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IN THE CIRCUIT COURT OF ROANE COUNTY, WEST VIRGINIA

TRADERS BANK,

Plaintiff,

v.

SHERMAN DILS III, PAMELA DILS  
and DILS RENTALS, INC.,

Defendants.

CIVIL ACTION NO. 06-C-1  
JUDGE DAVID W. NIBER

FILED  
CIRCUIT COURT, W. VA.  
ROANE COUNTY, W. VA.  
OCT - 1 AM 10:12  
BEVERLY GREATHOUSE  
CLERK

ORDER OF CERTIFICATION

On the 8<sup>th</sup> day of September, 2008 came the Plaintiff, Traders Bank, by and through counsel, L. Jill McIntyre and Jackson Kelly, P.L.L.C. and Defendants/counterclaimants, Sherman Dils, III, Pamela Dils and Dils Rentals, Inc., by and through counsel, James R. Leach and Jim Leach, L.C., for a hearing on *Traders Bank's Motion to Dismiss and Motion for Summary Judgment*. This Court having denied the Motion by Ordered dated October 8, 2008, Traders Bank filed a *Motion for Relief from Order, Alternative Motion to Certify Question, and Motion to Stay Discovery*. Having reviewed documents and heard argument of counsel, the Court hereby FINDS that the issue of the standing of the Defendants/counterclaimants to bring a counter claim of fraud against Traders Bank substantially controls this case, there is a sufficiently precise and undisputed factual record upon which legal issues could be resolved and, therefore, certification to the Supreme Court of West Virginia is appropriate and just in this matter. IT IS THEREFORE ORDERED that *Traders Bank's Motion for Relief from Order* be DENIED, the *Motion to Certify Question* be GRANTED, and the following question be certified to the Supreme Court of Appeals of West Virginia:

Copy to  
James R.  
Jill Mc.  
10-1-09

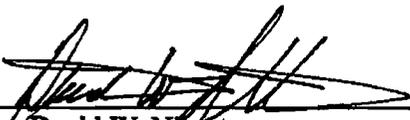
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**Question:** Where a plaintiff lender seeks to recover a debt on a promissory note, does the maker of the promissory note have standing to assert, as a defense and counterclaim, a tort claim of fraud in the inducement, on the basis that the maker relied upon the oral promise of the lender (that the lender knew or should have known would not be fulfilled), where the lender claims that it is relevant that the promise made was for the benefit of a third party, but where the counterclaimant asserts that it is the deceit by false promise, not the nature of the promise, which gives rise to standing in a tort claim of fraudulent inducement.

**Answer:** Yes

The Court further ORDERS that all further proceedings in this case be stayed until such question shall have been decided and the decision thereof certified back.

Entered this the 29<sup>th</sup> day of September, 2009.

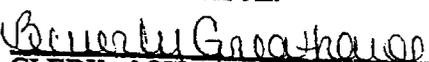
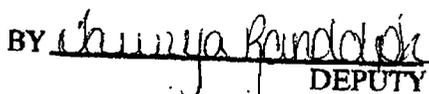
  
 \_\_\_\_\_  
 Judge David W. Nibert

Prepared by:

Entered in <sup>CIV</sup> O.O.B. No. 45 Page 374  
 this 1 day of Oct., 2009



**JAMES R. LEACH** (WVB # 6923)  
**VICTORIA J. SOPRANIK** (WVB # 7320)  
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 34 Bickel Mansion Drive  
 Parkersburg, WV 26101  
 Telephone: 304-865-8530  
*Attorney for Defendants/Counterclaimants*

TRUE COPY TESTE:  
  
 CLERK of CIRCUIT COURT of  
 ROANE COUNTY, WEST VIRGINIA  
 BY   
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