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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

BANK OF NEW YORK MELLON, Plaintiff and Respondent, v. MARINE NAZARYAN et al., Defendants and Appellants.	B276695 Los Angeles County Super. Ct. No. BC576120

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael M. Johnson, Judge. Affirmed.

Gladych & Associates, John A. Gladych and Andrea A. Golan for Defendant and Appellant Marine Nazaryan.

Fidelity National Law Group, Alia S. Haddad, Susan M. Hutchison and Kevin Broersma for Plaintiff and Respondent.

INTRODUCTION

In 1998, defendant Marine Nazaryan and her now-ex-husband purchased a home located at 1068 and 1068-A Rosedale Avenue in the City of Glendale (Property). In 2002, the ex-husband executed a quitclaim deed transferring sole title to the Property to his sister. In 2005, the sister recorded the subject deed of trust, which was executed in favor of Greenpoint Mortgage Funding, Inc. (Greenpoint) and secures a refinancing loan against the Property (2005 Deed of Trust). About a year later, Nazaryan obtained a judgment in a marital dissolution proceeding awarding her sole title to the Property. For several years after obtaining title to the Property, Nazaryan made regular payments on the loan secured by the 2005 Deed of Trust. In 2012, a written assignment was executed, transferring all beneficial interest in the deed of trust and the underlying loan to plaintiff Bank of New York Mellon (Bank of New York). In 2015, Bank of New York filed this lawsuit against Nazaryan and other defendants for, among other things, declaratory relief. Specifically, Bank of New York sought a declaration that the 2005 Deed of Trust is an enforceable, first-priority lien against the Property.

After the trial court granted Bank of New York's motion for summary adjudication of its declaratory relief claim, the bank dismissed its remaining claims and judgment was entered in its favor. On appeal, Nazaryan argues the court erred in granting summary adjudication because the following triable issues of fact exist: (1) whether Greenpoint was a bona fide encumbrancer of the Property; (2) whether Nazaryan took title to the Property subject to the 2005 Deed of Trust; and (3) whether Bank of New York received a valid assignment of the deed of trust. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Property

In April 1986, Nazaryan married Sarkis Tonoyan[1] (Sarkis). Around September 1998, the couple purchased the Property.

On October 15, 1998, "Sergo Tonoyan" executed a deed of trust securing a promissory note for $212,000 against the Property (1998 Deed of Trust). The 1998 Deed of Trust was recorded on October 26, 1998. That same day, two quitclaim grant deeds for the Property were recorded: the first transferring the Property from Vahik and Hilda Ghookasian to "Sergo Tonoyan, a Married Man as His Sole and Separate Property," and the second executed by Nazaryan transferring her interest in the Property to "Sergo Tonoyan."

On June 23, 1999, "Sergo Tonoyan" executed another deed of trust securing a $35,000 note against the Property (1999 Deed of Trust). The 1999 Deed of Trust was recorded on July 13, 1999.

On May 15, 2002, Nazaryan executed an "Interspousal Transfer Grant Deed," transferring her interest in the Property to Sarkis (2002 Interspousal Grant Deed). That same day, Sarkis executed a quitclaim deed (2002 Quitclaim Deed) transferring the Property to his sister, Ripsime Tonoyan (Ripsime).

Around the time Sarkis transferred title to the Property to her, Ripsime executed a deed of trust securing a $240,000 note against the Property (2002 Deed of Trust). The 2002 Quitclaim Deed, the 2002 Interspousal Grant Deed, and the 2002 Deed of Trust were all recorded on May 24, 2002.

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[1] It is undisputed that Sarkis was also known as "Sergo Tonoyan."

On May 30, 2002, Ripsime paid off the promissory note secured by the 1998 Deed of Trust, and on June 6, 2002, she paid off the note secured by the 1999 Deed of Trust. Reconveyances of the 1998 and 1999 deeds of trust were recorded in June 2002.

2. The dissolution of Nazaryan's marriage to Sarkis

On February 10, 2003, Nazaryan filed a petition for dissolution of her marriage. On February 18, 2003, Nazaryan recorded a "Notice of Lis Pendens" (Lis Pendens) in Los Angeles County, which named only herself and Sarkis; the notice did not name Ripsime.

On February 20, 2003, Ripsime executed a deed of trust securing a $100,000 note against the Property (2003 Deed of Trust). The 2003 Deed of Trust was recorded on February 28, 2003.

