UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re: MICHAEL JACQUES JACOBS, No. 19-12591-j11

Debtor.

ORDER DENYING RULE 60(b) MOTION FOR RELIEF FROM A JUDGMENT OR ORDER OVERRULING OBJECTION TO CLAIM #6 DUE TO NEW EVIDENCE

THIS MATTER is before the Court on the Rule 60(b) Motion for Relief from a Judgment or Order Overruling Objection to Claim #6 Due to New Evidence ("Second Rule 60(b) Motion"– Doc. 262) filed by the Debtor, Michael Jacques Jacobs, pro se. Debtor requests relief from the Court's Order Overruling Objection to Claim #6 ("Order Allowing DLJ's Claim" - Doc. 161) and its supporting Memorandum Opinion (Doc. 159) as it relates to the Order Allowing DLJ's Claim under Fed. R. Civ. P. 60(b)(2) and Fed. R. Civ. P. 60(b)(3)[1] and requests the Court to stay execution of the Order Allowing DLJ's Claim "for the duration of the proceedings in this Court."[2] Creditor DLJ Mortgage Capital, Inc. ("DLJ") opposes the Motion.[3]

Because Debtor recognizes that the underlying issues are on appeal to the Bankruptcy Appellate Panel for the Tenth Circuit (the "BAP"), Debtor requests the Court to issue an indicative ruling determining that it would be inclined to grant the Second Rule 60(b) Motion. Debtor also requests the Court to allow Debtor to take additional limited discovery to supplement the record to assist the Court in reviewing its prior rulings. Having considered the Motion and the Response, and being otherwise sufficiently informed, the Court will deny the Motion.

[1] Fed. R. Civ. P. 60(b) is made applicable to bankruptcy cases by Fed. R. Bankr. P. 9024.
[2] Second Rule 60(b) Motion (Doc. 262), p. 1.
[3] *See* Creditor's Response in Opposition to Debtor's Motion for Relief from a Judgment or Order Overruling Objection to Claim #6 Due to New Evidence ("Response" - Doc. 271).

PROCEDURAL HISTORY

Before Debtor filed his voluntary petition under chapter 11 of the Bankruptcy Code on November 13, 2019, DLJ obtained an in rem foreclosure judgment (the "Foreclosure Judgment") with respect to Debtor's residence located at 800 Calle Divina NE, Albuquerque, New Mexico (the "Property") as part of a state court foreclosure action styled *DLJ Mortgage Capital, Inc. v. Ruby Handler Jacobs a/k/a Ruby Jacobs, Michael Jacobs, et al.*, Case No. D-202-CV-2012-09237 (the "State Court Action"). DLJ's claim in this bankruptcy case is based on the Foreclosure Judgment DLJ obtained in the State Court Action following a trial on the merits. The Foreclosure Judgment is based on a promissory note ("Note") and a mortgage on the Property securing the Note (the "Mortgage").

This Court entered its Order Allowing DLJ's Claim (Doc. 161), and Order Granting in Rem Stay Relief Under 11 U.S.C. § 362(d)(4) ("Stay Relief Order"–Doc. 160), and issued a supporting Memorandum Opinion (Doc. 159), on May 24, 2021 following a trial on the merits of DLJ's Stay Relief Motion[4] and Debtor's Objection to Claim #6 filed by DLJ ("Claim Objection"–Doc. 96). The Court overruled Debtor's Claim Objection based on the preclusive effect of the Foreclosure Judgment.[5] Since then, Debtor has filed five motions seeking to alter or amend or relief from the Order Allowing DLJ's Claim and/or Stay Relief Order and the supporting Memorandum Opinion:

1. First Rule 59(e) Motion[6] filed June 11, 2021;

2. Second Rule 59(e) Motion[7] filed June 21, 2021;

[4]Motion for Relief from the Automatic Stay and for the Abandonment of Property; Motion for In Rem Relief Pursuant to 352(d)(4) by DLJ Mortgage Capital Inc. ("DLJ's Stay Relief Motion"–Doc. 27).
[5] *See* Memorandum Opinion, Doc. 159, pp. 21-22.
[6]Defendant's Motion to Alter or Amend Judgment ("First Rule 59(e) Motion"–Doc. 163) relating to the Stay Relief Order.
[7]Rule 59(e) Motion to Alter or Amend Judgment of Order Overruling Objection to Claim #6 With Declaratory Relief ("Second Rule 59(e) Motion"–Doc. 172) relating to the Order Allowing DLJ's Claim.

