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LINE 5

CIV535902

REGINA MANANTAN VS. WELLS FARGO BANK,  
N.A., ET AL.

REGINA MANANTAN

TIMOTHY L. MCCANDLESS

WELLS FARGO BANK, N.A.

BRIAN S. WHITTEMORE

DEMURRER TO SECOND AMENDED COMPLAINT OF MANANTAN BY WELLS FARGO BANK, N.A.

**TENTATIVE RULING:**

*Please note that the tentative ruling has been updated as to defendant Quality Loan Service Corporation. (See infra.)*

Defendants Wells Fargo Bank, N.A. DBA America's Servicing Company and U.S. Bank, N.A., as Trustee, successor-in-interest to Bank of America, National Association as Trustee, successor by merger to LaSalle Bank, National Association as Trustee for Morgan Stanley Mortgage Loan Trust 2007-7AX's Demurrer to Plaintiff's Second Amended Complaint is **OVERRULED** as to cause of action nos. 1, 2, 3, 4, 6 and 8. The Demurrer is **SUSTAINED** with leave to amend as to cause of action no. 5 and **SUSTAINED** without leave to amend to cause of action no. 7.

The Second Amended Complaint sufficiently pleaded facts to support the first, second, third, fourth, sixth and eighth causes of action for breach of security instrument, wrongful foreclosure, fraud, unfair business practices, setting aside Trustee's sale and quiet title, respectively.

"Tender is not required where the foreclosure sale is void, rather than voidable, such as when a plaintiff proves that the entity lacked the authority to foreclose." *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1100.

- With regard to the first cause of action, the Second Amended Complaint sufficiently states a claim for breach of security instrument, specifically violation of §22 of the 2007 Deed of Trust, which required a certain amount of notice be given to the borrower before a Notice of Default could be recorded. (SAC para. 69.)
- With regard to the second cause of action for wrongful foreclosure, the Second Amended Complaint sufficiently states a claim that Plaintiff and Defendant Wells Fargo were in talks about a loan

modification in 2015 when the Homeowners' Bill of Rights was in effect and several violations occurred, including: (a) the status of the loan was in active loan modification review when the Notice of Trustee's Sale was recorded and the foreclosure sale took place, thus Defendants were "dual tracking," (b) the Plaintiff requested from Defendant Wells Fargo, but never received a single point of contact and (c) Defendant Wells Fargo did not send any acknowledgement of denial of the modification application with a notice of the deadline to appeal. (SAC paras. 34, 37, 39, 45.)

With regard to the third cause of action for fraud, the Second Amended Complaint has sufficiently alleged facts for negligent misrepresentation: (1) Defendant Wells Fargo never disclosed that it was not the lender, nor that to grant a loan modification Wells Fargo would have to enter into an unfavorable financial transaction, contrary to its interests, (2) Wells Fargo was aware of this falsity, (3) Wells Fargo intended to defraud Plaintiff, as evidenced by its failure to offer a modification to which Plaintiff was entitled, (4) Plaintiff justifiably relied on Defendant Wells Fargo's misrepresentation and (5) Plaintiff suffered damages. (SAC para. 114.)

With regard to the fourth cause of action for violation of B&P §17200, the Second Amended Complaint sufficiently alleges other predicate claims upon which to base a claim of fraudulent, unfair or deceptive business practices.

With regard to the sixth cause of action to set aside the Trustee's sale, the Second Amended Complaint alleges that the Trustee's Deed is void (SAC paras. 62, 147) and not voidable, thus there was no sale at all and the parties are unable to ratify the sale.

A trustor has no right to set aside a trustee's deed as against a bona fide purchaser for value by attacking the validity of the sale. *Homestead Savings v. Darmiento* (1991) 230 Cal.App.3d 424, 436. However, Plaintiff does not attack the procedure of the sale, but rather that the seller did not have a valid title to convey via sale.

The recent case of *Yvanova v. New Century Mortg. Corp.* (2016) 199 Cal.Rptr.3d 66 gives the Plaintiff standing to sue based on questionable transfers in the chain of title of the Deed of Trust and recognizes that

the borrower can be damaged by not knowing who holds the Deed of Trust for his/her house.

With regard to the eighth cause of action, the Second Amended Complaint sufficiently pleads a claim for quiet title to establish title between adverse claimants. The foreclosure sale has placed a cloud on Plaintiff's title to the property.

The Second Amended Complaint did not sufficiently plead facts to support the fifth and seventh causes of action for intentional infliction of emotional distress and slander of title, respectively.

With regard to the fifth cause of action for intentional infliction of emotional distress, the Second Amended Complaint fails to state a claim because it does not contain sufficient allegations that anyone "intended" to cause or "acted with reckless disregard of the probability of causing" emotional distress to Plaintiff. Para. 64 alleges the damages common to all claims, which include financial issues, including that Plaintiff has suffered damage to her credit, overpaid interest, the title to the house is clouded, Plaintiff may lose her home and Plaintiff has suffered damage to her reputation in the community. There is no mention of severe emotional damages such as sleeplessness, anxiety, depression or the like.

