

MICHAEL PETERS, Plaintiff and Appellant,
v.
NEW CENTURY MORTGAGE CORPORATION, Defendant and
Respondent.

[No. E066771.](#)

Court of Appeals of California, Fourth District, Division Two.

Filed March 16, 2018.

APPEAL from the Superior Court of Riverside County, Super.Ct. No. RIC1404419, David E. Gregory, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Ronald H. Freshman for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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OPINION

MILLER, J.

Plaintiff and appellant Michael Peters appeals the dismissal of his quiet title action after a default prove-up hearing. Peters filed a complaint seeking declaratory relief and to quiet title pursuant to Code of Civil Procedure section 761.020^[1] against defendant and respondent New Century Mortgage Corporation^[2] (New Century) with whom Peters had executed a promissory note and deed of trust in exchange for a loan to purchase property in Moreno Valley.

Peters presents the following issues on appeal: (1) whether a borrower has legal standing to contest a lender's right to assert a lien against real property, such as a mortgage, and maintain a quiet title action; and (2) whether the

facts set forth in the complaint, and as established by the evidence at the prove-up hearing, are sufficient to establish a cause of action to quiet title.

FACTUAL AND PROCEDURAL HISTORY

A. COMPLAINT

On May 1, 2014, Peters filed his complaint for declaratory relief and quiet title (Complaint) against New Century and "all persons or entities unknown, claiming any legal or equitable right, title, estate, lien or interest in the property described in this complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto" (all caps. omitted). Peters alleged he was the owner of the parcel commonly known as 11540 Steeple Chase Drive in Moreno Valley (Property). New Century at all times was a California corporation doing business in the State of California. However, according to the California Secretary of State, New Century was in "surrendered status" in California.

Peters obtained the Property by a grant deed from the Secretary of Housing and Urban Development recorded on December 29, 2000. Peters obtained a loan in the amount of \$356,000 and signed a promissory note (Note) and deed of trust (DOT) as security for the loan in favor of New Century. The deed of trust filed on August 11, 2006, stated that Mortgage Electronic Registration Systems Inc. (MERS)^[3] was the separate corporation acting as the nominee for New Century and the lender's successors and assigns. Peters alleged that his Note was transferred to "MASTR Asset-Backed Securities Trust 2006-NC3" (MASTR) with a closing date of December 28, 2006. Peters alleged that the transfer of the note to MASTR was not recorded properly and the MASTR trust had closed for further loans on December 28, 2006. The failure to properly record the transfer created a break in the chain of title. Based on the break in the chain of title, a legal foreclosure would not be possible. Peters also appears to allege that no proper party possessed the Note and DOT.

As for his cause of action for declaratory relief, it is unclear. It provides that "Plaintiff contends there is a reasonable apprehension that if the defective purported Note, purported DOT; are left outstanding, each would and has caused serious injury, prejudice and damages to Plaintiff. Therefore Plaintiff applies for the adjudication and an order, i.e., declaratory relief that said instrument be cancelled." (Italics omitted.)

As for his quiet title action, he alleged that "From the origination of the purported refinancing, Defendants, and each one, in the manners specified hereinabove, have falsely and maliciously made claims adverse to Plaintiff and against his Property and against his Property by wrongfully recording fraudulent and false documents claiming encumbrances on Plaintiff's Property. Therefore; pursuant, but not thereby limited to, CCP § 761.020 (d) et. seq. *Id*, Plaintiff seeks a determination and declaratory judgment quieting title as of the date of this filing."

In listing the elements of quiet title, Peters alleged the adverse parties were U.S. Bank, N.A. that was claiming to be the trustee in which Peters's Property was allegedly held in trust on behalf of the holders of the MASTR who claim to be the current beneficial holder of the Note and DOT. As will be discussed *post*, a DOT was filed on March 9, 2015, in which MERS granted U.S. Bank, N.A. as trustee under a pooling and servicing agreement dated as of December 1, 2006, for MASTR. Ocwen Loan Servicing, LLC. was servicing the loan.

In his prayer for relief, he sought to have the trial court order that the DOT and all other documents recorded be cancelled and declaratory judgment and adjudication of the controversies related to the legal rights and duties of the parties.

Peters filed a securitization analysis and mortgage assignment report. It was provided that "Lindsay Stiglbauer" prepared the report but no information as to her qualifications was provided. The report provided loan transaction details for the Property. It provided information that there were no "recorded" assignments to MASTR from New Century. The report provided its determination as to the proper chain of title.

