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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

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In Re:) Case No. LA10-40116-VZ
)
) Los Angeles, California
) Thursday, January 24, 2013
Debtor.) 11:00 a.m.
)
)

ADV. 12-01983 [REDACTED] V. WMC
MORTGAGE CORP ET AL

MOTION FOR SUMMARY JUDGMENT ON
THE REMAINING CAUSE OF ACTION
IN THE COMPLAINT, OR IN THE
ALTERNATIVE, FOR AN ORDER
ADJUDICATING FACTS WITHOUT
SUBSTANTIAL CONTROVERSY

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE VINCENT P. ZURZOLO
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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transcript produced by transcription service.

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1 LOS ANGELES, CALIFORNIA THURSDAY, JANUARY 24, 2013 11:00 AM

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3 (Call to order of the Court.)

4 THE COURT: Six is a hearing on a motion for
5 summary judgment in the [REDACTED] versus WMC Mortgage
6 Corporation, bankruptcy case, adversary proceeding.

7 MS. WILTON: Good morning, your Honor. Christine
8 Wilton on behalf of the plaintiff respondent [REDACTED]

9 THE COURT: Good morning.

10 MS. MANZER: Good morning, your Honor. Nancy
11 Manzer with the law firm of Wilmer, Cutler, Pickering, Hale
12 and Dorr on behalf of the movant Bank of America.

13 THE COURT: Good morning. Could you please spell
14 your last name.

15 MS. MANZER: M-A-N-Z-E-R.

16 THE COURT: Thank you.

17 MR. WEBER: Good morning, your Honor. Edward
18 Weber for the movant.

19 THE COURT: Okay. Good morning.

20 MR. WEBER: Excuse my voice. Sorry.

21 THE COURT: That's okay.

22 Ms. Manzer or Mr. Weber, who is going to make oral
23 arguments for the motion?

24 MS. MANZER: I will, your Honor.

25 THE COURT: Okay.

1 MS. MANZER: And I did want to just note that I
2 had filed a motion pro hac vice. And I don't know if that's
3 been acted on but I wanted to let you know that it's been
4 filed and make sure that you were going to let me argue.

5 THE COURT: Okay. What would you like to say, Ms.
6 Manzer?

7 MS. MANZER: Your Honor, I don't say this often
8 when I'm before a court but I really think this is an easy
9 case.

10 I think the only thing the Court has to decide is
11 the res judicata effect of the debtor's confirmed plan, and
12 I think that effect is very clear and it's dispositive. So
13 I don't think there's any other issues that the Court needs
14 to reach.

15 The debtor's confirmed plan in this case very
16 clearly identifies Bank of America as a creditor that can
17 enforce a lien against the debtor's property. There's no
18 ambiguity in the plan on that point.

19 The plan is binding on the debtor. It acts as a
20 final judgment which the debtor cannot now challenge. It
21 addresses precisely the issue that is at the center of this
22 adversary proceeding about whether Bank of America --
23 whether there is a valid lien that Bank of America can
24 enforce. And I think the plan establishes that.

25 So the debtor raises issues about the disallowance

1 of the claim. I think that's irrelevant.

2 First of all, disallowance of that claim was prior
3 to the time that the debtor proposed the plan. It was prior
4 to the time that the plan was confirmed.

5 If the debtor thought that the disallowance of the
6 claim caused the lien to be ineffective or invalid and
7 wanted to challenge that, she could have proposed a plan
8 that didn't include Bank of America as a secured creditor.

9 She could have raised the issue at the
10 confirmation hearing, and having failed to do that, she
11 can't raise that issue now. She can't now take a different
12 position and seek a different result than what was
13 established by the plan. So it's simply irrelevant.

14 Even if the debtor wasn't barred from trying to
15 argue that point based on the disallowance of the claim, I
16 think the disallowance of the claim is also irrelevant
17 because there was no finding about the validity of the lien
18 that would carry over to this adversary.

