

IN THE SUPREME COURT OF IOWA

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

v.

HOME PRIDE CONTRACTORS, INC.,  
Defendant–Appellant.

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No. 23–1510

Appeal from the Iowa District Court for Boone County  
Hon. John Haney, District Court Judge

No. CVCV042380

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BRIEF OF AMICUS CURIAE  
MIDWEST ROOFING CONTRACTORS ASSOCIATION, INC.

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## IDENTITY OF AMICUS CURIAE AND ITS INTEREST IN THE CASE

Amicus curiae Midwest Roofing Contractors Association, Inc.<sup>1</sup> (MRCA) is a Missouri non-profit corporation and trade association of roofing contractors that develops and administers programs and services to work to improve the roofing industry and to help member companies, both big and small, build their business. The MRCA is a roofing industry representative and represents roofing contractor interests to manufacturers, consultants, regulatory agencies, and, at times, the courts. Members of the MRCA work throughout the country, including Iowa and its neighboring states. The MRCA is interested here because, if the trial court's ruling is affirmed, the effects of this case could have unintended but harmful consequences to the roofing industry, roofing contractors and in turn their consumer customers. MCRA's perspective on the implications of the district court's ruling on the roofing market and harm to contractors and consumers will assist the Court's resolution of this appeal. Iowa R. App. P. 6.904.<sup>2</sup>

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<sup>1</sup> [www.mrca.org](http://www.mrca.org)

<sup>2</sup> No party or party's counsel authored this brief in whole or in part and no party or party's counsel contributed money to fund the preparation or submission of this brief. Iowa R. App. P. 6.904(4)(d).

## SUMMARY OF THE ARGUMENT

This case begins with an experience that Iowans know well: a weather event that caused damage to a home's roof. When there is widespread damage in a community, what can happen next follows a familiar pattern. Many contractors obtain contracts in the affected neighborhoods replacing one roof after another. For the average homeowner, the stress of this experience is compounded by cost of repairs. No doubt many a homeowner has looked up at a gaping hole in the roof and immediately thought, "I know I have insurance, but how am I going to pay for this before I get reimbursed?"

Fortunately, the marketplace developed a mechanism to address this problem. Homeowners often don't have to worry about the upfront cost of an urgent repair because many contractors will accept the payment that the insurance company will make to the homeowner once the repairs are completed. The insurance payment goes directly from the homeowners to the contractor, without the homeowners having to come up with out-of-pocket the tens of thousands of dollars that the repairs might cost.

Of course, most roofing contractors would not make this deal without a contract. The contract here provided for the homeowners' promised transfer of the payment from the insurance company, and, as is typical in the industry, included a 1.5 % late fee and default interest if the payment was delayed more than 30 days. The roofing contractor never loaned the homeowners anything. It simply agreed to wait to be paid until the job was done and agreed to the amount the homeowners' insurance would pay.

Unfortunately, in this case, the homeowners didn't keep their end of the bargain. Even though the roof was repaired, and the insurance company sent the payment, they simply kept the money. One would think then this would be a simple case of the district court ordering them to pay for the new roof they had received. But not so.

Instead, this case comes as a lawsuit over the roofing company's efforts to collect what it was owed. The district court accepted the novel argument from the homeowners that the transaction was governed by the Iowa Consumer Credit Code. Because the roofing contractor, which is not in the business of making loans subject to the ICCA, didn't follow the Code's procedures for collecting what it was owed, penalties are sure to follow.

The district court was incorrect to find the ICCA applies to this transaction. It thought this was a *consumer credit sale*. But as explained below, that was wrong because two of the five elements of that definition aren't present. A late payment fee is different from a *finance charge* and the agreement to take the insurance payment is not an extension of *credit*. The failure to show either of these means this isn't a consumer credit sale.

This case has implications beyond the parties. Roofing contractors tend to follow the storms. Iowa is one of 11 states that have enacted the Uniform Consumer Credit Code, but every state has similar laws. Unpredictable liability from erratic court rulings will send an unfortunate message to roofing contractors at a time when Iowans most need their services: come to Iowa at your own

risk. That means when the next storms blow through, we may see blue tarps on roofs for a long time.

