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ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-12-1061-KiDMk
)		
FANDA HEZAM FADEL,)	Bk. No.	RS 11-33453-MJ
)		
Debtor.)		
)		
_____)		
)		
FANDA HEZAM FADEL,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
DCB UNITED LLC, TRUSTEE OF)		
THE EISENHOWER UDT 7-22-11,)		
)		
)		
Appellee.)		
_____)		

Argued and Submitted on July 19, 2012,
at Pasadena, California

Filed - May 31, 2013

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

Honorable Meredith A. Jury, Bankruptcy Judge, Presiding

Appearances: Jenny L. Doling, Esq. of the Law Offices of Jenny L. Doling argued for appellant, Fanda Hezam Fadel; Jeannette Marsala, Esq. of Prober & Raphael ALC argued for appellee, DCB United LLC, Trustee of the Eisenhower UDT 7-22-11.

Before: KIRSCHER, DUNN, and MARKELL, Bankruptcy Judges.

1 KIRSCHER, Bankruptcy Judge:

2
3 Appellee, DCB United, LLC, Trustee of the Eisenhower UDT 7-
4 22-11 ("DCB"), purchased a single family residence located in La
5 Quinta, California (the "Property") at a foreclosure sale on July
6 22, 2011, two days after appellant, debtor Fanda Hezam Fadel
7 ("Mrs. Fadel"), filed her chapter 13¹ bankruptcy petition. At the
8 time of the foreclosure sale, Mrs. Fadel resided in the Property
9 with her husband, Mohamed Fadel ("Mr. Fadel"), and their seven
10 children. Despite Mrs. Fadel's claims to the contrary, the
11 bankruptcy court ultimately determined that she did not hold an
12 ownership interest in the Property, the foreclosure sale was not
13 void, and thus DCB was entitled to relief from the automatic stay
14 to proceed with an unlawful detainer action against Mrs. Fadel in
15 state court.

16 Because Mrs. Fadel conveyed any interest she had in the
17 Property in 2001 to Mr. Fadel, and because she did not
18 subsequently acquire an interest in the Property vis-à-viz
19 California's community property law, we AFFIRM.

20 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

21 Mrs. Fadel has been married to Mr. Fadel since 1988.
22 Throughout their marriage, Mr. Fadel has been employed outside of
23 the home while Mrs. Fadel, with the exception of intermittent
24 employment, has stayed at home to care for their seven children.
25 Mr. Fadel purchased the Property in 2001. The grant deed,

26
27 ¹ Unless specified otherwise, all chapter, code, and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 recorded on March 7, 2001, granted the Property to "Mohamed Fadel,
2 a married man, as his sole and separate property." On that same
3 date, an interspousal transfer grant deed (the "Interspousal
4 Deed") was recorded from Mrs Fadel conveying all of her interests,
5 whether community or otherwise, to Mr. Fadel, who continued to
6 hold the Property as his sole and separate property.

7 In August 2003, Mr. Fadel obtained a loan for \$275,000 from
8 Pacific Republic Mortgage Corporation. In exchange for the loan,
9 Mr. Fadel executed a deed of trust against the Property in favor
10 of the lender. The deed of trust lists the borrower as "Mohamed
11 Fadel, a married man, as his sole and separate property."

12 Mr. Fadel eventually defaulted on the loan. To fend off
13 foreclosure by Bank of America ("B of A"),² on January 31, 2011,
14 Mr. Fadel filed his own chapter 7 bankruptcy case. Although his
15 Schedule A identified the Property, it did not identify how title
16 to the Property was held (i.e., husband, wife, joint, or
17 community). Mr. Fadel's Schedule D identified B of A as the first
18 lienholder on the Property. Although many codebtors were listed
19 in Mr. Fadel's Schedule H, Mrs. Fadel was not listed as a codebtor
20 on the deed of trust note, nor was the debt to B of A even
21 mentioned. Mr. Fadel received his discharge on May 26, 2011, and
22 his case was closed on June 17, 2011.

23 Still faced with a pending foreclosure sale of the Property
24 on July 22, 2011, Mrs. Fadel filed her own chapter 13 bankruptcy
25 case on July 20, 2011. Mrs. Fadel's Schedule A identified the
26 Property, and it too did not identify how title to the Property

27
28 ² It is not clear in the record how B of A became the first
lienholder on the Property, but this fact is not in dispute.

1 was held. In Mrs. Fadel's Schedule H, the box "none" was checked,
2 indicating that no codebtors were liable on any of her debts.
3 Mrs. Fadel's counsel notified B of A of the bankruptcy when she
4 filed her petition on July 20, 2011. B of A proceeded with the
5 foreclosure sale of the Property on July 22, 2011, as planned.
6 DCB was the successful bidder. DCB recorded its trustee's deed on
7 August 8, 2011.

8 On August 3, 2011, Mrs. Fadel filed a chapter 13 plan, which
9 purported to cure all prepetition arrearages owed on the Property
10 and to make monthly deed of trust note payments to B of A and the
11 second lienholder. DCB opposed confirmation of the plan because
12 Mrs. Fadel had no debt to reorganize with DCB, and because she had
13 no income to fund a plan. The managing member of DCB stated in
14 his declaration in support that DCB was unaware of any bankruptcy
15 at the time it purchased the Property. The bankruptcy court
16 overruled DCB's objection and confirmed the plan.

17 On September 15, 2011, DCB moved for relief from stay under
18 § 362(d)(1) to proceed with an unlawful detainer action against
19 Mrs. Fadel in state court ("Stay Relief Motion"). DCB asserted
20 that it had acquired title to the Property at the foreclosure sale
21 on July 22, 2011. In support, DCB attached copies of the grant
22 deed and the Interspousal Deed. Through these deeds, DCB asserted
23 that Mrs. Fadel had relinquished her community interest in the
24 Property.

