

FEB 01 2016

NOT FOR PUBLICATION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-15-1095-JuKuW  
 )  
 STEPHEN LEE BECK and DONITA M.) Bk. No. 11-54179-MEH  
 BECK, )  
 )  
 Debtors. )  
 )  
 \_\_\_\_\_ )  
 )  
 STEPHEN LEE BECK; DONITA M.)  
 BECK, )  
 )  
 Appellants, )  
 )  
 v. ) **M E M O R A N D U M**\*  
 )  
 WELLS FARGO HOME MORTGAGE,\*\* )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Argued and Submitted on January 21, 2016  
at San Francisco, California

Filed - February 1, 2016

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

Honorable M. Elaine Hammond, Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
 John G. Downing argued for appellants  
 Stephen Lee Beck and Donita M. Beck.  
 \_\_\_\_\_

\_\_\_\_\_

\* 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.

\*\* Wells Fargo Bank did not participate in this appeal.

1 Before: JURY, KURTZ, and WANSLEE,\*\*\* Bankruptcy Judges.

2 Debtors Stephen Lee Beck and Donita M. Beck (Debtors) filed  
3 a motion under Rule 3012 seeking to value their real property  
4 under § 506(a) and (d) (Valuation Motion) prior to confirming  
5 their fourth amended chapter 13<sup>1</sup> plan (FAP). Their plan treated  
6 the second deed of trust held by Wells Fargo Bank, N.A. (Wells)  
7 against their property as unsecured.

8 In the notice accompanying the Valuation Motion, Debtors  
9 identified (1) Wells as the creditor with a second deed of trust  
10 on their property; (2) the address of their property; (3) the  
11 underlying loan number associated with the security; and (4) the  
12 amount of the debt. They also stated that there was a lack of  
13 equity in the property based on Stephen Beck's opinion that the  
14 value of the property was less than the sum owed to the creditor  
15 who held the first deed of trust. While the Valuation Motion  
16 reiterated this information, instead of referring to Wells'  
17 current deed of trust which was recorded against their property  
18 in 2004, Debtors mistakenly referred to a deed of trust recorded  
19 in 2002 by Wells which had been reconveyed. The bankruptcy  
20 court granted their Valuation Motion and the subsequent order  
21 (Valuation Order) again listed the deed of trust recorded in  
22 2002.

23 \_\_\_\_\_  
24 \*\*\* Hon. Madeleine C. Wanslee, United States Bankruptcy Judge  
25 for the District of Arizona, sitting by designation.

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

1 The bankruptcy court then confirmed their FAP, which  
2 treated Wells as an unsecured creditor. Having filed a proof of  
3 claim (POC), Wells received over \$20,000 in distributions as an  
4 unsecured creditor over the course of Debtors' plan. After  
5 completing their plan payments, Debtors sought a judgment  
6 voiding Wells' lien. Although served with the Valuation Motion,  
7 the Valuation Order, the plan and amended plans, and Debtors'  
8 request for a judgment voiding its lien, Wells failed to  
9 respond.

10 After Debtors realized that they had mistakenly referenced  
11 the 2002 deed of trust as opposed to the 2004 deed of trust in  
12 the Valuation Order, they filed a motion to correct it (Motion  
13 to Correct) and again sought a judgment avoiding Wells' lien.  
14 Wells did not respond or appear at the hearing. The bankruptcy  
15 court denied the motion, finding that relief under Civil  
16 Rule 60(b)(1) was not available since the motion had been  
17 brought more than one year after the Valuation Order was  
18 entered. The court further found there was no mistake as  
19 defined by case law since the information regarding Wells' deed  
20 of trust was readily available from the public records.  
21 Although Debtors' Motion to Correct and request for judgment was  
22 uncontested, the court declined to grant the motion on the basis  
23 that Wells had not received adequate notice that Debtors  
24 intended to strip its lien associated with the 2004 deed of  
25 trust.

26 Debtors appeal from the bankruptcy court's order denying  
27 their Motion to Correct and request for judgment voiding lien.  
28 For the reasons stated below, we REVERSE the bankruptcy court's

1 determination that Wells' due process rights were violated,  
2 VACATE the order denying the Motion to Correct, and REMAND this  
3 matter to the bankruptcy court for further proceedings  
4 consistent with this memorandum.

