

1 Chapter 7¹ debtor Simone St. Clare appeals from the
2 bankruptcy court's orders (1) overruling her objection to
3 claim 8-1 filed by Bank of America, N.A. (BANA) and (2) denying
4 her motion for reconsideration of that ruling. We AFFIRM.

5 **I. FACTS**

6 In September 2005, debtor obtained a loan from Countrywide
7 Bank, N.A. in the principal amount of \$1,340,000, which was
8 evidenced by a note and secured by a first deed of trust on her
9 property located in Martinez, California (the Martinez
10 Property).

11 Debtor was in default on the loan when she filed her
12 chapter 13 petition pro se on September 18, 2012. In
13 Schedule A, debtor listed the Martinez Property as unencumbered
14 with no secured debt. Debtor listed no secured creditors in
15 Schedule D.

16 On February 26, 2013, debtor amended her Schedule A to
17 state that the Martinez Property was encumbered by a secured
18 claim in the amount of \$1,865,299. On the same day, debtor
19 filed an adversary proceeding against BANA and others (Adv.
20 No. 13-04044) seeking, among other things, to have the
21 bankruptcy court determine the extent and validity of BANA's
22 lien against the Martinez Property and quiet title. On May 29,
23 2013, debtor voluntarily dismissed the adversary proceeding
24 without prejudice.

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

1 A few months before, on March 15, 2013, BANA timely filed a
2 proof of claim (POC) designated as claim 8-1, asserting a
3 secured claim against the Martinez Property for amounts due
4 under the note in the total amount of \$1,894,662.21, including
5 an arrearage and other charges in the amount of \$472,439.20
6 (representing fifty-two monthly payments for February 15, 2008
7 through the petition date).

8 Attached to the POC was (1) an itemized statement of
9 interest, fees, expenses and charges; (2) a copy of the note
10 which contained an endorsement in blank; (3) a copy of the deed
11 of trust dated September 29, 2005; (4) a copy of the assignment
12 of the deed of trust dated April 8, 2011, executed by Mortgage
13 Electronic Registration Systems, Inc. (MERS) in favor of BAC
14 Home Loans Servicing, LP, fka Countrywide Home Loans Servicing,
15 LP (BAC); and (5) a copy of the certificate of merger filed in
16 the Office of the Secretary of State of Texas on June 28, 2011,
17 evidencing the merger of BAC into BANA. The assignment shows
18 that the deed of trust was assigned to BAC by virtue of an
19 Assignment of Deed of Trust, duly acknowledged on April 8, 2011
20 and recorded April 15, 2011 as document 2011-0078100-00 in the
21 Contra Costa, County recorder's office. The Certificate of
22 Merger shows that on June 28, 2011, the Secretary of State of
23 Texas issued the certificate merging BAC into BANA, effective
24 July 1, 2011.

25 On May 16, 2013, debtor filed an objection to the POC.
26 Stripped to its essence, debtor alleged that the POC was not
27 accompanied by any evidence that BANA had authority to bring the
28 claim or standing to enforce the note. BANA filed a response to

1 the objection and a supplemental opposition.

2 At the September 12, 2013 hearing on the matter, the
3 bankruptcy court recited its findings of fact and conclusions of
4 law on the record and overruled debtor's objection. Instead of
5 providing an official or unofficial transcript of the hearing,
6 debtor prepared a summary from the digital audio recording which
7 she included in the record. According to debtor's summary, the
8 bankruptcy court found that BANA's POC complied with Rule 3001:
9 the POC was executed by BANA's attorney and attached to the POC
10 was (1) a copy of the note with endorsement in blank; (2) an
11 itemized statement of interest, fees, expenses and charges as
12 required under Rule 3001(c); and (3) a copy of the deed of trust
13 which was required under Rule 3001(d). The bankruptcy court
14 decided that debtor's arguments regarding BANA's standing to
15 enforce the note were without merit, overruled her objection,
16 and concluded that BANA's POC was secured and allowed in the
17 amount of \$1,894,662.21.

