

POSTED ON WEBSITE
NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)	Case No. 09-48497-E-13C
)	
)	
GARY DOUGLAS DUERNER and)	
JUDY KAYE DUERNER,)	
)	
Debtors.)	
<hr/>		
)	
GARY DOUGLAS DUERNER and)	Adv. Pro. No. 10-2056-E
JUDY KAYE DUERNER,)	Docket Control No. PD-1
)	
Plaintiffs,)	
v.)	
)	
BANK OF AMERICA, N.A. and)	
U.S. BANK, N.A.)	
)	
Defendants.)	
)	

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Motion for Summary Judgment filed by Defendants U.S. Bank, National Association, as Trustee of the Banc of America Funding 2007-C Trust ("U.S. Bank, N.A.") and Bank of America, N.A. was properly noticed and set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed by Gary Duerner and Judy

1 Duerner ("Plaintiff-Debtors") and oral argument presented to the
2 court.

3 The Plaintiff-Debtors, appearing in *pro se*, filed their First
4 Amended Complaint ("FAC") on August 5, 2010. After discovery was
5 concluded and several hearings, U.S. Bank, N.A. and Bank of
6 America, N.A. filed this motion for summary judgment. Upon review
7 of the motion, supporting pleadings, opposition, and determining
8 that there are no material issues of fact in dispute, the court
9 grants the motion for summary judgment.

10 **REQUEST FOR SUMMARY JUDGMENT**

11 U.S. Bank, N.A. and Bank of America, N.A. seek summary
12 judgment in this adversary proceeding pursuant to Federal Rule of
13 Civil Procedure 56 *incorporated by* Federal Rule of Bankruptcy
14 Procedure 7056. U.S. Bank, N.A. and Bank of America, N.A. argue
15 that the Plaintiff-Debtors':

- 16 1. Claim of quiet title fails because they never claim
17 ability to tender pursuant to California Civil Code
18 760.00;
- 19 2. Claim of quiet title fails since Plaintiff-Debtors have
20 not presented evidence to refute Defendants' authority to
21 enforce the notes and deeds of trust pursuant to
22 California Commercial Code 3301;
- 23 3. Claim of quiet title fails since Plaintiff-Debtors have
24 not provided any evidence to dispute Plaintiff-Debtors'
25 lack of standing to challenge ownership interests in the
26 loans as they were not parties to the purchase
27 transaction between the named defendants; and
- 28 4. Plaintiff-Debtors' rescission claim is moot as Defendants

1 rescinded the notice of Default after the commencement of
2 the adversary proceeding.

3 U.S. Bank, N.A. and Bank of America, N.A. request that the
4 court take judicial notice of seventeen documents offered with
5 their motion for summary judgment:

6 A. PACER docket for Plaintiff-Debtors' bankruptcy case filed
7 under Chapter 13 of the Bankruptcy Code on December 30,
8 2009.

9 B. Plaintiff-Debtors' Chapter 13 Plan filed on January 12,
10 2010.

11 C. Proof of Claim on behalf of Bank of America, N.A. with
12 respect to the Buckskin Property on January 26, 2010
13 ("Claim No. 1").

14 D. Proof of Claim filed on behalf of Bank of America, N.A.
15 with respect to the Island Property on February 5, 2010
16 ("Claim No. 2").

17 E. Objections to Claim No. 1 and Claim No. 2 filed by
18 Plaintiff-Debtors on June, 1, 2010.

19 F. Orders sustaining Plaintiff-Debtors' objections to Claim
20 1 and Claim 2 entered by the court on July 30, 2010.

21 G. Proof of Claim filed on behalf of U.S. Bank, N.A. as
22 Trustee of the Banc of America Funding 2007-C with
23 respect to the Buckskin Loan on June 17, 2010 ("Claim
24 No. 4").

25 H. Proof of Claim filed on behalf of U.S. Bank, N.A. as
26 Trustee of the Banc of America Funding 2007-C with
27 respect to the Island loan on June 17, 2010 ("Claim
28 No. 5").

1 I. Objection to Claim No. 4 filed by Plaintiff-Debtors on
2 August 9, 2010.

3 J. Objection to Claim No. 5 filed by Plaintiff-Debtors on
4 August 9, 2010.

5 K. Civil Minute Orders overruling Plaintiff-Debtors'
6 Objections to Claim No. 4 and Claim No. 5 issued by the
7 court on August 20, 2010.

