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NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. CC-16-1374-KuFL  
 )  
 6 DESERT SPRINGS FINANCIAL, LLC, ) Bk. No. 6:16-bk-14859-MW  
 )  
 7 Debtor. )  
 )  
 8 )  
 YUN HEI SHIN; RAMON PALM LANE, )  
 9 INC., )  
 )  
 10 Appellants, )  
 )  
 11 v. ) **MEMORANDUM\***  
 )  
 12 MITCHELL ALTMAN, )  
 )  
 13 Appellee. )  
 )  
 14

Argued and Submitted on March 23, 2017  
at Pasadena, California

Filed - April 20, 2017

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

Honorable Mark S. Wallace, Bankruptcy Judge, Presiding

Appearances: Kathleen P. March argued for appellants; Todd L.  
Turoci argued for appellee.

Before: KURTZ, FARIS and LAFFERTY, 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.

1 **INTRODUCTION**

2 Yun Hei Shin and Ramon Palm Lane, Inc.<sup>1</sup> appeal from an order  
3 overruling their objection to the proof of claim Mitchell Altman  
4 filed against the chapter 11<sup>2</sup> debtor Desert Springs Financial,  
5 LLC.

6 The bankruptcy court determined that the facts in the record  
7 at the time of the claim objection hearing were insufficient to  
8 rebut the presumption of validity applicable to Mitchell's  
9 procedurally compliant proof of claim under Rule 3001(f).  
10 Because the bankruptcy court's determination was clearly  
11 erroneous, we VACATE its order overruling the claim objection,  
12 and we REMAND for further proceedings.

13 **FACTS**

14 Mitchell Altman is the son of Desert Springs Financial's  
15 managing member Murray Altman. Murray owns 75% of the debtor and  
16 Shin owns 25%. Murray and Shin engaged in years of state court  
17 litigation, and Shin claims she ultimately obtained a state court  
18 judgment against Murray for roughly \$1.4 million. Desert Springs  
19 Financial's schedules reflect that Shin (or her wholly owned  
20 corporation) is a judgment creditor of the company for a similar  
21 amount.

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23 <sup>1</sup> Ramon Palm Lane is Shin's wholly owned corporation. For  
24 purposes of this appeal, Ramon Palm Lane and Shin appear to have  
25 an identity of interest. Unless otherwise indicated, all  
26 references to Shin herein are to both Shin and Ramon Palm Lane.

27 <sup>2</sup> Unless specified otherwise, all chapter and section  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1           After Desert Springs Financial commenced its bankruptcy case  
2 in May 2016, Mitchell filed a proof of claim in which he asserted  
3 that Desert Springs Financial was indebted to him based on a  
4 \$600,000 secured loan he made to the company in May 2013. With  
5 accrued prepetition interest, Mitchell claimed he was owed over  
6 \$760,000 as of the date of Desert Springs Financial's petition  
7 filing. Mitchell attached to his proof of claim a note and deed  
8 of trust executed by his father Murray on behalf of Desert  
9 Springs Financial in January 2014. The loan documents tend to  
10 demonstrate that a debt exists and that it is secured by Desert  
11 Springs Financial's real property located in Palm Desert,  
12 California, as described in the deed of trust.

13           Shin filed her claim objection in September 2016. Among  
14 other things, Shin pointed out that the note and deed of trust  
15 were executed by Murray - who qualified as an insider under the  
16 Code's statutory definition and who controlled Desert Springs  
17 Financial as its managing member. Shin further pointed out that  
18 on the other side of the purported loan transaction was Murray's  
19 son Mitchell - who also qualified as an insider under the Code.  
20 Shin additionally noted that Murray executed the loan documents  
21 roughly eight months after the loan transaction supposedly was  
22 entered into.

