

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

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BY:

JUDICIAL OFFICER PRESIDING: Matthew Brower

CLERK: Jerry Montano

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: W. Roysdon

CASE NO: 37-2018-00058882-CL-UD-CTL CASE INIT.DATE: 11/21/2018

CASE TITLE: **Nationstar Mortgage LLC vs Park [IMAGED]**

CASE CATEGORY: Civil - Limited

CASE TYPE: Unlawful Detainer - Residential

APPEARANCES

In unlawful detainer cases governed by Code Civ. Proc., § 1161a, involving purchasers of property at post foreclosure trustee sales, such as is the case here, § 1161a does require a "narrow and sharply focused examination of title." (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 255.) "To establish that he is a proper plaintiff, one who has purchased property at a trustee's sale and seeks to evict the occupant in possession must show that he acquired the property at a regularly conducted sale and thereafter "duly perfected" his title." ((Code Civ. Proc., § 1161a, subdiv. 3.) (*Id.*))

"[W]here the plaintiff in the unlawful detainer action is the purchaser at a trustee's sale, he or she 'need only prove a sale in compliance with the statute and deed of trust, followed by the purchase at such sale, and the defendant may raise objections only on that phase of the issue of title.'" (*Bank of New York Mellon v. Preciado*, (2013) 224 Cal. App. 4th Supp. 1, citing, *Old Nat'l Fin. Servs. V. Seibert* (1987) 194 Cal.App.3d 460, 465, 239 Cal.Rptr. 728.) "The statute" with which a post-foreclosure plaintiff must prove compliance is Civ. Code, § 2924. (*Bank of New York Mellon v. Preciado*, supra, citing *Seidell v. Anglo-California Trusts Co.* (1942) 55 Cal.App.2d 913, 920, 132 P.2d 12.)

"[T]itle is duly perfected when all steps have been taken to make it perfect, i.e., to convey to the purchaser that which he has purchased, valid and good beyond all reasonable doubt, which includes good record title, but is not limited to good record title, as between the parties to the transaction. The term 'duly' implies that all of those elements necessary to a valid sale exist, else there would not be a sale at all." (*Bank of New York Mellon v. Preciado*, supra at 9-10, citing *Kessler v. Bridge* (1958) 161 Cal.App.2d Supp. 837, 841, 327 P.2d 241 [*internal citations omitted*].) This holding by the court in *Preciado* makes clear that in Code Civ. Proc., § 1161a post-foreclosure trustee sale cases, a focus on the sale itself (rather than simply the recorded title documentation) is part of the analysis of determining whether the title was "duly perfected."

The plaintiff-purchaser need prove only that the sale was in compliance with Civil Code, § 2924 and that he or shew has thereafter duly perfected title. (*Stephens, Partain & Cunningham v. Hollis* (1987) 948, 952, 242 CR 251.) The occupant may not raise other issues regarding the validity of the trust deed or other defects in the plaintiff's title. (*See, MCA, Inc. v. Universal Diversified Enters. Corp.* (1972) 27 CA3d 170, 176, 103 CR 522.) Civ. Code, § 2924(c) provides that a recital in the trustee's deed that all the requirements of Civ. Code, §§ 2924 through 2924.5 have been met is *prima facie* evidence of compliance.

At an unlawful detainer proceeding brought by the subsequent buyer from the purchaser at a non-judicial

post-foreclosure trustee sale, this subsequent buyer must also prove that the trustee sale was conducted in accordance with Civ. Code, § 2924 and that title has been duly perfected. (*Stephens, Partain & Cunningham v. Hollis, supra, at p. 242.*)

"A deed of trust to real property acting as security for a loan typically has three parties: the trustor (borrower), the beneficiary (lender), and the trustee. The trustee holds a power of sale. If the debtor defaults on the loan, the beneficiary may demand that the trustee conduct a nonjudicial foreclosure sale." (*Yvanova v. New Century Mortgage Corporation* (2016) 62 Cal.4th 919; *citing, Biancalana v. T.D. Service Co.* (2013) 56 Cal.4th 807, 813, 156 Cal.Rptr.3d 437, 300 P.3d 518.)

The California Supreme Court in *Yvanonova v. New Century Mortgage Corporation* goes on to explain that, "[t]he trustee starts the nonjudicial foreclosure process by recording a notice of default and election to sell. (Civ. Code, § 2924, subd. (a)(1).) After a three-month waiting period, and at least 20 days before the scheduled sale, the trustee may publish, post, and record a notice of sale. (§§ 2924, subd. (a)(2), 2924f, subd. (b).) If the sale is not postponed and the borrower does not exercise his or her rights of reinstatement or redemption, the property is sold at auction to the highest bidder. (Civ. Code, § 2924g, subd. (a); *Jenkins, supra*, 216 Cal.App.4th at p. 509, 156 Cal.Rptr.3d 912; *Moeller v. Lien, supra*, 25 Cal.App.4th at pp. 830-831, 30 Cal.Rptr.2d 777.). *Id. at p. 927.*)

It is further made clear that "[t]he deed of trust ... is inseparable from the note it secures, and follows it even without a separate assignment. (Civ. Code, § 2936; *Cockerell v. Title Ins. & Trust Co.* (1954) 42 Cal.2d 284, 291, 267 P.2d 16.) ... [I]f the borrower defaults on the loan, only the current beneficiary may direct the trustee to undertake the nonjudicial foreclosure process. "[O]nly the 'true owner' or 'beneficial holder' of a Deed of Trust can bring to completion a nonjudicial foreclosure under California law." (*Barrionuevo v Chase Bank, N.A.* (N.D.Cal.2012) 885 F.Supp.2d 964, 972." (*Id. at pp. 927-928.*)

