


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 16, 2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 15-16986-MKN
)	Chapter 11
TAWK DEVELOPMENT, LLC,)	
)	Date: September 7, 2016
Debtor.)	Time: 3:00 p.m.

MEMORANDUM DECISION ON MOTION FOR RECONSIDERATION¹

On September 7, 2016, the court heard the Motion for Reconsideration ("Motion") brought by Clark County Treasurer ("County Treasurer"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On December 18, 2015, a voluntary Chapter 11 petition was filed by TAWK Development, LLC ("Debtor").² (ECF No. 1). On the same date, the Clerk of the Court issued a

¹ In this Memorandum, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the Clerk of the Court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRCP" are to the Federal Rules of Civil Procedure.

² Debtor filed a prior Chapter 11 proceeding on January 14, 2011, denominated Case No. 11-10584-MKN. On April 16, 2012, an order was entered confirming the Debtor's plan of reorganization ("Initial Plan"). Paragraph 17 of the confirmation order provided that "Immediately upon delivery of the amount of \$39,105.44 to the holder of the Class 2 - Secured Sewer Claim, the Secured Sewer Claim shall be paid and satisfied in full and all liens of any kind asserted on account of such claim shall be immediately released including, but not limited to, the lien recorded with the Clark County Recorder on March 18, 2010 as Book-Instrument 20100318-0004423." Under the confirmed Initial Plan, the holder of the Secured Sewer Claim is the City of Las Vegas ("City"). The City also had a separate unsecured claim that was being paid in full

1 Notice of Chapter 11 Bankruptcy Case (“Chapter 11 Notice”) that included, inter alia, a deadline
2 of April 20, 2016, for creditors to file proofs of claims. (ECF No. 3).

3 On December 21, 2015, Debtor filed its Disclosure Statement to Accompany Debtor’s
4 Plan of Reorganization (“Disclosure Statement”). (ECF No. 19). Attached as Exhibit “1” to the
5 Disclosure Statement was a copy of the proposed Debtor’s Plan of Reorganization (“Plan”).

6 On December 24, 2015, a Certificate of Notice was filed attesting that a copy of the
7 Chapter 11 Notice had been sent by first class mail that date to the parties listed in the creditor
8 mailing matrix, including the County Treasurer. (ECF No. 39).

9 On January 4, 2016, an order was entered conditionally approving the Disclosure
10 Statement that scheduled a combined hearing on confirmation of the proposed Plan as well as
11 final approval of the Disclosure Statement (“Combined Hearing”). (ECF No. 45).

12 On January 6, 2016, Debtor filed its schedules of assets and liabilities (“Schedules”) as
13 well as its statement of financial affairs (“SOFA”). (ECF No. 51). The County Treasurer was
14 included on the Debtor’s list of twenty largest unsecured claims as well as its Schedule E/F of
15 unsecured creditors having priority and non-priority unsecured claims. The City also was
16 included in the list of twenty largest unsecured claims as well as in Schedule E/F. Additionally,
17 both the County Treasurer and the City were included in the SOFA disclosing the creditors who
18 had received payments from the Debtor within 90 days before the commencement of the Chapter
19 11 proceeding.

20 On January 6, 2016, notice of the Combined Hearing was filed (“Combined Hearing
21 Notice”). (ECF No. 53).

22 On January 6, 2016, the City filed a proof of claim (“City POC”), assigned claim No. 1,
23 in the unsecured amount of \$10,066.74, ostensibly for unpaid sewer services.

24 On January 8, 2016, a Certificate of Service was filed attesting that the Combined
25 Hearing Notice, as well as the Disclosure Statement and proposed Plan had been served by
26 _____

27 in quarterly distribution payments as a general unsecured creditor in Class 4 of the confirmed
28 Initial Plan. The effective date of the confirmed plan was May 1, 2012, and the Debtor received
its discharge pursuant to Section 1141(d). A final decree was entered on July 9, 2012.

1 United States Mail (“Combined Hearing COS”) on the County Treasurer at the address
2 previously set forth in the Schedules and SOFA. (ECF No. 56).

3 On January 13, 2016, the County Treasurer filed an initial proof of claim (“Initial County
4 POC”), assigned claim No. 2, in the secured amount of \$121,408.04, which included a mailing
5 address for notices to be sent that matched the address included in the Schedules, SOFA, and
6 Combined Hearing COS. The Initial County POC also included email addresses for the County
7 Treasurer and its counsel, but there is no indication on the court’s docket that the County
8 Treasurer and its counsel ever filed a request for special notice in the case. Attached to the
9 Initial County POC is a two-page document entitled “Real Property and Special Tax Statement
10 for Fiscal Year 2015-2016” (“Initial Tax Statement”). The second page of that Initial Tax
11 Statement includes a “Detail of Amount Due” that presumably reflects how the County Treasurer
12 arrived at the \$121,408.04 figure for the balance due under its Initial County POC. Included in
13 that calculation is a Property Tax Distribution Principal amount of \$139,042.33, a Las Vegas
14 Artesian Basin amount of \$76.45, a Las Vegas Sewer Delinquency amount of \$47,541.31, and a
15 Property Tax Penalty amount of \$4,345.56. The total of all those amounts is \$191,005.65 as the
16 total tax amount for the 2016 fiscal tax year. The difference between the total tax amount and
17 the \$121,408.04 balance figure asserted in the Initial County POC is \$69,597.61.

18 On March 14, 2016, Debtor filed an objection to the City POC (“City POC Objection”).
19 (ECF No. 175). That objection was supported by the declaration of Steven Lyons (ECF No. 176)
20 and was noticed to be heard on April 20, 2016. (ECF No. 177). Debtor asserted, inter alia, that
21 the City had misapplied payments made under the Debtor’s Initial Plan and the amount set forth
22 in the City POC, i.e., \$10,066.74, had been paid in full after commencement of the current
23 Chapter 11 proceeding. The City POC Objection, supporting declaration of the Debtor’s
24 controller, and notice of hearing were timely served by U.S. mail on the City at the address set
25 forth in the City POC. (ECF No. 178).

