

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Chapter 11

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP., *et al.*,

Debtors.

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)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is entered on the dates stated below, by and between Neil F. Luria, as Plan Trustee for the Taylor, Bean & Whitaker Plan Trust (the “Plan Trustee” or “Plaintiff”), and The ResCap Liquidating Trust (successor-in-interest to GMAC Mortgage, LLC) (“GMACM” or “Transferee Party,” and collectively with the Plan Trustee, the “Parties”). The Parties recite as follows:

WHEREAS, on August 24, 2009 (“Petition Date”), Taylor, Bean & Whitaker Mortgage Corp. (the “Debtor”) filed for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”);

WHEREAS, on July 21, 2011, the Bankruptcy Court presiding over the case (the “Bankruptcy Court”) entered its order confirming the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* (the “Plan”) (Order, D.E. # 3420);

WHEREAS, on August 10, 2011, the Plan became effective and created the Taylor, Bean & Whitaker Plan Trust (“Plan Trust”), with Neil F. Luria as Plan Trustee;

WHEREAS, the Plan Trustee made demand in writing upon the Transferee Party for the return of certain alleged prepetition preferential and/or fraudulent transfers (the “Transfers”) made by the Debtor to the Transferee Party, pursuant to 11 U.S.C. §§ 544, 547, 548 and 550, and Fla. Stat. § 726.105 and 726.106;

WHEREAS, on August 20, 2011, the Plan Trustee commenced an adversary proceeding (Adversary Proceeding”) against the Transferee Party (**Adv. Pro. No. 11-520**) seeking the return of money relating to the Transfers made by the Debtor to the Transferee Party (the “Demand Amount”);

WHEREAS, the Transferee Party presented the Plan Trustee with certain affirmative defenses regarding the Demand Amount;

WHEREAS, on May 14, 2012, GMAC Mortgage, LLC and certain of its affiliates (the “ResCap Debtors”) filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “NY Court”), which is being jointly administered under Case No. 12-12020 (MG);

WHEREAS, on August 29, 2012, the NY Court entered an order approving the ResCap Debtors’ motion to establish procedures for filing proofs of claim in the Chapter 11 Cases [Docket No. 1309] (the “Bar Date Order”). The Bar Date Order established, among other things, (a) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (the “General Bar Date”) and prescribed the form and manner for filing proofs of claim (Bar Date Order ¶¶ 2, 3). On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Docket No. 2093];

WHEREAS, on or about October 29, 2012, the Plan Trustee filed a proof of claim, designated as Claim No. 1894, against GMACM (the “Proof of Claim”). With respect to the Proof of Claim, the Plan Trustee asserted a general unsecured claim in the amount of \$370,526.17 on account of the Demand Amount;

WHEREAS, on December 11, 2013, after a confirmation hearing, the NY Court entered an *Order Confirming Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of Unsecured Creditors* (the “Confirmation Order”) approving the terms of the Chapter 11 plan, as amended (the “NY Plan”), in these Chapter 11 Cases [Docket No. 6065]. On December 17, 2013, the NY Plan went effective and the Liquidating Trust was created [Docket No. 6137];

WHEREAS, the NY Plan provides for the creation and implementation of the Liquidating Trust, which would, among other things, be “authorized to make distributions and other payments in accordance with the Plan and the Liquidating Trust Agreement.” *See* Plan, Art. VI.A-D; *see also* Confirmation Order ¶ 22. Further, pursuant to the Confirmation Order:

In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Liquidating Trust may compromise and settle Claims against the Debtors and Causes of Action against other Entities.

Confirmation Order ¶ 20;

WHEREAS, in the interest of avoiding further costly and time-consuming litigation, the Parties have agreed to the terms set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. The Parties agree that the above recitations are true and correct.
2. The Parties agree that the Plaintiff shall have an allowed claim against the GMACM bankruptcy estate in the amount of **\$19,500.00** (the "Allowed Claim"), and the Allowed Claim shall receive the treatment provided for Allowed Unsecured Claims against the GMACM Debtors provided for in Article III.D.2(h) of the Plan.
3. The Transferee Party agrees to waive any and all claim rights under 11 U.S.C. § 502, and any claims of any nature and priority previously filed or scheduled, and any rights to file any claim of any nature and priority for the Demand Amount, the Claim, or otherwise.
4. Upon receipt of the final distribution on account of the Allowed Claim, and consistent with the terms of the NY Plan, the Plan Trustee shall release the Transferee Party and its directors, officers, employees, members, agents, parents, affiliates, subsidiaries, other related entities, successors and assigns, from any and all further liability to the Debtor or Plan Trustee on account of the Adversary Proceeding, and Plaintiff shall file a dismissal with prejudice of the Adversary Proceeding. Further, the Transferee Party hereby agrees to release and hold harmless the Plan Trustee and its directors, officers, employees, members, agents, parents, affiliates, subsidiaries, other related entities, successors and assigns, including, without limitation, the Plan Trust, post-petition agents of the Debtor, the Official Committee of Unsecured Creditors, and any post-petition Directors and Officers of the Debtor, the Plan Trust Advisory Committee, its members and their advisors, on account of the matters raised in the Adversary Proceeding.
5. The Parties believe that the Agreement is in the best interests of the Transferee Party, the Debtor's estate and the Plan Trust.
6. The Parties shall cooperate in the consummation of the settlement and in the preparation and execution of any and all documents necessary to carry out the intent and purpose of this Agreement.
7. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors, successors-in-interest, and assigns, including any reorganized entity or any trustee that may be appointed or elected pursuant to the Bankruptcy Code in this or any superseding case.
8. This Agreement shall not be construed against either party as an admission of liability or concession of any matters, except as to those specific agreements contained herein.
9. This Agreement shall be construed and governed by the laws of the State of Florida to the extent state law is applicable.

10. This Agreement constitutes the entire agreement by and between the Transferee Party and the Plan Trust with respect to all issues raised, or that could have been raised, regarding prepetition transfers by the Debtor to the Transferee Party and claims, if any, of the Transferee Party against the Debtor, the Plan Trustee, or the Plan Trust.

11. The Parties hereby acknowledge that there are no communications or oral understandings contrary to or different from this Agreement.

12. The Parties shall request that the Bankruptcy Court retain jurisdiction to enforce and construe the provisions of this Agreement. The Parties consent to the Bankruptcy Court's exercise of personal and subject matter jurisdiction (including "core" jurisdiction) to adjudicate any disputes that might arise under this Agreement.

13. The Parties acknowledge that they have been represented by counsel of their own choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had the opportunity to receive an explanation from legal counsel regarding the legal nature and effect hereof.

14. Each Party shall bear its own attorneys' fees and costs incurred in connection with the negotiation and documentation of this Agreement.

15. The Agreement may be executed in one or more counterparts, each counterpart to be considered an original portion of this Agreement and all of which shall constitute a singular instrument.

16. Each of the Parties to this Agreement represents and warrants that it is duly authorized to execute and enter into this Agreement and that the person through whom each party executes this Agreement is fully and duly empowered and authorized to execute it on the respective Party's behalf.

Dated: December 31, 2014

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MORRISON & FOERSTER LLP
Counsel for The ResCap Liquidating Trust

BERGER SINGERMAN LLP
*Counsel for Neil F. Luria, as Trustee for the
Taylor, Bean & Whitaker Plan Trust*

By: /s/ Jordan A. Wishnew
Its: Counsel

By: /s/ James D. Gassenheimer
Its: Counsel