

IN THE SUPREME COURT OF IOWA
No. 23–1510
Boone County No. CVCV042380

LANCE A. DEGENEFFE and TRACY L. DEGENEFFE,
Plaintiff–Appellee,

v.

HOME PRIDE CONTRACTORS, INC.,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR
BOONE COUNTY
THE HONORABLE JOHN J. HANEY,
DISTRICT COURT JUDGE

APPELLANT’S AMENDED FINAL BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. Does a roofing contractor extend credit for purposes of the Iowa Consumer Credit Code if its construction contract requires payment of the balance of the contract upon completion of the work and assesses interest if payment is made more than 30 days late?**

Hahn v. Hank's Ambulance Serv., Inc., 787 F.2d 543 (11th Cir. 1986)
Legg v. West Bank, 873 N.W.2d 763 (Iowa 2016)
Midwest Check Cashing, Inc. v. Richey, 728 N.W.2d 396 (Iowa 2007)
Muchmore Equip., Inc. v. Grover, 315 N.W.2d 92 (Iowa 1982)
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State ex rel. Miller v. Nat'l Farmers Org., 278 N.W.2d 905 (Iowa 1979)
15 U.S.C.A. § 1601
Iowa Code § 537.1102
Iowa Code § 537.1301

- II. Is a roofing contractor's assessment of interest for a first-time, one-off customer's failure to pay the full contractual amount when due a charge for unanticipated late payment or delinquency, and therefore excluded from the definition of a "finance charge" under the Iowa Consumer Credit Code?**

Bright v. Ball Mem'l Hosp. Assoc., 616 F.2d 328 (7th Cir. 1980)
Eriksen v. Fisher, 421 N.W.2d 193 (Mich. Ct. App. 1988)
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ROUTING STATEMENT

This Supreme Court should retain this case because it presents substantial issues of first impression involving the application of the Iowa Consumer Credit Code, Iowa Code chapter 537, to one-off transactions that provide for the collection of interest by a contractor when a customer fails to pay for goods and services when payment is due upon the completion of work. Late-payment interest provisions raise two substantial issues of first impression under the Iowa Consumer Credit Code. *See* Iowa R. App. P. 6.1101(2)(c). First, is the collection of interest by a contractor for late payment an extension of credit under the narrow definition of “credit” in the Iowa Consumer Credit Code? *See* Iowa Code § 537.1301(16) (defining “credit”); *Legg v. West Bank*, 873 N.W.2d 763, 770 (Iowa 2016) (recognizing the definition of “credit” under the Iowa Consumer Credit Code “is much more narrow than the common law definition”). Second, is a contractor’s assessment of interest for a first-time, one-off customer’s failure to pay the full contractual amount when due a charge for “unanticipated late payment” or “delinquency” or is it a “time price differential?” *Compare* Iowa Code § 537.1301(21)(b)(1) (excluding charges for “unanticipated late payment” from the definition of a “finance charge”) *with* Iowa Code

§ 537.1301(21)(a)(2) (identifying a “time price differential” as a type of “finance charge”).

The Supreme Court has not weighed in on these questions, even though many construction contracts allow for the collection of interest when a customer fails to pay the contractor the contractual amount when due. Several courts in other jurisdictions have addressed these issues in similar contexts (such as the Truth-in-Lending Act or their own consumer credit codes), and the majority conclude that that such agreements do not constitute an extension of credit and do not contain a finance charge. Notably, although eleven states have adopted consumer credit codes¹ with similar definitions of a “finance charge,” there is little case law that explains the difference between a time price differential and charges for unanticipated late payment or delinquency. Therefore, this case is also appropriate for retention because it presents fundamental and urgent issues of broad public importance

¹ The Iowa Consumer Credit Code is based on the Uniform Consumer Credit Code, which has been adopted in Idaho, Colorado, Utah, Wyoming, Kansas, Oklahoma, Iowa, Wisconsin, Indiana, South Carolina, and Maine. *See* Unif. L. Comm’n, Consumer Credit Code (1974) <https://www.uniformlaws.org/committees/community-home?CommunityKey=0f8dc75f-b418-4378-9641-486bb12813ff>; *see generally* S.F. 1405, 65th G.A., explanation (Iowa 1974) (“This bill enacts a Consumer Credit Code for the state of Iowa which is based upon the Uniform Consumer Credit Code.”).

requiring ultimate determination by the Supreme Court. *See* Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE CASE

Nature of the Case

The parties dispute whether the Iowa Consumer Credit Code, Iowa Code chapter 537, applies to a roofing contract between a contractor, Home Pride Contractors, Inc. (“Home Pride”) and homeowners Lance and Tracy Degeneffe. (*See generally* D0044, MSJ Order, App. 117–26.) Home Pride’s roofing contract provided that the Degeneffes’ payment was due upon the completion of work. (D0019, Roofing Contract ¶ 5, App. 055.)² If the Degeneffes did not pay on time, Home Pride could assess 1.5% interest after 30 days. (D0019, Roofing Contract ¶¶ 5, 12, App. 055–56.)

Home Pride is a roofing contractor and is not in the business of extending credit or lending money to its customers. (D0019, Ryan Aff. ¶ 4, App. 053.)³ However, the district court surprisingly concluded that Home

² Both parties submitted the roofing contract with their summary judgment exhibits. (D0025, Pls.’ MSJ Ex. A, App. 061–62; D0019, Ryan Aff., App. 055–56.) The parties also entered a contract titled “Authorization of the Insured” on July 26, 2021, but that contract was not the basis for finding that this transaction was the subject of the Iowa Consumer Credit Code. (D0025, Pls.’ MSJ Ex. A, App. 060; D0044, MSJ Order 3, App. 119.)

³ Michelle Ryan’s affidavit was submitted by Home Pride in support of its motion for summary judgment. (*See generally* D0023, Def.’s Index of Evidence in Support of Its Mot. for Summ. J.).

