UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SANDRA WATKINSON, Appellant, v. DISTRESSED CAPITAL MANAGEMENT, URBAN LEAGUE OF SAN DIEGO COUNTY, STATEBRIDGE MORTGAGE COMPANY, LLC, and CHRISTINA TRUST, a Division of Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity But Solely, As Owner Trustee on Behalf of RBSHD 2013-1, Appellees.	*	Civil Action No. 22-10674-MGM

MEMORANDUM AND ORDER REGARDING
BANKRUPTCY APPEAL
(Dkt. No. 1)

March 29, 2024

MASTROIANNI, U.S.D.J.

I. INTRODUCTION

Sandra Watkinson ("Appellant") brings this appeal challenging multiple rulings of the Bankruptcy Court (Bailey, J.). The Bankruptcy Court found in favor of defendants Distressed Capital Management ("DCM"), Urban League of San Diego County ("Urban"), Statebridge Mortgage Company, LLC ("Statebridge"), and Christiana Trust ("Christiana") (collectively, "Appellees"). For the following reasons, the court will affirm the Bankruptcy Court's orders.

II. BACKGROUND

In July of 2018, Appellant filed a petition for relief under Chapter 13 of the Bankruptcy Code. (A-497.) Christiana then filed a proof of claim, asserting a claim as a creditor of $340,670.84, secured by the mortgage[1] on the property of Appellant's residence. (*Id.*)

Appellant filed a complaint commencing an adversary proceeding[2] in Bankruptcy Court in June of 2019. (A-002.) The complaint asserted an objection to Christiana's proof of claim and alleged claims against both Christiana and Statebridge. (A-016–22.) On August 25, 2020, Appellant moved for leave to amend her complaint to add claims against two new defendants (DCM and Urban), which the Bankruptcy court granted. (A-099–103.) This amended complaint asserted six counts,[3] but the Bankruptcy Court found Appellant withdrew Count VI as to Christina and Statebridge, and it dismissed Counts V and VI as to DCM and Urban without prejudice for lack of jurisdiction. (A-112-18, 500, 520, 523-27.)[4] Count I alleged violations of the Real Estate Settlement

[1] The assignments of the Note and mortgage on Appellant's property were as follows: on April 24, 2009, Appellant borrowed $228,375 from Countrywide Bank, which became Bank of America by merger, and executed a promissory note (the "Note") secured by a mortgage on her residence. (A-503). The mortgagee was identified as Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Countrywide Bank, FSB. (A-503). On July 5, 2011, MERS assigned the mortgage to BAC Home Loans servicing, LP. (A-503; A-504). On January 3, 2014, Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP assigned the mortgage to the Secretary of Housing and Urban Development ("HUD"). (A-503; A-504). In addition, Bank of America, N.A., as successor by merger to Countrywide Bank, FSB, endorsed the Note to HUD as well. Then, HUD further endorsed the note and assigned the mortgage to RBS Financial Products. (A-503; A-504). The final endorsement and assignment of the note and mortgage before this proceeding was from RBS to Christiana. (A-503). The Bankruptcy Court found that at the date on which Christiana filed its proof of claim, Christiana was the sole holder of the Note and owner by assignment of the mortgage. (A-504).

[2] "[A]n adversary proceeding is a subsidiary lawsuit within the larger framework of a bankruptcy case." *In re Fin. Oversight & Mgmt. Bd. For P.R.*, 872 F.3d 57, 63 (1st Cir. 2017) (quoting *Kowal v. Malkemus* (*In Re Thompson*), 965 F.2d 1136, 1140 (1st Cir. 1992)); *see also* Fed. R. Bankr. P. 7001.

[3] Appellant also alleged that Statebridge violated regulations of HUD by failing to offer or accept reasonable forbearance agreements to avoid foreclosure, but this was not asserted as a count in any complaint. (A-106–07). Because Appellant did not seek a ruling on this in her proposed findings and conclusions, mention the argument in her closing, or answer Appellees' argument in closing regarding the issue, the Bankruptcy Court found this alleged violation of HUD regulations to be waived. (A-501). Appellant does not challenge this ruling on appeal.

