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FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

FILED
JUN - 6 2011
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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In re:)
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DORIS JEAN JACKSON,)
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Debtor.)

Case No. 11-20156-B-7
DCN No. CJH-1

MEMORANDUM DECISION ON
MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Christopher J. Hoo, Randall S. Miller & Associate, PC, Sherman
Oaks, California, for OneWest Bank, FSB, movant

Peter G. Macaluso, Law Offices of Peter G. Macaluso, Sacramento,
California, for Doris Jean Jackson, debtor

1 THOMAS C. HOLMAN, Bankruptcy Judge:
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3 A typical assignment of a promissory note secured by a
4 mortgage or deed of trust on real property does not, by itself,
5 confer on the assignee standing to enforce the note and deed of
6 trust in federal court.
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8 I. Factual Background
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10 Before the court is the motion (Dkt. 15) of "OneWest Bank,
11 FSB, its successors and/or assigns, as purchaser of certain
12 assets of First Federal Bank of California from the Federal
13 Deposit Insurance Corporation, as Receiver" ("OneWest") for
14 relief from the automatic stay (the "Motion"). The Motion does
15 not recite what OneWest wants to do that requires relief from the
16 automatic stay, but the court treats the Motion as requesting
17 relief from the automatic stay to commence and complete
18 foreclosure proceedings under the Deed of Trust and Assignment of
19 Rents (Dkt. 20) (the "Deed of Trust") that secures a Note
20 Secured By Deed of Trust (Dkt. 21) (the "Note") made by the
21 debtor in favor of First Federal Bank of California, FSB, and
22 subsequently assigned to OneWest by a Corporate Assignment of
23 Deed of Trust (Dkt. 18) (the "Assignment").

24 This chapter 7 bankruptcy case was commenced by the filing
25 of the debtor's voluntary petition on January 3, 2011. The
26 Motion was filed April 14, 2011. The Motion recites, *inter alia*,
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1 that OneWest is "the holder of a mortgage" (Dkt. 21 at 1) on the
2 debtor's residence (the "Property"), that as of April 7, 2011,
3 "the mortgage was delinquent" from February 1, 2011, that as of
4 April 7, 2011, the total debt owed to OneWest was approximately
5 \$111,425.81 and that according to the debtor's schedules the
6 value of the Property is \$112,000.00 (Dkt. 21 at 2). The prayer
7 of the Motion requests relief from the automatic stay for cause
8 under 11 U.S.C. § 362(d)(1) and nullification of the 14-day stay
9 provided in F. R. Bankr. P. 4001(a)(3).

10 The debtor filed written opposition on May 10, 2011 (Dkt.
11 25). In her opposition, the debtor asserts that OneWest does not
12 have standing to file the Motion, and requests sanctions pursuant
13 to Fed. R. Bankr. P. 9011, 28 U.S.C. § 1927, and the court's
14 inherent authority.

15 On May 23, 2011, the court posted on the court's website a
16 tentative ruling setting forth the substance of this memorandum.
17 The Motion came on for hearing on May 24, 2011. Neither OneWest
18 nor the debtor appeared at the hearing. Dkt. 29. The court made
19 the following ruling: The debtor's opposition is sustained in
20 part. The motion is dismissed. The debtor's countermotion for
21 sanctions is denied. Memorandum Decision to follow. (Dkt. 30).

