

**In re: ALLANA BARONI, Debtor.  
ALLANA BARONI, Appellant,**

**v.**

**WELLS FARGO BANK, N.A., as Trustee for Structured Adjustable  
Rate Mortgage Loan Trust Mortgage Pass-through Certificates, Series  
2005-17, Appellee.**

[No. 15-60082.](#)

**United States Court of Appeals, Ninth Circuit.**

Argued and Submitted August 30, 2017, Pasadena, California.  
Filed September 22, 2017.

Appeal from the Ninth Circuit Bankruptcy Appellate Panel, BAP No. 14-1579, Kurtz, Dunn, and Taylor, Bankruptcy Judges, Presiding.

Before: W. FLETCHER and IKUTA, Circuit Judges, and BARKER,<sup>[\*\*]</sup>  
District Judge.

**NOT FOR PUBLICATION**

**MEMORANDUM**<sup>[\*]</sup>

Allana Baroni appeals the Bankruptcy Appellate Panel's (BAP) decision affirming the bankruptcy court's grant of summary judgment to Wells Fargo. We have jurisdiction under 28 U.S.C. § 158(d)(1).

The undisputed facts in the record established that Wells Fargo possessed Baroni's promissory note indorsed in blank. **As the holder of a negotiable instrument, Wells Fargo is entitled to enforce the note** in Baroni's bankruptcy case. Cal. Com. Code §§ 1201(b)(21)(A), 3301.

**Baroni now argues that notes secured by a deed of trust to real property are nonnegotiable and that the statute of frauds prohibits Wells Fargo from enforcing the note.** Because she failed to raise these arguments to the bankruptcy court or BAP, they are waived. [In re Mercury Interactive Corp. Sec. Litig.](#), 618 F.3d 988, 992 (9th Cir. 2010). In any event, **both arguments lack merit.**

First, a negotiable instrument may be accompanied by a deed of trust. Cal. Com. Code § 3104(a)(3); [Wilson v. Steele](#), 211 Cal. App. 3d 1053, 1061 (1989).

Second, the **FAILURE TO SATISFY THE STATUTE OF FRAUDS MERELY RENDERS A CONTRACT VOIDABLE, NOT VOID.** [Masin v. Drain](#), 150 Cal. App. 3d 714, 717 (1984). **Baroni lacks standing to challenge assignments as voidable.** See [Yvanova v. New Century Mortg. Corp.](#), 62 Cal. 4th 919, 939-40 (2016).

Finally, because we hold that Wells Fargo is entitled to enforce the note as the holder of a negotiable instrument, we do not address whether it could alternatively enforce the note through an unbroken chain of title.<sup>[1]</sup>

AFFIRMED.

[\*\*] The Honorable Sarah Evans Barker, United States District Judge for the District of Southern Indiana, sitting by designation.

[\*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[1] Since we do not address Wells Fargo's chain of title, we deny Baroni's contested motion, filed September 19, 2016, for judicial notice of a purported assignment of the deed of trust.