8 L. Plaintiff-Debtors' Fourth Amended Chapter 13 Plan filed
9 on October 5, 2010.

10 M. Subpoena Duces Tecum served on U.S. Bank.

11 N. U.S. Bank's response to Plaintiff-Debtors' subpoena.

12 O. PACER docket for Plaintiff-Debtors' Adversary Proceeding.

13 P. Notice of rescission of Declaration of Default and Demand
14 for sale and of notice of Breach and Election to Cause
15 Sale recorded in the official records of Placer County.

16 Q. Amended schedules I and J.

17 While most of the documents offered provide evidence of having
18 been filed with the court or recorded by the relevant county
19 recorder, the document labeled Exhibit P, see Dckt. 128, does not
20 bear evidence from the county recorder that the document was
21 recorded. Rather, First American Title Insurance Company certifies
22 that the document is "a copy of the document recorded 11/12/2010 as
23 instrument No. 2010-0093401-00 In Book____ Page____ Official
24 Records of Placer."

25 Where certain indisputable facts are so within the common and
26 general knowledge of the community, or capable of accurate and
27 ready determination by resort to sources whose accuracy cannot
28 reasonably be questioned, the judicial notice doctrine serves as a

1 substitute for formal proof. A judicially noticed fact must be one
2 not subject to reasonable dispute in that it is either
3 (1) generally known within the territorial jurisdiction of the
4 trial court or (2) capable of accurate and ready determination by
5 resorting to sources whose accuracy cannot be reasonably be
6 questioned. Fed. R. Evid. 201(b). Even where a fact may not be of
7 common knowledge, so long as the fact is capable of immediate and
8 accurate determination from a credible source, a court may take
9 judicial notice. *Id.* at 201(b)(2).

10 No formula exists for determining the appropriate use of
11 judicial notice under Federal Rule of Evidence 201(b)(2). See 2
12 MCCORMICK ON EVID. 11 § 330 (6th ed.). Frequently, courts utilize
13 judicial notice with regard to information contained in public
14 records. *Mack v. S. Bay Beer Distrib.*, 798 F. 2d 1279, 1282 (9th
15 Cir. 1986), *abrogated in part on other grounds by Astoria Federal*
16 *Savings and Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

17 The document labeled Exhibit P does not show that it was
18 recorded with the relevant county recorder. Therefore, there is no
19 evidence that the document is contained in public records. The
20 court will take judicial notice of Exhibits A-O and Q in Docket No.
21 128. The request for judicial notice of Exhibit P is denied.

22 **STATEMENT OF UNDISPUTED FACTS**

23 By this motion the Defendants U.S. Bank, N.A. as Trustee of
24 Banc of America Funding 2007-C Trust and Bank of America N.A. seek
25 summary judgment against Plaintiff-Debtors Gary Duerner and Judy
26 Duerner. The Statement of Undisputed Facts in this case, Docket
27 Entry No. 86, sets forth the following:

28 1. On or about July 15, 2005, Plaintiff-Debtors executed the

1 Buckskin Note in the principal sum of \$498,000.00, which
2 was made payable to Wells Fargo. Decl. of Paula
3 Pridemore ¶ 4; Ex. A, Dckt. 129.

4 2. The Buckskin Note is indorsed and payable to U.S. Bank,
5 N.A. as trustee for holders of Banc of America Funding
6 Corporation Mortgage Pass-Through Certificates, Series
7 2007-C ("Trust"). Decl. of Paula Pridemore ¶ 5; Ex. A,
8 Dckt. 129.

9 3. On or about July 15, 2005, as security for the Buckskin
10 Note, Plaintiff-Debtors made, executed, and delivered to
11 Wells Fargo a Deed of Trust granting Wells Fargo a
12 security interest in real property commonly described as
13 3527 Buckskin Court, Rocklin, California. Decl. of Paula
14 Pridemore ¶ 6; Ex. B, Dckt. 129.

15 4. The Deed of Trust was recorded on July 26, 2005 in the
16 Official Records of Placer County, State of California.
17 Decl. of Paula Pridemore ¶ 6; Ex. B, Dckt. 129.

18 5. On or about July 27, 2005, Plaintiff-Debtors executed the
19 Island Note, which was made payable to Wells Fargo. Decl.
20 of Paula Pridemore ¶ 7; Ex. C, Dckt. 129.

21 6. The Island Note is indorsed and payable to U.S. Bank as
22 trustee for holders of the Trust. Decl. of Paula
23 Pridemore ¶ 8; Ex. C, Dckt. 129.

24 7. On or about July 27, 2005, as security for the Island
25 Note, Plaintiff-Debtors executed a Deed of Trust granting
26 Wells Fargo a security interest in certain real property
27 commonly described as 900 Island Drive #106, Unit 106,
28 Rancho Mirage, California. Decl. of Paula Pridemore ¶ 9;

Ex. D, Dckt. 129.

