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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUITUNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: SAN FRANCISCO CARE CENTER, L.P., a California Limited Partnership, Debtor.	BAP Nos. NC-25-1201-CNB NC-25-1248-CNB (related appeals)
LENEX MORTGAGE IX LLC, Appellant, v. SAN FRANCISCO CARE CENTER, L.P., a California Limited Partnership, Appellee.	Bk. No. 25-30025 MEMORANDUM*

Appeal from the United States Bankruptcy Court
for the Northern District of California
Dennis Montali, Bankruptcy Judge, Presiding

Before: CORBIT, NIEMANN, and BRAND, Bankruptcy Judges.

INTRODUCTION

In this converted chapter 7¹ bankruptcy case, Lenex Mortgage IX LLC

* 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 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, all “Civil Rule” references are to the Federal Rules of Civil Procedure, all “CCC” references are to the California Civil Code, and all “CCP”

(“Lenox”) appeals the bankruptcy court’s order sustaining the debtor’s objection to Lenox’s payoff demand. Lenox also appeals the bankruptcy court’s order awarding the debtor attorneys’ fees as the prevailing party pursuant to the reciprocal provision of California Civil Code § 1717(a).

Because the bankruptcy court erred by not awarding Lenox fees incurred related to the bankruptcy proceeding, we partially REVERSE and REMAND the order sustaining the debtor’s objection to Lenox’s payoff demand.

Additionally, because the fee award was predicated on the debtor being the prevailing party in the payoff demand litigation, we VACATE and REMAND the fee order for further proceedings consistent with this decision.

FACTS²

A. Pre-bankruptcy

In June 2002, debtor San Francisco Care Center, L.P. (“SFCC”) entered into a written loan agreement (“Loan”) with Pacific Commonwealth Mortgage Company, for a maximum amount of

references are to the California Code of Civil Procedure.

² We exercise our discretion, when appropriate, to take judicial notice of documents electronically filed in the underlying bankruptcy case and related proceedings. See *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003); *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).

\$23,108,000, to finance the construction of a senior health care facility on certain real property in San Francisco, California (the “Property”). In 2004, SFCC began operating an assisted living facility for elderly and memory care residents at the Property.

The Loan was memorialized in three documents (together, the “Loan Documents”): (1) a deed of trust note (“Note”), in the original principal amount of \$23,108,000, dated June 1, 2002; (2) a deed of trust with assignment of rents (“Deed of Trust”) recorded June 6, 2002; and (3) a security agreement (“Security Agreement”) as of May 1, 2002. The Loan Documents were later described by the bankruptcy court as “terribly outdated and nothing like what is routinely seen today.”

In May 2006, Pacific Commonwealth assigned the Loan to the United States Department of Housing and Urban Development (“HUD”). In December 2006, HUD sold the loan to Lenox.

1. SFCC’s first default

Sometime in 2006 or 2007, SFCC defaulted under the terms of the Loan (“First Default”). In January 2008, Lenox recorded a notice of default. Lenox provided SFCC a summary of the total amount due to reinstate the Loan (“Cure Amount”). The Cure Amount was \$252,470.56, which included charges for delinquent principal and interest and unpaid late charges. Although the notice of default indicated SFCC could be liable for attorneys’ fees, the Cure Amount did not include any such amount.

SFCC timely paid the Cure Amount. After curing the default, SFCC

demanded that Lenox distribute additional construction funds. Lenox refused, asserting that it had never succeeded to the construction lender role of Pacific Commonwealth or HUD. Because of Lenox's refusal, SFCC filed a complaint in state court seeking to force Lenox to distribute the construction funds ("State Court Action").³ Ultimately, SFCC voluntarily dismissed the State Court Action.

2. SFCC's second default

In 2017, SFCC was sued by the City of San Francisco for, *inter alia*, building code violations. Although SFCC eventually prevailed in 2023, "the exorbitant legal fees associated with defending this legal action, coupled with the COVID pandemic, strained [SFCC's] finances." Consequently, beginning in early 2024, SFCC was unable to make the payments required under the Loan ("Second Default").

In September 2024, Lenox recorded a 90-day notice of default. A foreclosure sale was scheduled for January 14, 2025.

