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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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In re:	)	BAP No.	AZ-12-1241-K1PaMk
	)		
MARSHALL L. RADER and BARBARA	)	Bk. No.	10-14477-RTB
J. RADER,	)		
	)		
Debtors.	)		
-----	)		
	)		
WILLIAM E. PIERCE, Chapter 7	)		
Trustee,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>O P I N I O N</b>	
	)		
ROBERT G. CARSON, Trustee of	)		
the R & S Carson Family Trust;	)		
SANDRA J. CARSON, Trustee of	)		
the R & S Carson Family Trust,	)		
	)		
Appellees.	)		
-----	)		

Argued and submitted on January 25, 2013  
at Phoenix, Arizona

Filed - March 8, 2013

Appeal from the United States Bankruptcy Court  
for the District of Arizona

Honorable Redfield T. Baum Sr., Bankruptcy Judge, Presiding

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Appearances: Terry A. Dake, Esq., of Terry A. Dake, Ltd., argued  
for Appellant; Brian Y. Furuya, Esq., of Aspey  
Watkins & Diesel, PLLC, argued for Appellees.

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Before: KLEIN,\* PAPPAS, and MARKELL, Bankruptcy Judges.

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\* Hon. Sandra R. Klein, United States Bankruptcy Judge for  
the Central District of California, sitting by designation.

1 KLEIN, Bankruptcy Judge:

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**INTRODUCTION**

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Chapter 7<sup>1</sup> trustee, William E. Pierce ("Trustee"), appeals from an order overruling his objection to a claim filed by Robert G. Carson and Sandra J. Carson on behalf of The R & S Carson Family Trust ("Carsons"). We AFFIRM.

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**FACTS**

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Marshall and Barbara Rader ("Debtors") filed a chapter 13 bankruptcy petition on May 12, 2010. A few months later, the case was converted to a chapter 7, and Trustee was appointed as the chapter 7 trustee.

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On August 12, 2010, the Carsons filed a "Motion for Order Approving Stipulation of Parties Regarding Relief from Automatic Stay" ("Motion"). The Motion indicated that the Carsons, Debtors, and Trustee agreed that the automatic stay should be terminated regarding a parcel of real property located in Valle-Williams, Coconino County, Arizona ("Property"). Attached to the Motion was a stipulation ("Stipulation"), which stated that the Carsons had a security interest in the Property and that Debtors were in default under their obligations to the Carsons. On September 9, 2010, the bankruptcy court entered an "Order Approving Stipulation Regarding Relief from Automatic Stay" ("Order").

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On November 1, 2010, the Carsons timely filed a \$739,100.61 proof of claim ("Claim"), which indicated that the debt was

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<sup>1</sup> Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 secured by a trust deed on the Property. The Claim stated that  
2 the value of the Property was \$370,000. This valuation was  
3 supported by an appraisal, and was not challenged in the  
4 bankruptcy court nor is it challenged in this appeal. The Claim  
5 was bifurcated into a secured claim of \$370,000 and an unsecured  
6 claim of \$369,100.61.

7 On December 16, 2010, the Carsons purchased the Property for  
8 \$370,000 at a non-judicial foreclosure sale. Debtors received a  
9 discharge on January 11, 2011.

10 On March 2, 2012, Trustee filed an objection to the Claim  
11 ("Claim Objection"), which stated, in its entirety, that: "Said  
12 claimant asserts a lien on certain property of the debtor's [sic]  
13 estate and said claimant has or should have looked to said  
14 property for payment of the debt thereby secured. The trustee  
15 recommends that said claim be treated as: DISALLOWED." The  
16 Carsons filed a response to the Claim Objection on March 16, 2012.  
17 On April 20, 2012, the bankruptcy court heard and overruled the  
18 Claim Objection, reasoning that the Carsons could not have filed a  
19 state court deficiency action or an adversary proceeding without  
20 violating the discharge injunction. On May 1, 2012, the  
21 bankruptcy court entered an order overruling the Claim Objection  
22 and allowing the Carsons' \$369,100.61 unsecured claim. Trustee  
23 timely filed a notice of appeal on May 4, 2012.

#### 24 **JURISDICTION**

25 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
26 §§ 1334(b) and 157(b)(2)(B). We have jurisdiction pursuant to 28  
27 U.S.C. § 158(b).