8. On or about May 1, 2006, Wells Fargo and Bank of America, N.A. entered into a Second Amended and Restated Master Mortgage Loan Purchase Agreement ("Purchase Agreement") whereby Bank of America agreed to purchase, from time to time, certain residential mortgage loans from Wells Fargo. Decl. of Paula Pridemore ¶ 10; Ex. E, Dckt. 129.

9. Concurrently with the execution and delivery of the Purchase Agreement, Wells Fargo and Bank of America entered into a Second Amended and Restated Master Seller's Warranties and Servicing Agreement ("Warranties and Servicing Agreement") which prescribes the manner of purchase of the Mortgage Loans from Wells Fargo and the conveyance, servicing, and control of the Mortgage Loans. Decl. of Paula Pridemore ¶ 11; Ex. F, Dckt. 129.

10. Pursuant to the Warranties and Servicing Agreement, Bank of America agree to purchase the Mortgage Loans from Wells Fargo on various dates pursuant to separate assignment and conveyance agreements to be executed in conjunction with each sale. Decl. of Paula Pridemore ¶ 12; Ex. F, Dckt. 129.

11. On or about May 25, 2006, Wells Fargo and Bank of America entered into an Assignment and Conveyance Agreement ("ACA") whereby Wells Fargo sold various loans to Bank of America, including the Buckskin Loan. Decl. of Paula Pridemore ¶ 13; Ex. G, Dckt. 129.

12. The ACA includes a schedule of the loans sold pursuant to the agreement, which identifies the Buckskin Loan

(identified as loan number *****8877) and Island Loan (identified as loan number *****9569). Decl. of Paula Pridemore ¶ 14; Ex. G, Dckt. 129.

13. On or about April 30, 2007, the Trust was formed through a pooling and servicing agreement ("PSA") among Banc of America Funding Corporation and U.S. Bank. Decl. of Paula Pridemore ¶ 15.

14. Concurrently with the formation of the Trust, Bank of America, Banc of America Funding Corporation, U.S. Bank, and Wells Fargo entered into an Assignment Assumption and Recognition Agreement ("AARA") whereby Bank of America transferred to Banc of America Funding Corporation all of its right, title and interest in various mortgage loans, including the Mortgage Loans Bank of America acquired pursuant to the Purchase Agreement, Warranties and Servicing Agreement, and ACA. Decl. of Paula Pridemore ¶ 16; Ex. H, Dckt. 129.

15. Pursuant to the terms of the AARA and PSA, Banc of America Funding corporation transferred to U.S. Bank on behalf of the Trust all of its right, title and interest in and to the mortgage loans Banc of America Funding Corporation acquired under the AARA. Decl. of Paula Pridemore ¶ 17; Ex. H, Dckt. 129.

16. Wells Fargo has the contractual right and responsibility, pursuant to the PSA, to service various mortgage loans sold to the Trust, including the Buckskin Loan and Island Loan. Decl. of Paula Pridemore ¶ 18.

17. As the loan servicer, Wells Fargo acts as an agent for

U.S. Bank and is generally responsible for the administration of the Buckskin Loan and Island Loan until the loans are paid in full, assigned to another creditor, or the servicing rights are transferred. Decl. of Paula Pridemore ¶ 19.

18. In the event of a default under the terms of the loans, Wells Fargo is authorized by U.S. Bank to enforce the terms of the Buckskin Deed of Trust and Island Deed of Trust. Decl. of Paula Pridemore ¶ 19.

19. On December 30, 2009, Plaintiff-Debtors filed this instant bankruptcy case under Chapter 13 of the Bankruptcy Code and were assigned case number 09-48497. Ex. A to Req. for J.N., Dckt. 128.

20. On January 12, 2010, Plaintiff-Debtors filed their Chapter 13 Plan ("Plan") wherein they classify the Buckskin Loan as a Class 1 secured claim in Sec. 3.09 of the Plan. Ex. B to Req. for J.N., Dckt. 128.

21. On January 26, 2010, a Proof of Claim was filed on behalf of Bank of America with respect to the Buckskin Property ("Claim No. 1"). Ex. C to Req. for J.N., Dckt. 128.

22. On February 5, 2010, a Proof of Claim was filed on behalf of Bank of America with respect to the Island Property ("Claim No. 2"). Ex. D to Req. for J.N., Dckt. 128.

23. On June 1, 2010, Plaintiff-Debtors filed objections to the Proofs of Claim with respect to Claim No. 1 and Claim No. 2. Ex. E to Req. for J.N., Dckt. 128.

