NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: DARLYNE LUCCHESI, Debtor.	BAP No. CC-25-1019-NLC Bk. No.8:24-bk-12353-MH
DARLYNE LUCCHESI, Appellant, v. U.S. BANK N.A., as Trustee, successor in interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR4 Trust, Appellee.	**MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the Central District of California
Mark D. Houle, Bankruptcy Judge, Presiding

Before: NIEMANN, LAFFERTY, and CORBIT, 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.

INTRODUCTION

Chapter 13[1] debtor Darlyne Lucchesi ("Debtor") appeals the bankruptcy court's order granting U.S. Bank N.A., as Trustee, ("Lender") in rem relief from the automatic stay. Lender holds a deed of trust on Debtor's residence (the "Property"). Relief was granted under § 362(d)(1) and (4) on the basis of multiple bankruptcy cases filed by Debtor affecting the Property. Debtor also appeals the order denying her subsequent motion to vacate the stay relief order. Because the bankruptcy court did not abuse its discretion in granting Lender in rem relief from the automatic stay or in denying Debtor's motion to vacate, we AFFIRM.

FACTS

A. Loan and Defaults

In March 2006, Debtor refinanced her mortgage on the Property with a loan from Countrywide Home Loans, Inc. in the original principal amount of $1 million (the "Loan"). As security for the Loan, Debtor executed a Deed of Trust for the Property (the "DOT"). The Loan and the beneficial interest in the DOT were subsequently transferred in 2012, 2014, and 2018, with Lender being the current holder.

About a year and a half after refinancing, Debtor defaulted on her payment obligations under the Loan. Debtor failed to make the payment

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

due on September 1, 2007, and has not made any payment on the Loan since August 2007.

In October 2007, Countrywide mailed to Debtor a letter entitled Notice of Default and Acceleration (the "Demand Letter"). The Demand Letter gave Debtor 30 days to remit the past due amounts before foreclosure proceedings would be initiated. The default was not cured, and a Notice of Default was recorded in July 2008. The default went uncured, and a Notice of Trustee's Sale was recorded. A few months later, Lender's predecessor rescinded the Notice of Default.

A second Notice of Default was recorded four years later, which was also rescinded several months later.

B. First, Second, and Third Bankruptcy Cases

Debtor filed a chapter 7 bankruptcy petition in March 2015. Debtor included the debt to Lender in her bankruptcy schedules, with a disputed balance of $1,247,261.00.[2] An order of discharge was entered in June 2015 (the "Discharge").

[2] The schedules from Debtor's 2015 bankruptcy case were not provided as part of the excerpts of record. However, the issue of whether the Property was included in Debtor's prior bankruptcy cases was raised by Debtor at oral argument. Debtor argued that certain prior bankruptcy cases did not involve the Property but, instead, a separate rental property. We exercise our discretion to take judicial notice of schedules electronically filed in Debtor's prior bankruptcy cases. *See Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (Courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") (citation omitted). The Property and Loan were scheduled in each of Debtor's bankruptcy cases, except the second bankruptcy case discussed *infra* in which no schedules were filed.

About three months later, a third Notice of Default was recorded, followed by another Notice of Trustee's Sale.

Debtor filed a chapter 13 bankruptcy petition in April 2016 on the same day that the new Notice of Trustee's Sale was recorded. Debtor's second bankruptcy case was dismissed about a week later for Debtor's failure to file required case commencement documents.

Debtor filed another chapter 13 bankruptcy petition roughly a month later. Debtor's third bankruptcy case was converted to chapter 11 upon a motion by Debtor's newly retained bankruptcy counsel. The third bankruptcy case was dismissed in February 2017, after a motion by the U.S. Trustee under § 1112(b) for failure to comply with reporting requirements.

