


No. _____

In the
Supreme Court of the United States



VINCENT TANG,

Petitioner,

v.

JPMORGAN CHASE BANK, N.A. ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
Court of Appeal of the State of California, Sixth Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are forgery and robo-signing one and the same?
2. Are there due process and equal protection issues surrounding the determination as to whether the bad act is robo-signing or forgery?
3. Is it a violation of due process and equal protection of the law to forbid a victim of forgery to use the judicial process in order to cure his loss?
4. Is it a violation of due process and equal protection of the law to forbid a homeowner the right to challenge defects in the chain of title to his property that led to the loss of his property?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant Below

- Vincent Tang

Respondents and Defendants-Appellees Below

- JPMorgan Chase Bank, N.A.
- Deborah Brignac
- Select Portfolio Servicing
- U.S. Bank, N.A.

RULE 29.6
CORPORATE DISCLOSURE STATEMENT

Vincent Tang is an individual. There is no parent corporation, nor does he have an interest in any publicly held company that owns 10% or more of the corporation's stock.

LIST OF PROCEEDINGS

Supreme Court of California

No. S266733

Vincent Tang, *Plaintiff and Appellant*, v.
JPMorgan Chase Bank, N.A. Et Al.,
Defendants and Respondents.

Date of Final Order: March 17, 2021

Court of Appeal of the State of California Sixth
Appellate District

No. H045898

Vincent Tang, *Plaintiff and Appellant*, v.
JPMorgan Chase Bank, N.A. Et Al,
Defendants and Respondents.

Date of Final Order: December 9, 2020

Date of Rehearing Denial: December 30, 2020

Superior Court of California County of Santa Clara
No. 17-cv-307324

Vincent Tang, *Plaintiff*, v.

JPMorgan Chase Bank, N.A. Et al, *Defendants*.

Final Decision: January 30, 2018 for Select Portfolio
and U.S. Bank, N.A. Filed: January 31, 2018

Final Decision: February 7, 2018 for JPMorgan Chase
Bank, N.A. and Deborah Brignac. Filed: February 7,
2018

Superior Court of California County of Santa Clara
No. 17-cv-307324

Vincent Tang, *Plaintiff*, v.

JPMorgan Chase Bank, N.A. Et al, *Defendants*.

Judgment Entered: April 6, 2018 for Select Portfolio
Servicing, Inc. and U.S. Bank, N.A.

Judgement Entered: June 18, 2018 for JPMorgan
Chase Bank, N.A. and Deborah Brignac

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INTRODUCTION: WHY THIS MATTER IS URGENT

The Covid19 Pandemic and the consequent shelter in place has ruined the livelihood of many Americans. Its continuation threatens millions of homeowners. This, in turn, has caused states to impose foreclosure and eviction moratoriums.

Homeowners will need to know what their legal rights are when these moratoriums are lifted. This, in turn, directly calls into play the law regarding due process and equal protection in responding to the Questions Presented.

This knowledge is essential to any economic recovery, particularly when there is demonstrable misconduct, *i.e.*, forgery, on the part of the foreclosing entities. This knowledge is essential to any economic recovery, particularly when there is confusion in the chain of title.

This matter, and the issues it presents, is critical in holding banking and financial institutions accountable for their conduct, particularly when attempting to foreclose on people's homes.



OPINIONS BELOW

A. Decisions for Which Review is Sought

Petitioner challenges the Court of Appeal affirmance of the dismissal of his Second Amended Complaint without leave to amend. The decision of the California Court of Appeal, Sixth Appellate District, affirming the judgment on appeal appears as App.3a. The order of the California Court of Appeal denying a petition for rehearing appears as App.105a. The order of the California Supreme Court denying a petition for review appears as App.1a. The trial court decisions and judgments appear as App.39a through App.104a.

