IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 22-1865

COUNTY BANK,
Plaintiff-Appellee,
v.
CLINTON ALLAN SHALLA AND MICHELLE LYNN SHALLA
Defendants-Appellants,

CLINTON ALLAN SHALLA AND MICHELLE LYNN SHALLA
Counterclaim Plaintiffs-Appellants,
v.
COUNTY BANK,
Counterclaim Defendant-Appellee,

CLINTON ALLAN SHALLA AND MICHELLE LYNN SHALLA
Third Party Plaintiffs-Appellants,
v.
CHRIS GOERDT AND PEOPLES TRUST AND SAVINGS BANK,
Third Party Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR WASHINGTON COUNTY
HONORABLE MICHAEL SCHILLING AND SHAWN SHOWERS

RESISTANCE OF THIRD PARTY DEFENDANT-APPELLEE CHRIS GOERDT TO APPELLANTS' APPLICATION FOR FURTHER REVIEW

(COURT OF APPEALS DECISION ENTERED JUNE 19, 2024)

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STATEMENT RESISTING FURTHER REVIEW

The Iowa Court of Appeals' decision properly affirmed the District Court's Orders and Jury Verdict in favor of Chris Goerdt ("Goerdt"), County Bank, and Peoples Trust and Savings Bank ("Peoples"). The Application for Further Review ("Application") filed by Appellants Clinton and Michelle Shalla ("Clinton" and "Michelle" individually; collectively the "Shallas") is without merit and should be denied.

An application for further review is not a matter of right but is discretionary. Iowa R. App. P. 6.1103(1)(b). Applications for further review "are not granted in normal circumstances." *Id.* Iowa Rules of Appellate Procedure 6.1103(1)(b)(1)-(4) set forth the criteria this Court considers in deciding whether to grant an application for further review. In this matter, further review is not warranted.

The Shallas' Application asserts that the Court of Appeals' decision regarding Iowa Code § 535.17 Credit Agreement Statute of Frauds "is an important question of law that needs to be settled by the Iowa Supreme Court." (Application, p. 7, ¶ 11 (citing Iowa R. App. P. 6.1103(1)(b)(2)). However, the Court of Appeals' decision is entirely consistent with existing Iowa law and precedent – including the Court of Appeals' decision in *Gieger v. Peoples Trust and Savings Bank*, No. 18-1428, 2019 WL 4678179 (Iowa Ct. App. Sept. 25, 2019) (unpublished) which the Court of Appeals in this appeal

reviewed and considered at length. Further, the Shallas' Application also seeks review of the Court of Appeals' decision affirming the District Court's orders and directed verdict regarding discovery and vicarious liability, respectively. The Shallas provide no basis for this Court to review these issues under the criteria set forth in Iowa Rule of Appellate Procedure 6.1103(1)(b)(1)-(4).

Accordingly, the Supreme Court should deny the Shallas' Application.

STATEMENT OF THE CASE AND BACKGROUND

In their Application, the Shallas seek to avoid the District Court's summary judgment, directed verdict rulings, and other orders (including denial of extending the discovery deadline) in favor of Appellees Goerdt, Peoples, and County Bank, all of which have been affirmed by the Court of Appeals.

This case arises out of Clinton's failure to timely exercise a Buyback Option to repurchase his farm real estate located in Washington County, Iowa (hereinafter the "Farm") contained in a Debt Settlement Agreement the Shallas had with the Greg and Heather Koch (the "Kochs"). (7/18/23 Revised and Combined Appendix ("App.") at App. 1096-1107 (at ¶ 7(c)).) Clinton admitted he did not exercise the Buyback Option by its deadline (even though he knew the deadline), and never communicated in writing with the Kochs (required by its terms) regarding the same before the deadline. (App. 1539-1543 (Trial Transcript-Day 4, pp. 159-163); App. 290-294.) Clinton also admitted he *never* discussed the Buyback Option deadline before the deadline expired with