25 Mrs. Fadel opposed the Stay Relief Motion, contending that:
26 (1) because the sale occurred postpetition and violated the
27 automatic stay, it was void and DCB lacked standing to seek
28 relief; and (2) because B of A had accepted her postpetition deed

1 of trust note payments, thereby substantially consummating the
2 plan, DCB was bound by the provisions of the confirmed plan.³

3 The first hearing on DCB's Stay Relief Motion took place on
4 November 2, 2011. The bankruptcy court noted that at the time of
5 plan confirmation, it did not recognize the issue of whether Mrs.
6 Fadel held an interest in the Property, but, rather, assumed that
7 she did, and that DCB's purchase of the Property violated the
8 stay. However, with Mrs. Fadel's interest in the Property in
9 question, for which the bankruptcy filing may or may not have
10 imposed an automatic stay, the court was not certain whether the
11 sale was void. The bankruptcy court noted that the Interspousal
12 Deed indicated that the Property, which would otherwise be
13 community property, did not belong to Mrs. Fadel.

14 After further discussion, the bankruptcy court ordered
15 additional briefing on the issue of whether Mrs. Fadel held an
16 interest in the Property at the time she filed her chapter 13
17 petition, which would determine whether an automatic stay existed
18 or not with respect to the Property. In her supplemental brief,
19 Mrs. Fadel raised a multitude of arguments to establish an
20 interest in the Property, despite her name not appearing on the
21 title. Mrs. Fadel first argued that she held a possessory
22 interest in the Property at the time of her bankruptcy filing,
23 which constituted property of the estate protected by the
24 automatic stay. Next, Mrs. Fadel, who is of Arab descent, argued
25 that even though her cultural belief is that real property should
26 be titled in the name of the husband, California's community

27
28 ³ The parties indicate in the record that B of A subsequently returned all plan payments submitted by Mrs. Fadel.

1 property law nonetheless gave her an interest in the Property
2 protected by the automatic stay. Specifically, Mrs. Fadel argued
3 that she had acquired a "pro tanto" community property interest in
4 the Property since community funds were used to reduce the debt on
5 the Property and fund improvements to it. Finally, Mrs. Fadel
6 argued that, based on the Fifth Circuit case of Brown v. Chesnut
7 (In re Chesnut), 422 F.3d 298 (5th Cir. 2005) [hereinafter
8 "Chesnut"], she held at least an "arguable" interest in the
9 Property on the petition date due to her community interest, and B
10 of A violated the automatic stay when it conducted the foreclosure
11 sale without first obtaining relief under § 362(d). Mrs. Fadel
12 asked the bankruptcy court to adopt Chesnut and hold that the
13 automatic stay applied to the Property, even if it was later
14 determined that she had no interest in it. In her declaration in
15 support, Mrs. Fadel stated that even though title to the Property
16 was in Mr. Fadel's name only, she always believed that she and her
17 husband owned the Property jointly.

18 DCB countered Mrs. Fadel's arguments, contending that since
19 the Property was never part of her bankruptcy estate, it was not
20 protected by the automatic stay, and thus the foreclosure sale was
21 not void. DCB noted that Mrs. Fadel was not on the title or an
22 obligor on the note secured by the deed of trust. As for any
23 possible community interest, DCB contended that although under
24 CAL. FAM. CODE § 760 the presumption is that all property acquired
25 during a marriage is community property, CAL. EVID. CODE § 662
26 provides a conflicting presumption that the owner of the legal
27 title to property is presumed to be the owner of the full
28 beneficial title. Thus, argued DCB, legal title, which may be

1 rebutted only by clear and convincing evidence, trumps the
2 community property presumption." According to DCB, evidence of
3 community funds being used to improve the Property could not rebut
4 Mrs. Fadel's admitted and clear intent to have the Property titled
5 in Mr. Fadel's name as his sole and separate property, despite her
6 claim that she always believed it was community property.

7 DCB also countered the cases cited by Mrs. Fadel, contending
8 that they concerned the division of property upon dissolution, not
9 the characteristics of property during marriage and, in any event,
10 no writing evidencing the Fadels' intent to transmute the Property
11 into community property, such as the recording of a quitclaim
12 deed, existed as of the petition date. At best, argued DCB, even
13 if Mrs. Fadel had a right to reimbursement for community
14 contributions, that right is a monetary right; it does not change
15 legal title to the Property. Finally, argued DCB, Mrs. Fadel's
16 claimed possessory interest only protected her from loss of
17 possession through eviction proceedings, which is why DCB sought
18 relief from stay to commence its unlawful detainer action.

19 After carefully considering the issue, the bankruptcy court
20 granted the Stay Relief Motion at the continued hearing on
21 December 5, 2011. The court first determined that the
22 confirmation order had no preclusive effect as to DCB's Stay
23 Relief Motion because DCB was never a creditor of Mrs. Fadel and
24 because the plan attempted to reorganize a debt for which Mrs.
25 Fadel was not obligated.

26 In reaching its decision that the Property was not property
27 of Mrs. Fadel's estate on the petition date and therefore no stay
28 violation occurred rendering the sale void, the bankruptcy court

1 determined that legal title trumped any community interest she
2 held in the Property, unless Mrs. Fadel was unaware she was giving
3 away her interest in it. On that issue, the court found that Mrs.
4 Fadel, for cultural reasons, knowingly and knowledgeably granted
5 any interest she may have had in the Property to Mr. Fadel as his
6 sole and separate property, and no subsequent writing existed
7 transmuting it to community property. The court rejected Mrs.
8 Fadel's argument that community contributions to the Property gave
9 her a pro tanto community property interest in it, as that issue
10 was relevant only between spouses upon dissolution; it was not
11 relevant as to third parties where title controls.

12 The bankruptcy court distinguished Chesnut from the instant
13 case, reasoning that Texas law controlled the Chesnut decision,
14 which is different from California law. Under California law,
15 legal title trumps the presumption that property acquired during
16 the marriage is community property. The court agreed that Mrs.
17 Fadel had a possessory interest in the Property on the petition
18 date, but determined that the act of selling the Property at
19 foreclosure affected title, not possession alone. Finally,
20 although the court agreed with Mrs. Fadel that perhaps the better
21 course of action would have been for B of A to obtain a comfort
22 order before conducting the foreclosure sale, that did not change
23 the outcome - Mrs. Fadel had no interest in the Property. The
24 order granting the Stay Relief Motion was entered on December 15,
25 2011 ("Stay Relief Order").

