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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. NC-14-1140-PaJuKu
)	
KABITA CHOUDHURI,)	Bankr. No. 13-30873
)	
Debtor.)	
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KABITA CHOUDHURI,)	
)	
Appellant,)	
v.)	MEMORANDUM ¹
)	
DEUTSCHE BANK NATIONAL TRUST)	
COMPANY, as Trustee for GSAA)	
Home Equity Trust 2006-8,)	
)	
Appellee.)	
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Argued and Submitted on October 23, 2014
at San Francisco, California

Filed - November 12, 2014

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

Honorable Dennis Montali, Bankruptcy Judge, Presiding

Appearances: Appellant Kabita Choudhuri argued pro se; Bernard
Kornsberg of Severson & Werson argued for appellee
Deutsche Bank National Trust Company, as Trustee
for GSAA Home Equity Trust 2006-8.

Before: PAPPAS, JURY and KURTZ, Bankruptcy Judges.

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 Chapter 13² debtor Kabita Choudhuri ("Choudhuri") appeals
2 the orders of the bankruptcy court denying Choudhuri's objection
3 to the proof of claim filed by creditor Deutsche Bank National
4 Trust Co., as Trustee for GSAA Home Equity Trust 2006-8
5 ("Deutsche Bank") and sustaining Deutsche Bank's objection to and
6 denying confirmation of Choudhuri's proposed plan. We AFFIRM the
7 order denying the objection to the proof of claim, and DISMISS
8 the appeal from the order denying confirmation as MOOT.

9 **FACTS**

10 **The Loan**

11 On December 20, 2005, Choudhuri signed an adjustable rate
12 promissory note (the "Note") for \$679,000 payable to Wells Fargo
13 Bank, N.A. ("Wells Fargo"). The copy of the Note in the excerpts
14 of record is signed by Choudhuri and endorsed in blank by a vice
15 president of Wells Fargo. On the same date, Choudhuri executed a
16 deed of trust against her real property in Marin County,
17 California to secure the loan.

18 The terms of the Note provided that interest would initially
19 accrue on the unpaid balance at 6.75 percent per annum, which
20 could be adjusted every six months thereafter starting with the
21 January 1, 2008 payment. Note at ¶ 3. All payments to be made
22 by Choudhuri on the Note would be applied to interest only until
23 the February 2011 payment, after which the monthly payments would
24

25
26 ² Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
28 Rule references are to the Federal Rules of Bankruptcy Procedure,
Rules 1001-9037, and all Civil Rule references are to the Federal
Rules of Civil Procedure 1-86.

1 be applied to both principal and interest. Note at ¶ 3(C).

2 On February 23, 2006, Wells Fargo assigned the Choudhuri
3 loan to Goldman Sachs Mortgage Company ("Goldman Sachs"). On
4 April 26, 2006, Goldman Sachs assigned its interest in the loan
5 to Deutsche Bank. Wells Fargo continued as servicer of the loan
6 after the assignments.

7 **The State Court Action**

8 On June 26, 2008, Choudhuri filed an action in the Marin
9 County Superior Court against Wells Fargo, claiming that Wells
10 Fargo had breached the loan contract and had committed fraud (the
11 "State Court Action"). On September 26, 2008, a stipulated order
12 was entered in the State Court Action which directed Choudhuri to
13 make all future loan payments to the state court's clerk to be
14 held pending resolution of the lawsuit.

15 On July 19, 2010, a summary judgment was entered in the
16 State Court Action in favor of Wells Fargo and against Choudhuri
17 on all causes of action. Among the state court's conclusions in
18 the summary judgment were the following:

19 The undisputed evidence shows that beginning in April
20 2006, [Choudhuri] began missing her mortgage payments
21 for several periods. [Choudhuri] does not deny she
22 failed to make many of her mortgage payments, but
23 alleges that she was only following the advice of
24 unidentified Wells Fargo customer care personnel. . . .
[Choudhuri] does not describe precisely what was said
to her, who said it, their authority, or the time and
location. Also, [Choudhuri's] documentary evidence
do[es] not support her contention.

25 Summary Judgment at 6, July 8, 2010.

26 [Wells Fargo's] documentary evidence provides a
27 sufficient prima facie showing that the adjustable
28 interest rates and monthly mortgage payments were
properly calculated[.]

