FRED GULIEX, Plaintiff and Appellant,

v.

PENNYMAC HOLDINGS LLC, Defendant and Respondent.

No. F073142.

Court of Appeals of California, Fifth District.

Filed July 12, 2017.

APPEAL from a judgment of the Superior Court of Kern County, Super. Ct. No. CV280938, Sidney P. Chapin, Judge.

Fred Guliex, in pro. per.; and Stefanie N. West for Plaintiff and Appellant.

Aldridge Pite, Christopher L. Peterson, Jillian A. Benbow; Duncan Peterson and Christopher L. Peterson for Defendant and Respondent.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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OPINION

LEVY, J.

Plaintiff, a homeowner and borrower, sued the defendant financial institution for wrongs allegedly committed in connection with a nonjudicial foreclosure sale of his residence. Plaintiff's main theory was that the financial institution did not own his note and deed of trust and, therefore, lacked the authority to foreclose under the deed of trust.

The financial institution convinced the trial court that (1) it was, in fact, the beneficiary under the deed of trust, (2) a properly appointed substitute trustee conducted the foreclosure proceedings, and (3) the plaintiff lacked standing to claim the foreclosure was wrongful. The financial institution argued its chain of title to the deed of trust was established by facts stated in recorded assignments of deed of trust and a recorded substitution of trustee. The trial court took judicial notice of the recorded documents. Based on these documents, the court sustained a demurrer to some of the causes of action and granted summary judgment as to the remaining causes of action. On appeal, plaintiff contends he has standing to challenge the foreclosure and, furthermore, the judicially noticed documents do not establish the financial institution actually was the beneficiary under the deed of trust. We agree.

As to standing, the holding in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919 (*Yvanova*) clearly establishes plaintiff has standing to challenge the nonjudicial foreclosure on the ground that the foreclosing party lacked the authority to initiate the foreclosure because it held no beneficial interest under the deed of trust.

As to establishing facts by judicial notice, it is well recognized that courts may take notice of the existence and wording of recorded documents, but not the disputed or disputable facts stated therein. (*Yvanova, supra*, 62 Cal.4th at p. 924, fn. 1; *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 (*Herrera*).) Under this rule, we conclude the facts stated in the recorded assignments of deed of trust and the substitution of trustee were not subject to judicial notice. Therefore, the financial institution did not present evidence sufficient to establish its purported chain

of title to the deed of trust. Consequently, the financial institution failed to show it was the owner of the deed of trust and had the authority to foreclose on plaintiff's residence.

We therefore reverse the judgment and remand for further proceedings.

FACTS

The Loan and Deed of Trust

On April 19, 2005, plaintiff Fred Guliex (Borrower) purchased real property located on Judith Avenue in Arvin, California (the residence). He financed the purchase of the residence by obtaining a $156,000 loan from Long Beach Mortgage Company. The loan documents included a note and a deed of trust, both of which were dated June 21, 2005. In the deed of trust, Borrower granted Long Beach Mortgage Company, a Delaware corporation with an address in Anaheim, a security interest in the residence as collateral for the loan. The deed of trust was recorded on June 30, 2005, in the official records of Kern County.

The deed of trust named Long Beach Mortgage Company as both the beneficiary and the trustee. Paragraph 20 of the deed of trust stated the note together with the deed of trust could be sold one or more times without prior notice to Borrower and, as a result of such a sale, the loan servicer might change. Paragraph 24 of the deed of trust addressed substitute trustees by stating "Lender, as its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the [residence] is located." Paragraph 24 also stated "the successor trustee shall succeed to the title, powers and duties conferred upon the Trustee herein and by Applicable Law."

2008 Seizure of Washington Mutual Bank

Washington Mutual Bank is described in documents presented in this case as the successor in interest of Long Beach Mortgage Company, the original lender. The record does not show how Washington Mutual Bank became Long Beach Mortgage Company's successor. For instance, the record does not describe (1) an assignment of assets from Long Beach Mortgage Company to Washington Mutual Bank, (2) a corporate acquisition of Long Beach Mortgage Company by Washington Mutual Bank, or (3) a merger of that resulted in Washington Mutual Bank being the surviving entity.

The report of the loan auditor retained by Borrower and included in the appellate record refers to the seizure of Washington Mutual Bank by federal regulators and a deal to sell the bulk of its operations to JPMorgan Chase. The report and the remainder of the appellate record provides few details about the seizure and the transfer of Washington Mutual Bank's assets, but published cases describe those events. (See *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1085 (*Glaski*); *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 504, disapproved on another ground in *Yvanova, supra*, 62 Cal.4th at p. 939, fn. 13.) We note that (1) the United States Office of Thrift Supervision seized Washington Mutual Bank in September 2008; (2) the Federal Deposit Insurance Corporation (FDIC) acted as receiver; and (3) unspecific assets and liabilities were sold by the FDIC to JPMorgan Chase Bank, N.A. (*Glaski, supra*, at p. 1085.) As in *Glaski,* it is possible, though not certain, that JPMorgan Chase Bank acquired Borrower's deed of trust when it purchased assets of Washington Mutual Bank from the FDIC. (*Ibid.*)

2009 Default

Borrower defaulted on his loan payments in 2009. During his deposition, Borrower testified he called Chase to ask about a loan modification even though he had been making payments to Chase regularly. Borrower said he was told that Chase would modify the loan, but he needed to be three months behind. Borrower testified, "I got three months behind, and then they started—I got stacks of paper this high. They started that modification, and it never got

anyplace. That's—that's how I got in this situation." It appears that Borrower did not resume making payments under the loan.

2011 Documents

On July 26, 2011, three documents relating to the deed of trust were recorded in the official records of Kern County. The documents were stamped with consecutive documents numbers, from which we infer the sequence of their recording.

The first document recorded was an assignment of deed of trust dated July 25, 2011, which stated JPMorgan Chase Bank, National Association, successor in interest to Washington Mutual Bank, successor in interest to Long Beach Mortgage Company, granted, assigned and transferred to JPMorgan Chase Bank, National Association all beneficial interest under the deed of trust together with the notes or notes secured by the deed of trust.

