

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 19-0678

33 CARPENTERS CONSTRUCTION INC.,

Plaintiff-Appellant

vs.

IMT INSURANCE COMPANY,

Defendant—Appellee.

**APPEAL FROM THE DISTRICT COURT
OF SCOTT COUNTY CASE NO. LACE130323
HONORABLE MARY E. HOWES, PRESIDING JUDGE**

APPELLEE IMT INSURANCE COMPANY'S FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. DID THE DISTRICT COURT PROPERLY GRANT THE DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

A. THE PLAINTIFF’S POST-LOSS ASSIGNMENT FROM BRANDON GORDON WAS INVALID AS A MATTER OF LAW

33 Carpenters Construction Inc. v. Cincinnati Insurance Company, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254

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Iowa Code Section 522C.2 (7) (a)-(c)

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B. THE PLAINTIFF ACTED AS A PUBLIC ADJUSTER

33 Carpenters Construction Inc. v. Cincinnati Insurance Company, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254

C. APPLYING THE “BALANCING TEST” REACHES THE SAME RESULT—THE ASSIGNMENT IS INVALID

33 Carpenters Construction Inc. v. Cincinnati Insurance Company, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254

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Iowa Code Section 522C.1

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Iowa Code Section 522C.6

Iowa Code Section 714.16

Restatement (Second) of Contracts section 178

ROUTING STATEMENT

This appeal should be directed to the Iowa Court of Appeals pursuant to Iowa R. App. P. 6.1101 (3) (a) as the issues presented for review require the application of existing legal principles.

STATEMENT OF THE CASE

The Plaintiff 33 Carpenters Construction Inc. filed a Petition on May 24, 2018 in Scott County District Court against Defendant IMT Insurance Company (hereinafter “IMT”). (App. Pp. 13-15). The Plaintiff’s Petition alleged a breach of contract by IMT regarding a post-loss assignment of a property damage insurance claim that had been made by an IMT insured, Brandon Gordon. (App. Pp. 13-15). The property damage occurred on March 6, 2017. (App. P. 14).

The Defendant IMT filed an Answer denying all claims by the Plaintiff and asserted multiple affirmative defenses. (App. Pp. 17-19). Defendant IMT filed a Motion for Summary Judgment on February 12, 2019. (App. Pp. 20-35). IMT contended that since the Plaintiff was not an Iowa licensed public adjuster that the alleged assignment of Brandon Gordon’s claim was invalid and unenforceable. (App. Pp. 20-35).

The Plaintiff filed a Resistance to IMT’s Motion for Summary Judgment on February 27, 2019. (App. P. 82-91). The Motion for Summary Judgment came before the Honorable Mary E. Howes for oral argument on March 28, 2019. (App. Pp. 92-99). Judge Howes entered and filed a written ruling on April 4, 2019 granting the Defendant’s Motion for Summary

Judgment. (App. Pp. 92-99). The Plaintiff filed its Notice of Appeal on April 25, 2019. (App. Pp. 100-101).

STATEMENT OF THE FACTS

On March 6, 2017 a high wind event caused damage to Gordon's residence located at 7402 North Pine Street, Davenport Iowa. (App. Pp. 13-15). Gordon had a policy of insurance with IMT that provided coverage for physical damage to his residence. (App. P. 31 and P. 47). Mr. Gordon reported the event on March 20, 2107 and reported high winds had damaged shingles on his residential roof. (App. P. 31 and 52). The damage from the storm would have been covered subject to the terms and conditions of the IMT Policy. (App. P. 31 and Pp. 47-51).

On April 6, 2017, IMT sent correspondence to Mr. Gordon that its inspection had discovered wind damage to the west slope of the house and both slopes of the detached garage. (App. P. 53). The letter informed Mr. Gordon that the repair estimate was \$2,362.67 and had enclosed a check for \$1,362.67 after subtracting the \$1000.00 deductible. (App. P. 53).

