NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. AZ-10-1422-DMkMa
DAVID THOMAS MATSON AND DEBORAH ANN MATSON,	Bk. No. 09-21270-CGC
Debtors.	
DAVID THOMAS MATSON; DEBORAH ANN MATSON,	
Appellants,	
v.	**M E M O R A N D U M**[1]
CITIBANK, N.A.,	
Appellee.	

Argued and Submitted on May 13, 2011
at Phoenix, Arizona

Filed - June 7, 2011

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

Honorable Charles G. Case, II, Bankruptcy Judge, Presiding

Appearances: Trucly Pham Swartz of John Joseph Volin, P.C. argued for the Appellants
Leonard McDonald, Jr. of Tiffany & Bosco, P.A. argued for the Appellee

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Before: DUNN, MARKELL and MANN,[2] Bankruptcy Judges.

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[1] 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.

[2] Hon. Margaret M. Mann, Bankruptcy Judge for the Southern District of California, sitting by designation.

The debtors, David and Deborah Matson, appeal the bankruptcy court's decision to grant Citibank, N.A. ("Citibank") relief from stay as to their home in Gilbert, Arizona.[3] On appeal, the debtors contend that the bankruptcy court abused its discretion in granting Citibank relief from stay because Citibank did not have standing to request such relief as it was not a real party in interest. We AFFIRM.

FACTS

Two years before filing for bankruptcy, the debtors purchased their home, executing a promissory note, dated May 14, 2007, secured by a trust deed in favor of Ampro Mortgage ("Ampro"), a division of United Financial Mortgage Corp. ("United Financial"). The trust deed referenced the promissory note, stating that the "'Note' meant the promissory note signed by [the debtors] and dated May 14, 2007."

The trust deed named Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary thereunder and as the nominee for Ampro and its successors and assigns.

The trust deed provided that MERS, as the beneficiary,

> holds only legal title to the interests granted by [the debtors] in the trust deed, but, if necessary to comply with law or custom, MERS (as nominee for [Ampro and its] successors and assigns) has the right: to exercise any or all of those interests, including but not limited to, the right to foreclose and sell the

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[3] Unless otherwise specified, all chapter and section 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. The Federal Rules of Civil Procedure are referred to as "Civil Rules."

> Property; and to take any action required of [Ampro] including, but not limited to, releasing and canceling this [trust deed].

(Emphasis added.)

The debtors filed their chapter 13 bankruptcy petition on August 31, 2009. They scheduled their home as having a value of $178,000, and as having a secured claim of $247,431.65 against it. The debtors listed in their schedules and chapter 13 plan HomEq Servicing Corp. as the creditor secured by the sole trust deed against their home.

Barclays Capital Real Estate, Inc., d/b/a HomEq (hereinafter "HomEq"), filed a motion for relief from stay ("initial relief from stay motion") on November 16, 2009.[4] HomEq contended in the initial relief from stay motion that the debtors defaulted on their mortgage payments for September through November 2009, totaling $6,519.60, and sought to foreclose its trust deed. HomEq provided copies of the promissory note and the trust deed as exhibits to the initial relief from stay motion.

The debtors filed a response and a motion to dismiss the initial relief from stay motion. They denied that they had defaulted on the mortgage payments. The debtors further contended that HomEq lacked standing to request relief from stay because it was not a real party in interest.[5] Specifically, the

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[4] Neither the debtors nor Citibank provided copies of the schedules (except Schedule C included in the initial relief from stay motion) or the chapter 13 plan. We obtained them from the bankruptcy court main case docket.

[5] No hearing was set on the initial relief from stay motion or on the debtors' motion to dismiss.

debtors argued that HomEq did not own and/or hold the promissory note by endorsement, as it did not provide evidence of a valid endorsement of the promissory note in the initial relief from stay motion. Moreover, the debtors alleged, a trustee of a residential mortgage-backed securitized trust actually held and/or owned the promissory note and trust deed. HomEq merely was a servicer, sub-servicer or default servicer.