B. Decisions Not Challenged

Petitioner does not challenge, but in fact agrees with, the portion of the Sixth District Court's opinion denying attorney fees to JPMorgan Chase Bank, N.A. and reversing the trial court's decision awarding such attorney fees pursuant to *Chacker v. JPMorgan Chase Bank, N.A.* (2018) 27 Cal.App.5th 351 and *Hart v. Clear Recon Corp.* (2018) 27 Cal.App.5th 322. (See App.30a through App.38a).



JURISDICTION

The judgment of the California Court of Appeal, Sixth Appellate District, was entered on December 9, 2020. (App.3a). The Sixth District Court of Appeal summarily denied Petitioner's Petition for Rehearing on December 30, 2020. (App.105a). Vincent Tang timely filed a Petition for Review with the California Supreme Court on January 18, 2021, which was denied on March 17, 2021. (App.1a). This Petition for a Writ of Certiorari is timely. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).



RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND JUDICIAL RULES

U.S. Const., amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. XIV § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Civil Code § 1654

In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

California Civil Code § 2924(a)(6)

(6) An entity shall not record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest. An agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust shall not record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.

California Civil Code § 2924.17(a) and (b)

(a) A declaration recorded pursuant to Section 2923.5 or pursuant to Section 2923.55, a notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded by or on behalf of a mortgage servicer in connection with a foreclosure subject to the requirements of Section 2924, or a declaration or affidavit filed in any court relative to a foreclosure proceeding shall be accurate and complete and supported by competent and reliable evidence.

(b) Before recording or filing any of the documents described in subdivision (a), a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

California Civil Code § 3523

For every wrong there is a remedy.

California Code of Civil Procedure § 452

In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

California Penal Code § 115(a)

(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

California Penal Code § 115.5

(a) Every person who files any false or forged document or instrument with the county recorder which affects title to, places an encumbrance on, or places an interest secured by a mortgage or deed of trust on, real property consisting of a single-family residence containing not more than four dwelling units, with knowledge that the document is false or forged, is punishable, in addition to any other punishment, by a fine not exceeding seventy-five thousand dollars (\$75,000).

(b) Every person who makes a false sworn statement to a notary public, with knowledge that the statement is false, to induce the notary public to perform an improper notarial act on an instrument or document affecting title to, or placing an encumbrance on, real property consisting of a single-family residence containing not more than four dwelling units is guilty of a felony.

California Penal Code § 134

Every person guilty of preparing any false or antedated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any

trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

California Penal Code § 470(a)

Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

California Penal Code § 470(d)

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any

instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).



STATEMENT OF FACTS

A. Mortgage Fraud and Forgery Have Been Endemic.

McDonnell Property Analytics conducted the first audit of a registry of deeds in the United States for the Honorable John L. O'Brien, Register of Deeds for Southern Essex District, Salem, Massachusetts. McDonnell's Report found, among other things, that only 16% of the recorded assignments of mortgage were valid. They found that 75% of assignments of mortgages were invalid, of which 27% were outright fraudulent. McDonnell Analytics, <https://www.mcdonnellanalytics.com/>.

John O'Brien, The Register of Deeds of Southern Essex District, Salem, Massachusetts is one of the few county recorders who undertook due diligence to prevent the mortgage fraud and the recording of false documents.

In 2012, after conducting an investigation through McDonnell Property Analytics, Mr. O'Brien required that any documents submitted to his office and bearing the name of multiple fraudulent and forging document signers be submitted to his office under oath attesting that the documents were independently verified by affidavit. Mr. O'Brien found that many documents submitted were fraudulent. The Register also admonished that he was prepared to refer questionable documents to the Massachusetts Attorney General's Office for review and possible criminal prosecution. (App.107a through App.124a).

Significant to this Petition is the fact that Deborah Brignac is one of the persons on this list. This troubled list was initially compiled in 2012 and re-confirmed in 2015. (*See* App.120a and App.123a, respectively)

Also significant to this Petition is that Deborah Brignac never submitted any further documents to the Southern Essex District Recorder after issuance of the letter in 2012.

B. Factual Allegations.

On June 27, 2005, Plaintiff obtained a loan from Washington Mutual Bank in the amount of \$825,500 and secured the loan with a deed of trust on his home located at 2739 Clover Meadow Court, San Jose, CA 95135.