B. SFCC's bankruptcy

On January 14, 2025, the date of the scheduled foreclosure sale, SFCC filed a chapter 11 bankruptcy petition.⁴ SFCC continued to operate the

³ SFCC describes a second state court action, *Sasco Electric v. Obayashi Corporation, et al.*, case no. CGC-05-440733. That case involved several parties including SFCC, SFCC's general contractor, and multiple subcontractors, that alleged claims, crossclaims and counterclaims for breaches of contract related to construction at the Property. Lenox was not a party to the *Sasco* litigation and did not appear.

⁴ On April 14, 2026, the bankruptcy court granted SFCC's motion to convert the case to chapter 7. The conversion does not affect the analysis of the issues before the

facility at the Property pursuant to a cash collateral order. Lenox filed a proof of claim in the amount of \$19,189,226.25.

In April 2025, SFCC sought to sell the Property pursuant to § 363(b) for a purchase price of \$27,750,000, all cash at closing. The sale motion did not describe the intended distribution of the proceeds. Lenox filed a limited objection. Lenox requested that the sale order “provide for payment of Lenox’s secured claim, which [was] more than \$19.2 million, directly from escrow”. Two other claimants filed similar limited objections to the sale motion.

In May 2025, the bankruptcy court approved the sale of the Property (“Sale Order”). The Sale Order directed the objecting creditors to submit their payoff demands to SFCC and directed SFCC to pay immediately upon closing all “principal amounts of the demands, and all other charges not timely challenged” by SFCC. Any payoff demand challenged by SFCC was ordered “held in escrow, along with a 15% cushion, pending resolution of such challenge.”

Lenox’s payoff demand was \$19,822,204.53 plus \$3,584.57 in per diem interest for every day past July 7, 2025, \$1,910,657.89 in unpaid interest, and \$419,266.94 in attorneys’ fees (“Demand”).

1. Demand litigation

Pursuant to the Sale Order, SFCC notified Lenox in writing that it

disputed the \$419,266.94 demanded for accrued attorneys' fees (the "Disputed Fees"). SFCC subsequently filed a formal objection to Lenox's Demand and Lenox's proof of claim (the related proceedings, the "Demand Litigation").

SFCC argued the attorneys' fees provisions in the Deed of Trust did not apply because, although the State Court Action was an action instituted on the Note, it was not litigation in which Lenox appeared to protect and defend its security interest. Rather, the State Court Action related to the narrow issue of Lenox's alleged breach of its obligation to advance construction funds. Additionally, SFCC argued that the attorneys' fee provision in the Note did not apply because the State Court Action was voluntarily dismissed by SFCC, and there was no adjudication by the court of reasonable attorneys' fees. Finally, SFCC asserted that the attorneys' fees provision in the Security Agreement did not apply because there were no proceeds from a foreclosure sale as the Property was sold pursuant to an order of the bankruptcy court.

Lenox, on the other hand, asserted that it was entitled to the Disputed Fees because the fees were incurred "where Lenox either commenced, appeared or defended 'actions' and 'proceedings' that purported to affect its security interest in the Property." Lenox explained the basis for fees as:

- First Default: \$187,324.54
- State Court Action: \$139,035.94
- Second Default: \$56,073.32
- Chapter 11 proceeding and Demand Litigation: \$87,162

Lenox asserted that it had been attempting to collect the fees and costs for years—SFCC’s monthly statements included \$102,448.12 for “Other Charges.”⁵ Lenox further argued that SFCC’s interpretation of the Loan Documents was impermissibly narrow.

At the Demand Litigation hearing, SFCC compared the Loan Documents before the court with standard loans with “broad attorney’s fees clauses,” limited only by reasonableness of the incurred fees. SFCC asserted that unlike standard loans, the Loan Documents at issue were “HUD documents” with very limiting language as to when a lender could recoup incurred attorneys’ fees. SFCC further asserted that because the Loan Documents were not ambiguous, the court must interpret the Loan Documents according to their express language.

SFCC also advised the court that if it prevailed, SFCC would seek attorneys’ fees pursuant to the reciprocal clause of CCC § 1717.⁶ SFCC

⁵ SFCC disputed Lenox’s assertion that the “Other Charges” represented accrued attorneys’ fees. SFCC asserted that the charges “did not specify any component as legal costs, much less demand payment, . . . were never explained or itemized in any statement, remained at the same level for many years, and were far less than now demanded.”

