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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 SACRAMENTO DIVISION
8

9 In re) Case No. 10-29678-E-7
10 BERENICE THOREAU de la SALLE) Docket Control No. BLS-7
11 and PIERRE THOREAU de la)
12 SALLE,)
13 Debtor(s).)
14

15 This memorandum decision is not approved for publication and may
16 not be cited except when relevant under the doctrine of law of the
17 case or the rules of claim preclusion or issue preclusion.

18 MEMORANDUM OPINION AND DECISION

19 The court is presented with an objection filed by Bernice de
20 la Salle ("Debtor"), one of the original debtors in this case,¹ to
21 a proof of claim filed by U.S. Bank, N.A., Trustee for the
22 Certificateholders of SARM 05-19XS ("U.S. Bank, N.A., Trustee").

23 BACKGROUND

24 The bankruptcy case was commenced as a Chapter 13 case on
25 April 15, 2010, and converted to one under Chapter 7 on May 9,
26 2011. The objection to claim was filed by Debtor prior to
27 conversion of the case to one under Chapter 7. In addition to the

28 ¹ During the pendency of this case Pierre Thoreau de la
Salle, the co-debtor, passed away. The Debtor has continued in
the prosecution of her bankruptcy case.

1 objection to claim, the Debtor also filed an adversary proceeding
2 against U.S. Bank, N.A., Trustee, E.D. Cal. Bankr. Adv. No. 10-
3 02642, prior to conversion of the case to one under Chapter 7.

4 U.S. Bank, N.A. Trustee filed Proof of Claim No. 17 on August
5 20, 2010, and Proof of Claim No. 18 (which amended Proof of Claim
6 No. 17) on September 16, 2010. The claim is based on a promissory
7 note dated April 25, 2005, in the principal amount of \$668,000.00,
8 for which "America's Wholesale Lender is the named payee" ("Note").
9 The claim is asserted to be secured pursuant to a deed of trust
10 dated April 25, 2005, in which America's Wholesale Lender is
11 identified as the Lender and Mortgage Electronic Registration
12 Systems, Inc. is identified as the beneficiary as the nominee of
13 Lender ("Deed of Trust"). Copies of the Note and Deed of Trust are
14 attached to Proof of Claim No. 17.

15 The objection to claim states the following grounds upon which
16 the Debtor asserts that the claim should be disallowed:

- 17 1. The proof of claim is not accompanied by evidence that
18 U.S. Bank, N.A., Trustee has authority to bring the
claim.
- 19 2. U.S. Bank, N.A., Trustee has not met its threshold burden
20 of standing.
- 21 3. U.S. Bank, N.A., Trustee has not proven that the security
22 interest it relies upon has been perfected, as required
by Federal Rule of Bankruptcy Procedure 3001(d).

23 The relief requested in the objection is that (1) U.S. Bank,
24 N.A., Trustee be required to file an amended proof of claim,
25 (2) U.S. Bank, N.A., Trustee be required to provide the complete
26 chain of title for both the Note and Deed of Trust upon which its
27 claim is based, (3) U.S. Bank, N.A., Trustee be required to provide
28 the original Note and Deed of Trust, with "wet signatures," upon

1 which its claim is based, and (4) if U.S. Bank, N.A., Trustee fails
2 to provide the documents, the court disallow its claim in the
3 bankruptcy case.

4 The Adversary Proceeding asserted various claims that the Deed
5 of Trust which was purported to secure the U.S. Bank, N.A., Trustee
6 claim was no longer effective or enforceable. The Debtor sought a
7 declaration that the rights of the estate, as a hypothetical lien
8 creditor or bona fide purchaser for value, were superior in the
9 Real Property to that of U.S. Bank. The Complaint also sought to
10 quiet title between the Debtor and U.S. Bank, N.A., Trustee with
11 respect to the Real Property on various grounds, including that
12 lien is defective on its face, the lien has been bifurcated from
13 the Note, and that U.S. Bank, N.A., Trustee does not have an
14 interest in the Note and Deed of Trust.

