

IN THE COURT OF APPEALS OF IOWA

No. 1-259 / 10-0794
Filed May 25, 2011

SCENIC BUILDERS, L.L.C.,
Plaintiff-Appellee,

vs.

RON PEIFFER and
JULIE PEIFFER,
Defendants-Appellants.

Appeal from the Iowa District Court for Allamakee County, Richard D. Stochl, Judge.

Ron and Julie Peiffer appeal the dismissal of their counterclaim under Iowa Code section 714H.5 (2009). **REVERSED AND REMANDED.**

Erik W. Fern of Putnam Law Office, Decorah, for appellants.

Max E. Kirk of Ball, Kirk & Holm, P.C., Waterloo, for appellee.

Thomas J. Miller, Attorney General, Jessica Jean Whitney, Assistant Attorney General, Consumer Protection Division, Des Moines, for amicus curiae.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

The limited question presented in this interlocutory appeal is whether Iowa Code section 714H.3 (2009) applies to contracts for the construction of personal residences. The district court found it does not and dismissed the defendants' counterclaim for damages under the section. Because we conclude the statute applies to contracts for construction of personal residences, we reverse and remand for further proceedings.

In October 2009, Scenic Builders, L.L.C. filed a petition against Ron and Julie Peiffer, alleging they breached a contract for new home construction. The Peiffers answered, claiming the document they signed was not a contract but a preliminary estimate. They counterclaimed for damages under Iowa Code chapter 714H, alleging Scenic Builders engaged in unfair practices, false promises, and misrepresentation by altering the preliminary estimate and attempting to bind them to it.

Scenic Builders moved to dismiss the counterclaim for failure to state a claim upon which relief can be granted, alleging chapter 714H does not apply to a contract for home construction. The Peiffers resisted, arguing home construction is "consumer merchandise" and therefore included under chapter 714H's protections. Following a hearing, the district court concluded chapter 714H did not apply and dismissed the counter claim. The Peiffers filed a motion to amend and enlarge, which the district court denied. Our supreme court granted the Peiffers' interlocutory appeal.

Our review of rulings on motions to dismiss is for correction of errors at law. *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001). We will affirm a

dismissal only if there is no right of recovery under any state of facts. *Id.* We review the Peiffers' claim in its most favorable light, resolving all doubts and ambiguities in their favor. *See id.*

Iowa Code section 714H.5 states in pertinent part, "A consumer who suffers an ascertainable loss of money or property as the result of a prohibited practice or act in violation of this chapter may bring an action at law to recover actual damages." Section 714H.3 lists the prohibited practices and acts as those relating to "the advertisement, sale, or lease of consumer merchandise, or the solicitation of contributions for charitable purposes." The district court found this language does not include contracts for the construction of a personal residence.

The sole question we are presented with is whether contracts for construction of personal residences are "consumer merchandise" as contemplated in section 714H.3. In interpreting chapter 714H, we look at its language. *See Gardin v. Long Beach Mortg. Co.*, 661 N.W.2d 193, 197 (Iowa 2003). We do not search beyond the express terms of a statute when the statute is plain and its meaning is clear. *Id.* We read the statute as a whole and give it its plain and obvious meaning, a sensible and logical construction. *Id.* We do not construe a statute in a way that produces impractical or absurd results. *Id.*

When the legislature has not defined words of a statute, we look to prior court decisions, similar statutes, dictionary definitions, and common usage. *Id.* However, when terms are defined within the statute, those definitions are the foundation of our analysis. *Zimmer v. Vander Waal*, 780 N.W.2d 730, 733 (Iowa 2010). The term "consumer merchandise" is defined in chapter 714H.2 as "merchandise offered for sale or lease, or sold or leased, primarily for personal,

family, or household purposes.” Iowa Code § 714H.2(4). The chapter utilizes the definition of “merchandise” found in section 714.16. *Id.* § 714H.2(6). That section defines merchandise to include “any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.” *Id.* § 714.16(i). Accordingly, chapter 714H covers any real estate or services sold primarily for personal, family, or household purposes.

Chapter 714H does not specifically define the terms “real estate” or “services.” Black’s Law Dictionary defines “real estate” as, “[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.” Black’s Law Dictionary 1254 (8th ed. 2004). “Service” is defined as, “The act of doing something useful for a person or company for a fee.” Black’s Law Dictionary 1399 (8th ed. 2004).

In *State ex rel. Miller v. Cutty’s Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 521 (Iowa 2005), our supreme court considered a consumer fraud case involving the sale of undivided interests in a campground, which “gave the buyer access to the campground and use of the campground’s amenities, which included an indoor pool, whirlpool, sauna, miniature golf course, tennis courts, various ‘play areas,’ and a fishing lake with paddle boats.” The court determined the sale of the undivided interests “plainly falls within the purview” of the chapter 714 whether viewed as the sale of real estate or a service under the definition of “merchandise” found in section 714.16(i). *Id.* at 524-25.

Whether home construction contracts are considered contracts for real estate or contracts for a service, we conclude they are included in the protections afforded by chapter 714H under the plain language of the statute. Under the

facts alleged by the Peiffers, we conclude they have stated a claim upon which relief can be granted. Accordingly, we reverse the court's grant of dismissal and remand for further proceedings.

REVERSED AND REMANDED.