⁶ Specifically, CCC § 1717 provides:

In any action on a contract, where the contract specifically provides that attorney’s fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney’s fees in addition to other costs Reasonable attorney’s fees shall be fixed by the court, and shall be an element of the costs of suit.

explained it was entitled to attorneys' fees for the Demand Litigation because the Demand Litigation was an action on the Note and, unlike Lenox in the State Court Action, SFCC was explicitly requesting an award of fees. SFCC stated:

SFCC: [Lenox has asserted that SFCC] wouldn't be entitled to attorneys' fees because in such a case it says if the lender couldn't have asked for it, then the borrower can't ask for it under [CCC §] 1717. The case is not applicable here because the lender could have asked for it. They didn't, but they could have asked for it in that prior action.⁷ And that's what they're required to do. We are asking for that, so we are entitled to it.

....

THE COURT: I apologize if this wasn't brought out and I didn't pay attention to it in the argument. [CCC §] 1717 operates reciprocity if you have — if there is a reciprocal provision. If I say to [Lenox] you're not entitled to anything because you don't have a provision [providing for such fees in the Loan Documents], how can I then say but there is a provision that applies reciprocity [and allows SFCC to be awarded fees]?

....

SFCC: If you rule in our favor, for example on the Note itself, it's because they would be entitled to attorney's fees **had they asked for it in that action**. That's what that Note says. So it's true, you rule in our favor, they don't get attorneys' fees, but **they could have had they done it correctly**.⁸ And, therefore,

⁷ The parties never clarified the meaning of "that prior action." We presume SFCC is referring to the State Court Action because SFCC previously conceded that was an action on the Note.

⁸ It appears that SFCC is arguing Lenox "could have done it correctly" by seeking an award of fees by the court in the State Court Action before the State Court Action was dismissed. It does not appear that SFCC addressed the issue of whether Lenox was entitled to fees related to the Demand Litigation.

under [CCC §] 1717, we have the same right. The difference is we're actually asking for it. **They didn't do that.**

Hr'g Tr. 28:1-8, 12-17, 20-25, Sep. 19, 2025 (emphasis added).

Lenox disputed SFCC's interpretation about the necessity to request fees. Lenox asserted it was entitled to fees regardless of whether a court awarded such fees and regardless of whether there was a foreclosure sale.

2. Bankruptcy court's order sustaining SFCC's objection to the Disputed Fees

After taking the matter under advisement, the bankruptcy court issued a written decision. In the decision, the bankruptcy court first determined the controlling law was § 506(b), which authorizes an oversecured creditor reasonable fees "provided for under the agreement or State statute under which such claim arose." The bankruptcy court next explained it must look to the express language in the three "poorly drafted" Loan Documents to determine whether the Disputed Fees were "provided for under the agreement."⁹

The bankruptcy court first examined the Note and stated the language regarding attorneys' fees was "extremely limited."¹⁰ The bankruptcy court determined that previous litigation between Lenox and

⁹ At the hearing, both parties agreed with the court's identification of the operative language in each of the three Loan Documents.

¹⁰ The operative language in the Note stated: "If action be instituted on this note, the undersigned promise(s) to pay in addition to the costs and disbursements allowed by law such sum as the Court may adjudge reasonable as attorneys' fees in said action."

SFCC “was not initiated or instituted as an action on the Note”¹¹ and no court had previously “adjudge[d] reasonable attorney’s fees.” Therefore, the bankruptcy court determined that the Note was “of no help to Lenox” in establishing it was entitled to the Disputed Fees.

In the Deed of Trust, the bankruptcy court determined that the operative paragraphs were paragraphs 11 and 12.¹² The bankruptcy court determined that paragraph 11 “suffer[ed] from the same deficiency as the Note in that no such action or proceeding was ever commenced.” As to paragraph 12, the bankruptcy court found that SFCC defaulted as

¹¹ This determination was contrary to the position of both parties, who each agreed that the State Court Action was an action on the Note.

¹² Paragraphs 11 and 12 stated in relevant part:
Trustor covenants and agrees . . .

To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorney’s fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

. . .

Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees[.]

contemplated in the paragraph, but Lenox failed to protect its security by exercising one of the enumerated powers identified in the Deed of Trust. Therefore, the bankruptcy court determined that Lenox could not “avail itself of the final words of that paragraph, namely that Debtor would need to pay reasonable fees of any employed counsel.” Consequently, the bankruptcy court determine that the Deed of Trust was also “of no help to Lenox” in establishing entitlement to the Disputed Fees.

Finally, the bankruptcy court examined the language of the Security Agreement¹³ finding it was “designed to operate in parallel with the Deed

¹³ The operative language in the Security Agreement states:

Should Mortgagor default in the payment of any of the principal or interest owing, or if any breach be made of any obligation or promise of the Mortgagor herein contained or secured, then the whole principal sum remaining unpaid upon said indebtedness with interest accrued thereon and all other sums owing from the Mortgagor to the Mortgagee shall, upon thirty (30) days written notice to Mortgagor become due and payable at the option of the Mortgagee, and Mortgagee may then without notice to the Mortgagor proceed to foreclosure according to law, or it may at its option and it is hereby empowered to do so, enter upon the premises where said pledged property may be and take possession thereof; and remove and sell or dispose of the same at public or private sale without any previous demand of performance or notice to the Mortgagor of any such sale whatsoever, notice of sale and demand of performance and every other notice of demand whatsoever being hereby expressly waived by said Mortgagor.

The proceeds of any sale hereunder shall be retained by the Mortgagee, to cover all costs and charges incurred by said Mortgagee, in the said taking or sale, including reasonable attorney’s fees incurred and including all sums due from Mortgagor to Mortgagee, and interest thereon, and any surplus or such proceed remaining shall be paid to the Mortgagor, or whomever may be lawfully entitled to receive the same. The Mortgagor promises to pay forthwith any deficiency remaining after

of Trust.” The bankruptcy court reasoned that if SFCC defaulted, the Deed of Trust gave Lenox “the right to look to the real estate,” and the Security Agreement gave Lenox “the right to ‘remove and sell or dispose of the pledged property,’ namely the fixtures and equipment.” The bankruptcy court found that the Security Agreement provided that Lenox could recoup attorneys’ fees from the proceeds of a foreclosure sale. The bankruptcy court determined there was no “sale of any kind as contemplated by the Security Agreement” because the Property was not sold through a foreclosure sale, it was sold pursuant to a § 363(b) bankruptcy sale. Therefore, continued the court, the Security Agreement did not authorize the Disputed Fees.

Based on its analysis of the operative language in each of the Loan Documents, the bankruptcy court determined that Lenox was not entitled to the Disputed Fees and thus, sustained SFCC’s objection to the Disputed Fees (“Demand Denial Order”).

C. SFCC’s motion for prevailing party attorneys’ fees

In October 2025, SFCC, as the prevailing party in the Demand Litigation, filed a motion for fees and costs pursuant to the reciprocity provisions of CCC § 1717(a). SFCC asserted three reasons why the court should award fees and costs: (1) the Demand Litigation was “an action on a

any such sale. Mortgagee, or its agent may bid and purchase at any sale under this Security Agreement as herein authorized, or at any sale made upon foreclosure of this Security Agreement.

contract” because it concerned the extent of Lenox’s claim and rights under the terms of the Note, specifically, what amount of payment was necessary to extinguish the debt arising under the Note; (2) SFCC was the prevailing party because the court agreed with SFCC’s interpretation of the Loan Documents and denied Lenox’s Demand of the Disputed Fees; and (3) the amount requested (\$98,732.001 in attorneys’ fees and \$8,660.12 in costs) was “reasonable under the lodestar method, and appropriate given the issues involved and the results obtained.”

Lenox objected to SFCC’s fee motion. Although Lenox acknowledged that SFCC was entitled to an award of fees and costs pursuant to CCC § 1717(a), Lenox asserted that it was entitled to offset or recoup any fees and costs awarded to SFCC. Essentially, Lenox argued that it was entitled to offset any award to SFCC by the Disputed Fees (recharacterized in its opposition to the fee motion as “Accumulated Debt”), the very fees and costs which the bankruptcy court denied in the Demand Denial Order. In support, Lenox generally repeated the arguments presented in the Demand Litigation, which the bankruptcy court previously heard and rejected.