Citibank filed an amended motion for relief from stay ("amended relief from stay motion") on July 9, 2010,[6] alleging that the debtors defaulted on their mortgage payments for September 2009 through June 2010, totaling $23,872.20. Citibank further asserted that it was the successor trustee for the holders of MASTR Adjustable Mortgage Trust 2007-HF2 in a securitization transaction under a pooling and servicing agreement, dated July 1, 2007. Citibank provided as exhibits copies of the promissory note and the trust deed, the same as those provided in the initial relief from stay motion. It also provided a copy of the assignment of the trust deed ("assignment"), dated June 28, 2010.[7] The assignment specifically provided:

> For good and valuable consideration, the sufficiency of which is hereby acknowledged, [MERS], AS NOMINEE FOR AMPRO MORTGAGE[,] A DIVISION OF UNITED FINANCIAL MORTGAGE CORP., ITS SUCCESSORS AND ASSIGNS . . . By

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[6] Neither the initial relief from stay motion nor the amended relief from stay motion cited § 362(d) as the basis for relief from stay. The order granting Citibank relief from stay also did not cite § 362(d) as the basis for relief from stay.

[7] There appears to be no indication that the assignment was recorded.

> these presents does convey, grant, bargain, sell, assign, transfer and set over to: CITIBANK, N.A., AS SUCCESSOR TRUSTEE FOR THE HOLDERS OF MASTR ADJUSTABLE MORTGAGES TRUST 2007-HF2 IN A SECURITIZATION TRANSACTION PURSUANT TO POOLING AND SERVICING AGREEMENT, DATED AS OF JULY 1, 2007, C/O HOMEQ SERVICING . . . The described Deed of Trust, <u>together with the certain note(s) described therein</u> with all interest, all liens, and any rights due or to become due thereon.

(Emphasis added.) A Noriko Colston (titled as the assistant secretary) signed the assignment on behalf of MERS.

The debtors filed a response to the amended relief from stay motion. They did not dispute that they defaulted on their mortgage payments, but claimed they were prepared to make adequate protection payments.

The debtors challenged Citibank's standing as a party in interest. They argued that Citibank did not hold the promissory note, but that, according to HomEq, U.S. Bank actually was the trustee for the holders of the promissory note. U.S. Bank, the debtors asserted, thus was the only party with the right to the mortgage payments and the authority to transfer the promissory note. Moreover, Citibank did not hold or own the promissory note by endorsement, delivery and acceptance. The debtors further contended that the assignment was defective because there was no evidence that the assignee had anything to assign or had the authority to make the assignment. Unless Citibank held the promissory note, it had no rights or interests under the trust deed. The debtors also contended that the assignment did not transfer any interest in the promissory note.

Before the October 19, 2010 hearing on the amended relief

from stay motion,[8] Citibank filed as an additional exhibit a copy of the promissory note and, with it, an untitled document and an allonge to the promissory note.[9] The untitled document (presumably an allonge) bore the following language:

> PAY TO THE ORDER OF UBS REAL ESTATE SECURITIES, INC. WITHOUT RECOURSE BY: AMPRO MORTGAGE, A DIVISION OF UNITED FINANCIAL MORTGAGE CORP. ("HomEq allonge").

The HomEq allonge was signed by the assistant vice president with the last name of Igtanloc. The assistant vice president's first name was illegible.

The allonge was not dated but it referenced the debtors, the address of their home and the July 1, 2007 date of the securitization transaction under the pooling and servicing agreement. The allonge bore the following language:

> PAY TO THE ORDER OF: Citibank, N.A., as Successor Trustee for the holders of MASTR Adjustable Mortgages Trust 2007-HF2 in a Securitization transaction pursuant to Pooling and Servicing Agreement, dated as of July 1, 2007 (without recourse) BY: UBS Real Estate Securities, Inc. By Barclays Capital Real Estate Inc., DBA HomEq Servicing its [attorney] in fact ("Citibank allonge").