Peters also attached a letter from OCWEN Loan Servicing, LLC dated March 21, 2012. It stated MASTR was the holder of the Note. There was no evidence that Peters had defaulted on his loan.

Peters was granted an order that New Century could be served by publication and substitute service on the California Secretary of State. No direct service was made on the other parties, e.g. MERS or U.S. Bank, N.A.

B. REQUEST FOR ENTRY OF DEFAULT AND PROVE-UP HEARING

On July 27, 2015, Peters filed a request for a court-ordered entry of default and prove-up hearing for the quiet title claim based on the failure of New Century to respond. He attached a declaration of service made on New Century. He also attached the entry of default by the clerk of the court. He submitted an order for judgment for quiet title and cancellation of deed of trust.

Peters attached a declaration from William J. Paatalo. He was a private investigator licensed in Oregon. He claimed to be an expert at investigating foreclosure fraud and chain of title and other issues related to the securitization of residential and commercial mortgage loans.

Paatalo was hired by Peters's counsel to review the chain of title and securitization of the DOT for the Property. In his opinion, "There are significant defects and breaks in the chain of title to the Peters Deed of Trust, creating a cloud upon the title." He supported this conclusion by providing that New Century declared bankruptcy in 2007 and was liquidated pursuant to a final court order on July 15, 2008. New Century terminated its "Executory Contract" with MERS on March 31, 2008. However, the only assignment of Peters's DOT was recorded on March 9, 2015, by MERS solely as the nominee of New Century. It was assigned to U.S. Bank National Association, as trustee, under a pooling and servicing agreement dated as of December 1, 2016, for MASTR. Paatalo concluded that due to New Century's bankruptcy and liquidation in 2008, MERS acting solely as the nominee for New Century was an "impossibility." He also stated that Peters was current on his payments on the Note.

C. FIRST AND SECOND HEARING

At a first hearing held August 31, 2015, only Peters and his counsel were present. The trial court indicated it had read all of the documents. Peters's counsel explained it was trying to convert the secured debt to unsecured debt, not get his house free and clear from any debt. The trial court wanted case authority for the fact that it could strip the encumbrance from the Property and convert a secured to an unsecured loan.

At the next hearing, held on September 30, 2015, the trial court clarified what it believed to be the issue in the case: Peters sought to expunge a deed of trust he willingly executed on the grounds that the lender subsequently engaged in acts of assignment of loan pooling and of appointing trustees for

which Peters cannot confirm are out there or exist. The trial court questioned whether Peters had standing to bring such issues. It was the trial court's belief that Peters had no legal standing preforeclosure to force the lender to establish the requisite chain of title. The trial court noted, "The law is clear that a borrower can't force a mortgage or to prove up their right to foreclose on the property prior to the foreclosure."

The trial court inquired, "So did you have authority wherein a borrower has obtained quiet title relief expunging a deed of trust wherein the challenge to that deed of trust is based upon an alleged pre-foreclosure break in chain of title, chain of assignment, notices of assignment, et cetera, perhaps allegedly not being able to be shown notices of the alleged original encumbrances being unable to be produced?"

Peters's counsel responded, "I was unable to find case law to support that particular—that particular issue." The trial court responded it was not surprised because that type of fact pattern and legal position had been presented to it previously, and it was unable to find supporting case law.

Peters's counsel sought more time to possibly amend to include causes of action for slander of title and cancellation of instruments. The trial court responded, "I don't care what the theory of recovery is. It's the factual basis under which your client seeks relief that I don't believe affords him standing or affords him the right to a judgment quieting title and stripping the property of the deed of trust." The trial court again asked to be given a California case under a similar fact pattern in which a court had granted relief under a similar fact pattern. The trial court confirmed that such relief could be under any theory, including slander of title. Peters was given 60 days to find a case.

D. FINAL FILING AND HEARING

On December 9, 2015, Peters filed a document addressing the questions posed by the trial court at the two prior hearings. Peters essentially argued that he had complied with the statutory provisions outlined in section 764.010. He contended, "This Court is looking for authority to support what [Peters] seeks by means of this Quiet Title action and that authority is statutory and outlined in the Code of Civil Procedure § 764.010, et. seq. and in California Civil Code § 3412. The law affords [Peters] this right to quieting title and canceling or delivering up the deed because the facts of

this case demand such action by the Court and absent any case law authority the requested relief still should be obtained by operation of law." Peters requested the court take judicial notice of a "Santa Barbara" case, which awarded a judgement for quiet title (but provided no facts of the case) and referred to Paatalo's declaration that New Century had filed bankruptcy so transfer of the DOT seven years after the bankruptcy was impossible.

