

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 17-2009

STANDARD WATER CONTROL SYSTEMS, INC.

Plaintiff/Counterclaim Defendant-Appellee,

v.

MICHAEL D. JONES and CORI JONES,

Defendants/Counterclaim Plaintiffs-Appellants.

APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY
THE HONORABLE LAWRENCE MCLELLAN

**APPELLEE'S APPLICATION FOR FURTHER REVIEW FROM THE
DECISION OF THE COURT OF APPEALS DATED FEBRUARY 6, 2019**

Jodie C. McDougal AT0001570
Elizabeth R. Meyer AT0010139
DAVIS BROWN LAW FIRM
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
Email: JodieMcDougal@DavisBrownLaw.com
Email: ElizabethMeyer@DavisBrownLaw.com

ATTORNEYS FOR PLAINTIFF, STANDARD
WATER CONTROL SYSTEMS, INC.

QUESTIONS PRESENTED FOR FURTHER REVIEW

1. Does Iowa Code Section 561.21(3) permit the collection of attorney fees, interest, and costs of the action that are included within a mechanic's lien judgment through judicial sale of a homestead?

2. Did Defendant-Appellees, Michael and Cori Jones ("the Joneses") waive their right to argue that collection of attorney fees, interest, and costs of the action that were included in the original mechanic's lien judgment is not permitted through judicial sale of a homestead by failing to raise this defense prior to the District Court's entry of such judgment granting foreclosure on the mechanic's lien, inclusive of principal, interest, costs, and attorney fees, against their homestead?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR FURTHER REVIEW2

TABLE OF AUTHORITIES5

STATEMENT SUPPORTING FURTHER REVIEW5

STATEMENT OF THE CASE.....7

STATEMENT OF THE FACTS9

 I. THE DISTRICT COURT’S JUDGMENT ENTRY9

 II. THE JONESES’ FIRST APPEAL11

 III. INITIAL LITIGATION REGARDING THE SHERIFF’S SALE11

 IV. THE DISTRICT COURT’S NEW AWARD OF ATTORNEY FEES14

 V. SECOND SPECIAL EXECUTION AND MOTION TO VACATE WRIT .15

ARGUMENT16

 I. THE COURT OF APPEALS’ INTERPRETATION OF SECTION 561.21(3) CONTRADICTS PRIOR PRECEDENT, UNDERMINES PROTECTIONS GRANTED UNDER CHAPTER 572, AND SHOULD BE REVERSED ON FURTHER REVIEW16

 A. The Court of Appeals’ Decision Conflicts with *Moffitt v. Denniston & Partridge Co.*16

 B. The Court of Appeals’ Decision That Attorney Fees Cannot Be Recovered Through Judicial Sale of the Homestead Pursuant to Iowa Code Section 561.21(3) Is Inconsistent with Legislative Intent, Undermines Provisions of Chapter 572, And Should Be Reversed on Further Review17

 1. The Legislative History of Section 561.21 Demonstrates That the Entire Amount Covered by a Mechanic’s Lien is a “Debt” Which Can Be Satisfied Through Judicial Sale of a Homestead.....18

 a. A “Mechanic’s Lien” Consists of Principal, Interest, Costs, and Court-Approved Attorney Fees18

 b. Iowa Code Section 561.21(3) Was Intended to Permit Satisfaction of All Amounts Included in a Mechanic’s Lien Through Judicial Sale of a Homestead20

 II. THE COURT OF APPEALS’ DECISION CONTRADICTS PRECEDENT GOVERNING WAIVER OF THE HOMESTEAD DEFENSE AND RES JUDICATA, AND SHOULD BE REVERSED ON FURTHER REVIEW25

CONCLUSION27
CERTIFICATE OF COMPLIANCE.....29
CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE30