The parties to the promissory note and deed of trust were as follows: The beneficiary of the loan was Washington Mutual Bank. The trustee of the deed of trust was California Reconveyance Company. The deed of trust is Santa Clara County Recorder's instrument

18453514, which deed of trust was recorded on July 6, 2005.

On or about October 2, 2008, defendant JPMorgan Chase Bank, N.A. (CHASE) executed an alleged affidavit of purchase of Washington Mutual Bank as a result of a receivership of Washington Mutual ordered by the Federal Deposit Insurance Corporation (FDIC).

On March 1, 2010, California Reconveyance Company recorded a notice of default on the PROPERTY. This Notice of Default is Santa Clara County instrument 20623739. This was the last notice of default to be recorded on the PROPERTY.

This notice of default 20623739 (hereinafter referred to as the NOD), which was seven years old at the time of sale was stale and no longer valid. This NOD claimed that \$14,954.54 was due as of February 26, 2010, an amount which was grossly inaccurate as of the date of the foreclosure sale on February 8, 2017. Additionally, this NOD failed to provide the notices and disclosures of Senate Bill 900 (the Homeowner Bill of Rights-HBOR), which became law on January 1, 2013. Plaintiff has not been provided with these HBOR notices. For this additional reason, the NOD is stale, regardless of whether the HBOR is retroactive.

On or about February 26, 2010, Deborah Brignac executed an assignment of the deed of trust, Santa Clara County instrument 20623738. This Assignment was recorded on March 1, 2010. (App.125a). This Assignment purported to assign the DOT to Bank of America as successor by merger to LaSalle Bank NA as trustee to the WaMu Mortgage Pass-Through Certificates Series 2005-AR19. The Assignment also purported to transfer the promissory note under the language, "Together

with the note or notes therein described and secured thereby, the money due and to become due thereon, with the interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or part, the real property described therein.”

Such transfer language in document 20623738, if otherwise proper, would strip the note of any negotiability, making it a monetary contract only. The only means by which a negotiable instrument can be transferred and maintain its negotiable status is by endorsement or allonge.

Plaintiff did not know of the fraudulent nature of this Assignment and could not have known. He relied upon the honesty and integrity of the respondents that they would only undertake actions that were lawful and not fraudulent. He did not become aware of or even suspect wrongdoing on the part of the defendants until mid-2016, when he received a forensic loan audit pertaining to his loan. Even then, this audit did not fully apprise him of the extent of the fraudulent actions of the defendants.

The Assignment which Deborah Brignac executed on or about February 26, 2010 (instrument 20623738-App.125a), is an instrument that Ms. Brignac fraudulently executed. Deborah Brignac executed this Assignment of the Deed of Trust as and under the authority of being a Vice President of JPMorgan Chase Bank. Ms. Brignac never was a Vice President of JPMorgan Chase Bank. Ms. Brignac in fact, was an employee, a foreclosure specialist and supervisor for California Reconveyance Company, and nothing more. Her claim that she was a Vice President of JPMorgan Chase Bank was fraudulent and false. Her conduct of fraudulently

executing documents on behalf of California Reconveyance Company, however, has been a pattern of conduct that she has repeated on multiple occasions during the periods of time from 2008 through the present.

Deborah Brignac indeed has a troubled past. John O'Brien, The Register of Deeds of Southern Essex District, Massachusetts, commenced requiring any documents submitted to his office and bearing the name of Deborah Brignac be submitted to his office under oath attesting that the documents be independently verified by affidavit. (App.107a through App. 124a). Mr. O'Brien found that documents submitted under the name of Deborah Brignac to be fraudulent. (App.120a and 123a). The Register also admonished that he was prepared to refer questionable documents to the Massachusetts Attorney General's Office for review and possible criminal prosecution. (App.109a, 115a). As a result, Deborah Brignac never submitted thereafter any documents to Southern Essex District, Massachusetts.