The second document was a substitution of trustee dated July 25, 2011, that stated California Reconveyance Company was substituted for the original trustee, Long Beach Mortgage Company. The substitution of trustee also stated the "undersigned" was the present beneficiary under the deed of trust. It was signed by an officer of JPMorgan Chase Bank, National Association, successor in interest to Washington Mutual Bank, successor in interest to Long Beach Mortgage Company.

The third document was a notice of default and election to sell under deed of trust that stated the residence was in foreclosure because Borrower was behind on his payments and listed the past due amount as $38,616.91. The notice of default was signed and recorded by California Reconveyance Company, as trustee. A declaration of compliance with Civil Code section 2923.5, subdivision (b) was attached to the notice of default. The declaration was signed by Clement J. Durkin for JP Morgan Chase Bank, National Association and stated the borrower had been contacted to discuss his financial situation and to explore the options for avoiding foreclosure.

Over three months later, on October 27, 2011, California Reconveyance Company recorded a notice of trustee's sale. The notice stated Borrower was in default under the deed of trust and estimated the amount of unpaid balance and other charges at $196,269.23. The notice stated a public auction of the residence would be held on November 23, 2011, in Bakersfield.

2012 Bankruptcy

The trustee's sale scheduled for November 2011 was not held. Borrower asserts that he filed a Chapter 13 bankruptcy in 2012 after months of unsuccessful attempts to modify the loan. Exactly when Borrower's bankruptcy proceeding was concluded is not disclosed in the appellate record.

2013 Documents

On August 26, 2013, California Reconveyance Company recorded a second notice of trustee's sale. The notice stated Borrower was in default under the deed of trust and estimated the amount of unpaid balance and other charges at $218,300.83. The notice stated a public auction of the residence would be held on September 18, 2013, in Bakersfield.

A "California Assignment of Deed of Trust" dated September 14, 2013, was recorded in Kern County on November 15, 2013. It stated JPMorgan Chase Bank, National Association, granted, sold, assigned, transferred and conveyed unto PennyMac Mortgage Investment Trust Holdings I, LLC, all beneficial interest under the deed of trust.

On November 20, 2013, the residence was sold by California Reconveyance Company at a trustee's sale. On November 22, 2013, the Kern County Assessor-Recorder recorded a trustee's deed upon sale stating California Reconveyance Company as trustee of the deed of trust granted and conveyed all right, title and interest in the property

to PennyMac Holdings, LLC (PennyMac). The trustee's deed upon sale stated (1) a default occurred, a notice of default and election to sell was recorded, and the default still existed at the time of the trustee's sale; (2) the trustee, in exercise of its powers under the Deed of Trust, sold the property at public auction on November 20, 2013; and (3) the grantee, PennyMac, being the highest bidder at the sale, "became the purchaser of said property for the amount bid being $126,000.00 in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the time of said Trustee's Sale."

Borrower testified that before the trustee's sale, he had received a paper from Chase stating bidding at the sale would start at $60,000. In Borrower's opinion, the property was worth approximately $80,000 in November 2013.

The day after the trustee's sale, a "Corporate Assignment of Deed of Trust" was signed by a vice president of JPMorgan Chase Bank, National Association. The assignment was dated November 21, 2013, and stated JPMorgan Chase Bank, National Association, granted, sold, assigned, transferred and set over the deed of trust without recourse, representation or warranty, together with all right, title and interest secured by the deed of trust, to PennyMac. The corporate assignment was recorded on November 22, 2013, immediately before the trustee's deed upon sale was recorded.

PROCEEDINGS

In December 2013, Borrower filed this lawsuit against PennyMac, PennyMac Loan Services, and California Reconveyance Company. In August 2014, Borrower filed a first amended complaint, which is the operative pleading in this appeal and contains headings for five causes of action. All five causes of action are based on or related to Borrower's basic position that the November 2013 foreclosure sale was illegal.

Borrower alleged Long Beach Mortgage Company never sold, transferred or granted the deed of trust and note to PennyMac and, thus, PennyMac "is merely a third-party stranger to the loan transaction." Borrower also alleged that PennyMac actually has no secured or unsecured right, title or interest in the note and deed of trust and has no right to collect mortgage payments or demand mortgage payments. Borrower specifically disputed the validity of the assignment recorded in July 2011 and the two assignments recorded in November of 2013. In Borrower's view, PennyMac must establish a complete and unbroken chain of title from the origination of the loan to the transaction that established PennyMac's purported ownership of the deed of trust. Borrower also alleged illegal "robodocs" were used in connection with the foreclosure and the loan and deed of trust had been fully satisfied prior to the foreclosure sale.

In September 2014, PennyMac filed a demurrer to the amended complaint. PennyMac argued that Borrower lacked standing to challenge its authority to foreclose and failed to allege facts showing prejudice or the ability and willingness to tender payment of the debt.

The trial court sustained the demurrer as to three of the five causes of action alleged in the amended complaint. The trial court concluded Borrower lacked standing to challenge the foreclosure and PennyMac's chain of title was perfected.

In August 2015, PennyMac filed a motion for summary judgment, contending that Borrower could not establish one or more of the elements of his fourth and fifth causes of action. The trial court agreed and granted the motion. As a result of the summary judgment and the order sustaining the demurrer, the entire case was resolved without a trial.

DISCUSSION

I. DEMURRERS

A. Standard of Review

1. Stating a Cause of Action under Any Legal Theory

Appellate courts independently review an order sustaining a general demurrer and make a de novo determination of whether the pleading alleges facts sufficient to state a cause of action under *any* legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) The demurrer is treated as admitting all material facts properly pleaded, but does not admit the truth of contentions, deductions or conclusions of law. (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.)

2. Rule Prohibiting "Speaking" Demurrers

A corollary of the rule that a demurrer admits all material facts properly pleaded is the principle that a defendant may not offer evidence of additional facts to support a demurrer. Our Supreme Court has stated "facts have no place in a demurrer." (*Bainbridge v. Stoner* (1940) 16 Cal.2d 423, 431.) Demurrers supported by evidence are referred to as "speaking" demurrers and usually are improper. (See *Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037, 1041, fn. 2; 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 948, p. 364 ["the `speaking demurrer' (one that contains factual matters) is not recognized in this state"].)