26 On April 20, 2016, a hearing on the City POC Objection was held. The City did not file
27 an opposition or response disputing the facts alleged in the City POC Objection, nor the
28 testimony of the Debtor’s controller. On April 25, 2016, an order was entered sustaining the

1 Debtor's objection to the City POC. (ECF No. 208). The order was not appealed.

2 On April 21, 2016, the County Treasurer filed an amended proof of claim ("Amended
3 County POC"), assigned claim No. 14, in the secured amount of \$141,514.20, which included a
4 mailing address for notices to be sent that matched the address included in the Schedules, SOFA,
5 and Combined Hearing COS. The Amended County POC also included email addresses for the
6 County Treasurer and its counsel, but there is no indication on the court's docket that the County
7 Treasurer and its counsel ever filed a request for special notice in the case. Attached to the
8 Amended County POC is a two-page document entitled "Real Property and Special Tax
9 Statement for Fiscal Year 2015-2016" ("Amended Tax Statement"). The second page of that
10 Amended Tax Statement includes a "Detail of Amount Due" that presumably reflects how the
11 County Treasurer arrived at the \$141,514.20 figure for the balance due under its Amended
12 County POC. Included in that calculation is a Property Tax Distribution Principal amount of
13 \$139,042.33, a Las Vegas Artesian Basin amount of \$76.45, a Las Vegas Sewer Delinquency
14 amount of \$47,541.31, a Property Tax Penalty amount of \$17,651.84, a Property Tax Interest
15 amount of \$6,797.88, and a Mailing Fee amount of \$2.00. The total of all those amounts is
16 \$211,111.81 as the total tax amount for the 2016 fiscal tax year. The difference between the
17 amended total tax amount and the \$141,514.20 balance figure in the Amended County POC is
18 \$69,597.61.

19 On June 10, 2016, Debtor filed an objection to the Amended County POC ("Claim
20 Objection"). (ECF No. 223). The Declaration of Steven Lyons, the Debtor's controller ("Lyons
21 Declaration"), accompanied the Claim Objection, attesting that the Debtor had timely made its
22 first and second real property tax installment payments of \$34,837.03 and \$34,760.58, totaling
23 \$69,597.61, but that the County Treasurer had misapplied the payments to the sewer claim of the
24 City that had been disallowed. Additionally, the Debtor's controller attested that the Debtor had
25 attempted to make another real property tax installment payment, but the payment was refused
26 by the County Treasurer. A notice was filed stating that the hearing on Claim Objection would
27 be held before this court on July 13, 2016 ("Claim Objection Notice"). (ECF No. 225). The
28 Claim Objection Notice specifically outlined the requirements set forth in Local Rule 3007(b)

1 for responding to a claim objection, and the possible outcomes under Local Rule 3007(c) in the
2 event a response to a claim objection was not filed. The Claim Objection Notice also specified
3 under Local Rule 9014(d) that any response to the Claim Objection had to be filed no later than
4 fourteen days before the scheduled hearing, i.e., June 29, 2016.

5 On June 15, 2016, Debtor filed an amended plan of reorganization (“Amended Plan”)
6 (ECF No. 227) along with an amended disclosure statement (“Amended Disclosure Statement”).
7 (ECF No. 228).

8 On June 17, 2016, a certificate of service was filed attesting that on June 10, 2016, the
9 Claim Objection and Claim Objection Notice were served by United States Mail on the County
10 Treasurer at the address indicated in the Schedules, SOFA, Combined Hearing Notice, Initial
11 County POC, and Amended County POC (“Claim Objection COS”). (ECF No. 234).

12 On June 17, 2016, an order was entered conditionally approving the Amended Disclosure
13 Statement that scheduled a combined hearing on confirmation of the proposed Amended Plan as
14 well as final approval of the Amended Disclosure Statement for July 13, 2016 (“Amended
15 Combined Hearing”). (ECF No. 230). On June 17, 2016, notice of the Amended Combined
16 Hearing was filed (“Amended Combined Hearing Notice”). (ECF No. 232).

17 On June 17, 2016, a Certificate of Service was filed attesting that the Amended
18 Combined Hearing Notice, as well as the Amended Disclosure Statement and proposed
19 Amended Plan had been served by United States Mail (“Amended Combined Hearing COS”) on
20 the County Treasurer at the address previously set forth in the Schedules, SOFA, Combined
21 Hearing Notice, Initial County POC, and Amended County POC. (ECF No. 233).

22 On July 12, 2016, the Amended Combined Hearing was held. The appearances of
23 counsel and possible witnesses were noted on the record. No objections were filed and no
24 appearance was made on behalf of the County Treasurer. The Amended Disclosure Statement
25 was approved on a final basis and the Amended Plan was confirmed.

26 On July 13, 2016, the hearing on the Claim Objection was held. No response was filed
27 and no appearance was made on behalf of the County Treasurer. The Claim Objection was
28 sustained as unopposed.

1 On July 13, 2016, an order was entered approving the Amended Disclosure Statement
2 and confirming the Amended Plan. (ECF No. 249). The confirmed Amended Plan included a
3 July 28, 2016, deadline for repayment of Athene Annuity and Life Company (“Athene”), the
4 Debtor’s principal secured creditor (“Repayment Deadline”).

5 On July 15, 2016, an order was entered sustaining the Claim Objection (“Claim
6 Objection Order”). (ECF No. 252). The order provided, inter alia, that Clark County shall not
7 have any claim against the Debtor, and, more important, that “any and all liens held by the Clark
8 County Treasurer against Debtor’s property (including the real property identified as APN 138-
9 13-701-058) are hereby released in their entirety and the Clark County Treasurer shall have no
10 lien against the Debtor’s property.” (Emphasis added).

11 On July 27, 2016, the County Treasurer filed the instant Motion to reconsider the Claim
12 Objection Order pursuant to Section 502(j). It seeks to vacate the Claim Objection Order for
13 cause, or that the order be modified to disallow only certain portions of the amounts claimed by
14 Clark County. (ECF No. 254). The Declaration of Rebecca Coates (“Coates Declaration”),
15 assistant treasurer for Clark County, was filed in support of the Motion. (ECF No. 256). The
16 Motion was noticed to be heard on August 31, 2016. (ECF No. 255).

17 On August 1, 2016, Debtor filed an Emergency Application for Order to Show Cause
18 Why Clark County Treasurer Should Not be Held in Contempt for Failure to Comply with Order
19 Approving Objection to Clark County Treasurer POC 14 (“Emergency Application”) (ECF No.
20 262), accompanied by the Declaration of Talitha Gray Kozlowski (“Kozlowski Declaration”)
21 (ECF No. 263). Debtor alleged that the title company, First American Title Co. (“FATCo”), was
22 refusing to issue a title policy to complete the loan necessary to refinance the Debtor’s property.
23 See Kozlowski Declaration at ¶ 2. Instead, FATCo was insisting that Clark County remove its
24 liens against the real property. Id.