Goerdt, who, at the time (Fall of 2015), was President at Peoples and assisted Clinton in securing financing for the repurchase of the Farm. (App. 1541-1543 (Trial Transcript-Day 4, p. 161-163); App. 298-299.) Clinton admitted his strictly oral communications with Goerdt were to "secure financing" (*e.g.*, a loan) for Clinton, not to exercise the Buyback Option on Clinton's behalf (and Goerdt has corroborated the same). (App. 1541 (Trial Transcript-Day 4, p. 161); App. 298-299; App. 1260 (p. 67, ln 9-13); App. 649.) Clinton admitted it was his (Clinton's) responsibility to timely exercise the Buyback Option. (App. 1540 (Trial Transcript-Day 4, p. 160); App. 294.) Despite Clinton's admitted failure to timely exercise the Buyback Option, Clinton voluntarily proceeded to repurchase his Farm anyway for approximately $1.25 million from the Kochs with a loan from County Bank, which was secured by Goerdt, who, by that time (January 2016), was a loan officer with County Bank. (App. 1114 (¶ 2); App. 873 - 898.)

After repurchasing the Farm in early 2016, things did not go well for the Shallas because, by March 2017, the Shallas were not making payments on the Farm and related loans, and they were in default. (App. 83-84 (¶¶ 13-16).) As a result, County Bank brought an Action to foreclose on the Farm on March 28, 2018. (App. 81-143.)

Thereafter, the Shallas blamed County Bank, Peoples, and Goerdt for Clinton's failure to timely exercise the Buyback Option (believing it to be the

banks' and/or Goerdt's responsibility to exercise it). The Shallas also alleged other accusations against them, asserting counterclaims for fraud, negligence, vicarious liability / respondeat superior, and conversion County Bank, Peoples, and/or Goerdt. (*See*, *e.g.*, App. 160-162 (¶¶ 29, 33-48); App. 163-166 (¶¶ 51-72).)

Despite the Parties conducting fulsome discovery (and two years after the discovery deadline had lapsed), the Shallas untimely moved to extend the discovery deadline, which Peoples resisted. (App. 600-611; 9/30/21 Shallas' Proposed Trial and Discovery Plan (Dkt. #D0150), pp. 1-3; App. 867-871; and App. 639-642.) Ultimately, the District Court, in its discretion, entered an order on November 7, 2021 denying the Shallas' extension motions because the "interests of justice are not served by further extending deadlines" as the case "has been on file for an extended time period" and adopted the reasoning set forth in Peoples' Resistances. (App. 645; App. 867-871; and App. 639-642.)

Through summary judgment orders, directed verdict, and jury verdict, Peoples, County Bank, and Goerdt have prevailed on all claims (except the Shallas prevailed on one count of conversion against Goerdt for $5,800 wherein the Jury found in favor the Shallas; the same Jury found in favor of Goerdt on the other counts of conversion). (App. 649-655; App. 804, 806-811, 813.) County Bank also prevailed on its foreclosure action against the Shallas. (App. 815-822.)

Following trial and jury verdict, on October 5, 2022, the Shallas filed a sprawling Motion for New Trial against County Bank, Peoples, and Goerdt, requesting a new trial on all issues decided by the District Court, including summary judgment orders through trial and jury verdict. (App. 834-837.)

County Bank and Goerdt filed resistances to the Shallas' Motion for a New Trial. (App. 839-842; App. 843-859.) On October 14, 2022, the District Court entered its Order denying the Shallas' Motion for a New Trial. (App. 860.) On November 10, 2022, the Shallas filed their Notice of Appeal. (App. 862-864.) On June 19, 2024, following appellate briefing and oral argument, the Court of Appeals entered its decision affirming the District Court's orders and Jury Verdict in favor of County Bank, Peoples, and Goerdt, specifically that Iowa Code § 535.17 barred the Shallas' tort claims against Peoples and Goerdt because Goerdt's alleged oral promises to the Shallas about securing financing and exercising the Buyback Option were oral promises made in connection with an unwritten credit agreement. (*See* Court of Appeals Decision, pp. 1-24.)

