

~~EXHIBIT B PROPOSED PRELIMINARY APPROVAL ORDER~~

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE

JOHN AND JEANNETTE SCHWARTZ, et al.

Plaintiffs.

vs.

BANN-COR MORTGAGE, et al.,

Defendants.

Case No. 00 CV 226639

Case No. 00 CV 226639-01

Case No. 00 CV 226639-02

Case No. 00 CV 226639-03

Division 14

~~PROPOSED~~ ORDER PRELIMINARILY APPROVING THE CLASS ACTION  
SETTLEMENT

WHEREAS, a Class Action Petition has been filed in this Court on behalf of John and Jeannette Schwartz, et al., against Bann-Cor Mortgage, et al., Case No. 00-CV-226639 (the “Litigation”); and

WHEREAS, on March 25, 2008, the Court certified a litigation class in the Litigation comprised of those persons who obtained a second mortgage loan from Bann-Cor Mortgage on or after October 31, 1994 (the “Litigation Class”); and

WHEREAS, notice was provided to the members of the Litigation Class of their opportunity to opt out or exclude themselves from the Litigation Class and no class members timely elected to exercise his, her, or its right to opt out of the Litigation Class; and

WHEREAS, on March 26, 2008, the Court severed the claims of those members of the Litigation Class whose Bann-Cor Loans were purchased by and assigned to TMS Mortgage, Inc., d/b/a The Money Store (the “Settlement Class”) from those members of the Litigation Class whose Bann-Cor Loans were purchased or assigned to someone other than TMS Mortgage, Inc. d/b/a The Money Store (“Non-HomEq Plaintiff Borrowers”); and

WHEREAS, Plaintiffs John and Jeannette Schwartz (as members of the Litigation Class whose Bann-Cor Loans were purchased by and assigned to TMS Mortgage, Inc. d/b/a The Money Store) (the “Named Plaintiffs”) and Defendant Wachovia Equity Servicing, LLC , as successor in interest to HomEq Servicing Corp. (f/k/a TMS Mortgage Inc.) and Defendant The Money Store, LLC (collectively, “the HomEq Defendants”) have entered into a “Settlement Agreement and Release” dated May 11, 2009 (the “Agreement”), in which said parties have agreed upon a settlement of the Litigation as between them and the members of a proposed Settlement Class, subject to the approval of the Court; and

WHEREAS, the Named Plaintiffs have filed a Motion for Preliminary Approval of Settlement with the Court.

NOW THEREFORE, upon careful consideration of the Motion for Preliminary Approval of Settlement, and after review of the Agreement executed by Named Plaintiffs John and Jeannette Schwartz and the HomEq Defendants (hereinafter the “Parties”), and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The terms of the Agreement, and the Settlement provided therein, are approved preliminarily as fair, reasonable and adequate to the Settlement Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in paragraph 12 of this Order.
2. The definitions set forth in the Agreement are hereby incorporated by reference into this Order (with capitalized terms as set forth in the Agreement).
3. The Parties have executed the Agreement in order to settle and resolve the Litigation as between them and the members of the Settlement Class, subject to the approval of

the Court.

4. Accordingly, for the purpose of a settlement in accordance with the Agreement, and upon review of the Named Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, this Court hereby preliminarily certifies the following class of persons as a settlement class (the "Settlement Class"):

"All persons who, on or after October 31, 1994, obtained a "Second Mortgage Loan" as defined in R.S. Mo. § 408.231.1, that was secured by a mortgage or a deed of trust on residential real property located in the State of Missouri, originated by Bann-Cor Mortgage, and purchased by and assigned to TMS Mortgage, Inc. d/b/a The Money Store."

5. Pursuant to the Agreement, and for settlement purposes only, the Court finds preliminarily as to the Settlement Class that:

- a. The Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Settlement Class which predominate over questions affecting only individual members of the Settlement Class;
- c. The claims of the Named Plaintiffs are typical of those of the Settlement Class;
- d. The Named Plaintiffs and their counsel will fairly and adequately protect the interests of each of the members of the Settlement Class; and
- e. Certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of the controversies between the Settlement Class Members and the HomeEq Defendants.

