

1a

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

IN RE: Allana BARONI, Debtor,

Allana Baroni, Appellant,

v.

The Bank of New York Mellon, FKA The Bank of New York, As Successor Trustee of JPMorgan Chase Bank, N.A. as Trustee for the Holders of Sami II Trust 2006-AR6 Mortgage Pass through Certificates, Series 2006-AR6, Appellee.

No. 16-56617

Submitted February 6, 2018\* San Francisco, California

Filed February 08, 2018

Appeal from the United States District Court for the Central District of California, Stephen V. Wilson, District Judge, Presiding, D.C. No. 2:16-cv-01493-SVW

**Attorneys and Law Firms**

Richard Lawrence Antognini, Law Office of Richard L. Antognini, Grass Valley, CA, for Appellant  
Justin Donald Balser, Melissa L. Cizmorris, Attorney, Akerman LLP, Denver, CO, for Appellee

Before: THOMAS, Chief Judge, and D.W. NELSON  
and CHRISTEN, Circuit Judges.

MEMORANDUM\*\*

Allana Baroni (“Baroni”) appeals the district court's order affirming the bankruptcy court's grant of summary judgment in favor of The Bank of New York Mellon (formerly known as “The Bank of New York”) (“BNYM”). We have jurisdiction under 28 U.S.C. § 1291, and we **affirm**.

1. Baroni's note secured by a deed of trust is a “negotiable instrument” under Cal. Com. Code § 3104(a). *Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919, 927, 199 Cal.Rptr.3d 66, 365 P.3d 845 (2016) (citing *Creative Ventures, LLC v. Jim Ward & Assocs.*, 195 Cal. App. 4th 1430, 1445–46, 126 Cal.Rptr.3d 564 (2011) (applying Commercial Code to promissory note) ). That the principal on her note may increase if she fails to pay interest does not render the note non-negotiable. Regardless of any “interest” or additional “charges,” Baroni agreed to pay at the very least \$1.248 million—a “fixed amount of money” pursuant § 3104(a).

2. The undisputed evidence establishes BNYM possesses Baroni's promissory note indorsed in blank. As the “holder of the instrument,” BNYM may “enforce” it in this bankruptcy action. §§ 1201(b)(21)(A), 3301 (internal quotation marks omitted); *see also In re Veal*, 450 B.R. 897, 910–11, 917 (B.A.P. 9th Cir. 2011) (citations and internal quotation marks omitted); *In re Smith*, 509 B.R. 260, 266–67 (Bankr. N.D. Cal. 2014) (citations omitted).

**AFFIRMED.**

3a

United States District Court,  
C.D. California, Western Division.  
Allana BARONI, Appellant,

v.

BANK OF NEW YORK MELLON, et al., Appellees.  
CASE NO. 2:16-cv-01493-SVW Bank. Case No. 1:12-  
bk-10986-MB Adv. Proc. No. 1:13-ap-01072-MB  
Signed 10/03/2016

### **Attorneys and Law Firms**

Louis Jay Esbin, Law Offices of Louis J. Esbin,  
Stevenson Ranch, CA, Richard L. Antognini, Law  
Office of Richard Antognini, Grass Valley, CA, for  
Appellant.

Christopher R. Fredrich, Stroock & Stroock & Lavan  
LLP, Los Angeles, CA, for Appellee.

### **ORDER AFFIRMING SUMMARY JUDGMENT**

HON. STEPHEN V. WILSON, UNITED STATES  
DISTRICT JUDGE

### **I. INTRODUCTION**

Allana Baroni (“Baroni”) filed for bankruptcy on February 1, 2012. 1 AER 40:11–12. The Bank of New York Mellon (“BONYM”) filed a claim as a secured creditor under a Deed of Trust. *Id.* at 6. The Deed of Trust (“DOT”) and promissory note (“Note”) were originally executed with Countrywide Home Loans and recorded on property located in Camarillo, California for the sum of \$1,248,000.00. 3 AER 283, ¶ 10; 5 AER 681–91. BONYM claims the DOT and Note were assigned to it prior to these bankruptcy proceedings. Dkt. 21 at 3.