On May 1, 2017, Gordon signed an "Assignment of Claim and Benefits" with the Plaintiff 33 Carpenters Construction. (App. P. 31 and 57). The Assignment provided that 33 Carpenters would receive all insurance claim proceeds from IMT on the claim. (App. P. 31 and 57). The

Assignment provided that 33 Carpenters in its own name and for its own benefit could prosecute, collect, settle, and compromise Brandon Gordon's insurance claim as 33 Carpenters saw fit. (App. P. 31 and 57). Also on May 1, 2017, Mr. Gordon signed a document titled "Insurance Contingency." (App. P. 31 and 58). This document states that Mr. Gordon understands that 33 Carpenters Construction "will act as their General Contractor to obtain appropriate property damage adjustments." (App. P. 31 and 58). In other words, 33 Carpenters affirmatively informed Mr. Gordon that they would handle any appropriate property damage claim adjustments. Furthermore, also on May 1, 2017, Gordon and 33 Carpenters executed an agreement that provided that 33 Carpenters Construction will provide complete replacement per approved insurance scope in exchange for payment of the RCV insurance proceeds agreed upon by the insurer. (App. P. 32 and 59-60). On May 22, 2017, 33 Carpenters prepared a "Precise Aerial Measurement Report" regarding the damage to Gordon's home. (App. P. 32 and Pp. 61-69).

IMT then retained Cullen Claims to re-evaluate the claim on February 28, 2018. (App. P. 32 and 70-71). Cullen inspected the premises and issued an estimate of \$7,475.24 as replacement cost value for the dwelling and \$4,560.50 as actual cash value. (App. Pp. 32 and 71, page 6 of Cullen Estimate). The net claim if depreciation was recovered was \$6,475.24 after

applying the \$1000.00 deductible. (App. Pp. 32 and 71, page 6 of Cullen Estimate).

Mr. Gordon on April 9, 2018, authorized 33 Carpenters to speak with his mortgage company, release claim information, request inspections *and work directly with in connection with all aspects of processing the claim including disbursement of claim funds.* (App. Pp. 32 and 72) (emphasis added). On April 10, 2018, 33 Carpenters issued a “roof production form” related to the repair of the Gordon home. (App. Pp. 32 and 73-74). The cost of roof repairs was \$13,016.72 according to the Plaintiff’s estimate. (App. Pp. 32 and 73-74).

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT

PRESERVATION OF ERROR

The Appellant properly preserved error by timely filing a Notice of Appeal following the District Court’s entry of the Ruling granting the Defendant’s Motion for Summary Judgment on April 4, 2019.

STANDARD OF REVIEW

A review of an order granting summary judgment is for correction of errors at law. *33 Carpenters Construction Inc. v. Cincinnati Insurance Company*, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254 at *2, citing *Johnson v. Associated Milk Producers, Inc.*, 886 N.W.2d 384, 389 (Iowa 2016). “On review, ‘we examine the record before the district court to determine whether any material fact is in dispute, and if not, whether the district court correctly applied the law.’ ” *Roll v. Newhall*, 888 N.W.2d 422, 425 (Iowa 2016) (quoting *J.A.H. ex rel. R.M.H. v. Wadle & Assocs., P.C.*, 589 N.W.2d 256, 258 (Iowa 1999)).

[W]e examine the record in the light most favorable to the nonmoving party. We afford the nonmoving party “every legitimate inference that can be reasonably deduced from the evidence, and if reasonable minds can differ on how the issue should be resolved, a fact question is generated,” and the district court should deny summary judgment.

Boelman v. Grinnell Mut. Reins. Co., 826 N.W.2d 494, 501 (Iowa 2013) (citations omitted). Summary judgment is properly granted “when the moving party demonstrates there is no genuine issue of material fact and that [it] ... is entitled to judgment as a matter of law.” *Id.*; accord Iowa R. Civ. P. 1.981(3). “When a motion for summary judgment is made and supported ..., an adverse party may not rest upon the mere allegations or denials in the pleadings.” Iowa R. Civ. P. 1.981(5). The adverse party “must set forth

specific facts showing that there is a genuine issue for trial.” *Id.* “Speculation is not sufficient to generate a genuine issue of fact.” *Nelson v. Lindaman*, 867 N.W.2d 1, 7 (Iowa 2015).