At the next hearing, Peters began to testify regarding service of New Century. The trial court declared jurisdiction over New Century based on the default before the trial court; the trial court wanted to address the merits. The trial court also agreed to take judicial notice of the documents attached to Peters's request for judgment.

Peters also testified regarding the exhibits. Paatalo was an expert hired by Peters to conduct an audit of his mortgage and the Property. Paatalo reached the conclusion there were significant breaks in title on the Property. In 2008, New Century declared bankruptcy and liquidated. It was impossible for New Century to transfer the DOT to MERS on February 9, 2015. There were no valid transfers from New Century, including to MASTR.

Peters argued that pursuant to section 764.010 he made an adequate showing that a judgment of quiet title should be entered. He argued, "So, plaintiff further requests the deed of trust, dated August 4th, 2006, and is recorded as document XXXXXXXXXXXX, which operates as the security instrument on the loan, be canceled and expunged as a cloud on plaintiff's title."

The trial court inquired what adverse consequence would befall him if the request was not granted. Peters responded that there was a cloud on title. He also argued that there were persons who were claiming they were the rightful owners. The trial court asked if he was unsure who to pay his mortgage to, i.e, what were the competing claims. Further, the trial court noted, "I also don't have evidence, and I don't have information, in fact, you did not include all unknown persons as defendants in this action. Neither did you serve unknown persons. And, therefore, the only judgment that it appears to me that I could possibly consider—be considering making is as against Defendant New Century Mortgage Corporation, not any and other defendant or entities claiming any adverse interest to [Peters]. They were not named. They were not served. They are not parties to this lawsuit." Peters's counsel insisted that the publication notice included unnamed parties.

The trial court again inquired what would be the harm. Peters responded there could potentially be competing claims. Further, since New Century declared bankruptcy, it could not transfer the DOT. As such, the DOT was "sitting out there that's just basically clouding up my client's title, and all we're trying to do is get rid of it." Peters's counsel admitted that Peters had been making mortgage payments to the servicing company for nine years.

The trial court inquired if there was any evidence Peters was not receiving credit toward his obligation for the payments. The trial court also noted that as a borrower Peters did not have standing preforeclosure to contest someone's right to foreclose. The trial court noted, "It's a successor in interest who claims to be a lawful successor in interest to an obligation [Peters] validly, voluntarily and lawfully undertook and tells me he continues to do. Where's his jeopardy?" There was no basis in the law to strip the title of the DOT.

Peters's counsel responded that the "trial court" had failed to provide any authority that he could not file a quiet title action under the facts. The quiet title statutes provided authority. The trial court concluded, "All right. Then let's make it simpler. [¶] You have not proven to me that New Century Mortgage holds an interest adverse to your client's interest. Therefore, judgment of dismissal."

A judgment of dismissal was entered on July 14, 2016. It provided, "The Court finds that Plaintiff has failed to establish that New Century Mortgage Corporation has an interest in plaintiff's property which is sufficiently adverse to Plaintiff's interest such that it may be said to cloud title or that Plaintiff's interest in the property is damaged in any way by Defendant's Deed of Trust. The Action is dismissed with prejudice."

DISCUSSION

On appeal, Peters contends the trial court held that he lacked standing to maintain a quiet title action. He insists the evidence presented at the hearing was sufficient to support his standing to bring a quiet title action. He claims he met all of the statutory requirements to present a prima facie case by stating the adverse claim to title, a legal and physical description of the property and the other requirements. Peters contends that contrary to the determination of the trial court, "a mortgage is an adverse claim to title."

A claim to quiet title requires: (1) a verified complaint, (2) a description of the property, (3) the title to which a determination is sought, (4) the adverse claims to the title against which a determination is sought, (5) the date as of which the determination is sought, and (6) a prayer for the determination of the title. (Code Civ. Proc., § 761.020; [Deutsche Bank Nat. Trust Co. v. McGurk](#) (2012) 206 Cal.App.4th 201, 210.) Section 764.010 provides, "The court shall examine into and determine the plaintiff's title against the claims of all the defendants. The court shall not enter judgment by default but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law." As such, "notwithstanding a defendant's default in a quiet title action, the **plaintiff is not automatically entitled to judgment in its favor but must prove its case in an evidentiary hearing with live witnesses and any other admissible evidence.**" ([Nickell v. Matlock](#) (2012) 206 Cal.App.4th 934, 947; see also [Yeung v. Soos](#) (2004) 119 Cal.App.4th 576, 580-581.)

