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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Frances Ryan, by and through
her Guardian ad Litem,
Geraldine Ryan,

Plaintiff,

v.

Nationstar Mortgage, LLC; and
Does 1 through 50, inclusive,

Defendants.

No. 2:14-cv-02067-GEB-DAD

ORDER GRANTING MOTION TO DISMISS

Defendant Nationstar Mortgage, LLC ("Defendant") seeks dismissal of Plaintiff's Complaint, arguing, *inter alia*: "Plaintiff's entire complaint . . . rests on th[e] failed legal contention" that "a non-party to this lawsuit, U.S. Bank acting as trustee of a Pooling and Servicing Agreement ("PSA") of many bundled loans, did not receive a valid assignment of Plaintiff's loan because the assignment purportedly took place after the PSA trust's closing date." (Def.'s Mem. P.&A. in Supp. Mot. to Dismiss ("Mot.") 1:3-7, 1:14-17, ECF No. 4.) Defendant argues:

Based on this allegation, Plaintiff contends that U.S. Bank and [Defendant] lack authority to foreclose on the loan secured by real

1 property This loan securitization
2 allegation by Plaintiff has been repeatedly
3 rejected by the state courts in California
4 and respective Federal Courts. These courts
5 have consistently held that persons such as
6 Plaintiff, borrowers on loans, have no
7 standing to challenge a violation of a
8 PSA

9 (Id. at 1:7-16.)

10 Plaintiff opposes the motion.

11 **I. Judicial Notice**

12 Defendant's motion includes a request that judicial
13 notice be taken of various documents pertaining to Plaintiff's
14 mortgage, including the Deed of Trust and the Corporation
15 Assignment Deed of Trust. Defendant argues judicial notice is
16 proper since the documents are "publicly
17 recorded[,] . . . referenced in Plaintiff's Complaint, and . . .
18 central to the allegations contained in the Complaint." (Def.'s
19 Req. for Judicial Not. ("RFJN") 2:8-10, ECF No. 5.)

20 Plaintiff has not contested this requested, and
21 Defendant has shown it should be granted. Therefore, it is
22 granted.

23 **II. Factual Background**

24 Certain judicially noticed facts and allegations in
25 Plaintiff's Complaint follow.

26 On or around November 10, 2005, Plaintiff borrowed
27 \$500,000.00 from Countrywide Home Loans, Inc. for a "residential
28 mortgage loan for [her] residence." (See Compl. ¶¶ 2, 11, ECF No.
1-3; RFJN Ex. A, ECF No. 5-1¹.) The loan was secured by a Deed of
Trust. (See Compl. ¶¶ 2, 12-13; RFJN Ex. A.) The Deed of Trust

¹ All exhibits to Defendant's RFJN were filed collectively as ECF No. 5-1.

1 lists Recon Trust Company, N.A. as trustee and Mortgage
2 Electronic Registration Systems, Inc. ("MERS") as the
3 beneficiary. (RJFN Ex. A.) MERS then assigned its beneficial
4 interest under the Deed of Trust to "U.S. Bank National
5 Association as Trustee for the Holders of SARM 2005-23" ("U.S.
6 Bank"). (RFJN Ex. B, Compl. ¶ 12.) This assignment was recorded
7 on August 29, 2011. (RFJN Ex. B, Compl. ¶ 12.) "Defendant
8 N[ationstar] M[ortgage] LLC . . . is the purported servicer of
9 [the] Subject Loan." (Compl. ¶ 3.)

10 Plaintiff alleges "[t]he August 29, 2011 attempted
11 transfer [to U.S. Bank] was made over five (5) years after the
12 Closing Date [for the Trust] . . . [and] was [thus] *void ab*
13 *initio*." (Id. ¶ 13 (emphasis omitted).) Plaintiff also alleges
14 this attempted transfer was void because "the Trust was required
15 to possess the Deed of Trust to the Subject Loan within 90 days
16 of the Closing Date of the Trust (or April 1, 2006), as set forth
17 in the Pooling and Servicing Agreement [{"PSA"}]." (Id. ¶ 20.)

18 Plaintiff further alleges:

19 Therefore, there has never been any valid
20 Assignment of the Deed of Trust[,] and . . .
21 [Defendant] . . . ha[s] [n]ever had any right
22 to collect any payments from the Plaintiffs.

23

24 [Defendant] has no rights to service or
25 administer the S[ubject] L[oa]n, as those
26 rights are derived from a T[rustee] who in
27 fact does not have any such right.

28 (Id. ¶¶ 13, 25.)

29 III. Discussion

30 Defendant argues "Plaintiff's claim . . . fails because
31 she has no standing to challenge the Assignment of Deed of Trust

1 or the PSA, since she is not, and never was, a party to, or an
2 intended beneficiary of, these agreements." (Mot. 5:24-26.)

3 Plaintiff rejoins that she "may challenge the
4 'securities trust's chain of ownership by alleging the attempts
5 to transfer the deed of trust to the securities trust occurred
6 after the trust's closing date.'" (Pl.'s Opp'n 2:10-12, ECF No. 7
7 (quoting Glaski v. Bank of Am., Nat'l Ass'n, 218 Cal. App. 4th
8 1079, 1096 (2013)).) In Glaski, a California Court of Appeal
9 "reject[ed] the view that a borrower's challenge to an assignment
10 must fail once it is determined that the borrower was not a party
11 to, or third party beneficiary of, the assignment agreement.
12 Glaski, 218 Cal. App. 4th at 1096. The California Court of Appeal
13 held, in Glaski, that "a borrower can challenge an assignment of
14 his or her note and deed of trust if the defect asserted would
15 void the assignment." Id. at 1095 (citation and emphasis
16 omitted).