ARGUMENT

A. THE PLAINTIFF’S POST-LOSS ASSIGNMENT FROM BRANDON GORDON WAS INVALID AS A MATTER OF LAW

To recover under an insurance policy, “a person must possess an insurable interest in the insured property.” *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 236 (Iowa 2001). “Generally, insurance policies . . . are not assignable prior to loss without the insurer’s consent.” *Id.* “However, general stipulations prohibiting assignments absent an insurer’s consent have been held to apply only to pre-loss assignments.” *Id.* at 237. 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. Instead, it is a transfer of a chose in action under the policy.” *Id.* at 237–38 (citations omitted). The law favors the assignability of choses in action and the “assignee . . . has a right of action on [the assignment] in the assignee’s own name, subject to any defense or counterclaim which the maker or debtor had against an assignor of the instrument before notice of the assignment.” Iowa Code § 539.1.

In this case, 33 Carpenters took an assignment of Brandon Gordon's claim for property insurance proceeds arising out of the storm of March 6, 2017. Pursuant to the undisputed material facts as considered by the District Court, the alleged assignment of Gordon's insurance claim to 33 Carpenters must be deemed invalid and unenforceable as a matter of law because the Plaintiff was acting as an unlicensed public adjuster on behalf of Gordon in regards to his property insurance claim. This very same issue was recently decided by the Iowa Court of Appeals in *33 Carpenters Construction Inc. v. Cincinnati Insurance Company*, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254 *5 which was considered by the District Court in the present case. (App. Pp. 36-46).

Iowa Code chapter 522C "govern[s] the qualifications and procedures for licensing public adjusters," including the "duties of and restrictions on public adjusters." *Id.* § 522C.1. A public adjuster is anyone, who for compensation or value, "acts on behalf of an insured" by:

- (a) Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.

(b) Advertising for employment as a public adjuster of first-party insurance claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured.

(c) Directly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

Id. § 522C.2(7)(a)–(c); Iowa Admin. Code r. 191-55.2. “A person shall not operate as or represent that the person is a public adjuster in this state unless the person is licensed by the commissioner in accordance with this chapter.”

Iowa Code § 522C.4

The general rule in Iowa is that a contract made in the course of a business or occupation for which a license is required by one who has not complied with such requirement is unenforceable where the statute expressly so provides, or where it expressly or impliedly, as a police regulation, prohibits the conduct of such business without compliance. *33 Carpenters Construction Inc. v. Cincinnati Insurance Company*, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254 *4, *citing Davis, Brody, Wisniewski v. Barrett*, 115 N.W.2d 839, 841 (Iowa 1962).

Iowa Code section 522C.4 expressly prohibits a person from operating as a public adjuster in Iowa unless they are licensed in Iowa. *33 Carpenters Construction Inc. v. Cincinnati Insurance Company*, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254 *4. Therefore, since 33 Carpenters was operating as an unlicensed public adjuster when it entered into the assignment with Brandon Gordon the assignment is invalid and unenforceable.

The Plaintiff contends in its appeal brief that nothing in the Assignment from Gordon requires or discusses adjusting activities. (Appellant's Brief p. 12 referencing App. Pp. 31 and 57). However, the Plaintiff does not reference another document that was signed by Brandon Gordon. (App. Pp. 31 and 58). This document titled "Insurance Contingency" includes the following relevant and pertinent language:



Roofing & Storm Restoration

1729 State Street
Bettendorf, IA 52722
563-344-3323

INSURANCE CONTINGENCY

Brandon Gordon authorizes 33 Carpenters Construction to meet with and discuss hail and wind damage at 7402 N. Pine St Davenport from the storm which occurred on 3-6-17 IA 52806

Brandon Gordon understands that 33 Carpenters Construction will act as their General Contractor to obtain appropriate property damage adjustments. After the insurance company approval, 33 Carpenters Construction will proceed with all necessary repairs or replacements as authorized by the insurance carrier and agreed to by both parties i.e. Brandon Gordon and 33 Carpenters Construction.

