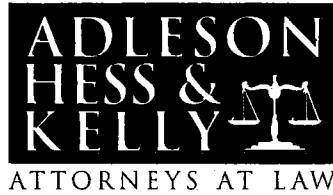


PHILLIP M. ADLESON  
RANDY M. HESS  
PATRIC J. KELLY  
EDWARD C. McDONALD, JR.  
PAMELA A. BOWER  
JEFFREY A. BARUH  
JOANNE M. WENDELL  
LISA J. PARRELLA\*  
CLAY A. COELHO



A PROFESSIONAL CORPORATION  
www.ahk-law.com  
www.insurancecoveragelaw.com

MAIN OFFICE:  
577 SALMAR AVENUE  
SECOND FLOOR  
CAMPBELL, CALIFORNIA 95008  
TELEPHONE (408) 341-0234  
FACSIMILE (408) 341-0250

SANTA ANA OFFICE:  
1820 E. FIRST STREET, SUITE 410  
SANTA ANA, CALIFORNIA 92705  
TELEPHONE (714) 795-2360

\*ALSO LICENSED IN NEVADA AND NEW YORK  
PLEASE REPLY TO: CAMPBELL

August 31, 2011

**VIA FEDERAL EXPRESS**

Hon. Barbara J.R. Jones, Presiding Chief Justice  
and Associate Justices  
California Court of Appeal  
First Appellate District, Division 5  
350 McAllister Street  
San Francisco, CA 94102-7303

Re: *Barrera v. Wells Fargo Bank, N.A., et al.* (August 12, 2011) "  
First Appellate District Case No.: A129915

**THE UNITED TRUSTEES ASSOCIATION'S LETTER IN SUPPORT OF PUBLICATION**

Our File No: 880284

Dear Hon. Presiding Justice Barbara J.R. Jones and the Associate Justices of the California Court of Appeal, First Appellate District, Division 5:

This letter is written on behalf of the United Trustees Association ("UTA"), formerly known as the California Trustees Association ("CTA"), a nonprofit educational organization. The members of UTA are comprised of lenders and trustees under deeds of trust secured by real property in California, as well as members working for industries which provide support services in the nonjudicial foreclosure process, such as legal newspapers, title companies, posting and publishing services, and attorneys. UTA's members provide reconveyance and nonjudicial foreclosure services for nearly all lenders in the California real estate market. UTA has also been actively involved in legislative changes in the nonjudicial foreclosure process in the California Legislature.

UTA, (as CTA), has filed amicus briefs in the United States Supreme Court, the Federal Ninth Circuit Court of Appeals, the California Supreme Court, and the California Courts of Appeal, including such cases as: *BFP v. Resolution Trust Corporation*<sup>1</sup>; *I. E. Associates v. Safeco*<sup>2</sup>; *Kachlon v. Markowitz, Banc of America Leasing & Capital, LLC v. 3 Arch Trustee Services, Inc., Trustors Security Service v. Title*

<sup>1</sup> *BFP v. Resolution Trust Corporation* (1994) 511 U.S. 531 (validity of regularly conducted nonjudicial foreclosure sale.)

<sup>2</sup> *I. E. Associates v. Safeco* (1985) 39 Cal.3d 281 (the extent and scope of a trustee's duties in connection with a nonjudicial foreclosure.)

*Recon Tracking, et al.*<sup>3</sup>; *In re Lindsay*<sup>4</sup>; *Prudential Home Mortgage Company, Inc. v. Superior Court*<sup>5</sup>; *Abdallah v. United States Bank*<sup>6</sup>; and, *Nguyen v. Calhoun*<sup>7</sup>.

UTA's goal is to provide a clear understanding of the legislation and case law that impacts the lending, loan servicing and default services industries, including important issues relating to lending, servicing and foreclosure of loans secured by deeds of trust. UTA members are vitally interested in the outcome of this case because they are regularly involved in the nonjudicial foreclosure of deeds of trust. Most beneficiaries (lenders) whose loans are secured by a deed of trust use the nonjudicial foreclosure process, which is evidenced by a series of recorded documents. If a nonjudicial foreclosure sale is challenged, UTA members rely upon the court's ability to take judicial notice of the legal effect of many of these public records upon which the trustee's nonjudicial foreclosure sale was based. An ounce of perceived doubt in the trial court's ability to take judicial notice of those documents will inject a pound of uncertainty in trial court cases involving the nonjudicial foreclosure process. Given the continuing public interest in the nonjudicial foreclosure process and significant amount of civil litigation regarding the same, certainty in this area is required to reduce the ever expanding litigation challenging nonjudicial foreclosures.

While UTA agrees with the court's decision and analysis in the *Barrera v. Wells Fargo Bank*<sup>8</sup> case, it believes that the *Barrera* opinion should be published to compliment its published companion case, *Fontenot v. Wells Fargo Bank*<sup>9</sup>, from Division 1 of this Court. The published *Fontenot* decision gives a cogent, concise analysis of the current cases involving the application of the doctrine of judicial notice of official public records.<sup>10</sup> Like *Fontenot*, decided by this Court a day earlier, the *Barrera* decision squarely addresses the issue of judicial notice of public records in the context of nonjudicial foreclosure sales. The value of adding *Barrera* as a published decision is that it reviews in detail the progressing developments of the law in this area (including a citation to *Fontenot v. Wells Fargo Bank*) and analyzes in detail the *Poseidon*<sup>11</sup> decision, upon which the analysis of both the *Fontenot* and *Barrera* decisions rest. The *Barrera* decision also devotes a part of the decision distinguishing contrary cases cited by the appellant.<sup>12</sup> Together, these decisions provide a comprehensive explanation of the scope and use of judicial notice of publically recorded documents in nonjudicial foreclosure cases.

