

IN THE SUPREME COURT OF IOWA

Case No. 18-1354

33 CARPENTERS CONSTRUCTION, INC.,

Appellant/Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Appellee/Defendant,

Appeal from the Honorable Henry W. Latham II
of the Iowa District Court in and for Scott County

Scott County District Court Case No. LACE128749

FINAL BRIEF OF APPELLANT/PLAINTIFF
33 CARPENTERS CONSTRUCTION, INC.

March 2, 2018

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Iowa Code § 522C.1

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Iowa Code § 522C.6

Other Authorities

Iowa R. App. P. 6.101(1)(b)

Iowa R. App. P. 6.1101(2)(c)

Iowa R. App. P. 6.1101(3)

In the Matter of Dansco Contracting, Dan Glasgow, and Joel Manley, 2013 WL 4039889 and 2011 WL 75621668

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In the Matter of Tierney Brothers Construction LLC, Sean Tierney, and

Tracy Tierney, 2010 WL 2324608

Statement of Issues Presented for Review

Whether the Scott County District Court properly granted State Farm Fire and Casualty Company's Motion for Summary Judgment, when 33 Carpenters Construction had contracted for a valid post-loss assignment with the original homeowner-insured and subsequently negotiated its own claim with the insurer.

Routing Statement

Pursuant to Iowa R. App. P. 6.1101(2)(d) and Iowa R. App. P. 6.1101(2)(f), this case is appropriate for retention by the Iowa Supreme Court, as it seemingly presents issues of public import and changing legal principles. Presently, another comparable case is pending on Application for Further to the Supreme Court (See Iowa Supreme Court Case No. 17-1979), which presents similar issues for consideration.

Statement of the Case

33 Carpenters Construction, Inc. (hereinafter: “33 Carpenters”) a Bettendorf, Scott County, Iowa headquartered storm restoration contractor, agreed to provide repair work to the residence of Brant and Sarah Clausen (hereinafter: “the Clausens”), located at 19310 251st Avenue Bettendorf, Scott County, Iowa following from a hail and windstorm that struck that area on March 15, 2016. As consideration, 33 Carpenters agreed with the Clausens to provide all materials and labor necessary for any exterior repairs, in exchange for any proceeds the Clausens were to receive from their home insurance policy paid by State Farm Fire and Casualty Company (hereinafter: “State Farm”) relative to this incident. State Farm is the Illinois Corporation that provided insurance coverage for the Clausens’ residence during the relevant period.

On June 29, 2016, a 33 Carpenters representative initiated contact with the Clausens at their residence. After the 33 Carpenters representative discovered hail damage to the exterior of the home, those two parties entered into an agreement for repairs as described above, and the Clausens made a property damage claim to State Farm. State Farm representatives then visited the home in response on July 12, 2016, and met with the same 33 Carpenters representative to assess the loss. State Farm never provides any details

concerning this meeting, but quickly formulated an initial estimate, and paid some Actual Cash Value (“ACV”) amounts, which represents the cost to repair or replace the damaged property, minus depreciation. Thereafter, on a date uncertain, 33 Carpenters began repairing the residence. As part of its contract with the homeowner, 33 Carpenters then accepted a post-loss assignment of the Clausen claim on February 22, 2017. In March 2017, with the dispute concerning the scope of the claim still unresolved, 33 Carpenters filed suit, claiming that State Farm had breached the insurance policy. (Petition, App. 4-7). On May 5, 2018, State Farm filed a Motion for Summary Judgment, claiming that 33 Carpenters’ contract with the homeowner contravenes Iowa’s licensure requirement for public adjuster, and was thus invalid, necessitating dismissal of the suit. (Defendant’s Motion for Summary Judgment, App. 78-80). The matter was heard before the Honorable Henry W. Latham II of the District Court of Scott County, on June 22, 2018, who granted State Farm’s Motion via written ruling issued on July 10, 2018. (Order Granting Summary Judgment, App. 203-210). Thereafter 33 Carpenters filed a Notice of Appeal on August 9, 2018. (Notice of Appeal, App. 211).