6. For the purpose of this preliminary approval and all matters relating to the Settlement and the Litigation, until further order of the Court, the Court appoints the Named Plaintiffs, John and Jeannette Schwartz, as Representatives of the Settlement Class and R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the law firm Walters Bender Strobbeln & Vaughan, P.C., as Counsel for the Settlement Class (“Class Counsel”).

7. By this Order, the Court hereby exercises subject matter and personal jurisdiction over the Settlement Class for purposes of evaluating the final certification of the Settlement Class and the fairness and adequacy of the Settlement.

8. The Class Mail Notice, as set forth in Exhibit A to the Agreement, is approved.

9. The Class Mail Notice, in substantially the form set forth in Exhibit A, shall be mailed by Class Counsel to all persons on the Settlement Class list, and any known Chapter 7 bankruptcy trustees of any Settlement Class member for a Chapter 7 bankruptcy filed after origination of the Settlement Class member’s loan, by first-class mail, postage prepaid. Such mailing shall be completed within five (5) days of this Preliminary Approval Order.

10. The Agreement contemplates a notice methodology that protects the interests of the Settlement Class and the Parties, is the best notice practicable under the circumstances and is reasonably calculated to apprise the members of the Settlement Class of the pendency of the Litigation, the Agreement, and the right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the notice methodology is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all applicable requirements of law, including, but not limited to, Mo. R. Civ. P. 52.08 and the Due Process Clause of the Fourteenth Amendment of the United

States Constitution.

11. Prior to the Fairness Hearing, Class Counsel shall serve and file a sworn statement of a person with knowledge, evidencing compliance with the provisions of this Order concerning the mailing of the Class Mail Notice.

12. Any member of the Settlement Class wishing exclusion from the Settlement Class shall mail a request for exclusion (“Request for Exclusion”) to the Parties’ respective counsel. To be valid, the Request for Exclusion must be **received** on or before **June 11, 2009**. Such Request for Exclusion shall include: (a) the name, address, telephone number and the last four digits of the class member’s social security number; (b) the applicable loan number(s) of the class member’s loan (if known); (c) a statement that the class member and all other borrowers named on the class member’s promissory note are seeking exclusion; (d) the signature of each person who was a party to the promissory note made in connection with the class member’s loan (unless any such person shall be deceased, in which case the opt out submission shall include a copy of such person’s death certificate); (e) a reference to “John and Jeannette Schwartz, et al., v. Bann-Cor Mortgage, et al., Case No. 00-CV-226639”; and (f) the signature of the class member. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be included in the Settlement Class and be bound by any judgment entered in this Action with respect to said Class .

13. Within a reasonable period after the deadline for submitting Requests for Exclusion, but before the Final Approval Hearing, Class Counsel shall file with the Court a sworn statement listing those persons who submitted timely Requests for Exclusion. The originals of all Requests for Exclusion shall be retained by the parties.

14. A hearing (the “Fairness Hearing”) shall be held before the undersigned at 1:30

p.m. on July 6, 2009, in Division 14 at the Jackson County Courthouse, 308 W. Kansas, Independence, MO 64050. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the proposed Settlement; (b) the entry of any final order or judgment in the Litigation with respect to the Settlement Class; (c) the application for attorney's fees and for reimbursement of expenses by Class Counsel; (d) the application for an incentive award for the services rendered by the Named Plaintiffs; and (e) other related matters. The Fairness Hearing may be postponed, adjourned or continued by Order of the Court without further notice to the Settlement Class.

15. To be considered at the Fairness Hearing, any person desiring to file an objection or other comment on the Settlement shall be required to file all such objections and comments and all supporting pleadings on or before June 11, 2009, with service upon Class Counsel and Defendants' Counsel. In his/her Objection, an objecting Settlement Class Member must (a) set forth his/her full name, current address, and telephone number; (b) state that the Settlement Class Member objects to the Settlement in whole or in part; (c) set forth a specific statement of the legal and factual basis for the Objection; (d) provide copies of any and all documents that the objector wishes the Court to consider in connection with the Objection; (e) provide the names of any witnesses, and, provide a written expert report from all proposed experts who may be offered at the Fairness Hearing; (f) provide copies of any other loan documents on which the objector relies as a basis for the objection; (g) if the objector is represented by counsel, provide a detailed description of the legal authorities supporting each objection; and (h) reference "John and Jeannette Schwartz, et al., v. Bann-Cor Mortgage, et al., Case No. 00-CV-226639". No Objection to or other comment concerning the Settlement shall be heard unless timely filed in accordance with the guidelines specified above and in the Agreement. Class Counsel and

Defendants' Counsel shall promptly furnish each other with copies of any and all objections or written requests for exclusion that come into their possession.