23           While Shin did not point it out in her objection, it also  
24 seems odd that the alleged loan apparently went into default  
25 roughly 12 days after the parties got around to documenting it.  
26 On its face, the note dated January 16, 2014 provided for the  
27 first annual interest payment of \$36,000 to be made on January  
28 23, 2014 - and provided for a five day grace period before the

1 nonpayment of interest became an event of default. The statement  
2 of indebtedness attached to the proof of claim indicates that  
3 Desert Springs Financial never made the the January 23, 2014  
4 interest payment or any of the other annual interest payments due  
5 under the note. It additionally seems peculiar that the  
6 statement of indebtedness charged Desert Springs Financial for 31  
7 months of prepetition interest at the default interest rate, when  
8 there were only 28 months between the first interest payment  
9 default and the date of Desert Springs Financial's petition.<sup>3</sup>

10 Instead of focusing on the loan documents, Shin focused on  
11 Desert Springs Financial's books and records. She claimed to  
12 have reviewed the company's books and records between 2009 and  
13 March 2014 and opined based on that review that there was no  
14 evidence in those books and records of any loan from Mitchell to  
15 Desert Springs Financial. Shin also characterized as suspicious  
16 Desert Springs Financial's inconsistent listing of the company's  
17 debts to Mitchell in its initial and amended bankruptcy  
18 schedules. None of the variously scheduled amounts came anywhere  
19 near the amount of the \$600,000 note.

20 In his response to Shin's claim objection, Mitchell noted  
21 that, while Shin might dispute that he was the source of the  
22 \$600,000, there was no dispute regarding the existence of the  
23 \$600,000 or the use of those funds in May 2013 to pay off a

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24  
25 <sup>3</sup> There is yet another curiosity in the note: one note  
26 provision identifies interest payment dates as annual events,  
27 whereas another note provision requires the borrower to make  
28 "consecutive monthly installments" on each "Interest Payment  
Date." Presumably, a business entity executing bona fide loan  
documents would be concerned about the note's apparent  
inconsistency regarding when interest payments were due.

1 \$600,000 loan that Desert Springs Financial owed to Shin. As  
2 Mitchell explained, Desert Springs Financial paid Shin the  
3 \$600,000 in May 2013 to prevent Shin from levying on a writ of  
4 attachment she had obtained from the state court. Shin has not  
5 disputed Desert Springs Financial's payment of the \$600,000 to  
6 her for this purpose.

7 More importantly for purposes of this appeal, Mitchell  
8 asserted that his proof of claim was filed in compliance with the  
9 applicable bankruptcy rules, so his claim was entitled to a  
10 presumption as to its validity and amount under Rule 3001(f).  
11 According to Mitchell, nothing in Shin's claim objection or in  
12 the declarations accompanying her claim objection was sufficient  
13 to rebut this presumption.

14 Mitchell contended that most of the contents of the claim  
15 objection declarations was really argument, or lacked a  
16 foundation as to the declarant's personal knowledge, or both. In  
17 furtherance of this contention, Mitchell filed evidentiary  
18 objections at the same time he filed his claim objection  
19 response. In relevant part, Mitchell challenged paragraph six of  
20 Shin's declaration, which stated:

21 From the Superior Court litigation against [Murray] and  
22 DSF, I have copies of DSF's books, from 2009 through  
23 3/5/14 (date the supposed DOT was recorded). I have  
24 reviewed those DSF books and records thoroughly, and  
those DSF books and records do **NOT** show that Mitchell  
Altman lent **ANY** money to DSF.

25 Shin Decl. (Sept. 13, 2016) at ¶ 6 (Emphasis in original).  
26 Mitchell maintained that paragraph six was inadmissible based on  
27 the following grounds: "Lack of personal knowledge, lack of  
28 foundation, argument. Fed.R.Evid.602. Not the best evidence as

1 to contents of documents. Fed.R.Evid.1002. Inadmissible  
2 hearsay. Fed.R.Evid.802. Improper opinion testimony.  
3 Fed.R.Evid.701." Evid. Objections (Oct. 4, 2016).