Baroni filed a first amended adversary complaint against BONYM on May 29, 2013. 3 AER 281—4 AER 545. The complaint claimed that BONYM did not have an interest in the DOT and Note and also includes claims of unjust enrichment, violation of the Federal Debt Collection Practices Act, and California's Unfair Competition Law. 3 AER 288–96. The Bankruptcy Court granted BONYM summary judgment. 8 AER 1070–73. The Bankruptcy Court found that the Note was a negotiable instrument under the California Commercial Code, and that Baroni did not have standing to challenge the assignment of the Note. 8 AER 1058: 25–27; 8 AER 1060: 3–7. Baroni appealed. This Court affirms on all counts.

## II. ANALYSIS

The issues presented on this appeal are: (A) whether the Note secured by the DOT is a negotiable instrument; (B) whether Baroni has standing to challenge the assignment of the Note to BONYM; and (C) if so, whether BONYM has a legal interest in the Note and DOT. *See* dkt. 18.

### A. Negotiable Instrument

This Court addressed the same issue in the companion case *Baroni v. CIT N.A.*, No. 2:16-CV-000829-SVW. As she does in that case, Baroni relies on a one-hundred-year-old case that says a Note is a nonnegotiable instrument when secured by deeds of trust on real property. *National Hardware Co. v. Sherwood*, 165 Cal. 1 (1913). As BONYM points out, the law relied on by this case was specifically amended to remove security as an impediment to negotiability. *See*

*Wilson v. Steele*, 211 Cal. App. 3d 1053, 1061 (1989). Further, the California Commercial Code, put into effect fifty years after *National Hardware Co.*, does not use security as a means to define a “negotiable instrument.” See Cal. Com. Code § 3104. Lastly, even cases relied on by Baroni acknowledge that Notes secured by property can be negotiable instruments. See *Yvanova v. New Century Mortgage Corp.*, 62 Cal.4th 919, 927 (2016).<sup>1</sup>

Further, the Bankruptcy Court was correct to reject Baroni's argument that a negative amortization provision renders a Note nonnegotiable. Baroni cites no law to support its argument, whereas BONYM cites two cases specifically finding such a provision does not affect the negotiability of a Note. See *dk. 21* at 11 (citing *Goss v. Trinity Sav. & Loan Ass'n*, 813 P.2d 492, 497 (Okla. 1991), *In re Kelley*, 2012 WL 314879 at \*4 (Bankr. N.D. Cal, Feb. 1, 2012)). The California Commercial Code expressly states that interest, whether fixed or variable and whether described in the instrument or refers to information not contained in the instrument, does not render the Note nonnegotiable. See Cal. Com. Code § 3112. This Court AFFIRMS the Bankruptcy Court's finding that the Note is a negotiable instrument, and thus can be enforced by the party that possesses it.

## **B. Standing**

As also held in the companion *Baroni* case, Baroni lacks standing to challenge the assignment of the Note and DOT to BONYM. Baroni seems to misunderstand the standing inquiry. Baroni argues that she has standing to challenge BONYM's failure to prove compliance with the pooling and servicing

agreement (“PSA”) that assigned BONYM the Note. Dkt. 18 at 17. However, the law she cites merely shows that she can challenge BONYM's standing as a claimant. *See In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011). BONYM showed its standing as a claimant by providing evidence that it possesses the Note and DOT. *See* 8 AER 1057:19–22. Possession of these documents show that BONYM “owns the loan or has some right to enforce it.” *See* dkt. 24 at 4 (*citing In re Veal*, 450 B.R. at 920–21).<sup>2</sup>

Baroni lacks standing to challenge the assignment of these documents since she was not a signatory to the contract or a third party beneficiary to it. *See Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal. App. 4th 497, 517 (2013). Baroni argues a recent California Supreme Court case overturns this rule, dkt. 18 at 17 (citing *Yvanova v. New Century Mortgage Corp.*, 62 Cal.4th 919 (2016)), but she is mistaken. This case expressly limits its holding to the context of a post-foreclosure sale. *See Yvanova*, 62 Cal.4th at 924; *see also Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal. App. 4th 808, 815 (2016) (holding that “Yvanova's ruling is expressly limited to the post-foreclosure context.”); *Lundy v. Selene Finance, LP*, 2016 U.S. Dist. LEXIS 28983, \*2 (N.D. Cal. 2016) (holding that “Yvanova made clear that its holding was limited only to claims that occur after the foreclosure sale was completed.”). There has been no foreclosure of Baroni's property, thus this case is inapplicable.

