U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **18-01373-jw**

ORDER ON MOTION FOR A NEW TRIAL

The relief set forth on the following pages, for a total of 14 pages including this page, is hereby ORDERED.

FILED BY THE COURT
01/15/2019

Entered: 01/15/2019

US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Johnson D. Koola, Debtor(s).	C/A No. 18-01373-JW Chapter 13 **ORDER ON MOTION FOR A NEW TRIAL**

This matter comes before the Court upon the Motion for New Trial ("Motion") filed by Johnson D. Koola ("Debtor") on October 12, 2018, seeking a new trial on his objection ("Proof of Claim Objection") to the proof of claim filed by Ditech Financial LLC ("Ditech"), which was previously overruled by the Court by an Order entered September 28, 2018 ("September 2018 Order"). On November 7, 2018, an objection to the Motion was filed by U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust ("U.S. Bank"), the assignee of the claim since the entry of the September 2018 Order. A hearing was held on the Motion attended by Debtor, counsel for U.S. Bank and Jamal Harris, a representative of Caliber Home Loans, Inc. ("Caliber").

Standard of Review

A motion for a new trial is governed by Fed. R. Civ. P. 59(a), which is made applicable to this proceeding by Fed. R. Bankr. P. 9023. For nonjury matters, Rule 59(a)(1)(B) provides that "[t]he court may, on motion, grant a new trial on all or some of the issues—and to any party—. . . for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court." The District Court for the District of South Carolina in *Sunland Construction Co., Inc. v. City of Myrtle Beach*, C/A No. 4:05-CV-1227-RBH, 2009 WL 10678232 (D.S.C. May 13, 2009), outlined when a new trial should be granted in a non-jury matter:

> Rule 59 has been interpreted as allowing a new trial to be granted in a nonjury action only if a new trial might be obtained under similar circumstances in a jury action. *United States v. Carolina Eastern Chemical Co., Inc.,* 639 F. Supp. 1420,

> 1423 (D.S.C. 1986). Those generally recognized grounds for a new trial include: that the verdict is against the weight of the evidence, that the damages are excessive, or that for numerous other reasons the trial was not fair. *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243 (1940). A motion for a new trial in a nonjury case or a petition for a rehearing should be based upon manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons. *Carolina Eastern Chemical Co.,* 639 F. Supp. at 1423. Ultimately, the decision on a motion for a new trial rests within the sound discretion of the trial court. *City of Richmond v. Atlantic Co.*, 273 F.2d 902 (4th Cir. 1960).

Sunland Constr. Co., 2009 WL 10678232 at * 6.

While the majority of Debtor's Motion is merely a restatement of the assertions and arguments he made as part of the Proof of Claim Objection, it appears he is asserting that a new trial is necessary because of his allegation that the Court committed an error in law in not requiring the presentment and enforcement of the original note when considering Ditech's standing to file the claim, that the Court's findings contain a mistake of fact, and that he was prejudiced by the Court's determination not to obtain briefs and arguments on the legal effect of Debtor's prior chapter 7 bankruptcy discharge.

Manifest Error of Law

Debtor appears to assert that the Court erred in not addressing Ditech's ability to enforce the original note in this matter in determining its standing to file a claim based on the mortgage debt.

Initially, it is important to recognize that Debtor has repeatedly agreed to the following: (1) the existence and his simultaneous execution of the subject note and mortgage; (2) that he owes the debt represented by the subject note and mortgage, and he has been in default on the debt since 2009; (3) that Federal National Mortgage Association ("Fannie Mae") was the owner of the debt at the time the proof of claim was filed, [1] and therefore that Fannie Mae was the party with the

[1] In his motion filed on July 13, 2018 "Motion for an Order Rescheduling the July 24, 2018 Hearing," Debtor titled his argument as follows: "Since July 1, 2011 Fannie Mae is the owner or holder of the Note given by Koola to

right to payment.[2] Ditech has also consistently asserted that Fannie Mae was the owner of the debt, including the ownership of the note.[3]

