



DISTRICT COURT  
BOULDER COUNTY  
COLORADO  
1777 6th Street  
Boulder, CO 80302

US BANK NATIONAL  
ASSOCIATION ND,

Plaintiff,

v.

RALPH MARTIN a/k/a  
RICK MARTIN,

Defendant.

Case No. 09 C 369  
Division 5

For Plaintiff:  
Tanya Milligan, Esq.

For Defendant:  
Pro Se

The matter came on for hearing on December 18, 2009,  
before the HONORABLE ROXANNE BAILIN, Judge of the  
District Court, and the following proceedings were had.

Transcript Prepared By:

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1 voluntarily. And if he were found to be the owner, then  
2 obviously you can't evict an owner.

3 So Ms. Milligan, why is it that you thought  
4 that you could proceed in an FED?

5 MS. MILLIGAN: Your Honor, we believe the  
6 County Court does have jurisdiction over this matter and  
7 the reason for that is pursuant to this Court's order  
8 ordering the judicial foreclosure of the property, the  
9 public trustee went ahead and proceeded with this Court's  
10 order. If you'll look at the Complaint, you'll see the  
11 Complaint for unlawful detainer, we would have that --

12 THE COURT: Yeah, I was just handed that a few  
13 minutes ago.

14 MS. MILLIGAN: Correct. Exhibit 2, it's this  
15 Court's order authorizing the sale. And sale was made  
16 pursuant to that order resulting in a confirmation deed  
17 in the name of US Bank which is Exhibit 4 to our  
18 Complaint. So because US Bank owns the property pursuant  
19 to the confirmation deed, Exhibit 4, the bank is  
20 authorized to now proceed with eviction. Mr. Martin is  
21 now in possession of property that he does not own.

22 THE COURT: Okay. There's also a motion to  
23 dismiss with prejudice or judgment on the pleadings that  
24 is pending in the civil case which became ripe last week  
25 I guess.

1 MS. MILLIGAN: I think even just yesterday or  
2 the day before.

3 THE COURT: Okay.

4 MS. MILLIGAN: But it is -- it is ripe. We  
5 believe --

6 THE COURT: Yes, yesterday. Okay.

7 MS. MILLIGAN: We believe that Mr. Martin's  
8 claims against US Bank were filed improperly and that  
9 they are groundless pursuant to our motion and have  
10 walked through each cause of action demonstrating why  
11 they should be --

12 THE COURT: Uh-huh.

13 MS. MILLIGAN: -- dismissed at this time.

14 THE COURT: Okay. All right. And one of those  
15 claims -- one of his claims is that he still should have  
16 been considered to be the owner of this property.

17 MS. MILLIGAN: It's a -- it's a quiet title  
18 claim --

19 THE COURT: Uh-huh.

20 MS. MILLIGAN: -- and how to read through it.

21 THE COURT: Okay. Thank you. All right.

22 Mr. Martin?

23 MR. MARTIN: Your Honor?

24 THE COURT: Uh-huh.

25 MR. MARTIN: The -- pointing to the Complaint

1 that they filed in County Court, their Exhibit 1 is the  
2 deed of trust that I signed in '05. And if you look at  
3 their Exhibit A on their Exhibit 1, it has a legal  
4 description that the US Bank typed. It's very short;  
5 one, two, three, four, five, six, seven.

6 THE COURT: I see it.

7 MR. MARTIN: And, Your Honor, the one, two,  
8 three, four -- the sixth line down if I may read it says,  
9 The same property more fully described in book case or  
10 document number 2360001 dated 11-12-2002. Your Honor, if  
11 I could approach, I have a very nice copy of that  
12 recorded document they're referring to which is my  
13 ownership of the property and the trust that the bank had  
14 in their hand when they wrote these documents.

15 THE COURT: Uh-huh, okay.

16 MR. MARTIN: Thank you. Thank you.

17 THE COURT: Okay. All right. Go ahead.

18 MR. MARTIN: The two issues -- and this is the  
19 secondary issue, why are all the paperwork drawn up by US  
20 Bank and PERA; and I have no idea. However, the  
21 fraudulent appraisal is an almost stipulated situation.  
22 The US Bank has said, okay, they've offered in their  
23 motion, final reply, that there's nothing really wrong  
24 with my expert appraisal, that theirs was false. But  
25 they're now saying that I --

1 MS. MILLIGAN: That's a misrepresentation.

2 THE COURT: Okay.

3 MR. MARTIN: And so essentially -- well, they  
4 had the opportunity to put their own appraisal but they  
5 did not do so and what is now ripe in your motion to  
6 dismiss, the primary case. And so we have a jury  
7 question sitting there as to whether I reasonably relied  
8 on it which apparently is an extremely ripe jury question  
9 and secondarily whether the appraisal indeed was off by  
10 33 percent, maybe it wasn't, that's a jury question, too.  
11 The secondary point of the -- their own documents pointed  
12 to my own trust totally counter-minding their arguments  
13 that I somehow surprised their young bank officer when  
14 here he is sitting with the trust in front of him  
15 creating this document. They may not have realized that  
16 until this moment, Your Honor. And they're -- they're  
17 rather silly.