Lastly, if Baroni's argument was adopted then every claimant in bankruptcy would have the affirmative duty to not only provide evidence of every transaction assigning the Note from the time of its inception to the day the claim is made, but also to *affirmatively prove* that each assignment was legally

valid despite no contractual party arguing otherwise. This Court refuses to adopt such a rule. This Court AFFIRMS the finding that Baroni lacks standing to challenge the PSA.

### C. BONYM'S INTEREST IN THE NOTE

Though this Court holds Baroni lacks standing to challenge BONYM's interest in the Note, it nonetheless will briefly address this issue. The Bankruptcy Court did not err in failing to consider a printout of “2008 Maiden Lane LLC” supposed assets when Baroni's counsel presented no evidence authenticating the printout or even providing its source. *See* 6 AER 733:15–17; 6 AER 842–42. Further, even if considered, the fact that Maiden Lane LLC held the mortgage in 2008 would not hamper BONYM's ability to hold the mortgage in 2012. BONYM holds a negotiable instrument and has no duty to provide an unbroken chain of title.

Further, Baroni's counsel makes the incredible argument that BONYM's transfer of the Note to Nationstar Mortgage, LLC (“Nationstar”) *in 2013* somehow affects its standing as a claimant *in 2012*. *See* dkt. 24 at 9–10. It is undisputed that Nationstar now holds the Note and DOT. *See id.*; dkt. 21 at 3–4. Baroni argues that “Nationstar should have filed a claim” in the bankruptcy proceedings, dkt. 24 at 10, even though the deadline to file a claim was September 17, 2012—several months before Nationstar owned the loan. *See* 8 AER 1055:19–22. Such an argument, along with the doctored quote described above, completely undermines the credibility of Baroni's counsel.

### III. CONCLUSION

For each holding by the Bankruptcy Court that Baroni appealed, but did not address in their briefing, this Court finds Baroni WAIVED these claims. *See Collins v. City of San Diego*, 841 F.2d 337, 339 (9th Cir. 1988). For the foregoing reasons, this Court AFFIRMS the Bankruptcy Court on all counts.  
IT IS SO ORDERED

### Footnotes

1Baroni's reliance on *Debrunner v. Deutsche Bank Nat. Trust Co.*, 204 Cal.App.4th 433 (2012) is misplaced. That case is inapposite as it dealt with a foreclosure proceeding where Deutsche Bank held the deed of trust but *not* the promissory note. *Id.* at 440.

2Baroni's counsel doctored a quote from *In re Veal* without proper use of ellipses. Counsel wrote the following quote purportedly from the case: "The bankruptcy court here apparently concluded as a matter of law that the identity of the person entitled to enforce the Note was irrelevant. We disagree." Dkt. 24 at 4. The actual quote is: "The bankruptcy court here apparently concluded as a matter of law that the identity of the person entitled to enforce the Note was irrelevant. Its analysis followed the Mortgage instead of the Note. We disagree." *In re Veal*, 450 B.R. at 920. The intentional doctoring of this quote is even more evident by the fact that later in the same quote Baroni's counsel *properly* uses ellipses, showing he knows their intended use and *can* apply them appropriately. *See* dkt. 24 at 4. *In re Veal* analyzes the standing of a servicing agent that filed a claim in bankruptcy. *Id.* The agent could not provide evidence that they serviced a party entitled to enforce the Note. *Id.* Thus, they could not show standing to file a claim. *Id.* This case in no way



9a

holds that a debtor can challenge a contract assigning the mortgage to a claimant.