28

1 **ISSUE**

2 Whether the bankruptcy court erred when it overruled  
3 Trustee's Claim Objection.

4 **STANDARD OF REVIEW**

5 "An order overruling a claim objection can raise legal issues  
6 (such as the proper construction of statutes and rules) which we  
7 review de novo, as well as factual issues (such as whether the  
8 facts establish compliance with particular statutes or rules),  
9 which we review for clear error." Veal v. Am. Home Mortg. Serv.,  
10 Inc. (In re Veal), 450 B.R. 897, 918 (9th Cir. BAP 2011). "De  
11 novo review is independent, with no deference given to the trial  
12 court's conclusion." Allen v. U.S. Bank, N.A. (In re Allen), 472  
13 B.R. 559, 564 (9th Cir. BAP 2012). Review under the clearly  
14 erroneous standard is "significantly deferential," with reversal  
15 requiring "a definite and firm conviction that a mistake has been  
16 committed." Id. Put another way, "[a] court's factual  
17 determination is clearly erroneous if it is illogical,  
18 implausible, or without support in the record." Retz v. Samson  
19 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010) (citing United  
20 States v. Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009)  
21 (en banc)).

22 **DISCUSSION**

23 Trustee asserts that the bankruptcy court should have  
24 disallowed the unsecured portion of the Carsons' Claim because  
25 they did not comply with Arizona Revised Statute ("A.R.S.")  
26 § 33-814, which establishes procedures for obtaining deficiency  
27 judgments after non-judicial foreclosure sales. According to  
28 Trustee, the automatic stay was not a bar to the Carsons pursuing

1 a deficiency judgment because the Order was sufficiently broad to  
2 allow the Carsons to file a state court action or an adversary  
3 proceeding.

4 Trustee also argues that the discharge injunction did not  
5 prohibit the Carsons from pursuing a deficiency action because:  
6 1) Debtors would not have to be parties to any such action;  
7 2) proceedings can be filed post-discharge that name Debtors as  
8 nominal parties without violating the discharge injunction; and  
9 3) the Carsons could have filed a motion with the bankruptcy court  
10 to obtain leave to proceed.

11 The Carsons counter that pursuant to §§ 101(5) and 506, the  
12 bankruptcy court properly allowed their unsecured claim.  
13 According to the Carsons, requiring creditors to file separate  
14 actions to obtain deficiencies would be contrary to the law,  
15 burdensome, and a waste of judicial resources because: 1) the  
16 automatic stay prevented them from filing a deficiency action as  
17 required by state law; 2) the Order did not allow them to file a  
18 separate deficiency action; and 3) the discharge injunction  
19 prohibited them from pursuing any action against Debtors.

20 **A. Arizona Revised Statute § 33-814**

21 A.R.S. § 33-814 sets forth procedures pursuant to which a  
22 creditor can obtain a deficiency judgment after a non-judicial  
23 foreclosure sale. A.R.S. § 33-814(A) provides, in relevant part,  
24 that "within ninety days after the date of sale of trust property  
25 under a trust deed pursuant to § 33-807,<sup>2</sup> an action may be

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27 <sup>2</sup> A.R.S. § 33-807 outlines a trustee's authority under a  
28 deed of trust. "[I]n Arizona, non-judicial foreclosure sales,  
(continued...)

1 maintained to recover a deficiency judgment against any person  
2 directly, indirectly or contingently liable on the contract for  
3 which the trust deed was given as security . . . ." If no  
4 deficiency action is filed within the ninety-day period, "the  
5 proceeds of the sale, regardless of amount, shall be deemed to be  
6 in full satisfaction of the obligation and no right to recover a  
7 deficiency in any action shall exist." A.R.S. § 33-814(D).

8 **B. Preemption**

9 Based on the facts of this case, we find that A.R.S. § 33-814  
10 is preempted by the Bankruptcy Code. The preemption doctrine,  
11 which implements the Supremacy Clause of the Constitution,<sup>3</sup>  
12 "invalidate[s] state statutes to the extent they are inconsistent  
13 with, or contrary to, the purposes or objectives of federal law."  
14 Sticka v. Applebaum (In re Applebaum), 422 B.R. 684, 688 (9th Cir.  
15 BAP 2009) (citing Perez v. Campbell, 402 U.S. 637, 652 (1971)).  
16 Congress may preempt state law "either expressly-through clear  
17 statutory language-or implicitly." Whistler Invs., Inc. v.  
18 Depository Trust & Clearing Corp., 539 F.3d 1159, 1164 (9th Cir.  
19 2008). Nothing in the Bankruptcy Code explicitly preempts

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23 (...continued)  
24 or trustees' sales," are governed by A.R.S. §§ 33-801 to 33-  
25 821. Hogan v. Wash. Mut. Bank, N.A., 277 P.3d 781, 782-83  
26 (Ariz. 2012). "When parties execute a deed of trust and the  
debtor thereafter defaults, A.R.S. § 33-807 empowers the  
trustee to sell the real property securing the underlying note  
through a non-judicial sale." Id.

27 <sup>3</sup> The Supremacy Clause provides that the "Constitution, and  
28 the Laws of the United States . . . shall be the supreme Law of  
the Land . . . any Thing in the Constitution or Laws of any State  
to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.

1 statutes such as A.R.S. § 33-814. Thus, the issue is whether  
2 A.R.S. § 33-814 is implicitly preempted.