19 So I think the res judicata point decides the
20 issue.

21 We've also made arguments on collateral estoppel
22 waiver, judicial estoppel. I think those all apply. I
23 think those are all good arguments, but I don't think you
24 even have to go there, because I think the res judicata
25 issue is so clear.

1 I'm happy to answer any questions or address any
2 points that I haven't addressed that are in our papers that
3 you think you would like to hear about. I would like to
4 reserve the right to respond to any points that debtor's
5 counsel makes.

6 But unless you have questions, I think that's all
7 I have to say, at least as far as an opening.

8 THE COURT: Okay. Thank you very much.

9 Ms. Wilton, anything you want to say in support of
10 your opposition?

11 MS. WILTON: Yes, your Honor.

12 Well, in support of the opposition, I'd like to
13 emphasize that the burden to comply with the Local
14 Bankruptcy Rules and the Federal Rules of Civil Procedure
15 had required a procedurally correct motion for summary
16 judgment.

17 The flaw in the movant's motion is they failed to
18 file a statement of uncontroverted facts according to the
19 Local Bankruptcy Rules and required by the Local Bankruptcy
20 Rules.

21 And based on that, my client has not had an
22 opportunity to respond to that. So it poses a due process
23 problem or issue.

24 Secondly, the exhibits that have been provided
25 on reply, should the Court move beyond the procedural

1 defects of the motion, the note in Exhibit A of the movant's
2 reply is not authenticated. Federal Rules of Evidence 901-4
3 requires the authenticating and identifying the documents.

4 When we look at the comparison of the note
5 attached to Exhibit A in comparison with the proofs of claim
6 previously filed by Bank of America, we note that the note
7 is distinctly different.

8 An example, at the foot of page one of the
9 promissory note in Exhibit A, we have bar codes and bar code
10 data that are not present in the proof of claim notes. And
11 the proof of claim note at the foot of the page provides a
12 stamp certifying that it's a true and correct copy of the
13 original.

14 Those are the distinctions.

15 And the hole punches at the top of the note
16 attached to the motion for summary judgment appear to be
17 different in addition to the bar code missing in the stamp.

18 The debtor is objecting to the admissibility of
19 this evidence for the purpose of establishing the perfected
20 security interest based on movant's failure to authenticate
21 and identify the documents according to the Federal Rules of
22 Evidence.

23 Bank of America is acting as a loan servicer on
24 their behalf and apparently in their reply as well, on
25 behalf of themselves and the trustee of the securitized

1 trust.

2 There's no admissible evidence on the record to
3 support that Bank of America is acting as a loan servicer.
4 They have not provided any evidence to support their
5 relationship to Deutsche Bank.

6 Further, the pooling and servicing agreement
7 that's been provided as Exhibit B -- and I'm aware that your
8 Honor is familiar with these documents. Section 2.01 of the
9 pooling and servicing agreement, which is found at page four
10 of Bank of America's Exhibit B, sets forth the requirements
11 of conveyance of mortgage loans, which requires that the
12 mortgage loan move from the originator which would be WMC
13 Mortgage to the depositor.

14 And specifically section 2.01(a) requires the
15 depositor concurrently with the execution and delivery
16 thereof would transfer and convey the note and the deed of
17 trust to the trustee.

18 And I'm summarizing this. I'm not quoting it,
19 your Honor, just to move through swiftly here.

20 Therefore, the note would have been required to be
21 transferred, according to their own exhibit, from the
22 depositor WMC Mortgage -- from the originator, excuse me, to
23 the depositor Morgan Stanley and then again from the
24 depositor to the trustee of the trust and then into the
25 trust.

1 Again, that is another reason why the note
2 attached with their Exhibit A on the reply should be
3 inadmissible to support a perfected security interest.

4 Thank you.

5 THE COURT: You're welcome.

6 Okay. Ms. Manzer, do you wish to make a reply?

7 MS. MANZER: Your Honor, you can ignore all the
8 exhibits we submitted with the reply. As we noted, we are
9 submitting them because we thought it might resolve issues
10 with the debtor.

