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

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos. CC-11-1269-PaMkCa and
)	CC-11-1272-PaMkCa
MARLOW HOWARD HOOPER and)	(Related Appeals)
MONIQUE LORI HOOPER,)	
)	Bk. No. 08-24094-MJ
Debtors.)	
_____)	Adv. No. 09-01275-MJ
)	
MARLOW HOWARD HOOPER;)	
MONIQUE LORI HOOPER,)	
)	
Appellants,)	
)	M E M O R A N D U M¹
v.)	
)	
KARL T. ANDERSON, Chapter 7)	
Trustee; ETS SERVICES, LLC; GMAC)	
MORTGAGE, LLC; MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS, INC.,)	
)	
Appellees.)	
_____)	

Argued and submitted on January 19, 2012
at Pasadena, California

Filed - February 14, 2012

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

Honorable Meredith A. Jury, Bankruptcy Judge, Presiding

Appearances: _____
W. Derek May of the Law Offices of Stephen R. Wade,
P.C. argued for appellants Marlow and Monique
Hooper; Adam Starr of Greenberg Traurig, LLP argued
for appellee GMAC Mortgage, LLC.

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

1 Before: PAPPAS, MARKELL and CASE,² Bankruptcy Judges.

2
3 Chapter 7³ debtors Marlow Hooper and Monique Hooper (the
4 "Hoopers") appeal the bankruptcy court's orders approving a
5 compromise settling litigation pending between Karl T. Anderson
6 (the chapter 7 "Trustee") and creditor GMAC Mortgage, LLC
7 ("GMAC"),⁴ overruling Hoopers' objection to GMAC's claim, and
8 denying reconsideration of those orders. We AFFIRM.

9 **FACTS**

10 In 2006, the Hoopers purchased a property in Rancho
11 Cucamonga, California (the "Property"). To finance this purchase,
12 Marlow Hooper⁵ borrowed \$1 million from Greenpoint. The loan was
13 evidenced by an adjustable rate note dated April 20, 2006 (the
14 "Note"). The correct street address of the Property is listed on
15 the Note.

16 _____
17 ² The Honorable Charles G. Case II, United States Bankruptcy
18 Judge for the District of Arizona, sitting by designation.

19 ³ Unless otherwise indicated, all chapter, section and rule
20 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
21 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
22 Federal Rules of Civil Procedure are referred to as "Civil Rules."

23 ⁴ Besides GMAC, the other defendants named in the adversary
24 proceeding were ETS Services, Inc. ("ETS"), Mortgage Electronic
25 Registration Systems, Inc. ("MERS"), Greenpoint Mortgage Funding,
26 Inc. ("Greenpoint") and Fidelity National Title, Inc.
27 ("Fidelity"). Although ETS and MERS are named as appellees in
28 this appeal, they did not file briefs or appear at oral argument.
With the exception of Fidelity, the appellees appear to have acted
in concert. Consequently, we refer to the appellees collectively
either as GMAC or the GMAC Parties.

⁵ The Note and two deeds of trust discussed herein were
executed by Marlow Hooper alone; they do not bear the signature of
his wife and co-debtor, Monique Hooper. According to GMAC's
motion for relief from stay, discussed below, Monique Hooper was
not a co-borrower on the Note.

1 At the same time he executed the Note, Marlow Hooper executed
2 a Deed of Trust (the "2006 DOT") in favor of Greenpoint. The 2006
3 DOT lists the correct address of the Property; however, the legal
4 description for the Property in the 2006 DOT was incorrectly
5 listed as "Lot 17 Tract No. 16332," instead of the correct
6 description of "Lot 19 Tract No. 16332."⁶ The 2006 DOT was
7 recorded in the Official Records of San Bernadino County on May 1,
8 2006.

9 On September 12, 2008, acting without obtaining a new
10 signature from Marlow Hooper, Greenpoint recorded a second,
11 modified version of the 2006 deed of trust (the "2008 DOT"). In
12 the 2008 DOT, the Property is correctly described as "Lot 19 Tract
13 No. 16332."⁷

14 The Hoopers filed a chapter 7 bankruptcy petition on
15 October 15, 2008. In their original schedule D, they listed an
16 undisputed, noncontingent liquidated claim of \$1,077,217.96 in
17 favor of GMAC for a mortgage and deed of trust on the Property.
18 The Hoopers also claimed a homestead exemption on the Property in
19 schedule C. Trustee did not challenge the Hoopers' exemption
20 claim, nor seek to administer the Property. Instead, on
21 December 2, 2008, Trustee filed a "no-asset report."