[4] Appellant has not developed any argument on appeal as to Counts V and VI, which are therefore deemed as waived. *See United States v. Sevilla-Oyola*, 770 F.3d 1, 13 (1st Cir. 2014).

Procedures Act ("RESPA"), 12 U.S.C. §2601, against Christiana and Statebridge, regarding force-placed insurance. (A-112.)[5] Count II alleged Christiana and Statebridge violated Mass. Gen. Laws ch. 93A, in relation to the conduct of Statebridge in obtaining force-placed insurance. (A-113.) Count III sought a declaratory judgment that Christina does not have standing and its proof of claim should be disallowed because it was not the holder of the promissory note or the owner of the mortgage. (A-114.) Count IV sought a declaratory judgment that DCM and Urban do not have standing and Christina's proof of claim should be disallowed. (A-116.)

Discovery was to be completed by December 3, 2019. (A-045.) On December 2, 2019, the Bankruptcy Court allowed Appellant's unopposed motion to extend the discovery deadline to February 3, 2020, which made the joint pretrial memorandum due on March 4, 2020. (A-052, 498; *see* A-046.) After no pretrial memorandum was filed, the Bankruptcy Court issued an order to show cause why the adversary proceeding should not be dismissed for lack of prosecution. (A-053.) Appellant then requested that the discovery period and other deadlines be extended due to the Covid-19 pandemic and counsel's family member's illness. (A-055–56.) This family member's illness was the same reason provided in the initial discovery deadline extension request. (*Id.*) Appellees assented-to a limited extension. (A-059–60.) The Bankruptcy Court denied this extension request, noting that the pandemic shutdown had begun after the March 4, 2020 deadline. (A-062, 499.) However, the Bankruptcy Court declined to dismiss the adversary proceeding and scheduled the matter for trial. (A-062.) The Bankruptcy Court noted that "no or little discovery was accomplished in these matters." (A-499.)

[5] Force-placed insurance is insurance purchased by banks on the homes of borrowers whose policies have expired. This type of insurance is often more expensive than regular policies and often increases the likelihood of foreclosure. *Servicers and Insurers: Force-Place Insurance*, 41 REAL EST. L. REP. July 2011, at 1.

At trial, each party presented one witness and three exhibits were admitted into evidence. (A-503.)[6] The Bankruptcy Court found Appellant's testimony to be largely unintelligible and, as to the issue of flood insurance, lacking credibility. (A-505–06.) On the other hand, the Bankruptcy Court found Statebridge's witness, Stefani Jeffries, to be credible. (A-506.)

The Bankruptcy Court overruled Appellant's objection to the proof of claim, dismissed the counts in the amended complaint against Christiana and Statebridge, and allowed Christina's proof of claim in full. (A-014, 520.) In addition, the Bankruptcy Court dismissed Count IV as moot. (A-523-24.) This appeal followed.

III. STANDARD OF REVIEW

When a district court reviews a decision of a Bankruptcy Court, it applies a clearly erroneous standard to findings of fact, de novo review to conclusions of law, and abuse of discretion review to discretionary rulings. *See In re López-Muñoz*, 983 F.3d 69,71 (1st Cir. 2020). "A [factual] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *In re IDC Clambakes, Inc.*, 727 F.3d 58, 63–64 (1st Cir. 2003). Moreover, "[m]ixed questions of law and fact invoke a sliding standard of review," whereby "[t]he more fact intensive the question, the more deferential the level of review . . . [and] the more law intensive the question, the less deferential the level of review." *Id.* at 64.

[6] On March 9, 2021, the day before trial, Appellant filed multiple documents after the Bankruptcy Court had closed for business. (A-010–11; A-499). Among these documents were four motions in limine, four exhibits totaling about fifty pages, and a memorandum of law in which Appellant was seeking a disposition of the issues in her favor. (A-010–11; A-499). The Bankruptcy Court determined that it would deprive Appellees of due process to consider the submissions and would also deprive the Bankruptcy Court of the opportunity to review them. (A-499). The Bankruptcy Court decided to strike the unauthorized filings rather than postpone the trial. (A-499-500).