Lenox also specifically objected to \$8,436.76 in research fees sought by SFCC. Lenox asserted that costs recoverable pursuant to CCC “§ 1717(a) are circumscribed by CCP § 1033.5.” According to Lenox, in California, CCP § 1033.5 precludes prevailing parties from seeking reimbursement of computerized legal research expenses such as Westlaw.

D. Bankruptcy court’s fee ruling

The bankruptcy court issued its oral ruling granting SFCC's fee motion. The bankruptcy court found that SFCC was the prevailing party and that Lenox had not used the words "setoff and recoupment" prior to the hearing on SFCC's fee motion, although "maybe they could have and maybe they should have." Because Lenox had not previously asserted the claim of setoff, the bankruptcy court determined the claim was waived.¹⁴ The bankruptcy court also disagreed with Lenox's assertion that SFCC should not be awarded costs related to online legal research stating, "I believe that [the \$10,000 is] a modest amount. It sounds like a large amount of money, but given the alternatives and the prevalence of online research now, I think [SFCC] has got the better argument, so [SFCC is] right."

The bankruptcy court granted SFCC all requested fees and costs. On December 1, 2025, the bankruptcy court issued a written order consistent with the oral ruling ("Fee Order").

Lenox timely appealed the Demand Denial Order and the Fee Order.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

ISSUES

Whether the bankruptcy court erred in sustaining SFCC's objection to

¹⁴ Lenox disagreed, asserting that it did not waive the issue because the claim of offset was not ripe until SFCC became the prevailing party upon entry of the Demand Denial Order.

Lenox's Demand.

Whether the bankruptcy court erred in granting SFCC's motion for attorneys' fees pursuant to CCC § 1717.

STANDARDS OF REVIEW

We review the bankruptcy court's decision regarding an award of attorneys' fees and costs for an abuse of discretion. *Lionetti v. Law Offices of Steven H. Marcus (In re Lionetti)*, 613 B.R. 13, 18 (9th Cir. BAP 2020) (review of a denial of § 523(d) fees); *Redwood Theaters, Inc. v. Davison (In re Davison)*, 289 B.R. 716, 720 (9th Cir. BAP 2003) (review of fees awarded under state law). Under the abuse of discretion standard, we first "determine de novo whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested." *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). Next, we determine whether the bankruptcy court's factual findings and application of the law were illogical, implausible, or without support in the record. *Id.*

"To the extent the issue is whether California law allows the award of attorneys' fees, our review is de novo." *Saccheri v. St. Lawrence Valley Dairy (In re Saccheri)*, BAP No. EC-12-1269-JuKiD, 2012 WL 5359512, at *5 (9th Cir. BAP Nov. 1, 2012), *aff'd*, 599 F. App'x 687 (9th Cir. 2015). "De novo review requires that we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

DISCUSSION

A. Attorneys' fees pursuant to § 506(b)

Under the Bankruptcy Code, there is no general right to recover attorneys' fees. *Ford v. Baroff (In re Baroff)*, 105 F.3d 439, 441 (9th Cir. 1997). However, the Code provides for an award of attorneys' fees under certain limited circumstances. Under § 506(b), a creditor is entitled to a claim for attorneys' fees if: (1) the claim is an allowed secured claim; (2) the creditor is oversecured; (3) the fees are reasonable; and (4) the fees are provided for in the agreement between a debtor and a creditor. *Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai)*, 581 F.3d 1090, 1098 (9th Cir. 2009) (internal quotation marks and citation omitted).

To determine whether an agreement provides for fees, the "inquiry begins with the language of the attorney fees provision itself." *Mountain Air Enters., LLC v. Sundowner Towers, LLC*, 3 Cal. 5th 744, 760 (2017).

"Contract terms are to be given their ordinary meaning, and when the terms of a contract are clear, the intent of the parties must be ascertained from the contract itself." *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095, 1099 (9th Cir. 2006) (citing *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1549 (9th Cir. 1990)). *Mountain Air Enters., LLC*, 3 Cal. 5th at 752 ("initial inquiry is confined to the writing alone").

B. The bankruptcy court did not abuse its discretion by concluding that Lenox was not entitled to the Disputed Fees related to the State Court Action and the two Defaults.