Pride's roofing contract was a consumer credit transaction under the Iowa Consumer Credit Code because it "grant[ed] the Degeneffes[] the right to defer payment, with 1.5% interest added after 30 days" and the 1.5% interest charge was a time price differential within the ICCC's definition of a finance charge. (*See* D0044, MSJ Order, 8; App. 124.) This appeal timely followed.

Course of Proceedings

Lance and Tracy Degeneffe sued Home Pride in the Iowa District Court for Boone County, alleging a single claim for Violation of the Iowa Consumer Credit Code (Iowa Code Chapter 537). (D0001, Pet., App. 004–10.) On June 16, 2023, Home Pride moved for summary judgment on the basis that the Iowa Consumer Credit Code did not apply to the Roofing Contract. (D0021, Def.'s MSJ.) On June 30, 2023, the Degeneffes resisted summary judgment and filed their own motion for summary judgment on the Iowa Consumer Credit Code claim. (D0026, Pls.' MSJ.) The Degeneffes' motion for summary judgment asserted that the Iowa Consumer Credit Code applied to the Roofing Contract, and that Home Pride's conduct was harassing and abusive under the Iowa Consumer Credit Code because Home Pride had (1) requested attorneys' fees; (2) filed a lawsuit in Nebraska to collect the amounts due under the Roofing Contract; and (3) accused Plaintiffs of fraud and/or criminality. (D0027, Pls.' Br. in Support of MSJ.)

On July 13, 2023, while the cross motions for summary judgment were pending, the Degeneffes moved to amend their Petition to allege a putative class claim based on the Iowa Consumer Credit Code. (D0034, Pls.’ Mot. to Amend.)

On August 4, 2023, the district court held a hearing on the cross motions for summary judgment. (*See generally* 8/4/2023 MSJ Tr., App. 127–52.) On August 17, 2023, the court issued an order denying Home Pride’s motion for summary judgment; granting the Degeneffes’ summary judgment “in so far as establishing that the Roofing Contract at issue herein constitutes a ‘consumer credit sale’ subject to the ICCC”; and denying the Degeneffes’ motion for summary judgment to the extent it sought to establish that Home Pride’s conduct was harassing and abusive under the ICCC. (D0044, MSJ Order 9, App. 125.)

On August 25, 2023, the district court granted the motion for leave to amend. (D0048, Aug. 25, 2023 Order.)

On September 15, 2023, Home Pride timely submitted an application for interlocutory appeal of the August 17, 2023 summary judgment ruling. (App. for Interlocutory Appeal.) The Degeneffes joined the application for interlocutory appeal on September 29, 2023. (Pls’ Response to App. for Interlocutory Appeal.) The Iowa Supreme Court granted the application for

interlocutory appeal on October 18, 2023 and stayed all proceedings in the district court. (Order Granting App. for Interlocutory Appeal.)

STATEMENT OF THE FACTS

On August 21, 2021, Home Pride and the Degeneffes entered a roofing contract (“Roofing Contract”) to replace the roof on the Degeneffes’ former⁴ residence in Boone County, Iowa. (*See* D0029, Pls.’ Response to Def.’s SUMF ¶ 1, App. 114; D0025, Pls.’ SUMF ¶ 2; App. 057.) In return, the Degeneffes agreed to pay for Home Pride’s goods and services. (*See generally* D0019, Roofing Contract ¶ 5, App. 055.)

The price for Home Pride’s work under the Roofing Contract was contingent upon insurance costs and approval. (D0019, Roofing Contract ¶¶ 2–3; Price of Goods and Services, App. 055.) Specifically, the cost would be determined by the replacement cost value provided to the Degeneffes under their homeowners’ insurance policy, plus any costs necessarily incurred for overhead, supplements, and profit. (*See* D0029, Pls.’ Response to Def.’s SUMF ¶ 2, App. 114; D0019, Roofing Contract ¶ 2, App. 055.)⁵

⁴ The Degeneffes sold the residence during the pendency of this lawsuit.

⁵ Neither party submitted invoices for the cost of repair in the summary judgment record. However, the summary judgment record reflects that the cost for roofing repairs under this formula was \$13,164.37. (*See* D0025, Pls.’ MSJ Ex. E, October 14, 2022 Letter from Jeffers at p. 1, App. 072; D0025, Pls.’ MSJ Ex. B, May 10, 2022 Letter from Jeffers, App. 063.) The Degeneffes received payment from their insurance company for Home

The Roofing Contract required the Degeneffes to pay Home Pride upon completion of the work as follows:

Upon completion of work as set forth by the agreement, Customer agrees to sign a completion certificate and pay the balance of the contract (1.5% added after 30 days).

(D0019, Roofing Contract ¶ 5, App. 055.) It was not an installment contract.

(See generally D0019, Roofing Contract, App. 055–56.) The Roofing Contract also allowed Home Pride to collect 1.5% interest if payment was not made within 30 days of the completion of work, both in the provision above, as well as in the default provision below:

12. Default. SHOULD DEFAULT BE MADE IN PAYMENT OF THIS AGREEMENT, CHARGES SHALL BE ADDED FROM THE DATE THEREOF AT A RATE OF ONE AND ONE-HALF (1-1/2) PERCENT PER MONTH (18% PER ANNUM) . . .

Pride’s completion of the roof, and Home Pride billed the Degeneffes for \$13,164.37. (See D0025, Pls.’ MSJ Ex. E, October 14, 2022 Letter from Jeffers at p. 1, App. 072.) The Degeneffes refused to pay, which led both parties to initiate lawsuits regarding the Roofing Contract.

Although Home Pride attempted to consolidate the cases early in the litigation, its motion to consolidate was resisted and denied. Home Pride’s initiated lawsuit, *Home Pride Contractors Inc. v. Degeneffe, et al.*, LACV042366 (Boone County, Iowa) (“Home Pride lawsuit”) remains pending. The Degeneffes raised the Iowa Consumer Credit Code in the Home Pride lawsuit as a counterclaim and affirmative defense, which has been briefed through summary judgment with a more fulsome record, including the initial invoice to the Degeneffes. The Iowa Consumer Credit Code portion of the Home Pride lawsuit has been placed “on hold” until this appeal is resolved.

