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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 REPLY BRIEF

Brian P. Rickert, AT0006633
Stephanie A. Koltookian, AT0012724
BROWN, WINICK, GRAVES, GROSS, AND BASKERVILLE, P.L.C.
666 Grand Avenue, Suite 2000
Des Moines, Iowa 50309-2510
Telephone: 515-242-2400
Facsimile: 515-283-0231
Email: brian.rickert@brownwinick.com
stephanie.koltookian@brownwinick.com

ATTORNEYS FOR APPELLANT

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ISSUES PRESENTED FOR REVIEW

I. Does common sense and the ample weight of authority supports that the Roofing Contract does not extend credit or include finance charge?

II. Is the Degeneffes' expansive proposed construction of the Iowa Consumer Credit Code based on the improper application of contract interpretation principles to statutory construction of the Iowa Consumer Credit Code?

III. Can liberal construction of the Iowa Consumer Credit Code overcome the plain language that does not support that the the Roofing Contract is a consumer credit sale?

IV. Can the Court consider "public policy" arguments that are unsupported by facts and riddled with issues that are not preserved for appellate review?

ARGUMENT

The Degeneffes ask this Court to check their common sense at the door and find that a Roofing Contract is a consumer credit transaction simply because the contract gives the homeowner thirty days to pay their bill before charging default interest on the outstanding balance. That is not the law in Iowa, and it is not the law anywhere else, either. The Iowa Consumer Credit Code does not apply to Home Pride's Roofing Contract, and the district court's summary judgment order must be vacated and the case remanded for entry of summary judgment in Home Pride's favor.

I. Common sense and the ample weight of authority supports that the Roofing Contract does not extend credit or include finance charge.

The Degeneffes imply that if payment in full of a construction contract is due upon completion, the payment must be due and paid the instant the last tool is laid down to avoid the transaction becoming subject to the Iowa Consumer Credit Code.[1] Their interpretation is nonsense and reflects an absurd interpretation of the statute. *See generally Brakke v. Iowa Dep't of Nat. Res.*, 897 N.W.2d 522, 534 (Iowa 2017) ("It is universally accepted where statutory terms are ambiguous, courts should interpret the

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[1] *See* Appellees' Br. p. 21 ("Appellant's admission that the Roofing Contract provides for a 30-day period before the consumer defaults is an admission that the consumer has the right to defer payment.").

statute in a reasonable fashion to avoid absurd results."); *State v. Arthur*, 160 N.W.2d 470, 477–78 (Iowa 1968) ("Often it has been stated that the lawyer, and the judge should not leave common sense outside the courtroom door, and make decisions only on speculative theory."); *cf. United States v. James*, 3 F.4th 1102, 1105 (8th Cir. 2021) ("[J]udges [are] not required to check their common sense at the door" when evaluating legal challenges). It is difficult to imagine any construction contract that provides for payment after the work is completed that would not be a consumer credit sale if that was the applicable standard. No court has adopted such an outlandish interpretation of the Consumer Credit Code. Iowa should not be the first jurisdiction in the nation to adopt such an unworkable rule.

In ***every*** construction contract where payment is due upon completion of the work, the homeowner must have some time to submit their payment to the contractor. The Iowa Supreme Court has already weighed in on this issue and held that a construction contract which provided for payment upon the completion of work ***did not*** constitute the extension of credit. *See Muchmore Equip. v. Grover*, 315 N.W.2d 92, 98 (Iowa 1982) (finding construction payment due upon completion was not an extension of credit under the Iowa Consumer Credit Code). The Degeneffes suggest that Home Pride's 30-day

period to make payment in full[2] before the imposition of interest distinguishes this case from *Muchmore Equipment v. Grover*, 315 N.W.2d 92, 98 (Iowa 1982). *See* Appellees' Br. 20. They are wrong.

In *Muchmore*, the Iowa Supreme Court found that there was no extension of credit where a contractor's contract "called for the balance in full upon completion of the building." *Id.* at 98. The contract also provided for "1% per month as a 'service charge,'" which the *Muchmore* Court concluded "amounts to interest." *Id.* at 97. The *Muchmore* Deferred Appendix shows that the contractor's interest rate was communicated to the purchaser as "1% INT. PER MO. ON ACCT AFTER 30 DAYS" as shown below:

[2] The Degeneffes also argue that their payment is not due until a "group of actions" have been completed under the Roofing Contract. *See* Appellees' Br. 20. That is a distinction without a difference. It does not matter *what* triggers the payment being due. For purposes of this appeal, the issue is whether the Degeneffes had a *right* to *defer* payment after it became due.

Muchmore Equip., Inc. v. Grover, No. 2-66162, Deferred Appendix p. 8, (Iowa Apr. 8, 1981).