## ARGUMENT

**I. Five elements must be shown for the Iowa Consumer Credit Code to govern a “consumer credit transaction.” Two of those elements, that the contract extends credit and has a finance charge, are not present in the roofing contract. Did the district court err in concluding that the roofing contract was governed by the ICCC?**

The Iowa Consumer Credit Code, Iowa Code Chapter 537, provides a set of rules for consumer credit transactions. It regulates how certain credit transactions must be made, the rights of the creditor and debtor, and the acceptable methods for collection of unpaid debts. Certain kinds of finance arrangements are prohibited, see, e.g., Iowa Code § 537.2201, and the requirements for disclosure of loan terms are specified. Iowa Code § 537.3201, et seq.

But not everything a consumer buys is subject to the ICCC. In the Degen-effes’ case, they claimed the roofing contract was a “consumer credit sale.” Iowa Code § 537.1301(13). This means they had to show five elements were present:

- (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). Two parts of this definition are not established by the roofing contract. The first is that Home Pride didn't give the Degeneffes credit.

**A. The transaction did not involve credit.**

“Credit” is “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.” Iowa Code § 537.1301(16). “A transaction is only a ‘credit’ transaction if it falls within the definition of that term in Iowa Code section 537.1301(13)(a)(1).” *Anderson v. Nextel Partners, Inc.*, 745 N.W.2d 464, 467 (Iowa 2008). When the contract calls for payment when a specific condition is met, rather than in installments, it is not a credit transaction. *Id.* at 468-69 (cellphone contract did not extend credit “because the ‘debt’ incurred for each month was not payable in installments, but was due and payable upon the customer’s receipt of the monthly invoice.”)

Because the roofing contract did not permit the Degeneffes to defer their payment obligation, “the agreement did not constitute an extension of ‘credit’...” *Id.* (collecting cases). When the payment is due “substantially contemporaneous[ly]” with the performance, it is not a “credit transaction.” *Shaumyan v. Sidetex Co.*, 900 F.2d 16, 18 (2d Cir. 1990) (construing identical



“credit” definition in Equal Credit Opportunity Act, 15 U.S.C. § 1691, et seq., to find contract for home improvement did not extend credit to homeowners.)

The Degeneffes must show that this contract meets the statutory definition. “The ICCC definition of credit...is much more narrow than the common law definition... When the legislature chooses to define words in a statute, ‘the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature.’” *Legg v. West Bank*, 873 N.W.2d 763, 770 (Iowa 2016) (finding bank overdraft fees did not create credit transaction). *Muchmore Equip., Inc. v. Grover*, 315 N.W.2d 92, 98 (Iowa 1982), *superseded by statute on other grounds* (“[T]his contract itself was not on ‘credit’; it called for the balance in full upon completion of the building.”)

Because the Degeneffes owed Home Pride the insurance proceeds upon the completion of the work and had no right under the contract to defer payment, they were not given credit. This alone defeats their claim. But they lose for a second reason: the 1.5% percent late fee was not a finance charge.

**B. The contract’s late-fee provision was not a finance charge.**

Under the ICCC, a “finance charge” is “the sum of all charges payable ... as an incident to or as a condition of the extension of credit...” Iowa Code § 537.1301(21)(a). Although section 537.1301(21)(a)(2) says a finance charge can include a “[t]ime price differential...” it does not include charges “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).

The “finance charge” definition is tied to the definition of “credit.” Because this contract didn’t give the Degeneffes credit, the 1.5% fee can’t be a finance charge. But it isn’t a finance charge for a second reason. The charge is only for late payment in breach of the contract. This means the fee isn’t the cost of money borrowed, it’s a consequence of delaying payment in breach of the contract. The contract simply provides a remedy for Home Pride when a homeowner is tardy in handing over what he has promised.

The district court thought the late fee was a “time price differential.” That term is not defined in the ICCC. The trial court defined “time price differential” as “the difference between a seller’s price for immediate cash payment and a different price when payment is made later or in installments.” (District court order 8) (citing BLACK’S LAW DICTIONARY (11th ed. 2019)). Time price differentials can be found when a charge is added onto a continuing installment payment obligation. See, e.g., *Murphy v. Exeter Fin. Corp.*, 558 S.W.3d 207, 211 (Tex. App. Texarkana 2018). Telling a consumer that he can buy a home for \$100,000 in cash today or ten annual payments of \$12,000 is functionally the same as quoting a price, an installment schedule, and an interest rate to go with it.

But Home Pride didn’t do that. The contract did not set one price to pay upon the completion of the contract and a higher price for payments made later, nor did the contract allow for future payments or installment payments.

