EXHIBIT A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 2 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: LESLIE A. PASCASCIO, Debtor, TEENA COLEBROOK, Appellant, v. CIT BANK, Appellee.	No. 16-56445 D.C. No. 2:15-cv-07837-AB Central District of California, Los Angeles ORDER

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

Colebrook's motion for an extension of time to file a petition for panel rehearing (Docket Entry No. 40) is granted.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Colebrook's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 41) are denied.

Appellee CIT Bank's motion for an award of attorney's fees under Ninth

Ex. A

Circuit Rule 39-1.6 and California Civil Code § 1717 (Docket Entry No. 42) is denied.

The parties' motions to take judicial notice (Docket Entry Nos. 43 and 45) are denied as unnecessary.

No further filings will be entertained in this closed case.

EXHIBIT B

NOT FOR PUBLICATION

FILED

OCT 6 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: LESLIE A. PASCASCIO, Debtor.	No. 16-56445
	D.C. No. 2:15-cv-07837-AB
TEENA COLEBROOK, Appellant, v. CIT BANK, Appellee.	MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andre Birotte, Jr., District Judge, Presiding

Submitted September 26, 2017**

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

Teena Colebrook appeals from the district court's order affirming the bankruptcy court's order denying her motion to vacate under Fed. R. Civ. P. 60(b)

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Ex B

its order granting CIT Bank's motion for relief from the automatic stay in an unrelated bankruptcy case. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo the district court's decision on appeal from the bankruptcy court and apply the same standards of review applied by the district court. *In re Thorpe Insulation Co.*, 677 F.3d 869, 879 (9th Cir. 2012). We affirm.

The bankruptcy court did not err in finding that Colebrook was properly served with the motion for relief from the automatic stay, and Colebrook failed to rebut the presumption of receipt. *See* Fed. R. Bankr. P. 9014(b) (a motion "shall be served in the manner provided for service of a summons and complaint by Rule 7004"); Fed. R. Bankr. P. 7004(b)(1) (service may be made within the United States by first class mail postage prepaid to the individual's dwelling house or usual place of abode); *In re Bucknum*, 951 F.2d 204, 207 (9th Cir. 1991) (proof of mailing creates a rebuttable presumption of its receipt, which "can only be overcome by clear and convincing evidence that the mailing was not, in fact, accomplished."). Thus, the bankruptcy court did not abuse its discretion by denying Colebrook's motion to vacate the order granting CIT relief from the automatic stay because Colebrook was served with CIT's motion for relief from the automatic stay and failed to object. *See Wilson v. City of San Jose*, 111 F.3d 688, 691 (9th Cir. 1997) (standard of review).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Colebrook's motions to take judicial notice (Docket Entry Nos. 18 and 33) are denied as unnecessary.

AFFIRMED.

EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.: CV 15-07837-AB BK Court Case No. 2:14-bk-24031 SK	Date: September 6, 2016

Title: *In re: Leslie A. Pascascio (Teena Colebrook v. CIT Bank, N.A.)*

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian	N/A
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Appearing	None Appearing

Proceedings: [In Chambers] Order AFFIRMING Bankruptcy Court Order

Before the Court is Appellant Teena Colebrook's ("Appellant") appeal from the bankruptcy court's September 11, 2015 Order (AA Vol. 3, p. 592) denying Appellant's motion to vacate the bankruptcy court's October 31, 2014 order granting Appellee CIT Bank's ("Appellee") motion for extraordinary relief from stay. (AA Vol 2, p. 149.) Having reviewed the parties' briefing and the record before the bankruptcy court, the September 11, 2015 Order is **AFFIRMED**.

I. BACKGROUND

In August 2013, four months after Appellant defaulted on her home mortgage and failed to cure, Appellee commenced foreclosure proceedings. The foreclosure sale was scheduled for December 11, 2013. On or about December 2, 2013, a deed purporting to assign part of Appellant's interest in the property to Ann Mejia was allegedly recorded in the Recorder's Office. On December 6, 2013, Mejia filed for bankruptcy, halting the

Ex C

foreclosure sale scheduled for December 11. The Mejia bankruptcy was dismissed on December 30, 2013 for failure to file schedules and statements of affairs.