On July 9, 2024, the Shallas filed their Application seeking further review / remand by this Court regarding the Court of Appeals decision on the following issues: (1) the Court of Appeals' decision affirming the District Court's summary judgment and directed verdict orders applying Iowa Code § 535.17 to bar the Shallas fraud and negligence claims against Peoples

and Goerdt; (2) the Court of Appeals' decision affirming the District Court's November 7, 2021 Order denying the Shallas' motion to extend the discovery deadline; and (3) the Court of Appeals' decision affirming the District Court's directed verdict in favor of County Bank on the Shallas' vicarious liability / respondeat superior claim. (Shallas' Application, pp. 1-25.)

For the reasons set forth below, the Supreme Court should deny the Shallas' Application.

ARGUMENT

I. The Court Of Appeals Correctly Affirmed The District Court's Orders Of Summary Judgment And Directed Verdict In Favor Of Peoples And Goerdt On The Shallas' Fraud And Negligence Claims Pursuant To Iowa Code § 535.17.

Despite the District Court and Court of Appeals both rejecting the Shallas' interpretation of Section § 535.17, the Shallas persist in pursuing an exceedingly narrow, untenable interpretation of the statute in order to allow their tort claims to circumvent the application of Iowa Code § 535.17. And despite conceding Section 535.17's language is unambiguous, the Shallas persist in their assertion that the legislative history is dispositive or relevant. It is not, and such an inquiry into the legislative history is improper and contrary to well-established rules of statutory interpretation. *See*, *e.g.*, *Est. of Butterfield by Butterfield v. Chautauqua Guest Home, Inc.*, 987 N.W.2d 834, 838 (Iowa 2023) (quoting *Com. Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021) ("When a

statute's text and meaning is clear, 'we will not search for a meaning beyond the express terms of the statute or resort to rules of construction.'"); *Est. of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 730 (Iowa 2008) ("When the statute's language is plain and its meaning clear, we look no further.") (citing *State v. Snyder*, 634 N.W.2d 613, 615 (Iowa 2001); *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp.*, 606 N.W.2d 359, 365 (Iowa 2000) ("Legislative history is properly considered in interpreting statutory language found to be *ambiguous*.") (emphasis added). Thus, the Shallas' arguments set forth in their Application are misplaced.

The Court of Appeals was correct in its decision to affirm the District Court's grant of summary judgment to Peoples and grant of directed verdict to Goerdt on the Shallas' claims of negligence and fraud because those claims are barred by Iowa Code § 535.17, as the Shallas' claims relate to oral statements made in connection with a credit agreement that were not in writing. (Court of Appeals Decision, pp. 7-11.) Contrary to the Shallas' contentions to narrowly (and incongruously) interpret Iowa Code § 535.17, the Court of Appeals (and the District Court and the Court of Appeals in *Gieger* before it) correctly found the statute and many courts -- in Iowa and other jurisdictions interpreting similar statutes -- support a broad, inclusive interpretation of Iowa Code § 535.17 that bars claims like the Shallas both in tort and in contract regarding

credit agreements that are not in writing. In other words, the Court of Appeals got it exactly right in its decision:

> Taken in totality, section 535.17 demands a broad application that allows the enforcement of only written credit agreements, both in tort and in contract, and the Shallas, without a writing, cannot show that there was ever a credit agreement for Goerdt and Peoples Trust to breach . . . The district court did not err by granting summary judgment and a directed verdict on this issue.

(Court of Appeals Decision, p. 11.) Accordingly, the Court of Appeals decision affirming the District Court's summary judgment and directed verdict orders in favor of Peoples and Goerdt, respectively, were proper, and the Supreme Court should deny further review, as set forth below.