Nonetheless, Debtor argues that Ditech, as servicer, must also demonstrate that it may enforce the original note to have standing to file the proof of claim. As the Court has received

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Countrywide." To further this argument, Debtor included an exhibit to the motion, which was a July 2011 letter from Bank of America to Debtor that indicated that "The name of the creditor to whom the debt is owed: FNMA [(Fannie Mae)]" and noting that "Bank of America, N.A. does not own your loan and only services your loan on behalf of your creditor . . . ." Debtor later asked in his August 13, 2018 Correspondence that the Court take judicial notice of this letter to establish the fact that Fannie Mae is the creditor for the debt.

The July 13, 2018 motion also indicates that in July of 2013, Debtor applied for a loan modification with Fannie Mae. In the cover letter for the application, which was attached to the motion, Debtor states that "I understand that Fannie Mae currently owns my mortgage. Later Bank of America became my service provider. A couple of months back, Bank of America transferred the servicing of the loan to Green Tree." Debtor asserts that his application reflects that "Fannie Mae is the new creditor whom the debt is owed . . . ."

In his Brief filed on August 6, 2018, Debtor states that "Since both Koola and Ditech represent to the Court that Fannie Mae is the creditor, Ditech's 'Affidavit of Lost Note' claim is moot."

In the Correspondence filed by Debtor on August 13, 2018, Debtor indicated that he spoke with a representative of Fannie Mae, and that he was informed that "(i) Fannie Mae is the owner of Koola's mortgage loan; (ii) Fannie Mae became the owner of Koola's mortgage loan on March 1, 2004; (iii) Ditech is the servicer of the loan." Based on these facts, Debtor further alleged in the Correspondence that Ditech committed perjury and a fraud on the court by withholding "information from the Court that Fannie Mae is the creditor and owner of Koola's mortgage loan and that Ditech is only a servicer of Koola's loan owned by Fannie Mae."

Further, through the present Motion, Debtor continues to take the position that Fannie Mae is the owner of the debt, including asserting that "[t]he Note was sold to Fannie Mae in March 2004 . . . ."

[2] Section 101(5) of the Bankruptcy Code defines "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable secure or unsecured . . . ."

[3] At the hearing on the Objection to Claim held on June 21, 2018, Ditech indicated that Fannie Mae is the owner of the loan. In its August 6, 2018 Brief, Ditech clarified its position that Fannie Mae is the owner of the note, referencing the website providing the Fannie Mae Servicing Guides, which governs the relationship between Fannie Mae and its servicers.

The March 14, 2018 Fannie Mae Servicing Guide provides that "Fannie Mae is at all times the owner of the mortgage note**,** whether the mortgage loan is in Fannie Mae's portfolio or part of the MBS Pool." *See* § A2-1-04 Fannie Mae Single Family Servicing Guide (Mar. 14, 2018) *available at* https://www.fanniemae.com/content/guide/svc031418.pdf (hereinafter "*2018 FNMA Servicing Guide*"). This appears to have been Fannie Mae's requirements since at least May 23, 2008, before BAC Home Loans Servicing LP commenced a foreclosure action against Debtor. *See* § 202.07.01 Fannie Mae Single Family 2011 Servicing Guide (June 10, 2011) available at https://www.fanniemae.com/content/guide/svc061011.pdf. (indicating that "Fannie Mae is at all times the owner of the mortgage note, whether the mortgage loan is in Fannie Mae's portfolio or part of the MBS pool[,]" and noting that this provision became effective on May 23, 2008). It appears Fannie Mae gives temporary possession of the note to a servicer to assist with representing Fannie Mae's interest in litigation, including foreclosure and bankruptcy cases, by providing the servicer with "holder" status of the note. *See* § A2-1-04 *2018 Fannie Mae Servicing Guide*.