On January 15, 2014, Appellant filed for bankruptcy ("First Bankruptcy"). On June 26, 2014, Appellee was granted a relief from stay to exercise it remedies under the loan to foreclose on the property. Appellee scheduled the foreclosure sale for July 24, 2014. Appellant moved to set aside the order granting Appellee relief from the stay, but that motion was denied. Appellant moved to dismiss the First Bankruptcy, and on October 23, 2014, that motion was granted.

On July 1, 2014, a deed purporting to grant Appellant's interest in the property to Leslie Pascascio was recorded in the Recorder's Office. On July 24, the day the foreclosure sale was scheduled, the Trustee received a fax indicating that Pascascio had filed for bankruptcy the day before, on July 23, 2014, thus halting the sale. Appellant was not a party to the Pascascio bankruptcy.

In the Pascascio case, Appellee filed a motion for extraordinary relief ("ER Motion") from bankruptcy stay to allow it to proceed with the foreclosure. On October 31, 2014, the court issued an extraordinary relief order ("ER Order") granting the motion, finding that Appellant's bankruptcy petition was part of a scheme to hinder, delay, or defraud creditors that involved the transfer of some interest in the property without the consent of the creditor or court approval, and/or multiple bankruptcies. *See* ER Order, AA Vol. 1, pp. 150. The ER Order would be binding on any subsequent bankruptcies filed within two years. Meanwhile, on September 14, 2014, the Pascascio bankruptcy case was dismissed, and on November 20, 2014, it was closed.

Thereafter, Appellant filed a lawsuit in San Luis Obispo wherein she was granted a TRO staying the foreclosure sale. But the San Luis Obispo court denied Appellant a preliminary injunction and dissolved the TRO, so the foreclosure was rescheduled, this time for April 10, 2015.

On April 1, 2015, Appellant filed a Second Bankruptcy. But, because the ER Order was binding for two years, Appellee proceeded with the foreclosure sale, selling the property to a third party on April 10, 2015. On April 28, 2015, the bankruptcy court dismissed Appellant's Second Bankruptcy because, in light of her dismissal of her First Bankruptcy within the previous 180 days, she was not an eligible debtor under 11 U.S.C. § 109(g)(2).

Thereafter, on June 29, 2015, Appellant filed in the Pascascio bankruptcy case a Motion to Vacate ER Order. Appellant claimed that the deed purporting to grant the property from her to Pascascio was fraudulent, so that the property was not properly subject to the Pascascio bankruptcy. *See* AA Vol. 1, pp. 154-163. Appellant also indicated that she did not have notice of the Appellee's motion for extraordinary relief. *Id.* pp 156. It appears that Appellant argues that had the ER Order not issued, the property would have been protected from foreclosure by her own Second Bankruptcy filing. *Id.* pp. 157.

The bankruptcy court denied Appellant's motion to vacate on multiple grounds indicated at oral argument: that the motion was procedurally improper under the bankruptcy code because the Pascascio case was closed and not reopened; that even were the Pascascio case reopened, Appellant was not entitled to relief under Bankruptcy Code § 362(d)(4); that were the motion construed as one for relief from an order under Fed. R. Civ. Proc. 60, there were no grounds to support relief; and that Appellant was properly served with the ER Motion. *See* Transcript, AA, Vol 3, pp. 574-591.

II. STANDARD OF REVIEW

The district court reviews a decision of the bankruptcy court's factual findings for clear error and the legal conclusions *de novo.* Fed. R. Bankr. Proc. 8013; *In re Ambanc La Mesa L.P.,* 115 F.3d 650, 653 (9th Cir. 1997).