A. The Court Of Appeals Properly Decided Iowa Code § 535.17 Is Unambiguous, Broad, And Must Be "Applied Purposively."

As the Court of Appeals recognized, the plain language of a statute controls its interpretation, not its legislative history. (Court of Appeals Decision, p. 8, citing *Est. of Butterfield by Butterfield*, 987 N.W.2d at 838.) Moreover, a statute must be read as a whole. *Porter v. Harden*, 891 N.W.2d 420, 425 (Iowa 2017) ("Statutes need to be read as a whole, both in initially determining whether ambiguity exists, and, later in construing the statute."). Further still, where a statute (such as Section 535.17) has defined terms, those definitions control because "[w]hen the legislature has defined words in a statute—that is, when the legislature has opted to 'act as its own

lexicographer'—those definitions bind us." *In re J.C.*, 857 N.W.2d 495, 500 (Iowa 2014) (quoting *State v. Fischer*, 785 N.W.2d 697, 702 (Iowa 2010)).

In its decision, the Court of Appeals correctly held that an examination of Iowa Code § 535.17 "reveals it is not ambiguous." (Court of Appeals Decision, p. 8.) The Court of Appeals recognized Section 535.17 is not narrow, but rather its language is broad and inclusive. (Court of Appeals Decision, p. 11.) To begin, Iowa Code § 535.17(1) states:

> A credit agreement is not enforceable in contract law by way of action or defense by any party unless a writing exists which contain all the material terms of the agreement and is signed by the party against whom enforcement is sought.

Iowa Code § 535.17(1). Here, the Shallas incorrectly focus on and stop their analysis completely at "contract law", ignoring the broad language and definitions found in the statute. This is misplaced for a number of reasons.

For instance, Section 535.17 broadly defines "credit agreement" as "any contract made or acquired by a lender to loan money, finance any transaction or otherwise extend credit for any purpose." *Id.* at § 535.17(5)(c). "Lender" is broadly defined to include not only a "person primarily in the business of loaning money" but also a person "financing sales, leases, or other provision of property or services." *Id.* at § 535.17(5)(e).

Iowa Code § 535.17(5)(b) also broadly defines "contract" and includes precisely the type of alleged oral promise on which the Shallas premise their claims:

> "Contract" means a *promise or set of promises for the breach of which the law would give a remedy or the performance of which the law would recognize a duty*, and includes promissory obligations based on instruments and similar documents or on the contract doctrine of promissory estoppel.

Iowa Code § 535.17(5)(b) (emphasis added). Subsection 5(b) validates that any "promise" to extend credit (which the Shallas contend here), the breach of which gives rise to a claim, is subject to the requirements of Section 535.17(1), whether the claim is characterized as a negligent or fraudulent promise to make a loan, an intentional interference with other contracts by refusing to make a loan, or a breach of a traditional common law "contract" to make a loan, *i.e.*, an accepted offer with consideration. *E.g.*, *Clinton Nat. Bank v. Saucier*, 580 N.W.2d 717, 720 (Iowa 1998) (affirming district court's grant of summary judgment under § 535.17 on the claim that bank orally represented to customer that it would honor customer overdrafts); *Raccoon Valley State Bank v. Gratias*, No. 04-1854, 2006 WL 3798902, at *2, *4 (Iowa Ct. App. Dec. 28, 2006) (affirming district court's grant of summary judgment and determination that Section 535.17 barred misrepresentation claim).

Further, Iowa Code § 535.17(5)(a) also broadly defines "action" – to which Section 535.17 requirements apply – "includes petition, complaint, counterclaim, cross-claim, or *any other pleading or proceeding to enforce affirmatively any right or duty or to recover damages for the nonperformance of any duty*." *Id.* (emphasis added); *Raccoon Valley State Bank*, 2006 WL 3798902, at *1, *4 (affirming summary judgment, dismissing bank customer's misrepresentation (tort) counterclaim against bank based on oral statement modifying written credit agreement). The Shallas' tort claims against Peoples and Goerdt fall squarely and are barred under the broad language and definitions of "credit agreement", "contract", "lender", and "action."