On May 29, 2003, Nazaryan filed a complaint joining Ripsime as a defendant in the dissolution action. The complaint states Nazaryan had discovered Sarkis unilaterally transferred the Property to Ripsime without Nazaryan's knowledge or consent. Nazaryan never filed an amended lis pendens identifying Ripsime as a party to the dissolution action.

On December 30, 2004, Ripsime executed the subject deed of trust in favor of Greenpoint, securing a $233,000 promissory note against the Property (2005 Deed of Trust).[2] The deed of trust identified Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary and Marin Conveyancing Corp. (Marin) as the trustee.

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[2] A copy of the promissory note secured by the 2005 Deed of Trust is not included in the record.

On January 6, 2005, Greenpoint and the lender under the 2003 Deed of Trust entered into a subordination agreement giving Greenpoint a first-priority lien over the Property (Subordination Agreement). The 2005 Deed of Trust and the Subordination Agreement were recorded on January 14, 2005.

On January 27, 2005, Ripsime paid in full the promissory note secured by the 2002 Deed of Trust. The reconveyance was recorded on February 23, 2005.

On March 9, 2005, Nazaryan executed a deed of trust in favor of her family law attorney, Albert Graham, purporting to secure a $50,000 promissory note against the Property. The March 9, 2005 deed of trust was recorded on April 11, 2005. On July 27, 2005, Nazaryan executed another deed of trust in favor of Graham, purporting to secure a $50,000 note against the Property.[3]

On March 7, 2006, the trial court entered judgment in Nazaryan's dissolution action.[4] The court found that Sarkis had defrauded Nazaryan out of her interest in the Property and that Sarkis's transfer of the Property to Ripsime in 2002 was a "sham transaction." The court awarded Nazaryan sole ownership of the Property. Neither the judgment, nor the court's ruling and findings, make any reference to the 2005 Deed of Trust or any of the other deeds of trust Ripsime executed after Sarkis transferred the Property to her.

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[3] The July 27, 2005 deed of trust was not recorded until January 27, 2009.

[4] The judgment was not recorded until January 22, 2008.

On May 10, 2007, Nazaryan executed a third deed of trust in favor of Graham, which secured a $100,000 note against the Property and which was recorded about two months later.

For nearly a six-year period after the court entered judgment in her dissolution action, Nazaryan made payments on the loan secured by the 2005 Deed of Trust. Specifically, she made one payment on May 14, 2007, after which she made payments on a near monthly basis from December 2008 through September 2013. In total, Nazaryan paid $36,252.60 toward the underlying loan.

3. The assignment of the 2005 Deed of Trust to Bank of New York

On April 27, 2012, a representative of MERS signed an "ASSIGNMENT OF DEED OF TRUST," which was recorded in Los Angeles County on May 8, 2012 (Assignment). The Assignment provides: "For Value Received, the undersigned holder of a Deed of Trust . . . does hereby grant, sell, assign, transfer and convey unto **THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS SUCCESSOR TRUSTEE TO JPMORGAN CHASE BANK N.A., AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF BEAR STEARNS ALT-A TRUST 2005-4, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-4** . . . all beneficial interest under [the 2005 Deed of Trust] together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust."[5] The Assignment states that

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[5] Nazaryan presented evidence that the "Bear Stearns Alt-A Trust" closed around April 29, 2005. Nazaryan also submitted an

Greenpoint was the original lender and Ripsime was the original borrower.

On August 17, 2012, Nazaryan executed a fourth deed of trust in favor of Graham, securing a $232,491.41 promissory note against the Property. This deed of trust was recorded on August 22, 2012.

4. Bank of New York's lawsuit and motion for summary adjudication

On May 5, 2015, Bank of New York filed the operative first amended complaint against Ripsime, Nazaryan, and Graham.[6] The complaint alleged three causes of action: (1) for declaratory relief against all defendants; (2) for equitable lien against Nazaryan and Graham; and (3) for cancellation of instruments against Nazaryan.[7] With respect to its claim for declaratory relief, Bank of New York sought a judgment (1) quieting title to the Property in the bank's name "as Beneficiary, under the terms and conditions" of the 2005 Deed of Trust, and (2) declaring the

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undated document that Capital One Financial Corporation (Capital One) filed with the Securities Exchange Commission. The document indicates that Capital One had acquired Greenpoint and, around 2007, had shut down Greenpoint's "mortgage origination operations." However, that document also states that Greenpoint's "mortgage servicing business continue to be reported as part of [Capital One's] continuing operations."

[6] Ripsime and Graham are not parties to this appeal.

