

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

In re Jeffrey S. Beier

In re Beier · No. 8:24-cv-00752-ODW · Decided June 27, 2025

SUMMARY

The United States District Court for the Central District of California reviews Jeffrey S. Beier’s appeal from bankruptcy-court orders overruling his objection to The Bank of New York Mellon’s secured proof of claim and denying reconsideration. The district court affirms, concluding that the bankruptcy court properly allocated the burden of proof, correctly determined that BONY held the note and deed of trust under California law, and did not err in treating the lien as attaching to the property-sale proceeds.

OPINION

JS-6 1 O 2 3 4 5 6 7 8 United States District Court 9 Central District of California 10 11 In re JEFFREY S. BEIER, Case № 8:24-cv-00752-ODW 12 Debtor. Bankruptcy Case № 8:23-bk-10898-TA 13 14 JEFFREY S. BEIER, MEMORANDUM OPINION 15 Debtor-Appellant, 16 v. 17 THE BANK OF NEW YORK MELLON, 18 Defendant-Appellee. 19 20 I. INTRODUCTION 21 Appellant Jeffrey S. Beier is a debtor before the United States Bankruptcy 22 Court, Central District of California.

The bankruptcy court denied Beier’s objection 23 to a proof of claim that Appellee The Bank of New York Mellon (“BONY”) filed 24 reflecting a \$2,786,180.50 secured claim. (App. 397–407 (“Order Overruling 25 Obj.”).)1) The court then denied Beier’s motion for reconsideration. (App. 463–68 26 1 Beier filed an appendix at ECF Nos. 12 to 12-18 (“App.”), and BONY filed a supplemental 27 appendix at ECF Nos. 13-1 to 13-4 (“SA”).

Each appendix is separately and consecutively 28 paginated and consists of multiple volumes. The Court cites to the consecutive page numbers without reference to appendix volume. 1 (“Order Den. Mot. Recons.”).) Beier appeals both rulings. (Appellant’s Opening Br. 2 (“Opening Br.”) 1, ECF No. 11.)

For the reasons below, the Court AFFIRMS the 3 bankruptcy court’s rulings.2 4 II. BACKGROUND 5 A. The Loan 6 On March 2, 2005, Jefferey S. Beier and Toni Beier (“Borrowers”) executed a 7 Note in the principal amount of \$1,470,000.00 in favor of Countrywide Home Loans, 8 Inc. (“Countrywide”). (App. 230–33 (“Decl. Jae Min” or “Min Decl.”) ¶ 4; see 9 App. 234–38 (“Note”).)

That same day, Borrowers executed a Deed of Trust, which 10 secured the Note on the real property located at 10 Tuscon, Coto de Cara Area, 11 California 92679 (“Property”). (App. 239–66 (“Deed of Trust”).) The Deed of Trust 12 identifies Countrywide as “Lender” and Mortgage Electronic Registration Systems, 13 Inc. (“MERS”) as “the beneficiary” and “nominee for Lender and Lender’s successors 14 and assigns.” (Deed of Trust, App.

240–41.) 15 The Note was stamped with an indorsement to “JP Morgan Chase Bank as 16 Trustee” (“JPMorgan”). (Note, App. 237.) Both parties agree that the stamp was 17 crossed out, though they dispute the effect of this. (Appellee’s Br. (“Opp’n Br.”) 1–2, 18 11–12, ECF No. 13; Appellant’s Reply Br. (“Reply Br.”) 2–6, ECF No. 14.) Attached 19 to the Note is an allonge, which does not identify the payee.

(Note, App. 238.) 20 In June 2010, a Substitution of Trustee and Assignment of Deed of Trust was 21 recorded with the county recorder, transferring the Deed of Trust from MERS to 22 BONY. (App. 96 (“June 2010 Assignment”).) Subsequently, on June 15, 2023, a 23 Corrective Assignment of Deed of Trust was recorded, still reflecting a transfer of the 24 Deed of Trust from MERS to BONY.

(App. 267–69 (“Corrective Assignment”).) 25 BONY has had possession of the Note since at least July 12, 2023, when it filed its 26 proof of claim (“Proof of Claim”). (Min Decl. ¶ 6, App. 231.) 27 2 After considering the briefs and excerpts of record filed by each party, the Court found that oral 28 argument would not significantly aid the Court’s analysis because the facts and legal arguments are adequately presented in the briefs and record.

Fed. R. Bankr. P. 8019(b)(3). 1 B. Bankruptcy Proceedings 2 Prior to the current bankruptcy, Beier filed for bankruptcy four times from 3 April 2008 to March 2023. (Opp’n Br. 2–4; SA 9, 11, 27, 29, 56, 58, 378–79.) Beier 4 also initiated four state court suits, one against the loan servicer and three against 5 BONY. (Opp’n Br. 2–4; SA 67–68, 71, 78, 82–83, 126, 225.)

