

DEC 09 2016

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-16-1116-FPaKi
)		
REYNALDO F. MARQUES,)	Bk. No.	8:12-bk-22571-MW
)		
Debtor.)		
_____)		
)		
REYNALDO F. MARQUES,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
JAMES J. JOSEPH, Trustee;)		
JPMORGAN CHASE BANK N.A.,)		
)		
Appellees.**)		
_____)		

Argued and Submitted on November 17, 2016
at Pasadena, California

Filed - December 9, 2016

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Mark S. Wallace, Bankruptcy Judge, Presiding

Appearances: Appellant Reynaldo F. Marques argued pro se; John Sorich argued on behalf of Appellee JPMorgan Chase Bank, N.A.

* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, see Fed. R. App. P. 32.1, it has no precedential value, see 9th Cir. BAP Rule 8024-1.

** Appellee James J. Joseph did not file an answering brief or otherwise make an appearance in this appeal.

1 Before: FARIS, PAPPAS,^{***} and KIRSCHER, Bankruptcy Judges.

2 **INTRODUCTION**

3 Appellant and chapter 7¹ debtor Reynaldo F. Marques appeals
4 from the bankruptcy court's order granting appellee JPMorgan
5 Chase Bank, N.A. ("Chase") relief from the automatic stay. On
6 appeal, he argues that the bankruptcy court erred by failing to
7 determine Chase's standing to foreclose on his property before
8 granting relief from the automatic stay. The record reflects
9 that the bankruptcy court did consider Mr. Marques' arguments and
10 properly determined that Chase had standing to seek relief from
11 the automatic stay. Accordingly, we AFFIRM.

12 **FACTUAL BACKGROUND²**

13 **A. The Promissory Note and the debtors' default**

14 On or about August 14, 2006, Mr. Marques and his wife, Anne
15 C. Marques, executed an adjustable rate note (the "Promissory
16 Note") in the principal amount of \$727,000 in favor of Washington
17 Mutual Bank, FA ("WaMu"). The Promissory Note was secured by a
18 deed of trust on real property located in Dana Point, California
19 (the "Property") that was executed by Mr. and Mrs. Marques and
20

21 ^{***} The Honorable Jim D. Pappas, United States Bankruptcy
22 Judge for the District of Idaho, sitting by designation.

23 ¹ Unless specified otherwise, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
25 "Rule" references are to the Federal Rules of Bankruptcy
26 Procedure, and all "Civil Rule" references are to the Federal
27 Rules of Civil Procedure.

28 ² Mr. Marques presents us with a deficient record on appeal.
We have exercised our discretion to review the bankruptcy court's
docket, as appropriate. See Woods & Erickson, LLP v. Leonard
(In re AVI, Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP 2008).

1 recorded in Orange County. The Promissory Note was endorsed in
2 blank and without recourse.

3 On September 25, 2008, the Federal Deposit Insurance
4 Corporation ("FDIC") was appointed as receiver of WaMu. In
5 September 2008, Chase acquired certain assets and liabilities of
6 WaMu from the FDIC, including the Promissory Note.

7 Mr. and Mrs. Marques ceased making payments on the
8 Promissory Note in November 2008. In March 2009, Chase recorded
9 a Notice of Default and Election to Sell Under Deed. Around the
10 same time, it substituted Quality Loan Service Corporation as the
11 new trustee under the deed of trust. When Mr. and Mrs. Marques
12 failed to cure the default, notices of sale were recorded on
13 June 29, 2009 and July 9, 2010.

14 On October 5, 2011, Mr. Marques unilaterally executed a
15 fraudulent limited power of attorney whereby Chase purportedly
16 appointed him as its attorney-in-fact. Mr. Marques, supposedly
17 as an attorney-in-fact for Chase, next executed and recorded a
18 fraudulent "substitution of trustee" that substituted Equitable
19 Trustee Services Management Trust ("Equitable") as trustee in
20 place of Quality Loan Service. Equitable executed and recorded a
21 "Deed of Full Reconveyance" that purported to extinguish the deed
22 of trust.