3 "There are two types of implied preemption: field preemption  
4 and conflict preemption." Id. Field preemption is present when  
5 federal law "so thoroughly occupies a legislative field as to make  
6 reasonable the inference that Congress left no room for the States  
7 to supplement it." Cipollone v. Liggett Group, Inc., 505 U.S.  
8 504, 516 (1992). Conflict preemption is present "to the extent  
9 that federal law actually conflicts with any state law." Whistler  
10 Invs., 539 F.3d at 1164.

11 Field preemption is inapplicable in this case. Section  
12 502(b)(1) states that a court "shall allow" a claim unless the  
13 claim is "unenforceable against the debtor and property of the  
14 debtor, under any agreement or applicable law." By explicitly  
15 incorporating other "applicable law," § 502(b)(1) demonstrates  
16 that Congress did not intend the Bankruptcy Code thoroughly to  
17 occupy the field related to the claims allowance process. Cf.  
18 Hillsborough Cnty., Fla. v. Automated Med. Labs., Inc., 471 U.S.  
19 707, 713 (1985) (stating that preemption is inferred if "Congress  
20 'left no room' for supplementary state regulation" (quoting Rice  
21 v. Sante Fe Elevator Corp., 331 U.S. 218, 230 (1947))).

22 "Conflict preemption analysis examines the federal statute as  
23 a whole to determine whether a party's compliance with both  
24 federal and state requirements is impossible or whether, in light  
25 of the federal statute's purpose and intended effects, state law  
26 poses an obstacle to the accomplishment of Congress's objectives."  
27 Whistler Invs., 539 F.3d at 1164. As analyzed below, we find that  
28 both types of conflict preemption are present in this case.

1 First, the automatic stay and the discharge injunction—two  
2 cornerstones of federal bankruptcy law—made it impossible for the  
3 Carsons to comply with A.R.S. § 33-814. Second, A.R.S. § 33-814’s  
4 requirement that the Carsons file an action as a prerequisite to  
5 recovering a deficiency poses an obstacle to Congress’ objectives  
6 in creating the Bankruptcy Code’s comprehensive, centralized  
7 claims resolution process and its framework for determining the  
8 validity and secured status of claims.

9  
10 **1. It was Impossible for the Carsons to Comply with Federal  
and State Law**

11 **a. Automatic Stay**

12 When Debtors filed bankruptcy on May 12, 2010, an automatic  
13 stay immediately went into effect that prohibited, among other  
14 actions, “the commencement or continuation, including the issuance  
15 or employment of process, of a judicial, administrative or other  
16 action or proceeding against the debtor . . . to recover a claim  
17 against the debtor that arose before the commencement of the  
18 case.” § 362(a)(1); Dunbar v. Contractors’ State License Bd. of  
19 Cal. (In re Dunbar), 235 B.R. 465, 470 (9th Cir. BAP 1999) (“[The  
20 automatic stay] is designed to immediately maintain the status quo  
21 by precluding and nullifying postpetition actions, whether  
22 judicial or nonjudicial, in nonbankruptcy forums against the  
23 debtor and property of the estate.”). “The scope of protections  
24 embodied in the automatic stay is quite broad, and serves as one  
25 of the most important protections in bankruptcy law.” Eskanos &  
26 Adler, P.C. v. Leetien, 309 F.3d 1210, 1214 (9th Cir. 2002).

27 It is undisputed that the automatic stay was in effect  
28 between December 16, 2010 (the date of the foreclosure sale) and



1 January 11, 2011 (the date Debtors received a discharge). The  
2 Carsons would have violated the automatic stay if they had filed a  
3 deficiency action during that period of time, unless the Order  
4 modified the stay not only to allow the Carsons to proceed with  
5 the foreclosure sale, but also to initiate a deficiency action.

6 The Order was silent regarding whether the Carsons could  
7 pursue a deficiency judgment. The Order could be interpreted as  
8 authorizing the Carsons to file a deficiency action because it  
9 provided that they could take "any and all steps pursuant to their  
10 loan and security agreements" to realize and recover on the  
11 indebtedness owed by Debtors. The Order could also be interpreted  
12 as only authorizing the Carsons to pursue recovery by way of a  
13 foreclosure sale, because it provided that the Carsons could  
14 schedule and conduct "a non-judicial foreclosure sale of the real  
15 property under the deed of trust," but did not mention filing a  
16 deficiency action.