If "1% int. per mo. on acct. after 30 days" does not lead to the extension of credit, "1.5% added after 30 days"[3] does not either. Home Pride's Roofing Contract is substantially identical to the *Muchmore* invoices. Like the purchaser in *Muchmore*, the Degeneffes are given 30 days to pay before interest is applied to their account. (*See* D0019, Roofing Contract ¶ 5, App. 055.) Like the contractor's agreement in *Muchmore*, Home Pride's Roofing Contract does not extend credit.

Courts across the country have reached the same result. The Degeneffes do not acknowledge or respond to Home Pride's authority that contractual payment periods — up to 48 days[4] — with interest charged after

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[3] Undersigned counsel acknowledges and apologizes for inadvertently inserting the word "interest" between "1.5%" and "added" when quoting the contract's parenthetical a single time. *See* Appellant's Br. 20. However, the district court's summary judgment ruling states that the "contract provision grants the Degeneffes[] the right to defer payment, with 1.5% *interest* added after 30 days." (D0044, MSJ Order p. 8, App. 124 (emphasis added).) For the first time on appeal, the Degeneffes now challenge that 1.5% refers to interest. *See* Appellees' Br. 27. Their challenge should be rejected.

[4] *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); *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

the payment period ends reflects charges for unanticipated late payment, not a finance charge. *See generally* Iowa Code § 537.1301(21). If the Degeneffes had any on-point authority to support their position, they should have identified it in this appeal. Their silence is telling.

II. The Degeneffes' expansive proposed construction of the Iowa Consumer Credit Code is based on the improper application of contract interpretation principles to statutory construction of the Iowa Consumer Credit Code.

No reasonable person reviewing the Roofing Contract would conclude that Home Pride extended credit to the Degeneffes by providing a thirty-day window to provide payment. The Roofing Contract identifies the events that must occur before the homeowner must "pay the balance of the contract (1.5% added after 30 days)." (*See* D0019, Roofing Contract ¶ 5, App. 055.) If payment is not made on time, default interest is added to compensate Home Pride for the unanticipated late payment. The Roofing Contract does not set two deadlines to pay, one when the balance of the contract is due, one thirty days later. Instead, it identifies a singular time to "pay the balance of the contract," and allows Home Pride to charge default interest if payment is made late.

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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").

The Degeneffes seek to support their expansive application of the Iowa Consumer Credit Code by conflating contract interpretation and statutory interpretation. The Degeneffes ask this Court to apply the principle that doubts as to the meaning of a contract are resolved against the drafter to find that the Iowa Consumer Credit Code applies to this contract. *See* Appellees' Br. 15; *see generally Peak v. Adams*, 799 N.W.2d 535, 548 (Iowa 2011) ("We generally construe ambiguous boilerplate language against the drafter."). But here, the primary "doubt" and "ambiguity" surrounding the Roofing Contract does not relate to contract interpretation. Both parties and the district court appear to agree on the meaning of the Roofing Contract — the homeowner has a period of 30 days to pay the balance of the contract, and 1.5% interest is added after 30 days. (*See generally* D0044, MSJ Order 8, App. 124.)[5]

The parties dispute whether the Iowa Consumer Credit Code applies to the Roofing Contract based on its terms. The *contract interpretation*

[5] It is unclear to Home Pride if the Degeneffes now argue that the default interest provision applies to increase the underlying debt if payment is still not made after 30 days. *Compare* Appellees' Br. 27 *with* Appellees' Br. 28. If so, their interpretation makes little sense and fails to give a reasonable interpretation to the entire contract because it *creates* ambiguity about when the default interest provision would apply (Day 31 after the payment of the balance was due? Day 60?). In contrast, Home Pride's interpretation gives effect to all language of the contract without rendering any of the language superfluous. *See generally* Appellant's Br. 21–22.

principle that ambiguities are construed against the drafter has no place in this *statutory interpretation* appeal. Instead, this Court must determine the legal implications of the Roofing Contract and whether the Iowa Consumer Credit Code applies to this transaction. It does not.

III. Liberal construction of the Iowa Consumer Credit Code does not support that the statute applies to the Roofing Contract.

The Degeneffes seek to apply the principle of liberal construction to avoid the plain language of the Iowa Consumer Credit Code. This argument must be rejected for two primary reasons.

First, the fact that the Iowa Consumer Credit Code should be "liberally construed" to "protect consumers against unfair practices" does not give this Court free reign to ignore the plain language of the statute. *See* Iowa Code §§ 537.1102(1) & 537.1102(2)(d). As the Iowa Supreme Court explained in *Dornath v. Employment Appeal Board*,

> [L]iberal construction does not allow us "to ignore the ordinary meaning of words in a statute and to expand or contract their meaning to favor one side in a dispute over another." On the contrary, we best carry out a statute's purposes "by giving a fair interpretation to the language the legislature chose; nothing more, nothing less."