22 23 II. Discussion

24
25 "Under the Bankruptcy Code, a party seeking relief from stay
26 must establish entitlement to that relief[,] . . . [f]oreclosure
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1 agents and servicers do not automatically have standing." *In re*
2 *Jacobson*, 402 B.R. 359, 367 (Bankr. W.D. Wash. 2009) (citing *In*
3 *re Hayes*, 393 B.R. 259, 266-67 (Bankr. D. Mass. 2008); *In re*
4 *Scott*, 376 B.R. 285, 290 (Bankr. D. Idaho 2007). "For a federal
5 court to have jurisdiction, the litigant must have constitutional
6 standing, which requires an injury fairly traceable to the
7 defendant's allegedly unlawful conduct and likely to be redressed
8 by the requested relief." *In re Jacobson*, 402 B.R. 359, 366
9 (Bankr. W.D. Wash. 2009) (citing *United Food & Commercial Workers*
10 *Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551 (1996)).
11 Constitutional standing, which is based on the "case or
12 controversy" requirement under Article III, § 2 of the U.S.
13 Constitution, cannot be waived as it is "a threshold
14 jurisdictional requirement." See *id.* at 367 (citing *Pershing Park*
15 *Villas Homeowners Ass'n v. United Pac. Ins. Co.*, 219 F.3d 895,
16 899-00 (9th Cir. 2000)). The United States Supreme Court
17 recently held that in order to meet this jurisdictional
18 requirement, an assignee of a claim must hold legal title to the
19 claim being asserted. *Sprint Commc'ns Co. v. APCC Services,*
20 *Inc.*, 554 U.S. 269, 128 S. Ct. 2531, 171 L.Ed.2d 424 (2008). An
21 assignment for collection will suffice for purposes of satisfying
22 the constitutional standing requirement. *Id.* at 2542.

23 Any expectation that the legal owner always has the right to
24 enforce a claim evidenced by a promissory note is misplaced when
25 the promissory note is a negotiable instrument.

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1 The right to enforce an instrument and ownership of the
2 instrument are two different concepts Ownership
3 rights in instruments may be determined by principles of the
4 law of property, independent of Article 3 Moreover,
5 a person who has an ownership right in an instrument might
6 not be a person entitled to enforce the instrument

7
8 An instrument is a reified right to payment. The right is
9 represented by the instrument itself.

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11 Cal. Comm. Code § 3203, Uniform Commercial Code Comment 1 (West,
12 Westlaw through Ch. 24 of 2011 Reg. Sess. and Ch. 2 of 2011-2012
13 1st Ex.Sess.).

14 The concept of standing involves more than constitutional
15 standing. It involves two inquiries. See *Franchise Tax Bd. v.*
16 *Alcan Aluminum*, 493 U.S. 331, 335, 110 S.Ct. 661, 107 L.Ed.2d 696
17 (1990) ("We have treated standing as consisting of two related
18 components: the constitutional requirements of Article III and
19 nonconstitutional prudential considerations."); *Warth v. Seldin*,
20 422 U.S. 490, 498, 95 S.Ct. 2197, 2204, 45 L.Ed.2d 343 (1975).
21 In the first, as set forth above, the court must ask whether the
22 plaintiff or moving party has suffered sufficient injury to
23 satisfy the "case or controversy" requirement of Article III. A
24 suit brought by a plaintiff or relief sought by a moving party
25 without Article III standing is not a "case or controversy," and
26 an Article III federal court therefore lacks subject matter

1 jurisdiction over the suit. *Steel Co. v. Citizens for a Better*
2 *Environment*, 523 U.S. 83, 101-04 (1998). In that event, the suit
3 should be dismissed under Federal Rule of Civil Procedure
4 12(b)(1). *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136,
5 1140 (9th Cir.2003); *Scott v. Pasadena Unified Sch. Dist.*, 306
6 F.3d 646, 664 (9th Cir.2002).

7 Beyond this "irreducible constitutional minimum of
8 standing," the court must engage in a second inquiry to determine
9 whether the plaintiff or moving party is properly able to assert
10 a particular claim. *Lujan v. Defenders of Wildlife*, 504 U.S.
11 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); *Franchise Tax*
12 *Bd. v. Alcan Aluminum*, 493 U.S. 331, 335, 110 S.Ct. 661, 107
13 L.Ed.2d 696 (1990); *Dunmore v. U.S.*, 358 F.3d 1107, 1112 (9th
14 Cir. 2004). Frequently, this inquiry requires an analysis of
15 whether a statute under which the plaintiff or moving party
16 asserts a claim has conferred "standing" on the plaintiff or
17 moving party. In such cases, non-constitutional or "prudential"
18 standing exists when "a particular plaintiff has been granted a
19 right to sue by the specific statute under which he or she brings
20 suit." See *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th
21 Cir.2004); see also *Valley Forge Christian Coll. v. Americans*
22 *United for Separation of Church and State, Inc.*, 454 U.S. 464,
23 474-75, 102 S.Ct. 752, 760, 70 L.Ed.2d 700 (1982) (discussing
24 other "prudential principles" such as refraining from
25 adjudicating "generalized grievances," and requiring the
26 complaint to fall within "the zone of interests to be protected

