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

LANCE DEGENEFFE and TRACY DEGENEFFE,
Plaintiffs-Appellees,

vs.

HOME PRIDE CONTRACTORS, INC.,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR BOONE COUNTY

THE HONORABLE JOHN J. HANEY, DISTRICT COURT JUDGE

APPELLEES' FINAL BRIEF

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Cases

Acciona Windpower N. Am., LLC v. City of W. Branch, Iowa, 847 F.3d 963, 967 (8th Cir. 2017)
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1979 Iowa Op. Att'y Gen. 369, 1979 WL 21062 (1979)
Black's Law Dictionary (11th ed. 2019)

ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.903(2)(d) and 6.1101, this matter is appropriately routed to the Iowa Court of Appeals as it presents a challenge to the routine application of clear law to undisputed fact by a District Court rather than any of the criteria that would justify retention by the Iowa Supreme Court. Accordingly, Appellee is not seeking oral argument. *See* Iowa R. App. P. 6.908(1).

STATEMENT OF THE CASE

This case concerns the application of the Iowa Consumer Credit Code ("ICCC")[1] to the Appellant's standardized contract for roofing services ("Roofing Contract"). The District Court granted summary judgment in favor of Appellees Lance and Tracy Degeneffe ("Appellees"), holding that the Roofing Contract met all statutory elements of the ICCC's definition of a Consumer Credit Sale. Appellant now argues that the District Court erred by holding that the first and fourth elements of the statute's definition of a Consumer Credit Sale were satisfied. The first element concerns whether Appellant granted credit to Appellees. The fourth element concerns whether the Roofing Contract contains a finance charge. The District Court's decision that the other three statutory elements have been satisfied is not

[1] The Iowa Consumer Credit Code is contained at Chapter 537 of the Iowa Code and is referenced throughout this brief by its name, abbreviation, and location within the Iowa Code.

disputed in this appeal. Appellant argues that the District Court's grant of summary judgment to Appellees is in error because of its findings as to the first and fourth elements of the statute. Clear law, the undisputed facts, and public policy all support the District Court's grant of summary judgment to Appellees. Accordingly, the District Court did not err in finding that the Roofing Contract extended credit and contains a finance charge.

As noted by the District Court, the issue of whether either party breached the contract remains unresolved and is pending in a case at the district court level between these same parties.

STATEMENT OF THE FACTS

Appellant's recitation of the facts ignores the standards required to deny a fact at the summary judgment stage. While a full recitation of related undisputed facts provides context for the underlying facts, very few facts are necessary for the resolution of this interlocutory appeal. Appellant admits this is the standard contract it uses use with Iowa consumers. Clause 5 of the Roofing Contract is relevant to the dispute herein.

Clause 5 of the Roofing Contract states, in relevant part, "Upon completion of work 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)." (Roofing Contract, cl. 5; App. 012; 021; 037; 055; 061; 071; 089). Please note that the entirety of the

parenthetical stated in the Roofing Contract is "(1.5% added after 30 days)." Appellant's repeated statement that the parenthetical states "(1.5% interest added after 30 days)" is wholly inaccurate. The word "interest" does ***not*** appear in the Roofing Contract's parenthetical.

Crucially, it is also undisputed that Appellant concedes that the Roofing Contract provides a 30-day period *before* a consumer would be in default: "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[.]" (Appellant's Br. p. 22.) This admission means that Appellant has conceded that the Roofing Contract provides a consumer with the right to defer payment.

Appellees discuss Clause 12 of the Roofing Contract in response to arguments made by Appellant. Clause 12 is the Default Interest provision of the Roofing Contract and covers default interest rather than a finance charge. Clause 12 states:

> SHOULD DEFAULT BE MADE IN PAYMENT OF THIS AGREEMENT, CHARGES SHALL BE ADDED FROM THE DATE THEREOF AT A RATE OF . . . 18% PER ANNUM . . . AND IF PLACED IN THE HANDS OF AN ATTORNEY FOR COLLECTION, ALL ATTORNEYS AND LEGAL FLING FEES SHALL OE PAID BY CUSTOMER ACCEPTING THIS AGREEMENT.

(Roofing Contract, cl. 12; App. 038; 056; 062; 090). Additional facts will be included as needed for context within Appellees' argument, but the core analysis requires only these facts.

