

2005

Experienced investor as BFP at trustee sales: Melendrez v D & I Inv., 2005

Roger Bernhardt

Golden Gate University School of Law, rbernhardt@ggu.edu

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/pubs>

 Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

Bernhardt, Roger, "Experienced investor as BFP at trustee sales: Melendrez v D & I Inv., 2005" (2005). *Publications*. Paper 284.
<http://digitalcommons.law.ggu.edu/pubs/284>

This Article is brought to you for free and open access by the Faculty Scholarship at GGU Law Digital Commons. It has been accepted for inclusion in Publications by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

**Experienced investor as BFP at trustee sales:
Melendrez v D & I Inv., 2005
Roger Bernhardt**

Experienced investor in foreclosed properties, who purchased foreclosed property at significantly below market value, was bona fide purchaser for value.

Melendrez v D & I Inv., Inc. (2005) 127 CA4th 1238, 26 CR3d 413

After the Melendrezes defaulted on their home mortgage payments and foreclosure proceedings were initiated, the Melendrezes entered into a forbearance agreement with their lender. When they missed a payment under the agreement, a trustee sale was noticed and held. The property was sold to a real estate broker, an experienced purchaser of properties at foreclosure sales, for \$197,100; the fair market value of the home was between \$317,000 and \$380,000. The Melendrezes sued the trustee, lender, and buyer to set aside the trustee sale and cancel the trustee deed, alleging that the trustee sale was invalid for violation of the repayment agreement and the lender's internal policies. Ruling in favor of the defendants, the trial court found that the trustee sale was valid and that the buyer was a bona fide purchaser for value (BFP), and ruled in favor of the defendants.

The court of appeal affirmed. The Melendrezes argued that under the ruling in *Estate of Yates* (1994) 25 CA4th 511, 32 CR2d 53, the buyer was not a BFP because he (1) was experienced in foreclosure sales and (2) purchased the subject property at less than market value. The court noted the conclusive presumption created by CC §2924 in favor of a BFP and the equitable rationale of protecting those who have invested value in reliance on an honest belief in the validity of the foreclosure proceedings.

The court distinguished *Yates* as involving a faulty notice of the sale and other indicators to the buyer of irregularities in the sale, and reiterated the trial court's finding that the buyer in this matter was a BFP because he gave up something of value in exchange for the title to the Melendrezes' home and had no notice or knowledge of any defect in the proceedings. Furthermore, nothing inherently precludes an experienced foreclosure speculator who pays less than market value from being a BFP, absent a showing of fraud on the buyer's part.

THE EDITOR'S TAKE: I can't blame Miller & Starr for asserting that "a speculator who frequently purchases at foreclosure sales who pays substantially less than the value of the property at a foreclosure sale is not a bona fide purchaser" (4 Miller & Starr, California Real Estate 10:210 (3d ed 2000)) based on their reading of *Estate of Yates* (1994) 25 CA3d 511, 32 CR2d 53. That really is what *Estate of Yates* said. I might have made a more cautious statement about it, such as "one court has characterized an experienced speculator who purchased at a foreclosure sale for substantially less than the value of the property as not a bona fide purchaser (BFP), and other courts may be inclined to do the same"—but I, too, read *Estate of Yates* that way. In any event, the court was certainly not inclined to follow any such interpretation, and has made it clear that there is no blanket rule on this issue. It is now probably closer to reality to say that an experienced foreclosure buyer may or may not be treated as a BFP, depending, in part, on how much its bid was, how much of

an increase over the lender's opening bid it was, and how close it came to market value—plus a lot of other things.

More important, I think, is the court's holding that even if one is a BFP, the conclusive presumption of the recitals provides only limited help. Under CC §2924, the only recitals in the trustee deed that are conclusive regard mailing, publishing, and delivering copies of notices of default and sale. Although it is not uncommon (or illegal, as far as I can tell) to see trustee deeds that recite more proprieties than that, additional recitals do not come under the umbrella of statutory protection.

Some attacks on foreclosure sales may be based on improper notice, but many others are grounded in claims such as the one presented here, *i.e.*, violation of a promise to wait longer. In those cases, it doesn't help to be a BFP rather than any other bidder (or even the lender). If the claimed irregularity is covered by a recital to the contrary, there may be a presumption against the irregularity. However, the presumption is not conclusive, and therefore probably will play no role in the litigation. If the irregularity is not within any recital, then it becomes a question of ordinary burden of proof.

This is not an area where lenders, trustees, or buyers can hope to protect themselves or significantly improve their positions via better drafting. On this one, comfort can come only from the legislature.— *Roger Bernhardt*