

FILED
JACKSONVILLE, FLORIDA
SEP 12 2012
CLERK, U. S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11 Case

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,
REO SPECIALISTS, LLC, and
HOME AMERICA MORTGAGE, INC.,

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF

Debtors.

Jointly Administered Under
Case No. 3:09-bk-07047-JAF

In re:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

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

Applicable Debtor.

**RESPONSE TO OBJECTION TO CLAIM
NO. 3069 FILED BY DEAN AND MARGARET JOHNSTON**

Debtor has failed in all regards, with respect to their Objection to Claim No. 3069, to establish that the Claim should be disallowed. Debtor's arguments are without any basis in fact, law, or otherwise, and are therefore entirely void of any legal basis or merit.

The Claim, including all attachments, was filed in a timely manner on June 15, 2010. *See Exhibit A.* The Claim should be allowed based on the record in the lawsuit as Claimant's lawsuit was undergoing appeal, and was unable to continue with the appellate process as a result of Debtor's bankruptcy filing. *See Exhibit B.* Moreover, the settlement in the lawsuit that may have barred any recovery was therefore subject to review and

possible reversal by the Nevada Supreme Court. The Debtor's legal arguments, including the defenses asserted by Debtor in the lawsuit, were also subject to possible adverse appellate ruling considering the lawsuit was under appeal at the time when the stay was imposed on the case. Accordingly, the Claim as presented in this case falls into the category of a contingent, unliquidated claim, and is thus authorized by law and valid in that the definition of "claim" includes contingent, unliquidated claims. *See* 11 U.S.C. § 101(5)(A).

Despite Debtor's assertions, the supporting documentation attached to the claim fully supports and validates the Claim. As previously indicated, the Claim is valid in that it falls within the definition of what type of claim is allowed pursuant to section 101(5)(A) which the supporting documentation in the Claim fully indicates.

The basis for the amount of the underlying proof of claim is Nevada District Court case no. 08-CV-0063 and Nevada Supreme Court case no. 54053. The dollar amount provided to the Court in the Claim represents an educated estimation of what a jury might have awarded Claimant in a favorable verdict. In an attempt to help the Court arrive at its own estimation, Claimant respectfully provides the following damage amounts to support the Claim:

1. Actual damages allowed pursuant to NRS 598D.110(2)(a): \$96,975.00 (mortgage payments on First Deed of Trust for one year times a multiplier of 3), plus
2. General damages for Margaret A. Johnston's emotional distress: \$76,025.00, plus
3. Punitive damages pursuant to NRS 42.005: \$250,000.00.

Therefore, the total estimated damage amount equals \$423,000.00. *See also* Exhibit E (to verify mortgage payments made on First Deed of Trust).

Furthermore, since the claim is contingent and unliquidated, an estimation of the amount of the claim must be made out of necessity as the lawsuit that Claimant was involved in was stayed by Debtor's bankruptcy filing. Additionally, no definitive damage amounts that Claimant is aware of were ever submitted to the Court by the Claimant while the lawsuit was ongoing other than what is indicated in the initial complaint. *See* Exhibit C at 2. Nevertheless, if the lawsuit had not been interrupted by Debtor's bankruptcy filing, the sum total of actual damages, possible general damages, as well as punitive damages could have been awarded to Claimant by a jury pursuant to Nevada law in an amount equal to or greater than the estimated Claim amount. *See* NRS 598D.110(2); NRS 42.005.

Claimant also respectfully requests that the Court take special notice of the fact that Dean Johnston and Margaret Johnston (i.e., "the Claimant") have now been locked out of our residence for over three years, and have suffered terribly for a very long time because of this. We strongly believe that being ejected in this manner from the property that we legally own is a violation of Nevada law. *See Hyman v. Kelly*, 1 Nev. 179, 185-186 (1865).

We therefore respectfully ask the Court to consider all the circumstances when adjudicating this matter, including the fact that my wife, Margaret Johnston, is severely disabled. She is very frail, has extreme difficulty walking, has possible Multiple Sclerosis, and other severe ailments that I will not mention in this pleading in an effort to protect her dignity. I am certain the Court would be astounded to learn just how much her health and well-being have suffered after having been locked out of our property by TBW on two separate occasions and for well over three years. How much I have suffered is

really of no consequence to me. My only concern is just how much my wife has suffered now for so many years.

With all due respect to the Court, no one could know how difficult it has been for us to be forced out of our home that we still own, and not be able to get back in to it. This is what we were trying to do in a judicial manner, until we were forced to stop our judicial pursuits to be reinstated into our property pursuant to Nevada law. NRS 598D.010 et seq.

TBW has been able to pursue their judicial endeavors under the laws of the United States and under the U.S. Constitution. We have not been as fortunate as we have not been able to do the same. Instead, we have been forced to live in motels, hotels, and in our car. Where is our justice? Maybe we will get something monetarily from this Claim depending on the Court's decision. My wife and I truly feel the amount of our Claim is justified, and of course, we will respect whatever decision the Court renders regarding this matter.

We truly respect the law, and TBW's rights as well. But we also submit to the Court that it is a violation of our rights under the 14th Amendment to the U.S. Constitution to have been forced to vacate our property in view of the fact that we, as owners of the property, have the exclusive right to use the property:

Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property.

Buchanan v. Warley, 245 U.S. 60, 74 (1917) (emphasis added).

Accordingly, we feel that a terrible injustice has been inflicted on two citizens of the United States that is beyond comprehension, and that has yet to be addressed or judicially corrected. Maybe someday some type of justice will find its way to us.

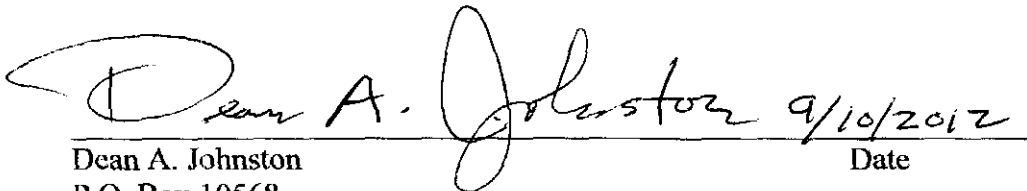
Finally, in view of the fact that Debtor asserts they no longer have a continuing interest in the loan, and have no ability to provide equitable relief sought in the complaint, does not nullify the fact that Claimant has a valid Claim against Debtor. Claimant has a valid Claim against Debtor as Debtor filed for bankruptcy over one year after Claimant's lawsuit had been filed against them. The Claim initiated by Claimant is therefore valid in every regard as the automatic stay initiated by Debtor's bankruptcy filing stopped the adjudication of Claimant's case thereby giving rise to a valid Claim against Debtor. 11 U.S.C. § 362(a)(1); 11 U.S.C. § 101(5)(A).

Claimant respectfully reserves the right to amend this response, to object on additional grounds not set forth herein, and/or to respond to any further objections by Debtor not presently set forth herein. By filing this response, the Claimant does not waive the right to file further responses or respond to avoidance actions or other causes of action by the Debtor.

CONCLUSION

For the foregoing reasons, Dean Johnston and Margaret Johnston request that the Court overrule the Objection to Claim No. 3069, and allow the Claim in its entirety as submitted by Claimant, and grant Claimant such other and further relief as is just and appropriate.

Respectfully submitted,

 9/10/2012

Date

Dean A. Johnston
P.O. Box 10568
Zephyr Cove, Nevada 89448
(775) 790-3266
djb21@netzero.net



Margaret A. Johnston

P.O. Box 10568

Zephyr Cove, Nevada 89448

(775) 790-3266

djbj21@netzero.net



Date

Enclosures (32)

cc: Alisa Paige Mason, Esq.

EXHIBIT A

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152 AND 3571.

ATTACHMENT 1

ATTACHMENT 1

Creditors assert a contingent claim against debtor estimated at \$423,000.00 (more or less depending on how this matter is adjudicated) based on Nevada District Court case # 08-CV-0063 and Nevada Supreme Court case # 54053. See ATTACHMENT 2.

Furthermore, creditors are the legal owners of the real property in dispute in the aforementioned Nevada court case numbers. See ATTACHMENT 3. The First and Second Deeds of Trust are also included herein to further prove creditors have a valid contingent claim as herein stated against debtor. See ATTACHMENT 4.

ATTACHMENT 2

RECEIVED

FILED

FEB 20 2008

1 CASE NO. 08-CV-0003

2 DEPT NO. I

DOUGLAS COUNTY
DISTRICT COURT CLERK 2008 FEB 20 PM 4:24

BARBARA J. GRIFFIN
CLERK

~~WILFERT~~ DEPUTY

3
4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7 ***

8 DEAN JOHNSTON AND
9 MARGARET JOHNSTON,
husband and wife,

VERIFIED COMPLAINT
(EXEMPT FROM ARBITRATION:
EQUITABLE RELIEF REQUESTED)

10 Plaintiffs,

11 vs.

12 MORTGAGE ELECTRONIC
13 REGISTRATION SYSTEM, INC., as
nominee for TAYLOR BEAN & WHITAKER
14 MORTGAGE CORPORATION, foreign
corporations,

15 Defendants.

16
17 Plaintiffs, for their Complaint against Defendants, and each of them, complain and aver
18 as follows:

19 1. Plaintiffs are husband and wife and are the owners of property commonly
20 referred to as 207 Bedell Way Zephyr Cove, NV 89448. On or about January 8, 2008,
21 Defendants caused to be served a notice of default and election to sell under a deed of trust
22 with respect to said property, alleging a mortgage or deed of trust to secure a note in the sum
23 of \$376,000.00 in favor of Defendants, with a right of redemption expiring February 18, 2008.
Exhibit A hereto.

24 2. The subject mortgage was a no-document mortgage and Defendants and their
25 predecessors and/or successors failed to take any steps to ascertain the ability of Plaintiffs to
26 repay the subject loan by its terms or otherwise prior to making a home loan on the property.
27

1 3. Nevada law provides by statute and otherwise that such "no-doc" loans can only
2 be enforced under limited circumstances which are not applicable here, and which further
3 provide for remedies to the makers of such notes for actual damages sustained, with a
4 multiplier, as well as equitable remedies including enjoining the subject foreclosure.

5 4. Pursuant to said statutes, and common law, Plaintiffs are entitled to an
6 immediate injunction enjoining Defendants from foreclosing upon said property under the
7 mortgage and deed of trust and promissory note, and are further entitled to judgment in their
8 favor for damages sustained as a result of the violation in making this loan without proper
9 investigation as to Plaintiffs' ability to pay, which damages exceed the sum of \$10,000 in
10 amount.

11 5. Plaintiffs are informed and believe and thereon aver that the subject lending
12 practice is a predatory lending practice and that they are not the only ones, but that there are
13 similarly situated individuals within the State of Nevada subject to the same conduct of the
14 Defendants. Plaintiffs therefore allege on information and belief that the conduct of the
15 Defendants was wilful, malicious, fraudulent and oppressive, entitling Plaintiffs to an award of
16 punitive damages. Plaintiffs may also seek certification under NRCP 23 with respect to
17 liability.

18 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, jointly
19 and severally, for the aforementioned equitable relief, damages, reasonable attorney's fees
20 and costs of suit, and such other and further relief as the Court deems just and proper.

21 DATED 2/15/08

22 LAW OFFICE OF
23 JEFFREY A. DICKERSON

24 _____
25 JEFFREY A. DICKERSON
26
27
28

VERIFICATION

We are the Plaintiffs herein and have read the within and foregoing Complaint and know the contents thereof; that the same is true of our own knowledge, except as to those matters stated on information and belief, and as to those matters we believe them to be true.

We declare under penalty of perjury that the foregoing is true and correct.

