

DEC 10 2014

NOT FOR PUBLICATION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. CC-14-1071-PaTaKu
GUILLERMINA AGUILAR,) CC-14-1073-PaTaKu
Debtor.) (Related Appeals)

Appellant,)
v.) Adv. Proc. 13-02076-BR
OCWEN LOAN SERVICING, LLC;)
INDY MAC MORTGAGE SERVICES;)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC.;)
QUALITY LOAN SERVICING)
CORPORATION; PITE DUNCAN, LLP,)
Appellees.)

MEMORANDUM¹

Appellant,)
v.)
OCWEN LOAN SERVICING, LLC;)
INDY MAC MORTGAGE SERVICES,)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC.,)
Appellees.)

Argued and Submitted on November 20, 2014
at Los Angeles, California

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 Filed - December 10, 2014

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

4 Honorable Barry Russell, Bankruptcy Judge, Presiding

5 Appearances: Appellant Guillermina Aguilar argued pro se,
6 assisted by translator Victor Rivera; Kerry W.
7 Franich of Severson & Werson PC argued for
8 appellees Mortgage Electronic Registration
9 Systems, Inc., Ocwen Loan Servicing, LLC, and Indy
Mac Mortgage Services; Melissa Robbins Coutts of
McCarthy & Holthus, LLP argued for appellee
Quality Loan Servicing Corporation.

10 Before: PAPPAS, TAYLOR, and KURTZ, Bankruptcy Judges.

11
12 These are related appeals by chapter 7² debtor Guillermina
13 Aguilar ("Aguilar"). In No. 14-1071, Aguilar appeals the order
14 of the bankruptcy court dismissing her adversary proceeding
15 against Ocwen Loan Servicing, LLC ("Ocwen"), Indy Mac Mortgage
16 Services ("Indy Mac"), Quality Loan Servicing Corp. ("QLS"), and
17 Mortgage Electronic Registration Systems, Inc. ("MERS"). In
18 No. 14-1073, she appeals the bankruptcy court's order granting
19 relief from the stay to Ocwen. We AFFIRM both orders.

20 **FACTS**

21 Because the appeals involve many common facts and the same
22 property, we recite here the relevant facts and, below, set forth
23 a separate discussion of the issues raised concerning the two
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 appeals.

2 We are hindered in our review in this appeal because Aguilar
3 did not supply the Panel with required excerpts of record, nor do
4 her appellate briefs contain any significant citations to legal
5 authorities. Appellees provided some necessary documents for our
6 consideration in their excerpts. As our motions panel previously
7 advised the parties, to aid in our review, we may take judicial
8 notice of the bankruptcy court's dockets in the bankruptcy case
9 and adversary proceeding. O'Rourke v. Seaboard Surety Co.
10 (In re E.R. Fegert), 887 F.2d 955, 957-58 (9th Cir. 1988).

11 **Prepetition Events**

12 On May 2, 2007, Aguilar and her husband borrowed \$406,500
13 from Indy Mac to purchase a property in Los Angeles (the
14 "Property"). To secure the loan, they signed a promissory note
15 and deed of trust encumbering the Property. MERS was designated
16 in the deed of trust as beneficiary, solely as nominee for
17 IndyMac.

18 In November 2009, MERS assigned the deed of trust to OneWest
19 Bank, N.A ("OneWest"). Later in November 2009, OneWest
20 substituted QLS as the trustee under the deed of trust. QLS sent
21 Aguilar a Notice of Default for failure to make payments due
22 under the note on November 24, 2009.

23 QLS issued a notice a trustee's sale of the Property on
24 April 23, 2013, alleging that the unpaid balance on the note was
25 \$575,335, and scheduling the trustee's sale for May 23, 2013.

26 On or about September 19, 2013, OneWest assigned the deed of
27 trust to Ocwen.

1 Property was not adequately protected and that the bankruptcy
2 case was filed in bad faith; under (d)(2), alleging that Aguilar
3 lacked any equity in the Property; and under (d)(4), alleging
4 that Aguilar had engaged in a scheme to hinder, delay, or defraud
5 her creditors by the multiple bankruptcy filings. In response,
6 Aguilar indicated that she had filed an adversary proceeding
7 concerning the Ocwen loan seeking to quiet title to the Property.

8 The bankruptcy court conducted a hearing on the motion for
9 stay relief on February 18, 2014. Aguilar appeared pro se,
10 assisted by a translator; Ocwen was represented by counsel. The
11 court indicated its intention to grant the stay relief motion,
12 commenting:

13 From my standpoint, this is – our records, it's either
14 the sixth or seventh bankruptcy. I think you've abused
15 the bankruptcy system and you haven't paid anything for
at least four years. So I'm going to grant the
request.

16 Hr'g Tr. 4:14-17, February 18, 2014.

17 The bankruptcy court entered an order on February 20, 2014,
18 granting relief from stay in Ocwen's favor under § 362(d)(1),
19 (d)(2) and (d)(4) (the "Stay Relief Order"). Aguilar filed a
20 timely appeal of the Stay Relief Order.

21 **The Adversary Proceeding**

22 On November 1, 2013, Aguilar filed an adversary complaint
23 against Ocwen, QLS, Indy Mac, and MERS, asserting a claim for
24 declaratory relief and quiet title to the Property. She also
25 alleged violations of Cal. Civ. Code § 2923.5 and Rule 3001; the
26 complaint was amended on December 31, 2013.

27 In both the original and amended complaints, Aguilar listed
28 both herself and the chapter 7 trustee, Rosendo Gonzalez

1 ("Trustee"), as plaintiffs. On January 29, 2014, Trustee filed
2 a "Trustee's Notice of Debtor's Improper Filing of Pleadings" in
3 the adversary proceeding in which he advised the bankruptcy court
4 and other parties that, "at no time has the Trustee authorized,
5 agreed, signed, instructed, or advised the Debtor or anyone in
6 this case to file a pleading purportedly on behalf of the
7 Trustee."

8 Ocwen, Indy Mac, and MERS filed a motion to dismiss the
9 amended complaint on January 7, 2014, arguing that Aguilar lacked
10 standing to pursue the action because the Property was property
11 of the bankruptcy estate, and that only the chapter 7 trustee
12 could assert the claims made in the amended complaint; the
13 defendants sought dismissal under Civil Rule 12(b)(6), applicable
14 in adversary proceedings via Rule 7012, for failure to state a
15 claim upon which any relief could be granted. QLS joined in the
16 dismissal motion on February 5, 2014.

17 The hearing on the motion to dismiss took place on
18 February 18, 2014. Aguilar was present, aided by a translator.
19 Defendants were represented by counsel. Explaining its intention
20 to grant the motion, the court observed:

21 I am going to dismiss this complaint. []There are a
22 number of things . . . that I agree with in
23 [Defendants'] papers, but it's not [Aguilar's] motion
24 to file. . . . [T]his lawsuit is property of the
25 Chapter 7 trustee There's simply no ability to
bring this cause of action on behalf of
[Aguilar]. . . . I am going to grant the motion to
dismiss.

26 Hr'g Tr. 4:13-21.

27 On March 5, 2014, the bankruptcy court entered the order
28 dismissing the adversary proceeding, without leave to amend, for

1 the reasons it had recited at the hearing. Aguilar filed a
2 timely appeal.

3 **JURISDICTION**

4 The bankruptcy court had jurisdiction under 28 U.S.C.
5 §§ 1334 and 157(b)(2)(A) and (G). We have jurisdiction under
6 28 U.S.C. § 158.

7 **ISSUES**

8 Whether the bankruptcy court abused its discretion in
9 granting relief from the stay.

10 Whether the bankruptcy court erred in dismissing the
11 adversary proceeding under Civil Rule 12(b)(6).

12 **STANDARDS OF REVIEW**

13 We review a bankruptcy court's order granting relief from
14 the automatic stay for an abuse of discretion. Arneson v.
15 Farmers Ins. Exch. (In re Arneson), 282 B.R. 883, 887 (9th Cir.
16 BAP 2002). To determine whether the bankruptcy court abused its
17 discretion, we conduct a two-step inquiry: (1) we review de novo
18 whether the bankruptcy court "identified the correct legal rule
19 to apply to the relief requested" and (2) if it did, whether the
20 bankruptcy court's application of the legal standard was
21 illogical, implausible or "without support in inferences that may
22 be drawn from the facts in the record." United States v.
23 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

24 The bankruptcy court's dismissal of an adversary proceeding
25 under Rule 7012/Civil Rule 12(b)(6) is reviewed de novo. N.M.
26 State Inv. Council v. Ernst & Young, LLP, 641 F.3d 1089, 1094
27 (9th Cir. 2011); Barnes v. Belice (In re Belice), 461 B.R. 564,
28 572 (9th Cir. BAP 2011).