18 After allowing BANA's secured claim, the bankruptcy court
19 found debtor's liquidated secured debt was no longer subject to
20 dispute. The court thus concluded that debtor was over the debt
21 limit stated in § 109(e)² and no longer eligible for chapter 13
22 relief. The bankruptcy court stated its intent to dismiss the
23 case within ten days of the hearing unless debtor requested
24 conversion of the case to either chapter 7 or 11 and entered the

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26 ² Section 109(e) provides that "[o]nly an individual with
27 regular income that owes, on the date of the filing of the
28 petition, noncontingent, liquidated, unsecured debts of less than
\$382,175 and noncontingent, liquidated, secured debts of less
than \$1,149,525 . . . may be a debtor under chapter 13"

1 order (Conversion/Dismissal Order) consistent with its decision.

2 Debtor timely moved for reconsideration of this order,
3 which the bankruptcy court denied. The court found no new facts
4 and again explained the reasoning for the court's decision. In
5 a nutshell, the court explained that BANA's POC was prima facie
6 valid and debtor's arguments were not of equal probative force.
7 Debtor also requested the court to place in writing its oral
8 findings of fact and conclusions of law made at the
9 September 12, 2013 hearing. The court noted that it had stated
10 its findings of fact and conclusions of law on the record at the
11 September 12, 2013 hearing, and that debtor could request
12 through the clerk's office a transcript of the hearing for her
13 anticipated appeal. The bankruptcy court gave debtor an
14 additional five days to decide whether to convert her case.

15 Thereafter, debtor filed a timely notice of appeal of the
16 Conversion/Dismissal Order and the order denying her motion for
17 reconsideration. At the same time, debtor also sought a stay
18 from the bankruptcy court. The bankruptcy court denied her
19 request, but gave debtor additional time to seek a stay from the
20 BAP. Debtor filed an Emergency Motion for Stay Pending Appeal
21 with the BAP which was denied on October 25, 2013. Debtor went
22 back to the bankruptcy court to request extension of the
23 temporary stay of the Conversion/Dismissal Order despite the
24 fact that it had already expired. The bankruptcy court granted
25 debtor's request by extending the stay of the Dismissal/
26 Conversion Order through November 7, 2013.

27 On November 7, 2013, debtor voluntarily converted her case
28 to chapter 7. Debtor then made numerous attempts to stay entry

1 of her chapter 7 discharge, all of which either the bankruptcy
2 court or the BAP denied. The chapter 7 trustee has since filed
3 a report of no distribution and debtor received her discharge on
4 February 12, 2014.

5 **II. JURISDICTION**

6 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
7 §§ 1334 and 157(b) (2) (B). As discussed below, we have
8 jurisdiction under 28 U.S.C. § 158.

9 **III. ISSUES**

10 A. Does debtor have standing to pursue this appeal?

11 B. Did the bankruptcy court err by overruling debtor's
12 objection to claim 8-1?

13 **IV. STANDARDS OF REVIEW**

14 Standing and mootness are jurisdictional questions that we
15 review de novo. Palmdale Hill Prop., LLC v. Lehman Commercial
16 Paper, Inc. (In re Palmdale Hills Prop., LLC), 654 F.3d 868, 873
17 (9th Cir. 2011).

18 The bankruptcy court's decision to allow or deny a POC is
19 reviewed for an abuse of discretion. Bitters v. Networks Elec.
20 Corp. (In re Networks Elec. Corp.), 195 B.R. 92, 96 (9th Cir.
21 BAP 1996). A bankruptcy court's denial of a motion for
22 reconsideration is also reviewed for an abuse of discretion.
23 Arrow Elecs., Inc. v. Justus (In re Kaypro), 218 F.3d 1070, 1073
24 (9th Cir. 2000); Sewell v. MGF Funding, Inc. (In re Sewell),
25 345 B.R. 174, 178 (9th Cir. BAP 2007). In determining whether
26 the court abused its discretion we first determine de novo
27 whether the trial court identified the correct legal rule to
28 apply to the relief requested and then, if the correct legal

1 standard was applied, we determine whether the court's
2 application of that standard was "(1) illogical,
3 (2) implausible, or (3) without support in inferences that may
4 be drawn from the facts in the record." United States v. Loew,
5 593 F.3d 1136, 1139 (9th Cir. 2010).