24. Plaintiff-Debtors' Objections were based upon the Declaration re: Chain of Title executed by Michelle

1 Sheppard wherein she states that Buckskin Note is
2 specially indorsed to U.S. Bank, N.A. As Trustee of the
3 Banc of America Funding 2007-C. Ex. E to Req. for J.N.,
4 Dckt. 128.

5 25. On July 30, 2010, the court entered orders sustaining
6 Plaintiff-Debtors' Objections to Claim No. 1 and Claim
7 No. 2. Ex. F to Req. for J.N., Dckt. 128.

8 26. On June 17, 2010, Proofs of Claim were filed on behalf of
9 U.S. Bank, N.A. as trustee with respect to the Buckskin
10 Loan ("Claim No. 4"). Ex. G to Req. for J.N., Dckt. 128.

11 27. On June 17, 2010, Proofs of Claim were filed on behalf of
12 U.S. Bank, N.A. as trustee with respect to the Island
13 Loan ("Claim No. 5"). Ex. H to Req. for J.N., Dckt. 128.

14 28. On August 9, 2010, Plaintiff-Debtors objected to Claim
15 No. 4 and Claim No. 5. Ex. I & J to Req. for J.N., Dckt.
16 128.

17 29. On August 20, 2010, the court overruled Plaintiff-
18 Debtors' Objections to Claim No. 4 and Claim No. 5,
19 stating that the parties already have a separate
20 adversary proceeding addressing the issue of ownership of
21 the note and the correct party to assert rights
22 thereunder in this case. Ex. K to Req. for J.N., Dckt.
23 128.

24 30. On October 5, 2010, Plaintiff-Debtors filed their Fourth
25 Amended Chapter 13 Plan wherein they proposed to make
26 direct post-petition payments on the Buckskin Loan. The
27 plan fails to provide for cure of any pre-petition
28 arrears with respect to the loan. Ex. I to Req. for J.N.,

Dckt. 128.

31. The Fourth Amended Plan was confirmed on December 10, 2010. Ex. A to Req. for J.N., Dckt. 128.

32. Plaintiff-Debtors have failed to tender any post-petition payments on the account for the Buckskin Loan in the amount of \$47,210.67 from January 1, 2010, through June 1, 2011, and on the account of the Island Loan in the amount of \$44.00, 812.98 from January 1, 2010, through June 1, 2011. Decl. of Paula Pridemore ¶ 20.

33. On October 13, 2010, Plaintiff-Debtors filed a Motion for Rule 2004 Examination Order. Ex. A to Req. for J.N., Dckt. 128.

34. At the November 2, 2010, the court granted the Motion for 2004 Examination and issued a subpoena for the production of the documents by Defendant to substantiate its claims as a secured creditor of the Plaintiff-Debtors. Ex. A to Req. for J.N., Dckt. 128.

35. On or about December 9, 2010, U.S. Bank responded to the subpoena informing Plaintiff-Debtors to contact America's Servicing Company/Wells Fargo for the requested documents. Ex. N to Req. for J.N., Dckt. 128.

36. On or about January 3, 2011, Wells Fargo as the servicing agent for U.S. Bank filed a Declaration in Response to the Subpoena Duces Tecum. Ex. A to Req. for J.N., Dckt. 128.

37. On or about January 25, 2011, Plaintiff-Debtors filed a Motion to Compel Production of Documents. Ex. A to Req. for J.N., Dckt. 128.

1 38. At the February 17, 2011 hearing, Defendants produced the
2 original blue-ink notes for the Buckskin and Island
3 properties, the original Island Deed of Trust, an
4 executed and unredacted copy of the Purchased Agreement
5 entered into by Wells Fargo and Bank of America, an
6 executed and unredacted copy of the Warranties and
7 Servicing Agreement entered into by Wells Fargo and Bank
8 of America, an executed and unredacted copy of the ACA
9 entered into by Wells Fargo and Bank of America with
10 attached Mortgage Loan Schedule. Decl. Of Brian A. Paino
11 ¶ 5.

12 39. On February 2, 2010, Plaintiff-Debtors filed an Adversary
13 Complaint for an Order to Reconvey Deed of Trust. Ex. O
14 to Req. for J.N., Dckt. 128.

15 40. Subsequently, the Complaint was amended to include claims
16 for Quiet Title, Rescission of Notice of Default, and
17 Mandatory Settlement. FAC, Dckt. 30.

18 41. On or about November 12, 2010, a Notice of Rescission of
19 Declaration of Default and Demand for Sale and of Notice
20 of breach and Election to Cause Sale was recorded in the
21 Official Records of Placer County. Ex. Q to Req. for
22 J.N., Dckt. 128.

23 **THE ADVERSARY PROCEEDING**

24 Plaintiff-Debtors filed their complaint on February 2, 2010,
25 asserting that Bank of America had submitted a proof of claim for
26 Plaintiff-Debtors' property commonly known as 3527 Buckskin Court,
27 Rocklin, California after they had they admitted they did not
28 possess the actual Note to the property. Plaintiff-Debtors based

1 their allegation on a letter they received from Bank of America's
2 Legal Processing Site after serving a subpoena on the CEO of Bank
3 of America to prove their ownership. The letter stated that the
4 Los Angeles site would not produce the requested documents and that
5 the subpoena had been forwarded to Countrywide for production of
6 the documents. Ex. A to the Compl.

7 In the Complaint, Plaintiff-Debtors sought an order requiring
8 Bank of America, N.A. to execute and record a deed of reconveyance
9 to clear title of the Buckskin property or, in the alternative, an
10 order requiring Bank of America to prove possession of original
11 negotiable instrument and standing to demand payment from
12 Plaintiff-Debtors.

13 Plaintiff-Debtors subsequently amended the Complaint following
14 a declaration by Michelle Sheppard, which stated that U.S. Bank,
15 N.A. was the actual holder of the note, joining U.S. Bank, N.A. as
16 a defendant. Plaintiff-Debtors also amended their claims to
17 include (1) an order of quiet title removing Bank of America, N.A.
18 from the title of the property commonly known as 3527 Buckskin
19 Court, Roseville, California, as well as the property commonly
20 known as 900 Island Drive, #106, Rancho Mirage, California;
21 (2) rescission of the Declaration of Default issued on the Buckskin
22 Property; (3) and a mandatory settlement conference to be attended
23 by representatives from Wells Fargo Home Mortgage, Wells Fargo Home
24 Mortgage, Inc., Wells Fargo Bank, Bank of America, and U.S. Bank
25 and each entity's legal counsel to determine the actual holder of
26 the notes for both properties. This last claim arose out of
27 Plaintiff-Debtors' assertion that Pite Duncan, LLP has "purported"
28 to represent all five entities "at various times during current and

1 previous bankruptcy cases of Plaintiff-Debtors and has stated that
2 each one of these is the owner/possessor/servicer of the original
3 note." FAC 2:16-20.

4 **ANALYSIS**

5 Federal Rule of Civil Procedure 56, made applicable to this
6 proceeding by Bankruptcy Rule 7056, provides that summary judgment
7 is appropriate if the pleadings, depositions, answers to
8 interrogatories, admissions on file, and declarations, if any, show
9 that there is "no genuine issue of fact and that the moving party
10 is entitled to judgment as a matter of law." "The initial burden
11 of showing the absence of a material factual issue is on the moving
12 party. Once that burden is met, the opposing party must come
13 forward with specific facts, and not allegations, to show a genuine
14 factual issue remains for trial." *DeHorney v. Bank of America*
15 *N.T.&S.A.*, 879 F.2d 459, 464 (9th Cir. 1989); *see also Celotex*
16 *Corp. v. Catrett*, 477 U.S. 317, 323-324 (1986).

17 **I. Plaintiff-Debtors' Objection and Defendants' Response**

18 In both their Objection to Motion for Summary Judgment and
19 their Supplement to the Objection, Plaintiff-Debtors argue that a
20 genuine dispute of material fact still exists in this proceeding
21 since Defendants have failed to provide a copy of two "Deeds of
22 Assignment" for each property that Plaintiff-Debtors claim brakes
23 the chain of title and clouds title to each of their properties.
24 Plaintiff-Debtors fail to name specifically which Defendant they
25 are referring to, U.S. Bank, N.A. or Bank of America, N.A. The use
26 of the generic "defendant" makes it difficult to determine which
27 Defendant Plaintiff-Debtors are accusing of not having provided the
28 necessary documents.

1 Defendants, in their response, challenged Plaintiff-Debtors'
2 allegations, noting that Plaintiff-Debtors appear to ignore current
3 case law. Indeed, Plaintiff-Debtors' argument appears to be based
4 on a faulty premise. Assignments of trust deeds do not need to be
5 recorded after every transfer of title. "The transfer of the note
6 carries with it the security, without any formal assignment or
7 delivery, or even mention of the latter. . . . The process is only
8 a mode of enforcing a lien." *Carpenter v. Longan*, 83 U.S. 271, 275
9 (1872) (stating the common-law rule). Where the recording of the
10 assignment of the beneficial interest in the Deed of Trust is the
11 party that now owns the underlying Note, there is little reason to
12 believe that the assignment is not proper. See *Henley v. Hotaling*,
13 41 Cal. 22, 28 (1871) (holding the Note and Deed of Trust are
14 inseparable); accord *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170
15 (1932); Cal. Civ. Code § 2936.

16 Plaintiff-Debtors' objection is also unclear as to where
17 exactly in the chain of title of either the Buckskin Property or
18 the Island Property the two Deeds of Assignment are allegedly
19 missing. In fact, Plaintiff-Debtors provide no evidence that chain
20 of title has even been broken. The chain of title outlined in the
21 Declaration made by Paula J. Pridemore and supported by exhibit
22 documents establish that Wells Fargo, the original lender,
23 transferred the Deed of Trust and Note to both the Buckskin
24 Property and the Island Property to Bank of America, N.A., pursuant
25 to a Purchase Agreement and an Assignment and Conveyance Agreement
26 entered into by both parties. Ex. E and G to the Pridemore Decl.
27 Bank of America, N.A. then transferred those Deeds of Trust and
28 Notes to U.S. Bank, N.A. as trustee of the Banc of America Funding

1 2007-C Trust, pursuant to an Assignment, Assumption, and
2 Recognition Agreement entered into by Bank of America, N.A., as
3 assignor, Banc of America Funding Corporation, U.S. Bank, N.A., as
4 assignee, and Wells Fargo Bank, N.A., as servicer. Ex. H to the
5 Pridemore Decl.

6 While Plaintiff-Debtors are correct that the parties
7 purporting to exercise powers under the trust deed must be those
8 named in the public record, see Cal. Civ. Code 2932.5; see also
9 *Macklin v. Deutsche Bank Nat'l Trust Co. (In re Macklin)*, No. 11-
10 2024-E, 2011 WL 2015520, *11, 2011 Bankr. LEXIS 1877, *34 (Bankr.
11 E.D. Cal. May 19, 2011), this state-law requirement does not change
12 the long-standing rule that the transfer of the note carries with
13 it the beneficial interest in the trust deed or mortgage.

14 As U.S. Bank, N.A. has asserted ownership of the notes for the
15 Buckskin and Island properties in the bankruptcy case and the
16 established chain of title shows them to be the current holder of
17 the notes, the court fails to see where chain of title was broken
18 or clouded. As Defendants contend in their response, Plaintiff-
19 Debtors have failed to show that ownership of the notes is still a
20 genuine issue of material fact.

21 At oral argument the Plaintiff-Debtors articulated the missing
22 documents which they assert renders the Defendants' claim
23 defective. The Defendants produced the original documents at court
24 at a prior hearing, which the Plaintiff-Debtors inspected. No
25 dispute exists as to the documents provided as exhibits or that
26 there is a chain of title showing the transfer of the note from
27 Wells Fargo Bank, N.A. to U.S. Bank, N.A. as Trustee. What is
28 contended is that the missing documents are recorded assignments of

1 deeds of trust from Bank of America, N.A. to subsequent transferees
2 and ultimately U.S. Bank, N.A., as Trustee. The Plaintiff-Debtors
3 make a passionate argument that the real property records of the
4 county do not reflect that the notes have been assigned, and that
5 this renders the otherwise documented transfers of the Notes to
6 U.S. Bank, N.A., as Trustee, invalid.

7 However, the Plaintiff-Debtors miss the point, focusing only
8 on the recorded assignments of the Deed of Trust. The key issue is
9 who owns the Note, for which at this point there is no dispute.
10 What has been clear in this case, and reaffirmed by the Plaintiff-
11 Debtors at the hearing, is that they do not want to attempt a loan
12 negotiation with the servicing agent for U.S. Bank, N.A., as
13 Trustee – Wells Fargo Bank, N.A. Though Wells Fargo Bank, N.A. has
14 been identified throughout this case as the entity for the
15 Plaintiff-Debtors to contact concerning a loan modification, the
16 Plaintiff-Debtors stated at the hearing that they had not contacted
17 Wells Fargo Bank, N.A. concerning any modification of the loans.
18 This was explained as the Plaintiff-Debtors wanting to speak with
19 the “true owner” of the Note rather than its agent.