C. 2018 State Court Action and Unsuccessful Appeal

In October 2018, Debtor filed a lawsuit against Lender and related parties in California state court (the "State Court Action"). Through the State Court Action, Debtor sought to cancel the DOT and prevent all further efforts to foreclose on the Property. A Judgment of Dismissal with Prejudice was entered in favor of all defendants (the "State Court Judgment") in August 2019.

Debtor appealed the State Court Judgment. The court of appeal issued an opinion affirming the State Court Judgment (the "Appellate Decision"). The Appellate Decision detailed why each of Debtor's challenges to the DOT under California state law was without merit.

D. Fourth, Fifth, and Current Sixth Bankruptcy Case

In November 2022—after final oral argument before the court of appeal but before issuance of the Appellate Decision—Debtor filed another chapter 13 bankruptcy petition. Debtor's fourth bankruptcy case was dismissed three months later, following the initial hearing on Debtor's proposed chapter 13 plan. Debtor filed motions to reconsider and vacate the dismissal, which were denied by the bankruptcy court.

Debtor filed another chapter 13 bankruptcy petition two months after dismissal of her fourth bankruptcy case. Debtor's fifth bankruptcy case was dismissed four months later, in July 2023, with a 180-day bar to refiling.

Additional Notices of Default were recorded, and Lender issued another Notice of Trustee's Sale of the Property.

In July 2024, Debtor recorded the October 2007 Demand Letter. Debtor later indicated she did so to establish the alleged maturity date of the accelerated debt.

Debtor filed her sixth and current chapter 13 bankruptcy case in September 2024, the day prior to the scheduled trustee's sale of the Property.

E. Motion for Relief from Stay

In the current case, Lender filed a motion for relief from stay roughly a month after the petition date (the "Motion"). The Motion sought relief pursuant to § 362(d)(1) and (4). Lender argued the sixth bankruptcy case

was filed in bad faith, in light of the other bankruptcy cases filed in which an interest in the Property was asserted.

Debtor, acting in pro per, filed three documents in response to the Motion: (1) a response using the form provided by the bankruptcy court; (2) a document captioned Adversary Action as Response to Motion for Relief from Stay; and (3) a complaint initiating an adversary proceeding against Lender and related parties (the "Adversary Proceeding"). The Adversary Proceeding challenged the presumption of bad faith asserted in the Motion[3] and also questioned the underlying enforceability of the DOT. Debtor argued the Loan was both subject to her Discharge from 2015 and had separately expired, by operation of law, in 2011. Debtor asserted the Loan had matured on November 16, 2007, the deadline provided in the Demand Letter, and that Lender's predecessor had only four years[4] from that date to bring a contract action to enforce the debt, after which the DOT was "extinguished." The complaint also cited California Civil Code ("Civil Code") §§ 880.030-882.020 as the authority for the proposition that the DOT was "automatically eliminated" ten years after acceleration. These same arguments had been previously raised, and rejected by the state trial and

[3] The complaint includes, among other things, an attempted challenge to the 180-day bar to refiling issued upon the dismissal of Debtor's fifth bankruptcy case.

[4] Debtor cited California Code of Civil Procedure § 337 for this four-year statute of limitations for actions based on written contracts.

appellate courts in the State Court Action. The Adversary Proceeding is still pending before the bankruptcy court.[5]

Lender filed a reply in support of the Motion. The reply emphasized Lender was seeking in rem relief, all elements for relief under § 362(d)(4) were present, and the Adversary Proceeding was further evidence that Debtor was "engaging in a scheme to delay, hinder, or defraud creditors."

F. Hearing on Motion and Motion to Vacate

At the hearing on the Motion, a newly retained attorney appeared on behalf of Debtor and noted Debtor filed a motion to withdraw the reference from the bankruptcy court the day before the hearing. The bankruptcy court noted that the withdrawal motion (1) was not properly filed, and (2) did not prevent the calendared matters from going forward even if it had been properly filed.