(D0019, Roofing Contract ¶ 12, App. 056.)

Home Pride completed the roofing work on the Degeneffes' home and invoiced them for that work. (*See* D0019, Ryan Aff. ¶ 7, App. 053.)⁶ When the Degeneffes failed to pay, Home Pride initiated collection efforts for the amount due under the Roofing Contract, plus interest. (*See* D0025, Pls.' SUMF ¶¶ 4–5, App. 057.) These collection efforts included demand letters, phone calls, and eventually litigation. (*See* D0025, Pls.' SUMF ¶¶ 4–13, App. 057–59.) To date, Home Pride has not been paid for any of its work performed pursuant to the Roofing Contract. (*See* D0019, Ryan Aff. ¶ 8, App. 053.)

ARGUMENT

This case involves a simple transaction. Home Pride agreed to repair a roof in exchange for payment in full upon completion of the work. If the Degeneffes didn't pay on time, Home Pride could collect interest for the late payment. The parties' agreement was not a consumer credit sale.

The district court erred in granting summary judgment in the Degeneffes' favor, and in denying Home Pride's motion for summary judgment, because the Roofing Contract is not subject to the Iowa Consumer

⁶ The summary judgment order found that “The Degeneffes' did not pay the total of the contract price. There is a dispute as to whether or not all work was performed under the agreement.” (D0044, MSJ Order 3, App. 119.)

Credit Code. The Iowa Consumer Credit Code governs most consumer credit transactions in Iowa. *See Midwest Check Cashing, Inc. v. Richey*, 728 N.W.2d 396, 399 (Iowa 2007). Consumer credit transactions include consumer credit sales.⁷ Iowa Code § 537.1301(12). The Degenettes’ sole claim in this case is that the Roofing Contract is a consumer credit sale subject to the Iowa Consumer Credit Code. (D0001, Pet. ¶¶ 24–37, App. 008–9; *see also* D0034, Am. Pet. ¶¶ 41–55.)

The Iowa Consumer Credit Code defines a “consumer credit sale” as follows:

[A] consumer credit sale is a sale of goods, services, or an interest in land *in which all of the following are applicable*:

- (1) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.
- (2) The buyer is a person other than an organization.
- (3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose.
- (4) Either the debt is payable in installments or a finance charge is made.
- (5) With respect to a sale of goods or services, the amount financed does not exceed the threshold amount.

Iowa Code § 537.1301(13)(a) (emphasis added).

⁷ Plaintiffs’ only asserted basis that the Iowa Consumer Credit Code applied was its contention that the Roofing Contract was a “consumer credit sale.” *See* D0027, Pls’ MSJ Br., at 1.

Summary judgment should have been granted in Home Pride’s favor because the Roofing Contract did not meet the first and fourth requirements of a consumer credit sale. Home Pride is a general contractor, and its Roofing Contract requires payment “[u]pon completion of work.” (D0019, Roofing Contract ¶ 5, App. 055.) Home Pride’s Roofing Contract sets a single payment date (established by reference to the completion of work) for the homeowner to “pay the balance of the contract.” (D0019, Roofing Contract ¶ 5, App. 055.) If the homeowner fails to pay the balance of the contract within 30 days of the due date, Home Pride can assess interest for the late payment. (D0019, Roofing Contract ¶¶ 5, 12, App. 055–56.) Clearly, no credit was provided by Home Pride to the Degeneffes, and the interest charged for late payment is not a finance charge under the ICCC. Even though reversal is required if error occurred on just one of those findings, the district court actually erred on both findings.

This court should reverse and remand this case for the entry of summary judgment in Home Pride’s favor because Home Pride did not grant credit to the Degeneffes and Home Pride’s assessment of interest for late payment was not a finance charge governed by the Iowa Consumer Credit Code.

I. The District Court Erred by Finding that Home Pride’s Roofing Contract Was a Consumer Credit Sale Subject to the Iowa Consumer Credit Code Because Home Pride Did Not Extend Credit to the Degeneffes.

A. Preservation of Error and Standard of Review.

Home Pride preserved error on this issue by moving for summary judgment and by opposing the Degeneffes’ motion for summary judgment on this issue. (D0020, Def.’s Br. in Support of Mot. Summ. J., 5–7; D0032, Def.’s Br. in Resistance to Mot. Summ. J., 1–4; 8/4/2023 MSJ Tr. 4:11–6:15, App. 129–31.)

The standard of review of a district court ruling on a motion for summary judgment is for correction of errors at law. *Konrardy v. Vincent Angerer Trust, Dated Mar. 27, 1998*, 925 N.W.2d 620, 623 (Iowa 2019). Under this standard, the court is “bound by well-supported findings of fact, but are not bound by the legal conclusions of the district court.” *Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 712 (Iowa 2005) (quoting *In re Estate of Tolson*, 690 N.W.2d 680, 682 (Iowa 2005)).

The record is reviewed on appeal “in the light most favorable to the nonmoving party.” *Andrew v. Hamilton Cnty. Pub. Hosp.*, 960 N.W.2d 481, 488 (Iowa 2021) (quoting *Bierman v. Weier*, 826 N.W.2d 436, 443 (Iowa 2013)). Summary judgment should be granted “when there is no genuine issue of material fact and the moving party is entitled to judgment as a

matter of law.” *Andrew*, 960 N.W.2d at 488 (quoting *Bierman*, 826 N.W.2d at 443). The court’s task on appeal is to “determine whether a genuine issue of material of fact exists, and whether the law was correctly applied.” *Farm & City Ins. Co. v. Anderson*, 509 N.W.2d 487, 489 (Iowa 1993). Under these standards, the district court erred in granting the Degeneffes’ motion for summary judgment and erred in denying Home Pride’s motion for summary judgment because Home Pride did not extend credit to the Degeneffes.