6 On April 28, 2023, Beier filed the instant chapter 11 bankruptcy, which was 7 later converted to chapter 7. (App. 1 (“Docket Sheet”).) On July 12, 2023, BONY 8 filed a Proof of Claim reflecting a total secured claim of \$2,786,180.50, secured by the 9 Property. (App. 29–100 (“Proof of Claim”).)

On November 15, 2023, the bankruptcy 10 court entered an order granting the sale of the Property for \$3.2 million, including 11 authorization for the trustee to make a \$2.4 million interim distribution to BONY and 12 deposit the balance in a trust account pending settlement negotiations or outcome of 13 future litigation between Beier and BONY. (App. 196–99 (“Sale Order”) ¶¶ 4, 9.)

14 The court authorized the trustee to disburse the remaining sale proceeds to BONY if 15 Beier failed to bring litigation within thirty days of the Sale Order. (Sale Order ¶ 10, 16 App. 198.) On

November 30, 2023, the sale closed and the trustee issued the \$2.4 17 million interim distribution to BONY. (SA 686.) 18 C. Beier’s Objection to BONY’s Proof of Claim 19 On December 1, 2023, Beier filed an objection to BONY’s Proof of Claim.

20 (App. 102–09 (“Beier’s Obj.”).) As relevant to this appeal, Beier raised two issues 21 with BONY’s Proof of Claim.³ First, Beier questioned BONY’s ownership of the 22 Note and Deed of Trust. (Beier’s Obj., App. 103–04.) He argued that BONY 23 provided no evidence to support that it was the successor trustee to JPMorgan.⁴ 24 (Beier’s Obj., App. 104.) He also argued that there is broken chain of title with 25 26 3 The Court does not discuss objections that Beier lodged with the bankruptcy court but which he does not raise on appeal.

27 4 BONY identifies as BONY, “formerly known as The Bank of New York, as Successor Trustee to 28 JPMorgan Chase Bank, N.A., as Trustee for the Bear Steans ALT-A Trust, Mortgage Pass-Through Certificates, Series 2005-04.” (Opp’n 2 n.1.) 1 respect to the Deed of Trust because no document shows a transfer from Countrywide 2 or a transfer to MERS such that MERS could transfer the Deed of Trust to BONY.

3 (Beier’s Obj., App. 104–05.) Second, Beier contended that the Note is unenforceable 4 because the Sale Order released the lien and the statute of limitations for enforcement 5 of the Note elapsed. (Beier’s Obj., App. 108.) 6 BONY opposed Beier’s objection. (App. 203–26 (“Opp’n Obj.”).) BONY 7 asserted three arguments relevant to this appeal.

First, BONY argued that issue 8 preclusion, based on rulings in Beier’s prior bankruptcy and adversary proceedings, 9 estops Beier from challenging its Proof of Claim. (Opp’n Obj., App. 214.) Second, 10 BONY, as holder of the Note and Deed of Trust and beneficiary of record, asserted 11 standing to file its Proof of Claim. (Opp’n Obj., App. 215–18.) Lastly, BONY argued 12 that it still has a right to the Property’s sale of proceeds.

(Opp’n Obj., App. 219–23.) 13 On January 9, 2024, the bankruptcy court held a hearing on Beier’s objection. 14 (App. 376–96 (“Obj. Hr’g Tr.”).) On January 24, 2024, the court entered an order 15 overruling Beier’s objection. (Order Overruling Obj.)

As relevant to this appeal, the 16 court first addressed Beier’s argument that BONY does not hold the Note and Deed of 17 Trust. (Order Overruling Obj., App. 401.) The court explained that, under California 18 law, a person is a “holder” entitled to enforce an instrument if the person is “in 19 possession” of that instrument and (1) is identified on the instrument or (2) if the 20 instrument does not state a payee.

(Order Overruling Obj., App. 402 (quoting Cal. 21 Com. Code § 1201(b)(21)(A)).) The court then determined that Countrywide—the 22 Note’s original beneficiary—indorsed the Note in blank and that BONY currently 23 possesses the Note. (Order Overruling Obj., App. 402.) Even though the

Note was 24 originally indorsed to JPMorgan, the court found that it “was crossed out and voided.” 25 (Order Overruling Obj., App.

402.) As to the Deed of Trust, the court traced 26 Countrywide’s transfer to MERS, and MERS’s transfer to BONY, providing BONY 27 standing to enforce the instrument and file the Proof of Claim. (Order Overruling 28 Obj., App. 402.) 1 Second, the court held that while issue preclusion was not proper, “further 2 litigat[ion] on this issue of chain of title is likely precluded under the related doctrine 3 of claim preclusion as it undoubtedly arose from the common nucleus of operative 4 facts, or from a single transaction, that was decided by the prior litigation.” (Order 5 Overruling Obj., App.

