

2015

**AFTON B. THOMAS, Trustee of the J.M. TRUST, Plaintiff/  
Appellant vs. JODY K. MATTENA, Defendant/Appellee. AFTON B.  
THOMAS, Trustee of the KENT E. THOMAS MARITAL TRUST,  
Plaintiff/Appellant, vs. GEORGE TENNYSON MATTENA; JODY K.  
MATTENA; and BAD LANDS BOW HUNTERS, LLC, a Utah Limited  
Liability Company, Defendants/Appellees. : Reply Brief**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

AFTON B. THOMAS, Trustee of the J.M. TRUST,  
Plaintiff/Appellant

vs.

JODY K. MATTENA,  
Defendant/Appellee.

AFTON B. THOMAS, Trustee of the KENT E. THOMAS MARITAL TRUST,  
Plaintiff/Appellant,

vs.

GEORGE TENNYSON MATTENA; JODY K. MATTENA; and BAD LANDS BOW HUNTERS, LLC, a Utah Limited Liability Company,  
Defendants/Appellees.

Court of Appeals No. 20150987

REPLY BRIEF OF APPELLANT

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, HONORABLE RYAN HARRIS CIVIL NO. 130905157 AND CONSOLIDATED CASE NO. 130905158

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UTAH APPELLATE COURTS

AUG 15 2016

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## ARGUMENT

None of the parties involved in this action dispute the trial court's factual finding that there was no meeting of the minds in relation to whether the Mattenas would be personally liable to repay the Bad Lands Loan. In accordance with the Utah legal authority cited in Ms. Thomas' opening brief, if there is no meeting of the minds, then a contract does not exist. If a contract does not exist, then the trial court cannot reform or create a new contract. Rather, the trial court should place the parties back into the position they were in before the attempted agreement was made.

The Mattenas argue that the Bad Lands Loan was properly found to be valid by the trial court, notwithstanding the fact there was no meeting of the minds regarding personal liability. This is the very issue of dispute on appeal. The record in this case (as well as the trial court's findings and conclusions) clearly establish that Ms. Thomas believed the Bad Lands Loan was being issued along with a personal guarantee from the Mattenas. On the other hand, the Mattenas believed they had no liability for the Bad Lands Loan. Thus, a misunderstanding existed.

The Mattenas, however, treat the Bad Lands Loan as a discrete and separate transaction which would have been completed even if Ms. Thomas had understood that no personal guarantee was part of the attempted agreement. Such is not the case. At all material times in this matter, Ms. Thomas proceeded with her understanding that the Bad Lands Loan included a personal guarantee. Because the trial court found there was not a meeting of the minds on this issue, the trial court should have concluded that no valid contract existed. "It is fundamental that a meeting of the minds on the integral features of

an agreement is essential to the formation of a contract. An agreement cannot be enforced if its terms are indefinite.” *Goggin v. Goggin*, 2011 UT 76, P 37, 267 P.3d 885. The Mattenas believe it was correct for the trial court to selectively enforce part of the attempted agreement, even though there was not an understanding reached regarding the personal guarantee issue. Because of the lack of a meeting of the minds, such a conclusion is not legally supportable.

In their brief, the Mattenas argue that Ms. Thomas has failed to meet her burden to marshal the evidence in support of the trial court’s findings of fact. The issue on appeal, however, is not whether there are sufficient factual findings to support the trial court’s legal conclusions. The issue raised by Ms. Thomas on appeal is whether the trial court applied the proper legal conclusion which resulted from the undisputed factual finding that there was no meeting of minds on the personal guarantee issue. Accordingly, there are no other facts to marshal. The parties have not contested the trial court’s finding that that there was no meeting of the minds.

Additionally, the Mattenas contend that the lack of a personal guarantee alone should not make contract void. Ms. Thomas does not necessarily disagree with this position as a broad statement. In this matter, however, the trial court did not find the parties intentionally agreed to a contract without a personal guarantee. In this case, the trial court determined there was never a meeting of the minds in relation to the personal guarantee. Obviously, there is a difference between a situation where parties knowingly enter into an agreement with no personal guarantees, as opposed to a situation where the parties act on a misunderstanding about whether a personal guarantee exists.

Finally, the Mattenas contend that Ms. Thomas should not be allowed to pursue equitable relief against them because that issue was never raised with the trial court. It is significant to note that potential equitable relief in this matter results directly from the trial court's finding that no meeting of minds existed on the personal guarantee issue. Consequently, equitable relief did not become an issue until the trial court made the "lack of the meeting of the minds" finding. Rather than considering equitable relief as a remedy, however, the trial court selectively enforced part of a contract that did not exist. In this case, Ms. Thomas contends the trial court erred when it selectively enforced part of the Bad Lands Loan. Instead, the trial court should have declared that no loan existed and ordered whatever relief was necessary to adjust the equities between the parties and ensure restoration of the status quo before the attempted contract negotiations.

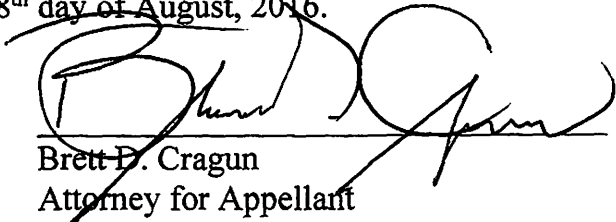
The Mattenas assert that equitable relief will likely not place Ms. Thomas in any better position than she is now in. At present, the trial court has not evaluated or ruled on what equitable relief would provide a restoration of the status quo which existed prior to the contract negotiations in this matter. It is clear that it was not only Ms. Thomas who was mistaken about the personal guarantee issue, but it was the Mattenas as well. Given the existence of a bilateral mistake, it seems fundamentally unfair for only one party to bear the full loss resulting from a mutual mistake. The trial court, however, is in the best place to make a decision on what equitable relief may be appropriate.

## CONCLUSION

It is undisputed there was no meeting of the minds in relation to the personal guarantee issue. The existence of a personal guarantee was an integral part of the parties' attempted agreement. Because of lack of the meeting of the minds, no valid contract came into existence. Because no contract existed, the trial court should not have enforced part of the attempted contract.

Based on the foregoing, Appellant respectfully requests that this Court correct the trial court's legal error which found part of a contract could be enforced. This matter should then be remanded to the trial court with instructions to determine what relief is necessary to adjust the equities between the parties and ensure restoration of the status quo that existed prior to the time the parties attempted to enter into an agreement.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of August, 2016.



Brett D. Cragun  
Attorney for Appellant




**CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1)**

1. This reply brief complies with the type-volume limitation of Utah R. App. P. 24(f) (1) because this brief contains no more than 1,020 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

2. This reply brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in font size 13 and Times New Roman type font.

DATED this 8<sup>th</sup> day of August, 2016.



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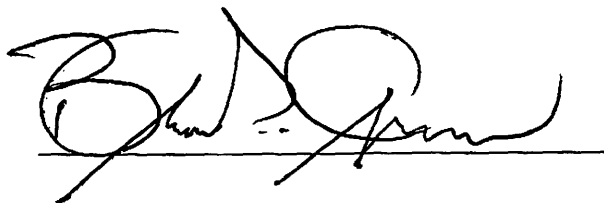
Brett D. Cragun  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of foregoing Reply Brief Of Appellant was served upon the following individual, by mail and email, postage prepaid, at the address shown below this 8<sup>th</sup> day of August, 2016.

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A handwritten signature in black ink, appearing to read "John V. Mayer", is written over a horizontal line. The signature is stylized and cursive.