B. Argument

1. Home Pride Did Not Extend Credit to the Degeneffes Because the Degeneffes Did Not Have a Right to Defer Payment of the Balance of the Roofing Contract.

Home Pride’s Roofing Contract is not governed by the Iowa Consumer Credit Code because Home Pride did not extend credit to the Degeneffes. A consumer credit sale requires proof that “[c]redit is granted pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.” Iowa Code § 537.1301(13)(a)(1). “Credit” is defined as “the *right* granted by a person extending credit to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.” *Id.* § 537.1301(16) (emphasis added).

The Iowa Consumer Credit Code’s definition of credit is “much more narrow than the common law definition.” *See Legg*, 873 N.W.2d at 770. Therefore, when analyzing whether credit has been extended, there must be evidence that the seller granted the “*right . . . to defer payment*” to the buyer. *See id.* (quoting Iowa Code § 537.1301(16) (emphasis in original)). To determine if the buyer has the right to defer payment, the court considers (1) “whether the individual had the ability to defer payments” and (2) “when the money was ‘due and payable.’” *Legg*, 873 N.W.2d at 769.

The district court properly identified this applicable law but erred in concluding that Home Pride extended credit to the Degeneffes based on the Roofing Contract’s parenthetical “(1.5% interest added after 30 days).” (D0044, MSJ Order 8, App. 124; Roofing Contract ¶ 5, App. 55.) In reaching this conclusion, the district court accepted the Degeneffes’ argument that the 1.5% interest was a “time price differential” as set forth by Iowa Code section 537.1301(21)(a)(2), a subsection of the definition of a “finance charge.” (MSJ Order 8, App. 124.) The district court’s analysis was flawed in two ways: (1) its conclusion was based on a flawed contract interpretation, which caused it to ignore a long line of cases that credit is not extended when payment is due upon completion of work, and (2) it

combined two “consumer credit sale” requirements into a single requirement — the inclusion of a “finance charge.”

- a. *The district court’s contract interpretation should be rejected because the Roofing Contract did not grant credit to the Degeneffes.*

The district court erred in granting summary judgment to the Degeneffes because it failed to apply ordinary contract interpretation principles to determine whether the Degeneffes had the ability to defer payments and when the money was “due and payable.” Specifically, the district court failed to give effect to all language in the Roofing Contract and interpret its terms in context. Applying these normal contract interpretation principles, neither consideration supports that Home Pride extended credit to the Degeneffes.

The district court failed to give effect to all language of the Roofing Contract. Courts “endeavor to give effect to all language of the contract” because that is the “most important evidence of [the parties’] intentions.” *Homeland Energy Sols., LLC v. Retterath*, 938 N.W.2d 664, 687 (Iowa 2020) (quoting *C&J Vantage Leasing Co. v. Wolfe*, 795 N.W.2d 65, 77 (Iowa 2011)). “[A]n interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.” *Iowa Fuel & Mins., Inc. v.*

Iowa State Bd. of Regents, 471 N.W.2d 859, 863 (Iowa 1991); *see also Colwell v. MCNA Ins. Co.*, 960 N.W.2d 675, 679 (Iowa 2021) (recognizing Iowa courts “interpret every word and every provision of a contract to give it effect if possible”). The district court’s determination that the Degeneffes had “the right to defer payment, with 1.5% interest added after 30 days” does not comply with these principles because its interpretation gave no effect to the phrase “upon completion of the work” and rendered the phrase “balance of the contract” meaningless. (*See* D0044, MSJ Order 8, App. 124; D0019, Roofing Contract ¶ 5, App. 055). If the district court had given meaning to all terms of the contract, it would have determined that the payment due under the contract came due on a single date: “upon the completion of the work.”

Likewise, the district court’s ruling failed to consider the terms of the Roofing Contract in context. Iowa law is clear that “words and phrases are not interpreted in isolation. Instead they are interpreted in [the] context in which they are used.” *Hartig Drug Co. v. Hartig*, 602 N.W.2d 794, 798 (Iowa 1999) (internal citation omitted). The parenthetical “1.5% added after 30 days” provides the time when the Degeneffes could pay the balance of the contract (the full amount due) before being in default on their payment

obligations and subjected to the default interest rate, which is apparent when the two interest-related terms are put side by side:

5. Upon completion of work as set forth by the agreement, Customer agrees to sign a completion certificate and pay the balance of the contract (1.5% added after 30 days).

12. Default. SHOULD DEFAULT BE MADE IN PAYMENT OF THIS AGREEMENT, CHARGES SHALL BE ADDED FROM THE DATE THEREOF AT A RATE OF ONE AND ONE-HALF (1-1/2) PERCENT PER MONTH (18% PER ANNUM) . . .

(D0019, Roofing Contract ¶¶ 5, 12, App. 055–56).⁸ These terms should have been read together to give context and meaning to both provisions. The interest rates in paragraphs 5 and 12 are identical, and read together, the “date thereof” of default in paragraph 12 is 30 days after the balance of the contract is due pursuant to paragraph 5’s parenthetical.

Home Pride’s job was to replace the Degeneffes’ roof. When the work was done, the Degeneffes were to pay for that work. The Roofing Contract did not give the Degeneffes the right to defer payments in any way.

