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NOT FOR PUBLICATION

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

1 In re:) BAP No. CC-11-1374-MkHHa
2)
3 JOAN KATHLEEN GREEN,) Bk. No. ND 09-11614-RR
4)
5 Debtor.)
6)
7)
8)
9 JOAN KATHLEEN GREEN,)
10)
11 Appellant,)
12)
13 v.) **MEMORANDUM***
14)
15 WATERFALL VICTORIA MASTER FUND)
16)
17 2008-1 GRANTOR TRUST SERIES A;)
18)
19 QUANTUM SERVICING CORPORATION,)
20)
21 Appellees.)
22)
23)
24)
25)

Submitted Without Oral Argument
on September 21, 2012

Filed - October 15, 2012

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Robin L. Riblet, Bankruptcy Judge, Presiding

Appearances: Appellant Joan Kathleen Green pro se on brief;
Melissa Robbins Coutts of McCarthy & Hotlhus, LLP
on brief for appellees Waterfall Victoria Master
Fund 2008-1 Grantor Trust Series A and Quantum
Servicing Corporation.

Before: MARKELL, HOLLOWELL and HAMMOND,** Bankruptcy Judges.

*This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

**Hon. M. Elaine Hammond, United States Bankruptcy Judge for
the Northern District of California, sitting by designation.

1 Waterfall attached to its moving papers the following
2 documents as exhibits:

- 3 1. A conformed copy of a deed of trust ("Deed of Trust") dated
4 May 24, 2007 (recorded as document no. 2007036626 in the San
5 Luis Obispo County Recorder's Office) identifying Green as
6 borrower, Greenpoint Mortgage Funding, Inc. as lender
7 ("Greenpoint") and Mortgage Electronic Registration Systems,
8 Inc. or "MERS"² as the beneficiary, solely as the "nominee"
9

10 ²Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034
11 (9th Cir. 2011), recently described MERS and its general purpose:

12 MERS is a private electronic database, operated by
13 MERSCORP, Inc., that tracks the transfer of the
14 "beneficial interest" in home loans, as well as any
15 changes in loan servicers. After a borrower takes out
16 a home loan, the original lender may sell all or a
17 portion of its beneficial interest in the loan and
18 change loan servicers. The owner of the beneficial
19 interest is entitled to repayment of the loan. For
20 simplicity, we will refer to the owner of the
21 beneficial interest as the "lender." The servicer of
22 the loan collects payments from the borrower, sends
23 payments to the lender, and handles administrative
24 aspects of the loan. Many of the companies that
25 participate in the mortgage industry - by originating
26 loans, buying or investing in the beneficial interest
27 in loans, or servicing loans - are members of MERS and
28 pay a fee to use the tracking system.

22 * * *

23 [The process of recording assignments of deeds of
24 trust] became cumbersome to the mortgage industry,
25 particularly as the trading of loans increased. It has
26 become common for original lenders to bundle the
27 beneficial interest in individual loans and sell them
28 to investors as mortgage-backed securities, which may
themselves be traded. MERS was designed to avoid the
need to record multiple transfers of the deed by

(continued...)

1 for the lender Greenpoint; and

2 2. An Adjustable Rate Note ("Note") dated May 24, 2007, in the
3 amount of \$999,900.00, identifying Green as borrower and
4 Greenpoint as lender.

5 The bankruptcy court entered an order in July 2010 denying
6 Waterfall's Relief From Stay Motion "for lack of cause shown."

7 Meanwhile, LoanCare had filed in December 2009 a proof of
8 claim ("Proof of Claim") asserting a secured claim based on the
9 same Note and Deed of Trust. In the proof of claim, LoanCare did
10 not state that it was acting as servicing agent for Waterfall,
11 nor did it even mention Waterfall's name.

12 Nonetheless, relying on the information contained in the May
13 2010 Relief From Stay Motion, Green filed in September 2010 a
14 motion entitled: "Motion For Proof of Perfected Ownership
15 Interest and Right to Collect on Proof of Claim" seeking relief
16 against both LoanCare and Waterfall with respect to the Proof of
17 Claim.³ Even though a conformed copy of the recorded Deed of
18 Trust was attached to the Proof of Claim, Green asserted that the
19 Proof of Claim did not satisfy the requirements of Rule 3001(d)

20 ²(...continued)

21 serving as the nominal record holder of the deed on
22 behalf of the original lender and any subsequent
23 lender.