6 V. DISCUSSION

7 A. Standing

8 Due to debtor's voluntary conversion of this case from
9 chapter 13 to chapter 7 while this appeal was pending, BANA
10 contends that debtor does not have standing to pursue to this
11 appeal. "In addition to having standing at the outset, a
12 plaintiff's stake in the litigation must continue throughout the
13 proceedings, including on appeal." Williams v. The Boeing Co.,
14 517 F.3d 1120, 1128 (9th Cir. 2008). Standing is not subject to
15 waiver and must be considered by the court at all stages of
16 litigation. Because this court's jurisdiction is limited,
17 debtor must have standing to continue this appeal.

18 To have standing to bring this appeal, debtor must
19 demonstrate that she is directly and adversely affected
20 pecuniarily by the order of the bankruptcy court. Fondiller v.
21 Robertson (In re Fondiller), 707 F.2d 441, 442 (9th Cir. 1983).
22 The Ninth Circuit has held that "the allowance or disallowance
23 of 'a claim in bankruptcy is binding and conclusive on all
24 parties or their privies, and being in the nature of a final
25 judgment, furnishes a basis for a plea of res judicata.'" Bevan v. Social Commc'ns Sites, LLC (In re Bevan), 327 F.3d 994,
26 997 (9th Cir. 2003) (quoting Siegel v. Fed. Home Loan Mortg.
27 Corp., 143 F.3d 525, 529 (9th Cir. 1998)). Because the
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1 bankruptcy court in a claim objection proceeding makes a
2 substantive ruling that binds the parties in all other
3 proceedings and may finally adjudicate the parties' underlying
4 rights, an affirmance by us could have preclusive effect if the
5 debtor subsequently challenged the validity of claim 8-1 in some
6 other forum. Id. Consequently, if we were to reverse, we would
7 be able to provide the debtor effective relief. See People of
8 Village of Gambell v. Babbitt, 999 F.2d 403, 406 (9th Cir. 1993)
9 (if there is a present controversy as to which effective relief
10 can be granted, then the appeal is not moot). Accordingly,
11 debtor has standing to pursue this appeal.

12 **B. The Merits**

13 Initially, we mention that our review in this appeal is
14 hampered because there is no official transcript in the record
15 that contains the bankruptcy court's findings of fact and
16 conclusions of law overruling debtor's objection to claim 8-1
17 at the September 12, 2013 hearing. Although the bankruptcy
18 court told debtor to request an official transcript of that
19 hearing from the Clerk's Office in the context of the
20 reconsideration order, she failed to do so, instead providing
21 her own summary. 28 U.S.C. § 753 provides:

22 An official transcript in any case certified by the
23 reporter or other individual designated to produce the
24 record shall be deemed prima facie a correct statement
25 of the testimony taken and proceedings had. No
26 transcripts of the proceedings of the court shall be
considered as official except those made from the
records certified by the reporter or other individual
designated to produce the record.

27 Pursuant to this statute, debtor's summary of the September 12,
28 2013 hearing cannot be deemed a correct or official statement of

1 the testimony taken and proceedings had. Further, although
2 there is precedent for considering unofficial transcripts under
3 some circumstances, see Gasprom, Inc. v. Fateh (In re Gasprom,
4 Inc.), 500 B.R. 598, 602 at n.4 (9th Cir. BAP 2013), there is no
5 precedent that authorizes us to consider a summary of the
6 hearing transcript prepared by a litigant. Such summaries are
7 inherently unreliable. For this reason alone, we may summarily
8 affirm. See Ehrenberg v. Cal. State Univ., Fullerton Found.
9 (In re Beachport Entm't), 396 F.3d 1083, 1087-88 (9th Cir.
10 2005); Morrissey v. Stuteville (In re Morrissey), 349 F.3d 1187,
11 1189 (9th Cir. 2003) (failure to provide a critical transcript
12 may result in summary affirmance).

13 However, even without the required transcript, we may
14 affirm the bankruptcy court's ruling on the merits. The filing
15 of a proof of claim in a bankruptcy case is authorized by § 501:
16 "A creditor . . . may file a proof of claim." § 501(a). The
17 requirements of a proof of claim are provided in Rule 3001,
18 which mandates, among other things, that a proof of claim be in
19 writing and conform substantially to the appropriate Official
20 Form 10, be executed by the creditor or the creditor's
21 authorized agent, and, where based on a writing, filed with the
22 original or a duplicate of that writing. Rule 3001(a)-(c). "If
23 a security interest in property of the debtor is claimed, the
24 proof of claim shall be accompanied by evidence that the
25 security interest is perfected." Rule 3001(d).

26 "A proof of claim executed and filed in accordance with
27 these rules shall constitute prima facie evidence of the
28 validity and amount of the claim." Rule 3001(f). Upon

1 objection, the proof of claim provides "some evidence as to its
2 validity and amount" and carries over a "mere formal objection."
3 Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell),
4 223 F.3d 1035, 1039 (9th Cir. 2000). The objector must produce
5 sufficient evidence "tending to defeat the claim by probative
6 force equal to that of the allegations in the proofs of claim
7 themselves." Id. "The ultimate burden of persuasion remains at
8 all times upon the claimant." Id. Debtor acknowledges and
9 relies on these principles in this appeal.

10 Debtor contends that the bankruptcy court clearly erred
11 when it applied an incorrect legal standard in overruling her
12 objection. Specifically, debtor maintains that in "direct
13 contravention" to Rule 3001, claim 8-1 was not "executed by the
14 creditor or the creditor's authorized agent" and no box was
15 checked to indicate the authority to file the POC. Due to this
16 alleged deficiency, debtor argues that claim 8-1 was not
17 entitled to the prima facie validity found by the bankruptcy
18 court.

19 Contrary to debtor's assertion, the bankruptcy court did
20 not apply the wrong legal standard in finding that BANA's POC
21 was entitled to prima facie validity. First, a POC that
22 substantially complies with Rule 3001 is prima facie valid.
23 Rule 3001(a). Debtor fails to recognize that Ms. Jones signed
24 the POC as "Attorney for Creditor" and BANA is named as the
25 creditor on the face page. Despite the obvious connection
26 between Ms. Jones and BANA, debtor simply argues that Ms. Jones
27 did not check the box that says she was acting as BANA's agent.
28 In addition, the documents attached to the POC detail the

1 underlying debt. In short, the record shows that the POC was
2 executed and filed in accordance with the Rules and Official
3 Form 10 and was prima facie valid.

4 The burden then shifted to debtor to present evidence to
5 overcome the prima facie case, In re Lundell, 223 F.3d at 1039,
6 which she did not do. "The objector must produce evidence
7 which, if believed, would refute at least one of the allegations
8 that is essential to the claim's legal sufficiency." Id. at
9 1040. Debtor makes no argument on appeal that her evidence was
10 of sufficient probative weight to overcome the prima facie
11 validity of BANA's POC. Indeed, she does not tell us how the
12 bankruptcy court erred in either its findings of fact or
13 conclusions of law stated at the September 12, 2013 hearing.

14 Notwithstanding the absence of an official transcript for
15 the September 12, 2013 hearing, the bankruptcy court made
16 several findings and conclusions in its order denying debtor's
17 motion for reconsideration. Debtor does not make any arguments
18 on appeal that the bankruptcy court's factual findings or legal
19 conclusions contained in the reconsideration order were
20 erroneous. Those arguments are deemed waived for purposes of
21 this appeal. Smith v. Marsh, 194 F.3d 1045, 1052 (9th Cir.
22 1999).

23 VI. CONCLUSION

24 For the reasons stated, we AFFIRM the bankruptcy court's
25 orders (1) overruling debtor's objection to BANA's POC and
26 (2) denying her motion for reconsideration on the grounds that
27 BANA's POC was prima facie valid and debtor's arguments were not
28 of equal probative force.