5 **I. FACTS**

6 On June 27, 2002, Debtors obtained a home equity loan from  
7 Wells. The underlying note was secured by a second deed of  
8 trust which was recorded on July 3, 2002, as Instrument Number  
9 2002-0010687 (2002 Deed of Trust). On September 15, 2004, the  
10 2002 Deed of Trust was reconveyed to Debtors.

11 On July 27, 2004, Stephen Beck executed a promissory note  
12 for \$97,000 in favor of Wachovia Bank of Delaware, N.A.  
13 (Wachovia). The note was secured by a second deed of trust  
14 against Debtors' property located at 901 Freedom Drive,  
15 Hollister, California (Property). The deed of trust was  
16 recorded on August 3, 2004, as Instrument Number 2004-0013967  
17 (2004 Deed of Trust). At some point, Wells became the successor  
18 by merger to Wachovia. Its records identified Debtors' loan by  
19 a loan number ending in 6995.

20 On April 30, 2011, Debtors filed a chapter 13 petition.  
21 One of their assets was their Property. Debtors filed their  
22 chapter 13 plan with the petition and both were served on Wells  
23 at 3476 Stateview, Fort Mill, South Carolina 29715 (South  
24 Carolina Address). Among other things, the plan provided:

25 Debtors will file a motion to value lien of Wells  
26 Fargo (loan ending in 6995), currently secured by a  
27 2nd deed of trust on Debtor's [sic] residence, and  
seek treatment of that lien was [sic] completely  
unsecured.

28 On June 2, 2011, Debtors filed the Valuation Motion. In

1 the notice, Debtors stated the address of the Property, named  
2 Wells as the creditor, and valued the Property at \$270,500,  
3 which was less than the approximately \$296,900 owed on their  
4 first mortgage. Based on this value, Debtors asserted in the  
5 notice that "0.00 of the Wells Fargo loan . . . ending in 6995  
6 and secured by a second deed of trust against the Residence is  
7 secured." The accompanying motion reiterated this information,  
8 but also stated:

9       There is also a home equity loan (number ending in  
10       6995) made by Wells Fargo Bank (the "2nd Loan"). The  
11       home equity loan is secured by a Short Form Deed of  
12       Trust, recorded against the Residence on July 3, 2002  
13       as Instrument Number 2002-0010687 in the Official  
14       Public Records of San Benito County. Based on a claim  
15       submitted by Wells Fargo Bank, there was \$90,376.00  
16       owed pursuant to that second deed of trust.

17 Debtors supported the motion with the declaration of Stephen  
18 Beck who opined that the value of the Property was \$270,500 and  
19 reiterated the paragraph above.

20       Debtors served the notice and motion on Wells by regular  
21 mail at the South Carolina Address and by certified mail  
22 addressed to Stanley Stoup, General Counsel, Wells Fargo &  
23 Company, 420 Montgomery Street, San Francisco, CA 94104 (San  
24 Francisco Address) and Wells Fargo c/o CSC Lawyers Incorporating  
25 Service, 2730 Gateway Oaks Dr., Ste. 100, Sacramento, CA 95833  
26 (Sacramento Address). Wells did not respond to the motion.

27       On August 2, 2011, Debtors filed a second notice of  
28 opportunity for hearing re the Valuation Motion. The notice  
again referenced the address of the Property, the asserted value  
of \$270,000 which was less than what was owed on the first deed  
of trust, and the loan ending in 6995. Debtors again asserted

1 that Wells' second deed of trust was wholly unsecured. This  
2 notice was served on Wells at the three addresses set forth  
3 above. Again, Wells did not respond.

4 On August 17, 2011, Wells filed POC 3-1. The POC asserted  
5 a secured claim in the amount of \$98,809.30 and referenced the  
6 loan number "708xxxxxx6995." Attached as Exhibit "A" was an  
7 itemization of the total debt and arrearages as of the time of  
8 the filing. This itemization stated that the principal balance  
9 as of the petition date (April 30, 2011) was \$90,376.22, and  
10 listed late charges as \$262.45 and accrued interest of  
11 \$8,170.06. No arrearages were listed on the face of the POC.  
12 Also attached to the POC was the 2004 Deed of Trust and the  
13 promissory note dated July 27, 2004.