1 Summary Judgment at 5. Having ruled against Choudhuri on the
2 merits, the state court entered an order directing the clerk to
3 release all of the withheld monthly mortgage payments to Wells
4 Fargo.³ The summary judgment in the State Court Action was
5 affirmed by the California Court of Appeal on May 9, 2012.

6 **The Bankruptcy Case**

7 Choudhuri filed for chapter 13 relief on April 14, 2013.
8 Her Schedule D lists a secured debt to Wells Fargo of \$678,994,
9 secured by her property with a value of \$845,194.

10 Choudhuri filed an amended chapter 13 plan on May 29, 2013.
11 In it, she proposed to make direct monthly payments of \$1,442.00
12 on the Note and to cure loan arrearages of \$24,000 over the
13 five-year life of the plan through monthly plan payments to the
14 trustee of \$754.80. Deutsche Bank objected to confirmation of
15 the plan, arguing that the amount of the arrearages that
16 Choudhuri had listed in the plan was incorrect.

17 Deutsche Bank filed a proof of claim ("POC") in Choudhuri's
18 bankruptcy case on August 1, 2013; it asserted a secured claim
19 for the loan in the amount of \$916,072.27, which sum included
20 total arrearages of \$278,886.31. The POC also attached extensive
21 documentation for the loan.

22 Choudhuri objected to Deutsche Bank's POC on August 16,
23 2013, challenging Deutsche Bank's standing as a creditor,
24 questioning the validity of loan documents attached to the POC,
25 and disputing the amount alleged for arrearages and the balance

26
27 ³ The parties represented to the Panel at oral argument
28 that, despite the state court's order, the funds have not been
distributed.

1 due on the loan. Deutsche Bank responded on September 4, 2013,
2 denying Choudhuri's allegations and challenging her computations
3 of the arrearages.

4 The bankruptcy court consolidated the proceedings on plan
5 confirmation and Choudhuri's objection to the POC, set case
6 management deadlines, and tentatively scheduled an evidentiary
7 hearing. On November 5, at Choudhuri's request, the bankruptcy
8 court conducted a hearing concerning a discovery dispute.
9 Choudhuri had attempted to depose the most knowledgeable person
10 relating to her loans from Deutsche Bank and Wells Fargo, but
11 only a representative from Wells Fargo appeared. The court
12 suspended discovery until Deutsche Bank could file a motion for
13 summary judgment on the issue of its standing.

14 The bankruptcy court considered Deutsche Bank's summary
15 judgment motion addressing its standing on December 13, 2013.
16 The court denied the motion because Deutsche Bank had not
17 provided sufficient documentation to show that Wells Fargo was
18 its servicer on the Note. The court allowed further discovery
19 and held over the issue of Deutsche Bank's standing for an
20 evidentiary hearing.

21 The discovery disputes continued. On January 6, 2014,
22 Choudhuri served third-party subpoenas on counsel for Wells Fargo
23 in the State Court Action, requiring them to produce documents
24 related to the proceeding. The bankruptcy court quashed those
25 subpoenas.

26 The evidentiary hearing on confirmation and the claim
27 objection was held on February 10, 2014. Choudhuri did not
28 provide any transcript of this hearing in her excerpts of the

1 record. Deutsche Bank, in its excerpts, provided a partial
2 transcript containing the testimony of Beverly Decaro, a Loan
3 Verification Analyst for Wells Fargo, who testified as to the
4 loan practices of Wells Fargo and about the documents she had
5 reviewed regarding the Choudhuri loan. Decaro authenticated and
6 presented the original Note and deed of trust to the court, both
7 of which bore the signature of Choudhuri and testified that the
8 documents were in the physical possession of Wells Fargo as
9 servicer of Deutsche Bank.

10 Choudhuri's appellate brief indicates that testimony was
11 also given at the hearing by Leila Sen, who was present during an
12 earlier deposition of Decaro. Choudhuri also testified as a
13 witness.

