California Nuisance Lawsuit Intended to Delay Foreclosure

A recent California case provides good precedent for dealing with nuisance lawsuits that are intended to delay valid foreclosures. In *Brown v. Deutsche Bank National Trust Company* —Cal.Rptr.3d—, 2016 WL 2726229 (May 9, 2016), plaintiff sued defendants to stop them from foreclosing on her home. The trial court sustained defendants' demurrer without leave to amend, and dismissed plaintiff's complaint. The court of appeal affirmed.

In 2004, plaintiff took a $450,000 home loan from Washington Mutual Bank. Washington Mutual failed in 2008, and the Federal Deposit Insurance Corporation ("FDIC") was appointed its receiver. The FDIC sold many of Washington Mutual's assets, including loans and mortgage servicing rights, to JPMorgan Chase Bank ("Chase"). The terms of that sale were memorialized in a Purchase and Assumption Agreement ("P&A Agreement").

In 2011, after plaintiff was over $60,000 in arrears on her loan, California Reconveyance Company ("CRC"), as trustee for Chase, initiated nonjudicial foreclosure. During the pendency of foreclosure proceedings Chase assigned the loan to Deutsche Bank National Trust Company ("Deutsche Bank").

In her lawsuit, plaintiff alleged that the assignments of her loan to Chase and Deutsche Bank were invalid, and that Deutsche Bank and CRC lacked authority to proceed with the foreclosure. The court of appeal upheld the dismissal of her lawsuit, however, for the following reasons:

First, the court recognized that **California's nonjudicial foreclosure process is intended to be a "quick, inexpensive[,] and efficient remedy against a defaulting debtor/trustor."** *Citing Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830. Accordingly, **courts have held that borrowers cannot bring a preemptive action to challenge an entity's authority to foreclose, reasoning that these actions would "fundamentally undermine the nonjudicial nature of the process and introduce the possibility of lawsuits filed solely for the purpose of delaying valid foreclosures."** *See, Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 512, *citing Gomes v. Countrywide Home Loans, Inc*. (2011) 192 Cal.App.4th 1149, 1152; *accord Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 814-815.

Additionally, the court found that plaintiff's allegations regarding **defendants' lack of authority to foreclose were not supported by any reasoned argument**, and in fact were contradicted by matters of which the court could take judicial

notice, including the P&A Agreement and other loan and assignment documents. A demurrer, like a Federal Rule 12(b)(6) motion to dismiss, must be based solely on the face of the pleadings and matters of which judicial notice may be taken. Cal. Code Civ. Proc., §430.30(a). Ordinarily extrinsic evidence may not be considered. But **courts have upheld taking judicial notice of the contents of foreclosure-related documents, including assignment documentation**. *E.g.*, *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 756, 759-760; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-266.