

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**In re:** Taylor, Bean & Whitaker Mortgage Corp., REO Specialists, LLC and Home America Mortgage, Inc.,

**Chapter 11**  
**CASE No: 3:09-bk-07047-JAF**  
**Case No. 3:09-bk-\*1002-JAF**  
**Case No. 3:09-bk-10023-JAF**

**Debtor(s),** Jointly Administered Under  
**Case NO. 3:09-bk-07047-JAF**

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**In re:** Taylor, Bean & Whitaker Mortgage Corp.

**Chapter 11**  
**CASE No: 3:09-bk-07047-JAF**

**Debtor(s),**

\_\_\_\_\_ /

**MOTION FOR RELIEF FROM AUTOMATIC STAY  
NUNC PRO TUNC TO AUGUST 24, 2009 AS TO LIENHOLDER DEBTOR  
ON REAL PROPERTY OWNED BY NON-DEBTOR BORROWER  
(Re: 254 Valley Rd, North Branford, CT 06471)**

Webster Bank, N.A., (“Movant”) hereby moves this Court, pursuant to 11 U.S.C. § 362, for relief from the automatic stay with respect to certain real property of the non-debtor Borrowers Luis Rojas and Norma Rivera Rojas having an address of 254 Valley Rd, North Branford, CT 06471 (the “Property”). The facts and circumstances supporting this Motion are set forth in the Affidavit in Support of Motion for Relief from Automatic Stay attached hereto as Exhibit D (the “Affidavit”) In further support of this Motion, Movant respectfully states:

1. Jurisdiction of this cause is granted to the Bankruptcy Court pursuant to 28 U.S.C. § 157 and § 1334, 11 U.S.C. § 362, and Fed.R.Bankr.P. 4001(a), and all other applicable rules and statutes affecting the jurisdiction of the Bankruptcy Courts generally.
2. This is a core proceeding under 28 U.S.C. § 157(b)(2).

3. The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
4. A petition under Chapter 11 of the United States Bankruptcy Code was filed with respect to the Debtor-Lienholder on August 24, 2009.
5. The **non-debtor borrowers Luis Rojas and Norma Rivera Rojas (“Non-debtor Borrowers”)** have executed and delivered or is otherwise obligated with respect to that certain promissory note to First Federal Savings Bank of America dated November 12, 2003, in the original principal amount of **\$294,000.00** (the “Note”). A true and correct copy of the Note is attached hereto as **Exhibit A**. Movant is an entity entitled to enforce the Note.
6. Pursuant to that certain Mortgage dated November 12, 2003, **(the “First Mortgage”)**, all obligations (collectively, the “Obligations”) of the non-debtors borrower under and with respect to the Note and the Mortgage are secured by the Property. A true and correct copy of the Mortgage is attached hereto as **Exhibit B**. As set forth on the Mortgage, the original parties to the Mortgage are non-debtor borrowers Luis Rojas and Norma Rivera Rojas and Mortgagee First Federal Savings Bank of America.
7. The lien created by the Mortgage was duly perfected by filing of the Mortgage on **November 18, 2003** in **Book 350**, at **Page 214** of the Public Records of Wayne County, Connecticut.
8. All rights and remedies under the Mortgage have been assigned to Webster Bank, National Association, pursuant to the Certificate of Merger attached hereto as **Exhibit C**.
9. The aforementioned documents give Secured Creditor a **first mortgage position** on the property located at **254 Valley Road, North Branford, CT 06471-1831**. The legal

description of the Property is:

A certain piece or parcel of land, together with all the buildings and improvements thereon, situated in the Town of North Branford, County of New Haven and state of Connecticut, known as 254 Valley Road, and shown as Lot #5 on Sheet No. 3 of a map entitled "Final Subdivision Plan Valley Road Subdivision North Branford, Connecticut, Valley Construction Co. Scale 1" = 40' date Sept. 10, 1985", on file in the North Branford Town Clerk's Office as Map No. 12-31, and being more particularly bounded and described, as follows:

Southeasterly: by Valley Road, 237.84 feet, as shown on said map, being in part a curved line;

Northeasterly: by Lot #7, as shown on said map, 351.09 feet;

Northwesterly: by Lot #4, as shown on said map, 200.00 feet;

Southwesterly: by Lot #3, as shown on said map, 187.35 feet;

Northwesterly: Again, by Lot #3, as shown on said map, 10.00 feet; and

Southwesterly: Again, by Lot #3, as shown on said map, 270.00 feet.

