UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,

Debtor.
_____/

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

Chapter 11

LIMITED OBJECTION OF SOVEREIGN BANK, AS AGENT, TO MOTION OF THE DEBTOR SEEKING ORDER: (A) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING FROM THE DIP LENDER ON A FINAL BASIS PURSUANT TO SECTIONS 105 AND 364 OF THE BANKRUPTCY CODE; (B) PROVIDING LIENS, SECURITY INTERESTS AND SUPERPRIORITY CLAIMS TO THE DIP LENDER; AND (C) APPROVING THE FORM AND METHOD OF NOTICE THEREOF

Sovereign Bank, for itself and in its capacity as agent for various lenders ("**Sovereign**") under a pre-petition Servicing Facility Agreement (as defined below) with Taylor, Bean & Whitaker Mortgage Corp. (the "**Debtor**"), files this limited objection (the "**Objection**") to the Motion of the Debtor Seeking Order: (A) Authorizing the Debtor to Obtain Postpetition Financing from the DIP Lender on a Final Basis Pursuant to Sections 105 and 364 of the Bankruptcy Code; (B) Providing Liens, Security Interests and Superpriority Claims to the DIP Lender; and (C) Approving the Form and Method of Notice Thereof (Doc. No. 498) (the "**DIP Financing Motion**"). In support hereof, Sovereign respectfully represents as follows:

Background

1. Sovereign is the agent under that certain Sixth Amended and Restated Servicing Facility Loan and Security Agreement dated as of May 15, 2009 by and among the Debtor, the lenders party thereto and their successors (the "**Lenders**"), and Sovereign, as Agent (the "**Servicing Facility Agreement**"). Pursuant to previous versions of the Servicing Facility Agreement, the Lenders established a servicing line of credit for the Debtor, whereby each Lender advanced (the "**Advances**") proceeds to the Debtor based on receivables due to the Debtor as servicer for certain mortgage loans.

2. As of the date of the commencement of this case, the Debtor owed the Lenders approximately $164.9 million under the Servicing Facility Agreement. The Debtor's obligations under the Servicing Facility Agreement are secured by, among other things, liens on substantially all of the Debtor's assets deriving from its servicing contracts and agreements and servicing rights (the "**Collateral**"). The servicing rights that are collateralized under the Servicing Facility Agreement relate to pools of mortgages owned by the Government National Mortgage Association ("**Ginnie Mae**"), the Federal Home Loan Mortgage Corporation ("**Freddie Mac**"), and private investors (including the FDIC and Bank of America for loans in warehouse pending sale, servicing-retained to future investors). Upon information and belief, the outstanding balance of the pools of mortgages constituting the Collateral as of June 30, 2009 owned by (a) Ginnie Mae is approximately $26 billion, (b) Freddie Mac is approximately $15-16 billion, (c) private investors is approximately $3 billion, and (d) warehouse loans held for sale to future investors, servicing-retained, is approximately $6 billion.

3. On August 4, 2009, the United States Department of Housing and Urban Development sent a letter informing the Debtor that its HUD/FHA origination and underwriting approval had been suspended. On that same day, Ginnie Mae and Freddie Mac each sent a letter terminating the Debtor's eligibility to sell and service mortgage loans under their respective agreements.

4. On or about August 6, 2009, Colonial Bank ("**Colonial**"), the Debtor's primary deposit institution, denied the Debtor access to its bank accounts. The Debtor maintained approximately 108 accounts with Colonial, including custodial accounts containing principal and interest and tax and insurance payments of mortgagors and operating accounts that contained, among other things, servicing fees earned by the Debtor.

5. On August 7, 2009, Sovereign sent a letter to the Debtor notifying the Debtor that it was in default under the Servicing Facility Agreement and declaring the entire outstanding amount owed under the Servicing Facility Agreement to be immediately due and payable (the "**Default Letter**"). Since receiving the Default Letter, the Debtor has failed to make any payments to Sovereign, as Agent for the Lenders.

6. On August 24, 2009 (the "**Petition Date**"), the Debtor filed a voluntary 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. An official Committee of Unsecured Creditors (the **"Committee")** has been appointed pursuant to Section 1102 of the Bankruptcy Code.

