



YVANOVA V. NEW CENTURY – ALL BARK AND NO BITE, A YEAR IN RETROSPECTIVE

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When *Yvanova v. New Century* 62 Cal. 4th 919 (2016) was decided in February 2016, it was billed by some as a groundbreaking homeowners' rights case. *Yvanova* was the first decision to reach the California Supreme Court addressing whether a borrower may challenge assignments of a Deed of Trust to support an alleged wrongful foreclosure case (including securitization-based claims). *Yvanova* was also the first major decision interpreting homeowners' rights to challenge foreclosures after the financial collapse of 2008.

Prior to *Yvanova*, the lower State Appellate Courts and Federal Courts all concluded (with the exception of one case, *Glaski v Bank of America*, 218 Cal. App.4th 1079 (2013)), that a homeowner lacked standing to challenge a wrongful foreclosure based upon an alleged improper assignment.

The *Yvanova* decision upended that line of case law and held, "a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan

and was not a party to the challenged assignment." *Yvanova*, 62 Cal. 4th at 924. The decision however failed to address what constituted a void versus voidable assignment. The decision also provided that it does 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.* *Yvanova* failed to provide a definitive resolution of these issues. Instead, the California Supreme Court left those issues to be determined by the lower courts.

Both the reported and unreported cases that have interpreted *Yvanova*, have severely limited its impact. For example, all of the reported California Appellate cases which have interpreted *Yvanova* to date, have ruled that the failure to comply with the timely transfer of a loan to the Trust, as required by the timeline set forth in the pooling and servicing agreement ("PSA"), is a voidable, rather than a void, defect under New York law. These cases include, *Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal. App. 4th 808 (2016);

Yhudai v. Impac Funding Corp., 1 Cal.App.5th 1252 (2016); and *Maria Mendoza, v. JPMorgan Chase Bank, N.A. et al.*, No. C071882, 2016 WL 7217199, at *9 (Cal. Ct. App. Dec. 13, 2016). Because New York law governs most PSAs, borrowers now lack standing to bring a wrongful foreclosure action based upon the alleged improper securitization of a loan. *Mendoza* also held that borrowers cannot bring claims because an assignment was allegedly robo-signed. *Mendoza*, 2016 WL 7217199, at *9-10. *Mendoza* further

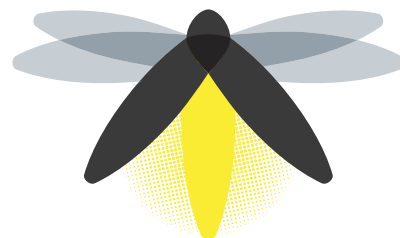
rejects the argument that a borrower may challenge standing based upon the tax consequences that may follow a late transfer of deed of trust into the trusts, in violation of the PSA's terms, because any negative tax consequences would not make it a void transaction. *Id.*

Additionally, cases applying *Yvanova* have held that a borrower cannot challenge pre-foreclosure actions. For instance, one case applying *Yvanova* to California's Homeowner's Bill of Rights ("HBOR"), *Lucioni v. Bank of Am., N.A.*, 3 Cal.App.5th 150 (2016) determined that

HBOR does not impose a pre-foreclosure duty on a foreclosing entity to demonstrate that it has a right to foreclose. *Yhudai* similarly confirms that it is a plaintiff's burden to prove an assignment is void because it is the plaintiff that "[has] the burden to prove it was wrongful." *Yhudai*, 1 Cal. App.5th at 1260.

The trend in case law, in both State and Federal courts, rejects the rights of a borrower to challenge an alleged wrongful foreclosure, based on a lack of standing. While challenges to an assignment in a wrongful foreclosure action are now permitted, the post-*Yvanova* cases makes clear such challenges will only be permitted in the limited instances, for example, where an assignment is forged making it void. Additionally, these cases also establish that a borrower cannot use *Yvanova* to preemptively challenge a foreclosure or require the lender to prove its right to foreclose. Therefore, while *Yvanova* was billed by some as a groundbreaking borrower's rights case, in application, it has had little impact.

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