

MAY 29 2013

NOT FOR PUBLICATION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

In re:) BAP No. CC-12-1445-MkTaJu
)
 JAMES W. SIMPSON,) BK. No. 11-38929
)
 Debtor.)
 _____)
)
 JAMES W. SIMPSON,)
)
 Appellant,)
)
 v.) **MEMORANDUM***
)
 DEUTSCHE BANK NATIONAL TRUST)
 COMPANY; JAN P. JOHNSON,)
 Chapter 13 Trustee; KRISTIE)
 PEREZ, Bankruptcy Specialist)
 at Carrington Mortgage)
 Services LLC,)
)
 Appellees.)
 _____)

Submitted Without Oral Argument
on May 16, 2013**

Filed - May 29, 2013

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

Honorable Thomas C. Holman, Bankruptcy Judge, Presiding

Appearances: Appellant James W. Simpson, pro se, on brief;
 Nicolas A. Daluiso of Robinson Tait, P.S., on
 brief, for Appellee Deutsche Bank National Trust
 Company.

*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.

**By order entered March 28, 2013, this appeal was deemed
 suitable for submission without oral argument.

1 Before: MARKELL, TAYLOR, and JURY, Bankruptcy Judges.

2
3 **INTRODUCTION**

4 Chapter 13¹ debtor James Simpson ("Simpson") objected to the
5 claim of creditor Deutsche Bank National Trust Company as
6 Indenture Trustee for New Century Home Equity Loan Trust Series
7 2006-2 ("Deutsche Bank") on the ground that Deutsche Bank did not
8 have standing. The bankruptcy court initially sustained the
9 objection, and it also entered an order disallowing the claim.
10 After Deutsche Bank amended its claim and presented further
11 evidence, however, the court vacated its prior disallowance order
12 and overruled Simpson's claim objection.

13 Simpson appeals from the order overruling his claim
14 objection and vacating the disallowance order. We AFFIRM, but
15 this affirmance is without prejudice to Simpson filing in the
16 bankruptcy court a § 502(j) reconsideration motion based on the
17 undisputed fact that, subsequent to the filing of this appeal,
18 Deutsche Bank foreclosed on the property securing its claim,
19 thereby extinguishing its claim.

20 **FACTS**

21 On August 2, 2011, Simpson filed his chapter 13 bankruptcy
22 petition in pro per. On September 29, 2011, Deutsche Bank timely
23 filed Proof of Claim No. 3-1 ("POC 3-1") asserting a secured
24 claim in the amount of \$605,614.27.

25
26 _____
27 ¹Unless specified otherwise, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 In POC 3-1, Deutsche Bank identified itself as the creditor
2 and Carrington Mortgage Servicers ("Carrington") as the Note's
3 servicing agent. The basis for the claim was a note ("Note")
4 secured by deed of trust ("Deed of Trust") on real estate in Elk
5 Grove, CA ("Property"). Attached to POC 3-1 were copies of the
6 Note, the Deed of trust, an Assignment of the Deed of Trust (the
7 "Assignment"), and a legal description of the Property.

8 The Note was executed on May 26, 2006 in the principal
9 amount of \$450,000. The Note identified New Century Mortgage
10 Company ("NCMC") as lender and Simpson's wife, Pamela Simpson, as
11 the sole borrower.² The last page of the Note contains what
12 appears to be an endorsement in blank signed by an NCMC
13 executive.

14 The Deed of Trust, also executed on May 26, 2006, was
15 recorded on June 1, 2006. The named beneficiary was the lender,
16 NCMC. Since they both held title to the Property, both Simpson
17 and his wife signed the Deed of Trust as "borrowers." Under ¶ 13
18 of the Deed of Trust, co-signers like Simpson – those who execute
19 the Deed of Trust but not the Note – only pledge their interest
20 in the Property as collateral to secure the payment obligation
21 under the Note; they are not personally obligated to pay the sums
22 secured by the Deed of Trust. In other words, Simpson presumably
23 had no in personam liability for the debt evidenced by the Note;
24 it was nonrecourse as to him.³

25
26 ²Pamela Simpson is not a party to Simpson's bankruptcy case.