25 On August 2, 2016, a Certificate of Service was filed attesting that the Emergency
26 Application and related documents were served on the County Treasurer by personal delivery
27 and by email to the person at the mailing address set forth in the Schedules, SOFA, Combined
28 Hearing Notice, Initial County POC, Amended County POC, and Amended Combined Hearing

1 Notice. (ECF No. 265). On the same date, an Order to Show Cause (“OSC”) was entered
2 directing the County Treasurer to appear on August 3, 2016, to show cause why it should not be
3 held in contempt for failing to comply with the Claim Objection Order. (ECF No. 264).

4 On August 3, 2016, the County Treasurer filed a supplement to the Motion
5 (“Supplement”) (ECF No. 268), along with a response to the OSC. (ECF No. 270). Although
6 the original Motion sought relief solely under Section 502(j), the County Treasurer’s Supplement
7 seeks relief from the Claim Objection Order pursuant to FRCP 59(e), or, alternatively under
8 FRCP 60(b).

9 On August 4, 2016, an order was entered on the Emergency Application to facilitate the
10 refinance of the Debtor’s real property pursuant to the confirmed Amended Plan, without
11 prejudice to the parties’ arguments and claims in connection with the Motion (“Emergency
12 Order”). (ECF No. 272). The Emergency Order expressly provided that the County Treasurer
13 would notify FATCo that it “has no liens or delinquent taxes against” the Debtor’s real property.
14 See Emergency Order at 2:7-9. Additionally, the order provided that if the court determines that
15 the County Treasurer has a claim against the Debtor, the claim shall be treated and paid as an
16 administrative claim under the confirmed Amended Plan. Id. at 2:13-16.

17 On August 11, 2016, an amended order was entered extending the Repayment Deadline
18 to August 15, 2016, subject to the Debtor’s payment of additional amounts to Athene in
19 exchange for the extension. (ECF No. 276).³

20 On August 12, 2016, Debtor filed a notice that the conditions precedent to the
21 effectiveness of its confirmed Amended Plan, including the repayment of Athene’s secured
22 claim, had been met. (ECF No. 278).

23 On August 17, 2016, Debtor filed opposition to the Motion. (ECF No. 280).
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26 ³ On August 10, 2016, a stipulation between the Debtor and Athene was filed providing
27 for the Repayment Deadline to be extended through August 12, 2016, for the additional amount
28 of \$75,000, and for an extension through August 15, 2016, for the additional amount of
\$150,000. (ECF No. 275). In its Opposition, Debtor asserts that the \$75,000 amount was paid to
Athene to obtain the extension needed to meet the extended Repayment Deadline. See
Opposition at 5:8-9.

1 On August 24, 2016, an order was entered approving the parties' stipulation to continue
2 the hearing on the Motion to September 7, 2016. (ECF No. 283).

3 On September 1, 2016, the County Treasurer filed its reply in support of the Motion that
4 includes the additional Declaration of Rebecca Coates ("Second Coates Declaration"). (ECF No.
5 294).

6 DISCUSSION

7 The court initially will address whether the County Treasurer has established that it did
8 not receive proper notice of the Claim Objection. If it did not receive proper notice, then the
9 Motion must be granted. If it did receive proper notice, however, the court must consider
10 whether the County Treasurer has met its burden of establishing that it is entitled to relief from
11 the Claim Objection Order.

12 I. Receipt of Notice.

13 Under Section 502(a), a claim encompassed by a proof of claim is deemed allowed unless
14 a party in interest objects. Under FRBP 3001(f), a properly filed proof of claim constitutes
15 prima facie evidence of the validity and amount of the claim. If a claim is given prima
16 facie validity, the initial burden falls on the objector to rebut the presumption of validity. See
17 Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697, 706–07 (B.A.P. 9th Cir.
18 2006). If the objecting party provides evidence sufficient to rebut the presumption, the burden
19 shifts to the claimant to provide further evidence to support validity and amount of claim. Id. at
20 707. However, "[t]he ultimate burden of proof as to the claim's validity and amount" always
21 remains with the claimant. Id. Under FRBP 3007(a), a written objection to a claim must be
22 filed, and a copy of the objection and notice of hearing must be mailed to the claimant at least 30
23 days before the hearing.

24 In the instant case, the County Treasurer filed the Amended County POC on April 21,
25 2016. Debtor filed the Claim Objection on June 10, 2016, and scheduled a hearing for July 13,
26 2016. The Claim Objection was accompanied by the Lyons Declaration under penalty of perjury
27 disputing the validity and amount of the Amended County POC, thereby rebutting the
28 presumption of validity. The Claim Objection COS attests that the Claim Objection and Claim

1 Objection Notice were mailed to the County Treasurer on June 10, 2016, more than 28 days
 2 before the hearing date. In short, the Debtor properly objected to the Amended County POC and
 3 overcame the prima facie evidence of its validity.

4 Also in this case, however, the County Treasurer seeks relief from the Claim Objection
 5 Order by asserting that it did not receive the Claim Objection nor the Claim Objection Notice. It
 6 asserts that it only became aware of the Claim Objection Order when it received a copy from a
 7 title company on July 19, 2016. See Coates Declaration at ¶ 4; Second Coates Declaration at ¶ 7.
 8 The County Treasurer maintains that it conducted a search of its office and is unable to locate a
 9 copy of the Claim Objection or Claim Objection Notice. See Coates Declaration at ¶ 3; Second
 10 Coates Declaration at ¶¶ 7-8. Because it cannot locate a copy of the Claim Objection or Claim
 11 Objection Notice, the County Treasurer maintains that it never received notice. See Second
 12 Coates Declaration at ¶ 10.⁴

13 When a legal document is accompanied by a certificate of service, proof of service,
 14 certificate of mailing, or similar statement attesting under penalty of perjury, that the document
 15 has been deposited into the United States mail, that attestation creates an evidentiary
 16 presumption that the document was delivered to the addressee. Known as the “mailbox rule,” a
 17 proof of timely and proper mailing creates a rebuttable presumption that the mailed document
 18 was received by the addressee. See Mahon v. Credit Bureau of Placer Cnty. Inc., 171 F.3d 1197,
 19 1202 (9th Cir. 1999); Moody v. Bucknum (In re Bucknum), 951 F.2d 204, 206-07 (9th Cir.
 20 1991).⁵ See also Nev.Rev.Stat. 47.250(13) (rebuttable presumption of receipt by mail).⁶

22 ⁴ According to the Claim Objection COS, the Claim Objection and Claim Objection
 23 Notice were mailed to the County Treasurer on June 10, 2016. According to the two
 24 declarations from the assistant treasurer, she first became aware of the Claim Objection Order on
 25 July 19, 2016, when she received a copy from a title company. Some time between July 19,
 26 2016 and the date of the first declaration (July 27, 2016), the assistant treasurer attests that the
 27 desks of all relevant personnel in the Treasurer’s Office were searched and copies of the Claim
 Objection and Claim Objection Notice were not found. The declarations do not address whether
 the documents could have been discarded inadvertently during the four to five week period after
 the mailbox rule presumes they were received by the Country Treasurer.