14 The bankruptcy court heard the parties' closing arguments
15 and announced its findings and conclusions on February 27, 2014.
16 Regarding standing, the court ruled:

17 I will find from evidence . . . that Wells Fargo at all
18 relevant times has been the servicer of the Note
19 [T]he loan traveled from Wells Fargo as the
20 original creditor on the loan to Deutsche Bank [which]
in its capacity as trustee of the GSA Home Equity Trust
2006-8 is the holder of the Note, and Deutsche Bank
therefore has standing to file the Proof of Claim

21 H'rg. Tr. 95:12-18, February 27, 2014. As to the amount owed on
22 the Note and arrearages, the court ruled:

23 I find that exhibit 2 [the Note] is in fact the
24 adjustable rate note that Ms. Choudhuri signed in
December of 2006.

25 Hr'g Tr. 91:9-11.

26 My conclusion is . . . that Deutsche Bank in its
27 capacity as I recited on the record has standing to
assert the claim and that the claim is owed [by]
28 Ms. Choudhuri in the principal amount plus accrued
interest per the Proof of Claim.

1 Hr'g Tr. 96:2-6. The bankruptcy court concluded as to Deutsche
2 Bank's POC:

3 The Proof of Claim is supported in its entirety by the
4 subsequent evidence presented I will disallow
5 fourteen hundred dollars of the Proof of Claim, but
6 find that all the other calculations are proper.

6 Hr'g Tr. 95:10-12.

7 Finally, the bankruptcy court determined that, based on the
8 amounts it had decided Choudhuri owed to Deutsche Bank for the
9 arrearages on the loan, Choudhuri's plan was not feasible. The
10 court therefore sustained Deutsche Bank's objection and denied
11 confirmation of the plan.

12 The bankruptcy court memorialized its decisions concerning
13 the claim and plan objections in orders entered on March 4, 2014.
14 On March 10, 2014, Choudhuri filed a motion for reconsideration
15 under Rule 9024/Civil Rule 60(b)(1) and (2). The bankruptcy
16 court promptly denied the motion, noting that, in the motion,
17 Choudhuri had shown no mistake, inadvertence, surprise, excusable
18 neglect, and no newly discovered evidence:

19 At best [Choudhuri's] motion is a rehash of arguments
20 she made at trial that the court rejected; in fact, her
21 motion is without merit and little more than a
22 continuation of her contentious and litigious strategy
23 to avoid coming to terms with the stark reality of the
24 valid and enforceable debt to Deutsche Bank that
25 encumbers her home.

23 On March 21, 2014, Choudhuri filed a single timely notice
24 appealing both the order denying confirmation of the plan and the
25 order denying Choudhuri's objection to Deutsche Bank's POC.

26 **Events Subsequent to the Appeal**

27 In their appellate briefs, the parties acknowledge that the
28 bankruptcy court dismissed Choudhuri's chapter 13 case on May 21,

1 2014. Choudhuri filed a Rule 9023/Civil Rule 59(e) motion to
2 vacate the judgment of dismissal in the bankruptcy court on
3 May 28, 2014. The bankruptcy court denied that motion in an
4 order entered June 19, 2014. The order dismissing the bankruptcy
5 case, and the order denying the reconsideration motion, were not
6 appealed.⁴

7 **JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C.
9 §§ 1334 and 157(b) (2) (B). Subject to our discussion below, we
10 have jurisdiction under 28 U.S.C. § 158.

11 **ISSUES**

12 Whether the appeal of the order denying confirmation of the
13 plan is moot.

14 Whether the bankruptcy court erred in sustaining in part and
15 denying in part Choudhuri's objection to Deutsche Bank's proof of
16 claim.

17 Whether the bankruptcy court was biased against Choudhuri.

18 **STANDARDS OF REVIEW**

19 Mootness is a question of law reviewed de novo. Nelson v.
20 George Wong Pension Trust (In re Nelson), 391 B.R. 437, 442 (9th
21 Cir. BAP 2008).

22 The bankruptcy court's decision on an objection to proof of
23 claim is a mixed question of fact and law. We review the
24

25
26 ⁴ At oral argument, the parties informed the Panel that
27 Choudhuri had filed another chapter 13 petition on June 14, 2014.
28 We have no information in the record as to the status of that
bankruptcy case, and neither party has explained how the filing
is relevant to our consideration of this appeal.

1 bankruptcy court's findings of fact for clear error and its
2 conclusions of law de novo. Continental Ins. Co. v. Thorpe
3 Insulation Co. (In re Thorpe Insulation Co.), 671 F.3d 1011, 1030
4 (9th Cir. 2011).