24 Id. at 1038-39 (citing Jackson v. Mortg. Elec. Reg. Sys., Inc.,
25 770 N.W.2d 487, 490 (Minn. 2009), and Robert E. Dordan, Mortgage
26 Electronic Registration Systems (MERS), Its Recent Legal Battles,
and the Chance for a Peaceful Existence, 12 Loy. J. Pub. Int. L.
177, 178 (2010)).

27 ³In essence, Green's motion objected to the Proof of Claim.
28 Accordingly, we hereinafter refer to this motion as the "Claim
Objection."

1 because the Proof of Claim contained insufficient evidence
2 demonstrating perfection of Waterfall's alleged lien on the
3 Property. According to Green, there was nothing recorded in the
4 public records for San Luis Obispo County indicating that
5 Waterfall, or anyone else, had taken from Greenpoint an
6 assignment of the Deed of Trust. Green argued that any interest
7 Waterfall claimed to have in the Note and the Deed of Trust was
8 invalid without a duly executed and recorded written assignment
9 of the Deed of Trust.

10 Alternately, Green argued that MERS's involvement in the
11 Loan transaction rendered unenforceable the lender's rights under
12 the Note and the Deed of Trust, regardless of who attempted to
13 assert those rights. It is difficult to follow Green's argument
14 on this point. On the one hand, she stated that, for purposes of
15 the Claim Objection, she was assuming that MERS held the original
16 Note. On the other hand, Green argued:

17 It is the Debtor's understanding that once a note is
18 registered with MERS, all subsequent assignments are
19 done electronically; MERS never acquires actual
physical possession of the note, nor do they acquire
any beneficial interest in the note

20 It is the Debtor's contention that MERS had no
21 beneficial interest in the note and since MERS was not
22 the title holder, the chain of title was broken and
consequently no one has standing to sue (obviously, the
servicing company [LoanCare], who filed the Proof of
Claim, has no beneficial interest in the note either).

23 * * *

24 As held by the Court in the bankruptcy case *In re*
25 *Walker* cited above, MERS has no authority to foreclose
on the Debtor's mortgage, since it is a 'mere nominee'.
26 And even more importantly, since MERS had no
beneficial, transferable interest in the Mortgage,
27 Waterfall cannot collect on the claim.

28 Claim Objection (Sept. 10, 2010) at p. 7 of 28.

1 Green also generally complained about MERS's electronic
2 mortgage registration system. According to Green, MERS's system
3 violates "the California Business and Professions Code, as well
4 as Unfair and Deceptive Acts and Practices" Id. at p. 8
5 of 28.

6 By way of relief, Green essentially asserted that the court
7 should require Waterfall to establish its "right to collect on
8 the claim" by demonstrating its "true ownership" of the Note and
9 the Deed of Trust. Id.

10 In October 2010, Waterfall and its new servicing agent
11 Quantum Servicing Corp. ("Quantum") filed a response to the Claim
12 Objection, along with a "Supplemental Declaration" of April
13 Kennedy in support of the response. In the Supplemental
14 Declaration, Ms. Kennedy declared that she was an employee of
15 Quantum, and that Quantum was Waterfall's new servicing agent.
16 Ms. Kennedy further stated that she had reviewed "business
17 records" reflecting a chain of transfers of the "beneficial
18 rights" under the Loan. According to Kennedy, the beneficial
19 rights were first held by Greenpoint but ultimately ended up with
20 Waterfall by January 2009. Kennedy also stated that the same
21 business records reflected a chain of transfers of the "servicing
22 rights" under the Loan. Kennedy declared that Greenpoint was the
23 first servicer of the Loan, that LoanCare was the second servicer
24 of the Loan and that Quantum was the third servicer of the Loan.
25 According to Kennedy, LoanCare was the servicing agent for the
26 Loan between August 2008 and September 2010. Kennedy's
27 statements regarding LoanCare and Waterfall are consistent with
28 Waterfall's claim that LoanCare filed the Proof of Claim in

1 December 2009 on behalf of Waterfall as the servicing agent under
2 the Loan.

3 In addition to Kennedy's declaration, Waterfall relied upon
4 all of the papers filed in support of its prior Relief From Stay
5 Motion. Waterfall argued that these items were sufficient to
6 establish the standing of its former servicing agent LoanCare to
7 file the Proof of Claim on Waterfall's behalf. Alternately,
8 Waterfall requested additional time to respond to the Claim
9 Objection so that its new servicing agent Quantum could obtain
10 and present additional documentation to substantiate Waterfall's
11 interest in the Loan.