22 In a motion originally filed in the bankruptcy case on
23 December 11, 2008, which was amended on December 31, 2008, GMAC

24
25 ⁶ It is not disputed that "Lot 19 Tract No. 16332" is the
26 correct legal description of the Property.

27 ⁷ There was also an alleged disparity between the 2006 and
28 2008 DOTs regarding the assessor's number. However, this feature
of the documents was not raised as a significant issue in this
appeal.

1 sought relief from the automatic stay so that it could foreclose
2 on the Property. Attached to these motions were copies of the
3 2006 DOT and Note. The Hoopers did not contest the stay relief
4 motions, and the bankruptcy court entered its order terminating
5 the stay in favor of GMAC on January 7, 2009. This order was not
6 appealed.

7 The bankruptcy court granted the Hoopers a discharge on
8 February 3, 2009, and the bankruptcy case was closed on
9 February 19, 2009.

10 The Hoopers contend that they were unaware of the existence
11 of the 2008 DOT before their discharge was granted. On March 31,
12 2009, the Hoopers filed a motion to reopen their case to amend
13 their schedules "to include previously unidentified assets." The
14 case was reopened by order entered by the bankruptcy court on
15 April 30, 2009.

16 **The Compromise**

17 After he became aware of the discrepancy in the documents,
18 Trustee initiated an adversary proceeding against GMAC, ETS, MERS,
19 Greenpoint and Fidelity on June 11, 2009. In the complaint,
20 Trustee sought avoidance of the 2008 DOT. In addition, he alleged
21 that the 2006 DOT did not "properly encumber" the Property because
22 it contained an incorrect legal description.⁸ According to
23 Trustee, even if the 2008 DOT was authorized by the parties, which
24 Trustee disputed, because it was recorded on September 12, 2008,
25 within ninety days of the filing of the Hoopers' bankruptcy

26
27 ⁸ Although the complaint and subsequent summary judgment
28 motion asserted that the 2006 DOT did not properly encumber the
Property, Trustee did not seek to avoid the 2006 DOT.

1 petition it could be avoided as a preference under § 547(b). The
2 Hoopers were not named as parties, and did not intervene, in the
3 adversary proceeding.

4 Trustee filed a motion for summary judgment on January 4,
5 2010, arguing that there were no triable issues of material fact
6 and that, as a matter of law, "the unauthorized and concealed
7 recording of the 2008 DOT on September 12, 2008, thirty-three days
8 before the filing of the bankruptcy petition, was an avoidable
9 preference under § 547." A flurry of objections from the GMAC
10 Parties, replies from Trustee, supplemental briefing, and multiple
11 continuances of the hearing on summary judgment followed.

12 Trustee then moved to sell the Property on August 25, 2010,
13 pursuant to § 363(b) and (f) with valid liens to attach to the net
14 proceeds of the sale. The sale motion disclosed that there was a
15 pending compromise between GMAC and Trustee. The Hoopers objected
16 on September 7, 2010, arguing that Trustee was improperly
17 including some personal property items (a refrigerator and several
18 flat screen televisions) in the sale, and because the estimated
19 distribution to unsecured creditors from the sale was to be only
20 \$10,000. GMAC did not oppose the sale motion. The bankruptcy
21 court approved the sale on November 24, 2010. The bankruptcy
22 court overruled the Hooper's objection, and the Hoopers did not
23 appeal the order approving the sale. The sale closed, and Trustee
24 is holding \$555,911 in net proceeds of the sale.