23 When Chase discovered the fraudulent filings, it proceeded
24 to undo Mr. Marques' mischief. It recorded a rescission that
25 stated that Chase did not appoint Mr. Marques as its attorney-in-
26 fact, did not authorize the reconveyance, and did not authorize
27 Equitable to act on its behalf.

28 As of March 2016, the amount due under the Promissory Note

1 totaled \$1,146,499.85. The fair market value of the Property was
2 \$892,500.

3 **B. The bankruptcy cases**

4 In addition to the fraudulent filings, Mr. and Mrs. Marques
5 initiated numerous bankruptcy cases.

6 Mrs. Marques filed a chapter 7 petition on January 20, 2012,
7 which was dismissed for failure to appear at the § 341(a) meeting
8 of creditors.

9 Mrs. Marques filed a second chapter 7 petition on May 2,
10 2012. She received a discharge, and that case was closed on
11 January 30, 2013.

12 Mr. Marques commenced the current case by filing a chapter 7
13 petition on October 30, 2012. He received a discharge, and the
14 case was closed on August 27, 2013. He later moved to reopen the
15 case; the court did so on December 4, 2013.

16 Mr. Marques filed a chapter 13 petition on November 15,
17 2013. The court granted his motion to dismiss that case shortly
18 thereafter.

19 While the present case was pending, Mr. Marques filed
20 another chapter 13 petition on April 24, 2014. Mr. Marques again
21 voluntarily dismissed that case.

22 **C. Chase's Motion for Relief from Stay and Mr. Marques'
23 Standing Motion**

24 On December 1, 2015, Chase filed its motion seeking relief
25 from the automatic stay ("Motion for Relief from Stay"). It
26 argued that (1) Mr. Marques did not have any equity in the
27 Property and the Property is not necessary to an effective
28 reorganization; (2) Chase's interest in the Property was not

1 protected by sufficient equity; (3) the bankruptcy filing was a
2 scheme to delay, hinder, or defraud creditors; and (4) in rem
3 relief was warranted due to Mr. and Mrs. Marques' abuse of the
4 bankruptcy process.

5 On January 21, 2016, Mr. Marques filed a motion ("OSC
6 Motion") requesting that the bankruptcy court issue an order to
7 show cause why Chase should not be compelled to prove its
8 standing and produce the "wet-ink" Promissory Note. Chase
9 responded that it would make the Promissory Note available for
10 Mr. Marques' inspection prior to the hearing on the OSC Motion.

11 Meanwhile, Mr. Marques filed a document challenging Chase's
12 standing to seek relief from the automatic stay ("Standing
13 Motion"), which appeared to both oppose the Motion for Relief
14 from Stay and move the court to determine the validity of the
15 Promissory Note. Mr. Marques argued that Chase lacked standing
16 to enforce the Promissory Note because it had not produced the
17 original Promissory Note and could not prove a valid assignment
18 or chain of title of the Promissory Note from WaMu and the FDIC.
19 As such, he contended that the bankruptcy court lacked
20 jurisdiction to decide the Motion for Relief from Stay.

21 On March 7, 2016, the bankruptcy court held a hearing on the
22 OSC Motion. Chase produced the Promissory Note for inspection by
23 the court and Mr. Marques. Following the hearing, the court
24 said:

25 At the hearing, Lender produced, and the Court and
26 Debtor inspected, the Original Note. Debtor admitted
27 in open court that the signatures on the Original Note
28 are his signature and his spouse's signature. However,
for reasons relating to previous transfers of the
Original Note and other reasons stated on the record,
Debtor maintained and argued that the Original Note is

1 no longer enforceable.