Lenox asserts on appeal that it is entitled to the Disputed Fees pursuant to § 506(b) and that the bankruptcy court erred by reading the language of the Loan Documents too narrowly. Specifically, Lenox argues that the bankruptcy court erred in disregarding “contractual provisions that expressly permitted Lenox to accrue—without immediate demand—costs incurred to protect its security interests and other rights.” Lenox argued the provisions in the Loan Documents authorized Lenox to add those accruing amounts to SFCC’s indebtedness. Lenox argued that it had broad authority to recoup attorney fees related to protecting its “collateral wherever and whenever threatened.” Opening Br. 18-19. Lenox asserts this right exists independent of the involvement of the courts, a court ruling on reasonable attorneys’ fees, or the existence of a foreclosure sale. We disagree.

The language in the Loan Documents is unambiguous and strictly limits Lenox’s entitlement to recover attorneys’ fees. *See Doe 1 v. AOL LLC*, 552 F.3d 1077, 1081 (9th Cir. 2009) (explaining the fact that “parties disput[ing] a contract’s meaning does not render the contract ambiguous; a contract is ambiguous if reasonable people could find its terms susceptible to more than one interpretation”) (citation modified). The cases cited by Lenox, *Hart v. Clear Recon Corp.*, 27 Cal. App. 5th 322 (2018); *Chacker v.*

JPMorgan Chase Bank, N.A., 27 Cal. App. 5th 351 (2018), *as modified on denial of reh'g* (Oct. 17, 2018); and *Residential Funding Corp. v. Buettner*, 797 F. Supp. 3d 1167, 1175 (E.D. Cal. 2025), do not require a different result. Rather, the cases stand for the unremarkable proposition that a court must look carefully at the language of the agreement between the parties to determine if a creditor is entitled to add incurred attorneys' fees to the amount of a debtor's secured debt and whether the reciprocity provision of CCC § 1717(a) applies.

1. The bankruptcy court did not abuse its discretion in denying the Disputed Fees related to the State Court Action.

First, the bankruptcy court found that the express language of the Note did not provide for the Disputed Fees related to the State Court Action. We agree. Although the bankruptcy court incorrectly found that it was not an "action instituted on the Note," this was harmless error. *See Van Zandt v. Mbunda (In re Mbunda)*, 484 B.R. 344, 355 (9th Cir. BAP 2012) ("Generally speaking, we ignore harmless error."), *aff'd*, 604 F. App'x 552 (9th Cir. 2015); Civil Rule 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.") (made applicable by Rule 9005). The complaint in the State Court Action sought to enforce obligations under the Note and therefore was an action on the Note. Regardless, as the bankruptcy court correctly determined, the Note limited the availability of attorneys' fees to those that a court "may adjudge reasonable as attorneys' fees in *said*

action.” (Emphasis added). Because no court “adjudged” or awarded Lenox “reasonable attorneys’ fees in said action,” the bankruptcy court correctly determined that the Note’s express language did not entitle Lenox to the Disputed Fees related to the State Court Action.

Second, the bankruptcy court found that the Deed of Trust did not authorize the Disputed Fees because the State Court Action was not an action “purporting to affect [Lenox’s] security.” This finding was not clearly erroneous. In the State Court Action, SFCC did not challenge the validity of the Note, Lenox’s enforcement of the Note, or seek to enjoin payments due under the Note. *See e.g. Fox v. JPMorgan Chase Bank, N.A.*, 2019 WL 5387733, at *10 (Cal. Ct. App. Oct. 22, 2019) (explaining actions affecting creditor’s security may include actions to cancel or void a note or deed of trust or enjoining creditor from collecting any sums due or from foreclosing). Instead, SFCC sought to compel Lenox’s release of additional construction funds. Lenox has not established that the bankruptcy court’s finding that the relief sought by SFCC in the State Court Action did not affect Lenox’s security was illogical, implausible, or without support in inferences that may be drawn from the facts in the record. *See Hinkson*, 585 F.3d at 1262.