1 I.
2 No. 14-1073
3 **The bankruptcy court did not abuse its
4 discretion in granting relief from stay.**

5 The bankruptcy court granted Ocwen's motion for relief from
6 stay because Aguilar had not made any payments on the secured
7 note in over four years and had filed multiple bankruptcy
8 petitions within the preceding one year, which the court
9 concluded amounted to an abuse of the bankruptcy system.
10 Although we find no abuse of discretion in the court's order,
11 because of the repeated filings, it appears the order was
12 unnecessary as there was no automatic stay in effect in the
13 bankruptcy case.

14 The court granted relief from stay under § 362(d)(1), (d)(2)
15 and (d)(4), which provide:

16 (d) On request of a party in interest and after notice
17 and a hearing, the court shall grant relief from the
18 stay provided under subsection (a) of this section,
19 such as by terminating, annulling, modifying, or
20 conditioning such stay-

21 (1) for cause, including the lack of adequate
22 protection of an interest in property of such party in
23 interest;

24 (2) with respect to a stay of an act against
25 property under subsection (a) of this section, if-

26 (A) the debtor does not have an equity in such
27 property; and

28 (B) such property is not necessary to an
effective reorganization;

. . .

(4) with respect to a stay of an act against real
property under subsection (a), by a creditor whose
claim is secured by an interest in such real property,
if the court finds that the filing of the petition was
part of a scheme to delay, hinder, or defraud creditors
that involved either-

(A) transfer of all or part ownership of, or
other interest in, such real property without the

1 consent of the secured creditor or court approval; or
2 (B) multiple bankruptcy filings affecting such
3 real property.

4 Section 362(d) (1) enables a creditor to obtain an order
5 terminating the automatic stay to pursue foreclosure proceedings
6 against estate property "for cause." The "cause" explicitly
7 referenced in § 362(d) (1) is lack of adequate protection, but it
8 is only an example, rather than the exclusive grounds for relief,
9 under § 362(d) (1). Ellis v. Parr (In re Ellis), 60 B.R. 432, 435
10 (9th Cir. BAP 1985). What constitutes adequate cause to
11 terminate the automatic stay is determined on a case-by-case
12 basis. Delaney-Morin v. Day (In re Delaney-Morin), 304 B.R. 365,
13 369 (9th Cir. BAP 2003) (citing MacDonald v. MacDonald
14 (In re MacDonald), 755 F.2d 715, 717 (9th Cir. 1985)). The party
15 seeking to preserve the stay, in this instance Aguilar, has the
16 burden of proof to establish that there is no cause to terminate
17 the stay. § 362(g); In re Ellis, 60 B.R. at 435.

18 Here, Ocwen showed that Aguilar had not made any payments on
19 the loan in over four years, which amounted to fifty-three missed
20 payments, totaling \$164,128.31. We have held that a debtor's
21 persistent failure to make payments, standing alone, may
22 constitute adequate cause for relief from the stay. In re Ellis,
23 60 B.R. at 435; see also, Price v. Del. State Police Fed. Credit
24 Union (In re Price), 370 F.3d 362, 373 (3d Cir. 2004) ("A
25 persistent failure to make monthly payments under loan documents
26 can constitute cause for granting relief from the automatic
27 stay."). The bankruptcy court therefore did not abuse its
28 discretion granting relief from stay to Ocwen under § 362(d) (1).

Section 362(d) (2) authorizes relief from the stay when the

1 debtor lacks equity in the property and it is not necessary to
2 effective reorganization. In this context, equity is "the amount
3 or value of a property above the total liens or charges."
4 Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984). The
5 requirement that the property not be necessary for reorganization
6 is not implicated in a chapter 7 liquidation bankruptcy case
7 since no reorganization is contemplated. In re Vitreous Steel
8 Prods. Co., 911 F.2d 1223, 1232 (7th Cir. 1990). Although the
9 bankruptcy court did not make explicit findings under
10 § 362(d)(2), it was aware from Aguilar's bankruptcy schedules and
11 the declaration of Ocwen's agent that both parties valued the
12 Property at \$426,176.00, and that Ocwen's loan balance was
13 \$641,602.37. In the absence of other proof, it clearly appeared
14 that Aguilar lacked equity in the Property. The bankruptcy court
15 therefore did not abuse its discretion in granting relief from
16 stay to Ocwen under § 362(d)(2).