15 U.S. Bank, N.A., Trustee filed a motion to dismiss the
16 Adversary Proceeding. The court determined that all but one of the
17 claims asserted in the Adversary Proceeding were barred under the
18 doctrine of *Res Judicata* or Claims Preclusion based on a prior
19 final order dismissing with prejudice an action commenced by the
20 Debtors against U.S. Bank, N.A., Trustee in the United States
21 District Court for the Eastern District of California. Adv.
22 Dckt. 50. The court did not dismiss claims which arose under
23 11 U.S.C. § 544, a trustee's lien avoiding powers.

24 The court rejected U.S. Bank, N.A., Trustee's contention that
25 the Debtor, as a Chapter 13 debtor, did not have standing to assert
26 the Bankruptcy Code avoiding powers because she was not a trustee
27 or debtor in possession. The court held that in the absence of a
28 trustee, the Chapter 13 Debtor had standing to assert claims

1 arising under 11 U.S.C. § 544 to recover property for or assert
2 rights of the bankruptcy estate. See *Houston v. Eiler (In re*
3 *Cohen)*, 305 B.R. 886 (B.A.P. 9th 2004).

4 The court administratively consolidated the objection to claim
5 with the adversary proceeding for discovery and trial/evidentiary
6 hearing. To the extent that an objection to claim requests relief
7 of the kind specified in Federal Rule of Bankruptcy Procedure 7001
8 (which includes declaratory relief; determining the validity,
9 extent and priority of a lien; and injunctive relief), such
10 objection must be made through an adversary proceeding.

11 **ROLE OF CHAPTER 7 TRUSTEE**

12 After conversion of the case, the Chapter 7 Trustee asserted
13 his status as the real party in interest in Adversary Proceeding
14 10-2642. The Trustee has filed a motion to approve a compromise of
15 the litigation with U.S. Bank, N.A., Trustee on the issues
16 remaining in that Adversary Proceeding.

17 The Trustee has not substituted in or asserted the right to
18 proceed with an objection to the claim of U.S. Bank, N.A., Trustee.

19 The Debtor has independently proceeded with the objection to
20 claim. On May 25, 2012, the Debtor's discharge was entered.
21 Dckt. 378.

22 Pursuant to the order setting this evidentiary hearing, the
23 parties addressed in their hearing briefs the issue of whether the
24 Debtor has standing to prosecute an objection to the claim of U.S.
25 Bank, N.A., Trustee when the Trustee has elected not to prosecute
26 such objection.

27 **STANDING TO OBJECT TO CLAIM**

28 In determining who may object to a claim, the court considers

1 the purpose underlying why a claim is filed in a bankruptcy case.
2 For a creditor to receive a distribution in a Chapter a 7 case,
3 11 U.S.C. § 726(a); Chapter 12 case, 11 U.S.C. § 1225; and Chapter
4 13 case, 11 U.S.C. § 1325, distributions are to be made only for
5 creditors who have filed allowed claims. For Chapter 9 and 12
6 cases, there must be either a proof of claim or the claim is not
7 listed by the debtor as disputed, contingent, or unliquidated.
8 11 U.S.C. §§ 924, 925, 1111(a).

9 The issue of who is a "party in interest" for purposes of
10 11 U.S.C. § 502(a) and (b) has been addressed by a number of
11 courts. COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 5.02.02[2][d]
12 provides the following discussion of a Chapter 7 debtor's right to
13 object to a claim as follows:

14 The debtor may be a party in interest with standing to
15 object to a proof of claim. Particularly in chapter 12
16 and chapter 13 cases, the success of the debtor's plan
17 may depend upon the debtor's being able to argue
18 successfully that the debt asserted as a priority claim
19 or a secured claim, which must often be paid in full, is
20 excessive or invalid. Typically, the trustee in such
21 cases does not view it as his or her role to object to
22 particular claims except, perhaps, if they have been
23 tardily filed.

24 In a chapter 7 case, or a chapter 11 case in which the
25 debtor is not in possession, the debtor usually has no
26 pecuniary interest that would justify objecting to a
27 claim unless there could be a surplus after all claims
28 are paid. An individual debtor, however, in such a case
may sometimes have an interest in objecting to particular
claims. For example, the debtor may wish to object to an
excessive dischargeable claim whose holder would receive
distributions that otherwise would be made to the holder
of a nondischargeable claim. To the extent that a
nondischargeable claim is satisfied in some measure by a
distribution, it is in the debtor's interest to maximize
the distribution, thereby relieving the debtor from some
or all of the claim of that creditor which would survive
the bankruptcy case. The debtor also has an interest if
there is any chance that a disallowance will yield a
solvent estate that would provide a return to the debtor.
The same reasoning applies to equity holders of the

1 debtor. Thus, a debtor may be afforded standing, in
2 certain instances, to object to claims.