This Assignment in this matter by Ms. Brignac was void for additionally the following reason. The Assignment purported to move the DOT into WAMU AR19 on or about February 26, 2010 (App.125a), almost five years after the WAMU AR19 had closed and legally was not permitted nor capable of receiving any additional assets into WAMU AR19. Thus, even if Ms. Brignac had the lawful authority to execute documents on behalf of JPMorgan Chase in February 2010, Assignment 20623738, (App.125a) which she executed, was void by the terms of the organizing and operating instruments of WAMU AR19, assuming that they exist.

Perhaps even worse yet, the Securities and Exchange Commission, through their Edgar website,

did not have a record of this PROPERTY having ever been moved into the WAMU AR19. In other words, the plaintiff's home was never lawfully placed into the WAMU AR19, even on a grossly tardy (5 years later) basis. The claim that the property was ever moved into the WAMU AR19 is a false and fraudulent claim.

This failure to file documents reflecting movement of 2739 Clover Meadow Court, San Jose, CA 95135 into WAMU AR19, and thus the lack of authority of any of the Respondents to have undertaken their actions and especially gone to foreclosure sale, and their fraud, was previously confirmed by the following Edgar URLs: For the Prospectus (form FWP), <https://www.sec.gov/Archives/edgar/data/1346793/000095011705004755/0000950117-05-004755-index.htm>; for the Pooling and Servicing Agreement (PSA), <https://www.sec.gov/Archives/edgar/data/1346793/000127727706000014/psa2005ar19.pdf>.

U.S. Bank, NA then came out of nowhere and inserted itself into the chain or links of title.

On or about March 10, 2014, U.S. Bank NA, allegedly through Select Portfolio Servicing (SPS), unlawfully substituted ALAW as trustee of the deed of trust. *See* Santa Clara County Recorder Instrument 2284685465.

U.S. Bank NA, allegedly through SPS, undertook substitution 2284685465 as alleged successor to BANA. This substitution of trustee was allegedly executed by Select Portfolio Servicing as Attorney in fact.

This substitution of trustee was void due to the fact that neither U.S. Bank as successor, nor SPS, nor WAMU AR19, nor any of its agents or those operating with an alleged power of attorney had a beneficial

interest in the DOT or the promissory note in March 2014.

Additionally, there was no assignment to U.S. Bank as trustee of WAMU AR19. The prior (invalid) assignment had been to Bank of America as Trustee of WAMU AR19 in 2010. (App.125a). U.S. Bank came out of the blue with Select Portfolio claiming to be its attorney in fact.

On March 21, 2016, the alleged trustee of WAMU AR19 (US Bank) wrongfully recorded and caused to be recorded a substitution of trustee naming Quality Loan Servicing (QLS) as trustee of the deed of trust, allegedly through SPS. This is Santa Clara County Recorder instrument 23250641.

U.S. Bank NA undertook substitution 23250641 as alleged successor to BANA. This substitution of trustee was allegedly executed by Select Portfolio Servicing allegedly as Attorney in fact. This substitution of trustee was void due to the fact that neither U.S. Bank as successor, nor SPS, nor WAMU AR19 nor any of its agents or those operating with an alleged power of attorney had a beneficial interest in the DOT or the promissory note in March 2016.

QLS then commenced recording notices of trustee sale upon 2739 Clover Meadow Court, San Jose, CA 95135. QLS recorded notice of trustee sale, Santa Clara County instrument 23253970 on March 24, 2016. QLS recorded yet another notice of trustee sale three months later, on June 14, 2016, Santa Clara County instrument 23334989. Five months later, QLS recorded a notice of trustee sale on the Clover Meadow property on November 1, 2016, Santa Clara County Instrument 234843389.

On February 8, 2017, QLS sold 2739 Clover Meadow Court, San Jose, CA 95135 at a foreclosure auction to Orchid Terrace Inc. (25%), Monte Vista Oaks Inc. (25%), Monte Vista Oaks DB Plan (25%), KIP Dream Homes (25%) for \$1,389,100.00. In other words, respondents seized plaintiff's home and title to his home through an unlawful nonjudicial foreclosure auction.

