

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

US FOODSERVICE,	:	APPEAL NO. C-080995
	:	TRIAL NO. A-0703333
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
HEIDI SOLORIA,	:	
	:	
Defendant-Appellant,	:	
	:	
and	:	
	:	
HSTH INC., dba BUFFALO	:	
ROADHOUSE,	:	
	:	
and	:	
	:	
TERRY HUBER,	:	
	:	
Defendants.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Heidi Soloria appeals from the trial court’s judgment against her on a personal guaranty that Soloria had executed to US Foodservice.

Soloria and Terry Huber had partnered to form HSTH, Inc., and through HSTH, the two operated a Buffalo Wings N’ Rings restaurant. HSTH had contracted with US

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Foodservice for various food and supply items for the restaurant. Both Soloria and Huber had executed a personal guaranty accompanying their contract with US Foodservice. The guaranty provided that both Soloria and Huber would be personally responsible for any debts owing from HSTH to US Foodservice. It further provided that Soloria and Huber could be removed from liability on this guaranty by providing written notice of termination to US Foodservice.

In 2002, Soloria sold her stock in HSTH to Huber. At that time, she spoke to someone at US Foodservice and provided notice that she had sold her share of the business to Huber and that she was no longer responsible for the account. Soloria could not remember to whom she had spoken or what department within US Foodservice she had called. Soloria testified that this employee had informed her that she did not need to take any further action. Soloria further notified Joseph Czanik, her account representative with US Foodservice, that she had sold her share of the business. At the time that Soloria sold her share to Huber, HSTH had a zero balance with US Foodservice.

After Soloria left the business, Huber, over a period of time, incurred a debt of approximately \$28,000 with US Foodservice. US Foodservice filed a suit seeking to enforce the personal guaranty from Soloria and Huber to satisfy this debt. Following a trial to the bench, the court entered judgment in the amount of \$28,516.72 against Soloria. In turn, the trial court granted Soloria a judgment against Huber for the same amount.

Soloria now appeals, arguing in her sole assignment of error that the trial court erred in entering judgment against her. Soloria specifically argues that US Foodservice waived the written termination requirement and that the doctrine of equitable estoppel entitled her to relief from judgment.

To be removed from liability on her personal guaranty, Soloria had to provide US Foodservice with written notice of termination. Soloria does not dispute that she failed to provide the requisite written notice, and she has failed to demonstrate that US Foodservice made any representations that would have waived this written requirement.

Although Soloria spoke to a US Foodservice representative over the telephone and gave notice that she had sold her share in HSTH, she could not remember to whom she had spoken. And Soloria never referred to the personal guaranty or gave notice that she wanted to revoke it. Under these circumstances, the representative could not have waived the requirement for written notice of termination. Soloria further notified her US Foodservice account representative that she had sold her share of HSTH, but she again failed to refer to revocation of the personal guaranty. Further, Joseph Czanik, the account representative, testified that he was unaware of the requirement that the personal guaranty be terminated in writing. Czanik could not have waived, on behalf of US Foodservice, a requirement of which he was unaware.

We further conclude that Soloria failed to demonstrate the applicability of equitable estoppel. The doctrine of equitable estoppel is designed to “prevent relief when one party induces another to believe certain facts exist and the other party changes his position in reasonable reliance on those facts to his detriment.”<sup>2</sup> To demonstrate equitable estoppel, a plaintiff must show “(1) that the defendant made a factual misrepresentation, (2) that the misrepresentation was misleading, (3) that it

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<sup>2</sup> *Doe v. Archdiocese of Cincinnati*, 116 Ohio St.3d 538, 2008-Ohio-67, 880 N.E.2d 892, ¶17, quoting *State ex rel. Chavis v. Sycamore City School Dist. Bd. of Edn.* (1994), 71 Ohio St.3d 26, 34, 641 N.E.2d 188.

induced actual reliance which was reasonable and in good faith, and (4) that it caused detriment to the relying party.”<sup>3</sup>

As we have already noted, Soloria gave notice that she had sold her share in HSTH to two US Foodservice representatives. But neither of these representatives made factual misrepresentations sufficient to satisfy the elements of equitable estoppel.

We recognize that the judgment against Soloria is harsh, as she had attempted to take the necessary steps to remove herself from any future liability to US Foodservice. But given the absence of a waiver of the written notice requirement and the inapplicability of equitable estoppel, we are constrained to overrule Soloria’s assignment of error.

The judgment of the trial court is, reluctantly, affirmed.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on September 2, 2009

per order of the Court \_\_\_\_\_.

Presiding Judge

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<sup>3</sup> *Daniels v. Bertke Elec. Co.* (Mar. 13, 1998), 1st Dist. No. C-970419.