17 Because the Order is subject to more than one reasonable  
18 interpretation, it is ambiguous. See Kester v. Campbell, 652 F.2d  
19 13, 16 (9th Cir. 1981) ("The language of the [executive] order is  
20 sufficiently ambiguous to permit several reasonable  
21 interpretations . . . ."); Univ. Realty & Dev. Co. v. Omid-Gaf,  
22 Inc., 508 P.2d 747, 750 (Ariz. Ct. App. 1973) ("Language is  
23 ambiguous when it can reasonably be construed in more than one  
24 sense . . . ."). Therefore, we can refer to the "entire record  
25 for determining what was decided." Colonial Auto Ctr. v. Tomlin  
26 (In re Tomlin), 105 F.3d 933, 936 (4th Cir. 1997) (internal  
27 quotation marks omitted); see also In re Wachovia Preferred Sec. &  
28 Bond/Notes Litig., No. 09 Civ. 6351 RJS, 2012 WL 2589230, at \*1

1 (S.D.N.Y. Jan. 3, 2012) (slip opinion) (incorporating by reference  
2 definitions in a stipulation into an order); Solutia, Inc. v.  
3 McWane, Inc., 726 F. Supp. 2d 1316, 1329 (N.D. Ala. 2010)  
4 (considering a stipulation, briefs, and a declaration to interpret  
5 an ambiguous order).

6 As the Carsons argue persuasively, the Stipulation, on which  
7 the Order is based, states that the Carsons would "seek  
8 foreclosure and liquidation of the . . . Real Property," while the  
9 Arizona statute at issue provides that deficiency actions are  
10 against persons. A.R.S. § 33-814(A) ("[A]n action may be  
11 maintained to recover a deficiency judgment against any person  
12 directly, indirectly or contingently liable on the contract for  
13 which the trust deed was given as security . . . .").

14 Trustee's assertion that any ambiguity must be construed  
15 against the Carsons is meritless for two reasons. First, Trustee  
16 was represented by counsel and the Order was based on the  
17 Stipulation, which Trustee signed. Thus, the general rule that  
18 ambiguities are interpreted against the drafter is limited in this  
19 case "by the degree of sophistication of the contracting parties  
20 [and] the degree to which the contract was negotiated." New  
21 Jersey v. Merrill Lynch & Co., Inc., 640 F.3d 545, 550 (3d Cir.  
22 2011); see also Terra Int'l., Inc. v. Miss. Chem. Corp., 119 F.3d  
23 688, 692 (8th Cir. 1997) (declining to construe an ambiguous  
24 clause in a contract against the drafter "due to the relatively  
25 equal bargaining strengths" of the parties and the fact that the  
26 non-drafting party was represented by "sophisticated legal  
27 counsel" during the formation of the agreement).

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1           Second, "the terms of an order lifting the automatic stay are  
2 strictly construed." Griffin v. Wardrobe (In re Wardrobe), 559  
3 F.3d 932, 935 (9th Cir. 2009) (internal quotation marks omitted);  
4 InterBusiness Bank, N.A. v. First Nat'l Bank of Mifflintown, 328  
5 F. Supp. 2d 522, 528-29 (M.D. Pa. 2004) ("It is axiomatic that,  
6 due to the presumptively expansive scope of the automatic stay,  
7 relief from the stay must be narrowly construed."); Bank of Am.  
8 Nat'l Trust & Sav. Ass'n v. Va. Hill Partners I (In re Va. Hill  
9 Partners I), 110 B.R. 84, 87 (Bankr. N.D. Ga. 1989) ("[U]nless the  
10 stay relief order clearly provides otherwise, the determination  
11 and allowance of claims, deficiency or otherwise, against the  
12 debtor or its estate in the pending bankruptcy case remain within  
13 the exclusive jurisdiction of the bankruptcy court.").

14           Trustee's reliance on In re Tyler, 166 B.R. 21 (Bankr.  
15 W.D.N.Y 1994) and InterBusiness, 328 F. Supp. 2d 522, to support  
16 his position that the Carsons were required to file a state court  
17 action to obtain a deficiency judgment is unavailing. Both Tyler  
18 and InterBusiness involved judicial foreclosure statutes that  
19 required creditors to file state court actions before foreclosing  
20 on real property. Any deficiency actions in those cases would  
21 have necessarily been part of the state court foreclosure  
22 proceeding. InterBusiness, 328 F. Supp. 2d at 527 ("Petitions to  
23 fix value are filed as part of the foreclosure action itself, as a  
24 simple, supplemental proceeding in the existing case."); In re  
25 Tyler, 166 B.R. at 25 (stating that a party seeking a deficiency  
26 judgment in New York must file a motion within the mortgage  
27 foreclosure proceeding).

28

1           The courts in Tyler and InterBusiness considered the  
2 interrelationship between the foreclosure and deficiency actions  
3 to be an important factor in interpreting the relief from stay  
4 orders. InterBusiness, 328 F. Supp. 2d at 527; In re Tyler, 166  
5 B.R. at 25 (stating that when it grants relief from stay to allow  
6 a party to proceed with foreclosure proceedings, "it is the  
7 Court's expectation that it has modified or terminated the stay  
8 for the completion of all related state court mortgage foreclosure  
9 proceedings, including the establishment of any deficiency  
10 judgment"). In contrast, the non-judicial foreclosure procedure  
11 authorized by A.R.S. § 33-814 did not require the Carsons to file  
12 a state court action before foreclosing on the Property. If the  
13 Carsons had pursued a deficiency judgment, they would have been  
14 required to initiate a separate state court lawsuit.