10a  
JAN 20 2016  
UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA SAN  
FERNANDO VALLEY DIVISION

In re  
ALLANA BARONI,  
Debtor.  
ALLANA BARONI, Plaintiff,  
vs.  
THE BANK OF NEW YORK MELLON FKA THE  
BANK OF NEWYORK, AS SUCCESSOR TRUSTEE  
TO JP MORGAN CHASE BANK, N.A., AS  
TRUSTEE FOR THE HOLDERS OF SAMI 11  
TRUST 2006-AR6, MORTGAGE PASS THROUGH  
CERTIFICATES, SERIES 2006-AR6, Defendants.

Case No.: 1:12-bk-10986-MB Chapter 11  
Adv. Proc. No. 1:13-ap-01072-MB  
Hearing Date: October 5, 2015  
Time: 10:00 a.m. Place: Courtroom 303 21041 Burbank  
Blvd Woodland Hills, CA 91367

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW

The Motion for Summary Judgment filed by defendant Bank of New York Mellon f/k/a The Bank of New York, as Successor Trustee to JP Morgan Chase Bank, N.A., as Trustee for the Holders of SAMI II Trust 2006-AR6, Mortgage Pass Through Certificates, Series 2006-AR6 ("BONYM") came on for hearing on May 13, 2015, June 18, 2015, July 30, 2015 and October 5, 2015. Appearances were as noted in the record. Having considered the parties' papers filed in support of and in

opposition to the Motion for Summary Judgment, oral arguments as well as other pleadings and papers on file in this Adversary Proceeding, as well as the main bankruptcy case, the Court now finds and concludes as follows:

#### UNCONTROVERTED FACTS

1. Plaintiff Allana Baroni ("Baroni") commenced this bankruptcy case on February 1, 2012. Case Dkt. 1.
2. BONYM filed a proof of claim (the "POC") on or about September 17, 2012, in an amount in excess of \$1.4 million, asserting a secured claim against Baroni and her real property located at 5390 Plata Rosa Court, Camarillo, California 93012 (the "Camarillo Property"). In her motion for authority to use cash collateral and in her plan of reorganization, Baroni describes the Camarillo Property as her rental income property from which she derives rental income. Case Dkt. 57,376.
3. The Order Setting Bar Date for Filing Proofs of Claim in an Individual Chapter 11 Case set September 17, 2012, as the deadline for creditors of Baroni to file proofs of claim. Case Dkt. 96. No other entity has filed a proof of claim in this bankruptcy case asserting a claim regarding the Camarillo Property other than BONYM.
4. On April 15, 2013, the Court entered its order confirming Debtor's Second Amended Plan of Reorganization. Case Dkt. 423. Baroni's Second Amended Plan of Reorganization is combined in a single document with her Second Amended Disclosure Statement (collectively, the "Plan") and was filed on March 20, 2013. Case Dkt. 376. In the course of trying to restructure the debts encumbering her various real properties, including the Camarillo Property, Baroni alleges that she discovered the

lenders claiming an interest in her real properties engaged in loan securitization and pledged their position as first deed of trust lienholders into multiple income streams, fabricating notes and conveying them to numerous domestic and offshore trusts. By doing so, Baroni alleges that the lenders violated numerous state and federal statutes, as well as their common law duties to her. Baroni discloses and preserves potential causes of action arising from these allegations in Exhibit 2 to her Plan. With respect to the Camarillo Property, Exhibit 2 to her Plan expressly discloses that she has potential claims for [a] Violations of the Real Estate Settlement and Procedures Act (RESPA); 12 U.S.C. § 2601 et seq., [b] Violations of the Truth-in-Lending Act (TILA) 15 U.S.C. § 1638, [c] Violations of the Fair Debt Collection Practices Act (FDCPA); 15 U.S.C. § 1692 et seq., [d] Violations of Fair Business and Profession Code, [e] Fraudulent Inducement, [f] Negligence, [g] Intentional Infliction of Emotional Distress, [h] Breach of Fiduciary Duties, [i] Slander of Title, [j] Common Law Fraud and [k] Unjust Enrichment. Baroni did not disclose or preserve a cause of action for rescission. The Plan contemplates, inter alia, that Baroni would file a post-confirmation adversary proceeding asserting her various causes of action regarding the Camarillo Property and disputing the POC filed by BONYM.

