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LINE 8	
CIV 535902	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.

**NOTE: This Court did not request further briefing, so it did not review Plaintiff's "Sur-Reply" or Defendants' Reply to the Sur-Reply.**

**TENTATIVE RULING:**

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.

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*.

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.

The recent California Supreme Court decision in *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal. 4th 919 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.

The Plaintiff has standing to sue under *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal. 4th 919, which decided, "A homeowner who has been foreclosed on by one with no right to do so has suffered an injurious invasion of his or her legal rights at the foreclosing entity's hands. No more is required for standing to sue." 62 Cal. 4th at 939.

The *Yvanova* court ruled that only the entity holding the beneficial interest under the deed of trust may instruct the trustee to commence a nonjudicial foreclosure. 62 Cal. 4th at 935. If a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void, meaning of no legal force or effect whatsoever, the foreclosing entity has acted without legal authority by pursuing a trustee's sale, and such an unauthorized sale constitutes a wrongful foreclosure. *Ibid.*

Although *Saterbak v. JP Morgan Chase Bank* (2016) 245 Cal. App. 4th 808 concludes that an untimely assignment to a securitized trust made after the trust's closing date is voidable only, the *Saterbak* case is a preforeclosure case, unlike the case at bar. The court finds that the *Glaski* case is controlling and more persuasive. Although the case relied upon by *Glaski (Rajamin)* has been called into question, the *Glaski* case itself has not yet been overruled.

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 does not contain sufficient allegations that anyone "intended" to cause or "acted with reckless disregard of the probability of causing" emotional distress to Plaintiff. There is no mention of severe emotional damages such as sleeplessness, anxiety, depression or the like. Plaintiff is granted leave to amend this cause of action.

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 secs. 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.

In the Second Amended Complaint, Plaintiff alleges that the Trustee's Deed is void (SAC paras. 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 paras. 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 sec. 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. *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, 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.

Plaintiff is reminded that there is a 15-page limit to all memoranda of points and authorities in opposition to a demurrer or motion. 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 secs. 9 and 22, then Plaintiff is also entitled to attorney's fees, if Plaintiff is the prevailing party, as provided by Civ. Code sec. 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, 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.

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

**TENTATIVE RULING:**

Plaintiff has dismissed with prejudice the case against Defendant Quality Loan Service Corporation.