ARGUMENT

I. The District Court did not err in finding that Appellant Home Pride's Roofing Contract contains a qualifying Consumer Credit Sale and, therefore, did not err in awarding summary judgment in favor of Appellees and against Appellant.

A. Issue Preserved for Appellate Review.

On June 16, 2023, Appellant moved for summary judgment alleging that its Roofing Contract[2] was not subject to the ICCC because it did not constitute a Consumer Credit Sale under the relevant statutory definitions. (Def's MSJ [D0021].) Appellees resisted and made their own motion for summary judgment on the same issue on June 30, 2023. (Pls' MSJ [D0026].) The District Court heard the issue via a Zoom hearing on August 4, 2023. (*See generally* August 4, 2023 MSJ Tr., App. 0127–0152). On August 17, 2023, the District Court issued an Order holding the undisputed facts demonstrate that the Roofing Contract meets the statutory definition of a Consumer Credit Sale and is therefore subject to the ICCC. (August 17 Order

[2] Appellees refer to the contract in question as the "Roofing Contract" because that has been the nomenclature used throughout summary judgment. However, as a matter of general information, Appellees note that the contract also obligated Appellant to perform work involving Appellees' siding, gutters, and downspouts.

[D0044].) Accordingly, the District Court denied Appellant's motion for summary judgment and granted summary judgment in favor of Appellees. (August 17 Order [D0044].) On September 15, 2023, Appellant timely submitted an application for interlocutory appeal and Appellees joined the application on September 29, 2023. The Iowa Supreme Court granted the application on October 18, 2023 and stayed all proceedings in the District Court pending the outcome of this appeal.

B. Standard of Review.

Summary judgment and construction of statutes like the Iowa Consumer Credit Code at Iowa Code Chapter 537 are reviewed for correction of errors at law. *Anderson v. Nextel Partners, Inc*., 745 N.W.2d 464, 466 (Iowa 2008). When the Iowa Legislature enacted Chapter 537, it expressly mandated that its provisions are to "be liberally construed and applied to promote its underlying purposes and policies. . . ., [which includes p]rotect[ing] consumers against unfair practices." Iowa Code § 537.1102. "'A motion for summary judgment should be granted when there is no genuine issue of material fact for trial, and the movant is entitled to judgment as a matter of law.'" *Anderson, 745 N.W. at 466* (quoting Iowa R. Civ. P. 1.981(3)). The court examines the record in a light most favorable to the opposing party to determine if the movant has met its burden. *Matherly v. Hanson*, 359 N.W.2d 450, 453 (Iowa 1984).

However, in opposing a motion for summary judgment, the non-moving party may not rest upon mere allegations or denials in its pleadings but must set forth "specific facts showing that there is a genuine issue for trial." *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989). Under Iowa law, it is well settled that simply averring to the existence of a genuine issue of material fact in a resistance is insufficient to raise a genuine issue of fact in dispute. *See Griglione v. Martin*, 525 N.W.2d 810, 813 (Iowa 1994). Summary judgment motions should be interpreted liberally in order to serve a just, speedy, and inexpensive determination of an action. *Hanna v. State Liquor Control Comm'n*, 179 N.W.2d 374, 375 (Iowa 1970). "Paper cases and defenses can thus be weeded out to make way for litigation which does have something to it." *Prior v. Rathjen*, 199 N.W.2d 327, 330 (Iowa 1972) (quoting *Gruener v. City of Cedar Falls*, 189 N.W.2d 577, 580 (Iowa 1971)).

As recently emphasized by the Iowa Supreme Court, "[s]ummary judgment is not a dress rehearsal or a practice run; '**it is the put up or shut up moment in a lawsuit, when a [nonmoving] party must show what evidence it has that would convince the trier of fact to accept its version of events.**'" *Slaughter v. Des Moines Univ. College of Osteopathic Med.*, 925 N.W.2d 793, 808 (Iowa 2019) (quoting *Hammel v. Eau Galle Cheese Factory*, 407 F. 3d 852, 859 (7th Cir. 2005) (internal citations omitted, emphasis added)).