[7] After the court granted summary adjudication of the declaratory relief claim, Bank of New York dismissed its equitable lien and cancellation of instruments causes of action. Accordingly, we discuss only the allegations relevant to the declaratory relief claim in this opinion.

2005 Deed of Trust "a valid, enforceable first priority lien against the Property as of January 14, 2005."

4.1. Bank of New York's motion for summary adjudication and Nazaryan's opposition

On November 9, 2015, Bank of New York filed a motion for summary adjudication of its claim for declaratory relief. Bank of New York argued it was a bona fide encumbrancer for value because Greenpoint, the original lender under the 2005 Deed of Trust, had no notice of the title dispute over the Property at issue in Nazaryan's dissolution action when the deed of trust was executed and later recorded. Bank of New York also argued Nazaryan took title to the Property subject to the 2005 Deed of Trust after the court entered judgment in her favor in the dissolution action in March 2006. Finally, Bank of New York claimed that any liens Graham held against the Property were subordinate to the 2005 Deed of Trust because they were executed after the 2005 Deed of Trust was recorded.

In support of its motion, Bank of New York filed a request for judicial notice of certain documents, including the Lis Pendens, the 2005 Deed of Trust, and the Assignment. Bank of New York also submitted the declarations of Kyle Lucas, a senior loan analyst with Ocwen Financial Corporation (Ocwen), the company that services loans for Bank of New York, and Lore Hilburg, an expert witness retained by the bank.

Lucas testified that he is familiar with the 2005 Deed of Trust and the Assignment through his review of Ocwen's records. According to Lucas, Bank of New York was assigned all beneficial interest under the 2005 Deed of Trust when it executed the Assignment.

Hilburg is an attorney who has consulted title companies, title insurers, escrow companies, and other entities on issues concerning title, title insurance, and escrow. Hilburg conducted a search of the grantor/grantee index maintained by the Recorder's Office, acting as if she were standing in the shoes of Greenpoint at the time it executed the 2005 Deed of Trust. Hilburg began with a search of the index using Ripsime's name, which showed that Ripsime acquired title to the Property on February 4, 2002 through a deed executed by Sarkis. The Lis Pendens was not included in the index under Ripsime's name, and nothing else in the index under Ripsime's name showed that Nazaryan claimed any interest in the Property. Hilburg then conducted a search of the grantor/grantee index using Sarkis's name, which showed that Sarkis acquired title to the Property in 1998, that Nazaryan had quitclaimed her interest in the Property to Sarkis that same year, and that Sarkis had transferred title to the Property to Ripsime in 2002. The Lis Pendens did not appear in the index search using Sarkis's name, since he did not own the Property at the time the Lis Pendens was recorded.

Hilburg also reviewed a preliminary title report and a title insurance policy that Fidelity National Title Company (Fidelity) issued to Greenpoint around the time the 2005 Deed of Trust was recorded.[8] The title report and the insurance policy do not include any reference to the Lis Pendens or any title dispute over the Property. In Hilburg's opinion, a lender would not make a loan to a borrower if a title report shows the property intended to serve

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[8] The insurance policy names Greenpoint as the insured entity and the 2005 Deed of Trust as the insured mortgage.

as collateral was at issue in a lis pendens, "even if the insurer agrees to insure over it."

Nazaryan opposed Bank of New York's summary adjudication motion and objected to Lucas's and Hilburg's declarations. Nazaryan argued Bank of New York lacked standing to bring its lawsuit against Nazaryan because it failed to demonstrate it was assigned the 2005 Deed of Trust. Specifically, she argued the bank failed to present evidence establishing that the Assignment was valid despite the fact that (1) Capital One closed Greenpoint's mortgage origination operations about five years before the Assignment was executed, and (2) the "Bear Stearns Alt-A Trust," into which the deed of trust was assigned, closed more than seven years before the date of the Assignment. Nazaryan also argued the motion should be denied because Bank of New York did not present any evidence showing (1) the original lender, Greenpoint, lacked notice of the Lis Pendens; (2) that Bank of New York possessed the promissory note secured by the 2005 Deed of Trust; and (3) that Nazaryan ratified the 2005 Deed of Trust.

