

1 their home, fraud,¹ and cancellation of instruments.² Presently
2 before the court is defendants' Motion for judgment on the
3 pleadings pursuant to Federal Rule of Civil Procedure 12(c)
4 ("Rule 12(c)").

5 I. Factual and Procedural Background

6 In January 2003, plaintiffs obtained a \$270,000 loan
7 from Ameriquest Mortgage Company ("Ameriquest") secured by a Note
8 and Deed of Trust on property located in Grass Valley, California
9 ("the property"). (Second Am. Compl. ("SAC") ¶¶ 2-3, 12-13
10 (Docket No. 41); Defs.' Req. for Judicial Notice in Supp. of
11 Ameriquest's Mot. to Dismiss ("Ameriquest RJN") Ex. A (Docket No.
12 58-1).)

13 Plaintiffs allege that the loan was to be transferred
14 into a securitized trust that had a closing date--the date by
15 which all Notes and Deeds of Trust must be transferred into the
16 trust--of July 1, 2003. On February 20, 2009, five and a half
17 years after the trust had closed, Ameriquest assigned all
18 beneficial interest in the Note and Deed of Trust to Deutsche
19 Bank National Trust Company ("Deutsche Bank") by way of a
20 Corporate Assignment and Deed of Trust. (SAC ¶ 18; Ex. 1.)
21 Plaintiffs allege that, because the Deed of Trust was not
22 transferred to the securitized trust by the closing date, this

23 ¹ Plaintiffs' fraud claim was dismissed on January 14,
24 2014. (Docket No. 72).

25 ² Plaintiffs originally brought this action against three
26 additional defendants--Town and Country Title Services;
27 Ameriquest Mortgage Co.; and American Home Mortgage Servicing,
28 Inc. They were dismissed with prejudice on February 13, 2017.
(Docket No. 120.)

1 assignment is invalid. (Id. ¶ 35.)

2 A Notice of Default and Election to Sell Under Deed of
3 Trust was recorded on October 12, 2010. (Id. ¶ 21.) A Notice of
4 Trustee's Sale was executed and recorded on February 24, 2011.
5 (Id. ¶ 24, Ex. 3.) On April 29, 2011, the property was sold at
6 public auction and Deutsche Bank became the owner. (Ameriquest
7 RJN ¶ 8, Ex. H.) On May 6, 2011, a Trustee's Deed Upon Sale was
8 recorded, declaring that the property had been sold to Deutsche
9 Bank. (SAC ¶ 25, Ex. 4.) Plaintiffs allege this sale never
10 actually occurred. (Id.)

11 In October 2011, plaintiffs filed a Chapter 7
12 bankruptcy petition. (Bankr. No. 11-45476; Ameriquest RJN ¶ 9,
13 Ex. I.) On January 5, 2012, plaintiffs filed a Complaint against
14 Ameriquest and other named defendants to commence a bankruptcy
15 adversary proceeding. (Bankr. Adv. No. 12-02007.) Plaintiffs
16 filed the amended Complaint in that proceeding on February 9,
17 2012.

18 Plaintiffs obtained a discharge in bankruptcy on
19 February 13, 2012, (Ameriquest RJN Ex. J), and this court granted
20 plaintiffs' Motion to withdraw the reference of the adversary
21 complaint to bankruptcy court on July 16, 2013. (Docket No. 32.)
22 On August 26, 2013, defendants filed a Motion to dismiss
23 plaintiffs' First Amended Complaint, which was granted on
24 September 18, 2013. (Docket No. 40.) Plaintiffs filed the SAC
25 on October 8, 2013, re-alleging claims of wrongful foreclosure,
26 fraud, and cancellation of instruments. (Docket No. 41.)
27 Defendants then moved to dismiss the SAC for failure to state a
28 claim pursuant to Rule 12(b)(6). On January 14, 2014, the court

1 dismissed plaintiffs' claims without leave to amend. (Docket No.
2 72.)

3 On January 31, 2014, plaintiffs filed a notice of
4 appeal. (Docket No. 74). On February 22, 2016, the Ninth
5 Circuit remanded the case for reconsideration in light of the
6 California Supreme Court's decision in Yvanova v. New Century
7 Mortgage Corp., 62 Cal. 4th 919 (2016). (Docket No. 79.)

8 Subsequently, on May 26, 2016, this court vacated its dismissal
9 of plaintiffs' wrongful foreclosure and cancellation of
10 instruments claims, but did not amend or vacate its dismissal of
11 plaintiffs' fraud claim. (Docket No. 106.)

12 On August 15, 2017, defendants filed the pending motion
13 for judgment on the pleadings. Plaintiffs did not file an
14 opposition or a statement of non-opposition as required by Local
15 Rule 230(c). Accordingly, because plaintiffs are precluded under
16 Rule 230(c) from being heard at oral argument, the court took the
17 motion under submission without oral argument on either side.

18 II. Legal Standard

19 "After the pleadings are closed—but early enough not to
20 delay trial—a party may move for judgment on the pleadings."

21 Fed. R. Civ. P. 12(c). For the purposes of such a motion, the
22 court takes all factual allegations of the non-moving party as
23 true and construes them in the light most favorable to that
24 party. Fleming v. Pickard, 581 F. 3d 922, 925 (9th Cir. 2009)
25 (citing Turner v. Cook, 362 F. 3d 1219, 1225 (9th Cir. 2004)).