14 On March 27, 2012, Debtors filed a third amended plan which  
15 stated:

16 Debtors have file [sic] a motion to value lien of  
17 Wells Fargo (loan ending in 6995), currently secured  
18 by a 2nd deed of trust on Debtor's [sic] residence,  
19 and seek treatment of that lien as completely  
20 unsecured. Wells Fargo shall receive payment pursuant  
21 to Class 2(d) above.

22 The third amended plan provided that the unsecured creditors in  
23 Class 2(d) would receive twenty cents on the dollar. Debtors  
24 served Wells with the third amended plan at the South Carolina  
25 Address. Wells did not object to the third amended plan.

26 On April 23, 2012, Debtors filed the FAP which contained  
27 the identical provision stated above. The plan, as amended,  
28 further stated: "Notwithstanding section 2(d) above, general  
unsecured creditors shall receive a minimum of \$20,140.85." The  
plan did not provide for Debtors to make any direct payments to

1 Wells. Debtors served Wells with the FAP at the South Carolina  
2 Address. Wells did not object.

3 The bankruptcy court granted Debtors' Valuation Motion by  
4 order dated May 2, 2012. The Valuation Order referred to the  
5 2002 Deed of Trust and further stated:

6 The court finds that notice of the motion upon [Wells]  
7 was proper. . . [Wells] having failed to file timely  
8 opposition to Debtors' motion, the court hereby orders  
9 as follows:

10 (1) For purposes of Debtors' Chapter 13 plan only, the  
11 Lien is valued at zero. Wells Fargo Bank[], does not  
12 have a secured claim, and the Lien may not be  
13 enforced, pursuant to 11 U.S.C. §§ 506, 1322(b) (2) and  
14 1327.

15 (2) This order shall become part of Debtors' confirmed  
16 Chapter 13 plan.

17 Debtors served Wells with the order by regular mail at the  
18 South Carolina Address and by certified mail to Stanley Stroup,  
19 General Counsel, Wells Fargo Bank, N.A., 101 N. Phillips Avenue,  
20 Sioux Falls, South Dakota 57104 (South Dakota Address)<sup>2</sup> and to  
21 Wells at the Sacramento Address.

22 On June 5, 2012, the bankruptcy court confirmed the FAP.  
23 Debtors elected to have property of the estate revert in Debtors  
24 upon plan confirmation.

25 On October 17, 2014, the chapter 13 trustee filed her Final  
26 Report and Account which stated that payments of \$20,038.63 were  
27 made to Wells on its unsecured claim.

28 On October 20, 2014, Debtors filed their application for  
voiding lien. There, Debtors sought a judgment stating that the

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<sup>2</sup> The South Dakota Address used for Stanley Stroup was  
different from the San Francisco Address that was used previously  
for service.

1 2004 Deed of Trust listing Wells as a beneficiary was "for all  
2 purposes void and unenforceable." Debtors served the  
3 application and accompanying declaration on Wells by regular  
4 mail at Wells Fargo Home Mortgage, 1 Home Campus, MAC  
5 #X2302-04C, Des Moines, IA 50328 (Iowa Address),<sup>3</sup> and by  
6 certified mail to Stanley Stroup at the South Dakota Address and  
7 to Wells at the Sacramento Address. Wells did not respond.

8 At some point, Debtors discovered that they had mistakenly  
9 referred to the 2002 Deed of Trust in the Valuation Motion and  
10 Valuation Order. Accordingly, on February 12, 2015, Debtors  
11 filed the Motion to Correct and again requested a judgment  
12 voiding lien. Through the Motion to Correct, Debtors sought to  
13 have the Valuation Order reflect that the lien affected by the  
14 valuation was the 2004 Deed of Trust. The Motion to Correct was  
15 based on Rule 9024, which incorporates Civil Rule 60(a),  
16 Rule 3012, and the bankruptcy court's Guidelines for Valuing and  
17 Avoiding Liens in Chapter 11 and Chapter 13 cases.<sup>4</sup>

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19 <sup>3</sup> This address was listed on Wells' POC as the address where  
20 payment should be sent.