3 The Fourth Circuit Court of Appeals addressed this issue in
4 *Grausz v. Englander*, 321 F.3d 467, 473 (4th Cir. 2003), concluding
5 that a Chapter 7 debtor was a "party in interest" when the outcome
6 of the proceeding could result in there being additional monies to
7 pay nondischargeable debts.

8 In the bankruptcy context a party in interest is one who
9 has a pecuniary interest in the distribution of assets to
10 creditors. *Willemain v. Kivitz*, 764 F.2d 1019, 1022 (4th
11 Cir. 1985)...If legal fees were reduced or disallowed,
12 there would be more money available in the estate to pay
13 the non-dischargeable priority claims, and Grausz's
personal liability would be reduced. Grausz therefore had
a pecuniary interest in the outcome of the fee
applications, making him a party in interest to that
proceeding.

14 In discussing appeals taken from orders concerning claims and
15 administrative expenses, the Ninth Circuit Court of Appeals
16 concluded that,

17 Only those persons who are directly and adversely
18 affected pecuniarily by an order of the bankruptcy court
19 have been held to have standing to appeal that order.
20 *Hartman Corp. of America v. United States*, 304 F.2d 429,
21 431 (8th Cir. 1962); see *Skelton v. Clements*, 408 F.2d
22 353 (9th Cir.), cert. denied, 394 U.S. 933, 89 S. Ct.
23 1202, 22 L. Ed. 2d 462 (1969). Thus, a hopelessly
insolvent debtor does not have standing to appeal orders
affecting the size of the estate. *E.g.*, *Skelton v.*
Clements, 408 F.2d at 354. Such an order would not
diminish the debtor's property, increase his burdens, or
detrimentally affect his rights. *In re Capitano*, 315 F.
Supp. 105, 107 (E.D. La. 1970).

24 *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442 (9th
25 Cir. 1982).

26 Generally, an insolvent debtor does not have standing to
27 object to a claim and is not a party in interest because the debtor
28 has no pecuniary interest in the distribution of assets among

creditors. *In re Jorczak*, 314 B.R. 474, 479 (Bankr. D. Conn. 2004); *Wellman v. Ziino (In re Wellman)*, 2007 Bankr. LEXIS 4291, 4-6 (B.A.P. 9th Cir. Nov. 9, 2007). The Chapter 7 Trustee is the legal representative of the estate and "[o]nly a trustee can pursue a cause of action belonging to the bankruptcy estate," including the allowance and disallowance of claims. *Stoll v. Quintanar (In re Stoll)*, 252 B.R. 492, 495 (B.A.P. 9th Cir. Cal. 2000); *Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 429 (B.A.P. 9th Cir. 2005). With regard to prosecuting claims objections, a debtor lacks standing to object unless he or she would be injured in fact by the allowance of the claim. *Cheng v. K&S Diversified Invs., Inc. (In re Cheng)*, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004).

Where an estate will have a surplus that will be returned to the debtor after all the creditors have been paid in full, providing the debtor with an economic interest similar to that of creditors who will be paid in full, a Chapter 7 debtor may have standing to object to a claim. *In re Wellman*, 2007 Bankr. LEXIS at 4-6. "Debtors only have standing to object to claims where there is a "sufficient possibility" of a surplus to give them a pecuniary interest." *Id.* In *Jorczak* the court found that there was a sufficient possibility where an asset had a claimed value of \$136,000.00 and potential claims totaled \$55,000.00. 314 B.R. at 479-80.

PARTY IN INTEREST STANDING ASSERTED BY DEBTOR

No contention has been made that U.S. Bank, N.A., Trustee will be paid on its claim in this Chapter 7 case by the Trustee. No dispute was raised to the contention that the Debtor is insolvent.

1 It has not been asserted that the objection to claim could affect
2 the administration of the estate and yield a pecuniary effect for
3 the Debtor (surplus estate, payment of nondischargeable debts).

