

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

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

IN RE:
TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.
Debtor.

**MORTGAGE FIRST LLC'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY
(351 Clarendon Lane, Bolingbrook, IL 60440)
(*Nunc Pro Tunc* Relief Requested)**

COMES NOW, Mortgage First, LLC (“Movant”), by and through its undersigned attorney and pursuant to 11 U.S.C. § 362 (d) and Rule 4001(a) of the Federal Rules of Bankruptcy Procedure, files this Motion for Relief from the Automatic Stay *nunc pro tunc* to August 24, 2009, to allow the Movant to validate its Final Judgment of Foreclosure, and shows the court:

1. Debtor filed a voluntary Chapter 11 petition on August 24, 2009 (D.E.#1).
2. Movant’s interest in the property is by virtue of a first mortgage with Jack L. Huff and Donna J. Huff for the real property as listed below from Fifth Third Bank, the predecessor in interest to Movant, dated December 30, 2005. Said Mortgage was recorded on February 22, 2006 in Official Records document # 2006030950 in the public records of Will County, Illinois. True and correct copies of the Note and Mortgage are attached hereto as Exhibits “A” and “B.”
3. Movant is a holder of the first mortgage on certain real property in Will County, Illinois described as: 351 Clarendon Lane, Bolingbrook, IL 60440. The legal description for the property is:

**LOT 87 IN LAKEWOOD RIDGE UNIT 1, BEING A
SUBDIVISION OF THAT PART OF SECTION 9, LYING
SOUTHERLY OF THE INDIAN BOUNDARY LINE, ALL IN
TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD
PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT
THEREOF RECORDED MARCH 22, 2002 AS DOCUMENT**

**NUMBER R2002-050730 AND AMENDED BY
CERTIFICATE OF CORRECTION RECORDED MAY 21,
2002 AS DOCUMENT NUMBER R2002-084623, IN THE
VILLAGE OF BOLINGBROOK, WILL COUNTY,
ILLINOIS.**

4. The Debtor may have an interest in the property pursuant to a Mortgage recorded on April 13, 2006 in Official Records document #2006061411 in the public records of Will County Illinois. See Exhibit "C."

5. Any interest the Debtor has in the Property is subordinate to Movant's interest.

6. The Borrowers defaulted under the Note and Mortgage when they failed to make the payment due on March 1, 2008. Movant is owed a principal balance of \$54,434.18. The per diem is \$8.20. See attached Exhibit "D."

7. On or about December 22, 2007 the Movant filed an action for foreclosure in the Circuit Court of 12th Judicial Circuit; Will County, Illinois (Case # 08 CH 5893). An amended complaint, adding the Debtor as a defendant, was filed post-petition on September 22, 2009. On November 10, 2009, a Final Judgment of Mortgage Foreclosure (the "Judgment") was entered, post-petition. The Movant was unaware that Debtor had sought protection under Chapter 11.

8. Movant is entitled to relief from the automatic stay under 11 U.S.C. §362(d)(1). Movant's interests under the subject loan documents are not being adequately protected. Movant's security interest in the subject property is being significantly jeopardized by Borrower's failure to make regular payments under the loan documents while Movant is prohibited from pursuing lawful remedies to protect such security interest.

9. Relief from the Automatic Stay is needed because the Debtor is a necessary party to the foreclosure action since it appears to hold a lien junior to that of the Movant.

10. Movant respectfully requests that the automatic stay be lifted in favor of Movant, *nunc pro tunc* to the date of the Chapter 11 petition, August 24, 2009, so that so that Movant is not forced to incur the additional expense and so that the Final Judgment, which was entered post-petition, will not be null and void and so Movant can continue the state court Foreclosure Action through post-judgment proceedings.

11. Granting relief from the automatic stay to Movant *nunc pro tunc* to August 24, 2009 will not result in the Debtor or the estate suffering any prejudice. *See In re IBI Sec. Serv., Inc.*, 158 B.R. 1, 3 (Bankr. E.D.N.Y. 1993) (relief from stay granted *nunc pro tunc* to date of

filing state court complaint against debtor where it was determined that debtor would not suffer any prejudice and where debtor did not contest the motion); *see also In re Bresler*, 119 B.R. 400 (Bankr. E.D.N.Y. 1990) (granting relief from stay *nunc pro tunc* to validate a foreclosure sale conducted one day after the bankruptcy filing).

12. Movant will be harmed, however, by having to incur additional expenses. In accordance with the loan documents, any such costs will only increase the amount needed to satisfy the indebtedness, which is to the Borrower's detriment if he is able to either reinstate or redeem prior to a foreclosure sale. Such costs will also reduce any equity available to junior lien holders.

13. Pursuant to 11 U.S.C. §362(e), Movant hereby requests that in the event a hearing is necessary, that said hearing be held within thirty (30) days.

14. Movant seeks the award of bankruptcy fees and costs in the amount of \$826.00 as a result of the necessity of filing this Motion. Movant's attorneys' fees and costs are recoverable as part of the debt pursuant to the loan documents; however, these fees and costs shall not be a personal liability of Debtor.

WHEREFORE, Movant respectfully requests that the automatic stay be lifted *nunc pro tunc* to August 24, 2009 so that Movant may be permitted to protect its security interest in Debtor's property outside of the bankruptcy forum, that in the event that a hearing is necessary on this Motion that it be held within thirty (30) days, that Debtor be required to pay Movant's attorneys' fees and costs incurred in filing this Motion, and for such further relief as the Court deems appropriate.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served to the parties on the attached mailing matrix either by electronic transmission or by United States First Class Mail this **29th day of May, 2012**.

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MAILING MATRIX

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