Iowa Code §§ 535.17(6) and (7) also make clear the statute is to be broadly interpreted and applied purposively:

> 6. This section *shall be interpreted and applied purposively* to ensure that contract actions and defenses on credit agreements are supported by clear and certain written proof of the terms of such agreements *to protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements*.
>
> 7. This section *entirely displaces principles of common law and equity that would make or recognize exceptions to or otherwise limit or dilute the force and effect of its provisions* concerning the enforcement in contract law of credit agreements or modifications of credit agreements. However, this section does not displace any additional or other requirements of contract law, which shall continue to apply, with respect to the making of enforceable contracts, including the requirement of consideration or other basis of validation.

Iowa Code § 535.17(6)-(7) (emphasis added). Accordingly, the Iowa legislature made clear that § 535.17 must be applied expansively and "purposively" in order "to protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements." *Id.* at § 535.17(6). Indeed, the Iowa Supreme Court has held "Iowa Code section 535.17(6) controls over any ambiguity in the provisions of section 535.17 and clearly requires any alleged credit agreements must be in writing to be enforceable . . .." *Clinton Nat. Bank* 580 N.W.2d at 722.

Accordingly, the Court of Appeals was correct in its finding that examining Iowa Code § 535.17 "reveals it is not ambiguous" and the statute "demands a broad application . . ." (Court of Appeals Decision, pp. 8, 11.)

B. The Court Of Appeals Correctly Relied On Persuasive Precedent From Iowa Courts And Other Jurisdictions In Affirming The District Court's Orders Barring The Shallas' Tort Claims Pursuant to Iowa Code § 535.17.

In addition to its holding Iowa Code § 535.17 is unambiguous and broad, the Court of Appeals properly analyzed and relied upon key, persuasive case law in its majority opinion affirming the District Court's summary judgment and directed verdict in favor of Peoples and Goerdt. (Court of Appeals Decision, pp. 9-11.)

Here, the Court of Appeals recognized existing Iowa precedent regarding Section 535.17 is clear the statute applies to both contract and tort

claims. (Court of Appeals Decision, pp. 11.) The statute not only applies to the specific promise to make a loan, but also to any ancillary promises or activities made in connection with the promise to make a loan, thus requiring a writing to be enforceable under Iowa Code § 535.17. *See*, *e.g.*, *Clinton Nat. Bank,* 580 N.W.2d at 722 (affirming summary judgment in favor of the bank on a customer's counterclaim that alleged the bank breached an oral agreement to honor the customer's overdrafts, because even assuming the bank made oral statements to its customer that it would honor overdrafts, such statements were "immaterial" because payment of an overdraft is subject to Section 535.17 and any ancillary statements made by the bank to honor overdrafts must be in writing to be enforceable); *Raccoon Valley State Bank*, 2006 WL 3798902, at *4 (holding a customer's misrepresentation claims against the bank was barred under Section 535.17, as the alleged oral agreement by a bank to accept a lesser payoff amount (an ancillary activity to a loan agreement) was not enforceable unless it was in writing); *Gieger*, 2019 WL 4678179, at *4-6 (affirming judgment in favor of defendant bank under Section 535.17, finding that the bank employee's alleged oral statements agreeing to assist a customer with ancillary matters to an agreement to secure financing (like obtaining appraisals) were subject to the statute, and all the bank employee's alleged promises or misrepresentations were unenforceable because none were in writing).

The Court of Appeals found its prior decision in *Gieger* to be particularly persuasive, as it is an on-point appellate decision. The Court of Appeals noted the *Gieger* Court thoroughly considered the language in Section 535.17 and reviewed persuasive authority from other jurisdictions with similar credit agreement statute of frauds statutes in making its ruling. (Court of Appeals Decision, p. 9-10.) Indeed, the Court of Appeals in the present case concluded "[w]e come to the same conclusion" as the Court in *Gieger*, that plaintiffs "cannot raise in tort what they cannot prove in contract: the existence of an enforceable contract." (Court of Appeals Decision, p. 9-10; quoting *Gieger*, 2019 WL 4678179, at *6.)