TABLE OF AUTHORITIES

Cases

<u>Aalfs Wall Paper & Paint Co. v. Bowker</u> , 162 N.W.33 (Iowa 1917).....	21
<u>City Drywall Corp. v. C.G. Smith Constr. Co.</u> , 270 N.W.2d 608, 613 (Iowa 1978)	19
<u>Deerfield Construction Co. v. Crisman Corp.</u> , 616 N.W.2d 630, 633 (Iowa 2000)	20
<u>Francksen v. Miller</u> , 297 N.W.2d 375 (Iowa 1980).....	7, 26, 27, 28
<u>In re Keane</u> , 7 B.R. 844, 851 (N.D. Iowa Bankruptcy 1980)	22, 23, 24
<u>Moffitt v. Denniston & Partridge Co.</u> , 294 N.W. 731 (Iowa 1940) 6, 17, 18, 21, 22, 24, 25	
<u>Rohlin Const. Co., Inc. v. Lakes, Inc.</u> , 252 N.W.2d 403, 406 (Iowa 1977)	20
<u>S. Hanson Lumber Co. v. De Moss</u> , 111 N.W.2d 681, 684 (Iowa 1961).....	20
<u>Scheffert v. Scheffert</u> , 840 N.W.2d 726, 2013 WL 5508538, *2-3 (Iowa Ct. App. Oct. 2, 2013)	7, 26, 27
<u>Standard Water Control Systems, Inc. v. Jones</u> , 2018 WL 739330 at * 1 (Iowa Ct. App. Feb. 7, 2017)	8, 9, 15
<u>Standard Water Control Systems, Inc. v. Jones</u> , 888 N.W.2d 673, 675 (Iowa Ct. App. 2016)	8, 9, 11
<u>W.P. Barber Lumber Co. v. Celandia</u> , 674 N.W.2d 62, 64 (Iowa 2003)	19
<u>Willverding v. Offineer</u> , 87 Iowa 475, 478–79, 54 N.W. 592, 593 (1893).....	19

Statutes

Iowa Code § 561.21	22, 25
Iowa Code § 572.2	19
Iowa Code § 572.26	19
Iowa Code § 572.32	21

STATEMENT SUPPORTING FURTHER REVIEW

Pursuant to Iowa Rule of Appellate Procedure 6.1103, Plaintiff-Appellee, Standard Water Control Systems, Inc. (“Standard”) requests that the Iowa Supreme Court grant its application for further review of the Iowa Court of Appeals Decision filed on February 6, 2019 (“the Decision”).

The Court of Appeals erred in determining that Iowa Code Section 561.21(3) does not permit the collection of attorney fees, interest, and costs of the action that are included within a mechanic’s lien judgment through judicial sale of a homestead. The Decision conflicts with a decision of this Court in Moffitt v. Denniston & Partridge Co., 294 N.W. 731 (Iowa 1940). Additionally, interpretation of this provision of the Iowa Code, as it relates to attorney fees, is an important question of law that has not been, but should be, settled by the Iowa Supreme Court. Finally, the Decision also presents an issue of broad public importance due to its effect on parties that furnish work on Iowa homes, and who are intended to be protected under Chapter 572. Under the reasoning adopted by the Iowa Court of Appeals, contractors furnishing work on homesteads are, in practical effect, deprived of the attorney fee shifting protection intended under Chapter 572.

The Court of Appeals also erred in determining that the Joneses had not waived the homestead defense by failing to raise it prior to the District Court’s

judgment entry granting foreclosure on the Joneses' home to satisfy Standard's full mechanic's lien judgment. The Court of Appeals' Decision in this regard conflicts with Francksen v. Miller, 297 N.W.2d 375 (Iowa 1980) and Scheffert v. Scheffert, 840 N.W.2d 726, 2013 WL 5508538, *2-3 (Iowa Ct. App. Oct. 2, 2013).

STATEMENT OF THE CASE

This case concerns the third appeal in a matter originating from work performed by Standard to waterproof the basement of a home owned by the Joneses.

In their first appeal, the Joneses challenged the District Court's judgment in favor of Standard *in personam* and *in rem*, based upon Standard's mechanic's lien, the Joneses' breach of their contract with Standard, and the District Court's award of attorney fees through trial. See Standard Water Control Systems, Inc. v. Jones, 888 N.W.2d 673, 675 (Iowa Ct. App. 2016). In the first appeal, the Court of Appeals affirmed the District Court's judgment on the merits, but remanded to the District Court on the issue of attorney fees. Id. at 679.

The Joneses' second appeal concerned the District Court's award, after remand, of attorney fees through trial, and attorney fees associated with the first appeal. Standard Water Control Systems, Inc. v. Jones, 2018 WL 739330 at * 1 (Iowa Ct. App. Feb. 7, 2017)(Slip Opinion)(“Standard II”). The Iowa Court of Appeals affirmed on both issues. Id.

The third appeal by the Joneses concerns Standard Water's efforts to execute on its judgment against the Joneses in district court. In short, the Joneses—after never appealing inclusion of attorney fees in the *in rem* judgment against the home in the first appeal, and having previously successfully argued that uncertainty regarding the amount of attorney fees should cause the District Court to set aside the first sheriff's sale of the home—argued that attorney fees, interest and court costs, should never have been allowed as a lien on a homestead. The Joneses' homestead argument was raised for the first time over *two years* after the District Court's judgment entry. The District Court concluded that the language of Iowa Code Section 561.21(3) does not permit the collection of attorney fees, costs of the action and interest that are included in a mechanic's lien judgment through judicial sale of a homestead, but found that the Joneses' arguments were barred in this case by the doctrine of judicial estoppel, law of the case, and waiver/res judicata.