405.) Last, the court concluded that even if the statute of 6 limitations barred BONY from foreclosing on the property, it does not bar BONY 7 from recovering on the Property’s sale proceeds. (Order Overruling Obj., App. 406.) 8 Based on its findings, the court determined that BONY has a valid proof of 9 claim and overruled Beier’s objection. (Order Overruling Obj., App.

407.) 10 D. Motion for Reconsideration 11 On February 7, 2024, Beier filed a Motion for Reconsideration of the 12 bankruptcy court’s order overruling his claim objection. (App. 408–19 (“Mot. 13 Recons.”).) Beier argued that he found evidence that undermines BONY’s chain of 14 title. (Mot. Recons., App. 410.) Specifically, Beier purportedly discovered evidence 15 that a third party—Wells Fargo Bank, N.A. (“Wells Fargo”)—had claimed ownership 16 of the Note.

(Mot. Recons., App. 410.) In support, Beier cited a “Supplemental 17 Memorandum” filed in his 2008 prior bankruptcy, where Wells Fargo, through MERS, 18 asserted that Countrywide assigned it the Note. (Mot. Recons., App. 415; see 19 App. 423–31 (“Suppl. Mem.”).) Beier seized on the court’s language in its order 20 overruling his objection, that “no rival claimant has emerged which one would have 21 expected on a \$2.7 million obligation were there really a question.” (Order 22 Overruling Obj., App.

403.) Based on this “new” evidence, Beier asked the court to 23 reconsider its prior ruling because its order “was premised on the incorrect factual 24 assumption that no other party had come forward claiming to own the” Note and 25 Trust. (Mot. Recons., App. 415.)

Therefore, Beier argued, BONY could not satisfy its 26 burden that it owns the Note and Deed of Trust. (Mot. Recons., App. 415–16.) 27 BONY opposed the motion. (App. 432–47 (“Opp’n Mot. Recons.”).) On 28 March 5, 2024, the bankruptcy court held a hearing on Beier’s Motion for 1 Reconsideration. (App. 453–62 (“Recons. Hr’g Tr.”).)

On March 21, 2024, the court 2 denied the motion. (Order Den. Mot. Recons, App. 432–47.) In denying the motion, 3 the court first held that Beier could not demonstrate the evidence was newly 4 discovered, as MERS filed the Supplemental Memorandum in Beier’s 2008 5 bankruptcy. (Order Den. Mot. Recons, App. 467.)

Second, the court found no clear error of fact, as its denial of Beier's objection "was not solely based on the absence of a rival claimant, but also on the evidence provided by BONY that qualified it as a note holder and beneficiary of the deed of trust." (Order Den. Mot. Recons, App. 467.) Finally, the court noted that "no evidence has been provided to show that Wells Fargo is currently the note holder and beneficiary (nor claims to be) at any time since 2008, nor has any representative from Wells Fargo come forward stating that they are a rival claimant in this current bankruptcy case." (Order Den.

Mot. Recons, App. 467.) E. Appeal On April 5, 2024, Beier filed his Notice of Appeal in this Court. (Notice of Appeal, ECF No. 1.) On October 24, 2024, he filed his opening brief. (Opening Br.) On November 18, 2024, BONY filed its opposition brief. (Opp'n Br.)

On December 2, 2024, Beier filed a reply. (Reply Br.) On January 15, 2025, the Court took the matter under submission without oral argument. (ECF No. 15.) III. JURISDICTION AND STANDARDS OF REVIEW The Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 158(a) and is sitting as a single-judge court of appeal.

The Court reviews the bankruptcy court's conclusions of law de novo and its factual findings for clear error. In re Salazar, 430 F.3d 992, 994 (9th Cir. 2005). IV. DISCUSSION Beier raises two issues on appeal: (1) whether the bankruptcy court erred in overruling Beier's objection to BONY's Proof of Claim, and (2) whether the bankruptcy court erred in denying Beier's Motion for Reconsideration.

(Opening Br. 2–3.) A. Claim Objection Beier challenges the bankruptcy court's denial of his claim objection on three grounds. First, Beier contends that the bankruptcy court impermissibly shifted the burden of proof to him to disprove BONY's Proof of Claim. (Opening Br. 15–16.) Second, he argues that the bankruptcy court erred in finding that BONY is the holder of the claim it asserts.

(Id. at 16.) Third, he maintains that the Sale Order and statute of limitations bar BONY's claim. (Id. at 16–19.) 1. Burden of Proof Beier's first challenge on appeal is that the bankruptcy court impermissibly shifted the burden of proof to him, instead of placing the burden on BONY. (Id. at 14–16.)