26 Mrs. Fadel filed a timely motion for reconsideration of the
27 Stay Relief Order (the "Reconsideration Motion"). She again asked
28 the bankruptcy court to adopt the holding in Chesnut. Mrs. Fadel

1 also contended that the bankruptcy court erred in ruling that she
2 did not have an interest in the Property as of the petition date.
3 She argued, for the first time, that the Property was protected by
4 the codebtor stay under § 1301(a) because, pursuant to CAL. FAM.
5 CODE §§ 910 and 914, she was liable on the deed of trust debt
6 incurred by Mr. Fadel during their marriage.

7 Mrs. Fadel further asserted, for the first time, that because
8 she does not speak, read, or write in English, she did not know
9 what she was signing when Mr. Fadel requested that she sign the
10 Interspousal Deed, and therefore the presumption of "undue
11 influence" trumped the title presumption in CAL. EVID. CODE § 662.
12 In her declaration, Mrs. Fadel claimed she had no intention of
13 granting away her interest in the Property. Mr. Fadel stated in
14 his declaration that Mrs. Fadel did not understand that signing
15 the Interspousal Deed meant she was relinquishing her interest in
16 the Property.

17 Finally, Mrs. Fadel raised two of her previous arguments that
18 (1) CAL. FAM. CODE §§ 914 and 920 gave her a pro tanto community
19 property interest in the Property on the petition date due to her
20 right to reimbursement, which she argued could be determined
21 outside of dissolution, and (2) because DCB voluntarily submitted
22 itself to the bankruptcy court's jurisdiction by opposing
23 confirmation, it was bound by the confirmation order even if it
24 was not a creditor. DCB opposed the Reconsideration Motion.

25 The bankruptcy court denied the Reconsideration Motion. It
26 determined that no codebtor stay existed because all documentary
27 evidence indicated that Mrs. Fadel was not an obligor on the deed
28 of trust note. The court also expressed its reluctance to give

1 any weight to Mrs. Fadel's undue influence claim, as it would only
2 provide the Fadels, who were not disputing an interest in
3 property, the opportunity to conspire to create undue influence
4 and manipulate the system for their benefit. The court noted that
5 even if Mrs. Fadel's assertion were true, it would only render the
6 Interspousal Deed voidable, not void. The court also rejected
7 Mrs. Fadel's argument that she had acquired a pro tanto community
8 property interest in the Property due to a right of reimbursement
9 because reimbursement is a monetary right, not a property
10 interest, and such right arises only between spouses upon
11 dissolution.

12 Finally, the bankruptcy court again declined to adopt
13 Chesnut. Noting that the Ninth Circuit has not yet considered the
14 "arguable property" principle, the bankruptcy court reasoned that
15 Chesnut is contrary to California's record notice policy, which
16 allows parties to determine title to real property and to rely on
17 that information. Here, the grant deed and the Interspousal Deed
18 notified the world that Mr. Fadel held title to the Property as
19 his sole and separate property, and that Mrs. Fadel had no
20 interest in it. However, the bankruptcy court recognized that
21 Chesnut raised a serious question of law and informed Mrs. Fadel
22 that it would grant her a stay pending appeal, if requested.

23 An order denying the Reconsideration Motion was entered on
24 February 3, 2012. Mrs. Fadel timely appealed the Stay Relief
25 Order and the Reconsideration Order on that same date. The
26 bankruptcy court entered an order granting a stay of the Stay
27 Relief Order pending appeal on February 16, 2012.

28

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
3 and 157(b)(2)(G). We have jurisdiction under 28 U.S.C. § 158.

4 **III. ISSUES**

5 1. Did the bankruptcy court err when it determined that DCB was
6 not bound by the confirmation order?

7 2. Did the bankruptcy court abuse its discretion in granting the
8 Stay Relief Motion?

9 3. Did the bankruptcy court abuse its discretion in denying the
10 Reconsideration Motion?

11 **IV. STANDARDS OF REVIEW**

12 We review findings of fact for clear error and issues of law
13 de novo. Hoopai v. Countrywide Home Loans, Inc. (In re Hoopai),
14 369 B.R. 506, 509 (9th Cir. BAP 2007).

15 Whether property is included in a bankruptcy estate is a
16 question of law subject to de novo review. Sticka v. Lambert (In
17 re Lambert), 283 B.R. 16, 18 (9th Cir. BAP 2002).

18 We review an order granting relief from stay for abuse of
19 discretion. Kronemyer v. Am. Contractors Indem. Co. (In re
20 Kronemyer), 405 B.R. 915, 919 (9th Cir. BAP 2009).

21 A denial of a motion for reconsideration is reviewed for an
22 abuse of discretion. Hansen v. Moore (In re Hansen), 368 B.R.
23 868, 875 (9th Cir. BAP 2007).

24 In determining whether the bankruptcy court abused its
25 discretion, we first "determine de novo whether the [bankruptcy]
26 court identified the correct legal rule to apply to the relief
27 requested." United States v. Hinkson, 585 F.3d 1247, 1262 (9th
28 Cir. 2009)(en banc). If the bankruptcy court identified the

1 correct legal rule, we then determine whether its "application of
2 the correct legal standard [to the facts] was (1) illogical, (2)
3 implausible, or (3) without support in inferences that may be
4 drawn from the facts in the record." Id. (internal quotation
5 marks omitted).

6 V. DISCUSSION

7 A. The bankruptcy court did not err in determining that the 8 confirmation order was not binding on DCB.

9 Section 1327(a) provides that "[t]he provisions of a
10 confirmed plan bind the Debtor and each creditor, whether or not
11 the claim of such creditor is provided for by the plan, and
12 whether or not such creditor has objected to, has accepted, or has
13 rejected the plan."

14 As the bona fide purchaser of the Property at the foreclosure
15 sale two days after Mrs. Fadel filed her chapter 13 bankruptcy
16 case, we agree with the bankruptcy court that DCB was not a
17 "creditor" of Mrs. Fadel bound by the confirmation order. Section
18 101(10)(A) defines a creditor as an "entity that has a claim
19 against the debtor that arose at the time of or before the order
20 for relief concerning the debtor."⁴ Section 101(5), in pertinent
21 part, defines a claim as a "right to payment," See Blue
22 v. Town of Lake Bldg. Corp. (In re Blue), 247 B.R. 748, 751-52
23 (Bankr. N.D. Ill. 2000)(party not a creditor of the debtor is not
24 bound by debtor's confirmed chapter 13 plan). As such, DCB was
25 not precluded from moving for relief from the automatic stay.