Colston signed the Citibank allonge on behalf of HomEq.

On the day of the hearing, the debtors filed exhibits in support of their response. The debtors' exhibits consisted of a report titled, "Forensic Lender Discovery, Stage One: Loan Securitization Audit Report" ("report"),[10] and a letter, dated

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[8] The hearing on the amended relief from stay motion was not set as an evidentiary hearing.

[9] HomEq provided neither the untitled document nor the allonge in the initial relief from stay motion.

[10] Forensic Professionals Group USA, Inc. ("FPG-USA") is a (continued...)

October 27, 2009, from HomEq in response to an inquiry from the debtors ("letter").

The report pointed out that the promissory note had no endorsements on its face. The report also indicated that the assignment and the Citibank allonge had been signed by a robo signor.

The report stated that there was no record of Ampro being a corporation, trade name or limited liability company. The report noted that the assignment had been executed by an entity that was no longer in existence on the date that the assignment was executed.

The report further indicated that, according to MERS, Ocwen, not HomEq, was the official loan servicer, and that HomEq "was not a stated loan servicer . . . . [but] actually a collection company." It also indicated that MERS had not shown that it was the current owner of a beneficial interest in the promissory note, ever held the promissory note, or was entitled to enforce the promissory note.

With respect to the letter, HomEq sent it in response to the debtors' request for the contact information of the "trustee/investor" of their loan. HomEq informed the debtors that it was responsible for the day-to-day servicing actions and decisions concerning their loan. HomEq nonetheless listed U.S.

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[10](...continued)
company that investigates foreclosure documentation and the legitimacy of claims being made by the party seeking foreclosure. FPG-USA provides "highly qualified expert forensic mortgage analysis, discovery, investigation and reporting." Richard Kahn, principal of FPG-USA, apparently issued the report.

Bank, with a St. Paul, Minnesota address, as the contact for the "trustee/investor."

At the hearing, the debtors questioned the validity of the Citibank allonge, pointing out that Colston was "widely known as a robo signer." Tr. of October 19, 2010 hr'g, 2:25, 3:1. They also argued that, though it executed the HomEq allonge, Ampro was not even an "existing corporation," as indicated in the report. Tr. of October 19, 2010 hr'g, 6:11.

The debtors argued that "[HomEq] never had an interest or benefit to the note in order to have any right to assign the [promissory] note to Citibank." Tr. of October 19, 2010 hr'g, 3:3-5. They further contended that the report revealed numerous defects in the assignment of the promissory note. They also claimed that U.S. Bank, not Citibank, held the promissory note.

The bankruptcy court acknowledged the debtors' concerns regarding the robo signor and the Citibank allonge and the HomEq allonge. It also acknowledged the issue raised by the debtors as to whether U.S. Bank was involved in the loan. The bankruptcy court doubted whether that issue was "really critical," however, given that the letter was dated in 2009, almost a year before the hearing. Tr. of October 19, 2010 hr'g, 4:13.

The bankruptcy court asserted that the main issue before it boiled down to whether the stay should remain in place as to the debtors' home. The bankruptcy court found that there was "no argument here that the Debtors [had] not made any payments for over a year." Tr. of October 19, 2010 hr'g, 4:22-23. It further found that Citibank had standing to request relief from stay; the bankruptcy court determined that Citibank presented colorable

evidence showing that it was "the appropriate holder of both the note and the beneficiary under the deed of trust." Tr. of October 19, 2010 hr'g, 4:24-25.

The bankruptcy court believed that the question of whether Citibank could conduct a trustee's sale should not be addressed in a summary proceeding, such as a relief from stay motion. The issue instead must be addressed in a plenary proceeding, such as an adversary proceeding.