1 or regulated"). In other instances, a statute or rule of law may
2 restrict the assertion of a claim to a certain universe of
3 parties. This restriction includes the requirement of Federal
4 Rule of Civil Procedure 17(a)(1) that "an action must be
5 prosecuted in the name of the real party in interest." See *In re*
6 *Wilhelm*, 407 B.R. 392, 398 (Bankr. D. Idaho 2009) (stating that
7 the requirement of Rule 17 "generally falls within the prudential
8 standing doctrine.") The restriction may also be based on state
9 law. See *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 124
10 S.Ct. 2301, 159 L.Ed.2d 98 (2004) (non-custodial parent who is
11 barred under state law from suing as his or her child's "next
12 friend" lacks prudential standing to bring a First Amendment
13 challenge to a school board's policy requiring teacher-led
14 recitation of the Pledge of Allegiance); 15 James Wm. Moore, et
15 al., *MOORE'S FEDERAL PRACTICE - CIVIL* § 101.51[1][e] (3d ed.
16 2011) ("State laws may operate to deprive a prospective plaintiff
17 of prudential standing in federal court."). Generally, a party
18 without legal rights to enforce an obligation under applicable
19 substantive law lacks prudential standing. *Doran v. 7-Eleven,*
20 *Inc.*, 524 F.3d. 1034, 1044 (9th Cir. 2008). If a party has
21 suffered sufficient injury to satisfy the jurisdictional standing
22 requirement of Article III, but the party cannot satisfy the
23 applicable prudential standing requirement(s), the party cannot
24 state a claim upon which relief can be granted. *Guerrero v.*
25 *Gates*, 357 F.3d 911, 920-21 (9th Cir.2003), In that event, the
26 claim for relief should be dismissed under Federal Rule of Civil
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1 Procedure 12(b) (6). Id. at 920-21.

2 The *Sprint* case, cited above, involved constitutional
3 standing as applied to causes of action. As discussed above,
4 constitutional standing is only the first step in the standing
5 analysis. In the context of this motion for relief from
6 automatic stay, the court must also determine whether the movant
7 has prudential standing by determining whether under applicable
8 substantive law the movant has a legal right to enforce the
9 obligation on which its claim is based.

10 Where a negotiable instrument represents the obligation to
11 be enforced, as here, the issue whether the movant has a legal
12 right to enforce the obligation, and, thus, whether the movant
13 has prudential standing, is determined by the Commercial Code.
14 According to a recent draft report by the Permanent Editorial
15 Board for the Uniform Commercial Code,

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17 [I]n the context of notes that have been sold or used as
18 collateral to secure an obligation, the central concept for
19 making that determination is identification of the 'person
20 entitled to enforce' the note. Several issues are resolved
21 by that determination. Most particularly:

22
23 (i) the maker's obligation on the note is to pay the amount
24 of the note to *the person entitled to enforce the note,*

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26 (ii) the maker's payment to *the person entitled to enforce*
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1 the note results in discharge of the maker's obligation, and

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3 (iii) the maker's failure to pay, when due, the amount
4 of the note to the person entitled to enforce the note
5 constitutes dishonor of the note.

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9 UCC Section 3-301 provides only three ways in which a
10 person may qualify as the person entitled to enforce a
11 note, two of which require the person to be in
12 possession of the note (which, for this purpose, may
13 include possession by a third party such as an agent):

14
15 [1.] The first way that a person may qualify as the
16 person entitled to enforce a note is to be its
17 "holder." This familiar concept, set out in detail in
18 UCC Section 1-201(b)(21)(A), requires that the person
19 be in possession of the note and either (i) the note is
20 payable to that person or (ii) the note is payable to
21 bearer. Determining to whom a note is payable requires
22 examination not only of the face of the note but also
23 of any indorsements. This is because the party to whom
24 a note is payable may be changed by indorsement so
25 that, for example, a note payable to the order of a
26 named payee that is indorsed in blank by that payee

1 becomes payable to bearer.