The Court reviews the bankruptcy court's allocation of burden of proof de novo. See *Lopez v. Catalina Channel Express, Inc.*, 974 F.3d 1030, 1033 (9th Cir. 2020). The Bankruptcy Code, Bankruptcy Rules, and case law "have put in... place a general procedure to allocate the burdens of proof and persuasion in determining whether a claim is allowable." *Lundell v. Anchor Constr.*

Specialists, Inc. (In re *Lundell*), 223 F.3d 1035, 1039 (9th Cir. 2000). Under 11 U.S.C. § 502(a), "[a] proof of claim is deemed allowed unless a party in interest objects." *Id.* A proof of

claim is 19 “prima facie evidence of the validity and amount of the claim.” Id. (quoting Fed. R. 20 Bankr. P. 3001(f)). 21 Once a party in interest objects to a proof of claim, there is a “dispute which is a 22 contested matter... and must be resolved after notice and opportunity for hearing 23 upon a motion for relief.” Id. In this circumstance, “the proof of claim provides 24 ‘some evidence as to its validity and amount’ and is ‘strong enough to carry over a 25 mere formal objection without more.’” Id. (quoting *Wright v. Holm (In re Holm)*, 26 931 F.2d 620, 623 (9th Cir.

1991)). Therefore, to overcome a proof of claim, an 27 objector must provide “sufficient evidence” that “show[s] facts tending to defeat the 28 claim by probative force equal to that of the allegations of the proofs of claim 1 themselves.” Id. (second quoting *In re Holm*, 931 F.2d at 623). If an objector 2 “produces sufficient evidence to negate one or more of the sworn facts in the proof of 3 claim, the burden reverts to the claimant to prove the validity of the claim by a 4 preponderance of the evidence.” Id. 5 Beier does not direct the Court to specific language the bankruptcy court used 6 to indicate that it had shifted the burden of proof to him but cites generally to the 7 bankruptcy court’s conclusion that BONY’s proof of claim is valid.

(See Opening 8 Br. 14–16.) Nevertheless, upon review of the order, the Court concludes that the 9 bankruptcy court used the appropriate standard. First, the bankruptcy court recited the 10 very standard for which Beier advocates, and which the Court lays out above. (See 11 Order Overruling Obj., App. 401; Opening Br. 13–14.)

Second, the bankruptcy court 12 employed language indicating that it placed the burden on BONY, and found that 13 BONY met its burden, not that Beier failed to meet his. (Order Overruling Obj., 14 App. 401 (“BONY readily establishes its standing...”); id. at 402–03 (“BONY’s 15 opposition had provided sufficient explanation of how it is the proper holder of both 16 the Promissory Note and Deed of Trust.”).)

17 As best as the Court can tell, Beier takes issue with the bankruptcy court’s 18 following statement in its recitation of facts: 19 Debtor questions how BONY became the owner of the promissory note 20 and the deed of trust based on the proof of claim and its alleged chain of title issues. But the Jae Min declaration submitted by BONY is the only 21 evidence presented and this evidence confirms that BONY is the holder 22 of the note through acquisition and authorized servicers.

Whatever theory debtor might have as to why BONY might not be the current 23 holder is not backed up by anything except argument. 24 25 (Order Overruling Obj., App. 399.) This statement is factually accurate; Beier did not 26 present any evidence but rather challenged BONY’s Proof of Claim based on the 27 documents BONY provided with its claim. (See Beier’s Obj.)

And the court did not 28 reject Beier’s objection solely because he failed to offer evidence. Instead, it found 1 that BONY’s proffered evidence supported a denial of the objection. The

bankruptcy court reiterated this in its order on Beier's Motion for Reconsideration, highlighting that its prior ruling was based "on the evidence provided by BONY that qualified it as a note holder and beneficiary of the deed of trust." (Order Den.

Mot. Recons., 5 App. 467 (emphasis added).) Had Beier offered evidence that sufficiently undermined BONY's evidence, then BONY may not have met its burden. But Beier did not offer any such evidence, and the bankruptcy court's accurate observation about this does not mean it improperly shifted the burden of proof. Accordingly, by placing the burden on BONY, the bankruptcy court used the correct standard of proof in evaluating Beier's claim objection.

2. Holder of Note and Deed of Trust Next, Beier argues that the bankruptcy court erred in concluding that BONY is the holder of the Note and Deed of Trust. (Opening Br. 15–16.) Beier contends that he "showed precisely the issues with the chain of title and why [BONY] had not shown that it was the holder of the claim," and BONY failed to "present the evidence necessary to fill in these gaps." (Id. at 15.)

Whether BONY is the holder of the Note and Deed of Trust is a question of state law. See *Butner v. United States*, 440 U.S. 48, 54 (1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law."); *Kirschner v. Blixseth*, No. 2:11-cv-08283-GAF (SPx), 2014 WL 21 12573851, at *8 (C.D. Cal. June 18, 2014) (applying California law in determining holder of note), *aff'd*, 667 F. App'x 643 (9th Cir.

