

<p><b>SUPREME COURT, STATE OF COLORADO</b>  101 W. Colfax Avenue, Suite 800  Denver, Colorado 80202</p>	
<p>Appeal from Court of Appeals, Colorado  Opinion by Judge Webb, Miller and Booras, JJ., concur  <b>Case Number: No. 10 CA 0256</b></p> <p>Appeal from District Court, Boulder County, Colorado  Judge Roxanne Bailin  <b>Case Number: 2009 CV 759</b></p>	
<p><b>PETITIONER:</b>  <b>RICK MARTIN, a Trustee for the Rick Martin Living Trust (TRUSTEE) and RICK MARTIN, an Individual (MARTIN)</b></p> <p>v.</p> <p><b>RESPONDENTS:</b>  <b>US BANK NATIONAL ASSOCIATION (US BANK) and RICHARD G. GEBHARDT, as Boulder County Public Trustee</b></p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorneys for Petitioner:  Ralph M. (Rick) Martin, pro se  P.O. Box 1839  Longmont, CO 80502  Telephone: 303-651-2177  Facsimile: 303-678-9953  Email: rmartin@patentcolorado.com</p>	<p>Case Number: 11SC32</p>
<p style="text-align: center;"><b>PETITIONERS' REPLY BRIEF</b></p>	

<b>SUPREME COURT, STATE OF COLORADO</b> 101 W. Colfax Avenue, Suite 800 Denver, Colorado 80202	
<b>On appeal from:</b> Court of Appeals No. 10 CA 0256 Opinion by Judge Webb, Miller and Booras concur  Order Denying Petition For Rehearing Announced: December 16, 2010; Judgment affirmed November 10, 2010 Not Published Pursuant to C.A.R. 35(f)  <b>On appeal from:</b> Boulder District Court Judge Bailin, District Judge Case Number: 09 CV 759	
<b>Appellant(s):</b> <b>RICK MARTIN, a Trustee for the Rick Martin Living Trust (TRUSTEE) and RICK MARTIN, an Individual (MARTIN)</b>  v.  <b>Appellee(s):</b> <b>US BANK NATIONAL ASSOCIATION (US BANK) and RICHARD G. GEBHARDT, as Boulder County Public Trustee</b>	<b>▲ COURT USE ONLY ▲</b>
Attorneys for Petitioner: Ralph M. (Rick) Martin, pro se P.O. Box 1839 Longmont, CO 80502 Telephone: 303-651-2177 Facsimile: 303-678-9953 Email: rmartin@patentcolorado.com	Case Number:    Division                      Courtroom
<b>CERTIFICATE OF COMPLIANCE</b>	

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically the undersigned certifies that:

The brief complies with Rule 53 (a)  
It contains 2973 words.

Respectfully Submitted *pro se* by:

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Ralph M. (Rick) Martin

As trustee and individually

## I. ADVISORY LISTING OF ISSUES

### ADDRESSING U.S. BANK'S COMMENT'S

1. Did the Colorado Court of Appeals err in ruling that Colorado's lender fraud statute, C.R.S. 38-40-105 (1)(b), *in a case of first impression*, can be legislated out of existence by the Bench by adding common law "reliance" element to the statute then re-writing the Complaint against the Petitioner, in violation of *Coors Brewing Co. v. Floyd*, 978 P.2d 633 (Colo. 1999), and then dismiss the case on the pleadings for lack of reliance?

*U.S. Bank argues that no disputed facts existed under Colorado's lender fraud statute. Martin's Complaint (Exhibit B herein) accuses U.S. Bank of BLATANTLY FALSIFYING THEIR OWN APPRAISAL TO CREATE AT LEAST A 33 PERCENT OVER-VALUATION OF 340COTTONWOOD CT. ...*

*This allegation creates a factual dispute on the "misrepresentation" element of C.R.S. 38-40-105 (1)(b). This allegation uses the word "FALSIFY" which connotes INTENT which satisfies the "knowledge" element of the statute, also creating a factual dispute.*

*The Complaint paragraph 37 states that U.S. Bank's intentional falsification of their own appraisal was a "misrepresentation" used to "ENTICE" Plaintiff into a second mortgage. This enticement issue presents a third factual dispute.*