IV. DISCUSSION

Appellant raises six arguments on appeal. She argues the Bankruptcy Court erred by: (1) failing to extend Appellant's discovery deadline; (2) allowing Appellees' witness to testify following a review of documents outside of court; (3) finding that Christiana had standing to enforce the Note against Appellant; (4) depriving her of a fair hearing on the merits based on certain statements made by the Bankruptcy Court during the trial; (5) finding that Appellant had not met her burden of proving that she had obtained homeowner's insurance; and (6) failing to enter a declaratory judgment against the DCM and Urban under Count IV.

A. Denial of Extension Request

Appellate review of a court's decision regarding case management is highly deferential. *See Thibeault v. Square D Co.,* 960 F.2d 239, 242 (1st Cir. 1992). An appellate court reviews such decisions solely for abuse of discretion. *Velez v. Awning Windows, Inc.*, 375 F.3d 35, 41 (1st Cir. 2004); *see also In re Carp.* 340 F.3d 15, 22 (1st Cir. 2003) ("We review a bankruptcy court's discovery decision for abuse of discretion—and that discretion is very wide."). Moreover, "a party's noncompliance with a deadline that she herself suggested creates a particularly inhospitable landscape for a claim that a court abused its discretion in holding her to that deadline." *Rivera-Aponte v. Gomez Bus Line,* 62 F.4th 1, 7 (1st Cir. 2023).

Federal Rule of Bankruptcy Procedure 9006(b)(1) governs requests for extensions of time: "the court for cause shown may at any time in its discretion (1) with or without notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Fed. Bank. P. 9006(b)(1). "Rule 9006(b)(1) was patterned after Rule 6(b) of the Federal

Rules of Civil Procedure," which also uses the phrase "excusable neglect." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 391 (1993).

Accordingly, excusable neglect is the standard litigants must meet when they fail to request an extension before the deadline expires. "Although inadvertence, ignorance of the rules, or mistakes construing the rule do not usually constitute 'excusable neglect,' it is clear that 'excusable neglect' . . . is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Pioneer Inv. Servs. Co.*, 507 U.S. at 392. "[T]he determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* at 395. These factors include "the danger of prejudice to the debtor, the length of delay and its potential impact on judicial proceedings, the reason for delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* "Great deference must be afforded to a bankruptcy court's determination regarding whether counsel's neglect is excusable; we may not set it aside without a firm conviction that the court below abused its discretion and committed clear error." *In re Sheedy*, 875 F.3d 740, 743 (1st Cir. 2017) (quoting *In re Power Recovery Sys.*, 950 F.2d 798, 801 (1st Cir. 1991)).

The original discovery deadline was December 2, 2019. (A-045). Before this deadline expired, Appellant requested a 60-day extension in the wake of Appellant's counsel's family member experiencing health issues. (A-049.) Appellees assented, and the new discovery deadline was extended to February 3, 2020. (A-052.) However, Appellant's counsel missed that deadline and the March 4, 2020 pretrial memorandum deadline. (A-055–56.) The Bankruptcy Court issued an Order to Show Cause on March 9, 2020 as to why the Adversary Complaint should not be dismissed. (A-053.) Appellant requested an additional extension due to the COVID-19 pandemic and his family member's further deterioration in health. (A-055–56, 59.) On March 31, 2020, the Bankruptcy Court

issued an Order Releasing the Order to Show Cause, which did not dismiss the Adversary Complaint, but denied Appellant's request to extend the discovery deadline. (A-062.)

As the Bankruptcy Court explained in its Memorandum of Decision, "[b]ecause the pandemic shutdown had begun only after the March 4, 2020 deadline [of] the pretrial memorandum and the discovery period had expired well before the pandemic started, the court denied the motion to extend the deadlines and scheduled the matter for trial, but the court did not dismiss the adversary proceeding or overrule the claim objection for nonprosecution." (A-499.) This decision was not an abuse of discretion.

