

**IN THE IOWA SUPREME COURT**

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**SUPREME COURT NO. 22-1721**

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**BRADSHAW RENOVATIONS, LLC**

Plaintiff, Counterclaim Defendant, and Appellant,

v.

**BARRY GRAHAM and JACKLYNN GRAHAM,**

Defendants, Counterclaim Plaintiffs, and Appellees

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Appeal from the Iowa District Court for Polk County  
Case Number LACL148948,  
Judge Sarah Crane

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**APPELLEES'/CROSS-APPELLANTS' REPLY BRIEF**

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## REPLY TO APPELLANT’S BRIEF ON CROSS-APPEAL

Bradshaw concedes Grahams’ argument with respect to billing entries dated June 18, 19, 23, and 29, 2020. Bradshaw Reply Br. at 34. These fees total \$389.50. The District Court awarded only half of this amount. Therefore, the District Court’s attorney fee award should be reversed at least with respect to the addition of \$194.75 to the Grahams’ fee award.

The four remaining disputed entries are as follows:

1/10/22	Zach Hermsen	“Detailed review of invoices and Jacki’s notes and preparing trial strategy and summary spreadsheet for trial exhibit.”	\$986
1/11/22	Zach Hermsen	“Continued detailed review and analysis of invoices, receipts, and Jacki’s notes.”	\$783
1/21/22	Zach Hermsen	“Drafting Attachment A to discovery responses.”	\$1,073
1/21/22	Zach Hermsen	“Drafting Attachment A to discovery responses.”	\$500
<b>TOTAL:</b>			<b>\$3,342</b>

The Grahams seek attorney fees pursuant to Iowa Code section 714H.5. This attorney-fee statute instructs the court to award fees and costs incurred in the “action” based on “the novelty and difficulty of the issues in the case,” and “the circumstances of the case.” Iowa Code § 714H.5(2).

The District Court endorsed a bright-line mathematical formula to award only ½ of any fee entries that arguably overlapped, in any manner, with the Grahams’ claim for breach of contract (as distinguished from the

Grahams' consumer fraud claim under section 714H). [*See* District Court's Fee Order 10/7/22 at 6; App. 126]. Bradshaw uses a similar rationale to argue that the above fee entries should only be awarded at ½ rate. Bradshaw Reply Br. at 34-35.

The District Court and Bradshaw's analysis fails to consider the full "circumstances of the case" as required by Iowa Code section 714H.5(2). The billing entries above were for the undersigned counsel's detailed review of Bradshaw's invoices and receipts, and the preparation of a damages spreadsheet that allocated 95% of its analysis to the Grahams' consumer fraud damages, and 5% to the Grahams' breach of contract damages. [*See* Fee and Cost App. 9/13/22; App. 108-114] [*See also* Ex. 8; App. 492-503]. As argued at trial, the breach of contract action had nothing to do with Bradshaw's invoices and receipts; rather, the breach of contract action solely focused on whether Bradshaw performed work defectively that needed to be repaired. [*See* Grahams' Closing Argument, 8/25/22 Transcript at 59:20-60:8 ("Our damages. Breach of contract. That's [the Grahams' construction expert] Mr. Parlee's – the high range of his numbers. I'm the Grahams' attorney. I'm going to push for the high range. The lower range would be in that \$23,000 range. Quite frankly, we're fine with anything in that range.... [W]e believe the better way to calculate that is to say what's it actually going to cost to have

to fix this now? And it's that number.")] The attorney fee entries above are 95% focused on Bradshaw's billing practices (i.e., the consumer fraud claim) – NOT on Bradshaw's workmanship (i.e., the breach of contract claim). Therefore, when considering the entire "circumstances of the case" as required by section 714H.5(2), these fees should be awarded to the Grahams in their entirety.

### **CONCLUSION**

Each of the billing entries at issue were overwhelmingly focused on Bradshaw's billing practices and the Grahams' consumer fraud claim. Accordingly, when considering the entire "circumstances of the case" as required by section 714H.5(2), those fees should have been awarded to the Grahams in their entirety pursuant to the consumer fraud statute's attorney-fee provision at section 714H.5(2). The Grahams request that this Court reverse the District Court's Fee Order dated October 7, 2022 only with respect to those limited billing entries outlined in the Grahams' Brief, for a total additional award to the Grahams of \$1,865.75, and affirm the District Court's Fee Order in all other respects.

Respectfully submitted,

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## CERTIFICATE OF COST

The undersigned hereby certifies that the cost of printing the foregoing Defendants' -Appellees' Reply Brief is \$ 0.00.

/s/ Zachary J. Hermsen

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Defendants' -Appellees' Reply Brief was served upon the attorneys of record listed below by electronic filing and electronic delivery to the parties via the EDMS system on June 26, 2023, pursuant to Iowa R. App. P. 6.902(2) and Iowa R. Elec. P. 16.101(1).

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## **CERTIFICATE OF FILING**

The undersigned hereby certifies that the foregoing Defendants'-Appellees' Reply Brief was filed with the Iowa Supreme Court by electronically filing the same on June 26, 2023, pursuant to Iowa R. App. P. 6.902(2) (2013) and Iowa Ct. R. 16.1221(1).

/s/ Zachary J. Hermsen

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This forgoing Defendants'-Appellees' Reply Brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman 14-point font and 613 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Zachary J. Hermsen

June 26, 2023  
Date