18 So I think -- I think ownership is a very  
19 meritorious jury question. And -- and begging your  
20 Court's permission here, I would suggest that I think the  
21 case law from 1948 forward says in these factually  
22 complex ownership issues, it's a jury call which is set  
23 for April 26th. The surprise tactic of filing an FED in  
24 the wrong court, I'm not sure why that occurred.

25 The other issue is the house is being

1 maintained by me and the first mortgage under President  
2 Obama's policies renegotiated very professionally by GMAC  
3 twice now and the house is in good shape, I've been there  
4 10 years, the bank suffers no harm at all waiting until  
5 the jury trial. In fact they save thousands of dollars a  
6 month on property of management in the middle of the  
7 winter with pipes freezing and they actually gained. If  
8 the house -- if I lose in April, I'm out of there, they  
9 sell the house in the top time to sell, spring before  
10 school. House is insured, I'll stipulate to that, and  
11 I'm not sure why, you know, we don't have a stipulation  
12 here about let's wait until the jury trial but we don't.  
13 And at this point I think I've been served in the wrong  
14 court and I'm at Your Honor's mercy, that's it.

15 THE COURT: So GMAC holds what?

16 MR. MARTIN: The first.

17 THE COURT: The first mortgage?

18 MR. MARTIN: For 180- --

19 THE COURT: Okay.

20 MR. MARTIN: -- yes, ma'am. And twice they've  
21 had renegotiations. At the same time I failed to move  
22 any motions whatsoever with US Bank, and the fact the  
23 house of course crashed -- with loan, not real estate --  
24 to the value of perhaps 300,000 today. The first is  
25 180-, so there's \$120,000 equity in the house but for the

1 argument of US Bank's security interest.

2 My argument is if they hadn't lied to me in '05  
3 when I was at the top of a 15-year career with four  
4 patent lawyers serving 1,200 small businesses thinking  
5 nothing of -- they had all of our cash flow, et cetera,  
6 et cetera, young bank officer, and for five months now,  
7 this bank has said, we're not going to tell you who he  
8 is, where he is, or even if he's still with us. And in  
9 fact we're not even going to answer questions as to his  
10 salary and his commissions which is their position now  
11 forcing me to file a motion to compel in front of Your  
12 Honor assuming I survive the motion to dismiss.

13 And so here we have this mysterious young kid  
14 who made a commission ran out of the bank, quit,  
15 falsified all these documents, and I want to get him to  
16 talk to us, I can't even find him. Now, they want to  
17 just throw my family out on the street because all these  
18 documents are drawn up in error by them and avoid a jury  
19 trial. I hope that's not the American way.

20 THE COURT: Okay. Thanks very much. Okay.  
21 Would you like to respond at all?

22 MS. MILLIGAN: Just briefly, Your Honor.  
23 Mr. Martin is a sophisticated party, he's an attorney  
24 licensed in the state of Colorado, he -- this -- this FED  
25 action was certainly not filed in the wrong court, it was

1 transferred to your Court, Your Honor. And certainly not  
2 a surprise, I think proper notice has been given. He's  
3 been through and we've had an opportunity to respond to  
4 the Rule 120 motion and that was -- Rule 120 was granted  
5 on -- in US Bank's behav -- US Bank's favor and notice  
6 for demand for possession was given and this hearing was  
7 set within the appropriate time listed under -- pursuant  
8 to Colorado statute. Certainly not a surprise.

9 We take offense and object to Mr. Martin's  
10 unsupported and off-hand statements that there was any  
11 sort of misstatement from US Bank to Mr. Martin in --  
12 when he closed the loan on this property. He certainly  
13 didn't have a problem taking the \$250,000 and spending it  
14 as he wanted to. He's been living in a property that he  
15 hasn't paid mortgage on or anything for, for over a year.  
16 And that's why it should come to no surprise that -- and  
17 then -- and then now he's trying to refinance a first  
18 mortgage on property that he does not own and admittedly  
19 he does not own any more and hasn't owned since 2002.

