

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

IN RE:

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP,

CASE NO.: 3:09-bk-07047-JAF
CHAPTER 11

Debtor(s).

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CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Subject Property: 26912 VIA ESCORIAL, MISSION VIEJO, CA 92691

Creditor, WILMINGTON TRUST, NA, SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE, FOR THE BENEFIT OF REGISTERED HOLDERS OF STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2007-AR1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR1 ("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 as the Debtor, TAYLOR, BEAN & WHITAKER MORTGAGE CORP ("Debtor"), is a junior lienholder and the instant bankruptcy case is prohibiting Creditor for exercising its *in rem* remedies against the Mortgagor/Borrower.

2. **Creditor's Interest:** The Debtor filed this voluntary Chapter 11 proceeding on August 24, 2009. The Creditor is a secured creditor through a Note and Mortgage executed by Carlos Cruz ("Borrower") on June 29, 2006 in the amount of \$515,920.00. *See Exhibit "A."* Currently, the principal balance owed on the loan is \$529,733.35 and the default date is March 1, 2013. The Creditor holds a first position lien security interest in the subject property 26912 VIA ESCORIAL, MISSION VIEJO, CA 92691 ("Property"), more fully described as:

**LOT 1 OF TRACT NO. 8056, IN THE CITY OF MISSION VIEJO,
COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP
RECORDED IN BOOK 327, PAGE(S) 48 TO 50, INCLUSIVE OF
MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY
RECORDER OF SAID COUNTY**

3. **Standing:** Creditor possesses standing to bring this motion and the right to foreclose by virtue of being owner and holder of the Note and Mortgage that were 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. **Grounds for Relief:** The Creditor maintains that cause exists pursuant to 11 U.S.C. §362(d) for the automatic stay to be lifted as it would be inequitable to allow the automatic stay to remain in effect while Creditor is not being adequately protected and there is no equity in the subject property which is not necessary for an effective reorganization.

The Creditor's security interest in the subject property is being significantly jeopardized by the Borrower's failure to make regular payments owed under the subject loan documents while Creditor is prohibited from pursuing lawful remedies to protect such interest due to a junior lienholder's bankruptcy case. To obtain marketable title to the subject property, the Debtor must be joined in Creditor's foreclosure action to extinguish any lien or rights to the subject property held by Debtor.

Furthermore, pursuant to the County Property Appraiser's Office in which the Property lies situate, the property is valued at \$533,610.00. *See Exhibit "B"* (Pursuant to *Rule 803(8) Federal Rules of Evidence*, the property appraiser valuation is permissible.) The Borrower is indebted to the Creditor in the amount of \$529,733.354. As the amount due to the Creditor exceeds the Property's value, there is no equity in the Property.

9. **Waiver of Rule 4001(a)(3)**: Creditor requests that the Court waive the 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 respectfully requests that this Court issue an Order terminating or modifying the stay, waiving the 14 day stay of such Order and for any such further relief this Court deems proper and just.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 30, 2015, I served a copy of the foregoing either electronically and/or via first class U.S. mail upon:

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