16. Any Settlement Class Member who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall forever be foreclosed from making any objection to Settlement, including but not limited to, the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement.

17. Submissions of the Parties relative to the Settlement, including memoranda in support of the Settlement, applications for attorneys' fees and reimbursement of expenses by Plaintiffs' Counsel, and any applications for the payment of services rendered by the Named Plaintiffs, shall be filed with the Clerk of the Court on or before June 26, 2009. Any attorney hired by a Settlement Class Member at the Class Member's expense for the purpose of objecting to the Settlement, or to any application for an incentive award, attorney's fees or expenses shall file with the Clerk of Court and serve upon Class Counsel and Defendants' Counsel a written notice of appearance no later than June 11, 2009.

18. Any Settlement Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless, on or before June 11, 2009, such person (a) has filed with the Clerk of the Court a notice of such person's intention to appear, and (b) has served copies of such notice upon Class Counsel and Defendants' Counsel.

19. Any Settlement Class Member may intervene in the Litigation in person, or by counsel if a motion to intervene is filed and served as provided in the Notice. No person shall be

permitted to intervene unless, on or before June 11, 2009, such person (a) has filed with the Clerk of the Court a valid motion to intervene; and (b) has served copies of such notice upon Class Counsel and Defendants' Counsel.

20. All other events contemplated under the Agreement to occur after this Order and before the Fairness Hearing shall be governed by the Agreement, and the Class Mail Notice, to the extent not inconsistent herewith. Class Counsel and Defendants' Counsel shall take such further actions as are required under the Agreement.

21. The Parties shall be authorized to make non-material changes to the Class Mail Notice so long as Class Counsel and Defendants' Counsel agree, and one of the Parties files a notice thereof with the Court prior to the Fairness Hearing.

22. All claims against and motions involving the HomEq Defendants in the Litigation, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court.

23. The claims of Plaintiffs James Wong, Daniel and Wanda Jensen and/or any of the other Non-HomEq Plaintiff Borrowers against Bann-Cor Mortgage, the Master Financial Defendants and any other person, association or entity other than a Released Person are not stayed or suspended by the Agreement, this Order, or otherwise. The claims and causes of action of Plaintiffs James Wong, Daniel and Wanda Jensen and the other Non-HomEq Plaintiff Borrowers against Bann-Cor Mortgage, the Master Financial Defendants and any other person, association or entity other than a Released Person as identified in the Agreement are not affected by the Agreement

24. If Final Approval of the Settlement does not occur, or if the Settlement is

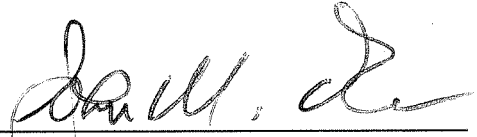
terminated for any reason whatsoever, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and all Orders issued pursuant to the Settlement shall be vacated.

25. Neither this Order, the Agreement, nor any of its terms or provisions, nor any of the negotiations between the Parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the HomeEq Defendants' denials, defenses, or factual or legal positions, and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary in a proceeding to enforce the terms of this Order and the Agreement, or to prove or show that a compromise in settlement of the Released Claims per the Agreement, in fact, was reached; provided, however, that this Order and the Agreement may be filed in any action filed against or by the HomeEq Defendants or the Released Persons to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. The HomeEq Defendants expressly reserve all rights and defenses to any claims and do not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

IT IS SO ORDERED

5-11-09

Date

  
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John M. Torrence, Circuit Judge

A TRUE COPY - ATTEST  
CIRCUIT COURT OF JACKSON COUNTY, MO  
COURT ADMINISTRATOR'S OFFICE  
DEPARTMENT OF CIVIL RECORDS

BY  DCA