"Demonstrating excusable neglect is a demanding standard and the trial judge has wide discretion in dealing with litigants who make such claims." *In re Sheedy*, 875 F.3d at 743 (internal quotation marks omitted). Here, Appellant's counsel gave two reasons for the belated extensions request: the COVID-19 pandemic, and "a close family member's illness that has been ongoing since July 2019." (A-055.) But, as the Bankruptcy Court explained, the pandemic was not a legitimate excuse because the missed deadlines passed before the shutdown had begun. As for the family member's illness, that circumstance could certainly, depending on the context, amount to excusable neglect, as an intervening event beyond the party's control. In this case, however, Appellant's counsel explained that the illness caused him "to seek extensions of pending deadlines in all of his pending matters," but did not explain how it prevented him from seeking a timely extension in this case, except to state: "unfortunately, due to the myriad of ongoing events, this did not take place in this case." (A-056.) Without a more specific explanation linking the family member's illness with the missed deadlines, the Bankruptcy Court acted within its wide discretion in denying the extension request. *See Stonks v. City of Brockton Sch. Dep't,* 322 F.3d 97, 101 (1st Cir. 2003) ("Most attorneys are busy most of the time and they must organize their work so as to be able to meet the time requirements they are handling or suffer the consequences." (internal quotation marks omitted)).

The court also notes that Appellant's counsel failed to conduct any discovery during the eight months the adversary proceeding was pending and provided no explanation for this failure to the Bankruptcy Court.

In the end, the Bankruptcy Court did not abuse its discretion in denying Appellant's request for an additional extension of the discovery deadline.

B. Hearsay Objection

Appellant argues that the Bankruptcy Court erred by overruling Appellant's objections to Defendants' witness testimony. The standard of review applied to a bankruptcy court's evidentiary rulings is abuse of discretion. *Williams v. Drake*, 146 F.3d 44, 47 (1st Cir. 1998). Under Federal Rule of Evidence 602, "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Fed. R. Evid. 602; *see* Fed. R. Bank. P. 9017 (stating that the Federal Rules of Evidence apply). Evidence that a witness has personal knowledge may come in the form of that witness's own testimony. *Id.* "Evidence is inadmissible under Rule 602 'only if in the proper exercise of the trial court's discretion it finds that the witness could not have actually perceived or observed that which he testified to.'" *United States v. Neal*, 36 F.3d 1190, 1206 (1st Cir. 1994) (quoting *Hallquist v. Local 276, Plumbers & Pipefitters Union*, 843 F.2d 18, 24 (1st Cir. 1988)).

During the trial, Appellees called Stefani Jeffries as a witness. Jeffries worked as a post-transfer auditor and previously as director of bankruptcy and foreclosure for Statebridge. Ms. Jeffries testified that her role as a post-transfer auditor required her to "ensure that the data and documents" in Statebridge's system of records was accurate. (A-631.) Ms. Jeffries stated that she had reviewed the Appellant's loan file as preparation for trial. (A-637.) She also testified as to the general responsibilities of Statebridge as the servicer of a mortgage loan, including the general review process for loss mitigation requests submitted by borrowers and the "letter cycle" sent to borrowers

when there is no current insurance policy for the property. (A-636, 640-41, 648.) In addition, Ms. Jeffries explained the various assignments of the mortgage and Note and the loan's payment history, as set forth in the proof of claim (which was admitted as an exhibit). (A-643-648, 654-659.) Appellant objected during direct examination on hearsay grounds and again on the grounds that the witness's recollection had not been properly refreshed. (A-637, 649-50.)

Appellant argues that Ms. Jeffries did not have personal knowledge about this case without reference to the business records and thus the Bankruptcy Court allowed impermissible hearsay to be admitted. Appellant points to cross-examination of Ms. Jeffries where she stated that she was not on the case until after the servicing was transferred to the new entity. (A-663.)

The Bankruptcy Court did not abuse its discretion in determining that Ms. Jeffries had personal knowledge of the procedures of loan servicing with respect to Appellant. Witnesses can have personal knowledge of events even if their involvement comes after the occurrence of the events they are testifying to. *See Neal*, 36 F.3d at 1206 (holding that an insurance specialist had personal knowledge where her testimony was based on records that she was exposed to over the course of her employment despite her starting employment one month after relevant event occurred). Here, Ms. Jeffries explained the general responsibilities of Statebridge as the servicer of the mortgage loan, including the handling of any loss mitigation requests (like loan modification requests). (A-636.) Ms. Jeffries testified, based on her prior review of Statebridge business records, that Statebridge had reviewed and considered Appellant's loss mitigation requests. (A-636-40.) Appellant has not demonstrated that the Bankruptcy Court abused its discretion in determining that Ms. Jeffries had personal knowledge of the Appellant's mortgage and servicing rights and requests.