credible evidence that the note is lost, Debtor maintains that the Court must analyze and apply S.C. Code Ann. § 36-3-804,[4] the lost instrument statute[5] of the South Carolina Commercial Code in effect when Debtor executed the note in 2004.[6] Section 36-3-804 of the South Carolina Code provides that "the owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable upon due proof of his ownership, the facts which prevent his production of the instrument and its terms."[7]

In applying the requirements of that statute, the Court finds that Fannie Mae was the owner of the debt, including ownership of the subject note at the time of the hearing on Proof of Claim

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[4] In his August 6, 2018 Brief, Debtor asserts that "the Court should apply the Code that was in force on February 20, 2004[, the date the note was executed (i.e. S.C. Code Ann. § 36-3-804)]."

Further, in his memorandum in support of the Motion, Debtor asserts: "[T]his Court should apply the Code that was in force on February 20, 2004, which is **S.C. Code Ann. § 36-3-804 (1976).**" (emphasis in original). He also states, "this Court had the duty to apply **S.C. Code Ann. § 36-3-804 (1976)** to determine the validity of Ditech's Affidavit of Lost Note claim." (emphasis in original).

[5] The Court of Appeals of South Carolina has held that a note evidencing a mortgage debt is a negotiable instrument subject to Article 3 of the South Carolina Commercial Code. *See Swindler v. Swindler*, 355 S.C. 245, 249–50, 584 S.E.2d 438, 440–41 (Ct. App. 2003). For the purposes of this Order, the terms "instrument" and "note" will be used interchangeably.

[6] Subsequently, the South Carolina Legislature adopted a revised version of Article 3 of the South Carolina Commercial Code in July of 2008, which included S.C. Code Ann. § 36-3-309 and replaced § 36-3-804. However, the July 2008 Act adopting the amendments indicated that "[a] transaction occurring before the effective date [July 1, 2008] of this act and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law." "Transaction" is not defined in the South Carolina Commercial Code, and it does not appear South Carolina case law has directly addressed what constitutes a "transaction" as intended by the South Carolina Legislature. For the purposes of this Motion, the Court accepts the view that S.C. Code Ann. § 36-3-804 is applicable to this matter.

[7] "Owner" is not defined under the prior version of Article 3 of the South Carolina Commercial Code. That version of the South Carolina Commercial Code permitted parties other than the owner of the note to be the holder of the note for collection and enforcement of the note. *See* S.C. Code Ann. § 36-3-301 (2004) ("The holder of an instrument **whether or not he is the owner** may transfer or negotiate it and discharge it or enforce payment in his own name." (emphasis added)). However, under the plain reading of § 36-3-804, it is clear that the party to collect on and enforce the note after it is lost is the "owner" and not the holder of the note when it was lost. In the present matter, considering the servicing relationship between Bank of America and Fannie Mae, it would appear that Fannie Mae, as owner of the debt, was the owner of the note when it was lost, and that Bank of America was only the holder of the note for purposes of servicing the debt. Based on this determination, it would appear that while Bank of America was entitled to enforce the note as the holder prior to it becoming lost, Fannie Mae, as the owner of the note/instrument, became the party to enforce it under S.C. Code Ann. § 36-3-804 when the note was lost.

Objection, and at the time the proof of claim was filed by Ditech, its servicer.[8] The Court received credible and undisputed testimony that the original note was lost when it was in the possession of the prior servicer, Bank of America N.A. ("Bank of America"),[9] specifically when it was in the possession of foreclosure counsel, Korn Law Firm. After Korn Law Firm suddenly ceased operations, the original note could no longer be located.[10] Exact copies of the original note, which included its terms, were submitted into evidence by both parties. Therefore, at the time of the Court's September 2018 Order, it would appear that Fannie Mae, as owner of the instrument, would be a proper party to maintain an action to collect according to § 36-3-804.[11]