2016). a. Holder of the Note California law provides that the persons entitled to enforce an instrument include "the holder of the instrument." Cal. Com. Code § 3301(a). A "holder" is "the person in possession of a negotiable instrument that is payable either to bearer or, to an identified person that is the person in possession..." Id. § 1201(b)(21)(A).

A "bearer" is "a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank. Id. § 1201(b)(5). In other words, an instrument is payable to bearer if it "[d]oes not state a payee." Id. § 3109(a)(2); see *Lane v. Bank of N.Y. Mellon* (In re Lane), 959 F.3d 1226, 1228 4 (9th Cir.

2020) ("Countrywide later endorsed the note 'in blank,' which made it payable to the bearer."). Additionally, "[f]or the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument." Cal. Com. Code § 3204. An "allonge" is one such type of paper. See Allonge, Black's Law Dictionary (12th ed.

2024) (defining "allonge" as "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements"); *Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 757 n.1 (9th Cir. 2017) (same) (quoting an earlier edition of Black's Law Dictionary). While the Note

indicates that it was originally indorsed to JPMorgan, the 14 bankruptcy court concluded that this indorsement was crossed out and voided.

(Order 15 Overruling Obj., App. 402; see Note, App. 237; Min Decl. ¶ 5, App. 231 (“The 16 endorsement stamp from Countrywide Home Loans, Inc. to JPMorgan Chase Bank, as 17 Trustee on the Note was voided.”).) This conclusion of fact is not clearly erroneous. 18 See *In re Lundell*, 223 F.3d at 1040 (evaluating whether bankruptcy court’s findings 19 regarding proof of claim were clearly erroneous).

On review of the Note, the original 20 indorsement to JPMorgan was crossed out. This conclusion is further supported by 21 the allonge, issued by Countywide and attached to the Note. (See Note, App. 238; 22 Min Decl. ¶ 6, App. 231 (declaring that the allonge is attached to the Note).) 23 Consistent with the crossed out original indorsement, the allonge does not identify a 24 payee.

(See Note, App. 238 (leaving blank line after “Pay to the Order of”).) 25 26 27 5 Beier states that the allonge “fails to identify the payee.” (Opening Br. 8.) As noted, this does not 28 negate the allonge’s effect; rather, it means that allonge is indorsed in blank. See, e.g., Cal. Com. Code § 3109(a)(2). 1 As a legal matter, Beier asserts that a crossed-out indorsement is not an 2 indorsement in blank.

(Reply Br. 4.) Neither party nor the bankruptcy court 3 identified a court that has previously addressed this issue. 4 The California Commercial Code indicates an answer. California Commercial 5 Code section 3207 provides: 6 Reacquisition of an instrument occurs if it is transferred to a former 7 holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first 8 became a holder of the instrument.

If the cancellation causes the 9 instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is 10 discharged, and the discharge is effective against any subsequent holder. 11 12 This provision contemplates that a former holder may cancel indorsements after it 13 reacquires the instrument.

One way to cancel an indorsement is by crossing it out. 14 See Unif. Com. Code § 3-207 cmt. (stating, in comment of provision identical to 15 California Commercial Code section 3207, that a former holder can obtain holder 16 status “by striking the former holder’s indorsement and any subsequent 17 indorsements”).

Therefore, crossing out an indorsement can have the effect of 18 cancelling that indorsement. 19 Section 3207 also supports that, in certain circumstances, cancelling an 20 indorsement can result in the instrument being indorsed in blank.

The statute provides 21 that cancellation can “cause[] the instrument to be payable to the reacquirer or to 22 bearer.” Cal. Com. Code § 3207 (emphasis added). As noted, one way an instrument 23 is payable to bearer is if it “[d]oes not state a payee.” Id. § 3109(a)(2).

The statute 24 thus recognizes that cancelling an indorsement can result in an instrument indorsed in 25 blank. 26 Accordingly, the evidence supports that Countrywide Home Loans, Inc., who 27 issued the loan and originally indorsed it to JPMorgan, crossed out the original 28 indorsement and attached the allonge to the Note. This resulted in an indorsement in 1 blank, meaning that the holder of the loan is entitled to payment.

See id. § 3301(a). 2 Based on the evidence before the Court, BONY unquestionably is the holder of the 3 Note and has been since it filed its Proof of Claim. (Min Decl. ¶ 6, App. 231.) Thus, 4 the bankruptcy court did not err in concluding that BONY holds the Note. 5 b. Holder of the Deed of Trust 6 Under California law, a deed of trust is a lien on property.