25 As noted above, Trustee and GMAC had reached a tentative
26 settlement agreement to resolve the adversary proceeding and to
27 distribute the house sale proceeds. On December 21, 2010, Trustee
28 filed a Motion for Order Authorizing Trustee's Global Compromise

1 [of] Adversary Proceeding (the "Compromise Motion"). The material
2 terms of the proposed compromise and settlement agreement provided
3 that:

4 - A portion of GMAC's secured claim on the Property,
5 amounting to \$95,000, would be deemed avoided under § 547, and
6 preserved for the benefit of the bankruptcy estate pursuant to
7 § 551 (the "Compromise Amount"). The adversary proceeding would
8 be dismissed with prejudice as to all defendants.

9 - The following distributions would be made from the house
10 sale proceeds: (1) the \$95,000 Compromise Amount would be paid to
11 Trustee, of which \$85,000 would be allocated to payment of allowed
12 administrative expenses, and \$10,000 would be distributed to
13 unsecured creditors, which Trustee estimated would result in a 55
14 percent dividend (assuming \$18,000 in total allowed unsecured
15 claims); (2) the balance of the proceeds would be disbursed to
16 GMAC for application on its secured claim; and (3) the Hoopers
17 would "not be entitled to receive any portion of the Net Proceeds,
18 whether on account of any asserted homestead exemption or
19 otherwise."

20 The Hoopers filed an objection to the Compromise Motion on
21 December 28, 2010. In the objection, they asserted, inter alia,
22 that GMAC was not a creditor, secured or otherwise, because GMAC
23 was not the current owner or assignee of the Note, and because
24 GMAC's position was founded on what they described as the
25 fraudulent, criminal act of the unauthorized recording of the 2008
26 DOT. The Hoopers also suggested that it was unfair for Trustee
27 and GMAC to effectively deny Hoopers' entitlement to a homestead
28 exemption through a settlement where the Hoopers were not parties.

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Objection to GMAC's Proof of Claim

GMAC had filed secured Proof of Claim #3-1 in the Hoopers' bankruptcy case on September 15, 2009 in the amount of \$1 million. Attached to the proof of claim were copies of the 2006 and 2008 DOTs; the Note was not attached.

The Hoopers filed an Objection to the GMAC claim on November 30, 2010. Among the arguments they advanced to support this objection were that GMAC had not established that it was the holder of the Note with authority to enforce it, and that the alteration and recording of the 2008 DOT was fraudulent, without their consent, and in violation of Cal. Penal Code § 132 (Offering False Evidence).

Hearings on Compromise and Objection to Claim

The bankruptcy court ordered that the Hoopers' objection to claim and Trustee's Compromise Motion be heard together. The first hearing occurred on January 11, 2011. Trustee, the Hoopers, and the GMAC Parties were represented by counsel. The court informed the parties that it was concerned about the standing of GMAC. Specifically, the court indicated it lacked adequate evidence that GMAC was holder of the Note:

The evidence that has been submitted in response to the objection to claim was not attached to the original proof of claim [and] is suspicious at best that GMAC is the holder. The reason I say that is because they hold, according to their declaration and the documents, based on an in-blank endorsement on an unnumbered page signed by a person whose authority is unknown to the Court on an unknown date.

Hr'g Tr. 2:19-25, January 11, 2011. After hearing from the parties, the bankruptcy court continued the hearing to March 29, 2011, and instructed GMAC to produce the original Note;

1 authenticate the endorsement on the Note from Greenpoint to GMAC;
2 and provide evidence that the person who signed the endorsement
3 was authorized to do so.

4 At the continued hearing on March 29, 2011, Trustee, the U.S.
5 Trustee, the Hoopers and the GMAC Parties were represented by
6 counsel. GMAC presented what it represented was the original Note
7 to the bankruptcy court. The bankruptcy judge examined the Note,
8 observing that it contained the signature of Marlow Hooper, was
9 endorsed in blank on the back of its fourth page, and that the
10 endorsement was signed by "Thomas K. Mitchell, Vice President of
11 Greenpoint." The court observed that the form of endorsement was
12 consistent with how notes in general are endorsed.

13 The bankruptcy court also acknowledged that GMAC had
14 submitted the declaration of Rosa Medina, a former vice president
15 of Greenpoint. The Medina declaration asserted that she was vice
16 president of Greenpoint for seventeen years prior to the closure
17 of that company in 2007, and that Thomas K. Mitchell was a vice
18 president of Greenpoint while she was employed there.

