

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR BEAN & WHITAKER
MORTGAGE CORP.,

Debtor.

CHAPTER 11

CASE No.: 3:09bk-7047-JAF

**MOTION OF SCHOOL STREET CONDOMINIUM TRUST
FOR RELIEF FROM AUTOMATIC STAY**

Movant, School Street Condominium Trust, a party-in-interest, by counsel, moves for relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) & (2), and Bankruptcy Rules 4001 and 9014, for relief from the automatic stay, in order to continue prosecution of a civil action to establish and foreclose a statutory lien against property located at 133 Summer Street, Unit #T-3, Haverhill, Essex County, Massachusetts, and to commence further civil actions to establish and foreclose statutory liens, and in support of this motion states:

1. On August 24, 2009, Debtor filed a voluntary petition for bankruptcy under chapter 11, in the United States Bankruptcy Court for the Middle District of Florida.
2. School Street Condominium is a residential condominium located at Summer Street and School Street, Haverhill, Essex County, Massachusetts. Said condominium was created by Master Deed dated December 18, 1986, and recorded in the Essex County South Registry of Deeds at Book 8688, Page 223.
3. Movant is the Board of Trustees of the School Street Condominium Trust (“the Trust”), the governing body of the School Street Condominium under Declaration

of Trust, with By-Laws, dated December 18, 1986, and recorded in the Essex County South Registry of Deeds at Book 8688, Page 242. Movant's power to bring a civil lien action is established in the said Declaration of Trust of the Condominium, as well by the provisions of Massachusetts General Laws, Chapter 183A, §10(b)(4). The Trust's mailing address is PO Box 1195, Haverhill, Massachusetts 01831.

4. Debtor, Taylor Bean & Whitaker Mortgage Corp., is the record holder of a first mortgage on Condominium Unit #T-3, Haverhill, Essex County, Massachusetts ("Unit #T-3"), acquired by assignment of mortgage dated February 9, 2009, and recorded in the Essex South District Registry of Deeds at Book 28346, Page 232.

5. The Trust has a statutory lien on Unit #T-3 pursuant to Massachusetts General Laws, c.183A, §6, for both pre-petition and post-petition common fees for the months of June 2009 through, and including, December 2009.

6. The statutory lien is subject only to lien in favor of a first mortgagee and real estate taxes. However, the lien is afforded limited priority over the first mortgagee's lien.

7. Debtor has failed to provide adequate assurance of payment of the statutory condominium priority lien amounts.

8. Movant is seeking relief from the automatic stay to enforce its statutory lien against the Unit. It is necessary for Movant to comply with Massachusetts General Law, c. 183A by commencing a civil action against the owner of the Unit, in which the Debtor is named as a party-in-interest, in order to perfect the statutory lien.

9. It is necessary for Movant to serve the Debtor with all pleadings as a named party-in-interest in the aforementioned civil action, in which Debtor is a party-interest.

10. Movant is the original creditor and the claim has never been transferred.

11. There is no other collateral securing this debt to the Movant.

12. The approximate pre-petition priority lien amount is 2,194.00.

13. The total post-petition arrearage due as of December 1, 2009, is \$1,110.62, excluding attorneys' fees and costs. As a result of this motion, attorneys' fees and costs of approximately \$650.00 have accrued. This figure may increase as additional attorneys' fees and costs continue to accrue.

14. The total post-petition arrearage through the anticipated hearing date on this motion would also include any additional monthly common fees in the amount of \$175.00, which accrue on the first of each month. The post-petition arrearage would also include any additional expenses, attorneys' fees and costs that accrue from the date of the filing of this motion through the date of the hearing.

15. Movant seeks relief from the automatic stay to enforce its rights under the Condominium Master Deed and By-Laws, and applicable state law.

16. Movant states that it is entitled to relief from the automatic stay pursuant to 11 U.S.C. 362(d)(1) for cause on the basis that debtor has failed to provide Movant with adequate protection.

WHEREFORE, Movant respectfully requests that this Court:

a. grant Movant's relief from the automatic stay to allow Movant to continue the pending civil action, and to commence additional civil actions to enforce its statutory

lien against the Unit, which take limited priority over the first mortgage, under applicable state law; and

b. for such other and further relief as this Court may deem appropriate and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was furnished to Debtors' Counsel, Russell M Blain, Stichter, Riedel, Blain & Prosser, 110 East Madison Street, Suite 200, Tampa, FL 33602, and Jeffrey W. Kelley, Troutman Sanders, LLP, 600 Peachtree St., Suite 5200, Atlanta, GA 30308; Elana L. Escamilla, United States Trustee, 135 W. Central Blvd., Suite 620, Orlando, FL 32806; and the U.S. Attorney, either electronically or by U.S. mail this 31st day of December, 2009.

MCCORVEY & MYERS
A Partnership of Professional Entities

John H. McCorvey, Jr., P. L.
John H. McCorvey, Jr., Esquire
Florida Bar No. 0844365
1912 Hamilton Street, Suite 204
Jacksonville, Florida 32210
(904) 388-4030
Attorney for SCHOOL STREET
CONDOMINIUM TRUST