If the appeal is of a motion to vacate an order or judgment under Fed. R. Civ. Proc. 60(b), which is made applicable to bankruptcy proceedings under Fed. R. Bankr. Proc. 9024, a bankruptcy court's ruling is reviewed for abuse of discretion. *In re Hammer,* 112 B.R. 341, 345 (9th Cir. BAP 1990), *aff'd* 940 F.2d 524 (9th Cir. 1991); *see also Wilson v. City of San Jose,* 111 F.3d 688, 691 (9th Cir. 1997). Under the abuse of discretion standard, the reviewing court may not reverse unless it has a "definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors." *See Kayes v. Pacific Lumber Co.,* 51 F.3d 1449, 1464 (9th Cir. 1995), *cert. denied,* 516 U.S. 914.

III. DISCUSSION

Appellant argues that the bankruptcy court erred in numerous ways. The Court will not reach whether Appellant's motion was procedurally improper because the bankruptcy judge ultimately also ruled on the merits of the motion.

The bankruptcy court did not err in finding that Appellant was not entitled to relief under 11 U.S.C. § 362(d)(4). Appellant was not the debtor in the Pascascio case, so she needed to invoke some other procedure by which to seek relief in that case. Section § 362(d)(4) allows persons other than the debtor in the case to move for relief from an order: "a debtor in a subsequent case under this title may move for relief from [an extraordinary relief from stay] order based upon changed circumstances or for good cause shown, after notice and a hearing." But, this provision does not aid Appellant because when she filed her motion to vacate, on June 29, 2015, she was not a debtor in a subsequent case because her Second Bankruptcy Case had already been dismissed (on April 28, 2015). Appellant tries to avoid this conclusion by arguing, for the first time, that she could have become a party to the Pascascio case by intervening, and therefore she would not have to resort to § 362(d)(4). But, Appellant did not make this argument to the bankruptcy court in connection with her motion to vacate, and this court will not reach it for the first time on appeal.

The bankruptcy court did not err in finding that Appellant was not entitled to relief under Fed. R. Civ. Proc. 60(b). Under Rule 60(b), a court can relieve a party from a final judgment, order, or proceeding for a number of reasons, including, among others, mistake, newly discovered evidence, or fraud. The bankruptcy court found that Appellee did not invoke any particular subsection of Rule 60(b) and presented no evidence to support relief under any section. To the extent Appellant argues that she is entitled to relief because the Mejia and Pascascio deeds were fraudulent and that Appellee fabricated them, she did not present substantial evidence of this. Furthermore, in light of the bankruptcy court's finding that Appellant served its ER Motion and the notice of continuance on Appellant, Appellant could have made this argument when the court was considering the ER Motion. Because Appellant could have but failed to present her "fraud" argument to the bankruptcy court when it considered Appellee's ER Motion, she cannot present that argument through a Rule 60 motion.

The bankruptcy court did not err in finding that Appellee served Appellant with the ER Motion and with notice of the continuance of that motion. The bankruptcy court found that Appellee's service complied with Fed. R. Bankr. Proc. 9014(b) and 7004(b)(1), which in turn incorporates the federal mailbox rule. Appellant argues that the Hawthorne address to which Appellee mailed notice of the ER Motion and the continuance was not her actual address, and that service should have been made at her San Luis Obispo address. But the bankruptcy court considered this argument and determined that Appellant herself unequivocally admitted at a hearing in the San Luis Obispo case that the Hawthorne address was her residence, and that service at the Hawthorne address was therefore proper. There is no error in this finding. The court also rejects as groundless Appellant's argument that the bankruptcy court misallocated the burden of proof regarding her proper address for service.

Finally, the Court notes that even had the court vacated the ER Order, allowed Appellant to argue that the Pascascio deed was fraudulent, and found in Appellant's favor on that issue, such an order would have been futile because the foreclosure would have happened anyway. The property was in foreclosure because Appellant defaulted on her loan. Appellant contends that she could have obtained some relief from foreclosure through her bankruptcy case. It is true that when foreclosure sale occurred, on April 10, 2015, Appellant's Second Bankruptcy case was pending. But, that case could not have afforded Appellant any relief from foreclosure. The Second Bankruptcy would not have triggered an automatic stay under 11 U.S.C. § 362(b)(21) because Appellant was an ineligible debtor under § 109(g)(2), and the creditor was acting to enforce a security interest in real property. And, the bankruptcy judge in the Second Bankruptcy denied Appellant's motion to grant her relief from the ineligibility bar of § 109(g)(2). Thus, even had the court granted Appellant's motion to vacate ER Order, doing so would have been futile from Appellant's point of view and the foreclosure would have proceeded anyway.