27 ³Consistent with paragraph 13 of the Deed of Trust, the
28 parties treated the Note as the sole obligation of Pamela
(continued...)

1 The Assignment, executed on April 27, 2007, reflects NCMC's
2 assignment of the beneficial interest in the Deed of Trust to
3 Deutsche Bank.

4 On November 8, 2011, Simpson objected to POC 3-1. He
5 asserted that (i) he did not list Carrington as a creditor on his
6 petition; (ii) neither Deutsche Bank nor Carrington had the right
7 to assert creditor status; (iii) he did not sign the Note;
8 (iv) Deutsche Bank committed perjury on behalf of Carrington by
9 submitting the Note which did not contain his signature;
10 (v) Deutsche Bank had submitted three different versions of the
11 Note with different stamps and markings; and (vi) Deutsche Bank
12 had never produced the original Note for inspection by Simpson
13 per his requests. Therefore, Simpson reasoned, Deutsche Bank had
14 not submitted the documentation necessary to demonstrate that it
15 was a holder of the Note.

16 One month later, Deutsche Bank opposed Simpson's claim
17 objection. Deutsche Bank attached a declaration by Kristie Perez
18 ("Perez"), an employee of Carrington who declared that Carrington
19 was the servicer of the Note on Deutsche Bank's behalf and that
20 true and correct copies of the Note and Deed of Trust were
21 attached as exhibits to her declaration.

22 On January 10, 2012, the bankruptcy court heard the claim
23 objection and sustained it, but also granted leave to amend. The
24

25 ³(...continued)
26 Simpson. Nonetheless, the debt provided for in the Note may well
27 have qualified as a community claim, as it was incurred in a
28 community property state during marriage and related to the
primary residence of a married couple. See generally §§ 101(7),
541(a)(2).

1 bankruptcy court found that Perez's declaration did not establish
2 that Deutsche Bank possessed the original Note. Thus, Deutsche
3 Bank had not demonstrated that it was the Note's holder as
4 required for standing to enforce the claim. On January 13, 2012,
5 the bankruptcy court entered an order ("Conditional Order")
6 sustaining the objection, but also giving Deutsche Bank until
7 February 7, 2012 to file an amended proof of claim. As specified
8 in the Conditional Order: "[i]f Deutsche fails to file an
9 amended proof of claim within the allowed time, [Simpson] may
10 submit an order disallowing [POC 3-1]" Civil Minute
11 Order (Jan. 13, 2012).

12 One week after the deadline, on February 14, 2012, Deutsche
13 Bank filed Proof of Claim 6-2 ("POC 6-2").⁴ Deutsche Bank
14 indicated that this served to amend a previously filed claim, but
15 confusingly stated that it amended POC 6-1. Even if POC 6-2 was
16 intended to amend POC 6-1, the Panel understands that the
17 overarching intent was to amend POC 3-1.⁵ Deutsche Bank again
18 filed a declaration by Perez, but this time she also declared
19 that Deutsche Bank possessed the original Note and that she had
20 reviewed it.

21 On February 19, 2012, five days after Deutsche Bank's
22 filing, Simpson filed a proof of service indicating that he had
23 served Deutsche Bank with his proposed order disallowing POC 3-1
24

25 ⁴According to Deutsche Bank, Proof of Claim 6-1 ("POC 6-1")
26 was a misfiling, and POC 6-2 is the operative document.

27 ⁵The relevant content of POC 3-1 and POC 6-2 is identical,
28 including the creditor's name, the claim amount, and the basis
for the claim.

