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YOUR UNLAWFUL DETAINER JUDGMENT HAS MORE POWER TO ACTUALLY “QUIET TITLE” THANKS TO RULING BY A CALIFORNIA COURT

By Bruce T. Bauer, Esq., Brooks Bauer

A recent published decision, *Malkoskie v. Option One Mortg. Corp.*, --- Cal.Rptr.3d ----, 2010 WL 3703797 (Cal.App. 2 Dist. Sep 23, 2010) (NO. B221470, should assist financial institutions in the eviction of foreclosed out homeowners and their defense in the subsequent “wrongful foreclosure” actions.

The facts of the *Malkoskie* case should be familiar to most financial institutions involved in foreclosure activity since it involves (1) real property that was foreclosed upon; (2) an unlawful detainer action in which a judgment was rendered against the borrowers and in favor of the purchaser at the foreclosure sale; and (3) a subsequent “wrongful foreclosure” filed by the borrower in which they again sought to challenge the title of the purchase notwithstanding the eviction judgment. In the end, the Court of Appeals held that the post-foreclosure eviction action was *res judicata* of all issues regarding title and therefore the “wrongful foreclosure” action was barred as a matter of law. This ruling will make it much easier to dispose of some “wrongful foreclosure” actions.

BACKGROUND

The Malskoskies refinanced their Los Angeles property in late 2004. A deed of trust was recorded with Home Loans USA Inc., as the beneficiary, and Premier Trust Deed Services, Inc. as the trustee. The Malskoskies subsequently defaulted on their loan around May 2007. Thereafter, the loan was foreclosed upon and there was various activity related to recordation of nonjudicial foreclosure documents, and the transfer of the underlying deed of trust. Essentially, as of the date of recording of the notice of default, no substitution had been served or recorded showing Option One as the new beneficiary in

place of Home Loans USA, Inc., nor any substitution showing Alliance as the new trustee in place of Premier Trust Deed Services. Then in September 2007, a substitution was recorded evidencing Alliance as the newly assigned trustee as designated by Option One. Thereafter, Alliance conducted the nonjudicial foreclosure sale on February 4, 2008, and Wells Fargo acquired the property on a credit bid. The Trustee’s Deed was recorded on April 18, 2008. More than two months later, on April 18, 2008, the substitution was recorded acknowledging assignment of the deed of trust from Home Loans USA, Inc., to Option One.

THE UNLAWFUL DETAINER ACTION

After the foreclosure sale on February 4, 2008, Wells Fargo instituted an unlawful detainer action against plaintiffs. Plaintiffs filed an answer to the unlawful detainer complaint, alleging the foreclosure sale was invalid due to irregularities in the sale. Wells Fargo and plaintiffs agreed to entry

of a stipulated judgment in the unlawful detainer action in favor of Wells Fargo. Thus, Wells Fargo had obtained judgment in its favor in the unlawful detainer action. Plaintiffs were forcibly evicted from the property on May 12, 2008.

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THE “WRONGFUL FORECLOSURE” SUPERIOR COURT ACTION

Then, as is often the case, Plaintiffs, undeterred by the judgment in the unlawful detainer action, filed a separate Superior Court action (the “Wrongful Foreclosure Action”), against Option One, Wells Fargo, and First American Title Company, among others for various causes of action including declaratory relief,

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quiet title, cancellation of trustee's deed, willful wrongful foreclosure, negligent wrongful foreclosure, wrongful eviction and negligence causes of action. We then filed a demurrer to the Malkoskies' Complaint on the grounds that the judgment in the unlawful detainer action was *res judicata* as to plaintiffs' claims in the Superior Court action since the issue of title was necessarily raised in the unlawful detainer action.

The Court of Appeals *agreed* that the judgment in the unlawful detainer action was indeed *res judicata* as to the Superior Court action. The Appellate Court held that the unlawful detainer judgment had claim preclusive effect in this action. Indeed, the Second District Court of Appeal held that because the sole basis upon which Wells Fargo asserted its right to possession of the property was its "duly perfected" legal title obtained in the nonjudicial foreclosure sale, the validity of Wells Fargo's title had to be resolved in the unlawful detainer action and could not then be again litigated in another action.

Since this ground was dispositive, the Court of Appeals did not then need to consider the other issue raised in the appeal by the Malkoskies - whether there were defects in the foreclosure sale. Essentially, once judgment had been rendered in the underlying unlawful detainer action, it did not matter whether there were any such defects.

CONCLUSION

Thus, the litigation of the unlawful detainer action is critically important. Once judgment has been obtained in the unlawful detainer action, the foreclosed out borrower should not be able to raise the issue of title again in a subsequent action. If such an action is filed, or a claim asserted, counsel should aggressively raise the defense that there was a prior judgment that was rendered on that topic.

If you have any questions regarding this matter, please do not hesitate to contact me.



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