4 Mitchell's response to the claim objection did not contain  
5 much in the way of evidence. Instead, Mitchell seemed content,  
6 for the most part, to rely upon the prima facie validity of his  
7 proof of claim. Mitchell did submit a half-page declaration in  
8 support of his response. In it, Mitchell stated that: (1) he  
9 loaned Desert Springs Financial \$600,000 so that the company  
10 could pay off Shin's \$600,000 loan; (2) even before the loan was  
11 documented, he made the loan on the understanding that he would  
12 be given a deed of trust securing the loan against Desert Springs  
13 Financial's property; and (3) he does not know why it took Desert  
14 Springs Financial's counsel eight months to document the  
15 transaction. The only other evidence Mitchell presented with his  
16 claim objection response pertained to the fact that the \$600,000  
17 was paid to Shin to prevent her from levying on the writ of  
18 attachment she had obtained in that amount.

19 Shin filed a reply brief and a response to Mitchell's  
20 evidentiary objections. In an attempt to fend off Mitchell's  
21 best evidence objection regarding paragraph six of her  
22 declaration, Shin filed a supplemental declaration and attached  
23 to it what she represented were excerpts from Desert Springs  
24 Financial's books and records. The excerpts include what appears  
25 to be a page from Desert Springs Financial's general ledger. Two  
26 ledger entries dated May 6, 2013 are of particular interest.  
27 From the parties' other evidence, on or about that date, Desert  
28 Springs Financial repaid Shin's \$600,000 loan. The first ledger

1 entry shows a debit to Murray's capital account in the amount of  
2 \$600,000 and the second ledger entry shows a credit to Shin's  
3 loan payable account in the same amount.

4 The same general ledger page on which these two ledger  
5 entries appear contains other ledger entries dated between April  
6 16, 2013 and May 23, 2013. None of these ledger entries show any  
7 ledger activity on a loan payable account in Mitchell's name.

8 In fact, the Desert Springs Financial Balance Sheet pages  
9 accompanying Shin's supplemental declaration reflect that, as of  
10 September 25, 2013, Desert Springs Financial had no loan payable  
11 account at all for Mitchell.

12 At the hearing on the claim objection, the bankruptcy court  
13 sustained most of Mitchell's evidentiary objections. Concerning  
14 paragraph 6 of Shin's declaration, the bankruptcy court sustained  
15 the objection based on the best evidence rule and on a lack of  
16 foundation. Shin argued that her supplemental declaration, with  
17 the excerpts from Desert Springs Financial's books and records  
18 attached, cured any evidentiary defect in her original  
19 submission. The bankruptcy court disagreed. As a threshold  
20 matter, the bankruptcy court commented that there was no evidence  
21 presented that Shin was an accountant or otherwise qualified to  
22 explain what the books and records demonstrated in terms of the  
23 May 2013 funding of Shin's loan repayment. The court also  
24 reasoned that the books and records excerpts did not include any  
25 recent financials from around the time Desert Springs Financial  
26 filed its bankruptcy petition. According to the court, the  
27 assets and liabilities of the company at the time the petition  
28 was filed (in May 2016) were critical and how the company

1 originally booked the transaction in May 2013 was not. The  
2 following quote is representative of the bankruptcy court's  
3 reasoning:

4 All right. I think we are arguing paragraph 6 [of the  
5 Shin declaration]. And the Court's looked at the  
6 attachments to the exhibits to Ms. Shin's supplemental  
7 declaration and the Court's ruling [sustaining the  
8 evidentiary objection to paragraph 6] stands. I think  
9 that what's attached is a partial excerpt from the  
books and records balance sheets going back almost --  
actually over three years and I think what counts is  
what the financial -- what the books and records showed  
on the petition date, not what they showed three years  
ago.

10 Hr'g Tr. (Oct. 18, 2016) at 6:7-15; see also id. at 19:4-7 ("The  
11 records that are attached are actually out-of-date records. They  
12 show what might have been the state of affairs in 2013, but they  
13 don't show the state of affairs on the petition date.").

14 Apparently, the court believed that, even if the funding of the  
15 \$600,000 was not originally conceived as a loan from Mitchell to  
16 Desert Springs Financial in May 2013, it might have been re-  
17 conceived as that at some point before Desert Springs Financial's  
18 bankruptcy filing. As the bankruptcy court reasoned, because of  
19 the limited time period covered by Shin's books and records  
20 excerpts, they did not show whether "Murray Altman may have  
21 gifted that loan to his son between 2013 and the petition date."

