

## SUMMARY STATEMENT

*U.S. Bank Nat'l Ass'n v. CitiMortgage, Inc.*, Docket No. 41252.

In an appeal from Blaine County, the Supreme Court vacated the judgment of the district court and remanded the case for further proceedings. Herbert and Julie Thomas had a two million dollar home equity line of credit (HELOC) with U.S. Bank that was secured by a deed of trust. They obtained a \$4.99 million loan from CitiMortgage that was used, in part, to pay \$1.8 million that the Thomases owed on the HELOC. The title insurance company handling the closing of the CitiMortgage loan was supposed to provide U.S. Bank with a written demand to reconvey the property secured by the deed of trust so that CitiMortgage's deed of trust to the property would have first priority and the HELOC would be closed. U.S. Bank did not reconvey the property nor did it close the HELOC. The Thomases again began drawing against the HELOC. By the time the case came before the district court, the Thomases owed U.S. Bank more than \$2 million for draws on the HELOC and accrued interest. The Thomases defaulted on both the U.S. Bank and CitiMortgage loans. The district court was asked to determine which financial institution's deed of trust had priority. The primary factual issue presented to the district court was whether U.S. Bank had received a written demand for reconveyance of the property. The district court found that the demand had been delivered with the check paying off the HELOC debt. Thus, U.S. Bank lost its first priority position on the property because it breached its duty to reconvey the property to the grantors under Idaho Code section 45-1514. U.S. Bank appealed, and CitiMortgage cross-appealed the district court's denial of its request for attorney fees. The Supreme Court held that CitiMortgage bore the burden of proving facts sufficient to show that U.S. Bank's Deed of Trust no longer had priority over CitiMortgage's Deed of Trust, and that the district court erroneously placed the burden of proof on U.S. Bank. Due to the misallocation of the burden of proof and the district court's failure to consider certain evidence, the Supreme Court sent the case back to the district court with instructions to consider the evidence in light of the correct burden of proof. Further, the Supreme Court determined that the district court correctly denied CitiMortgage's request for attorney fees under Idaho Code sections 12-121, 45-915 and 45-1514.