5 Allegations of judicial bias are reviewed for abuse of
6 discretion. Taylor v. Regents of Univ. of Cal., 993 F.2d 710,
7 712 (9th Cir. 1993).

8 DISCUSSION

9 I.

10 As a preliminary matter, we consider two problems with
11 Choudhuri's positions in this appeal.

12 First, we note that this appeal challenges two distinct
13 orders of the bankruptcy court: one denying Choudhuri's objection
14 to Deutsche Bank's POC, and the other sustaining Deutsche Bank's
15 objection and denying confirmation of Choudhuri's chapter 13
16 plan. However, Choudhuri's bankruptcy case has now been
17 dismissed, reconsideration of the dismissal was denied, and the
18 dismissal was not appealed. Is Choudhuri's appeal of the
19 bankruptcy court's prior orders rendered moot by the dismissal of
20 the bankruptcy case?

21 If an event occurs while a case is pending on appeal that
22 makes it impossible for the Panel to grant relief to the
23 appellant, the appeal is moot, we lack jurisdiction to decide it,
24 and the appeal must be dismissed. Wells Fargo Fin. Accept.
25 (In re Rodriguez), 375 B.R. 535, 539 (9th Cir. BAP 2007).

26 In the bankruptcy context the determination whether [an
27 appeal] becomes moot on the dismissal of the bankruptcy
28 hinges on the question of how closely the issue in the
case is connected to the underlying bankruptcy.
[Citations omitted]. When the issue directly involves

1 the debtor's reorganization, the case is mooted by the
2 dismissal of the bankruptcy.

3 IRS v. Pattullo (In re Pattullo), 271 F.3d 898, 901 (9th Cir.
4 2001) (citing Spacek v. Thomen (In re Universal Farming Indus.),
5 873 F.3d 1334, 1335 (9th Cir. 1989)).

6 Here, Choudhuri's ability to propose and confirm a plan to
7 deal with her debts in her chapter 13 case was lost when that
8 case was dismissed via a now-final order. As a result, in this
9 appeal, we can grant Choudhuri no effective relief concerning the
10 bankruptcy court's order sustaining the objection to confirmation
11 of her proposed plan. Because the appeal of that order is now
12 moot, we lack jurisdiction to consider this aspect of the appeal,
13 and it will be DISMISSED.

14 However, Choudhuri's appeal of the order denying her
15 objection to the Deutsche Bank POC is not mooted by dismissal of
16 the bankruptcy case. In the Ninth Circuit, "the allowance or
17 disallowance of a claim in bankruptcy is binding and conclusive
18 on all parties or their privies, and being in the nature of a
19 final judgment, furnishes a basis for a plea of res judicata."
20 Bevan v. Social Commc'ns Sites (In re Bevan), 327 F.3d 994, 997
21 (9th Cir. 2003) (quoting Siegel v. Fed. Home Loan Mortg. Corp.,
22 143 F.3d 525, 529 (9th Cir. 1998) (internal quotation marks
23 omitted)); Poonja v. Alleghany Props. (In re Los Gatos Lodge),
24 278 F.3d 890, 894 (9th Cir. 2002). Our primary inquiry in
25 determining mootness is whether we can give the appellant any
26 effective relief if we decide the matter in her favor. Pilate v.
27 Burrell (In re Burrell), 415 F.3d 994, 998 (9th Cir. 2005). A
28 bankruptcy court's order resolving an objection to a creditor's

1 claim may have preclusive effect in other proceedings involving
2 the parties. Consequently, our decision concerning the propriety
3 of the bankruptcy court's decision about the Deutsche Bank POC is
4 a matter of consequence, and we could conceivably relieve
5 Choudhuri of the burden of a potentially erroneous decision.
6 Thus, Choudhuri's appeal of the bankruptcy court's order denying
7 her objection to Deutsche Bank's proof of claim is not moot.