"Standing is a threshold issue, because without it no justiciable controversy exists." ([Saterbak, supra](#), 245 Cal.App.4th at p. 813.)^[4] **Plaintiff bears the burden of proving standing.** ([Mendoza v. JPMorgan Chase Bank, N.A.](#) (2016) 6 Cal.App.5th 802, 810.) "When as here, the facts relevant to standing are undisputed, '[s]tanding is a question of law that we review de novo.'" ([Scott v. Thompson](#) (2010) 184 Cal.App.4th 1506, 1510.)

In [Jenkins v. JPMorgan Chase Bank, N.A.](#) (2013) 216 Cal.App.4th 497 ([Jenkins](#)), disapproved of on other grounds in [Yvanova v. New Century Mortg. Corp.](#) (2016) 62 Cal.4th 919 ([Yvanova](#)), the court held in denying a cause of action for declaratory relief, that, **"As an unrelated third party to the alleged securitization, and any other subsequent transfers of the beneficial interest under the promissory note, [Peters] lacks standing to enforce any agreements, including the investment trust's pooling and servicing agreement, relating to such transactions."** ([Jenkins](#), at p. 515.)

In [Yvanova, supra](#), 62 Cal.4th 919, the California Supreme Court addressed standing in a case involving a foreclosure. The underlying facts are similar to this case. "In 2006, plaintiff executed a deed of trust securing a note for \$483,000 on a residential property in Woodland Hills, Los Angeles County. [¶] The lender, and beneficiary of the trust deed, was defendant [New

Century]. New Century filed for bankruptcy on April 2, 2007, and on August 1, 2008, it was liquidated and its assets were transferred to a liquidation trust. [¶] On December 19, 2011, according to the operative complaint, New Century (despite its earlier dissolution) executed a purported assignment of the deed of trust to Deutsche Bank National Trust, as trustee of an investment loan trust the complaint identifies as `Msac-2007 Trust-He-1 Pass Thru Certificates (the Morgan Stanley investment Trust)." (*Id.* at pp. 924-925.) In addition, the deed of trust was transferred several additional times. The property was foreclosed upon and sold at auction by a company named Western Progressive, LLC, as trustee. (*Id.* at p. 925)

The plaintiff filed a second amended complaint, to which the defendants demurred, against New Century, the Morgan Stanley Investment Trust, Western Progressive and all of the additional entities to which the deed of trust was transferred. The plaintiff contended a single cause of action of quiet title on the grounds that the assignment of the deed of trust to Morgan Stanley investment trust was void because New Century's assets had been transferred to a bankruptcy trustee prior to the purported transfer, and the Morgan Stanley investment trust had closed to new loans in 2007. (*Yvanova, supra*, 62 Cal.4th at pp. 925-926.) The trial court sustained the defendants' demurrer and the Court of Appeal affirmed the judgment. (*Id.* at pp. 925-926.) The Court of Appeal reasoned that the plaintiff had no standing to attack the improprieties in the assignment of her deed of trust. As a third party, the plaintiff had no standing to enforce the transfer. **The Supreme Court granted review on the narrow question, "In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void?"** (*Id.* at p. 926.)

The Supreme Court noted, "Defendants emphasize, correctly, that a borrower can generally raise no objection to assignment of the note and deed of trust. **A promissory note is a negotiable instrument the lender may sell without notice to the borrower. [Citation.] The deed of trust, moreover, is inseparable from the note it secures, and follows it even without a separate assignment.**" (*Yvanova, supra*, 62 Cal.4th at pp. 927.) It further stated, **"A deed of trust may thus be assigned one or multiple times over the life of the loan it secures. But if the borrower defaults on the loan, only the current beneficiary may direct the trustee to undertake the nonjudicial foreclosure process."** (*Id.* at pp. 927-928, italics added.)

Accordingly, "We conclude a home loan borrower has standing to claim a nonjudicial foreclosure was wrongful because an assignment by which the foreclosing party purportedly took a beneficial interest in the deed of trust was not merely voidable but void, depriving the foreclosing party of any legitimate authority to order a trustee's sale." (*Id.* at pp. 942-943.)