DATED 2/15/2008


DEAN JOHNSTON

DATED 2/15/2008


MARGARET JOHNSTON

Jeffrey A. Dickerson, Esq.
9655 Gateway Dr., Suite B
Reno, NV 89521
(775) 786-6664

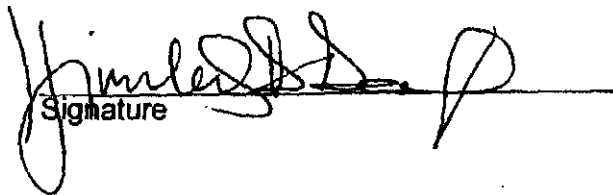
DOUGLAS COUNTY DISTRICT COURT
DOUGLAS COUNTY, STATE OF NEVADA

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, "VERIFIED COMPLAINT (EXEMPT FROM ARBITRATION: EQUITABLE RELIEF REQUESTED)", in Case No. _____, DOES NOT contain the Social Security Number of any person.

DATED this 20 day of February, 2008.


Signature

Jeffrey A. Dickerson, Esq.
9655 Gateway Dr., Suite B
Reno, NV 89521
(775) 786-6664

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN JOHNSTON AND MARGARET
JOHNSTON, HUSBAND AND WIFE,
Appellants,

vs.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, INC., AS
NOMINEE FOR TAYLOR BEAN &
WHITAKER MORTGAGE
CORPORATION, FOREIGN
CORPORATIONS,
Respondents.

No. 54053

FILED

FEB 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

Respondent Mortgage Electronic Registration System, Inc.

In responding to the November 20, 2010, order directing a status report issued by this court, appellants indicated that respondent Mortgage Electronic Registration System, Inc. (MERS) is not properly a respondent to this appeal because it was never served in the underlying action. Likewise, respondent Taylor Bean & Whitaker Mortgage Corporation indicated, in its response to our order directing a status report, that MERS never appeared in the underlying action.¹ Accordingly, because it appears that MERS is not a proper respondent to this appeal, we dismiss the appeal as to MERS.

¹Counsel for Taylor Bean has further indicated that it does not represent MERS on appeal. As a result, the clerk of this court shall remove the law firm of Alverson Taylor Mortensen & Sanders from being listed as counsel of record for MERS on the court's docket.

Respondent Taylor Bean & Whitaker Mortgage Corporation

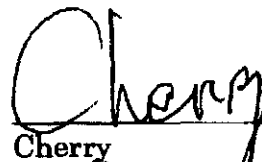
On August 28, 2009, this court received notice that Taylor Bean filed a Chapter 11 bankruptcy petition on August 24, 2009, in the United States Bankruptcy Court for the Middle District of Florida. The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the [bankruptcy] debtor." 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial court. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. Id. A review of the district court documents submitted to this court pursuant to NRAP 3(e) reveals that Taylor Bean was a defendant in the action below. Accordingly, the automatic bankruptcy stay applies to this appeal.


Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice to appellants' right to move to reinstate their appeal against Taylor Bean upon the lifting of the bankruptcy stay. Because a dismissal without prejudice will not require this court to reach the merits of this appeal and is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such a dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy dismissal will violate the automatic stay "where the decision


to dismiss first requires the court to consider other issues presented by or related to the underlying case"); see also IUFA v. Pan American, 966 F.2d 457, 459 (9th Cir. 1992) (holding that the automatic stay does not preclude dismissal of an appeal so long as dismissal is "consistent with the purpose of [11 U.S.C. §362(a)]").

Accordingly, we dismiss this appeal as to Taylor Bean. This dismissal is without prejudice to the parties' right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings

It is so ORDERED.²

 J.
Cherry

 J.
Saitta

 J.
Gibbons

cc: Hon. David R. Gamble, District Judge
Lester H. Berkson, Settlement Judge
Mortgage Electronic Registration System, Inc.
Jeffrey A Dickerson
Alverson Taylor Mortensen & Sanders
Douglas County Clerk

²In light of this order, we deny as moot all motions currently pending in this appeal.