4.2. The court's ruling and judgment in favor of Bank of New York

In June 2016, the court granted Bank of New York's motion for summary adjudication of its declaratory relief claim.[9] The court made three findings, which it later incorporated as part of its judgment: (1) the 2005 Deed of Trust "is a valid, enforceable first priority lien against [the Property] as of January 14, 2005"; (2) Nazaryan took title to the Property subject to the 2005 Deed

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[9] The court also granted Bank of New York's request for judicial notice and overruled Nazaryan's evidentiary objections.

of Trust when the family law court entered judgment in Nazaryan's dissolution action; and (3) any interests Graham held in the Property through the four deeds of trust Nazaryan executed in his favor were subordinate to the 2005 Deed of Trust.

On July 15, 2016, Bank of New York dismissed its claims for equitable lien and cancellation of instruments. That same day, the court entered judgment on Bank of New York's declaratory relief claim. Nazaryan filed a timely notice of appeal from the judgment.

DISCUSSION

1. Defects in Nazaryan's Appellate Briefs

Before reaching the merits of her claims on appeal, we note some of the defects in Nazaryan's briefs that have made our review of those claims unnecessarily difficult. It is a fundamental rule of appellate review that the challenged judgment or order is presumed to be correct and that the appellant carries the burden "to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) As part of this burden, the appellant must provide accurate citations to the appellate record directing the court to the evidence supporting each factual assertion contained in the appellant's brief. It is not the reviewing court's responsibility to navigate the record on its own to verify the accuracy of the appellant's factual assertions and to determine the validity of the challenged judgment or order. Accordingly, when an opening brief fails to make appropriate references to the record in connection with points urged on appeal, the appellate court may treat those points as waived or forfeited. (See *Lonely Maiden Productions, LLC v.*

GoldenTree Asset Management, LP (2011) 201 Cal.App.4th 368, 384 (*Lonely Maiden Productions*).)

In her opening brief, Nazaryan fails on numerous occasions to provide accurate citations to the more than 700-page record to support her factual assertions. For example, in her statement of facts, Nazaryan claims that, in December 2004, Ripsime executed the 2005 Deed of Trust, which was later recorded on January 14, 2005. She also claims that the deed of trust secures a $233,000 loan against the Property, and she states that the deed of trust identifies Ripsime as the borrower, Greenpoint as the lender, Marin as the trustee, and MERS as the beneficiary. She then claims that Greenpoint and the lender under the 2003 Deed of Trust executed a subordination agreement giving Greenpoint a first-priority lien on the property, which was also recorded on January 14, 2005. In support of these assertions Nazaryan cites only to page 243 of the appellant's appendix. That page, however, is the cover sheet for the exhibit in Bank of New York's request for judicial notice that contains the 2005 Deed of Trust. The first page of the deed of trust identifying the parties to the agreement and the amount of the secured loan actually appears on page 245, and the provision identifying the Property as the security for the underlying loan does not appear until page 247. The lead sheet showing when and where the deed of trust was recorded appears on page 244. In addition, the subordination agreement does not appear anywhere in the exhibit containing the 2005 Deed of Trust, let alone on the page cited by Nazaryan. Instead, it begins at page 40 of the appendix, more than 200 pages before the page Nazaryan cites.

As another example, Nazaryan claims in her procedural summary that she argued in her opposition to Bank of New

York's motion for summary adjudication that Greenpoint had notice of the defects in the title to the Property when it executed the 2005 Deed of Trust and that, had Greenpoint been diligent in investigating the Property's title history, it would have discovered that Nazaryan had filed the Lis Pendens "despite it being outside the chain of title." In support of this assertion, Nazaryan cites page 433 of the appendix, which is the cover page for her memorandum of points and authorities; she does not cite to the specific pages of her opposition in which she raised this argument.

By failing to provide accurate record citations to many of the factual assertions raised in her opening brief, Nazaryan has forfeited her claims that are dependent on those assertions, several of which are critical to her appeal (such as the date on which the 2005 Deed of Trust was executed and recorded). (See *Lonely Maiden Productions, supra*, 201 Cal.App.4th at p. 384.) For that reason alone, we would affirm the court's judgment. Nevertheless, as we discuss below, we also affirm the judgment on the merits.

2. Standard of Review

We independently review a trial court's ruling on a motion for summary judgment or adjudication. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) Summary adjudication of a single cause of action is appropriate where no triable issue of material fact exists as to that claim and the moving party is entitled to judgment as a matter of law. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476 (*Merrill*).) A plaintiff moving for summary adjudication must present evidence satisfying each element of its claim. (Code Civ. Proc., § 437c, subd. (p)(1).) If the plaintiff meets this burden, the defendant must present evidence

establishing a triable issue of material fact as to at least one of the elements of the plaintiff's claim or a defense to that claim. (*Ibid.*) A triable issue exists if the evidence would allow a reasonable trier of fact to find the fact in favor of the party opposing summary judgment. (*Aguilar*, at p. 850.)