19 At this point, the bankruptcy court stated that, based on the
20 submission of the original Note and the Medina declaration,
21 "[c]ertainly that's prima facie evidence that GMAC is the holder
22 of the Note." Hr'g Tr. 4:14-16, March 29, 2011. The court
23 concluded: "[B]ased on the record before the court, my tentative
24 [ruling] is this is an enforceable claim. GMAC has standing.
25 They have the original note. It is an enforceable secured claim."
26 Hr'g Tr. 6:24-7:1. Later in the hearing, the court confirmed this
27 ruling:

28 I'm going to overrule the Debtor's objection to the

1 claim on behalf of the estate. I think that the issue
2 of whether or not GMAC is the holder has been satisfied
3 by their bringing the endorsed Note, the original Note,
to court. . . . I would overrule the objection, and I
would grant the compromise.

4 Hr'g Tr. 40:25-41:4, 41:21-22.

5 The bankruptcy court then went on to make findings on each of
6 the Ninth Circuit's criteria for approving a compromise set forth
7 in Martin v. Kane (In re A & C Props.), 784 F.2d 1377 (9th Cir.
8 1986): that the dispute at issue in the compromise was highly
9 complex and that Trustee was not confident of his chances for
10 success in litigation; that collectibility was not a concern as
11 the funds were in a blocked account; that the four hearings over
12 legal ramifications were sufficient for the court to determine
13 that the complexity and cost of continuing proceedings would
14 justify ending the dispute; and that no creditor had objected to
15 the compromise. Therefore, the court concluded, the A&C Props
16 factors were met. Hr'g Tr. 42:1-43:13.

17 The bankruptcy court entered an Order Authorizing Trustee's
18 Global Compromise on April 20, 2011, "pursuant to the findings
19 made on the record." On May 31, 2011, the court entered an Order
20 Overruling Debtors' Objection to Claim of GMAC Mortgage, LLC,
21 Claim #3, "pursuant to the findings of fact and conclusions of
22 law, stated in the hearings of January 11, 2011 and March 29,
23 2011."

24 **The Reconsideration Motion and Hearing**

25 The Hoopers filed a motion for reconsideration of the orders
26 approving the compromise and overruling the claim objection on
27 April 11, 2011. The Hoopers argued that newly discovered evidence
28 showed that the Thomas K. Mitchell signature on the Note

1 DISCUSSION

2 I.

3 **The bankruptcy court did not abuse its
4 discretion in approving the Compromise.**

5 Rule 9019(a) provides that, "On motion by the trustee and
6 after notice and a hearing, the court may approve a compromise or
7 settlement. . . ." The bankruptcy court is vested with
8 considerable discretion in approving compromises and settlements.
9 Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610,
10 620 (9th Cir. 1988). To approve a compromise, the bankruptcy
11 court must be satisfied that its terms are "fair, reasonable and
12 equitable." In re A & C Props., 784 F.2d at 1382. In assessing
13 the reasonableness of a compromise, the bankruptcy court should
14 consider:

- 15 (a) The probability of success in the litigation;
16 (b) the difficulties, if any, to be encountered in the
17 matter of collection; (c) the complexity of the
18 litigation involved, and the expense, inconvenience and
19 delay necessarily attending it; (d) the paramount
20 interest of the creditors and a proper deference to
21 their reasonable views in the premises.

22 Id.

23 In this case, the bankruptcy court explicitly addressed each
24 of the A&C Props. factors.

25 Probability of success in the litigation. The bankruptcy
26 court noted that the central dispute resolved by the compromise
27 was whether GMAC held an enforceable secured claim as to the
28 Property in light of the incorrect legal description of the
Property in the 2006 DOT. The court noted that neither Trustee
nor the GMAC parties were confident of their prospects for success
in litigating this issue. Further, the court observed that,
however the court might rule, GMAC's title companies would likely

1 insist on an appeal. Consequently, in the bankruptcy court's
2 view, it was unclear that Trustee would be successful.

3 The difficulties, if any, to be encountered in the matter of
4 collection. This was not a relevant factor to the bankruptcy
5 court in this case, because the proceeds of the sale of the
6 Property, the only funds potentially available to the estate, were
7 being held in a blocked account maintained by Trustee until
8 conclusion of the adversary proceeding.