1 in accordance with the Conditional Order. Deutsche Bank opposed,
2 arguing that it missed the February 7 deadline only because of
3 technical glitches with the bankruptcy court's electronic filing
4 system. Nonetheless, on March 19, 2012, the bankruptcy court
5 entered an order disallowing POC 3-1 ("Disallowance Order"). The
6 Disallowance Order said nothing about POC 6-2.

7 On June 5, 2012, Simpson objected to POC 6-2 and filed a
8 supporting memorandum of points and authorities. He contended
9 that POC 6-2 was untimely filed. He also restated his earlier
10 challenges to POC 3-1 and made various new contentions. The crux
11 of his substantive arguments was that Deutsche Bank did not have
12 standing to prosecute a proof of claim due to various infirmities
13 with the conveyances of the relevant interests in the Note and
14 the Deed of Trust.

15 After a hearing, the bankruptcy court found that Deutsche
16 Bank had established that it possessed the original Note, which
17 was endorsed in blank, and that it was the successor beneficiary
18 under the Deed of Trust. Accordingly, the court determined that
19 Deutsche Bank was the Note's holder and thus had standing to
20 prosecute the proof of claim.

21 As to the timeliness of POC 6-2, the court stated that its
22 Conditional Order was not self-executing; it did not
23 automatically disallow POC 3-1. Rather, the Conditional Order
24 merely permitted Simpson to lodge a proposed order disallowing
25 POC 3-1 if Deutsche Bank did not meet the February 7, 2012
26 deadline. By the time Simpson had submitted his proposed order
27 on February 19, 2012, Deutsche Bank had already amended POC 3-1
28 by filing POC 6-2 on February 14, 2012. Given this sequence of

1 events, the bankruptcy court determined that it had erred by
2 entering the Disallowance Order. Alternately, the court held
3 that the untimeliness of POC 6-2 was the result of excusable
4 neglect.

5 On August 16, 2012 the bankruptcy court entered an order
6 overruling Simpson's objection to POC 6-2 and vacating the
7 Disallowance Order. In effect, the court determined that POC 6-2
8 was an allowed secured claim against the bankruptcy estate.

9 On August 24, 2012, Simpson timely filed this appeal, BAP
10 No. EC-12-1445. He appeals the bankruptcy court's order of
11 August 16, 2012, challenging Deutsche Bank's standing and the
12 court's decision to vacate the Disallowance Order.

13 On August 29, 2012, Deutsche Bank moved for relief from stay
14 to foreclose on the Property. The bankruptcy court granted the
15 motion on October 3, 2012. Simpson timely appealed the order
16 lifting stay, BAP No. EC-12-1527, but did not obtain a stay
17 pending appeal from either the bankruptcy court or the Panel. On
18 November 30, 2012, the Property was sold at a nonjudicial
19 foreclosure sale. After the sale, we dismissed this second
20 appeal, BAP No. EC-12-1527, as moot.

21 In this appeal, BAP No. EC-12-1445, Simpson first argues
22 that POC 6-2 did not amend POC 3-1, but rather was a new untimely
23 filed proof of claim. He next contends that the bankruptcy court
24 did not have sufficient grounds to vacate the Disallowance Order.
25 Relying on various alleged deficiencies in the Note, the Deed of
26 Trust, and the Assignment, Simpson also argues that Deutsche Bank
27 lacked standing. Finally, Simpson argues that the bankruptcy

28

1 court should not have found excusable neglect.⁶

2 Deutsche Bank argues that it had standing to pursue its
3 claim and that the bankruptcy court correctly determined that its
4 failure to meet the amendment deadline was due to excusable
5 neglect. Deutsche Bank further contends that the different
6 versions of the Note simply represented the state of the Note at
7 different points in time: pre- and post-endorsement, and with and
8 without a stamp indicating that a copy was certified.

9 **JURISDICTION**

10 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
11 §§ 1334 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C.
12 § 158.