4 Issues concerning the extent, validity, and priority of the
5 lien asserted by U.S. Bank, N.A., Trustee must be asserted through
6 an adversary proceeding. Federal Rule of Bankruptcy Procedure
7 7001. Those rights were raised and advanced in Adversary
8 Proceeding 10-2642 which is now under the control of the Chapter 7
9 Trustee. Further, the court granted the U.S. Bank, N.A., Trustee
10 motion to dismiss all claims in that Adversary Proceeding based on
11 *issue preclusion* and *res judicata* attacking the extent, validity,
12 and priority of the Deed of Trust and Note. The Debtor cannot
13 attempting to resurrect those issues through this claim objection.

14 At oral argument the Debtor confirmed that her concern was
15 that an "order" of the bankruptcy court relating to the proof of
16 claim could be used by U.S. Bank, N.A., Trustee as an adjudication
17 of her personal rights. Upon further discussion, given that the
18 only order to be entered would be on the Debtor's objection to
19 claim, this point was clarified by the Debtor to be a concern that
20 her failing to object to a claim would constitute an adjudication
21 of her rights as to U.S. Bank, N.A., Trustee's asserted interest in
22 and rights to the Note and Deed of Trust.

23 U.S. Bank, N.A., Trustee agreed on the record that the filing
24 of the proof of claim and the absence of an objection thereto would
25 not constitute an adjudication of rights or interests as between
26 the Debtor and U.S. Bank, N.A., Trustee concerning the Note and
27 Deed of Trust. In addressing the standing issue, U.S. Bank, N.A.,
28 Trustee has asserted that the Debtor does not have standing based

1 on the lack of a pecuniary interest concerning the claim and the
2 administration of the bankruptcy case.² The U.S. Bank, N.A.,
3 Trustee analysis of the lack of pecuniary interest is based on the
4 Chapter 13 Trustee's final report of claims, stated to be,

5	Disputed Secured Claims	\$824,462.33
6	Priority Claims	\$ 8,721.97
	General Unsecured Claims	\$406,408.95

7 Chapter 13 Trustee's Final Report, Dckt. 280. The U.S. Bank, N.A.,
8 Trustee computation of the estate assets total approximately
9 \$604,000.00, again based on the Chapter 13 Trustee's Final Report
10 and Schedules in this case. Dckt. 280, Page 1; Dckt. 83, Page 5.
11 As a result, Debtor cannot demonstrate injury in fact because she
12 does not have a pecuniary interest in the estate or administration
13 of the estate.

14 **FAILURE OF DEBTOR TO SHOW PARTY IN INTEREST STATUS AND STANDING**

15 The Debtor has not shown how or why her objection to claim
16 will result in any additional amounts of money be made available to
17 her or for her benefit from the distributions to be made by the
18 Trustee. The Debtor has not shown how there is a surplus estate
19 which will be increased by the court's ruling on the objection to
20 claim.

21 To the contrary, the Debtor has shown that the objection to
22 claim ruling is intended to have no impact on the bankruptcy case,
23 but adjudicate rights between the Debtor and U.S. Bank, N.A.,
24

25 ² Clearly, U.S. Bank, Trustee could not have it both ways -
26 contending that the Debtor does not have standing to object to
27 the claim and that the failure to object to the claim results in
28 the proof of claim having *res judicata* or issue preclusion effect
as to the Debtor. U.S. Bank, N.A., Trustee's agreement is the
logical conclusion drawn from its defense that the Debtor does
not have standing to litigate the issues in a claims objection.

1 Trustee concerning issues outside of the bankruptcy case. Merely
2 because a person files bankruptcy does not render the bankruptcy
3 court the "be all and end all" for litigating any and all disputes.

4 Here, the estate is insolvent and there is no evidence that
5 the estate will have a surplus to be returned to Debtor. Therefore
6 Debtor does not have standing to object to a claim because Debtor
7 has no pecuniary interest in the property of the estate and will
8 not benefit if the estate is enlarged. *In re Stoll*, 252 B.R. 492
9 at 495.

10 The requirement of there being an actual pecuniary interest
11 flowing through the bankruptcy case for a Chapter 7 debtor to have
12 "Party in Interest" status is consistent with the general law
13 concerning standing in federal court. Standing must be determined
14 to exist before the court can proceed with the case. *Sacks v.*
15 *Office of Foreign Assets Control*, 466 F.3d 764, 771 (9th Cir.
16 2006). Even when neither party raises the issue of whether Debtor
17 has standing to object to U.S. Bank's claim, the court may raise it
18 *sua sponte*. See Federal Rules of Civil Procedure 12(h)(3).