The credible evidence before the Court established that Ditech, in asserting the proof of claim, was acting for Fannie Mae as its servicer. This Court has repeatedly held that a servicer may file a proof of claim on behalf of the owner of the claim, and the Court of Appeals of South Carolina has held that a servicer has standing to foreclose. *See, e.g., In re McFadden*, 471 B.R. 136, 176

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[8] Throughout these proceedings both parties have maintained that Fannie Mae was the owner of the debt. Further, both parties indicated in their pleadings that Fannie Mae was the owner of the Note. Specifically, Ditech asserted Fannie Mae's ownership of the note in its August 6, 2018 brief by stating that "At the time of the initial hearing on the Objection to Claim and at the Preliminary Status Hearing, Fannie Mae was the owner of the note[,]" and referencing the Fannie Mae Single Family Servicing Guide, which further provides that Fannie Mae is at all times the owner of the notes in its portfolio. Further, Debtor, in his motion filed on July 13, 2018 titled "Motion for an Order Rescheduling the July 24, 2018 Hearing," titled his argument as follows: "Since July 1, 2011 Fannie Mae is the owner or holder of the Note given by Koola to Countrywide." Further, in the present Motion, Debtor asserts "[t]he Note was sold to Fannie Mae in March 2004 . . . ."

[9] The foreclosure action was initially commenced by BAC Home Loans Servicing LP ("BAC Home Loans"). BAC Home Loans merged with Bank of America, and Bank of America became the plaintiff in the state court foreclosure action as indicated by the October 13, 2011 Order of the state court.

[10] Debtor asserts in his Memorandum that the record does not reflect that Bank of America was the holder of the note when it was lost. However, the Court received both testimony and the lost note affidavit which evidenced that Bank of America was the holder of the note when it was lost.

[11] Debtor, in his brief in support of his Motion, cites to case law from other jurisdictions for the proposition that under S.C. Code Ann. § 36-3-804, only the party entitled to enforce the instrument at the time it was lost is permitted to enforce it thereafter. However, the cases Debtor cites in support of his arguments apply a different lost instrument statute than that adopted by the South Carolina's Legislature (including both S.C. Code Ann. §§ 36-3-804 and 36-3-309). Specifically, these cases apply the original version of U.C.C. § 3-309, which South Carolina never adopted. In 2008, South Carolina adopted the revised version of U.C.C. § 3-309 to replace S.C. Code Ann. § 36-3-804. The Official Comments to S.C. Code Ann. § 36-3-309 further indicate that the section was drafted with the intent of rejecting the very results that occurred in the cases cited by Debtor. Therefore, the Court does not find the case law cited by Debtor to be relevant to or controlling in the present matter.

(Bankr. D.S.C. 2012) ("A servicer is a real party in interest and has standing to move for relief from stay and to file proofs of claim on the owner's behalf."); *Bank of America, N.A. v. Draper*, 405 S.C. 214, 223, 746 S.E.2d 478, 482 (Ct. App. 2013) ("[T]he master [in equity] correctly found the Bank [as servicer] had standing to foreclose on the mortgage."). In addition, in order to clarify the record, the Court ordered that the claim be amended to clearly indicate that Ditech was acting on behalf of the owner, Fannie Mae. The Court also ordered in the September 2018 Order for Ditech to administer any funds paid on the debt during the course of the bankruptcy case in trust for and for the benefit of the owner of the debt, Fannie Mae. By these requirements, the Court cured Debtor's concerns that the beneficial party, Fannie Mae, would receive payments. Based upon these facts and conditions, the Court finds the requirements of § 36-3-804 is satisfied, and therefore, Fannie Mae, through its servicer, Ditech, had standing to file the proof of claim and assert the right of payment of the debt.

Finally, it appears that the issue of Ditech's standing is now somewhat mooted by the subsequent direct transfer of ownership of the right to payment of the debt from Fannie Mae to U.S Bank and the filing of an amended proof of claim by the new owner, U.S. Bank.