3. Judicial Notice and Its Limitations

The general rule against speaking demurrers is subject to an explicit statutory exception. The grounds for a demurrer may be based on the face of the complaint or "any matter of which the court is required to or may take judicial notice." (Code Civ. Proc., § 430.30, subd. (a); see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Thus, a court considering a demurrer may take judicial notice of the existence, content and authenticity of public records and other specified documents. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1262.) However, courts do not take judicial notice of the truth of the factual matters asserted in those documents. (*Ibid.*)

The application of these principles defining the scope of judicial notice is important to the outcome of this appeal. Their application is illustrated by a case where the trial court took judicial notice of various recorded documents—specifically, a deed of trust, two assignments of the deed of trust, two substitutions of trustee, and a notice of default and election to sell under the deed of trust. (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1116.) The appellate court stated:

> "[T]he fact a court may take judicial notice of a recorded deed, or similar document, does not mean it may take judicial notice of factual matters stated therein. [Citation.] For example, the First Substitution [of Trustee] recites that Shanley `is the present holder of beneficial interest under said Deed of Trust.' By taking judicial notice of the First Substitution, the court does not take judicial notice of this fact, because it is hearsay and it cannot be considered not reasonably subject to dispute." (*Id.* at p. 1117.)

Similarly, in *Herrera, supra*, 196 Cal.App.4th 1366, the court concluded a substitution of trustee stating the bank in question was the present beneficiary under the deed of trust did not establish the bank was the beneficiary because the statement was hearsay and the fact was disputed. (*Id.* at p. 1375.) The court also stated:

> "Nor does taking judicial notice of the assignment of deed of trust establish that the Bank is the beneficiary under the 2003 deed of trust. The assignment recites that JPMorgan Chase Bank, `successor in interest to WASHINGTON MUTUAL BANK, SUCCESSOR IN INTEREST TO LONG BEACH MORTGAGE COMPANY' assigns all beneficial interest under the 2003 deed of trust to the Bank. The recitation that JPMorgan Chase Bank is the successor in interest to Long Beach Mortgage

> Company, through Washington Mutual, is hearsay. Defendants offered no evidence to establish that JPMorgan Chase Bank had the beneficial interest under the 2003 deed of trust to assign to the Bank. The truthfulness of the contents of the assignment of deed of trust remains subject to dispute [citation], and plaintiffs dispute the truthfulness of the contents of all of the recorded documents." (*Ibid.;* see *Yvanova, supra*, 62 Cal.4th at p. 924, fn. 1)

To complete our overview of judicial notice, we recognize the rule that courts do not judicially notice the truth of factual matters asserted in documents is subject to a narrow exception. Evidence Code section 622 provides: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest; but this rule does not apply to the recital of a consideration." (See *Satten v. Webb* (2002) 99 Cal.App.4th 365, 375 [recitals in exhibits attached to complaint].) Of course, a party must establish that it actually is a successor in interest before the conclusive presumption applies.

B. PennyMac's Demurrer and Borrower's Standing

1. The Demurrer and the Trial Court's Ruling

PennyMac's demurrer argued Borrower lacked standing to challenge PennyMac's authority to foreclose. The section of PennyMac's brief arguing Borrower lacked standing to challenge the foreclosure relied on cases where the foreclosure process was underway, but no trustee's sale had been completed. (See *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149.) Extrapolating from the preforeclosure cases, PennyMac argued Borrower could not challenge the completed foreclosure and, thus, the entire action was subject to demurrer without leave to amend.

The trial court was convinced by PennyMac's arguments about standing. The minute order stated Borrower lacked standing to challenge the nonjudicial foreclosure process, the securitization process, and the assignment of the promissory note because (1) Borrower did not dispute the underlying debt and (2) he failed to allege tender or the ability to tender. As to Borrower's curing these defects by amendment, the court stated Borrower "does not seem to be able to do so, since the chain of title of PennyMac is perfected." (Capitalization omitted.)

2. Borrower's Standing Argument

Borrower's opening brief contains a heading asserting the trial court erred in granting summary judgment to PennyMac because he had standing to challenge the assignments of the deed of trust. PennyMac's appellate brief suggests this court should treat Borrower as having waived challenges to the demurrer because those specific challenges were not adequately raised and briefed.

We reject PennyMac's suggestion and conclude Borrower has raised the question of his standing to challenge PennyMac's right to foreclose. Borrower, who was representing himself in this proceeding during briefing, might have used the term "summary judgment" in the heading of his brief in a nontechnical way to mean the judgment entered without a trial (i.e., summarily) rather than with the intention of restricting his argument solely to the order granting the motion for summary judgment. This interpretation is consistent with Borrower's statement that his "appeal is from the final judgment." It also is consistent with the first paragraph on page 12 of Borrower's opening brief, where he (1) asserted the trial court erred in sustaining the demurrer as to three causes of action on the ground he lacked standing and (2) specifically (and correctly) argued the court could not know the chain of title of PennyMac was perfected. Therefore, reading Borrower's appellate briefs as a whole, we conclude he adequately raised the standing issue for purposes of challenging both the demurrer and the summary judgment.

3. The Law of Borrower Standing

PennyMac's demurrer and the trial court's ruling on that demurrer were made before the California Supreme Court addressed "[u]nder what circumstances, if any, may the borrower challenge a nonjudicial foreclosure on the ground that the foreclosing party is not a valid assignee of the original lender." (Yvanova, supra, 62 Cal.4th at p. 928.) Our high court decided that question as follows:

> "We conclude a home loan borrower has standing to claim a nonjudicial foreclosure was wrongful because an assignment by which the foreclosing party purportedly took a beneficial interest in the deed of trust was not merely voidable but void, depriving the foreclosing party of any legitimate authority to order a trustee's sale." (*Id.* at pp. 942-943.)

