

Prejudice Element of Wrongful Foreclosure

If a property owner loses their property through a foreclosure sale initiated by someone who did not validly own the debt, has the property owner automatically suffered enough “prejudice” to pursue a claim for wrongful foreclosure? Or does the property owner *also* need to show that it would have been able to avoid foreclosure by paying the debt to the true lender?

The California Supreme Court’s recent *Yvanova* decision (reviewed on Money and Dirt here: [California Supreme Court: Borrowers Have Standing to Allege Wrongful Foreclosure Based on Void Assignment of Note](#)) only partially addressed the “prejudice” issue. In *Yvanova*, the Supreme Court discussed prejudice, but only “in the sense of an injury sufficiently concrete and personal to provide standing,” not “as a possible element of the wrongful foreclosure tort.” The Court held that the plaintiff in that case demonstrated sufficient prejudice — lost ownership of property in an allegedly illegal foreclosure sale — to confer standing to pursue a wrongful foreclosure claim.

A recent opinion by the California Court of Appeal (Fourth District, Division One, in San Diego) — [Sciarratta v. U.S. Bank National Association](#) — picks up the “prejudice” analysis where *Yvanova* left off, and addresses prejudice as an element of a wrongful foreclosure claim.

The facts: a twisted tale of note assignments

In 2005, the property owner obtained a \$620,000 loan secured by real property in Riverside County. The note and deed of trust identified the lender as Washington Mutual (WaMu).

In April 2009, JPMorgan Chase Bank (Chase), as successor in interest to WaMu, assigned the note and deed of trust to Deutsche Bank. The trustee promptly recorded a Notice of Default, followed by a Notice of Sale.

In November 2009, Chase recorded a document assigning the note and deed of trust to Bank of America (even though just months earlier, Chase had already assigned the note and deed of trust to Deutsche Bank — oops!). On the same date as the assignment, Bank of America recorded a Trustee’s Deed, reflecting that Bank of America had acquired the property at a trustee’s sale in exchange for a credit bid.

In December 2009, Chase recorded a “corrective” assignment of the note and deed of trust, suggesting that the April 2009 assignment to Deutsche Bank was a mistake, and was really intended to be an assignment to Bank of America.

The property owner sued the banks and the trustee for wrongful foreclosure.

The trial court’s ruling: no prejudice; case dismissed

The banks filed a demurrer, arguing that the property owner could not allege “prejudice,” which is an essential element of a wrongful foreclosure claim.

The trial court sustained the banks’ demurrer and dismissed the case.

The property owner appealed.

The court of appeal’s opinion

The Court of Appeal reversed, holding that a property owner who loses property to a foreclosure sale initiated by someone purporting to exercise rights under a void assignment suffers enough prejudice to state a claim for wrongful foreclosure.

The court first relied on the Supreme Court’s holding in *Yvanova* that “only the entity currently entitled to enforce a debt may foreclose on the mortgage or deed of trust securing that debt.” In this case, based on the clear paper trail of assignments, the entity entitled to enforce the debt was Deutsche Bank, but the entity that foreclosed was Bank of America.

Based on the complaint’s allegations, the court noted, the assignment was not merely voidable but void. The court observed, “Chase, having assigned ‘all beneficial interest’ in [the property owner’s] notes and deed of trust to Deutsche Bank in April 2009, could not assign again the same interests to Bank of America in November 2009.”

The court concluded that a property owner “who has been foreclosed on by one with no right to do so — by those facts alone — sustains prejudice or harm sufficient to constitute a cause of action for wrongful foreclosure.” The court added:

The critical issue is not the plaintiff’s ability to pay, but rather whether defendant’s conduct resulted in the plaintiff’s harm; i.e., a foreclosure that was wrongful

because it was initiated by a person or entity having no legal right to do so; i.e. holding void title.

The court also offered policy grounds supporting its decision. The court's ruling would encourage "lending institutions to employ due diligence to properly document assignments and confirm who currently holds a loan." A contrary ruling, on the other hand, would subject property owners to unfairly losing their property in foreclosure to someone who does not even own the underlying debt, with no court oversight.

Lesson

The *Sciarratta* decision will make it easier for property owners to assert wrongful foreclosure claims. "Prejudice" can be established by allegations that the foreclosure sale was initiated by someone who did not own the debt due to a void assignment.

The lesson for lenders is obvious: vigorously document and track assignments of a note and deed of trust. Avoid "paper trail slop."

For borrowers, the *Sciarratta* decision will help a case survive early attacks, such as demurrer. But the plaintiff will still ultimately need to prove damages — such as moving expenses, lost rental income, damage to credit, emotional distress, and (the holy grail, if available) lost equity. The *Sciarratta* decision did not address the element of damages.