In addition to *Gieger* and other Iowa precedent, the Court of Appeals also cited to and analyzed numerous decisions of courts in other jurisdictions that have determined that oral agreements to extend credit are barred by the statute of frauds, regardless of the theory of recovery asserted. (Court of Appeals Decision, p. 9-10, Note 1.) Such cases, "though not binding, lend persuasive support." *Kunde v. Est. of Bowman*, 920 N.W.2d 803, 811 (Iowa 2018). These cases include: (1) *Dixon v. Countrywide Fin. Corp.*, 664 F. Supp. 2d 1304, 1309 (S.D. Fla. 2009); (2) *Horseshoe Entertainment L.P. v. Gen. Elec. Capital Corp.*, 990 F. Supp. 737, 743 (E.D. Mo. 1997); (3) *Ohio Valley Plastics, Inc. v. Nat'l City Bank*, 687 N.E.2d 260, 264–65 (Ind. Ct. App. 1997); and (4) *Twiford Enterprises,*

Inc. v. Rolling Hills Bank and Trust, Case No. 20-CV-28-F, 2020 WL 5248561, at *7-8 (D. Wyo. Aug. 5, 2020).

At bottom, the Court of Appeals' decision affirming the District Court was correct, as it properly analyzed Iowa Code Section 535.17's broad and unambiguous language, existing legal precedent and case law, and applied the same to the present record. The Shallas' assertions to the contrary are misplaced and without merit. The Supreme Court, therefore, should leave the Court of Appeals decision undisturbed and deny the Shallas' Application.

II. The Court Of Appeals Correctly Affirmed The District Court's Denial Of The Shallas' Motion To Extend Case Discovery Deadlines And Other Attempts To Re-Open Discovery.

The Shallas' arguments regarding the District Court's denial to extend pretrial discovery deadlines were fully briefed before the Court of Appeals, directly considered, and unanimously rejected. (*See* Court of Appeals Decision, pp. 11-12; J. Langholz Concurrence in Part and Dissent in Part, p. 17 ("I join much of the majority's well-reasoned opinion. I agree that the district court . . . did not abuse its discretion in denying Clinton and Michelle Shalla an extension of the discovery deadline . . .)). The Court of Appeals correctly affirmed the District Court's November 7, 2021 Order denying the Shallas additional discovery.

Yet, the Shallas persist in their argument – one they have made before the District Court, Court of Appeals, and now in their Application (pp. 19-20) – that Parties had an "agreement" to extend discovery past the established case deadlines and the District Court and now Court of Appeals have failed to enforce it, prejudicing them. The Shallas' argument is not supported by Iowa law nor the record.

First, the Court of Appeals correctly applied the "abuse of discretion" standard to District Court's decision denying the extension of the discovery deadline. (Court of Appeals Decision, pp. 11, citing to *Hill v. McCartney*, 590 N.W.2d 52, 54-55 (Iowa Ct. App. 1998) ("[T]he exercise of that discretion will not be disturbed unless it was exercised on clearly untenable grounds or tan extent clearly unreasonable."); *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 139 (Iowa 2013) ("In reviewing decisions regarding discovery, we give the district court wide latitude.").) The Shallas appear to not dispute and otherwise concede the Court of Appeals applied the correct "abuse of discretion" standard. (Application, p. 19.)

Second, the Court of Appeals correctly and carefully reviewed the record under this standard, specifically addressing the Shallas' assertion that the Parties had an agreement to suspend *all* discovery until Goerdt could be deposed. (Court of Appeals Decision, p. 11.) The Court of Appeals correctly found that the Shallas "cite no portion of the record to support their claim" that the

Parties had an agreement to suspend all discovery. (*Id.* at p. 11.) The Court of Appeals noted that Peoples Trust, County Bank, and Goerdt "dispute this and maintain the Shallas only ever requested *Goerdt's deposition alone* be delayed." (*Id.* at p. 11 (emphasis in original).)