Together with a driveway easement over Lot #3, as shown on said map.

10. The total outstanding indebtedness of the non-debtor Borrower as of August May 22, 2013 is **\$317,751.64**. See Affidavit in Support of Motion for Relief from Automatic Stay attached hereto as **Exhibit D** (the "Affidavit").
11. Additional interest, fees, and costs have been incurred and continue to accrue on the defaulted loan. However, no liability is being assessed against Debtor-Lienholder.
12. The estimated market value of the Property is **\$380,300.00**. The basis for such valuation is the Van Buren Township Property Appraiser attached hereto as **Exhibit E**.
13. Upon information and belief, the Debtor-Lienholder may hold an interest in subject property by virtue of a **Second Mortgage** dated **September 05, 2006**, in the original principal amount of \$214,000.00 and recorded on **September 12, 2006**. Therefore, the Debtor-Lienholder is a junior lienholder and as a result is a necessary party Defendant to the foreclosure suit. A copy of the Second Mortgage is attached as **Exhibit F**.

14. The Debtor-Lienholder is not obligated under the terms of the subject note and nor is the Debtor-Lienholder the owner of the real property in question. The Debtor-Lienholder, as a mortgage company, was simply the holder of a junior mortgage on the property at one time. Further, Movant did not acquire the loan until after the filing of the present bankruptcy.
15. The second mortgage appears to be included in the Overline Loans Classes 2 and 3, pursuant to Exhibit H of the Final Reconciliation Report of Debtor Taylor Bean & Whitaker Mortgage Corp (ECF No. 1644).
16. The Final Reconciliation Report (ECF No. 1644) indicated that The Overline Loans were deemed to be assets of Taylor Bean & Whitaker Mortgage Corp.
17. The Overline Loans were placed into a liquidation trust pursuant to the Order Confirming the Third Amended Plan and Supplement and Plan Trust Agreement (ECF No. 3420).
18. Movant's review of the record does not indicate that the Second Mortgage as part of the Overline Loans Classes 2 and 3 have been liquidated, nor has relief from the automatic stay been granted as to Debtor-Lienholder's interest in the second mortgage.
19. Movant has initiated foreclosure proceedings upon subject property and intends to complete the foreclosure and transfer of title through sale of subject property. Per a review of title, Movant determined that Debtor-Lienholder was in Bankruptcy and may hold a junior mortgage. Further review indicated that no Ordinary Court Order had been entered with the Bankruptcy Court which would have permitted the continuation of the foreclosure notwithstanding the bankruptcy. As a result, the foreclosure proceedings were immediately placed on hold pending resolution of this matter.

20. Pursuant to 11 U.S.C. §§ 105(a); 362(d)(1) and (d)(2), Movant requests the Court to lift and annul the automatic stay *nunc pro tunc* to the date of filing of Debtor-Lienholder's Bankruptcy on **August 24, 2009**.
21. Cause exists for relief from the automatic stay *Nunc Pro Tunc* to the date of filing for the following reasons:
- a. Movant is prohibited from instituting and/or completing a foreclosure action on the Subject Property because of the pendency of this Bankruptcy Action, and that in absence of the Court's Order allowing Movant to proceed with the foreclosure action, Movant will be significantly jeopardized.
  - b. Movant's interest in the Property is not adequately protected. Movant's interest in the collateral is not protected by an adequate equity cushion.
  - c. Pursuant to 11 U.S.C. § 362(d)(2)(A), non-debtor Borrower has no equity in the Property above the First Mortgage held by Movant and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.
  - d. The Debtor will not be harmed by the Court granting Movant the requested relief as the debtor's rights in the subject collateral remain as indicated under non-bankruptcy law.
  - e. Absent the annulment of the automatic stay *nunc pro tunc*, the pending foreclosure proceedings must be canceled and as a result Movant would need to restart the foreclosure creating additional and unnecessary delay and expense.
  - f. Further, no benefit will be realized by the Debtor or the Debtor's Estate was Movant required to re-foreclose on the Subject Property