"We do not resolve conflicts in the evidence as if we were sitting as the trier of fact. [Citation.] Instead, we draw all reasonable inferences from the evidence in the light most favorable to the party opposing summary judgment. [Citation.]" (*Nadaf-Rahrov v. Neiman Marcus Group, Inc.* (2008) 166 Cal.App.4th 952, 961.) We liberally construe the opposing party's evidentiary submissions and strictly scrutinize the moving party's own evidence in order to resolve any evidentiary doubts or ambiguities in the opposing party's favor. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.)

When reviewing an order granting or denying a motion for summary adjudication, we " 'consider[] all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.' [Citation.]" (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037 (*Yanowitz*).) A party who fails to attack the trial court's evidentiary rulings on appeal forfeits any contentions of error concerning them. (*Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41 (*Frittelli*).)

In opposing Bank of New York's motion for summary adjudication, Nazaryan raised numerous evidentiary objections to Lucas's and Hilburg's declarations, all of which the court overruled. Although Nazaryan challenges these rulings in her reply brief, she does not argue in her opening brief that the court erred in overruling her objections. Nazaryan fails to explain why she did not raise these arguments in her opening brief. She has,

therefore, forfeited any challenge to the court's evidentiary rulings on appeal. (*REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 500 [a reviewing court will not consider issues raised for the first time on appeal in a reply brief, unless the appellant demonstrates good cause for why she did not raise those issues in the opening brief]; see also *Frittelli*, *supra*, 202 Cal.App.4th at p. 41.) Likewise, Nazaryan argues in her reply brief that the court improperly accepted as true the statements included in the documents submitted by Bank of New York in its request for judicial notice, but she did not raise such arguments in her opening brief and does not explain why she failed to do so. Accordingly, Nazaryan has forfeited any challenge on appeal to the court's reliance on the truth of the statements included in those documents. (See *REO Broadcasting Consultants*, at p. 500.) We therefore consider all of the evidence Bank of New York submitted in support of its motion for summary adjudication in reviewing the court's order granting that motion. (See *Yanowitz*, *supra*, 36 Cal.4th at p. 1037.)

3. Bank of New York's predecessor, Greenpoint, was a bona fide encumbrancer of the Property.

Nazaryan contends the court erred in finding no triable issue of fact exists as to whether Greenpoint was a bona fide encumbrancer of the Property. Specifically, she argues Bank of New York failed to present sufficient evidence to establish Greenpoint lacked notice of the Lis Pendens or of the fact that Nazaryan claimed an interest in the Property that was adverse to Ripsime's interest before Greenpoint executed the 2005 Deed of Trust. We disagree.

"A good faith encumbrancer for value who first records takes its interest in the real property free and clear of unrecorded interests. [Citations.] 'An encumbrancer in good faith and for

value means a person who has taken or purchased a lien, or perhaps merely the means of obtaining one, and who has parted with something of value in consideration thereof. [Citation.] [A] "good faith" encumbrancer is one who acts without knowledge or notice of competing liens on the subject property. [Citations.]' [Citation.]" (*First Fidelity Thrift & Loan Assn. v. Alliance Bank* (1998) 60 Cal.App.4th 1433, 1440–1441 (*First Fidelity*), italics omitted.)

"The issue of whether a buyer is a bona fide purchaser is ordinarily a question of fact." (*OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1331.) " 'The general rule places the burden of proof upon a person claiming bona fide [encumbrancer] status to present evidence that he or she acquired interest in the property without notice of the prior interest. [Citations.]' " (*First Fidelity*, *supra*, 60 Cal.App.4th at p. 1442.)

Here, Bank of New York satisfied its burden of presenting evidence that Greenpoint, the original lender under the 2005 Deed of Trust, was a bona fide encumbrancer of the Property. Hilburg, Bank of New York's expert witness, testified in her declaration that she conducted a title search of the Property as if she stood in Greenpoint's shoes at the time the 2005 Deed of Trust was executed. Hilburg concluded that Greenpoint would not have discovered Nazaryan's claim of title to the Property when it searched Ripsime's name in the Recorder's Office's grantor/grantee index because the Lis Pendens did not appear in Ripsime's chain of title, since Nazaryan did not name Ripsime in the Lis Pendens. Greenpoint also would not have discovered the Lis Pendens from a search of the index using Sarkis's name

because the Lis Pendens was recorded after Sarkis transferred title to the Property to Ripsime.