33 Carpenters Construction will perform the repairs or replacements specified by the insurance company for insurance approved funds only, without an additional cost to you except upgrades. Your only other responsibility will be the cost of the deductible. Any supplemental claims billed by 33 Carpenters Construction and approved by your insurance company for additional work, increase in cost, number of squares or linear feet extras, and general contractor's overhead and profit are considered as part of the contract.

Authorized Signature: [Signature]
Print Name: Brandon Gordon
Date: 5/1/17
Best Contact: 563-499-0669

(App. Pp. 31 and 58). The "Insurance Contingency" agreement clearly authorizes 33 Carpenters to meet with and dicuss the hail and wind damage with IMT. (App. Pp. 31 and 58). The document further provides that 33 Carpenters will act as the General Contractor for Gordon to obtain appropriate property damage adjustments. (emphasis added) (App. Pp. 31 and 58).

The clear and obvious intent of the Insurance Contingency agreement was to allow 33 Carpenters to contact IMT to discuss the property damage and potentially adjust the scope of the claimed damages upward as that would benefit Brandon Gordon as the scope of repairs suggested by 33 Carpenters was broader than as originally proposed by IMT and also broader than as proposed by Cullen Claims. The evidence that adjusting the claim upward would benefit 33 Carpenters and Gordon is in comparing the estimate from Cullen Claims of \$7,475.24 (App. Pp. 32 and 70-71) to the 33 Carpenters “roof production form” related to the repair of the Gordon home. (App. Pp. 32 and 73-74). The alleged cost of repair as claimed by 33 Carpenters was \$13,016.72 or about 75 percent more than the Cullen estimate. (App. Pp. 32 and 73-74). For 33 Carpenters to argue that it was not adjusting the claim of Brandon Gordon is without merit as they are clearly acting as a public adjuster in evaluating Brandon Gordon’s insurance claim with the hope of increasing the scope of repairs to Gordon’s home which in turn results in 33 Carpenters revenue increasing as it was the General Contractor.

The following document was also signed by Brandon Gordon regarding the claim for property damage to IMT:

33 CARPENTERS CONSTRUCTION

1729 State Street
Bettendorf, Iowa 52722

O: 563.344.3323 F: 563.552.7450
Email: admin@33carpentersconstruction.com
www.33carpentersconstruction.com
Mortgage Affidavit
Third Party Authorization

I/We, Brandon Gordon, hereby authorize 33 Carpenters Construction, Inc. to speak with my mortgage company, release claim information, request inspections, and work directly with in connection with all aspects of processing of the claim, including disbursement of claim funds.

BB Authorization for US BANK to mail disbursements to 33 Carpenters Construction, Inc.

BB Signature _____ Signature _____ Date 9 April 2018

Print Name(s) Brandon Gordon

Mortgage Company: US BANK Phone Number: 800 365 7772

Loan or Tracking Number: 2200336486

Do you have a Second Mortgage? (circle one) YES or NO If yes, Name _____

of the Second Mortgage Company: _____ Phone Number: _____

Loan or Tracking Number: _____

Borrower(s) Name: _____

Property Address: 7402 N. Pine St. Davenport

Authorized Party: Kim Nelson or Austin Nelson or Erin Larson

Telephone Number: 563.344.3323

Address: 1729 State Street Bettendorf, IA 52722

Note: 33 Carpenters Construction reserves the right to adjust the contract amount as dictated on the original price agreement.
This authorization will become effective as of the date signed and will terminate at which time the claim has been completed and closed by 33 Carpenters Construction and _____.