3. Rule 60(b) Motion Regarding Stay Relief Order[8] filed July 2, 2021;

4. First Rule 60(b) Motion Regarding Order Allowing Claim[9] filed September 13, 2021;

5. Second Rule 60(b) Motion[10] filed May 24, 2022.

The Court denied the First Rule 59(e) Motion and the Second Rule 59(e) Motion as untimely, but without prejudice.[11] The Court denied the Rule 60(b) Motion Regarding Stay Relief Order on March 8, 2022.[12] On March 22, 2022, Debtor filed a Notice of Appeal of the Court's order denying the Rule 60(b) Motion Regarding Stay Relief Order and supporting Memorandum Opinion.[13]

The Court held a status conference on March 16, 2022 on the First Rule 60(b) Motion Regarding Order Allowing Claim, and then entered an Order Requesting Exhibits,[14] which provided that the Court would consider certain exhibits from the trial in the State Court Action. In response to the Order Requesting Exhibits, DLJ filed a Notice of Exhibits and Transcript of Trial ("DLJ's Notice of Exhibits and Trial Transcript" - Doc. 241). DLJ attached to that notice copies of documents relating to the State Court Action, including the docket, the parties' combined list of trial exhibits, an order sealing certain exhibits, various trial exhibits, and the transcript of the state court trial. Debtor filed a response and additional exhibits (Doc. 242 and

[8] Defendant's Motion for Relief from a Judgment or Order ("Rule 60(b) Motion Regarding Stay Relief Order" - Doc. 176).
[9] Rule 60(b) Motion for Relief from a Judgment or Order Overruling Objection to Claim #6 ("First Rule 60(b) Motion Regarding Order Allowing Claim"–Doc. 197).
[10] Doc. 262.
[11] Order Denying Motions to Alter or Amend Judgment as Untimely Filed (Doc. 173).
[12] Memorandum Opinion Regarding Debtor's Motion for Relief from a Judgment or Order (Doc. 228) and Order Denying Motion for Relief from a Judgment or Order (Doc. 176) (Doc. 229).
[13] Doc. 240.
[14] *See* Order Resulting from Status Conference Held March 16, 2022 ("Order Requesting Exhibits"–Doc. 236).

Doc. 243), and DLJ filed a response (Doc. 247). DLJ also filed an Affidavit Regarding Ownership (Doc. 248) signed by Amanda Harvey, on behalf of Selene Finance, as Loan Servicer and Attorney-in-Fact for DLJ.

The Court denied the First Rule 60(b) Motion Regarding Order Allowing Claim on May 10, 2022.[15] Debtor filed a Notice of Appeal of the Court's order denying the First Rule 60(b) Motion Regarding Order Allowing Claim on May 19, 2022.[16]

DISCUSSION

Because the Debtor filed a Notice of Appeal of the Court's order denying the First Rule 60(b) Motion Regarding Order Allowing Claim, and the issues raised on appeal implicate the issues decided in the Order Allowing Claim (Doc. 161) and supporting Memorandum Opinion (Doc. 159), Debtor requests the Court to issue an immediate indicative ruling under Fed. R. Civ. P. 62.1(a), indicating that the Court would be inclined to grant Debtor's Second Rule 60(b) Motion or confirm that Debtor's Second Rule 60(b) Motion raises substantial issues. Federal Rule 62.1 does not apply to appeals to the BAP of final orders or judgments entered in bankruptcy cases or adversary proceedings. Instead, Fed. R. Bankr. P. 8008 applies. Because Fed. R. Bankr. P. is the corollary to Fed. R. Civ. P. 62.1, the Court will construe Debtor's request for an indicative ruling under Federal Rule 62.1(a) as a request under Bankruptcy Rule 8008.