In opposition to the Motion, Debtor noted her recordation of the Demand Letter a few months earlier. Debtor argued the Demand Letter changed the "final maturity" of the Loan to November 17, 2007 upon acceleration.[6] Lender then had, per Debtor's argument, a maximum of ten

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[5] We exercise our discretion to take judicial notice of the docket and certain electronic filings in the Adversary Proceeding. *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003). While the Adversary Proceeding is still pending, Lender was dismissed with prejudice from the Adversary Proceeding in December 2025. Debtor moved for reconsideration of that order, which was denied in February 2026. Debtor filed a notice of appeal as to both orders and that separate appeal is pending before the Panel, BAP No. 26-1063.

[6] The bankruptcy court asked Lender's counsel whether Lender contested the Loan was accelerated. Lender's counsel confirmed on the record that Lender did not

years from that date, under Civil Code § 882.020(a)(1), to enforce the debt, after which the DOT expired.[7] The bankruptcy court asked for any authority supporting this position. Debtor's counsel had none, but Debtor herself asserted "all bankers know this." Given the lack of legal authority, the bankruptcy court ruled in Lender's favor, finding Lender established a colorable claim in support of its motion for relief from stay. The court emphasized that relief from stay is a summary proceeding, not a final ruling on the underlying claims asserted. Under § 362(g), the moving party has the burden of proof on the issue of the debtor's equity in the Property, and the debtor has the burden of proof on all other issues.

The bankruptcy court then found Debtor's multiple prior bankruptcy filings were part of a scheme to hinder, delay or defraud the creditor. That finding satisfied the elements of § 362(d)(4)(B), making relief appropriate. Finding the pattern of behavior "fairly egregious," the bankruptcy court also waived the 14-day stay of the order for relief otherwise applicable under Rule 4001. A written order granting the Motion was subsequently entered (the "Relief Order").

Thereafter Debtor, again proceeding in pro per, filed a motion asking the bankruptcy court to vacate the Relief Order under Civil Rule 60(b) (the "Motion to Vacate"). The Motion to Vacate reiterated the arguments made

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contest the acceleration.

[7] Debtor's counsel acknowledged at the hearing that the maturity date indicated in the DOT is 2046.

by Debtor at the hearing on the Motion. Lender filed an opposition to the Motion to Vacate. Debtor filed a reply alleging fraud, including forgery, by Lender, which were similar to fraud claims asserted by Debtor in the State Court Action. A day prior to the scheduled hearing, Debtor submitted a request for judicial notice.

At the hearing on the Motion to Vacate, the bankruptcy court rejected Debtor's request for judicial notice[8] as untimely.[9] The court also found there was no evidence submitted in support of the allegations of fraud.[10] As to the legal issue of the alleged expiration of the DOT, the bankruptcy court found, as argued in Lender's opposition, that the statutes cited by Debtor apply to judicial foreclosure and not to nonjudicial foreclosure pursuant to a deed of trust. The court asked Lender's counsel to prepare a proposed

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[8] Debtor argued in her opening brief that it was both a denial of due process and procedural error for the bankruptcy court to deny the request for judicial notice. She raised the same arguments as to the bankruptcy court's denial of a continuance of the hearing on the Motion to Vacate. We disagree. The request for judicial notice was untimely. As noted in the Order Denying Request for Continuance, the request for continuance was not warranted on the asserted basis of judicial efficiency. Further, the request for continuance was made after the close of briefing and three days before the scheduled hearing on the Motion to Vacate.

[9] Debtor has requested judicial notice of legislative history documents in Debtor's reply brief filed in this appeal. We, like the bankruptcy court, reject this request as untimely.

[10] Per Debtor's arguments at the hearing on the Motion to Vacate, the attempted request for judicial notice did not address the fraud allegations but rather the legislative history of the California statutes upon which Debtor relied. Therefore, the bankruptcy court's denial of the request for judicial notice as untimely would not have cured the lack of evidence submitted by Debtor on the issue of fraud by Lender.

order denying the Motion to Vacate, which was subsequently entered (the "Order Denying Motion to Vacate").

