



IOWA
DEFENSE
COUNSEL
ASSOCIATION

Case Law Update: Contracts/Commercial Law

Austin J. McMahon
Swisher & Cohrt, PLC

Redemption Rights & Interest Rates

Mlady v. Dougan, 967 N.W.2d 328 (Iowa 2021)

- “Close only counts in horseshoes and hand grenades, not our redemption statute”
- Mlady purchased property at sheriff’s sale for \$1,600,001.00
- Underlying promissory notes called for 4.25% nondefault rate; and 21% default rate
- Dougan, attempting to redeem, initial pmt of \$1,690,000 under assumption that 4.25% rate applied; additional payment to hedge against possible applicability of 21% rate for total of \$1,937,00 but. . .
- Due to an attorney’s math error, the \$1,937,001 “fell short by \$1,798.79, or 0.09277853%” of the total amt needed—\$1,938,799.79.
- Held: 21% default rate applied; “Close enough? ” No.

Mechanic's Liens

Borst Brothers Construction, Inc. v. Finance of America Commercial, LLC, 975 N.W.2d 690 (Iowa 2022).

- Issue: The validity and priority of subcontractors' mechanics' liens when a general contractor fails to file a commencement of work notice.
- Dostal Developers (general); Borst Brothers (sub) began work on July 3, 2017; Kelly Concrete (sub) began work in September of 2017; Dostal obtains loans w/ FAC in November/December of 2017; Dostal defaulted
- Dostal failed to file Notice of Commencement of Work; Kelly posted NCW and Preliminary Notice in Feb of 2018; Borst posted NCW in Feb of 2018, PN in Nov of 2018
- Held: Borst and Kelly had valid liens; 572.13A's 10-day deadline to file a NCW only applies to general contractors; Subs may file NTOCW after 10-day deadline if general fails to do so; Borst and Kelly had priority over FAC
- Dissent: notices improper, any liens subordinate to FAC

Construction – Change Orders –

Ryan Companies US, Inc. v. FDP WTC, LLC, No. 20-1366,
2022 WL 469336 (Iowa Ct. App. 2022).

- Issue: does the failure to follow contract procedures for change orders preclude recovery of costs for work performed exceeding GMP?
- FDP (owner) and Ryan (contractor) two contracts, \$22,626,869 GMP and \$2,501,864 GMP; DC awarded damages above the GMP for changes
- Contract fully integrated; contract required written + signed change orders
- Ryan argued that design/construction docs not complete at time of contract + parties anticipated scope and GMP subject to change
- Held: contractor assumes risk of costs exceeding GMP; “contracts mean what they say,” plain language re: change orders not followed

Acceleration of Debt & Waiver

GreenState Credit Union v. Property Holders, Ltd., No. 21-0498, 2022 WL 2154816 (Iowa Ct. App. 2022).

- Issue: does accepting pmts after acceleration and foreclosure work waiver?
- PH executed and delivered loan/note secured by mortgage to GS; defaulted and failed to cure; notice of acceleration, failed to pay accelerated balance; GS filed foreclosure in Feb of 2020;
- PH alleged GS continued to accept pmts and that loan brought current by July of 2020
- Held: once accelerated, only pmt of entire balance cures; acceptance of partial pmts of entire balance merely reduces balance; “mortgagee cannot be penalized for the mere receipt of that to which he is in equity and good conscience entitled”

Attorney's Fees – LLC Manager Action Against LLC

Goche v. WMG, L.C., 970 N.W.2d 860 (Iowa 2022).

- Issue: question of first impression, whether 489.408(1) allows manager of LLC to recover from the LLC attorney fees incurred litigating against LLC?
- WMG – Joseph Goche + 3 siblings (members), Joseph manager; NCJC – corp. owned by Joseph; WMG leased farmland to NCJC
- Relationships soured, litigation ensued, Joseph personally asserted claims against WMG, including indemnification; WMG counterclaimed
- 489.408(1): LLC “shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by ... the manager of a manager-managed company in the course of the ... manager's activities on behalf of the company”
- Held: assume w/out deciding AF covered by 489.408(1); fees/expenses not incurred *on behalf of* WMG; litigation against LLC does not constitute activity on behalf of the company; 489.408(1) would allow recovery for defending or prosecuting claims on behalf of LLC against 3rd party

Economic Loss Doctrine

Floyd County Mutual Insurance Association o.b.o.

McGregor v. CNH Industrial America LLC, 18 F.4th 1024
(8th Cir. 2021) (applying Iowa law)

- Issue: the “Iowa Supreme Court has not yet decided whether a plaintiff may recover under a theory of product liability for damage to the product itself when the plaintiff also seeks recovery for damage to other property”
- Tractor manufactured by CNH caught fire; Floyd sued seeking 145K for damage to tractor + 22K for damage to other property; DC held amount-in-controversy not met b/c damage for tractor not recoverable under ELR
- Held: predicted that the ISC would hold that the economic-loss doctrine permits recovery only for the other property and not for the product itself; noted that permitting Ps to recover for damage to the product only if Ps also seek recovery for personal injury or damage to other property would result in a windfall for Ps fortunate enough to incur such additional injuries