Statement of the Facts

State Farm contracted for a homeowners insurance policy with the Clausens concerning their residence at 19310 251st Avenue, Bettendorf, Scott County, Iowa. The policy provided coverage for direct physical loss to the residence and other covered loss caused by or resulting from a covered cause of loss. It is undisputed that this policy was in effect on March 15, 2016, when a hail and windstorm wrought widespread damage in the Quad Cities area, including to the Clausen home, which constituted a covered loss. (Defendant's Answer, Affirmative Defenses, and Jury Demand p. 2, App. 9).

On June 29, 2016, Matt Shepherd, a 33 Carpenters representative first initiated contact with the Clausens, at their residence. (Defendant's Statement of Undisputed Material Facts p. 1, App. 81). On the same date, the Clausens entered into a contract for repairs with 33 Carpenters, and made a claim to State Farm for property damage. (*Id.* p. 2, App. 82). The contract called for the Clausens to pay 33 Carpenters the amount of their insurance deductible and insurance proceeds, if any, to 33 Carpenters, in exchange for all exterior repairs. State Farm representatives first visited the subject property on July 12, 2016. Neither of the Clausens were present at this meeting, but Shepherd was at their residence. (*Id.*) Importantly, there is absolutely no evidence offered *from any party* that suggests that the

Shepherd negotiated, represented, or otherwise adjusted the Clausens' claim on this date, with the State Farm representatives, merely that he was present. Thereafter, on July 15, 2016, State Farm representative prepared an initial estimate for the loss, and issued ACV payment to the Clausens, which was eventually transferred to 33 Carpenters. (*Id.*) At an unspecified time thereafter, work commenced on the Clausen residence.

On February 22, 2017, 33 Carpenters received an "Assignment of Claim and Benefits" from the Clausens for their insurance claim with State Farm, Claim No. 15-911L-718. (Petition p. 4, App. 7). Later in February 2017, with the dispute continuing concerning the proper scope of the repairs, 33 Carpenters filed suit on March 13, 2017 alleging a breach of the insurance contract by State Farm. (Petition, App. 4-7).

On May 5, 2018, State Farm filed a Motion for Summary Judgment, claiming that 33 Carpenters' contract with the homeowner contravenes Iowa's licensure requirement for public adjuster, and was thus invalid, necessitating the dismissal of the suit, which 33 Carpenters resisted. (Defendant's Motion for Summary Judgment, App. 78-80). The matter was heard before the Honorable Henry W. Latham II of the District Court of Scott County, on June 22, 2018, who granted the Motion via written ruling issued on July 10, 2018. (Ruling on Defendant's Motion for Summary

Judgment, App. 203-210). Thereafter 33 Carpenters filed a Notice of Appeal on August 9, 2018.

Argument

Argument I: The District Court improperly granted State Farm Fire and Casualty Company's Motion for Summary Judgment for 33 Carpenters Construction Inc. did not violate any Iowa statutes in contracting for a valid post-loss assignment and subsequently negotiating its own claim directly with the insurer.

Error Preservation, Scope of Review, and Standard of Review

33 Carpenters timely filed Notice of Appeal on August 9, 2018 from the District Court's grant of Summary Judgment earlier on July 10, 2018, in compliance with Iowa R. App. P. 6.101(1)(b). Given that the July 10, 2018 Order was a final judgment on State Farm's Summary Judgment Motion, no other steps or actions were necessary of 33 Carpenters to perfect this appeal.

