

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:

MERCANTILE BANCORP, INC.,

Debtor.

Chapter 11

Case No. 13-11634 (KJC)

Re: Docket Nos. 6 and 148
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**JOINDER OF WILMINGTON TRUST COMPANY, SOLELY IN ITS
CAPACITIES AS INDENTURE TRUSTEE, INSTITUTIONAL OR PROPERTY
TRUSTEE, DELAWARE TRUSTEE AND GUARANTEE TRUSTEE UNDER
FOUR SERIES OF TruPS TRUSTS, TO OFFICIAL COMMITTEE OF TRUST
PREFERRED SECURITIES HOLDERS’ OBJECTION TO MOTION OF DEBTOR
MERCANTILE BANCORP, INC., FOR AN ORDER, INTER ALIA, AUTHORIZING
THE SALE OF THE DEBTOR’S SHARES IN MERCANTILE BANK AND THE
RELATED TRADEMARK FOR MERCANTILE BANK’S “M” LOGO PURSUANT
TO THE SUCCESSFUL BIDDER’S PURCHASE AGREEMENT FREE AND CLEAR
OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS**

Wilmington Trust Company, solely in its capacities as Indenture Trustee, Institutional or Property Trustee, Delaware Trustee, and Guarantee Trustee with respect to four series of TruPS Trusts (“Wilmington Trust” or the “TruPS Trustee”), by and through its undersigned counsel, hereby files this joinder to the Official Committee of Trust Preferred Securities Holders’ Objection to Motion of Debtor Mercantile Bancorp, Inc., for an Order, Inter Alia, Authorizing the Sale of the Debtor’s Shares in Mercantile Bank and the Related Trademark for Mercantile Bank’s “M” Logo Pursuant to the Successful Bidder’s Purchase Agreement Free and Clear of Liens, Claims, Encumbrances and Other Interests [Docket No. 148] (the “Committee Sale Objection”). In support hereof, the TruPS Trustee respectfully states as follow:

BACKGROUND

1. Mercantile Bancorp, Inc. (the “Debtor”) is indebted to four TruPS Trusts pursuant to the following documents:

- (a) the Indenture dated as of August 25, 2005 (the “Trust I Indenture”) between the Debtor, as Issuer, and Wilmington Trust, as Indenture Trustee, pursuant to which the Debtor issued its Fixed/Floating Rate Junior Subordinated Deferrable Interest Debentures Due 2035 (the “Trust I Debentures”); (b) the Amended and Restated Declaration of Trust dated as of August 25, 2005 (the “Trust I Trust Declaration”), by and among the Debtor, as Sponsor, Wilmington Trust, as Institutional Trustee and Delaware Trustee, and the Administrators named therein; and (c) the Guarantee Agreement dated as of August 25, 2005 (the “Trust I Guarantee Agreement,” together with the Trust I Indenture and the Trust I Trust Declaration, the “Trust I Trust Documents”), between the Debtor, as Guarantor, and Wilmington Trust, as Guarantee Trustee.
- (a) the Indenture dated as of July 13, 2006 (the “Trust II Indenture”) between the Debtor, as Issuer, and Wilmington Trust, as Indenture Trustee, pursuant to which the Debtor issued its Floating Rate Junior Subordinated Notes Due 2036 (the “Trust II Debentures”); (b) the Amended and Restated Trust Agreement dated as of July 13, 2006 (the “Trust II Trust Declaration”), by and among the Debtor, as Depositor, Wilmington Trust, as Property Trustee and Delaware Trustee, and the Administrative Trustees named therein; and (c) the Guarantee Agreement dated as of July 13, 2006 (the “Trust II Guarantee Agreement,” together with the Trust II Indenture and the Trust II Trust Declaration, the “Trust II Trust Documents”), between the Debtor, as Guarantor, and Wilmington Trust, as Guarantee Trustee.
- (a) the Indenture dated as of July 13, 2006 (the “Trust III Indenture”) between the Debtor, as Issuer, and Wilmington Trust, as Indenture Trustee, pursuant to which the Debtor issued its Fixed/Floating Rate Junior Subordinated Debt Securities Due 2036 (the “Trust III Debentures”); (b) the Amended and Restated Declaration of Trust dated as of July 13, 2006 (the “Trust III Trust Declaration”), by and among the Debtor, as Sponsor, Wilmington Trust, as Institutional Trustee and Delaware Trustee, and the Administrators named therein; and (c) the Guarantee Agreement dated as of July 13, 2006 (the “Trust III Guarantee Agreement,” together with the Trust III Indenture and the Trust III Trust Declaration, the “Trust III Trust Documents”), between the Debtor, as Guarantor, and Wilmington Trust, as Guarantee Trustee.
- (a) the Indenture dated as of August 30, 2007 (the “Trust IV Indenture”) between the Debtor, as Issuer, and Wilmington Trust, as Indenture Trustee, pursuant to which the Debtor issued its Junior Subordinated Deferrable Interest Notes Due 2037 (the “Trust IV Debentures”); (b) the Amended and Restated Trust Agreement dated as of August 30, 2007 (the “Trust IV Trust Declaration”), by

and among the Debtor, as Depositor, Wilmington Trust, as Property Trustee and Delaware Trustee, and the Administrative Trustees named therein; and (c) the Guarantee Agreement dated as of August 30, 2007 (the "Trust IV Guarantee Agreement," together with the Indenture and the Trust Declaration, the "Trust IV Trust Documents"),¹ between the Debtor, as Guarantor, and Wilmington Trust, as Guarantee Trustee.

2. Based on currently available information, the Debtor's only outstanding obligations arise under the TruPS Documents. Therefore, the TruPS Trustee and the holders that it represents under the TruPS Documents are the only creditors of the Debtor's estate.

3. Prior to the Petition Date, the TruPS Trustee notified the Debtor that Events of Default occurred under the TruPS Documents because, *inter alia*, the Federal Deposit Insurance Corporation (the "FDIC") was appointed receiver of two of the Debtor's major depository institution subsidiaries, The Royal Palm Bank of Florida and Heartland Bank.

4. Nearly a year thereafter, the Debtor commenced the above-captioned Chapter 11 case in order to consummate a transaction to sell its remaining depository subsidiary, Mercantile Bank (the "Bank") to United Community Bancorp, Inc. ("United") pursuant to the Motion of the Debtor Mercantile Bancorp, Inc., Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, for an Order, Inter Alia, Authorizing the Sale of all of the Debtor's Share in Mercantile Bank and the Related Trademark for Mercantile Bank's "M" Logo Pursuant to the Successful Bidder's Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests [Docket No. 6] (the "Sale Motion"). The sale, as proposed in the Sale Motion, does not appear to create any return to the Debtor's estates, and will likely leave all creditors out of the money.

5. On June 27 2013, the Office of the United States Trustee appointed the Official Committee of Trust Preferred Securities Holders (the "Committee"), which consists of three

¹ The Trust I Trust Documents, the Trust II Trust Documents, the Trust III Trust Documents and the Trust IV Trust Documents shall collectively be referred to as the "TruPS Documents".

members, including the TruPS Trustee in its capacities under the Trust I Trust Documents [Docket No. 42].

JOINDER AND RESERVATION OF RIGHTS

6. The TruPS Trustee agrees with the assertions, contentions and arguments set forth in the Committee Sale Objection and hereby joins therein.

7. The TruPS Trustee reserves its rights to further address the Sale Motion, the Committee Sale Objection and any other ancillary issues either by further submission to this Court, at oral argument or testimony to be presented at any hearing.

Dated: September 10, 2013

POLSINELLI PC

/s/ Shanti M. Katona

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