

IN THE IOWA DISTRICT COURT FOR DES MOINES COUNTY

<p>FARM BUREAU PROPERTY &amp; CASUALTY INSURANCE COMPANY,</p> <p>Plaintiff,</p> <p>v.</p> <p>RANDY MURDOCK AND PRECISION EQUIPMENT, LLC,</p> <p>Defendants.</p>	<p>Case No. LALA004411</p> <p><b>RULING ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT</b></p>
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This matter is before the Court on Defendant Precision Equipment, LLC’s (“Precision”) Motion for Summary Judgment filed on October 14, 2014. The matter was set for hearing on December 17, 2014. Plaintiff Farm Bureau Property & Casualty Insurance Company (“Farm Bureau”) was represented by attorney Michelle D. Hurley. Precision was represented by attorneys Adam D. Zenor and Holly Brown. Attorney William J. Cahill appeared on behalf of Defendant Randy Murdock, who had not yet been dismissed from the case, but did not participate in the hearing.

At the conclusion of the hearing, the matter was deemed submitted on Precision’s Motion for Summary Judgment, Memorandum of Authorities, Statement of Undisputed Facts, and Appendix filed on October 14, 2014; Farm Bureau’s Statement of Disputed Fact and Memorandum in Support of Resistance filed on November 7, 2014; and all other matters required to be considered by Rule 1.981(3), Iowa R.Civ.P., insofar as such are made a part of this record.

## **BACKGROUND FACTS AND PROCEEDINGS**

On or about July 2, 2012, Plaintiff's insured, Gregory McLaughlin, purchased a 2009 Case IH model 8120 axial flow combine ("Combine") from Precision. Sometime prior to this date, Precision had purchased the Combine from Defendant Randy Murdock. On September 12, 2012, the Combine started on fire, resulting in damages to the Combine. A post fire investigation revealed that "air deflector" safety equipment, required to have been installed per a Product Improvement Program Bulletin issued by Case IH Agriculture, had been removed from the Combine prior to McLaughlin's purchase. It is unclear who removed the air deflectors.

On August 4, 2014, Plaintiff filed a Petition alleging negligent misrepresentation against both Defendants. Defendant Murdock was dismissed from the action in a court order dated January 14, 2015. Precision now moves for summary judgment.

## **SUMMARY JUDGMENT STANDARD**

Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment on the merits as a matter of law. Rule 1.981(3), Iowa R. Civ. P.; Behr v. Meredith Corp., 414 N.W.2d 339, 341 (Iowa 1987). The burden of demonstrating the nonexistence of a material fact is upon the moving party. Willow Tree Investments, Inc. v. Wagner, 453 N.W.2d 641, 642 (Iowa 1990). In determining whether a genuine issue of material fact exists which would preclude the granting of a motion for summary judgment, a court is required to view all material before it in the light most favorable to the non-moving party. Bates v. Allied Mutual Ins. Co., 467 N.W.2d 255 (Iowa 1991); Merriam v. Farm Bureau Ins. Co., 793 N.W.2d 520, 522 (Iowa 2011).

The requirement of a "genuine issue of fact" means the evidence is such that a reasonable trier of fact could find for the nonmoving party. Fees v. Mutual Fire and Auto. Ins. Co., 490

N.W.2d 55, 57 (Iowa 1992). An issue of fact is “material” only when the dispute is over facts that might affect the outcome of the suit, given the governing law. Fees, 490 N.W.2d at 57; Junkins v. Brandstad, 421 N.W.2d 130, 132 (Iowa 1988). The materiality issue must be decided by reference to applicable substantive law, and only fact disputes that might affect the outcome of the suit under governing law will properly preclude the entry of judgment. Behr, 414 N.W.2d at 341. A fact issue is generated if reasonable minds could differ on how the issue should be resolved. Hofer v. Wisconsin Educational Association Insurance Trust, 470 N.W.2d 336, 338 (Iowa 1991); Scheckel v. Jackson County, Iowa, 467 N.W.2d 286, 289 (Iowa App. 1991).

With the foregoing in mind, the Court must view the entire record in the light most favorable to the nonmoving party. Des Moines Register and Tribune Co. v. Dwyer, 452 N.W.2d 491, 495 (Iowa 1996). However, once the movant satisfies the burden of production demonstrating no genuine issue of material fact exists, the burden shifts to the resisting party to produce specific facts showing that a genuine issue for trial remains. Konz v. Ehly, 451 N.W.2d 504, 506 (Iowa App. 1989). Even if a material issue of fact exists, when “the conflict in the record consists only of the legal consequences flowing from the undisputed facts, entry of summary judgment is proper.” Hofer v. Wisconsin Educ. Assn. Ins. Trust, 470 N.W.2d 336, 338 (Iowa 1991); Scheckel v. Jackson County, Iowa, 467 N.W.2d 286, 289 (Iowa App. 1991).

### **DISCUSSION**

Precision argues that summary judgment is appropriate because no genuine issue of material fact exists and negligent misrepresentation is an inappropriate claim against Precision because it is a retailer.

“The tort of negligent misrepresentation does not apply to sellers of products but rather is limited to those in the business or profession of supplying information for the guidance of

others.” Huck v. Wyeth, 850 N.W.2d 353, 371 (Iowa 2014). “Liability based on the tort of negligent misrepresentation was limited to those persons in the business of supplying information versus persons who give information incidental to selling goods.” Id. at 372 (citing Nelson v. DeKalb Swine Breeders, Inc., 952 F.Supp. 622, 628 (N.D.Iowa 1996) (applying Iowa law to hold that the tort of negligent misrepresentation does not apply to sellers of products).

It is undisputed that Precision is a "dealer of merchandise;" a retailer. Pl. Statement of Disputed Facts and Memorandum, at 4. However, Plaintiff contends that Clark v. McDaniel, in which the Iowa Supreme Court allowed a misrepresentation claim against a used car dealer, is analogous to the present case. Clark v. McDaniel, 546 N.W.2d 590 (Iowa 1996). A review of this case shows that the claim sustained against the used car dealer was not negligent misrepresentation, but fraudulent misrepresentation. Id. Clark v. McDaniel, therefore, is less on point than Huck v. Wyeth, quoted above.

Plaintiff argues that summary judgment is inappropriate because the identity of the person or entity that removed the air deflectors from the Combine is an outstanding disputed fact. In this case, however, this disputed fact is irrelevant to the applicable law, that is, the type of defendant against which the tort of negligent misrepresentation may be brought. Plainly, Precision is a seller of products, and not one “in the business or profession of supplying information for the guidance of others.” Huck at 371.

Precision has met its burden to demonstrate that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law.

Defendant Precision Equipment, LLC’s Motion for Summary Judgment is granted.

IT IS SO ORDERED.

Dated and signed this 25<sup>th</sup> day of March, 2015.

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/s/ JOHN M. WRIGHT  
JUDGE, EIGHTH JUDICIAL DISTRICT OF IOWA



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** LALA004411  
**Case Title** FARM BUREAU PROPERTY & CASUALTY VS MURDOCK & PRECISION EQUIP

So Ordered

A handwritten signature in blue ink, appearing to read "John M. Wright", written over a horizontal line.

John M. Wright, District Court Judge,  
Eighth Judicial District of Iowa