19 To demonstrate standing, a person must have a legally
20 protected interest, for which there is a direct stake in the
21 outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43,
22 64, 117 S.Ct. 1055 (1997). The Supreme Court provided a detailed
23 explanation of the Constitutional case in controversy requirement
24 in *Northeastern Florida Chapter of Associated General Contractors*
25 *of America v. City of Jacksonville Florida*, 508 U.S. 656, 663, 113
26 S.Ct. 2297 (1993). The party seeking to invoke federal court
27 jurisdiction must demonstrate (1) injury in fact, not merely
28 conjectural or hypothetical injury, (2) a causal relationship

1 between the injury and the challenged conduct, and (3) that the
2 prospect of obtaining relief from the injury as a result of a
3 favorable ruling is not too speculative. *Id.*

4 An overlay to the basic Constitutional requirements was
5 recently addressed *Stern v. Marshall*, ___ U.S. ___, 131 S. Ct.
6 2594 (2011), by the Supreme Court concerning the proper exercise
7 of federal judicial power by an Article I bankruptcy judge.
8 Notwithstanding the comprehensive regulatory scheme enacted by
9 Congress in creating the current Bankruptcy Code and the recognized
10 authority of a bankruptcy referee (pre-Bankruptcy Code) and current
11 bankruptcy judges to enter final judgments and orders on a myriad
12 of matters, including objections to claims, the Supreme Court
13 addressed the proper line drawn between an Article I judge
14 exercising the judicial power of the United States in the context
15 of a bankruptcy case. In *Stern*, the Supreme Court found that the
16 bankruptcy judge determined a counterclaim which did not
17 necessarily need to be determined as part of the claim objection.
18 The Supreme Court found that the Article I bankruptcy judge issuing
19 a judgment on the counterclaim under those circumstances was an
20 improper intrusion on the Article III judicial power.

21 For this bankruptcy court to address the present objection for
22 which there is no pecuniary interest of the Debtor relating to the
23 administration of the bankruptcy case, it would likewise be an
24 improper intrusion on the powers of the Article III judges and
25 state court judges. The Debtor's disputes with U.S. Bank, N.A.,
26 Trustee have nothing to do with it having a claim in the bankruptcy
27 case, the administration of the bankruptcy case, or distribution to
28 creditors in the bankruptcy case.

1 **RULING**

2 The court overrules the objection to claim without prejudice
3 based on the Debtor not being a party in interest as required by
4 11 U.S.C. § 502(a) and not having standing to prosecute the
5 objection to Proofs of Claim Nos. 17 and 18 under the facts of this
6 case. Overruling the objection to claim and the existence of the
7 unobjected to proofs of claim filed by U.S. Bank, N.A., Trustee are
8 deemed not to be an adjudication of rights between the parties to
9 this objection to claim. U.S. Bank, N.A., Trustee and the Debtor
10 agreed on the record that the proof of claim filed by U.S. Bank,
11 N.A., Trustee would not be an adjudication of rights, or give rise
12 to *res judicata* or claims preclusion.³ This agreement and ruling
13 is without prejudice to the effect of any other rulings, orders, or
14 judgments entered by this court or any other court.

15 The court shall issue a separate order overruling the
16 objection to claim without prejudice. This Memorandum Opinion and
17 Decision constitutes the court's findings of fact and conclusions
18 of law pursuant to Federal Rule of Civil Procedure 52 and Federal
19 Rules of Bankruptcy Procedure 7052 and 9014.

20 Dated: June 15, 2012

21

RONALD H. SARGIS, Judge
22 United States Bankruptcy Court

23

³ As addressed in the Restatement of Law Second, agreement
24 by the parties or reservation of rights for a party as not having
25 been determined in a judicial proceeding, the court determining
26 that there is a lack of jurisdiction or nonjoinder of parties, or
27 the court ordering dismissal of a proceeding without prejudice
28 are separate and independent grounds for there being no *res*
judicata, collateral estoppel, or claims preclusion effect given
Restatement of Law Second, Judgments 3d, Chapter 3, Former
Adjudication: the Effects of Judgment, §§ 20, 26(a), (b).