The bankruptcy court opined that the purpose of a relief from stay proceeding simply was to determine whether "to keep the stay in place, condition the stay or remove the stay" with no "further relief from that." Tr. of October 19, 2010 hr'g, 6:19-21. "[B]eyond the basics of showing that [Citibank and/or HomEq] have a colorable prima facie case that they're the ones who hold all of this, then all of the rest of these issues where you come back and say, well, you know, a non-existent corporation is signing it, there's somebody who hasn't reviewed the documents, all the rest of that stuff can be fully explored in a court of competent jurisdiction in the appropriate proceeding. And this is not it." Tr. of October 19, 2010 hr'g, 6:22-25, 7:1-4. The bankruptcy court stressed that "[t]his [was] not the place to litigate these issues, so long as there [was] a colorable showing of the transfers, which in this case there [was]." Tr. of October 19, 2010 hr'g, 5:16-18.

The bankruptcy court granted Citibank relief from stay, effective November 18, 2010. The bankruptcy court entered its order granting Citibank relief from stay on October 28, 2010. The debtors timely appealed.

JURISDICTION

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

ISSUE

Did the bankruptcy court err in determining that Citibank had standing to prosecute the amended relief from stay motion?

STANDARDS OF REVIEW

"Standing is a question of law that we review de novo." Mayfield v. United States, 599 F.3d 964, 970 (9th Cir. 2010). Under de novo review, we consider the matter anew as if no decision had been rendered before. Dawson v. Marshall, 561 F.3d 930, 933 (9th Cir. 2009).

We review the bankruptcy court's decision to grant relief from stay for an abuse of discretion. Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1084 n.9 (9th Cir. 2000)(en banc). We follow a two-part test to determine objectively whether the bankruptcy court abused its discretion. United States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009). First, we "determine de novo whether the bankruptcy court identified the correct legal rule to apply to the relief requested." Id. Second, we examine the bankruptcy court's factual findings under the clearly erroneous standard. Id. at 1262 & n.20. We must affirm the bankruptcy court's factual findings unless those findings are "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in inferences that may

be drawn from the facts in the record.'" Id. If we determine that the bankruptcy court erred under either part of the test, we must reverse for an abuse of discretion. Id.

We may affirm on any ground supported by the record. Shanks v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

DISCUSSION

The debtors issue the same challenge on appeal as they did before the bankruptcy court: They argue that Citibank had no standing to pursue the amended relief from stay motion because it was not a real party in interest, as Citibank neither owned nor held the promissory note.[11]

A. Standing generally

Essentially, "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Warth v. Seldin, 422 U.S. 490, 498 (1975). Standing inquiries involve "both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." Id.

Constitutional standing concerns whether the plaintiff's stake in a matter is sufficient "to make out a concrete 'case' or 'controversy' to which the federal judicial power may extend

[11] The debtors also argue that because Citibank lacked standing to pursue the amended relief from stay motion, the bankruptcy court lacked jurisdiction to consider the amended relief from stay motion. But their jurisdiction argument essentially recapitulates their standing argument.

under Article III" of the Constitution. Pershing Park Villas Homeowners Assoc. v. United Pac. Ins. Co., 219 F.3d 895, 899 (9th Cir. 2000).

Prudential standing, on the other hand, concerns "the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." Elk Grove United School Dist. v. Newdow, 542 U.S. 1, 12 (2004) (quoting Allen v. Wright, 468 U.S. 737, 751 (1984))(internal quotation marks omitted).

At the outset, the debtors concede that Citibank has constitutional standing. Appellants' Opening Brief at 11. They contend, however, that Citibank did not have prudential standing to seek relief from stay because it was not the real party in interest. They assert that "the real party in interest in a Motion for Relief [from Stay] is a party entitled to enforce the right being asserted under applicable, substantive law." Appellants' Opening Brief at 12.

As we explain below, Citibank has shown a colorable claim sufficient to qualify it as a party in interest with standing to seek relief from stay.

B. Standing to bring motion for relief from stay

When a debtor files for bankruptcy, § 362(a) automatically stays any and all collection and enforcement activities against the debtor, his or her property and the property of the estate.

See 11 U.S.C. § 362(a). A "party in interest" may request relief from the stay under § 362(d). The bankruptcy court may grant relief from the stay under § 362(d)(1), "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1).