Debtor timely appealed the Relief Order and the Order Denying Motion to Vacate.

JURISDICTION

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

ISSUES

1. Did the bankruptcy court abuse its discretion in issuing the Relief Order?

2. Did the bankruptcy court abuse its discretion in denying the Motion to Vacate?

STANDARDS OF REVIEW

We review the bankruptcy court's order granting relief from stay under § 362(d)(1) and (4) for abuse of discretion. *Ellis v. Yu (In re Ellis)*, 523 B.R. 673, 677 (9th Cir. BAP 2014). We also review for abuse of discretion bankruptcy court orders denying motions to set aside orders or judgments under Civil Rule 60, made applicable by Rule 9024. *Tennant v. Rojas (In re Tennant)*, 318 B.R. 860, 866 (9th Cir. BAP 2004). A bankruptcy court abuses its discretion if it applies an incorrect legal standard or its factual findings are illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

A bankruptcy court's factual finding that a debtor acted with intent to hinder, delay, or defraud creditors is reviewed for clear error. *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997).

We may affirm on any ground fairly supported by the record. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999).

DISCUSSION

By this appeal, Debtor seeks far more than the reversal of the Relief Order. Debtor's arguments on appeal focus on Debtor's objections to Lender's claim. Debtor asks the Panel to "recognize" that the DOT is "extinguished as a matter of law." Debtor also asks the Panel to "direct corrective relief" including the expungement of the DOT and an injunction against any attempted foreclosure sale. Such relief is far beyond the scope of this appeal.[11]

A. The bankruptcy court did not abuse its discretion in finding Lender established a colorable claim in the Property.

A motion for relief from stay under § 362 is meant to be a summary proceeding. *Biggs v. Stovin (In re Luz Int'l, Ltd.)*, 219 B.R. 837, 841 (9th Cir. BAP 1998) (citing *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 31 (1st Cir. 1994)). "A proceeding to determine eligibility for relief from a stay only determines whether a creditor should be released from the stay in order to argue the merits in a separate proceeding." *Arkison v. Griffin (In re Griffin)*,

[11] Such relief is also precluded by the State Court Judgment. *See* nn.13 and 14 *infra*.

719 F.3d 1127, 1128 (9th Cir. 2013). "The validity of the claim or contract underlying the claim is not litigated during the hearing . . . . Thus, the state law governing contractual relationships is not considered in stay litigation." *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985). Given the limited nature of the relief obtained, a party seeking stay relief need only establish that it has a "colorable claim" to the property at issue. *Veal v. Am. Home Mortg. Servicing, Inc.* (*In re Veal)*, 450 B.R. 897, 914-15 (9th Cir. BAP 2011); *Luz Int'l, Ltd.*, 219 B.R. at 842.

At the hearing on the Motion, the bankruptcy court found Lender had a colorable claim to the Property. Lender presented evidence in the form of the note and DOT, and demonstrated that no payments had been made for more than 10 years. Debtor did not contest any of those points, but, instead, argued the DOT was no longer enforceable as a matter of law due to the acceleration of the debt upon default.[12] The bankruptcy court noted that the only burden the moving party has under § 362(g) is the debtor's equity in the property, and that issue was not disputed here. The bankruptcy court stated that Debtor's legal argument—the only defense asserted on the issue of whether Lender had a colorable claim—was

[12] In her opposition to the Motion, Debtor did challenge the chain of title arising from the transfer of the Loan between lenders. No evidence was submitted on this issue; just conclusory assertions. This argument was not revisited at oral argument before the bankruptcy court. Nor did Debtor contest the bankruptcy court's factual findings acknowledging Lender's standing in light of the note, DOT, and more than 10 years without payments.

incorrect, but, nevertheless, asked Debtor to direct the court to any authority Debtor believed supported her argument. Debtor's counsel conceded there was "not specifically" any such authority.

