Exhibit 7

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SEAN K. BURKE and DEBORAH L. BURKE,

Plaintiffs,

v.

JPMORGAN CIIASE BANK, N.A.; WELLS FARGO BANK, N.A., AS TRUSTEE FOR JPMORGAN MORTGAGE TRUST 2008-R2 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2008 R-2,

Defendants.
_____/

No. C 13-04249 WHA

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT AND MOTION TO SEAL

INTRODUCTION

In this foreclosure dispute, plaintiffs move for relief from judgment following an order granting defendants' motion for summary judgment. Plaintiffs' motion is **DENIED**.

STATEMENT

The details of this case are set forth in a previous order granting defendants' motion for summary judgment (Dkt. No. 93), but will now be briefly restated.

1. THE MORTGAGE LOAN NOTE AND DEED OF TRUST.

In August 2007, plaintiffs Sean Burke and Deborah Burke obtained a home loan in the amount of $1,246,250.00 from Washington Mutual Bank, F.A. Plaintiffs signed an adjustable rate note promising to make payments on it to WaMu.

In September 2008, WaMu failed and the Federal Deposit Insurance Corporation became its receiver. On the same day, JPMorgan Chase Bank, N.A., executed a purchase and

assumption agreement with the FDIC by which it agreed to purchase certain WaMu assets, including specifically all mortgage servicing rights and obligations. One loan acquired was plaintiffs' loan.

Plaintiffs soon began missing payments, however, and submitted multiple modification applications, all denied, leading to a notice of default and two subsequent notices of trustee sales. Both trustee sales have been postponed.

In 2015, an assignment was recorded memorializing the September 2008 assignment of plaintiffs' deed of trust, and all interests in it, from the FDIC to Chase (Dkt. No. 85-5 at 80).

As of July 2016, plaintiffs remained in default and the loan had an unpaid principal balance of $1,303,620.08 and a total payoff amount of $1,823,963.50.

2. PLAINTIFFS' THEORY.

Plaintiffs filed this action in September 2013, and amended their complaint in February 2014. Plaintiffs' claims rested on their theory that Chase and Wells Fargo Bank, N.A., as trustee for JPMorgan Mortgage Trust 2008-R2 Mortgage Pass-Through Certificates series 2008-R2, lacked a beneficial interest in plaintiffs' mortgage loan. Chase allegedly could not enforce the underlying note because WaMu had allegedly sold the interests in plaintiffs' loan to an unknown interim loan purchaser prior to Chase's purchase of WaMu's assets in September 2008. The interim purchaser then sold the same interests to Wells Fargo, as trustee of the security trust. Wells Fargo allegedly could not enforce the underlying note through the trust because there were no intervening assignments of plaintiffs' deed of trust from WaMu to the interim purchaser, and from the interim purchaser to the security trust, as required by the binding terms of the security trust's agreement and instrument.

No evidence of this securitization was ever presented (Dkt. No. 93 at 4). In fact, plaintiffs did not undertake any written or oral discovery during the course of the action (Dkt. No. 110-1 at 2). Furthermore, plaintiffs response to Chase's summary judgment motion appended no evidentiary support.

3. FINAL JUDGMENT IN FAVOR OF DEFENDANTS.

After full briefing and oral argument, Chase's motion for summary judgment was granted. The order stated in pertinent part (Dkt. No. 93 at 4–5):

> This order concludes that summary judgment in favor of defendants is appropriate here because no material dispute exists as to whether Chase holds a beneficial interest in the mortgage. Chase owns the mortgage; plaintiff submits nothing to suggest otherwise.
>
> Defendants submit evidence that demonstrates Chase owns the loan. Chase possesses the original note as well as the deed of trust (Childress Decl. ¶ 9–10). A Chase employee who has reviewed the entire record of the mortgage states in a declaration that no sale or securitization of the mortgage occurred prior to Chase's purchase of WaMu's assets in September of 2008 (Childress Decl. ¶ 10). Moreover, an assignment of deed was recorded in 2015, which "memorialize[d] the transfer that occurred by operation of law on September 25, 2008" of the mortgage from the FDIC as WaMu's receiver to Chase (RJN, Exh. 6).
>
> The only evidence that plaintiffs cite in their opposition brief are blurry screenshots appended to the amended complaint. The screenshots refer to a mortgage-backed security but make *no* identifiable reference to plaintiffs' loan. Plaintiffs make no effort to explain how the screenshots show plaintiffs' loan was securitized. This order holds that no reasonable trier of fact could conclude based on these screenshots that the loan was securitized prior to Chase's purchase of WaMu's assets in September 2008.
>
> All of plaintiffs' claims rise and fall on the theory that defendants do not own the loan. Because Chase demonstrates that it owns the mortgage, all of plaintiffs' claims fail.

Plaintiffs appealed the order granting defendants' motion for summary judgment and final judgment in October 2016 (Dkt. No. 96). Plaintiffs now move for relief from the same order and judgment pursuant to Rule 60(b)(3). This order follows full briefing, oral argument, and supplemental briefing.

ANALYSIS

Once an appeal is filed, the district court no longer has jurisdiction to consider motions for relief from judgment. Rule 62.1, however, provides that "[i]f a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the [district] court may: (1) defer considering the motion; (2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue."

Final judgment was entered here pursuant to the order granting summary judgment in favor of defendants. Plaintiffs appealed the final judgment. Therefore, this motion proceeds with limited jurisdiction to take one of the actions specified by Rule 62.1.

1. RULE 60(b)(3) STANDARD.

Rule 60(b)(3) provides for relief from judgment for fraud, misrepresentation, or misconduct by an opposing party. To prevail, the movant must prove by clear and convincing evidence that (1) the prevailing litigants obtained the verdict through fraud, misrepresentation, or other misconduct, and (2) the conduct complained of prevented the losing party from fully and fairly presenting the defense. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004). Rule 60(b)(3) "requirc[s] that fraud . . . not be discoverable by due diligence before or during the proceedings." *Ibid.* The merits of a case are not before the court on a Rule 60(b) motion. *Id.* at 1261.

2. PLAINTIFFS FAIL TO PROVE CHASE FRAUDULENTLY ENDORSED THEIR NOTE.

Plaintiffs argue that Chase forged WaMu's endorsement of the mortgage loan note after the FDIC's takeover of WaMu in September 2008. They also present evidence that purports to show Chase engages in a pattern whereby it continually expunges, conceals, and forges away defects in its chain of title in order to present a false impression of ownership. In their reply, plaintiffs conjecture that Chase forged the endorsement in order to create the false impression that "the securitization" was in compliance with the regulations of the Internal Revenue Service. Regardless of plaintiffs' failure to show the loan was securitized in the first place, their fraud argument still fails to show by clear and convincing evidence that defendants obtained any part of the judgment through fraud.

A. Ms. Riley's Employment History.

At oral argument, plaintiffs identified as their strongest evidence the deposition testimony of Cynthia Riley from a Florida state court action. Plaintiffs assert that Cynthia Riley, the

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