ATTACHMENT 3

Douglas County Assessor's Office Search

Page 1 of 1

Active Parcel Number:
 1418-34-111-021
 Address:
 207 BEDELL WY.
 TAHOE DOUGLAS SEWER
 CAVE ROCK VILLAGE

Document: 003501
 Book: 09 08
 Page: 1159

Previous (OLD) Parcel Number:
 0000-03-142-100
 Property Name:
 CAVE ROCK
 VILLAGE

Assessed Values		Property	
Land Value:	\$43,750	Residence Sqft	654
Impv. Value:	\$4,810	Stories	2 0
Assessed Value:	\$48,560	Original Const. YR	1942
Assessed Value:	\$48,560	Composite Const. YR	1957
		Lot	3
		Block	2
		Total	0.040
		Acres	0.040

Assessed Owner:
 JOHNSTON, DEAN & MARGARET
 PO BOX 10568
 ZEPHYR COVE, NV 89448

Tax Abatement Status:
 Owner

Annual Taxes

Legal Owner:
 JOHNSTON, DEAN & MARGARET



Photos do not necessarily depict the current appearance of the property.

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ATTACHMENT 4

Parcel Number: 1418-34-111-021

RECORDING REQUESTED BY

Name: Taylor, Bean & Whitaker Mortgage Corp.

RETURN TO

Name: Taylor, Bean & Whitaker Mortgage Corp.
1417 North Magnolia Ave.
Address: Ocala, FL 34475

DOC # 0683802
09/05/2006 03:01 PM Deputy: SD

CONFORMED COPY
Requested By:

FIRST CENTENNIAL TITLE CO OF
NV

Douglas County - NV
Werner Christan - Recorder

Page: 1 Of 15 Fee: 28.00
BK-0906 PG- 1161 REPTT: 0.00



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153782-CZ

DEED OF TRUST

MIN: 100029500013526011

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated August 29, 2006 together with all Riders to this document.

(B) "Borrower" is Dean Johnston and Margaret Johnston, Husband and Wife As Joint Tenants

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Taylor, Bean & Whitaker Mortgage Corp.

Lender is a a Florida Corporation
the laws of FL
1417 North Magnolia Ave, Ocala, FL 34475

organized and existing under
Lender's address is

(D) "Trustee" is First Centennial Title

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

NEVADA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3029 1/01

ITEM T2699L1 (0106)—MERS

(Page 1 of 14 pages)

GREATLAND ■
To Order Call: 1-800-520-0303 □ Fax: 616-791-1131



0240861352601

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(F) "Note" means the promissory note signed by Borrower and dated **August 29, 2006**

The Note states that Borrower owes Lender **Three Hundred Seventy Six Thousand and no/100**

Dollars (U.S. **\$376,000.00**)

plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **September 01, 2036**.

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Other(s) [specify] |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

NEVADA—Single Family—Fannie Mac/Freddie Mac UNIFORM INSTRUMENT

Form 3029 1/01

ITEM 1209012 (0108)—MERS

(Page 2 of 14 pages)

GREATLAND ■
To Order Call: 1-800-630-6263 □ Fax: 619-791-1121

Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Washington Douglas
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

See Attached Exhibit A.

(If the legal description is a metes and bounds description, the name and mailing address of the preparer is:

Taylor, Bean & Whitaker Mortgage Corp.
 1417 North Magnolia Ave
 Ocala, FL 34475

which currently has the address of

207 Bedell Way
(Street)

Zephyr Cove
(City)

, Nevada

89448
(Zip Code)

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

NEVADA—Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3029 1/01

ITEM T2600L3 (0100)—MERS

(Page 3 of 14 pages)

GREATLAND
 To Order Call: 1-800-520-8288 ☐ Fax: 616-791-1131

Parcel Number: 1418-34-111-021

RECORDING REQUESTED BY

Name:

RETURN TO

Name: First Centennial Title
1025 Roberta Lane
Address: Sparks, Nevada 89431

DOC # 0683803
09/05/2006 03:02 PM Deputy: SD
CONFORMED COPY
Requested By:
FIRST CENTENNIAL TITLE CO OF
NV
Douglas County - NV
Werner Christen - Recorder
Page: 1 of 16 Fee: 29.00
BK-0906 PG-1176 RPTT: 0.00



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153782-CZ

DEED OF TRUST (Secondary Lien)

MIN: 100029500013526144

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19, and 20. Certain rules regarding the usage of words used in this document are also provided in Section 15.

(A) "Security Instrument" means this document, which is dated August 29, 2006 together with all Riders to this document.

