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CIV535902 REGINA MANANTAN VS WELLS FARGO BANK, N.A., ET AL

REGINA MANANTAN  
WELLS FARGO BANK, N.A.

TIMOTHY L. MCCANDLESS  
BRIAN S. WHITTEMORE

MOTION FOR RECONSIDERATION RE: DEMURRER

**TENTATIVE RULING:**

Defendants Wells Fargo Bank, N.A., D/B/A 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 Demurrer's Motion for Reconsideration is GRANTED under CCP sec. 1008(a).

The Court reconsiders its Order of July 29, 2016 sustaining in part and overruling in part Defendants Wells Fargo Bank, N.A., D/B/A 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 demurrer to the Second Amended Complaint.

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.

In the Second Amended Complaint, Plaintiff alleges that the Trustee's Deed is void (SAC paras. 62, 147), and not voidable, thus there was no sale at all, therefore there can be no bona fide purchaser. However, Plaintiff's conclusions of law, that the deed is void, rather than voidable, are not accepted as true.

A mortgagor whose loan is owned by a trust does not have standing to challenge the assignee's possession or status as assignee based on purported noncompliance with certain provisions of the trust's pooling and service agreement. *Yhudai v. Impac Funding Corporation* (2016) 2016 WL 4098719.

Therefore, the demurrer to the Second Amended Complaint IS SUSTAINED WITHOUT LEAVE TO AMEND as to cause of action nos. 1, 6, and 8. The Demurrer was SUSTAINED without leave to amend to cause of action nos. 5 and 7 previously and remains so.

The demurrer to the Second Amended Complaint is OVERRULED as to cause of action nos. 2, 3 and 4 because those causes of action do not rely on a challenge to the securitization of the note.

Moving Party's Request for Judicial Notice in Support of its Motion for Reconsideration is GRANTED.

With regard to the first cause of action, the Second Amended Complaint does not state a claim for breach of security instrument, specifically violation of sec. 22 of the 2007 Deed of Trust, because Plaintiff does not have standing to do so, as a stranger to the transaction in which the note was securitized.

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 sec. 17200, the Second Amended Complaint sufficiently alleges other predicate claims (above) 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. However, Plaintiff's conclusions of law, that the deed is void, rather than voidable, are not accepted as true. Plaintiff, as a stranger to the transaction, does not have standing to challenge the transaction in which the note was securitized.

With regard to the eighth cause of action, the Second Amended Complaint does not sufficiently plead a claim for quiet title because it is solely based on Plaintiff's challenge to the securitization of the note, which Plaintiff does not have the standing to make.

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 contested, 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.