22 Hr'g Tr. (Oct. 18, 2016) at 7:10-12.

23 On the merits, the bankruptcy court held that Mitchell was  
24 entitled to the benefit of the Rule 3001(f) presumption and that,  
25 to rebut this presumption, Shin had the burden of presenting  
26 evidence with a "probative force . . . equal to or greater than  
27 the probative force of the proof of claim." Hr'g Tr. (Oct. 18,  
28 2016) at 18:6-8. The court explained that the evidence Shin



1 presented in support of her claim objection - including the "out-  
2 of-date" books and records excerpts - was insufficient to  
3 overcome the Rule 3001(f) presumption. According to the court,  
4 in light of Shin's failure to overcome the presumption, it was  
5 unnecessary to reach the larger burden of proof issues, which  
6 would have required Mitchell to prove the validity of his claim  
7 by a preponderance of the evidence.

8 The bankruptcy court entered its order overruling Shin's  
9 claim objection on October 20, 2016, and Shin timely appealed.

### 10 JURISDICTION

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
12 §§ 1334 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C.  
13 § 158, subject to the mootness discussion set forth immediately  
14 below.

15 While this appeal has been pending, the bankruptcy court  
16 entered an order dismissing the underlying bankruptcy case. In  
17 light of the case dismissal, we must consider whether this appeal  
18 is moot. If we no longer can grant any meaningful relief to Shin  
19 even if she were to prevail on appeal, this appeal must be  
20 dismissed as moot. Ellis v. Yu (In re Ellis), 523 B.R. 673, 676  
21 (9th Cir. BAP 2014) (citing Pitts v. Terrible Herbst, Inc., 653  
22 F.3d 1081, 1087 (9th Cir. 2011)).

23 It is debatable whether case dismissal can render moot an  
24 appeal from an order allowing or disallowing a claim. Compare  
25 Bevan v. Social Commc'ns Sites, LLC (In re Bevan), 327 F.3d 994,  
26 996-97 (9th Cir. 2003) (appeal from order overruling claim  
27 objection not moot because of potential preclusive effect that  
28 order might have in future litigation), with Center For

1 Biological Diversity v. Lohn, 511 F.3d 960, 965 (9th Cir. 2007)  
2 (citing Pilate v. Burrell (In re Burrell), 415 F.3d 994, 998-99  
3 (9th Cir. 2005)) (potential preclusive effect of the order on  
4 appeal did not prevent the appeal from that order from becoming  
5 moot).

6 We do not need to resolve this debate. Even if case  
7 dismissal sometimes can render moot an appeal from an order  
8 overruling a claim objection, this appeal has not yet become moot  
9 because the time to appeal the case dismissal order has not yet  
10 run. As long as the case dismissal order potentially is subject  
11 to reversal on appeal, effective and meaningful relief for Shin  
12 in her current appeal is not foreclosed.

13 The time to appeal the case dismissal order has not yet run  
14 because that order is not yet final. The case dismissal order  
15 explicitly reserved for future hearing, on a date certain, the  
16 issue of whether its dismissal of the current bankruptcy case  
17 should include a 180-day bar to the filing of a new bankruptcy  
18 case. Requests for restrictions on future bankruptcy filings  
19 typically are heard and determined as part of the case dismissal  
20 proceedings, and rulings granting such restrictions typically are  
21 appealed as part of the appellate review of the case dismissal  
22 order. See Ellsworth v. Lifescape Med. Assocs., P.C. (In re  
23 Ellsworth), 455 B.R. 904, 922 (9th Cir. BAP 2011) (stating that,  
24 once the bankruptcy court has determined that cause for dismissal  
25 exists, court should then determine whether any sort of  
26 restriction on future bankruptcy filings should be imposed).

