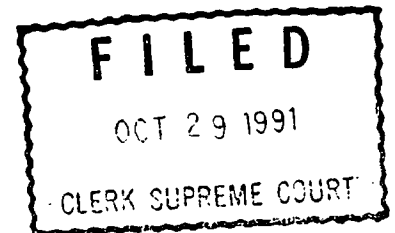


IN THE COURT OF APPEALS OF IOWA

No. 1-221 / 90-1370



HUMISTON GRAIN CO.,
Plaintiff-Appellee,

vs.

ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC.,
Defendant-Appellant.

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ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC.,
Counterclaim-plaintiff-Appellant,

vs.

HUMISTON GRAIN CO., and ROBERT GREER,
Counterclaim-defendants-Appellees.

HUMISTON GRAIN CO.,
Third-Party Plaintiff-Appellee,

vs.

JAMES EARNEST, d/b/a EARNEST INSURANCE AGENCY,
Third-Party Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County,
J. R. Curnan, Judge.

Defendant appeals a district court judgment ordering it to pay plaintiff for equipment rental and ruling that plaintiff does not have to pay defendant property damages for a semitrailer destroyed in an accident. **AFFIRMED.**

James M. Heckmann of Bauer and Heckmann, P.C., Dubuque,
for appellant.

Eric M. Knoernschild of Hintermeister & Knoernschild,
Muscatine, for appellees Humiston Grain Co. and Robert
Greer.

Chris J. Scheldrup of Moyer & Bergman, Cedar Rapids,
for appellee James Earnest.

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

SCHLEGEL, J.

On May 24, 1988, Humiston Grain Company and Rowley Interstate Transportation Company entered into an independent contractor agreement. The written lease provided that Humiston would lease its 1982 Mack semitractor to Rowley and, with its own driver, would haul Rowley's trailers and cargo. Under the agreement Humiston would be paid a percentage of revenues earned in hauling the freight. The agreement provided that Humiston would furnish liability insurance and Rowley would furnish cargo insurance. There is disagreement as to whether the agreement concerned who would carry collision insurance on Rowley's trailers.

After executing this agreement Humiston contacted its insurance agent, James Earnest. Earnest telephoned Rowley and spoke with Vicki Woods concerning the insurance provisions. Woods informed Earnest that Humiston was to provide liability coverage and that Rowley would provide cargo and physical damage coverage. She did not specify Rowley's policy deductibles or subrogation provisions. Acting on Woods' information Earnest did not procure additional collision coverage for Rowley. Earnest did not read paragraph 8 of the lease agreement which provides:

8. As between Carrier [Rowley] and Owner [Humiston] only, without any regard or affect to the obligations of Carrier to any third party, Owner agrees to be responsible for any and all loss incurred by Carrier which may arise from, or in connection with, the operations performed or to be performed pursuant to this agreement; which may be deducted from settlement, if the loss results

from the negligence of the Owner, or its agent, or if the Owner or its agent are involved in the loss. This is to include, but is not limited to, attorney fees and any other expenses incurred in defending or processing a claim arising as a result of any of the above operation of the equipment leased herein. A complete, written explanation and itemization of any deduction for the aforementioned loss will be provided to the Owner before any deduction from monies due the Owner.

(Emphasis added.)

On August 11, 1988, Humiston employee Robert Greer was driving the Humiston semitractor and pulling a Rowley-owned trailer. Due to his negligence, Greer collided with a train and destroyed Rowley's trailer. Damage to the trailer was \$32,000. As a set-off for that loss, Rowley withheld \$8,633.91 due and owing Humiston.

Humiston instituted this lawsuit and demanded the money it earned hauling Rowley's cargo. Rowley then filed a counterclaim seeking recovery for the loss to its trailer under alternate theories of breach of contract, negligence, and bailment. Rowley added the driver, Greer, as a defendant to its counterclaim. Humiston later joined James Earnest as a third-party defendant and alleged malpractice for not obtaining the proper coverage.

After a hearing and post-trial rulings the court held that because Rowley's employee, Woods, had advised Earnest that Rowley carried collision insurance on its trailers, Rowley was estopped from seeking damages on any of its theories of recovery. The court entered judgment in favor of Humiston for \$8,633.91 and dismissed Humiston's third-party action as moot.

Our scope of review is on assigned error only. Iowa R. App. P. 4.

I. Rowley asserts that Vicki Woods' statements were true and Rowley did carry collision insurance on its trailers. Rowley argues that under paragraph 8 of the lease Humiston still bore the ultimate responsibility for the loss regardless of who carried insurance. Even if Humiston had insurance, Rowley notes, Rowley (who would have to pay its deductible) or Rowley's carrier (under its policy subrogation provisions) would have a viable claim against Humiston.