12 Green filed a reply in support of her Claim Objection
13 ("Reply"). In her Reply, Green asserted that Waterfall should be
14 required to produce the Original of both the Note and the Deed of
15 Trust. The remainder of Green's Reply goes into more detail
16 about her complaints regarding MERS and its electronic
17 registration system. According to Green, MERS generally is used
18 by lenders to hide their identity from borrowers, to avoid
19 payment of recording fees, and to turn pools of loans into ponzi
20 schemes through the securitization process.

21 Significantly, for the first time in the Reply, Green
22 claimed: (1) that her Loan amounted to a contract of adhesion;
23 (2) that Waterfall would be unjustly enriched if it were allowed
24 to enforce its rights (if any) under the Loan; and (3) allowing
25 enforcement of the Loan would be unconscionable (collectively,
26 the "Unconscionability Claims"). But Green's Unconscionability
27 Claims were based solely on her general, unsubstantiated
28 allegations against MERS. Green did not in any way tie her

1 Unconscionability Claims to any specific alleged misconduct
2 concerning her particular Loan.

3 The bankruptcy court held two hearings on the Claim
4 Objection in the Fall of 2010. After the second hearing, the
5 court directed Waterfall to file a supplemental brief by the end
6 of 2010 in support of its standing to file the Proof of Claim,
7 and the continued the hearing on the claim objection to
8 January 11, 2011.

9 Waterfall and Quantum filed their supplemental brief
10 ("Supplemental Brief") on December 30, 2010. In it, Waterfall
11 admitted that written assignments of the beneficial interest in
12 the Deed of Trust were never drafted or recorded. According to
13 Waterfall, the registration information on MERS's website was
14 meant to serve as a substitute for the execution and recordation
15 of written assignments. More importantly, Waterfall claimed it
16 had standing to file the Proof of Claim because it was a "person
17 entitled to enforce" the Note within the meaning of § 3301(a) of
18 the California Commercial Code.⁴ Waterfall argued that it was a
19 "person entitled to enforce" under Cal. Com. Code § 3301(a)
20 because it was a "holder" of the Note. As Waterfall explained
21 it, pursuant to Cal. Com. Code § 1201(b)(21)(A), its possession
22 of the original Note indorsed in blank made it a holder of the
23 Note. Waterfall further argued that paper assignments of the
24 Deed of Trust were unnecessary either to perfect the lien created
25 by the Deed of Trust or to convey the beneficial interest under
26

27
28 ⁴Division 3 of the California Commercial Code is
California's version of Article 3 of the Uniform Commercial Code.

1 the Deed of Trust.

2 Green filed a response to the Supplemental Brief on
3 January 7, 2011, a few days before the continued claim objection
4 hearing. Green claimed that Cal. Com. Code § 9109(d)(11)
5 rendered Division 3 of the Cal. Com. Code inapplicable to
6 transactions creating or transferring liens on real property.
7 According to Green, the transfer of the lender's rights under the
8 Deed of Trust was governed by provisions of California's Civil
9 Code, particularly Cal. Civil Code § 1091, which required a
10 writing signed by the transferor. Green further argued that
11 Waterfall's attempt to rely solely on its status as a holder of
12 the original promissory note contravened both the California
13 Civil Code and the "lex situs" doctrine.⁵

14 At the January 11, 2011 continued hearing on the Claim
15 Objection, Waterfall appeared through its servicing agent
16 Quantum, which presented the original Note, indorsed in blank,
17 and the original Deed of Trust, to Green and to the Court. The
18 bankruptcy court advised Green that it did not receive, and had
19 not had an opportunity to review, her response to the
20 Supplemental Brief, but the court allowed Green to make the same
21 arguments as part of her oral argument at the hearing.