(App. Pp. 32 and 72). This agreement between Gordon and 33 Carpenters expressly authorizes 33 Carpenters to request inspections of the property and “work directly with in connection with all aspects of processing the claim, including disbursement of claim funds.” (App. Pp. 32 and 72). This is additional evidence that 33 Carpenters was indeed adjusting the insurance

claim on behalf of Brandon Gordon despite 33 Carpenters assertion to the contrary.

33 Carpenters has admitted it was not a licensed public adjuster at the time of the Brandon Gordon claim. (App. Pp. 32 and 80). By acting as an advocate on behalf of Gordon during the adjustment of his claim, 33 Carpenters undoubtedly acted as a public adjuster. 33 Carpenters did so despite the undisputed material fact that none of 33 Carpenter's employees, contractors, principals or agents hold an Iowa public adjusters license pursuant to Iowa Code Chapter 522C. (App. Pp. 32 and 80). In other words, 33 Carpenters was aware it was not a licenced public adjuster in Iowa, but completely ignored the law and assisted Gordon in adjusting his insurance claim. Thus, as the Plaintiff was operating as an unlicensed adjuster when it entered into the contract with Gordon the contract is void and unenforceable. See *Davis, Brody, Wisniewski v. Barrett*, 115 N.W.2d 839, 841 (Iowa 1962) and *33 Carpenters Construction Inc. v. Cincinnati Insurance Company*, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254 *4.

Furthermore, 33 Carpenters was also engaged in prohibited practices as a residential contractor regarding the property damage claim to Brandon

Gordon's residence. Iowa Code Section 103A.71 addresses prohibited practices of residential contractors. This Section provides in pertinent part:

1. As used in this section:

b. "Residential contractor" means a person in the business of contracting to repair or replace residential roof systems or perform any other exterior repair, exterior replacement, or exterior reconstruction work resulting from a catastrophe on residential real estate or a person offering to contract with an owner or possessor of residential real estate to carry out such work.

c. "Residential real estate" means a new or existing building, including a detached garage, constructed for habitation by one to four families.

d. "Roof system" includes roof coverings, roof sheathing, roof weatherproofing, and roof insulation.

3. A residential contractor shall not represent or negotiate on behalf of, or offer or advertise to represent or negotiate on behalf of, an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, exterior replacement, or exterior reconstruction work on the residential real estate.

Iowa Code Section 103A.71. The plain language and intent of this statutory law is to prohibit contractors, such as 33 Carpenters, from negotiating on behalf of homeowners on any insurance claim when there is claim for exterior property damage to residential real estate. It is undisputed in this case that the damage claimed by Brandon Gordon was to the exterior and roof of his home. (App. Pp. 32 and 70-72). Therefore, not only was 33 Carpenters acting contrary to Iowa law in attempting to adjust the claim without a license, the

Plaintiff was engaged in further prohibited conduct by requiring Gordon to sign a document authorizing 33 Carpenters as the general contractor to handle all aspects of Gordon's insurance claim. Furthermore, I.C.A. Section 103A.71 (5) provides that a contract entered into with a residential contractor is void if the residential contractor violates 103A.71 (3). Consequently, the assignment and general contractor agreement between 33 Carpenters and Brandon Gordon is also void as a matter of law pursuant to I.C.A. Section 103A.71 (3) and (5).

B. THE PLAINTIFF ACTED AS A PUBLIC ADJUSTER

33 Carpenters contends in its appeal brief that there is no proof that it "actually" acted as a public adjuster because there was no evidence of contact between 33 Carpenters and IMT. The District Court found this argument without merit. (App. Pp. 97 and 98). Indeed as noted by the District Court, the Court of appeals dismissed an identical argument made by 33 Carpenters in *33 Carpenters Construction Inc. v. Cincinnati Insurance Company*, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254. (App. Pp. 97 and 98). The Court of Appeals in the *Cincinnati* case stated the following regarding 33 Carpenters claim that it was acting solely on its own behalf pursuant to the assignment with the homeowner (Whigham):

This is a form-over-substance argument. To be sure, the assignment was intended by 33 Carpenters to benefit it by allowing it to make a profit; but the assignment was fundamentally and primarily a vehicle by which Whigham intended to benefit when 33 Carpenters successfully negotiated and effected a settlement with Cincinnati so 33 Carpenters could repair his home. We find there is no genuine issue of fact that 33 Carpenters was acting for and aiding Whigham in negotiating for and attempting to effect a settlement of Whigham's first-party insurance claim for loss to his home insured by Cincinnati. Thus, 33 Carpenters operated as a public adjuster on behalf of Whigham while not licensed by the insurance commissioner.

