

1989

# Jerry Spicer v. Michael S. Hughes : Reply Brief

Utah Court of Appeals

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BRIEF

UTAH  
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10  
DOCKET NO. 890586-CA IN THE COURT OF APPEALS  
STATE OF UTAH

JERRY SPICER	:	
	:	
Plaintiff - Appellant	:	Docket No. 890586CA
	:	
vs.	:	
	:	
MICHAEL S. HUGHES,	:	Priority No. 14b
	:	
Defendants - Respondent.	:	

APPELLANT'S REPLY BRIEF

Appeal from Judgment of the Third Judicial District Court  
in and for Salt Lake County, State of Utah  
The Honorable Scott Daniels, Judge, Presiding

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FILE

Mr. ...

Atty. Gen. ...  
Clerk of ...  
Court of Appeals



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### JURISDICTION

Appellant adopts herein the statement of "Jurisdiction" as contained in the opening Appellant's Brief, Page 1.

### STATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellant adopts herein the issues as stated in the "Statement of Issues Presented for Review" section of the opening Brief, Pages 1 and 2. The Appellant states an additional issue presented for review in light of the issues raised by the Respondent's Brief, that being:

1. Does the Statute of Frauds, Utah Code Ann. § 25-5-4, preclude enforcement of an obligation to pay the debt of a third-party where no written agreement or memorandum of agreement was introduced into evidence in a situation where a defendant offers evidence of an oral agreement and seeks enforcement of that agreement as an offset to the debt claimed by the plaintiff?

### STATEMENT OF CASE

Appellant adopts herein the "Statement of Case" as stated in the opening Appellant's Brief, Pages 1 and 2.

### DISPOSITION IN LOWER COURT

Appellant adopts herein the "Disposition in Lower Court" as stated in the opening Appellant's Brief, Page 2.

### STATEMENT OF FACTS

Appellant adopts the "Statement of Facts" as contained in the opening Appellant's Brief, Pages 2, 3 and 4.

### SUMMARY OF ARGUMENT

Under the evidence as presented in this case, there was no basis for enforcing an alleged oral agreement of the Appellant to pay the debt of a third-party corporation to the Respondent.

The lower court, having found that the Appellant provided the Respondent for his benefit the sum of Eleven Thousand Two Hundred Twenty-One Dollars and Eighty Cents (\$11,221.80), which funds were provided at the request of the Defendant, there should be implied an obligation upon the part of the Respondent to repay the sums so advanced to the Appellant.

The Appeal by the Appellant is not without merit.

### ARGUMENT

#### POINT I

Respondent, in his Brief, appears to take the position that the principle set forth in the cases cited in Appellant's Brief to the effect that "where one pays out money at the special instance and request of another, the law implies a promise on the part of the latter to repay it," upon the grounds that the facts in the cases cited by Appellant, are not exactly the same as this case.

As pointed out in Appellant's Brief and as the evidence in this case clearly shows, Appellant Spicer caused Eleven Thousand Dollars (\$11,000.00) to be paid upon behalf of the Respondent at the special request of the Respondent.

Regardless of the particular facts that might cause a court to apply principles of law, the principles do not change.

Accordingly, the proposition that there is an implied obligation to repay money advanced at the request of and for the benefit of the requesting party gives rise to an implied obligation to repay as set forth in Roussel v. Roussel, 339 P.2d 522, 527 (Okla. 1959) and Kennedy v. Conrad, 9 Montana 356, 9 P.2d 1075, 1078 (Mont. 1932).

#### POINT II

Respondent, in his Brief, overlooks the fact that the Court, in this case, entered Findings of Fact and Conclusions of Law in which the Court found that there was, at the time Appellant gave money to Hughes, by the payment of the Eleven Thousand Dollars (\$11,000.00) to a third party, United States Savings & Trust Company (hereinafter "USS&T"), a corporation, owed the defendant, Michael S. Hughes, some money. The Court then went on to make a further finding that the payment by the Appellant to the Defendant was not intended as a loan but was repayment for the past consideration furnished by the Appellant to USS&T.