22 The bankruptcy court thereafter ruled that Greenpoint had
23 duly perfected its lien against the Property by recording the
24 Deed of Trust in the official records for San Luis Obispo County,
25 California. The court further ruled that Waterfall and its
26

27 ⁵We explain Green's reference to the lex situs doctrine in
28 our merits discussion, infra.

1 servicing agent Quantum were in possession of the original Note
2 indorsed in blank by Greenpoint, which gave them standing to
3 enforce the Note. Based on these rulings, the court held that it
4 was going to overrule Green's Claim Objection.

5 Notwithstanding the court's oral ruling at the January 11,
6 2011 hearing, there was a substantial delay before entry of an
7 order overruling the Claim Objection because neither Waterfall
8 nor Quantum lodged a proposed form of order. Ultimately, the
9 bankruptcy court entered a final order in July 2011. But before
10 that order was entered, a number of additional events occurred
11 that are relevant to this appeal. Foremost among them, Green
12 filed motions requesting a new hearing and seeking
13 reconsideration of the court's oral ruling (collectively, "Post-
14 hearing Motions"). According to Green, the bankruptcy court had
15 not given her adequate time to respond to the Supplemental Brief.
16 However, there was nothing particularly new about the Post-
17 hearing Motions. Green merely elaborated on the arguments she
18 had previously made in support of her Claim Objection.

19 Without holding an additional hearing, the bankruptcy court
20 entered an order denying the Post-hearing Motions, for
21 essentially the same reasons that it had stated when it orally
22 had overruled Green's Claim Objection.

23 Green appealed the order denying her Post-hearing Motions
24 (BAP No. CC-11-1253). But we dismissed that appeal on
25 jurisdictional grounds, because Green did not timely file her
26 notice of appeal within fourteen days of entry of that order.

27 On July 6, 2011, the bankruptcy court entered an order
28 overruling Green's Claim Objection. Green filed a notice of

1 appeal from that order on July 13, 2011.

2 **JURISDICTION**

3 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
4 §§ 1334 and 157(b)(2)(A) and (B). We have jurisdiction under
5 28 U.S.C. § 158, subject to the discussion set forth immediately
6 below.

7 Before we address the merits of this appeal, we first must
8 address a jurisdictional issue raised by the rather odd
9 procedural history of this matter. We agree with our prior BAP
10 panel that Green's appeal of the Post-hearing Motions was
11 untimely and should have been dismissed. However, we must
12 determine the proper scope of the appeal now before us, which was
13 timely filed after the court entered the order overruling the
14 Claim Objection. In this instance, the scope of this appeal
15 hinges on the finality of the bankruptcy court's orders.

16 Generally speaking, an order is final, rather than
17 interlocutory, only when it fully adjudicates the issues raised
18 and clearly manifests the court's intent to be its final act in
19 the matter. Brown v. Wilshire Credit Corp. (In re Brown),
20 484 F.3d 1116, 1120 (9th Cir. 2007) (quoting Slimick v. Silva
21 (In re Slimick), 928 F.2d 304, 307 (9th Cir. 1990)). To
22 ascertain the trial court's intent, we may look to the content of
23 the order, as well as the judge's and the parties' conduct.
24 In re Brown, 484 F.3d at 1120; In re Slimick, 928 F.2d at 308.

25 Green's appeal of the order denying her Post-hearing Motions
26 was an appeal from an interlocutory order, not final, because the
27 bankruptcy court did not intend that order to fully and finally
28 dispose of the entire matter - the Claim Objection.

1 Here, the bankruptcy court's comments at a hearing held on
2 June 29, 2011, reflect that the court had expected Waterfall to
3 lodge a proposed order memorializing the court's January 11, 2011
4 oral ruling overruling the Claim Objection, but that Waterfall
5 had not done so. In response to the court's comments at that
6 hearing, Waterfall and Quantum apparently lodged a proposed form
7 of order, which the court signed and entered on July 6, 2011.
8 That was the final order fully disposing of the Claim Objection.

9 Orders denying motions for new trial and motions for
10 reconsideration typically are final orders, but that is in part
11 because they usually are entered after entry of an order
12 disposing of the underlying dispute. Here, the converse is true.
13 The May 3, 2011 order denying Green's Post-hearing Motions was
14 entered before the court entered its July 6, 2011 order disposing
15 of the underlying Claim Objection. As a result, the order
16 denying Green's Post-hearing Motions was interlocutory, not
17 final, at the time it was entered.