2
3 [2.] The second way that a person may be the person
4 entitled to enforce a note is to be a "nonholder in
5 possession of the [note] who has the rights of a
6 holder."

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8 [a.] How can a person who is not the holder of a
9 note have the rights of a holder? This can occur
10 by operation of law outside the UCC, such as the
11 law of subrogation or estate administration, by
12 which one person is the successor to or acquires
13 another person's rights. It can also occur if the
14 delivery of the note to that person constitutes a
15 'transfer' (as that term is defined in UCC Article
16 3, see below) because transfer of a note "vests in
17 the transferee any right of the transferor to
18 enforce the instrument." Thus, if a holder (who,
19 as seen above, is a person entitled to enforce a
20 note) transfers the note to another person, that
21 other person (the transferee) obtains from the
22 holder the right to enforce the note even if the
23 transferee does not become the holder (as in the
24 example below). Similarly, a subsequent transfer
25 will result in the subsequent transferee being a
26 person entitled to enforce the note.

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2 [b.] Under what circumstances does delivery of a
3 note qualify as a transfer? As stated in UCC
4 Section 3-203(a), a note is transferred "when it
5 is delivered by a person other than its issuer for
6 the purpose of giving to the person receiving
7 delivery the right to enforce the instrument."
8 For example, assume that the payee of a note sells
9 it to an assignee, intending to transfer all of
10 the payee's rights to the note, but delivers the
11 note to the assignee without indorsing it. The
12 assignee will not qualify as a holder (because the
13 note is still payable to the payee) but, because
14 the transaction between the payee and the assignee
15 qualifies as a transfer, the assignee now has all
16 of the payee's rights to enforce the note and
17 thereby qualifies as the person entitled to
18 enforce it. Thus, the failure to obtain the
19 indorsement of the payee does not prevent a person
20 in possession of the note from being the person
21 entitled to enforce it, but demonstrating that
22 status is more difficult. This is because the
23 person in possession of the note must also
24 demonstrate the purpose of the delivery of the
25 note to it in order to qualify as the person
26 entitled to enforce.

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2 [3.] There is a third method of qualifying as a person
3 entitled to enforce a note that, unlike the previous
4 two methods, does not require possession of the note.
5 This method is quite limited - it applies only in cases
6 in which "the person cannot reasonably obtain
7 possession of the instrument because the instrument was
8 destroyed, its whereabouts cannot be determined, or it
9 is in the wrongful possession of an unknown person or a
10 person that cannot be found or is not amenable to
11 service of process." In such a case, a person
12 qualifies as a person entitled to enforce the note if
13 the person demonstrates not only that one of those
14 circumstances is present but also demonstrates that the
15 person was formerly in possession of the note and
16 entitled to enforce it when the loss of possession
17 occurred and that the loss of possession was not as a
18 result of transfer (as defined above) or lawful
19 seizure. If the person proves those facts, as well as
20 the terms of the note, the person may enforce the note,
21 but the court may not enter judgment in favor of the
22 person unless the court finds that the maker is
23 adequately protected against loss that might occur
24 because if the note subsequently reappears.

25
26 PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE, DRAFT REPORT OF THE
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1 PEB ON THE UCC RULES APPLICABLE TO THE ASSIGNMENT OF MORTGAGE NOTES AND TO THE
2 OWNERSHIP AND ENFORCEMENT OF THOSE NOTES AND THE MORTGAGE SECURING THEM, 3-6
3 (March 29, 2011) ([http://extranet.ali.org/directory/files/PEB_](http://extranet.ali.org/directory/files/PEB_Report_on_Mortgage_Notes-Circulation_Draft.pdf)
4 [Report_on_Mortgage_Notes-Circulation_Draft.pdf](http://extranet.ali.org/directory/files/PEB_Report_on_Mortgage_Notes-Circulation_Draft.pdf)) (footnotes
5 omitted).