On appeal, Debtor argues Lender had no colorable claim because the note is time-barred (citing Cal. Com. Code § 3118(a)),[13] the power of sale is

[13] The argument on appeal that the note is time-barred is slightly different than Debtor's argument before the bankruptcy court. There, Debtor relied on the four-year statute of limitations in California Code of Civil Procedure ("CCP") § 337. On appeal, Debtor now relies on the six-year statute of limitations for promissory notes payable at a definite time under California Commercial Code § 3118 in conjunction with CCP § 360.5, which requires waivers of statutes of limitation to be in writing. In the State Court Action, Debtor cited a six-year statute of limitations under CCP § 336(a) (which is actually five years under that statute). However, whichever statute of limitations Debtor tried to bootstrap, her theory then relied upon the application of Civil Code § 2911, which provides "[a] lien is extinguished by the lapse of time within which, under the provisions of the Code of Civil Procedure, . . . [a]n action can be brought upon the principal obligation."

In the State Court Action, in response to the Motion, and also in this appeal, Debtor "alleged the statute of limitations to enforce the power of sale in the deed of trust had expired under Civil Code section 2911 and was unenforceable." Appellate Decision, November 30, 2022, at 2. The court of appeal held "[a]ppellate courts have uniformly rejected this argument, finding section 2911 does not apply to the power of sale." *Id.* As noted by both the court of appeal and bankruptcy court, Debtor is attempting to impose provisions that, as a matter of law, do not apply to a nonjudicial foreclosure under a voluntary deed of trust. The authorities cited by Debtor do not support the discrete propositions asserted. *See*, *e.g.*, *Kaichen's Metal Mart, Inc. v. Ferro Cast Co.*, 33 Cal. App. 4th 8 (1995) (challenge by junior creditor, under CCP § 337, to perpetual waiver of statute of limitations for enforcement of senior loan secured by business's personal property through a UCC financing statement); *Cadle Co. v. World Wide Hosp. Furniture, Inc.*, 144 Cal. App. 4th 504 (2006) (breach of promissory note and guaranty for business line of credit); *Guracar v. Student Loan Solutions, LLC*, 111 Cal. App. 5th 330 (2025) (enforcement of unsecured student loan debt); *In the Marriage of Walker*, 240 Cal. App. 4th 986 (2015) (division of proceeds from liquidation of marital property after bankruptcy by one spouse; no pages "999-1000" as cited).

extinguished (citing Civ. Code §§ 882.020-.030),[14] and the debt is discharged (citing §§ 362, 524).[15] These arguments go to disputed issues concerning the "validity of the claim or the contract underlying the claim" and, as such, do not effect Lender's colorable claim for relief under § 362. *Johnson*, 756 F.2d at 740. The State Court Judgment and Appellate Decision also undercut the sole basis for Debtor's argument that Lender did not hold a colorable claim against the Property. The bankruptcy court applied the correct legal standard for a colorable claim under § 362 and its factual findings are supported by the record. Debtor has failed to show an abuse of discretion on the part of the bankruptcy court in its finding that Lender had a colorable claim.

B. The bankruptcy court did not abuse its discretion in granting relief under § 362(d)(1) and (4).

Once a colorable claim for relief under § 362 has been established, the bankruptcy court must then consider the specific provision of § 362 under

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[14] As noted by the bankruptcy court at the hearing on the Motion, the crux of Debtor's position is the alleged extinguishment of the DOT, ten years after the acceleration of the debt, by operation of Civil Code § 882.020(a)(1). The Appellate Decision described this as the "backup argument." The court of appeal soundly rejected this theory noting the April 1, 2046 maturity date stated in the DOT controls and "the filing of a notice of default will not impact the statute of limitations on liens placed on a property with a mortgage." Appellate Decision, November 30, 2022, at 11 (citing *Schmidt v. Pearce*, 178 Cal. App. 4th 305, 316 (2009)).