2 The court held that, because Mr. Marques had received the
3 requested relief of inspecting the Promissory Note, the OSC
4 Motion was moot. However, it invited Mr. Marques to submit any
5 documentation in support of his position to the court prior to
6 the hearing on the Standing Motion and the evidentiary hearing on
7 the Motion for Relief from Stay.³

8 On March 28, 2016, the bankruptcy court held a hearing on
9 Mr. Marques' Standing Motion and an evidentiary hearing on
10 Chase's Motion for Relief from Stay.

11 Regarding the Standing Motion, Mr. Marques argued that Chase
12 did not have the wet-ink Promissory Note (even though Chase had
13 produced it for his inspection at the March 7 hearing) and that
14 the assignment from WaMu/FDIC to Chase was invalid or unproven.
15 The bankruptcy court denied the Standing Motion and adhered to
16 its tentative ruling, wherein it recounted that Chase had
17 produced the original copy of the Promissory Note at the hearing
18 on the OSC Motion. It therefore found that Chase was in
19 possession of the Promissory Note. Because the Promissory Note
20 was endorsed in blank, it was a bearer instrument, and Chase, as
21 the entity in possession of the Promissory Note, was therefore
22 the "holder." As the holder, it "is entitled to enforce the
23 promissory note and therefore has standing in this bankruptcy
24 court to move for relief from the automatic stay."

25
26 ³ On March 17, 2016, Mr. Marques filed a Verified
27 Jurisdictional Attack and Memorandum of Law Regarding Movant's
28 Clear Lack of Standing as Established by Court Precedent. His
arguments therein essentially repeated those raised in the
Standing Motion.

1 In its order denying the Standing Motion ("Standing Order"),
2 the bankruptcy court held that:

3 1. [Chase] is "holder" of the Promissory Note;

4 2. As "holder," [Chase] is entitled to enforce the
5 Promissory Note;

6 3. [Chase] has standing in this bankruptcy court to
7 move for relief from the automatic stay; and

8 4. Debtor's Motion for an Order Determining that
9 [Chase] Lacks Standing is denied with prejudice.

10 Mr. Marques did not appeal from the Standing Order.

11 The bankruptcy court next held the evidentiary hearing on
12 the Motion for Relief from Stay. Chase offered the testimony of
13 a research officer at Chase, who testified that Chase had
14 properly acquired assets of WaMu, including the Promissory Note.

15 He also testified that Mr. Marques was not an attorney-in-fact
16 for Chase and was not authorized to substitute a trustee under
17 the deed of trust or reconvey the deed of trust to himself.

18 Mr. Marques offered his own testimony, although it largely
19 focused on the validity of the Promissory Note and its subsequent
20 assignment.

21 At the conclusion of the evidentiary hearing, the court took
22 the matter under advisement and issued a written memorandum
23 decision granting the Motion for Relief from Stay on April 11,
24 2016. It held that (1) Chase established that Mr. Marques "lacks
25 any equity in the Property by a wide margin[;]" (2) Chase "lacks
26 adequate protection of its interest in the Property . . . based
27 upon the monthly payments continuing to accrue and the gap
28 between the Property's fair market value and the amount of
Movant's claim[;]" and (3) Mr. Marques' petition was a part of a

1 scheme to hinder, delay, or defraud Chase.

2 In its order ("Relief from Stay Order"), the court stated
3 that it granted the Motion for Relief from Stay and that the
4 order shall be binding in any other bankruptcy case affecting the
5 Property for a period of two years.

6 Mr. Marques timely filed his notice of appeal from the
7 Relief from Stay Order. The notice of appeal did not include or
8 otherwise reference the Standing Order.

9 **D. The motion to dismiss**

10 While this appeal was pending, Chase filed a motion to
11 dismiss, arguing that the Property had been sold at auction,
12 rendering this appeal moot.

13 Chase represented that, on September 12, 2016, the Property
14 was foreclosed upon and sold to Chase. On September 16, 2016,
15 the trustee's deed upon sale was recorded in Orange County.
16 Thus, Chase argued that this appeal is constitutionally moot.

17 In response, Mr. Marques repeated his arguments that the
18 Promissory Note and deed of trust were void, such that Chase was
19 without authority to proceed with the foreclosure sale.