With regard to the seventh cause of action for slander of title, the Second Amended Complaint fails to state a cause of action because all of the actions complained of are protected by the litigation privilege found at Civil Code §§47 and 2924(b).

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, plaintiff is directed to prepare, circulate and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Jonathan E. Karesh, Department 20.

DEMURRER TO SECOND AMENDED COMPLAINT OF MANANTAN BY MOAB INVESTMENT GROUP, LLC

**TENTATIVE RULING:**

Defendant Moab Investment Group, LLC's Demurrer to Plaintiff's Second Amended Complaint is OVERRULED.

Plaintiff has sufficiently pleaded facts to support the sixth and eighth causes of action against Defendant Moab.

For purposes of the demurrer, all material facts in the pleadings are assumed to be true. *Ellenberger v. Espinosa* (2004) 30 Cal.App.4th 943, 947. However, the deductions or conclusions of fact or law are not accepted as true. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. A demurrer can be used to challenge defects that appear on the face of the pleading under attack or from matters outside the pleadings that are judicially noticeable. *Ibid.*

In the Second Amended Complaint, Plaintiff alleges that the Trustee's Deed is void (SAC ¶¶62 and 147) and not voidable, thus there was no sale at all, therefore there can be no bona fide purchaser. An instrument which is wholly void cannot be made the foundation of a good title, even under the equitable doctrine of bona fide purchase. *Trout v. Trout* (1934) 220 Cal. 652, 656.

Because [Plaintiff] properly alleged the foreclosure was void and not merely voidable, tender was not required to state a cause of action for quiet title or for cancellation of instruments. *Sciarratta v. U.S. Bank National Ass'n.* (2016) 247 Cal.App.4th 552, 568.

A quiet title action is to establish title between adverse claimants. Plaintiff has pled sufficient facts to satisfy the elements of a quiet title action by claiming that she and Defendant Moab are adverse claimants to the title to the property. (SAC ¶¶155, 157-158 and 163.)

Moving party's Request for Judicial Notice in Support of Defendant Moab Investment Group, LLC's Demurrer to Plaintiff's Second Amended Complaint is GRANTED. Evid. Code §452(c), (d) and (h). The Court takes judicial notice of the existence and contents of the documents attached as Exs. 1 and 2, though not of disputed or disputable facts stated in Ex. 2. *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1102.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, prevailing party is directed to prepare, circulate and submit a written order reflecting this Court's

ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Jonathan E. Karesh, Department 20.

Plaintiff is reminded that there is a 15-page limit to all memoranda of points and authorities in opposition. CRC 3.1113(d).

MOTION TO STRIKE PORTIONS OF PLAINTIFF'S SECOND AMENDED COMPLAINT BY WELLS FARGO BANK, N.A.

**TENTATIVE RULING:**

Defendants Wells Fargo Bank, N.A. DBA America's Servicing Company and U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, National Association as Trustee, successor by merger to LaSalle Bank, National Association as Trustee for Morgan Stanley Mortgage Loan Trust 2007-7AX's Motion to Strike Portions of Plaintiff's Second Amended Complaint is DENIED.

Punitive damages are available when it is found that Defendant's acts were "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary people." *Mock v. Michigan Millers Mut. Ins. Co.* (1992) 4 Cal.App.4th 306, 331. Plaintiff's Second Amended Complaint has pleaded sufficient facts of Defendants' "vile, base and contemptible" acts to support a claim for punitive damages.

If Defendants are entitled to attorney's fees under the Deed of Trust in the case of the borrower's default, which is provided for under §§9 and 22, then Plaintiff is also entitled to attorney's fees, if Plaintiff is the prevailing party, as provided by Civ. Code §1717, which calls for reciprocal attorney's fees under a unilateral contract provision.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, prevailing party is directed to prepare, circulate and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Jonathan E. Karesh, Department 20.

JOINDER OF QUALITY LOAN SERVICE CORPORATION TO DEFENDANT'S DEMURRERS TO PLAINTIFF'S SECOND AMENDED COMPLAINT

**TENTATIVE RULING:**

Defendant Quality Loan Service Corporation's Joinder to Defendants Wells Fargo Bank, N.A. DBA America's Servicing Company and U.S. Bank, N.A., as

Trustee, successor-in-interest to Bank of America, National Association as Trustee, successor by merger to LaSalle Bank, National Association as Trustee for Morgan Stanley Mortgage Loan Trust 2007-7AX's Demurrer to Plaintiff's Second Amended Complaint is GRANTED and the demurrer is sustained without leave to amend as to all causes of actions stated against Quality Loan Service Corporation. This joining defendant benefits from the immunity provisions found at Civil Code §2924(b) in that its alleged acts are protected by the litigation privilege. Plaintiff has also failed to plead malice on the part of this defendant.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, prevailing party is directed to prepare, circulate and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Jonathan E. Karesh, Department 20.