The Court of Appeals reversed the District Court, (1) concluding that the doctrines of waiver and res judicata did not apply under the circumstances in this case to bar the Joneses' arguments, and (2) agreeing with the District Court's conclusion that Iowa Code Section 561.21(3) prohibits the collection of attorney fees, interest, and costs of the action included in a mechanic's lien judgment through judicial sale of a homestead.

The District Court and Court of Appeals improperly construed Iowa Code Section 561.21. Further, the Court of Appeals erred in reversing the District Court's ruling that the Joneses were barred from arguing that attorney fees could not be recovered by Standard Water through judicial sale of the home due to their previous failures to raise homestead rights as a defense in the mechanic's lien foreclosure action.

STATEMENT OF THE FACTS

Basic facts of the underlying litigation in this matter are set forth in the Court of Appeals' opinions in the first two appeals in this case. See Standard, 888 N.W.2d at 675; Standard II, 2018 WL 739330 at *1-2. Facts relevant to the present appeal are procedural in nature, and are detailed below.

I. THE DISTRICT COURT'S JUDGMENT ENTRY

On February 16, 2015, the District Court entered a Judgment Entry ("Judgment Entry") in this matter for an *in personam* money judgment against the Joneses inclusive of the following amounts: (1) the principal amount of \$5,400, plus prejudgment interest at the rate of 12% per annum from July 15, 2013 through the date of judgment; (2) Standard Water's attorney fees in the amount of \$43,835.25; (3) costs of \$299.04; (4) all other accruing attorney fees and costs related to sale of the Joneses' home via sheriff's sale; and (5) post-judgment interest. (App. 90-91)

The Judgment Entry further stated in relevant part as follows:

FURTHER, IT IS ORDERED, ADJUDGED, AND DECREED that Standard is entitled to foreclosure of its mechanic's lien dated July 21, 2013. . .on the single family dwelling owned by the Joneses with the locally known address of 2910 Mahaska Ave., Des Moines, Polk County, Iowa 50317 ("Property"); that Standard is entitled to an *in rem* judgment and a foreclosure of the Mechanic's Lien **in the full and total amount of the aforementioned money judgment**, together with all accruing interest, costs and fees. . .

(App. 91 (emphasis added))

The Judgment Entry further stated that:

FURTHER, IT IS HEREBY ORDERED that this court shall issue Special Execution for sale of the Property; that a Sheriff's Sale shall be held for the sale of the Property; that a Sheriff's Deed shall issue to the purchaser at such Sale; that all proceeds from the Sheriff's Sale of the property shall be used to satisfy, in part or in whole, the judgment in favor of Standard set forth herein. . .IT IS FURTHER ORDERED that all rights, titles or interests of whatever kind or nature of all Defendants shall be forever barred and foreclosed, subject only to the rights of redemption as provided by law and the rights of the appearing junior lienholders to any surplus funds.

(App. 91-92)

The Joneses did not challenge the validity of the Court's entry of an *in rem* judgment against their home in an amount inclusive of fees, interest and costs, nor did they challenge the Court's express directive that a sheriff's sale of their home occur, with the proceeds used to cover the full and total amount of the judgment.

II. THE JONESES' FIRST APPEAL

As noted above, in their first appeal the Joneses did not appeal the Court's judgment with regard to the Court's entry of an *in rem* judgment against their home and entry of a decree of foreclosure covering the full amount of Standard Water's judgment, including interest, costs, and its attorney fees. In its decision on the first appeal dated August 31, 2016, the Iowa Court of Appeals noted that:

[t]he district court found the Joneses were in breach of contract and entered judgment in personam against the defendants for \$5400 plus interest at twelve percent and attorney fees in the amount of \$43,835.25. **The district court concluded Standard Water was entitled to in rem judgment against the property for the same amount and entitled to foreclose the mechanic's lien.**

Standard, 888 N.W.2d at 675. The Court of Appeals remanded this matter to the District Court only for further consideration of the amount of attorney fees awarded and affirmed the remainder of the District Court's Judgment Entry. Id. at 679.

