

<p>District Court, Saguache County, State of Colorado  Court Address: PO Box 197, 501 4th Street, Saguache, CO 81149</p> <hr/> <p><b>Plaintiff:</b> CHAD R. ROBISON, sole trustee, for his successors in trust, under the CHAD R. ROBISON living trust, dated July 22, 2013, and any amendments thereto</p> <p><b>v.</b></p> <p><b>Defendants:</b> CIRCLE T LAND COMPANY, LLLP; TONSO FARMS; and STEVEN R. TONSO</p>	<p>DATE FILED: April 21, 2016 10:57 AM  CASE NUMBER: 2015CV30020</p> <hr/> <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No: 2015CV30020</p> <p>Division 3</p>
<p align="center"><b>Order: Granting Defendants’ Motion for Summary Judgment</b></p>	

THIS MATTER came before the Court on March 31, 2016 for argument on the Defendants’ Motion for Summary Judgment, filed January 9, 2016. The Plaintiff, Chad R. Robison, is represented by Erich Schwiesow, Esq., of ERICH SCHWIESOW, P.C. The Defendants — Circle T. Land Company, LLLP; Tonso Farms; and Steven R. Tonso — are represented by Michael R. Waters of Waters, Kubik & Cassens, LLC. Having reviewed the motion, the response, the reply, the attached exhibits, and heard argument, the Court enters the following undisputed facts and conclusions of law:

**Undisputed Facts**

1. In the summer of 2015, the Plaintiff Chad Robison began negotiating with Defendant Steven R. Tonso of Tonso Farms for several things — including, the purchase of the real and personal property at issue in this case; the use of the Tonso Farms name; transfer of existing leases; seed for the 2016 crop; and transfer of going concerns, such as current employees.
2. During negotiations, the parties met in person, spoke on the phone, exchanged emails and text messages. *See* Robison, Aff. ¶ 3.
3. On June 16, 2015, Mr. Tonso emailed Mr. Robison the “preliminary proposed terms as [he] understand[s] them.” Ex. A, at 7. The email specified the selling price (nine million dollars) among other things. *Id.* Mr. Tonso concludes by saying:

I am sure that it won’t look like this or be this simple when the accountants and lawyers get done with it, but it is a start! I hope this all agrees with what you were thinking and the direction you want to go. Like I said, it is a start. Let’s get ‘er done! This basic formula looks good to me. . . .

With best regards,

Steve Tonso

*Id.* at 8.

4. On June 23, 2015, Mr. Robison responded with additional proposed terms, including the following: a description of the property, namely “11 quarters of land”; a modified payment schedule; an agreement to purchase life insurance to cover outstanding payments; a break-down of the selling price; proposed collateral; and other things. Ex. A, at 4-6.
5. On June 24, 2015, Mr. Tonso responded that the proposed collateral was insufficient. Ex. A, at 4. The email concludes: “Steve.” *Id.* Except for the collateral, the parties agreed that everything else looked good at this point. *See* Ex. A, at 3-4.
6. On June 26, 2015, Mr. Robison sent email an email addressing the collateral. Ex. A, at 3.
7. On June 29, 2015, Mr. Tonso responded:

Chad,

Just got back in town from a long weekend up at the cabin. We can make the collateral work, house stays in it, seconds on ground if we need to. Not to worry. Everything is still good to go. Let’s keep kicking the can down the road. Is it time to put together some sort of contract? I meet with my attorney on 7/22. Let me know where you are on all of this. Sounds like we are getting close.

Let’s get ’er done!

Steve

Ex. A, at 3.

8. Also on June 29, 2015, Mr. Robison responded: “Ya I think we are, as my dad says ‘put pen to paper’. I think we got all major things covered.” Ex. A, at 2.
9. Although Mr. Tonso suggested that he could have his attorney prepare a formal contract, it is undisputed that the parties never completed such a contract.
10. On July 6, 2015, Mr. Robison sent an email identifying himself as the “sole trustee” for the CHAD R. ROBISON living trust, dated July 22, 2013, and any amendments thereto. Ex. A, at 2.
11. On July 13, 2015, Mr. Tonso emailed Mr. Robison, indicating that he received a “substantially larger offer” to sell his Potato Packing Facility, his farm, and the crop as a

“package deal.” Ex. A, at 1. He indicated that he no longer intended to sell the property to Mr. Robison.

### Conclusions of Law

The Defendants contend that they are entitled to summary judgment on the Plaintiff’s claims for breach of contract and estoppel. They argue that these claims are barred by the statute of frauds.

The statute of frauds requires, as relevant here, a signed writing. C.R.S. § 38-10-108; *Luttgen v. Fischer*, 107 P.3d 1152, 1155 (Colo. App. 2005). “If a law requires a signature, an electronic signature satisfies the law.” C.R.S. § 24-71.3-107(4). An “electronic signature” is a symbol or process “adopted by a person with the intent to sign the record.” C.R.S. § 24-71.3-102(8), C.R.S. 2015.

The Court agrees with the Defendants and adopts the reasoning of their Reply, filed March 2, 2016. In particular, the Court notes that there is no genuine issue as to whether the Mr. Tonso had the requisite intent when he included his typed name in the email exchange. Contrary to the Plaintiff’s argument, “[t]here must be a showing that the signer intended to do a legally significant act.” *Regions Bank v. Cabinet Works, L.L.C.*, 92 So. 3d 945, 956; *see also J.B.B. Inv. Partners, Ltd. v. Fair*, 232 Cal. App. 4th 974, 988-91, 182 Cal. Rptr. 3d 154, 164-66 (2014), *as modified* (Dec. 30, 2014), *review denied* (Apr. 15, 2015). Neither the email chain nor the Plaintiff’s affidavit support any inference that Mr. Tonso intended to enter into a binding agreement. Therefore, the Court concludes that the Defendants are entitled to summary judgment.

But, the statute of frauds is not a defense to a promissory-estoppel claim. *See Am. Pride Co-op. v. Seewald*, 968 P.2d 139, 142 (Colo. App. 1998). For that reason, the Court does not grant summary judgment on the claim for estoppel.

**IT IS THEREFORE ORDERED THAT** the Court GRANTS summary judgment on the Plaintiff’s claim for breach of contract.

**IT IS FURTHER ORDERED THAT** the Court denies the motion for summary judgment on the estoppel claim.

Done this April 21, 2016



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Martin A. Gonzales  
District Judge – 12<sup>th</sup> Judicial