

IN THE SUPREME COURT OF IOWA

NO. 19-1689

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WAYNE JOSEPH MLADY,

Appellant-Cross Appellee,

v.

SUE ANN DOUGAN,

Appellee-Cross Appellant.

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Appeal from the Iowa District Court for Howard County

The Honorable John J. Bauercamper

No. EQCV017058

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**AMICUS CURIAE BRIEF OF THE IOWA BANKERS  
ASSOCIATION**

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

The Iowa Bankers Association (“IBA”) was established in 1887 and its primary purpose is to support the banking industry in Iowa, in large part by advocating the industry’s public policy initiatives through the legal system, the Iowa Legislature and Congress. IBA is the largest financial trade association in Iowa representing nearly 290 state and federally chartered financial institutions across the state.

This amicus curiae brief submitted by the IBA will discuss the policy implications of the importance in freely contracting with the debtor for a known interest rate, along with the need for certainty required for calculations of redemption amounts by the redeeming party.

IBA submits this amicus brief as the decision by this Court could have a profound impact on the predictability, certainty and risk associated with judicial foreclosure of real property with redemption rights in Iowa.

## **RULE 6.906(4)(d) STATEMENT OF AUTHORSHIP**

Pursuant to Iowa R. App. P. 6.906(4)(d), the undersigned counsel of the Iowa Bankers Association authored this brief in whole. No party, party’s counsel or other person outside of the Iowa Bankers Association contributed money to fund the preparation or submission of this brief.

## ARGUMENT

### I. THE COURT OF APPEALS PROPERLY AFFIRMED THE APPLICABLE INTEREST RATE FOR REDEMPTION PURSUANT TO IOWA CODE § 628.13 WAS 21%.

The interest rate at issue during the redemption period in this case is governed by Iowa Code § 628.13(1) (2019), where it requires payment in the amount of the sheriff's certificate of sale "with interest at contract rate at the certificate of sale from its date." *Great Western Bank v. Clement*, No. 19-1689, 2020 WL 7383114 at 5 (Iowa Ct. App. Dec. 16, 2020); Iowa Code § 628.13(1) (2019).

The promissory note referenced in this case clearly states the contract rate of 4.25% will increase to 21% at maturity or default, and given the certificate of sale was issued in an action for judicial foreclosure, such an action constitutes an event of "default" within the terms of the contract. This Court has previously addressed the accrual of interest during redemption where the redeeming party was required to pay interest at the *existing note rate* until the time of redemption. *Waterloo Savings Bank v. Carpenter*, 233 Iowa 671, 679, 9 N.W.2d 818, 821 (Iowa 1943); "interest runs from the date of the note until redemption *at the rate provided for in the note.*" *Federal Land Bank of Omaha v. Bryant*, 445 N.W.2d 761 (Iowa 1989) (emphasis added).

Debtors and creditors according to Iowa law generally have the flexibility and freedom under both common and statutory law to contract for terms agreed to by both parties in the agricultural and commercial lending context.<sup>1</sup> The default rate of 21% was clearly the rate in existence on the note at the date of the certificate of sale according to the Iowa Court of Appeals and Iowa Code 628.13(1) (2019). Dougan argues that public policy favors redemption, and such statutes “are in the interest of the community and for the purpose of protecting the public from pauperism.” (Dougan brief at 13, quoting *Tansil v. McCumber*, 206 N.W. 680, 686 (Iowa 1925)). The IBA does not debate this point, as it is clear that Iowa law provides debtors a right to both redeem and that the right of redemption is freely assignable. Iowa Code §§ 628.3, 628.25 (2019).

What is at issue, however is the statutory interpretation of Iowa Code 628.13(1) (2019), referring to the rate in existence on the date the certificate of sale was issued, as this rate was clearly 21%. If the Iowa legislature wanted to specify the rate in effect during redemption as the standard “non-default” rate contracted for (in this case at 4.25%), it would have said so in the statute. These default rates serve not only as an inducement for debtors to avoid

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<sup>1</sup> Default rates are prohibited in the consumer context, but are commonly used for agricultural and commercial loans. See, Iowa Code 537.3402 (2019).

default, but also serve to encourage additional bidders at foreclosure sales in order to put property back to its most provident and productive use.

Financial institutions in Iowa, as in other states, are not in the business of owning property received in foreclosure.<sup>2</sup> A decision by this Court to either ban the use of default rates during redemption or vacating interest accrual altogether during the redemption period is not only in conflict with existing Iowa law, but in addition would substantially raise the risk of financing agricultural and commercial transactions across the state. These institutions depend upon the ability to contract for any rate of interest, including default rates that may change depending on the status of repayment by the borrower. *Federal Land Bank of Omaha v. Wilmarth*, 252 N.W.2d 507, 510 (Iowa 1934).

## **II. FINANCIAL INSTITUTIONS DEPEND UPON THE CERTAINTY OF STRICT COMPLIANCE FOR REDEMPTION FOLLOWING FORECLOSURE.**

Similar policy arguments exist for financial institutions regarding the certainty of the timeframes in the redemption statute – and they must be strictly complied with, and be beyond the reach of equitable relief. *Nw. Mut. Ins. Co. v. Hansen*, 218 N.W. 502, 505 (Iowa 1928); *Tharp v. Kerr*, 119 N.W. 267, 268 (Iowa 1909). Iowa law is clear that the right to redeem is

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<sup>2</sup> See Iowa Code 524.910(2) (2019). This subsection states: “Real property purchased by a state bank at sales upon foreclose of mortgages or deeds of trust owned by it....shall be sold or disposed of by the state bank within five years after title is vested in the state bank, unless the time is extended by the superintendent.”

purely statutory and runs one year from the date of the sheriff's sales. *First Nat'l Bank of Glidden v. Matt Bauer Farms Corp.*, 408 N.W.2d 51, 53 (Iowa 1987) (citing Iowa Code § 628.3 (2019)).

This issue has recently been addressed by the Iowa Court of Appeals, where the court refused to use equitable powers to “move the goal posts as a matter of equity...as our supreme court has been reluctant to extend the statutory deadline.” *Sibley State Bank v. Zylstra*, No. 19-0126, 2020 WL 4814072 (Iowa Ct. App. Aug. 19, 2020) (citing *Fed. Land Bank of Omaha v. Heeren*, 398 N.W.2d 839, 844 (Iowa 1987); *Hansen*, 218 N.W. at 505 (endorsement of strict compliance with the redemption statute)).

These objective parameters are crucial for financial institutions and other buyers or investors who bid at sheriff sales on foreclosed real estate. The statutory process cannot be a guessing game for these certificate holders, and a subjective extension of the redemption period for equitable reasons would negatively impact attracting qualified bids at foreclosure sales. Any “chilling” effect by a ruling injecting such subjectivity into the redemption process will be factored by financial institutions when pricing loans, particularly in the agricultural and commercial area where redemption is available for debtors under existing Iowa law.



## CONCLUSION

WHEREFORE, the IBA respectfully requests that this Court affirm the decision of the Iowa Court of Appeals.

Respectfully submitted,



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### **CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE VOLUME LIMITATION**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 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 in 14-point font and contains 1259 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

*/s/ Robert L. Hartwig*  
Robert L. Hartwig

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on March 11, 2021, I presented the foregoing document to the Clerk of Court for the Iowa Supreme Court for filing and uploading into the Iowa Electronic Document Management System, which will send notification of such filing to the appropriate parties electronically.

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