22. Movant further requests that pursuant to Bankruptcy Rule 4001(a)(3), the 14-day stay of the Order Granting Relief from Automatic Stay be waived to allow Movant to enforce its interests without further delay.
23. Movant has conferred with adverse parties and the Trustee in an attempt to obtain consent to the filing of this Motion; however, said consent has not been received.
24. Pursuant to Local Rule 9004-2, the estimated time required for hearing is five (5) minutes.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property *nunc pro tunc* to January 18, 2008.
2. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
3. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived as subject property is not property of the estate.
4. For such other relief as the Court deems proper.

By: /s/ George E. Wise  
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Owen Hare FBN: 89053  
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Email: gwise@closingsource.net  
ohare@closingsource.net

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Relief from Stay Nunc Pro Tunc has been sent by electronic or standard first class mail this 1st day of August, 2013, to the following:

**Taylor, Bean & Whitaker Mortgage Corp.**

4901 Vineland Road, Ste 120  
Orlando, FL 32811  
*Non-Debtor(s)*

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*Liquidating Trustee*

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*Attorney for Liquidating Trustee*

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*Trustee*



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*Attorney for Trustee*

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*U.S. Trustee*

**Kevin Boone**  
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Cincinnati, OH 45255  
*Non-Debtor Borrower*

By: /s/ George E. Wise  
George E. Wise FBN: 71214  
Owen Hare FBN: 89053  
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ohare@closingsource.net



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BK 440 PG 975

After Recordation Return To:  
Taylor, Bean & Whitaker  
C/O NTC 2100 Alt. 19 North  
Palm Harbor, FL 34683

Loan #: 1286191

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP., WHOSE ADDRESS IS 4901 Vineland Road, Suite 120, Orlando, FL, 32811, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to TAYLOR, BEAN & WHITAKER MORTGAGE CORP., WHOSE ADDRESS IS 4901 Vineland Road, Suite 120, Orlando, FL 32811 (321)710-0172, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said Mortgage bearing the date 09/05/2006 made by LUIS ROJAS AND NORMA ROJAS to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC AS NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP. and recorded in the Land Records of the Town of NORTH BRANFORD, State of Connecticut, in Volume 394, at Page 309, to which reference may be had.

IN WITNESS WHEREOF, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP. has hereunto set their hands this 13th day of February in the year 2011.

By: Melissa Long  
Melissa Long  
VICE PRESIDENT

Signed and Delivered in the presence of:

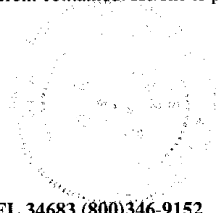
Dorothy Hamble  
Dorothy Hamble Witness

Jennifer Rice  
Jennifer Rice Witness

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 13th day of February in the year 2011, by Melissa Long as VICE PRESIDENT for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP., who, as such VICE PRESIDENT being authorized so to do, executed the foregoing instrument for the purposes therein contained. He/she is personally known to me.

Virginia A. Argo  
Virginia A. Argo  
Notary Public - State of FLORIDA  
Commission expires: 12/16/2012



Document Prepared By:  
E. Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

TBWAS 13700853 -\_ CJ2951297 MIN 100029500012861914 MERS PHONE 1-888-679-MERS form5/FRMC11



\*13700853\*

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On 03/07/2011 At 11:55:00 am  
Risa A. Valanti  
North Branford Town Clerk