Bankruptcy Rule 8008 provides, in relevant part:

> **Relief Pending Appeal**. If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:
>
> (1) defer considering the motion;
> (2) deny the motion; or

[15] Memorandum Opinion and Order Denying Rule 60(b) Motion for Relief from a Judgment or Order Overruling Objection to Claim #6 (Doc. 257).
[16] Notice of Appeal and Statement of Election (Doc. 258).

(3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue.

Fed. R. Bankr. P. 8008(a).

The Second Rule 60(b) Motion seeks relief under Fed. R. Civ. P. 60(b)(2) and (3), made applicable to bankruptcy cases by Fed. R. Bankr. P. 9024. Motions for relief under Fed. R. Civ. P. 60(b)(2) and (3) must be filed "no more than a year after entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). The Second Rule 60(b) Motion again seeks relief from the Court's Memorandum Opinion and Order Allowing Claim. Debtor filed the Second Rule 60(b) Motion on May 24, 2022, exactly one year after the date of entry of the Order Allowing Claim and supporting Memorandum Opinion, and fourteen days after the entry of the Court's order denying the First Rule 60(b) Motion Regarding Order Allowing Claim. Hence, the Second Rule 60(b) Motion was timely filed.

Consistent with the Court's authority under Fed. R. Bankr. P. 8008, the Court will consider and deny the Second Rule 60(b) Motion.

A. *Request for Relief under Rule 60(b)(2)*

Rule 60(b)(2) provides for relief from a final judgment or order based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(e)." Fed. R. Civ. P. 60(b)(2). "For newly discovered evidence to provide a basis for a new trial under Rule 60(b)(2), the moving party must show '(1) the evidence was newly discovered since the trial; (2) [the moving party] was diligent in discovering the new evidence; (3) the newly discovered evidence could not be merely cumulative or impeaching; (4) the newly discovered evidence [is] material; and (5) that a new trial[ ] with the newly discovered evidence would probably produce a different result.'" *Zurich N. Am. v. Matrix*

Serv., Inc., 426 F.3d 1281, 1290 (10th Cir. 2005) (quoting *Graham v. Wyeth Lab.*, 906 F.2d 1399, 1416 (10th Cir. 1990)).

> *State Court Trial Exhibits 11, 14, and 18 do not constitute newly discovered evidence that, with reasonable diligence, could not have been discovered in time for Debtor to move for a new trial under Rule 59(b) on his objection to DLJ's Claim #6*

One of the grounds Debtor asserts for Rule 60(b) relief is that he only recently discovered that the Assignment of Mortgage to DLJ and an Allonge in favor of DLJ[17] upon which DLJ based its claim in the State Court Action were ineffective because they were executed under a Limited Power of Attorney outside the effective period stated in the Limited Power of Attorney. Debtor asserts he only discovered this recently when he first gained access to the Limited Power of Attorney as an exhibit to DLJ's Notice of Exhibits and Trial Transcript filed March 23, 2022.[18] Debtor contends that the Limited Power of Attorney is newly discovered evidence that with reasonable diligence he could not have discovered prior to March 23, 2022 because it was not in the exhibit notebook prepared for the trial in the State Court Action and was not stipulated in evidence at trial; instead, it was "hastily"[19] admitted in evidence after Debtor's state court counsel objected to its admission. Debtor states that he did not see the Limited Power of Attorney before DLJ filed its Notice of Exhibits and Trial Transcript in this bankruptcy case.

The Limited Power of Attorney does not constitute newly discovered evidence that, with reasonable diligence, could not have been discovered in time for Debtor to move for a new trial under Rule 59(b) on his objection to DLJ's Claim #6, as required for granting relief under Fed.

---

[17] The Assignment of Mortgage to DLJ and the Allonge were admitted by stipulation of DLJ, Selene Finance, LP, and the Debtor as trial Exhibits 19 and 20 in the State Court Action. *See* DLJ's Notice of Exhibits and Trial Transcript (Doc. 241), Exhibit 2 (Doc. 241-1) (The Parties' Amended Combined Final List of Trial Exhibits), identifying exhibits admitted by stipulation in the State Court Action.
[18] Doc. 241.
[19] Second Rule 60(b) Motion (Doc. 262), p. 5 n.4.