Finally, the bankruptcy court found that because there was no foreclosure sale, the Security Agreement did not authorize the Disputed Fees. This conclusion was not clearly erroneous. The Property was sold through the bankruptcy court pursuant to § 363(b), not pursuant to a

foreclosure sale. The Security Agreement authorized payment of attorneys' fees from a single source: foreclosure sale proceeds. As such, no attorneys' fees were authorized if no foreclosure sale occurred. *See In re Kudlacek*, 109 B.R. 424, 428 (Bankr. D. Nev. 1989) (holding "due to the narrowness of the language in the HUD deed of trust, there can be no award of attorney's fees . . . without a foreclosure sale and proceeds to pay such claims"). The bankruptcy court's determination is consistent with the limiting language of the Security Agreement.

2. The bankruptcy court did not abuse its discretion in denying the Disputed Fees related to the First and Second Defaults.

The bankruptcy court also found that the express language of the Loan Documents did not allow Lenox to recoup attorneys' fees related to the First and Second Defaults. The bankruptcy court first found that the Note did not provide for the Disputed Fees because no court adjudged and awarded attorneys' fees. This finding was not clearly erroneous and is supported by the record.

Additionally, the bankruptcy court found that the Deed of Trust's attorneys' fees provision was not applicable to the First and Second Defaults. This was not error. Although the Defaults potentially affected Lenox's security, Lenox did not appear in an action or proceeding related to the Defaults. "The word 'proceeding' can take on different meanings in different contexts." *Mountain Air Enters.*, 3 Cal. 5th at 754 (internal quotation marks and citation omitted). It can be "construed narrowly as an

action or remedy before a court, and, as broadly as all the steps or measures adopted in the prosecution or defense of an action.” *Id.* (citation modified). An action is the “entire judicial proceeding.” *Id.* at 753 (citing CCP § 22).

Here, although Lenox filed notices of default and scheduled a foreclosure sale, those are nonjudicial, statutory rights Lenox could avail itself of without the assistance of the courts. Thus, after the State Court Action, there were no additional actions or proceedings purporting to affect Lenox’s security until SFCC’s bankruptcy filing. Therefore, the bankruptcy court correctly determined that the Deed of Trust did not authorize the Disputed Fees related to the First and Second Defaults.

Finally, for the reasons already stated, it was not error for the bankruptcy court to determine that the Security Agreement did not authorize Lenox to recover the Disputed Fees related to the two Defaults. Although a foreclosure sale was noticed and scheduled, it did not occur. Rather, the Property became property of the bankruptcy estate and was sold pursuant to § 363(b).

C. The bankruptcy court abused its discretion in denying the Disputed Fees related to the bankruptcy proceedings.

In its analysis, the bankruptcy court did not address each fee generating event as identified by Lenox. Specifically, the bankruptcy court did not directly address the Disputed Fees related to the bankruptcy proceedings. We agree with Lenox that the Demand Litigation cannot

qualify as an action on the Note for one purpose but not another.

Specifically, the Demand Litigation cannot qualify as an action “on a contract” under CCC § 1717(a) while simultaneously failing to qualify as an “action” for purposes of reimbursing Lenox for fees and expenses incurred in that same action under the Note and Deed of Trust.

Lenox appeared in the bankruptcy proceedings to protect its security interest pursuant to the Deed of Trust (i.e., by obtaining a replacement lien via the cash collateral order, filing a proof of claim, and ensuring the sale order was consistent with its rights provided for in the Loan Documents). Additionally, the Demand Litigation was an action on the Note. The Demand Litigation involved disputes regarding Lenox’s rights and remedies under the Note. Specifically, the parties litigated whether the Note authorized Lenox to add previously incurred attorneys’ fees to the amount of SFCC’s indebtedness and whether Lenox could seek full payment of such fees before extinguishing the debt arising under the Note. Significantly, both parties agreed at various times that the Demand Litigation was “on the Note.” The bankruptcy court also agreed as evidenced by the Fee Order: CCC § 1717(a) only applies if the action is “on a contract.” Consequently, we determine that the bankruptcy court erred in disallowing Lenox the Disputed Fees related to the bankruptcy proceedings. Accordingly, we REVERSE as to this part of the Demand Denial Order. On remand, the bankruptcy court must also determine the reasonableness of the attorneys’ fees incurred during the bankruptcy

proceedings including the Demand Litigation.