III. INITIAL LITIGATION REGARDING THE SHERIFF'S SALE

On October 21, 2015, a sheriff's sale of the home occurred ("First Sheriff's Sale"). (App. 107) Prior to the First Sheriff's Sale, and likewise following the First Sheriff's Sale, the Joneses did not raise any objection to the First Praecipe or First Writ being inclusive of principal, interest, costs, and attorney fees. At the First

Sheriff's Sale, Standard Water submitted the winning (credit) bid of \$45,000; and thereafter, the one-year redemption period began. (See *id.*)

When the one-year redemption period was nearing its end, and just after the Court of Appeals entered its Decision on the First Appeal, the Joneses filed a Motion to Set Aside Sale ("Motion to Set Aside Sale") on August 31, 2016. (App. 120) Nowhere in their Motion to Vacate Sale, or in their Supplemental Memorandum of Authorities in support of such motion filed on September 27, 2016, did the Joneses challenge the inclusion of attorney fees, or interest or costs, in the *in rem* judgment against their home, the First Praecipe, or the First Writ of Execution. (*Id.*; App. 152) Instead, in the Motion to Vacate Sale, the Joneses argued that the First Sheriff's Sale should be set aside because the issue of the amount of attorney fees had been remanded, expressly noting that "[p]art of the basis of the execution on the Joneses' Property was the attorney fee award." (*Id.*)

The Joneses argued specifically that the First Sheriff's Sale must be vacated and set aside because they could not know the amount necessary to redeem the home until the District Court re-determined the amount of attorney fees that would be awarded to Standard. The Court detailed the Joneses' position in its later Order on the Motion to Set Aside Sale, expressly stating, in pertinent part, as follows:

The Joneses argue that depending upon the district court's review of the request for attorney fees the Jones might have the ability to redeem the property as provided under Iowa Code 528.3. Presently the

Jones state that they cannot financially afford to redeem with the present attorney fee award.

* * * *

Jones counter by noting that . . . [t]his is their home and they cannot financially afford to post an appeal bond or pay the disputed amount to the clerk of court under Iowa Code section 628.21. They further argue that the amount to be paid to the clerk of court is not known in light of the court of appeals' decision. They further argue that depending upon the supreme court's decision and/or the district court's decision upon remand the Jones would be entitled to a new bidding process. . . . Depending upon the new ruling the Jones may be able to bid on the property. Finally, this is the Jones' home and to allow the sheriff's sale to stand knowing they cannot afford to exercise their right to redeem effectively makes them homeless.

(App. 156-57)

In their Motion to Set Aside Sale, the Joneses thus acknowledged that attorney fees, interest, and costs were a proper part of the judgment being foreclosed and of the judgment amount that the Joneses would need to pay the Clerk of Court to redeem the home.

The Joneses were successful in their position. On September 28, 2016, the Court granted the Joneses' Motion to Vacate Sale ("Order on Motion to Vacate Sale"). Therein, the Court vacated the First Sheriff's Sale and ordered that a new sheriff's sale must occur after the amount of attorney fees had been finally determined, thereby requiring Standard Water to start over in its execution efforts.

(App. 158)

IV. THE DISTRICT COURT'S NEW AWARD OF ATTORNEY FEES

On remand, Standard Water and the Joneses further litigated the amount of attorney fees that should be awarded to Standard Water. On March 24, 2017, the Court entered its Order Re: Trial Attorney Fees, Appellate Attorney Fees and Sheriff's Sale ("March 24 Order"). In its March 24 Order, the Court also addressed the issue of a new sheriff's sale, requiring that Standard Water follow normal statutory procedures to foreclose, but reducing the Joneses redemption period to 90 days. (App. 182-83)

The Joneses appealed the March 24 Order, with regard to the amount of attorney fees awarded to Standard following remand for work through trial, and with regard to appellate attorney fees. Throughout their appellate filings in the second appeal, the Joneses did not dispute or object to the fact that the attorney fees awarded would be a part of the judgment satisfied from sale of their home, arguing repeatedly that they will face homelessness due to the amount of fees awarded. (App. 246, 295)

As noted above, the Court of Appeals affirmed the District Court's March 24, 2017 Order regarding fees awarded. Standard II, 2018 WL 739330 at *3.

V. SECOND SPECIAL EXECUTION AND MOTION TO VACATE WRIT

On May 30, 2017, Standard Water filed a Praecipe for Special Execution, inclusive of principal, interest¹, costs², and fees³. (App. 185) A Special Execution was issued on June 6, 2017, and a sheriff's sale scheduled for August 22, 2017. (App. 190)

On August 10, 2017, just twelve days before the scheduled sheriff's sale, the Joneses filed a Motion to Vacate Writ of Special Execution, arguing **for the very first time in this matter**, that the attorney fees, interest and costs that were plainly included in the *in rem* judgment entered on their home cannot be recovered via special execution, because the home is the Joneses' homestead. Standard resisted their Motion to Vacate Writ, and the District Court first denied the Motion because the Joneses had not established the home was their homestead. (App. 316-17)

On August 22, 2017, a second sheriff's sale took place. Standard was the successful bidder, with a credit bid of \$45,000. (App. 324-27)

On August 22, 2017, the Joneses filed a Motion to Reconsider ("Motion to Reconsider")(App. 319), which Standard resisted. (App. 336)

¹ Per the Praecipe, pre-judgment interest totaled \$935.97, plus post-judgment interest of \$3.10/day running from February 16, 2015. Presently, the total interest owed by the Joneses is several thousands.