Motions for relief from stay are contested matters. See Rules 4001(a) and 9014(a). Because they are contested matters, motions for relief from stay must be prosecuted in the name of the real party in interest. See Rules 9014(c) and 7017 and Civil Rule 17.

The Bankruptcy Code does not define the term "party in interest." Kronemyer v. Am. Contractors Indemnity Co. (In re Kronemyer), 405 B.R. 915, 919 (9th Cir. BAP 2009). Status as a party in interest under § 362(d) thus is determined on a case-by-case basis, "with reference to the interest asserted and how [that] interest is affected by the automatic stay." Id. (quoting In re Woodberry, 383 B.R. 373, 378 (Bankr. D.S.C. 2008))(internal quotation marks omitted). Any party who will be impacted in a significant way by the case or has a pecuniary interest in the case or a practical stake in the outcome of a case qualifies as a "party in interest." Brown v. Sobczak (In re Sobczak), 369 B.R. 512, 518 (9th Cir. BAP 2007)(citing In re Cowan, 235 B.R. 912, 915 (Bankr. W.D. Mo. 1999)).

Hearings on motions for relief from stay are intended to be summary proceedings. Biggs v. Stovin (In re Luz Int'l, Ltd.), 219 B.R. 837, 842 (9th Cir. BAP 1998)(citing Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 31 (1st Cir. 1994)). Section 362(e) requires the bankruptcy court to hold a preliminary hearing

within thirty days from the date the motion for relief from stay is filed, or the stay is terminated. Luz, 219 B.R. at 841. See also Grella, 42 F.3d at 31. The bankruptcy court must hold a final hearing on the motion for relief from stay within thirty days following the preliminary hearing. Luz, 219 B.R. at 841. See also Grella, 42 F.3d at 31.

At a hearing on a motion for relief from stay, a bankruptcy court generally is called upon only to decide a limited set of issues: the adequacy of protection for the creditor, the debtor's equity in the property and the property's necessity to an effective reorganization. First Fed. Bank of California v. Robbins (In re Robbins), 310 B.R. 626, 631 (9th Cir. BAP 2004). See also Grella, 42 F.3d at 31 ("That [§ 362(d)] sets forth certain grounds for relief and no others indicates Congress'[s] intent that the issues decided by a bankruptcy court on a creditor's motion to lift the stay be limited to these matters."). A motion for relief from stay is a contested matter, not an adversary proceeding. Grella, 42 F.3d at 33 (citing Rules 4001 and 9014). "To allow a relief from stay hearing to become any more extensive than a quick determination of whether a creditor has a colorable claim would turn the hearing into a fullscale adversary lawsuit . . . and would be inconsistent with this procedural scheme." Id. (citation omitted). Moreover, a bankruptcy court is required under § 362(e)(1) to act quickly in resolving motions for relief from stay.[12] Luz, 219 B.R. at 842

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[12] Section 362(e)(1) provides:

(continued...)

(citing Grella, 42 F.3d at 31).

> Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate.

Luz, 219 B.R. at 842. (Emphasis added.) See, e.g., Johnson v. Righetti (In re Johnson), 756 F.2d 738, 740 (9th Cir. 1985)("Stay litigation is limited to issues of the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization. . . . The validity of the claim or contract underlying the claim is not litigated during the hearing."); In re Vitreous Steel Prods. Co., 911 F.2d 1223, 1234 (7th Cir. 1990)("Questions of the validity of liens are not generally at issue in a § 362(d) hearing, but only whether there is a colorable claim of a lien on property of the

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[12](...continued)
> Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. . . . If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

estate.")(Emphasis in original.)