2. Did the Colorado Court of Appeals err in ruling that reformation of a real estate Deed of Trust by the Bench is legal in spite of:
  - a) Reversing *Coors Brewing Co. v. Floyd*, 978 P.2d 633 (Colo. 1999) by inserting a past tense into Petitioner's Complaint paragraph 9;
  - b) Failing to conduct an evidentiary hearing to determine the state of mind of the loan officer and Petitioner at the time of the loan;
  - c) Ignoring the definition of a "spurious document" per C.R.S. 38-35-201(3) and *GMAC Mortgage Corp. v. PWI Group*, 155 P.3d 556 (Colo. App. 2006);
  - d) Ignoring the expiration of U.S. Bank's statute of limitations for enforcing the Warranty of Title Clause. Complaint paragraph 23(C.R.S. 13-80-101) and Complaint Exhibit 5 paragraph 6; and
  - e) Ignoring the validity of real estate conveyances to trusts, C.R.S. 30-30-108.5?

*U.S. Bank argues that no undisputed facts existed on the record, therefore, reformation was ripe for Summary Judgment. Martin's Complaint alleged that U.S. Bank prepared the Deed of Trust "attended by circumstances of malice and/or constituted misconduct purposefully, heedlessly and/or recklessly." U.S. Bank accused Martin of bringing the entire action to perpetuate his fraudulent transaction. Thus each side called the other a crook, thereby creating a very disputed fact.*

## **II. Discussion Reformation**

Respondent U.S. Bank argues that no undisputed facts exist in the scant pleadings history of this case. But the record shows that Martin accused U.S. Bank of preparing and filing the Deed of Trust, "attended by circumstances of malice and/or constituted misconduct purposefully, heedlessly and/or recklessly committed without regard to the consequences or rights of plaintiff," see Complaint paragraphs 28 and 31, Exhibit B herein.

U.S. Bank created the enormous disputed fact of the state of mind of both Martin and the loan officer. U.S. Bank has accused Martin of bringing the entire case "to perpetrate his fraudulent transaction." See U.S. Bank's Motion to Dismiss

with Prejudice or Judgment on The Pleadings and Request for Sanctions, page two, three, four, Filing I.D 28155539, attached hereto as Exhibit A.

In summary the parties have each called each other a crook, thereby creating a very significant question of fact. U.S. Bank goes so far as to state that “Martin created a forged or groundless [Deed of Trust],” Exhibit A page 4 last paragraph. Thus U.S. Bank created a second issue of fact as to who created U.S. Bank’s loan documents? Was it Martin?

The Lower Courts have cozily erased these factual issues by ignoring Martin’s allegations entirely. Now U.S. Bank “concedes a mutual mistake for reformation purposes.” See Respondents’ Brief in Opposition to Petition for Certiorari, page 7 last paragraph.

Certiorari is critical to decide whether U.S. Bank’s proposition that “*Colorado banks can do no wrong, and accusations of fraud against a bank shall be stricken from the record*” shall become Colorado law.

Or perhaps U.S. Bank reads *Boyles Bros. Drilling Co. v. Orion Indus., Ltd.*, 761 P2d 278,281 (Colo. App. 1988) to hold that the party allegedly engaged in fraud gets the reformation done in his favor? So the alleged crook (U.S. Bank) wins in Colorado?

Martin does not in any way concede to mutual mistake. Martin contends that U.S. Bank's loan officer intentionally wanted to slide a quick loan through, make a commission and then quit the bank's employ. See Exhibit E page 4 last paragraph.

Martin's accusation of fraud, if proven true, would void the Deed of Trust, and return Martin's house titled to "The Rick Martin Living Trust."

U.S. Banks quips, "Certainly the parties did not intend to sign and record a document that had no usefulness whatsoever." Respondents' Brief pages 7 and 8. Yet this is exactly what Martin alleges, simply that the loan officer greased a loan through to an individual to get a speedy approval rather than do it right and go through a complex trust evaluation process and/or demand a quit claim deed be processed. Martin's Complaint even pointed out that the same local U.S. Bank office had properly issued a commercial mortgage on the same Trust! See Exhibit B paragraph 22 and Complaint Exhibit 9.

Another reason for Certiorari is to affirm the validity of C.R.S. 38-30-108.5, Complaint paragraph 18, wherein Colorado's statute to authorize Martin's trust to hold real estate needs to be reaffirmed. U.S. Bank argues that Martin's signature by implication always carries the Trust with it! This current holding effectively legislates yet another statute (38-30-108.5) out of existence by the Bench.