13 **ISSUE**

14 Did the bankruptcy court err in vacating the Disallowance
15 Order and in allowing POC 6-2?

16 **STANDARDS OF REVIEW**

17 We review the bankruptcy court's conclusions of law de novo
18 and its factual findings under the clearly erroneous standard.
19 Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R.
20 25, 32 (9th Cir. BAP 2008). A finding of fact is clearly
21 erroneous only if it is illogical, implausible, or without
22 support in the record. See Retz v. Samson (In re Retz), 606 F.3d
23 1189, 1196 (9th Cir. 2010). If two permissible views of the

24
25 ⁶Simpson also asserted on appeal that Deutsche Bank
26 committed bankruptcy fraud under 18 U.S.C. § 157. But we cannot
27 rule upon this issue as bankruptcy fraud is a criminal matter not
28 within the jurisdiction of the bankruptcy court or this Panel.
18 U.S.C. § 3231 (2012); see Griffith v. Oles (In re Hipp, Inc.),
895 F.2d 1503, 1518 (5th Cir. 1990).

1 evidence are possible, the trial judge's choice between them
2 cannot be clearly erroneous. Anderson v. City of Bessemer City,
3 N.C., 470 U.S. 564, 573-74 (1985).

4 DISCUSSION

5 A. General Legal Principles Regarding Bankruptcy Claims

6 Creditors may file proofs of claim. § 501(a). "A proof of
7 claim is a written statement setting forth a creditor's claim."
8 Rule 3001(a). "A proof of claim executed and filed in accordance
9 with [the Bankruptcy Rules] shall constitute prima facie evidence
10 of the validity and amount of the claim." Rule 3001(f).

11 In a Chapter 13 case, the creditor must file a proof of
12 claim with respect to any unsecured claim. Rule 3002(a). Even
13 then, however, the claim must be "allowed" before it can serve as
14 the basis for any distribution. Allowance initially is not
15 difficult to obtain. "A claim . . . , proof of which is filed
16 under section 501 . . . , is deemed allowed unless a party in
17 interest . . . objects." § 502(a).

18 "If [an] objection to a claim is made, the court . . . shall
19 determine the amount of such claim . . . as of the date of the
20 filing of the petition, and shall allow such claim in such
21 amount[,]" with various exceptions. § 502(b). The only
22 exception relevant here is that a claim shall not be allowed if
23 "such claim is unenforceable against the debtor and property of
24 the debtor, under any agreement or applicable law"

25 § 502(b)(6). Put another way, "the court must allow the claim if
26 it is enforceable against either the debtor or his property."

27 Johnson v. Home State Bank, 501 U.S. 78, 85 (1991) (emphasis in
28 original).

1 The effect of an allowed claim is that the claimant is
2 deemed to have a valid "right to payment," the claim's amount is
3 established, and the claimant is entitled to a distribution from
4 the bankruptcy estate; however, if a claim is disallowed, that
5 disallowance is not a finding that the claimant engaged in any
6 illegal activity, such as wrongful foreclosure or fraud. See
7 § 101(5); Rule 3021; Cotchett, Pitre & McCarthy v. Silver, 2012
8 WL 1657620 at *13 (E.D. Cal. 2012); In re Hudson, 260 B.R. 421,
9 430 (Bankr. W.D. Mich. 2001).

10 Secured creditors such as Deutsche Bank do not need to file
11 proofs of claim. Meadowbrook Estates v. McElvany, Inc.
12 (In re Meadowbrook Estates), 246 B.R. 898, 902 (Bankr. E.D. Cal.
13 2000) (citing In re Tarnow, 749 F.2d 464, 465 (7th Cir. 1984)).
14 In the absence of a proof of claim, a secured creditor's lien
15 passes through the bankruptcy and remains in place; "the debtor's
16 [personal] liability for the secured creditor's claim will be
17 discharged and the creditor will not receive a dividend from the
18 estate." Id.; see also Johnson, 501 U.S. at 83. But when a
19 secured creditor wants to obtain a distribution under a confirmed
20 Chapter 13 plan, that creditor must file a proof of claim. See
21 Rule 3021; Dixon v. I.R.S. (In re Dixon), 218 B.R. 150, 151 (10th
22 Cir. BAP 1998) (applying Rule 3021 in a Chapter 13 case).