IV. CONCLUSION

For the foregoing reasons, the bankruptcy court's September 11, 2015 Order is **AFFIRMED**.

The Court directs the Clerk's Office to correct the docket to reflect the spelling of debtor's name as "Leslie A. Pascascio," consistent with the Bankruptcy Court's docket.

IT IS SO ORDERED.

CC: BK Court

EXHIBIT D

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Attorney for Interested Party
Teena Colebrook

FILED & ENTERED

SEP 11 2015

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY walter DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT

CENTRAL DIVISION OF CALIFORNIA – LOS ANGELES DIVISION

IN RE:

Leslie Pascascio
Debtor

Case No.: 2:14-bk-24031-SK

ORDER DENYING MOTION TO VOID ORDER GRANTING RELIEF FROM STAY

Hearing Date: 09/03/2015

Time : 8:30 am

Interested party Teena Colebrook's "Motion to Void Order Granting Relief From Stay" (Motion) was filed on July 16, 2015. The Motion was heard on September 3, 2015 at 8:30 a.m. For the reasons stated on the record at the hearing,

IT IS HEREBY ORDERED THAT the Motion is denied.

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Date: September 11, 2015

Sandra R. Klein
United States Bankruptcy Judge

EXHIBIT E

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

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In Re: LESLIE A. PASCASCIO Debtor,	) Case No. 2:14-bk-24031-SK)) Chapter 13)) Los Angeles, California) Thursday, 9:00 A.M.) September 3, 2015

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HEARING RE: MOTION TO VOID ORDER GRANTING RELIEF FROM STAY

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SANDRA KLEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For OneWest Bank:	YALE K. KIM, ESQ. Allen Matkins Leck Gamble Mallory & Natsis, LLP 5154 South Figueroa Street 9th Floor Los Angeles, California 90071
For Teena Colebrook:	ODEHA L. WARREN, ESQ. Law Office of Odeha L. Warren 41690 Enterprise Circle North Suite #204 Temecula, California 92590
Court Recorder:	Earnestine Walters U.S. Bankruptcy Court Central District of California Edward R. Roybal Federal Building and Courthouse 255 East Temple Street, Room #1639 Los Angeles, California 90012 (855) 460-9641

Proceedings produced by electronic sound recording; transcript produced by transcription service.

Further, even if the instant case were reopened, which it is not, but even it were the relief sought by Ms. Colebrook cannot be granted. Section 362(d)(4) specifically provides that "a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or good cause shown after a hearing." That's 11 U.S.C. 362(d)(4).

Movant's Chapter 13 case was dismissed on 4/28/15 before Judge Zurzolo. Her motion to vacate is pending with a continued hearing date of September 29th at 11:00 a.m. As such until that motion to dismiss is ruled on or movant files another bankruptcy case, movant is not currently a debtor and she cannot seek relief from the relief from stay order that was entered.

Further, even if the Court were to construe the motion as being brought under FRCP as a motion for relief from a judgment or order, movant has the burden of demonstrating that such relief is appropriate. She hasn't cited any section of the FRCP 60 that would be applicable nor has she presented any evidence demonstrating that such relief would be appropriate.

Further, just in terms of the service argument, I do believe it's appropriate to address that. In terms of service it's undisputed that in the San Luis Obispo action Ms. Colebrook did state that she -- the property was her residence. She indicated she got mail there. She had all her things there and there was other information that was provided that would lead any reasonable person to believe. that that is her residence.

Under FRBP 4001(a)(1) a motion for relief from stay must be made in accordance with FRBP 9014. FRBP 9014(b) provides that motion shall be served in the manner provided for service of a summons and complaint by FRBP 7004. FRBP 7004 provides that service may -- that service be made by the U.S. Mail by First Class Mail postage prepaid upon "an individual by mailing a copy of the summons and complaint to the individual's dwelling, house or usual place of abode or to the place where the individual regularly conducts a business or profession."