The Roofing Contract set a single price for the goods and services Home Pride agreed to provide — the replacement cost value provided to the Degeneffes under their homeowners’ insurance policy, plus any costs

⁸ The district court identified both of these provisions as “relevant . . . for purposes of this [summary judgment] ruling,” but did not address paragraph 12 of the Roofing Contract in its analysis. (D0044, MSJ Order 3, 6–9, App. 119,122–25.)

necessarily incurred for overhead, supplements, and profit. (*See* D0029, Pls.’ Response to Def.’s SUMF ¶ 1, App. 114; D0019, Roofing Contract ¶ 2, App. 055.) That amount was due “[u]pon the completion of work as set forth by the agreement.” (D0019, Roofing Contract ¶ 5, App. 055.) Home Pride could assess interest for late payment or default if payment was not made in full within 30 days after the completion of work. No credit card was provided. No credit of any kind was extended. It was a very simple transaction that the Degeneffes are attempting to turn into something more.

The Degeneffes’ contention (which the district court accepted) that they had the ability to pay late in exchange for paying interest is no different than any purchaser’s ability to breach a contract. If the Degeneffes’ and the district court’s interpretation of the Iowa Consumer Credit Code is carried to its logical conclusion, *every* purchaser of a product who is obligated to pay upon completion of work is extended credit because the purchaser has the ability to defer payments by breaching the contract and paying late or not paying at all. The Legislature cannot have intended for the Iowa Consumer Credit Code, with its narrow definition of credit, to be applied so broadly.

Iowa courts have not interpreted the Iowa Consumer Credit Code so broadly. Iowa courts hold that contractual agreements like Home Pride’s Roofing Contract that “require[] payment in full upon completion” or state

the debtor “must pay the [creditor] back immediately” do **not** constitute the extension of credit under the Iowa Consumer Credit Code. *See Legg*, 873 N.W.2d at 770 (collecting cases); *Muchmore Equip., Inc. v. Grover*, 315 N.W.2d 92, 98 (Iowa 1982), *overruled on other grounds* (“[T]his contract itself was not on ‘credit’; it called for the balance in full upon completion of the building.”); *see also State ex rel. Miller v. Nat’l Farmers Org.*, 278 N.W.2d 905, 907 (Iowa 1979) (“Nowhere in the agreement allows the member to defer payment of dues. They are ‘due and payable’ at the date of making application and annually thereafter.”).

The district court’s conclusion that the Roofing Contract extended credit flies in the face of these authorities. It is also at odds with courts across the country applying similar laws. There is general agreement in the American legal community that when a contract requires payment in full upon the completion of work, the seller does not extend credit, even if the seller’s contract provides for a charge or interest in the event of late payment. *See Hahn v. Hank’s Ambulance Serv., Inc.*, 787 F.2d 543, 544 (11th Cir. 1986) (per curiam) (finding ambulance company did not extend “credit” for purpose of the Truth-in-Lending Act, 15 U.S.C.A. § 1601 *et seq.* (“TILA”) when it “assesses a charge in light of the customer’s failure to pay the company at the time the service is performed, in accordance with

customary policy”); *Rogers Mortuary, Inc. v. White*, 594 P.2d 351, 353 (N.M. Ct. App. 1979) (finding funeral purchase agreement did not extend credit for purposes of the TILA when contract provided that “if defendant failed to pay th[e] debt for more than 30 days, and was late in payment thereafter, then defendant was charged with interest each month on any balance past due”); *Simpson v. C.J.V. Constr. & Consulting, Inc.*, 690 So. 2d 363, 364–65 (Ala. 1997) (collecting cases and finding contractor did not extend credit for purposes of TILA by assessing a charge when the homeowners failed to pay the contractor when the money became due); *Sealey v. Boulevard Constr. Co.*, 437 N.E.2d 305, 307 (Ohio Ct. App. 1980) (finding contractor did not “extend credit” when its contract stated that the buyer would pay “‘the unpaid balance of the cash price’ upon completion of the installation of the aluminum siding” and did not provide for “deferment of payment”); *cf. Ault v. Gen. Property Mgmt. Co.*, 683 P.2d 988, 991 (Okla. Civ. App. 1984) (“An agreement to pay upon the completion of the work contracted for does not constitute an extension of credit” under the Uniform Consumer Credit Code).⁹

⁹ *Cf. Laramore v. Ritchie Realty Mgmt. Co.*, 397 F.3d 544, 547–48 (7th Cir. 2005) (concluding a residential lease for a one-year term and requiring monthly payments did not defer a debt for the purposes of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 (“ECOA”)); *Riethman v. Berry*, 287 F.3d 274, 277–78 (3d Cir. 2002) (holding lawyers who did not require up-front

These out-of-state authorities are entitled to weight because the primary purposes and policies of the Iowa Consumer Credit Code include to (1) “[c]onform the regulation of disclosure in consumer credit transactions to the Truth in Lending Act,” *see* Iowa Code § 537.1102(2)(f), and (2) “[m]ake the law, including administrative rules, more uniform among the various jurisdictions.” *id.* § 537.1102(2)(g). This court should not endorse an erroneous contract and statutory interpretation that would defy the policies and purposes outlined by the Legislature. It also is against common sense. This was a very simple transaction that required a customer to pay its roofing contractor when the contractor completed installing the new roof. Nothing more, nothing less.

In sum, the fact that the Degeneffes made a choice to not pay the balance of the contract when due does not mean that Home Pride extended them credit or gave them the *right* to pay the balance of the contract late.

payment nonetheless did not “give their clients a unilateral right to defer payments” for the purposes of TILA or the ECOA); *Shaumyan v. Sidetex Co.*, 900 F.2d 16, 18 (2d Cir. 1990) (concluding a home improvement contract providing for progress payments did not defer debt under the ECOA); *Kuhfeldt v. Liberty Mut. Ins. Co.*, 833 F. Supp. 632, 635–36 (E.D. Mich. 1993) (concluding an insurance policy providing for one year’s coverage and not requiring plaintiffs to continue to pay monthly premiums was not a credit transaction under TILA); *Liberty Leasing Co. v. Machamer*, 6 F. Supp. 2d 714, 717–19 (S.D. Ohio 1998) (holding consumer leases did not defer debt under the ECOA because they were payments for contemporaneous use).