C. Argument: The Roofing Contract contains a qualifying Consumer Credit Sale because, in relevant parts, credit was extended and the contract contains a finance charge; therefore, the District Court did not err in awarding summary judgment in favor of Appellees and against Appellant.

This case presents a straightforward application of settled law to the plain language of a contract. The ICCC applies to consumer credit transactions that include a Consumer Credit Sale. Iowa Code § 537.1301(12). The language of the Roofing Contract is undisputed; the content and purpose of Chapter 537 is undisputed, and Appellant does not dispute that the provisions of the Roofing Contract violate Chapter 537. *See id*. at 537.1102 (stating the statute should be "liberally construed and applied to promote" its purpose of protecting Iowa consumers). Instead, Appellant unsuccessfully proffers arguments as to why the contract it drafted should be allowed to violate an Iowa law that was enacted for the protection of Iowa consumers. *See Peak v. Adams*, 799 N.W.2d 535, 548 (Iowa 2011) (holding that doubts as to the meaning of a contract are resolved against the drafter) (citing *Village Supply Co. v. Iowa Fund, Inc.*, 312 N.W.2d 551, 555 (Iowa 1981) (holding same) (internal citations omitted)); *see also Dickson v. Hubbell Realty Co.*, 567 N.W.2d 427, 430 (Iowa 1997) (holding same) (additional citations omitted).

The question presented, ultimately, is whether the undisputed language of the Roofing Contract contains a Consumer Credit Sale and therefore falls within the

ambit of the plain language of the ICCC. Simply put, the answer is yes. Chapter 537 is to "be liberally construed and applied to promote its underlying purposes and policies. . . ., [which includes p]rotec[ing] consumers against unfair practices." Iowa Code § 537.1102. The statute defines a Consumer Credit Sale by five elements:

> [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.

Id. at 537.1301(13) (emphasis added). Portions of the first and fourth elements are at issue in this interlocutory appeal.[3,4] Ultimately, despite Appellant's attempts to

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[3] Appellant admits that the Roofing Contract is the standard contract it uses when entering into this type of transaction with Iowans. Therefore, it is undisputed that Appellant satisfies the second clause of the first element because it is "a seller who regularly engages as a seller in credit transactions of the same kind." Iowa Code § 537.1301(13)(1). The first clause of the fourth element (whether the debt was payable in installments) is not at issue.

[4] The District Court found that elements 2, 3, and 5 were satisfied because, respectively, "the Degeneffes are person(s) (as opposed to an organization); . . . the

paint the issue as complicated and to justify its blatant violation of Iowa's consumer protection measures, this case represents a simple matter of applying clear law to undisputed facts.

1. The District Court identified the correct legal standards applicable to the issue of whether Appellant extended credit to Appellees.

In this interlocutory appeal, Appellant focuses only on whether the Roofing Contract extends credit to Appellees and does not dispute that it is "a seller who regularly engages as a seller in credit transactions of the same kind." *See* Iowa Code § 537.1301(13)(1); *see also* FN 2, *supra*. The District Court concluded that, in addition to the definition of a Consumer Credit Sale, the statutory definition of "credit" is relevant to this question. ([D0044]MSJ Order, App. 123). Iowa Code § 537.1301(16) defines "credit" as "the right granted by a person extending credit to a person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor." Appellees argued that the best authority interpreting that definition in light of the ICCC is *Legg v. W. Bank*. *See*

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goods and services provided for a roof on the Degeneffes' personal residence . . .; and . . . the amount due and owing does not exceed the threshold amount" of the statute. ([D0044]MSJ Order; App. 125). It is undisputed that the District Court's findings were not in error, and these elements are not at issue in the present interlocutory appeal.

873 N.W.2d 763, 769 (Iowa 2016). The District Court agreed, finding Appellees' "brief, caselaw and analysis persuasive." ([D0044]MSJ Order p. 8 , App. 124).