At the hearing on the Motion, U.S. Bank presented testimony of Jamal Harris, a representative of Caliber, as well as a Notice of Sale of Ownership of Mortgage Loan ("Notice of Sale") sent to Debtor by LSF10 Master Participation Trust on August 17, 2018, and a Noticing of Servicing Transfer ("Service Transfer Notice") set to Debtor by Caliber on September 20, 2018. Mr. Harris testified that Fannie Mae transferred ownership of the subject loan to U.S. Bank on July 25, 2018 and that Caliber became the servicer of the loan on U.S. Bank's behalf in September 2018.

The Court also made an *in camera* review of the Pooling and Servicing Agreement between U.S Bank, Caliber, and Fannie Mae. The Pooling and Servicing Agreement indicated that Fannie Mae transferred ownership of the subject loan to U.S. Bank on July 25, 2018.[12]

On November 13, 2018, U.S. Bank further filed an amended proof of claim clearly indicating that U.S. Bank is the current creditor, that it acquired post-petition the right to payment of the debt from Fannie Mae, that Ditech made the earlier filing of the claim as servicer for the then owner, Fannie Mae, and that Caliber is the new servicer for U.S. Bank.[13]

Therefore, based on this evidence, the Court finds that Fannie Mae was the owner of the debt, including the subject note, with a right to payment at the time of the filing of the proof of claim, that Ditech acted as its servicer in filing the proof of claim, and that Fannie Mae thereafter transferred ownership of the debt to U.S. Bank on July 25, 2018.[14] Because U.S. Bank is now the owner of the debt with the right to payment under the lost note, it is in compliance with the requirements of S.C. Code Ann. § 36-3-804,[15] and therefore, is the proper party to maintain the proof of claim against Debtor.

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[12] It appears from the pooling and servicing agreement ("PSA") that the debt was part of an underlying mortgage asset purchase agreement between Fannie Mae (referred to in the PSA as the "Original Loan Seller" though it appears it was also referred to as the "Original Mortgage Loan Seller" in the PSA) and LSF10 Mortgage Holdings, LLC on July 25, 2018, and that LSF10 Mortgage Holdings, LLC transferred the pooled loans, including Debtor's debt, to the LSF10 Master Participation Trust and its indentured trustee, U.S. Bank.

[13] After the Court entered its Order on the Proof of Claim Objection, on October 5, 2018, U.S. Bank filed a Transfer of Claim pursuant to Fed. R. Bankr. P. 3001(e)(2) indicating that Ditech, as the party filing the original proof of claim, transferred the subject claim to U.S. Bank. The Transfer of Claim also indicated that notices and payments for the loan should be sent to Caliber, the new servicer of the debt. The Clerk of Court served notice of the Transfer of Claim on Ditech in accordance with Fed. R. Bankr. P. 3001(e)(2), and no objections were filed to the Transfer of Claim.

[14] In light of Debtor's request in his memorandum filed in support of the Motion, the Court will amend the September 2018 Order to address the enforceability of the lost note as analyzed in this Order.

[15] The Court notes that "owner" under S.C. Code Ann. § 36-3-804 is not limited to the owner of the note at the time the note was lost. Therefore, under the plain reading of the statute, U.S. Bank would qualify as the owner under § 36-3-804 when it acquired ownership of the note from Fannie Mae after it was lost.

Mistake of Fact

Debtor also asserts that the weight of the evidence does not support a finding that Ditech, as the servicer for Fannie Mae, had standing to file a claim in his bankruptcy case because it failed to present sufficient and specific original documents to establish its standing. During the hearing on the Motion, Debtor cited to Judge Duncan's opinion in *In re McFadden*, 471 B.R. 136 (Bankr. D.S.C. 2012) to identify certain specific documents a mortgage creditor should present to establish its standing to file a proof of claim in a bankruptcy case. However, in considering Debtor's arguments, the Court finds that the court in *McFadden* never set any definitive or required list of documents that must be presented to establish a mortgage creditor's standing in a bankruptcy case.[16] Rather, the court in *McFadden* addressed the admissibility of evidence which was subject to an objection at trial. In prosecuting a motion for relief and responding to an objection to claim, the mortgage creditor in *McFadden* elected to present the original note, original mortgage, original assignments, and the relevant pooling and servicing agreement. Furthermore, *McFadden* was not a case of a lost note and does not stand for the proposition that these original documents must be presented to establish standing. Rather, like this Court did in this matter, the *McFadden* court determined standing based on the record presented to it.