21 <sup>4</sup> The guidelines require the debtor to file a separate  
22 motion to obtain valuation of a secured creditor's claim. The  
23 motion must be served upon the affected lienholder in accordance  
24 with Bankruptcy Local Rule (BLR) 9014-1(b) & (c) and in the  
25 manner required by the Rules; "in particular, Rule 7004(b) and  
26 7004(h)." The guidelines further provide that the motion must be  
27 resolved before the plan is confirmed. Finally, the guidelines  
28 require that the motion be supported by a memorandum of points  
and authorities and any declarations under penalty of perjury  
establishing all facts necessary to entitle debtor to the relief  
required. "At minimum, required declarations include statements  
by competent witnesses regarding the value of the collateral and  
the balance due on each lien relevant to the motion."



1 Attached to the motion was the supporting declaration of  
2 Debtors' attorney, John G. Downing. Downing declared that at  
3 the time the Valuation Motion was filed (1) the only deed of  
4 trust in his file was the 2002 Deed of Trust; (2) this deed of  
5 trust was reconveyed on September 15, 2004; and (3) Wells had  
6 not filed its POC until after the Valuation Motion was decided.  
7 Based on these facts, Downing contended that the Valuation Order  
8 contained a clerical mistake and should be corrected pursuant to  
9 Civil Rule 60(a) to reference the 2004 Deed of Trust and the  
10 requested judgment should reflect that lien. Also attached to  
11 the motion was the 2002 Deed of Trust and the reconveyance of  
12 that deed of trust recorded on September 15, 2004.

13 On February 13, 2015, Debtors served a corrected notice of  
14 hearing on Wells in connection with the Motion to Correct and  
15 their request for judgment. This notice was served on Wells by  
16 regular mail at the Iowa Address and by certified mail to  
17 Stanley Stroup at the South Dakota Address and Wells at the  
18 Sacramento Address. Wells did not respond.

19 On March 12, 2015, the bankruptcy court heard the matter.  
20 Wells did not appear at the hearing. Downing argued that Wells  
21 received notice and that it was effective because the Valuation  
22 Motion referenced the loan ending in 6995, which was the correct  
23 loan number. Downing further argued that Wells had notice of  
24 their Motion to Correct and request for judgment voiding lien  
25 and, therefore, Debtors were entitled to entry of default  
26 against Wells under Civil Rule 55(a), made applicable to  
27 contested matters by Rule 9014(c).

28 The bankruptcy court denied the motion on several grounds.

1 First, referring to Rule 60(b)(1), the court found that the  
2 motion was untimely since motions under that subsection had to  
3 be brought within a year. Second, the court did not find there  
4 was a mistake or excusable neglect as the original Valuation  
5 Motion and Valuation Order clearly stated that Debtors were  
6 seeking to avoid a junior lien that was recorded on July 3,  
7 2002, and described a document number recorded in 2002. The  
8 bankruptcy court stated that there was no such lien in existence  
9 at that time so there was no basis for Wells to object to the  
10 Valuation Motion, and they did not.

11 The court also denied Debtors' motion and request for  
12 judgment on due process grounds. The court found that although  
13 the notice to Wells may have had the correct loan number for a  
14 loan they had pending, this was not sufficient notice when other  
15 information was incorrect. The bankruptcy court further opined  
16 that the information was publicly available at the time and  
17 could have been obtained, but it was not.

18 The bankruptcy court entered the order denying Debtors'  
19 Motion to Correct and request for judgment voiding lien on  
20 March 12, 2015. Debtors filed a timely notice of appeal.

## 21 **II. JURISDICTION**

22 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
23 §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C.  
24 § 158.

## 25 **III. ISSUES**

26 Did the bankruptcy court err by finding that Wells had  
27 inadequate notice of Debtors' intent to value their Property for  
28 the purpose of treating Wells' claim as wholly unsecured and

1 stripping its lien after completing their chapter 13 plan?

2 Did the bankruptcy court abuse its discretion by denying  
3 Debtors' Motion to Correct under Civil Rule 60(a)?

#### 4 IV. STANDARDS OF REVIEW

5 Whether adequate due process notice was given in any  
6 particular instance is a mixed question of law and fact that we  
7 review de novo. Berry v. U.S. Trustee (In re Sustaita),  
8 438 B.R. 198, 207 (9th Cir. BAP 2010). However, to the extent  
9 an issue within the mixed question can be identified as solely a  
10 question of fact, it is subject to a clearly erroneous standard  
11 of review. See Rose v. United States, 905 F.2d 1257, 1259 (9th  
12 Cir. 1990).