9 The complexity of the litigation involved, and the expense,
10 inconvenience and delay necessarily attending it. The bankruptcy
11 court repeated its views about the legal complexity of the dispute
12 noted above. Additionally, the court noted that it had held "four
13 or five hearings on the legal issues over the legal ramifications
14 of what's involved in the Compromise" and that the litigation was
15 "sufficiently complex and costly to have the matter end now[.]"
16 Hr'g Tr. 42:17-25.

17 The paramount interest of the creditors and a proper
18 deference to their reasonable views in the premises. The
19 bankruptcy court determined that the only party benefitting from
20 rejection of the compromise would be the Hoopers:

21 The estate would benefit from everything that is before
22 the Court. No party has objected to the Compromise
23 except for the Debtor, which would indicate that the
24 unsecured creditors and - GMAC is either a secured
25 creditor or by far the largest unsecured creditor in
26 this estate, and they have chosen to take what they can
27 take in their compromise, and I think that is
28 significant. . . . I would find that it meets the
fourth criteria of the A&C factors.

26 Hr'g Tr. 43:1-13. In addition, under these facts, the court could
27 also have noted that the compromise provided a 55 percent return
28 to the unsecured creditors, whereas it was uncertain if there

1 would be any funds available for creditors if the litigation
2 continued.

3 In summary, then, in approving the compromise, the bankruptcy
4 court applied the correct legal rule, measuring the reasonableness
5 of the compromise under the factors articulated by the Ninth
6 Circuit in A&C Props. Whether the members of this Panel would
7 independently agree with them, the bankruptcy court's findings and
8 conclusions were supported by competent evidence in the record,
9 and were not illogical, implausible, or without support in
10 inferences that may be drawn from the record. The bankruptcy
11 court did not abuse its discretion in approving the Compromise.

12 **II.**
13 **The Hoopers' Objection to the Compromise**

14 The Hoopers do not seem to dispute that the A&C Props.
15 factors were satisfied. Rather, they argue that the bankruptcy
16 court should not have approved the settlement with Trustee because
17 GMAC lacked standing, arguing that GMAC was not a creditor,
18 secured or otherwise, as it did not show it was the owner or
19 assignee of the Note. Further, the Hoopers argue that the
20 position of GMAC is built on a fraud and a criminal act in its
21 unauthorized recording of the 2008 DOT.

22 The Panel recently published an extensive Opinion examining
23 the legal status of parties as holders entitled to enforce
24 promissory notes. See Am. Home Mortg. Servicing, Inc. v. Veal
25 (In re Veal), 450 B.R. 897 (9th Cir. BAP 2011). Briefly, in that
26 opinion, the Panel observed that Article 3 of the Uniform
27 Commercial Code "provides a comprehensive set of rules governing
28 the obligations of parties on [a promissory note], including how

1 to determine who may enforce those obligations and to whom those
2 obligations are owed." Id. at 910. "To enforce a note under the
3 method most commonly employed, the person must be a 'holder' of
4 the note." Id. Under Cal. Com. Code § 1201(b)(21), a holder of a
5 note is defined as:

6 "Holder," means: (A) the person in possession of a
7 negotiable instrument that is payable either to bearer
8 or, to an identified person that is the person in
9 possession; or (B) the person in possession of a
document of title if the goods are deliverable either to
bearer or to the order of the person in possession.

10 See also In re Veal, 450 B.R. at 911.

11 Under California law, a negotiable instrument may be endorsed
12 in blank, that is, endorsed without reference to an identifiable
13 person. Cal. Com. Code § 3205(b).⁹ Where a note is endorsed in
14 blank, it becomes "payable to bearer and may be negotiated by
15 transfer of possession until specially indorsed." Id.; In re Lee,
16 408 B.R. 893, 899-90 (Bankr. C.D. Cal. 2009) ("If an indorsement
17 does not specify a payee, it constitutes a blank indorsement, as
18 defined in Cal. Com. Code § 3205(b), which makes the note payable
19 to whoever is the bearer of the note.").

