

6/6/06

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**JOE COMES, RILEY PAINT, INC., an
Iowa Corporation, SKEFFINGTON'S
FORMAL WEAR OF IOWA, INC., an
Iowa Corporation, PATRICIA ANNE
LARSEN,**

Plaintiffs,

Vs.

MICROSOFT CORPORATION,

Defendant.

CASE NO. CL82311

**RULING & ORDER ON PLAINTIFFS'
MOTION FOR COLLATERAL
ESTOPPEL**

FILED
POLK COUNTY, IA.
2006 JUN -6 AM 8:39
CLERK DISTRICT COURT

Now on the 17th day of April, 2006, this matter came before the Court for hearing in regard to the Plaintiffs' Motion requesting that the court find that certain facts have been collaterally estopped from being litigated in the present litigation. The parties were present by their respective counsel.

At issue are numerous findings of fact which were found by the United States District Court for the District of Columbia in 1999 in the case of the *United States v. Microsoft Corporation*, 84 F.2d 9(D.D.C. 1999). In a bifurcated decision Judge Jackson of the United States District Court for the District of Colombia first made 412 findings of fact that were approved by a preponderance of the evidence.

In the present case the Plaintiffs requested the Iowa District Court, the Honorable Artis

Reis, to apply the doctrine of collateral estoppel and foreclose Microsoft from relitigating 352 of the 412 factual findings made in the action in the United States District Court. Judge Reis granted the motion and collaterally estopped and precluded Microsoft from relitigating the 352 factual findings. The Defendants then appealed this ruling to the Iowa Supreme Court. That Court on January 27, 2006, reversed the decision of the district court finding that the district court did not properly apply the offensive use of collateral estoppel and “drifted away from the doctrine’s original intent.” *Comes v. Microsoft Corporation*, 709 N.W.2d 114, 119 (Iowa 2006).

The Iowa Supreme Court in its ruling recognized that collateral estoppel may be invoked if four pre-requisites are met:

- (1) The issue concluded must be identical;
- (2) The issue must have been raised and litigated in the prior action;
- (3) The issue must have been material and relevant to the disposition of the prior action; and
- (4) The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Comes v. Microsoft Corporation, 709 N.W.2d 114, 118 (Iowa 2006). The Iowa Supreme Court found that the fourth requirement of the collateral estoppel analysis was misapplied by the district court. The Court found that some of the findings made by the district court were not facts upon which the case turned nor were they deemed vital or crucial to the ultimate issue precluded – that Microsoft violated the antitrust laws for unlawful monopoly maintenance of operating systems from the period of 1995-1998. *Comes v. Microsoft Corporation*, 709 N.W.2d 114, 120 (Iowa

2006). In addition, the Court found that before collateral estoppel can be applied offensively, the Court must also consider whether treated in issue or fact as conclusively determined will complicate the determination of other issues in the subsequent action or prejudice the interest of the defending party. *Id.*

The Iowa Supreme Court also noted the danger in giving preclusive effect to a lengthy list of subsidiary facts as such a lengthy list could be very prejudicial to a defendant. *Id.* In its review of the 336 findings of fact, the Iowa Supreme Court found “an inordinate number of such findings.” *Id.* at 120. Therefore, the Court found that since the district court did not properly apply the necessary and essential standard and further did not properly consider the potential prejudice inherent in such a lengthy list of subsidiary facts, the district court’s order was reversed and the case was remanded back to the district court with directions. *Id.*

The directions that have been given to this Court by the Iowa Supreme Court to determine which facts were actually recognized by the parties in the federal action in the United States District Court for the District of Columbia as the issues in dispute and which were necessary to the final judgment.

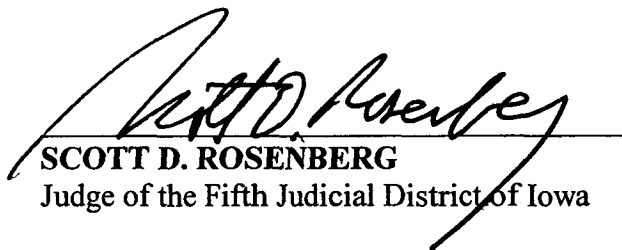
Clearly, this Court must, therefore, determine which facts as determined by the United States District Court were actually recognized by the parties as important and as by the trier as necessary to the judgment. By using this standard and rule the Court can then protect the “parties” from the dangers of innocuous, subsidiary facts because it only precludes such facts as were truly disputed in the first proceeding.” *Comes v. Microsoft Corporation*, 709 N.W.2d 114, 121 (Iowa 2006).

In the hearing held on April 17, 2006, the plaintiffs requested the Court to apply collateral estoppel to 220 findings of fact. The Defendant in this matter concedes only 16 findings of fact.

The Court has reviewed each and every finding of fact sought to be collaterally estopped by the Plaintiff and those conceded by the Defendant. In reviewing these findings of fact, the Court has applied the rules as set out by the Iowa Supreme Court in its decision which remanded the matter back to this Court for determination.

The Court, using the numerical sequence referred to by both parties at the hearing in this matter, finds that the following findings of fact are hereby collaterally estopped from being relitigated: 18, 33-36, 45-47, 50-55, 57-60, 62-63, 66-68, 74-76, 90-95, 100-106, 110-111, 115-116, 120-125, 130, 132, 134, 143-145, 148, 154, 156-161, 164, 166-167, 170, 173-177, 192, 194, 203, 208, 213-218, 221, 228-230, 241-245, 253-258, 261-262, 271-272, 287-289, 291, 293-294, 298, 301, 304-306, 308-309, 337, 339-340, 342-345, 349-352, 355-357, 360, 372, 376-377, 394, 396-397, 400-402, 404-407, 409-412.

Dated this 5th day of June, 2006


SCOTT D. ROSENBERG
Judge of the Fifth Judicial District of Iowa

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