Monterey S.P. 7 P’ship v. W.L. Bangham, Inc., 49 Cal. 3d 454, 460 (1989). “[O]nly the ‘true owner’ 8 or ‘beneficial holder’ of a Deed of Trust can bring to completion a nonjudicial 9 foreclosure.” Yvanova v. New Century Mortg. Corp., 62 Cal. 4th 919, 928 (2016) 10 (alteration in original). 11 Beier argues that there “is a broken chain of title,” so the bankruptcy court erred 12 in concluding that BONY holds beneficiary interest in the Deed of Trust.

(Opening 13 Br. 7.) Beier is incorrect because chain of title is not broken. (Order Overruling Obj., 14 App. 402–03.) The Deed of Trust identifies Countrywide as “Lender” and MERS as 15 “the beneficiary” and “nominee for Lender and Lender’s successors and assigns.” 16 (Deed of Trust, App. 240–41.) It further states that: 17 Borrower understands and agrees that MERS holds only legal title to the 18 interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender 19 and Lender’s successors and assigns), has the right: to exercise any or all 20 of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but 21 not limited to, releasing or canceling this Security Instrument.

22 23 (Deed of Trust, App. 241–42.) This language allows MERS to assign the Deed of 24 Trust. See, e.g., Lopez v. United Guar. Residential Ins. Co., No. 2:16-cv-07898-CAS 25 (SKx), 2016 WL 7117244, at *4 (C.D. Cal. Dec. 5, 2016) (interpreting identical 26 language); Schwartz v. U.S. Bank, Nat’l Ass’n, No. 2:11-cv-08754-MMM (JCGx), 27 2012 WL 10423214, at *6 & n.26 (C.D.

Cal. Aug. 3, 2012) (same). 28 1 On June 7, 2010, MERS, as beneficiary of the Deed of Trust, assigned the Deed 2 of Trust to BONY, which was recorded. (June 2010 Assignment.) Then, on June 15, 3 2023, MERS executed a “Corrective Assignment” to BONY to add “nominee 4 verbiage” to the June 2010 assignment, which was recorded. (Corrective 5 Assignment.) Based on these assignments, the Deed of Trust can be traced from 6 Countrywide and MERS to BONY.

7 Accordingly, the bankruptcy court did not err in concluding that BONY is the 8 holder of the Deed of Trust.^{6 9 3} Entitlement to Sale Proceeds 10 Beier also argues that the bankruptcy court erred in deciding that BONY has a 11 secured claim in the sale proceeds of the Property. (Opening Br. 10–12, 17–18.) 12 On November 15, 2023, the bankruptcy court entered the Sale Order through 13 which it granted the sale of the Property for \$3.2 million, including authorization for 14 the trustee to make a \$2.4 million interim distribution to BONY and deposit the 15 balance in a trust account pending settlement negotiations or outcome of future 16 litigation.

(Sale Order, App. 196–98.) On November 30, 2023, the sale closed, and 17 the trustee distributed \$2.4 million to BONY. (SA 686–87.) In the Sale Order, the 18 court ordered that “[t]he sale is free and clear of any and all liens and interests, 19 including” BONY’s Deed of Trust. (Sale Order ¶ 5, App. 197.)

The court did not 20 explicitly state that BONY’s liens would attach to the sale proceeds of the Property, 21 (Sale Order), so Beier argues that BONY does not have a claim against those 22 proceeds, (Opening Br. 17–18). 23 24 6 BONY also argues that Beier cannot challenge its Proof of Claim based on claim preclusion. 25 (Opp’n 15–20.)

However, it is not clear whether the bankruptcy court actually decided that Beier’s objection is precluded or merely explained which way it was leaning if it had to decide the issue. 26 The court stated that “further litigating on this issue of chain of title is likely precluded under the related doctrine of claim preclusion.” (Order Den. Obj. 405 (emphasis added).)

Given the 27 ambiguity as to whether the bankruptcy court decided this issue, and the Court’s finding that the 28 bankruptcy court did not err in concluding BONY is the holder of the Note and Deed of Trust, the Court does not address whether Beier’s objection is barred by claim preclusion. 1 In rejecting this argument, the bankruptcy court held that “[w]hile it would 2 perhaps have been clearer to expressly attach the lien” in the Sale Order, the lien did 3 attach to the sale proceeds.

(Order Overruling Obj., App. 406–07.) The court noted 4 that Beier offered no case law to support that a Sale Order must have explicit language 5 for a lien to attach. (Order Overruling Obj., App. 407.) And it held that “[i]n this 6 context it is abundantly clear that BONY’s claim was authorized in bulk to be paid 7 directly... and only a smaller balance was to be separately held pending litigation.” 8 (Order Overruling Obj., App.

