which the Court directed the Trust to dismiss the Quiet Title Action, and (iv) any other and further relief as this Court deems necessary and just.

/s/ Jennifer Hayes

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via US Mail or CM/ECF on this 10th day of May, 2012, to the following recipients: Taylor, Bean & Whitaker Mortgage Corp, 315 NE 14th Street, Ocala, FL 34470; Edward Peterson, 110 East Madison Street, Suite 200, Tampa, Florida 33602; Elena L. Escamilla, Office of the United States Trustee, 135 W Central Blvd, Suite 620, Orlando, FL 32801; J. David Dantzler, Troutman Sanders, 600 Peachtree Street, NE, Suite 5200, Atlanta, GA 30308-2216; Arthur J. Spector, Berger Singerman, PA, 350 E. Las Olas Blvd., 10th Floor, Fort Lauderdale, FL 33301, and to all parties who requested electronic noticing through CM/ECF.

/s/ Jennifer Hayes
Attorney