In *Legg*, the Iowa Supreme Court surveys a number of transactions to determine what constitutes an extension of credit. *Legg*, 873 N.W. at 769 (citing Iowa Code § 537.1301(12) (also citing *Anderson v. Nextel Partners, Inc.*, 745 N.W.2d 464, 465 (Iowa 2008); *State ex rel. Miller v. Nat'l Farmers Org.*, 278 N.W.2d 905, 906–07 (Iowa 1979)); *see also* [D0044]MSJ Order, p. 7–8, App. 123–124). Ultimately, the Iowa Supreme Court found that the common element to transactions in which credit is extended is "that the parties' agreement needed to grant the debtor the right to defer repayment in order for there to be an extension of credit." *Id.* at 769 (quoting *Miller*, 278 N.W.2d at 907 to note that in a transaction where credit was not extended: "Nothing 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. Nor is any provision made for deferring payment of the annual assessment."))). The District Court explained that, pursuant to *Legg*, "the Court must assess whether the individual had the ability to defer payments and when the money was 'due and payable'" when determining whether credit was extended. ([D0044]MSJ Order, p. 7–8, App. 123–124; *see also Legg*, 873 N.W. at 769.) While *Legg* does not deal directly with a Consumer Credit Sale, the Iowa Supreme Court found the case instructive because "the definition of credit under the ICCC is the

same regardless of the type of consumer transaction – Consumer Credit Sale, consumer lease, or consumer loan." *See Legg*, 873 N.W. at 769.

2. The District Court appropriately disregarded Appellant's proposed legal standards regarding the definition of credit under the ICCC in favor of those identified by Appellees and therefore did not err in holding that Appellant extended credit to Appellees nor in granting summary judgment to Appellees.

Appellant alleges that the District Court should have relied upon alternate language in *Legg* or on the *Muchmore Equipment v. Grover* and *State ex rel. Miller v. National Farmers Organization* cases. (Appellant's Br. pp. 24–25; *see also* 315 N.W.2d 92, 98 (Iowa 1982); 278 N.W.2d 905, 907 (Iowa 1979)). The language specified from all three cases is wholly inapposite given the language of the Roofing Contract and the content of Appellant's pleadings during summary judgment (and during this interlocutory appeal).

Appellant argues that these cases are connected to the Roofing Contract because each holds that a contractual agreement wherein payment is due immediately upon completion of the work "do not constitute an extension of credit under the Iowa Consumer Credit Code." (Appellant's Br. pp. 24–25; *see also Legg*, 873 N.W. at 770; *Muchmore*, 315 N.W.2d at 98; *Miller*, 278 N.W.2d at 907). Appellant then claims that its Roofing Contract requires full and immediate payment upon completion of the project. (Appellant's Br. pp. 23–25). There are two readily identifiable problems with Appellant's claim.

First, the plain language of the Roofing Contract contradicts Appellant's claim. The Roofing Contract includes "[u]pon completion of the work set for by the agreement," as a precondition to multiple discrete possibilities spelled out in the remainder of the contractual clause. (Roofing Contract, cl. 5 ("Upon completion of work 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)."; App. 012; 021; 037; 055; 061; 071; 089).

The sentence in question does more than what Appellant claims—it states "[u]pon completion of the work" and then lists a group of actions that will follow. Those actions include signing a completion certificate, paying the balance, or if payment occurs after 30 days, paying 1.5% more. That differentiates the Roofing Contract from contractual arrangements wherein payment is due immediately upon completion of the project. *See Legg*, 873 N.W. at 770; *Muchmore*, 315 N.W.2d at 98; *Miller*, 278 N.W.2d at 907. For the District Court to have accepted Appellant's interpretation of the language, Appellant would have needed to offer some evidence that its interpretation was correct. *Fogel*, 446 N.W.2d at 454 (non-moving party may not rest upon mere allegations or denials in its pleadings but must set forth "specific facts showing that there is a genuine issue for trial."); *Griglione*, 525 N.W.2d at 813 (simply averring to the existence of a genuine issue of material fact in a resistance is insufficient to raise a genuine issue of fact in dispute).

Appellant cannot offer such evidence and has demonstrated this by repeatedly quoting only the first clause of the sentence. The District Court did not err in refusing to apply the language Appellant identified. ([D0044]MSJ Order p. 8 (finding Appellees' "brief, caselaw and analysis persuasive;" App. 124).