28 ⁵ “[A] sworn statement is credible evidence of mailing for purposes of the mailbox rule.”
Schikore v. BankAmerica Supplemental Ret. Plan, 269 F.3d 956, 964 (9th Cir. 2001), citing

1 The presumption is not rebutted simply by submitting an affidavit denying receipt of the
 2 document; rather, the presumption must be overcome by clear and convincing evidence. See In
 3 re Bucknum, 951 F.2d at 206-07. Evidence to buttress such denial must be included, such as, for
 4 example, testimony from an employee that the document was not sent, or proof that other listed
 5 parties did not receive the document. Id. at 207 n.1, citing Osborn v. Ricketts (In re Ricketts), 80
 6 B.R. 495, 498-99 (B.A.P. 9th Cir. 1987). “[C]lear and convincing evidence ‘indicat[es] that the
 7 thing to be proved is highly probable or reasonably certain. This is a greater burden than
 8 preponderance of the evidence, ... but less than evidence beyond a reasonable doubt.’” United
 9 States v. Jordan, 256 F.3d 922, 930 (9th Cir. 2001), quoting Black’s Law Dictionary 577 (7th ed.
 10 1999).

11 In this instance, the evidence submitted by the County Treasurer is insufficient to meet its
 12 burden. The Claim Objection COS states under penalty of perjury that the documents were sent
 13 by U.S. mail to the County Treasurer at the address set forth in the Amended County POC,
 14

15 Lewis v. United States, 144 F.3d 1220, 1223 (9th Cir. 1998). The mailbox rule as a rule of
 16 evidence should not be confused with the mailbox rule as a rule of contract law. As a rule of
 17 contract law, the mailbox rule may serve to establish the timing and acceptance of a contract
 18 offer. See, e.g., Palo Alto Town & Country Vill., Inc. v. BBTC Co., 11 Cal.3d 494, 500 (Cal.
 19 1974) (notice of acceptance of contract option is effective when deposited in the mail).

19 ⁶ The faith that the legal system places on the efficiency and trustworthiness of the U.S.
 20 Postal Service rarely is challenged and usual chain of custody rules are largely ignored. See
 21 Rosenthal v. Walker, 111 U.S. 185, 193-94 (1884) (“The rule is well settled that if a letter
 22 properly directed is proved to have been either put into the post-office or delivered to the
 23 postman, it is presumed, from the known course of business in the post-office department, that it
 24 reached its destination at the regular time, and was received by the person to whom it was
 25 addressed... ‘[T]he presumption so arising is not a conclusive presumption of law, but a mere
 26 inference of fact, founded on the probability that the officers of the government will do their duty
 27 and the usual course of business...’”(citations omitted; emphasis added). As if to echo the
 28 Supreme Court’s confidence, the words “Neither snow nor rain nor heat nor gloom of night stays
 these couriers from the swift completion of their appointed rounds” appears on the U.S. Post
 Office building located on 33rd Street in New York City. In the 1947 holiday film “Miracle on
 34th Street,” the reliability of the U.S. Postal Service as an agency of the federal government was
 accepted as proof that the character Kris Kringle was Santa Claus through the delivery to a
 courtroom of thousands of Christmas letters from children, addressed to Santa Claus. Many
 years later, the mailbox rule continues to apply. See generally Woodies Holdings, LLC v.
United States, 120 Fed.Cl. 113, 117-18 (2015).

1 including the reference number corresponding to the parcel number for the Debtor's property.
2 Although the County Treasurer maintains that it had created a file regarding the Debtor's
3 bankruptcy proceeding, see Second Coates Declaration at ¶ 7, it does not assert that no
4 documents concerning the case were ever received. This is significant because the same mailing
5 address for the County Treasurer was used by the Debtor for other documents served by mail in
6 the case, including the Disclosure Statement, Plan, Combined Hearing Notice, Amended
7 Disclosure Statement, Amended Plan, and Amended Combined Hearing Notice. Therefore, the
8 two declarations of the assistant treasurer raise an equal inference that the Claim Objection and
9 Claim Objection Notice were misplaced by the treasurer's office rather than that they were not
10 received.⁷ Thus, the absence of documents in the County Treasurer's file contesting the County
11 POC does not establish a high probability or reasonable certainty that the Claim Objection and
12 Notice of Claim Objection were never received.⁸

14 ⁷ By comparison, in In re Todd, 441 B.R. 647 (Bankr. D. Ariz. 2011), an individual
15 debtor listed a prepetition judgment creditor, but only gave the mailing address of the judgment
16 creditor's law firm. The law firm did not represent the judgment creditor in the bankruptcy
17 proceeding and was not authorized to receive notice. 441 B.R. at 649. The law firm was able to
18 rebut the presumption of receipt of notice of the debtor's bankruptcy by providing evidence of
19 specific, precise and detailed mail handling procedures, and by submission of affidavits of the
20 firm's receptionist, legal assistant, file clerk, and three lawyers, none of whom saw the clerk's
21 notice of bankruptcy. Id. at 652. Because the law firm had been significantly involved in
22 obtaining the prepetition judgment, the bankruptcy court concluded that the weight of the
23 evidence established that the bankruptcy notice had not been received. Neither comparable
24 evidence nor comparable circumstances are present in the instant case.

25 ⁸ The County Treasurer complains that it has the difficult burden of proving a negative,
26 i.e., that it did not receive the Claim Objection or Claim Objection Notice. See Reply at 2:14.
27 But that difficulty stems from the evidentiary presumption of receipt arising from the mailbox
28 rule. In this circuit, the case law is clear that a party cannot overcome the presumption simply by
denying receipt of the mailed document. Moreover, the case law provides clear guidance on the
type of evidence that will overcome the presumption, e.g., testimony that the document was not
mailed, or, proof that other listed parties did not receive the document. The Motion is a
contested matter for which ordinary discovery rules apply, including obtaining testimony
through depositions. See FED.R.BANKR.P. 9014(c). The County Treasurer apparently did not
depose the individual who signed the Claim Objection COS, nor did it offer testimony from
other parties who were sent the Claim Objection and Claim Objection Notice by U.S. mail and
by email. Nor did it offer evidence establishing that other documents allegedly mailed by the
Debtor never reached their destination. The mailbox rule applied in this circuit creates a

Under these circumstances, the court concludes that the County Treasurer simply has not overcome the evidentiary presumption of its receipt of the Claim Objection and Claim Objection Notice by U.S. mail.⁹ Service having been proper under FRBP 3007(a), relief from the Claim Objection Order is not warranted on the basis of lack of notice.

