

1967

M & S Construction & Engineering Company v.  
Clearfield State Bank and Vern M. Smith, et al.. :  
Supplemental Brief To Appellants Petition For  
Rehearing and Brief In Support Thereof

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#### Recommended Citation

Supplemental Submission, *M&S Construction v. Clearfield State Bank*, No. 10708 (1967).  
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IN THE SUPREME COURT OF THE STATE OF UTAH

\* \* \* \* \*

M & S CONSTRUCTION & ENGINEERING COMPANY,

Plaintiff-Appellant,

-vs-

CLEARFIELD STATE BANK,

Defendant-Respondent,

VERN M. SMITH, et al,

Additional Defendants-Appellants.

Case No. 10708

\* \* \* \* \*

SUPPLEMENTAL BRIEF TO APPELLANTS PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF

\* \* \* \* \*

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ATTORNEYS FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF UTAH

\* \* \* \* \*

W & S CONSTRUCTION AND :  
ENGINEERING COMPANY, :

Plaintiff- :  
Appellant, :

-vs-

Case No.  
10708

WARFIELD STATE BANK, :

Defendant- :  
Respondent, :

WERNER M. SMITH, et al, :

Additional :  
Defendants- :  
Appellants. :

\* \* \* \* \*

SUPPLEMENTAL BRIEF

\* \* \* \* \*

Upon reviewing the materials presented to the Court by Appellant in seeking rehearing, it has become evident that there are facts and circumstances which should be pointed out in order that the Court may better understand Appellants' position, and this Supplemental material is now set forth for the purpose of making Appellants' position more clear to the Court.

At the trial of this matter, Appellant alleged agreement to finance, which was subsequently breached by the Bank. At the conclusion of a three-day trial, the jury specifically found, in answer to Interrogatories:

1. That there was a definite agreement, and
2. That it had been breached by the Bank.

Damages were thereafter fixed by the jury in the amount of One Hundred Fifty-Six Thousand Dollars (\$156,000.00). Following Defendants' Motion for Judgment Notwithstanding the Verdict, the Court ruled that the agreement found by the jury to have been in existence between the parties was barred by the Statute of Frauds and an Order for Judgment Notwithstanding the Verdict was entered.

It is the position of Appellant that during the course of this lengthy and expensive trial, all evidence and testimony essential to this Court's making a determination of the Statute of Frauds question was presented and received by the trial court and made a part of the record, and that such determination is and should be made by this court as a question of law, without the necessity of a new trial. The question put to this Court on appeal is whether or not the trial court erred in making a determination that the agreement violated the Statute of Frauds. This question has not been answered by this Court. Once a determination has been made as to the existence of a contract and as to its terms there is no useful purpose in ordering a new trial since the only issue is solely a question of law.

As stated earlier in this brief, it appears  
clear that the one year provision of the Statute  
Frauds is a question of law and not a question  
of fact once the terms of the agreement are found  
to be the trier of the facts.

It is respectfully submitted that no useful  
purpose is served by ordering a new trial.

Respectfully submitted,

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