(*See* D0019, Ryan Aff. ¶ 4, App. 053.) Payment was always required at the end of the work, as confirmed by the Roofing Contract. If payment did not occur on time, interest would be charged. When the contract is viewed as a whole, Home Pride did not extend credit or intend, much less *grant*, the Degeneffes the right to defer payment.¹⁰ In short, Home Pride did not extend credit to the Degeneffes in any way and the district court erred by denying Home Pride’s motion for summary judgment.

- b. *The district court’s analysis failed to consider each requirement of a “consumer credit sale” independently.*

The district court’s analysis was also flawed because it failed to analyze whether Home Pride granted credit to the Degeneffes separately from whether a finance charge was made in evaluating whether there was a “consumer credit sale” subject to the Iowa Consumer Credit Code. Instead, the district court collapsed those two requirements into a single inquiry: whether there was a finance charge. *Compare* Iowa Code § 537.1301(13)(a), *with* D0044, MSJ Order at 8–9, App. 124–25 (finding credit was granted

¹⁰ There is also zero evidence in the record that Home Pride *regularly* extends credit to homeowners. *See Ault*, 683 P.2d at 991 (finding evidence of “one transaction, coupled with un rebutted denials of the existence of other such transactions” could not establish that that the defendant “regularly” extended credit). Here, the un rebutted evidence shows that Home Pride “does not extend credit to home owners and is not engaged in the business of making loans.” (D0019, Ryan Aff. ¶ 4, App. 053.)

because there was a “finance charge”).¹¹ When interpreting statutory provisions, courts must “presume that the legislature intended all parts of the statute for a purpose, so we will avoid reading the statute in a way that would make any portion of it redundant or irrelevant.” *Rojas v. Pine Ridge Farms, L.L.C.*, 779 N.W.2d 223, 231 (Iowa 2010); *Vroegh v. Iowa Dept. of Corrections*, 972 N.W.2d 686, 703 (Iowa 2022) (“Canons of statutory interpretation require that every word and every provision in a statute is to be given effect if possible, and *not* deemed mere surplusage.”).

The Legislature chose to distinguish between the granting of credit and the making of a finance charge. Iowa Code § 537.1301(13)(a)(1) & (4) (defining “consumer credit sale” to have “all of the following” apply: “credit is granted . . . by a seller who regularly engages as a seller in credit transactions of the same kind” and “[e]ither the debt is payable in installments or a finance charge is made”). Regardless of whether the Degenettes could establish that the interest rate in the Roofing Contract is a finance charge (it is not), they did not establish as a matter of law that Home Pride granted them credit through the Roofing Contract. The statute requires

¹¹ This is particularly apparent in the Court’s listing of “undisputed facts before the Court,” which address the requirements of Iowa Code § 537.1301(13)(a) in order but identifies the existence of a “finance charge” to meet both the first and fourth requirement. (D0044, MSJ Order 8–9, App. 124–25.)

that *all* requirements must be met in a transaction for the Iowa Consumer Credit Code to apply. *See* Iowa Code § 537.1301(13)(a). If the Degeneffes failed to establish either the extension of credit or a finance charge, their Iowa Consumer Credit Code claim should have been dismissed and summary judgment in favor of Home Pride should have been entered.

II. Home Pride’s Roofing Contract Is Not Subject to the Iowa Consumer Credit Code Because Home Pride Does Not Impose a Finance Charge.

A. Preservation of Error and Standard of Review.

Home Pride preserved error on this issue by moving for summary judgment and by opposing the Degeneffes’ motion for summary judgment on this issue. (D0020, Def.’s Mot. for Summ. J., 5–6; D0038, Def.’s Resistance to Pls.’ Mot. for Summ. J., 2–3; 8/4/2023 MSJ Tr. 4:11–21, App. 129.)

The standard of review of a district court ruling on a motion for summary judgment is for correction of errors at law. *Konrardy*, 925 N.W.2d at 623; *see supra* pp. 18–19.

B. Argument.

The Roofing Contract does not contain a finance charge as a matter of law. It contains provisions that allow Home Pride to assess interest in the event of unanticipated late payment or default. These types of charges are

explicitly excluded from the definition of the term “finance charge” in the Iowa Consumer Credit Code. The district court’s determination that the 1.5 % interest charge was a “finance charge” because it constitutes a “time price differential” lacks any basis in the Roofing Contract or in the law. This presents a separate and independent reason for this Court to reverse the district court, as it clearly erred.

For the Degenettes’ Iowa Consumer Credit Code claim to succeed, they had to demonstrate that the Roofing Contract created a debt that included a finance charge.¹² Iowa Code § 537.1301(13)(a)(4). The term “finance charge” is defined, in relevant part, under Iowa Code section 537.1301(21) as set forth below:

- a. “[F]inance charge” means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable: . . .
 - (2) Time price differential, credit service, service, carrying or other charge, however denominated. . . .
- b. “Finance charge” *does not* include:
 - (1) *Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence unless the parties*

¹² The Roofing Contract did not provide for payment in installments, and the Degenettes did not attempt to establish a consumer credit transaction through that alternative.

agree that these charges are finance charges. A charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account which is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or at a specified amount is required when billed, and in the ordinary course of business the consumer is permitted to continue to have purchases or other debts debited to the account after the imposition of the charge. . . .

Iowa Code § 537.1301(21) (emphasis added).

The district court incorrectly concluded that the “1.5% added after 30 days” provision that allowed Home Pride to collect interest for a customer not paying after the work was completed was a “time price differential,” and therefore, a finance charge. (D0044, MSJ Order 8, App. 124.) It erred in reaching this conclusion because the Roofing Contract’s interest charge was only triggered in the event of an unanticipated late payment, delinquency, or default, which is not a “finance charge” under the Iowa Consumer Credit Code as a matter of law.

1. The 1.5 % Interest Rate is an Unanticipated Late Payment Charge, Delinquency, or Default Charge Expressly Excluded from the Definition of a Finance Charge Under the Iowa Consumer Credit Code.