17 Section 362(d)(4)(B) allows the bankruptcy court to grant
18 relief from stay to a creditor whose debt is secured by real
19 property where it is shown that the debtor has engaged in a
20 scheme to delay, hinder or defraud creditors through multiple
21 bankruptcy filings. First Yorkshire Holdings, Inc. v. Pacifica
22 L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864,
23 870 (9th Cir. BAP 2012); see also (Behrens v. U.S. Bank, N.A.
24 (In re Behrens), 501 B.R. 351, 355 (8th Cir. BAP 2013). Here,
25 the bankruptcy court found that Aguilar had engaged in such a
26 scheme by making four bankruptcy filings within the past twelve
27 months, most of which were dismissed based upon her failure to
28 prosecute them, and that her conduct constituted an abuse of the

1 bankruptcy process. The record adequately supports this finding.
2 It is undisputed that Ocwen is a creditor with a secured interest
3 in the Property, and Aguilar has not challenged in this appeal
4 the court's finding that she was engaged in such a scheme. Thus,
5 the bankruptcy court did not abuse its discretion in granting
6 relief from stay under § 362(d)(4).

7 While we conclude the bankruptcy court had ample cause to
8 terminate the automatic stay, as it turns out, there was no
9 automatic stay in effect for the bankruptcy court to terminate in
10 this case. Our review of the record indicates that Aguilar filed
11 three cases within twelve months before her current petition and
12 that all of these were dismissed for reasons other than abuse
13 under § 707(b). Consequently, under § 362(c)(4)(A), no automatic
14 stay ever arose in the current bankruptcy case. That Code
15 provision states:

16 (4)(A)(I) if a single or joint case is filed by or
17 against a debtor who is an individual under this title,
18 and if 2 or more single or joint cases of the debtor
19 were pending within the previous year but were
20 dismissed, other than a case refiled under a chapter
other than chapter 7 after dismissal under section
707(b), the stay under subsection (a) shall not go into
effect upon the filing of the later case[.]

21 § 362(c)(4)(A)(I).

22 The Panel has held that, through § 362(c)(4), Congress
23 intended that, when a debtor commences a third bankruptcy case
24 (i.e., where the debtor has had two pending cases within the
25 previous year that were dismissed for reasons other than under
26 § 707(b)), the automatic stay "shall not go into effect upon the
27 filing of the later case." § 362(c)(4)(A)(I); Reswick v. Reswick
28 (In re Reswick), 446 B.R. 362, 372-73 (9th Cir. BAP 2011). In

1 contrast to a second filing within the same year, where the
2 automatic stay goes into effect but then terminates on the
3 thirtieth day after the petition date if an extension is not
4 obtained, for a third filing (and, a fortiori, in a fourth filing
5 within one year such as this one), the automatic stay simply does
6 not arise at all. Nelson v. George Wong Pension Trust
7 (In re Nelson), 391 B.R. 437, 452 (9th Cir. BAP 2008) ("Clearly,
8 Congress could, and did, intend the consequences of repeat
9 filings to be different, and potentially more severe, as the
10 number of successive filings increases.").

11 On this record, we conclude that the bankruptcy court did
12 not abuse its discretion in granting relief from stay under
13 § 362(d)(1), (d)(2), and (d)(4). Moreover, as an alternative
14 basis for our holding, it appears that there never was a stay in
15 effect in Aguilar's current bankruptcy case, such that the
16 bankruptcy court could not err by purporting to terminate it.
17 Further, a fair view of the bankruptcy court's reasoning is that
18 the court was principally concerned with stopping the abuse of
19 the bankruptcy process by Aguilar's serial bankruptcy filings and
20 entered its decision under § 362(d)(1), (2) and (4) to prevent
21 the continuing abuse.

22 **II.**
23 **No. 14-1071**
24 **The bankruptcy court did not err in dismissing**
25 **Aguilar's adversary proceeding under Civil Rule 12(b)(6).**

26 Although very difficult to decipher, Aguilar appears to make
27 one claim for relief in her First Amended Complaint. She seeks
28 to quiet title in the Property, making various allegations of
improper procedures in transfer of the note and deed of trust.

1 We examine that claim and allegations below. But first we
2 examine whether Aguilar has standing to bring any claims related
3 to the Property.

4 **A. Aguilar lacked standing to prosecute the adversary**
5 **proceeding.**

6 Under Civil Rule 12(b)(6), made applicable in adversary
7 proceedings via Rule 7012, a bankruptcy court may dismiss a
8 complaint if it fails to "state a claim upon which relief can be
9 granted." In reviewing a Civil Rule 12(b)(6) motion, the
10 bankruptcy court must accept as true all facts alleged in the
11 complaint and draw all reasonable inferences in favor of the
12 plaintiff. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir.
13 2011); Newcal Indus., Inc. v. Ikon Office Solutions, 513 F.3d
14 1038, 1043 n.2 (9th Cir. 2008). However, the trial court need
15 not accept as true conclusory allegations in a complaint, or
16 legal characterizations cast in the form of factual allegations.
17 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007); Warren
18 v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir.
19 2003).