Second, Appellant's claim is illogical. Appellant admits that the Roofing Contract provides a 30-day period *before* a consumer would be in default: "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[.]" (Appellant's Br. p. 22.) If the payment was due immediately upon completion of the work, the consumer would be in default immediately upon their failure to pay. 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. As previously discussed, Appellants argue that the parenthetical is somehow a "grace period." This particular "grace period" culminates with an increased price. The "grace period" coupled with the "1.5% added after 30 days" clearly meets the definition of a time-price differential, which leads to the same conclusion the District Court reached.

For these reasons and in accordance with the Legislature's mandate to interpret the ICCC for the protection of Iowa consumers, the District Court appropriately disregarded Appellant's proposed legal standards regarding the

definition of credit under the ICCC in favor of those identified by Appellees. *See* Iowa Code § 537.1102.

3. The District Court identified the correct legal standards applicable to the issue of whether the Roofing Contract contains a finance charge.

The District Court decided the issue of whether the Roofing Contract contains a finance charge based on the analysis identified by Appellees at summary judgment. ([D0044]MSJ Order p. 8; App. 124). Appellees have argued throughout, and the District Court agreed, that the Roofing Contract's parenthetical stating "1.5% added after 30 days" is a time-price differential. *Id*. The concept of a time-price differential is defined in Black's Law Dictionary: a time-price differential is the "difference between a seller's price for immediate cash payment and a different price when payment is made later or in installments." Black's Law Dictionary (11th ed. 2019); *see also* [D0044]MSJ Order p. 8, App. 124. Iowa law is clear and unequivocal: a finance charge exists when a "[t]ime price differential, credit service, service, carrying or other charge, however denominated" exists. Iowa Code § 537.1301(21)(a)(2); *see also* 1979 Iowa Op. Att'y Gen. 369, 1979 WL 21062 (1979) ("[T]he terms 'interest' and 'carrying charge' are both encompassed within the broader term 'finance charge' [in the ICCC]."). Thus, if a time-price differential is present, then the Roofing Contract includes a finance charge and is governed by the ICCC.

Even Appellant's own example of a time-price differential precisely describes the present situation. *See* Appellant's Br. pp. 37–38 (describing a situation wherein a seller would sell an item for $97 for immediate payment but would accept $100 for payment in three months and classifying the $3 difference as the time-price differential). Here, the contract provides two options for payment. (Roofing Contract, cl. 5 ; App. 012; 021; 037; 055; 061; 071; 089). Assuming for ease that the services cost $100, the prices available to the consumer under the Roofing Contract are: (1) $100 for immediate payment and (2) $101.50 for payment after 30 days. When read in conjunction with Appellant's example, there is clearly no difference.

Appellant also makes a lengthy argument alleging that the Roofing Contract "contains provisions that allow Home Pride to assess interest in the event of unanticipated late payment or default." (Appellant's Br. pp. 30–40.) Appellant argues that this excludes both the 1.5% time-price differential and the default interest from qualifying as a finance charge under the ICCC. *See id*. at pp. 31–32; *see also* Iowa Code § 537.1301(21).

This argument, like others made by Appellant, suffers from a disingenuous parsing of the Roofing Contract and a failure to acknowledge the plain meaning of the words within the four corners of the contract. As discussed, the Roofing Contract provides for two situations: immediate payment and payment after 30 days with a 1.5% finance charge. (Roofing Contract, cl. 5; App. 012; 021; 037; 055; 061; 071;

089). The parties included language covering all time periods between payment upon completion of the work to payment while in default. At no point does the Roofing Contract use the phrase "late charge." The Default Interest Provision is for unanticipated late payments. The 1.5% after 30 days is not. They are different provisions and different concepts.

Moreover, Appellant is the drafter of this contract, and Appellant does not argue the contract is unambiguous. If Appellant had wanted to include a late charge provision or address unanticipated payments as opposed to the actual provisions it did use, it could simply have substituted that language when it drafted the Roofing Contract. *See* Part I.C, *supra*, and I.C.5, *infra*. To the extent this Court believes the contract is ambiguous (which neither party argues), any ambiguity must be resolved against Appellant. *See id*. Appellant cannot make arguments based on what it wishes it had drafted; it must contend with what is contained within the four corners of the Roofing Contract.

Given the undisputed and plain language of the Roofing Contract, the District Court identified the appropriate legal standards to determine this point of law.