33 Carpenters Construction Inc., 2019 WL 478254 at *5. (App. Pp. 97-98).

As the District Court correctly stated in its opinion and Order, the Court of Appeals did not rely upon any facts indicating the parties did or did not have any contact. Furthermore, in the *Cincinnati* case, all of the significant action by 33 Carpenters occurred after the assignment with the exception of one incident. *33 Carpenters Construction Inc.*, 2019 WL 478254 at *1.

Furthermore, 33 Carpenters contention that it had no contact with IMT is a bit misconstrued. There is evidence that 33 Carpenters met with the folks from Cullen Claims on or about March 19, 2018. (App. Pp. 70 and 71). The meeting took place at Gordon's home. (App. Pp. 70 and 71). The purpose the meeting was to allow Cullen to evaluate the damage. (App. Pp. 70 and 71). Cullen was retained by IMT. (App. Pp. 70 and 71). Thus, it is arguable that Cullen was acting as IMT's agent in adjusting the claim. Therefore, it is

arguable that 33 Carpenters had indirect contact with IMT by and through its interaction with Cullen Claims.

In the present case, as correctly noted by the District Court, the series of documents signed by Gordon clearly show that the Plaintiff sought out and entered into the assignment with Gordon to try and settle the insurance claim with IMT. Moreover, as correctly noted by the District Court, the obvious intent of 33 Carpenters seeking out the assignment with Gordon, including the filing of this lawsuit was for the paramount purpose of benefiting Mr. Gordon through negotiations that would certainly have occurred with IMT so that 33 Carpenters could repair the Gordon home as the general contractor. (App. P. 98).

C. APPLYING THE “BALANCING TEST” REACHES THE SAME RESULT—THE ASSIGNMENT IS INVALID

33 Carpenters contends the District Court erred in not applying the balancing test as set forth in *Mincks Agri Center v. Bell Farms*, 611 N.W.2d 270 (Iowa 2000). The facts in *Mincks* are quite distinguishable from the present case, in that in *Mincks*, the plaintiff was seeking to enforce a grain contract with the defendant Bell Farms. In the present case, none of the parties to the subject contract, 33 Carpenters and Gordon are seeking to enforce the contract terms against the other. Instead, 33 Carpenters is seeking

to enforce the contract terms against a third-party, the Defendant IMT Insurance. Thus, the principles of the “balancing test” should not apply because the sole issue is whether the fact that 33 Carpenters was adjusting a claim without a license and as such is barred from asserting the rights of Gordon under the contract of insurance. The answer to that question, as the District Court correctly found, is a resounding “Yes, 33 Carpenters is barred from asserting the rights of Gordon because the contract was invalid and unenforceable.” Consequently, the plaintiff’s contention that the District Court erred in not applying the balancing test is without merit and should be disregarded, but assuming arguendo that the balancing test should be applied, the result would be the same as the assignment agreement is unenforceable on grounds of public policy.

Restatement (Second) of Contracts section 178 states the general principle governing the unenforceability of contracts on public policy grounds:

A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.

Mincks Agri Center Inc. v. Bell Farms Inc., 611 N.W.2d 270, 275 (Iowa 2000), citing Restatement (Second) of Contracts § 178(1), at 6 (1981). see

also *Rogers v. Webb*, 558 N.W.2d 155, 156 (Iowa 1997) (“Contracts that contravene public policy will not be enforced.”); *Beneficial Finance v. Lamos*, 179 N.W.2d 573, 580 (Iowa 1970) (noting that where the illegality “is of such nature that the public interest and welfare of those persons for whose protection the particular element has been declared to be illegal will be best sub served by denying plaintiff a remedy it would be [the court's] province to do so”).