27 More importantly, a bankruptcy court's order is not final  
28 and immediately appealable unless it fully adjudicated the issues

1 at bar and clearly evidenced "the judge's intent that it be the  
2 court's final act in the matter." Slimick v. Silva (In re  
3 Slimick), 928 F.2d 304, 307 & n.1 (9th Cir. 1990). By expressly  
4 reserving the 180-day bar issue for future determination, the  
5 bankruptcy court manifested its intent that the dismissal order  
6 was **not** its final act in the matter. Consequently, the order  
7 dismissing Desert Springs Financial's bankruptcy case has not yet  
8 become final and appealable, and the time to appeal has not yet  
9 run. Id.

#### 10 **ISSUES**

- 11 1. Was Mitchell's proof of claim sufficiently compliant with  
12 the Rules to qualify for the Rule 3001(f) presumption?
- 13 2. Did Shin present sufficient evidence in support of her claim  
14 objection to overcome the presumptive validity of Mitchell's  
15 claim?

#### 16 **STANDARDS OF REVIEW**

17 Claims objection appeals can involve both legal and factual  
18 issues. We review the legal issues de novo and the factual  
19 issues for clear error. See Veal v. Am. Home Mortg. Servicing,  
20 Inc. (In re Veal), 450 B.R. 897, 918 (9th Cir. BAP 2011).

21 Whether the bankruptcy court identified and applied the  
22 correct burden of proof is a question of law we review de novo.  
23 Margulies Law Firm v. Placide (In re Placide), 459 B.R. 64, 71  
24 (9th Cir. BAP 2011) (citing People's Ins. Co. of China v. M/V  
25 Damodar Tanabe, 903 F.2d 675, 682 (9th Cir. 1990)). On the other  
26 hand, "[w]hether evidence is sufficient to rebut an evidentiary  
27 presumption is a question of fact reviewed for clear error."  
28 Garner v. Shier (In re Garner), 246 B.R. 617, 619 (9th Cir. BAP

1 2000) (citing Sierra Steel, Inc. v. Totten Tubes, Inc. (In re  
2 Sierra Steel, Inc.), 96 B.R. 275, 277 (9th Cir. BAP 1989)).

3 While interpreting the Rules to determine what is required  
4 to file a procedurally compliant proof of claim is a question of  
5 law, whether a particular proof of claim has been executed and  
6 filed in compliance with those Rules is a question of fact  
7 reviewed for clear error. Id. (citing Ashford v. Consolidated  
8 Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222,  
9 225 (9th Cir. BAP 1995)).

10 "A bankruptcy court's factual findings are not clearly  
11 erroneous unless they are illogical, implausible or without  
12 support in the record." Ezra v. Seror (In re Ezra), 537 B.R.  
13 924, 929 (9th Cir. BAP 2015) (citing Retz v. Samson (In re Retz),  
14 606 F.3d 1189, 1196 (9th Cir. 2010)).

## 15 DISCUSSION

### 16 1. General Legal Standards Applicable To Claims Litigation

17 We travel a well-worn path in stating the respective burdens  
18 and obligations of the parties in claims litigation.  
19 Nonetheless, because this appeal hinges on the appropriate  
20 allocation and application of these burdens and obligations, we  
21 once again state them in detail.

22 A claim is deemed allowed absent objection from a party in  
23 interest, § 502(a), and a procedurally compliant proof of claim  
24 is prima facie evidence of the validity and amount of the claim.  
25 Rule 3001(f).

26 A mere formal claim objection, without evidence, cannot  
27 defeat a claim presumed to be valid under Rule 3001(f). Lundell  
28 v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th

1 Cir. 2000). To overcome the Rule 3001(f) presumption, the  
2 objecting party must present evidence tending to rebut the claim  
3 - evidence with probative force equal to that of the creditor's  
4 proof of claim. Id. As a practical matter, "the objector must  
5 produce evidence which, if believed, would refute at least one of  
6 the allegations that is essential to the claim's legal  
7 sufficiency." Id. at 1040 (quoting In re Allegheny Int'l, Inc.,  
8 954 F.2d 167, 173-74 (3d Cir. 1992)) (emphasis omitted).

9 If the objecting party successfully rebuts the presumption,  
10 the claimant bears the burden of proof to show by a preponderance  
11 of the evidence that its claim is valid, and "the ultimate burden  
12 of persuasion remains at all times upon the claimant." Id. at  
13 1039.