Where the nonjudicial post-foreclosure trustee sale is not properly initiated, "... a borrower may base a wrongful foreclosure claim on allegations that the foreclosing party acted without authority because the assignment by which it purportedly became beneficiary under the deed of trust was not merely voidable but void." (*Yvanonova, supra, at pp. 851-852.*)

"A void contract is without legal effect. (Rest.2d Contracts, § 7, com. A.) "It binds no one and is a mere nullity." (*Little v. CFS Service Corp.* (1987) 188 Cal.App.3d 1354, 1362, 233 Cal.Rptr. 923.) "Such a contract has no existence whatever. It has no legal entity for any purpose and neither action nor inaction of a party to it can validate it" (*Colby v. Title Ins. And Trust Co.* (1911) 160 Cal. 632, 644, 117 P. 913.) "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, [*internal citations omitted*] the foreclosing entity has acted without legal authority by pursuing a trustee's sale, and such an unauthorized sale constitutes a wrongful foreclosure." (*Yvanonova, supra, at pp. 855-856; citing Barrionuevo v. Chase Bank, N.A., at pp. 973-974.*)

These concepts of void and voidable deeds are discussed in the case of *Dimock v. Emerald Props. LLC* ((2000) 81 CA4th 868, 876-879, 97 CR2d 255), wherein the Plaintiff filed a wrongful foreclosure case following the initiation of an unlawful detainer petition. The 4th Circuit on appeal determined that the sale by the pre-substitution trustee was void (as opposed to voidable), and that notice defects make a deed voidable only where recitals of regularity appear in it and no contrary recitals have been made, and trustor overcomes defective voidable deed by showing grounds for equitable relief from deed, such as fraud, defective notice, and that he or she tendered any amount due under the deed.

The Court in *Scirarratta v. U.S. Bank Nat'l Ass'n* ((2016) 247 Cal.App. 4th 552) goes on to provide that in such a case as that in *Yvanova*, it would be an "'odd result indeed' were a court to conclude a homeowner had no recourse where anyone, even a stranger to the debt, had declared a default and ordered a trustee's sale." (*Citing, Yvanova, supra*, 62 Cal.4th at p. 938.) As a result, the 4th Circuit in *Scirarratta*, took one step further, that which the Supreme Court in *Yvanova* left unspoken and found that not only could the foreclosed upon homeowner have standing to sue following a foreclosure sale which is void for violating Civ. Code, § 2924(a)(6), but that the plaintiff in such a scenario sustains the

prejudice/harm necessary to support a wrongful foreclosure lawsuit. "...[A] homeowner 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." (*Scirarratta, supra* 247 Cal.App.4th at pp. 221-222.)

The 4th Circuit explains, "[w]hen a non-debtholder forecloses, a homeowner is harmed because he or she has lost her home to an entity with no legal right to take it. If not for the void assignment, the incorrect entity would not have pursued a wrongful foreclosure. Therefore, the void assignment is the cause-in-fact of the homeowner's injury and all he or she is required to allege on the element of prejudice." (*Id. at* pp. 555-556.) "A contrary rule would lead to a legally untenable situation – i.e., that anyone can foreclose on a homeowner because someone has the right to foreclose. 'And since lenders can avoid the court system entirely through nonjudicial foreclosures, there would be no court oversight whatsoever.'" (*Id., citing, Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 410.)

In the present case Counsel for the Defense argues that the foreclosure sale was void for failing to comply with California Civil Code section 2924(a)(6)'s requirement that a non-judicial post-foreclosure trustee sale be initiated by the holder of the beneficial interest under the mortgage or deed of trust or trustee under the deed of trust. This is because at the time that it initiated the trustee sale, ALS was not the beneficiary of the deed of trust and therefore had no right to hold a foreclosure. If the Court is to follow the authority of the line of cases cited above, including *Little v. CFS Service Corp.*, (*supra*, 188 Cal.App.3d at p. 1362) that a void contract, "... binds no one and is a mere nullity", and *Colby v. Title Ins. And Trust Co.*, (*supra*, 160 Cal. At p. 644) that "[s]uch a contract has no existence whatever ..." it must be for all legal purposes, including whether the Plaintiff acquired the property at a regularly conducted sale and thereafter duly perfected his title. (Code Civ. Proc., § 1161a, subd. 3.) The line of cases above, including *Scirarratta, Preciado*, and *Yvanova*, each address this very scenario of the validity of the trustee sale, with the first and last in the context of a wrongful foreclosure cause of action, and the second in the context of an unlawful detainer.

An alternative determination that such post-foreclosure trustee sales deemed void retain a legal effect limited to Code Civ. Proc., § 1161a unlawful detainer cases would be an absurd result, and be unsupported by the case law. My review of the above cited line of cases makes clear that title cannot be duly recorded where the non-judicial post-foreclosure trustee sale which produced the title transfer was void. Based on the evidence presented by the Plaintiff in support of the present motion, this proposition remains a triable issue of material fact that remains to be adjudicated (*Miller v. Bechtel Corps.*, (1983) 33 Cal. 3d 686, 874). It follows that the Plaintiff's motion for summary judgement is denied.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Nationstar Mortgage LLC vs Park [IMAGED]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2018-00058882-CL-UD-CTL

I certify that I am not a party to this cause. I certify that a true copy of the attached minute order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 07/15/2019.

Clerk of the Court, by: , Deputy
J. Montano

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