8 Choudhuri's appeal also presents a second challenge. Though
9 she is the appellant seeking review of several of the bankruptcy
10 court's findings concerning the amount owed on the Deutsche Bank
11 POC, Choudhuri failed to provide the Panel a transcript of the
12 evidentiary hearing concerning her objection to the POC. This is
13 problematic. Rule 8009(b)(9) requires that, in BAP appeals, the
14 excerpts include "[t]he transcript or portion thereof, if
15 required by a rule of the bankruptcy appellate panel." 9th Cir.
16 BAP R. 8006(1) dictates in relevant part that "[t]he excerpts of
17 the record shall include the transcripts necessary for adequate
18 review in light of the standard of review to be applied before
19 the Panel. The Panel is required to consider only those portions
20 of the transcript included in the excerpts of the record." The
21 explanatory note to this local rule warns that, if a party
22 challenges the factual findings of the bankruptcy court, "the
23 record should usually include the entire transcript and all other
24 relevant evidence considered by the bankruptcy court. See
25 In re Friedman, 126 B.R. 63, 68 (9th Cir. BAP 1991) (failure to
26 provide an adequate record may be grounds for affirmance);
27 In re Burkhart, 84 B.R. 658 (9th Cir. BAP 1988)."

28 In particular, Choudhuri challenges the bankruptcy court's

1 findings and conclusions that the bankruptcy court explained were
2 based on the testimony and other evidence submitted during the
3 evidentiary hearing. Without a complete transcript of the
4 testimony at the hearing, this Panel is unable to evaluate the
5 assertions Choudhuri makes in her briefs concerning her
6 testimony, particularly her contentions that she never signed the
7 Note, and about her disputes regarding calculations of
8 arrearages. The Ninth Circuit has ruled that "the BAP [is]
9 required only to consider those portions of the transcript
10 included in the record." Morrissey v. Stuteville
11 (In re Morrissey), 349 F.3d 1187, 1190-91 (9th Cir. 2003); see
12 also FED. R. APP. P. 10(b)(2) ("If the appellant intends to urge
13 on appeal that a finding or conclusion is unsupported by the
14 evidence or is contrary to the evidence, the appellant must
15 include in the record a transcript of all evidence relevant to
16 that finding or conclusion.").

17 Choudhuri further complicates our consideration of her
18 arguments by failing to support them with precise citations to
19 the limited excerpts she presented. Indeed, her excerpts are not
20 consecutively paginated, a violation of 9th Cir. BAP
21 R. 8009(b-1)(b)(2), and as to some (but not all) of her factual
22 assertions challenging the bankruptcy court, she refers to a
23 "tab" in her excerpts, without any page reference. This approach
24 to appellate advocacy is inefficient and inappropriate; an
25 appellate panel is not obligated to search the entire record
26 unaided by the parties to identify error. Tevis v. Wilke,
27 Fleury, Gould & Birney, LLP (In re Tevis), 347 B.R. 679, 686 (9th
28 Cir. BAP 2006).

1 On the other hand, though Choudhuri's record is a concern,
2 we are mindful of the Ninth Circuit's admonition that we must
3 examine the entire record available to determine if it is
4 sufficient to address the merits of the appeal. Ehrenberg v.
5 Cal. State Univ. (In re Beachport Enter.), 396 F.3d 1083, 1088
6 (9th Cir. 2005). Here, the bankruptcy court indicated that its
7 decision to deny Choudhuri's objection to Deutsche Bank's POC was
8 based on the documentary evidence and testimony of Decaro.
9 Deutsche Bank provided copies of the documentary evidence
10 introduced at the hearing, and a partial transcript detailing the
11 relevant portion of the testimony of Decaro, in its excerpts.

12 While the appellate record in this appeal is skimpy, we will
13 consider the portions of the record provided to determine if the
14 findings and conclusions of the bankruptcy court were proper.

15 II.

16 **Deutsche Bank had standing to file the POC.**

17 A party bears the burden of proof to establish its legal
18 standing. Summers. v. Earth Island Inst., 555 U.S. 488, 492
19 (2009) (the "movant bears the burden of showing that he has
20 standing for each type of relief sought."). Once standing to
21 file a POC is established, the filing of a POC in proper form
22 constitutes prima facie evidence of "its validity and the amount
23 of the claim." Rule 3001(f). Even if an objection is made to
24 the claim, it remains sufficient absent evidence of its
25 invalidity. Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th
26 Cir. 1991). When Choudhuri objects to the accounting of the
27 amount due on the claim in the POC, "the burden of proof shifts
28 back to the creditor." Litton Loan Servicing, LP v. Garvida

1 (In re Garvida), 347 B.R. 697, 706 (9th Cir. BAP 2006). Then,
2 once the creditor has substantiated its accounting, the burden
3 shifts back to the objecting Choudhuri to produce evidentiary
4 support for its objection.