On February 17, 2017, respondents recorded and caused to be recorded a trustee's deed upon sale, Santa Clara County Instrument 23585170.

Simply stated, the defendants did not have the lawful right to foreclose upon the Clover Meadow property of the Plaintiff due to the defect in the chain of assignments and substitution of trustee, *i.e.*, the void nature of instruments commencing with the Assignment by Deborah Brignac. (App.125a).

There is no basis for U.S. Bank, N.A. to have inserted itself as trustee of the WAMU AR 19 trust in 2014.

WAMU AR19 and its servicers and agents and subsidiaries are not and were not the lawful beneficiaries. QLS is not and was not the lawful foreclosure trustee. The entire foreclosure process was contaminated going back to the Brignac Assignment.

The major servicers of mortgages in California, such as Bank of America, Wells Fargo, Citimortgage, and JPMorgan Chase, among others, agreed to the National Mortgage Settlement in April 2012. That settlement imposed on them the obligation to prove they had the power to foreclose: "Servicer shall implement processes to ensure the Servicer or the foreclosing entity has a documented enforceable interest in the promissory note and mortgage (or deed of trust). . . or

is otherwise a proper party to the foreclosure action.” Consent judgment and consent settlement in *United States v. Bank of America Corp.*, Case No. 12-CV-00361 (D.D.C. April 4, 2012), Settlement Term Sheet, Section I. C. (1). Respondent CHASE (and BANA and U.S. Bank) have failed to comply with this requirement of the consent judgment by its actions and those of its employees in this matter.

The Homeowner Bill of Rights, Senate Bill 900, includes California Civil Code § 2924(a)(6). California Civil Code § 2924(a)(6) provides: “No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, . . . No agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust may record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest.”

The HOBR includes California Civil Code § 2924.17(a). California Civil Code § 2924.17(a) provides: “A declaration recorded pursuant to . . . a notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded by or on behalf of a mortgage servicer . . . shall be accurate and complete and supported by competent and reliable evidence.”

The HBOR includes California Civil Code § 2924.17(b). California Civil Code § 2924.17(b) also provides: “Before recording or filing any of the documents described in subdivision (a), a mortgage servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower’s default and

the right to foreclose, including the borrower’s loan status and loan information.”

In making the original purchase of the property in 2005, plaintiff and his family made a down payment of their life savings. He, as a result of this unlawful foreclosure sale, has lost these life savings.

In *Yvanova*, the California 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.

C. Case History

Date	Item
Mar 17, 17	Complaint Filed
May 19, 17	Motion to Consolidate with Unlawful Detainer Case Denied
Jun 02, 17	First Amended Complaint Filed
Aug 11, 17	Order on Demurrer with Leave to Amend
Sep 12, 17	Second Amended Complaint (SAC) Filed
Jan 31, 18	Order Granting Select Portfolio Servicing’s and U.S. Bank’s Demurrer Without Leave to Amend
Feb 07, 18	Order Granting JPMorgan Chase Bank and Deborah Brignac Demurrer Without Leave to Amend
Apr 06, 18	Judgment Entered for SPS and U.S. Bank

Jun 18, 18	Judgment Entered for JPMorgan Chase and Brignac
Jun 04, 18	Notice of Appeal Filed
Jan 02, 19	Order Granting JPMorgan Chase \$28,645.00 in Attorney Fees and \$1,691.84 in Costs
Dec 09, 20	Sixth District Court of Appeal Decision Affirming the Judgment but reversing the award of Attorney Fees
Dec 30, 20	Petition for Rehearing Denied
Jan 19, 21	Petition for Review Filed with the California Supreme Court
Mar 17, 21	California Supreme Court Denies Petition for Review



REASONS FOR GRANTING THE PETITION

I. THE OPINION ENGAGES IN MULTIPLE ERRORS OF LAW.

A. Conflation of Robo-Signing and Forgery.

Throughout the opinion, the Court of Appeal equates robo-signing with forgery. On page 4, the Court writes, “Among her ‘troubled past,’ the complaint generally alleges she engaged in robo-signing of recorded documents.” (App.14a). In footnote #4, it defines robo-signing as “the use of automated signatures.” (App.14a).