20 The motions panel deferred the mootness issue for
21 consideration concurrent with the merits of this appeal.

22 **JURISDICTION**

23 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
24 §§ 1334 and 157(b)(1) and (2)(G). Subject to our discussion of
25 mootness below, we have jurisdiction under 28 U.S.C. § 158.

26 **ISSUES**

27 (1) Whether this appeal is moot.

28 (2) Whether the bankruptcy court erred in granting Chase

1 relief from the automatic stay.

2 **STANDARDS OF REVIEW**

3 We review for an abuse of discretion a bankruptcy court's
4 order granting relief from the automatic stay. First Yorkshire
5 Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire
6 Holdings, Inc.), 470 B.R. 864, 868 (9th Cir. BAP 2012). To
7 determine whether the bankruptcy court abused its discretion, we
8 conduct a two-step inquiry: (1) we review de novo whether the
9 bankruptcy court "identified the correct legal rule to apply to
10 the relief requested" and (2) if it did, whether the bankruptcy
11 court's application of the legal standard was illogical,
12 implausible, or "without support in inferences that may be drawn
13 from the facts in the record." United States v. Hinkson,
14 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

15 We review de novo our own jurisdiction, including questions
16 of mootness. Silver Sage Partners, Ltd. v. City of Desert Hot
17 Springs (In re City of Desert Hot Springs), 339 F.3d 782, 787
18 (9th Cir. 2003).

19 **DISCUSSION**

20 In his opening brief, Mr. Marques declares, "**Appellant**
21 **withdraws his appeal**, but requests that this court, sua sponte,
22 do its duty to review upon this instant and urgent request, the
23 record of [the case below]" Despite "withdrawing" the
24 appeal, Mr. Marques continues to prosecute the appeal.

25 Because Mr. Marques is proceeding pro se, we will assume
26 that he did not mean to withdraw his appeal and will examine the
27 merits of his appeal.

1 **A. This appeal is not moot.**

2 Before reaching the merits of this appeal, we must first
3 resolve Chase's motion to dismiss. Although the Property has
4 been sold at auction with no right of redemption, this appeal is
5 not moot.

6 Mootness directly affects the Panel's ability to decide this
7 appeal. See Ellis v. Yu (In re Ellis), 523 B.R. 673, 677 (9th
8 Cir. BAP 2014) ("We cannot exercise jurisdiction over a moot
9 appeal."). Chase argues that the appeal is constitutionally
10 moot. Regarding constitutional mootness, we have stated:

11 Constitutional mootness derives from Article III
12 of the United States Constitution, which provides that
13 the exercise of judicial power depends on the existence
14 of a case or controversy. The doctrine of
15 constitutional mootness is essentially a recognition of
16 Article III's prohibition against federal courts'
17 issuing advisory opinions. While the Article III
18 mootness doctrine has a "flexible character," it
19 applies when events occur during the pendency of the
20 appeal that make it impossible for the appellate court
21 to grant effective relief. If no effective relief is
22 possible, we must dismiss for lack of jurisdiction.

23 United States v. Gould (In re Gould), 401 B.R. 415, 421 (9th Cir.
24 BAP 2009), aff'd, 603 F.3d 1100 (9th Cir. 2010) (internal
25 citations omitted); see Motor Vehicle Cas. Co. v. Thorpe
26 Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 880
27 (9th Cir. 2012) (Whether a case is constitutionally moot turns on
28 whether the Panel may provide "the appellant any effective relief
in the event that it decides the matter on the merits in his
favor.").

In the present case, Mr. Marques did not seek a stay of the

1 foreclosure sale pending appeal.⁴ After he filed this appeal,
2 Chase purchased the Property at auction, and there is no
3 statutory right of redemption. Chase thus contends that the sale
4 is final and that this appeal is moot.