5. On April 4, 2013, Baroni filed her complaint against BONYM (the "Complaint"), commencing this adversary [proceeding](#). [Adv. Dkt. 1](#) . The Complaint alleges three claims for relief: [1] For a declaratory judgment disallowing the POC in its entirety, [2] for a declaratory judgment avoiding the lien in the Camarillo Property asserted in the POC, and [3] for restitution / unjust enrichment to recover all the loan payments by Baroni to BONYM. Thereafter Baroni and BONYM

stipulated that Baroni could amend the Complaint and, on May 29, 2013, Baroni filed her First Amended Complaint (the "FAC") against BONYM, which complaint included the original three claims for relief, as well as new claims for relief based on alleged violations of the Federal Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. and alleged violations of California's Business and Professions Code § 17200 et seq. [Adv. Dkt. 9. Neither](#) the Complaint nor the FAC allege a claim for rescission.

6. On or about June 27, 2006, Baroni executed a note in the principal sum of \$1,248,000.00 (the "Note") secured by a Deed of Trust ("Deed of Trust") on the Camarillo Property. The Note identifies the lender as Countrywide Home Loans, Inc. [Adv. Dkt. 9, Par. 10](#); Declaration of Edward Hyne of Nationstar Mortgage LLC, etc. (the "Hyne Decl.," [Adv. Dkt 58-2](#)) 4 and Exh. A to the Hyne Decl.

7. Baroni defaulted on the Note. Hyne Decl., Par. 6. Baroni has not offered any evidence to the contrary.

8. Nationstar is the current servicer of the Loan. As the current servicer for the Loan, Nationstar has authority and control over the Loan's "collateral file," including all original documents relating to the Loan, including the original Note and Deed of Trust which secures it. Hyne Decl., Pars. 7, 11.

9. BONY's counsel, Akerman LLP, currently holds, and is authorized by Nationstar to hold, the original Note and Deed of Trust as agent for Nationstar. Hyne Decl., Par. 12. Declaration of Christopher R. Fredrich ("Fredrich Decl.," [Adv. Dkt. 58-3](#)), Pars. 8-10.

10. At the May 6, 2015 hearing in this adversary proceeding, counsel for Baroni acknowledged that Baroni had not propounded any discovery in the

adversary proceeding pursuant to Rules 7026 - 7036 of the Federal Rules of Bankruptcy Procedure.

11. On numerous occasions, counsel for BONYM Christopher Fredrich, has offered to make the original Note available for inspection by Baroni and her counsel but each time Baroni and her counsel have declined. Fredrich Decl., Par.12 Baroni has not submitted any evidence to the contrary.

12. At the July 30, 2015 hearing, Fredrich presented the original Note for inspection by Baroni and her counsel. The original note contains on the signature page what appears to be Baroni's signature, as well as a blank indorsement. Baroni has not submitted any evidence regarding the original note presented for inspection on July 30, 2015.

13. Prepetition, on or about December 15, 2010, Baroni obtained a copy of the Note under the Real Estate Settlement Procedures Act. Adv. Dkt. 68, Declaration of Michael S. Riley, 5; Adv. Dkt. 103, Declaration of Louis J. Esbin, Par.3.

14. The original Note presented at the July 30, 2015 hearing, the copy of the Note attached to the Hyne Declaration and the copy of the Note attached to the POC are indorsed in blank. Hyne Decl., Exh. A-8 & POC 10-1, p. 48. There are no apparent differences in these endorsements that would create a genuine dispute regarding any material fact.

15. The original Note presented at the July 30, 2015 hearing and the copy of the Note attached to the Hyne Declaration include a loan number and bar codes on the first page that do not appear on the copy of the Note attached to the POC. The copy of the Note obtained pursuant to RESPA does not contain a bar code or an indorsement. These differences do not establish a

genuine issue of fact as to whether there is more than one Note.