The Bankruptcy Court also did not err in its application of Rule 612. Federal Rule of Evidence 612(a) states: "[t]his rule gives an adverse party certain options when a witness uses a writing to refresh memory: (1) while testifying; or (2) before testifying, if the court decides that

justice requires the party to have those options." Fed. R. Evid. 612. Rule 612(b) states: "[A]n adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony." *Id.* However, Rule 612(b) only applies, when a witness used a writing before testifying to refresh recollection, "*if* the court decides that justice" so requires pursuant to Rule 612(a)(2).[7] *Id.*

During Appellees' direct examination of Ms. Jeffries, Appellees' counsel asked Ms. Jeffries if there were ever any loss mitigation requests submitted to Statebridge during the time that Statebridge was servicing the loan. Appellant's counsel objected stating: "I don't know what is [sic] the witness testifying from. There's no document that she's testifying from for personal knowledge." (A-637.) The Bankruptcy Court stated that the witness was testifying from her own memory. Appellant's counsel then stated: "Yeah. If, that's true, but if she's referring to business records, they are not in evidence." (A-637.) The Bankruptcy Court then asked the witness if she was looking at any documents. Ms. Jeffries responded: "No. I did review our system of record and the history of this case in preparation for this trial." (A-637.) The Bankruptcy Court then asked if Appellant's counsel was referring to Rule 612, and Appellant's counsel indicated that he was. The Bankruptcy Court asked Appellant's counsel what relief he was seeking under Rule 612. (A-638.) Appellant's counsel replied: "I think they should be excluded from referring to that." (A-638.) The Bankruptcy Court replied: "But that's not any of the relief that 612 gives you. That's not an option. Are you familiar with Rule 612?" (A-638.) The Bankruptcy Court then read a portion of Rule 612 to

[7] *See* Advisory Committee Notes 1974 ("The Committee amended the Rule so as still to require the production of writings used by a witness while testifying, but to render the production of writings used by a witness to refresh his memory before testifying discretionary with the court in the interests of justice, as is the case under existing federal law. *See Goldman v. United States*, 316 U.S. 129 (1942). The Committee considered that permitting an adverse party to require the production of writings used before testifying could result in fishing expeditions among a multitude of papers which a witness may have used in preparing for trial."); *see also United States v. Massachusetts Mar. Acad.*, 762 F.2d 142, 157 (1st Cir. 1985) (explaining that "the opposite party ha[s] a right to inspect the writing used before the trial to refresh the witness's memory only if the court determines it is necessary in the interests of justice." (internal quotation marks omitted)).

Appellant's counsel. (A-638-39.) Appellant's counsel again requested that Ms. Jeffries be excluded from testifying, but the Bankruptcy Court denied this request. (A-639.)

The Bankruptcy Court found that Ms. Jeffries was testifying from personal knowledge after having her recollection refreshed outside of court. Appellant's counsel could have requested the production of those documents that refreshed Ms. Jeffries recollection, and the Bankruptcy Court would have then determined under Rule 612(a)(2) whether "justice require[d] [Appellant] to have those options" set forth in Rule 612(b). Fed. R. Evid. 612. If allowed, Appellant's counsel could have then examined the documents, cross-examined the witness about them, or introduced portions of the documents into evidence. *See id.* However, Appellant's counsel failed to request a remedy that was available under Rule 612 despite being prompted by the Bankruptcy Court. (A-683.) Appellant's counsel instead requested Ms. Jeffries be entirely precluded from testifying on that subject. (A-638.) The Bankruptcy Court did not abuse its discretion in finding that Ms. Jeffries recollection was properly refreshed outside of court, and further, that Appellant failed to request any available remedy under Rule 612.

