

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

IN RE:

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP.

CASE NO.: 3:09-bk-07047-JAF

Debtor(s)

CHAPTER 11

_____ /

**CREDITOR'S MOTION FOR
RELIEF FROM THE AUTOMATIC STAY**

Subject Property: 33 GORDON AVE , ENFIELD, CT 06082

**NOTICE OF OPPORTUNITY TO
OBJECT AND FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection or other matter without further notice of hearing unless a party in interest files an objection within 21 days from the date set forth on the proof of service attached to this paper plus an additional three days for service. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 400 W. Washington Street, Room Number 5100, Orlando, Florida 32801, and serve a copy on the movant's attorney, Attorneys for Creditor, at SHD Legal Group P.A., PO Box 11438 Fort Lauderdale, Florida 33339-1438.

If you file and serve an objection within the time permitted, the Court may schedule and notify you of a hearing, or the Court may consider the objection and may grant or deny the relief requested without a hearing. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Creditor, U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2012 SC2 TITLE TRUST ("Creditor"), by and through undersigned counsel and pursuant to 11 U.S.C. §362(d), Bankruptcy Rule of Civil Procedure 4001 and Local Rule 4001-1(ii) , moves this Court for relief from the automatic stay to proceed *in rem*, and states:

1. **Summary of Motion:** Creditor seeks relief from the automatic stay to proceed with its foreclosure regarding the property described below. The Debtor, TAYLOR, BEAN & WHITAKER MORTGAGE CORP. (“Debtor”), holds an inferior lien against the property and will be subject to the Creditor’s foreclosure to foreclose any interest it possesses.

2. **Creditor’s Interest:** The Debtor filed this voluntary Chapter 13 proceeding on 08/24/2009. The Creditor holds the Note and Mortgage executed on November 30, 2006 in the amount of \$191,900.00 by Sara Dibacco. ***Exhibit “A.”*** The Creditor holds a security interest in the subject property located at 33 GORDON AVE , ENFIELD, CT 06082 (“Property”), more fully described as:

A CERTAIN PIECE OR PARCEL OF LAND, WITH THE BUILDINGS THEREON, SITUATED IN THE TOWN OF FIELD. COUNTY OF HARTFORD AND STATE OF CONNECTICUT, ON THE SOUTHERLY SIDE OF GORDON VENUE, AND KNOWN AS LOT 9 ON A MAP ENTITLED “MAP SHOWING SOME PROPERTY OF S. LEGER STARR FROM MABEL L. SISISKY AND LEONARD H. SLAYBARD BEING A PART OF THE AREA SHOWN ON AP ENTITLED “PROPERTY DEVELOPMENT C.D. SPIER & MRS. H.E. RICE, ENFIELD, CONN. H.B. WHEARCRAFT, JR., ENGR. 37 W 39 ST. N.Y.C. SCALE 1" = 60' 1924'. SEE ENFIELD BOOK OF MAPS VOL. 1 PAGE 53. SCALE OF THIS MAP 1" = 40' CLASS A2 OCT. 1953 H. F. ROSENBERGER, JR. L725 THOMPSONVILLE, CONN. REVISED OCT. & DEC. 1960", WHICH SAID MAP OR PLAN IS ON FILE IN THE TOWN CLERK'S OFFICE IN SAID TOWN OF ENFIELD, AND MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS, TO WIT: NORTHERLY: BY SAID GORDON AVE, SEVENTY (70) FEET: EASTERLY: BY LOT NO 7 ON SAID MAP, ONE HUNDRED TWO

AND FORTY-SIX ONE-HUNDREDTHS (102.46) FEET; SOUTHERLY:
BY LAND NOW OR FORMERLY OF STEPHEN L. STARR, SEVENTY
(70) FEET; AND WESTERLY: BY LOT NO11 ON SAID MAP, ONE
HUNDRED TWO AND FORTY-FOUR ONE-HUNDREDTHS (102.44)
FEET

The principal balance due is \$197,347.93. Based on the Creditor's title exam the Debtor holds a second mortgage executed on November 30, 2006 on the Property, book 2245 page 228, in the amount of \$47,950.00. **Exhibit "B."** As of June 2014 the total payoff for this loan was \$218,095.75.

3. **Standing:** Creditor possesses standing to bring this motion as the Note and Mortgage were subsequently assigned to it. *See Troupe v. Redner, 652 So2d 394 (Fla 2d DCA 1995)*, citing *Withers v. Sandlin, 36 Fla. 619, 18 So. 856 (1896)*; *Laing v. Gainey Builders, Inc., 184 So. 2d 897 (Fla 1st DCA 1966)*.

4. **Property Valuation:** Pursuant to the County Property Appraiser, the property is valued at \$218,095.75 *See Exhibit "C"*. Pursuant to *Rule 803(8) Federal Rules of Evidence*, the property appraiser valuation is permissible.

5. **Lack of Equity Pursuant to 11 U.S.C. §362(d)(2)(A):** As the amount due to the Creditor exceeds the Property's value, there is no equity in the Property.

6. **Grounds for Relief:** The Creditor maintains that cause exists pursuant to 11 U.S.A. §362(d)(1) for the automatic stay to be lifted. The Creditor's security interest in the subject property is being significantly jeopardized by the borrower remaining the property. In order for the Creditor to satisfy the debt owed, it must initiate a foreclosure proceed. As the Creditor's interest in the property is superior to the Debtor, the Debtor must be included in the foreclosure action to foreclose its interest and perfect title.

7. **Waiver of Rule 4001(a)(3):** Creditor, respectfully, requests that the Court waive the fourteen (14) day stay of the Order Granting Relief pursuant to Bankruptcy Rule 4001 (a)(3), so that Creditor can pursue its in rem remedies without further delay.

WHEREFORE, Creditor, U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE TRUSTEE FOR TRUMAN 2012 SC2 TITLE TRUST, prays that this Court issue an Order terminating or modifying the stay, and for any such further relief this Court deems proper and just.

SHD Legal Group P.A.
Attorney for Creditor
PO BOX 11438
Fort Lauderdale, FL 33339-1438
Phone: (954) 564-0071
Fax: (954) 564-9252
Email: ADiaz@shdlegalgroup.com

By: _____/s/Adam A. Diaz_____
Adam A. Diaz
Florida Bar No.98379

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2014, I served a copy of the foregoing either electronically and/or via first class U.S. mail upon:

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.
4901 VINELAND ROAD, STE 120
ORLANDO, FL 32811
Debtor(s)

EDWARD J. PETERSON, III , AMY DENTON HARRIS, RUSSELL M BLAIN, RICHARD C.
PROSSER
STICHTER, RIEDEL, BLAIN & PROSSER, PA
110 EAST MADISON STREET, SUITE 200
TAMPA, FL 33602
JEFFREY W KELLEY
TROUTMAN SANDERS LLP
600 PEACHTREE STREET SUITE 5200
ATLANTA, GA 30308-2216

KRISTOPHER E AUNGST
ALISA PAIGE MASON
BERGER SINGERMAN PA
1450 BRICKELL AVENUE SUITE 1900
MIAMI, FL 33131

ALLISON D THOMPSON
LAW OFFICES OF DANIEL C CONSUEGRA PL
9204 KING PALM DRIVE
TAMPA, FL 33619
Attorney for Debtor(s)

UNITED STATES TRUSTEE- JAX, 11
135 W. CENTRAL BLVD, SUITE 602
ORLANDO, FL 32801
Trustee

By: /s/Adam A. Diaz
Adam A. Diaz
Florida Bar No.98379

1461-146277
AAD