Restatement section 178 provides helpful guidance in determining whether the interest in enforcing the contract is outweighed by the public policy at stake:

- (2) In weighing the interest in the enforcement of a term, account is taken of
 - (a) the parties' justified expectations,
 - (b) any forfeiture that would result if enforcement were denied, and
 - (c) any special public interest in the enforcement of the particular term.

- (3) In weighing a public policy against enforcement of a term, account is taken of
 - (a) the strength of that policy as manifested by legislation or judicial decisions,
 - (b) the likelihood that a refusal to enforce the term will further that policy,
 - (c) the seriousness of any misconduct involved and the extent to which it was deliberate, and
 - (d) the directness of the connection between that misconduct and the term.

Mincks Agri Center Inc. v. Bell Farms Inc., 611 N.W.2d at 275, citing Restatement § 178(2)–(3), at 6–7.

There is no dispute that Chapter 522C prohibits 33 Carpenters from serving as a public adjuster of insurance claims because 33 Carpenters does not have an adjusting license. There is no dispute that 33 Carpenter’s promise to adjust Gordon’s claim and serve as the general contractor was in consideration of Gordon’s promise to hire 33 Carpenters to serve as a general contractor and to pay the insurance claim funds directly to 33 Carpenters. Thus, under the Restatement, the promises between the parties are unenforceable if the licensing requirement has a regulatory purpose and the interest in enforcing the promise is outweighed by the public policy underlying the licensing requirement. See *Mincks*, 611 N.W.2d at 277.

The purpose of Iowa Code Chapter 522C is specifically stated in I.C.A. Section 522C.1 as follows:

The purpose of this chapter is 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.

I.C.A. Section 522C.1.

The purpose is to regulate and control individuals who wish to serve as public adjusters in assisting people with property insurance claims. Thus, it is

readily apparent that the purpose of this code section is regulatory and not a revenue raising statute as the statute specifies the duties and restrictions on public adjusters. In other words, the purpose of the statute is to regulate the actions of public adjusters and how those licensed adjusters handle insurance claims. Therefore, the next step is to evaluate whether the enforcing the promise is outweighed by the public policy underlying the licensing requirement. See *Mincks*, 611 N.W.2d at 277.

33 Carpenters in its brief, contends that in weighing the interest in enforcing the contract, that Mr. Gordon would be without an insurance claim to have his roof fixed if the District Court's Ruling granting the Defendant's Motion for Summary Judgment is granted, but doesn't cite to any evidence in the record to support that claim. Moreover, that argument is without merit as there is no evidence that IMT has denied that his roof should not or will not be fixed if the District Court's ruling is affirmed. In fact, the estimate from Cullen Claims clearly includes an amount to fix the roof of Mr. Gordon's roof. (SUMF Paragraph 10, Exhibit I to Defendant's Motion for Summary Judgment). What IMT is contending is that the assignment between Gordon and 33 Carpenters is unenforceable because 33 Carpenters was acting as a public adjuster without a license at the time the assignment was entered into which is contrary to public policy. There also not appear to be any

ascertainable special public interest in the enforcement of this contract.

Furthermore, as noted in *Mincks*, where performance of an activity is illegal, the public interest weighs against enforcement and 33 Carpenters clearly was engaged in illegal activity in adjusting a property insurance claim without a license. *Mincks*, 611 N.W.2d at 279.

The public interest in enforcing the assignment is clearly outweighed by the factors factoring against enforcement of the contract. The factors weighing against enforcement, as identified above, include (a) the strength of that policy as manifested by legislation or judicial decisions, (b) the likelihood that a refusal to enforce the term will further that policy, (c) the seriousness of any misconduct involved and the extent to which it was deliberate, and (d) the directness of the connection between that misconduct and the term. *See* Restatement § 178(3), at 6–7.

The purpose and public policy of Chapter 522C is clearly to protect the public from the unauthorized practice of public adjusting. I.C.A. 522C.4 expressly requires all individuals assisting members of the public in adjusting an insurance claim must be licensed. There is no ambiguity to these statutes and the goal is certainly to ensure that only qualified individuals who have passed the appropriate licensing exams are adjusting property insurance claims. In other words, the plain, unambiguous language of Chapter 522C, the

penalties set forth therein and requirements support the argument that the public policy underlying the regulation of the practice of public adjusting is strong and the legislature has deemed it in the public's best interests to regulate public adjusters.

Furthermore, the importance of the licensing requirement of Chapter 522C is further evidenced by the fact that a person who acts as a public adjuster without a license is subject to criminal sanctions. I.C.A. 522C.6 provides in pertinent part:

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.

I.C.A. 522C.6. The legislature obviously wanted to set forth a strong public policy against acting as a public adjuster without a license when it chose to impose criminal sanctions for acting as an adjuster without a license.

Moreover, the legislature included language and law that allows the Division of Insurance to impose civil penalties according to the provisions of Chapter 507A. See I.C.A. Section 522C.6 (3) (b).

As additional support that the public interest in enforcing the assignment is clearly outweighed by the factors factoring against enforcement of the contract is the fact that 33 Carpenters was engaged in prohibited

activity while serving in the dual role of the general contractor and assisting Gordon in his insurance claim in violation of Iowa Code Section 103A.71

(3). A violation of this subsection is an unlawful practice pursuant to I.C.A. Section 714.16 which is Iowa's consumer frauds statute. The legislature obviously wanted to set forth a strong public policy during instances in which a residential general contractor such as 33 Carpenters is negotiating on behalf of an owner of residential real estate on any insurance claim in connection with repair of roof systems or any exterior repair by prohibiting such conduct and imposing civil penalties and categorizing such activity as consumer fraud.

33 Carpenters also contends that any alleged violation of the public adjusters statute should be handled by the Iowa Insurance Commission. As noted by the District Court in its ruling, the Iowa Court of Appeals wholly rejected this proposition in *33 Carpenters Construction Inc. v. Cincinnati Insurance Company*, 927 N.W.2d 690, (Iowa Ct. App. 2019) (unpublished decision), 2019 WL 478254 *5. (Ruling on Defendant's Motion for Summary Judgment, page 5). The District Court quoted the following language from that case:

Although chapter 522C grants certain authority and responsibility to the insurance commissioner, the statutes do not limit our authority to apply

the law to the facts before us in order to resolve the legal dispute presented to us as a result of the lawsuit filed by 33 Carpenters.

(App. Pp. 96-97). The same legal principles apply to the present case and this Court has the authority to apply the law to the facts to resolve the instant legal case. Consequently, 33 Carpenters contention that only the Iowa Insurance Commissioner should handle any alleged violation of the public adjusting statute is without legal and factual support. Said argument should be summarily dismissed in this case.

CONCLUSION

WHEREFORE, Defendant, IMT Insurance Company respectfully requests that the Court deny Plaintiff's appeal for the reasons discussed herein, affirm the District Court's Ruling granting its Motion for Summary Judgment and for any other relief the Court deems proper.

REQUEST FOR ORAL ARGUMENT

As this appeal involves the application of existing legal principles, Appellee believes that oral argument is unnecessary.

Respectfully submitted,

A handwritten signature in black ink that reads "WH Larson". The signature is written in a cursive, slightly slanted style.

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CERTIFICATE OF SERVICE AND FILING

The undersigned certifies this Final Brief was filed with the Iowa Supreme Court via EDMS, and a copy of this second amended proof brief was served on the 2nd day of August 2019, upon all parties to the appeal via EDMS:

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CERTIFICATE OF COST

It is certified that the actual cost paid by Appellee for submitting this brief was \$0.00 as it was filed electronically by EDMS.

Respectfully submitted,

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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 5,121 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. 6.093(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Times New Roman.

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