Hilburg also concluded Greenpoint would not have had any notice of the Lis Pendens or any other dispute over title to the Property based on its review of the preliminary title report and the title insurance policy issued by Fidelity around the time the deed of trust was recorded. Neither the title report nor the insurance policy make note of the Lis Pendens. According to Hilburg, a lender would not issue a loan if it knew the property serving as collateral was identified in a lis pendens, even if an insurer was willing to insure over the title dispute.[10]

Once Bank of New York presented Hilburg's testimony, the burden shifted to Nazaryan to present evidence that Greenpoint nevertheless would have had notice of the Lis Pendens or of the fact that Nazaryan claimed title to the Property before the 2005 Deed of Trust was recorded. (See Code Civ. Proc., § 437c, subd. (p)(1).) Nazaryan did not present any evidence on this issue. The court therefore properly found no triable issue exists as to

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[10] Nazaryan argues Hilburg's opinion should not be afforded any evidentiary weight because Hilburg had testified in a deposition that she had no personal knowledge of what type of title search Greenpoint conducted before the 2005 Deed of Trust was recorded. Although Nazaryan cites to Hilburg's declaration when quoting what she claims is Hilburg's deposition transcript, she does not cite to any part of the record containing a copy of that transcript. A copy of that transcript is not included in the record on appeal, and there is nothing indicating Nazaryan ever filed a copy of the transcript in the trial court. We therefore do not consider the statements that Nazaryan claims Hilburg made during her deposition.

whether Greenpoint was a bona fide encumbrancer of the Property.[11]

4. Nazaryan took title to the Property subject to the 2005 Deed of Trust.

Nazaryan next contends the court erred when it found she took title to the Property subject to the 2005 Deed of Trust. We find no error.

"Ordinarily a recorded document imparts constructive notice to subsequent purchasers and precludes them from acquiring the property as bona fide purchasers without notice, because the law conclusively presumes that a party acquiring property has notice of the contents of a properly recorded document affecting such property." (*Hochstein v. Romero* (1990)

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[11] We also note that Nazaryan has failed to explain on appeal how she was prejudiced by such a finding. Specifically, Nazaryan fails to cite any legal authority explaining what effect, if any, Greenpoint's notice of the title dispute over the Property would have had on the validity of the 2005 Deed of Trust once the trial court in Nazaryan's dissolution action awarded her title to the Property in March 2006. (See *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799 (*Dietz*) [" 'When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citation.]' "], internal citations omitted.) Because Nazaryan has failed to demonstrate prejudice on this issue, we cannot reverse the court's judgment even if it erred in finding Greenpoint was a bona fide encumbrancer of the Property. (Cal. Const., art. VI, § 13 [An appellant has the burden not only to show error but prejudice from that error]; *Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963 ["[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice. [Citations.]"], internal citations omitted.)

219 Cal.App.3d 447, 452, citing Civ. Code, §§ 1213, 1214.) Accordingly, one who obtains title to a piece of property is subject to all previously recorded liens encumbering the property. (See *Brown v. County of Los Angeles* (1947) 77 Cal.App.2d 814, 817 ["It is elementary law that the mortgage being of record, subsequent purchasers of the property were on notice of it, and its terms and conditions."].)

Here, Bank of New York presented evidence that, at the time Nazaryan took title to the Property through the March 2006 judgment in her dissolution action, the 2005 Deed of Trust had already been recorded in Los Angeles County, where the Property was located. Specifically, Bank of New York presented the 2005 Deed of Trust, attached to which is the lead sheet showing the deed of trust was recorded in the Recorder's Office on January 14, 2005, more than a year before Nazaryan took title to the Property. Bank of New York also presented checks executed by Nazaryan showing she made payments on the loan secured by the 2005 Deed of Trust for nearly six years after she obtained title to the Property. In her opening brief, Nazaryan confirms that it is "undisputed" that "[f]rom May 2007 to June of 2013, [she] made payments on the loan secured by the 2005 Deed of Trust and paid at least $36,352.60." Such evidence supports an inference that Nazaryan was aware that she took title to the Property subject to the 2005 Deed of Trust. Nazaryan did not present any evidence that would support a finding to the contrary. Accordingly, the court properly found no triable issue of

fact exists as to whether Nazaryan took title to the Property subject to the 2005 Deed of Trust.[12]

5. Bank of New York has standing to bring its lawsuit against Nazaryan.

Finally, Nazaryan contends Bank of New York lacks standing to bring the underlying lawsuit because the bank failed to establish that it was assigned the 2005 Deed of Trust. We disagree.