7. On or about August 24, 2009, the Debtor filed its Emergency Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens Pursuant to 11 U.S.C. §§ 105(a), 361, 363, 541 and 552 and Bankruptcy Rule 4001 (Doc. No. 5) (the "**Cash Collateral Motion**"). In response thereto, Sovereign filed its (a) Motion for Adequate Protection or, in the Alternative, for Relief from the Automatic Stay (Doc. No. 33) and (b) Response to Debtor's Emergency Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral and Granting Replacement Liens Pursuant to U.S.C. §§ 105(A), 361, 363, 541 and 552 and Bankruptcy Rule 4001 (Doc. No. 34) (collectively, the "**Sovereign Responses**"), seeking adequate protection of its interests as a condition to the Debtor's use of Sovereign cash Collateral.

8. In response to the Sovereign Responses, the Debtor offered to provide Sovereign with a replacement lien (in the amount, to the extent, and with the validity and priority of Sovereign's lien position as of the Petition Date) consisting of a pool of real estate and the proceeds thereof that the Debtor represented were not pledged or held for the benefit of investors, lenders, or any other third parties (the "**Sovereign Replacement Collateral**"). Sovereign accepted this offer of adequate protection and based thereon withdrew its objections to the Debtor's use of its cash Collateral.[1]

[1] This agreement was announced at a hearing before the Court on October 15, 2009, but has not yet been incorporated into an order of the Court.

Sovereign's Limited Objection to the DIP Financing Motion

9. In the DIP Financing Motion, the Debtor proposes to borrow up to $25,175,000 from Selene Residential Mortgage Opportunity Fund, L.P. ("**Selene**"), an affiliate of an entity seeking to purchase certain real estate assets of the Debtor. The DIP Financing Motion proposes to provide Selene with first-priority liens upon the discrete portfolio of REO Residential Properties (the "**DIP Lien REO Properties**") and a so-called DIP Superpriority Claim under 11 U.S.C. § 364(c) over any and all other administrative expenses, except for the payment of up to $2.5 million of a carve-out which includes fees and expense reimbursement due to professionals of the Debtor and the Committee of Unsecured Creditors, and fees of the U.S. Trustee and any chapter 7 trustee appointed for the Debtor (the **"Carve-out"**).

10. Sovereign has two concerns with the DIP Financing Motion. First, it wants clarification that the DIP Lien REO Properties are not the same properties as the Sovereign Replacement Collateral.

11. Second, pursuant to 11 U.S.C. § 507(b), Sovereign will have an administrative claim having priority over every other claim allowable under 11 U.S.C. § 503(b), including the fees and expense reimbursement due to professionals of the Debtor and the Committee of Unsecured Creditors, if it turns out that the Sovereign Replacement Collateral does not adequately protect Sovereign's interest in its cash Collateral. The Carve-out proposed in the DIP Financing Motion would impermissibly alter the priority of Sovereign's potential Section 507(b) claim, placing it below the fees and expenses of professionals of the Debtor and the Committee. Therefore, any approval of the DIP Financing Motion and the Carve-out

provided for therein should protect and preserve Sovereign's potential Section 507(b) claim by including it in the Carve-out and providing that it is superior to the claims of professionals of the Debtor and the Committee.

WHEREFORE, Sovereign requests that the Court condition approval of the DIP Financing Motion on the protection of Sovereign's rights in the Replacement Collateral and under 11 U.S.C. § 507(b), for such other and further relief as is just.

Dated: October 29, 2009

Respectfully submitted,

/s/ Robert A. Soriano

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Attorneys for Sovereign Bank, as Agent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Limited Objection Motion of Debtor Seeking Order: (A) Authorizing the Debtor to Obtain Postpetition Financing from the DIP Lender on a Final Basis Pursuant to Sections 105 and 364 of the Bankruptcy Code; (B) Providing Liens, Security Interests and Superpriority Claims to the DIP Lender; and (C) Approving the Form and Method of Notice Thereof has been served this 29th day of October, 2009 to all parties participating in CM/ECF Electronic Noticing and by U.S. Mail to:

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

Edward J. Peterson, III
Stichter, Riedel, Blain & Prosser, P.A.
110 East Madison Street, Suite 200
Tampa, FL 33602

United States Trustee - JAX
135 West Central Boulevard, Suite 620
Orlando, FL 32801

and the 1007D list of unsecured creditors and parties listed on the attached matrix.

/s/ Robert A. Soriano
Attorney