Instead, the contract identified a single contract price—subject to adjustment because of the insurance proceeds source of payment—which was due when the contract work was completed. The late fee was only owed because of the failure to pay on time.

The contract's late fee was not a finance charge. No credit was given the Degeneffes. The modest fee provided for their tardy payment wasn't the price of money they borrowed. They didn't negotiate the ability to delay payment for their roof or pay the debt in installments. Because of these facts, the district court was incorrect to find the contract was subject to the ICCC. This alone is reason to reverse. But reversal is also needed because of the harms this decision could inflict on consumers and the marketplace.

**II. Consumers benefit when the marketplace is governed by understandable and predictable rules. The district court’s idiosyncratic interpretation of the ICCC threatens to make Iowa an unattractive place for home repair contractors to work. Should the district court’s interpretation of the ICCC be reversed?**

“[C]ontinuity and predictability...help maintain the stability essential to society.” *Bd. of Water Works Trustees of City of Des Moines v. Sac County Board of Trustees*, 890 N.W.2d 50, 61 (Iowa 2017) (rejecting challenge to drainage district immunity supported by “a century’s worth of precedent...”) This is important when considering the marketplace for home repairs, particularly in the context of home repairs made after a natural disaster when contractors from outside of Iowa might be needed to meet acute demand.

This goal of uniformity aligns with the primary purposes and policies of the ICCC. They are to “[c]onform the regulation of disclosure in consumer credit transactions to the Truth in Lending Act,” and “[m]ake the law, including administrative rules, more uniform among the various jurisdictions.” See Iowa Code § 537.1102(2)(f), (g). Uniformity is also important to the MRCA’s members. Some provide services throughout the United States, and some provide services in multiple states. While these members understand that their activities are subject to each State’s legal system, those systems must be understandable and predictable so that MCRA’s members can make informed decisions about where to do business and on what terms.

The potential costs of an erroneous understanding of the ICCC also can fall on homeowners. When the work is covered by insurance, they benefit from

the ability to have their home repaired without having to pay first and be reimbursed later. These homeowners, who intend to honor their commitments when they sign a contract for repairs, would be harmed if it became difficult to find a roofing contractor willing to do the work on such customary terms because Iowa courts have misapplied the ICCC. Ultimately, the only homeowners who stand to benefit from the district court's decision are the Degeneffes.

**A. The roofing contract here contained language that is standard throughout the marketplace.**

The contract contains standard late fee and default interest provisions used by roofing contractors (and other building trades) throughout the country designed to protect the roofing contractor from nonpayment or other customer default. These provisions protect the roofing contractor by incentivizing the customer to comply with their contractual payment obligations to avoid the stated contractual default consequences.

In the context of a case like this one, ensuring the homeowner turns over the insurance payment is the key concern of the roofing contractor. The contractor has already paid for the materials for the roofing job. The contractor also has laborers to pay. These obligations come due even if a homeowner acts like the Degeneffes. The contractor, after all, must pay its laborers and suppliers on time and in full. See, e.g., Iowa Code § 91A.8 (providing action against employer for failure to pay wages on time.)

Residential roofing contracts rarely extend credit directly to the consumer. See, e.g., Consumer Reports, *How to Finance a Home Improvement Project*<sup>3</sup>, U.S. Department of Housing and Urban Development, *Fixing Up Your Home and How to Finance It*<sup>4</sup>. When credit has been extended to a roofing contract customer, it is typically a bank or other third-party lender that extends credit, not the roofing contractor itself. *Id.*

The industry drafts its contracts with these realities in mind. The contractor needs a remedy for delayed payment and a late fee is a straightforward method to encourage the homeowner to get the insurance proceeds handed over or to make payment. Other remedies are less attractive. True, the contractor could place a mechanics' lien on the property. Iowa Code § 572.2. But collection requires a court proceeding. Iowa Code § 572.24. And there likely will be a superior mortgage lien on the property that will complicate the process. Iowa Code § 572.18 (mechanics' liens are junior to "liens of record prior to the time of the original commencement of the claimant's work...")

