

A woman owned several vacant lots in a subdivision. She obtained a \$500,000 loan from a bank and executed and delivered to the bank a promissory note and mortgage describing Lots 1, 2, 3, 4, and 5. The mortgage was promptly and properly recorded.

Upon payment of \$100,000, the woman obtained a release of Lot 2 duly executed by the bank. She altered the instrument of release to include Lot 5 as well as Lot 2 and recorded it. The woman thereafter sold Lot 5 to a man, an innocent purchaser, for value.

The bank discovered that the instrument of release had been altered and brought an appropriate action against the woman and the man to set aside the release as it applied to Lot 5. The woman did not defend against the action, but the man did.

The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

Who should the court rule for?

- A. The bank, because the alteration of the release was ineffective.
- B. The bank, because the man could have discovered the alteration by reasonable inquiry.
- C. The man, because he was entitled to rely on the recorded release.
- D. The man, because the bank was negligent in failing to check the recordation of the release.

Explanation:

Void v. Voidable contracts

Void

(invalid upon creation)

Forgery
Illegality
Fraud in the factum (assent by trick)
Duress by physical compulsion

Voidable

(valid unless set aside)

Lack of capacity
Mistake
Misrepresentation
Duress by threat
Undue influence
Fraud in the inducement

Recording acts determine the priority of competing interests in the same land. In a **race-notice jurisdiction** (as seen here), a **bona fide purchaser's** (BFP's) subsequent property interest has priority over an earlier property interest if the BFP (1) **lacked notice** and (2) **recorded first**. But a BFP cannot rely on a **forged or altered document** to establish priority under the recording act since that document is **void**.

Here, the woman sold Lot 5 to the man, an innocent purchaser for value (BFP), after altering the mortgage release for Lot 2 to include Lot 5. But since the alteration of the release was ineffective (ie, void), the man cannot rely on the release to establish his priority under the recording act (**Choice C**). Therefore, the court should rule for the bank and set aside the altered release.

(Choice B) The man would not have been a BFP if he could have discovered the alteration of the release by reasonable inquiry—eg, had a different recorded instrument explained that Lot 5 was not released. But since there is no evidence that he could have reasonably discovered the alteration, he *was* a BFP. Nevertheless, the bank will prevail because the altered release was ineffective.

(Choice D) The man cannot rely on the altered release to establish his priority because the recording act does not protect BFPs from forged or altered documents. As a result, the bank's negligence (ie, failure to use reasonable care) in failing to check the recordation of the release is immaterial.

Educational objective:

In a race-notice jurisdiction, a bona fide purchaser who (1) lacks notice and (2) records first will prevail. But a BFP cannot rely on a forged or altered document to establish priority since that document is void.

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