Robo-signing has been defined as the failure to conduct a review of the evidence substantiating a borrower's default prior to recording or filing certain documents, including an assignment of a deed of trust. *See Michael J. Weber Living Trust v. Wells Fargo Bank, N.A.* (N.D. Cal., Mar. 25, 2013, No. 13-CV-00542-JST) 2013 WL 1196959, at *4. In other words, the authority to sign is there. The due diligence, however, is missing.

Contrast this definition of robo-signers with the definition of a forger.

California Penal Code § 470 generally defines forgery. The definition of forgery is very broad. California Penal Code § 470(d) makes culpable of forgery, "Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, . . ." This broad definition covers recorded assignments of the deed of trust and substitutions of trustee.

California Penal Code § 134 provides, "Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony."

This provisions are in line with California Penal Code § 115 and § 115.5, as pled in Appellant's SAC, paragraphs 84, 92, 94, 103.

Consistent with California Penal Code § 470(d), BLACK'S LAW DICTIONARY defines forgery as, "3. Under the Model Penal Code, the act of fraudulently altering,

authenticating, issuing, or transferring a writing without appropriate authorization.” *Forgery*, BLACK’S LAW DICTIONARY (11th ed. 2019).

This conduct, forgery, is exactly what the Petitioner has pled throughout his complaint.

On Page 11 of the opinion, the Court of Appeal decision cites to *Saterbak v. JPMorgan Chase, N.A.* (2016) 245 Cal.App.4th 808, 811, 814 for its conflation of forgery with robo-signing. It wrote, “*Saterbak* further addressed the allegation that a signature on the instrument was ‘forged or robo-signed’ and decided that the borrower lacked standing to pursue those theories.” (App.16a).

A factual determination must first be made whether the acts of Brignac are forgery or mere robo-signing. For over 30 years, the California Supreme Court held that persons executing documents in the manner as Petitioner has alleged in his SAC (Second Amended Complaint) commits forgery, not mere robo-signing. *Century Bank v. St. Paul Fire & Marine Ins. Co.* (1971) 4 Cal.3d 319, 322. The California Supreme Court has never backed off this position one iota.

B. Assumption That Brignac Was a Vice President of Chase.

Appellant explained that the parties involved pretended that the woman working “at” CRC was signing as a Vice President at Chase. Appellant explained that Brignac was never a Vice President of Chase. The Court of Appeal assumes, without supporting facts or contrary allegations, that the Appellant’s allegations are false, *i.e.*, that she was a Vice President of Chase or executed documents with the

approval of Chase, although none of these assumptions is supported by the record.

The Court of Appeal claim that the fraud was not explicitly alleged is incorrect. (App.6a and App.18a). These allegations of fraud were contained in Paragraph 9, Paragraph 24 and Paragraph 50 of the SAC.

Paragraph 51 of the SAC detailed Ms. Brignac's troubled past of submitting false documents to the Register of Deed of Southern Essex District in Massachusetts. Even the court's opinion concerning the first cause of action recognizes that, "Tang seeks to have the assignment voided 'for reasons of fraud, lack of authority, and forgery.'" (App.6a).

C. Unsupported Assumption of Agency Relationship.

On Page 13 of the Opinion, the Court assumes an agency relationship when writing that "a principal may ratify agent's unauthorized act." (App.19a). There is no evidence of an agency relationship between or among Chase Bank, CRC, or Deborah Brignac. Without a principal/agent relationship, there is nothing to ratify.

D. Broken Chain of Title.

U.S. Bank came out of nowhere in 2014 and inserted itself in the chain of title as trustee of WaMu Mortgage Pass-Through Certificates Series 2005-AR19 trust.

