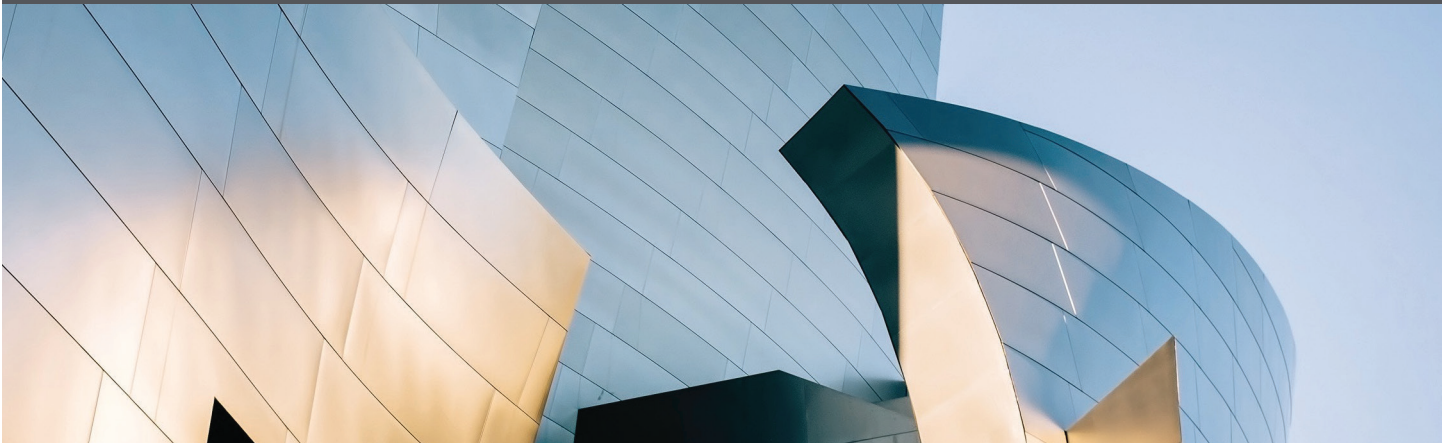


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United States Court of Appeals for the Ninth Circuit Confirms *Yvanova* is Limited to Post-Foreclosure Challenges to Authority

In its recent ruling, the United States Court of Appeals for the Ninth Circuit confirmed that California law does not permit pre-foreclosure challenges to assignments of deed of trust. The ruling is significant because it reiterates the limited application of Yvanova v. New Century Mortg. Corp., 62 Cal.4th 919 (2016), which numerous borrowers previously attempted to rely on to support preemptive challenges to foreclosure sales.

On May 11, 2020, the United States Court of Appeals for the Ninth Circuit, in *Perez v. Mortgage Electronic Registration Systems, Inc.*, ruled that California law does not permit preemptive actions to challenge a party's authority to pursue foreclosure before a foreclosure has taken place.¹ The opinion comes in response to two pre-foreclosure actions brought by borrowers Bella and Enrique Perez ("Appellants") against Mortgage Electronic Registration Systems, Inc. ("MERS") and the two lenders holding the subject mortgages.² In each action below, Appellants filed claims seeking declaratory relief and cancellation of instruments as to MERS and the lenders, and quiet title as to only the lenders. Appellants' claims are premised on the theory that they can preemptively challenge the lenders' authority to foreclose by initiating actions before a foreclosure sale has taken place.

The Court's ruling is significant because it clarifies that *Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919 (2016) (*Yvanova*) is limited to post-foreclosure actions for wrongful foreclosure. In *Yvanova*, the California Supreme Court held that borrowers asserting wrongful foreclosure actions have standing to challenge allegedly void assignments of the deed of trust in limited circumstances. However, the California Supreme Court's holding in *Yvanova* is narrowly tailored and applies only to post-foreclosure actions for

wrongful foreclosure. Despite its limited application, many borrowers have relied on *Yvanova* to support their claims for preemptive challenges to foreclosure sales that have not yet occurred.

The California Supreme Court has yet to address the question of whether pre-foreclosure challenges to assignments are viable under California law. The Ninth Circuit acknowledged this lack of authority and, in its ruling, looked to relevant decisions of the California courts of appeal for guidance, noting that "the existing California appellate cases demonstrate that, both before and after *Yvanova*, California appellate courts have dismissed preemptive, pre-foreclosure actions. There is no convincing evidence the California Supreme Court would break with that precedent."³ Citing the large number of litigations and appeals involving preemptive suits to challenge an entity's authority to foreclose, the Court in *Perez* explained that it was specifically writing for publication to describe currently applicable California law.⁴

In summary, *Perez* is a positive outcome for lending institutions and those holding the beneficial interest in deeds of trust because it is citable precedent that confirms *Yvanova's* narrow holding is limited to post-foreclosure actions only.

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For additional information, please contact:

Wayne Streibich, Philadelphia Office
Chair, Consumer Finance Litigation
215.569.5776 | wstreibich@blankrome.com

Cheryl S. Chang, Los Angeles Office
Partner, Consumer Finance Litigation
424.239.3472 | chang@blankrome.com

Jessica A. McElroy, Los Angeles Office
Associate, Consumer Finance Litigation
424.239.3419 | jmcelroy@blankrome.com

1. *Perez v. Mortg. Elec. Registration Sys., Inc.*, No. 18-16584, 2020 WL 2312867, --- 9th Cir. --- (9th Cir. May 11, 2020) (*Perez*).

2. *Perez v. Mortg. Elec. Registration Sys., Inc.*, No. 3:17-CV-04880-JD, 2018 WL 3109599, at *1 (N.D. Cal. June 25, 2018), *aff'd*, No. 18-16584, 2020 WL 2312867 (9th Cir. May 11, 2020) and *Perez v. Mortg. Elec. Registration Sys., Inc.*, No. 217CV01790TLNEFB, 2018 WL 3740543, at *1 (E.D. Cal. Aug. 3, 2018), *aff'd*, No. 18-16584, 2020 WL 2312867 (9th Cir. May 11, 2020).

3. *Perez*, 2020 WL 2312867, at *4.

4. *Id.* at n.6.