406–07.) The court further questioned whether, under 9 the facts of this case, it even had the authority to make a lien disappear after a sale 10 order. (Order Overruling Obj., App. 406); see 11 U.S.C. § 363(f). On these bases, the 11 court found “that the BONY lien attached to the sale proceeds of the Property and the 12 lack of formal language to that effect was inconsequential in this context.” (Order 13 Overruling Obj., App.

406–07.) On appeal, Beier argues—again without citing any 14 authority—that the bankruptcy court must have explicitly attached the liens to the sale 15 proceeds in the Sale Order. (Opening Br. 17–18.) 16 “[I]t is well recognized that a bankruptcy court has the power to interpret and 17 enforce its own orders.” *Wilshire Courtyard v. Cal. Franchise Tax Bd.* (In re *Wilshire 18 Courtyard*), 729 F.3d 1279, 1289 (9th Cir.

2013). A court reviews the bankruptcy 19 court’s interpretation of its own order for abuse of discretion. E.g., *Rosales v. Wallace* 20 (In re *Wallace*), 490 B.R. 898, 906 (B.A.P. 9th Cir. 2013) (“We accord substantial 21 deference to the bankruptcy court’s interpretation of its own orders and will not 22 overturn that interpretation unless we are convinced it amounts to an abuse of 23 discretion.”).

24 Had the court stated in the Sale Order that the sale of the Property was free and 25 clear of BONY’s lien, without more, perhaps Beier would be correct that BONY’s lien 26 did not attach to the sale proceeds. However, the Sale Order both includes and omits 27 language that supports the bankruptcy court’s interpretation that BONY’s lien attached 28 to the sale proceeds of the Property.

1 In the Sale Order, the bankruptcy court authorized the trustee to make a 2 \$2.4 million “initial distribution” to BONY “and deposit the balance of the net sale 3 proceeds in a trust account pending settlement negotiations or the outcome of 4 litigation.” (Sale Order ¶ 9, App. 198.) Further, the court provided the trustee 5 discretion “to make a further disbursement to BONY if [Beier] fails to commence 6 litigation within 30 days of” the Sale Order.

(Sale Order ¶ 10, App. 198.) Had the 7 bankruptcy court intended to detach the sale proceeds from BONY’s lien, there would 8 be no basis for the trustee to distribute the sale proceeds to BONY. There would have 9 also been no reason to place the remaining sale proceeds with the trustee pending 10 litigation between BONY and Beier if BONY could not recover the proceeds upon 11 winning the litigation.

12 Further, in the Sale Order, the bankruptcy court did not make a finding that 13 would permit it to authorize the sale of the Property without BONY’s lien attaching to 14 the proceeds. Section 363(f) provides that the sale of estate property be made free and 15 clear of liens and other interests “if one of several criteria are met.” In re *Groves*, 16 652 B.R.

104, 114 (B.A.P. 9th Cir. 2023), *aff’d*, No. 23-60040, 2024 WL 3041548 17 (9th Cir. June 18, 2024); see 11 U.S.C. §§ 363(e), (f)(1)–(5), (g), (h) (providing for 18 when the trustee may sell property free and clear). Beier does not refute this premise 19 but argues that if the bankruptcy court improperly authorized the sale without 20 attaching BONY’s liens as required by § 363(f), the proper remedy is for BONY to 21 appeal the Sale Order.

(Reply Br. 12.) But this misstates the significance of the 22 bankruptcy court not having a basis to allow the sale free and clear of BONY's liens. 23 The significance is not that the bankruptcy court may have erred in releasing the liens; 24 rather, the fact that the court had no basis to allow a free and clear sale is further 25 evidence that the court did not release the liens in the first instance.

26 While, as the bankruptcy court recognized, (Over Overruling Obj., App. 406– 27 07), it would have been clearer to explicitly state that it was attaching the lien to the 28 sale proceeds, the language and context of the Sale Order supports that the court did 1 indeed attach BONY's lien to the sale proceeds.

Accordingly, the bankruptcy court 2 did not abuse its discretion in interpreting its Sale Order as having attached BONY's 3 lien to the Property's sale proceeds. 4 Based on the foregoing, the Court rejects each of Beier's challenges on appeal 5 to the bankruptcy court's order overruling Beier's claim objection and affirms that 6 order. 7 B. Motion for Reconsideration 8 Beier also appeals the bankruptcy court's denial of his Motion for 9 Reconsideration.

(Order Mot. Recons., App. 463–68) 10 Federal Rule of Bankruptcy Procedure 9023, which incorporates Federal Rule 11 of Civil Procedure 59(e), permits a party to file a motion for reconsideration. A court 12 may grant a motion for reconsideration only in certain circumstances. 389 Orange St. 13 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999) (“Under Rule 59(e), a motion 14 for reconsideration should not be granted, absent highly unusual circumstances, unless 15 the district court is presented with newly discovered evidence, committed clear error, 16 or if there is an intervening change in the controlling law.”) On appeal, Beier argues 17 that the bankruptcy court should have granted his Motion for Reconsideration because 18 the court “committed clear error” in basing its claim objection ruling “on an error of 19 fact,” and reconsideration is needed “to correct a manifest error” and avoid a 20 “manifest injustice.” (Opening Br.