As of February 2010, the beneficiary, and servicer, of the loan was JPMorgan Chase Bank, N.A. (CHASE). The assignment of Deborah Brignac, recorded March 1, 2010, transferred the beneficial interest to "Bank of America National Association as successor by merger

to LaSalle Bank NA as trustee for WaMu Mortgage Pass-Through Certificates Series 2005-AR19.” (App.125a).

Thus, if Brignac’s assignment was valid, Bank of America, N.A. (BANA) would have been the trustee of the Certificates Series 2005-AR19 trust. Yet, by a substitution of trustee (nothing more) recorded six years later, on March 2, 2016, U.S. Bank claimed to be a successor trustee of WaMu Mortgage Pass-Through Certificates Series 2005-AR19. For such a status to be enjoyed by U.S. Bank, there would have had to be an assignment. There is none. It was from this invalid substitution that the remaining notices of default, trustee sale, and trustee’s deed upon sale are founded. They are thus void.

E. The Consequences of Forgery Are Significant.

The consequences of Brignac’s forged and fraudulent signings are significant. The California Supreme Court has made it clear that a forged deed (or its assignment) is completely void and ineffective to transfer any title to the grantee. *Firato v. Tuttle* (1957) 48 Cal.2d 136, 139 (deed of reconveyance); *Burns v. Ross* (1923) 190 Cal. 269, 275 (assignment of contract of sale); *Cutler v. Fitzgibbons* (1906) 148 Cal. 562, 563–564; *Vaca Val. & C.L.R. Co. v. Mansfield* (1890) 84 Cal. 560, 566 (blank deed completed without authority).

II. WHERE A CAUSE OF ACTION HAS BEEN PLEADED, IT IS AN ABUSE OF DISCRETION TO RESOLVE QUESTIONS OF FACT WHERE THERE IS A DIFFERENCE IN HOW INFERENCES MAY BE DRAWN.

A. Demurrer Standards.

California has adopted a policy of liberal pleading construction and simply follows a “fair-notice” test. *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, 390. So long as a complaint as a whole contains sufficient facts to apprise a defendant of the basis upon which plaintiffs seek relief, a complaint is deemed to be sufficiently pleaded. *Perkins v. Superior Court (General Telephone Directory)* (1981) 117 Cal.App.3d 1, 6.

The demurrer admits the truth of all material facts properly pleaded. *Aubry v. Tri-City Hospital District* (1992) 2 Cal.4th 962, 966-967; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Adelman v. Associated Int'l Ins. Co.* (2001) 90 Cal.App.4th 352, 359.

It is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103. It is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

Critical to this petition is the fact that a judge may not resolve questions of fact on demurrer unless there is only one legitimate inference to be drawn from the allegations of the complaint. *TracFone Wireless,*

Inc. v. County of Los Angeles (2008) 163 Cal.App.4th 1359, 1368. *See Kruss v. Booth* (2010) 185 Cal.App.4th 699, 713–715 (judge cannot decide on demurrer whether California or Nevada law applies based on information outside of complaint).

The policy of liberal construction applies to the allegations of a complaint. Allegations of a pleading must be liberally construed with a view to substantial justice. California Code of Civil Procedure § 452; *see Stevens v. Superior Court (API Auto Ins. Services)* (1999) 75 Cal.App.4th 594, 601.

B. Deed of Trust Is a Contract.

Plaintiff has the right to challenge the fraudulent assignments and substitutions by virtue of ¶ 22 of the Deed of Trust. Paragraph 22 states in part that the plaintiff/borrower shall have “the right . . . to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale.” (App.128a). The fact that the foreclosing entities do not have the legal right to foreclose would appear to go the heart of the non-existence of a default or other defense.

Additionally, the contract agrees that the governing law shall be federal law and California State law. Paragraph 16 of the deed of trust states, “This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located.” (App.128a).

