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Post-*Yvanova* Landspace: Appellate Courts Chime In While Supreme Court Punts

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A few months have passed since the California Supreme Court answered one question in *Yvanova*,[1] and left a few more unanswered in its trail. The *Yvanova* gaps are necessarily being filled by appellate opinions, forming a landscape of case law on challenges to authority to foreclose. The appellate opinions so far have been diverse, if not unexpected. What has been equally unforeseen is the Supreme Court passing up on opportunity to clarify *Yvanova* further, as if the Supreme Court signals- do not lift the lid off of the standing stew for now....let it simmer. Below is a summary of the simmering effect since *Yvanova* issued.

FIRST POST-*YVANOVA* APPELLATE RULING -*SATERBAK*

As the first post-*Yvanova* appellate ruling, *Saterbak*[2] set precedent by distinguishing itself from *Yvanova* and undertaking to establish parameters for *Yvanova*'s narrow framework. *Saterbak* made a distinction between a pre-foreclosure and post-foreclosure challenge to authority to foreclose, construing that *Yvanova*'s ruling is limited to post-foreclosure scenarios only. *Saterbak*'s interpretation is a plausible one as what was before the Court in *Yvanova* was a completed foreclosure. Next, *Saterbak* provided guidance on what constitutes a void versus a voidable assignment of a deed of trust. The analysis was much needed to fill a gaping *Yvanova* gap. As the first post-*Yvanova* ruling, *Saterbak* has garnered much attention and been explored for its significance as well as its nuances. *Saterbak* kick started the standing stew that continues to simmer.

> ***The Yvanova gaps are necessarily being filled by appellate opinions, forming a landscape of case law on challenges to authority to foreclose.***

SECOND POST-*YVANOVA* APPELLATE RULING- *BROWN*

Next came *Brown*,[3] which also involves a pre-foreclosure challenge to authority to foreclose. *Brown* however, declined to decide the threshold issue of whether a borrower has standing to bring a preemptive challenge to an entity's authority to foreclose. *Brown* side-stepped the issue by looking to the judicially noticed documents, and deciding that the judicially noticed documents, in this case a Purchase and Assumption Agreement, contradicted the borrower's contention about the lack of authority to foreclose. *Brown* rested on the specific facts of the case.

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THIRD POST-*YVANOVA* APPELLATE RULING- *SCIARRATTA*

The *Sciarratta*[4] ruling is the latest published on the subject of a borrower's standing to challenge the authority to foreclose. *Sciarratta* involves a post-foreclosure challenge based on the allegation of a void assignment of deed of trust. The deed of trust assignments in *Sciarratta* are disconnected. Due to the disconnected chain of assignments, the *Sciarratta* court declared that there was a void assignment. Under that circumstance *Sciarratta* ruled on how a plaintiff needs to allege the elements of a wrongful foreclosure claim at the pleading stage, specifically, the element of prejudice. *Sciarratta* was an appeal from a ruling on a demurrer, and did not discuss the claim elements, past the pleading stage.

THE SUPREME COURT PUNTS ON *KESHTGAR* AND OTHERS

The *Yvanova* and *Keshtgar*[5] appellate rulings were companions of sorts. Both involve a borrower's challenge to the authority to foreclose, both appellate opinions issued around the same time and both were accepted for review by the California Supreme Court. In March 2016, when *Saterbak* made a distinction between pre-foreclosure and post-foreclosure scenarios, the anticipation for a Supreme Court ruling on *Keshtgar* heightened. Unlike *Yvanova*, *Keshtgar* involves a pre-foreclosure challenge to the authority to foreclose, and the Supreme Court could have taken the opportunity to clarify *Yvanova* further, if only one aspect of it.

In an unpredicted turn, the Supreme Court passed on the opportunity. In April 2016, the Supreme Court dismissed review in one case, and transferred six cases, previously accepted for review, back to the lower courts, all for reconsideration in light of *Yvanova*. *Keshtgar* was one of the six cases that got transferred. The California Supreme Court is not inclined to lift the lid off of the standing stew, giving the appellate courts time to chime in with their interpretations, and letting the stew simmer, for the time being.

1 *Yvanova* v. *New Century Mortgage Corp.*, 62 Cal.4th 919(2016).

2 *Saterbak* v. *JP Morgan Chase Bank, N.A.*, 245 Cal. App. 4th 808 (2016).

3 *Brown* v. *Deutsche Bank National Trust Co.*, 2016 Cal. App. LEXIS 375.

4 *Sciarratta* v. *U.S. Bank National Assn.*, 2016 Cal. App. LEXIS 399.

5 *Keshtgar* v. *U.S. Bank*, 334 P.3d 686(2014).

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