15           Trustee contends that even if the Order did not authorize the  
16 Carsons to file a deficiency action in state court, they could  
17 have filed an adversary proceeding to establish a deficiency.  
18 Trustee's argument is baseless. Neither the Bankruptcy Code, the  
19 Federal Rules of Bankruptcy Procedure, nor any other relevant  
20 authority requires a creditor to file an adversary proceeding to  
21 have an allowed claim.

22           A proof of claim "is deemed allowed" unless a party in  
23 interest objects. § 502(a). Upon objection, the dispute is  
24 considered a "contested matter," and "relief shall be requested by  
25 motion." Rule 9014(a); Garner v. Shier (In re Garner), 246 B.R.  
26 617, 623 (9th Cir. BAP 2000) ("What matters about the procedural  
27 status of an objection to claim as a 'contested matter' is that  
28 Rule 9014 classifies the objection as a 'motion' for purposes of

1 Federal Rule of Civil Procedure 43(e)."). Further, Rule 7001,  
2 which defines matters that are adversary proceedings, does not  
3 mention claims allowance proceedings. Thus, contrary to Trustee's  
4 assertion, the Carsons did not need to file an adversary  
5 proceeding to have an allowed unsecured claim.

6 **b. Discharge Injunction**

7 Debtors received a discharge less than one month after the  
8 Carsons foreclosed on the Property. Thus, the discharge  
9 injunction was in effect during most of the ninety-day period when  
10 Trustee asserts the Carsons should have complied with A.R.S.  
11 § 33-814.

12 Section 524(a)(2) provides that a discharge "operates as an  
13 injunction against the commencement or continuation of an action,  
14 the employment of process, or an act, to collect, recover or  
15 offset any such debt as a personal liability of the debtor." "The  
16 § 524(a)(2) discharge injunction casts a wide shadow, with a large  
17 penumbra." Ruvacalba v. Munoz (In re Munoz), 287 B.R. 546, 553  
18 (9th Cir. BAP 2002). It applies "permanently with respect to  
19 every debt that is discharged," Garske v. Arcadia Fin., Ltd. (In  
20 re Garske), 287 B.R. 537, 542 (9th Cir. BAP 2002), and "enjoins  
21 any creditor's effort to collect a discharged debt as a personal  
22 liability of the debtor." Heilman v. Heilman (In re Heilman), 430  
23 B.R. 213, 218 (9th Cir. BAP 2010).

24 Trustee argues that the discharge injunction did not prevent  
25 the Carsons from filing an action pursuant to A.R.S. § 33-814  
26 because Debtors would not have to be parties to any deficiency  
27 action. Trustee cites In re Sun Ok Kim, 89 B.R. 116 (D. Haw.

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1 1987) for the proposition that the bankruptcy estate, rather than  
2 Debtors, would have been the real party in interest.

3 In Sun Ok Kim the court was confronted with deciding which  
4 parties have standing to object to proofs of claims. Id. at 118.  
5 The court stated that usually only the trustee has such standing,  
6 but if the "trustee is formally notified and refuses to make an  
7 objection, either the debtor or the creditor may then ask the  
8 bankruptcy court to disallow the claim." Id. The fact that a  
9 trustee is normally the only party with standing to object to  
10 claims does not mean that the trustee is the only party who can be  
11 named as a defendant in a state court action or an adversary  
12 proceeding involving a claim. Trustee conflates standing to  
13 object to a claim with real party in interest with regard to the  
14 determination of claims. The former concept is, by its terms,  
15 narrower than Trustee contends and does not preclude a debtor's  
16 involvement in the "determination" of claims.

17 Additionally, Trustee's argument is undercut by the express  
18 language of A.R.S. § 33-814, which states that a deficiency action  
19 may be maintained "against any person" liable on the contract. It  
20 is undisputed that Debtors were the parties liable on the contract  
21 and that their liability was discharged on January 11, 2011. Any  
22 action filed by the Carsons after that date would have violated  
23 the discharge injunction because it would have been against  
24 Debtors personally on account of a discharged debt. In re Garske,  
25 287 B.R. at 542 ("[A]n unsecured creditor has no right to any of  
26 the debtor's property post-discharge to satisfy a discharged  
27 debt.").