The court in *Yvanova* also considered whether a borrower must show prejudice when it addressed the defendants' argument that an allegedly invalid assignment leading to a foreclosure by an unauthorized party causes no harm or prejudice to a borrower in default of a loan because the actual holder of the beneficial interest under the deed of trust could have foreclosed on the property. (Yvanova, supra, 62 Cal.4th at p. 937.) The court stated:

> "As it relates to standing, we disagree with defendants' analysis of prejudice from an illegal foreclosure. A foreclosed-upon borrower clearly meets the general standard for standing to sue by showing an invasion of his or her legally protected interests [citation]—the borrower has lost ownership to the home in an allegedly illegal trustee's sale." (*Ibid.*)

The court also rejected the view that tender of the amount of the secured indebtedness, or an excuse of tender, was needed to establish the borrower's standing. (Yvanova, supra, 62 Cal.4th at p. 929, fn. 4.)

4. Application of Standing Principles to This Case

The trial court concluded Borrower lacked standing to challenge the nonjudicial foreclosure and the assignment of the note and deed of trust to PennyMac. The court's minute order supported this conclusion by stating Borrower did not dispute the underlying debt and failed to allege tender or the ability to tender. In *Yvanova,* our Supreme Court unanimously rejected the argument that borrower standing required a showing of prejudice and a tender of the balance due on the loan. (Yvanova, supra, 62 Cal.4th at pp. 929, fn. 4, 937.) Based on *Yvanova,* the order sustaining the demurrer to the first three causes of action in Borrower's amended complaint cannot be upheld due to an absence of standing. Under *Yvanova,* Borrower has standing to challenge a foreclosure by an unauthorized entity.

C. Another Ground for the Demurrer—PennyMac's Chain of Title

1. Contentions and Trial Court's Ruling

PennyMac's demurrer argued Borrower's amended complaint offered baseless theories that attempted "to challenge PennyMac's authority to foreclose, while at the same time ignoring the valid chain of title leading up to the Trustee's Sale." Under PennyMac's view of the record, "there is a full chain of assignments of the Deed of Trust, ending with the assignment to the foreclosing beneficiary PennyMac."

Borrower opposed the demurrer by arguing that there were huge gaps in the chain of title and PennyMac was a third party stranger to the secured debt. Borrower relied on the rule that taking judicial notice of a document does not establish the facts asserted in the document and argued the recorded assignments of deed of trust did not establish PennyMac was, in fact, the owner or holder of a beneficial interest in the deed of trust. Borrower also cited *Herrera* to support his argument about the limits placed on judicial notice.

The trial court reached the chain-of-title theory as an alternative ground for sustaining the demurrer as to three causes of action. The court stated Borrower failed to allege sufficient facts to constitute a violation of law, and seemed unable to do so, because the chain of title of PennyMac was perfected. We disagree. As explained below, the facts alleged in

the amended complaint and the facts judicially noticeable do not establish an unbroken or perfect chain of title from Borrower to PennyMac.

2. The Links in PennyMac's Purported Chain of Title

"Links" in a chain of title are created by a transfer of an interest in the underlying property from one person or entity to another. An examination of each link in the purported chain of title relied upon by PennyMac reveals that certain links were not established for purposes of the demurrer. Our analysis begins with a description of each link in the purported chain (and each related document, where known), beginning with the husband and wife who sold the residence to Borrower and ending with the trustee's sale to PennyMac.

Link One-Sale: Clarence and Betty Dake sold the residence to Borrower pursuant to a grant deed dated April 19, 2005, and recorded on June 30, 2005. The parties do not dispute this transfer.

Link Two-Loan: Borrower granted a beneficial interest in the residence to Long Beach Mortgage Company pursuant to a deed of trust dated June 21, 2005, and recorded on June 30, 2005. The parties do not dispute this transfer.

Link Three-Purported Transfer: Long Beach Mortgage Company purportedly transferred its rights to Washington Mutual Bank by means of a document or transaction not identified in the appellate record. Also, the appellate record does not identify when the purported transaction occurred. Borrower disputes the existence of this and subsequent transfers of the deed of trust.

Link Four-Purported Transfer: Washington Mutual Bank purportedly transferred its rights to JPMorgan Chase Bank, National Association in an unidentified transaction at an unstated time.

Link Five-Assignment: JPMorgan Chase Bank, National Association, successor in interest to Washington Mutual Bank, successor in interest to Long Beach Mortgage Company, purportedly transferred the note and all beneficial interest under the deed of trust to "JPMorgan Chase Bank, National Association" pursuant to an assignment of deed of trust dated July 25, 2011, and recorded on July 26, 2011.

Link Six(A)-Assignment: JPMorgan Chase Bank, National Association transferred all beneficial interest in the deed of trust to PennyMac Mortgage Investment Trust Holdings I, LLC pursuant to a "California Assignment of Deed of Trust" dated September 14, 2013, and recorded on November 15, 2013.

Link Seven-Trustee's Sale: California Reconveyance Company, as trustee under the deed of trust, (1) sold the residence to PennyMac at a public auction conducted on November 20, 2013, and (2) issued a trustee's deed of sale dated November 21, 2013 and recorded on November 22, 2013. PennyMac, the grantee under the deed upon sale, was described in the deed as the foreclosing beneficiary.

Link Six(B)-Purported Assignment: The day after the trustee's sale, JPMorgan Chase Bank, National Association executed a "Corporate Assignment of Deed of Trust" dated November 21, 2013, purporting to transfer the deed of trust without recourse to PennyMac Holdings, LLC. The assignment was recorded November 22, 2013. This assignment was signed (1) after JPMorgan Chase Bank, National Association had signed and recorded the "California Assignment of Deed of Trust" described earlier as Link Six(A) and (2) after the trustee's sale was conducted on November 20, 2013. Consequently, it is unclear whether any interests were transferred by this "corporate" assignment.

3. Links Three and Four Are Missing from the Chain

The purported chain of title relied upon by PennyMac presents the following questions: First, has it been established that Long Beach Mortgage Company transferred the deed of trust to Washington Mutual Bank? Second, has it been established that Washington Mutual Bank transferred the deed of trust to JPMorgan Chase Bank, National

Association? The answer to these questions is "no." The record before this court is insufficient to establish either of the transfers actually occurred.