20 To avoid dismissal under Civil Rule 12(b)(6), a plaintiff
21 must aver in the complaint "sufficient factual matter, accepted
22 as true, to 'state a claim to relief that is plausible on its
23 face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
24 Twombly, 550 U.S. at 570). A claim cannot be plausible when it
25 has no legal basis. Cedano v. Aurora Loan Servs. (In re Cedano),
26 470 B.R. 522, 528 (9th Cir. BAP 2012). A dismissal under Civil
27 Rule 12(b)(6) may be based on either the lack of a cognizable
28 legal theory, or on the absence of sufficient facts alleged under

1 a cognizable legal theory. Johnson v. Riverside Healthcare Sys.,
2 534 F.3d 1116, 1121 (9th Cir. 2008). Importantly for this
3 appeal, dismissal for lack of standing is a subspecies of
4 dismissal for failure to state a claim under Civil Rule 12(b)(6).
5 Quarre v. Saylor (In re Saylor), 178 B.R. 209, 215 (9th Cir. BAP
6 1995), aff'd, 108 F.3d 219 (9th Cir. 1997).

7 Here, the bankruptcy court's basis for dismissing Aguilar's
8 adversary proceeding was that, "[this lawsuit] is property of the
9 Chapter 7 trustee There's simply no ability to bring
10 this cause of action on behalf of [Aguilar]. . . . I am going to
11 grant the motion to dismiss." Hr'g Tr. 4:14-20, February 18,
12 2014. In other words, the bankruptcy court concluded that only
13 the chapter 7 trustee in the bankruptcy case had the legal
14 standing to pursue the claims stated in Aguilar's amended
15 complaint, and that Aguilar did not have standing. We conclude
16 that the bankruptcy court did not err in dismissing the adversary
17 proceeding.

18 Recall, Trustee had explicitly informed the bankruptcy court
19 in the "Trustee's Notice of Debtor's Improper Filing of
20 Pleadings" that, "[A]t no time has the Trustee authorized,
21 agreed, signed, instructed, or advised the Debtor or anyone in
22 this case to file a pleading purportedly on behalf of the
23 Trustee." Legal claims and causes of action held by a debtor
24 against others existing at the time of the bankruptcy filing
25 become property of the bankruptcy estate. City & Cnty. of San
26 Francisco v. PG&E Corp., 433 F.3d 1115, 1126 (9th Cir. 2006);
27 Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705,
28 708 (9th Cir. 1986). An asset remains property of the estate

1 while the bankruptcy case remains open, unless explicitly
2 abandoned. Cusano v. Klein, 264 F.3d 936, 946 (9th Cir. 2001).

3 Section 323(g) provides that "[t]he trustee in the case is
4 the representative of the estate." For this reason, the Ninth
5 Circuit has held "that the bankruptcy code endows the bankruptcy
6 trustee with the exclusive right to sue on behalf of the estate."
7 Estate of Spirtos v. One San Bernadino Cnty. Super. Ct. Case No.
8 SPR 02211, 443 F.3d 1172, 1175 (9th Cir. 2006); accord, Parker v.
9 Wendy's Int'l, Inc., 365 F.3d 1268, 1272 (11th Cir. 2004) (the
10 trustee "is the only party with standing to prosecute causes of
11 action belonging to the estate").

12 Since only Trustee had standing to assert the claims in
13 Aguilar's amended complaint, and because he had explicitly
14 informed the bankruptcy court that Aguilar's filing of the
15 complaint naming him as a co-plaintiff was an "improper
16 pleading," we conclude that the bankruptcy court's determination
17 that Aguilar did not have standing to prosecute the adversary
18 proceeding is a sufficient finding for dismissal under Civil
19 Rule 12(b)(6).⁴

20
21 _____
22 ⁴ The bankruptcy court ruled only on the basis of standing
23 and apparently disregarded Ocwen's additional jurisdictional
24 arguments. On appeal, Ocwen nevertheless continued its arguments
25 that the bankruptcy court had neither arising under, arising in,
26 nor related to jurisdiction on the quiet title claim, because "it
27 relates to heretofore unidentified property that does not belong
28 to the bankruptcy estate." The quiet title dispute, however,
relates to the rights, liabilities, options, and freedom of
action of debtor Aguilar and creditor Ocwen in the Property,
which is indisputably property of the estate. Thus, there is, at
the very least, related to jurisdiction. Battle Ground Plaza,
(continued...)