6 OneWest submitted the Note and Deed of Trust as evidence in
7 support of the Motion (Dkts. 20 and 21). OneWest also submitted
8 the Assignment in support of the Motion.

9 The court finds that the Assignment is sufficient to show
10 that OneWest is the owner of the Note and has constitutional
11 standing to bring the motion. The Assignment "does convey,
12 grant, sell, assign, transfer and set over the described Deed of
13 Trust together with the certain note(s) described
14 therein...together with all right, title and interest secured
15 thereby, all liens, and any rights due or to become due thereon
16 to OneWest Bank, FSB..."

17 However, the court finds that the record before the court
18 fails to demonstrate that OneWest is the "person entitled to
19 enforce" the note under the Commercial Code, and the court
20 therefore concludes that OneWest has not shown that it has
21 prudential standing to bring the Motion.

22 The court finds that OneWest has not shown that it is the
23 "holder" of the Note [the first alternative above] because: (1)
24 there is no evidence in the record that the Note has been
25 indorsed to OneWest or to bearer; and (2) there is no evidence in
26 the record that OneWest is in possession of the Note. The court
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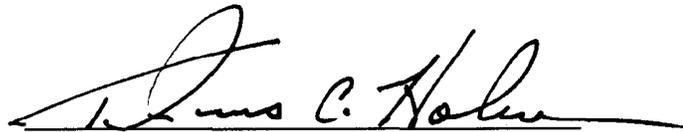
1 finds that OneWest has not shown that it is a "nonholder in
2 possession of the note who has the rights of a holder" [the
3 second alternative above] because there is no evidence in the
4 record that OneWest is in possession of the Note. The court
5 finds that OneWest has not shown that it is a "nonholder not in
6 possession of the note who has the rights of a holder" [the third
7 alternative above] because there is no evidence in the record
8 that OneWest cannot reasonably obtain possession of the Note
9 because the Note was destroyed, its whereabouts cannot be
10 determined, or it is in the wrongful possession of an unknown
11 person or a person that cannot be found or is not amenable to
12 service of process.

13 As to the debtor's countermotion for sanctions, although
14 this request was made on less than twenty-eight days' notice and
15 should be construed as a motion filed pursuant to Local
16 Bankruptcy Rule 9014-1(f)(2), the motion cannot be granted.
17 Pursuant to Federal Rule of Bankruptcy Procedure. 9011(c)(1)(A),
18 "[a] motion for sanctions under this rule shall be made
19 separately from other motions or requests[.] . . ." The debtor
20 failed to comply with this requirement. Pursuant to Federal Rule
21 of Bankruptcy Procedure 9011(c)(1)(A), a motion for sanctions
22 "may not be filed with or presented to the court unless, within
23 [twenty-one] days after service of the motion . . . the
24 challenged paper, claim, defense, contention, allegation, or
25 denial is not withdrawn or appropriately corrected[.] . . ." The
26 debtor has failed to comply with this requirement. The

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1 countermotion for sanctions was filed on May 10, 2011 (Dkt. 25),
2 providing the creditor with only fourteen (14), instead of
3 twenty-one (21), days to withdraw or amend their motion for
4 relief from the automatic stay. The requests for sanctions under
5 28 U.S.C. § 1927 and the court's inherent authority are not
6 granted because the debtor refers to inherent authority only in
7 the title of section 2 of the opposition and countermotion and
8 refers to 28 U.S.C. § 1927 only by stating that OneWest's
9 "inaccurate representations . . . may warrant sanctions under 28
10 U.S.C. § 1927." The debtor provides no other authority or
11 analysis to support these requests. With respect to 28 U.S.C. §
12 1927, the debtor has failed to address *Perroton v. Gray (In re*
13 *Perroton)*, 958 F.2d 889 (9th Cir. 1992), which holds that a
14 bankruptcy court is not a "court of the United States" as defined
15 in 28 U.S.C. § 451.

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17 Dated: June 6, 2011


UNITED STATES BANKRUPTCY JUDGE

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