26 While Mrs. Fadel concedes that DCB was not a creditor, she

27 ⁴ Section 101(10)(B) and (C) provide additional definitions
28 not relevant to this discussion.

1 contends DCB was still bound by the confirmation order, which was
2 final and not appealed, because DCB voluntarily subjected itself
3 to the bankruptcy court's jurisdiction when it objected to her
4 plan as a party in interest. Mrs. Fadel cites no authority to
5 support her assertion. We also reject Mrs. Fadel's argument that
6 the bankruptcy court erred by "vacating" the confirmation order
7 under Civil Rule 60(b)(4). Nothing in the record reflects that
8 the order was vacated. The bankruptcy court did not err when it
9 determined that DCB was not bound by the confirmation order.

10 **B. The bankruptcy court did not abuse its discretion when it**
11 **granted the Stay Relief Motion.**

12 **1. Applicable law.**

13 Upon the filing of a bankruptcy petition, an estate is
14 created comprised of "all legal or equitable interests of the
15 debtor in property," "wherever located or by whomever held," "as
16 of the commencement of the case." § 541(a)(1). According to
17 § 541(a)(2), property of the bankruptcy estate includes:

18 All interests of the debtor and the debtor's spouse in
19 community property as of the commencement of the
[bankruptcy] case that is-

20 (A) under the sole, equal, or joint management and
21 control of the debtor; or

22 (B) liable for an allowable claim against the debtor, or
23 for both an allowable claim against the debtor and an
allowable claim against the debtor's spouse, to the
extent that such interest is so liable.

24 While this provision defines what interests of the debtor are
25 included in the bankruptcy estate, it does not address "the
26 threshold questions of the existence and scope of the debtor's
27 interest in a given asset.'" Dumas v. Mantle (In re Mantle), 153
28 F.3d 1082, 1084 (9th Cir. 1998)(quoting State of Cal. v. Farmers

1 Mkts., Inc. (In re Farmers Mkts., Inc.), 792 F.2d 1400, 1402 (9th
2 Cir. 1986)). Rather, the bankruptcy court must look to state
3 property law to determine whether, and to what extent, the debtor
4 has any legal or equitable interests in property as of the
5 commencement of the case. Id. (citing Butner v. United States,
6 440 U.S. 48, 55 (1979)).⁵

7 The filing of the bankruptcy petition creates an automatic
8 stay under § 362(a), which operates to enjoin specific acts
9 against the debtor, property of the debtor and property of the
10 estate. § 362(a)(3), (4), (5) and (6). However, under § 362(d),
11 a "party in interest" may request relief from the stay. Upon
12 request, § 362(d) requires the bankruptcy court to grant relief
13 from the automatic stay upon the showing of "cause," or when no
14 equity exists in a property and the property is not necessary to
15 debtor's effective reorganization. See § 362(d)(1) and (d)(2).
16 What constitutes "cause" to terminate the stay is determined on a
17 case-by-case basis. Delaney-Morin v. Day (In re Delaney-Morin),
18 304 B.R. 365, 369 (9th Cir. BAP 2003)(citing MacDonald v.
19 MacDonald (In re MacDonald), 755 F.2d 715, 717 (9th Cir. 1985)).

20 **2. Analysis.**

21 Mrs. Fadel assigns several errors to the bankruptcy court's
22 decision to grant DCB relief from stay to proceed with its
23

24 ⁵ Rule 7001(2) and Ninth Circuit law require an adversary
25 proceeding to determine "an interest in property." Brady v.
26 Andrew (In re Commercial W. Fin. Corp.), 761 F.2d 1329, 1336-38
27 (9th Cir. 1985). Neither of the parties raised any issue as to
28 whether Mrs. Fadel could allege a property interest as a defense
to a contested matter or if she needed to initiate an adversary
proceeding. As the issue has not been raised, the Panel takes no
position on whether any waiver has occurred. Ung. v Boni (In re
Boni), 240 B.R. 381, 386(9th Cir. BAP 1999).

1 unlawful detainer action against her in state court. We address
2 each argument in turn.

3 **a. Legal title presumption trumps the community**
4 **property presumption.**

5 Under the "form of title" presumption, the description in a
6 deed as to how title is held presumptively reflects the actual
7 ownership status of the property. In re Marriage of Brooks, 169
8 Cal.App.4th 176, 184-85 (Cal. Ct. App. 2008)(citing In re Marriage
9 of Haines, 33 Cal.App.4th 277, 292 (Cal. Ct. App. 1995)). This
10 common law presumption has been codified in CAL. EVID. CODE § 662,
11 which states, "The owner of the legal title to property is
12 presumed to be the owner of the full beneficial title. This
13 presumption may be rebutted only by clear and convincing proof."
14 California's form of title presumption "is based on promoting the
15 public policy in favor of the stability of titles to property,"
16 and "allegations that legal title does not represent beneficial
17 ownership have been historically disfavored because society and
18 the courts have a reluctance to tamper with duly executed
19 instruments and documents of legal title." In re Marriage of
20 Brooks, 169 Cal.App.4th at 184-85 (citations and quotation marks
21 omitted). Absent a showing to the contrary, the characterization
22 of the Property in the title will control.

23 It is undisputed that the Fadels acquired the Property during
24 marriage. Under CAL. FAM. CODE § 760, a general presumption exists
25 that property acquired during the marriage is community property.
26 However, "the affirmative act of specifying a form of ownership in
27 the conveyance of title . . . removes such property from the more
28 general presumption." In re Marriage of Lucas, 27 Cal.3d 808,

1 814-15 (Cal. 1980), rev'd on other grounds by CAL. FAM. CODE § 2581
2 (citing Socol v. King, 36 Cal.2d 342, 346 (Cal. 1950)). The "act
3 of taking title to property in the name of one spouse during
4 marriage with the consent of the other spouse effectively removes
5 that property from the general community property presumption. In
6 that situation, the property is presumably the separate property
7 of the spouse in whose name title is taken." In re Marriage of
8 Brooks, 169 Cal.App.4th at 186-87 (citing 5 Miller & Starr, Cal.
9 Real Estate § 12:41, p. 12-110 (3d ed. 2006)). See Wolfe v.
10 Jacobson (In re Jacobson), 676 F.3d 1193, 1201 (9th Cir. 2012)(in
11 California no community property presumption exists where a spouse
12 acquires property in his name alone with the other spouse's
13 consent). Here, the recorded grant deed, the recorded
14 Interspousal Deed and all other documents related to the purchase
15 of the Property confirm that the owner (and the person responsible
16 for repayment of the deed of trust note) was only Mr. Fadel. These
17 documents, showing clear title to the Property in Mr. Fadel as his
18 "sole and separate property," displace any community property
19 presumption.