Debtor's argument that Ditech and now U.S. Bank must present the original note, original mortgage, all original assignments of the mortgage, and copies of its servicing agreements, and for U.S. Bank, as the new and subsequent owner, the original pooling and servicing agreement to establish standing,[17] also appears contrary to South Carolina law as indicated by *Talbert v. Talbert*, 97 S.C. 136, 81 S.E. 644 (1914) (upholding an order for foreclosure and sale when the trial court

[16] The Court also notes that *McFadden* would not be binding precedent in this matter.

[17] The Court conducted an *in camera* review of the pooling and servicing agreement for Debtor's loan.

accepted secondary evidence of the assignment of the note and mortgage when the plaintiff has lost the original copies).[18] While these documents may be helpful, neither Ditech nor U.S. Bank are bound to present those specific documents to establish standing, but may present alternative convincing evidence to establish the claim. Further it is unclear why the original mortgage would need to be produced in this matter as Debtor is not questioning the authenticity of the copy of the mortgage or the signatures contained therein. In addition, both parties have submitted identical copies of the note, and Debtor does not contest his signature on the original note. Further, the Court finds the evidence that the original note is lost to be credible and therefore cannot be presented.

Over the course of three months, Debtor has had multiple opportunities to obtain and present evidence to support his allegations that another party must file the proof of claim; however, the Court has only been presented with Debtor's multiple objections and varying demands for more and more proof. The record has consistently presented a single narrative.[19] Debtor has admitted the outstanding debt as evidenced by the simultaneously executed note and mortgage and that it is in default and presently owed. BAC Home Loans, which later became Bank of America commenced a foreclosure action against Debtor. Bank of America was the servicer of Debtor's

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[18] Due to the automatic stay in this case, U.S. Bank had not yet executed an assignment of the mortgage from Ditech to U.S. Bank at the time of the hearing on the Motion. However, after the conclusion of the hearing, the Court granted limited relief to U.S. Bank to execute and record the assignment of the mortgage.

[19] Debtor asserts that Ditech has committed a fraud on the Court during this proceeding when Ditech incorrectly indicated that it was in possession of the original note, when it did not initially disclose that it was the servicer of the debt on behalf of Fannie Mae, and when it relied upon the assignments of record, which Debtor has previously challenged, to support its claim. The Court understands that some of the confusion in this matter resulted from Ditech counsel's initial statements that it would present the original note at the hearing on the objection to claim. However, as testified by Ditech's representative, which the Court finds credible, Ditech did not realize the note was lost until shortly before the June 21, 2018 hearing on the objection. The Court does not believe Ditech intentionally misled the Court regarding the note or acted in any kind scheme to defraud. Further, in light of the holdings regarding a servicer's standing as indicated in *Draper*, the Court also does not find that Ditech's non-disclosure of its servicing relationship with Fannie Mae demonstrates an intent to deceive. Finally, as the Court overruled Debtor's challenges to the assignments of mortgage in the September 2018 Order, the Court does not find Ditech's reliance on these assignments to constitute a fraud on the Court. The Court believes both parties have been forthcoming in this matter and have had open candor regarding the history of the debt.

loan, which was owned by Fannie Mae.[20] Bank of America, as holder, through its foreclosure counsel, was in possession of the note when it became lost. Thereafter, Green Tree Servicing LLC ("Green Tree"), which would later become Ditech by merger, became the servicer of the loan on behalf of the owner, Fannie Mae, and as a result, Bank of America assigned the right to collect the debt as servicer to Green Tree/Ditech. These facts are reflected in the September 2018 Order and support the Court's holdings in that Order.