(B) "Borrower" is Dean Johnston and Margaret Johnston, Husband and Wife As Joint Tenants

Borrower is the trustor under this Security Instrument.

(C) "Lender" is Taylor, Bean & Whitaker Mortgage Corp.

Lender is a Florida Corporation
the laws of FL

1417 North Magnolia Ave, Ocala, FL 34475

organized and existing under
Lender's address is

(D) "Trustee" is JLM Title LLC, a Nevada Limited Liability Company DBA Frist Centennial Title Company of Nevada

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

NEVADA DEED OF TRUST—Single Family—Secondary Lien
THE COMPLIANCE SOURCE, INC. ©
ITEM TB0001 (0000)—10/07/05

(Page 1 of 14 pages)

GREATLAND®
To Order Call: 1-800-526-6900 Fax: 818-791-1131



0244881352614

(F) "Note" means the promissory note signed by Borrower and dated **August 29, 2006**

The Note states that Borrower owes Lender **Forty Seven Thousand and no/100**

Dollars (U.S. **\$47,000.00**)

plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **September 01, 2021**

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, if allowed under Applicable Law, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input checked="" type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Home Improvement Rider | <input type="checkbox"/> Revocable Trust Rider | |
| <input type="checkbox"/> Other(s) [specify] | | |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 *et seq.*) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Washington Douglas :
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)

See Attached Exhibit A.

(If the legal description is a metes and bounds description, the name and mailing address of the preparer is:

Taylor, Bean & Whitaker Mortgage Corp.
1417 North Magnolia Ave

which currently has the address of

207 Bedell Way
[Street]

Zephyr Cove
[City]

, Nevada

89448
[Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including,

NEVADA DEED OF TRUST—Single Family—Secondary Lien
 THE COMPLIANCE SOURCE, INC. ©
 ITEM 78628L3 (0304)—MERS

(Page 3 of 14 pages)

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EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN JOHNSTON AND MARGARET
JOHNSTON, HUSBAND AND WIFE,
Appellants,

vs.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, INC., AS
NOMINEE FOR TAYLOR BEAN &
WHITAKER MORTGAGE
CORPORATION, FOREIGN
CORPORATIONS,
Respondents.

No. 54053

FILED

FEB 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

Respondent Mortgage Electronic Registration System, Inc.

In responding to the November 20, 2010, order directing a status report issued by this court, appellants indicated that respondent Mortgage Electronic Registration System, Inc. (MERS) is not properly a respondent to this appeal because it was never served in the underlying action. Likewise, respondent Taylor Bean & Whitaker Mortgage Corporation indicated, in its response to our order directing a status report, that MERS never appeared in the underlying action.¹ Accordingly, because it appears that MERS is not a proper respondent to this appeal, we dismiss the appeal as to MERS.

¹Counsel for Taylor Bean has further indicated that it does not represent MERS on appeal. As a result, the clerk of this court shall remove the law firm of Alverson Taylor Mortensen & Sanders from being listed as counsel of record for MERS on the court's docket.

Respondent Taylor Bean & Whitaker Mortgage Corporation

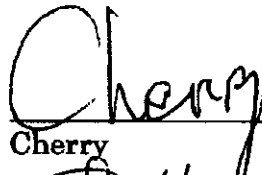
On August 28, 2009, this court received notice that Taylor Bean filed a Chapter 11 bankruptcy petition on August 24, 2009, in the United States Bankruptcy Court for the Middle District of Florida. The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the [bankruptcy] debtor." 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial court. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. Id. A review of the district court documents submitted to this court pursuant to NRAP 3(e) reveals that Taylor Bean was a defendant in the action below. Accordingly, the automatic bankruptcy stay applies to this appeal.


Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice to appellants' right to move to reinstate their appeal against Taylor Bean upon the lifting of the bankruptcy stay. Because a dismissal without prejudice will not require this court to reach the merits of this appeal and is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such a dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy dismissal will violate the automatic stay "where the decision

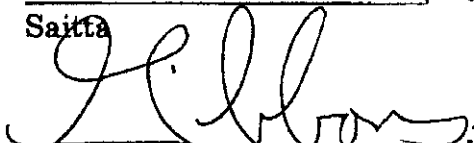
to dismiss first requires the court to consider other issues presented by or related to the underlying case"); see also IUFA v. Pan American, 966 F.2d 457, 459 (9th Cir. 1992) (holding that the automatic stay does not preclude dismissal of an appeal so long as dismissal is "consistent with the purpose of [11 U.S.C. §362(a)]").

Accordingly, we dismiss this appeal as to Taylor Bean. This dismissal is without prejudice to the parties' right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings

It is so ORDERED.²

 J.
Cherry

 J.
Saitta

 J.
Gibbons

cc: Hon. David R. Gamble, District Judge
Lester H. Berkson, Settlement Judge
Mortgage Electronic Registration System, Inc.
Jeffrey A Dickerson
Alverson Taylor Mortensen & Sanders
Douglas County Clerk

²In light of this order, we deny as moot all motions currently pending in this appeal.

EXHIBIT C

RECEIVED

FILED

FEB 20 2008

1 CASE NO. 08-CV-0003

2 DEPT NO. I

DOUGLAS COUNTY
DISTRICT COURT CLERK 2008 FEB 20 PM 4:24

BARBARA J. GRIFFIN
CLERK

WILFERT DEPUTY

3
4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7 ***

8 DEAN JOHNSTON AND
9 MARGARET JOHNSTON,
husband and wife,

VERIFIED COMPLAINT
(EXEMPT FROM ARBITRATION:
EQUITABLE RELIEF REQUESTED)

10 Plaintiffs,

11 vs.

12 MORTGAGE ELECTRONIC
13 REGISTRATION SYSTEM, INC., as
nominee for TAYLOR BEAN & WHITAKER
14 MORTGAGE CORPORATION, foreign
corporations,

15 Defendants.

16
17 Plaintiffs, for their Complaint against Defendants, and each of them, complain and aver
18 as follows:

19 1. Plaintiffs are husband and wife and are the owners of property commonly
20 referred to as 207 Bedell Way Zephyr Cove, NV 89448. On or about January 8, 2008,
21 Defendants caused to be served a notice of default and election to sell under a deed of trust
22 with respect to said property, alleging a mortgage or deed of trust to secure a note in the sum
23 of \$376,000.00 in favor of Defendants, with a right of redemption expiring February 18, 2008.
Exhibit A hereto.

24 2. The subject mortgage was a no-document mortgage and Defendants and their
25 predecessors and/or successors failed to take any steps to ascertain the ability of Plaintiffs to
26 repay the subject loan by its terms or otherwise prior to making a home loan on the property.
27

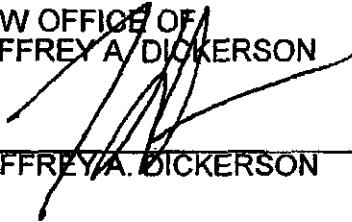
3. Nevada law provides by statute and otherwise that such "no-doc" loans can only be enforced under limited circumstances which are not applicable here, and which further provide for remedies to the makers of such notes for actual damages sustained, with a multiplier, as well as equitable remedies including enjoining the subject foreclosure.

4. Pursuant to said statutes, and common law, Plaintiffs are entitled to an immediate injunction enjoining Defendants from foreclosing upon said property under the mortgage and deed of trust and promissory note, and are further entitled to judgment in their favor for damages sustained as a result of the violation in making this loan without proper investigation as to Plaintiffs' ability to pay, which damages exceed the sum of \$10,000 in amount.

5. Plaintiffs are informed and believe and thereon aver that the subject lending practice is a predatory lending practice and that they are not the only ones, but that there are similarly situated individuals within the State of Nevada subject to the same conduct of the Defendants. Plaintiffs therefore allege on information and belief that the conduct of the Defendants was wilful, malicious, fraudulent and oppressive, entitling Plaintiffs to an award of punitive damages. Plaintiffs may also seek certification under NRCP 23 with respect to liability.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants, jointly and severally, for the aforementioned equitable relief, damages, reasonable attorney's fees and costs of suit, and such other and further relief as the Court deems just and proper.

