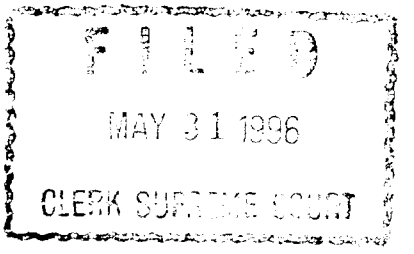
IN THE COURT OF APPEALS OF IOWA

No. 5-511 / 94-611



ROLLING HILLS FS, INC.,
Plaintiff-Appellee,

vs.

RICHARD HARDIN a/k/a, RICHARD HARDEN,
Defendant-Appellant.

RICHARD HARDEN,
Counter-Plaintiff-Appellant,

vs.

ROLLING HILLS FS, INC., RONNIE C. FRY, Credit Manager, and JOHN KNOBLOCH,
Counter-Defendants-Appellees.

Appeal from the Iowa District Court for Wayne County, J.W. Jordan, Judge.

Richard Harden appeals a district court ruling dismissing his counterclaim for damages against Rolling Hills FS, Inc. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

Richard Harden, Lineville, pro se.

Lori L. Koop of Morain, Burlingame, Pugh & Koop, West Des Moines, for appellees.

Considered by Habhab, P.J., and Cady and Huitink, JJ. Streit and Vogel, JJ., take no part.

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CADY, J.

Richard Harden appeals the decision of the district court dismissing his counterclaim for damages. We affirm in part, reverse in part and remand.

Richard Harden purchased two propane tanks from Rolling Hills FS, Inc. The tanks were paid for in full on February 25, 1991. Due to an accounting error, Rolling Hills believed Harden still owed $50 for the tanks and kept sending him notices requesting the payment of $50. Eventually, Harden refused to pay Rolling Hills for propane fuel he had received in order to show his protest of the billing for the propane tanks.

On October 18, 1993, Rolling Hills filed a small claims action against Harden alleging he owed $284 for propane fuel. On December 8, 1993, Rolling Hills discovered its accounting error regarding the tanks and sent a letter to Harden notifying him of this fact. The company continued to request that Harden pay for the propane fuel.

On December 15, 1993, Harden filed what he designated to be a counterclaim against Rolling Hills; John Knobloch, the general manager; and Ronnie Fry, the credit manager. In the counterclaim, he alleged Rolling Hills had engaged in improper and fraudulent credit practices by continuing to bill him for money he did not owe. He claimed he was entitled to treble damages due to the possibility Rolling Hills could have attempted to repossess the fuel tanks. He also claimed the company's credit

tactics caused him emotional distress. In addition, Harden sought punitive and exemplary damages. He asked to have the case transferred to district court.

A magistrate entered judgment against Harden for $284 in the small claims action on December 17, 1993. The magistrate ordered that the counterclaim be tried in district court by regular procedure. Harden's motion to reconsider was denied by the magistrate. Harden did not appeal the judgment in the small claims action.

Harden filed a motion to amend his counterclaim. He sought to add allegations against Lori Koop, the attorney for Rolling Hills, and Marvin Foster, a salesman for the company. He also filed a motion for a default and judgment. He claimed Rolling Hills was not registered to do business in Iowa and was prohibited, under Iowa Code section 490.1502, from using the courts to maintain an action. He stated Rolling Hills had been issued a certificate of dissolution by the State because it failed to file an annual report in 1990.

On March 18, 1994, the district court denied Harden's pending motions. The court granted the motion of the counterclaim-defendants to dismiss the counterclaims. The court found Harden's counterclaim was improper because it did not have a sufficient nexus to the original action. Harden was advised by the court that his claims regarding the billing for the fuel tanks would be more properly raised in a separate action. The court also denied Harden's motion for reconsideration. Harden then filed the present appeal.

I. Harden contends the district court erred by dismissing his counterclaim. He believes the court improperly concluded he could only bring a counterclaim if it was sufficiently connected to the small claims action. He asks to have his counterclaim reinstated.

This case was initially filed as a small claims action. Iowa Code section 631.7(4) (1993) provides, in part:

> The rules of civil procedure pertaining to actions, joinder of actions, parties and intervention shall apply to small claims actions, except that rule 29 shall not apply.