11 But the debtor -- the standing of Bank of America
12 to enforce the lien has been established by the plan. It's
13 not subject to question any longer.

14 I think the comments about the exhibit -- the note
15 was authenticated. If you need to go there, Ms. May did say
16 it was a true and correct copy -- it was a true and correct
17 copy as kept by the bank's records, but it was only intended
18 to show that the note was in fact endorsed and blank and to
19 eliminate some of the arguments that debtor makes.

20 But I don't think those are really -- those facts
21 are not at issue on this motion, because the plan
22 established and the debtor throughout the course of this
23 bankruptcy case time and time again acknowledge that Bank of
24 America had standing to enforce a lien against the property.

25 Those facts are simply not at issue. They were

1 determined by a final judgment of this Court and cannot be
2 collaterally attached at this point.

3 So I think, while we submitted that evidence and
4 whether that was a good idea or a bad idea, I don't know but
5 we thought it might eliminate some issues. But they are not
6 relevant to the legal issue before the Court.

7 It's a fact that the debtor is just not entitled
8 to challenge at this point based on the terms of the
9 confirmed plan.

10 And, your Honor, but that's -- I can go further if
11 you want to hear further about the details of the PSA and
12 the note, I can do that but I just don't think -- I don't
13 think it's relevant here.

14 THE COURT: Okay. Thanks a lot.

15 Here's my ruling on the motion for summary
16 judgment.

17 Motions for summary judgment are appropriate and
18 effective when they are filed and prepared with the
19 requirements of the Federal Rules of Bankruptcy Procedure,
20 Federal Rules of Civil Procedure, Federal Rules of Evidence
21 and the Local Bankruptcy Rules firmly in mind by the moving
22 party.

23 There are several defects with this motion --
24 which have been pointed out in the opposition so they're no
25 surprise to the moving party -- which renders the motion

1 defective based upon the failure to comply with the
2 applicable rules.

3 And I'll detail the ones that are most important,
4 although there are others as well.

5 First, with regard to proof of service of the
6 motion. Our Local Bankruptcy Rules require that the
7 capacity of the parties served with the motion must be
8 plainly stated on the proof of service. That capacity is
9 not so stated.

10 Number two -- and much more important. The first
11 is a procedural defect that many parties suffer from in
12 request for orders submitted with the Court.

13 But the second one, much more important, specific
14 to motions for summary judgment or for motions seeking
15 determination of issues or adjudicating facts that were not
16 a substantial controversy and directly on point, is that
17 parties are required to submit a statement of uncontroverted
18 facts and conclusions of law, what they purport or propose
19 are or assert are uncontroverted.

20 This lays a necessary foundation for framing the
21 dispute. And it wasn't done with the motion. And there's
22 no good explanation provided as to why it was not done.

23 Third, counsel today argues that evidence is
24 irrelevant to the issues which the moving party seeks to
25 have adjudicated through this motion. But nevertheless,

1 evidence was submitted. And the opposition does point out
2 that there are indeed issues of fact which are contested
3 between the parties.

4 So the evidence which was submitted with the
5 moving papers by the movant, i.e., the central testimony,
6 the declaration of Kelly May, lacks any statement
7 establishing a foundation of personal knowledge with regard
8 to various facts asserted directly in the declaration and
9 documents referred to and for which authentication is
10 attempted through that declaration.

11 So based upon the foregoing defects and flaws, the
12 motion is denied. My findings of fact and conclusions of
13 law are on the record.

14 Ms. Wilton, please submit a very simple order
15 denying the motion for summary judgment.

16 MS. WILTON: Thank you, your Honor. I will do so.
17 Thank you.

18 THE COURT: All right. Thank you all very much.
19 The Court's in recess until 1:30.

20 MS. MANZER: Thank you, your Honor.

21 THE COURT: You're welcome.

22 (Proceedings concluded.)
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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 *[Signature]* 2/11/13
Transcriber Date

6 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

7
8 *[Signature]*
9 L.L. Francisco, President.
Echo Reporting, Inc.

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