R. Civ. P. 60(b)(2). Debtor with reasonable diligence could have obtained a copy of the Limited Power of Attorney prior to expiration of the 14-day period to move for a new trial after entry of the Order Allowing Claim on May 24, 2021.[20] The Transcript of Proceedings from the trial in the State Court Action reflects that the state court admitted the Limited Power of Attorney at the trial it conducted on August 31, 2016 as Exhibit 18 over the hearsay objection made by Debtor's state court counsel.[21] Debtor, through his state court counsel or the state court, had access to the Limited Power of Attorney at or following the trial in the State Court Action conducted August 31, 2016, if not sooner. Although Debtor only recently ascertained the legal significance of the period during which the Limited Power of Attorney was in effect, that does not constitute newly discovered evidence.

Debtor's "newly discovered evidence" also includes a Mortgage Loan Sale Agreement between DLJ and U.S. Bank, N.A. dated September 21, 2011 and a Flow Subservicing Agreement between DLJ, Selene CS Participation ("Selene CS") and Selene Finance LP ("Selene Finance"), as "servicer." Debtor states that he had only seen a heavily redacted copy of the Flow Subservicing Agreement and DLJ failed to produce the Mortgage Loan Sale Agreement in discovery in this bankruptcy case. Neither document constitutes "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Fed. R. Civ. P. 60(b)(2). Copies of both documents were admitted in evidence in the state court trial by stipulation of DLJ, Selene Finance, and the Debtor as state

[20] Fed. R. Bankr. P. 9023 makes Fed. R. Civ. P. 59 applicable to bankruptcy cases except that the time to move for a new trial is 14 days after entry of the judgment instead of 28 days as provided in Fed. R. Civ. P. 59(b).

[21] *See* DLJ's Notice of Exhibits and Trial Transcript (Doc. 241), Exhibits 10.1 (Doc. 241-3) (Transcript from Trial in State Court Action), pp. 48-49.

court Trial Exhibits 11 and 14.[22] Copies of those exhibits are attached to DLJ's Notice of Exhibits and Trial Transcript.[23] Debtor asserts that these documents constitute newly discovered evidence because he did not have access to them because they were filed in the State Court Action under seal. The state court entered an Order Sealing Exhibits on December 22, 2016, almost four months after the trial conducted on Aust 31, 2016, pursuant to a Stipulated Protective Order Relating to Disclosure of Private, Confidential or Propriety Information ("Stipulated Protective Order") and the state court's oral ruling at trial.[24] But entry of the Order Sealing Exhibits in the State Court Action in accordance with the Debtor's own stipulation does not mean the Debtor had no access to the sealed exhibits that Debtor stipulated into evidence at trial. The Order Sealing Exhibits does not prevent parties to the litigation from seeing the documents. There is no indication the state court reviewed the exhibits only in camera. Debtor's state court counsel would need to have a copy of the exhibits to review in order to stipulate the documents into evidence.

> *The documents and information Debtor asserts is newly discovered evidence is not material; the probability is that a new trial with the "newly discovered evidence" would not produce a different result*

In addition, the documents and information Debtor asserts is newly discovered evidence is not material; the probability is that a new trial with the "newly discovered evidence" would not produce a result different from this Court's allowance of DLJ's claim in the bankruptcy case. This Court based its decision on the preclusive effect of the Foreclosure Judgment. The

[22] *See* DLJ's Notice of Exhibits and Transcript (Doc. 241), Exhibit 2 (Doc. 241-1) (The Parties' Amended Final List of Trial Exhibits).
[23] *Id.*, Exhibit 4 (Doc. 241-1) (Mortgage Loan Sale Agreement) and Exhibit 5 (Doc. 241-1) (Flow Subservicing Agreement).
[24] *Id.*, Exhibit 3 (Doc. 241-1) (Order Sealing Exhibits). The Stipulated Protective Order referenced in the Order Sealing Exhibits is not part of the record before this Court.

