

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

33 CARPENTERS CONSTRUCTION,
INC.,

Plaintiff/Counterclaim Defendant

v.

THE CINCINNATI INSURANCE
COMPANY,

Defendant/Counterclaim Plaintiff

LAW NO. LACE128760

**(Proposed) ORDER
GRANTING SUMMARY
JUDGMENT**

The above-entitled case comes before the Court on Defendant/Counterclaim Plaintiff's Motion for Summary Judgment. Having reviewed the materials submitted and the arguments of Counsel, the Court findings as follows:

The purported assignment of Whigham's insurance claim to 33 Carpenters must be deemed invalid because it violates Iowa's licensure requirement for public adjusters. Under Iowa law, a valid contract must consist of an offer, acceptance, and consideration. *Bartlett Grain Co., LP v. Sheeder*, 829 N.W.2d 18, 24 (Iowa 2013) (citations omitted). In addition, "[t]he general rule is an agreement that is contrary to the provisions of any statute or intends to be repugnant to general common law policy is void." *Staff Mgmt. v. Jimenez*, 839 N.W.2d 640, 650 (Iowa 2013) (citing *Reynolds v. Nichols & Co.*, 12 Iowa 398, 403 (1861)). Where a statute addresses the protection of health, safety, morals, and welfare of the people, all contracts are subject to that statute. *State ex rel. Turner v. Koscot Interplanetary, Inc.*, 191 N.W.2d 624, 630 (Iowa 1971).

By acting as an advocate during Cincinnati's adjustment of Whigham's insurance claim, 33 Carpenters effectively acted as a public adjuster. Iowa Code Chapter 522C governs the licensing of public adjusters. The Iowa Code defines a "public adjuster" as any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:

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 loss, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

Iowa Code § 522C.2(7)(a)–(c) (emphasis added). Iowa Code section 522C.4 provides "[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."

A person who acts as a public adjuster without proper licensure commits a serious misdemeanor. Iowa Code § 522C.6(2).

"Contracting parties are presumed to contract in reference to the existing law, which becomes part of the contract." *United Suppliers, Inc. v. Hanson*, 876 N.W.2d 765, 780 (Iowa 2016) (quoting *In re Receivership of Mt. Pleasant Bank & Trust Co.*, 426 N.W.2d 126, 134 (Iowa 1988)). "It is well-established Iowa law that contracts made in contravention of a statute are void, and Iowa courts will not enforce such contracts." *Bank of the West v. Kline*, 782 N.W.2d 453, 462 (Iowa 2010). The Iowa Supreme Court

has held the “general rule appears to be 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.” *Davis, Brody, Wisniewski v. Barrett*, 115 N.W.2d 839, 841 (Iowa 1962) (citations omitted); *see also Hoxsey v. Baker*, 246 N.W. 653, 655 (Iowa 1933) (holding it is “well settled that where the law requires a person who practices a profession such as medicine or pharmacy to obtain a license,” and a plaintiff cannot recover under a contract for services unless he has a license to perform those services); *Food Mgmt., Inc. v. Blue Ribbon Beef Pack, Inc.*, 413 F.2d 716, 724–25 (8th Cir. 1969) (applying Iowa law and finding contracts contravening Iowa architectural and professional engineering registration statutes are unenforceable).

Neither 33 Carpenters nor any of its employees maintains a public adjuster license. (SUMF ¶ 6). 33 Carpenters advertises on its website that it will advocate on the insured’s behalf with the insurance adjuster, and it will work directly with the insurance company to ensure that all damaged areas of the home are included. (SUMF ¶ 5). In February, 2017, 33 Carpenters informed Cincinnati that it represented Whigham regarding his insurance claim. (SUMF ¶ 14). 33 Carpenters attempted to aid Whigham in negotiations with Cincinnati to “determine how Cincinnati is going to make [Whigham] whole.” (SUMF ¶ 19). 33 Carpenters also, on its own, investigated the status of the siding and demanded it be present at Cincinnati’s site inspection. (SUMF ¶ 16). By undertaking these actions, 33 Carpenters acted as a public adjuster as that term is defined in Iowa

Code section 522C.2. 33 Carpenters did so without the requisite license. 33 Carpenters, therefore, violated Iowa Code section 522C.4 by acting as an unlicensed public adjuster. As a consequence, the assignment must be deemed invalid under Iowa law because it would effectively allow 33 Carpenters to operate as a public adjuster without the license required under Iowa Code chapter 522C.

THEREFORE, IT IS ORDERED Summary judgment must be granted in Cincinnati's favor on its counterclaim, and summary judgment must be granted against 33 Carpenters on its direct claim .

IT IS SO ORDERED.

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State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
LACE128760 33 CARPENTERS CONSTRUCTION VS CINCINNATI
INSURANCE COMPANY

So Ordered

A handwritten signature in black ink, appearing to read 'Henry W. Latham II', written over a horizontal line.

Henry W. Latham II, District Court Judge,
Seventh Judicial District of Iowa