[15] The Discharge did not eliminate the DOT or preclude in rem relief. *Johnson v. Home State Bank*, 501 U.S. 78, 80 (1991) ("Notwithstanding the discharge, the [secured creditor]'s right to proceed against [the debtor] in rem survived the Chapter 7 liquidation.").

which relief is sought. The Motion sought relief under § 362(d)(1) and (4). Section 362(d)(1) provides relief is granted "for cause" as determined by the bankruptcy court. Section 362(d)(1) provides nonexclusive examples of cause including lack of adequate protection of an interest in property. However, the bankruptcy court is afforded wide latitude in determining what constitutes "cause" for relief from stay, with such determination made on a case-by-case basis. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. BAP 2009). Bankruptcy courts have broad discretion to grant stay relief for cause, even where, as here, a debtor has initiated a related adversary proceeding. *See Ho v. Bank of Am. (In re Ho),* BAP No. CC-10-1363-MkPaD, 2011 WL 4485895, at *6 (9th Cir. BAP Aug. 9, 2011). The "cause" cited by Lender was Debtor's efforts to thwart Lender's attempts to foreclose on the Property through Debtor's multiple bankruptcy filings.

Section 362(d)(4), in turn, "permits the bankruptcy court to grant in rem relief from the automatic stay in order to address schemes using bankruptcy to thwart legitimate foreclosure efforts." *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC. (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (9th Cir. BAP 2012). Two factual scenarios indicative of such a scheme are noted in the statute:

> **(A)** transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property. Section 362(d)(4)(A) and (B). The Motion sought relief under § 362(d)(4)(B), in light of Debtor's five prior bankruptcy cases (four of which were dismissed shortly after filing). Relief under § 362(d)(4) has serious implications. If the order is properly recorded, in rem relief from the automatic stay is binding in any bankruptcy case filed for the next two years. *First Yorkshire Holdings*, 470 B.R. at 871; *see also* § 362(d)(20).

To grant relief under § 362(d)(4), the bankruptcy court must affirmatively find: (1) the bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, hinder, or defraud creditors; and (3) the scheme involved either (a) the transfer of an interest in real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. *First Yorkshire Holdings*, 470 B.R. at 870-71. The bankruptcy court found that Debtor's multiple bankruptcy filings were a scheme to hinder, delay, or defraud Lender.

Debtor did not contest that she had filed the multiple bankruptcies. Instead, Debtor's arguments went back to her alleged challenges to Lender's claim. Per Debtor, there could be no scheme to defraud Lender if Lender has no enforceable rights against the Property. In the words of Debtor's counsel before the bankruptcy court, "It's the Debtor's position that the scheme here is by the creditor." The bankruptcy court found this argument unpersuasive, particularly because Debtor provided no legal authority to support her interpretation of California law. Nor has Debtor

provided any such authority in this appeal. Debtor has failed to demonstrate any error by the bankruptcy court in its factual finding that, through her multiple bankruptcy filings, Debtor acted with intent to hinder, delay, or defraud Lender.

For these same reasons, Debtor has failed to show any abuse of discretion by the bankruptcy court in issuing the Relief Order.

C. The bankruptcy court did not abuse its discretion in denying the Motion to Vacate.

Debtor also appeals the Order Denying Motion to Vacate. The Motion to Vacate asked the bankruptcy court to vacate the Relief Order under Civil Rule 60(b)(1) and (b)(6), made applicable by Rule 9024. Lender notes, however, that the Motion to Vacate raises additional arguments that might fall under Civil Rule 60(b)(2) and (3). Civil Rule 60(b) allows the court, as pertinent here, to set aside an order for: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; or (6) any other reason that justifies relief.