The mailbox rule provides that proper and timely mailing of a document raises a rebuttable presumption that it was received by the addressee. Proof of mailing creates a rebuttable presumption of its receipt."

Although the presumption can be rebutted by specific evidence of non-receipt, at this point there is no presumption of non-receipt and there hasn't been sufficient evidence. As stated in the San Luis Obispo action, Ms. Colebrook unequivocally stated that the property address was her residence or her dwelling. She indicated that that's where she lived, that's where she got mail, that's where she -- all of her items were located, all of her personal property were located.

So based upon the presumption of the mailbox rule and the fact that the evidence is clear that OneWest did serve the motion at the address where Ms. Colebrook had admitted that she resided, the Court doesn't find her argument that she didn't receive notice of the relief from stay motion persuasive.

So, Ms. Warren, is there anything that you'd like to address? And again, I'm only ruling on the fact that procedurally it's not proper, it's not -- the case isn't reopened. The -- Ms. Colebrook is not a debtor so she can't move under 362(d)(4) for relief from that order. There was nothing in the motion that would support a finding under FRCP 60 and in terms of the argument that debtor wasn't properly served I do not find that to be persuasive, so those are the only things I'm ruling on at this time.

Please come to the podium.

MS. WARREN: Oh, okay. Your Honor, Ms. Colebrook would like to address the Court directly.

THE COURT: Ms. Warren, you are the -- you're her representative, so if she wants to tell you what she wants to say, that's fine, but you are her attorney so you need to be the one addressing the Court.

142nd Street, the property address that we're here for today. But there was an issue with her mailing and that's why in accordance with her grant deed she changed it. So she was expecting to get all of her service and they served other documents at her mailing address.

THE COURT: And I understand that's what you're saying, but the problem again is, under the law, service of the motion as well as the order -- the motion I'm talking about is the relief from stay before this Court, as well as the order was correct and effective under the law. So I hear what your arguments are. I disagree with you.

So is there anything else that you would like to add?

MS. WARREN: Just a moment.

(Pause)

THE COURT: What I'll do is ask Mr. Kim if he has anything he'd like to respond to and, Ms. Warren, you can continue consulting with your client and then I'll give you one more chance to speak.

MR. KIM: Your Honor, thank you for your diligent read of our papers. I apologize. I know this is Chapter 13 day, but we had -- we had quite a bit of history on this case. And so I would simply state that, you know, we agree with the Court's ruling on this. I think procedurally that's correct. There needs to be a motion to reopen

(End at 9:37 p.m.)

* * * * * * * *

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Date: 9/9/2015

RUTH ANN HAGER, C.E.T.**D-641

EXHIBIT F

United States Bankruptcy Court
Central District Of California

255 East Temple Street, Los Angeles, CA 90012

ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO APPEAR AT 341(a) MEETING OF CREDITORS

DEBTOR INFORMATION:
Leslie A Pascascio

BANKRUPTCY NO. 2:14-bk-24031-SK

CHAPTER 13

Last four digits of Social-Security or Individual Taxpayer-Identification (ITIN) No(s)., (if any): xxx-xx-3593
Employer Tax-Identification (EIN) No(s).(if any): *N/A*
Debtor Dismissal Date: 9/10/14

Address:
10637 South St Andrews Place
Los Angeles, CA 90047

The above debtor(s) has **FAILED TO APPEAR** for examination at the initial Section 341(a) meeting of creditors and any continuance thereof:

It is ordered:

1) The case is dismissed, the automatic stay is vacated, and all pending motions and adversary proceedings are moot and dismissed.

2) Any discharge entered in this case is hereby vacated in its entirety.

3) The Court retains jurisdiction on all issues arising under Bankruptcy Code § 110, 329 and 362.

Dated: September 10, 2014

For The Court,
Kathleen J. Campbell
Clerk of Court

(Form van23a–odmwab VAN–23) Rev. 11/09

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Additional material from this filing is available in the Clerk's Office.