18 When a litigant files an untimely appeal from an
19 interlocutory order, we must dismiss it. See Baldwin v. Redwood
20 City, 540 F.2d 1360, 1364 (9th Cir. 1976). However, that
21 interlocutory order ultimately merges into the final order, when
22 it eventually is entered, and a timely appeal taken from the
23 final order may cover both the final order as well as any
24 interlocutory order leading up to the entry of the final order.
25 Id.; see also U.S. v. Real Property Located at 475 Martin Lane,
26 Beverly Hills, CA, 545 F.3d 1134, 1140-41 (9th Cir. 2008).

27 Accordingly, both the order overruling the Claim Objection
28 and the order denying the Post-hearing Motions are within the

1 scope of this appeal. To the extent the parties' briefs address
2 issues raised by either order, we may consider them.

3 **ISSUE**

4 Did the bankruptcy court err when it overruled Green's Claim
5 Objection?

6 **STANDARDS OF REVIEW**

7 "An order overruling a claim objection can raise legal
8 issues (such as the proper construction of statutes and rules)
9 which we review de novo, as well as factual issues (such as
10 whether the facts establish compliance with particular statutes
11 or rules), which we review for clear error.' . . . We review de
12 novo whether a party has standing." Allen v. U.S. Bank, N.A.
13 (In re Allen), 472 B.R. 559, 565 (9th Cir. BAP 2012) (quoting
14 Veal v. Am. Home Mortg. Serv., Inc. (In re Veal), 450 B.R. 897,
15 906, 918 (9th Cir. BAP 2011)).

16 **DISCUSSION**

17 As a threshold matter, we note certain key facts that Green
18 has not disputed. Green has not disputed that Greenpoint loaned
19 her roughly \$1 million and that she executed the Note and the
20 Deed of Trust in exchange for the Loan. Green also has not
21 disputed that Greenpoint recorded the Deed of Trust in the
22 official records of San Luis Obispo County and that Greenpoint
23 indorsed the Note in blank. Nor has Green disputed that LoanCare
24 was acting as Waterfall's servicing agent at the time it filed
25 the Proof of Claim or that Quantum subsequently succeeded
26 LoanCare as Waterfall's servicing agent.

27 The sole issue raised in Green's Claim Objection was
28

1 Waterfall's standing to file the Proof of Claim.⁶ While there
2 are a number of different aspects to standing doctrine, Green's
3 Claim Objection focused on whether Waterfall was the party
4 entitled to enforce the Note and the Deed of Trust. This issue
5 implicated the prudential standing requirement that litigants
6 must assert their own legal rights and not the rights of others.
7 Sprint Commc'ns Co. v. APCC Servs., Inc., 554 U.S. 269, 289-90,
8 128 S.Ct. 2531, 2544 (2008); Warth v. Seldin, 422 U.S. 490, 499,
9 95 S.Ct. 2197, 2205 (1975). It also implicated the "real party
10 in interest rule," Civil Rule 17(a), which provides that "[a]n
11 action must be prosecuted in the name of the real party in
12 interest."⁷

13 We have plowed this same ground several times recently, most
14 notably in two published decisions, In re Allen, 472 B.R. 559,
15 and In re Veal, 450 B.R. 897. In those two decisions, we
16 generally held that a party has standing to file a proof of claim
17

18 ⁶In the reply she filed in the bankruptcy court in support
19 of her Claim Objection, Green sought for the first time to add
20 her Unconscionability Claims for consideration. By way of these
21 claims, Green apparently sought to have the court rule that
22 Waterfall should not be permitted to enforce the Note and the
23 Deed of Trust even if Waterfall established its standing. Green
24 has elaborated on these claims in her appeal briefs. However, in
25 addition to belatedly raising her Unconscionability Claims, Green
26 never offered any evidence to support them. In fact, these
claims were nothing more than unsubstantiated allegations of
general misconduct by MERS and its members, which Green generally
failed to connect to her particular Loan. Consequently, Green's
Unconscionability Claims cannot and do not support reversal of
the orders on appeal.

27 ⁷Rule 9014(c) makes Civil Rule 17 applicable in contested
28 matters, which include claim objections. In re Allen, 472 B.R.
at 565 n.3.

