

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

WELLS FARGO BANK et al.,  
Plaintiffs and Respondents,  
v.  
JAMES NEILSEN,  
Defendant and Appellant.

A122626

(San Mateo County  
Super. Ct. No. CIV465331)

BY THE COURT:

It is ordered that the opinion filed on October 22, 2009, be modified as follows:

On page 2 at the end of the first paragraph, the following footnote is added:

“By a Petition for Rehearing and accompanying Request for Judicial Notice, appellant attempted to change these facts from those just recited, and also recited in his original briefs to us. In the later filings, he belatedly contended that there was an earlier, i.e., December 2001, loan of \$275,000 made to him by PHH and that, as a consequence, the date of *that* loan is the date which controls as to the relative seniority of lienholder PHH. We reject this contention because (1) it was and is waived by appellant’s failure to make such an argument, or even note the December 2001 PHH loan, either in the court below or in his briefs to us and (2) because, clearly, the operative date of the relevant PHH loan is the effective date of the loan which was in effect as of November 2003, the date of the subordination agreement, and that was the PHH loan of \$322,700, which became effective on or about the same date as that agreement.”

This modification does not effect a change in the judgment. The petition for rehearing is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Haerle, Acting P.J.