

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 12 2019

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

In re: JOHN CHRISTOPHER  
O'CONNOR, an individual,

Debtor,

KATHERINE L. O'CONNOR, an  
individual and as Trustee of the 2009  
Three Children Irrevocable Trust,

Appellant,

v.

JOHN J. MENCHACA, Chapter 7 Trustee  
of John Christopher O'Connor,

Appellee.

No. 18-56196

D.C. No. 2:16-cv-01903-SJO

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
S. James Otero, District Judge, Presiding

Submitted December 9, 2019\*\*  
Pasadena, California

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

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

Before: N.R. SMITH and WATFORD, Circuit Judges, and KORMAN, \*\*\* District Judge.

Appellant Katherine L. O'Connor, the wife of a debtor in a Chapter 7 bankruptcy proceeding, appeals the decision of the District Court for the Central District of California that granted in part and denied in part the Appellee John J. Menchaca's (the "Trustee") motion for summary judgment, which sought to avoid certain transfers of real property pursuant to 11 U.S.C. §§ 544, 548 and California Civil Code section 3439.04(a)(1).

1. "Absent exceptional circumstances, we generally will not consider arguments raised for the first time on appeal, although we have discretion to do so." *El Paso City v. Am. W. Airlines, Inc. (In re Am. W. Airlines, Inc.)*, 217 F.3d 1161, 1165 (9th Cir. 2000). On appeal, the Appellant argues for the first time that the Trustee's action is time-barred, because *all* of the unsecured creditors either knew or should have known about the alleged fraudulent transfers, such that the statute of limitations on each of the unsecured creditor's claims expired prior to the filing of the debtor's bankruptcy petition. In the district court, the Appellant argued only that Wells Fargo's claims were barred. Moreover, the Appellant failed to

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\*\*\* The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

address any of the exceptions to the general rule that an argument raised for the first time on appeal is waived. *See United States v. Carlson*, 900 F.2d 1346, 1349 (9th Cir. 1990) (discussing the limited circumstances where we may consider an issue raised for the first time on appeal). Accordingly, the Appellant waived this argument.

2. Similarly, the Appellant raises for the first time on appeal her argument that a creditor must file a proof of claim in order to be considered “a creditor holding an unsecured claim that is allowable” for purposes of 11 U.S.C. § 544(b)(1). Again, the Appellant failed to argue any exceptions to waiver apply. This argument is also waived. *See El Paso City*, 217 F.3d at 1165.

**AFFIRMED.**