

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
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In re:

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

Debtors.

Chapter 11 Cases

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

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

**PLAN TRUSTEE'S MOTION TO STRIKE NOTICE OF APPEAL AND RELATED
STATEMENTS OF ISSUES FILED BY SANDY SMITH, JOHN CRAIN, JAY
OYLER, WESLEY AND TAMMY STOUT, MICHAEL AND DIANA ELLIOTT,
JEFF AND DARLENE GORRELL, LINDA BACON AND WANDA REED**

Neil F. Luria as Plan Trustee for the Taylor, Bean & Whitaker Plan Trust¹ (the "Plan Trust"), by and through undersigned counsel, files this Motion (the "Motion") requesting that the Court strike the *Notice of Appeal* (the "NOA") [D.E. 6112] and related statements of issue filed by Sandy Smith, John Crain, Jay Oyler, Wesley and Tammy Stout, Michael and Diana Elliott, Jeff and Darlene Gorrell, Linda Bacon, and Wanda Reed (collectively, the "Appellants") under Rules 8001, 8002, and 8006 of the Federal Rules of Bankruptcy Procedure on the basis that the NOA fails to designate the judgment, order or decree the Appellants seek to appeal, the NOA was improperly filed after the Appellants filed their statements of issue, and the NOA appears to be untimely to the extent it relates to an order [D.E. 5860] denying a request for reconsideration. In support of this Motion, the Plan Trustee states:

¹ As of the effective date of the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* (D.E. 3240) (the "Third Amended Plan"), August 10, 2011, the Debtors and the Official Committee of Unsecured Creditors ("Committee") have been replaced by the Plan Trust.

Background

1. On August 8, 2012, the Court entered an order (the “Order”) [D.E. 5860] denying the Appellants’ request for reconsideration of the Court’s order [D.E. 5704] striking a so-called *Motion Requesting Resolution Upon Court in Reference to Creditors as Listed Above and Taylor, Bean and Whitaker Mortgage Corp. and it’s Trust and between it’s Successors* (the “Resolution Motion”) [D.E. 5641].

2. The Order reiterates that if the Resolution Motion’s movants wish to appeal the Order, they must file a notice of appeal within fourteen days of the date of the Order. Accordingly, the deadline file a notice of appeal in connection with the Order was August 22, 2012.

3. On September 5, 2012, the Appellants² filed the NOA. However, the NOA fails to describe, list or otherwise identify a particular judgment, order or decree appealed from.

4. Further, the Appellants filed various statements of issues on appeal (collectively, the “Statements”) [John Crain and Sandy Smith, D.E. 6053; Larry Wesley and Tammy Stout, D.E. 6053; Jay D. Oyler, D.E. 6054; Jeff and Darlene Gorrell, D.E. 6055; Michael and Dianna Elliott, D.E. 6056] before they filed the NOA. The Statements were filed between August 23, 20102 and August 30, 2012.

5. As the Court is well aware, the Appellants are part of a group of *pro se* plaintiffs/claimants who have initiated more than one purported class action against the Debtor(s), which the Court determined violated the injunction provisions of the confirmed Plan (Adv. Case No. 3:11-ap-326-JAF and Adv. Case No. 3:12-ap-109-JAF).

² At least two of the movants in the Resolution Motion, Joni Cox-Tanner and Charles Tanner, do not appear to be participants in the NOA. Accordingly, the designation “Appellants” shall not refer to Joni Cox-Tanner and Charles Tanner.

Argument

6. Rules 8001, 8002 and 8006 of the Federal Rules of Bankruptcy Procedure make it clear that the Appellants must designate a particular order, judgment or decree that they are appealing. Otherwise, it is impossible for the appellee to respond to and defend the Appellants' appeal.

7. The Appellants actually used the official Notice of Appeal form, but fail to complete the form properly in terms of identifying a particular order, judgment or decree. The subsequently filed Statements, which are largely incomprehensible, seem to indicate simply that the Appellants are generally disgruntled with the way the Debtors' chapter 11 cases have progressed. General unhappiness with a case's development and the retention of certain professionals, without actually designating a particular order, judgment or decree, is not a supportable basis for an appeal. Therefore, the Appellants' NOA and related Statements should be struck for the foregoing reasons.

8. To the extent the Appellants are appealing the Order, the NOA is untimely. Rule 8022 requires that "the notice of appeal shall be filed with the clerk within 14 days of the date of the entry of the judgment, order, or decree appealed from." If the deadline runs from the date of the order striking the Motion for Resolution, which was entered on July 17, 2012, the Appellants would have had to file a NOA by July 31, 2012.

9. However, the Order provides that the Appellants had 14 days from the August 8, 2012 to file a notice of appeal. The Appellants still did not comply with the time requirements of the Order because they filed their Notice of Appeal close to thirty days after the date of the Order. Accordingly, the NOA and the related Statements should be struck as untimely.

10. Finally, the Appellants failed to procedurally follow Rules 8002 and 8006 when filing the Statements prior to filing the NOA. Rule 8006 provides that a designation of the items

to be included in the record on appeal must be filed within fourteen days after the appellants file a notice of appeal. The Appellants actually filed their Statements, which appear to be their purported designations, before they filed the NOA. The filing of the record and issues on appeal designations after the notice of appeal triggers a deadline for the appellee to file its own designations, but that deadline was not properly triggered because the NOA was filed after the Statements.

11. In sum, the Appellants' NOA and related Statements should be stricken on the basis that they are untimely, they fail to properly designate particular order, decree or judgment that the Appellants are appealing, and are otherwise procedurally improper because they were not filed in the proper sequential order.

WHEREFORE, the Plan Trustee respectfully requests 1) the entry of an Order striking the NOA and the related Statements; 2) an additional 20 days to file its Appellee Designations if the Court does not strike the NOA and related Statements; and 3) for such other and further relief to which the Plan Trustee is entitled or is otherwise just and proper.

Dated: October 8, 2012

Respectfully submitted,

BERGER SINGERMANN LLP
*Counsel to Neil F. Luria, Plan Trustee for the
Taylor, Bean & Whitaker Plan Trust*
1450 Brickell Avenue, Suite 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ James D. Gassenheimer
James D. Gassenheimer
Florida Bar No. 959987
jgassenheimer@bergersingerman.com
Alisa Paige Mason
Florida Bar No. 084461
pmason@bergersingerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Regular Mail, postage prepaid, upon all parties listed below on this 8th day of October, 2012.

/s/ James D. Gassenheimer

James D. Gassenheimer

Sandy S. Smith
1427 Wild Horse Lane
Stephenville, TX 76401

Djuana Reed
3967 Cain Mill Dr.
Lithonia, GA 30038

Larry Wesley and Tam Stout
145 Stout Farm Road
Taylorsville, NC 28681

John Crain
PO Box 13
Melbourne, FL 32902-1918

Linda Bacon
217 Kipling Way
Riversdale, GA 30274

Jay D. Oyler
28 Bradford Drive
Cartersville, GA 30120

Jeff and Darlene Gorrell
231 Ramblin Rd.
Newport, TN 37821

Michael & Dianna L. Elliott
133 Elliott Lane
Tolesboro, KY 41189