Generally, "[t]he burden of proving an assignment falls upon the party asserting rights thereunder." (*Cockerell v. Title Ins. & Trust Co.* (1954) 42 Cal.2d 284, 292.) To enforce an assigned right, the evidence of assignment must be "clear and positive" to protect the debtor from any further claims by other purported holders of the right to the debt. (*Ibid.*) "An assignment requires very little by way of formalities and is essentially free from substantive restrictions. '[I]n the absence of [a] statute or a contract provision to the contrary, there are no prescribed formalities that must be observed to make an effective assignment. It is sufficient if the assignor has, in some fashion, manifested an intention to make a present transfer of his rights to the assignee.' [Citation.] Generally, interests may be assigned orally [citations], and assignments need not be supported by any consideration." (*Amalgamated Transit Union, Local 1756, AFL-*

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[12] Although the court also found Nazaryan ratified the 2005 Deed of Trust through her payments on the underlying loan, an issue the parties discuss in their briefs, we need not address this issue in light of the undisputed evidence establishing that, at the time Nazaryan obtained the Property, this deed had already been recorded. Nazaryan's statute of frauds argument fails for the same reasons—she took title to the Property after the 2005 Deed of Trust was recorded.

CIO v. Superior Court (2009) 46 Cal.4th 993, 1002.) Proof of assignment may be established by introducing the written assignment identifying the party seeking to enforce the assigned right (*Marx v. McKinney* (1943) 23 Cal.2d 439, 443), or through the testimony of the party seeking to enforce that right (*Norton v. Consolidated Fisheries, Inc.* (1953) 120 Cal.App.2d 86, 89–90).

Bank of New York presented evidence that it was assigned the 2005 Deed of Trust in April 2012. Specifically, the bank introduced the written Assignment. The Assignment identifies the 2005 Deed of Trust, along with the original parties to that agreement, and it expressly states that Bank of New York, as trustee for the "Bear Stearns Alt-A Trust," was assigned all beneficial interest under the deed of trust and the underlying promissory note, along with "all rights accrued or to accrue under said Deed of Trust." The Assignment was signed by a representative of MERS, the beneficiary under the 2005 Deed of Trust, and it was recorded in Los Angeles County on May 8, 2012.[13] Bank of New York also introduced Lucas's declaration, in which he testified that "[a]ll beneficial interest under the 2005 Deed of Trust transferred to Bank of New York" under the Assignment.[14]

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[13] As noted above, Nazaryan has waived any argument that the truth of the statements contained in the Assignment are not judicially noticeable or that those statements constitute inadmissible hearsay because she failed to raise such arguments in her opening brief. (*REO Broadcasting Consultants v. Martin*, *supra*, 69 Cal.App.4th at p. 500; *Frittelli*, *supra*, 202 Cal.App.4th at p. 41.)

[14] Like her attack on Hilburg's declaration, Nazaryan argues in her opening brief and in her evidentiary objections filed in the trial court that Lucas's statements concerning the assignment of the 2005 Deed of Trust lack any evidentiary weight, quoting Lucas's deposition

To oppose Bank of New York's claim that it was validly assigned the 2005 Deed of Trust, Nazaryan presented the following evidence: (1) a "Prospectus Supplement" filed with the SEC that states the Bear Stearns Alt-A Trust, into which the 2005 Deed of Trust was transferred through the Assignment, closed around April 2005, about seven years before the Assignment was executed; and (2) a document Capital One filed with the SEC that states Greenpoint's mortgage origination operations were shut down about five years before the date of the Assignment. Nazaryan contends a factual dispute exists as to whether Bank of New York ever received an interest in the 2005 Deed of Trust through the Assignment because that agreement was executed about seven years after the closing date of the Bear Stearns Alt-A Trust.[15]

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testimony that he had no personal knowledge of the underlying transaction assigning the deed of trust to Bank of New York. To support this argument in her opening brief, Nazaryan cites only to quotations from Lucas's deposition that she included in her evidentiary objections; she does not cite to any part of the record containing an actual copy of the deposition transcript, presumably because a copy of the transcript is not included in the record and does not appear to have been filed in the trial court. Accordingly, we do not consider the statements that Nazaryan claims Lucas made during his deposition.