20 THE COURT: I'm sorry, what do you mean by  
21 that?

22 MS. MILLIGAN: Well, he transferred it --  
23 according to his own testimony it was transferred to --

24 THE COURT: The trust.

25 MS. MILLIGAN: -- a trust.

1 THE COURT: Yeah. Okay.

2 MS. MILLIGAN: And -- but can apparently  
3 refinance on behalf of the trust but not sign a deed of  
4 trust to US Bank on behalf of the trust. In Colorado  
5 there -- Colorado statutes allow a trustee to exactly --  
6 sign exactly the documents that are at issue in this  
7 case. C.R.S. §15-1-804(2)(V) as in Victor and (W) as in  
8 Wilma, those both grant a trustee the power to do and  
9 sign the exact documents that are at issue in this case.

10 THE COURT: So say again that he's -- you're  
11 saying that it's inconsistent for him to say that he can  
12 refinance the house, the first mortgage --

13 MS. MILLIGAN: Correct.

14 THE COURT: -- on behalf of the trust but that  
15 he can't -- and what was the second part of that?

16 MS. MILLIGAN: Sign the deed -- US Bank's deed  
17 of trust on behalf of the trust.

18 THE COURT: Okay. I understand.

19 MS. MILLIGAN: Meanwhile he is possessing the  
20 property, it's owned by US Bank pursuant to this Court's  
21 order and as the confirmation deed. US Bank can't  
22 utilize the property, he's insuring the property, we  
23 can't -- can't really protect the property from the  
24 possessor, doesn't know the condition of the property,  
25 can't go in and inspect because Mr. Martin's possessing

1 the property. And so, you know, he's encumbering the  
2 property, and US Bank is unable to utilize -- to exercise  
3 its property interest which it has under the law.

4 THE COURT: And you're not being paid?

5 MS. MILLIGAN: And we're not being paid.

6 THE COURT: All right.

7 MS. MILLIGAN: There's loss of income and --

8 THE COURT: And inability to move forward with  
9 selling it to someone else.

10 MS. MILLIGAN: Correct.

11 THE COURT: All right. Okay. All right.

12 Thank you. All right. So this -- the 09 CV 759 case was  
13 actually sitting on my desk this morning because I had  
14 asked that it be as we call it tickled for when the reply  
15 came in, an interesting expression but the one we use.  
16 And so I was prepared to take a wholesale look at that  
17 whole file and figure out where it was. The FED  
18 proceeding was obviously this morning and everybody came  
19 upstairs. So -- and I didn't know that I would be  
20 hearing this case until an hour ago.

21 So what I'm going to choose to do is not rule  
22 from the bench, because I think that it would be very  
23 difficult for me to do that but I'm going to give this  
24 immediate close attention and since the issues are all  
25 bound up together, then I will be able to issue a global

1 order with regard to the motion to dismiss with prejudice  
2 or judgment on the pleadings as well as the FED claims  
3 and put that in a single order and my intention before I  
4 knew that we had this other issue going on downstairs was  
5 to address this next week or at the latest early the  
6 following week. So I think given the fact that this has  
7 been going on for a while and that I can address this  
8 very quickly, that I'll choose to do it in that fashion.

9 So one of two things will happen, of course,  
10 and both sides understand this which is that I will  
11 either decide that the motion for judgment on the  
12 pleadings is well taken in which case 09 CV 759 will  
13 contain only an order from me authorizing sale. And if I  
14 find that it is not well taken and there are factual  
15 disputes that require it to go to trial, we have a trial  
16 date that's really quite soon and it will be resolved in  
17 that fashion.

18 If I deny the motion for judgment on the  
19 pleadings, then I think that effectively that stays the  
20 FED until the resolution of the case, because I will  
21 obviously have decided that there are ownership issues  
22 that can't be decided in the context of an FED. Okay?

23 MS. MILLIGAN: Okay.

24 THE COURT: A plan? All right. Thank you very  
25 much.

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MS. MILLIGAN: Thank you, Your Honor.

THE COURT: All right. Court is in recess.  
(Whereupon these proceedings were concluded.)

TRANSCRIBER'S CERTIFICATION

STATE OF COLORADO     )  
                                   )     SS.  
 COUNTY OF JEFFERSON )

I, Tami S. Ondik, do hereby certify that I have listened to the electronic recording of the foregoing; further that the foregoing transcript pages 1 through 12, were reduced to typewritten form from an electronic recording of the proceedings held December 18, 2009, in the Boulder County District Court, in the matter of US Bank National Association ND v. Ralph Martin a/k/a Rick Martin, et al.; and that the foregoing is an accurate record of the proceedings as above transcribed in this matter on the date set forth.

DATED this 18th day of January, 2010.

\_\_\_\_\_  
 Tami S. Ondik, AAERT CET\*\*D-301