5 But the closing of the foreclosure sale to Chase does not
6 prevent us from granting effective relief if we reverse the
7 bankruptcy court. Regarding the foreclosure and sale of real
8 property, we have stated:

9 The mootness doctrine applies when events occur during
10 the pendency of the appeal that make it impossible for
11 the appellate court to grant effective relief. . . .
12 Here, although it may be difficult to restore the
13 parties to the status quo ante, it is not impossible.
14 There is nothing in the record that shows debtor's
15 property was sold to a third party. Theoretically, if
16 we reversed, the trustee's sale would be void and title
17 to the property would revert to debtor. Although she
18 is presently not in possession, she would again own the
19 property and could move back in. Accordingly, we could
20 fashion effective relief, and the appeal is not moot.
21 We therefore reach the merits of the orders on appeal.

22 Leafy v. Aussie Sonoran Capital, LLC (In re Leafy), 479 B.R.
23 545, 552 n.8 (9th Cir. BAP 2012).

24 As in Leafy, this appeal is not moot. If the foreclosure
25 sale is indeed void as alleged by Mr. Marques, we could fashion
26 effective relief for him. Chase indicated that it purchased the
27 Property in September 2016, and it said at oral argument that it
28 did not subsequently sell the Property to a third party. We thus
have the ability to undo the sale, if necessary. See Focus
Media, Inc. v. Nat'l Broadcasting Co. (In re Focus Media, Inc.),

⁴ "We may take judicial notice of events in the bankruptcy case occurring subsequent to the filing of an appeal if they resolve the dispute between the parties." In re Ellis, 523 B.R. at 676 (citing Pitts v. Terrible Herbst, Inc., 653 F.3d 1081, 1087 (9th Cir. 2011)).

1 378 F.3d 916, 923 (9th Cir. 2004) (holding that “effective relief
2 is available” where the court can fashion equitable relief); cf.
3 Fitzgerald v. Ninn Worx Sr, Inc. (In re Fitzgerald), 428 B.R.
4 872, 881-82 (9th Cir. BAP 2010) (a “sale to a third party is a
5 classic example of mootness in the bankruptcy context because it
6 precludes meaningful relief”).

7 Chase has not shown that this appeal is moot. See Suter v.
8 Goedert, 504 F.3d 982, 986 (9th Cir. 2007) (“In general, the
9 party asserting mootness has the heavy burden of establishing
10 that there is no effective relief remaining for a court to
11 provide.”). Accordingly, we will next consider the merits of
12 this appeal.

13 **B. The bankruptcy court did not err in granting Chase relief**
14 **from the automatic stay.**

15 **1. The bankruptcy court determined the validity of the**
16 **Promissory Note prior to granting relief from stay.**

17 Mr. Marques’ only argument in his opening brief is that the
18 bankruptcy court lacked subject matter jurisdiction to hear
19 Chase’s Motion for Relief from Stay under Civil Rule 12(b)(1),
20 because it did not first consider whether Chase had standing to
21 foreclose on the Property. He argues that:

22 [t]he lower court had a mandatory duty to address
23 Appellant’s challenge of Movant’s standing, **prior to**
24 **proceeding**, which it did not do. The lower court
25 failed to address or acknowledge that the record of
26 case No.: 8-12-22571-MW shows that Movant had failed to
27 provide the chain of title, the putative assignment of
28 the loan, and failed to bring forward the original note
prior to filing its motion as required by Federal Rules
of Evidence, Rule 1002 (Requirement of the Original).

He claims that “[t]he lower court in which jurisdiction was
challenged lacked judicial discretion.” He does not otherwise

1 substantively challenge the Relief from Stay Order.⁵

2 Mr. Marques is factually and legally mistaken. The
3 bankruptcy court did consider Mr. Marques' challenges to Chase's
4 standing. On February 29, 2016, Mr. Marques filed the Standing
5 Motion, which asserted that the court did not have jurisdiction
6 to decide the Motion for Relief from Stay because Chase lacked
7 standing to foreclose. On March 7, 2016, in response to the OSC
8 Motion, Chase produced the original, wet-ink note. Both the
9 court and Mr. Marques had the opportunity to examine the
10 Promissory Note. Mr. Marques admitted that the signatures
11 belonged to him and his wife.

