

IN THE COURT OF APPEALS OF IOWA

No. 9-406 / 89-151

FILED

OCT 24 1989

CLERK SUPREME COURT

JEROME MARTIN; ROXANNE MARTIN, INC.; JEROME, INC.; MARTIN
SHEET METAL, INC.; QUAD CITY SPOTTING SERVICE, INC.; JOHN
BOAST, INC.; and JOHN BOAST;

Plaintiffs-Appellants,

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vs.

HAROLD ABDO, WILLIAM CALLAHAN, RICHARD SCHULTZ, FIRST
NATIONAL BANK OF MOLINE,

Defendants,

and SECURITY STATE TRUST AND SAVINGS BANK.

Defendant-Appellee.

Appeal from the Iowa District Court for Scott County,
L. D. Carstensen, Judge.

Defendants appeal a district court judgment dismissing
their claim for recovery of an illegal payment to obtain a
loan from defendant Security State Trust and Savings Bank.
AFFIRMED.

Jack E. Dusthimer of Carlin, Hellstrom & Bittner,
Davenport, for appellants.

H. Reed Doughty of Winstein, Kavensky, Wallace &
Doughty, Rock Island, Illinois, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SACKETT, J.

The sole issue in this appeal is whether defendant-appellee Security Bank's guilty plea to a charge of failing to report a currency transaction established, for purposes of a subsequent civil suit, the bank's knowledge of the use of the cash to make an illegal payment to secure a loan. We find it did not. We affirm.

These suits involved a series of claims seeking judgment by plaintiffs-appellants for illegal payments made to secure loans. Plaintiffs-appellants filed suit against Harold Abdo, William Callahan, Richard Schultz, and First National Bank of Moline, seeking return of the illegal payments. The action was tried in the district court and judgments were entered in favor of the plaintiffs against William Callahan and Richard Schultz. The district court dismissed plaintiffs' claims against the Security Bank.

This appeal is limited to a challenge to that part of the trial court's finding that determines the Security Bank board had no knowledge of the illegal loan payments by persons who were officers of the Security Bank. Plaintiffs-appellants contend the trial court was bound to give preclusive effect to the plea defendant Security Bank made to the charge in federal court.¹

1. The bank pled guilty to violations of 31 C.F.R. §§ 103.22, 103.25 and 31 U.S.C. § 5322(a). 31 C.F.R. § 103.22 (1980) provides in relevant part: "Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than \$10,000."

Plaintiffs-appellants contend the plea established defendant Security Bank's knowledge of the illegal payments.

Issue preclusion may be available in subsequent litigation by nonmutual parties. Hunter v. City of Des Moines, 300 N.W.2d 121, 125 (Iowa 1981). In determining whether it should be applied, consideration should be given to whether

(1) Treating the issue as conclusively determined would be incompatible with an applicable scheme of administering the remedies in the actions involved;

(2) The forum in the second action affords the party against whom preclusion is asserted procedural opportunities in the presentation and determination of the issue that were not available in the first action and that might likely result in the issue's being differently determined;

(3) The person seeking to involve favorable preclusion, or to avoid unfavorable preclusion, could have effected joinder in the first action between himself and his present adversary;

(4) The determination relied on as preclusive was itself inconsistent with another determination of the same issue;

(5) The prior determination may have been affected by relationships among the parties to the first action that are not present in the subsequent action, or was based on a compromise verdict or finding;

(6) Treating the issue as conclusively determined may complicate determination of issues in the subsequent action or prejudice the interests of another party thereto;

(7) Other circumstances make it appropriate that the party be permitted to relitigate the issue.

Hunter v. City of Des Moines, 300 N.W.2d at 125 (citing Restatement (Second) of Judgments § 88 (Tent. Draft No. 2, 1975)).

We agree the bank's plea of guilty to the offense of failure to report a currency transaction constitutes an admission of all the elements of the criminal charge. See LaMagna v. United States, 646 F.2d 775, 778 (2d Cir. 1981); United States v. \$15,896.00 in U.S. Currency, 545 F. Supp. 92, 93 (N.D.N.Y. 1982). It also establishes Security Bank's knowledge of the reporting requirement and the bank's intentional violation of the duty to report. United States v. Warren, 612 F.2d 887, 890 (5th Cir.), cert. denied, 446 U.S. 956, 100 S. Ct. 2928, 64 L. Ed. 2d 815 (1980). Security Bank would be estopped from making any claim in another action that there was a misunderstanding or lack of intent on those issues. United States v. \$31,697.59 Cash, 665 F.2d 903, 906 (9th Cir. 1982).

But in determining whether the doctrine of issue preclusion is applicable in this case we must first consider whether the four prerequisites necessary for utilization of the doctrine were sufficiently established. See Bertran v. Glens Falls Ins. Co., 232 N.W.2d 527, 533 (Iowa 1975). See generally In re Evans, 267 N.W.2d 48, 51 (Iowa 1978). First, the issue concluded must be identical. Hunter, 300 N.W.2d at 125. We find the issues are not identical. The issue in the first instance was the bank's knowledge of a cash transaction. The issue in this instance was knowledge the cash involved in the cash transaction was used to make an illegal payment to obtain a loan. The issues are not identical.

Second, the issue must have been raised and litigated in the prior action, and third, it must have been material and relevant to the disposition of the prior action. Finally, the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. Hunter, 300 N.W.2d at 126.

The issue of the purpose of the cash transaction was not litigated in the first action. The issue of the use of the cash was not material or relevant to the prior action and a determination of the issue was not material or essential to the judgment.

We affirm the trial court.

AFFIRMED.