This conclusion is compelled by the rules of law governing judicial notice, which were discussed in part I.A.3, *ante.* The analysis adopted in *Herrera* is particularly apt because that case also involved a loan made by Long Beach Mortgage Company that the foreclosing entity asserted was owned subsequently by Washington Mutual Bank and its successor in interest, JPMorgan Chase Bank. In *Herrera,* the bank foreclosing under a 2003 deed of trust relied on the recitations in a recorded assignment stating the assignor, JPMorgan Chase Bank, was the successor in interest to Washington Mutual Bank, which was the successor in interest to Long Beach Mortgage Company. (*Herrera, supra,* 196 Cal.App.4th at p. 1375.) The appellate court concluded that judicial notice of the recorded assignment from JPMorgan Chase Bank to the foreclosing bank did not establish that the foreclosing bank was the beneficiary under the 2003 deed of trust. (*Ibid.*)

The *Herrera* decision was over three years old when PennyMac filed its demurrer. Despite the fact that Borrower's opposition papers cited the decision, neither PennyMac nor the trial court referred to the case, much less explained why it was not controlling authority. We conclude *Herrera* correctly applied an established rule of law against taking judicial notice of facts asserted in a recorded document subject to judicial notice. Furthermore, that rule was confirmed in *Yvanova* when the California Supreme Court determined the trial court properly took judicial notice of the recorded deed of trust, assignment of the deed of trust, substitution of trustee, notices of default and of trustee's sale, and the trustee's deed upon sale and then stated: "We therefore take notice of their existence and contents, *though not of disputed or disputable facts stated therein.*" (*Yvanova, supra,* 62 Cal.4th at p. 924, fn. 1, italics added.)

Based on *Herrera* and *Yvanova,* we conclude the recorded documents do not establish that JPMorgan Chase Bank, National Association was the owner of the beneficial interest in the deed of trust. It follows that the recorded documents do not establish that PennyMac became the owner of any beneficial interest under the deed of trust. These are the same conclusions this court reached in another case involving an assignment by JPMorgan Chase Bank. (*Glaski, supra,* 218 Cal.App.4th at p. 1102.) Restated in terms of the links described in part I.C.2, *ante,* PennyMac failed to establish the third and fourth links in the chain of title upon which it relied.

4. Problems with Link Six(A)

An additional break in the chain of title preceding the trustee's sale is revealed by the September 2013 "California Assignment of Deed of Trust" that identified "PennyMac Mortgage Investment Trust Holdings I, LLC" as the assignee of all beneficial interest in the deed of trust. In comparison, the name of the entity that purchased the residence at the trustee's sale by credit bidding $126,000 was given as "PennyMac Holdings, LLC."

How do we know that the entity identified as "PennyMac Mortgage Investment Trust Holdings I, LLC" in the assignment of deed of trust is the same entity subsequently identified as "PennyMac Holdings, LLC" in the trustee's deed? That information was provided to the trial court in the second footnote of the memorandum of points and authorities submitted by PennyMac in support of its demurrer. The footnote stated in full: "PennyMac Mortgage Investment Trust Holdings I, LLC changed its name to PennyMac Holdings, LLC." It is well established under California law that speaking demurrers are improper. Accordingly, in sustaining the demurrer, the trial court should not have relied on the footnote's assertion of fact to establish a link in the chain of title relied upon by PennyMac.

For purposes of the demurrer, the second attempted assignment by JPMorgan Chase Bank, National Association, which was dated November 21, 2013, and named "PennyMac Holdings, LLC" as the assignee should have been regarded as ineffective, transferring nothing. A similar conclusion was reached by the Fourth District in *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552 (*Sciarratta*), when it considered two assignments to different assignees executed by JPMorgan Chase Bank, as successor in interest to Washington Mutual Bank. (*Id.* at pp. 557, 562.) The court concluded the borrower adequately alleged a second attempted assignment, which occurred in November 2009, was void because "when Chase purported to assign Sciarratta's promissory note and deed of trust to

Bank of America, Chase had nothing to assign, having previously (in Apr. 2009) assigned the promissory notes and deed of trust to Deutsche Bank." (*Id.* at p. 563.) As a result, the court concluded the foreclosure by Bank of America, the second assignee, was wrongful because Bank of America could not have acquired any interest in the deed of trust pursuant to the second attempted assignment. (*Id.* at p. 565.) Similarly, the November 21, 2013, assignment to "PennyMac Holdings, LLC" must be regarded as void and ineffective for purposes of the demurrer.

5. Summary

The purported chain of title relied upon by PennyMac is missing more than one link. Thus, the trial court erred in concluding the chain of title was perfected. It follows that the order sustaining the demurrer cannot be upheld on the ground that the chain of title presented by PennyMac precludes Borrower from establishing elements of the first three causes of action stated in his amended complaint.

D. Tender and Prejudice

1. Issue Not Resolved in Yvanova

Earlier we addressed whether Borrower's failure to tender the full amount owed on the debt secured by the deed of trust precluded him from having standing in this lawsuit. Based on the holding in *Yvanova,* we concluded the failure to tender did not deprive Borrower of standing. However, our Supreme Court explicitly identified the scope of its decision:

> "Our review being limited to the standing question, we express no opinion as to whether plaintiff Yvanova must allege tender to state a cause of action for wrongful foreclosure under the circumstances of this case. . . . As to prejudice, we do not address it as an element of wrongful foreclosure. We do, however, discuss whether plaintiff has suffered a cognizable injury for standing purposes." (*Yvanova, supra,* 62 Cal.4th at p. 929, fn. 4.)

Accordingly, we now address the elements of a wrongful (i.e., unauthorized) foreclosure cause of action that were not reached by our Supreme Court.

2. Types of Wrongful Foreclosure

As a general proposition, "[a] beneficiary or trustee under a deed of trust who conducts an illegal, fraudulent or willfully oppressive sale of property may be liable to the borrower for wrongful foreclosure." (*Yvanova, supra,* 62 Cal.4th at p. 929.) Our Supreme Court stated "[a] foreclosure initiated by one with no authority to do so is wrongful for purposes of such an action." (*Ibid.*)

Initially, we consider the label "wrongful foreclosure" for a cause of action that alleges a foreclosure was illegal in some way or other and whether that label facilitates an understanding the underlying legal theory or, alternatively, is so general that it might lead to confusion. There are many ways in which the foreclosure process might violate applicable statutes, the common law, or the loan documents. (See *Glaski, supra,* 218 Cal.App.4th at p. 1100, fn. 17 [claims a foreclosure is "wrongful" can be tort-based, statute-based and contract-based].) From another perspective, the legal theories presented under the label "wrongful foreclosure" can be divided into two basic categories of illegality.