In addition, Appellant's objection to Ms. Jeffries' testimony as inadmissible hearsay is without merit. Federal Rule of Evidence 801 states that "[h]earsay means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." FED. R. EVID. 801. A statement is "a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion." *Id.* Appellant objected to testimony offered by Ms. Jeffries about her knowledge of events that transpired between Statebridge and Appellant. (A-636, 648.) Appellant objected on the basis of the hearsay business records exception, which makes hearsay evidence admissible if the evidence is properly established as a business record under Rule 803(6). (A-661.) However, Ms. Jeffries' testimony was not hearsay because it did not refer to any statement that was made outside

of court. *See United States v. Mendez*, 514 F.3d 1035, 1044 (10th Cir. 2008); *United States v. Fajardo-Fajardo*, 594 F.3d 1005, 1009 n. 4 (8th Cir. 2010); *see also Staelens ex rel. Est. of Staelens v. Staelens*, 677 F. Supp. 2d 499, 504 (D. Mass. 2010). This was not a situation, for example, in which a witness recounted specific statements made by others contained within the records reviewed by the witness. *See United States v. Albiola*, 624 F.3d 431, 441 (7th Cir. 2010); *see also Mahlandt v. Wild Canid Survival & Rsch. Ctr., Inc.*, 588 F.2d 626, 630 (8th Cir. 1978) ("A statement based on the personal knowledge of the declarant of facts underlying his statement is not the repetition of the statement of another, thus not hearsay."). Accordingly, it was not an abuse of discretion for the Bankruptcy Court to overrule Appellant's objections and permit Ms. Jeffries to testify.

C. Burden of Proof Regarding Christiana's Standing

The servicing rights to Appellant's loan had been transferred multiple times prior to the trial. Statebridge serviced the loan from August 2015 through July 2020. (A-504.) During the bankruptcy case, Statebridge transferred the servicing interest to DCM and its specialty subservicer, Urban. (*Id.*) Statebridge sent a letter to Appellant informing her of this transfer on July 3, 2020. (*Id.*) Appellant argued that this letter was evidence that Christiana transferred both the Note and mortgage and no longer held either and, thus, it did not have standing to assert its proof of claim. (*Id.*)

The July 3, 2020 letter was Appellant's only evidence of a transfer of the mortgage or Note. (*Id.*) The letter is entitled: "**NOTICE OF ASSIGNMENT, SALE AND TRANSFER OF SERVICING RIGHTS**." (A-535.) The first sentence states that, in accordance with RESPA, the purpose of the letter was to inform Appellant "that effective July 20, 2020, the servicing of your mortgage loan, that is the right to collect payments from you, has been assigned and transferred to [DCM] and its specialty sub-service [Urban]." (*Id.*) In the second paragraph, however, the letter states:

> Please be assured that transactions of this type are common among financial institutions and have absolutely no bearing on your credit standing. The assignment,

> sale and transfer of your mortgage loan does not affect any term or condition of the mortgage instrument, other than the terms directly related to the servicing of your loan.

(*Id.*) The Bankruptcy Court found this letter pertained to the transfer of servicing rights, not a transfer of the loan itself, since "the entire subject of the letter is the 'assignment, sale and transfer of *servicing rights*." (A-505 (emphasis in original).)[8] Moreover, the Bankruptcy Court explained that even if the letter could be construed as evidence of a transfer of the loan, it was not substantial evidence because it lacked information on who the transferor was, who the transferee was, and the date of the transfer. (*Id.*) The Bankruptcy Court therefore found Appellant's argument that Christiana lacked standing to assert its proof of claim to be without merit.[9] (A-510.)

Appellant argues on appeal that Christiana does not own the proof of claim it sought to enforce, so it was seeking to enforce that proof of claim for a third party. Therefore, according to Appellant, Christiana lacks standing. However, Appellees argue that the Bankruptcy Court correctly reframed the issue as one not of standing, but of a burden shifting process. The Bankruptcy Court found that Christiana filed the proof of claim in its own name and asserted that it was the holder of the Note and owner of the mortgage. It was Christiana's burden, as the claimant, to prove that it held the Note and owned the mortgage.