16. The assignment of the Deed of Trust attached to the POC was recorded in Ventura County on November 22, 2011. POC 10-1, p. 39. Baroni offered an assignment of the Deed of Trust recorded in Ventura County on August 19, 2013. Adv. Dkt. 93, p.16; Adv. Dkt.103, p. 72.

17. Baroni alleges that she executed the Note on or about June 26, 2006, but has not submitted any evidence that the loan memorialized by the Note was not consummated in 2006 or, alternatively, that she gave written notice of rescission within three years of consummation of the loan. The only evidence submitted in support of her rescission theory are six unauthenticated letters dated March 19, 2015 and March 23, 2015. Adv. Dkt., Par. 10; Adv. Dkt. 68, pp. 170-175.

18. To the extent required, should any of the foregoing findings of fact be deemed to be conclusions of law, they are hereby adopted as such.

## CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334. Baroni's claims for relief are core proceedings under 28 U.S.C. § 157(b)(2)(B) and (K). The Court has jurisdiction to enter final judgment. Further, though no jurisdictional defects exist, the parties' failure to object to the Court's jurisdiction constitutes implied consent to the entry of final judgment. See *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct.1932,1948 (2015).

2. The Note is a negotiable instrument within the meaning of Cal. Com. Code § 3104. The variable

interest rate described therein does not destroy the negotiability of the Note. Cal. Com. Code, § 3112, Uniform Commercial Code Comment 1.

3. Under the California Commercial Code, the "person entitled to enforce" an instrument means: (a) the holder of the instrument, (b) a non-holder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to sections 3309 or 3418(4). Cal. Com. Code § 3301; *In re Lee*, 408 B.R. 893, 899 (Bankr. C.D. Cal. 2009); *In re Vargas*, 396 B.R. 511 (Bankr. C.D. Cal. 2008). A person or entity in possession of an instrument is the holder of the instrument if the instrument is payable to that person or entity, or payable to the bearer. Cal. Com. Code § 1201(b)(21). An instrument is payable to the bearer if it does not state a payee or it is "indorsed in blank". Cal. Com. Code § 3109(a)(2), 3109(c), 3201 (b) & 3205(b).

4. Each signature on the instrument is admitted unless specifically denied in the pleadings. Cal. Com. Code § 3308. As Baroni has presented no evidence to overcome the presumption of the authenticity of her signature on the Note or the blank indorsement, this Court must find the signatures to be authentic and authorized. Cal. Com. Code § 1206.

5. The superficial differences among the copy of the Note attached to the POC, the copy attached to the Hyne Declaration, the copy of the Note obtained pursuant to RESPA and the original Note presented at the July 30, 2015 hearing do not establish a genuine issue about any material fact, including whether there is more than one Note. See e.g., *In re Baroni*, CC-14-1579, 2015 WL 6941625, \*5 (B.A.P. 9th Cir., Nov. 10, 2015).



6. BONYM (or its agent) is in possession of the Note indorsed in blank, thus BONYM may file a proof of claim in this bankruptcy and enforce the Note as a holder. Cal. Com. Code § 3301.

7. BONYM is also entitled to enforce the Deed of Trust securing repayment of the Note. "The assignment of the debt secured by a mortgage carries with it the security." Cal. Civ. Code § 2936; *Cockerell v. Title Ins. & Trust Co.*, 42 Cal. 2d 284, 291(1954); *Carpenter v. Longan*, 83 U.S. 271, 275 (1872). The various assignments of the Deed of Trust in 2011 and 2013 do not change this result even if the Note and the Deed of Trust were split. "[A]n assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." *In re Vargas*, 396 B.R. 511, 517 (Bankr. C.D. Cal. 2008) quoting *Carpenter*, 83 U.S. at 274. See also, *In re Baroni*, CC-14-1578, 2015 WL 6956664, \* 13 (B.A.P. 9th Cir., Nov. 10, 2015).