1 based on a promissory note secured by real property if that party
2 is a "person entitled to enforce" the note under § 3-301 of the
3 Uniform Commercial Code ("UCC"). In re Allen, 472 B.R. at 565;
4 In re Veal, 450 B.R. at 902. In relevant part, a party is a
5 person entitled to enforce the note if it is a "holder" of the
6 note, as defined in UCC § 1-201(b)(21)(A). In re Allen, 472 B.R.
7 at 565; In re Veal, 450 B.R. at 910-11. Under
8 UCC § 1-201(b)(21)(A), a "holder" includes a "person in
9 possession of a negotiable instrument⁸ that is payable . . . to
10 bearer" In turn, a negotiable instrument is payable to
11 the bearer when it is indorsed in blank. See UCC § 3-205(b)
12 ("If an indorsement is made by the holder of an instrument and it
13 is not a special indorsement, it is a 'blank indorsement.' When
14 indorsed in blank, an instrument becomes payable to bearer and
15 may be negotiated by transfer of possession alone until specially
16 indorsed."); see also In re Allen, 472 B.R. at 567.

17 Here, the record indicates that Waterfall's servicing agent
18 Quantum presented to the bankruptcy court the original Note
19 indorsed in blank by Greenpoint,⁹ thereby demonstrating that it
20

21 ⁸The bankruptcy court's ruling indicates that it treated
22 Green's Note as a negotiable instrument. Green has not
23 challenged that aspect of the bankruptcy court's ruling. In any
24 event, even if we assume that the Note did not meet all the
25 formal requirements to qualify as a true negotiable instrument
26 under UCC § 3-104, there were sufficient grounds for the court to
27 have treated the Note as if it were a negotiable instrument for
28 purposes of determining who is entitled to enforce the Note. See
In re Veal, 450 B.R. at 909 & nn. 14, 15.

⁹Green has not disputed that Greenpoint indorsed the Note in
blank, nor is there any evidence in the record which would
(continued...)

1 was in possession of the Note and that the Note was payable to
2 bearer. Based thereon, the bankruptcy court determined that
3 Waterfall had standing to file a proof claim based on the Note
4 and the Deed of Trust. In light of our holdings in Allen and
5 Veal, we perceive no error in the bankruptcy court's ruling.

6 On appeal, Green principally argues that the bankruptcy
7 court should not have applied UCC Article 3 to determine
8 Waterfall's standing. Green claims that Division 3 of the
9 California Commercial Code - California's version of UCC Article
10 3 does not apply. Instead, Green claims that a number of
11 provisions of California's Civil Code do apply, and that these
12 provisions prohibit the transfer of any interest in real
13 property, including the assignment of a deed of trust, absent an
14 executed and recorded writing. But Green's legal contentions are
15 simply wrong.

16 Green first argues that Cal. Com. Code Division 3 does not
17 apply because Cal. Com. Code § 9109(d)(11) expressly excepts from
18 Division 3's coverage "the creation or transfer of an interest in
19 or lien on real property."¹⁰ But Green misreads the statute. On
20

21 ⁹(...continued)
22 support a contrary finding. See generally UCC § 3-308 (providing
23 a presumption that indorsement signature is presumed to be
authentic and authorized); Cal. Com. Code § 3308 (same).

24 ¹⁰The parties to this appeal seem to agree that California
25 law should be applied to resolve their dispute. Given that the
26 Note is silent, that Green resides in California and that she
27 executed the Note and the Deed of Trust in California, we agree.
See Cal. Com. Code § 1301(b); see also Barclays Discount Bank
Ltd. v. Levy, 743 F.2d 722, 724-25 (9th Cir. 1984); In re Veal,
450 B.R. at 921 n. 41 (applying Arizona's counterpart to Cal.

(continued...)

1 its face, Cal. Com. Code § 9109(d)(11) only governs Division 9;
2 it simply does not address Division 3 and its coverage of
3 negotiable instruments such as the mortgage note at issue here.