13 A bankruptcy court's denial of a motion under Civil Rule 60  
14 is reviewed for an abuse of discretion. Lemoge v. United  
15 States, 587 F.3d 1188, 1191-92 (9th Cir. 2009).

16 Review for abuse of discretion has two parts. First, "we  
17 determine de novo whether the bankruptcy court identified the  
18 correct legal rule to apply to the relief requested." U.S. v.  
19 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc). If  
20 so, we then determine under the clearly erroneous standard  
21 whether the bankruptcy court's factual findings and its  
22 application of the facts to the relevant law were  
23 "(1) illogical; (2) implausible; or (3) without support in  
24 inferences that may be drawn from the facts in the record." Id.  
25 at 1262.

#### 26 V. DISCUSSION

##### 27 A. Due Process

28 The bankruptcy court concluded that to modify the Valuation

1 Order to pertain to the 2004 Deed of Trust would deny Wells due  
2 process. We disagree with this conclusion because due process  
3 was served. "The standard for what amounts to constitutionally  
4 adequate notice, [], is fairly low; it's 'notice reasonably  
5 calculated, under all the circumstances, to apprise interested  
6 parties of the pendency of the action and afford them an  
7 opportunity to present their objection.'" Espinosa v. United  
8 Student Aid Funds, Inc., 553 F.3d 1193, 1202 (9th Cir. 2008)  
9 (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306,  
10 314-15, (1950)), aff'd, 559 U.S. 260 (2010).

11 Here, the key inquiry is in connection with the second part  
12 of the Mullane test which requires that the notice provided must  
13 afford the affected party an opportunity to present objections.  
14 Mullane, 339 U.S. at 314. While Mullane revolved principally  
15 around the constitutional adequacy of service by publication,  
16 the court stated that "[t]he notice must be of such nature as  
17 reasonably to convey the required information." Id.; see also  
18 Fogel v. Zell, 221 F.3d 955, 962 (7th Cir. 2000) ("If notice is  
19 unclear, the fact that it was received will not make it  
20 adequate.").

21 In the notice accompanying their Valuation Motion, Debtors  
22 identified the address of their Property and stated that its  
23 value was less than owed on the first deed of trust. Debtors  
24 also identified (1) Wells as the creditor whose lien in the  
25 second position was affected; (2) the loan number associated  
26 with its security; and (3) the amount of the loan. Both the  
27 loan number and the amount of the loan were identical to that  
28 identified by Wells in its POC which was based on the 2004 Deed

1 of Trust. This information was sufficient to allow Wells to  
2 identify the loan in question as the one secured by its current  
3 deed of trust and that the basis for treating Wells as wholly  
4 unsecured was the lack of equity in the Property and § 506(a).<sup>5</sup>  
5 In sum, the notice reasonably conveyed the required information  
6 under the standards set forth in Mullane and thus satisfied  
7 Wells' due process rights.

8 Further, the record shows that Wells was served with  
9 Debtors' plan and amended plans which clearly stated the  
10 proposed treatment of Wells' claim was as an unsecured creditor.  
11 The plans referred to Debtors' pending Valuation Motion in  
12 connection with Wells' second deed of trust and loan number  
13 ending in 6955. Again, this was sufficient to put Wells on  
14 notice that its in rem rights associated with its current deed  
15 of trust in the second position would be affected. Wells had  
16 notice of its treatment under Debtors' plan and amended plans  
17 and yet failed to timely object.

18 There is no indication in the record that Wells expected  
19 direct payments from Debtors to satisfy its secured debt over  
20 the long term. Indeed, the confirmed plan did not provide for  
21 any such payments. In accordance with the terms of the

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22  
23 <sup>5</sup> Section 506(a) governs the amount and treatment of secured  
24 claims. In a reorganization case, § 506 is relevant regarding  
25 what claims get paid through the plan, "and the would-be secured  
26 creditor whose claim is allowed only as unsecured gets paid as an  
27 unsecured creditor." Laskin v. First Nat'l Bank of Keystone  
28 (In re Laskin), 222 B.R. 872, 876 (9th Cir. BAP 1998). Rule 3012  
implements the substantive rights of § 506(a). It provides that  
the bankruptcy court may determine the value of a secured claim,  
upon motion of a party in interest, and after hearing on notice  
to the holder of the secured claim.

