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NOT FOR PUBLICATION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

5	In re:)	BAP No.	NC-14-1298-TaDKi
6	CINDY YUNKONG IKEOKA,)	Bk. No.	13-55904
7	Debtor.)		
8	_____)		
9	CINDY YUNKONG IKEOKA,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	U.S. BANK, N.A.,)		
13	Appellee.)		
	_____)		

Argued and Submitted on May 14, 2015
at San Francisco, California

Filed - June 26, 2015

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

Honorable Charles D. Novack, Bankruptcy Judge, Presiding

Appearances: Michael James Yesk of Yesk Law argued for
appellant Cindy Yunkong Ikeoka; Donna La Porte
argued for appellee U.S. Bank, N.A.

Before: TAYLOR, DUNN, and KIRSCHER, Bankruptcy Judges.

* 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 8024-1(c)(2).

1 Debtor Cindy Yunkong Ikeoka appeals from a bankruptcy court
2 order granting stay relief to U.S. Bank, N.A. under
3 § 362(d)(2).¹ We AFFIRM the bankruptcy court.

4 **FACTS**²

5 In 2004, the Debtor obtained a loan from Chevy Chase Bank,
6 F.S.B. to purchase real property in Carmel, California (the
7 "Property"). The obligation was evidenced by a promissory note
8 ("Note") in favor of Chevy Chase Bank and secured by a deed of
9 trust ("Trust Deed") creating a lien against the Property.

10 In November 2013, with foreclosure looming, the Debtor
11 filed a skeletal chapter 13 petition.³ It was her fourth
12 bankruptcy case within a three-year period; all three of her
13 prior cases were dismissed for failure to make plan payments or
14 to file required documents. At the time of petition, the Debtor
15 was roughly five years in payment arrears.

16 When the Debtor eventually filed completed schedules, she
17 valued the Property at \$800,000 and scheduled only Bank of
18 America, with a secured claim of \$190,000, as holding a lien
19 against the Property. It soon became apparent that the Debtor's
20 schedules were underinclusive of secured creditors; U.S. Bank,
21 N.A., as trustee relating to the Chevy Chase Funding LLC

22
23 ¹ Unless otherwise indicated, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

25 ² We exercise our discretion to take judicial notice of
26 documents electronically filed in the bankruptcy case. See
27 Atwood v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R.
28 227, 233 n.9 (9th Cir. BAP 2003).

³ Since this appeal was pending, the Debtor converted to
chapter 11.

1 Mortgage Backed Certificates, Series 2005-1 ("U.S. Bank"), also
2 filed a proof of claim. Its proof of claim, which attached
3 copies of the Note and Trust Deed, evidenced a much higher
4 secured claim in the amount of \$1,953,931.91.

5 U.S. Bank moved for stay relief to foreclose and, in
6 support of its request, attached the declaration of Stephen
7 Witkop, Assistant Vice-President of Capital One, N.A. Witkop's
8 declaration, which identified Capital One as the movant,
9 provided that Capital One was the current owner of the Note and
10 the Trust Deed holder pursuant to a Corrective Assignment of
11 Deed of Trust recorded in 2011 (the "Corrective Assignment").
12 The copy of the Corrective Assignment authenticated by Witkop's
13 declaration, however, showed U.S. Bank as the actual assignee.

14 The Debtor, pro se, opposed; among other things, she
15 disputed U.S. Bank's standing to foreclose. She also advanced
16 substantive arguments already pending in related state court
17 litigation.

18 At the stay relief hearing, the bankruptcy court expressed
19 concern as to U.S. Bank's standing and requested evidence, in
20 addition to the Corrective Assignment, that U.S. Bank owned the
21 Note.

22 U.S. Bank then filed a supplemental declaration from Witkop
23 and submitted a copy of an allonge to the Note, which contained
24 an endorsement in blank.

25 After the bankruptcy court expressed continued concern
26 regarding ownership of the Note, U.S. Bank filed the declaration
27 of Huy Pham, Assistant Vice-President for Capital One as
28 servicing agent for U.S. Bank. Pham attested that the Note was

1 endorsed in blank and came into U.S. Bank's possession when it
2 acquired the loan.

3 Satisfied with the additional evidence, the bankruptcy
4 court entered an order granting stay relief to U.S. Bank. The
5 Debtor timely appealed.

6 JURISDICTION

7 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
8 §§ 1334 and 157(b) (2) (G). We have jurisdiction under 28 U.S.C.
9 § 158.

10 ISSUES

- 11 1. Whether U.S. Bank had standing to seek stay relief.
- 12 2. Whether the bankruptcy court "improperly aligned" itself
13 with U.S. Bank during the stay relief proceeding.

14 STANDARD OF REVIEW

15 Standing is a legal issue that we review de novo. Cruz v.
16 Stein Strauss Trust # 1361 (In re Cruz), 516 B.R. 594, 600 (9th
17 Cir. BAP 2014). Similarly, we review de novo whether a
18 litigant's due process rights were violated. DeLuca v. Seare
19 (In re Seare), 515 B.R. 599, 615 (9th Cir. BAP 2014).

20 DISCUSSION⁴

21
22
23 ⁴ On appeal, U.S. Bank filed a request for judicial notice
24 of the federal court action that the Debtor commenced against
25 U.S. Bank, Capital One, N.A., and Chevy Chase Bank, FSB, among
26 others, for declaratory relief and an accounting, and alleging
violations of the Fair Debt Collection Practices Act and Truth
in Lending Act, among other things.