The standard for reviewing Summary Judgment Motions is well settled. Iowa appellate courts should scrutinize Summary Judgment rulings for correction of errors at law. *Carr v. Bankers Tr. Co.*, 546 N.W.2d 901, 903 (Iowa 1996). Further, a grant of Summary Judgment is appropriate only when the entire record demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* Importantly, the evidence is examined in the light most favorable to the nonmoving party, namely 33 Carpenters Construction Inc. *Mason v. Vision*

Iowa Bd., 700 N.W.2d 349, 353 (Iowa 2005). Lastly, in reviewing the grant of summary judgment:

“The question is whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. An issue of fact is ‘material’ only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. The requirement of a ‘genuine’ issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Rants v. Vilsack*, 684 N.W.2d 193, 199 (Iowa 2004) (quoting *Junkins v. Branstad*, 421 N.W.2d 130, 132–33 (Iowa 1988)); accord *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004); *Hynes v. Clay County Fair Ass'n*, 672 N.W.2d 764, 766 (Iowa 2003).

1. STATE FARM FIRE AND CASUALTY COMPANY CANNOT OFFENSIVELY UTILIZE IOWA CODE CHAPTERS 522C AND 507A TO REACH BACK IN TIME AND INVALIDATE 33 CARPENTER’S ASSIGNMENT CONTRACT WITH HOMEOWNERS BRANT AND SARAH CLAUSEN.

The Iowa Insurance Commissioner alone may enforce the provisions of Iowa Code Chapter 522C (concerning “Licensing of Public Adjusters”), and State Farm Fire may not offensively utilize this portion of Iowa law to

invalidate contract and assignment of claim from the Clausens to 33

Carpenters, post hoc.

Iowa Code § 522C.6 prescribes a complete listing of specific penalties the Iowa Insurance Commissioner may impose on those acting in violation of the “Licensing of Public Adjusters Act” including notably the following:

2. A person acting as a public adjuster without proper licensure or a public adjuster who willfully violates any provision of this chapter or any rule adopted or order issued under this chapter is guilty of a serious misdemeanor.

...

3(b). A person who, after hearing, is found to have violated this chapter by acting as a public adjuster without proper licensure may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.

The Iowa Insurance Commissioner has in fact exercised such authority with regularity. See: IN THE MATTER OF DANSCO CONTRACTING, DAN GLASGOW, AND JOEL MANLEY, 2013 WL 40398892011 and WL 75621668 (Defendant construction company cited for acting as unlicensed adjuster and proving misleading advertising in violation

of Iowa Code Chapters 522C and 507A, fined \$3,000.00 and ordered to cease and desist, later overturned after full hearing); IN THE MATTER OF GLAZE ROOFING AND REMODELING JOE GLAZE, 2010 WL 2324606, (Defendant construction company cited for acting as unlicensed adjuster and proving misleading advertising in violation of Iowa Code Chapters 522C and 507A, fined \$10,000.00 and ordered to cease and desist); and IN THE MATTER OF TIERNEY BROTHERS CONSTRUCTION LLC, SEAN TIERNEY, TRACY TIERNEY, 2010 WL 2324608 (Defendant construction company cited for acting as unlicensed adjuster and proving misleading advertising in violation of Iowa Code Chapters 522C and 507A, fined \$20,000.00 and ordered to cease and desist).

Notably, neither Iowa Code Chapter 522C nor Iowa Code Chapter 507A ever mention Defendant's supposed remedy of reaching back in time to negate valid assignment contracts.

State Farm points to various Iowa decisions, most notably *Staff Mgmt. v. Jimenez*, 839 N.W.2d 640 (Iowa 2013), in arguing that Iowa law offers **it** the ability to void the contract between 33 Carpenters and the Clausens, given that 33 Carpenters conduct allegedly violates the Licensing of Public Adjusters Act, which is a regulatory use of the State's police power. However, this argument is incomplete. The mere presence of a licensing or

regulatory act by itself is insufficient; the Court must look further to the purpose of the law, in deciding whether the existence of a regulatory scheme invalidates the contract supposedly drawn in contravention of statute.

Jimenez is a workers compensation matter, in which the Iowa Supreme Court decided that an undocumented worker still may avail herself of the Iowa Workers' Compensation Act, despite a federal prohibition against employing undocumented persons. Having examined the purpose behind the regulatory statute, the Iowa Supreme Court reasoned that *the employment contract was still valid*, given that it did not offend the legislature's purpose in enacting the protection. Following the same analysis, 33 Carpenters conduct did not assail the Iowa legislature's stated objective in enacting Chapter 522C, which was to regulate that industry: "to govern the qualifications and procedures for licensing public adjusters in this state, and to specify the duties of and restrictions on public adjusters, including limitation of such licensure to assisting insureds only with first-party claims." Iowa Code § 522C.1. 33 Carpenters is merely a contractor, not a public adjusting firm. While there is some necessary and incidental contact with its client's insurers as a result of the contracting process, they do not seek to represent the Clausens or any other clientele, in the broad manner of a public adjuster. They simply are operating in a different realm than that

which the Iowa legislature sought to regulate. Further, the contract at issue had no ‘illegal purpose’ for 33 Carpenters was not seeking to evade or circumvent the regulatory scheme, in drafting the agreement.

The District Court also pointed to *Davis, Brody, Wisniewski v. Barrett*, 253 Iowa 1178, 115 N.W.2d 839 (1962), a case in which the Supreme Court of Iowa also examined the purpose behind a regulatory statute, in determining whether or not Iowa residents may sue on a contract for architectural services with a New York firm that was not licensed within the State to perform architectural services. Importantly, the Supreme Court let the contract stand, when having examined the statute, they found no evidence that the statute permitting or demanding it be voided: “it is not the function of the court to give to such exercise of police power an effect beyond that clearly intended by the legislature.” *Id.* at 1181, 841. In the present instance, the Iowa legislature similarly did not create such a remedy as State Farm begs, despite having every opportunity, and the Iowa courts should not do so by decision.

Lastly, but perhaps most importantly, if State Farm’s argument does indeed hold merit, it is simply not the proper party to assert this defense, for it is only the Clausens that could assert such a right against 33 Carpenters. 33 Carpenters is suing State Farm based upon the underlying insurance

contract. State Farm's argument concerns the contract between the Clausens and 33 Carpenters, to which it is not a party. These are two wholly distinct matters. If 33 Carpenters were instead suing the Clausens, for whatever reasons, this would perhaps present a cognizable defense, but this is simply not the case.

2. ALTERNATIVELY, 33 CARPENTERS'S CONDUCT BEFORE THE DATE OF THE VALID POST LOSS ASSIGNMENT DID NOT VIOLATE IOWA CODE CHAPTER 522C NOR IOWA CODE CHAPTER 507A.

In the alternative, should the Court believe that Iowa Code Chapter 522C does indeed somehow apply in this instance, then 33 Carpenters argues that the conduct of its agent never violated that chapter nor Iowa Code Chapter 507A. State Farm cites a selection of factual occurrences, which are undisputed, to prove their claim. However, the **sole relevant occurrence** before the February 22, 2017 assignment was a July 12, 2016 meeting at the Clausen residence involving unidentified State Farm representatives, and 33 Carpenter's agent, Matt Shepherd. (Defendant's Statement of Undisputed Material Facts In Support Of Its Motion for Summary Judgment ¶ 9, App. 79). **Critically, State Farm does not claim that Shepherd negotiated the scope or otherwise advocated for the Clausens during this meeting, merely that it occurred.** *Id.* Certainly, if State Farm had **any evidence** to suggest that Shepherd had negotiated or

represented the Clausens at this July 12, 2016 meeting, it could have presented this to the Court in support of its Summary Motion, presumably via Affidavit from the State Farm representatives (who are in State Farm's exclusive control) or other similar means. Shepherd's mere presence at the Clausen residence, in the absence of other persuasive facts, is not dispositive, given that the Court "must examine the record in a light most favorable to the party opposing the motion for summary judgment."

Matherly v. Hanson, 359 N.W.2d 450, 453 (Iowa 1984).

This is the only discrete action that State Farm points to from this period, save references to the general text of 33 Carpenter's website, which has not been shown to have any relation to the facts of this case.