5 To demonstrate standing, "the party who filed the proof of
6 claim must show that it is either the creditor or the creditor's
7 authorized agent in order to obtain the benefits of
8 Rule 3001(f)." Veal v. Am. Home Mortg. Servicing, Inc.
9 (In re Veal), 450 B.R. 897, 922 (9th Cir. BAP 2011).

10 Choudhuri does not dispute that Wells Fargo originally
11 loaned her the funds, or that she executed the Note and deed of
12 trust in favor of that creditor. At the hearing in the
13 bankruptcy court, copies of the Note and deed of trust were
14 introduced into evidence, along with an "Assignment and
15 Conveyance Agreement" showing the sale of the Note by Wells Fargo
16 to Goldman Sachs. Deutsche Bank also introduced into evidence
17 two separate "Assignment, Assumption and Recognition Agreements"
18 which conveyed all rights in the Note from Goldman Sachs to
19 Deutsche Bank. Finally, the Note shows that it was endorsed in
20 blank and transferred to Deutsche Bank.

21 A "person in possession of a negotiable instrument that is
22 payable . . . to bearer" is a holder. CAL. COMM. CODE
23 § 1201(21)(A). Here, according to her testimony, the Note and
24 the deed of trust were in the possession of Decaro, a
25 representative of Wells Fargo, the servicing agent of Deutsche
26 Bank. Decaro presented the original Note and deed of trust to
27 the bankruptcy court at the hearing, and authenticated the copies
28 admitted into evidence as being true and correct. As the party

1 in possession of a bearer instrument, Deutsche Bank was entitled
2 to enforce it. CAL. COMM. CODE § 3301. And, as the Panel
3 explained succinctly in In re Veal, "a party has standing to
4 prosecute a proof of claim involving a negotiable promissory note
5 secured by real property if, under applicable law, it is a
6 'person entitled to enforce the note' as defined by the Uniform
7 Commercial Code." 450 B.R. at 902.

8 Choudhuri argues that at the evidentiary hearing she
9 testified that she had never seen the Note offered into evidence
10 by Deutsche Bank, and she pointed out what she contended were
11 anomalies in the document in evidence. Unfortunately, as
12 discussed above, we lack a transcript of Choudhuri's testimony
13 and thus cannot examine nor consider what she may have told the
14 bankruptcy court. It is of no moment, though, because the
15 bankruptcy court apparently did not assign any weight to her
16 testimony in this respect:

17 I'm satisfied from reviewing exhibit 2 [the Note] that
18 that is the obligation that Ms. Choudhuri signed and
19 agreed to. To the extent that she contends even to
20 this day that there was some other obligation she
executed, she has not provided any evidence to even
present a triable issue of fact.

21 H'rg Tr. 92:18-24. We defer to the bankruptcy court's findings
22 based on testimonial and documentary evidence. Rule 8013;
23 Michael P. v. Dep't of Educ., 656 F.3d 1057, 1070 (9th Cir.
24 2011); Baker v. Mereshian (In re Mereshian), 200 B.R. 342, 347
25 (9th Cir. BAP 1996).

26 Based upon the evidence presented at the hearing, we
27 conclude that the bankruptcy court did not err in determining
28 that Deutsche Bank had standing to assert the POC in Choudhuri's

1 bankruptcy case. The appellate record does not support
2 Choudhuri's allegations that she did not sign the Note offered in
3 evidence at the hearing, or that the terms of her obligation to
4 Deutsche Bank were different than as set forth in that Note.

5 **III.**

6 **The bankruptcy court did not err in determining**
7 **the amount of the arrearages.**

8 A chapter 13 plan may not modify the rights of a holder of a
9 claim secured by a security interest in a debtor's principal
10 residence. § 1322(b)(2). Despite this limitation, the Code
11 allows a debtor to provide in a plan that any default on a home
12 mortgage be cured within a reasonable time, while the debtor
13 maintains the regular payments. § 1322(b)(5). To exercise this
14 right, however, Choudhuri must propose a plan with payments
15 adequate to cure the arrearages on her mortgage and, to do that
16 here, the bankruptcy court was asked to determine that amount.