20 When the Hoopers objected that GMAC did not have possession
21 of the Note, the bankruptcy court ordered GMAC to produce the
22 original. GMAC complied at a hearing at which the bankruptcy
23 court had the opportunity to examine the Note; the record reflects
24 that the Hoopers and their counsel had been given an opportunity
25 before the hearing to examine the actual Note. GMAC also

26
27 ⁹ The Official Comment to Cal. Com. Code § 3305(b) notes:
28 "A blank indorsement is usually the signature of the indorser on
the back of the instrument without other words."

1 submitted other evidence to the bankruptcy court, the Medina
2 declaration, to show that the Note had been properly endorsed in
3 blank. On this basis, the bankruptcy court could rule that,
4 because GMAC was in possession of the properly endorsed Note, it
5 was the holder under California law. In re Hwang, 438 B.R. 661,
6 665 (C.D. Cal 2010) (concluding that under California law, the
7 possessor of the Note has the authority to enforce it, even if it
8 is not in lawful possession of the Note). As the holder of the
9 Note, GMAC had standing and power to enforce it. In re Veal,
10 450 B.R. at 911.

11 In both the bankruptcy court and this appeal, the Hoopers
12 object that there is no evidence of the date of the transfer of
13 the Note from Greenpoint to GMAC. After noting that under the
14 facts of this case it would be very difficult to determine the
15 date of transfer, the bankruptcy court ruled that, "I don't think
16 when [the Note] was transferred is important." Hr'g Tr. 5:2-3,
17 March 29, 2011. This ruling was correct. There is nothing in the
18 California Commercial Code that requires proof of the date of
19 transfer as a condition to enforcing a note. The statute requires
20 only that GMAC be in physical possession of a properly endorsed
21 Note; when that Note was transferred to GMAC is legally
22 irrelevant. Cal. Com. Code § 3205(b); In re Hwang, 438 B.R. at
23 665.

24 The sole argument made by the Hoopers on reconsideration
25 challenged the signature of Thomas K. Mitchell on the endorsement
26 to the Note because it was a stamped signature, rather than an
27 original one. However, the bankruptcy court properly dismissed
28 this objection, finding that "the signature on [the] note

1 endorsement is self-authenticating under Evidence Code 902(9)."¹⁰
2 Hr'g Tr. 1:21-23, May 3, 2011. The applicable general commercial
3 law of California provides that:

4 In an action with respect to an instrument, the
5 authenticity of, and authority to make, each signature
6 on the instrument is admitted unless specifically denied
7 in the pleadings. If the validity of a signature is
8 denied in the pleadings, the burden of establishing
9 validity is on the person claiming validity, but the
signature is presumed to be authentic and authorized
unless the action is to enforce the liability of the
purported signer and the signer is dead or incompetent
at the time of trial of the issue of validity of the
signature.

10 Cal Com. Code § 3308(a). Construing this statute, courts have
11 held that it "creates a presumption that commercial paper offered
12 in evidence is authentic and dispenses with a requirement of
13 extrinsic evidence for admissibility." Mandalay Resort Group v.
14 Miller (In re Miller), 310 B.R. 185, 193 (Bankr. C.D. Cal. 2004)

15 Under California law, the "burden of establishing" the
16 validity of the signature is on GMAC. Cal. Com. Code § 1201(b)(8)
17 ("'Burden of establishing' a fact means the burden of persuading
18 the trier of fact that the existence of the fact is more probable
19 than its nonexistence."). The bankruptcy court found that, based
20 on the Medina declaration, GMAC had offered sufficient evidence of
21 Mitchell's employment and his authority to endorse the Note.
22 According to the court, "I have no evidence whatsoever that that
23 is not a proper signature." Hr'g Tr. 3:19-25, May 3, 2011. We

25 ¹⁰ Fed. R. Evid. 902(9) **Self Authentication**
26 Extrinsic evidence of authenticity as a condition precedent
27 to admissibility is not required with respect to the
28 following: . . . (9) Commercial paper and related
documents. Commercial paper, signatures thereon, and
documents related thereto to the extent provided by general
commercial law.

1 perceive no error in this ruling.