documents and information Debtor asserts is newly discovered evidence do not change its preclusive effect. This Court cannot reexamine the propriety of the Foreclosure Judgment.[25]

Debtor asserts that if he had known about the Mortgage Loan Sale Agreement (state court Trial Exhibit 11)[26] it would have materially affected his prosecution of his objection to DLJ's claim. The Mortgage Loan Sale Agreement does not support Debtor's position that DLJ does not have a claim to enforce the entire amount owed under the Note, which amount was established by the Foreclosure Judgment. Under the Mortgage Loan Sale Agreement, DLJ became the owner of the loan at issue and acquired the right to enforce the Note. That fact was established by the state court's findings of fact.[27] The Mortgage Loan Sale Agreement shows that DLJ purchased a bundle of loans from U.S. Bank National Association as trustee but does not address the relationship between DLJ and Selene CS.[28]

---

[25] Under the *Rooker-Feldman* doctrine, this Court lacks jurisdiction to engage in appellate review of the claims and issues the state court decided in its Findings of Fact and Conclusions of Law and in the Foreclosure Judgment. As explained by the Tenth Circuit Bankruptcy Appellate Panel:

> The *Rooker–Feldman* doctrine is jurisdictional in nature. It provides that lower federal courts, such as bankruptcy courts, lack jurisdiction to engage in appellate review of claims actually decided by a state court and claims inextricably intertwined with a prior state-court judgment.

In re Kline, 472 B.R. 98, 105 (10th Cir. BAP 2012), *aff'd*, 514 F. App'x 810 (10th Cir. 2013) (citation omitted).

The doctrine precludes a bankruptcy court from engaging in appellate review of a state-court foreclosure judgment. *See In re Jester*, 656 F. App'x 425, 428 (the bankruptcy court lacks jurisdiction to review a state-court foreclosure judgment) (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S.284-86 (2005)); *In re Modikhan,* No. 1-19-46591-JMM, 2021 WL 5312396, at *14 (Bankr. E.D.N.Y. Nov. 15, 2021) (explaining that the *Rooker-Feldman* doctrine precludes a debtor from relitigating issues necessarily resolved by entry of a state court foreclosure judgment "even if the party seeking relief alleges that the state court foreclosure judgment was obtained erroneously, fraudulently, or by a party that lacked standing.").

[26] DLJ's Notice of Exhibits and Trial Transcript (Doc. 241), Exhibit 4 (Doc. 241-1) (Mortgage Loan Sale Agreement).

[27] *See* Findings of Facts and Conclusions of Law, ¶¶ 50,52, admitted into evidence by stipulation as Exhibit 11 at the final hearing on the Claims Objection held April 22, 2021.

[28] *See* DLJ's Notice of Exhibits and Trial Transcript (Doc. 241), Exhibit 4 (Doc. 241-1) (Mortgage Loan Sale Agreement), pp. 18–33.

Debtor asserts that he first learned after the trial in the State Court Action that the Flow Subservicing Agreement (state court Trial Exhibit 14)[29] defined the payments to the Participant Parties (DLJ and Selene CS) on a 50/50 basis, which Debtor asserts would have materially affected his prosecution of his objection to DLJ's claim in the bankruptcy case. But the state court's Findings of Fact and Conclusions of Law already established that "DLJ and Selene CS Participation own the asset together in its entirely[sic] with each holding a 50% beneficial interest."[30] The Allonge by which the Note was endorsed over to DLJ states "pay to the order of DLJ Mortgage Capital, Inc., without recourse."[31] There was no documentary evidence before the state court and the state court did not find that DLJ further endorsed the Note in part to Selene CS. In fact, the state court found and concluded that DLJ and Selene CS each holding a 50% beneficial interest in the loan did not constitute an impermissible splitting of the Note.[32] As holder of the Note, DLJ would have the right to assert a claim for all amounts due under the Note. Under the Flow Subservicing Agreement, payments under the Note were to be deposited by Selene Finance in a custodial account and then disbursed from that account to DLJ and Selene CS.[33] The Flow Subservicing Agreement does not state that there was any endorsement of the Note by DLJ.[34]