The *Yvanova* court also recognized the holding was narrow. First, the court reviewed [Jenkins, supra, 216 Cal.App.4th 497](#). The supreme court noted that in *Jenkins*, it "held California law did not permit a `preemptive judicial action[] to challenge the right, power, and authority of a foreclosing "beneficiary" or beneficiary's "agent" to initiate and pursue foreclosure.' [Citation.] Relying primarily on [Gomes v. Countrywide Home Loans, Inc. \(2011\) 192 Cal.App.4th 1149](#), [], *Jenkins* reasoned that such preemptive suits are inconsistent with California's comprehensive statutory scheme for nonjudicial foreclosure; allowing such a lawsuit "would fundamentally undermine the nonjudicial nature of the process and introduce the possibility of lawsuits filed solely for the purpose of delaying valid foreclosures." (Yvanova, supra, 62 Cal.4th at pp. 933-934) The *Yvanova* court held, "[t]his aspect of *Jenkins*, disallowing the use of a lawsuit to preempt a nonjudicial foreclosure, is not within the scope of our review, which is limited to a borrower's standing to challenge an assignment in an action seeking remedies for *wrongful foreclosure*." (*Id.* at p. 934.) It further held, "**We do not hold or suggest that a borrower may attempt to preempt a threatened nonjudicial foreclosure by a suit questioning the foreclosing party's right to proceed.**" (*Id.* at p. 924.) As such, the finding of standing in *Yvanova* is limited to postforeclosure proceedings. (See [Saterbak, supra, 245 Cal.App.4th at p. 815](#).)

In *Saterbak*, the plaintiff appealed the dismissal of her first amended complaint in which she objected to the transfer of her DOT in a preemptive action to determine whether the transferee of the DOT could initiate a nonjudicial foreclosure sale. ([Saterbak, supra, 245 Cal.App.4th at p. 814](#).) The court distinguished *Yvanova*. It held, "The California Supreme Court recently held that a borrower has standing to sue for wrongful foreclosure where an alleged defect in the assignment renders the assignment void. [Citation.] However, *Yvanova's* ruling is expressly limited to the post-foreclosure context. [Citation.] Because *Saterbak* brings a preforeclosure suit challenging Defendant's ability to foreclose, *Yvanova* does not alter her standing obligations." (*Saterbak*, at p. 815, fn. omitted.)

Peters's action here is a preforeclosure dispute in which he seeks to quiet title by cancellation of the DOT. Peters, as a third party, has no standing to challenge the assignment of the Note and DOT during a preforeclosure proceeding. Peters has failed to establish that he has standing to raise this issue in a preforeclosure suit.

Moreover, *Yvanova* concluded that a borrower has standing to challenge an assignment as *void* but not *voidable*. **A VOIDABLE TRANSACTION IS ONE THAT IS SUBJECT TO RATIFICATION BY THE PARTIES.** A void transaction has no legal effect. (*Yvanova, supra*, 62 Cal.4th at pp. 929-930.) As *Yvanova* states, "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 [citations], the foreclosing entity has acted without legal authority by pursuing a trustee's sale, and such an unauthorized sale constitutes a wrongful foreclosure." (*Id.* at p. 935.)

Again, *Yvanova* only applies in a postforeclosure proceeding. Moreover, here, Peters makes no attempt to argue that the filing of the DOT in 2015 by MERS or the transfer of the Note in 2006 to MASTR was void or voidable. This is despite Peters citing to *Yvanova*. As such, Peters has forfeited any claim on appeal that the assignment was void by failing to raise it in his opening brief. Peters has failed to meet his burden of showing he has standing.

DISPOSITION

The judgment of dismissal is affirmed. Respondent is awarded its costs on appeal.

RAMIREZ, P. J. and SLOUGH, J., concurs.

[1] All further statutory references are to the Code of Civil Procedure unless.

[2] New Century did not appear in the trial court and has not submitted a brief in this court.

[3] "MERS is a private corporation that administers a national registry of real estate debt interest transactions. Members of the MERS System assign limited interests in the real property to MERS, which is listed as a grantee in the official records of local governments, but the members retain the promissory notes and mortgage servicing rights. The notes may thereafter be transferred among members without requiring recordation in the public records. [Citation.] [¶] Ordinarily, the owner of a promissory note secured by a

deed of trust is designated as the beneficiary of the deed of trust. [Citation.] Under the MERS System, however, MERS is designated as the beneficiary in deeds of trust, acting as "nominee" for the lender, and granted the authority to exercise legal rights of the lender.'" ([Saterbak v. JPMorgan Chase Bank, N.A. \(2016\) 245 Cal.App.4th 808, 816, fn. 6. \(Saterbak\).](#))

[4] Although the trial court determined that Plaintiff had failed to show that New Century held an adverse claim on the Property, the issue of standing disposes of the matter.