² Costs, as set forth in the Praecipe, totaled \$1,036.61.

³ Attorney fees, as set forth in the Praecipe, consisted of \$41,670.25 in trial fees and \$17,283.44 in appellate fees.

On November 12, 2017, the District Court entered its Order denying the Joneses' Motion to Reconsider on the grounds of judicial estoppel, law of the case, and waiver/res judicata. (App. 374)

ARGUMENT

I. THE COURT OF APPEALS' INTERPRETATION OF SECTION 561.21(3) CONTRADICTS PRIOR PRECEDENT, UNDERMINES PROTECTIONS GRANTED UNDER CHAPTER 572, AND SHOULD BE REVERSED ON FURTHER REVIEW

A. The Court of Appeals' Decision Conflicts with Moffitt v. Denniston & Partridge Co.

Further review is appropriate because the Court of Appeals' decision conflicts with a decision of this Court in Moffitt v. Denniston & Partridge Co., 294 N.W. 731 (Iowa 1940).

While the Court of Appeals focused on the issue of attorney fees, it affirmed the District Court's conclusion that section 561.21(3) does not allow a homestead to be sold to recover **attorney fees, costs of the action, or interest that may have been entered as a judgment** against the home in a foreclosure action under chapter 572." (Decision at p. 9 (emphasis added)). As previously noted, the awarded costs exceed \$1,000 and the awarded interest is several thousands, as the *in personam* judgment continues to remain unsatisfied by the Joneses four years after it was entered.

In Moffitt v. Denniston & Partridge Co., the Iowa Supreme Court affirmed a district court's decision that a defendant's homestead could be sold to satisfy a judgment that consisted of (1) principal owed on a promissory note for the price of materials furnished for the improvement of the defendants' homestead, (2) **interest** on the note, and (3) **costs**. Id. at 731, 734. The Moffitt court recognized that the interest and costs were a part of a "debt. . . incurred for work done or material furnished exclusively for the improvement of the homestead."

Notably, Moffitt was decided under a version of Iowa's homestead statute with language identical to Iowa Code section 561.21(3) as it exists today. Id. at 732. The Court of Appeals provided no rationale for why this Court's prior decision in Moffitt--that interest and court costs were part of the debt that could be satisfied through judicial sale of a homestead--should be abandoned.

B. The Court of Appeals' Decision That Attorney Fees Cannot Be Recovered Through Judicial Sale of the Homestead Pursuant to Iowa Code Section 561.21(3) Is Inconsistent with Legislative Intent, Undermines Provisions of Chapter 572, And Should Be Reversed on Further Review

This case presents an important question of law and a matter of broad public importance. The Court of Appeals' decision entirely undermines the attorney fee shifting available to successful lien claimants under Iowa's mechanic's lien statute where the property at issue is a homestead, allowing only the principal amount owed to a successful lien claimant to be recovered through judicial sale of the

property. The Court of Appeals has construed “debts” under Section 561.21 too narrowly.

1. The Legislative History of Section 561.21 Demonstrates That the Entire Amount Covered by a Mechanic’s Lien is a “Debt” Which Can Be Satisfied Through Judicial Sale of a Homestead

a. A “Mechanic’s Lien” Consists of Principal, Interest, Costs, and Court-Approved Attorney Fees

Iowa Code Chapter 572 establishes the right to a mechanic’s lien on residential properties, many of which will be homesteads, and provides for the remedy of foreclosure on such liens. See Iowa Code §§ 572.2, 572.21. Generally, unless a counterclaim is filed, a mechanic’s lien claimant is entitled to bring only an action to foreclose the lien, and may not join other causes of action with that claim. Iowa Code § 572.26. Remedies under Chapter 572 are *in rem*, and do not alone give rise to *in personam* liability of the property owner. W.P. Barber Lumber Co. v. Celandia, 674 N.W.2d 62, 64 (Iowa 2003) (“A judgment of foreclosure on a mechanic’s lien is not a personal judgment.”); City Drywall Corp. v. C.G. Smith Constr. Co., 270 N.W.2d 608, 613 (Iowa 1978) (in an action to foreclose mechanic's lien, there was no basis for a personal judgment against owner); Willverding v. Offineer, 54 N.W. 592, 593 (1893) (in the absence of a contract with owner, a mechanic's lien does not impose personal liability).