The first category of illegality involves *procedural irregularities* in a foreclosure sale conducted by the rightful trustee at the directions of the rightful beneficiary. In other words, foreclosures in this category are *wrongful* because of the procedural irregularities or defects in the foreclosure process. (See *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 81, 92-94 [procedural irregularity alleged was the premature service of the notice of trustee's sale] (*Knapp*).) We adopt the term "irregular foreclosure" to describe this particular category of wrongful foreclosure.

In contrast, the second category of illegality involves a "foreclosure initiated by one with no authority to do so." (*Yvanova, supra*, 62 Cal.4th at p. 929.) In other words, foreclosures in this category are *wrongful* because they are initiated or conducted by the *wrong party*. When the foreclosing entity had no legal authority to pursue a trustee's sale, "such an unauthorized sale constitutes a wrongful foreclosure." (*Yvanova, supra*, at p. 935.) Stated another way, under California law, "only the original beneficiary, its assignee or an agent of one of these has the authority to instruct the trustee to initiate and complete a nonjudicial foreclosure sale." (*Yvanova, supra*, 62 Cal.4th at p. 929; see Civ. Code, § 2924, subd. (a)(6).) Consequently, when a foreclosing party claims the authority to initiate and complete a nonjudicial foreclosure sale as an assignee, the borrower may challenge that party's status as a true assignee by alleging an assignment or other transfer in the purported chain never occurred—that is, does not exist. (*Yvanova, supra*, 62 Cal.4th at p. 939; *Sciarratta, supra*, 247 Cal.App.4th at pp. 563-564; *Barrionuevo v. Chase Bank, N.A.* (N.D.Cal. 2012) 885 F.Supp.2d 964, 973.) One way, but not the only way, to allege an assignment never occurred is to allege grounds that would render a documented assignment void—that is, a nullity. (*Yvanova, supra*, 62 Cal.4th at p. 939.)

Based on the many uses of the term "unauthorized" in *Yvanova,* we adopt the term "unauthorized foreclosure" to describe this second type of wrongful foreclosure. Accordingly, the remainder of this opinion uses the terms "irregular foreclosure" and "unauthorized foreclosure" to identify the two types of legal theories that fall under the broader term "wrongful foreclosure." Our goal in using these labels is to aid in distinguishing the two legal theories and their constituent elements.

3. Tender as an Element of the Unauthorized Foreclosure Claim

We conclude that tender is not an element that must be pleaded and proven to establish an unauthorized foreclosure cause of action. We reached the same conclusion in *Glaski, supra*, 218 Cal.App.4th at page 1100 and were joined in that conclusion by Division One of the Fourth District in *Sciarratta, supra*, 247 Cal.App.4th at page 568.

In contrast, we recognize that tender is an element of a cause of action alleging an irregular foreclosure. (*McElroy v. Chase Manhattan Mortgage Corp.* (2005) 134 Cal.App.4th 388, 394 [complaint failed to state an irregular foreclosure cause of action because it did not allege a proper tender to cure the default].) A borrower attacking a nonjudicial foreclosure sale on the ground of procedural irregularity must overcome a rebuttable presumption that the sale was conducted regularly and fairly by pleading and proving an improper procedure and the resulting prejudice. (*Knapp, supra*, 123 Cal.App.4th at p. 86, fn. 4.) Allegations of tender, an ability to tender, or an excuse for not tendering are connected to showing that the procedural irregularity was prejudicial or harmful to the borrower. The theory of prejudice or harm is that if proper procedures had been followed, the default in the loan would have been cured by the homeowner and the foreclosure would not have been completed.

Requiring a borrower to tender payment to a party that holds no rights or interests in the loan or deed of trust makes little sense. Consequently, we do not extend the tender requirement that is an element of an irregular foreclosure cause of action to the cause of action for unauthorized foreclosure. As a result, the order sustaining the demurrer cannot be upheld on the ground that Borrower was required to plead tender, or an excuse justifying the failure to tender.

4. Prejudice as an Element to the Unauthorized Foreclosure Claim

PennyMac also contends that Borrower failed to allege any prejudice resulting from the allegedly defective foreclosure. Based on this contention, we consider whether prejudice is an essential element of a cause of action for unauthorized foreclosure.

The elements of an *irregular* foreclosure cause of action are (1) procedural irregularities in the foreclosure process that caused the sale of real property pursuant to the power of sale in the deed of trust to be illegal, fraudulent or willfully oppressive; (2) prejudice or harm to the party attacking the foreclosure sale; and (3) in cases where the borrower

challenges the sale, the borrower tendered the amount of the secured indebtedness or was excused from tendering. (*Sciarratta, supra,* 247 Cal.App.4th at pp. 561-562; see *Knapp, supra,* 123 Cal.App.4th at p. 86, fn. 4.)

For example, in *Knapp,* the borrowers claimed the notice of trustee's sale was defective because it was mailed prematurely. (*Knapp, supra,* 123 Cal.App.4th at p. 91.) Specifically, it was mailed less than three months after the recordation of the notice of default, which is contrary to the three-month waiting period required by Civil Code section 2924, subdivision (a)(2). The court concluded the slightly premature service of the notice was a minor procedural irregularity that "was in no way prejudicial to Borrowers." (*Knapp,* at p. 81.) As a result, the court concluded the irregular service of the notice of trustee's sale did not invalidate the foreclosure sale and affirmed the summary judgment granted by the trial court. (*Id.* at pp. 94, 102.)

