

IN THE SUPREME COURT OF IOWA

CASE NO. 19-0678

---

33 CARPENTERS CONSTRUCTION, INC.,

Appellant/Plaintiff

v.

IMT INSURANCE COMPANY,

Appellee/Defendant

---

Appeal from the Honorable Mary E. Howes of the Iowa District Court  
in and for Scott County District Court Case No. LACE130323

---

FINAL REPLY BRIEF OF APPELLANT/PLAINTIFF

33 CARPENTERS CONSTRUCTION, INC.

August 1, 2019

---

Edward F. Noethe  
Attorney for Appellant/Plaintiff  
McGinn, Springer & Noethe, PLC  
20 North 16<sup>th</sup> Street  
Council Bluffs, IA 51501  
Telephone: 712-328-1566  
Facsimile: 712-328-3707  
Email: enoethe@mcginnlawfirm.com

**Table of Contents**

Table of Contents ..... 2

Table of Authorities..... 2

Statement of Issues Presented for Review ..... 4

Arguments ..... 4 - 6

Argument

The District Court improperly granted IMT Insurance Company’s Motion for Summary Judgment ..... 4

D. NO PROOF EXISTS 33 CARPENTERS EVER ACTUALLY ACTED AS A PUBLIC ADJUSTER ..... 4 - 6

E. APPLYING THE BALANCING TEST RESULTS IN NOT INVALIDATING THE ASSIGNMENT..... 6 - 7

Conclusion ..... 7

Certificate of Cost..... 7

Certificate of Compliance..... 7

Certificate of Service ..... 8

**Table of Authorities**

**Iowa Cases**

Mason v. Vision Iowa Bd., 700 N.W.2d 349 (Iowa 2005)..... 5

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the District Court properly granted IMT Insurance Company's Motion for Summary Judgment, when 33 Carpenters Construction had contracted for a valid post-loss assignment with the original homeowner-insured.

### ARGUMENT D

#### NO PROOF EXISTS 33 CARPENTERS EVER ACTUALLY ACTED AS A PUBLIC ADJUSTER

The first involvement by the Plaintiff "33 Carpenters" was not until, May 1, 2017 when its representative accepted an assignment from the insured, Brandon Gordon "Gordon," and completed the contracting process (Appendix p. 31). Plaintiff "33 Carpenters" was then the sole owner of the claim. Any alleged actions undertaken by "33 Carpenters" after accepting the Assignment were not public adjusting, but instead were an effort to negotiate the proper scope of its own claim. Certainly, there is nothing wrongful about an assignee of a claim negotiating its own dispute with the insurer. The record for summary judgment showed no contact between "33 Carpenters" and "IMT".

"IMT" knows the record is devoid of any proof of any contact between "IMT" and "33 Carpenters". "IMT" resorts to speculation and reversing the rule of law that evidence is to be viewed in a light most favorable to the nonmoving party in an attempt to sway the court. See Mason v. Vision Iowa Bd., 700 N.W.2d 349,

353 (Iowa 2005).

“IMT” points to a meeting between “33 Carpenters” and Cullen and Associates, Inc. on March 19, 2018, which is about ten months after the post-loss assignment. At that time, “33 Carpenters” “arguably” met with “IMT” (Appellee’s Brief pp. 22-23). First, it is undisputed this meeting happened on March 19, 2018, which is about ten months after the post-loss assignment (Appendix p. 70). At that time, “33 Carpenters” is the owner of the claim. Second, the meeting is with personnel from Cullen and Associates, Inc., not “IMT” personnel. Further, “IMT” wants the court to assume Cullen and Associates personnel were “IMT” agents, though no proof was in the records to the relationship between “IMT” and Cullen and Associates.

Importantly, on the final page of the Cullen and Associates report it is written “No scope agreement was made or discussed – we were just documenting the damage” (Appendix p. 71) (emphasis added). The meeting, according to Defendant’s Exhibit “I”, page 3, was simply for Cullen and Associates to look at the interior and exterior of the building to assess damages (Appendix p. 70).

For further proof “33 Carpenters” acted as a public adjuster, “IMT” points to the admittedly poorly entitled document “Insurance Contingency” (Appendix p. 58). The document is simply an agreement that “33 Carpenters” will act as the general contractor for the roofing repair and will not bill Mr. Gordon for amounts

above the amounts approved by the insurer without Mr. Gordon's approval (Appendix p. 58).

The final evidence "IMT" asserts that "33 Carpenters" was acting as a public adjuster was the filing of this lawsuit and "... through negotiations that certainly have occurred ...", apparently at some unknown time in the future (Appellee's Brief p. 23). Thus, "IMT" has moved beyond incidents which occurred after the assignment into future events which may occur as proof that "33 Carpenters" has acted as a Public Adjuster.

### ARGUMENT E

#### APPLYING THE BALANCING TEST RESULTS IN NOT INVALIDATING THE ASSIGNMENT

Post-loss assignment in Iowa are undisputedly permissible under Iowa law. "IMT" does correctly point out it isn't even a party to the assignment (Appellees Brief p. 23). However, it wants the court to invalidate the assignment.

A major factor in this case against invalidating the assignment is the insured Mr. Gordon will be the person punished the most. "IMT" asserted at the motion for summary judgment the Exhibit "B" was a copy of Mr. Gordon's insurance policy. It really is just a declaration page. It is entitled "Home Protector Declarations Renewal" (Appendix p. 47). Appellee in its opening brief asserted "IMT" would probably assert a one year or two year contractual limitations period in the action policy barring any claim by Mr. Gordon if the

assignment is invalidated. Interestingly, “IMT” in its brief refrains from asserting Exhibit “B” is the actual insurance contract or that its actual policy does not contain a contractual limitations of one or two years, which is standard in Iowa.

### CONCLUSION

The Iowa District Court in and for Scott County improperly granted the Motion for Summary Judgment brought by IMT Insurance Company. Thus, the Court should overturn the District Court’s granting of Summary Judgment and remand this matter to the Scott County District Court for further proceedings.

### CERTIFICATE OF COST

I hereby certify that the cost of printing this document was \$0.00.

### CERTIFICATE OF COMPLAINE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 4,030 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 for Macintosh in 14 point Times New Roman style.

Signature: /s/ Edward F. Noethe

Date: August 1, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 1<sup>st</sup> day of August, 2019, I served this document  
by electronic filing via Iowa Appellate EDMS to:

William H. Larson  
KLASS LAW FIRM, L.L.P.  
Mayfair Center, Upper Level  
4280 Sergeant Road, Suite 290  
Sioux City, IA 51106  
Email: [larson@klasslaw.com](mailto:larson@klasslaw.com)  
712/252-1866 Phone  
ATTORNEY FOR APPELLEE

I further certify that on the 1<sup>st</sup> day of August, 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/ Edward F. Noethe  
Edward F. Noethe