Indeed, contrary to the Shallas' persistent allegations of a so-called agreement, the Parties did not have an agreement to extend discovery past the case deadline, except as to take Goerdt's deposition following his criminal sentencing (which did occur as agreed upon on May 18, 2021). (App. 1243-1244.) Further, the District Court only ordered the summary judgment proceedings/rulings would be postponed until after Goerdt's deposition. (App. 865; App. 649.) In its December 20, 2019 Order, the District Court never reset the pretrial deadlines, including the discovery deadline. (App. 865.) Accordingly, there is not and never was an agreement (or District Court order) that additional discovery (except for Goerdt's deposition) was to occur after the discovery deadline closed on December 27, 2019.

Finally, in addition to the above, the Court of Appeals also correctly highlighted that (1) the Shallas "waited until two years after those [discovery] deadlines had passed to bring the issue before the court" and (2) the Shallas only sought to alter the discovery deadline to depose a witness that the Shallas could have deposed at any time prior to the close of discovery, as that witness had no restrictions (such as a pending criminal indictment) on testifying.

(Court of Appeals Decision, p. 12.) In other words, the Shallas' delay in taking and/or completing discovery prior to the deadline was of their own making. These facts and circumstances were fully briefed by the Parties and considered by the District Court in the District Court's November 7, 2021 Order. (App. 645; App. 867-871; and App. 639-642.)

Given this, the Court of Appeals correctly ruled that it "cannot say the [District Court's] decision to deny an extension of the discovery deadline was 'clearly unreasonable' or based on 'clearly untenable grounds'", and it properly affirmed the District Court's November 7, 2021 Order. (Court of Appeals Decision, p. 12.) The Supreme Court should, therefore, deny the Shallas' Application on this issue.

III. The Court Of Appeals' Decision Affirming The District Court's Directed Verdict In Favor Of County Bank On The Issue Of Vicarious Liability/Respondeat Superior.

The Shallas' contend the Court of Appeals erred in affirming the District Court's directed verdict that County Bank had no liability for vicarious liability / respondeat superior for the actions of Goerdt, its former employee. At oral argument, the Shallas unequivocally conceded that their appeal of their vicarious liability claim was limited to County Bank only. However, the Shallas' Application now apparently backtracks that concession and asserts that their vicarious liability / respondeat superior claim also applies to Peoples. In any

event, the Shallas' claim of vicarious liability / respondeat superior applies only to County Bank and Peoples, and the Shallas make no claim of vicarious liability / respondeat superior against Goerdt. Accordingly, Goerdt is not going to address the merits of the Shallas' legal assertions on this issue, but Goerdt disputes the alleged facts asserted by the Shallas, as many are misleading, inaccurate, and/or not supported by the record.

CONCLUSION

For all the reasons stated herein and in the record, the Supreme Court should deny the Appellants' Application for Further Review and affirm the Court of Appeals' June 19, 2024 Decision in all respects.

Dated: July 19, 2024

/s/ Ryan S. Fisher

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

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.1103(5)(a) and 6.903(1)(g)(1) or (2) and 6.903(1)(i)(1) or (2) because:

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/s/ Ryan S. Fisher — July 19, 2024
Ryan S. Fisher — Date

CERTIFICATE OF SERVICE AND FILING

I certify that on July 19, 2024, I served the foregoing Resistance of Third Party Defendant-Appellee Chris Goerdt to Appellants' Application for Further Review by electronically filing the document with EDMS, which will notify all parties of the electronic filing.

/s/ Ryan S. Fisher

COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Resistance of Third Party Defendant-Appellee Chris Goerdt to Appellants' Application for Further Review is $N/A and that the amount has been paid in full by Appellees.

/s/ Ryan S. Fisher
Ryan S. Fisher