17 Defendant replies that Glaski is a "misguided and
18 minority decision[,]"" and under "the majority view in Jenkins v.
19 JP Morgan Chase Bank, N.A., 216 Cal. App. 4th 497 (2013)[,] . . .
20 a borrower is not a party to the securitization of a loan and,
21 therefore, lacks standing to challenge said transfer." (Def.'s
22 Reply 2:3-8, 2:19-22, ECF No. 9.) In Jenkins, a California Court
23 of Appeal held that a borrower, "[a]s an unrelated third party to
24 the alleged securitization, and any other subsequent transfers of
25 the beneficial interest under the promissory note, . . . lacks
26 standing to enforce any agreements, including the investment
27 trust's pooling and servicing agreement, relating to such
28 transactions." Jenkins, 216 Cal. App. 4th at 515. The Court of

1 Appeal also stated in Jenkins:

2 the relevant parties to such a transaction
3 [ar]e the holders (transferors) of the
4 promissory note and the third party acquirers
(transferees) of the note. . . .

5 Furthermore, even if any subsequent
6 transfers of the promissory note were
7 invalid, [plaintiff borrower] is not the
victim of such invalid transfers because her
obligations under the note remained
unchanged.

8 Id.

9 “Glaski conflicts with several other California
10 Court[] of Appeal cases that have held that a mortgage borrower,
11 as a third party, does not have a cause of action due to
12 irregularities in the chain of transfer.” Moran v. GMAC Mortg.,
13 LLC, No. 5:13-CV-04981-LHK, 2014 WL 3853833, at *5 (N.D. Cal.
14 Aug. 5, 2014); see, e.g., Yvanova v. New Century Mortg. Corp.,
15 172 Cal. Rptr. 3d 104, 109-110 (2014) (“We agree with the
16 reasoning in Jenkins, and decline to follow Glaski.”), rev.
17 granted, 176 Cal. Rptr. 3d 266 (2014); Mendoza v. JPMorgan Chase
18 Bank, N.A., 228 Cal. App. 4th 1020, 1033-34 (2014) (“We can find
19 no state or federal cases to support the Glaski analysis and will
20 follow the federal lead in rejecting this minority holding.”),
21 rev. granted, 180 Cal. Rptr. 3d 1 (2014).

22 Further, “the majority of federal district courts that
23 have addressed . . . whether a borrower has standing to challenge
24 securitization of a note by its transfer to a trust in an
25 allegedly defective manner[] are in accord with Jenkins.” Boza v.
26 U.S. Bank Nat’l Ass’n, No. LA CV12-06993 JAK (FMOx), 2013 WL
27 5943160, at *6 (C.D. Cal. Oct. 28, 2013); accord Rivac v. Ndex
28 West LLC, No. C 13-1416 PJH, 2013 WL 6662762, at *4 (N.D. Cal.

1 Dec. 17, 2013) ("This court is persuaded by the 'majority
2 position' of courts within this district, which is that Glaski is
3 unpersuasive, and that plaintiffs lack standing to challenge
4 noncompliance with a PSA in securitization unless they are
5 parties to the PSA or third party beneficiaries of the PSA."
6 (internal quotation marks and citation omitted)); Newman v. Bank
7 of N.Y. Mellon, No. 1:12-CV-1629 AWI GSA, 2013 WL 5603316, at *3
8 n.2 (E.D. Cal. Oct. 11, 2013) (declining to follow Glaski).

9 The California Supreme Court has not addressed this
10 issue. "[W]here the state's highest court has not decided an
11 issue, the task of the federal courts is to predict how the state
12 high court would resolve it." Westlands Water Dist. v. Amoco
13 Chem. Co., 953 F.2d 1109, 1111 (9th Cir. 1991) (quoting Air-Sea
14 Forwarders, Inc. v. Air Asia Co., Ltd., 880 F.2d 176, 186 (9th
15 Cir. 1989)) (internal quotation marks omitted). "An intermediate
16 state appellate court decision is a datum for ascertaining state
17 law which is not to be disregarded by a federal court unless it
18 is convinced by other persuasive data that the highest court of
19 the state would decide otherwise." Hayes v. Cnty. of San Diego,
20 658 F.3d 867, 872-73 (9th Cir. 2011) (internal quotation marks
21 and citation omitted).

22 Jenkins is persuasive and is followed. Plaintiff does
23 not allege in her Complaint facts plausibly showing that she was
24 either a party to the assignment about which she complains or an
25 intended third-party beneficiary of the assignment. Nor does
26 "Plaintiff[] . . . contend that [she] did not receive the
27 proceeds of [her] loan transactions; and [it is evident that her]
28 role thereafter was simply to make payments of the principal and

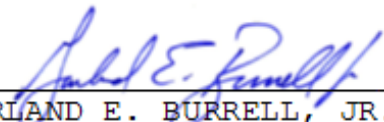
1 interest due." Rajamin v. Deutsche Bank Nat'l Trust Co., 757
2 F.3d 79, 90 (2d Cir. 2014). Therefore, Plaintiff has not shown
3 that she can provide a basis for her claims. Accordingly,
4 Plaintiff's Complaint is dismissed without leave to amend, and
5 judgment shall be entered for Defendant.

6 Dated: February 4, 2015

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GARIAND E. BURRELL, JR.
Senior United States District Judge

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