20 **II. Quiet Title - First Cause of Action**

21 One requirement for a quiet title claim is the assertion that
22 plaintiffs are “the rightful owners of the property.” *Kelley v.*
23 *Mortgage Elec. Registration Sys.*, 642 F. Supp. 2d 1048, 1057 (N.D.
24 Cal. 2009). California law requires a debtor to assert a quiet
25 title claim to tender payment the outstanding debt owed on the
26 subject property to challenge the validity of the trust deed. See
27 *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 974
28 (N.D. Cal. 2010); see also *Shimpones v. Stickney*, 219 Cal. 637, 649

1 (1934) (in order to invoke the equitable powers of the court to
2 quiet title the plaintiff must do equity, which includes tendering
3 payment on the debt).

4 Plaintiff-Debtors do not assert in their First Amended
5 Complaint that they have paid or have the ability to pay the debt
6 owed on the subject properties, only that Defendant Bank of America
7 does not have a claim to the property. However, the tender
8 requirement could be waived if ordering tender would be
9 inequitable. See *Standley v. Knapp*, 113 Cal. App. 91, 102 (1931);
10 *Humboldt Sav. Bank v. McCleverty*, 161 Cal. 285, 291 (1911); see
11 also 4 MILLER & STAR CALIFORNIA REAL ESTATE § 10:212 (3d ed.). While
12 originally applied to foreclosure sales that were not properly
13 performed, it is reasonable to extend the exception to claims that
14 are fraudulently asserted as well. Therefore, to the extent that
15 Plaintiff-Debtors can show that Defendants are fraudulently
16 asserting interest in the notes, the fact that they did not tender
17 will not bar their claim of quiet title outright.

18 However, in the exhibits attached to their Motion for Summary
19 Judgment, Defendant U.S. Bank has successfully shown that they are
20 the current holders of the notes to both the Buckskin Property and
21 the Island Property. They provided copies of the Purchase
22 Agreement which transferred the notes from Wells Fargo Bank, N.A.
23 to Bank of America, N.A. as well as the Assignment, Assumption, and
24 Recognition Agreement which then transferred the notes from Bank of
25 America, N.A. and U.S. Bank, N.A. as trustee for Banc of America
26 Funding C-2007 Trust. Plaintiff-Debtors, on the other hand, have
27 failed to provide any evidence to dispute U.S. Bank, N.A.'s
28

1 ownership of the notes.¹

2 The court has not been presented with any evidence
3 contradicting the U.S. Bank, N.A., as Trustee, ownership of the
4 Notes. There are no material issues of fact at dispute concerning
5 these rights. Though U.S. Bank, N.A., as Trustee, may well have to
6 "clean up" record title as to the beneficiary under the Deeds of
7 Trust before it may attempt to proceed with nonjudicial
8 foreclosure, the propriety or validity of a nonjudicial foreclosure
9 sale is not now before the court. U.S. Bank, N.A., as Trustee, has
10 established that it is the current owner of the Notes and as a
11 matter of law is the beneficiary under the Deeds of Trust.
12 Therefore, U.S. Bank is granted Summary Judgment as to the first
13 cause of action.

14 Plaintiff-Debtors also bring their quiet title claim against
15 Defendant Bank of America, N.A. yet it does not appear that this
16 entity is asserting any interest in the Notes that need to be
17 quieted. While Bank of America, N.A. filed proof of claims for the
18 loans secured by the Buckskin and the Island Properties, those
19 claims were subsequently disallowed by the court after Plaintiff-
20 Debtors objected to them. Civ. Min. Orders, Bankr. E.D. Cal. No.
21 09-48497-E-13L, Dckts. 105 & 106. Also, U.S. Bank, N.A. has now
22 effectively asserted and proven their interest in the notes and
23 Bank of America, N.A. has not presented any evidence challenging

24
25 ¹ In this Adversary Proceeding, at a prior U.S. Bank, N.A.
26 presented the Plaintiff-Debtors with the files containing the
27 original documents bearing the Plaintiff-Debtors' signatures.
28 These were inspected by the Plaintiff-Debtors in one of the court
conference rooms. No contention has been made that the copies of
the documents provided to the court are not true and accurate
copies of those originals.

1 said interest. Therefore, based on the undisputed facts and the
2 admissions by Bank of America, N.A., the court determines that Bank
3 of America, N.A. does not have an interest in the Notes and Deeds
4 of Trust which secure the Notes, and Bank of America, N.A. is
5 entitled to summary judgment since Plaintiff-Debtors' cause of
6 action is moot.

7 **III. Rescission of Notice of Default - Second Cause of Action**

8 In their Motion for Summary Judgment, Defendants contend that
9 they rescinded the Declaration of Default issued on the Buckskin
10 Property after the commencement of this adversary proceeding. They
11 requested that the court judicially notice their Notice of
12 Rescission (Exhibit P), but the provided document failed to show
13 that it had been properly recorded with the necessary county
14 recorder and was, therefore, not judicially noticed. Because the
15 Plaintiff-Debtors are self-represented litigants, the court will
16 address the merits of this claim.