Certiorari can confirm confidence in Colorado Real Estate Recording Statutes across the board, or leave them in complete disarray as the lower courts have done.

So in Colorado does the alleged crook (bank) get real estate contracts reformed in his favor?

So in Colorado does a conveyance of real estate to a trust mean absolutely nothing?

So in Colorado do (rich) banks get to reform warranty clauses long after the statute of limitations has run?

So in Colorado when suing a bank the plaintiff's Complaint will be construed against him in violation of *Coors Brewing Co. v. Floyd*, 978 P.2d 633 (Colo. 1999)?

So in Colorado banks can do no wrong, and accusations of fraud against a bank shall be stricken from the record?

### **III. Discussion C.R.S. 38-40-105 (1)(b)**

Where statutory language is clear and unambiguous, the court should apply the statute as written, and may presume that the General Assembly meant what it clearly said. *Griffin v. S.W. Devanney & Co.*, 775 P.2d 555, 559 (Colo. 1989).

U.S. Bank argues that “Martin’s inartful pleading” somehow permitted the trial court to convert (the first ever) cause of action under C.R.S. 38-40-105 (1)(b) into a common law fraud claim. This is a clear and unambiguous three element statute. The Three elements are misrepresentation, entice and knowledge of the misrepresentation.

U.S. Bank has finally given up trying to argue that Martin’s pleadings failed because at the time of the Complaint, Martin did not know that U.S. Bank used a third party appraiser. See Exhibit F page 20. U.S. Bank created the SCAPEGOAT DEFENSE JUST FOR THE COURT OF APPEALS, wherein “the appraiser hath done us wrong too!” This ruse worked. The Court of Appeals ruled that Martin’s pleadings were fatally flawed because Martin did not plead that the banks knew that their hired appraiser’s appraisal was a misrepresentation.

But Complaint paragraph 10 states:

10. Thus, U.S. Bank perpetrated a predatory home equity loan for \$250,000 by **FALSIFYING** the value of 340 Cottonwood Court in March 2005.

Complaint paragraph 26 states:

26. “Rick Martin as TRUSTEE believed in U.S. Bank and its **OWN** “appraiser” in the creation of “the NOTE”

Complaint paragraph 40 states:

40. U.S. Bank blatantly created an illusory security interest using **THEIR OWN** appraiser to create at least a 33 percent over-valuation of 340 Cottonwood Ct., forming an unconscionable loan.

So three strikes and you're out. U.S. Bank has stopped playing this ruse to the Supreme Court. The Supreme Court can read that no third party appraiser existed in the Complaint. The Complaint states three times U.S. Bank used its own appraiser. Now let's look at how the pleadings failed to satisfy the statute's third element, knowledge.

Falsifying is defined as "to make false by mutilation or addition <the accounts were **FALSIFIED** to conceal a theft. Synonyms include "to fudge, misrepresent, pervert, slant, twist and warp." In Webster's Third New International Dictionary, falsify means to counterfeit, to forge as in a passport! **TO TELL LIES!**

Blatantly (Webster's Third) means brazen, obvious. So Martin's Complaint is defective because Martin used the terms brazenly counterfeiting the appraisal (so as to conceal the true value of 340 Cottonwood Court)?

Does the Supreme Court want to affirm that Martin's bold accusation that U.S. Bank brazenly counterfeited an appraisal leaves in doubt Martin's allegation that U.S. Bank acted knowingly? Martin alleged that U.S. Bank **KNOWINGLY**

**LIED!** But now U.S. Bank argues that Martin, “did not allege facts from which **KNOWLEDGE** could be inferred, Respondents’ Brief page nine last paragraph.

Martin’s dramatic use of the words “blatantly falsifying” the appraisal would lead any UNBIASED, English speaking individual to understand Martin’s allegation that U.S. Bank knew it was counterfeiting a loan document. In fact Martin supplied the math in Complaint paragraph 11:

U.S. Bank second mortgage home equity banking procedures (and banking regulations) only allow a maximum of 80% loan to value loan, without mortgage insurance, whereby U.S. Bank was in violation of the rule in making the “NOTE” for \$250,000 with GMAC first mortgage for about \$225,000. In actuality the “NOTE” put the property upside-down even at the value of \$450,000, and no mortgage insurance was part of the loan.

