

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
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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-1022-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.

_____/

AGREED MOTION TO CONTINUE THE OCTOBER 24, 2012 HEARING ON MOTION FOR FINAL DETERMINATION OF TRADE CREDITOR CLASSIFICATION FILED BY AK CONTRACTING GENERAL PROPERTY MANAGEMENT, LLC

Neil F. Luria as Plan Trustee for the Taylor, Bean & Whitaker Plan Trust¹ (the “Plan Trust”) moves to continue the October 24, 2012 hearing on the *Motion for Final Determination of Trade Creditor Classification Filed by AK Contracting General Property Management, LLC for Final Determination of Trade Creditor Classification* (the “Classification Motion”) [D.E. 2354] by at least 120 days. The Plan Trustee states in support thereof:

1. On December 23, 2010, AK Contracting General Property Management, LLC (“AK Contracting”) filed its Classification Motion seeking to have AK Contracting treated as a

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3240) (the “Plan”), August 10, 2011, the Debtors and the Official Committee of Unsecured Creditors (“Committee”) have been replaced by the Plan Trust.

Trade Creditor and its Claim No. 269 treated as a TBW Class 9 general unsecured claim, as those terms are defined in the Plan.

2. On November 21, 2011, the Plan Trustee filed a Complaint against AK Contracting on behalf of REO Specialists, LLC to avoid certain fraudulent transfers under Sections 548 and 550 of the Bankruptcy Code (Adversary No. 3:11-ap-00880-JAF). As of the filing of this Motion, the foregoing adversary is unresolved.

3. The Plan Trustee filed his *Amended First Omnibus Objection to Claims of REO Specialists, LLC* [D.E. 4727] (the “REO Omnibus Objection”). In the REO Omnibus Objection, the Plan Trustee objected to Claim No. 1021 (the “REO Claim”) on the basis that the REO Claim was overstated and should be disallowed pursuant to Section 502(d) of the Bankruptcy Code on the basis that AK Contracting received an avoidable transfer(s) and failed to disgorge such avoidable transfer(s). AK Contracting filed a Response to the REO Omnibus Objection on March 9, 2012 [D.E. 5016].

4. On April 10, 2012, the Plan Trustee filed its Motion (the “First Continuance Motion”) [D.E. 5152] to continue the April 26, 2012 final hearing on the Trade Creditor Motion and agreed that AK Contracting’s Claim No. 269 (the “TBW Claim”) would be presently valued in the amount of \$315,543 as a TBW Class 9 general unsecured claim². The Court granted the First Continuance Motion.

² This valuation is subject to revision based on documentation that AK Contracting agreed to provide to the Plan Trustee and from any further analysis undertaken by the Plan Trustee. AK Contracting has provided data at the request of the Plan Trustee, but the Plan Trustee and his team are continuing to review the data as of the date of the filing of this Motion.

5. On August 10, 2012, the Plan Trustee filed an objection (the “TBW Objection”) [D.E. 5951] to Claim No. 269 and AK Contracting filed a response [D.E. 5990] in opposition on August 17, 2012.

6. The Plan Trustee and AK Contracting (the “Parties”) are still working together in an attempt to globally resolve all of AK Contracting’s filed claims³, the classification of AK Contracting’s claims, and the adversary pending on behalf of REO against AK Contracting. The Parties continue to exchange data relating to paid and unpaid invoices.

7. As a result, the Parties agree to continue the October 24, 2012 hearing on the Classification Motion in order to continue to reconcile the Parties’ data relating to the TBW Claim in order to determine whether an evidentiary hearing on the Classification Motion will still be necessary.

8. The Parties have agreed to continue the October 24, 2012 hearing on the Classification Motion by at least 120 days, or as the Court’s schedule permits. Further, at the October 19, 2012 scheduling conference on the TBW Objection, undersigned counsel for the Plan Trustee announced that the Parties agreed to have the TBW Objection also set for an evidentiary hearing on the same date as the continued hearing on the Classification Motion.

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³ Claim No. 269 filed against the estate of TBW is identical to and duplicative of the REO Claim.

WHEREFORE the Plan Trustee respectfully requests the Court enter an order continuing the evidentiary hearing on the Classification Motion presently set for October 24, 2012 by at least 120 days, or as the Court's schedule permits, and ordering any other relief that is just or necessary.

Dated: October 22, 2012

Respectfully submitted,

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