4 Green next argues that Waterfall's standing should not be
5 based on Cal. Com. Code § 3301 because that statute is
6 inconsistent with the requirements under the Cal. Civil Code for
7 transferring an interest in California real property. In making
8 this argument, Green invokes the "lex situs" doctrine¹¹ and
9 states that the statutory scheme implemented by the Cal. Civil
10 Code, particularly Cal. Civil Code § 1091,¹² contemplates that
11 deeds of trust and other transfers of real property cannot be
12 made except by operation of an executed and recorded writing

14 ¹⁰(...continued)
15 Com. Code § 1301(b) under similar circumstances). In any event,
16 Green has not pointed us to any material distinction for purposes
17 of this appeal between Division 3 of the Cal. Com. Code and
18 Article 3 of the UCC. Nor are we aware of any.

18 ¹¹As used by Green, the "lex situs" doctrine generally
19 requires legal issues involving real property to be determined
20 according to the laws of the state in which the property is
21 situated. See Black's Law Dictionary (9th Cir 2009); see also
22 Restatement (Second) of Conflict of Laws § 223(1) (1971)("Whether
23 a conveyance transfers an interest in land and the nature of the
24 interest transferred are determined by the law that would be
25 applied by the courts of the situs."). Green has not explained
26 why, under the lex situs doctrine, the Cal. Civil Code would be
27 entitled to any greater deference than the Cal. Com. Code.

24 ¹²Cal. Civil Code § 1091 provides:

25 Requisites for transfer of certain estates. An estate
26 in real property, other than an estate at will or for a
27 term not exceeding one year, can be transferred only by
28 operation of law, or by an instrument in writing,
subscribed by the party disposing of the same, or by
his agent thereunto authorized by writing.

1 memorializing the transfer. According to Green, because
2 Waterfall has admitted that there were no written assignments of
3 the Deed of Trust executed or recorded, any purported transfer to
4 Waterfall of the Deed of Trust was invalid under Cal. Civil Code
5 § 1091, and the purported transfer to Waterfall of the Note
6 consequently was a nullity.

7 But Green once again misreads the statute. Cal. Civil Code
8 § 1091 on its face explicitly permits transfers of interests in
9 real property "by operation of law." And it is settled
10 California law that a lien on real property is incident to the
11 underlying obligation and that a valid transfer of the underlying
12 obligation also carries with it the lien. See Cal. Civil Code
13 § 2936 ("The assignment of a debt secured by mortgage carries
14 with it the security."). Accord, Cockerell v. Title Ins. & Trust
15 Co., 42 Cal. 2d 284, 291, 267 P.2d 16, 20 (Cal. 1954); Marx v.
16 McKinney, 23 Cal.2d 439, 443, 144 P.2d 353, 356 (Cal. 1944);
17 Lewis v. Booth, 3 Cal. 2d 345, 349, 44 P.2d 560, 562 (Cal. 1935);
18 Union Supply Co. v. Morris, 220 Cal. 331, 338-40, 30 P.2d 394,
19 397 (Cal. 1934); Seidell v. Tuxedo Land Co., 216 Cal. 165, 170,
20 13 P.2d 686, 688 (1932); Ord v. McKee 5 Cal. 515, 516 (Cal.
21 1855); Domarad v. Fisher & Burke, Inc., 270 Cal. App. 2d 543,
22 553, 76 Cal. Rptr. 529, 535 (Cal. App. 1969); Santens v. Los
23 Angeles Fin., 91 Cal. App. 2d 197, 201-02, 204 P.2d 619, 621-22
24 (Cal. App. 1949); Poe v. Francis 132 Cal. App. 330, 335-36,
25 22 P.2d 801, 803 (Cal. App. 1933); see also Cal. Comm'l Code
26 § 9203(g) ("The attachment of a security interest in a right to
27 payment or performance secured by a security interest or other
28 lien on personal or real property is also attachment of a

1 security interest in the security interest, mortgage, or other
2 lien."); Carpenter v. Longan, 83 U.S. 271, 275 (1872) ("The
3 transfer of the note carries with it the security, without any
4 formal assignment or delivery, or even mention of the latter.").

5 In short, under long-settled California law, the valid
6 transfer of the Note carried with it an assignment of the Deed of
7 Trust. Because we already have held above that the Note was duly
8 negotiated to Waterfall under Cal. Com. Code § 3201, Waterfall
9 also qualifies by operation of law as the assignee of the Deed of
10 Trust.

