

2004

Ambiguous payoff demands in escrow: California Nat'l Bank v Havis, 2004

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, "Ambiguous payoff demands in escrow: California Nat'l Bank v Havis, 2004" (2004). *Publications*. Paper 247.
<http://digitalcommons.law.ggu.edu/pubs/247>

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.

**Ambiguous payoff demands in escrow:
California Nat'l Bank v Havis, 2004
Roger Bernhardt**

Use of term “payoff funds” in letter advising escrow agent of status of sale transaction did not transform letter into payoff demand statement.

California Nat'l Bank v Havis (2004) 120 CA4th 1122, 16 CR3d 245

California National Bank held a promissory note secured by real property. Before the close of escrow on the sale of that property, Bank sent a letter to the escrow agent stating that it had received “payoff funds” for the secured note in the form of a check outside of escrow. Apparently in violation of the escrow instructions, the sale closed and Gold Mountain, which financed the sale, took a deed of trust. Gold Mountain had instructed that its deed of trust was to be a first. However, the check received by Bank bounced and Bank initiated foreclosure. The trial court granted summary judgment for Gold Mountain, finding that the letter was a payoff demand statement under CC §2943, and that Bank’s secured interest in the property had been extinguished.

The court of appeal reversed, holding that the trial court had erred in granting summary judgment because, as matter of law, the use of the term “payoff funds” in the letter did not transform it into a payoff demand statement. The court explained that the letter did not satisfy the requirements of CC §2943 for a payoff demand statement because it did not advise the borrower of the sums needed to pay off the loan, and did not provide a per diem interest rate. The court observed that the letter merely advised the escrow agent of the status of the transaction, *i.e.*, the receipt outside of escrow of a check purporting to pay off the loan. The court acknowledged that the use of the term “payoff funds” was imprecise and ambiguous, but determined that, under the facts, the escrow agent was not justified in reading the letter as a statement that the balance due on the Bank’s loan was zero. The court also observed that CC §2943 was intended to benefit the borrower.

THE EDITOR’S TAKE: If I represented an escrow company, this decision would highlight a danger point in the process: How do you tell whether the document you have received is really an escrow instruction, commanding—and authorizing—some appropriate action, or whether it is something else—a communication of some sort, but not rising to the dignity of a formal instruction?

While a close reading of the letter sent in *Havis* persuades me that it really did not amount to a proper payoff demand under the statute (CC §2943), it was certainly close enough to a demand to cause experienced people in the field to read it both ways. The trial judge thought it was a payoff demand, and it is the judges who get the final word on this matter. And they get to say that word long after the fact and long after irretrievable events

have already occurred—such as reconveying an unsatisfied deed of trust, paying off an undeserving party, or erroneously insuring the senior priority of a junior lien. Such consequences can have economic consequences large enough—\$1.1 million here—to caution any escrow agent to do all he or she can to avoid them.

As a point of speculation, I wonder whether it would be preferable to have a check-the-box line printed on every document sent by an escrow company to the parties to the escrow, or stamped on every document received by the escrow company from the parties, indicating whether the contents amounted to formal instructions to the escrow agent or were merely informational or collateral. —*Roger Bernhardt*