17 In their First Amended Complaint, Plaintiff-Debtors fail to
18 state which Defendant issued the Declaration of Default and,
19 therefore, fail to identify which Defendant they want to rescind
20 the Notice of Default. The Complaint only requests that Pite
21 Duncan, LLP, Defendants' counsel, rescind the Declaration of
22 Default. In any case, Plaintiff-Debtors fail to provide any reason
23 why the Declaration should be rescinded, whether it be because the
24 entity that issued it did not have ownership of the note or because
25 Plaintiff-Debtors were not in fact in default on the loan. They
26 just ask the court to order its rescission. Rescission of a
27 Declaration of Default is appropriate when the default that
28 prompted the declaration has been cured. See Cal. Civ. Code §

1 2924(c) .

2 The court has not been presented with any evidence to support
3 the contention that the Notice of Default should be rescinded. The
4 Plaintiff-Debtors just request it, and contend that because notices
5 of assignments have not been recorded the notice should be
6 rescinded. In the Motion for Summary Judgment, U.S. Bank, N.A.
7 states that the Notice of Default has been rescinded. Dckt. 83.

8 Given that U.S. Bank, N.A. represents that the December 26,
9 2008, Notice of Default for the Deed of Trust recorded against the
10 3527 Buckskin Court, Rocklin, California property has been
11 rescinded, summary judgment is granted on this issue for the
12 Defendants. U.S. Bank having so admitted, the judgment shall
13 expressly state that the Notice of Default recorded on December 26,
14 2008, has been rescinded and of no legal or equitable force and
15 effect.

16 Plaintiff-Debtors fail to state or provide evidence to show
17 that they are current on the loan secured by the Buckskin Property.
18 Therefore, Defendants are granted Summary Judgment as to the second
19 cause of action.

20 **IV. Request for Mandatory Settlement Conference**

21 Though not set out as a separate cause of action, the
22 Plaintiff-Debtors also request that the court order "a
23 representative from Wells Fargo Home Mortgage, Wells Fargo Home
24 Mortgage, Inc., Wells Fargo Bank, Bank of America, and U.S. Bank
25 along with their own counsel from their bank's legal department
26 (not counsel from Pite Duncan claiming representation for these
27 entities to provide proof of actual ownership of the notes, proof
28 of possession of the original notes, proof of standing to bring

1 actions in this case, and proof of contracts authorizing
2 representation by Pite Duncan, LLP." FAC 3:13-21. The summary
3 judgment motion does not address this request in the prayer.

4 The request in the prayer is not supported by any allegations
5 in the Complaint for this relief. Fed. R. Civ. P. 7(a)(2)²
6 requires that a complaint include a short plain statement of the
7 claim showing that the pleader is entitled to the relief.
8 Additionally, the complaint must include a demand for the relief
9 sought. Fed. R. Civ. P. 7(a)(2). From reading the First Amended
10 Complaint, the court concludes that a claim for relief in the form
11 of ordering a settlement conference and discovery is not sought in
12 the First Amended Complaint. This is interpreted as merely a
13 statement that the Plaintiff-Debtors will proceed with discovery
14 and settlement negotiations. The requested production of documents
15 and attendance of parties is part of the common discovery provided
16 in Federal Rules of Bankruptcy Procedure 7026 - 7036.

17 **CONCLUSION**

18 Plaintiff-Debtors have failed to provide evidence putting any
19 genuine issues of material fact in dispute for the court to
20 determine. Defendants provided evidence to support U.S. Bank's
21 claim that it was the current holder of the notes for both the
22 Buckskin and the Island Property, which are indorsed in blank, and
23 Plaintiff-Debtors failed to present arguments or provide evidence
24 that contradicted this claim. Accordingly, as it relates to
25 Plaintiff-Debtors' Quiet Title Claim, the motion is granted on its

26
27 ² Federal Rule of Civil Procedure 7 is made applicable in
28 adversary proceedings pursuant to Federal Rule of Bankruptcy
Procedure 7007.

merits as to U.S. Bank, N.A. and granted as the claim is moot as to
Bank of America, N.A. As it relates to Plaintiff-Debtors'
Rescission Claim, the motion is granted as to both Defendants.

Dated: September 15, 2011

/s/ Ronald H. Sargis
RONALD H. SARGIS, Judge
United States Bankruptcy Court