4. The District Court did not err in holding that the Roofing Contract constitutes a Consumer Credit Sale because Appellant extended credit to Appellees and the Roofing Contract contains a finance charge; therefore the District Court did not err in awarding summary judgment in favor of Appellees and against Appellant.

The District Court was presented with a simple question of applying clear, settled, unequivocal law to undisputed facts. As explained in the preceding sections, the Iowa Consumer Credit Code contains well-established law, and the *Legg* case provides straightforward instructions for applying the law to various types of transactions. The Roofing Contract states, "[u]pon completion of work 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)." (Roofing Contract, cl. 5; App. 012; 021; 037; 055; 061; 071; 089). The fact that this quotation includes the full text of the contractual clause in question cannot be disputed. As explained above, it also cannot be credibly disputed that the full clause simply does more than the partial clause Appellant chooses to quote because it lists a group of actions *following* the phase "[u]pon completion of the work." It is also undisputed that the District Court correctly found that the Roofing Contract meets three of the five statutory elements required to qualify as a Consumer Credit Sale. The remaining questions before the District Court, then, were: 1) did Appellant extend credit to Appellees; and 2) does the above-referenced provision qualify as a time-price differential?

Appellant argues that the District Court inappropriately collapsed the two inquiries into one. The District Court, in fact, considered each question separately. ([D0044]MSJ Order p. 6–8; App. 122–124). It concluded that Appellant extended credit to Appellees because the full text of the provision provides for Appellees to

defer payment by 30 days at a higher price, therefore demonstrating that the customer had the ability to defer payments because the money was due and payable either immediately or later at a higher price. ([D0044]MSJ Order p. 8; App. 124). That differentiates the Roofing Contract from contractual arrangements wherein payment is due immediately upon completion of the project. The District Court then (separately) determined that the undisputed language of the Roofing Contract satisfies the definition of a time-price differential because a different price applies if payment is made after 30 days. ([D0044]MSJ Order p. 9; App. 125). Because there is a time-price differential present, the Iowa Consumer Credit Code applies. Iowa Code § 537.1301(21)(a)(2). The District Court made the required separate findings on the two issues and did not err.

5. The District Court satisfied the rules of contract interpretation by giving effect to all words of the Roofing Contract and therefore did not err in awarding summary judgment in favor of Appellees and against Appellant.

The rules of contract interpretation require the Court to give all words of the Roofing Contract effect. *Peak v. Adams*, 799 N.W.2d 535, 544 (Iowa 2011) ("The most important evidence of the parties' intentions at the time of contracting is the words of the contract.") (internal citations omitted); *Alta Vista Properties, LLC v. Mauer Vision Ctr., PC*, 855 N.W.2d 722, 727 (Iowa 2014) (quoting *Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp.*, 266 N.W.2d 22, 26 (Iowa 1978) ("[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.")); *see also Acciona Windpower N. Am., LLC v. City of W. Branch, Iowa*, 847 F.3d 963, 967 (8th Cir. 2017) (stating agreement with above). It is important to note that Appellant consistently truncates the contractual provision where convenient and adds the word "interest" where convenient. Appellant makes a fatal error by repeatedly stating that the Roofing Contract requires immediate payment but also acknowledging that the consumer is not in default until after 30 days. (Appellant's Br. p. 22; *see also* Part I.C.2, *supra*.) Both concepts cannot be true.

Given the undisputed and unambiguous text of the Roofing Contract, the only way to give effect to the three provisions applicable to payment is to interpret it as the District Court has. There is an additional contractual provision in the Roofing Contract called the Default Provision[5] that is relevant only to this portion of the argument. (*See* Roofing Contract, cl. 12 ("SHOULD DEFAULT BE MADE IN PAYMENT OF THIS AGREEMENT . . ."); App. 038; 056; 062; 090). It describes default terms of an annual interest rate of 18%. (*See id*. at cl. 12; App. 038; 056; 062; 090). Moreover, the Default Provision, Clause 12, uses the word "default," while the other provision, Clause 5, does not. *See id*. Thus, the plain language of the Roofing

[5] Generally and in this case, a finance charge and a default interest provision are wholly separate provisions of a contact, and a contract containing both falls within the ambit of the ICCC.