<sup>3</sup> *Trustors Security Service v. Title Recon Tracking, et al.* (1996) 49 Cal.App.4th 592 (interpretation of Civil Code § 2941 and the legislative preference for reconveyances of deeds of trust by trustees.)

<sup>4</sup> *In re Lindsay* (9th Cir. 1995) 59 F.3d 942 (validity of a regularly conducted nonjudicial foreclosure.)

<sup>5</sup> *Prudential Home Mortgage Company, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1236.

<sup>6</sup> *Abdallah v. United States Bank* (1996) 43 Cal.App.4th 1101.

<sup>7</sup> *Nguyen v. Calhoun* (2003) 105 Cal. App. 4th 428 (a loan secured by real property is paid off when the lender actually receives the payoff funds not when a purchase escrow by the seller/borrower closes.)

<sup>8</sup> *Barrera v. Wells Fargo Bank, N.A.* (1<sup>st</sup> App. Dist. 2011) 2011 WL 3557318, unpublished.

<sup>9</sup> *Fontenot v. Wells Fargo Bank, N.A.* (1<sup>st</sup> App. Dist. 2011) 2011 WL 3506177.

<sup>10</sup> The cases discussed include: *Mangini v. R.J. Reynolds Tobacco Co.* ((1994) 7 Cal.4<sup>th</sup> 1057; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4<sup>th</sup> 1106; and, *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4<sup>th</sup> 1366.

<sup>11</sup> *Poseidon v. Development, Inc. v. Woodland Lane Estates, LLC, supra.*

<sup>12</sup> The distinguished cases include: *Abernathy Valley, Inc. v. County of Solano* (2009) 173 Cal.App.4<sup>th</sup> 42 and *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725.

Hon. Barbara J.R. Jones, Presiding Chief Justice  
and Associate Justices  
August 31, 2011  
Page 3

In conclusion, UTA believes that the synergism created by the *Fontenot* decision and the *Barrera* decision, *if published*, will provide the definitive analysis of the court's ability to take judicial notice of the legal effect of recorded public records when the authenticity of those documents is not challenged. This guidance is needed in the current litigious environment of nonjudicial foreclosures. UTA strongly urges this Court to publish the *Barrera v. Wells Fargo Bank* decision.

Thank you for your consideration in this matter.

Respectfully submitted,

By:

  
PHILLIP M. ADLESON  
Counsel for United Trustees Association

cc: Clerk of the Court of Appeal for the First Appellate District  
Counsel for the parties in the above-entitled action

**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to the within-entitled action. I am employed in Santa Clara County, California, with the law firm of ADLESON, HESS & KELLY. My business address is 577 Salmar Avenue, Second Floor, Campbell, California 95008.

On August 31, 2011, I served upon the interested party(ies) in the action the foregoing document described as:

**AUGUST 31, 2011 LETTER FROM ADLESON, HESS AND KELLY, A PC TO HON. BARBARA J.R. JONES AND ASSOCIATE JUSTICES**

X by placing \_\_\_ the original X true copies thereof enclosed in sealed envelopes addressed to:

Hon. Barbara J.R. Jones  
And Associate Justices  
California Court of Appeal-1<sup>st</sup> App Dist  
Division 5  
350 McAllister Street  
San Francisco, CA 94102-7303  
**VIA FEDERAL EXPRESS**

George Holland, Jr., Esq.  
HOLLAND LAW FIRM  
1970 Broadway, Suite 1030  
Oakland, CA 94612-2222  
*Attorney for Plaintiff/Appellant, BARRERA*

Joan C. Spaeder-Youkin  
ROUP & ASSOCIATES  
23101 Lake Center Drive, Suite 310  
Lake Forest, CA 92630

Court Clerk  
Alameda County Superior Court  
1225 Fallon Street  
Oakland, CA 94612

Office of the Clerk  
Office of the Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

X **BY U.S. MAIL** I deposited such envelope(s), with said postage thereon fully prepaid in the United States mail at a facility regularly maintained by the United States Postal Service at Campbell, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Campbell, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing, pursuant to this affidavit.

**BY U.S. CERTIFIED MAIL** I deposited such envelope(s), with said postage thereon fully prepaid in the United States mail, Certified Mail, at a facility regularly maintained by the United States Postal Service at Campbell, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Campbell, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing, pursuant to this affidavit.

**RETURN RECEIPT REQUESTED, U.S. MAIL**

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**WITH CERTIFICATE OF MAILING** A certificate of mailing was obtained from the United States Post Office evidencing the mailing referenced above.

X **BY FEDERAL EXPRESS** I caused such envelope(s) to be placed for FedEx collection and delivery at Campbell, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for FedEx mailing. Under the practice it would be deposited with the FedEx Office on that same day with instructions for overnight delivery, fully prepaid, at Campbell, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the FedEx delivery date is more than one day after date of deposit with the local FedEx Office, pursuant to this affidavit.

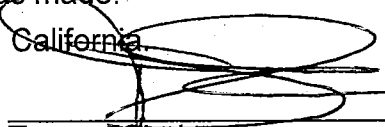
**BY FACSIMILE** I caused transmission of the foregoing document(s) by facsimile to the offices of the addressee(s), and such transmission was reported as complete and without error.

**BY PERSONAL SERVICE** I personally delivered by hand to the offices of the addressee(s) listed above, pursuant to CCP §1011.

X **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**(FEDERAL)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 31, 2011, at Campbell, California.

  
\_\_\_\_\_  
Tammy Clark