12 The court further held a hearing on the Standing Motion on
13 March 28, 2016, but ultimately found no merit to Mr. Marques'
14 arguments. In its Standing Order, the court said that it had
15 considered the parties' arguments and the Promissory Note
16 produced by Chase, and it concluded that Chase is the holder of
17 the Promissory Note and is therefore entitled to enforce it. The
18 court said that Chase had standing in the case to move for relief
19 from the automatic stay and denied Mr. Marques' motion.

20 Having determined that Chase had standing to seek relief
21 from the automatic stay, the bankruptcy court did not err in then
22 deciding Chase's Motion for Relief from Stay.

23
24 ⁵ Mr. Marques also alleges in passing that "the lower court
25 clearly denied Appellant his due process right to be heard," but
26 does not expand upon this point. As such, we will not consider
27 it. See Christian Legal Soc. Chapter of Univ. of Cal. v. Wu,
28 626 F.3d 483, 487 (9th Cir. 2010). In any event, the bankruptcy
court allowed Mr. Marques to file multiple documents on the issue
of standing and allowed him to argue orally at the hearing on the
Standing Motion and Motion for Relief from Stay.

1 Mr. Marques also contends that Federal Rule of Evidence 1002
2 required Chase to offer the Promissory Note before filing the
3 Motion for Relief from Stay. However, that rule only states that
4 “[a]n original writing, recording, or photograph is required in
5 order to prove its content unless these rules or a federal
6 statute provides otherwise.” Fed. R. Evid. 1002. It does not
7 specify any timing for production, and, in any event, Chase did
8 produce the original Promissory Note.

9 Accordingly, the court did not err when it granted Chase
10 relief from the automatic stay.

11 **2. Mr. Marques fails to prove that the Promissory Note is**
12 **defective.**

13 In his opening brief, Mr. Marques only contends that the
14 bankruptcy court erred by allegedly failing to determine Chase’s
15 standing prior to granting relief from stay. However, at oral
16 argument, Mr. Marques additionally argued that the court erred by
17 determining that the Promissory Note was valid. Although we
18 generally do not consider arguments not raised in the opening
19 brief, in the spirit of construing pro se appellants’ arguments
20 liberally, we will address this issue. See Shahrestani v.
21 Alazzeh (In re Alazzeh), 509 B.R. 689, 694 n.5 (9th Cir. BAP
22 2014).

23 Mr. Marques contends that Chase is not entitled to enforce
24 the Promissory Note because an adjustable-rate note is non-
25 negotiable and non-transferrable. Mr. Marques is wrong.

26 First, the Promissory Note itself contemplates that the
27 Promissory Note may be transferred to a different creditor: “I
28 understand that the Lender [WaMu] may transfer this Note. The

1 Lender or anyone who takes this Note by transfer and who is
2 entitled to receive payments under this Note is called the 'Note
3 Holder'."

4 Second, an adjustable-rate note can be negotiable under
5 Article 3 of the Uniform Commercial Code ("UCC"). Section 3104
6 of the California Commercial Code states:

7 (a) Except as provided in subdivisions (c) and (d),
8 "negotiable instrument" means an unconditional promise
9 or order to pay a fixed amount of money, with or
without interest or other charges described in the
promise or order, if it is all of the following:

10 (1) Is payable to bearer or to order at the time
11 it is issued or first comes into possession of a
holder.

12 (2) Is payable on demand or at a definite time.

13 (3) Does not state any other undertaking or
14 instruction by the person promising or ordering
15 payment to do any act in addition to the payment
16 of money, but the promise or order may contain
17 (i) an undertaking or power to give, maintain, or
18 protect collateral to secure payment, (ii) an
authorization or power to the holder to confess
judgment or realize on or dispose of collateral,
or (iii) a waiver of the benefit of any law
intended for the advantage or protection of an
obligor.