28

1           Alternatively, Trustee cites Ruvacalba v. Munoz (In re  
2 Munoz), 287 B.R. 546 (9th Cir. BAP 2002) for the proposition that  
3 Debtors could have been named to a post-discharge lawsuit as  
4 “nominal parties” without violating the discharge injunction. In  
5 Munoz, the court was faced with determining whether the discharge  
6 injunction would be violated if a party sought to establish  
7 liability against a debtor solely for the purpose of pursuing  
8 payment from a third party. Id. at 549. The court in Munoz  
9 decided it would not, and stated that “[w]here the purpose of the  
10 action is to collect from a collateral source, such as insurance  
11 or the UEF [Uninsured Employers Fund], and the plaintiff makes it  
12 clear that it is not naming the debtor as a party for anything  
13 other than formal reasons, no bankruptcy court order is  
14 necessary.” Id. at 550. Here, there is no “collateral source”  
15 from which the Carsons could collect. If the Carsons had named  
16 Debtors in a post-discharge deficiency action, they would have  
17 been seeking to hold Debtors personally liable and therefore would  
18 not have named Debtors for “formal reasons” only.

19           Trustee also contends that the Carsons could have “done  
20 exactly what the creditor in Munoz did” and “filed a motion with  
21 the bankruptcy court to obtain leave to proceed.” The court in  
22 Munoz distinguished between “construing” and “modifying” the  
23 discharge injunction. Id. at 553. The former is permissible  
24 because a court would merely be defining the parameters of the  
25 discharge injunction. Id. The latter, however, is not because  
26 the “discharge injunction is set in statutory concrete,” which  
27 “constitutes a clear and valid legislative command that leaves no  
28 discretion in the court to modify the discharge injunction.” Id.

1 at 550, 553. In Munoz, the court construed the discharge  
2 injunction and determined that a creditor seeking to collect from  
3 a collateral source would not violate it. Id. at 555. In  
4 contrast, if the Carsons had filed a motion for authorization to  
5 proceed with a deficiency action, they would have been  
6 impermissibly seeking to modify the discharge injunction to  
7 collect debt that was Debtors' personal liability.

8 In this case, compliance with the Bankruptcy Code and A.R.S.  
9 § 33-814 was impossible because the latter required the Carsons to  
10 file an action within ninety days of the foreclosure sale, but the  
11 automatic stay and the discharge injunction prevented them from  
12 doing so. See In re Perry, 425 B.R. 323, 397 (Bankr. S.D. Tex.  
13 2010) (excusing compliance with state law deficiency action  
14 statute because compliance would violate the automatic stay);  
15 Integra Bank v. Sixta (In re Smith), 192 B.R. 397, 401 (Bankr.  
16 W.D. Pa. 1996) (finding creditor was not required to comply with  
17 state law, which required judgments to be satisfied within six  
18 months, because there was never an uninterrupted six-month period  
19 of time due to the debtor's many bankruptcy filings).

20 Stated differently, the automatic stay and the discharge  
21 injunction acted as a legal bar to the Carsons doing what A.R.S.  
22 § 33-814 required them to do. Thus, the Bankruptcy Code and  
23 A.R.S. § 33-814 are in conflict and the state law must yield.  
24 Perez, 402 U.S. at 652 (stating that a state law that is in  
25 conflict with federal law is invalid); B-Real, LLC v. Chaussee (In  
26 re Chaussee), 399 B.R. 225, 230 (9th Cir. BAP 2008) ("[S]tate laws  
27 interfering with, or contrary to, federal law are preempted").  
28



1 As a result, the Carsons were not required to comply with A.R.S.  
2 § 33-814.

3  
4 **2. Compliance with A.R.S. § 33-814 Was an Obstacle to  
Accomplishing the Bankruptcy Code's Objectives**

5 Requiring the Carsons to comply with A.R.S. § 33-814 would be  
6 contrary to the Bankruptcy Code's policy of providing a  
7 comprehensive, centralized forum for adjudication of claims. It  
8 would also interfere with the Bankruptcy Code's framework for  
9 determining the secured and unsecured status of claims.

10  
11 **a. The Bankruptcy Code Provides a Comprehensive,  
Centralized Process for Adjudication of Claims**

12 The "centralized resolution of bankruptcy claims" and "the  
13 avoidance of piecemeal litigation" are fundamental purposes of the  
14 Bankruptcy Code. Erie Power Techs., Inc. v. Ref-Chem, L.P. (In re  
15 Erie Power Techs., Inc.), 315 B.R. 41, 45 (Bankr. W.D. Pa. 2004);  
16 see also In re Tammarine, 405 B.R. 465, 467 (Bankr. N.D. Ohio  
17 2009) ("The determination of claims against the bankruptcy estate  
18 is a central function of the bankruptcy courts."); In re Bargdill,  
19 238 B.R. 711, 716 (Bankr. N.D. Ohio 1999) (noting that the claims  
20 allowance process facilitates the orderly distribution of the  
21 bankruptcy estate, which is one of the fundamental tenets of  
22 bankruptcy law).