14 But if the objecting party does not rebut the presumption,  
15 the claims litigation ends there; the claim should be allowed  
16 without the claimant bearing any further burden to demonstrate  
17 the validity of its claim. Id. at 1041.

## 18 **2. Applicability of Rule 3001(f) Presumption**

19 Rule 3001(f) states: "A proof of claim **executed and filed in**  
20 **accordance with these rules** shall constitute prima facie evidence  
21 of the validity and amount of the claim." (Emphasis added.) In  
22 turn, other parts of Rule 3001 set forth the various requirements  
23 for a procedurally compliant proof of claim. Subdivision (a) of  
24 Rule 3001 requires proofs of claim to be in writing and to  
25 substantially conform to the Official Form (currently, Official  
26 Form 410). With exceptions not relevant here, subdivision (b) of  
27 Rule 3001 specifies that a proof of claim should be signed by the  
28 creditor or its authorized agent. Meanwhile, subdivision (c)(1)

1 required Mitchell to attach to his proof of claim the writings on  
2 which his claim and his security interest were based - the note  
3 and the deed of trust - and subdivision (d) required Mitchell to  
4 submit with his proof of claim evidence that his security  
5 interest had been perfected.

6 On its face, Mitchell's proof of claim satisfied all of the  
7 above requirements. While there are additional requirements for  
8 claims arising from open-end or revolving consumer credit  
9 agreements, see Rule 3001(c)(3), and for claims against  
10 individual debtors, see Rule 3001(c)(2), none of those special  
11 requirements apply here.

12 Shin argues that Mitchell's proof of claim was not  
13 procedurally compliant, but most of her arguments make no sense.  
14 Shin contends that the proof of claim should have been signed by  
15 Mitchell, should have been signed by someone with personal  
16 knowledge of the original loan transaction and should have been  
17 accompanied by a supporting declaration signed under penalty of  
18 perjury and by foundational evidence authenticating  
19 the note and the deed of trust. None of these items are  
20 identified in the Rules as proof of claim requirements, nor has  
21 Shin cited us any authority making them requirements. Of  
22 particular note, Mitchell's proof of claim was signed by the same  
23 attorney who has been representing Mitchell throughout this claim  
24 dispute, and in the proof of claim's signature block, Mitchell's  
25 attorney checked the appropriate box on the Official Form  
26 reflecting that he is "the creditor's attorney or authorized  
27 agent."

28 Most of the other points Shin raises in an attempt to

1 demonstrate that Mitchell was not entitled to the Rule 3001(f)  
2 presumption more properly pertain to the issue of whether there  
3 was adequate evidence in the record to rebut the presumption.

4       There is, however, one aspect of Shin's challenge to the  
5 application of Rule 3001(f) that we must consider more carefully.  
6 In essence, Shin argues that, because Murray and Mitchell both  
7 were insiders and because Murray was the managing member of  
8 Desert Springs Financial, Rule 3001(f) should not apply at all to  
9 Mitchell's proof of claim. Put another way, Shin asserts that,  
10 in light of Supreme Court and Ninth Circuit authority calling for  
11 heightened scrutiny of insider transactions with debtor business  
12 entities, the Rule 3001(f) presumption should not apply at all to  
13 claims arising from insider transactions. Shin relies upon  
14 Pepper v. Litton, 308 U.S. 295 (1939), and Brewer v. Erwin &  
15 Erwin, P.C. (In re Marquam Investment Corp.), 942 F.2d 1462 (9th  
16 Cir. 1991). These two cases stand for the general proposition  
17 that, in bankruptcy claims litigation, insider transactions must  
18 be "subjected to rigorous scrutiny" and the insider claimant has  
19 the additional burden of proving "the good faith of the  
20 transaction" and "its inherent fairness." Pepper, 308 U.S. at  
21 306; accord, Marquam Inv. Corp., 942 F.2d at 1465.