The Debtor also asserts that the only termination for cause under the Flow Subservicing Agreement was between the Participant Parties (DLJ and Selene CS) and Selene Finance,[35] and

[29] *Id.*, Exhibit 5 (Doc. 241-1) (Flow Subservicing Agreement), p. 104.
[30] *See* Findings of Facts and Conclusions of Law, ¶ 56 (citing the Flow Subservicing Agreement).
[31] *See* DLJ's Notice of Exhibits and Trial Transcript (Doc. 241), Exhibit 9 (Doc. 241-2) (Allonge), p. 1.
[32] Findings of Fact and Conclusions of Law (Findings ¶ 56); (Conclusions, ¶¶ 3 and 4).
[33] *See* DLJ's Notice of Exhibits and Trial Transcript (Doc. 241), Exhibit 5 (Doc. 241-1) (Flow Subservicing Agreement), Section 3.03 and 4.01, p. 89 and p. 104.
[34] *Id.*
[35] *See* DLJ's Notice of Exhibits and Trial Transcript (Doc. 241), Exhibit 5 (Doc. 241-1) (Flow Subservicing Agreement), Article VIII, p. 113.

had he known this it would have materially affected his prosecution of his objection to DLJ's claim in the bankruptcy case. The termination provision in the Flow Subservicing Agreement relates only to Selene Finance's role as servicer and does not address the relationship between DLJ and Selene CS with respect to the right to enforce the Note.[36]

The only truly new evidence Debtor learned after the Court entered its Order Allowing Claim is the revelation that Selene CS ceased operating as of March 12, 2020, and the averments offered in the Affidavit Regarding Ownership, which identifies the date Selene CS allegedly ceased operations and purports to confirm that DLJ currently is the 100% owner of the Note and mortgage. Debtor asserts that knowledge that Selene CS no longer existed as of March 2020 is material. The Court disagrees. The Court's prior ruling overruling Debtor's Claims Objection was based on the preclusive effect of the Foreclosure Judgment entered in the State Court Action. The new evidence regarding Selene CS does not alter the preclusive effect of the Foreclosure Judgment. This new evidence is insufficient to obtain relief from the Order Allowing Claim under Rule 60(b)(2) because it is not material to the Court's decision.

B. *Request for Relief under Rule 60(b)(3)*

Rule 60(b)(3) will relieve a party from a final judgment or order if there has been "fraud, . . . misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(3). "[T]he party relying on Rule 60(b)(3) must, by adequate proof, clearly substantiate the claim of fraud, misconduct or misrepresentation." *Zurich N. Am.,* 426 F.3d at 1290 (citing *Wilkin v. Sunbeam,* 466 F.2d 714, 717 (10th Cir. 1972)).

Debtor asserts that DLJ's actions before this Court in continuing to rely on the Foreclosure Judgment in asserting its claim in this bankruptcy case when it knew that Selene CS

[36] *Id.*

ceased operating amounts to fraud, misconduct, and misrepresentations warranting relief under Fed. R. Civ. P. 60(b)(3) from the Order Allowing DLJ's Claim. But the Court's ruling on the preclusive effect of the Foreclosure Judgment did not depend on whether Selene CS remained an operating entity.

Debtor also asserts that DLJ failed to provide documents in discovery taken in the bankruptcy case. Debtor submitted portions of DLJ's discovery responses in an effort to demonstrate that DLJ's alleged discovery failures, which Debtor interprets as discovery abuses and misconduct.[37] Debtor's Request for Production No. 3 ("RFP No. 3") sought

> All Documents, including but not limited to, correspondence, emails, notes, memoranda, agreements, contracts and other similar Documents between you and Selene CS relating to the Property and/or the Loan.[38]