A third grader can figure that the FALSIFIED appraisal of \$620,000 provided a 76.6% value ratio as follows:

$$76.6\% = \frac{\text{GMAC First Mortgage } (\$225,000) \text{ plus U.S. Bank Second } (\$250,000)}{\$620,000}$$

The English language leaves no doubt that Martin pled all three elements of C.R.S. 38-40-105 (1)(b) clearly and unambiguously.

## **INARTFUL PLEADING?**

Certiorari is needed to put the Complaint back on course for a lender fraud trial, Colorado's first.

The Court of Appeals created the alleged fatal pleadings flaw based on Martin's failure to plead "U.S. Bank knew or should have known the appraisal was false." This holding was based on U.S. Bank's SCAPEGOAT DEFENSE which never existed in front of the Trial Court. U.S. Bank created this ruse for the first time in their appeals Brief, Exhibit F page 20.

Now that we are here in the Supreme Court where judges can read the redundant words in the Complaint, "U.S. Bank using their own appraiser," U.S. Bank retreats to a new proposition. U.S. Bank's new and ridiculous proposition is that Martin's accusation that U.S. Bank **BLATANTLY FALSIFIED THEIR OWN APPRAISAL FORMING AN UNCONSCIONABLE LOAN** fails to allege facts from which U.S. Bank's knowledge of their own false appraisal could be inferred. Nobody with a law degree can seriously consider this argument. U.S. Bank is asking for a cover-up to avoid facing its first ever lender fraud trial.

Certiorari is critical to allow a breath of life to be given to C.R.S 38-40-105 (1)(b).

## **THE COMPLAINT PLEADS ALL THE NECESSARY ELEMENTS**

COMPLAINT FOURTH CAUSE OF ACTION FRAUD per 38-40-105

paragraph 37:

U.S. Bank made a **MISREPRESENTATION** of the material fact of the value of 340 Cottonwood Ct. to **ENTICE** Plaintiffs, (a putative borrower) to enter into a second mortgage in violation of C.R.S. 38-40-105 (1)(b), et seq. (See also paragraphs 10,26,40 quoted above).

Does repeating the statute TWICE and citing the enticement, the misrepresentation and the BLATANT FALSIFYING of the appraisal kill Colorado's first case of lender fraud under 38-40-105 (1)(b)? All three statutory elements are pled clear as day.

U.S. Bank started to kill C.R.S. 38-40-105 (1)(b) right from the start. See their Motion to Dismiss with Prejudice or Judgment in the Pleadings and Request for Sanctions, Exhibit A herein. At page six U.S. Bank (successfully) triggered the switch from Colorado's lender fraud statute to COMMON LAW FRAUD:

To prevail on a claim for fraud, Plaintiffs' must prove that (1) U.S. Bank made a fraudulent misrepresentation of material fact; (2) Plaintiffs' relied on the negligent misrepresentation; (3) Plaintiffs' had the right to rely on, or were justified in relying on, the misrepresentation; and (4) Their reliance resulted in damages. *Platt v. Aspenwood Condominium Association, Inc.*, 214 P.3d 1060, 1067 (Colo. App. 2009).

This conversion of Colorado's lender fraud statute into common law fraud was adopted by the Trial Court *in toto*! See Exhibit D page 3, paragraph 4 "Fraud."

U.S. Bank (successfully) carried this same argument to the Court of Appeals, see Exhibit F page 19.

U.S. Bank also introduced (successfully) at the Court of Appeals their ruse of a new SCAPEGOAT DEFENSE:

Exhibit F page 20:

Plaintiffs' allege that the Property appraisal induced Martin to enter into the loan agreement. The appraisal, however was not authored by U.S. Bank but by a third-party independent contractor—a professionally licensed appraiser (William Becker on behalf of Appraising Northern Colorado) for Transunion, as is evident from the appraisal Martin submitted to the district court. (R. at 208-217). If the appraisal were a misrepresentation, which U.S. Bank denies, *then it would have been as much a misrepresentation to U.S. Bank as to Martin.*

A failure to grant cert legislates from the BENCH the death of Colorado's lender fraud statute by sweeping it under the rug with common law fraud.

#### **IV. U.S. Bank Attorneys LIE LIE LIE**

U.S. Bank took paragraph nine of the Complaint, Exhibit B, and added the words, "and Martin knew this in 2005." The lower court bought it, and Coors Brewing Id. no longer exists in Colorado?