22       Even so, nothing on the face of Rule 3001(f) (or on the face  
23 of Pepper or Marquam) restricts insider creditors from the  
24 benefit of the presumption, and the circuit decisions that have  
25 specifically considered the relationship between insider claims  
26 and Rule 3001(f) have concluded that the presumption still  
27 applies. More specifically, the additional burden under Pepper  
28 and Marquam comes into play only if the proof of claim does not

1 procedurally qualify for the presumption or if the objecting  
2 party successfully rebuts the presumption. See, e.g., Stancill  
3 v. Harford Sands Inc. (In re Harford Sands Inc.), 372 F.3d 637,  
4 640-41 (4th Cir. 2004); McGee v. O'Connor (In re O'Connor), 153  
5 F.3d 258, 260-61 (5th Cir. 1998).

6 Harford Sands' and O'Connor's treatment of the  
7 interrelationship between Rule 3001(f) and the Pepper/Marquam  
8 rigorous scrutiny standard makes sense. Congress obviously knew  
9 how to qualify and restrict the claims of insiders when it wanted  
10 to do so. See § 502(b)(4). And yet nothing in the Code or Rules  
11 suggests that insiders should not have the benefit of the Rule  
12 3001(f) presumption. In the absence of a Congressional  
13 directive, or some explicit qualifying language in the Rules, we  
14 decline Shin's invitation to create our own insider exception to  
15 the Rule 3001(f) presumption based on the general principles of  
16 equity Pepper and Marquam relied upon. To engage in this type of  
17 equitable revision of the Code or the Rules would invite  
18 reversal. See, e.g., Law v. Siegel, 134 S. Ct. 1188, 1196-97  
19 (2014) (reversing bankruptcy court's order surcharging exemption  
20 on equitable grounds not set forth in Code); Gardenhire v. IRS  
21 (In re Gardenhire), 209 F.3d 1145, 1152 (9th Cir. 2000)  
22 (reversing Panel decision affirming allowance of an untimely  
23 proof of claim because Panel impermissibly extended on equitable  
24 tolling grounds claim filing deadline specified in Rules).

25 Thus, the bankruptcy court did not err in applying the Rule  
26 3001(f) presumption to Mitchell's claim.

### 27 **3. Evidence In The Record Countering the Presumption**

28 Having concluded that the Rule 3001(f) presumption applied,



1 we next must consider whether Shin rebutted the presumption of  
2 validity arising from Mitchell's procedurally compliant proof of  
3 claim. The undisputed facts in the record establish that:

4 (1) the debtor LLC's managing member executed the note and deed  
5 of trust in favor of his son roughly eight months after the loan  
6 transaction supposedly occurred; (2) the note and the statement  
7 of indebtedness attached to the proof of claim contained errors  
8 and/or irregularities; (3) the debtor's general ledger entries at  
9 the time the Shin loan was repaid included a \$600,000 credit to  
10 the Shin loan payable account and a \$600,000 debit to the Murray  
11 capital account; and (4) the same books and records showing the  
12 repayment of the Shin loan do not show any Mitchell loan payable  
13 account or any activity related to such an account.<sup>4</sup>

14 Taken together, the above-referenced undisputed facts  
15 potentially tend to show that Mitchell and Murray, after the  
16 transaction occurred, attempted to re-label what actually was a  
17 capital investment by Murray as a secured loan from Mitchell in  
18 an attempt to keep Desert Springs Financial's assets away from  
19 its creditors. These facts were "some evidence" that Murray and  
20 Mitchell fabricated documentation for a nonexistent loan in a  
21

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22 <sup>4</sup> Both parties at oral argument claimed that the bankruptcy  
23 court did not consider the books and records Shin presented with  
24 her reply brief. This claim is incorrect. The bankruptcy  
25 court's evidentiary rulings only addressed Shin's original  
26 declaration; nothing in the record suggests that the bankruptcy  
27 court excluded any part of Shin's supplemental declaration or any  
28 of the exhibits attached to the supplemental declaration. To the  
contrary, the bankruptcy court specifically stated that it had  
considered the books and records Shin presented and specifically  
addressed those documents in the process of explaining its  
reasoning for overruling Shin's claim objection.

