

# Clarke v. First National Bank of Omaha

**Case Number**

S-16-0146

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February 3, 2017

**Court Number**

Douglas

**Case Summary**

S-16-0146, Linda Clarke v. First National Bank of Omaha v. Gregg Graham (Appellant)

Douglas County, Hon. Shelly R. Stratman

Attorneys: Norman Denenberg (Appellant Graham) ---Susan J. Spahn (Endacott Peetz & Timmer) (First National Bank of Omaha) --- Edward W. Hasenjager; Howard A. Kaiman (Appellee Clarke)

Civil: breach of contract

Proceedings Below: Linda Clarke filed suit against First National Bank to recover the proceeds of a \$120,000 Certificate of Deposit (CD), which funds she claimed the bank erroneously paid to Gregg Graham. The bank joined Graham as a third party defendant, alleging that it should be reimbursed by Graham if it is found liable to Clarke. The district court granted summary judgment in favor of Clarke against First National Bank, and in favor of First National Bank against Graham.

Issues: The district court erred in (1) finding that there was no evidence that the new account agreement removing Clarke as co-owner of the C.D. and adding Graham as a payable-on-death (P.O.D.) beneficiary was actually signed and returned to the bank by the owner of the account, Hilda Graham; (2) finding that the funds from the \$120,000.00 CD were released to Graham in error; and (3) failing to apply Neb. Rev. Stat. U.C.C. ' 3-309 regarding a lost or destroyed instrument.

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