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[8] In addition, Ms. Jeffries testified that this letter, known as a "goodbye letter," which is regularly used to notify borrowers when there is a servicing transfer, does not state that there has been a transfer of the ownership of the mortgage, but only the servicing rights. (A-634-35.)

[9] The Bankruptcy Court dismissed Count IV of the Amended Complaint, which sought a declaratory judgment against DCM and Urban that they lacked standing for purposes of Christina's proof of claim, as moot since neither DCM nor Urban sought to prosecute Christina's proof of claim. (A-523-24.) Appellant argues that "while at face value, the [Bankruptcy Court's] ruling as to Count [IV] of the Amended Complaint would appear to make sense (Declaratory Judgment that DCM or [Urban] do not have standing), it overlooks the potentially fatal deficiency(s) related to the filed proof of claim, in which the Plaintiff was completely precluded from requesting any documentary discovery." (Dkt. No. 15 at 23.). This argument is undeveloped and therefore deemed waived. *See United States v. Sevilla-Oyola*, 770 F.3d 1, 13 (1st Cir. 2014) ("Arguments raised in only a perfunctory and undeveloped manner are deemed waived on appeal."). In any event, the court has already rejected Appellant's argument that the Bankruptcy Court erred in denying her discovery extension request, which similarly disposes of this argument.

The standard of review applied to a lower court's evidentiary rulings is abuse of discretion. *See McMillan v. Mass. Soc'y For Prevention of Cruelty To Animals*, 140 F.3d 288, 300 (1st Cir.1998). "A proof of claim executed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). When a party objects to a proof of claim, the objection must be supported by substantial evidence to rebut the prima facie validity. *In Re Hemingway Transp.*, 993 F.2d 915, 925 (1st Cir. 1993). If the objecting party produces substantial evidence, the burden of persuasion shifts to the party asserting the claim to establish its validity. *Id.*

It was not an abuse of discretion for the Bankruptcy Court to find that Christiana had complied with the Federal Rules of Bankruptcy Procedure and that its proof of claim constituted prima facie evidence of the claim's validity. Further, the Bankruptcy Court did not err in finding that Appellant failed to produce substantial evidence that rebutted the prima facie validity of the claim. The Bankruptcy Court went one step further by adding:

> [e]ven if the evidence adduced at trial were construed as substantial evidence, such that the prima facie validity of the claim were overcome, Christiana adduced evidence at trial which it has carried its burden of establishing that it is in fact the present holder of the Note and owner of the Mortgage.

(A-510.) The Bankruptcy Court found that Appellees' witness (Ms. Jeffries) authenticated the proof of claim. The proof of claim was accompanied by attachments including the promissory Note on which the claim is based. Ms. Jeffries walked through the endorsements of the Note and the series of holders before and ultimately to Christiana. (A-655–59.) The Bankruptcy Court did not err in characterizing the issue as a series of burden shifting processes, nor did it err in finding that Christiana met its burden while Appellant did not.

D. Deprivation of a Fair Hearing

Appellant argues that the Bankruptcy Court "appeared to have his [mind] made up prior to the trial ever starting" regarding the issue of Christiana's standing. Appellant bases this assertion on

the following statement made by the Bankruptcy Court: "I just want your client to understand that the chances she's going to walk away with a free house are slim and non[e] someday." (A-565.) This was part of a broader conversation between the Bankruptcy Court and Appellant's counsel in which the Bankruptcy Court wanted to know the next steps for Appellant if she were to prevail—namely, that the mortgage lien would still remain and could still be foreclosed on for nonpayment, despite the bankruptcy. Appellant's counsel countered, stating that she could bring a case in the Land Court for a quiet title action to have that court issue an opinion on the mortgage and the interest in land. The Bankruptcy Court clarified the purposes of this inquiry, stating: "I'm just trying … to figure out what you're hoping to achieve by this proceeding and making sure that, you know, the candle's worth the wick. That's all." (A-567.)

Appellant argues these statements evidence a deeply entrenched conviction of the Bankruptcy Court and led it to ignore the obvious evidentiary deficiencies of the Appellees' case and led the court to improperly allow inadmissible hearsay.[10] Appellant asserts that the Bankruptcy Court's own personal biases kept the Appellant from obtaining pre-trial discovery, apparently disregarding the fact that Appellant had missed the already-extended deadline by over a month without attempting to have it extended again.

