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Void or Voidable? That is the Unavoidable Question

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On December 13, 2016, the California Court of Appeal issued its opinion on remand in *Mendoza v. JPMorgan Chase Bank, NA* et. al.[1] The main question before the court was whether an assignment into a securitized trust, after it had been closed, rendered the assignment void or voidable. Similarly, the court also addressed whether a robo-signing allegation would render an assignment void or voidable. As to both issues, the court ruled that the assignment was voidable and therefore the borrower did not have standing to challenge the alleged irregularities in the securitization of the loan.[2]

To help understand how the court reached its ruling, we can look back to last year's highly-publicized *Yvanova v. New Century Mortgage Corp.* where the California Supreme Court considered whether a borrower has standing to challenge the validity of an assignment.[3] Our state's highest court ruled that a borrower does have standing if the alleged assignment is void, but the borrower *does not* have standing if the assignment is merely *voidable.*[4]

Unfortunately, *Yvanova* is considered to be a narrow ruling in that it stopped short of addressing or discussing what actually makes an assignment void or voidable. However, it did set the table for a series of relevant California appellate cases to deal with the issue. Many of these cases have been thoroughly discussed in prior issues of the *UTA Quarterly*, including articles by fellow McCarthy & Holthus, LLP attorneys Melissa Robbins Coutts (Winter 2016) and Kathy Shakibi (Summer 2016). In *Mendoza*, the court acknowledges that Yvanova aptly raised the dispositive issue at hand in this case, but it did not resolve it. Therefore, as the title of this article implies, understanding the differences between a void and voidable contract has become – for lack of a better word – unavoidable.

The discussion of what is "void" and "voidable" should not be a new concept for UTA members. The analysis has previously come up in the unfortunate context of void vs. voidable trustee sales. While the application differs here, the underlying distinction of the legal terms of art remains the same.

A void contract is without legal effect.[5] A common example of this would be where one party lacks the capacity to sign the contract (like a minor). In *Yvanova,* the court clarified that if an assignment is absolutely void, meaning of no legal force or effect whatsoever, it can never be ratified or validated by the parties to it.[6] That is an important distinction because conversely, if the assignment is voidable then only the parties to the agreement have the power to ratify or extinguish it.[7] Because the borrower is not a party to the assignment in question, they lack the necessary standing. The *Yvanova* court clarified, "A borrower who challenges a foreclosure on the ground that an assignment to the foreclosing party bore defects rendering it voidable could thus be said to assert an interest belonging solely to the parties to the assignment rather than to herself."[8]

> *"The issue of void assignments in California has been a growing topic over the past several years"*

The issue of void assignments in California has been a growing topic over the past several years. *Mendoza* provides a comprehensive review of this continually growing body of case law. You may recall the 2013 case *Glaski v. Bank of America* where the court upheld that allegations of an assignment occurring after a securitized trust's closing date were sufficient to support an allegation that the assignment was void and thus defeat a demurrer attacking a borrower's standing.[9] Since then, as *Mendoza* references, both state and federal courts have created "an avalanche of criticism" toward the rationale used in *Glaski*. Therefore, *Mendoza* follows the "ever-expanding body of law" upholding that "defects in the securitization of loans can be ratified by the beneficiaries of the trusts established to hold the mortgage-backed securities and, as a result, the assignments are voidable."[10]

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[1]*Mendoza v. JPMorgan Chase Bank, N.A.*, 6 Cal. App. 5th 802, 2016 Cal. App. LEXIS 1083 (Cal. App. 3d Dist. 2016).
[2]*Id.* at p. 2.
[3]*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919 [199 Cal. Rptr. 3d 66, 365 P.3d 845].
[4]*Id.* at p. 923.
[5]*Id.* at p. 929.
[6]*Id.* at p. 935.
[7]*Id.* at p. 929-930.
[8]*Id.* at p. 936.
[9]*Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1094-1095, 1097.
[10]*Mendoza*, at p. 2.

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