1 confirmed plan, the chapter 13 trustee made payments to Wells  
2 over forty-two months on the basis that its claim was unsecured.  
3 The plan is preclusive as to the treatment of Wells' claim. See  
4 Lomas Mortgage USA v. Wiese, 980 F.2d 1279, 1284 (9th Cir.  
5 1992), vacated on other grounds, 508 U.S. 958 (1993) ("An order  
6 confirming a Chapter 13 plan is res judicata as to all  
7 justiciable issues which were or could have been decided at the  
8 confirmation hearing."); see also Fietz v. Great W. Sav.  
9 (In re Fietz), 852 F.2d 455, 458 (9th Cir. 1988) ("Once a  
10 Chapter 13 plan is confirmed, all of the property of the estate  
11 vests in the debtor and creditors are precluded from asserting  
12 any other interest than that provided for them in the confirmed  
13 plan.").

14 Under these circumstances, we conclude that Wells had  
15 adequate notice regarding the stripping of its current deed of  
16 trust recorded in 2004 and Debtors' proposed treatment of its  
17 wholly unsecured claim in their confirmed FAP. It is not  
18 possible to tell from the record whether the bankruptcy court  
19 applied the legal standards for notice and due process set forth  
20 in Mullane. Assuming that it did not, under a de novo review,  
21 the court's ruling that Wells had inadequate notice was in  
22 error. Moreover, to the extent the finding of inadequate notice  
23 is purely one of fact, it is not supported by the record and  
24 thus is clearly erroneous.

25 **B. Civil Rule 60(a): Clerical Mistakes, Oversights and**  
26 **Omissions**

27 In their Motion to Correct, Debtors requested the  
28 bankruptcy court to correct the Valuation Order based on Civil

1 Rule 60(a), incorporated by Rule 9024.<sup>6</sup> Under Civil Rule 60(a),  
2 a bankruptcy court may "correct a clerical mistake or a mistake  
3 arising from oversight or omission whenever one is found in a  
4 judgment, order, or other part of the record." Relief under  
5 Civil Rule 60(a) is not limited to clerical mistakes committed  
6 only by the clerk; the rule applies to mistakes by the court,  
7 the parties, and the jury as well. Icho v. Hammer, 434 F.Appx.  
8 588, 2001 WL 1979163, at \*1 (9th Cir. May 23, 2011 (citing Day  
9 v. McDonough, 547 U.S. 198, 210-11 (2006)); see also Warner v.  
10 Bay St. Louis, 526 F.2d 1211, 1212 (5th Cir. 1976) (mistakes  
11 correctable by [Civil] Rule 60(a) are "not necessarily made by  
12 the clerk"); Pattiz v. Schwartz, 386 F.2d 300, 303 (8th Cir.  
13 1968) (mistakes by parties correctable by [Civil] Rule 60(a)).  
14 Corrections pursuant to Civil Rule 60(a) have no time limit.

15 In determining whether a mistake may be corrected under  
16 Civil Rule 60(a), the Ninth Circuit focuses on what the court  
17 originally intended to do. Tattersalls, Ltd. v. Dehaven,  
18 745 F.3d 1294, 1297 (9th Cir. 2014). Further, Civil Rule 60(a)  
19 covers more than the "quintessential clerical error" such as  
20 where the court errs in transcribing the judgment or makes a  
21 computational mistake. See Korea Exchange Bank v. Hanil Bank,  
22 Ltd. (In re Jee), 799 F.2d 532 (9th Cir. 1986) (Civil  
23 Rule 60(a) used to amend a prior dismissal order where the  
24 record and the recollection of the judge who entered the order  
25 indicated that the dismissal was intended to be without

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27  
28 <sup>6</sup> In denying the motion, the court referenced Civil  
Rule 60(b), not 60(a).

1 prejudice); Jones & Guerrero Co. v. Sealift Pac., 650 F.2d 1072  
2 (9th Cir. 1981) (Civil Rule 60(a) used to correct a blanket  
3 order dismissing twenty-two diversity cases, where the court  
4 intended to remand one of those cases – the only one not  
5 originally filed in federal court – to territorial court); Robi  
6 v. Five Platters, Inc., 918 F.2d 1439, 1444-45 (9th Cir. 1990)  
7 (uncorrected judgment “ordered, among other things, that [a  
8 party’s trademark] be canceled,” but it “failed to identify the  
9 particular trademark to be canceled or to include any trademark  
10 registration numbers or dates of issuance.” The United States  
11 Patent and Trademark Office was unable to identify the  
12 trademarks to be cancelled, the district court amended its  
13 judgment under Civil Rule 60(a) to identify the trademarks with  
14 more particularity.); Garamendi v. Henin, 683 F.3d 1069, 1180-81  
15 (9th Cir. 2012) (Civil Rule 60(a) used to clarify a judgment  
16 that could not be domesticated in a foreign country because its  
17 reasoning was not sufficiently detailed).