II. Relief under FRCP 59(e).

FRBP 9023 provides in pertinent part that “Except as provided in this rule . . . , [FRCP 59] applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment.” FED.R.BANKR.P. 9023. If a “motion for reconsideration” is brought within 14 days of an order or judgment, then it is appropriate to treat it as one to alter or amend a judgment under FRCP 59(e) rather than for relief from a judgment or order under FRCP 60. See American Ironworks v. North American Const., 248 F.3d 892, 898-99 (9th Cir. 2001); Heritage Pac. Fin., LLC v. Montano (In re Montano), 501 B.R. 96, 112 (B.A.P. 9th Cir. 2013).

FRCP 59(e) permits a timely motion to alter or amend judgment, but does not specify the grounds upon which a motion to alter or amend judgment may be granted. Because FRCP 59(e) does not specify the grounds for granting relief, the court has discretion in deciding such motions. See McDowell v. Calderon, 197 F.3d 1253, 1255n.1 (9th Cir. 1999). However, relief is generally granted under FRCP 59(e) when the movant demonstrates (1) the existence of newly discovered evidence that could not have been presented at the original hearing, (2) that the court committed clear error or the court’s original decision was manifestly unjust, or (3) there has been an intervening change in controlling law. See Ybarra v. McDaniel, 656 F.3d 984, 998 (9th Cir. 2011), citing Zimmerman v. City of Oakland, 255 F.3d 734, 740 (9th Cir. 2001); see also Smith

rebuttable evidentiary presumption, not a conclusive one. Instead of submitting the type of evidence required to prove the negative it laments, the County Treasurer only offers a denial of receipt that is clearly insufficient.

⁹ Even if live witness testimony was presented from the assistant treasurer and the individual who signed the Claim Objection COS, a credibility evaluation might not overcome the presumption of delivery. See, e.g., Anderson v. United States, 966 F.2d 487, 492 (9th Cir. 1992)(federal government failed to overcome presumption of receipt of income tax return mailed by the taxpayer).

1 v. Clark Cnty. Sch. Dist., 727 F.3d 950, 955 (9th Cir. 2013), citing Sch. Dist. No. 1J v. ACandS,
 2 Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). The Ninth Circuit has indicated that FRCP 59(e) “offers
 3 an ‘extraordinary remedy, to be used sparingly in the interests of finality and conservation of
 4 judicial resources.’” Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000),
 5 quoting 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 59.30[4] (3d ed. 2000).

6 In this instance, the County Treasurer’s request for relief under FRCP 59(e) is timely
 7 inasmuch as the Claim Objection Order was entered on July 15, 2016, and the Motion was filed
 8 on July 27, 2016. None of the usual grounds for relief under FRCP 59(e), however, are
 9 applicable in this case. The Claim Objection was properly noticed and any evidence in support
 10 of the County POC could have been presented in a response. Thus, there is no “newly
 11 discovered” evidence that could have been presented at the scheduled hearing. Moreover, the
 12 County Treasurer’s two declarations from the assistant treasurer do not present dispositive proof
 13 of the validity of the County Claim. Thus, the County Treasurer has not demonstrated clear error
 14 or manifest injustice in the Claim Objection Order.¹⁰ Finally, there is no intervening change in
 15 _____

16 ¹⁰ The first declaration submitted by the assistant treasurer under penalty of perjury
 17 includes a bizarre paragraph: “The Treasurer’s office had received two payments prior to the
 18 filing of the bankruptcy, and had previously applied these payments to charges outstanding at the
 19 time of receipt of the payment, in the amounts of \$34,837.03 received on or about August 27,
 20 2015 and \$34,760.58 received on or about October 15, 2015. Debtor’s check submitted for 3rd
 21 quarter payments (or Installment 3) in the amount of \$34,760.59 was returned by CCT because
 22 payment was remitted by owner and the charges for Installment 3 and Installment 4 were thought
 23 to be classified as pre-petition thus office has been instructed payments can only be accepted
 24 by Bankruptcy Trustee.” Coates Declaration at ¶ 7 (emphasis added). Grammatical problems
 25 aside, this paragraph is consistent with the written testimony of the Debtor’s controller regarding
 26 the payments made for the first and second quarters of 2015-2016, and the attempted payment
 27 for the third quarter. See Lyons Declaration at ¶¶ 3, 4 and 6. Difficulties apparently have arisen,
 28 however, because someone instructed the County Treasurer not to accept additional payments
 from the Debtor after it commenced the Chapter 11 proceeding. Those instructions were
 unfounded because typically no bankruptcy trustee is appointed in a Chapter 11 proceeding and
 the entity that files the Chapter 11 petition becomes a debtor in possession, unless the bankruptcy
 court expressly orders a trustee to be appointed. Failure by a debtor in possession to timely pay
 taxes after the bankruptcy is filed may constitute cause to dismiss or convert the case. See 11
 U.S.C. § 1112(b)(4)(I). In this instance, the Debtor properly attempted to make the post-petition
 tax payment. Thus, the instruction allegedly relied upon by the County Treasurer was simply
 bad legal advice and the County Treasurer should not have refused to accept the Debtor’s post-
 bankruptcy installment tax payment.

1 controlling law even suggested in this matter.

2 Under these circumstances, the court concludes that relief under FRCP 59(e) is not
3 available to the County Treasurer.

4 **III. Relief under Section 502(j) and FRCP 60(b).**

5 Section 502(j) provides in pertinent part that a disallowed claim “may be reconsidered for
6 cause.” It further provides that “A reconsidered claim may be allowed or disallowed according
7 to the equities of the case.” Section 502(j) is implemented through Bankruptcy Rule 3008 which
8 permits reconsideration to be obtained by motion. Where a motion under Section 502(j) is
9 brought within the appeal period for a claim objection order, the request for relief should be
10 analyzed under FRCP 59(e); where the motion is brought after the period, the relief requested
11 should be analyzed under FRCP 60(b). See United Student Funds v. Wylie (In re Wylie), 349
12 B.R. 204, 209 (B.A.P. 9th Cir. 2006). In this case, the Motion was filed on July 27, 2016, which
13 was within the 14-day appeal period under FRBP 8002(a)(1) that is applicable to the Claim
14 Objection Order that was entered on July 15, 2016. Based on Wylie, the County Treasurer’s
15 Motion arguably should be considered solely under FRCP 59(e). Section 502(j), however,
16 appears to be a broader grant of statutory authority to reconsider a claim objection order based
17 on the particular equities of the case. For this reason, the court concludes that relief is not
18 limited to that available under FRCP 59(e), but may be considered under FRCP 60(b).