Therefore, based on the record, the Court does not find the September 2018 Order contained a mistake of fact.

Failure to Obtain Briefs

In the Motion, Debtor asserts he was prejudiced because the Court considered the legal effect of Debtor's prior chapter 7 bankruptcy discharge on the issues before it without first seeking briefs from the parties on the subject. To the contrary, the Court notes that the recognition of the prior discharge of Debtor's personal liability on the claim benefits Debtor. First, the Court notes that the parties were aware of Debtor's prior discharge throughout this proceeding and failed to raise the subject even though it affects the enforcement of the promissory note against Debtor, which was a point of controversy between the parties. As it was not previously argued, the Court did not recognize the relevance of the prior bankruptcy discharge until its deliberations. Nonetheless, the issuance of Debtor's prior bankruptcy discharge is a matter of public record and its effect on his personal liability under the promissory note is purely a matter of law, and therefore, the Court would not be aided by briefs from the parties.

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[20] Fannie Mae's ownership during Bank of America's servicing of the loan is evidenced by the Fair Debt Collections Practices Act and State Law Notice issued by Bank of America to Debtor, which was submitted to the Court by Debtor in his July 13, 2018 Motion for an Order Rescheduling the July 24, 2018 Hearing (CM/ECF Docket No. 77 at p. 15). In addition, in the Correspondence filed by Debtor on August 13, 2018, Debtor indicated that he spoke with a representative of Fannie Mae, and that he was informed that "Fannie Mae is the owner of Koola's mortgage loan[, and] Fannie Mae became the owner of Koola's mortgage loan on March 1, 2004 . . . ."

In addition, Debtor, who has offered multiple arguments and pleadings to this Court, had a full opportunity to present arguments regarding the legal effect of his prior discharge as well as any other relevant legal arguments at several hearings in this matter but failed to do so. His failure does not prohibit the Court from making such considerations since they directly affect the right to payment of the claim in this case. Therefore, the Court finds Debtor was not prejudiced when he was not asked to provide briefs on the effect of Debtor's prior chapter 7 bankruptcy discharge.

Reassertion of Proof of Claim Objection

Debtor's Motion also substantially reasserts the allegations he initially raised in his objection to claim, including that the claim is time barred by the statute of limitations, the fact that Bank of America is listed as the plaintiff in the foreclosure action, the Bankruptcy Court's reconsideration of Debtor's dismissed counterclaims in the foreclosure action, the failure of Bank of America to offer Debtor an affordable loan modification,[21] the validity of the mortgage assignments, and the amount of the claim. Debtor has not presented any newly discovered evidence or intervening change of law to warrant a new trial on these matters and the Court does not find that the September 2018 Order contains a mistake of fact, manifest error of law or any other reason

[21] In his Motion, Debtor requests that the Court presently order his mortgage creditor to offer him an affordable loan modification. In light of 11 U.S.C. § 1322(b)(2), the Court does not have the authority to require a mortgage creditor to modify a loan secured by real property that is the principal residence of a debtor.

that the trial was not fair on those issues.[22] The Court finds the September 2018 Order adequately addresses these allegations.[23]

CONCLUSION

Since filing this chapter 13 case, Debtor has repeatedly maintained that his efforts to object to the mortgage claim were to ensure that he "pays the right creditor" and not to escape liability.[24] Credible evidence was presented to the Court or matters were stipulated which indicate that Fannie Mae was the owner of the debt, including owning the note, and that Bank of America intended to transfer its status as servicer and its collection efforts of the undisputed debt to Ditech. Testimony

