

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**US BANK NATIONAL ASSOCIATION  
AS TRUSTEE, C/O HOMECOMINGS  
FINANCIAL, LLC**

**APPELLANT,**

**v.  
KATHERINE COX, ET AL.**

**RESPONDENTS.**

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DOCKET NUMBER WD71945

DATE: May 31, 2011

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Appeal From:

Johnson County Circuit Court  
The Honorable Jacqueline A. Cook, Judge

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Appellate Judges:

Division Two: James M. Smart, Jr., Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

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Attorneys:

M. Catherine Hartnett and Sara N. Faubion, Kansas City, MO, for appellant.

John H. Edmiston, Warrensburg, MO, for respondents.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**US BANK NATIONAL ASSOCIATION  
AS TRUSTEE, C/O HOMECOMINGS  
FINANCIAL, LLC,**

**APPELLANT,**

**v.**

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**RESPONDENTS.**

No. WD71945

Johnson County

Before Division Two: James M. Smart, Jr., Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

US Bank Association, as Trustee, c/o Homecomings Financial, LLC appeals following a trial to the court from the trial court's judgment in favor of Katherine Cox and Dennis Cox, husband and wife, on US Bank's claims to reform a deed of trust and for unjust enrichment.

**AFFIRMED**

Division Two holds:

(1) The elements of an unjust enrichment claim are a benefit conferred by plaintiff on a defendant, appreciation by the defendant of the benefit conferred, and acceptance and retention of the benefit under circumstances that would render that retention inequitable.

(2) Mere receipt of a benefit is not enough to establish unjust enrichment absent a showing that it would be unjust for the defendant to retain the benefit. There can be no unjust enrichment if the parties receive what they intended to obtain.

(3) Katherine Cox was the only signator on the promissory note held by US Bank. Dennis Cox was never asked to sign the promissory note. Thus, the parties received what they intended. The trial court did not error in concluding that US Bank failed to establish the third element of an unjust enrichment claim. As Dennis Cox never agreed to pay the loan from US Bank, it was not against the weight of the evidence to find that the Coxes were not unjustly enriched by Dennis Cox's absence of personal liability on the loan.

(4) The trial court did not erroneously impose the obligation on US Bank to prove that the Coxes engaged in wrongful conduct as an element of an unjust enrichment claim. The trial court's observation that there was no evidence the Coxes engaged in wrongful conduct merely supplemented the trial court's finding that it was not unjust for the Coxes to retain the benefit of the US Bank loan where Dennis Cox never agreed to incur a personal obligation on the loan.

(5) The burden of proof in a reformation case is upon the party seeking to reform an instrument. To satisfy this burden, a party seeking reformation must establish by clear and convincing evidence a preexisting agreement between the parties, the existence of a mistake, and the mutuality of mistake.

(6) US Bank failed to meet its burden to establish a right to reform a deed of trust by substituting the proper tract of real estate as the secured property.

(7) Though a signature for Dennis Cox appeared on the deed of trust, the trial court found the signature to be a forgery. The weight of the evidence supported the trial court's finding that no mutuality of mistake was established by US Bank as to Dennis Cox in connection with the deed of trust.

(8) Even if US Bank established the elements of a reformation action as to Katherine Cox, reformation of the deed of trust to substitute a tract of property owned by Dennis Cox and Katherine Cox as tenants by the entirety could not be awarded. Dennis Cox did not consent to the imposition of a deed of trust on the entirety property. Though Katherine Cox may have intended to impose the deed of trust on the entirety property, she had no power to do so unilaterally, as a deed by only one of two tenants by the entirety conveys nothing.

Opinion by Cynthia L. Martin, Judge

May 31, 2011

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