Contract describes two separate situations: one in which the specified price is paid immediately and another in which the specified price is 1.5% higher and is paid after 30 days. (*See id*. at cl. 5; App. 012; 021; 037; 055; 061; 071; 089).

Appellant, as the drafter, chose to include language describing two separate situations and chose to differentiate clauses 5 and 12 from each by the addition of the word "default" to Clause 12. The Roofing Contract gives the consumer the right for the payment to be due and payable either immediately (at one price) or to defer payment at least 30 days (at a higher price). But as Appellant concedes, after the right to defer payment expires, the consumer would be in default, in which case the Default Provision would apply. The only way that at least one of the referenced clauses is not superfluous is if all three are given effect. As discussed in Part I.C *supra*, contracts are strictly interpreted against the drafter. As discussed directly above, Iowa law presumes that the drafter intended to give effect to "all terms" of the contract. If the drafter of the contract includes a term in one location in the contract, but omits it from another, that is presumed to be an intentional choice, and the law favors giving effect to both clauses as drafted. *See Smith Barney, Inc. v. Keeney*, 570 N.W.2d 75, 78 (Iowa 1997) (citing *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 862 (Iowa 1991).

The District Court gave effect to the full language of the Roofing Contract and correctly awarded summary judgment to Appellees.

D. Argument: Public policy supports the District Court's granting of summary judgment to Appellees.

The legal issue before this Court is simple: applying the well-established law of the Iowa Consumer Credit Code to the plain language of the Roofing Contract. However, this case also goes to the heart of why the Iowa Legislature enacted the ICCC, and public policy strongly supports affirming the District Court's grant of summary judgment to Appellees. The ICCC is to "be liberally construed and applied to promote its underlying purposes and policies. . . .,[which includes p]rotect[ing] consumers against unfair practices." Iowa Code § 537.1102. The undisputed facts demonstrate that Appellant is an entity doing business in Iowa, and the Roofing Contract is the "standard contract" it uses in all similar transactions in Iowa. In short, Appellant fully embraces and widely uses the Roofing Contract when doing routine business in Iowa.

This is precisely the situation that the Legislature was addressing with the ICCC. The ICCC applies to transactions entered into in Iowa, and it requires creditors to file actions in the county of the consumer's residence. *See id*. at § .1201, .5113. Stated another way, the ICCC denotes an instance of the Iowa Legislature enacting a statute to protect Iowans from unsavory and predatory entities. *See id*. at § .1102(2)(d). Enacting such a statute serves as notice to entities doing business in Iowa, including out-of-state entities such as Appellants and Amicus Curiae, that Iowa prioritizes business practices that are fair to Iowans. *See id*. at § .1102(2)(e)

(stating the law's purpose is, in part, to "Permit and encourage the development of fair and economically sound consumer credit practices.").

By using the Roofing Contract as a standard contract in all of its business with Iowans, Appellant has violated Iowa's laws. The Roofing Contract itself does not conform to the ICCC because it contains Attorney Fee provisions providing for the payment of Appellant's attorneys' fees by the consumer in the event that the consumer breaches the contract. *See* Roofing Contract, cls. 12, 13; App. 038; 056; 062; 090). This is fully prohibited by the ICCC. Iowa Code § 537.2507 (prohibiting said practice). Additionally, Appellant harassed Appellees by filing its initial Complaint in Nebraska, despite clear language in the ICCC requiring any action against the consumer to be brought in their Iowa county of residence. Iowa Code § 537.7103(2); *see also Chrysler Fin. Co. v. Bergstrom*, 703 N.W.2d 415, 419 (Iowa 2005) (citing Iowa Code § 537.5113) ("It is a violation of the consumer credit code to institute an action against a consumer in the wrong county."). Furthermore, in that Nebraska Complaint, Appellant sought "attorney's fees as allowed by law" despite the fact that the ICCC prohibits debt collectors from representing the debt may be increased by the addition of attorneys' fees when such practice is prohibited by law. Iowa Code § 537.7103(4)(h) (prohibiting said practice).