On multiple occasions, this Court has confirmed that the extent of a mechanic’s lien includes the entire contract price. Rohlin Const. Co., Inc. v. Lakes,

Inc., 252 N.W.2d 403, 406 (Iowa 1977)(“section 572.2 does not restrict the dollar amount of a mechanic’s lien to the reasonable value of services provided. . .[but] permits a mechanic’s lien to secure the entire contract price”); S. Hanson Lumber Co. v. De Moss, 111 N.W.2d 681, 684 (Iowa 1961)(recognizing that contractor is entitled to recover contract price in mechanic’s lien foreclosure). Here, Standard’s attorney fees and interest were a part of the contract price, given that the Joneses expressly agreed to be liable for Standard Water’s attorney fees and interest in any collection action on the contract. (App. 13)

This Court has also explicitly recognized, in multiple cases, that interest shall be included in the amount of a lien which may be foreclosed on. See Deerfield Construction Co. v. Crisman Corp., 616 N.W.2d 630, 633 (Iowa 2000)(holding that contractor was entitled to foreclose on mechanic’s lien where only interest owed to contractor remained unpaid, and recognizing that interest may be recovered in mechanic’s lien actions); Rohlin, 252 N.W.2d at 408 (“our cases indicate that interest may be recovered in mechanic’s lien foreclosure actions”) see also S. Hanson, 111 N.W.2d at 684 (ordering that interest be included in the amount of the mechanic’s lien and *in rem* judgment against the house property being foreclosed).

Furthermore, Iowa Code section 572.32 provides that “in an action to enforce a mechanic’s lien, a prevailing party may be awarded reasonable attorney

fees.” Iowa Code § 572.32. As noted above, Iowa courts have explained that a judgment in a mechanic’s lien foreclosure is only *in rem*. It follows that attorney fees awarded *must* be a part of the judgment *in rem* that attaches to the foreclosed property.

Under the Court of Appeals’ interpretation of Chapter 561.21, a successful mechanic’s lien claimant is left without any means to recover the statutorily allowed interest, cost, and attorney fees whenever the property was a homestead.

b. Iowa Code Section 561.21(3) Was Intended to Permit Satisfaction of All Amounts Included in a Mechanic’s Lien Through Judicial Sale of a Homestead

It has long been recognized that homesteads are subject to mechanic’s liens under Iowa law. See Aalfs Wall Paper & Paint Co. v. Bowker, 162 N.W.33 (Iowa 1917). In fact, section 561.21(3) has been interpreted to allow broader invasion into homestead rights, permitting collection for debts relating to improvements to a homestead even where mechanic’s lien rights *have been lost*. Moffitt, 294 N.W. at 732.

Iowa Code section 561.21(3) specifically provides that “[t]he homestead may be sold to satisfy **debts** of each of the following **classes**: . . . Those incurred for work done or material furnished exclusively for the improvement of the homestead.” Iowa Code § 561.21 (emphasis added). Cases interpreting the legislative history of Iowa Code section 561.21(3) support the conclusion that a

mechanic's lien—inclusive of principal, interest, costs, and attorney fees— is within the “class” of “debts” described therein for which a homestead is liable See In re Keane, 7 B.R. 844, 851 (N.D. Iowa Bankruptcy 1980); Moffitt, 294 N.W. at 732-34. In those prior cases, the courts always viewed the *entire* judgment, inclusive of all interest and costs, as the “debt” that was allowed to be satisfied through sale of the homestead, in lieu of some sort of dissection of the judgment to only allow the principal, but not the interest and costs, of the judgment to be satisfied through such sale.

In Keane, the United States Bankruptcy Court for the Northern District of Iowa addressed the question of whether a lender who had provided financing for home improvements, and obtained a judgment lien on the borrower's home flowing from a default on that debt, had a lien that could be satisfied by judicial sale of the homestead, such that the lien was exempt from discharge. 7. B.R. at 844. In performing its analysis, the Keane Court explored the legislative history for section 561.21(3). The court first noted:

[i]t is noteworthy that the present language of Chapter 561.21(3) closely follows the language of Chapter 572.2, which describes the class of persons entitled to a mechanic's lien:

572.2 Persons entitled to lien.

Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof. . .shall have a lien upon such building or improvement . . .to secure payment for material or labor furnished or labor performed.

Id. at 851 (quoting Iowa Code § 572.2). The Court went on to explain that “[t]he purpose of subparagraph (3) of Chapter 561.21 is reflected by its historical derivation.” Id. The court outlined the 130 year history of the statute as follows, noting the language of each succeeding statute:

Code of Iowa 1851, Section 1248:	“the homestead is liable for taxes accruing exclusively thereon, and . . . may be sold to pay the same. It is also subject to mechanics’ liens in the cases provided by law.”
Code of Iowa 1897, Section 2975:	“The homestead is subject to mechanic’s liens for work, labor or material done or furnished exclusively for the improvement of the same.”
Code of Iowa 1923, Section 6417:	“debts. . .incurred for work done or materials furnished exclusively for the improvement of the homestead”

Id. The Keane court further noted that legislative history reflected in the 1919 Report of the Code Commission indicated that the change in language between the 1897 and 1923 versions of the statute “was a mere codification, without change in subject matter, of the former provision.” Id. at 852 (citing Report of Code Commission at 2, 918 (919)).

Having reviewed the legislative history of section 561.21(3) in detail, the Keane court concluded that “[i]t is clear that **had Defendant perfected a Chapter 572 mechanic’s lien for work, labor or materials furnished for the improvement of Plaintiff’s homestead, said homestead would be subject to the mechanic’s lien and could be sold to satisfy the debt under Chapter**

561.21(3).” Id., n. 5 (citing Aalfs, 162 N.W.33). The Keane court further recognized that section 561.21(3), as revised, permits a “‘would be’ mechanic’s lienor” (i.e. a party that would have been eligible for a mechanic’s lien but did not perfect its rights under Chapter 572) to execute against a homestead.” Id. at 852-53 (citing Moffitt, 294 N.W. at 731)). The Keane court declined to extend application of section 561.21(3) to a lender that had merely financed home improvements, however, finding that the legislative history did not support the conclusion that mere lenders are afforded the same protection historically granted to materialmen and laborers under the relevant Iowa statutes. Id. at 853.

In Moffitt, the Iowa Supreme Court also examined the legislative history of section 561.23(3) (then codified as section 10155 of the 1939 Code of Iowa) to determine whether a party that had performed work or furnished materials for improvement of a homestead could executed on the homestead for that debt, despite not having perfected a mechanic’s lien. Moffitt, 294 N.W.2d at 732. As previously described, in Moffitt, the plaintiff was executing upon a judgment lien obtained on his breach of promissory note action. At that time, as now, the statute provided that a homestead could be sold to satisfy a debt “. . .incurred for work done or material furnished exclusively for the improvement of the homestead.” Id. (quoting Iowa Code § 10155 (1939)). The homeowners argued that the section 561.21(3) permitted sale of a homestead *only* to satisfy a mechanic’s lien. Id. The

court rejected this argument, finding that a “judgment . . .for materials used in the improvement of a homestead” could be satisfied through sale of a homestead, even where a mechanic’s lien was not perfected. Id. at 733-34. The Moffitt court determined that the legislature’s intent was “to make the homestead liable for improvements that were furnished for it.” Id. at 734. As discussed above, the debt at issue in Moffitt included interests and costs.

In short, Keane and Moffitt demonstrate that changes in the statutory language were *not* intended to exclude part of a mechanic’s lien judgment from collection through sale of a homestead, but rather to expand the ability of parties furnishing labor or materials for improvement of a homestead to collect, whether a mechanic’s lien has been perfected or not. Based upon the foregoing, the Court of Appeals should have concluded that the “classes” of “debts” for which homestead can be sold to satisfy under 561.21(3) includes the *entire* debt and amount under a mechanic’s lien, inclusive of principal, interest, costs, and attorney fees. See Iowa Code § 561.21. Otherwise, as noted above, remedies provided under Chapter 572 to lien claimants are rendered meaningless when the property at issue is a homestead.

The Court of Appeals significantly undermines remedies provided to mechanic’s lien claimants under Chapter 572. Given the importance of mechanic’s lien protections to those in the construction industry in Iowa, this Court should

exercise its discretion and grant further review of this case under Iowa Rule of Appellate Procedure 6.1103.

II. THE COURT OF APPEALS' DECISION CONTRADICTS PRECEDENT GOVERNING WAIVER OF THE HOMESTEAD DEFENSE AND RES JUDICATA, AND SHOULD BE REVERSED ON FURTHER REVIEW

The Court of Appeals found that the doctrines of waiver and res judicata did not apply to bar the Joneses' arguments relating to homestead protection because the Joneses raised the issue of homestead exemption prior to the second sheriff's sale. (Decision p. 14) The Court of Appeals found that "the claim of homestead exemption is a claim that can be asserted in response to an execution and is not required in the underlying lawsuit." (Id.) This decision conflicts with prior decisions of the Iowa Supreme Court in Franksen v. Miller and of the Iowa Court of Appeals in Scheffert v. Scheffert.