A hearing on a motion for relief from stay is "analogous to a preliminary injunction hearing, requiring a speedy and necessarily cursory determination of the reasonable likelihood that a creditor has a legitimate claim or lien as to a debtor's property." Grella, 42 F.3d at 34. See also Luz, 219 B.R. at 842. A bankruptcy court's decision to lift the stay "is not an adjudication of the validity or avoidability of the claim, but only a determination that the creditor's claim is sufficiently plausible to allow its prosecution elsewhere." Grella, 42 F.3d at 34 (emphasis added). In other words, the bankruptcy court has discretion to grant or deny relief from stay as long as the moving party has presented a colorable claim to the property at issue. See Luz, 219 B.R. at 842. A colorable claim is one "that is legitimate and that may reasonably be asserted, given the facts presented and the current law (or a reasonable and logical extension or modification of the current law)." Black's Law Dictionary 282 (9th ed. 2009).

C. Citibank as the real party in interest[13]

[13] The debtors also challenge the bankruptcy court's determination on evidentiary grounds. They contend that Citibank did not provide "competent, admissible evidence" demonstrating that it was entitled to enforce the promissory note. Appellants' Opening Brief at 15. According to the debtors, Citibank did not provide an adequate foundation as to the admissibility of its evidence: it did not authenticate any of its exhibits. Moreover, although the debtors submitted evidence that "cast doubt on [Citibank's]" standing, the bankruptcy court did not consider their exhibits with as much weight as those submitted by

(continued...)

The debtors argue that Citibank is not a real party in interest because it is not entitled to enforce the promissory note, as Citibank never owned or held it. According to the debtors, under Arizona Revised Statute ("A.R.S.") § 47-3301,[14]

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[13](...continued)
Citibank.

The debtors did not challenge the admissibility of Citibank's evidence at the hearing. "The failure of a litigant to request a ruling is a waiver of the right to raise any issue before [an appellate court] concerning admissibility." Fenton v. Freedman, 748 F.2d 1358, 1360 (9th Cir. 1984). To allow a party to challenge the admissibility of evidence on appeal, without advising the trial court of its failure to rule, would give the appellant "an unfair advantage." Id. "By remaining silent in the trial court, [the litigant] denies his opponent the opportunity to lay a better foundation or to present other competent evidence. The trial court is also deprived of the opportunity to explain its ruling or to correct its error." Id. Because the debtors never objected to the admissibility of Citibank's evidence, we will not consider the debtors' argument. (Notably, the debtors did not authenticate any of the exhibits they submitted in support of their response.)

The debtors also do not demonstrate how the bankruptcy court did not weigh their evidence and Citibank's evidence appropriately. At the hearing, the bankruptcy court explicitly informed the debtors that it "[understood] the arguments that [were] made by the Debtors' counsel with regard to the so-called robo signer issue and also with regard to the question of the fact that we're dealing with allonges rather than endorsements on the face of the note. And also this issue of whether or not U.S. Bank is involved." Tr. of October 19, 2010 hr'g, 4:7-11. There is no indication, as revealed in these statements, that the bankruptcy court favored or gave more deference to Citibank's evidence than the debtors' evidence.

[14] A.R.S. 47-3301 provides:

> "Person entitled to enforce" an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder or a

(continued...)

only a holder of the instrument is entitled to enforce it. Appellants' Opening Brief at 12. Under A.R.S. § 47-1201(B)(21)(a), a holder is one "in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession."

The debtors assert that Citibank never held or possessed the promissory note because it had not been transferred to MASTR Adjustable Mortgage Trust 2007-HF2 consistent with the provisions of the pooling and servicing agreement. The pooling and servicing agreement required that mortgage loans be transferred concurrently with the execution of the pooling and servicing agreement or by the cut-off date, which was July 1, 2007. Under New York law, which governs MASTR Adjustable Mortgage Trust 2007-HF2, "if the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust is void." Appellants' Opening Brief at 13. However, the debtors point out, the assignment was dated June 28, 2010, and recorded July 8, 2010 – after the cut-off date specifically set forth in the pooling and servicing agreement. MASTR Adjustable Mortgage Trust 2007-HF2 thus never effectively acquired the promissory note because the assignment occurred in violation of the pooling and servicing

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[14](...continued)
person not in possession of the instrument who is entitled to enforce the instrument pursuant to § 47-3309 or § 47-3418, subsection D. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

agreement (i.e., the transfer occurred after the cut-off date).