20 The only way Mrs. Fadel could overcome the form of title
21 presumption was to show "undue influence" by Mr. Fadel. Under
22 California's community property law, the presumption of undue
23 influence, based on the confidential relationship between spouses,
24 arises when an interspousal transaction advantages one spouse over
25 the other. See CAL. FAM. CODE § 721. In that circumstance, title
26 presumption and application of CAL. EVID. CODE § 662 are improper.
27 In re Marriage of Haines, 33 Cal.App.4th at 301-02. In other
28 words, the rebuttable presumption of undue influence, if proven,

1 trumps the title presumption. Id. "When a presumption of undue
2 influence applies to a transaction, the spouse who was advantaged
3 by the transaction must establish that the disadvantaged spouse's
4 action was freely and voluntarily made, with a full knowledge of
5 all the facts, and with a complete understanding of the effect of
6 the transaction." In re Marriage of Fossum, 192 Cal.App.4th 336,
7 344 (Cal. Ct. App. 2011)(citations and quotation marks omitted).
8 The question of "whether the spouse gaining an advantage has
9 overcome the presumption of undue influence is a question for the
10 trier of fact, whose decision will not be reversed on appeal if
11 supported by substantial evidence." Id. (citations and quotation
12 marks omitted).

13 In her declaration in support of the Reconsideration Motion,
14 Mrs. Fadel stated, for the first time, that she did not know what
15 the Interspousal Deed was when she signed it and that it was not
16 her intention to give up her community interest in the Property by
17 signing the document. The bankruptcy court rejected Mrs. Fadel's
18 testimony as self-serving, and it contradicted her earlier
19 statement that, based on her cultural beliefs, all property should
20 be titled in the name of her husband. The court further concluded
21 that even if undue influence existed, the Interspousal Deed would
22 merely be voidable, not void.

23 Although Mrs. Fadel raised undue influence before the
24 bankruptcy court, she appears to raise it only in passing on
25 appeal. To the extent she assigns error to the bankruptcy court's
26 finding of no undue influence, we disagree. First, Mrs. Fadel
27 raised this defense for the first time in her Reconsideration
28 Motion, so the bankruptcy court did not have to consider it. See

1 In re Greco, 113 B.R. 658, 664 (D. Haw. 1990), aff'd and remanded,
2 Greco v. Troy Corp., 952 F.2d 406 (9th Cir. 1991)(a motion for
3 reconsideration is not for asserting new legal theories or new
4 facts that could have been raised at the initial hearing);
5 Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001)
6 (court does not abuse its discretion when it disregards legal
7 arguments made for the first time in a motion to amend)(citing
8 Rosenfeld v. U. S. Dep't of Justice, 57 F.3d 803, 811 (9th Cir.
9 1995)). To the extent the bankruptcy court did consider her undue
10 influence argument, we agree that Mrs. Fadel knowingly and
11 knowledgeably signed the Interspousal Deed to effectuate her
12 intent and cultural belief that Mr. Fadel would hold title to the
13 Property as his separate property. If she was ignorant of its
14 legal ramifications, even assuming she could assert such a claim
15 now, at best this would only render the Interspousal Deed
16 voidable, not void. Fallon v. Triangle Mgmt. Servs., Inc., 169
17 Cal.App.3d 1103, 1106 (Cal. Ct. App. 1985)("[A] deed [is]
18 voidable, not void, if obtained as a result of undue influence . .
19 . . [A] deed . . . procured by duress cannot be set aside as
20 against a party purchasing in ignorance of the facts constituting
21 the duress, that is to say as against a purchaser for a valuable
22 consideration and without notice of the duress.")(citing Conn.
23 Life Ins. Co. v. McCormick, 45 Cal. 580 (Cal. 1873)). See also
24 Camacho v. Camacho, 1994 WL 424429, at *4 (E.D. Cal. 1994)(citing
25 Fallon and holding same). Moreover, because the Fadels are not
26 disputing ownership of the Property, and because they are still
27 married, whether the defense of undue influence applies is
28 doubtful, especially since Mrs. Fadel undertook no action to

1 rescind the Interspousal Deed prior to DCB's purchase of the
2 Property. See Fallon, 169 Cal.App.3d 1103, 1106. Mr. Fadel's
3 attempt to testify as to what Mrs. Fadel knew or did not know
4 about the legal ramifications of signing the Interspousal Deed was
5 inappropriate, and the bankruptcy court was free to reject it.
6 FED. R. EVID. 602. Notably, Mr. Fadel never testified that he
7 intended anything other than that he would solely and separately
8 hold title to the Property.

9 **b. CAL. FAM. CODE § 920 does not give Mrs. Fadel an**
10 **ownership interest in the Property.**

11 Nonetheless, Mrs. Fadel contends the bankruptcy court erred
12 in determining that she did not acquire an interest in the
13 Property by virtue of California's community property law.
14 Specifically, Mrs. Fadel argues that CAL. FAM. CODE § 920⁶ provides

15 _____
16 ⁶ A right of reimbursement provided by this part is subject
17 to the following provisions:

18 (a) The right arises regardless of which spouse applies the
19 property to the satisfaction of the debt, regardless of
20 whether the property is applied to the satisfaction of the
21 debt voluntarily or involuntarily, and regardless of whether
22 the debt to which the property is applied is satisfied in
23 whole or in part. The right is subject to an express written
24 waiver of the right by the spouse in whose favor the right
25 arises.

26 (b) The measure of reimbursement is the value of the property
27 or interest in property at the time the right arises.

28 (c) The right shall be exercised not later than the earlier
of the following times:

(1) Within three years after the spouse in whose favor the
right arises has actual knowledge of the application of the
property to the satisfaction of the debt.