23 "[T]he complex, detailed, and comprehensive provisions of the  
24 lengthy Bankruptcy Code, 11 U.S.C. §§ 101 et. seq., demonstrates  
25 Congress's intent to create a whole system under federal control  
26 which is designed to bring together and adjust all of the rights  
27 and duties" of creditors and debtors. MSR Exploration, Ltd. v.  
28 Meridian Oil, Inc., 74 F.3d 910, 914 (9th Cir. 1996). A

1 bankruptcy court has "great authority over the allowance and  
2 disallowance of claims." Id. at 914 n.2.

3       The Bankruptcy Code defines a "claim" broadly as a "right to  
4 payment, whether or not such right is reduced to judgment,  
5 liquidated, unliquidated, fixed, contingent, matured, unmatured,  
6 disputed, undisputed, legal, equitable, secured or unsecured."  
7 § 101(5). The breadth of this definition "is designed to ensure  
8 that all legal obligations of the debtor, no matter how remote or  
9 contingent, will be able to be dealt with in the bankruptcy case."  
10 Siegel v. Fed. Home Loan Mortg. Corp., 143 F.3d 525, 532 (9th Cir.  
11 1998) (emphasis and internal quotation marks omitted).

12       A proof of claim that is executed and filed in accordance  
13 with the Rules "shall constitute prima facie evidence of the  
14 validity and amount of the claim." Rule 3001(f); see also Garner  
15 v. Shier (In re Garner), 246 B.R. 617, 620 (9th Cir. BAP 2000)  
16 ("There is an evidentiary presumption that a correctly prepared  
17 proof of claim is valid as to liability and amount."). A claim  
18 "is deemed allowed, unless a party in interest . . . objects."  
19 § 502(a). Upon objection, a bankruptcy court  
20 shall determine the amount of such claim . . . as of the  
21 date of the filing of the petition, and shall allow such  
22 claim in such amount except to the extent that— (1) such  
23 claim is unenforceable against the debtor and property  
of the debtor, under any agreement or applicable law for  
a reason other than because such claim is contingent or  
unmatured.

24 § 502(b)(1).

25       A.R.S. § 33-814(A) provides that a judgment debtor may file  
26 an "application for determination of the fair market value of the  
27 real property." The court then determines the amount of the  
28 deficiency owed based on the sale price or what the court

1 determines the fair market value to be, whichever is greater.  
2 A.R.S. § 33-814(A). This procedure protects judgment debtors from  
3 unfairly high deficiency judgments based on trustee sales that  
4 garner inadequate amounts. MidFirst Bank v. Chase, 284 P.3d 877,  
5 879 (Ariz. Ct. App. 2012) (“[The] primary purpose of [A.R.S. § 33-  
6 814(A)] is to prohibit a creditor from seeking a windfall by  
7 buying property at a trustee’s sale for less than fair market  
8 value.”). This same valuation evidence can and should be  
9 submitted to the bankruptcy court as part of the claims objection  
10 process. McCartney v. Integra Nat’l Bank N., 106 F.3d 506, 512  
11 (3d Cir. 1997) (finding that a valuation hearing in connection  
12 with a proof of claim was “precisely the same opportunity to be  
13 heard” that was available in a state court deficiency action and  
14 that “debtors should not be burdened by state court litigation  
15 when deficiency judgment actions impacting upon the debtor’s  
16 estate can be settled in the bankruptcy forum”).

17 Additionally, filing a deficiency action in state court would  
18 have been unnecessary and inefficient because it would have  
19 required another court’s involvement in the adjudication of a core  
20 bankruptcy matter. 28 U.S.C. § 157(b)(2)(B) (“[A]llowance or  
21 disallowance of claims against the estate” is a “core  
22 proceeding.”); Durkin v. Bendor Corp., (In re G.I. Indus., Inc.),  
23 204 F.3d 1276, 1279-80 (9th Cir. 2000) (“The filing of a proof of  
24 claim is the prototypical situation involving the ‘allowance or  
25 disallowance of claims against the estate,’ a core proceeding  
26 under 28 U.S.C. § 157(b)(2).”).

27

28

1                   **b.     The Bankruptcy Code Has a Framework for Determining**  
2                   **the Secured and Unsecured Status of Claims**

3                   Requiring the Carsons to file a deficiency action pursuant to  
4 A.R.S. § 33-814 would also be contrary to the Bankruptcy Code's  
5 framework for determining the secured and unsecured status of  
6 claims. Section 506 provides that

7                   an allowed claim of a creditor secured by a lien on  
8 property in which the estate has an interest . . . is a  
9 secured claim to the extent of the value of such  
10 creditor's interest in the estate's interest in such  
property . . . and is an unsecured claim to the extent  
that the value of such creditor's interest . . . is less  
than the amount of such allowed claim.

11 § 506(a)(1).