The debtors' general argument, however, is problematic in that A.R.S. § 47-3301 does not say what the debtors wish it to say. The debtors' interpretation has been rejected in Mansour v. Cal-Western Reconveyance Corp., 618 F.Supp.2d 1178, 1181 (D. Ariz. 2009), where the district court pointed out that A.R.S. § 47-3301 specifically stated that a person not in possession of the instrument still is entitled to enforce the instrument. The debtors moreover did not raise this argument before the bankruptcy court. See Cold Mountain v. Garber, 375 F.3d 884, 891 (9th Cir. 2004)("In general, we do not consider an issue raised for the first time on appeal.").

Arizona is not a "show me the note" state, as emphasized by A.R.S. § 33-807. Diessner v. Mortgage Elec. Registration Sys., 618 F.Supp.2d 1184, 1187 (D. Ariz. 2009); Mansour, 618 F.Supp.2d at 1181; Garcia v. GMAC Mortgage, LLC, 2009 WL 2782791 (D. Ariz. 2009); Levine v. Downey Sav. & Loan, 2009 WL 4282471 (D. Ariz. 2009). A.R.S. § 33-807(A) provides, in relevant part:

> At the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property in which event chapter 6 of this title governs the proceedings. The beneficiary or trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust . . . .

A.R.S. § 33-807(B) also provides, in relevant part:

> The trustee or beneficiary may file and maintain an action to foreclose a deed of trust at any time before the trust property has been sold under the power of sale . . . .

The debtors seek a definitive determination as to the substance of Citibank's colorable claim, which, as we explained

earlier, is not appropriate within the limited context of a motion for relief from stay, given its summary nature.

At the hearing before the bankruptcy court, the debtors questioned whether MERS properly transferred the promissory note to Citibank, challenging the assignment on two grounds. Although the debtors do not raise this argument here, we address it for the sake of thoroughness.

A party moving for relief from stay "need only present evidence sufficient to present a colorable claim – not every piece of evidence that would be required to prove the right to foreclosure under a state law judicial foreclosure proceeding is necessary." In re Weisband, 427 B.R. 13, 22 (Bankr. D. Ariz. 2010)(citation omitted). Not every party moving for relief thus "has to provide a complete chain of a note's assignment to obtain relief." Id.

The debtors first contend that MERS had nothing to assign or had no authority to make the assignment. Under the trust deed, MERS had legal title to the interests granted by the debtors in the trust deed, and it had the right to exercise any or all of those interests, including the right to foreclose. Such rights conceivably could be transferred to another party.

The debtors next argue that the purported assignment was incomplete in that MERS did not transfer the promissory note. Contrary to the debtors' assertion, however, MERS did transfer the promissory note to Citibank under the assignment. The assignment explicitly states that MERS transferred to Citibank "the described Deed of Trust, together with the certain note(s) described therein . . . ." The trust deed referenced the

promissory note, describing it to mean the "Note" signed by the debtors and dated May 14, 2007.

Admittedly, there appears to be a gap in the transfers memorialized in the HomEq allonge and the Citibank allonge. But we agree with the bankruptcy court that Citibank provided, through the assignment, "a colorable showing of the transfers" sufficient to demonstrate that it had standing to pursue relief from stay. (Emphasis added.) In other words, Citibank has provided enough evidence to show that its claim is sufficiently plausible to allow Citibank to pursue it.

Moreover, as the bankruptcy court pointed out, the issue of whether the transfer was valid is not appropriate for disposition in a hearing on a motion for relief from stay. Deciding such an issue would go beyond the intended limited scope of a hearing on a motion for relief from stay.

CONCLUSION

Citibank has provided evidence to show a colorable claim, sufficient to establish standing to seek relief from stay against the debtors. We AFFIRM.