One of the great misunderstandings in foreclosure law is that the power of sale—the power to sell a home at a trustee’s sale—is somehow governed exclusively by California’s foreclosure statutes, Civil Code § 2924

et seq., See, e.g., *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 272. The power of sale is created by contract, not by statute. *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 511-512, overruled on other grounds by *Yvanova v. New Century Mortgage Corporation* (2016) 62 Cal.4th 919. Thus, the “standing” issue at the heart of this case turns on the language of a contract, rather than the language of the foreclosure statutes. *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1094. A loan servicer who acts as the agent for a party who is not a beneficiary lacks the power to foreclose. *Glaski, supra*.

Kachlon v. Markowitz is in accord with this. “By contrast, nonjudicial foreclosure bears none of the attributes essential for absolute privilege. Though regulated by statute as a matter of public policy, nonjudicial foreclosure is a private procedure involving private parties, occurring pursuant to a private power of sale contained in a deed of trust. See generally 4 Miller & Starr, *supra*, at § 10:179–10:180, pp. 547–551.” *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 339.

One of the firmest rules of contract interpretation is that clear contract language must be applied as written. California Civil Code § 1638 provides that “[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” Applying that principle, the California Supreme Court has held the “mutual intention of the parties is to be inferred, if possible, solely from the written provisions of the contract. Where contractual language is clear and explicit, it governs.” *Powerine Oil Co. v. Superior Court* (2005) 37 Cal.4th 377, 396.

The language in the Deed of Trust gives the borrower—Vincent Tang in this case—the right to sue to determine if the actual “Lender” is exercising the power to foreclose. (App.128a).

Also by contract, U.S. Bank is bound by how California and federal law govern the deed of trust, not New York law or that of some other state. (App.128a).

C. CC § 2924(a)(6) and CC § 2924.17(b).

California Civil Code § 2924(a)(6) and California Civil Code § 2924.17(b) allow Petitioner the right to challenge whether the Respondents, and any of them, held a valid beneficial interest under the deed of trust. This holding of a beneficial interest imposes a condition precedent upon the respondents before they could lawfully institute the non-judicial foreclosure upon Petitioner’s home.

Failure of the Respondents to hold a beneficial interest not only grants to the Petitioner the right to challenge the foreclosure, it grants to the Petitioner to bring an action in the Superior Court to do this.

III. THE SALE OF FEBRUARY 15, 2017 IS VOID.

What occurred in this matter, *i.e.*, the forgery of Deborah Brignac and the subsequent confusion of title, resulted in the contamination of title. Quality Loan Service (QLS) was improperly substituted as foreclosure trustee on or about March 21, 2016, without legal authority. QLS improperly recorded the notices of trustee sale on March 21, 2016, June 14, 2016 and November 1, 2016. QLS improperly conducted a trustee sale on February 15, 2017. QLS improperly recorded a notice of trustee sale on February 17, 2017.

A foreclosure sale conducted by an improper trustee is void. *Pro Value Properties, Inc. v. Quality Loan Service Corporation* (2009) 170 Cal.App.4th 579; *see also Dimock v. Emerald Properties* (2000) 81 Cal. App.4th 868, 876, 878 (foreclosure sale void where original trustee completed foreclosure sale after being replaced by new trustee). “[O]nly the entity currently entitled to enforce a debt may foreclose on the mortgage or deed of trust securing that debt. . . .” *Yvanova v. New Century Mortgage* (2016) 62 Cal.4th 919, 928. When a homeowner is foreclosed on by one with no right to do so by void assignment, that is all that is required to allege wrongful foreclosure. *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 565-566.



PRAYER

For the reasons set forth in this Petition for a Writ of Certiorari, Petitioner prays this Supreme Court grant him certiorari. Petitioner prays that this Court find that the Court of Appeal was in error in affirming the dismissal without leave to amend of Petitioner’s Second Amended Complaint. Petitioner prays that this Court affirm the reversal of the trial’s court’s award of attorney fees. Petitioner prays that this Court reverse this decision and remand the matter to the trial court for further proceedings consistent with this Court’s reversal.

Petitioner also prays that this Court find that the Court of Appeal, Sixth District, affirmance of the dismissal without leave to amend violated Petitioner’s

rights under the 5th and Section One of 14th Amendments of the United States Constitution.

Respectfully submitted,

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