

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO Boulder Justice Center 1777 6th Street, Boulder, CO 80302	EFILED Document CO Boulder County District Court 20th JD Filing Date: Jan 12 2010 7:50AM MST Filing ID: 28953617 Review Clerk: N/A ▲ COURT USE ONLY ▲
Plaintiff: Rick Martin as Trustee for Martin Living Trust (Trustee) And Rick Martin an Individual (Martin) v. Defendants: USBank National Association and Richard Gebhardt as Boulder County Public Trustee	
Attorney for Plaintiff: Pro se Attorney for Defendants: Tanya Milligan	2009CV759
ORDER	

This matter came on for hearing on December 18, 2009.¹ The matter originated in county court on the December 18, 2009 9:00 a.m. docket on the Defendant's forcible entry and detainer action. The Plaintiff appeared and moved to dismiss the action raising the same defenses as the claims in this case and stating that the county court did not have jurisdiction. The county court judge delivered the motion to dismiss in the county court action to this Court (no file is prepared until an answer is filed), and this Court consolidated the FED action into this action. Because this Court was available, the parties appeared in district court immediately after the county court proceedings terminated.

The Defendant has taken the position that it can proceed with the FED action because this Court signed an order for sale on July 21, 2009 and the sale to the bank has occurred.

As part of the discussion, the Plaintiff raised again his claims that there was a fraudulent appraisal and that the documents signed as part of the HELOC transaction with the bank are void because he created a living trust in which he is the sole grantor and beneficiary, and he did not sign as trustee. He stated that he believes that his claims are jury questions. He was not happy about what he called the "surprise tactic" of the bank trying to evict him while this case is pending. He stated that he is in the house taking very good care of it, paying first mortgage to GMAC. He asserted that there is no harm waiting until the jury trial in April.

The bank responded that the FED was not a surprise and that proper notices were sent. He has not paid on the second mortgage of \$250,000 for over a year. The bank insures the property yet it cannot get into the property.

¹ The Court apologizes for the lateness of this order. It was prepared shortly after the hearing but the Court did not forward it to its clerk for e-filing.

The Court stated that it would need to rule on the motion to dismiss in this action before determining whether the Plaintiff can be evicted. The Court advised that it would rule within the next two weeks. No orders or decisions were made at the conclusion of the hearing.

Dated: January 12, 2010

By the Court

A handwritten signature in black ink, appearing to be 'R. Bailin', is written over a circular stamp. The signature is fluid and cursive.

R. Bailin, District Judge