26 "Judgment on the pleadings is properly granted when there is no
27 issue of material fact in dispute, and the moving party is
28 entitled to judgment as a matter of law." Id.

1 III. Discussion

2 A. Wrongful Foreclosure

3 The Complaint alleges that defendants cannot foreclose
4 on the property or demand mortgage payments from plaintiffs
5 because the Deed of Trust and Note were not transferred into the
6 trust by its closing date, thereby violating the Pooling Service
7 Agreement ("PSA"). (SAC ¶ 34-36.) Plaintiffs were not, and do
8 not claim to be, a party to any of the assignments of their loan,
9 Deed of Trust, or Note. Defendants argue that plaintiffs
10 therefore lack standing to challenge any allegedly untimely
11 assignment to the trust. (Defs.' Mot for J. on Pleadings 3
12 (Docket No. 124).)

13 Pursuant to the Ninth Circuit's remand, this court has
14 now carefully considered the California Supreme Court's decision
15 in Yvanova. That case actually strengthens this court's original
16 determination to dismiss plaintiffs' claims without leave to
17 amend. Under Yvanova, a borrower has standing to challenge an
18 assignment of a note and deed of trust on the basis of defects
19 that render the assignment void, but does not have standing to
20 challenge a voidable assignment. 62 Cal. 4th at 942-43 (2016).
21 "When an assignment is merely voidable, the power to ratify or
22 avoid the transaction lies solely with the parties to the
23 assignment." Id. at 936. "Unlike a voidable transaction, a void
24 one cannot be ratified or validated by the parties to it even if
25 they so desire." In re Turner, 859 F. 3d 1145, 1149, (9th Cir.
26 2017).

27 The Turner court found that an act in violation of a
28 trust agreement renders the assignment voidable, not void. Id.

1 (affirming dismissal of wrongful foreclosure claim challenging
2 assignment of deed of trust because any failure to comply with
3 pooling agreement's deadline rendered transfer voidable but not
4 void.) Id. This holding follows the three California Courts of
5 Appeal that have held that "such an assignment is merely
6 voidable." Saterbak v. JP Morgan Chase Bank, N.A., 245 Cal. App.
7 4th 808, 815 (2016); see also Mendoza v. JP Morgan Chase Bank,
8 N.A., 6 Cal. App. 5th 802 (2016); Yhudai v. Impac Funding Corp.,
9 1 Cal. App. 5th 1252 (2016). Therefore, a borrower does not have
10 standing to challenge a purported untimely assignment of a deed
11 of trust.

12 Here, plaintiffs allege that the assignment of the Deed
13 of Trust and Note into the trust violated the trust agreement
14 because it was submitted after the trust's closing date. (SAC ¶
15 45.) However, any deficiencies in the assignment or recording of
16 the Deed of Trust to the trust pool at most rendered the
17 assignment voidable, not void. Thereby, plaintiffs, who were not
18 parties to the assignment, have no standing to challenge the
19 assignment. Accordingly, the court finds that plaintiffs'
20 wrongful foreclosure claim fails as a matter of law.

21 B. Cancellation of Instruments

22 A borrower seeking to cancel an assignment under
23 California Civil Code § 3412 must allege that the assignment
24 could cause that borrower serious injury.³ As explained by

25 ³ California Civil Code § 3412 states that "[a] written
26 instrument, in respect to which there is a reasonable
27 apprehension that if left outstanding it may cause serious injury
28 to a person against whom it is void or voidable, may, upon his
application, be so adjudged, and ordered to be delivered up or
canceled."

1 Saterbak, an assignment causes no serious injury if a borrower's
2 obligations remained unchanged after the assignment, even if the
3 borrower faces the possibility of losing her home or harm to her
4 credit based on a subsequent foreclosure, because that harm is
5 caused by her default, not the assignment. 245 Cal. App. 4th at
6 818-20.

7 Here, plaintiffs have not and cannot allege serious
8 injury under § 3412 because their obligations remained the same
9 after the assignment, meaning the harm they allege is the harm
10 caused by their default, not by the assignment. Thus, because
11 plaintiffs have not properly alleged the requisite injury,
12 plaintiffs' cancellation of instruments claim fails.

13 Defendants request that the court dismiss each of
14 plaintiffs' claims with prejudice and without leave to amend.
15 Generally, a court should "freely give leave [to amend] when
16 justice so requires." Fed. R. Civ. P. 15(a)(2). However, "a
17 district court need not grant leave to amend where the amendment:
18 (1) prejudices the opposing party; (2) is sought in bad faith;
19 (3) produces an undue delay in litigation; or (4) is futile."
20 AmerisourceBergen Corp. v. Dialysist W., Inc., 465 F. 3d 946, 951
21 (9th Cir. 2006). Granting plaintiffs leave to amend their claims
22 when they lack standing to challenge the assignment of their Deed
23 of Trust would be futile because plaintiffs cannot allege more
24 facts that would render the assignment void instead of voidable.
25 See Palmer, 2017 WL 2311680, at *6; Walker, 2015 WL 12746201, at
26 *7. Thus, the court will not grant leave to amend.

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IT IS THEREFORE ORDERED that defendants' Motion for Judgment on the Pleadings be, and the same hereby is, GRANTED, without leave to amend.

Dated: September 28, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE