

**IN THE SUPREME COURT OF IOWA**

No. 19-0241

(Kossuth County No. LACV027055)

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WMG, L.C.,  
Defendant-Appellant,  
vs.

NCJC, INC.,  
Plaintiff-Appellee

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Appeal from the Iowa District Court in and for Kossuth County  
The Honorable Carl J. Petersen

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Plaintiff-Appellee's Final Brief

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## **STATEMENT OF ISSUES**

- A. Did the District Court correctly decide Respondent NCJC, Inc. (“NCJC”) is the “prevailing party” entitled to recover attorneys’ fees in this case, despite Appellant WMG, L.C.’s (“WMG’s”) pre-trial offer to confess judgment?

Yes, the District Court correctly decided NCJC is the “prevailing party” and, accordingly, awarded attorneys’ fees to NCJC pursuant to the parties’ written Lease. As a matter of well-established Iowa law, WMG’s pre-trial offer to confess judgment impacted only the District Court’s cost award, not the attorneys’ fee award at issue on appeal.

*Lee v. State*, 874 N.W.2d 631 (Iowa 2016);

*Dutcher v. Randall Foods*, 546 N.W.2d 889 (Iowa 1996);

*Weaver Constr. Co. v. Heitland*, 348 N.W.2d 230 (Iowa 1984)

- B. Did the District Court correctly decide that Iowa Code § 625.25 does not preclude NCJC from recovering attorneys’ fees?

Yes, the District Court correctly decided Iowa Code § 625.25 does not preclude NCJC from recovering attorneys’ fees. NCJC gave WMG sufficient notice of and opportunity to pay its debt before NCJC filed this lawsuit.

Iowa Code § 625.25.

## **ROUTING STATEMENT**

NCJC agrees with WMG that this case should be transferred to the Court of Appeals.

## **STATEMENT OF THE CASE**

Section 20 of the written Farm Lease Cash or Crop Shares (the “Lease”) between NCJC and WMG provides: “If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorney’s fees.” NCJC filed this lawsuit to enforce certain terms of the Lease. After trial, the jury awarded NCJC \$41,453.57 in damages for WMG’s breach of the Lease. Kossuth County District Court Judge Carl J. Peterson then ruled that NCJC was the “prevailing party” and awarded NCJC attorneys’ fees pursuant to Section 20 of the Lease. WMG appeals the District Court’s Rulings on attorneys’ fees. This Court should affirm.

Binding Iowa Supreme Court precedent establishes that NCJC is the “prevailing party” here. NCJC obtained a judgment in its favor. That is all NCJC needed in order to recover its reasonable attorneys’ fees under the Lease. The District Court was right when it declared NCJC the “prevailing party” and awarded fees to it.

WMG’s appeal almost entirely turns on its legally incorrect argument that its pre-trial offer to confess judgment under Iowa Code chapter 677 makes WMG, not NCJC, the “prevailing party.” On its face, chapter 677 provides a mechanism to shift “costs” only – it makes no reference to attorneys’ fees. The Iowa Supreme

Court has repeatedly decided chapter 677 offers to confess judgment do not impact attorney fee awards. *Dutcher v. Randall Foods*, 546 N.W.2d 889, 895 (Iowa 1996); *Weaver Constr. Co. v. Heitland*, 348 N.W.2d 230, 233 (Iowa 1984). The District Court correctly rejected WMG’s contrary interpretation of chapter 677 and refused to “segregate” its fee award on a pre-offer/post-offer basis.

WMG’s alternative argument on appeal is that the District Court should have denied NCJC fees under Iowa Code § 625.25. Iowa Code § 625.25 provides that a defendant is liable for attorneys’ fees if it “had information of and a reasonable opportunity to pay the debt before the action was brought.” On numerous occasions, NCJC gave WMG reasonable notice of its breach of Lease claims. The fact that NCJC ultimately recovered less in damages than it originally sought is not a bar to NCJC’s attorney fee award.

Decisions regarding attorney fee awards are reviewed for an abuse of discretion. WMG fails to establish that the District Court abused its discretion in any way. The Iowa Court of Appeals should affirm the District Court’s November 29, 2018 and January 18, 2019 Rulings on attorneys’ fees.

### **STATEMENT OF FACTS**

In February 2012, WMG, as Landlord, and NCJC, as Tenant, executed the Lease. (Joint Appendix (“App.”) 307.) Section 20 of the Lease states: “If either party files suit to enforce any of the terms of this Lease, the prevailing party shall

be entitled to recover court costs and reasonable attorney's fees." (App. 314, § 20.)

On March 31, 2017, NCJC filed a Petition against WMG, asserting two claims for breach of the lease. (App. 10.) NCJC's first claim related to the right of refusal provision in Section 26c of the Lease. (App. 12.) NCJC's second claim related to WMG's inputs reimbursement obligation in Section 4 of the Lease. (App. 13.) WMG answered NCJC's claims and asserted its own counterclaim for slander of title. (App. 20.) The District Court dismissed WMG's slander of title counterclaim on the pleadings and dismissed NCJC's right of first refusal claim on summary judgment. (10/2/17 Ruling on Plaintiff's Motion to Dismiss Counterclaim; App. 79.)

On May 9, 2018, the jury returned a verdict in favor of NCJC and against WMG on the only remaining claim in the case – NCJC's inputs reimbursement claim. (App. 102.) The jury found that WMG had breached the Lease. (*Id.*) The jury awarded damages to NCJC in the amount of \$41,453.57. (*Id.*)

After trial, the parties filed cross-motions for attorneys' fees pursuant to Section 20 of the Lease. (App. 104; *id.* 115.) NCJC contended that it was the "prevailing party" because it obtained a \$41,453.57 verdict and judgment in its favor. (App. 115.) WMG argued that it was the "prevailing party" because NCJC was awarded less than WMG had offered to confess (\$75,000) before trial pursuant

to Iowa Code § 677.4. (App. 104.) WMG also opposed NCJC’s motion by arguing that it was not given a reasonable opportunity to pay NCJC before the lawsuit pursuant to Iowa Code § 625.25. (App. 154.)

On November 29, 2018, the District Court entered a Ruling on the parties’ cross-motions for attorneys’ fees. (App. 265.) First, the District Court decided NCJC, not WMG, is the “prevailing party” for the purposes of awarding attorneys’ fees under Section 20 of the Lease. (App. 268-70.) Following binding Iowa Supreme Court precedent, the District Court rejected WMG’s argument about its offer to confess judgment:

An award of attorney’s fees is unaffected by a plaintiff’s recovery of less than the sum offered at settlement. The legislative intent of Chapter 677 is clear; attorney’s fees are not included in the cost shifting, which the statute allows because attorney’s fees are not explicitly mentioned in the statute. Therefore, the offer to confess judgment only applies to costs; not applicable to attorney’s fees.

(*Id.* (citations omitted).) The District Court concluded: “NCJC, Inc., is clearly the prevailing party based upon the fact that a jury did award a significant sum arising out of their claim for reimbursement.” (*Id.*)

Second, the District Court rejected WMG’s argument that it was denied a reasonable opportunity to pay off its debt to NCJC before the lawsuit, as required by Iowa Code § 625.25. (App. 271.) After identifying the myriad ways NCJC notified WMG of its input reimbursement claim, the District Court concluded:

The court concludes that 625.25 is not dispositive in this situation. It would appear to this court that the claim for damage was reduced during litigation. NCJC, Inc.'s initial claim had a reasonable basis based upon the costs of the application of the nutrients. Therefore, Iowa Code Section 625.25 will not determine the issue of attorney's fees in this case.

*(Id.)*

Third, the District Court addressed the parties' requests for costs. (App. 271-72.) The District Court ordered NCJC to pay WMG \$150 in expert witness fees incurred after WMG's offer to confess judgment, but the court denied other costs the parties requested. *(Id.)* The costs portion of the District Court's Ruling is not at issue on appeal.

Fourth, the District Court addressed the reasonableness of NCJC's attorney's fees. (App. 272-77.) The District Court reduced NCJC's award by allowing it to recover only \$300 per hour for NCJC's lead trial counsel (instead of his usual rate of \$560 per hour). (App. 276.) The decrease in counsel's hourly rate reduced NCJC's award by \$50,000. *(Id.)* The District Court then further reduced NCJC's award to account for the fact that NCJC, although it was the overall prevailing party, did not obtain a complete victory. (App. 276-77.) With those reductions, the District Court awarded NCJC \$55,000 in attorneys' fees in addition to the damages awarded by the jury. (App. 277.) NCJC's attorney fee award amounts to roughly half what it spent on the case. (*Compare App. 277 with App. 115-53.*)

On December 12, 2018, WMG moved the District Court to reconsider, enlarge or amend its November 29, 2018 Ruling. (App. 279.) WMG largely rehashed the same arguments the District Court had already rejected. (*See id.*) The District Court denied WMG’s motion on January 18, 2019. (App. 299.) WMG now appeals both the November 29, 2018 and January 18, 2019 Rulings. (App. 302.)

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

The Iowa Court of Appeals reviews trial court decisions regarding attorneys’ fee awards for abuse of discretion. *See Lee v. State*, 874 N.W.2d 631, 637 (Iowa 2016); *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 897 (Iowa 1990). The Court “will not find an abuse of discretion unless it is shown ‘that such discretion was exercised on grounds . . . clearly untenable or, to an extent clearly unreasonable.’” *Lynch v. City of Des Moines*, 464 N.W.2d 236, 238 (Iowa 1990) (quoting *State v. Morrison*, 323 N.W.2d 254, 256 (Iowa 1982)); *accord GreatAmerica Leasing Corp. v. Cool Comfort Air Conditioning & Refrigeration*, 691 N.W.2d 730, 732 (Iowa 2005).

### **II. THE DISTRICT COURT CORRECTLY DECIDED NCJC IS THE “PREVAILING PARTY” AND AWARDED NCJC ATTORNEYS’ FEES UNDER THE PARTIES’ LEASE**

This Court should affirm the District Court’s Ruling that NCJC is entitled to attorneys’ fees as the “prevailing party” under Section 20 of the Lease. The jury decided in NCJC’s favor on its claim for inputs reimbursement under the parties’ Lease, and the Court dismissed WMG’s counterclaim. The only damages award was entered for NCJC. It does not matter that NCJC’s other right of first refusal claim was dismissed or that NCJC’s damages award was less than it originally sought or WMG offered to confess. What matters is that a judgment was entered for NCJC and against WMG on NCJC’s breach of Lease claim. That makes NCJC the “prevailing party” under the Lease.

**A. NCJC Prevailed Because it Obtained a Judgment Against WMG**

“[A] plaintiff ‘prevails’ when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” *Dutcher v. Randall Foods*, 546 N.W.2d 889, 895 (Iowa 1996) (quoting *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992)). “A claim materially alters the legal relationship between the parties once ‘the plaintiff becomes entitled to enforce a judgment, consent decree, or settlement against the defendant.’” *Lee*, 874 N.W.2d at 645 (quoting *Farrar*, 506 U.S. at 113).

To be deemed the “prevailing party,” the plaintiff need only “succeed on any significant issue in the litigation which achieves some of the benefit the [plaintiffs]

sought in bringing the suit.” *Farrar*, 506 U.S. at 109 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). By definition, a prevailing party is “[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded.” Black’s Law Dictionary, PARTY (10th ed. 2014). “A party that recovers less than the amount requested can still be a prevailing party for the purposes of entitlement to an award of attorney’s fees.” 20 Am. Jur. 2d Costs § 59. “[B]ecause ‘the prevailing party inquiry does not turn on the magnitude of the relief obtained,’ even an award of nominal damages confers eligibility to receive an attorney fee award under that standard.” *Lee*, 874 N.W.2d at 645 (quoting *Farrar*, 506 U.S. at 113-14).

Applying those standards here, NCJC is the “prevailing party.” NCJC prevailed by obtaining a jury verdict and judgment for significant portion of the damages (over \$41,000) it sought. *See Lee*, 874 N.W.2d at 645; *Farrar*, 506 U.S. at 109, 113. The fact that NCJC requested a higher number does not undermine NCJC’s status as the “prevailing party” for the purposes of awarding attorneys’ fees.

**B. Iowa Code Chapter 677 Does Not Entitle WMG to Attorneys’ Fees or Prevent NCJC from Recovering Attorneys’ Fees**

WMG argues that it is the “prevailing party” based on a misinterpretation of Iowa Code chapter 677. To be sure, WMG made an offer to confess judgment for \$75,000 under Iowa Code § 677.4, NCJC rejected that offer, and the jury later

awarded NCJC less than \$75,000 in damages. But those facts impact only the award of “costs” – which are not disputed on appeal.<sup>1</sup> They have no impact on the award of attorneys’ fees.

Iowa Code chapter 677 sets up a cost-shifting mechanism for defendants who offer to confess judgment. Iowa Code § 677.4 allows a defendant to offer to confess judgment for the amount the plaintiff claims. Iowa Code § 677.5 provides that, if the plaintiff does not accept the offer and does not recover more than what was offered at trial, “the plaintiff shall pay the costs of the defendant incurred after the offer.” *Id.* (emphasis added). Iowa Code § 677.10 also states: “If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff cannot recover costs, but shall pay the defendant’s costs from the time of the offer.” *Id.* (emphasis added). The statutes mention “costs” only. None of the statutes in Iowa Code chapter 677 references attorneys’ fees.

The Iowa Supreme Court has made clear that a defendant’s offer to confess judgment, even if it is higher than the plaintiff ultimately recovers, “does not preclude [the plaintiff] from recovering attorney fees.” *Dutcher*, 546 N.W.2d at 895. The defendant’s offer simply has no bearing on the question of whether the

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<sup>1</sup> The District Court awarded costs to WMG and denied costs to NCJC according to Iowa Code chapter 677 and other statutes governing costs. Neither party appeals the costs portion of the District Court’s Ruling.

plaintiff is the “prevailing party” for the purposes of recovering attorneys’ fees. *Tri-State Agri Corp. v. Clasing*, 2001 WL 1658852, \*6 (Iowa Ct. App., Dec. 28, 2001).

In *Weaver Constr. Co. v. Heitland*, 348 N.W.2d 230 (Iowa 1984), the Iowa Supreme Court rejected the very argument WMG makes here. In *Weaver*, the defendant offered to confess judgment for \$17,500 under Iowa Code chapter 677. *Id.* at 231-32. The plaintiff refused the defendant’s offer. *Id.* at 232. After a jury trial, the plaintiff received a verdict and judgment for only \$12,902.89 – roughly \$4,600 less than the defendant had offered. *Id.* The defendant argued that it was entitled to recover attorneys’ fees as “costs” pursuant to chapter 677. *Id.* Although the Iowa Supreme Court recognized that chapter 677 encourages settlement and should be liberally construed, the Court expressly disagreed with the defendant’s interpretation (which was the same interpretation WMG advocates in this case):

We do not agree, however, that the word “costs” should be so liberally stretched as to include attorney fees. As the trial court correctly noted, our legislature has explicitly provided in some statutes that a prevailing party may recover attorney fees as well as costs. **We believe the legislative intent of chapter 677 is clear; attorney fees are not included in the cost-shifting which the statute allows because attorney fees are not explicitly mentioned in the statute.**

*Id.* at 233 (emphasis added).

After rejecting the defendants’ theory based on the plain language of the statute, the Iowa Supreme Court further justified its decision by recognizing the

imbalance of Iowa Code chapter 677. *Id.* The Court expressed concerns about construing the statute as an attorney-fee shifting mechanism, considering only defendants can take advantage of it:

**Finally, we have grave doubt whether chapter 677 is an appropriate vehicle for initiating a more widespread practice of allowing the prevailing litigant to recover attorney fees as part of court costs.** Only a defendant may take advantage of that statute by making a formal settlement offer and thereby pressuring the plaintiff to accept that offer. If a party who rejects an offer of settlement should sometimes be required to pay the other party’s full expense of further litigation, fundamental fairness suggests that defendants as well as plaintiffs should be subjected to that sanction.

*Id.* (emphasis added). *See also Coker v. Abell-Howe Co.*, 491 N.W.2d 143, 152-53 (Iowa 1992) (“We think ‘costs’ should be read no more broadly in chapter 677 than it has been read in our other statutes and rules regarding costs. . . . This powerful tool need not be made stronger by expanding which costs will be allowable in the context of a confession of judgment.”).

**C. Iowa Code § 625.22 Does Not Entitle WMG to Attorneys’ Fees or Prevent NCJC from Recovering Attorneys’ Fees**

WMG ignores binding Iowa Supreme Court precedent, arguing that attorneys’ fees are “costs” for the purposes of Iowa Code chapter 677. WMG relies on Iowa Code § 625.22, which states: “When a judgment is recovered upon a written contract containing an agreement to pay an attorney fee, the court shall allow and tax as a part of the costs a reasonable attorney fee to be determined by the court.” Iowa Code § 625.22 has no connection to Iowa Code chapter 677.

Iowa Code § 625.22 does not expand chapter 677 into a fee-shifting statute or abrogate the Iowa Supreme Court’s holding that attorneys’ fees are not “costs” recoverable under chapter 677. *See Weaver*, 348 N.W.2d at 233. No Iowa case law supports WMG’s interpretation of the statutes.<sup>2</sup>

Aside from contradicting binding precedent, WMG’s construction of Iowa Code § 625.22 is backwards. Iowa Code § 625.22 does not provide an independent right to attorneys’ fees. Nor does it help determine who can recover attorneys’ fees. The statute merely directs the Court to tax reasonable attorneys’ fees if the parties’ contract requires an attorney fee award. Thus, before a court can tax attorneys’ fees under Iowa Code § 625.22, the court must first determine which party is entitled to attorneys’ fees under the parties’ contract.

The attorneys’ fees analysis starts with the parties’ contract, not Iowa Code § 625.22 or chapter 677. Here, the Lease grants the “prevailing party” the right to attorneys’ fees. The “prevailing party” is the party that obtained a judgment in its favor. *See Lee*, 874 N.W.2d at 645; *Farrar*, 506 U.S. at 109, 113. By that

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<sup>2</sup> Although WMG cites no cases to support its interpretation of Iowa Code chapter 677 and Iowa Code § 625.22, according to WMG, it is not intending to raise any novel legal issues. In its brief, WMG asked that the case be routed to the Court of Appeals because “it involves the application of existing legal principles.” (App. Br. at 10.) NCJC agrees that this case is governed by “existing legal principles.” Based on binding legal precedent from the Iowa Supreme Court, including *Weaver* and *Dutcher*, WMG’s argument about Iowa Code chapter 677 and Iowa Code § 625.22 fails.

definition, NCJC is the “prevailing party” in this case. Thus, NCJC is entitled to have its attorneys’ fees taxed by the District Court pursuant to Iowa Code § 625.22. Iowa Code § 625.22 does not somehow flip the result to make WMG the “prevailing party.”

**D. No Iowa Cases Support WMG’s Position**

WMG does not cite a single applicable case to support its arguments on appeal. WMG tries to confuse the Court about the state of the law by citing an unpublished Iowa Court of Appeals decision, *CSS2 Enterprise, Inc. v. Farmers Coop. Co.*, 871 N.W.2d 521, 2015 WL 4935834 (Iowa Ct. App. Aug. 19, 2015), that has no bearing on this appeal. To recognize just how off point *CSS2* is, the Court must recall the extremely unique factual and procedural background of that case.

In *CSS2*, the plaintiff (*CSS2*) sued the defendant (*Coop*) for, among other things, violations of Chapter 717A. 871 N.W.2d 521, at \*1. Chapter 717A provides that a “prevailing plaintiff . . . shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action.” *Id.* (quoting Iowa Code Section 717A.3(2)(b)). Pursuant to Iowa Code Chapter 677, *Coop* made an offer to confess judgment in the amount of \$287,500. *Id.* at \*2. The offer was silent as to whether it included or excluded attorneys’ fees and other costs. *Id.* *CSS2* accepted *Coop*’s offer with the understanding that *CSS2* could recover attorneys’ fees and costs in addition to the \$287,500 *Coop* offered. *Id.* The trial

court decided the offer was binding on Coop, and entered judgment for CSS2 in the amount of \$287,500 plus costs and attorneys' fees CSS2 incurred before Coop's offer of judgment. *Id.* at \*3. But the trial court decided CSS2 could not recover attorneys' fees after Coop's offer of judgment (e.g., fees CSS2 incurred in litigating the effect of the offer of judgment and continuing to defend Coop's counterclaim that was not resolved by the offer of judgment). *Id.* at \*4. CSS2 and Coop both appealed on a number of grounds. *Id.*

The Iowa Court of Appeals partly affirmed and partly reversed the trial court's decision. The Court of Appeals' opinion does not at all support WMG's appeal. For example, the Court of Appeals affirmed the trial court's decision to award attorneys' fees and costs to CSS2 through the date of Coop's offer of judgment. *Id.* at \*7. But the Court of Appeals reversed the trial court's decision to cut off CSS2's attorneys' fees after Coop's offer of judgment. *Id.* at \*9-10. The Court of Appeals expressly declined to read a limitation into Chapter 677 that would terminate a plaintiff's right to recover attorneys' fees once the defendant makes an offer of judgment. *Id.* at \*10. The net effect of the appeal was that CSS2 would be allowed to recover attorneys' fees for the entire case. *Id.* at \*12. The Court did not limit or reject CSS2's fee application or award fees to the Coop, as WMG asks the Court to do here.

If it has any relevance at all, the *CSS2* decision is entirely consistent with the District Court's Ruling that NCJC is entitled to attorneys' fees as the prevailing party, and WMG's offer of judgment does not limit NCJC's award. But *CSS2* really has nothing to do with this case. Among other distinctions:

- The statute at issue in *CSS2* was Iowa Code § 717A, not Iowa Code § 625.22. The two statutes are not analogous in that Iowa Code § 717A itself grants the plaintiff a right to attorneys' fees, while Iowa Code § 625.22 merely explains how attorneys' fees are taxed if a party establishes a separate contractual right to them.
- Coop's offer of judgment in *CSS2* was silent on attorneys' fees and costs, but the trial court decided (and the Court of Appeals agreed) that it implicitly included attorneys' fees and costs. *Id.* at \*6-7. By contrast, WMG's offer of judgment in this case expressly excluded attorneys' fees and costs. (11/17/17 Notice of Defendant's Intent to Offer to Confess Judgment.)
- The court in *CSS2* awarded attorneys' fees and costs to the plaintiff offeree, *CSS2*. Here, WMG is trying to twist that decision to support an award to the defendant offeror, WMG.
- *CSS2* accepted Coop's offer of judgment. *CSS2*, 871 N.W.2d 521, at \*2. NCJC, on the other hand, rejected WMG's offer of judgment.
- Different statutes apply depending on whether a plaintiff accepts or rejects an offer of judgment. *Compare* Iowa Code § 677.8 (describing the consequences of an accepted offer), *with* Iowa Code § 677.5 and 677.10 (describing the consequences of a rejected offer). The Court of Appeals' decision in *CSS2* concerned statutes that govern accepted offers of judgment, not statutes that govern rejected offers. 871 N.W.2d 521, at \*9.
- The Court of Appeals in *CSS2* noted that the Iowa Supreme Court's decision in *Weaver* applies when the defendant rejects an offer of judgment. *Id.* Thus, the *Weaver* decision applies here. As explained above, *Weaver* stands for the proposition that Iowa Code Chapter 677

is not an “appropriate vehicle” for defendants to seek attorneys’ fees. 348 N.W.2d at 233.

- CSS2’s acceptance of the Coop’s offer resolved the only claims (its Chapter 717A claims) upon which it could seek fees. The same is not true here. After NCJC denied WMG’s offer of judgment, the parties continued to litigate NCJC’s breach of Lease claim that enabled it to seek attorneys’ fees under the Lease.

For all of those reasons, the *CSS2* decision does not support WMG’s appeal.

The District Court correctly distinguished *CSS2* and decided NCJC is the “prevailing party” entitled to an award of fees in this case, regardless of Iowa Code chapters 625 and 677. (*See* App. 299 (“*CCS2* [sic] is not a similar case nor applicable. This case interprets Iowa Code chapter 717A. The application of this code section is not consistent with the application of Iowa Code section 677.10 nor Iowa Code chapter 625.”).)

#### **E. The District Court Properly Rejected WMG’s Proposed Fee Allocation**

The District Court also properly rejected WMG’s proposed fee allocation. WMG asked the District Court to “segregate” NCJC’s pre-offer and post-offer attorney fees, and then reduce NCJC’s award of pre-offer fees to account for specific issues and claims on which NCJC was not the “prevailing party.” WMG provides no legal basis to “segregate” or allocate NCJC’s fees this way. There is none.

“Generally speaking, ‘status as a prevailing party is determined on the outcome of the case as a whole, rather than by piecemeal assessment of how a party fairs on each motion along the way.’” *Emery v. Hunt*, 272 F.3d 1042, 1047 (8th Cir. 2001) (quoting *Jenkins v. Missouri*, 127 F.3d 709, 716 (8th Cir. 1997)). “[A] party need not have prevailed on every issue, or every asserted defense, in order to be considered a prevailing party.” *Branstad v. State ex rel. Natural Resources Comm’n*, 864 N.W.2d 553, 2015 WL 1546439, \*8 (Iowa Ct. App. , April 8, 2015), *vacated on other grounds*, 871 N.W.2d 291 (Iowa 2015). “[T]he prevailing party question is examined from an overall view of the action, not a claim-by-claim analysis.” 20 Am. Jur. 2d Costs § 59. “Thus, the court should not simply deny fees for particular matters on which the plaintiff did not prevail.” *Emery*, 272 F.3d at 1047.

Once the court decides which party prevailed, the court must then evaluate the reasonableness of the prevailing party’s fees. In considering reasonableness, the court again “must look at the whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee appropriate for handling the complete case.” *Landals*, 454 N.W.2d at 897. The court “cannot place undue emphasis on the size of the judgment, but must look at the whole picture.” *Lynch*, 464 N.W.2d at 239. Viewing the case as a whole, the trial court may award fees even for time spend on unsuccessful claims. *Id.*

Here, the District Court correctly decided NCJC is the “prevailing party” for the overall case. NCJC prevailed because it obtained a jury verdict and judgment in its favor for over \$41,000. No law required the District Court to separately determine which party prevailed before and after WMG’s offer to confess judgment or which party prevailed on each individual claim. The law actually requires the District Court to do the opposite.

Likewise, no law required the District Court to review the reasonableness of NCJC’s fees on a claim-by-claim basis or deny any of NCJC’s fees as “per se unreasonable,” as WMG argues. There is no such thing as “per se unreasonable” in the context of attorney fee awards in Iowa. Rather, the reasonableness of attorneys’ fees is determined based on the outcome of the case as a whole, and is left to the trial court’s discretion. *Lynch*, 464 N.W.2d at 239; *Landals*, 454 N.W.2d at 897; *Lee*, 874 N.W.2d at 637.

The District Court properly exercised its discretion in determining the reasonableness of NCJC’s fees. Although the District Court refused to adopt non-existent “per se” rules about NCJC’s fees, the court did account for the issues WMG raised. To be clear, NCJC was awarded only a fraction of the fees it incurred in the lawsuit. NCJC voluntarily chose not to seek fees that were specifically attributable to its dismissed right of first refusal claim. (*See* App. 118, ¶ 10.) The District Court then reduced NCJC’s award by another \$50,000 based on

the court's determination of a reasonable hourly rate. The District Court further reduced NCJC's award due to WMG's offer to confess judgment. (App. 268-70, 272-77.) NCJC would have preferred an award in the full amount it spent on the case, but the District Court was within its discretion to award a lower amount.

WMG provides no grounds for this Court to disturb the District Court's exercise of its discretion.

### **III. THE DISTRICT COURT CORRECTLY DECIDED IOWA CODE § 625.25 DOES NOT PREVENT NCJC FROM RECOVERING ATTORNEYS' FEES**

WMG argues that Iowa Code § 625.25 bars NCJC from recovering its attorneys' fees. Iowa Code § 625.25 states that attorneys' fees are recoverable if the "defendant had information of and a reasonable opportunity to pay the debt before action was brought." According to WMG, it did not have sufficient "information of and a reasonable opportunity to pay" its debt to NCJC before the lawsuit. WMG is wrong on the law and the facts.

All of the following evidence proves that NCJC notified WMG of its claim prior to the lawsuit:

- Section 4 of the Lease, which was drafted by Jeanne Goche-Horihan on behalf of WMG and signed for WMG by its managers other than Joseph Goche, establishes NCJC's right to inputs reimbursement (App. 309, § 4);
- NCJC appeared as an intervenor in in the matter of *Afshar v. WMG, et al.*, Kossuth County District Court File No. LACV026869 ("the *Afshar* matter") and asserted a declaratory judgment claim related to

NCJC's inputs reimbursement rights under Section 4 of the Lease (LACV02689 docket, 2/12/16 petition to intervene and 2/23/16 order granting petition);

- Before filing its Petition in this case, NCJC made a written demand for payment that WMG refused, as reflected in paragraph 6 of the Petition and admitted in paragraph 6 of WMG's initial Answer (App. 11, 15); and
- On February 22, 2017 (prior to the filing of the Petition in this case), an email between counsel for WMG's other managers referred to an assessment of the "reimbursement claim" by WMG's then-counsel, Michael Streit (*see* LACV02689 docket, 12/21/17 Resistance to Report, Ex. A.)

In addition, WMG had notice of NCJC's claim by means of Trial Exhibit 110, which was the focus of WMG's defense at trial. (App. 319.) Exhibit 110, filed in January 2017 in the *Afshar* case, plainly put WMG on notice of NCJC's claim and the amount of the claimed liability. (*Id.*) The unrefuted testimony at trial was that the \$190,000 claimed in Exhibit 110 was an accurate estimate of the inputs actually used by NCJC, but that the claim had been reduced in the course of this litigation to the \$75,000 that was supported by application maps. (*Id.*)

WMG has argued that NCJC did not itemize or precisely calculate its damages before the lawsuit. Once again, WMG is making an argument that has no basis in the law. Iowa Code § 625.25 does not require an itemization of damages. Nor does it require the amount of the claim pre-trial be the same as the amount of the jury verdict. The statute merely requires notice and an opportunity to pay.

WMG cites no case (and NCJC can find none) in which Iowa Code § 625.25 prohibited the prevailing party from recovering attorneys' fees merely because it recovered less in damages than it initially demanded. The minimal cases applying Iowa Code § 625.25 are easily distinguished. In each such case, a mortgage lender sent a borrower a default notice identifying only the amount of one monthly payment that was past due, but the bank then accelerated the debt and sued to collect the full balance of the loan. The problem was that the bank sought a higher amount in the lawsuit than it demanded pre-litigation, and the bank accelerated the debt without giving the borrower enough time to pay that higher amount before the lawsuit started. *See, e.g., Peoples Trust & Sav. Bank v. Baird*, 346 N.W.2d 1, 3 (Iowa 1984); *Home Sav. & Loan Ass'n v. Iowa City Inn, Inc.*, 152 N.W.2d 588, 589-90 (Iowa 1967); *Federal Land Bank of Omaha v. Wilmarth*, 252 N.W. 507, 511-12 (Iowa 1934).<sup>3</sup>

No Iowa appellate court has applied Iowa Code § 625.25 to a situation like this, where:

- The plaintiff is not a mortgage lender collecting a loan;
- The plaintiff did not accelerate the defendant's debt days before or at the same time the plaintiff started a lawsuit;

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<sup>3</sup> Like the case law, the only treatises that discuss Iowa Code § 625.25 do so primarily in the context of mortgage foreclosures. *See* 3 Ia. Prac., Methods of Practice, §§ 33:11, 33:16; 17 Ia. Prac., Real Estate Law and Practice, § 3:3.

- The defendant received notice of the plaintiff’s claims in multiple ways, well before the lawsuit started; and
- The plaintiff was awarded less than it sought in its pre-litigation notices.

If Iowa Code § 625.25 applied as WMG suggests, then a plaintiff who recovered less than he originally claimed would never be entitled to contractual attorneys’ fees – which is directly contrary to Iowa law. *See Lee*, 874 N.W.2d at 645 (deciding a party’s right to attorney’s fees “does not turn on the magnitude of the relief obtained”).

### **CONCLUSION**

The District Court did not commit any legal error or otherwise abuse its discretion in awarding legal fees to NCJC. This Court should affirm the District Court’s Rulings.

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I, Wesley T. Graham, hereby certify that I electronically filed the foregoing document with Clerk of the Supreme Court of Iowa using the Iowa Judicial System Electronic Document Management System, which will send notification of such filing to the counsel below on the 31st day of May, 2019.

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