11 Green also incorrectly relies on several other Cal. Civil
12 Code statutes.¹³ As a group, these other statutes deal with the

14 ¹³These statutes include Cal. Civil Code §§ 1107, 1169, 1214
15 and 1215. For the sake of completeness, each of these statutes
16 is set forth below.

17 Section 1107 provides:

18 Grant, how far conclusive on purchasers. Every grant of
19 an estate in real property is conclusive against the
20 grantor, also against every one subsequently claiming
21 under him, except a purchaser or incumbrancer who in
22 good faith and for a valuable consideration acquires a
23 title or lien by an instrument that is first duly
24 recorded.

25 Section 1169 provides:

26 In what office. Instruments entitled to be recorded
27 must be recorded by the County Recorder of the county
28 in which the real property affected thereby is
situated.

Section 1214 provides:

Every conveyance of real property or an estate for
(continued...)

1 rights of competing transferees of the same real property. They
2 do not address the question of who Green must pay on account of
3 her Loan obligations, which is the basic question raised by her
4 Claim Objection. Put another way, it simply is irrelevant to the
5 resolution of Green's standing issues who, among competing
6 claimants, might be entitled to the economic value underlying the
7 Note and the Deed of Trust. See In re Veal, 450 B.R. at 912. So
8 long as Green knows that, to the extent she pays Waterfall, her
9 Loan obligations legally will be considered satisfied under Cal.
10 Com. Code § 3602(a), Green should be content. See id.

11 Alternately, Green argues that Greenpoint impermissibly
12 "split" the Note and the Deed of Trust, by designating itself as
13 payee in the Note while allowing MERS to be named as the
14 "beneficiary" in the Deed of Trust. According to Green, this
15 split effectively rendered both the Note and the Deed of Trust
16 unenforceable.

18 ¹³(...continued)

19 years therein, other than a lease for a term not
20 exceeding one year, is void as against any subsequent
21 purchaser or mortgagee of the same property, or any
22 part thereof, in good faith and for a valuable
23 consideration, whose conveyance is first duly recorded,
and as against any judgment affecting the title, unless
the conveyance shall have been duly recorded prior to
the record of notice of action.

24 Section 1215 provides:

25 Conveyance defined. The term "conveyance," as used in
26 Sections 1213 and 1214, embraces every instrument in
27 writing by which any estate or interest in real
28 property is created, aliened, mortgaged, or incumbered,
or by which the title to any real property may be
affected, except wills.

1 Green's splitting argument ignores the plain language of the
2 Deed of Trust. That language nominally designates MERS as
3 "beneficiary" but further specifies that MERS serves as
4 beneficiary "solely as nominee" for the "lender" - in this case
5 Greenpoint and its successors. Based on the same deed of trust
6 language, the Ninth Circuit has held that MERS's nominal
7 beneficiary status, as nominee for the lender, does not
8 irreparably split the Note the from the Deed of Trust, so long as
9 MERS continues to serve as the nominee or agent for the lender or
10 its successors. See Cervantes, 656 F.3d at 1044. Cervantes'
11 holding is consistent with a number of published decisions within
12 this circuit opining that MERS merely serves as the agent for the
13 true beneficiary. See, e.g., Cedano v. Aurora Loan Servs., LLC
14 (In re Cedano), 470 B.R. 522, 531 (9th Cir. BAP 2012)
15 (identifying MERS as nominal beneficiary and agent/nominee for
16 lender); Weingartner v. Chase Home Fin., LLC, 702 F.Supp.2d
17 1276, 1279-81 (D. Nev. 2010) (same); see also Gomes v.
18 Countrywide Home Loans, Inc., 192 Cal. App.4th 1149, 1156 n.7,
19 121 Cal.Rptr.3d 819, 825 n.7 (Cal. App. 2011) (identifying MERS
20 as the nominee, or agent, of the noteholder).

21 In light of the decisions cited above, we are not persuaded
22 that the Note and the Deed of Trust have been irreparably split
23 in a manner that would render the Loan documents unenforceable.

24 Finally, Green complains that she was not given sufficient
25 time to respond to Waterfall's Supplemental Brief. Green further
26 points out that the bankruptcy court admitted that it did not
27 have an opportunity to review her written response to the
28 Supplemental Brief before the court orally announced its decision

