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California Criminal Court Correctly Declared Forged Deed of Trust Void

By Erin McCartney, Esq., Zieve, Brodnax & Steele, LLP

In *The People v. Astorga-Lider*, No. D073992, 2019 WL 2206321 (Cal. Ct. App. May 2, 2019), the California Court of Appeals, Fourth Appellate District, affirmed a holding which found a fraudulent deed of trust void pursuant to California Penal Code Section 115.

Factual History

Yolanda Astorga-Lider pled guilty to six felony counts, including two counts of violating Penal Code section 115(a). One of those counts, involved Astorga-Lider encumbering certain real property, purchased by Nohemi and Jose Lorenzana, with a fraudulent deed of trust.

The Lorenzanas could not afford to buy a home. Astorga-Lider, who claimed to be knowledgeable about the real estate industry, suggested a plan to the Lorenzanas and their friends Nicolas and Elizabeth Corral, which would allow the Lorenzanas to purchase a home. The Corrals would obtain a \$350,000 real estate loan, borrow against rental property they owned, and give the loan proceeds to the Lorenzanas. In turn, the Lorenzanas could use the proceeds to buy a home while making payments on the \$350,000 loan. The Lorenzanas finalized what they believed to be an all-cash purchase of a house.

However, unbeknownst to the Lorenzanas, the account number Astorga-Lider provided the bank to transfer the funds was for an account that she controlled and used to funnel unauthorized funds from multiple fraudulent loans. Furthermore, Astorga-Lider obtained a hard-money loan for \$275,000 in the Lorenzanas' name without their knowledge. The Lorenzanas signed several documents associated with the loan, including a deed of trust with the lender, Deo (the "Deo Deed of Trust").

Criminal Court Finds Forged Deed of Trust Void

After Astorga-Lider's guilty plea, the State moved, under section 115(e), for an order declaring certain record instruments

void, including the deed of trust listing Deo as the lender. After multiple rounds of briefing, the superior court granted the motion. In doing so, the court found the Deo Deed of Trust void.

Deo appealed the order, contending (1) the State's motion was procedurally improper; (2) the Deo Deed of Trust was not a false or forged document under section 115; (3) at most, the Deo Deed of Trust was voidable, not void; (4) civil court, not

criminal court, was the appropriate forum for adjudication of the validity of the Deo Deed of Trust; (5) Deo's due process rights were violated; and (6) the order voiding the Deo Deed of Trust constituted an unlawful taking.

The Court of Appeals quickly dismissed Deo's procedural arguments finding Deo had actual notice and extensively litigated the issues in the underlying criminal case. Instead, the Court focused on the substantive issues finding that: (1) the deed of trust was void and (2) that the criminal court properly applied section 115(e). The Court also specifically rejected Deo's arguments that the civil court was the more appropriate forum to adjudicate the validity of the deed of trust.



The Court ... found that since Lorenzanas believed the ... deed of trust was substantially different from what it actually was, the signed documents was just as much a forgery as it would have been if the signatures were actually forged.



The Court of Appeals Affirms

After reviewing the relevant arguments, the Court of Appeals concluded Deo's arguments were without merit and affirmed.

First, Deo attacks the court's finding that the deed of trust was void arguing that since the documents were executed by the Lorenzanas', the deed of trust cannot be considered a forgery. The Court, relying on the holding in *Buck v. Superior Court of Orange County* (1965) 232 Cal.App.2d 153, found that since the Lorenzanas believed the Deo deed of trust was substantially different from what it actually was, the signed document was just as much a forgery as it would have been if the signatures were actually forged.



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Second, since the deed of trust was a “forgery”, the Court found it was void rather than voidable. The Court cited section 115, subdivision (e)(1) in support, which states that the court “shall issue a written order that the false or forged instrument be adjudged void ab initio if the court determines that an order is appropriate under applicable law.”

Finally, the Court reviewed Deo’s argument regarding the appropriate forum to adjudicate the validity of the deed of trust. Deo argues that it is a civil matter and since the civil rule is different, that the matter should be presented in a civil proceeding. The Court disagreed. The Court found that since the statute provided for a false or forged instrument to be adjudged void after a defendant’s criminal conviction for procuring or offering the instrument for record, the existence of a pending civil suit does not preclude criminal court from addressing a motion for an order declaring such a forged instrument void.

Based on this ruling, third party rights, including those of innocent lenders, are impacted by a finding of false or forged documents in a criminal proceeding.



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