Rule 29 deals with compulsory counterclaims, which are claims arising out of the transaction or occurrence that is the basis for the opposing party's claim. *Cummings v. Schafer,* 511 N.W.2d 888, 889 (Iowa App. 1993). Under section 631.7(4), a party is not required to bring all compulsory counterclaims in a small claims action. *Harris v. Jones,* 476 N.W.2d 54, 55 (Iowa 1991).

At the same time, section 631.7(4) does not restrict the types of counterclaims a party may raise when the original filing is a small claims action. By stating only rule 29 does not apply, obviously rule 30, regarding permissive counterclaims, does apply. Rule 30 states:

> Unless prohibited by rule or statute, a party may counterclaim against an opposing party on any cause of action held by him when the action was originally commenced, and matured when pleaded.

A counterclaim is said to be matured when the holder of a cause of action may be entitled to a legal remedy. *Galloway v. Zuckert,* 424 N.W.2d 437, 440 (Iowa 1988).

In the present case there were no allegations Harden's claims were not held by him at the time Rolling Hills' action was commenced, or that they were not matured. Harden's counterclaim was a permissive counterclaim, and we conclude the district court erred by dismissing it on the ground there was not a sufficient nexus to the original claim by Rolling Hills. Permissive counterclaims necessarily involve different matter from the original proceeding and should generally be allowed.

II. Harden also claims the district court should not have denied his request to amend his counterclaim petition to add additional defendants and allegations.

Under rule 88, the privilege of amending pleadings after a responsive pleading is not a matter of right; it can be done only by leave of opposing counsel or the court. *In re Marriage of Fields*, 508 N.W.2d 730, 732 (Iowa 1993). The trial court has considerable discretion in granting or denying a motion for leave to amend. *Porter v. Good Eavespouting*, 505 N.W.2d 730, 732 (Iowa 1993). We will reverse only when a clear abuse of discretion in shown. *Id.*

The crucial determination in determining whether a proposed amendment should be allowed is whether the amendment substantially changes the issues before the court. *Allison-Kesley Ag Center, Inc. v. Hildebrand*, 485 N.W.2d 841, 845-846 (Iowa 1992). The proposed amendment involved allegations of fraud by a lawyer in filing an answer to the counterclaim, and would have substantially changed the issues before the court. Accordingly, we find no abuse of discretion in the district court's denial of Harden's request to amend his counterclaim petition.

III. Harden contends the district court should have granted his motion for a default against certain counterclaim-defendants. His claim for default is based on the failure of Koop, Foster, and Knobloch, to answer his amended petition. Because the court denied his request to amend the petition, however, these counterclaim-defendants had no responsibility to answer the amended petition. The district court correctly determined a default was not warranted.

IV. Harden's motion for judgment could be considered a motion for summary judgment. In the motion he alleges Rolling Hills was not properly licensed to do business in Iowa because the State issued it a certificate of dissolution on September 14, 1990, for failure to file a 1990 annual report. He claims Rolling Hills is thus prohibited from using the courts to bring or maintain an action in Iowa.

Section 490.1502(1) provides:

> A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

By its very terms, this section applies only to *foreign corporations*, which is a corporation incorporated under the laws of a state other than Iowa. The section does not apply to individuals, sole proprietorships, partnerships, domestic corporations, or any other entity other than foreign corporations.

Here, Harden admits Rolling Hills was incorporated under the laws of Iowa, and thus it is a domestic corporation, and not a foreign corporation. The fact that Rolling Hills was temporarily issued a certificate of dissolution by the State does not

change it from a domestic corporation to a foreign corporation. We conclude section 490.1502 does not apply to Rolling Hills. We affirm the decision of the district court denying Harden's motion for summary judgment.

V. Harden challenges the small claims judgment in this appeal. We determine his appeal of the small claims judgment is untimely, because no appeal was taken within thirty days of that judgment.

VI. Harden raises several other issues in his appeal. We find these issues were not raised before the district court, and were not preserved for our review. Therefore, we do not address them on appeal.

In summary, we reverse the decision of the district court which dismissed Harden's counterclaim and remand for further proceedings. We make no findings on the merits of the counterclaim. We affirm the portions of the district court decision which denied his request to amend the counterclaim petition, denied his motion for default against certain counterclaim-defendants, and denied his motion for summary judgment. Costs of this appeal are assessed one-half to each party.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.