

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

IN RE:

TAYLOR, BEAN & WHITAKER
MORTGAGE CORPORATION,

Debtor.

CASE NO.: 3:09-bk-7047-JAF
Chapter 11

TILLIE V. SILVA, in a representative capacity
of a Class of Plaintiffs similarly situated,

Plaintiff,

v.

Adversary No.: 3:12-ap-130-JAF

TAYLOR, BEAN & WHITAKER
MORTGAGE CORPORATION, et al.,

Defendants.

ORDER GRANTING MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This proceeding is before the Court on Taylor, Bean & Whitaker Mortgage Corporation's ("TBW") motion to dismiss Plaintiff's amended complaint (Docs. 7 and 8, Motion to Dismiss; *see also* Doc. 3, Supplemental Notice of Removal, Exs. M-X, Amended Complaint). Plaintiff filed a response in opposition to the Motion (Doc. 17); to which, TBW filed a reply brief (Doc. 22). For the reasons that follow, the Motion to Dismiss (Docs. 7 and 8) will be granted to the extent provided herein.

By way of background, Plaintiff initiated this action on October 26, 2011 by filing an class action complaint, on behalf of herself and others similarly situated, in the Third Judicial District, Salt Lake County, Utah (the "Utah Action"). The defendants in the Utah Action are as follows: (1) the debtor, TBW; (2) RoundPoint Mortgage Servicing Corporation; (3) Mortgage Electronic

Registration Systems, Inc.; (4) Brighton Title Company, LLC; (5) Guaranteed Financial, LLC; (6) Morris Kunz, and individual; and (7) John or Jane Does 1-10 (Doc. 3, Exs. M-X). On November 15, 2011, Plaintiff filed the instant Amended Complaint in the Utah Action.

On November 17, 2011, TBW removed the Utah Action to the United States Bankruptcy Court for the District of Utah (2:11-ap-2745 [Doc. 3]). Subsequently, the action was transferred to this Court on February 3, 2012 by order of the United States Bankruptcy Court for the District of Utah (Doc. 27).

Upon review of the parties respective filings, the Court finds Plaintiff is enjoined from bringing claims against TBW by the express provisions of the Confirmed Plan of Liquidation (3:09-bk-7047-JAF [Doc. 3420 at 30-32]).

Based on the foregoing, it is **ORDERED**:

1. Taylor, Bean & Whitaker Mortgage Corporation's Motion to Dismiss (Docs. 7 and 8) is granted as provided herein.

2. Plaintiff's Amended Complaint, as to Taylor, Bean & Whitaker Mortgage Corporation, is dismissed with prejudice.

3. This action is remanded to the Third Judicial District, Salt Lake County, Utah, in order for Plaintiff to proceed against the remaining defendants.

4. The Status Conference scheduled for February 28, 2012 at 10:00 a.m. is cancelled.

5. In accordance with the language of the Confirmed Plan of Liquidation (3:09-bk-7047-JAF [Doc. 3420 at 30-32]), this Order does not prohibit Plaintiff from, *inter alia*: (i) asserting legally cognizable foreclosure defenses in any state court foreclosure action; (ii) prohibit Plaintiff from asserting claims, in an appropriate forum that has jurisdiction, against former Taylor, Bean &

Whitaker officers or employees who were convicted of wrongdoing;¹ or (iii) prohibit a holder of a disputed claim from seeking to have any such disputed claim declared an allowed claim and paid in accordance with the distribution provisions of the Confirmed Plan of Liquidation.

DATED this 24th day of February, 2012 in Jacksonville, Florida.

/s/ Jerry A. Funk

JERRY A. FUNK

United States Bankruptcy Judge

Copies to:

All counsel of record and *pro se* parties, if any

¹ Plaintiff is advised that this Court is not such a forum.