19 Although FRCP 60(b) sets forth six separate grounds for relief from an order or
20 judgment, the County Treasurer apparently relies on the “catch-all” language in FRCP 60(b)(6).
21 See Supplement at 3:13 to 4:4. FRCP 60(b)(6) provides that the court may relieve a party from a
22 _____

23 Unfortunately, this type of misunderstanding of the bankruptcy process may have led to
24 the City’s failure to distinguish between payments made by the Debtor under the Initial Plan on
25 the City’s unsecured claim, and the payments made by the Debtor for additional sewer services
26 provided by the City after the effective date of the Initial Plan. In its objection to the City POC,
27 Debtor asserted that the City used the payments for post-effective date sewer services and
28 misapplied them to its unsecured claim that was being paid separately under the Initial Plan. See
City POC Objection at 6:18 to 7:2. As a result of misallocating the payments, Debtor maintained
that the City improperly asserted delinquencies in the post-effective date payments, charged
additional fees and penalties, and recorded additional sewer liens. See City POC Objection at
7:2-8.

1 final judgment or order for “any other reason that justifies relief.” Because the language refers
 2 to “other” reasons, however, relief is not available under FRCP 60(b)(6) if the factual basis for
 3 relief would have been encompassed by the other provisions of FRCP 60(b), i.e., 60(b)(1)
 4 through 60(b)(5). See Dental Services v. Tani, 282 F.3d 1164, 1168 & n.8 (9th Cir. 2002);
 5 Corex Corp. v. United States, 638 F.2d 119, 121 (9th Cir. 1981). Thus, even though the County
 6 Treasurer apparently prefers to look only to FRCP 60(b)(6) for relief, the court must consider
 7 whether the County Treasurer has ignored or failed to demonstrate it is entitled to relief under
 8 the other provisions of FRCP 60(b).

9 **A. FRCP 60(b)(1).**

10 FRCP 60(b)(1) permits relief from a judgment or order on the basis of “mistake,
 11 inadvertence, surprise, or excusable neglect.” FED.R.CIV.P. 60(b)(1). In the instant case, no
 12 clear argument is made by the County Treasurer that relief is sought or should be granted under
 13 this provision. Rather than acknowledging the remotest of possibilities that it might have made a
 14 mistake, the County Treasurer points the finger at the U.S. Postal Service:

15 While the law presumes that a document placed in the mail will be delivered by
 16 the post office, the truth is that - on occasion - mistakes happen. It is clear in this
 17 case the County does not have any record indicating any notice of any challenge
 18 to the County’s lien was ever received. Had it been received, the County would
 19 have aggressively acted to defend the lien - as it has with the present Motion of
 20 Reconsideration. Since the correspondence was addressed to the attention of the
 21 Clark County Treasurer’s Office, there is little question, had it been received by
 22 the County, it would have been delivered to any place other than the Treasurer’s
 23 Office. That, in turn, would have brought it to the attention of either Ms. Carrera
 24 or Ms. Coates who would have contacted their attorneys to have a proper
 25 response filed. As Ms. Coates notes, it would have been placed in the file for this
 26 bankruptcy matter. It is not there. It is not on anyone else’s desk in the
 27 Treasurer’s Office. The only presumption to be made is it it was never received.
 28 Accordingly, for this reason alone the reconsideration should be granted since the
 County never had a meaningful chance to have its position heard.

23 Reply at 2:14-21 (emphasis added). Beyond simply asserting that the post office, and apparently
 24 only the post office occasionally makes mistakes, the County Treasurer offers the equivalent of a
 25 presumption of infallibility: if the County Treasurer cannot find a document, it did not receive
 26 the document.

27 Not unexpectedly, the burden under FRCP 60(b)(1) rests on the moving party to show
 28 justification for its oversight, error or omission. See B. Russell, Bankruptcy Evidence Manual §

301:94 (2015 Edition). To obtain such relief, the movant must justify its actions or show that the mistake was unexpected and unavoidable rather than just careless. See Maudlin v. M/V Peacock (In re M/V Peacock), 809 F.2d 1403, 1405 (9th Cir. 1987); In re Staff Inv. Co., 146 B.R. 256, 263 (Bankr. E.D. Cal. 1993). Where a party is blameless, negligence by the party's attorney may qualify as a mistake authorizing relief under FRCP 60(b)(1). See Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp., 843 F.2d 808, 811 (4th Cir. 1988) (relief granted where debtor's attorney mistakenly believed that no answer needed to be filed, meritorious defenses existed, and prompt relief was sought). Cf., Heyman v. M.L. Mktg. Co. (In re Heyman), 116 F.3d 91, 94-96 (4th Cir. 1997) (relief denied where bankruptcy trustee was not blameless in permitting dismissal of collection action).

In this instance, the County Treasurer does not even concede the possibility that it made a mistake or inadvertently misplaced the Claim Objection and Claim Objection Notice, and therefore offers no evidence to justify its actions. It does not fault its own attorneys. And while it asserts that the U.S. Postal Service must have made a mistake or inadvertently mis-delivered the Claim Objection and Claim Objection Notice, it has offered zero evidence to support that assertion even if the alleged mistake or inadvertence of a third party is relevant under FRCP 60(b)(1). Moreover, because it will not acknowledge that the Claim Objection and Claim Objection Notice might have been received, it does not even make perhaps its best argument that the County Treasurer's failure to respond to the Claim Objection or to appear at the hearing was the result of excusable neglect.¹¹

Under these circumstances, the County Treasurer has failed to meet its burden of demonstrating it is entitled to relief under FRCP 60(b)(1).

B. FRCP 60(b)(2).

¹¹ A four-part balancing test typically is applied in determining the existence of excusable neglect under FRCP 60(b)(1). See In re Walker, 332 B.R. 820, 829 (Bankr. D. Nev. 2005). In that test, "all relevant circumstances" are considered, including (1) the danger of prejudice to the opposing party, (2) the impact on the judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) the good faith of the movant. Id. at 829-30, citing Pioneer Inv. Services v. Brunswick Assoc., 507 U.S. 380, 395 (1993) and Pincay v. Andrews, 389 F.3d 853, 855 (9th Cir. 2004).