Paragraph 8 of the contract provides that Humiston agrees to be responsible for any and all losses incurred by Rowley which may arise from, or in connection with, the operations performed pursuant to the agreement. This included loss resulting from the negligence of Humiston Grain or its agent. The trial court found "[t]his provision creates liability in Humiston Grain Co. unless the conversation between Vicki and Earnest estopped Defendant Rowley Interstate Transportation Company, Inc., from recovering." We agree.

The essential elements of estoppel are a false representation or concealment of material facts, lack of knowledge of the true facts on the part of the actor, intention that the representation be acted upon, and reliance by the party to whom the representation was made to its prejudice and injury. Bricker v. Maytag Co., 450 N.W.2d

839, 841 (Iowa 1990) (citing Fernandez v. Iowa Dep't of Human Servs., 375 N.W.2d 701, 708 (Iowa 1985)). Estoppel is based on the premise that one who has made certain representations should not later be permitted to change position to the prejudice of one who has relied thereon. Pillsbury Co. v. Ward, 250 N.W.2d 35, 39 (Iowa 1977). This principle is used when injustice would otherwise result. Id.

The exact language of the conversation between Woods and Earnest is not clear from the record. It is clear, however, that Woods conveyed to Earnest that Rowley would provide property loss insurance. Earnest and Humiston had no reason to doubt this statement and had no knowledge of any fact to the contrary. See Dierking v. Bellas Hess Superstore, 258 N.W.2d 312, 316 (Iowa 1977). Earnest identified himself to Woods, and it was evident the reason he called was to determine what insurance should be purchased by Humiston.

We believe Humiston relied on Woods' statement and for that reason did not purchase property loss insurance. See Iowa-Illinois Gas and Elec. Co. v. Iowa State Commerce Comm'n, 412 N.W.2d 600, 606 (Iowa 1987). Had Woods advised Earnest that Rowley was not purchasing property loss insurance or, alternatively, that Humiston was to purchase property loss insurance, Humiston would have done so. Under those circumstances the trailer loss would have been covered by Humiston's insurance and no claim relating to the trailer loss would have arisen. We find the representation by Woods

to Earnest was to the prejudice of Humiston and to its injury.

Woods was clearly an employee of Rowley. She was mentioned as being involved with Rowley's insurance in an earlier conversation between Humiston and Rowley, and she was the party to whom Earnest was referred for insurance purposes on his phone call. Despite Rowley's contentions, she was clearly clothed with authority and knowledge in that area by her employer.

Rowley employees testified there were normally two separate, written leases involved in carrier lease arrangements with owner-operators: one lease for the tractor and another for the trailer. The lease in this situation clearly indicates that the only equipment involved with the agreement is the Humiston tractor. The fact that there was normally a separate trailer lease executed in these transactions by Rowley may have led Woods to mistakenly believe she gave the correct answer to Mr. Earnest. However, the fact remains that the representation here was false.

We conclude Humiston has proven all the elements of estoppel by clear, convincing, and satisfactory evidence. See Manson State Bank v. Diamond, 227 N.W.2d 195, 201 (Iowa 1975). Rowley is estopped from recovering from Humiston.

II. Rowley also argues that even if it cannot recover on its breach of contract claim, its negligence and bailment claims are separate and distinct theories of recovery. We

determine these claims are defeated by our finding of estoppel. Rowley is estopped from any recovery by its false representation to Humiston that coverage would be provided by Rowley.

III. Rowley points out that Humiston's defenses are not applicable to Robert Greer, the driver. Rowley asks that the district court be reversed and the judgment be entered against Humiston and also against Greer. This issue was not raised in Rowley's combined motion for enlargement of findings of fact and conclusions of law, for reconsideration, and for new trial and is, therefore, waived. State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974).

IV. Finally, Rowley asks that this case be remanded for reconsideration of the dismissal of Humiston's cross-petition against Earnest. The record in this case shows that Rowley's claims against Humiston are totally independent of any claim that Humiston may have against its insurance agent. Rowley was not aggrieved by the trial court's ruling that Humiston's cross-petition against Earnest was moot. Whether or not Rowley obtained judgment against Humiston, only Humiston could determine whether a claim would be brought against Earnest. Therefore, only Humiston had the standing to object to the trial court's determination that the malpractice action was moot. We affirm the trial court on this issue.

V. For the reasons above, we affirm the trial court on all issues. Humiston shall have a judgment against Rowley

in the sum of \$8,633.91. Rowley's counterclaim is dismissed.

AFFIRMED.