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[22] Debtor also asserts that pursuant to Fed. R. Evid. 902, the lost note affidavit presented by Ditech should not be considered. Rule 902 of the Federal Rules of Evidence deals with the introduction of self-authenticated evidence and requires a party to give notice of the intent to offer self-authenticated evidence into the record. First, the Court notes that Debtor did not raise Fed. R. Evid. 902 at the hearing, rather he only indicated in his objection at the hearing that he was surprised by the assertion that the note was lost. Second, it does not appear Ditech was seeking to introduce the evidence pursuant to Fed. R. Evid. 902 as the affidavit was introduced during the testimony of Ms. Gostebski, a representative of Ditech, as a business record. As a result, it does not appear that Ditech was under an obligation to provide written notice of the intent to offer the affidavit into evidence. Third, Ditech provided notice of its intent to introduce the lost note affidavit in the statement of dispute filed with the Court three business days prior to the hearing on the objection to claim. Finally, the Court notes that it held an additional hearing on the objection to claim on July 24, 2018 to permit Debtor to present further arguments on the lost note affidavit and other items to appease Debtor's arguments of surprise that may have resulted from Ditech's determination that the note was lost shortly before the June 21, 2018 hearing.

Further, the Court notes that relevant facts contained in the lost note affidavit were also testified to by Ms. Gostebski, which the Court found to be credible.

[23] In Debtor's Memorandum in support of the Motion, Debtor asserts the Court *sua sponte* continued the May 24, 2018 hearing on Debtor's "Motion for Order of the Court Requiring Ditech Financial LLC to File Evidentiary Proof of Note and Mortgage" filed on April 18, 2018, and that the Court prejudiced Debtor by not finding at that hearing that Ditech did not have standing. However, the Court did not continue Debtor's May 24, 2018 hearing. Because Debtor had filed the Proof of Claim Objection on May 7, 2018, which challenged Ditech's standing, the Court determined that the more appropriate avenue for challenging Ditech's standing was through the claims process under 11 U.S.C. § 502 and the prosecution of Debtor's objection. Therefore, the Court denied the April 18, 2018 motion as moot due to the pending Proof of Claim Objection. Debtor has had a full and fair opportunity to challenge Ditech's standing through his objection to claim. Therefore, the Court does not find Debtor was prejudiced by the Court's denial of his April 18, 2018 "Motion for Order of the Court Requiring Ditech Financial LLC to File Evidentiary Proof of Note and Mortgage" as moot.

[24] The Court is becoming increasingly concerned that Debtor's present efforts are to delay the collection efforts on the mortgage debt as Debtor has a significant litigation history in the state court foreclosure action, including appealing matters to the Supreme Court of the United States, and he is now in default on the debt for nearly ten years of missed payments.

provided by Ditech clearly indicated it acted on behalf of Fannie Mae, the undisputed owner of the right to payment of the debt.

To ensure that Debtor was protected from double payments, which he consistently stated as his concern, and recognizing that amendments to claims can be liberally allowed, the Court ordered in the September 2018 Order that Ditech or its successor amend the claim to facially indicate it acting as servicer for Fannie Mae or a successor owner and that all payments be collected for the benefit of Fannie Mae or a successor owner and credited to Debtor's debt there.

Unbeknownst to the Court, on July 25, 2018,[25] Fannie Mae transferred the ownership of the debt/claim to U.S. Bank. The Court has received evidence of the transfer submitted at the hearing on November 14, 2018 and finds it to be credible.

As owner of the debt, represented by the lost note and the mortgage, U.S. Bank has designated Caliber as its servicer and had the claim transferred from Ditech to U.S. Bank. Further, U.S. Bank has amended the claim to clearly show its status as owner of the debt.

For these reasons, the Court denies Debtor's Motion for a New Trial.

AND IT IS SO ORDERED.

[25] In a footnote in its August 6, 2018 brief, Ditech briefly indicated that Fannie Mae had sold Debtor's loan, but without any indication of to whom the loan was sold. Further, the Court received a correspondence filed by Ditech's counsel on August 13, 2018 indicating the debt had been transferred from Fannie Mae, but no formal transfer of claim was filed on the claims register until October 5, 2018.