27 None of these documents were presented to the bankruptcy
28 court, and thus they are not part of the record on appeal. In
any event, these documents are not necessary to our ruling, and
therefore we deny the motion.

1 The Debtor advances only two arguments on appeal: (1) that
2 U.S. Bank lacked standing to seek stay relief; and (2) that the
3 bankruptcy court "improperly aligned" itself with U.S. Bank
4 during the proceedings. We disagree with both assertions.

5 **A. U.S. Bank had standing to seek stay relief.**

6 On the request of a party in interest and after notice and
7 a hearing, the bankruptcy court may terminate, annul, modify, or
8 condition the automatic stay. 11 U.S.C. § 362(d). A stay
9 relief proceeding is limited in nature, as there is no
10 substantive adjudication of rights or liabilities. Arkison v.
11 Griffin (In re Griffin), 719 F.3d 1126, 1128 (9th Cir. 2013).
12 As a result, "a party seeking stay relief need only establish
13 that it has a colorable claim to the property at issue." Id.

14 The threshold to assert a colorable claim for stay relief
15 to allow foreclosure under a deed of trust creating a lien on
16 California real property is not high. A party need only show
17 that it: (a) owns or has a property interest in the promissory
18 note secured by the real property; (b) is a "person entitled to
19 enforce" the promissory note under California law, see Edwards
20 v. Wells Fargo Bank, N.A. (In re Edwards), 454 B.R. 100, 105
21 (9th Cir. BAP 2011); or (c) has a right to initiate foreclosure
22 under California law, see Rozier v. U.S. Bank, N.A.
23 (In re Rozier), 2013 WL 4428808, at *5 (9th Cir. BAP Aug. 19,
24 2013). On this record, U.S. Bank established that it had a
25 colorable claim and, thus, standing to seek stay relief, from
26 the standpoint of both the Trust Deed and the Note.

27 California law permits the initiation of nonjudicial
28 foreclosure by a trustee, mortgagee, or beneficiary under a

1 trust deed, or **any of their authorized agents.** Cal. Civ. Code
2 § 2924(a)(1). Here, U.S. Bank submitted the Corrective
3 Assignment, which evidenced that it received an assignment of
4 the beneficial interest under the Trust Deed.⁵ As a result, it
5 was entitled to initiate foreclosure of the Property. Cal. Civ.
6 Code § 2924(a)(1); Debrunner v. Deutsche Bank Nat. Trust Co.,
7 204 Cal. App. 4th 433, 440 (2012). True, U.S. Bank's
8 declaratory evidence as initially submitted was less than
9 precise; Witkop's declaration identified Capital One as the
10 movant and indicated that Capital One was the current owner of
11 the Note and the Trust Deed holder. This was untrue.
12 Nonetheless, it eventually submitted the appropriate
13 documentation. Thus, although the bankruptcy court focused on
14 evidence relating to ownership of the Note, the non-bankruptcy
15

16
17 ⁵ The Debtor makes much of a prior Trust Deed assignment
18 filed by U.S. Bank in her second bankruptcy case, 10-53485.
19 There, the bank attached a copy of an assignment, recorded in
20 March of 2010, to its proof of claim, evidencing an assignment
21 of the Trust Deed beneficial interest to U.S. Bank, as trustee
22 for CCB Libor Series 2005-1 Trust. The Debtor contends that in
23 the present bankruptcy case, U.S. Bank "bizarrely" attached the
24 Corrective Assignment, dated June 27, 2011, which purportedly
25 assigned the Trust Deed interest to it as trustee for Chevy
26 Chase Funding LLC Mortgage Backed Certificates, Series 2005-1 -
27 "a completely different trust pool."

28 The Debtor ignores that the Corrective Assignment was just
that - an instrument correcting a prior, but erroneous
assignment. The Corrective Assignment itself states that it
"corrects the previously recorded Assignment of Deed of Trust
recorded on March 26, 2010 . . . to correct the full Assignee
name." And, once again, a stay relief proceeding is a summary
proceeding. To the extent the Debtor wishes to challenge the
validity of the assignment, she can do so in the litigation
pending in other forums.

1 right to initiate foreclosure supplied U.S. Bank with a
2 colorable claim and independently satisfied the requirement of
3 standing.

4 U.S. Bank also submitted evidence that, under state law, it
5 was entitled to enforce the Note. Under California law, a
6 person is entitled to enforce a note if it is the holder of the
7 note. See Cal. Com. Code § 3301. A note, once endorsed in
8 blank, is payable to bearer. Id. § 3109. Thus, a person in
9 possession of a note endorsed in blank is a person entitled to
10 enforce the note, regardless of whether they own the note. Id.
11 § 3301.

12 Here, in support of its requested relief, U.S. Bank
13 submitted a copy of an allonge to the Note, containing an
14 endorsement in blank and the Pham declaration. Pham attested
15 that U.S. Bank was in possession of the Note and that its
16 possession was continuous from the time that it acquired the
17 loan. Taken together, U.S. Bank showed that it was entitled to
18 enforce the Note. This, alternatively, established a colorable
19 claim and, thus, standing to seek stay relief.

20 **B. The bankruptcy court did not improperly align itself with**
21 **U.S. Bank.**

22 The Debtor also argues that the bankruptcy court
23 participated in the stay relief proceeding such that it aligned
24 itself with U.S. Bank and, in the process, violated her due
25 process rights. She contends that the bankruptcy court
26 repeatedly coached U.S. Bank's counsel and provided detailed
27 instructions and advice as to the information necessary to grant
28 the bank's requested relief. We disagree.