17 In resolving Choudhuri's objection to the amount set forth
18 in the Deutsche Bank POC, the bankruptcy court found that
19 Choudhuri's total payment arrearages were \$271,636.64. The court
20 based its calculations on the numerous documents presented at the
21 hearing, and on the testimony of Decaro, which in tandem provided
22 an explanation of the accounting procedures employed by Wells
23 Fargo, as the loan servicer, and the history of Choudhuri's
24 account and payments. After considering this evidence, the
25 bankruptcy court adopted the figures in the POC, but reduced the
26 amount of arrearages by \$1,400, representing an insurance premium
27 that the court found Deutsche Bank had not been required to pay.

28 The bases for Choudhuri's objections to the bankruptcy

1 court's calculations of the amount of the arrearages are unclear.
2 In her opening brief, she argues that the bankruptcy court
3 "refused to accept the evidence" that the total arrearages did
4 not exceed \$216,000. Choudhuri argues that at the hearing on
5 February 27, 2014, she produced a statement from Wells Fargo as
6 servicer of the Note indicating a current payment owed as of
7 February 28, 2014, of \$216,630.27, including unpaid payments of
8 \$212,206.95 (the "Wells Fargo Statement").

9 The evidentiary record had been closed at the end of the
10 hearing on February 10, 2014. At a telephonic hearing on
11 February 13, 2014, the court reminded Choudhuri that the record
12 was closed:

13 THE COURT: There's a term in the law or in trial
14 procedure about the evidence is closed. The evidence
15 is in. And pro ses tend to forget the difference
16 between argument and evidence. And they stand there
and I say have you made your argument, then they start
talking about new facts.

17 Hr'g Tr. 7:17-21, February 13, 2014. The court then told
18 Choudhuri the proper procedure for adding new evidence: "Well,
19 you'll have to request that I reopen the evidence." Hr'g
20 Tr. 8:5-6.

21 At the closing arguments on February 27, 2014, Choudhuri
22 presented the court and opposing counsel with the Wells Fargo
23 Statement. The bankruptcy court looked at the document, and
24 commented: "Again, you keep coming up with new things." Trial
25 Tr. 85:10-11, February 27, 2014. The court continued, "The bank
26 is arguing in this trial that it is owed arrearages of
27 [\$273,000]. This document says [\$216,000], but for the moment -
28 for the moment, let's assume this document you handed up is the

1 correct document." Trial Tr. 87:2-4. The court made further
2 comments that the Wells Fargo statement, even if true, would not
3 support Choudhuri's ability to service the debt. Trial
4 Tr. 88:3-4. The court returned the document to Choudhuri without
5 reopening the evidentiary record or accepting the document into
6 evidence.

7 Choudhuri did not move to reopen the record or to enter the
8 document into evidence. Although we treat pro se parties such as
9 Choudhuri with liberality, she must obey procedural rules.

10 Carter v. Commissioner, 784 F.2d 1006, 1008 (9th Cir. 1986) (pro
11 se litigants must comply with procedural rules); Warrick v.
12 Birdsell (In re Warrick), 278 B.R. 182, 188 (9th Cir. BAP 2002)
13 (a party's "status as a pro se litigant does not excuse her
14 failure to understand and follow court rules"). Contrary to
15 Choudhuri's position, the court did not "refuse" to admit the
16 Wells Fargo statement. It was not presented in evidence and,
17 even if it had been admitted, the court observed that it would
18 not support Choudhuri's arguments.

19 Choudhuri's other arguments concerning the amount of the
20 arrearages center on her contention that, since the loan's
21 inception, her payments represented both principal and interest
22 and, thus, the funds in the state court trust fund include
23 principal payments that could be applied to reduction of the
24 arrearages. Additionally, Choudhuri argues she should have had
25 the benefit of interest rate changes during the life of the Note,
26 which would have reduced the arrearages.

27 Despite these contentions, based upon the documentary
28 evidence, the bankruptcy court determined that the Note provided

1 that all payments on the Note for the first five years were to be
2 interest only, meaning there would be no reduction in the
3 principal balance. That conclusion was not error.

