

QUIET TITLE CASES

"Plaintiff's basis for claiming 'better title' is that securitization somehow altered her obligation to pay her mortgage. This argument is unrecognized in the law." **HEROLD V. ONE WEST BANK** (D. Nev. 9-29-2011); "A plaintiff cannot quiet title without discharging the mortgage debt. **AGUILAR V. BOCI**, 39 Cal.App.3d 475, 477 (1974) ("the cloud upon his title persists until the debt is paid"); **KELLEY V. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC.**, 642 F.Supp.2d 1048, 1057 (N.D. Cal. 2009). **TRUSTY V. RAY**, 249 P.2d 814, 817 (Idaho 1952) ("[a] mortgagor cannot without paying his debt quiet title as against the mortgagee"); "Plaintiff's quiet title claim is based on the argument that, as a result of securitization, the trust deed has been split from the note and, therefore, the deed of trust should be declared a nullity. This Court has repeatedly rejected this argument. Recently, both the Utah Court of Appeals and the Tenth Circuit Court of Appeals have similarly rejected this claim. For the same reasons stated by all of these courts, this claim must be rejected." **WINN V. BANK OF AMERICA** (D.Utah 1-4-2012); "A quiet title claim seeks to extinguish interests in the property in favor of the interest of the plaintiff. Here, Plaintiff is seeking to extinguish the Trust Deed. 'To succeed in an action to quiet title to real estate, a plaintiff must prevail on the strength of his own claim to title and not the weakness of a defendant's title or even its total lack of title.' Plaintiff fails to assert her own claim to title. She does not allege that the Deed of Trust was not validly executed or that she is not in default under the note. Accordingly, the court rejects Plaintiff's argument and dismisses this claim." **DOMINGO V. DIRECT MORTGAGE CORPORATION** (D.Utah 9-21-2011); "quiet title is not a remedy available to the trustor until the debt is paid or tendered. Plaintiff has not paid the loan amount, nor has Plaintiff alleged that he is ready, willing and able to tender the full amount owed. *See* **FARRELL V. WEST**, 114 P.2d 910, 911 (Ariz. 1941) (refusing to quiet title until and unless the plaintiff tenders the amount owed, as required in equity). Instead, Plaintiff asks this Court to invalidate the claims of the beneficiary under the deed of trust. The Court will not indulge this inappropriate use of an action to quiet title; "Plaintiff's argument that the assignment to U.S. Bank was void, and that U.S. Bank and MERS are not beneficiaries fails to support Plaintiff's claim for quiet title. As discussed above, an assignment of a deed of trust does not need to be recorded in order to be valid, and under the terms of the Deed of Trust, Plaintiff was not entitled to notice of any such assignment." **FRAME V. CAL-WESTERN RECONVEYANCE CORPORATION**

(D.Ariz. 9-2-2011); "This appeal requires us to interpret the statute governing judgments in quiet title actions. The statutory language is about as straightforward as such language ever gets: "The court shall not enter judgment by default. . . ." Entry of a default judgment against appellant HSBC Mortgage Services, Inc., and in favor of respondent **HARBOUR VISTA, LLC**, in a quiet title action was error." **HARBOUR VISTA V. HSBC MORTGAGE SERV. INC.**, G044357 (Cal.App. 12-19-2011); **MIER V. LORDSMAN INC.**, Civ. No. 10-00584, 2011 U.S. Dist. LEXIS 8484, at * 15-17 (D. Haw. Jan. 26, 2011) ("[T]o assert a claim for quiet title against a mortgagee, a borrower must allege they have paid, or are able to tender, the amount of the indebtedness."); **Goryoka v. Quicken Loan, Inc.**, [2013 WL 1104991](#), at *3 (6th Cir. March 18, 2013) (the Sixth Circuit has held that a quiet title claim is a remedy, and not a separate cause of action.)