DLJ objected to Debtor's request for discovery as "compound," "overly broad," "unduly burdensome," and "seeks information that is protected by attorney work product doctrine and attorney-client privilege."[39] DLJ's response to RFP No. 3 also referred Debtor to its exhibit list filed and served on August 17, 2020 at Doc. 74.[40] If Debtor was dissatisfied with DLJ's discovery responses he could have filed a motion to compel discovery. He did not. It is not appropriate to complain of discovery violations in support of a request for relief under Rule 60(b)(3) when Debtor failed in the first instance to file a motion to compel discovery if he felt DLJ was required to produce additional documents. In any event, as explained above, many of the documents Debtor complains that he only discovered well after the Court issued its

[37] *See* Debtor's Exhibit List for Rule 60(b) Motion New Evidence ("Debtor's Exhibit List"–Doc. 263), Exhibit 2.
[38] Debtor's Exhibit List (Doc. 263), Exhibit 2, p. 5.
[39] *Id.*
[40] *Id.*

Memorandum Opinion and Order Allowing DLJ's Claim were in fact admitted at the trial in the State Court Action.

Debtor also complains that the Affidavit Regarding Ownership was filed without documentation, reveals the newly discovered evidence Debtor complains he did not have in advance of the final hearing on the Claims Objection, and further exposes DLJ's scheme.[41] Yet the Court did not consider the Affidavit Regarding Ownership in denying the First Rule 60(b) Motion Regarding Order Allowing DLJ's Claim which is the subject of the Second Rule 60(b) Motion. Further, the Affidavit Regarding Ownership does not change the result the Court reached regarding the preclusive effect of the Foreclosure Judgment.[42]

Debtor's Second Rule 60(b) Motion identifies several discrepancies between what the documents reveal and what DLJ, through its attorneys and witness, Nik Fox, represented to the Court. These discrepancies do not entitle Debtor to relief under Rule 60(b)(3) because they are insufficient to demonstrate fraud or misconduct. Debtor had the documents available to him at the time of the final hearing on the Claims Objection and could have made those arguments at the final hearing. Even if he had pointed out those discrepancies at the final hearing, it would not have changed the Court's decision because the Court overruled the Claims Objection based on

[41] The Affidavit Regarding Ownership includes a sworn statement that as if March 12, 2020 (i) Selene CS is no longer an operating entity, (ii) Selene CS's beneficial interest in the Note and Mortgage and Mortgage pursuant to the Flow Subservicing Agreement has terminated, and (iii) DLJ has been the sole 100% beneficiary owner of the Note and Mortgage. Doc. 248. The Affidavit Regarding Ownership contains legal conclusions without supporting documentary evidence. The Court notes that Selene CS did not acquire a beneficial interest in the loan pursuant to the Flow Subservicing Agreement, which is simply an agreement relating to the servicing of the loan.

[42] Selene CS could have a beneficial interest in the loan, such as a participation interest, without being the holder of Note. The fact that DLJ now asserts that Selene CS no longer has a beneficial interest in the loan does not undermine the state court's findings or deprive the Foreclose Judgment from having preclusive effect to establish DLJ's claim in the bankruptcy case.

what had already been determined in the State Court Action resulting in the entry of the Foreclosure Judgment.

C. *Debtor's remaining requests for relief contained in the Second rule 60(b) motion*

The Court also declines to grant Debtor's request to stay execution of the Order Allowing DLJ's Claim for the duration of the proceedings before this Court. Debtor cites no basis for that request. The Court also declines to grant Debtor's request for additional limited discovery to supplement the record. Information relating to Selene CS would not change the Court's ruling allowing DLJ's claim. The other deficiencies Debtor now points out regarding DLJ's acquisition of the Note and Mortgage would require this Court to look behind the Foreclosure Judgment. Debtor's remedy is to pursue his appeal of the Foreclosure Judgment or seek relief from the Foreclosure Judgment in state court if such relief is available.

WHEREFORE, IT IS HEREBY ORDERED that the Second Rule 60(b) Motion is DENIED.

ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: July 1, 2022

Michael Jacques Jacobs
800 Calle Divina NE
Albuquerque, NM 87113

Elizabeth Dranttel
Attorney for DLJ Mortgage Capital, Inc.
Rose L. Brand & Associates, PC
7430 Washington Street NE
Albuquerque, NM 87102