Several month's discovery had passed before U.S. Bank's Motion to Dismiss, Exhibit A herein, was filed. During that discovery Martin received his first ever copy of both the appraisal and his package of closing documents. U.S. Bank is now excited about finding the "X" on their page 3 of their Respondents' Brief. However, they have never addressed their good fortune in curing their Warranty Clause, page 4, after the statute of limitations passed. Martin also discovered that, indeed, the young loan officer apparently disappeared. See Exhibit E herein and its Exhibits A and B.

*Martin brings this action to perpetrate his fraudulent transaction "MONTHS PRIOR TO THIS LOAN, however, Martin had deeded his interest in the property to the "Rick Martin Living Trust," Exhibit A page 2.*

But U.S. Bank's Respondents' Brief at pages two and three affirm that twenty three months had elapsed between the **public** filing by Martin of the Property to the Trust (Nov. 2002) to the loan (March 2005). See also Exhibit E page four last paragraph where this pattern of lying to the Courts was first brought to the lower court's attention.

U.S. Bank's Respondents' Brief page 2 still asserts that Martin is impeding the bank's attempts to make itself whole. But U.S. Bank's Answer Brief, Exhibit F, page 2 notes Martin's bankruptcy. See also the Bankruptcy Stay, Exhibit C. U.S. Bank took possession of 340 Cottonwood Court on or about 1/31/11. So the bank

is already as whole as it will get. Although the bank has caused Martin's Chapter 7 along with loss of his family's house. What U.S. Bank is fighting for is the death of C.R.S. 38-40-105 (1)(b). A denial of cert will grant their wish.

As to U.S. Bank's complaint about "Exhibit 5," a full copy of Martin's Complaint along with Exhibit 5 is attached hereto as Exhibit B. As to U.S. Bank's complaint about "Exhibit H" a full copy of the Plaintiffs' Reply along with "Exhibit H" is attached hereto as Exhibit E. The abbreviated Exhibit H as originally filed had the cite to the full article, but not the full printout of the public article. If the Supreme Court chooses not to use judicial notice to read the full disclosure of the banker greed (including U.S. Bank's) that wiped out America's Middle Class home equity savings, then so be it. There is a public following of this case at [www.illegaleviction.info](http://www.illegaleviction.info), with perhaps 200,000 Colorado foreclosure victims watching.

## **V. SUMMARY**

U.S. Bank used its SCAPEGOAT DEFENSE ruse to help sway the Court of Appeals to find a pleadings failure to dismiss Colorado's first lender fraud case, C.R.S. 38-40-105 (1)(b). U.S. Bank's Respondents' Brief backs off this ruse because of Martin's Complaint using the repetitive allegations of "**U.S. Bank**

**USING THEIR OWN APPRAISER BLATANTLY FALSIFIED** the appraisal.” U.S. Bank argued that the lender fraud statute should be erased and replaced with a common law fraud. Both lower courts bought this argument. C.R.S. 38-40-105 (1)(b) has clear unambiguous elements. The Complaint pled these elements clearly and unambiguously.

Certiorari is needed to resuscitate the recently killed lender fraud statute per C.A.R. 49 (a)(1). Both lower courts have legislated from the Bench the death of C.R.S 38-40-105 (1)(b). Certiorari is also needed per C.A.R. 49 (a)(4) to reinstate Colorado’s statute of limitations as they apply to banks and to clarify C.R.S. 38-35-201 (3), 30-30-108.5 and Coors Brewing Id.

I certify the word count is 2973.

Respectfully Submitted *pro se* by:

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Ralph M. (Rick) Martin

As trustee and individually

## **EXHIBIT LIST – APPENDIX**

A – U.S. Bank Motion to Dismiss

B – Complaint and ALL attachments

C – Bankruptcy Stay

D – ORDER from Lower Court

E – Plaintiffs’ Reply to U.S. Bank’s Motion to Dismiss

F– U.S. Bank’s Answer Brief

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served this \_\_\_ day of \_\_\_\_\_ 2011 via first class mail addressed to the following:

Tanya E. Milligan, Esq.  
MESSNER & REEVES, LLC  
1430 Wynkoop Street, Suite 300  
Denver, Colorado 80202

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Rick Martin