Further, the time line of events is critical to the Court's consideration. Again, the storm in questions occurs on March 15, 2016, and this first meeting occurs at the Clausen residence occurs on July 12, 2016. In response, State Farm creates its first estimate for damage at the Clausen residence on July 15, 2016, finding the loss amounted to \$30,607.02. (Defendant's Statement of Undisputed Material Facts In Support Of Its Motion for Summary Judgment p.2, App. 82). Then, 33 Carpenters produces a first estimate of \$55,473.55. (*Id.*) This is the first and only estimate that State Farm ever produces, prior to the time that the Clausens grant an

assignment of their claim to 33 Carpenters on February 22, 2017. (*Id.*). At this time, 33 Carpenters wholly owns the claim, and there is undoubtedly no prohibition against negotiating one's own claim, or any requirement that one obtain a public adjusting license to do so. **Only after 33 Carpenters accepts this valid post-loss assignment from the original insured does it begin to negotiate the claim**, first by filing suit in this matter on March 10, 2017 (Petition, App. 4-7). Iowa law unequivocally supports one's ability to assign a right to sue after loss. Furthermore "once the loss has triggered the liability provisions of the insurance policy, an assignment is no longer regarded as a transfer of the actual policy. *See Kintzel v. Wheatland Mut. Ins. Ass'n*, 203 N.W.2d 799, 804–05 (Iowa 1973); *Smith v. Buege*, 387 S.E.2d 109, 116 (W.Va. 1989). Instead, it is a transfer of a chose in action under the policy. *See St. Paul Fire & Marine Ins. Co. v. Allstate Ins. Co.*, 543 P.2d 147, 149 (Ariz. Ct. App. 1975); *Kintzel*, 203 N.W.2d at 805. At this point, the insurer-insured relationship is more analogous to that of a debtor and creditor, with the policy serving as evidence of the amount of debt owed. *See Antal's Rest., Inc. v. Lumbermen's Mut. Cas. Co.*, 680 A.2d 1386, 1389 (D.C. 1996); *Elat, Inc. v. Aetna Cas. & Sur. Co.*, 654 A.2d 503, 505 (N.J. Super. Ct. App. Div. 1995); *see Straz v. Kansas Bankers Sur. Co.*, 986 F. Supp. 563, 569 (E.D. Wis. 1997), *aff'd*, 165 F.3d 33 (7th Cir. 1998).

Moreover, if Courts permitted an insurer to avoid its contractual obligations by prohibiting all post-loss assignments, Courts could be granting the insurer a windfall. *See Int'l Rediscount Corp. v. Hartford Acc. & Indem. Co.*, 425 F. Supp. 669, 673 (D. Del. 1977); *St. Paul Fire & Marine Ins. Co.*, 543 P.2d at 149-50; *Parrish Chiropractic Ctrs., P.C. v. Progressive Cas. Ins. Co.*, 857 P.2d 540, 541 (Colo.Ct.App.1993); *Elat, Inc.*, 654 A.2d at 506.

Conclusion

The Iowa District Court in and for Scott County improperly granted the Motion for Summary Judgment brought by State Farm, for 33 Carpenters Construction Inc. did not violate any Iowa code provisions in contracting for a valid post-loss assignment and thereafter negotiating its own claim directly with the insurer. Thus the reviewing Court should overturn the District Court's earlier grant of Summary Judgment, and remand this matter to the Scott County District Court for further proceedings.

Request for Oral Submission

Appellants request to be heard in oral argument in this appeal upon submission of the case either to the Supreme Court of Iowa or Iowa Court of Appeals.

Certificate of Cost

I hereby certify that the cost of printing this document was \$2.00.

Certificate of Compliance

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 3,951 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. 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 Microsoft Word 2016 for Macintosh in 14 point Times New Roman style.

Signature: s/ Kyle J. McGinn

Date: March 2, 2019

Certificate of Service

I hereby certify that on the 2nd day of March, 2019, I served this document by electronic filing via Iowa Appellate EDMS to:

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I further certify that on the 2nd day of March, 2019, I filed this document via Iowa Appellate EDMS to the Clerk of the Supreme Court, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

s/ Kyle J. McGinn
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