(2) In proceedings for division of community and
quasi-community property pursuant to Division 7 (commencing
with Section 2500) or in proceedings upon the death of a
spouse.

1 her with a right to reimbursement, which she contends created a
2 pro tanto community property interest in the Property protected by
3 the automatic stay. Mrs. Fadel argues that, under California law,
4 when community funds are used to reduce the principal of a deed of
5 trust debt on one spouse's separate property, the community
6 acquires a pro tanto interest in the property, citing In re
7 Marriage of Moore, 28 Cal.3d 366, 371-72 (Cal. 1980)(en
8 banc)["Moore"], and In re Marriage of Marsden, 130 Cal.App.3d 426,
9 436-37 (Cal. Ct. App. 1982)["Marsden"], otherwise known as the
10 "Moore/Marsden rule." Mrs. Fadel notes that the Moore/Marsden
11 rule was extended to include community expenditures for
12 improvements to one spouse's separate property in Bono v. Clark,
13 103 Cal.App.4th 1409, 1423 (Cal. Ct. App. 2002).

14 Contrary to Mrs. Fadel's contentions, however, the form of
15 title presumption is not rebutted merely because the property is
16 acquired during marriage. "[T]he act of taking title to property
17 in the name of one spouse during marriage with the consent of the
18 other spouse effectively removes that property from the general
19 community property presumption. . . . [T]he property is presumably
20 the separate property of the spouse in whose name title is taken."
21 In re Brooks, 169 Cal.App.4th at 186-87. Mrs. Fadel, given the
22 rebuttable form of title presumption, had the burden to prove by
23 clear and convincing evidence that an agreement or understanding
24 existed between the parties "that the title reflected in the deed
25 is not what the parties intended." Id. at 189. This presumption
26 cannot be rebutted by: "tracing the funds used to purchase the
27 property;" "testimony of an intention not disclosed to the grantee
28 at the time of the execution of the conveyance;" or "evidence that

1 title was taken in a particular manner merely to obtain a loan."
2 Id. at 190 (citations omitted). The clear and convincing evidence
3 standard "requires evidence that is 'so clear as to leave no
4 substantial doubt' [and] 'sufficiently strong to command the
5 unhesitating assent of every reasonable mind.'" Id.

6 The record in this case establishes that the form of title
7 presumption prevails over the community property presumption and
8 the application of the Moore/Marsden rule. Mr. Fadel acquired
9 title to the Property from a third party through a grant deed,
10 during his marriage to Mrs. Fadel, on March 7, 2001. Mrs. Fadel,
11 through a grant deed, conveyed all of her right, title, and
12 interest, including community or otherwise, to Mr. Fadel on March
13 7, 2001. In 2003, Mr. Fadel obtained a loan in his own name
14 secured by the Property. The recorded deed of trust states that
15 the Property used to secure the loan, is "his sole and separate
16 property." Subsequently, Mr. Fadel defaulted on the loan; a
17 foreclosure was initiated, and Mr. Fadel filed a chapter 7
18 bankruptcy. He listed the Property and the secured debt on the
19 Property without any reference to any alleged interest held by
20 Mrs. Fadel. After his discharge and the closure of his case,
21 Mrs. Fadel filed a chapter 13 bankruptcy. She listed the Property
22 and the corresponding secured debt without stating any alleged
23 interest held by Mr. Fadel.

24 The grant deeds through which Mr. Fadel acquired the Property
25 from the third party and from Mrs. Fadel conveyed their entire
26 interests in the Property including any after-acquired interest
27 and any community property interest. See 3 Miller & Starr, Cal.
28 Real Estate § 8.5 (3d ed. 2012). On this record, we conclude that

1 Mrs. Fadel has not rebutted, with clear and convincing evidence,
2 the form of title presumption that Mr. Fadel held the Property as
3 his sole and separate property. Consequently the Moore/Marsden
4 rule never became applicable.

5 Mrs. Fadel contends In re Boyd, 410 B.R. 95, 99 (Bankr. N.D.
6 Cal. 2009), held that a pro tanto community property interest
7 arises even where the other spouse's separate property at issue
8 was purchased during the marriage. In that case, the non-debtor
9 spouse purchased a home with his separate funds during the
10 marriage. The non-debtor spouse held title in his name alone, and
11 the debtor executed multiple interspousal transfer deeds
12 disclaiming any interest in the home. Nonetheless, the bankruptcy
13 court, in In re Boyd, citing Moore/Marsden, stated that the
14 community (and thus debtor's bankruptcy estate) acquired an
15 interest in the home because the debtor's husband's income, which
16 was allegedly community property, was used to reduce the principal
17 on the deed of trust debt.

18 The Panel concludes that In re Boyd is distinguishable, and
19 we reject the application of its conclusions in this appeal for
20 the following reasons: (1) the form of title presumption
21 discussed in In re Brooks, 169 Cal.App.4th at 189-91, was not
22 addressed in In re Boyd; (2) the types of the deeds were not
23 discussed, i.e., grant versus quitclaim deeds; and (3) the
24 application of the Moore/Marsden rule apparently was not contested
25 in In re Boyd but was vigorously argued in this case.

26 **c. The codebtor stay does not apply.**

27 The codebtor stay of § 1301(a) enjoins a creditor from taking
28 legal action to "collect any part of a consumer debt of the debtor

1 from any individual that is liable on such debt with the debtor,
2 or that secured such debt."⁷ Thus, three elements must be
3 satisfied for the codebtor stay to apply: (1) the debt must be a
4 consumer debt; (2) the consumer debt at issue must be a debt of
5 the debtor; and (3) the codebtor must be liable on the debt with
6 the debtor.

7 Under § 101(8), a consumer debt is one incurred for
8 "personal, family, or household purposes." A deed of trust debt,
9 which consists of debt incurred to purchase the debtor's principal
10 residence or to improve it, is a "consumer debt" under § 101(8).
11 Zolq v. Kelly (In re Kelly), 841 F.2d 908, 913 (9th Cir. 1988).
12 Thus, the debt on the Property is a consumer debt.

13 Section § 1301(a) further requires that the consumer debt at
14 issue be a debt of the debtor and the codebtor must be liable on
15 the debt with the debtor. Thus, the codebtor must be both "liable
16 on" such debt and "liable with" the debtor to some third party.
17 Meyer v. Hill (In re Hill), 268 B.R. 548, 553 (9th Cir. BAP
18 2001)(applying same language appearing in § 1322(b)(1)). The
19 phrase "such debt" refers to the consumer debt that the creditor
20 is trying to collect. As such, not only must both the debtor and
21 codebtor be liable to some third party, they must also both be
22 liable on the particular debt the creditor is trying to collect.

23 It is undisputed that the only obligor on the deed of trust
24 note was Mr. Fadel. However, Mrs. Fadel contends that she is
25 nonetheless personally liable for the debt under CAL. FAM. CODE
26 § 914, which provides in relevant part:

27

28 ⁷ Section 1301(a) provides for two exceptions to the
codebtor stay, neither of which apply here.

1 (a) a married person is personally liable for the
2 following debts incurred by the person's spouse during
marriage:

3 (1) A debt incurred for necessities of life of the
4 person's spouse while the spouses are living together.

5

6 The "necessaries of life" include food, clothing, and shelter.
7 Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group
8 2012) ¶ 8:753 ["Cal. Practice Guide"].

9 The bankruptcy court determined that the codebtor stay did
10 not apply because Mrs. Fadel was not an obligor on the note. This
11 conclusion does not appear to address the specific issue she
12 raises. We begin our review by noting that Mrs. Fadel improperly
13 asserted the codebtor stay argument for the first time in the
14 Reconsideration Motion. Zimmerman, 255 F.3d at 740. We further
15 observe that neither Mr. Fadel nor Mrs. Fadel listed each other in
16 their respective Schedule H's as a codebtor on any debt. In any
17 event, we reject Mrs. Fadel's theory.

18 First, CAL. FAM. CODE § 914(a) cannot be read in a vacuum; it
19 must be read in conjunction with CAL. FAM. CODE § 914(b) and (c).
20 Importantly, CAL. FAM. CODE § 914(b) states:

21 (b) The separate property of a married person may be
22 applied to the satisfaction of a debt for which the
23 person is personally liable pursuant to this section. If
24 separate property is so applied at a time when nonexempt
25 property in the community estate or separate property of
the person's spouse is available but is not applied to
the satisfaction of the debt, the married person is
entitled to reimbursement to the extent such property was
available. (Emphasis added).

26 In other words, Mrs. Fadel's "separate" property can be used to
27 satisfy a debt incurred by Mr. Fadel during the marriage and while
28 they are living together. However, by its very language, CAL. FAM.

1 CODE § 914 applies only in the case where the married person's
2 separate property was used to satisfy a debt of his or her spouse,
3 and it sets forth the married person's reimbursement rights. See
4 Collection Bureau of San Jose v. Rumsey, 24 Cal.4th 301, 312 (Cal.
5 2000). Because Mr. Fadel was in default on the deed of trust
6 note, B of A, pursuant to the deed of trust, foreclosed on the
7 Property in an attempt to collect on the collateral securing the
8 debt. The collateral (i.e., the Property) was never Mrs. Fadel's
9 separate property and she did not use any separate property to
10 satisfy Mr. Fadel's debt. Therefore, no reimbursement rights have
11 been triggered under CAL. FAM. CODE § 914, and that statute does not
12 apply. In addition, contrary to Mrs. Fadel's assertion, CAL. FAM.
13 CODE § 910⁸ does not apply here either because the Property was not
14 part of the community estate; it was Mr. Fadel's sole and separate
15 property. Mrs. Fadel was not liable on the deed of trust note by
16 virtue of CAL. FAM. CODE § 914, and the note was not a "debt of the
17 debtor." Consequently, the codebtor stay does not apply.

18 **d. We decline to adopt Chesnut.**

19 The bankruptcy court declined to adopt Chesnut, but, because
20 it viewed the issue as one having potentially great legal
21 significance, it granted Mrs. Fadel a stay pending appeal of the
22 Stay Relief Order while we considered it.

23 In Chesnut, a stay violation case, the creditor conducted a
24

25 ⁸ CAL. FAM. CODE § 910 states, in relevant part, that:

26 (a) the community estate is liable for a debt incurred by
27 either spouse before or during marriage, regardless of which
28 spouse has the management and control of the property and
regardless of whether one or both spouses are parties to the
debt or to a judgment for the debt.
. . . .

1 postpetition foreclosure on real property in which the debtor
2 claimed a community-ownership interest without first obtaining
3 relief from stay. Title to the property was characterized as the
4 non-filing wife's separate property, but the debtor listed the
5 property in his Chapter 13 bankruptcy petition, contending that it
6 was a community asset since it was purchased during the marriage
7 and with community funds. The debtor sued the creditor for
8 allegedly violating the automatic stay. Without deciding the
9 substantive issue of whether the property was a community asset
10 belonging to the debtor or his bankruptcy estate, the bankruptcy
11 court determined that the debtor at least held an equitable
12 interest in the property that was adversely affected by the
13 foreclosure sale. Chesnut v. Brown, 300 B.R. 880, 883 (Bankr.
14 N.D. Tex. 2004).

15 The district court reversed, holding that no violation of the
16 stay occurred because the debtor had no interest in his wife's
17 separate property. Chesnut v. Brown, 311 B.R. 446, 449 (N.D. Tex.
18 2004). In reaching its decision, the district court noted:

19 The bankruptcy court determined, without citing any
20 authority, that the mere fact that debtor gave notice of
21 his bankruptcy filing and said that he claimed an
22 interest in the Property was enough to stop the
23 foreclosure sale. If that were the law, no one would be
24 able to rely on chain of title to deal with real property
25 in Texas. The bankruptcy court in effect ruled that
26 property acquired during marriage is community property
27 despite how it is titled. The inception of title rule is
28 to the contrary: 'Property acquired during marriage
acquires its status of separate or community at the time
of its acquisition.' Henry S. Miller Co. v. Evans, 452
S.W. 2d 426, 430 (Tex. 1970). As the Texas Supreme Court
has noted, '[t]he act of the spouses in taking a
conveyance of property in the name of the wife, limiting
the title to her separate use, unmistakably evidences an
intention that the same shall belong to her separate
estate.' Id. Moreover, extrinsic evidence cannot be
offered to contradict the express recitals in a deed

1 without first tendering competent evidence that there was
2 fraud, accident, or mistake in the insertion of the
3 recitals in the deed. Id. at 431. There is no such
4 evidence here.