988 N.W.2d 687, 692 (Iowa 2023) (quoting *Vroegh v. Iowa Dep't of Corr.*, 972 N.W.2d 686, 702 (Iowa 2022)); *see also Kaiser Aluminum & Chem. Sales, Inc. v. Hurst*, 176 N.W.2d 166, 168 (Iowa 1970) ("Even giving full

observance to section 554.1102, Code of Iowa, which directs us to liberally construe chapter 554 'to promote its underlying purposes and policies,' we cannot ignore the plain language of [the statute] . . . ."). The Iowa Consumer Credit Code is clear about what is, and is not, a finance charge. Charges for unanticipated late payments are not finance charges under the statute. *See* Iowa Code § 537.1301(21)(b)(1). The Degeneffes cannot avoid the statute's plain language under the guise of liberal construction. This alone defeats their argument.

Second, the Degeneffes give short shrift to the other applicable Legislative purposes and policies. They fail to acknowledge the Legislature's stated policies and purposes in enacting the Iowa Consumer Credit Code include: (1) conforming the regulation of disclosures in consumer credit transactions to the Truth in Lending Act; and (2) making the law more uniform between jurisdictions. *See* Iowa Code §§ 537.1102(2)(f) & 537.1102(2)(g); *see also* Appellant's Br. p. 27. The Degeneffes do not attempt to argue their interpretation and proposed application of the Iowa Consumer Credit Code would advance either of these purposes or policies. In fact, they ignore the law outside of Iowa altogether. *See* Appellees' Br. 4–6 (not citing a single authority regarding consumer credit transactions from outside Iowa).

When viewed as a whole, the policies and purposes of the Iowa Consumer Credit Code do not support the summary judgment ruling in this case. Instead, the policies and purposes of the Iowa Consumer Credit Code would be advanced by aligning Iowa with other jurisdictions across the country that would not treat the parties' arrangement as a consumer credit sale. Summary judgment should have been entered in Home Pride's favor and this Court should reverse with instructions that summary judgment be entered in Home Pride's favor.

IV. The "public policy" argument advanced by the Degeneffes is fraught with factual errors and issues that are not preserved for appellate review.

The Degeneffes' "public policy" argument starting on page 29 of their brief contains numerous improper characterizations of the record that are not supported by evidence nor discuss issues that were not preserved for review in this appeal. Most tellingly, the Degeneffes moved for summary judgment on their allegation that Home Pride's "conduct was harassing and abusive in attempting to collect payment under the Roofing Contract" ***and they lost.*** (*See* D0044, MSJ Order, at 9, App. 125.) They did not appeal that ruling, and that issue is not before this Court. Yet, they continue to allege that Home Pride "harassed" the Degeneffes. *See* Appellees' Br. 30, 33. Home Pride did not harass the Degeneffes, and their unsupported and inappropriate

allegations regarding the same should be disregarded because they are wholly irrelevant to the issues before the Court.[6]

CONCLUSION

The Degeneffes' Iowa Consumer Credit Code claim should have been dismissed pursuant to Home Pride's Motion for Summary Judgment. Home Pride did not extend credit and did not impose a finance charge under the statute. In its ruling, the district court made Iowa an outlier by applying the Consumer Credit Code to a simple roofing contract. This Court should reverse the district court's entry of summary judgment in favor of the Degeneffes and remand for the entry of summary judgment in favor of Home Pride.

[6] The Degeneffes also repeatedly identify Home Pride and the amicus as "non-Iowan" "out-of-state actors." *See* Appellees' Br. 31–32. Although Home Pride is domiciled out of state, it does have a physical office in Iowa, as shown in the Roofing Contract. (*See generally*, D0019, Roofing Contract, App. 055–56.) Regardless, laws cannot be applied to target out-of-state entities without violating various constitutional provisions, including the dormant commerce clause.

Date: April 25, 2024

Respectfully submitted,

/s/ Stephanie A. Koltookian
Brian P. Rickert, AT0006633
Stephanie A. Koltookian, AT0012724
BROWN, WINICK, GRAVES, GROSS
AND BASKERVILLE, P.L.C.
666 Grand Avenue, Suite 2000
Telephone: 515-242-2400
Facsimile: 515-283-0231
E-mail: brian.rickert@brownwinick.com
E-mail: Stephanie.Koltookian@brownwinick.com

ATTORNEYS FOR DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on April 25, 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 — April 25, 2024

Stephanie A. Koltookian — Date

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. The brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) or (2) because:

[X] this brief contains 2,289 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1) or

[ ] this brief uses monospaced typeface and contains [number of] lines of text, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa Rule of Appellate Procedure 6.9039(1)(e) and the type-style requirements of Iowa Rule of Appellate Procedure 6.903(1)(f) because:

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\/s/ Stephanie A. Koltookian	April 25, 2024
Stephanie A. Koltookian	Date