DATED 2/15/08

LAW OFFICE OF
JEFFREY A. DICKERSON

JEFFREY A. DICKERSON

Jeffrey A. Dickerson, Esq.
9655 Gateway Dr., Suite B
Reno, NV 89521
(775) 786-6664

EXHIBIT D

Douglas County Assessor's Office Search

Page 1 of 1

Active Parcel Number
 1418-34-111-021
 Address
 207 BIDEELL WY.
 TAHOE DOUGLAS SEWER
 CAVE ROCK VILLAGE
 Assessed Owner:
 JOHNSTON, DEAN & MARGARET
 PO BOX 10568
 ZEPHYR COVE, NV 89448
 Tax Abatement Status:
 Owner
 Annual Taxes
 Legal Owner:
 JOHNSTON, DEAN & MARGARET

Document: 643801
 Book: 09 06
 Page: 1159
 \$ Assessed Values
 Land Value: \$43,750
 Impr. Value: \$4,810
 Assessed Value: \$48,560
 2009 \$48,560 and 2010 \$48,560

Previous (OLD) Parcel Number:
 0000-03-142-100
 Property Name:
 CAVE ROCK
 VILLAGE
 3
 2
 0.040
 Acres

Building
 Residence Sqft 654
 Stories 2 D
 Original Const. YR 1942
 Composite Const. YR 1957
 Block
 Total



Photos do not necessarily depict the current appearance of the property.

Scanned: 6/15/2010-2:09:09 PM

EXHIBIT E

ALVerson, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117
(702) 384-7000

1 HUNDRED SEVENTY SIX THOUSAND DOLLARS (\$376,000.00) to Defendant herein at the
2 monthly rate of approximately \$2,693.71 payable in equal installments until September 1, 2036.

3 3. Pursuant to the Deed of Trust, Defendant/Counter-Claimant Taylor Bean & Whitaker
4 Mortgage Corporation loaned Plaintiffs/Counter-Defendants Dean Johnston and Margaret Johnston
5 THREE HUNDRED SEVENTY SIX THOUSAND DOLLARS (\$376,000.00).

6 4. The Deed of Trust provides that the Lender, Defendant/Counter-Claimant Taylor
7 Bean & Whitaker Mortgage Corporation, is required to give certain notices to the borrower,
8 Plaintiffs/Counter-Defendants Dean Johnston and Margaret Johnston, upon default. "The notice
9 shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30
10 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that
11 failure to cure the default on or before the date specified in the notice may result in acceleration of
12 the sums secured by the Security Instrument and sale of the Property."

13 5. The Deed of Trust includes an Election to Sell under which the Lender,
14 Defendant/Counter-Claimant Taylor Bean & Whitaker Mortgage Corporation, has the option to
15 invoke the power of sale, including the right to accelerate full payment of the Note, and any other
16 remedies permitted by applicable law.

17 6. Beginning in October, 2007, Plaintiffs/Counter-Defendants failed to make their
18 contractually required mortgage payments pursuant to the Deed of Trust .

19 7. On March 29, 2008, Defendant/Counter-Claimant Taylor Bean & Whitaker Mortgage
20 Corporation sent a letter to Plaintiffs/Counter-Defendants, Dean Johnston and Margaret Johnston,
21 to inform Plaintiffs/Counter-Defendants that their loan was in default as a failure to pay in
22 accordance with the terms of the Note and Security Deed held by Defendant/Counter-Claimant
23 Taylor Bean & Whitaker Mortgage Corporation, and as an attempt to collect on the debt.

24 8. As a result of this breach, Defendant/Counter-Claimant Taylor Bean & Whitaker
25 Mortgage Corporation is entitled to repayment of the \$376,000.00 it loaned to Plaintiffs/Counter-
26 Defendants Dean Johnston and Margaret Johnston pursuant to the Deed of Trust.

27 9. That as a result of Plaintiffs/Counter-Defendants' actions, Defendant/Counter-
28 Claimant has been forced to retain the services of Alverson, Taylor, Mortensen & Sanders to defend