5 At best, reasoned the district court, the debtor maybe had a claim
6 for economic contribution (i.e., a right to reimbursement), but
7 such a claim did not create an ownership interest in the real
8 property. Id.

9 The Fifth Circuit reversed the district court, holding that
10 the automatic stay applies to all property "arguably" owned by the
11 debtor, even if it is later determined that the debtor did not own
12 the property. Chesnut v. Brown, 422 F.3d at 304-05. In other
13 words, the stay applies regardless of the ultimate merits of the
14 debtor's ownership interest claim.

15 We decline to adopt such a rule. As the district court in
16 Chesnut so insightfully put it: "If that were the law, no one
17 would be able to rely on chain of title to deal with real property
18 in Texas." Chesnut, 311 B.R. at 449. The same would be true in
19 California, a state that has decided for public policy reasons
20 that "form of title" prevails, unless a spouse's undue influence
21 can be shown by clear and convincing evidence. Adopting Chesnut
22 would essentially render the recording system in California (and
23 many other Ninth Circuit states) nugatory, and it conflicts with
24 California's policy that creditors and other interested parties
25 can rely on title. In re Marriage of Brooks, 169 Cal.App.4th at
26 185.

27 In In re Pettit, a stay violation case, the debtors asked the
28 Ninth Circuit to conclude that, where there is a bona fide dispute
as to whether property is part of the bankruptcy estate, the

1 burden should be on the creditor to seek a determination from the
2 bankruptcy court before obtaining the disputed property. In re
3 Pettit, 217 F.3d 1072, 1081 (9th Cir. 2000). The Court declined
4 to extend Ninth Circuit precedent "to craft a novel rule on this
5 issue." Id. Here, we have less than a "bona fide" dispute over
6 property interests; we have merely a debtor claiming what she
7 contends is an arguable interest in a property she consciously
8 chose to relinquish to her husband.

9 The facts in this case certainly do not warrant any change in
10 Ninth Circuit law. "We decline to follow Chesnut because we are
11 convinced that its expansive reading of the term 'property of the
12 estate' is inconsistent with the plain language of that term's
13 statutory definition. See § 541(a)(1); see also Moody v. Amoco
14 Oil Co., 734 F.2d 1200, 1213 (7th Cir. 1984) (stating that
15 property of the estate under § 541(a) consists of the debtor's
16 property rights as of the date of the bankruptcy filing - 'no
17 more, no less'); Frazer v. Drummond (In re Frazer), 377 B.R. 621,
18 626-27 (9th Cir. BAP 2007)(same)." Jahr v. Frank (In re Jahr),
19 2012 WL 3205417, at *7 (9th Cir. BAP Aug. 1, 2012).

20 Since Mrs. Fadel had no community interest in the Property as
21 of the bankruptcy petition date, which would be protected by the
22 automatic stay, and DCB showed sufficient "cause" for relief under
23 § 362(d)(1) to pursue its unlawful detainer action, the bankruptcy
24 court did not abuse its discretion when it granted the Stay Relief
25 Motion.

26 **C. The bankruptcy court did not abuse its discretion in denying**
27 **the Reconsideration Motion.**

28 Although Mrs. Fadel did not cite under which rule she was

1 bringing her Reconsideration Motion, the bankruptcy court opted to
2 treat it as a timely motion to alter or amend judgment under Civil
3 Rule 59(e), made applicable here by Rule 9023, which thereby
4 tolled the appeal time of the Stay Relief Order. We agree with
5 the bankruptcy court's characterization. A motion for
6 reconsideration filed within 14 days of the underlying order is
7 treated as a motion to alter or amend a judgment under Civil Rule
8 59(e) and tolls the time within which to file a notice of appeal
9 of the underlying order until the order on reconsideration is
10 entered. Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.,
11 248 F.3d 892, 898-99 (9th Cir. 2001)(applying the former 10-day
12 rule).

13 Amendment or alteration of a judgment is appropriate under
14 Civil Rule 59(e) only if the court (1) is presented with newly
15 discovered evidence that was not available at the time of the
16 original hearing, (2) committed clear error or made an initial
17 decision that was manifestly unjust, or (3) there is an
18 intervening change in controlling law. Zimmerman, 255 F.3d at 740
19 (citing School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc., 5
20 F.3d 1255, 1263 (9th Cir. 1993)). Although Mrs. Fadel appealed
21 the Reconsideration Order, she fails to argue how the bankruptcy
22 court abused its discretion in denying the Reconsideration Motion.
23 As such, she has waived this issue for purposes of appeal. See
24 Wake v. Sedona Inst. (In re Sedona Inst.), 220 B.R. 74, 76 (9th
25 Cir. 1998)(an issue not briefed is deemed waived). Even if we
26 considered it, the Reconsideration Motion improperly raised legal
27 arguments and/or alleged new facts that Mrs. Fadel could have
28 raised at the initial hearing, and it improperly rehashed

1 arguments she had already presented. In re Greco, 113 B.R. at
2 664. Therefore, she asserted no appropriate grounds for granting
3 the Reconsideration Motion. Zimmerman, 255 F.3d at 740. The
4 bankruptcy court did not abuse its discretion in denying the
5 Reconsideration Motion.

6 **VI. CONCLUSION**

7 Under California law, DCB took free and clear title to the
8 Property upon completion of the foreclosure sale. See 4 Miller &
9 Starr, Cal. Real Estate § 10:208 (3d ed. 2009)(under California
10 law, "[t]he purchaser at the foreclosure sale receives title free
11 and clear of any right, title, or interest of the trustor or any
12 grantee or successor of the trustor."). Mrs. Fadel was not on the
13 title to the Property and she did not acquire an ownership
14 interest in the Property vis-à-viz California's community property
15 law prior to the sale. After the foreclosure sale, Mrs. Fadel was
16 simply a tenant at sufferance claiming a possessory interest in
17 the Property through Mr. Fadel. Seeing no error here by the
18 bankruptcy court in granting DCB relief to pursue its unlawful
19 detainer action, we AFFIRM.

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