

FILED

United States Court of Appeals
Tenth Circuit

OCT 13 1988

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

DEBORAH S. TOLBERT

Plaintiff-Appellee,

V.

MARTIN MARIETTA CORPORATION,
a Maryland Corporation,

Defendant-Appellant,

ARTHUR BENJAMIN MARTINEZ,
also known as A.B. Martinez,

Third-party-defendant.

No. 86-1188
(D.C. No. 83-C-1465)
(D. Colo.)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(D.C. No. 83-C-1465)

Submitted on the briefs:

James A. Kaplan and Jack M. Wesoky, of Feuer, Flossic & Rich,
Englewood, Colorado, for Plaintiff-Appellee.

John R. Webb and Corin W. McIlnay, of Holme, Roberts & Owen,
Denver, Colorado, for Defendant-Appellant.

Before HOLLOWAY, Chief Judge, MOORE, and BRORBY, Circuit Judges

PER CURIAM.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.8. The cause is therefore ordered submitted without oral argument.

In accordance with the Colorado Supreme Court's decision in In re Tolbert v. Martin Marietta Corp., 759 P.2d 17 (Colo. 1988), the memorandum opinion and order of the United States District Court for the District of Colorado in Tolbert v. Martin Marietta Corp., 621 F. Supp. 1099 (D. Colo. 1985), is reversed and the cause remanded with directions to enter summary judgment in favor of defendant Martin Marietta Corporation.

The mandate shall issue forthwith.