

JAN 26 2017

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: VICTOR ORLANDO RIVERA,

Debtor,

VICTOR ORLANDO RIVERA,

Appellant,

v.

OCWEN LOAN SERVICING, LLC and  
WELLS FARGO BANK, NA, Trustee for  
Soundview Home Loan Trust 2007-OPT1,  
Asset-Backed Certificates, Series 2007-  
OPT1,

Appellees.

No. 15-60009

BAP No. 13-1505

MEMORANDUM\*

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Pappas, Kurtz, and Taylor, Bankruptcy Judges, Presiding

Submitted January 18, 2017\*\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Victor Orlando Rivera appeals pro se from the Bankruptcy Appellate Panel's ("BAP") judgment affirming the bankruptcy court's judgment dismissing Rivera's adversary proceeding with prejudice. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo BAP decisions, and apply the same standard of review that the BAP applied to the bankruptcy court's ruling. *Boyajian v. New Falls Corp. (In re Boyajian)*, 564 F.3d 1088, 1090 (9th Cir. 2009). We affirm.

The bankruptcy court properly dismissed Rivera's adversary proceeding for failure to state a claim because California law does not permit Rivera to bring a preemptive suit to challenge defendants' authority to initiate nonjudicial foreclosure proceedings. *See Gomes v. Countrywide Home Loans Inc.*, 121 Cal. Rptr. 3d 819, 824 (Ct. App. 2011) (California law does not "provide for a judicial action to determine whether the person initiating the foreclosure process is indeed authorized" absent "a *specific factual basis* for alleging that the foreclosure was not initiated by the correct party"). To the extent that Rivera contends defendants engaged in fraudulent conduct, Rivera failed to plead the alleged fraud with particularity. *See Fed. R. Civ. P. 9(b)*.

Rivera's request to amend the caption, filed August 3, 2016, is denied.

Ocwen Loan Servicing, LLC and Wells Fargo Bank, N.A.'s request for judicial notice, filed November 25, 2015, is granted.

**AFFIRMED.**