

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE
CORPORATION,

Debtor.

Case No.: 3:09-bk-7047-JAF
Chapter 11

**ORDER DENYING IN PART MOTION FOR RECONSIDERATION OF THE COURT'S
APRIL 26, 2012 ORDER SUSTAINING WITHOUT PREJUDICE THE PLAN
TRUSTEE'S OBJECTION TO ADMINISTRATIVE EXPENSE CLAIM #3355**

This case is before the Court on U.S. Bank National Association's, as Successor Trustee for Bank of America, N.A., 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 "Bank"), Motion for Reconsideration of the Court's April 26, 2012 Order Sustaining Without Prejudice the Plan Trustee's Objection to Administrative Expense Claim #3355 (Doc. 5260, Motion; *see also* Doc. 5216, Order).¹ For the reasons set forth below, the Motion will be denied in part.

The Bank moves, pursuant to Rule 3008 of the Federal Rule of Bankruptcy Procedure, and Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure (as incorporated by Rule 9023 and 9024 of the Federal Rules of Bankruptcy Procedure), for the Court to reconsider its April 26, 2012 Order Sustaining Without Prejudice the Plan Trustee's Objection to Administrative Expense Claim #3355 (Doc. 5216). The substance of the Bank's Motion reveals it to be one not only for reconsideration of a claim under Bankruptcy Rule 3008 but also one to alter or amend the Court's prior determination(s) (*see* Doc. 5260 at 15-16). The Bank, however, failed to set

¹ The Court's April 26, 2012 Order (Doc. 5216) is fully incorporated herein by reference.

forth any basis under Rules 9023 and 9024 for altering or amending the Court's April 26, 2012 Order.

Specifically, Bankruptcy Rule 9023 incorporates Rule 59 of the Federal Rules of Civil Procedure and grants authority to the Court to reconsider orders after entry only upon one of the following grounds: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; (3) to correct a clear error of law; or (4) to prevent manifest injustice. *See In re CHC Indus., Inc.*, 381 B.R. 385, 389-90 (Bankr. M.D. Fla. 2007); *see also* Fed. R. Bankr. P. 9023. A motion under Rule 59 should not be used "as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant." *Id.* (internal quotations and citations omitted).

Bankruptcy Rule 9024 incorporates Rule 60 of the Federal Rules of Civil Procedure and grants authority to the Court to provide for relief from a final judgment, order, or proceeding on the basis of, *inter alia*: (1) clerical mistake(s), oversight(s) or omission(s); (2) newly discovered evidence; (3) misrepresentation or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason that justifies relief. Fed. R. Bankr. P. 9024.

The Court finds none of the aforementioned reasons to alter or amend its April 26, 2012 Order are present here. While the Bank asserts the catch-all phrase of Rule 60(b)(6) (*i.e.*, "any other reason that justifies relief") is applicable in this instance because the Debtor has purportedly been unjustly enriched (Doc. 5260 at 6-16), such an assertion presumes the Debtor did not possess marketable title to the subject property on the date of the sale.

As the Court noted in its April 26, 2012 Order, pursuant to California law, a void deed passes no title, “and cannot be made the foundation of good title even under the equitable doctrine of *bona fide* purchase.” *Erickson v. Bohne*, 130 Cal. App. 2d 553, 556 (Cal. Dist. Ct. App. 3rd 1955). Consequently, if the Substitution of Trustee and Full Reconveyance were found to be void *ab initio*, rather than voidable, then the Bank would hold superior title to the Property than the current purported title holder (*see* Doc. 5216 at 7).² Such a determination has yet to be made. In sum, irrespective of the Superior Court of the State of California’s Order Granting Motion to Expunge Lis Pendens (Doc. 5260-3), a cloud remains on the title to the Property.³

Based on the foregoing, it is **ORDERED**:

1. The Bank’s Motion for Reconsideration of the Court’s April 26, 2012 Order Sustaining Without Prejudice the Plan Trustee’s Objection to Administrative Expense Claim #3355 (Doc. 5260) is denied in part to the extent set forth below.

² All capitalized terms herein are defined in the Court’s April 26, 2012 Order (Doc. 5216).

³ The Superior Court of the State of California’s Order Granting Motion to Expunge Lis Pendens (Doc. 5260-3) directed that the Bank’s notice of *lis pendens* be expunged because this Court’s Sale Order, dated December 17, 2009, granted the purchaser, Selene RMFO REO Acquisition II, LLC (“Selene”), title to the Property “free and clear of any interest whatsoever” (Doc. 5260-3 at 3; *see also* Doc. 802, Sale Order). Under 11 U.S.C. § 363, however, a purchaser acquires only such interest (if any) that the trustee is able to convey. Both the Court’s Sale Order (Doc. 802) and the Superior Court of the State of California’s Order Granting Motion to Expunge Lis Pendens (Doc. 5260-3) presumed the trustee possessed marketable title to the Property on the date of the sale.

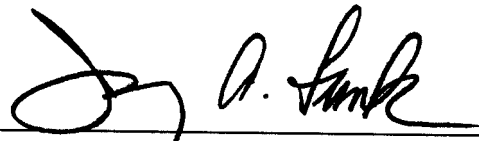
2. The portions of the Agreed Order (Doc. 2887), in which the Bank: (1) withdrew its Motion for Relief From the Sale Order (Doc. 2295); and (2) was directed to dismiss the Quiet Title Action pending in the Superior Court of the State of California, are vacated.⁴

3. The Bank's Motion for Relief From the Sale Order (Doc. 2295) is reinstated and granted in part for the sole purpose of permitting the Bank to file a quiet title action, in an appropriate forum, within sixty (60) days of the date of this Order. If no such quiet title action is filed, then the Motion for Relief From the Sale Order (Doc. 2295) will be deemed denied in its entirety without further order of the Court.

4. In all other respects, the Motion (Doc. 5260) is denied.

5. The preliminary hearing on this matter, scheduled for June 8, 2012 at 10:00 a.m., is cancelled.

DATED this 31st day of May, 2012 in Jacksonville, Florida.



Jerry A. Funk
United States Bankruptcy Judge

Copies to:

All Interested Parties

⁴ On January 19, 2011, the Court held a hearing on the Motion for Relief From the Sale Order (Doc. 2295). The parties appeared at the hearing and informed the Court that it was agreed between the parties that the Bank would, *inter alia*: (1) withdraw the motion to the extent it sought relief from the Court's Sale Order; and (2) dismiss the quiet title action pending in the Superior Court of the State of California. On April 1, 2011, the Court entered an order, *inter alia*, memorializing the parties' stipulation(s) with respect to the Motion for Relief From the Sale Order, *supra* (Doc. 2887, Order).