1 **B. Aguilar's claim for quiet title lacks merit.**

2 Even if Aguilar had the necessary standing to prosecute the
3 adversary proceeding, the claim stated in her amended complaint
4 is without merit.

5 Although less than a model of clarity, Aguilar's claim is
6 for declaratory relief and quiet title. She first alleges that
7 the "true beneficiary [of the deed of trust] is not identified in
8 the foreclosure documents against debtor and, thus, no power of
9 sale is conferred upon the foreclosing parties since they are not
10 the lien holders of the note."

11 This statement lacks a basis in law because California does
12 not require a foreclosing party to have possession of the note or
13 even a beneficial interest in it. Debrunner v. Deutsche Bank
14 Nat'l Trust Co., 204 Cal.App.4th 433, 440 (2012); Lane v. Vitek
15 Real Estate Indus. Grp., 713 F.Supp.2d 1092, 1099 (E.D. Cal.
16 2010) ("There is no stated requirement in California's
17 non-judicial foreclosure scheme that requires a beneficial
18 interest in the Note to foreclose."). Nevertheless, Ocwen
19 presented detailed documentary evidence of all transfers
20 demonstrating that QLS was trustee under the deed of trust with
21 authority to foreclose on the Property. Specifically, Ocwen
22 presented documents evidencing MERS as the original beneficiary,
23 solely as nominee for IndyMac. MERS assigned the deed of trust
24 to OneWest. OneWest assigned the deed of trust to Ocwen. Ocwen
25 is the present holder and beneficiary of the deed of trust. As

26
27 ⁴(...continued)
28 LLC v. Ray (In re Ray), 624 F.3d 1124, 1134 (9th Cir. 2010).
Ocwen's other jurisdictional arguments are equally misplaced.

1 Ocwen is the present beneficiary under the deed of trust and QLS
2 is the current trustee, they are either or both authorized to
3 initiate a nonjudicial foreclosure in California. CAL. CIV. CODE
4 § 2924.

5 In support of the claim for quiet title, Aguilar makes
6 several other arguments. First, Aguilar asserts that Cal. Civ.
7 Code § 2932.5 was violated because Appellees failed to record the
8 assignments of the deeds of trust. Ocwen provided documentary
9 evidence that each assignment was in fact recorded. In any case,
10 Cal. Civ. Code § 2932.5 does not apply to deeds of trust and
11 there is no requirement that they be recorded. In re Salazar,
12 470 B.R. 557 (S.D. Cal. 2011). Finally, Aguilar argues that the
13 deed of trust was never perfected. Aguilar's argument is
14 pointless, because even an unperfected lien still binds the party
15 who entered into it. Gribble v. Mauerhan, 188 Cal.App.2d 221,
16 228 (1961).

17 In other general arguments in her First Amended Complaint,
18 Aguilar alleged that her rights under Cal. Civ. Code § 2923.5
19 were violated when she was denied a loan modification. We have
20 examined this lengthy statute and have found no requirement in
21 its text that a lender offer a borrower a loan modification.
22 Regardless, the only fact Aguilar pled to support this allegation
23 was the bankruptcy court's order stating that Aguilar could enter
24 into loan modification discussions without exposing lenders to
25 violation of the stay.

26 Finally, Aguilar argues that Ocwen and the other defendants
27 violated Rule 3001 when they failed to file a proof of claim in
28 the bankruptcy case. However, Ocwen as a secured creditor is not

1 required to file a proof of claim in a chapter 7 case in order to
2 preserve its security interest or liens; such interests pass
3 through the bankruptcy unaffected despite the absence of a proof
4 of claim. § 501(a); Rule 3002(a); Dewsnup v. Timm, 502 U.S. 410,
5 418 (1992); Brawders v. Cnty. of Ventura (In re Brawders),
6 503 F.3d 856, 872 (9th Cir. 2007).

7 We conclude that the bankruptcy court did not err in
8 determining that Aguilar lacked legal standing to prosecute the
9 adversary proceeding. Aguilar's arguments in this appeal lack
10 merit.

11 **CONCLUSION**

12 We AFFIRM the bankruptcy court's orders in both appeals.
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