As discussed above, an action brought pursuant to Iowa Code Chapter 572 is a special action to foreclose upon a statutorily provided lien. See Iowa Code § 572.26. As recognized by the courts in Franksen and Scheffert, *in an action for foreclosure*, the homestead exemption is a personal defense that is waived if not raised prior to entry of a judgment granting the right to foreclosure.

In Franksen v. Miller, 297 N.W.2d 375 (Iowa 1980), the Iowa Supreme Court held that the plaintiff's judgment for foreclosure in a mechanic's lien action was valid against the defendant who failed to raise a homestead exemption as a

defense to the foreclosure action, and such determination was binding in a subsequent eviction action on res judicata principles. Id. at 377. The Supreme Court held that “the judgment and deed are valid against defendant’s present assertion of homestead rights. He had his opportunity for a day in court on that defense and it is unavailable to him now.” Id.

Likewise, in Scheffert v. Scheffert, 840 N.W.2d 726, 2013 WL 5508538, *2-3 (Iowa Ct. App. Oct. 2, 2013), the defendant failed to raise a homestead exemption prior to the entry of summary judgment in a partition action, but later raised it after the court-appointed referee had sold the property. Id. at *2-3. The Court of Appeals held that the plaintiff “did not raise the homestead defense in answer to the partition petition and consented to summary judgment in the partition action. Because [the plaintiff] did not timely raise his homestead claim, the district court did not err in ruling the matter res judicata.” Id.

The Joneses failed to raise the issue of homestead exemption as a defense in the mechanic’s lien action. In its Petition, Standard requested judgment inclusive of attorney fees, interest, and costs, and requested that the District Court issue special execution for sale of the home necessary to satisfy such judgment. (App. 10, 384) In entering judgment, the District Court ordered sale of the home pursuant to Chapter 572 to satisfy the *entire* mechanic’s lien judgment, inclusive of interest, costs and attorney fees. (App. 91-92) Under the principles recognized in

Francksen and Scheffert, the Joneses' failure to raise the homestead exemption as a defense prior to the District Court's judgment entry constituted a waiver of that defense and res judicata of the matter. Francksen, 297 N.W.2d at 377. Accordingly, the District Court correctly denied the Joneses' Motion to Reconsider, and the Court of Appeals erred in reversing the District Court's decision.

Because the Court of Appeals' decision contradicts the holdings of Francksen and Scheffert, it should be reversed on further review.

CONCLUSION

In conclusion, this Court should grant Standard's Application for Further review and, thereafter, reverse the decision of the Court of Appeals and find that Iowa Code section 561.21(3) permits satisfaction of the entire amount of a mechanic's lien judgment on a homestead through the sale of that homestead, inclusive of interest, costs, and attorney fees. This Court should further find that the District Court properly denied the Joneses' Motion to Reconsider pursuant to the doctrines of waiver and res judicata, because the Joneses did not timely raise homestead as a defense to Standard's action for foreclosure of a mechanic's lien.

/s/ Jodie McDougal

Jodie C. McDougal AT0001570

Elizabeth R. Meyer AT0010139

DAVIS BROWN LAW FIRM

215 10th Street, Suite 1300

Des Moines, Iowa 50309

Telephone: (515) 288-2500

Email: JodieMcdougal@DavisBrownLaw.com

Email: ElizabethMeyer@DavisBrownLaw.com

ATTORNEYS FOR PLAINTIFF, STANDARD
WATER CONTROL SYSTEMS, INC.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 5,458 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman, size 14.

Date: February 25, 2019

/s/ Jodie McDougal

Jodie C. McDougal AT0001570

Elizabeth R. Meyer AT0010139

DAVIS BROWN LAW FIRM

215 10th Street, Suite 1300

Des Moines, Iowa 50309

Telephone: (515) 288-2500

Email: JodieMcDougal@DavisBrownLaw.com

Email: ElizabethMeyer@davisbrownlaw.com

ATTORNEYS FOR PLAINTIFF, STANDARD
WATER CONTROL SYSTEMS, INC.

CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

I, Jodie C. McDougal, hereby certify that on the 25th day of February, 2019, I electronically filed the foregoing Appellee's Final Brief with the Clerk of the Iowa Supreme Court by using the EDMS system and all persons who have filed appearances are registered EDMS users and that service will be accomplished by the EDMS system on the following:

John F. Fatino
Whitfield & Eddy, P.L.C.
317 Sixth Avenue, Suite 1200
Des Moines, Iowa 50309
fatino@whitfieldlaw.com

ATTORNEY FOR DEFENDANTS/
COUNTERCLAIM-PLAINTIFFS/APPELLANTS