FRCP 60(b)(2) permits relief from a judgment or order on the basis of “newly discovered evidence.” FED.R.CIV.P. 60(b)(2). The moving party must show that it discovered material evidence after the order was entered that would have produced a different result. See Feature Realty, Inc. v. City of Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003). The standard governing a request for a new trial under FRCP 59 based on newly discovered evidence also applies to motions under FRCP 60(b)(2). See Jones v. Aero/Chem Corp., 921 F.2d 875, 878 (9th Cir. 1990). The moving party must show that due diligence was exercised to discover the new evidence before the end of trial. See Far Out Productions, Inc. v. Oskar, 247 F.3d 986, 998 (9th Cir. 2001).

As previously discussed at 13, supra, there is no new evidence discovered by the County Treasurer that could not have been presented if it had responded to the Claim Objection. Relief under FRCP 60(b)(2) therefore is unavailable.

C. FRCP 60(b)(3).

FRCP 60(b)(3) permits relief from a judgment or order on the basis of “fraud, misrepresentation, or misconduct” by the opposing party. See FED.R.CIV.P. 60(b)(3). The moving party must present clear and convincing evidence establishing that the adverse party’s misconduct prevented the movant from fully and fairly presenting a defense. See Casey v. Albertson’s Inc., 362 F.3d 1254, 1260 (9th Cir. 2004); In re Wylie, 349 B.R. 204, 213 (B.A.P. 9th Cir. 2006). The culpable conduct must be attributable to the adverse party rather than the moving party itself. See Latshaw v. Trainer Wortham & Co., 452 F.3d 1097, 1102 (9th Cir. 2006). Relief under FRCP 60(b)(3) lies at the discretion of the trial court. See Dixon v. Commissioner of Internal Revenue, 316 F.3d 1041, 1046 (9th Cir. 2003), citing England v. Doyle, 281 F.2d 304, 310 (9th Cir. 1960).

In this instance, the County Treasurer does not suggest any misconduct by the Debtor in obtaining the Claim Objection Order. As previously discussed in note 10, supra, the representations in the Lyons Declaration in fact are consistent with the representations in the Coates Declaration. And as previously discussed at 8-9, supra, the Debtor complied with the requirements under FRBP 3007(a) to object to the Amended County POC. Relief under FRCP

1 60(b)(3) therefore is unavailable.

2 **D. FRCP 60(b)(4).**

3 FRCP 60(b)(4) permits relief from a judgment or order on the basis that the judgment or
 4 order is “void.” FED.R.CIV.P. 60(b)(4). An order or judgment is not void even if it was entered
 5 in error. See Tomlin v. McDaniel, 865 F.2d 209, 210 (9th Cir. 1989), overruled on other
 6 grounds, Phelps v. Alameida, 569 F.3d 1120, 1133 (9th Cir. 2009). Rather, an order or judgment
 7 is void only if the court that rendered it lacked personal jurisdiction or subject matter
 8 jurisdiction, see, e.g., Wages v. Internal Revenue Service, 915 F.2d 1230, 1234 (9th Cir. 1990),
 9 or if the order or judgment was rendered in a manner inconsistent with due process. See
 10 generally, 11 Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d, § 2862 (2008). If
 11 an order or judgment is void, relief under FRCP 60(b)(4) is mandatory. See Thomas P. Gonzalez
 12 Corp. v. Consejo Nacional De Produccion De Costa Rica, 614 F.2d 1247, 1256 (9th Cir. 1980).

13 In this case, the County Treasurer does not suggest that the Claim Objection Order is
 14 void even though it alleges that it did not receive notice. This court has personal jurisdiction
 15 over the County Treasurer inasmuch as the Amended County POC was voluntarily filed in the
 16 case. Likewise, the court has subject matter jurisdiction over this Chapter 11 proceeding,
 17 including the Claim Objection. See 28 U.S.C. § 1334(a); 28 U.S.C. § 157(b)(2)(B). Debtor
 18 complied with the requirements under FRBP 3007(a) to object to the Amended County POC and
 19 the court has concluded that the County Treasurer has failed to overcome the presumption that
 20 the Claim Objection and Claim Objection Notice were received.

21 On this record, the court concludes that relief from the Claim Objection Order is not
 22 available under FRCP 60(b)(4).

23 **E. FRCP 60(b)(5).**

24 FRCP 60(b)(5) permits relief from a judgment or order on the basis that the judgment or
 25 order has been satisfied, released, discharged, or is based on an earlier judgment that has been
 26 reversed or otherwise should not be enforced. See FED.R.CIV.P. 60(b)(5). FRCP 60(b)(5)
 27 authorizes relief from a judgment or order where the order is (1) no longer equitable; and (2)
 28 prospective in application. See Frew ex rel. Frew v. Hawkins, 540 U.S. 431, 441 (2004);

1 Cincinnati Ins. Co. v. Flanders Elec. Motor Service, Inc., 131 F.3d 625, 630 (7th Cir. 1997). By
 2 its terms, the “equity” provision applies only to judgments having “prospective application.”
 3 See Agostini v. Felton, 521 U.S. 203, 239 (1997); Cincinnati Ins. Co., 131 F.3d at 630.
 4 Judgments are “prospective” when they are “executory” or “involve the supervision of changing
 5 conduct or conditions” (e.g., continuing injunctions, consent decrees, etc.). See Stokors S.A. v.
 6 Morrison, 147 F.3d 759, 762 (8th Cir. 1998) (money judgment may be “prospective” to extent
 7 judgment debtor failed to pay it in timely manner, but is not “prospective” for purposes of Rule
 8 60(b)(5)). To be eligible for relief under the “equity” provision, parties must show: (1) a
 9 significant change in facts or law that warrants revision of the judgment or decree; and (2) the
 10 proposed modification is “suitably tailored to the changed circumstance.” See Bellevue Manor
 11 Assocs. v. United States, 165 F.3d 1249, 1255 (9th Cir. 1999).

12 In this instance, there are no changed circumstances suggested by the County Treasurer,
 13 nor apparent from the record, that warrant relief from the Claim Objection Order. Relief under
 14 FRCP 60(b)(5) therefore is not available.