We conclude that elements of a cause of action alleging an *irregular* foreclosure are different from the elements of a cause of action alleging an *unauthorized* foreclosure. "'[W]here a plaintiff alleges that the entity lacked authority to foreclose on the property, the foreclosure sale would be void.'" (*Glaski, supra,* 218 Cal.App.4th at p. 1101.) When the foreclosure sale is void for *lack of authority,* we conclude the borrower need not plead prejudice as a separate element of the cause of action. First, prejudice seems obvious. (See *Sciarratta, supra,* 247 Cal.App.4th at p. 565 ["homeowner experiences prejudice or harm when an entity with no interest in the debt forecloses"].) The true beneficiary has not started the foreclosure process and, as a result, the borrower's rights in the property would continue until the true beneficiary decides to foreclose and completes that process. Thus, the timing of the completed, unauthorized foreclosure necessarily has occurred before any authorized foreclosure that *might* occur. The later date of a potentially authorized sale necessarily means the earlier, unauthorized sale worked to the detriment of the borrower. In other words, the borrower is prejudiced by the fact the borrower lost rights in the property sooner than would have occurred otherwise.

Second, leaving the timing aspect aside, PennyMac has identified no public policy or other rationale that justifies restricting the borrower's ability to set aside a *void* foreclosure sale. (See *Sciarratta, supra,* 247 Cal.App.4th at p. 565 [strong policy reasons favor conclusion that unauthorized foreclosure is harmful].) In *Glaski,* we concluded the remedy of setting aside the foreclosure sale was available to a borrower who establishes that the foreclosure sale is void because the entity lacked the authority to foreclose. (*Glaski, supra,* 218 Cal.App.4th at pp. 1100-1101.) The uncertainty over whether the true beneficiary under the deed of trust, once identified, will foreclose or, alternatively, will negotiate a loan modification, need not be addressed in a complaint when the borrower is pursuing a claim that will render the foreclosure sale void. Void means void—a void thing is as no thing, a nullity. (*Yvanova, supra,* 62 Cal.4th at p. 929.) Thus, the uncertainty of the true beneficiary's reaction to the default does not render the unauthorized foreclosure sale any less void.

In sum, we conclude prejudice is not an element of a cause of action alleging an *unauthorized* foreclosure.

E. Plaintiff's Causes of Action

The first cause of action in the amended complaint is labeled "quiet title." The legal theory underlying this cause of action is an unauthorized foreclosure and the relief sought is setting aside the November 2013 trustee's sale. Based on our earlier discussion of the unauthorized foreclosure cause of action and the remedy of setting aside the trustee's sale, we conclude Borrower's first cause of action has alleged sufficient facts to state a claim for relief.

The second cause of action asserts violations of Business and Professions Code section 17200 and alleges PennyMac engaged in unfair business practices, including executing and recording documents without the legal authority to do so and acting as the beneficiary under the deed of trust without the legal authority to do so. Borrower has alleged a claim for unauthorized foreclosure. It follows that he also has stated a claim for unfair business practices under Business and Professions Code section 17200. (*Glaski, supra,* 218 Cal.App.4th at p. 1101; *Susilo v. Wells Fargo Bank, N.A.* (C.D.Cal. 2011) 796 F.Supp.2d 1177, 1196.)

The third cause of action is labeled "quasi contract" and alleges an unjust enrichment would occur if PennyMac were allowed to retain any payments or to keep the residence because PennyMac had no legal authority to collect payments or foreclose on the residence. Borrower alleges the equitable remedy of restitution is appropriate to restore him to his former position by return of the property or its equivalent in money. We recognize that unjust enrichment is not an independent cause of action under California law, but will allow Borrower to proceed with the so-called third cause of action because it seeks a type of relief that may be different from the relief sought under the first and second causes of action.

Therefore, we conclude PennyMac's demurrer should have been overruled as to all causes of action in the amended complaint.

F. Plaintiff's Theory Related to a Securitized Trust[1]

In closing our discussion of the demurrer and whether Borrower has stated facts sufficient to constitute a cause of action under a recognized theory of law, we note that Borrower's amended complaint alleged, based on information and belief, that his loan was sold to a securitized trust named the Long Beach Mortgage Loan Trust 2005-WL2. Borrower further alleged that the defendants failed to endorse the note and failed to properly assign the deed of trust in a timely manner as set forth in the pooling and servicing agreement.

Plaintiff's allegations about an attempted transfer of his note and deed of trust to a securitized trust do not address how that attempted transfer relates to the chain of title relied upon by PennyMac or otherwise explain why PennyMac could not be the owner of the note and deed of trust. Consequently, even if the factual allegations (as distinguished from the legal conclusions) about an attempt to include Borrower's note and deed of trust in a securitized trust are true, those allegations are insufficient to establish that PennyMac was not a valid assignee of the note and deed of trust. Furthermore, if Borrower's allegations attempt to present the legal theory that a botched assignment to a securitized trust caused the debt and deed of trust to disappear, evaporate or otherwise cease to exist, we explicitly reject that legal theory. We are aware of no principle of law holding that an ineffective or void assignment of a debt extinguishes the debt. Instead, if a purported assignment is a nullity, the situation remains the same as though the purported assignment was never attempted and the purported assignor continues to own the debt and remains the beneficiary under the deed of trust.

In summary, Borrower's allegations about the securitized trust are insufficient to identify a break in the chain of title relied upon by PennyMac and are insufficient to extinguish the loan. Therefore, the question of whether any attempt to assign Borrower's note and deed of trust to a securitized trust was void or merely voidable is not properly before this court. Accordingly, we will not offer an advisory opinion on how to interpret McKinney's Consolidated Laws of New York Annotated: Estates, Powers and Trusts Law section 7-2.4.

II. SUMMARY JUDGMENT

A. Standard of Review

A motion for summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A moving party is entitled to judgment as a matter of law when it establishes by admissible evidence that the "action has no merit." (Code Civ. Proc., § 437c, subd. (a).)

A defendant moving for summary judgment can meet this burden by presenting evidence demonstrating that one or more elements of each cause of action cannot be established. (Code Civ. Proc., § 437c, subds. (o), (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850, 853-854.) A motion for summary judgment or summary adjudication will be defective if the moving party fails to reference evidence establishing, either directly or by inference,

each material fact the moving party claims is undisputed. (*Pierson v. Helmerich & Payne Internat. Drilling Co.* (2016) 4 Cal.App.5th 608, 617 (*Pierson*).)