19 Cal. Com. Code § 3104(a). The Promissory Note meets all of these
20 requirements, insofar as it: (1) represents an unconditional
21 promise; (2) pertains to a fixed amount of money; (3) was payable
22 to order at the time it was issued; (4) was payable at a definite
23 time; and (5) does not state any other undertakings or require
24 any further action by Mr. Marques other than the payment of
25 money.

26 The Promissory Note provides for a "fixed amount of money,"
27 even though it also provides for an adjustable interest rate.

28 See Cal. Com. Code § 3104(a); see Cal. Com. Code § 3112(b)

1 ("Interest may be stated in an instrument as a fixed or variable
2 amount of money or it may be expressed as a fixed or variable
3 rate or rates. The amount or rate of interest may be stated or
4 described in the instrument in any manner and may require
5 reference to information not contained in the instrument."); Cal.
6 Com. Code § 3112 cmt. 1 ("Under [UCC] Section 3-104(a) the
7 requirement of a 'fixed amount' applies only to principal. The
8 amount of interest payable is that described in the instrument.
9 If the description of interest in the instrument does not allow
10 for the amount of interest to be ascertained, interest is payable
11 at the judgment rate. Hence, if an instrument calls for
12 interest, the amount of interest will always be determinable. If
13 a variable rate of interest is prescribed, the amount of interest
14 is ascertainable by reference to the formula or index described
15 or referred to in the instrument.")

16 Mr. Marques also contends that, even if Chase is the holder
17 of the Promissory Note, it has not proved that it acquired the
18 Promissory Note legally. But we have repeatedly held that a
19 possessor of a note endorsed in blank is a party entitled to
20 enforce the note and foreclose on any collateral. See Zulueta v.
21 Bronitsky (In re Zulueta), BAP No. NC-10-1459-HPaJu, 2011 WL
22 4485621, at *6 (9th Cir. BAP Aug. 23, 2011), aff'd, 520 F. App'x
23 558 (9th Cir. 2013) ("A party in physical possession of an
24 endorsed-in-blank note qualifies as a holder of a note under
25 [California law]. Because [the servicer] appeared at the Hearing
26 with possession of the endorsed-in-blank Note, it was a holder of
27 the Note entitled to enforce it."); see also Veal v. Am. Home
28 Mortg. Servicing, Inc. (In re Veal), 450 B.R. 897, 902, 910-11

1 (9th Cir. 2011); Allen v. U.S. Bank, N.A. (In re Allen), 472 B.R.
2 559, 565-67 (9th Cir. BAP 2012).

3 There is no requirement that the holder of a note endorsed
4 in blank must additionally prove that it properly came into
5 possession of the note. In fact, the UCC makes clear that the
6 holder of a note includes anyone in possession of a note, even if
7 he came by it involuntarily or wrongfully:

8 Negotiation always requires a change in possession of
9 the instrument because nobody can be a holder without
10 possessing the instrument, either directly or through
11 an agent. But in some cases the transfer of possession
12 is involuntary and in some cases the person
13 transferring possession is not a holder. . . .
14 [N]egotiation can occur by an involuntary transfer of
15 possession. For example, **if an instrument is payable
16 to bearer and it is stolen by Thief or is found by
17 Finder, Thief or Finder becomes the holder of the
18 instrument when possession is obtained. In this case
19 there is an involuntary transfer of possession that
20 results in negotiation to Thief or Finder.**

21 Cal. Com. Code § 3201 cmt. 1 (emphasis added). Thus, Mr. Marques
22 is patently incorrect that Chase, as the holder of the Promissory
23 Note, must prove an unbroken chain of custody as a prerequisite
24 to enforcing the Promissory Note.

25 CONCLUSION

26 For the reasons set forth above, this appeal is not moot.
27 Additionally, the bankruptcy court did not err in granting Chase
28 relief from the automatic stay. Therefore, we AFFIRM.