23 A claim secured by property of the estate is bifurcated into
24 two claims if the value of the collateral is less than the amount
25 of the debt. § 506(a). There is a secured claim equal to the
26 value of the collateral and an unsecured claim for the remainder
27 (the deficiency). Id. The creditor's property right in the lien
28 is thus preserved. For the secured claim, the creditor can seek

1 relief from stay to foreclose its lien or accept payment in the
2 Chapter 13 plan to protect its interest. The Chapter 13 plan
3 pays priority claims, and if proceeds remain, the plan generally
4 pays all or part of the unsecured claim. See § 1322(a)(2),
5 (b)(1), (b)(8). But see Downey Savs. & Loan Ass'n v. Metz
6 (In re Metz), 820 F.2d 1495, 1498-99 (9th Cir. 1987) (Chapter 13
7 plan with zero payments to unsecured creditors not necessarily
8 filed in bad faith so long as all of debtor's disposable income
9 allocated to the plan). Any remaining portion of the unsecured
10 claim at plan completion is discharged. 1328(a); see also
11 Lawrence Tractor Co. v. Gregory (In re Gregory), 705 F.2d 1118,
12 1122 (9th Cir. 1983) (Chapter 13 discharge includes unsecured
13 debts even if none of the plan payments were allocated to those
14 debts so long as the plan "provided for" the debts under
15 Section 1328(a) by "deal[ing] with [them] or refer[ring] to
16 [them]").

17 **B. Simpson's Contentions Regarding Deutsche Bank's Claim**

18 In this appeal, Simpson's contentions boil down to three key
19 arguments: (1) the bankruptcy court should not have vacated the
20 March 19, 2012 Disallowance Order; (2) POC 6-2 should have been
21 disallowed as untimely; and (3) the bankruptcy court should have
22 sustained his objection to POC 6-2 for the same reason it
23 sustained his objection to POC 3-1, because Deutsche Bank did not
24 establish it was a person entitled to enforce the note and hence
25 lacked standing to file a proof of claim. We will address each
26 of these arguments in turn.

27 **1. Vacatur of Disallowance Order**

28 Simpson asserts that the bankruptcy court improperly vacated

1 the Disallowance Order. Simpson claims, as a matter of
2 procedure, that the court should not have vacated the
3 Disallowance Order sua sponte and, in the alternative, should
4 have given him advance notice and an opportunity for a hearing on
5 the issue of whether the Disallowance Order should be
6 reconsidered.

7 We are not persuaded that Simpson's procedural claims
8 justify reversal of the bankruptcy court's decision to vacate the
9 Disallowance Order. Section 502(j) and Rule 3008 govern
10 reconsideration of claims, but neither provision indicates that
11 the bankruptcy court was prohibited from sua sponte reconsidering
12 the Disallowance Order. Moreover, another Bankruptcy Code
13 provision appears to explicitly give the court authority to act
14 on its own motion under such circumstances. See § 105(a); see
15 also, Kirwan v. Vanderwerf (In re Kirwan), 164 F.3d 1175, 1177
16 (8th Cir. 1999) (holding that bankruptcy court had authority to
17 sua sponte reconsider disallowance of claims); (Oudomsouk v. Bank
18 of America, N.A. (In re Oudomsouk), 483 B.R. 502, 514-54 (Bankr.
19 M.D. Tenn. 2012) (same).