The failure to hand over the insurance proceeds or to make payment is a straightforward breach of contract. But this also takes litigation. Even in an expedited civil action, the contractor may wait a year to get a judgment. Iowa R. Civ. P. 1.281(4)(b). The contractor is out the money for materials and labor for this entire time. For smaller contractor companies, who rely more substantially upon any individual project, this delay can cause significant business

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<sup>3</sup> <https://perma.cc/FQ2T-9FGM> <last visited Feb. 12, 2024>

<sup>4</sup> <https://perma.cc/Q7YJ-GUAW> <last visited Feb. 12, 2024>

problems. See, e.g., Forbes, *The Importance Of Cash Flow Management During An Economic Downturn*, (“A company that can’t pay its bills on time is likely to face serious consequences, including late fees, penalties and damaged relationships with suppliers and customers . . . a business may be forced to take on debt or even close its doors.”).<sup>5</sup>

**B. The district court’s interpretation of the ICCC harms consumers.**

Roofing contractors need some kind of security before beginning a job. If they can’t get it through a modest late fee because that will trigger liability under the ICCC, then they will have to get it some other way. Contractors are likely to do what is typical<sup>6</sup> in situations where no insurance pays for the repair: demand an upfront deposit from the homeowner or require the homeowner to apply for credit and receive the payment from a lender for the work. Neither are as beneficial for the consumer.

But what choice would the consumer have? A hole in the roof threatens more damage to the homeowner’s most valuable possession. According to one study, “[h]omeownership is the largest source of wealth among families, with the median value of a primary residence worth about ten times the median

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<sup>5</sup> <https://perma.cc/C7TZ-SD5M> <last visited Feb. 12, 2024>

<sup>6</sup> A late fee is an industry standard for residential construction contracts, not just those where insurance proceeds will pay for the repair.

value of financial assets held by families.”<sup>7</sup> Fixing the roof is a priority, not just to keeping the family in the home but preserving their assets for the long term.

But not every family has the cash on hand to make the repair or to make a substantial deposit. According to a Federal Reserve study<sup>8</sup> of households, 54% reported that they could not handle an emergency expense of \$2,000 or more using only savings. Thirty-two percent said they could not pull more than \$1,000 from savings. *Id.*

The ability of those homeowners to borrow repair funds will depend on their individual circumstances. For those who can borrow, they will incur interest charges and loan application fees, together with the inconvenience of obtaining the loan. All to come up with funds to be reimbursed shortly by the insurance company. No doubt many of those homeowners will think, as they apply for a fee-laden cash advance on a credit card, “surely there is a better way to do this.” And, obtaining a loan takes time, all while the work may be needed on an emergency basis.

Unfortunately, this thought will likely come to many Iowans. Iowa, like many states, is not a stranger to damaging emergency weather events. See National Weather Service, *Event Summaries*<sup>9</sup> (showing all destructive weather events since 1990s, including meteorological details and narrative). In 2023,

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<sup>7</sup> National Association of Realtors, Economists’ Outlook, January 7, 2022. <https://perma.cc/N2TN-YESD> <last visited Feb. 11, 2024> (citing Federal Reserve Board, Survey of Consumer Finances, 2019).

<sup>8</sup> <https://perma.cc/P6XA-VHD3> <last visited Feb. 11, 2024>

<sup>9</sup> <https://perma.cc/C9WS-93A4> <last visited Feb. 7, 2024>



Iowa Governor Kim Reynolds issued 17 state disaster declarations for severe weather or flooding.<sup>10</sup> This followed nine state disaster declarations in the prior year. *Id.* These do not include disasters that rose to the level of a Presidential declaration.<sup>11</sup>

Severe storms normally do not damage a single home and can overwhelm the capacity of local contractors to respond. But fortunately, roofing contractors can typically move their equipment and crews to where the storms have hit. This mobility comes with a concern, however, because the contractors have much less incentive to go to a state where they may face increased difficulty getting paid without normal contractual payment default provisions. Iowa is not the only place to be hit by storms. If getting paid here is thought to be difficult because of idiosyncratic rules about consumer credit, then some contractors may simply decide to go elsewhere. The district court's decision discourages roofing contractors from serving Iowans.

### **III. Conclusion**

The district court should be reversed. On its own terms, the decision misapplies the ICCC. But it also threatens the stability of the home repair market and harms Iowa consumers. The only people who benefit from it are the homeowners who failed to fulfill their promise.

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<sup>10</sup> <https://perma.cc/GHC4-FJ98> <last visited Feb. 11, 2024>

<sup>11</sup> <https://perma.cc/97G6-HPNW> <last visited Feb. 11, 2024>

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains **3489** words, excluding parts of the brief exempted by that rule.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Equity A and Equity A Capitals, 14-point type.

/s/ Alan R. Ostergren  
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