8. Baroni does not have standing to challenge the pooling and servicing agreement (PSA) governing securitization of her Loan because she is not a signatory to the PSA, nor is she a third-party beneficiary of it. See *Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal. App. 4th 497, 517 (2013) as modified (June 12, 2013.); *Christie v. Bank of New York Mellon, N.A.*, 2015 WL 3621870, \*1, 14-55012 (9th Cir. June 11, 2015).

9. BONYM is entitled to judgment as a matter of law on Baroni's first cause of action, to Determine the Nature, Extent and Validity of Lien / Declaratory Relief, because BONYM is in possession of the Note and thus has the right to enforce the same.

10. BONYM is entitled to judgment as a matter of law on Baroni's second cause of action for Unjust Enrichment as Baroni failed to offer any evidence in

support of her unjust enrichment claim. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

11. BONYM is entitled to judgment as a matter of law on Baroni's third cause of action for violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq.

Baroni's cause of action arises out of a loan secured by Baroni's rental property and therefore is not a debt "primarily for personal, family or household purposes." 15 U.S.C. § 1692(a)(5). Baroni also failed to offer any evidence in support of her FDCPA claim. Celotex Corp., 477 U.S. at 322-24; Anderson., 477 U.S. at 252.

12. BONYM is entitled to judgment as a matter of law on Baroni's fourth cause of action for violation of California Business & Professions Code § 17200, et seq. Baroni's UCL cause of action requires her to establish BONYM has violated another law. Levitt v. Yelp! Inc., 765 F.3d 1123, 1129-30 (9th Cir. 2014). Baroni relies on BONYM's alleged violation of the FDCPA as the predicate violation for her UCL cause of action. As BONYM is entitled to judgment as a matter of law on Baroni's FDCPA cause of action, Baroni's UCL cause of action also fails. Krantz v. BT Visual Images, L.L.C., 89 Cal. App. 4th 164, 178 (2001); Graham v. Bank of Am., N.A., 226 Cal. App. 4th 594, 610 (2014).

13. Baroni cannot, for the first time, raise her claim for rescission where she has failed to plead or otherwise give notice of this claim in her FAC. Wasco Products, Inc. v. Southwall Technologies, Inc., 435 F.3d 989, 992 (9th Cir. 2006); Shubin v. Midland Credit Mgmt., Inc., 078033, 2008 WL 5042849, at \*6 (C.D. Cal. Nov. 24, 2008). Moreover, the provisions of Baroni's confirmed Plan, which neither disclosed nor preserved a rescission claim, are binding on Baroni and preclude Baroni from

asserting a post-confirmation rescission claim. 11 U.S.C. § 1141(a); Balser v. Dept. of Justice, Office of U.S. Trustee, 327 F.3d 903, 911, n.6 (9th Cir. 2003); In re Kelley, 199 B.R. 698, 704-05 (B.A.P. 9th Cir.1996).

14. Baroni's Truth In Lending Act claim for rescission of her 2006 loan, based on notices of rescission dated 2015, is time barred. 15 U.S.C. § 1635(f); Beach v. Ocwen Fed. Bank, 523 U.S. 410, 412 (1998).

15. To the extent required, should any of the foregoing conclusions of law be deemed to be findings of fact, they are hereby adopted as such.

IT IS SO ORDERED.

20a  
4/18/18

United States Court of Appeals, Ninth Circuit.

IN RE: Allana BARONI, Debtor,

Allana Baroni, Appellant,

v.

The Bank of New York Mellon, FKA The Bank of New  
York, As Successor Trustee of JPMorgan Chase Bank,  
N.A. as Trustee for the Holders of Sami II Trust 2006-  
AR6 Mortgage Pass through Certificates, Series 2006-  
AR6, Appellee.

No. 16-56617

Appeal from the United States District Court for the  
Central District of California, Stephen V. Wilson,

District Judge, Presiding, D.C. No. 2:16-cv-01493-SVW

**Attorneys and Law Firms**

Before: THOMAS, Chief Judge, and D.W. NELSON  
and CHRISTEN, Circuit Judges.

**ORDER**

Appellant's Petition for Panel Rehearing and Petition  
for Rehearing En Banc filed on March 14, 2018, is  
**DENIED.**

**SO ORDERED.**