20 As for the requirement of advance notice and a hearing, that
21 is a closer issue, because the bankruptcy court apparently raised
22 the issue of reconsidering the Disallowance Order for the first
23 time in its tentative ruling issued just before the August 14,
24 2012 hearing on POC 6-2. Rule 3008 and the accompanying Advisory
25 Committee Notes both generally indicate that advance notice and a
26 hearing are required. But notice and hearing under the
27 bankruptcy code are flexible concepts, see § 102(1)(A), and the
28 Ninth Circuit has held that defective notice and opportunity for

1 hearing is not grounds for reversal unless the appellant
2 establishes prejudice. Rosson v. Fitzgerald (In re Rosson),
3 545 F.3d 764, 776-77 (9th Cir. 2008). Here, Simpson has not
4 demonstrated any prejudice. The bankruptcy court's decision to
5 vacate the Disallowance Order was based on its interpretation of
6 another of its orders - the Conditional Order - and we must give
7 broad deference to the bankruptcy court in interpreting its own
8 orders. Rosales v. Wallace (In re Wallace), --- B.R. ---,
9 2013 WL 1562832 (9th Cir. BAP 2013) (citing Marciano v. Fahs
10 (In re Marciano), 459 B.R. 27, 35 (9th Cir. BAP 2011)). Simpson
11 has not pointed us to us any reason why the bankruptcy court's
12 interpretation of the Conditional Order was erroneous. Nor are
13 we independently aware of any such reason. Accordingly, Simpson
14 has not demonstrated that he was prejudiced by the lack of
15 advance notice or the lack of an additional hearing, so the
16 reconsideration process, even if defective, would not justify a
17 reversal of the bankruptcy court. In re Rosson, 545 F.3d at
18 776-77.

19 **2. Timeliness of POC 6-2**

20 Simpson next asserts that POC 6-2 should have been
21 disallowed as untimely. According to Simpson, untimeliness
22 necessarily flows from his interpretation of the Conditional
23 Order as absolutely barring the amendment of POC 3-1 on and after
24 February 7, 2014. But the bankruptcy court disagreed with
25 Simpson's interpretation of the Conditional Order. Instead, the
26 court in interpreting its own order determined that the
27 Conditional Order did not bar Deutsche Bank from filing POC 6-2
28 one week later, on February 14, 2012. As we discussed above, we

1 give deference to the bankruptcy court's interpretation of its
2 own orders, and we are not aware of any sound basis for
3 concluding that the court misinterpreted its Conditional Order.
4 Consequently, Simpson's timeliness argument also fails.⁷

5 **3. Deutsche Bank's Standing**

6 Simpson finally asserts that Deutsche Bank was not a person
7 entitled to enforce the note and thus lacked standing to file its
8 proof of claim. However, a creditor can establish that it is a
9 person entitled to enforce a note by demonstrating that it holds
10 the original note endorsed in blank. See Veal v. Am. Home Mortg.
11 Servicing, Inc. (In re Veal), 450 B.R. 897, 910-11 (9th Cir. BAP
12 2011). Here, the bankruptcy court found based on Perez's
13 declaration that Deutsche Bank held the original Note endorsed in
14 blank. Nothing that Simpson alleges or argues persuades us that
15 the bankruptcy court's finding was illogical, implausible or not
16 supported by the record. Accordingly, Simpson's standing
17 argument lacks merit.

18 **C. Harmless Error**

19 As indicated above, none of Simpson's arguments persuade us
20 that we should reverse the order appealed. But even if there
21 were some sort of error in the bankruptcy court's decision, we
22 still would not reverse because we must ignore harmless error.
23 See Van Zandt v. Mbunda (In re Mbunda), 484 B.R. 344, 355 (9th
24 Cir. BAP 2012). Any bankruptcy court error here would have been

25
26 ⁷In the alternative, the bankruptcy court found that
27 Deutsche Bank's untimely filing of POC 6-2 was due to excusable
28 neglect. In light of our conclusion that the bankruptcy court
did not err in refusing to disallow POC 6-2 as untimely, we
decline to address the excusable neglect issue.

