



California Court Follows Well-Established Case Law in Ruling *Borrower Cannot Challenge Validity of Loan Securitization*

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In *Glaski v. Bank of America, N.A.*, 218 Cal. App. 4th 1079 (July 31, 2013), the California Court of Appeal held that, under the facts of that case, “a borrower may challenge [a] securitized trust’s chain of ownership by alleging the attempts to transfer the deed of trust to the securitized trust (which was formed under New York law) occurred after the trust’s closing date.” This holding appeared to directly contradict California cases ruling that a borrower lacks standing to challenge the validity of an assignment to which they are neither a party nor a third party beneficiary, including the holding in the earlier case of *Jenkins v. JP Morgan Chase Bank, N.A.*, 216 Cal. App. 4th 497 (May 17, 2013).

In *Jenkins*, the California Court of Appeal held that a borrower lacks standing to challenge an assignment that allegedly fails to comport with a securitized trust’s pooling and servicing agreement: “As an unrelated third party to the alleged securitization, and any other subsequent transfers of the beneficial interest under the promissory note, [plaintiff] lacks standing to enforce any agreements, including the investment trust’s pooling and servicing agreement, relating to such transactions.” Similarly, the Court of Appeal in *Gomes v. Countrywide Home Loans, Inc.*, 192 Cal. App. 4th 1149, (2011), found the California non-judicial foreclosure statutes do not “provide for a judicial action to determine whether the person initiating the foreclosure process is indeed authorized.”

Thus, the decision in *Glaski* created a conflict in California’s intermediate appellate courts.

In *Diunugala v. JP Morgan Chase Bank, N.A.* (Case No. 12-cv-02106-WQH-NLS) (October 3, 2013), the United States District Court for the Southern District of California addressed this conflict, finding “the reasoning in [cases such as *Jenkins* and *Gomes*] to be more persuasive than that in *Glaski*.” The Court explained that these prior cases correctly found that a borrower who is not a party to an assignment lacks standing to challenge its validity. The Court further held that even if *Glaski* was correctly decided, a plaintiff cannot assert a claim based upon an allegedly ineffective assignment of a deed of trust without alleging facts demonstrating that the deed of trust was not assigned in any manner or alleging resulting prejudice to the borrower. Thus, the Court dismissed a claim for cancellation of instruments that was based upon the assignment of a deed of trust to a securitized trust that allegedly occurred after the closing date of the trust.

Diunugala is the first case coming out of a California court to expressly reject the California Court of Appeal’s reasoning in *Glaski* and deem *Glaski* unpersuasive. While not binding authority, other State and Federal Courts in California may follow *Diunugala* as persuasive authority and similarly follow well-established case law holding that a borrower lacks standing to challenge an allegedly invalid assignment of a deed trust.

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