In his Brief and in an attempt to persuade this Court that the findings were not only based upon evidence but that they were proper despite the Statute of Frauds, the Appellant states that the evidence at trial showed that Mr. Spicer owed Mr. Hughes money, Respondent's Brief, Page 18. The Respondent goes on to state that USS&T, of which Mr. Spicer was an officer, owed Hughes money."

There was no evidence that the Appellant, Mr. Spicer, owed the Respondent any money. To the contrary, the evidence was

to the effect that the Appellant was the President of Citram, a Florida corporation, that was looking for a merger and that any obligation to the Respondent for making arrangements for a merger were those of Citram. The testimony in this connection was:

"Q So that would have been the CITRAM side of the deal?

A Yes.

Q And so CITRAM was going to pay you a finder's fee if you could find a suitable merger partner?

A Yes, that's correct.

Q Now, did Mr. Spicer ever give you anything in writing that said if CITRAM didn't pay that fee that he would pay it to you personally?

A No, he did not."

Transcript, Page 46. In addition, the Respondent testified that while claiming that USS&T owed him money, USS&T was a corporation and that he had never received anything from the Appellant in writing wherein the Appellant agreed to personally pay any debts owed by USS&T. Transcript, Pages 48 and 49.

There is absolutely no evidence in the case of any promise by the Appellant to pay a debt of either Citram, the Florida corporation, or United States Savings & Trust, to the Respondent. There is no evidence that Appellant was an officer of USS&T.

The Law in Utah is clear that Utah Code Ann. § 25-5-4(2) requires that a promise to answer for the debt of another must be

in writing or there must be a memorandum thereof in writing signed by the party to be charged or the agreement is void and cannot be enforced. See Automotive Manufacturers Warehouse, Inc. v. Service Auto Parts, Inc. 596 P.2d 1033 at 1036 (UT 1979); Strevell-Paterson Company, Inc. v. Francis, 646 P.2d 741 at 742 (UT 1982); and SCM Lamb v. Watkins & Faber, 732 P.2d 105 (UT 1986).

### POINT III

The claim of the Appellant in this matter and the appeal from the judgment of the lower court is not meritless.

Respondent strongly urges this Court to find that the suit of the Appellant and the appeal herein is frivolous and without merit.

A review of the record in this matter, the applicable statutes and cases, and the Findings of Fact and Conclusion of Law of the Court clearly show that there is both a factual and a legal basis for the Appellant to ask this Court to reverse the judgment of the lower court and remand this case with instructions to vacate the judgment and to enter judgment for the Appellant as prayed in the Complaint.

Under the state of the evidence in this matter and the clear application of Utah Code Ann. § 25-5-4(2) to that evidence, the claim of the Appellant could hardly be said to be frivolous and without merit.

### CONCLUSION

The finding of the Court that the Respondent was entitled to take credit for the debt of a third-party corporation,

USS&T, against money paid upon his behalf by Appellant, clearly violates the provisions of §25-5-4(2) of the Utah Code Ann., and the Court having found in its first Finding of Fact that the Appellant provided the money at the request of and for the benefit of the Respondent, the lower court clearly should have implied an obligation upon the part of Respondent to repay the sum so advanced.

Under the status of this evidence and the provisions of the Code and principles of law cited herein, this Court should reverse and vacate the judgment below and remand the matter with instructions to enter judgment for Appellant as prayed for in the Complaint.

RESPECTFULLY SUBMITTED this 9th day of March, 1990.

J. H. BOTTUM & ASSOCIATES

By JS  
Joseph H. Bottum  
Attorney for Jerry Spicer,  
Plaintiff - Appellant

CERTIFICATE OF HAND DELIVERY

I certify that on the 12th day of March, 1990, a true and correct copy of the foregoing Appellant's Reply Brief in the above matter was hand delivered to:

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William M. Ferrell