1 manner that is reminiscent of the sham transaction described in  
2 Pepper, 308 U.S. at 297-301. And we conclude that this evidence  
3 was of equal probative force to the proof of claim and its  
4 attachments (including the note and the deed of trust).

5 The bankruptcy court's determination that the above-  
6 referenced facts were insufficient to rebut the presumption of  
7 validity arising from Mitchell's proof of claim was illogical and  
8 hence clearly erroneous. The bankruptcy court relied upon its  
9 own speculation that Murray and Mitchell might have agreed to  
10 change the nature of the transaction after it occurred. (This  
11 theory is inconsistent with the loan documentation and with  
12 Mitchell's declaration, in which he insisted that the transaction  
13 always was conceived of as a secured loan from him to Desert  
14 Springs Financial.) More to the point, the bankruptcy court's  
15 reliance on this theory begs the question as to whether Shin  
16 presented sufficient evidence to rebut the presumption of  
17 validity - a question we have now answered in the affirmative.

18 Because we have determined that the bankruptcy court's order  
19 overruling Shin's claim objection must be vacated as it was based  
20 on a clearly erroneous factual finding, we do not need to  
21 consider any of the bankruptcy court's evidentiary rulings  
22 against Shin.

#### 23 **4. Proceedings On Remand**

24 We acknowledge that the bankruptcy court has entered an  
25 order dismissing Desert Springs Financial's bankruptcy case. As  
26 a result, the bankruptcy court on remand might determine that  
27 there is no need (or continuing jurisdiction) to address further  
28 Shin's claim objection unless an appeal is taken from the case

1 dismissal order and unless that order is reversed on appeal.

2       Should there be any future claim objection proceedings  
3 following remand, in light of Shin's rebuttal of Mitchell's prima  
4 facie case, Mitchell would bear the burden of proof to establish  
5 the validity of his claim by a preponderance of the evidence,  
6 Lundell, 223 F.3d at 1039, plus Mitchell would bear the  
7 additional burden of showing both good faith and the inherent  
8 fairness of the transaction. In re Marquam Inv. Corp., 942 F.2d  
9 at 1465; accord In re Harford Sands Inc., 372 F.3d at 640-41; In  
10 re O'Connor, 153 F.3d at 260-61.

11       If further claim objection proceedings do take place after  
12 remand, unless the parties agree otherwise, the bankruptcy court  
13 likely would need to reopen the record and likely would need to  
14 hold an evidentiary hearing to resolve the claim objection. We  
15 understand why the bankruptcy court previously did not hold an  
16 evidentiary hearing. Neither party argued that an evidentiary  
17 hearing was necessary. Instead, both parties asserted that they  
18 should prevail without the need for an evidentiary hearing. The  
19 bankruptcy court largely agreed with Mitchell's position, ruling  
20 that Shin had not presented sufficient evidence to rebut the  
21 presumption of validity of Mitchell's claim, so no further  
22 proceedings (evidentiary or otherwise) were necessary. In  
23 addition, Shin has not argued on appeal that the bankruptcy court  
24 should have held an evidentiary hearing.

25       Sometimes, claim objections can be so lacking in merit, and  
26 in evidence presented, that an evidentiary hearing would not be  
27 needed to properly dispose of them. Compare In re Garner, 246  
28 B.R. at 623-25, with Reliance Steel & Aluminum Co. v. Locklin (In

1 re Locklin), 2015 WL 8267995, at \*6-7 & n.4 (Mem. Dec.) (9th Cir.  
2 BAP Dec. 7, 2015). This is not one of those cases. Here, the  
3 bankruptcy court overruled Shin's claim objection without holding  
4 an evidentiary hearing based on the incorrect premise that Shin  
5 had not presented sufficient evidence to overcome the presumption  
6 of validity of Mitchell's claim. On remand, the bankruptcy court  
7 will need to reevaluate the necessity of an evidentiary hearing  
8 in light of our holding.

9 **CONCLUSION**

10 For the reasons set forth above, the bankruptcy court's  
11 order overruling Shin's claim objection is VACATED, and this  
12 matter is REMANDED for further proceedings consistent with this  
13 decision.