20, 22.) 21 As to his contention of “manifest injustice,” Beier repeats his position that the 22 bankruptcy court applied the wrong burden of proof to adjudicate his claim objection. 23 (Id. at 22.) For the reasons discussed above, the bankruptcy court used the appropriate 24 burden of proof.

Therefore, the Court affirms the bankruptcy court's denial of Beier's 25 Motion for Reconsideration on this basis. 26 Beier also argues that the bankruptcy court made a clear and manifest error by 27 “premis[ing]” its denial of his claim objection “on the incorrect factual assumption 28 that no other party had come forward to own the” Note and Deed of Trust.

(Opening 1 Br. 21.) In its order overruling Beier's objection, the court “note[d] that no rival 2 claimant has emerged which one would have expected on a \$2.7 million obligation 3 were there really a question.” (Order Overruling Obj., App. 403.)

After the court 4 denied his claim objection, Beier purportedly discovered a “Supplemental 5 Memorandum” filed in 2008 in one of his prior bankruptcies. (Order Den. Recons., 6 App. 465.) In this document, filed by MERS on behalf of Wells Fargo, Wells Fargo 7 claimed to hold the Note and Deed of Trust. (Suppl. Mem., App. 424–26.) Beier 8 contends that the bankruptcy court erred in not reconsidering its claim objection order 9 in light of this evidence, which he claims undermines the court’s conclusion of fact 10 that no other person had claimed ownership of the Note and Deed of Trust.

(Opening 11 Br. 21.) Further, Beier asserts that the court “manifestly erred by not insisting on 12 complete chain of title when it is evident that others have asserted this same claim in 13 the past.” (Id.) 14 Beier asserts the basis for reconsideration is for clear and manifest error, but he 15 relies on previously unpresented evidence to support his motion.

This makes Beier’s 16 motion really one for reconsideration based on newly discovered evidence. However, 17 as the bankruptcy court correctly found, the Supplemental Memorandum did not 18 constitute “newly discovered evidence” for purposes of Rule 59(e) reconsideration. 19 (See Order Den. Recons., App. 467.) This document was filed in one of Beier’s prior 20 bankruptcies, meaning Beier was aware of and had access to this evidence prior to the 21 hearing on his claim objection.

See, e.g., *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 22 n.6 (9th Cir. 1994) (“Evidence is not newly discovered if it was in the party’s 23 possession at the time... or could have been discovered with reasonable diligence.”). 24 Even if the Supplemental Memorandum had been newly discovered, such that it 25 could be considered on a motion for reconsideration, the bankruptcy court correctly 26 denied Beier’s motion.

As the court noted, its claim objection order “was not based 27 solely on the absence of a rival claimant.” (Order Den. Recons., App. 467.) For the 28 reasons discussed above, the court’s order was properly based “on the evidence 1 || provided by BONY that qualified it as a note holder and beneficiary of the deed of 2 || trust.” (Order Den. Recons., App. 467.)

The Supplemental Memorandum does not 3 || alter this analysis. Beier has not offered any evidence that Wells Fargo—or any other person—currently holds the Note or Deed of Trust that undermines the bankruptcy 5 || court’s prior conclusion.

In fact, the Supplemental Memorandum is consistent with 6 || BONY’s current claim to the Note and Deed of Trust. Wells Fargo could have held the Note in 2008 through possession. (See Suppl. Mem., App. 426 (“MERS has 8 | established that Wells Fargo is in possession of the Note.”)); Cal. Com. Code 9 §§ 1201(b)(21)(A), 3109(a)(2), 3301(a). BONY is now in possession of the Note.

10 || And, when it filed the Supplemental Memorandum, MERS held the hen rights under 11 || the Deed of Trust, (see Suppl. Mem., App. 425), which it later assigned to BONY, (see 12 || June 2010

Assignment, App. 96; Corrective Assignment, App. 267-69.) 13 Accordingly, the bankruptcy court properly denied Beier's Motion for 14 || Reconsideration. 15 Vv. CONCLUSION 16 For the foregoing reasons, the Court AFFIRMS the Bankruptcy Court's Orders 17 || on Beier's Claim Objection and Motion for Reconsideration.

The Clerk of the Court 18 | shall close this case. 19 20 IT IS SO ORDERED. 21 22 June 27, 2025
23 os 24 Mt 5 OTIS D. IGH, II UNITED STATES DISTRICT JUDGE 27 28