2 As to the Hoopers' contention that the Note was invalid
3 because it bore a stamped, rather than handwritten signature, this
4 position is incorrect under California law. The statutes do not
5 require handwritten signatures on endorsements. Cal. Com. Code
6 § 3401(b)(1) ("Liability on instrument; Signature . . .
7 (b) signature may be made (1) manually or by means of a device or
8 machine[.]"). The Official Comments to this provision instructs
9 that "A signature may be handwritten, typed, printed or made in
10 any other manner." Therefore, the bankruptcy court did not err in
11 deciding that "The fact [that] the signature is a stamp, only if
12 there was some ability to prove that it was stamped without the
13 authorization of the person whose name appeared on it, would the
14 Court have any problem with this stamp." Hr'g Tr. 3: 9-12, May 3,
15 2011.

16 The bankruptcy court also properly rejected the Hoopers'
17 argument that it should deny the compromise because GMAC had
18 forged the 2008 DOT, and that the bankruptcy court should not
19 favor a party whose position is based on the commission of a
20 criminal act. To be precise, the court indicated that it had
21 based its rulings on the 2006 DOT, without regard to the 2008 DOT.
22 To the extent that there was doubt about the validity of the 2006
23 DOT, the court found that the apparent error in legal description
24 of the property was simply a "scrivener's error." Hr'g Tr.
25 37:7-9.

26 Given proper circumstances, a state court may correct a
27 "scrivener's error" in a contract. Bonshire v. Thompson, 52 Cal.
28 App. 4th 803, 811 (Cal. Ct. App. 1997). In this case, the

1 evidence is uncontroverted that the legal description in the 2006
2 DOT was inaccurate. However, the Hoopers never suggested that
3 they had not received the loan proceeds, or that they had not
4 intended to encumber the Property located at the address set forth
5 in the 2006 DOT. To the contrary, the evidence presented to the
6 bankruptcy court clearly established that they had. Thus, because
7 under these circumstances a court could have corrected the
8 scrivener's error in the 2006 DOT, the bankruptcy court did not
9 err in declining to disregard the incorrect legal description on
10 the 2006 DOT.

11 **III.**

12 **The bankruptcy court did not abuse its discretion
13 in overruling the Hoopers' objection to the GMAC claim.**

14 "A proof of claim executed and filed in accordance with these
15 rules shall constitute prima facie evidence of the validity and
16 amount of the claim." Rule 3001(f). Upon objection, the proof of
17 claim provides "some evidence as to its validity and amount" and
18 carries over a "mere formal objection." Lundell v. Anchor Constr.
19 Specialists, Inc. (In re Lundell), 223 F.3d 1035, 1039 (9th Cir.
20 2000). The objector must produce sufficient evidence "tending to
21 defeat the claim by probative force equal to that of the
22 allegations in the proofs of claim themselves." Id. (citing In re
23 Holm, 931 F.2d 620, 623 (9th Cir. 1991)). "The ultimate burden of
24 persuasion remains at all times upon the claimant." In re
25 Lundell, 223 F.3d at 1039.

26 In this case, GMAC's proof of claim was prima facie valid,
27 and the Hoopers' arguments were not of equal probative force.

28 In contesting the claim, the Hoopers presented the identical
objections they had posed to the Compromise, that GMAC was not the

1 holder of the Note and that the alteration and recording of the
2 2008 DOT was fraudulent, without consent, and in violation of Cal.
3 Penal Code § 132 (Offering False Evidence). The bankruptcy court
4 overruled the claim objection for the same reasons that it had
5 approved the Compromise, that GMAC was the holder of the Note with
6 power to enforce it, and that the 2008 DOT was irrelevant to its
7 considerations. Hr'g Tr. 40:25-41:4. In doing so, there remained
8 no reason for the bankruptcy court to entertain Debtors' contest
9 to GMAC's proof of claim. For the reasons given above, we agree
10 with the bankruptcy court, and find no abuse of discretion in its
11 overruling the Hoopers' objection to GMAC's claim.

