

**ABDUL HAMIDI, Plaintiff and Appellant,**  
**v.**  
**WELLS FARGO BANK, N.A., Defendant and Respondent.**

[No. A148528.](#)

**Court of Appeals of California, First District, Division Three.**

Filed September 18, 2017.

Appeal from the Contra Costa County, Superior Court No. CIVMSC15-01187.

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

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POLLAK, J.

Plaintiff Abdul Hamidi appeals a judgment dismissing his amended complaint seeking to prevent the nonjudicial foreclosure of his home following an order sustaining without leave to amend the demurrer of defendant Wells Fargo Bank, N.A. (Wells Fargo). The trial court sustained the demurrer on two grounds—that the securitization of plaintiff's loan did not deprive Wells Fargo as the successor in interest to the initial lender of the right to foreclose on the loan, which is the premise of each of plaintiff's claims, and that each of plaintiff's claims is preempted by the federal Home Owners' Loan Act (HOLA), 12 United States Code section 1461 et seq. The latter contention was the principal thrust of Wells Fargo's demurrer, to which the major portion of the trial court's order is directed, and plaintiff's appellate brief addresses only that issue.<sup>[1]</sup> Because there clearly is merit to the first ground, which plaintiff does not even mention in the single appellate brief he has filed, we shall affirm the judgment on that ground.

**Background**

Plaintiff's first amended complaint alleges that in September 2006 he "executed a promissory note and deed of trust in the amount of \$1,732,310

in favor of World Savings Bank . . . for the finance of real property" in San Ramon. The amended complaint alleges that "World Savings sold plaintiff's loan through a series of transactions to unknown third parties and finally being acquired by World Savings mortgage pass-through certificate 24. [¶] . . . Wells Fargo now claims to be the note holder and beneficiary." Judicially noticed facts submitted in support of Wells Fargo's demurrer establish that in 2007 World Savings Bank changed its name to Wachovia Mortgage FSB and that effective in November 2009 Wachovia Mortgage FSB became a division of Wells Fargo. **The amended complaint alleges that "it is impossible for Wells to have acquired plaintiff's loan from World Savings because World Savings sold plaintiff's loan before it was acquired by Wachovia."** Further, in May 2005 plaintiff received a notice of intent to foreclose on the loan "from Wells Fargo, however Wells Fargo has no authorization or right to foreclose upon the loan under Cal. Civ. Code § 2924(a)(6) because Wells Fargo is not the original trustee or the substituted trustee under the deed of trust or the designated agent of the holder of the beneficial interest." The "alleged successor trustee [identified in the notice] is not the successor trustee and has no authority to act as trustee under the deed of trust." "Plaintiff is informed and believes and thereon alleges that the substitution of trustee and any future notice of default and notices of trustee's sale will also be void."

Premised on Wells Fargo's alleged inability to foreclose (and without denying plaintiff's delinquency under the promissory note) the amended complaint alleges five causes of action: to cancel the "written instruments" under Civil Code section 3412, for violation of Business and Professions Code section 17200 et seq., for declaratory relief, to quiet title, and for violation of Civil Code sections 2924, subdivision (a)(6) and 2934, subdivision (a).

Wells Fargo demurred on several grounds including, as to each cause of action, that the complaint "fails to adequately allege a factual or legal basis for the claim," arguing that Wells Fargo did not lack the ability to foreclose because the loan had been securitized, and that judicially noticeable **DOCUMENTS ESTABLISH WELLS FARGO, AS SUCCESSOR IN INTEREST TO WORLD SAVINGS BANK, is in fact the lender under the note and the beneficiary under the deed of trust. As such, the trial court correctly determined that none of the well pleaded facts undermine Wells Fargo's right to proceed with the foreclosure.** (E.g., [\*Kalnoki v. First American Trust Servicing Solutions, LLC\* \(2017\) 8](#)

[Cal.App.5th 23, 36, 40](#); [Siliga v. Mortgage Electronic Registrations Systems, Inc. \(2013\) 219 Cal.App.4th 75, 82-83](#), disapproved on other grounds in [Yvanova v. New Century Mortgage Corp. \(2016\) 62 Cal.4th 919, 939, fn. 13.](#)) The court correctly rejected plaintiff's reliance on *Yvanova*, which held only that a borrower seeking a remedy for a wrongful foreclosure that has already occurred has standing to challenge a void (but not a voidable) assignment of the underlying promissory note and deed of trust. As the Supreme Court stated explicitly in *Yvanova*, it did "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." ([62 Cal.4th at p. 924.](#))

## **Disposition**

The judgment is affirmed.

McGuinness, P.J. and Jenkins, J., concurs.

[1] The Attorney General has submitted an amicus curiae brief in support of plaintiff's contention that his claims are not preempted. Wells Fargo has submitted a rather intemperate response claiming incredulously that the brief "attempt[s] to inject an entirely new issue never previously raised by any party to this appeal." In fact, the major portion of the argument in both the trial court and this court has been devoted to this issue. As the trial court and the parties have recognized, there is a split of authority among federal courts as to whether HOLA preemption continues to apply when a loan originally made by a savings association subject to HOLA is acquired by a bank not governed by HOLA. There is also a substantial question as to whether such preemption would in any event preclude application of state law to nonjudicial foreclosure procedural requirements. Nonetheless, because there unquestionably is merit to the other ground on which Wells Fargo's demurrer was sustained, to which plaintiff has failed to respond, we need not consider the preemption issues.