There is no reason for Appellant to have pursued this litigation in the manner they have other than to preserve their opportunity to prey on Iowa consumers. And

there is no reason for Amicus Curiae to have gone to the time and expense to urge this Court to find in favor of Appellant other than for the same reason on a grander scale.[6] Amicus Curiae urge this Court that a ruling against Appellant would cause a chilling effect on similar contractors' willingness to operate in Iowa. That situation is unlikely to materialize. As a practical matter, a ruling in Appellee's favor would simply require out-of-state contractors to choose between charging a finance charge and complying with the ICCC. Contractors, and business entities in general, are more sophisticated parties with more ready access to legal support than is the standard Iowa consumer and could readily make business decisions in that reality. Appellees are normal, everyday consumers.[7] The Iowa Legislature recognized the

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[6] Amicus Curiae repeatedly ask this Court to rely upon facts not in the Record. For example, they claim that the language in question is standard to the marketplace. *See* Amicus Curiae Brief, pp. 13–15. First, that information is not present in the Record. Neither Amicus Curiae nor Appellant provide any supporting documentation for the assertion, and even if they did, the Court could not consider it because it is not in the Record. Second, even if true and admissible, the "fact" that the language violating the ICCC is present in contracts throughout the industry would mean this case represents an opportunity to ensure that even more consumers are protected by the safeguards of the ICCC than just those working with Appellant.

[7] Appellant's argument that giving effect to the full language of the Roofing Contract enables consumers to breach such contracts with abandon is misplaced. First, the issue of contract breach is wholly unrelated to the issue before this Court. Second, if Appellant had wanted to draft the Roofing Contract using different language, they could have done so.

need to protect such consumers on a statewide level, and that is the foundation of the Iowa Consumer Credit Code. Iowa Code § 537.7103(4)(h).

Appellant's assertion that if the District Court's interpretation of the ICCC "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" is nothing but a straw man. Appellant's Br. p. 24. This argument ignores (again) what the text of the Roofing Contract provides for: immediate payment, payment after 30 days with a 1.5% finance charge, and payment once in default with 18% default interest. (Roofing Contract, cls. 5 & 12; App. 012; 021; 037; 055; 061; 071; 089 & 038; 056; 062; 090). As explained above, Appellees were never obligated to pay upon completion of the work, so any situation in which a party was so obligated is a factually different scenario. *See* Part I.C.2, *supra*. Also, whether either party to the Roofing Contract breached the agreement is a fact question pending before a district court in a case between these same parties and is not relevant to the narrow grounds of this interlocutory appeal.

Legally, this is a narrow question of applying enacted legislation to a clear contract. Practically, this case is an attempt by out-of-state actors to violate Iowa law so as to preserve their ability to prey on Iowa consumers using means and methods prohibited by the Iowa Consumer Credit Code. Appellants and Amicus Curiae are

asking Iowa courts to permit non-Iowans to violate Iowa law . If Appellants have an issue with Iowa's laws, their recourse is to lobby the Legislature, not to harass and sue Iowa consumers in foreign jurisdictions in violation of Iowa law. The Roofing Contract itself burdens an unknown number of other consumers subject to this same contract. The District Court's decision gives effect to the public policy behind the Legislature's enactment of the Iowa Consumer Credit Code, and public policy strongly supports this Court affirming the lower court's decision.

CONCLUSION

The District Court did not err in granting summary judgment to Appellees on the narrow legal issue of whether the Iowa Consumer Credit Code applies to the Roofing Contract. The District Court correctly held that Appellant extended credit to Appellees through the Roofing Contract because the undisputed plain language of the contract grants the consumer the right to defer payment, thus satisfying the ICCC's settled definition of "extending credit." The District Court also correctly held that the undisputed plain language of the contract includes a time-price differential that satisfies the established definition of a finance charge under the Iowa Consumer Credit Code. Therefore, the District Court did not err in finding that the Roofing Contract contains a qualifying Consumer Credit Sale, and the Iowa Consumer Credit Code applies. For these reasons, Appellees respectfully asks that

the Court enter an order affirming the District Court's award of summary judgment to Appellees and against Appellant.

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that the foregoing Appellees' Final Brief on March 29, 2024, was electronically filed 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/Matthew E. Laughlin April 29, 2024
Date

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 6,317 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2018 in Times New Roman 14.

/s/Matthew E. Laughlin April 29, 2024
Date

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Final Brief was the sum of $0.00.

/s/Matthew E. Laughlin

April 29, 2024
Date