Home Pride’s interest provision falls squarely within an exception to the definition of a finance charge: the default, delinquency, or unanticipated late payment exception. The Legislature expressly excluded from the

definition of “finance charge” all “[c]harges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence unless the parties agree that these charges are finance charges.” Iowa Code § 537.1301(21)(b)(1). Here, the 1.5% interest rate is a charge that results from default or delinquency from an actual unanticipated late payment. This is apparent from the terms of the Roofing Contract, which provides that payment of the “balance of the contract” is due “[u]pon completion of work.” (D0019, Roofing Contract ¶ 5, App. 055.) Interest is only added “after 30 days” — in other words, if payment is not timely received. *Id.*

The Degeneffes cannot show that their late payment (or in their case, *nonpayment*) was “anticipated” when the contract required payment upon the completion of the work. The Degeneffes did not allege — and could not allege — that there was any prior relationship between the parties that would have alerted Home Pride to the possibility that the Degeneffes would fail to pay for the work when due. (*See generally* D0025, Pls.’ SUMF, App. 057–59.) The uncontroverted evidence in the record shows only one transaction between the parties and that Home Pride invoiced the Degeneffes for the work when it was completed. (*See* D0019, Ryan Aff. ¶¶ 7–8, App. 053.) The Degeneffes never paid. (*See* D0019, Ryan Aff. ¶ 8, App. 053; D0029, Pls.’

Response to Def’s SUMF ¶ 4, App. 115.) Viewed in the light most favorable to the nonmovant — Home Pride — the Degeneffes’ failure to pay the contract when due was unanticipated, and the charges were for default or delinquency in payment.¹³

Under similar circumstances, other courts have concluded that these types of interest provisions do not constitute “finance charges” under similar statutory definitions. *Bright v. Ball Mem’l Hosp. Assoc.*, 616 F.2d 328, 330–31, 336–37 (7th Cir. 1980) (finding ¾% interest charged by hospital on outstanding medical bills more than 48 days old was a late payment charge excluded from the TILA definition of a “finance charge” as it related to the appellants); *Hahn*, 787 F.2d at 544 (finding ambulance company’s policy of charging \$5.00 when they do not pay on time is not a “finance charge” but is more in the nature of a “late payment charge” exempted from TILA); *Rogers Mortuary*, 594 P.2d at 353 (finding funeral purchase agreement did not contain a “finance charge” under TILA when contract provided that “if defendant failed to pay th[e] debt for more than 30 days, and was late in payment thereafter, then defendant was charged with interest each month on any balance past due.”); *Eriksen v. Fisher*, 421 N.W.2d 193, 197 (Mich. Ct.

¹³ If this court finds that there is not a sufficient factual record to determine whether or not the nonpayment was anticipated, it should reverse the entry of summary judgment in the Degeneffes’ favor and remand the case for further proceedings.

App. 1988) (finding 2% interest charge was not a finance charge because “the additional two percent goes into effect only if payments are late, and late payments are not normally anticipated” under TILA).

The sole Iowa authority interpreting the Iowa Consumer Credit Code’s unanticipated late payment exception does not defeat its application in this case. In *Landon v. Mapco, Inc.*, 405 N.W.2d 825, 827–28 (Iowa 1987), the Iowa Supreme Court found that a monthly interest rate was a finance charge under the Iowa Consumer Credit Code and rejected that the interest rate was for an unanticipated late payment. *Landon* involved a ten-year lease of a large propane tank. *Id.* at 827. During the lease, the lessee could only use liquified petroleum gas purchased from the defendant in the tank. *Id.* There were no written terms that controlled the purchase of the liquified petroleum gas. *Id.* However, records indicated that a finance charge between eighteen and twenty-one percent was imposed on balances more than thirty days old. *Id.* The lessee fell behind on payments, and the relationship between the parties deteriorated. *Id.* The lessor’s employees ultimately repossessed the fuel tank. *Id.*

The *Landon* Court found that the lessor’s history and practice of charging of 1.75% per month interest after 30 days were “monthly finance charges which would be waived if payment was made within thirty days.”

Id. at 828. In reaching this conclusion, the court emphasized the lengthy history of transactions between the parties where interest was regularly charged on the balance that was owed, with the only exception occurring when the purchaser was “placed on a strictly COD basis.” *Id.*

Landon is distinguishable because the *Landon* late payments were not unanticipated based on the parties’ lengthy course of dealings. In contrast, here, there was no prior course of dealings, and Home Pride did not continue to sell products or services to the Degeneffes after the Roofing Contract was completed. The parties have only had one transaction. The Degeneffes’ late payment was unanticipated. Therefore, there is no finance charge in the Roofing Contract because “charges as a result of default or delinquency made for actual unanticipated late payment, delinquency, default or other like occurrences” are expressly excluded from the statutory definition of a “finance charge” under the Iowa Consumer Credit Code. *See* Iowa Code § 537.1301(21)(b)(1). The district court erred and reversal is required.

2. The 1.5% Interest Is Not a Time Price Differential.

The district court’s analysis that the 1.5% interest provision was a time price differential was based on an erroneous application of the law to the facts. The Iowa Consumer Credit Code does state that a “time price differential” is a type of finance charge. *See* Iowa Code

§ 537.1301(21)(a)(2). A time price differential is not defined in the Iowa Consumer Credit Code. The district court adopted the following definition:

[The] difference between a seller's price for immediate cash payment and a different price when payment is made later or in installments.

(D0044, MSJ Order 8, App. 124 (citing Time-price differential, Black's Law Dictionary (11th ed. 2019)).)