D. Fees pursuant to CCC § 1717

“Under the American Rule, the prevailing litigant is ordinarily not entitled to collect reasonable attorney’s fees from the loser This default rule can . . . be overcome by statute . . . [or] by an enforceable contract allocating attorney’s fees.” *Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 448 (2007) (citation modified). State law governs the interpretation and application of a contract provision that permits an award of attorneys’ fees. *Resol. Tr. Corp. v. Midwest Fed. Sav. Bank of Minot*, 36 F.3d 785, 800 (9th Cir. 1993).

“When parties contractually allocate attorneys’ fees, [CCC] § 1717 ensures that such attorneys’ fees provisions apply reciprocally such that if a party to an action would be entitled to fees under the contract’s attorneys’ fees provision if successful, the adverse party must also be eligible for fees if it prevails.” *Pac. Fuel Co., LLC v. Shell Oil Co.*, 416 F. App’x 607, 609 (9th Cir. 2011) (citing *T.E.D. Bearing Co. v. Walter E. Heller & Co.*, 38 Cal.App.3d 59 (1974)). “The primary purpose of section 1717 is to ensure mutuality of remedy for attorney fee claims under contractual attorney fee provisions.” *Santisas v. Goodin*, 17 Cal. 4th 599, 610 (1998).

To recover fees under CCC § 1717, the party must establish several conditions. “First, the action in which the fees are incurred must be an action ‘on a contract,’ a phrase that is liberally construed.” *Penrod v. AmeriCredit Fin. Servs., Inc. (In re Penrod)*, 802 F.3d 1084, 1087 (9th Cir. 2015)

(citation omitted). “Under California law, an action is ‘on a contract’ [for purposes of CCC § 1717] when a party seeks to enforce, or avoid enforcement of, the provisions of the contract.” *Id.* at 1088; *see also Santisas*, 17 Cal. 4th at 611 (recognizing that a party may recover attorneys’ fees on a contract where a party “defends the litigation by successfully arguing the inapplicability, invalidity, unenforceability, or nonexistence of the same contract”) (internal quotation marks and citation omitted). Second, the party seeking fees must be the prevailing party. *In re Penrod*, 802 F.3d at 1087-88. Third, “the contract must contain a provision stating that attorney’s fees incurred to enforce the contract shall be awarded either to one of the parties or to the prevailing party.” *Id.* at 1087. Fourth, “the fees incurred are reasonable.” *Simulados Software, Ltd. v. Photon Infotech Priv., Ltd.*, No. 5:12-cv-04382-EJD, 2020 WL 2994126, at *2 (N.D. Cal. June 4, 2020), *aff’d*, 861 F. App’x 149 (9th Cir. 2021).

For purposes of CCC § 1717, “the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract.” CCC § 1717(b)(1). “The trial court . . . under [§] 1717 is vested with discretion in determining which party has prevailed on the contract[.]” *DisputeSuite.com, LLC v. Scoreinc.com*, 2 Cal. 5th 968, 973 (2017). In deciding whether a party prevails in a contract action, the trial court is instructed to compare the relief awarded on the contract claim or claims against the parties’ demands on those same claims. The court compares the extent to which each party succeeded or failed in its contentions. *Hsu v.*

Abbara, 9 Cal. 4th 863, 876 (1995). “If neither party achieves a complete victory . . . it is within the [court’s] discretion . . . to determine . . . neither party prevailed sufficiently to justify an award of attorney fees.”

DisputeSuite.com, LLC, 2 Cal. 5th at 973 (quoting *Scott Co. of Cal. v. Blount, Inc.*, 20 Cal. 4th 1103, 1109 (1999)); *Hsu*, 9 Cal. 4th at 875 (when results of contract litigation are mixed, the trial court has discretion under CCC § 1717 to determine which party, or that no party, prevailed).

Because we partially reverse the Demand Denial Order, we REMAND the Fee Order to allow the bankruptcy court to determine whether SFCC remains the prevailing party sufficient to justify an award of attorney fees pursuant to CCC § 1717.

CONCLUSION

We AFFIRM the Demand Denial Order as to the bankruptcy court’s determination that Lenox was not entitled to the Disputed Fees related to the State Court Action and the First and Second Defaults.

We REVERSE and REMAND the Demand Denial Order as to the Disputed Fees related to the Demand Litigation and the bankruptcy proceedings to the bankruptcy court for further proceedings consistent with this memorandum decision.

We VACATE and REMAND the Fee Order to the bankruptcy court for further proceedings consistent with this memorandum decision.