[15] Although Nazaryan asserts in an argument heading in her opening brief that the execution of the Assignment "Seven Years After Greenpoint Shutdown" raises questions as to the Assignment's validity, she provides no argument or citation to legal authority addressing what effect, if any, Greenpoint's operating status at the time the Assignment was executed would have on the validity of that agreement. She therefore has waived any challenge to the court's ruling on this ground. (See *Dietz*, *supra*, 177 Cal.App.4th at p. 799.) In any event, the evidence Nazaryan presented addressing Greenpoint's operating status states only that Capital One ceased Greenpoint's

California courts have repeatedly rejected this argument. A borrower cannot challenge the validity of an assignment based on defects that would render the assignment voidable, rather than void. (See e.g., *Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 815 (*Saterbak*); *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 814 (*Mendoza*).) "When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 936 (*Yvanova*).) Thus, "a borrower does not have standing to challenge an assignment that allegedly breaches a term or terms of a [pooling service agreement] because the beneficiaries, not the borrower, have the right to ratify the trustee's unauthorized acts." (*Mendoza*, at pp. 812–813.)

An untimely assignment to a securitized trust renders the assignment voidable, not void. (*Saterbak*, *supra*, 245 Cal.App.4th at p. 815.) Thus, Nazaryan, who is not a party to the Assignment, cannot assert the agreement is unenforceable based on the fact it was executed after the Bear Stearns Alt-A Trust closed. (See *ibid*.) Because there is no evidence that the parties to the Assignment have voided that agreement, the Assignment would be enforceable even if it were executed after the Bear Stearns Alt-A Trust closed.

Nazaryan relies on *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079 (*Glaski*) and *Yvanova* to argue she may

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"mortgage origination operations" around 2007; it does not state that neither Capital One nor Greenpoint continued to manage the mortgages that Greenpoint had already executed. Thus, such evidence fails to demonstrate that Greenpoint or Capital One would not have had the authority to assign the 2005 Deed of Trust in 2012.

challenge Bank of New York's authority to enforce the 2005 Deed of Trust based on the untimely assignment of the deed of trust into the Bear Stearns Alt-A Trust. Nazaryan's reliance on these cases is misplaced.

In *Yvanova*, the California Supreme Court held "that a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment." (*Yvanova*, *supra*, 62 Cal.4th at p. 924.) The Supreme Court expressly limited *Yvanova*'s holding, however, to the context in which a borrower brings a *post-foreclosure* action asserting that the assignment of the deed of trust is *void*. (*Id*. at pp. 934–935; see also *Saterbak*, *supra*, 245 Cal.App.4th at p. 815 [noting the limited holding of *Yvanova*].) Nazaryan does not cite any published cases extending *Yvanova*'s rationale to challenges to an allegedly voidable assignment raised in the pre-foreclosure context, like the one in which this case arises.

In *Glaski*, the Court of Appeal, relying on an unpublished decision out of a New York trial court, held that alleging an assignment occurred after the closing date of a securitized trust was sufficient to support a claim that the assignment was void and unenforceable. (*Glaski*, *supra*, 218 Cal.App.4th at p. 1097.) After *Glaski* was decided, however, the New York case on which it relied was overturned. (See *Saterbak*, *supra*, 245 Cal.App.4th at p. 815, fn. 5.) Since then, numerous courts have rejected that portion of *Glaski*'s holding, instead following the rule discussed above that an untimely assignment into a securitized trust renders the assignment voidable. (See, e.g., *ibid*; *Mendoza*, *supra*, 6 Cal.App.5th at pp. 811–817, and federal cases cited therein.)

We decline to follow *Glaski* for the same reasons discussed in *Saterbak* and *Mendoza*.

In sum, Bank of New York satisfied its burden of presenting evidence that it was assigned the 2005 Deed of Trust. Because Nazaryan did not present evidence or any legal arguments that would raise a triable issue of fact as to whether the Assignment was void or otherwise unenforceable, the trial court properly granted summary adjudication of Bank of New York's claim for declaratory relief.[16]

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[16] In her opening brief, Nazaryan also contends Bank of New York failed to demonstrate that "Nazaryan's equities are inferior to Bank of New York's equities" for purposes of establishing the bank's equitable lien claim. (Emphasis & full caps omitted.) As noted, Bank of New York sought summary adjudication of only its declaratory relief claim, and it dismissed its claim for equitable subrogation after the court granted the summary adjudication motion. We therefore do not address this argument.

DISPOSITION

The judgment is affirmed. Bank of New York shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J. *

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.