A typical time price differential occurs when there is one price set for paying for a product or service immediately, but a different, higher price, is owed if payment is made later. *See* Fadra L. Day, *Application of the Time-Price Doctrine in Credit Sales of Real Property*, 40 Baylor L. Rev. 573, 573 n.3 (Fall 1988) (“A ‘time-price differential is a method by which a seller charges one price for immediate cash payment and a different, usually greater, price when payment is made in installments or at a future date; the former is the cash price, the latter is the ‘time-price’ or credit price, and the difference in the two prices is the ‘time price differential.’” (citing *State ex rel. Guste v. Council of the City of New Orleans*, 297 So. 2d 518, 525 (La. App. 1974)); West's Encyclopedia of American Law, “Time-Price Differential”, available at <https://www.encyclopedia.com/law/encyclopedias-almanacs-transcripts-and-maps/time-price-differential> (adopting similar definition). For example, presume a seller will sell an item in the ordinary

course for \$97 paid today or for \$100 due three months later. A customer elects to purchase the product using the option where she will pay \$100 in three months (instead of \$97 for the product now). That \$100 transaction includes a finance charge in the form of a \$3 time price differential. *See* Nat'l Conf. of Comm'rs on Unif. State Laws, Unif. Consumer Credit Code Part 3, § 1.301, Cmt. 9 (1974). That is not what occurred in this case — not even remotely. The Roofing Contract did not set one price to pay upon the completion of the contract, and a higher price for payments made later. The Roofing Contract did not allow for installment payments, either. Instead, it identified a single contract price, due upon the completion of work.

The Degeneffes' argument that the 1.5% interest rate was a time price differential relied on a single case from another jurisdiction that is clearly inapposite to the terms of the Roofing Contract. In *Murphy v. Exeter Finance Corp.*, 558 S.W.3d 207, 211 (Tex. App. Texarkana 2018), a Texas court of appeals found that there was a “time price differential” in a motor vehicle installment contract. The Texas court described the terms of the contract as follows:

Under the contract signed by Murphy, he was not charged interest, but rather, a time price differential (a daily finance charge in addition to the principal) of \$12.50 per \$100.00 per year on the principal balance which, over seventy-two months, is the equivalent of the 20.6% annualized percentage rate specified in the contract.

Under the terms of the contract, Murphy was assessed a daily finance charge (the amount of which is determined by using the true daily earnings method that is based on the annualized percentage rate and the outstanding principal balance divided by the 365 days in a year: $\$16,330 \times 20.6\% = \$3,368.98 \div 365 = \$9.21638$ per day). Under this formula, the \$9.21638 daily finance charge accrued every day from the day after the contract was signed until a payment sufficient to reduce the principal was made. If the seventy-two scheduled payments of \$399.12 were made in full and on time, the principal would slowly decrease, which under the above formula, would result in a lower daily finance charge each successive month. However, the contract clearly stated that payments would be applied first to “earned but unpaid finance charge” then “to anything else [Murphy] owe[d] under [the] Agreement,” explaining, “If you do not timely make all your payments in at least the correct amount, you will have to pay more Finance Charge” and, “If you make scheduled payments early, your Finance Charge will be reduced (less). If you make your scheduled payments late, your Finance Charge will increase.”

Murphy, 558 S.W.3d at 211–12 (internal citations and footnotes omitted).

The Roofing Contract is not like the contract in *Murphy*. The Roofing Contract was not an installment contract,¹⁴ which alone distinguishes it. It also did not set a lower price to pay upon the completion of work, and a higher price if payment is made at a later date. It set *one* deadline to pay — upon completion of the work — with *one* price. Interest can only accrue under the Roofing Contract if the homeowner fails to pay on time. The

¹⁴ The Degeneffes have never argued that the Roofing Contract was an installment contract.

Degeneffes did not pay on time, so interest was assessed and Home Pride sought to collect the past-due amounts.¹⁵

The Roofing Contract contains no finance charge. It was not an installment contract and there was no time-price differential. The district court clearly erred, and this court should reverse and remand with directions to enter summary judgment in Home Pride's favor.

CONCLUSION

Home Pride's Roofing Contract with the Degeneffes is not subject to the Iowa Consumer Credit Code in any regard. Home Pride never extended credit to the Degeneffes. Home Pride did not impose a finance charge and the Roofing Contract did not allow for installment payments. Home Pride's Roofing Contract set a due date for payment in full, the Degeneffes failed to pay, and Home Pride assessed interest on the past-due balance. Contractors

¹⁵ If the Degeneffes believed a time price differential had been assessed, they should have introduced evidence of it into the record. Home Pride's invoices show how Home Pride charged the Degeneffes for the services provided under the Roofing Contract. Instead, they submitted correspondence from Home Pride's attorney without the attachments (which included the invoices sent to Home Pride). (D0025, Pls.' SUMF Ex. E, App. 072–73.) Even if this Court ultimately determines that the record is unclear whether the interest rate is a time price differential or a late payment, delinquency, or default charge, Home Pride is still entitled to relief in the form of a reversal of the entry of summary judgment in the Degeneffes' favor and a remand for further proceedings.

and others in Iowa are permitted to do so without being subject to the Iowa Consumer Credit Code. The district court clearly erred and must be reversed.

This Court should reverse the district court's entry of summary judgment in the Degeneffes' favor and remand the case with instructions for the entry of summary judgment in the favor of Home Pride.

REQUEST FOR ORAL ARGUMENT

Home Pride respectfully requests oral argument in this matter. *See* Iowa R. App. P. 6.903(2)(i).

Dated: May 1, 2024

Respectfully submitted,

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CERTIFICATE OF COST

I hereby certify that the amount actually paid for printing or duplicating necessary copies of Petitioner-Appellant's Final Brief was \$0.00.

/s/ Stephanie A. Koltookian

Stephanie A. Koltookian

May 1, 2024

Date

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on May 1, 2024, I electronically filed this document with the Clerk of the Iowa Supreme Court by using the Iowa Judicial Branch electronic filing system, which will send notice of electronic filing to all parties and attorneys of record.

 /s/ Stephanie A. Koltookian

Stephanie A. Koltookian

 May 1, 2024

Date

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