12 On appeal, the Hoopers raise one additional objection to the
13 bankruptcy court's decision overruling their objection to GMAC's
14 claim. They contend that the bankruptcy court erred when it ruled
15 on the Compromise Motion before it ruled on the objection to
16 claim. However, we need not address this issue because the
17 Hoopers' argument is simply incorrect. As shown by the hearing
18 transcript, the bankruptcy court first ruled on the objection to
19 claim at the March 29, 2011 hearing. Hr'g. Tr. at 40:25. It
20 later, at the same hearing, approved the Compromise. Hr'g Tr. at
21 41:21-22. That the bankruptcy court's formal order overruling the
22 objection to claim was entered after the order approving the
23 Compromise is of no moment. Both orders expressly refer back to
24 the oral rulings made by the bankruptcy court at the March 29
25 hearing, and made no changes to those rulings.¹¹

26

27 ¹¹ At oral argument, the Hoopers also attempted to argue that
28 the bankruptcy court erred in its ruling that they did not have a
(continued...)

1 IV.

2 **The bankruptcy court did not abuse its discretion**
3 **in denying the Hoopers' motion for reconsideration.**

4 A motion for reconsideration filed within ten¹² days of the
5 entry of a judgment is reviewed under Civil Rule 59(e). Am.
6 Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892,
7 899 (9th Cir. 2001). Civil Rule 59(e) is made applicable in
8 bankruptcy proceedings by Rule 9023. Although Civil Rule 59(e)
9 permits a court to reconsider and amend a previous order, "the
10 rule offers an extraordinary remedy, to be used sparingly in the
11 interests of finality and conservation of judicial resources."
12 Kona Enter., Inc. v. Bishop, 229 F.3d 877, 890 (9th Cir. 2000). A
13 motion for reconsideration should not be granted, absent highly
14 unusual circumstances, unless the court is presented with newly
15 discovered evidence, committed clear error, or if there is an
16 intervening change in the controlling law. Id. "A Rule 59(e)
17 motion may not be used to raise arguments or present evidence for
18 the first time when they could reasonably have been raised earlier
19 in the litigation." Id. (emphasis in original).

20 ¹¹(...continued)

21 right to a homestead exemption based on its examination of whether
22 there was an equitable mortgage. This issue was not identified in
23 the Hoopers' statement of issues on appeal, nor was it discussed
24 in their brief. Issues "not argued in the opening brief are
25 deemed forfeited." Koerner v. Grigas, 328 F.3d 1039, 1048-49 (9th
26 Cir. 2003). The discretionary exceptions to this rule (manifest
27 injustice would result, appellee raised the issue in its brief, or
28 opposing party would not be prejudiced) do not apply or were not
argued. We decline to review this issue on appeal.

¹² The ten-day limit for filing requests under Civil Rule
59(e) was in effect at the time of the Am. Ironworks case. The
time for filing requests under Rule 9023, incorporating and
modifying Civil Rule 59(e) for bankruptcy purposes, was enlarged
to fourteen days in 2009.

1 Here, the Hoopers sought reconsideration based upon what they
2 described as newly discovered evidence - that the Mitchell
3 signature on the Note was not handwritten, but was instead
4 stamped. As discussed above, the bankruptcy court properly
5 disposed of this argument by noting that under both federal and
6 California law, a stamped signature on a commercial document is
7 self-authenticating. Further, there is no requirement in
8 California commercial law that a signature be handwritten. Thus,
9 it was immaterial that the signature was stamped.

10 At the hearing on reconsideration, the Hoopers attempted to
11 argue that an intervening change of law had taken place, citing
12 Densmore v. Litton Loan Servicing, L.P. (In re Densmore), 445 B.R.
13 307 (Bankr. D. Vt. 2011). The bankruptcy court discounted this
14 argument because it was raised in a reply brief to GMAC's
15 objection to their motion for reconsideration, which was "too
16 late" for consideration by the court. Hr'g Tr. 8:9-10 (May 3,
17 2011). The court's decision was also justified because a
18 bankruptcy court decision from Vermont is certainly not
19 "controlling law" in a case in California involving local law, and
20 thus would not meet the threshold requirements for reconsideration
21 under Civil Rule 59(e).

22 The bankruptcy court did not abuse its discretion in denying
23 the Hoopers' motion for reconsideration.

24 **CONCLUSION**

25 We AFFIRM the bankruptcy court's orders.
26
27
28