18 In short, the Ninth Circuit has construed Civil Rule 60(a)  
19 broadly, holding that the “[r]ule ‘allows a court to clarify a  
20 judgment in order to correct a failure to memorialize part of  
21 its decision, to reflect the necessary implications of the  
22 original order, to ensure that the court’s purpose is fully  
23 implemented, or to permit enforcement.” Garmendi, 683 F.3d at  
24 1079.

25 We thus conclude that the bankruptcy court erred by not  
26 considering and applying Civil Rule 60(a) to correct the error  
27 in the Valuation Order. We provide our analysis on the  
28 applicability of Civil Rule 60(a) with the hope that such



1 guidance might be utilized by Debtors and the bankruptcy court  
2 on remand. McDonald v. Sperna (In re Sperna), 173 B.R. 654 (9th  
3 Cir. BAP 1994) (providing guidance to the bankruptcy court on  
4 remand); Sapper v. Lenco Blade, Inc., 704 F.2d 1069, 1072 (9th  
5 Cir. 1983) (addressing a question to provide guidance on  
6 remand).

7 As noted above, the error can be made by a party and here  
8 it appears to have been a mistake arising from oversight on the  
9 part of Debtors and their counsel. Furthermore, the correction  
10 proposed by Debtors would not change the Valuation Order's  
11 operative substantive terms or result in a different outcome –  
12 the value of Debtors' Property remains the same and Wells'  
13 second deed of trust (which had been correctly identified by  
14 loan number and amount) was wholly unsecured due to that value.  
15 Wells suffers no prejudice because the relief sought by Debtors  
16 is **the very same relief** that would have been granted in May 2012  
17 in connection with the Valuation Order, but for the unfortunate  
18 oversight of Debtors regarding the date of Wells' deed of trust.  
19 Moreover, Wells received payments as an unsecured creditor over  
20 the course of Debtors' plan. In addition, the use of Civil  
21 Rule 60(a) is not precluded by the fact that Debtors submitted  
22 new evidence relating to the lien in question. Tattersalls,  
23 745 F.3d at 1299 (permitting new evidence relating to loss of  
24 value) (citing Robert Lewis Rosen Assocs., Ltd. v. Webb,  
25 473 F.3d 498, 504-06 (2d Cir. 2007) (permitting the admission of  
26 new evidence to correct a judgment)). Finally, the proposed  
27 correction would not reflect any change in reasoning that led  
28 the bankruptcy court to enter the Valuation Order in the first

1 place. Accordingly, modifying the Valuation Order to reflect  
2 the 2004 Deed of Trust is warranted as there are no obstacles to  
3 a proper application of Civil Rule 60(a).

4 **C. Civil Rule 60(b)(1): Mistake or Excusable Neglect**

5 Civil Rule 60(b)(1) permits a court to reopen judgments for  
6 reasons of "mistake, inadvertence, surprise, or excusable  
7 neglect, but only on motion made within one year of the  
8 judgment." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.  
9 P'ship, 507 U.S. 380, 393 (1993). If a Civil Rule 60(b)(1)  
10 motion is untimely, the bankruptcy court lacks jurisdiction to  
11 consider the merits of the motion. Nevitt v. United States,  
12 886 F.2d 1187, 1188 (9th Cir. 1989). The bankruptcy court  
13 correctly concluded that to the extent Debtors relied upon Civil  
14 Rule 60(b)(1) to correct the Valuation Order, their motion was  
15 untimely.

16 **VI. CONCLUSION**

17 For the reasons stated below, we REVERSE the bankruptcy  
18 court's determination that Wells' due process rights were  
19 violated, VACATE the order denying the Motion to Correct, and  
20 REMAND this matter to the bankruptcy court for further  
21 proceedings consistent with this memorandum.  
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