4 In her brief, Choudhuri concludes that the bankruptcy
5 court's determination of arrearages should reduce the Deutsche
6 Bank claim amount to \$216,000. Then, she alleges, the \$80,000
7 she paid into the state court registry should be applied to
8 Choudhuri's mortgage principal, as well as another \$10,556
9 Choudhuri had paid to date in monthly payments to the chapter 13
10 trustee. This process would result in arrearages of under
11 \$100,000, which she insists she could accommodate via the terms
12 of an amended chapter 13 plan.

13 But Choudhuri's argument and suggested reduction lacks
14 support in either the law or in the record. The \$216,000 alleged
15 balance in the mortgage account is not supported in the record
16 received by the court. There was also no evidence offered to
17 show that the \$80,000 in the state court registry represented any
18 payments against principal.

19 Instead, the bankruptcy court determined that, except for
20 the \$1,400 allowance for the unsubstantiated insurance payment,
21 the arrearages asserted in the POC were correct. This is a
22 factual finding, and we defer to the bankruptcy court's
23 evaluation of the documentary and testimonial evidence adduced at
24 the hearing. Rule 8013; Alaska Rent-A-Car, Inc. v. Avis Budget
25 Grp., Inc., 709 F.3d 872, 880 (9th Cir. 2014).

1 IV.

2 **There is no evidence that the bankruptcy court**
3 **was biased against Choudhuri.**

4 Choudhuri asserts on appeal that the bankruptcy court
5 favored Deutsche Bank in its comments throughout the proceedings
6 and at the hearing. Once again, because we lack a transcript of
7 the trial on February 10, 2014, we are unable to examine the
8 court's comments allegedly made during that hearing, nor the
9 setting for any such statements. However, Choudhuri complains
10 that the court interrupted her closing argument by shouting "I
11 don't care what you object to." The transcript of that
12 proceeding on February 27, 2014, however, supplies the context
13 for the court's remark:

14 CHOUDHURI: Your Honor, I object to that entire Note.

15 THE COURT: I don't care what you object to; that's what
16 the document says.

17 H'rg Tr. at 8:18-21, February 27, 2014. Although perhaps gruff,
18 when considered as a response to Choudhuri's repeated denials
19 that the copies of the Note in evidence were accurate, the
20 court's comment is an expression of its view that, at that point
21 in the proceedings, Choudhuri's objection was valueless when
22 measured against the express provisions in the document.

23 Choudhuri also suggests that the court repeatedly "coached"
24 counsel for the creditor:

25 From the start of the petition, the bankruptcy court
26 has shown that it leans heavily in favor of
27 banks. . . . The most glaring instance of this is when
28 the court ordered the bank to file for summary judgment
and then, again, when it failed in its motion, the
court allowed the same issue to be resurrected and
coached the attorney as to the specific document it

1 must bring to court in order to prevail.

2 Choudhuri's Op. Br. at 20.

3 We disagree with Choudhuri's characterization of the
4 bankruptcy judge's actions. First, the appellate record does not
5 show that the bankruptcy court "ordered" Deutsche Bank to file a
6 motion for summary judgment. Second, Choudhuri misunderstands
7 the nature of summary judgment. In this context, such a motion
8 would test whether Deutsche Bank had established legal standing,
9 but it did not resolve this issue, which the court then deferred
10 to the evidentiary hearing. And we find nothing improper in the
11 bankruptcy court's direction to counsel to supply the documents
12 supporting its client's position.

13 As another example of bias in favor of Deutsche Bank,
14 Choudhuri argues that the bankruptcy court cut off discovery
15 "early" to her detriment. However, the record shows that
16 discovery was only suspended for about five weeks and there was
17 more than sufficient time afterwards to complete discovery before
18 the scheduled hearing. Choudhuri never requested continuance of
19 the evidentiary hearing to complete discovery. And Choudhuri
20 never showed how she was prejudiced by the suspended discovery.

21 Similarly, Choudhuri complains that the bankruptcy court
22 would not enforce her subpoenas against counsel who represented
23 Wells Fargo in the State Court Action. Once again, Choudhuri
24 never explained why this was an erroneous ruling or how deposing
25 counsel was relevant in the current disputes. Choudhuri showed
26 neither error nor prejudice in these actions by the bankruptcy
27 court, both of which she must demonstrate in discovery disputes.
28 United States v. Alvarez, 358 F.3d 1194, 1210 (9th Cir. 2004).

