UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:	Chapter 11 Case
TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,	Case No. 3:09-bk-07047-JAF
REO SPECIALISTS, LLC, and	Case No. 3:09-bk-10022-JAF
HOME AMERICA MORTGAGE, INC.,	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. _____/	

OBJECTION TO MOTION FILED BY COUNSEL FOR CLAIMANTS
JOHN A. BIRD AND TERRI L. BIRD TO WITHDRAW AS COUNSEL

Neil F. Luria, as Plan Trustee ("Plan Trustee") for the Taylor, Bean & Whitaker Plan Trust[1] (the "Plan Trust"), by and through undersigned counsel, hereby files this objection to the *Motion to Withdraw as Counsel for Claimants, John A. Bird and Terri L. Bird* [D.E. 7297] and states in support thereof:

1. The Plan Trustee filed an objection to Claim No. 1523 filed by John A. Bird and Terri L. Bird (the "Claimants") in the amount of $60,952.43. The basis for Claim No. 1523 (the "Claim") is the alleged misappropriation of proceeds by Citrus Land Title, LLC and the Debtor, Taylor, Bean

[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 have been replaced, for the most part and according to the terms of the Plan, by the Taylor, Bean &

& Whitaker Mortgage Corp. ("TBW"). The Claimants filed a postpetition lawsuit against Citrus Land Title, LLC, First American Title Insurance Company, and Jennifer C. Duca in the Fifth Judicial Circuit for Citrus County, Florida (Case No. 2010-CA-1564) on March 25, 2010. However, TBW was not named as a defendant.

2. As the Plan Trustee describes in the Objection, Citrus Land Title, LLC ("Citrus") is a separate legal entity from TBW. Further, Citrus is not a debtor in the above-styled case and Citrus was not and is not owned by TBW. Citrus was owned in part by Lee B. Farkas individually. Finally, the sale transaction related to the adversary commenced by the Claimants does not relate to a loan that TBW originated or serviced.

3. On September 8, 2012, the Claimants filed a response in opposition (the "Response") [D.E. 6156] to the Objection. The Response was filed by Karen O. Gaffney as counsel to the Claimants ("Claimants' Counsel"). The Objection and the Response were subsequently set for a scheduling conference on November 16, 2012.

4. On October 4, 2012, Claimants' Counsel filed a motion [D.E. 6293] seeking to continue the November 16, 2012 scheduling conference. The Court rescheduled the scheduling conference for December 14, 2012.

5. On November 5, 2012, Claimants' Counsel filed a motion seeking to again continue the rescheduled December 14, 2012 status conference. The Court entered an order [D.E. 6507] scheduling the status conference to February 15, 2013. The Court subsequently re-noticed the status conference to February 8, 2013 [Notice of Rescheduled Hearing, D.E. 6686] and then rescheduled the status conference for February 14, 2013 [D.E. 6857].

Whitaker Plan Trust (the "Plan Trust").

6. On February 15, 2013, the Court issued a notice of hearing (the "FEH Notice") [D.E. 7298] setting a final evidentiary hearing for June 6, 2013. Claimants' Counsel was served with the FEH Notice on February 15, 2013 [Certificate of Mailing, D.E. 7012]. Thus, a final evidentiary hearing on the Objection and the Response was set for close to four months after the February 14, 2013 status conference.

7. However, just a few weeks before the June 6, 2013 evidentiary hearing, Claimants' Counsel filed a motion seeking to withdraw as counsel for the Claimants (the "Withdrawal Motion") [D.E. 7297]. The Withdrawal Motion was set for a hearing on June 6, 2013 along with the Objection and the Response

8. The Withdrawal Motion simply states that a conflict has arisen and that the Claimants' Counsel will not be appearing before the Court at the June 6, 2013 final evidentiary hearing. However, the Withdrawal Motion does not specify whether the Claimants will proceed on June 6, 2013 as *pro se* claimants. Furthermore, the Withdrawal Motion does not provide any detail as to the so-called "conflict" that has arisen or why the Claimants' Counsel seeks to withdraw only a few weeks prior to a hearing that has been set for approximately four months following a number of requests to continue prior status conferences filed by Claimants' Counsel.

9. The Withdrawal Motion is grossly insufficient and fails to support the relief requested by the Claimants' Counsel. According to *In re Davis*, 258 B.R. 510, 513 (Bankr. M.D. Fla. 2001), "[t]he attorney seeking to withdraw has the burden of establishing one of these legitimate bases [set forth in Rule 4-1.16(b)] for withdrawal." The Court in *Davis* also explained that the reasons for requiring leave of court before withdrawal are important: "the attorney can adversely affect the orderly administration of the court by abandoning the client to his or her own devices before the court." *Id.*

8. The Plan Trustee objects to the relief sought within the Withdrawal Motion to the extent that the result is any continuance of the June 6, 2013 evidentiary hearing based on the Claimants' new status as *pro se* parties. To the extent that the Claimants will still go forward as *pro se* claimants on June 6, 2013 at the final evidentiary hearing, the Plan Trustee does not object to the relief requested by the Withdrawal Motion except to again emphasize that the Motion does not sufficiently describe a basis for a conflict pursuant to the Florida Rules of Professional Conduct. Furthermore, the withdrawal of the Claimants' Counsel does not simply affect the Claimants but has the potential to negatively impact Plan Trust resources if counsel for the Plan Trustee is forced to appear at the June 6, 2013 hearing only to learn that the Claimants will seek to continue the hearing in light of their *pro se* status or will raise arguments with respect to any prejudice to the Claimants by appearing *pro se* after being previously represented.

WHEREFORE, the Plan Trustee respectfully requests that the Court (1) deny the Withdrawal Motion and (2) grant such other and further relief as is just and appropriate.

[INTENTIONALLY LEFT BLANK]

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Middle District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(a).

Dated: May 31, 2013

Respectfully submitted,

BERGER SINGERMAN LLP
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By: */s/ Alisa Paige Mason*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically through the Court's CM/ECF system and via U.S. mail, postage pre-paid, upon Karen O. Gaffney, Esq., Karen O. Gaffney, P.A., 205 West Dampier Street, Inverness, FL 34450 this 31st day of May, 2013.

By: */s/ Alisa Paige Mason*
Alisa Paige Mason