

1994

# Davis v. US Bancorp Mortgage Company : Reply Brief

Utah Court of Appeals

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## Recommended Citation

Reply Brief, *Davis v. US Bancorp Mortgage Company*, No. 940443 (Utah Court of Appeals, 1994).  
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IN THE UTAH COURT OF APPEALS

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STEVEN C. DAVIS and KRISTI A. DAVIS, )  
)

Plaintiffs, Appellants, )  
and Cross-Appellees, )

Case No. 940443-CA

-vs- )  
)

U.S. BANCORP MORTGAGE COMPANY, formerly U.S. BANCORP REAL ESTATE SERVICES, formerly U.S. THRIFT & LOAN; and H. CLYDE DAVIS, )  
)

Defendants, Appellee, )  
and Cross-Appellant. )

Priority No. 15

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CROSS-APPELLANT U. S. BANCORP'S REPLY BRIEF

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APPEAL AND CROSS-APPEAL OF A JUDGMENT OF  
THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF UTAH  
THE HONORABLE GUY R. BURNINGHAM, PRESIDING

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## **ARGUMENT**

### **I.**

#### **U. S. BANCORP IS ENTITLED TO ALL ATTORNEYS' FEES REQUIRED TO ENFORCE ITS CONTRACTUAL RIGHTS.**

After U. S. Bancorp recorded a Notice of Default and Notice of Trustee's Sale to enforce its contractual rights, the Davises filed two lawsuits to forestall foreclosure by all means possible except by payment of the debt.

On the morning of the date set for trial the lower court heard arguments on U. S. Bancorp's Motion for summary judgment. The Davises could not and did not present competent evidence to preclude U.S. Bancorp's contractual right to foreclose the note and trust deed. Only after the rubbish and roadblocks were removed through efforts of U.S. Bancorp's counsel was the path to foreclosure clear.

The Davises' claims were meritless. Nonetheless, those claims had to be refuted at great cost so that the Note and Trust Deed could be enforced. Each and every claim was related to the agreement between the parties, even though couched in the form of torts. As the successful party in enforcing its contractual rights, U.S. Bancorp is entitled to a full award of attorney's fees, including those of Mr. Elggren and Mr. Drake incurred in removing the roadblocks placed by appellants.

## **CONCLUSION**

Court should affirm the summary judgment granted in favor of U. S. Bancorp, but remand the matter for an augmented award of attorney fees, including those incurred in defending the Davises' claims.

DATED this 5th day of June, 1995.



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Bancorp

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served two true and correct copies of the foregoing **Cross-Appellant U. S. Bancorp's Reply Brief** by depositing the same in the United States mail, postage prepaid, this 5th day of June, 1995, to the following:

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