Debtor's primary argument, both in the Motion to Vacate and on appeal to this Panel, is that the bankruptcy court misapplied California state law. Multiple courts have now told Debtor she is incorrect, as a matter of law, in her belief that the DOT is extinguished or otherwise unenforceable under California law.[16] The bankruptcy court denied the

[16] Copies of the State Court Judgment and the Appellate Decision were included

Motion to Vacate, adopting the arguments presented in the opposition, after finding that Debtor was merely rehashing the same arguments already presented. *Wall St. Plaza, LLC v. JSJF Corp. (In re JSJF Corp.)*, 344 B.R. 94, 103 (9th Cir. BAP 2006) ("[A] motion to reconsider may not be used to rehash the same arguments presented the first time or simply to express the opinion that the court was wrong."), *aff'd and remanded*, 277 F. App'x 718 (9th Cir. 2008). Here, as in *JSJF Corp.,* Debtor has raised no issues which were not, or could not have been, considered at the initial hearing on the Motion. Debtor has failed to show any mistake on the part of the bankruptcy court which would have warranted relief under Civil Rule 60(b)(1).

As to relief on the basis of "newly discovered evidence" under Civil Rule 60(b)(2), the Motion to Vacate vaguely referenced a forged note, fraudulent assignment, and unrecorded Substituted Trustee from August 30, 2024. To obtain relief under Civil Rule 60(b)(2), the movant must show that the "new" evidence: (1) existed at the time of the trial; (2) could not have been discovered through due diligence; and (3) was "of 'such magnitude that production of it earlier would have been likely to change the disposition of the case.'" *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1093 (9th Cir. 2003) (quoting *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A., Inc.*, 833 F.2d 208, 211 (9th Cir. 1987)). However, none of the items

in the request for judicial notice submitted by Lender in support of its opposition to the Motion to Vacate.

noted by Debtor qualify as newly discovered. In fact, Debtor made similar allegations in the State Court Action and the Adversary Proceeding. Evidence is not newly discovered under the Civil Rules if it was in the moving party's possession at the time of the original order. *Feature Reality*, 331 F.3d at 1093; *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n.6 (9th Cir. 1994).

Similarly, as to relief on the basis of fraud, misrepresentation, or misconduct by an opposing party under Civil Rule 60(b)(3), the Motion to Vacate made several references to fraudulent documents and/or misrepresentations by Lender. For relief under Civil Rule 60(b)(3), the moving party must prove by clear and convincing evidence that the order was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of prevented the losing party from fully and fairly presenting the defense. *De Saracho v. Custom Food Machinery, Inc.*, 206 F.3d 874, 880 (9th Cir. 2000). "Federal Rule of Civil Procedure 60(b)(3) require[s] that fraud . . . not be discoverable by due diligence before or during the proceedings[.]" *Pac. & Arctic Ry. and Navigation Co. v. United Transp. Union*, 952 F.2d 1144, 1148 (9th Cir. 1991). Again, no evidence was submitted supporting the assertions or substantiating any alleged prejudice to Debtor in the full and fair presentation of her opposition to the Motion arising therefrom.

The Civil Rule 60(b)(6) "catch-all" provision is to be used by the courts sparingly as an equitable remedy to prevent manifest injustice, and

should be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment. *United States v. Washington*, 394 F.3d 1152, 1157 (9th Cir. 2005). A party seeking such relief from a judgment must demonstrate both injury and circumstances beyond her control that prevented her from proceeding with the prosecution or defense of the action in a proper fashion. *Id*. As to Civil Rule 60(b)(6), the Motion to Vacate cites "false and misleading statements" made in the Motion. Any such statements would likely fall under Civil Rule 60(b)(3) and would not, therefore, support relief under Civil Rule 60(b)(6). *See Lafarge Conseils Et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1338 (9th Cir. 1986) (only matters that do not fit within one of the other subsections can be raised under Civil Rule 60(b)(6)). In addition, no further details or evidence was provided.

For each of these reasons, Debtor has failed to demonstrate the bankruptcy court abused its discretion in entering the Order Denying Motion to Vacate.

CONCLUSION

Based on the foregoing, we AFFIRM.