15 **F. FRCP 60(b)(6).**

16 Under FRCP 60(b)(6), the court is authorized to vacate a prior order whenever such
 17 action is appropriate to accomplish justice. See Klapprott v. United States, 335 U.S. 601,
 18 614-615 (1949). Ordinarily, this requires proof of extraordinary circumstances that prevented a
 19 litigant from seeking earlier, more timely relief. See United States v. Alpine Land & Reservoir
 20 Co., 984 F.2d 1047, 1049 (9th Cir. 1993). When there is a showing of a meritorious claim or
 21 defense that was not presented to the court, relief under FRCP 60(b)(6) may be granted. Id.
 22 Where there is delay in seeking relief, fault or lack of fault by the moving party should be
 23 considered. See Pioneer Inv. Services, 507 U.S. at 393-94. Extraordinary circumstances do not
 24 exist where the moving party made a deliberate litigation choice and subsequently sought relief
 25 from that choice. See Ackermann v. United States, 340 U.S. 193, 198 (1950). In the latter
 26 situation, the party should not be provided relief under Rule 60(b)(6). See United States v. Wyle
 27 (In re Pacific Far East Lines, Inc.), 889 F.2d at 250.

28 In this instance, the County Treasurer asserts that it first became aware of the Claim

1 Objection on July 19, 2016, when it received a copy of the Claim Objection Order from the title
 2 company. Eight days after it received that order, the County Treasurer filed the instant Motion
 3 on July 27, 2016. Unfortunately, the Repayment Deadline under the confirmed Amended Plan
 4 was July 28, 2016. Apparently, the title company, FATCo, had refused to issue a title policy on
 5 the Debtor's real property, even though the language of the Claim Objection Order expressly
 6 provided that Clark County's lien against the real property was released. Because FATCo would
 7 not issue a title policy, the Debtor was prevented from completing the refinance needed to
 8 comply with the Repayment Deadline.

9 The court, having considered Lyons Declaration and the Amended County POC,
 10 sustained the Claim Objection when the County Treasurer did not respond. In connection with
 11 the instant Motion, however, the Country Treasurer has submitted two declarations from the
 12 assistant treasurer, only one of which addresses the basis for the Amended County POC. See
 13 Coates Declaration at ¶¶ 4, 5, 6, 7 and 8. While the assistant treasurer confirms the testimony of
 14 the Debtor's controller that the Debtor made prepetition payments of \$34,837.03 and \$34,760.58,
 15 compare Coates Declaration at ¶ 7 with Lyons Declaration at ¶¶ 3 and 4, she does not explain
 16 how the Amended County POC reflects those payments in its attached Amended Tax Statement.
 17 While the assistant treasurer further attests that as of the date of her declaration, the Debtor had
 18 not made the Installment 3 and Installment 4 payments for the tax year, which payments appear
 19 from page one of the Amended Tax Statement to total \$79,369.99, she also concludes that
 20 "Debtor owes \$69,521.17." Coates Declaration at ¶ 8.¹² The court can find nothing in the
 21 Coates Declaration, Lyons Declaration, Initial County POC, or Amended County POC that
 22 actually explains how she arrived at this amount. Had the court been presented with this record
 23

24 ¹² She explains that the \$69,521.17 amount excludes penalties and interest and does not
 25 include "the City sewer charge." The only City sewer charge appearing in the Tax Statement
 26 presumably is the delinquency that was disallowed in connection with the City POC Objection.
 27 The City Treasurer, in its supplement to the Motion, concedes that the sewer charges were
 28 improperly included in the Amended County POC, see Supplement at 7 n.1, but still does not
 explain the \$69,521.17 figure. Moreover, the County Treasurer's written argument appears to
 concede that the Debtor's payments for Installment 1 and Installment 2 "were credited to those
 then-valid sewer charges first - leaving the tax obligation virtually unscathed."

1 at the July 13, 2016 hearing, the matter would have been continued pursuant to Local Rule
2 3007(c), for further evidence to be presented, including an accounting.¹³

3 On its face, the Claim Objection Order did not require the County Treasurer to take any
4 affirmative action: the order determined that Clark County does not have a claim, and that any
5 and all liens against the Debtor's real property are released. The Claim Objection Order was
6 self-executing and did not require the County Treasurer to provide a release of its liens. Thus, it
7 appears that FATCo could simply have relied on the Claim Objection Order itself to issue a title
8 policy, but apparently insisted on some acknowledgment from the County Treasurer. Under
9 these circumstances, it appears that it was FATCo's cautious approach not to issue the title
10 policy that was the primary reason for the delay in meeting the July 28, 2016, Repayment
11 Deadline.¹⁴

12 Ultimately, the County Treasurer provided the necessary assurance to FATCo so that the
13 title policy was issued and the extended Repayment Deadline was met. In the meantime,
14 however, the Debtor paid the \$75,000 fee to Athene to obtain the extension. Neither FATCo's
15 insistence on assurance from the County Treasurer, nor Athene's insistence on payment of an
16 extension fee, appears to have been caused by the County Treasurer. Under these circumstances,
17 it is inappropriate to shift to Clark County the Debtor's costs of obtaining the extension of the
18 Repayment Deadline.

19
20 ¹³ The court's only guess is that the County Treasurer took the Total Annual Charges
21 figure of \$186,660.09 appearing on page one of both the Initial Tax Statement and Amended Tax
22 Statement, subtracted the "Las Vegas Sewer - Delinq" amount of \$47,541.31, and then
23 subtracted the Debtor's payments of \$34,837.03 and \$34,760.58. After those amounts are
24 subtracted, the County Treasurer's suggested balance due figure of \$69,521.17 remains. The
25 problem with that approach, however, is that the Amended County POC is in the amount of
26 \$141,514.20 which includes the disallowed sewer delinquency, but which may not reflect all of
the Debtor's total installment payments. If the same figures are subtracted from the Amended
County POC as filed, the resulting amount is \$24,375.28. Although a proof of claim has prima
facie validity, the burden of proof remains on the claimant in response to a proper claim
objection.

27 ¹⁴ Moreover, it is not clear that a continued hearing for the presentation of evidence on
28 the Claim Objection could have been conducted and a ruling issued before the Repayment
Deadline.

1 On balance, it appears that the County Treasurer may have a meritorious basis for the
2 allowance of an administrative claim not exceeding \$69,521.17. As the law disfavors the denial
3 of potentially valid claims on a default basis, see NewGen, LLC v. Safe Cig, LLC, 2016 WL
4 4651406, at * 6 (9th Cir. Sep. 7, 2016), the court concludes that relief from the Claim Objection
5 Order is appropriate under FRCP 60(b)(6).

6 CONCLUSION

7 For the reasons discussed above, the Motion will be granted and a scheduling conference
8 on the Claim Objection will be held. A separate order has been entered contemporaneously with
9 this Memorandum.

10
11 Copies sent to all parties via CM/ECF ELECTRONIC FILING

12 Copies sent via BNC to:
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