1 harmless as to Simpson. As explained below, the undisputed fact
2 that the Property has been foreclosed upon subsequent to the
3 filing of this appeal provides Simpson with a complete defense
4 against Deutsche Bank's proof of claim, which defense Simpson can
5 assert via a § 502(j) motion for reconsideration. As a result,
6 our decision affirming the bankruptcy court's prior allowance of
7 Deutsche Bank's claim should be of little concern to Simpson,
8 inasmuch as he now can assert in the bankruptcy court meritorious
9 grounds for reconsideration of the allowance of Deutsche Bank's
10 claim.⁸

11 When a debt is nonrecourse as to the debtor, or the creditor
12 otherwise does not have a valid deficiency judgment against the
13 debtor, the creditor's recovery is limited to the value of the
14 collateral upon its sale or to any plan distributions made on
15 account of the secured claim. In other words, the debtor has no
16 in personam liability related to the debt secured by the
17 property. See First Nat'l Bank of Cal. v. Weinstein
18 (In re Weinstein), 227 B.R. 284, 292 (9th Cir. BAP 1998) ("[T]he
19 undersecured creditor with a nonrecourse unsecured claim would
20 not be entitled to a distribution in bankruptcy."). If the lien
21 securing the secured claim is foreclosed and the property is
22 sold, then the secured creditor's claim must be disallowed
23 because, to the extent that the claim was secured, it has been
24 satisfied by the proceeds of the foreclosure sale, and, to the

25
26 ⁸We pause here to emphasize that, while the post-appeal
27 foreclosure does affect Deutsche Bank's proof of claim, it does
28 not give Simpson valid grounds for reconsideration of either the
bankruptcy court's prior relief from stay order or the
foreclosure itself.

1 extent that the claim was unsecured, it is unenforceable.

2 Applicable non-bankruptcy law gives particular significance
3 to Deutsche Bank's post-appeal foreclosure. Under California
4 law, there can be no deficiency judgment after a nonjudicial
5 foreclosure sale such as occurred here after the notice of appeal
6 was filed. See Cal. Civ. Proc. Code § 580d (West 2012)
7 ("Section 580d"). Section 580d thus extinguishes any in personam
8 liability that a borrower may have on a debt upon nonjudicial
9 foreclosure of real property collateral securing that debt.

10 Here, Deutsche Bank may have had an allowed secured claim
11 against the estate at the time of the petition filing and until
12 the foreclosure sale. That is the dispute the parties have
13 framed in this appeal. But Deutsche Bank's nonjudicial
14 foreclosure largely renders irrelevant the issues raised in this
15 appeal.

16 The nonjudicial foreclosure, the occurrence of which is not
17 and cannot be disputed, raises the legal effect of Section 580d.
18 The effect of this statute also is indisputable. In light of the
19 foreclosure sale, any in personam liability that Simpson or his
20 estate otherwise may have had was extinguished. This conclusion
21 is not affected by the possible community claim nature of the
22 debt underlying the Note. After the nonjudicial foreclosure,
23 Section 580d renders nonrecourse any debt evidenced by the Note –
24 for both Simpson and his wife.

25 In sum, Section 580d rendered unenforceable Deutsche Bank's
26 post-foreclosure deficiency claim against Simpson and his
27 bankruptcy estate. As a result, the prior allowance of Deutsche
28 Bank's claim is subject to reconsideration under § 502(j), and

1 any error of the bankruptcy court in its prior rulings leading up
2 to the allowance of that claim would have been harmless.

3 **CONCLUSION**

4 For the reasons set forth above, we AFFIRM the bankruptcy
5 court's allowance of Deutsche Bank's claim, without prejudice to
6 Simpson filing in the bankruptcy court a § 502(j) reconsideration
7 motion based on Deutsche Bank's foreclosure on the Property,
8 which extinguished Deutsche Bank's claim in its entirety.