Appellate courts independently review an order granting summary judgment. (*Pierson, supra*, 4 Cal.App.5th at p. 617.) In performing this independent review, appellate courts apply the same three-step analysis as the trial court. (*Ibid.*) In this case, the second step of that analysis determines the outcome. The second step addresses whether the moving party carried its initial burden of establishing facts that show the plaintiff's causes of action had no merit. (*Ibid.*) In completing this step, we (1) examine the evidence referenced as support for the facts stated in the moving party's separate statement of undisputed facts and (2) determine whether that evidence establishes either directly or by inference, the material facts that the moving party asserts are undisputed. (*Haney v. Aramark Uniform Services, Inc.* (2004) 121 Cal.App.4th 623, 632; see Cal. Rules of Court, rule 3.1350(d)(3).) The evidence must be viewed in the light most favorable to the plaintiff, with any evidentiary doubts or ambiguities resolved in the plaintiff's favor. (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 96-97.)

B. Scope of PennyMac's Motion for Summary Judgment

PennyMac's motion for summary judgment addressed the two causes of action that survived its demurrer. Those causes of action were the fourth and the fifth set forth in the amended complaint. In the caption of the amended complaint, Borrower labeled his fourth cause of action as a violation of the California Homeowner Bill of Rights and listed Civil Code sections 2924, subdivision (a)(6) and 2924.17. His fifth cause of action was labeled as a violation of Civil Code sections 2934, subdivision (a)(1)(A) and 2936. The fifth cause of action challenges the validity of the substitution of trustee recorded in July 2011 on a variety of grounds.

PennyMac's notice of motion for summary judgment asserted that the fourth and fifth causes of action were without merit because Borrower was unable to prove or establish one or more elements of the cause of action. PennyMac summarizes the fourth cause of action as alleging "robodocs" were used in the foreclosure process and alleging PennyMac "failed to provide competent and relevant support to the recorded Assignments of Deed of Trust and the Substitution of Trustee." As to the lack of support for the recorded assignment of the deed of trust, PennyMac contends (1) Borrower failed to provide evidence that any of the recorded documents related to the nonjudicial foreclosure were invalid and (2) it "provided direct evidence of the full chain of title leading up to the Trustee's Sale."

C. Material Facts Are Disputed

1. PennyMac's Assertions of Undisputed Material Facts

PennyMac challenges Borrower's fourth and fifth causes of action by asserting the same 45 undisputed material facts. PennyMac's main factual points are that JPMorgan Chase Bank, National Association held the beneficial interest under the deed of trust, validly appointed a substitute trustee and subsequently transferred the beneficial interest to PennyMac.

JPMorgan Chase Bank, National Association's ownership of the beneficial interest under the deed of trust is addressed by undisputed material fact No. 8 in PennyMac's separate statement, which asserts:

> "JPMorgan Chase Bank, National Association, successor in interest to Washington Mutual Bank, successor in interest to Long Beach Mortgage Company assigned the interest under the Deed of Trust to JPMorgan Chase Bank, National Association ("Chase") by an Assignment of Deed of Trust dated July 25, 2011 and recorded on July 26, 2011, in the Official Records of Kern County, California."

The only evidence PennyMac cites to support this assertion of fact is exhibit C to its request for judicial notice, which is the assignment recorded in July 2011.

2. Borrower's Response

Borrower's separate statement responded to PennyMac's undisputed material fact No. 8 by stating he did "not dispute the fact the assignment was recorded, [but did] dispute the contents of the assignment." Borrower's opposition to the motion stated the disputed questions of fact included (1) whether PennyMac acquired possession of the note and deed of trust through properly recorded assignments, (2) whether PennyMac could demonstrate proof of ownership of the note and deed of trust, (3) whether the deed of trust was separated from the note, (4) whether the substitution of trustee was executed by the rightful party, and (5) the authenticity of the assignments recorded prior to the foreclosure sale.

3. PennyMac Did Not Carry Its Initial Burden

We conclude PennyMac did not carry its initial burden of establishing facts that show the plaintiff's causes of action had no merit. (See *Pierson, supra*, 4 Cal.App.5th at p. 617.) In particular, the July 2011 assignment of deed of trust that states JPMorgan Chase Bank, National Association was the successor in interest to Washington Mutual Bank, which was the successor in interest to the original lender, Long Beach Mortgage Company is insufficient to establish that JPMorgan Chase Bank, National Association in fact held an interest in the deed of trust as the successor of those two entities. As discussed in parts I.A.3 and I.C.3, *ante,* courts may take judicial notice of the existence and wording of recorded documents, "though not of disputed or disputable facts stated therein." (*Yvanova, supra*, 62 Cal.4th at p. 924, fn. 1.) In *Herrera, supra*, 196 Cal.App.4th 1366, the appellate court reversed an order granting the foreclosing bank's summary judgment on the ground that the assignment from JPMorgan Chase Bank to the foreclosing bank did not establish the foreclosing bank actually was the beneficiary under the 2003 deed of trust. (*Id.* at p. 1375.) The applicable principles governing judicial notice require the same result in this case.

PennyMac's failure to present sufficient evidence to establish JPMorgan Chase Bank, National Association actually held an interest in the deed of trust breaks the chain of title relied upon by PennyMac. This break calls into question the validity of all later recorded documents in the chain, including the substitution of trustee that designated California Reconveyance Company as the new trustee under the deed of trust.

Consequently, we conclude that PennyMac failed to establish facts that precluded Borrower from proving the elements of the fourth and fifth cause of action stated in the amended complaint. Based on this conclusion and our analysis of the demurrer, we conclude the judgment must be reversed.

DISPOSITION

The judgment is reversed. The trial court is directed to vacate its order sustaining the demurrer without leave to amend and to enter a new order overruling the demurrer. The trial court also is directed to vacate its order granting the motion for summary judgment and to enter a new order denying that motion. Plaintiff Guliex shall recover his costs on appeal.

HILL, P.J. and GOMES, J., concurs.

[1] The mortgage securitization process is described in *Yvanova, supra*, 62 Cal.4th at page 930, footnote 5. The mortgage-backed securities issued by a securitized trust are described in *Glaski, supra*, 218 Cal.App.4th at p. 1082, footnote 1. Those descriptions need not be repeated here.