"A court's disagreement—even one strongly stated—with *counsel* over the propriety of trial tactics does not reflect an attitude of personal bias against a client." *In re Cooper*, 821 F.2d 833, 841 (1st Cir. 1987). Appellant has failed to establish how she has been deprived of a fair hearing on the merits. As for the comments the Bankruptcy Court made about the "free house," it appears the

[10] Appellant's counsel did not object to the Bankruptcy Court's statement about a "free house" at trial. Where a party has the opportunity to ask for relief at trial but fails to do so, the claim may be deemed waived on appeal. *See In re Carp*, 340 F.3d at 24 (holding that even after offering a general objection to the issue, a party has the "the affirmative obligation to come forward and request further relief from the court" to succeed on a claim of an infringement of their right to a fair trial.) However, Appellees have not argued that Appellant waived her argument by failing to object at trial. *See Rivera-Carrasquillo v. Centro Ecuestre Madrigal, Inc.,* 812 F.3d 213, 233 n.32 (1st Cir. 2016) (holding that where defendants did not ask the court to hold that plaintiffs waived any arguments against them, the defendants waived their waiver argument.).

Bankruptcy Court was not persuaded by Appellant's counsel, the arguments made by Appellant's counsel, or the tactical decisions made by Appellant's counsel, and was trying to ensure that Appellant, who was present, understood the realities of the potential success of her case. This was not reversible error.

E. Proof of Insurance

Lastly, the Bankruptcy Court did not err in finding Appellant had not met her burden of proving "when she sent the required written notice that she had obtained a policy under 12 U.S.C. § 2605(l)(2)." (A-519.) At closing argument, Appellant's counsel agreed with the Bankruptcy Court that there was no evidence that any insurance policies overlapped. (A-519, 730). The Bankruptcy Court found that there was no proof that Statebridge failed to cancel the force-placed insurance when it received notice of Appellant's policy. (*Id.*)

The standard of review applied to a lower court's evidentiary rulings is abuse of discretion. *See McMillan v. Mass. Soc'y For Prevention of Cruelty To Animals*, 140 F.3d at 300. As discussed above, a proof of claim that comports with the requirements of the Federal Rules of Bankruptcy Procedure is entitled to a presumption of prima facie validity. *In Re Hemingway Transp.*, 993 F.2d at 925; Fed. R. Bankr. P. 3001(f). It is then up to the objecting party to produce substantial evidence to rebut that presumption. *In Re Hemingway Transp.*, 993 F.2d at 925; Fed. R. Bankr. P. 3001(f). If substantial evidence is produced, the burden shifts back to the claimant, who retains the ultimate burden of persuasion as to its claims. *In Re Hemingway Transp.*, 993 F.2d at 925.

Appellees contend that their witness, Ms. Jeffries, corroborated the "letter cycle" that is initiated by Appellees when a borrower does not have sufficient insurance. (A-648.) Ms. Jeffries detailed the process for mailing these letters out to borrowers. (A-668-669.) Appellant testified, after being shown a copy of one of the letters allegedly sent, that she remembered receiving one of the letters. (A-650-52.) Appellant failed to conduct any discovery and did not produce any documentary

evidence demonstrating when she notified Statebridge that she had obtained her own insurance. Appellant's only evidence was the testimony of Appellant, whom the Bankruptcy Court found was not credible due to her "hopelessly incomprehensible" testimony concerning when she obtained her own insurance. (A-506.) This court agrees that Appellant's testimony failed to indicate when she notified Appellees that she had obtained insurance and, furthermore, failed to demonstrate that there was any delay in cancelling the force-placed insurance following such notification. Accordingly, it was not an abuse of discretion for the Bankruptcy Court to find that Appellant failed to meet her burden to rebut the prima facie validity of the proof of claim.

V. CONCLUSION

In light of the foregoing, the court AFFIRMS the Bankruptcy Court's orders.

It is So Ordered.

/s/ Mark G. Mastroianni
MARK G. MASTROIANNI
United States District Judge