12                   The Supreme Court has noted that pursuant to § 506(a),  
13 creditors can divide their claims into "secured and unsecured  
14 portions, with the secured portion of the claim limited to the  
15 value of the collateral." Assocs. Commercial Corp. v. Rash, 520  
16 U.S. 953, 961 (1997); see also Enewally v. Wash. Mut. Bank (In re  
17 Enewally), 368 F.3d 1165, 1168-69 (9th Cir. 2004) ("Under the  
18 Bankruptcy Code, a secured loan may be separated into two distinct  
19 claims: a secured claim for an amount equal to the value of the  
20 security, and an unsecured claim for the difference, if any,  
21 between the amount of the loan and the value of the security.").

22                   Although the unsecured portion of the Carsons' Claim was  
23 unliquidated and contingent before the foreclosure sale, that  
24 portion of their Claim was still valid. See § 101(5)(A) (defining  
25 a "claim" as a "right to payment, whether or not such right" is,  
26 among other things, unliquidated or contingent). After the  
27 foreclosure sale, the character of the Carsons' unsecured claim  
28 changed to liquidated and non-contingent. This change did not

1 affect the unsecured claim's validity. See In re Sneijder, 407  
2 B.R. 46, 48 (Bankr. S.D.N.Y. 2009) ("The amount of [an] unsecured  
3 deficiency claim ordinarily is fixed when the collateral is sold  
4 at a foreclosure sale . . ."). Nothing in § 101(5) or any other  
5 section of the Bankruptcy Code specifies or even implies that when  
6 the character of a claim changes—from unliquidated and contingent  
7 to liquidated and non-contingent—it affects the claim's validity.  
8 To the extent that A.R.S. § 33-814 mandates a different  
9 conclusion, it is at odds with the Bankruptcy Code and is,  
10 therefore, preempted. Elliott v. Bumb, 356 F.2d 749, 755 (9th  
11 Cir. 1966) (finding that a state law that would "thwart or  
12 obstruct the scheme of federal bankruptcy" was preempted by the  
13 bankruptcy law).

14 Contrary to Trustee's position, "[t]here is no requirement  
15 that the creditor first obtain a deficiency judgment in the non-  
16 bankruptcy forum as a prerequisite for bifurcating a claim into a  
17 secured and an unsecured part." In re Costello, 184 B.R. 166, 171  
18 (Bankr. M.D. Fla. 1995). As partially secured, partially  
19 unsecured creditors, the Carsons timely "submit[ted] to the court  
20 . . . a proof of claim enumerating" the unsecured amount of their  
21 Claim. In re Bargdill, 238 B.R. 711, 716 (Bankr. N.D. Ohio 1999);  
22 see also In re VanDuyn, 374 B.R. 896, 897-98 (Bankr. M.D. Fla.  
23 2007) (noting that creditor filed bifurcated proof of claim, and  
24 then determining whether the deficiency claim should be allowed  
25 under substantive bankruptcy law).

26 Trustee contends that the Carsons should have amended their  
27 Claim after the foreclosure sale, because "[c]reditors have a duty  
28 to amend their claims when they are aware of facts which render

1 their previously filed claims inaccurate." The Carsons could have  
2 amended their Claim to reflect that the secured portion was  
3 satisfied, but that portion of the Claim is not in dispute. There  
4 was also no reason for the Carsons to amend the unsecured portion  
5 of their Claim because they do not assert that they are entitled  
6 to more than the unsecured amount listed in their Claim. See In  
7 re Five Boroughs Mortg. Co., Inc., 176 B.R. 708, 713 (Bankr.  
8 E.D.N.Y. 1995) (noting that after a foreclosure sale, a secured  
9 creditor may return to the bankruptcy court to pursue that portion  
10 of its debt that was not satisfied by foreclosure of its  
11 collateral "by filing a claim against the bankruptcy estate. It  
12 may be the lender's original proof of claim. Or the lender may  
13 simply amend the proof of claim already filed to reflect the  
14 debt's correct amount, which is the debt less the foreclosure sale  
15 proceeds received by the lender.").

#### 16 **CONCLUSION**

17 Trustee's Claim Objection was based solely on the Carsons'  
18 failure to obtain a deficiency judgment pursuant to A.R.S.  
19 § 33-814. In this case, state law is preempted by federal law  
20 because the automatic stay and the discharge injunction made it  
21 impossible for the Carsons to comply with A.R.S. § 33-814. A.R.S.  
22 § 33-814 is also preempted because requiring the Carsons to pursue  
23 a separate deficiency action, either in state court or in an  
24 adversary proceeding, would have been contrary to the Bankruptcy  
25 Code's orderly, efficient, and comprehensive claims administration  
26 process and its framework for determining the validity and secured  
27 status of claims. Therefore, the bankruptcy court's order  
28 overruling Trustee's Claim Objection is AFFIRMED.