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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Interiors by France, Plaintiff and Appellant, vs. Mitzel Contractors, Inc. d/b/a Mitzel Homes, Mitzel Builders, Inc., Leeroy Mitzel, an individual, and Eddy Mitzel, an individual, Defendants and Appellees.	Supreme Court Case No.: 20180399 Morton County Case No. 30-2016-CV-00803

APPELLANT'S BRIEF

Appeal from *Memorandum Opinion and Order Regarding Motion by Interiors by France for Attorney's Fees*, entered August 27, 2018, and *Judgment*, entered August 29, 2018, by the District Court for the South Central Judicial District, County of Morton, the Hon. Judge James S. Hill presiding

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TABLE OF CONTENTS

Paragraph #

Table of Authorities ....page ii

Statement of the Issue 1

Statement of the Case..2

Statement of the Facts 6

Jurisdictional Statement 24

Standard of Review..25

Law and Argument 26

I. The district court misinterpreted N.D.C.C. § 27-08.1-04 in denying Interior by France's motion for attorney fees under N.D.R.Civ.P. 54(e) 26

A. The district court misinterpreted and misapplied N.D.C.C. § 27-08.1-04 by finding the language of N.D.C.C. § 27-08.1-04 to be unambiguous 30

B. The district court misinterpreted and misapplied N.D.C.C. § 27-08.1-04 by finding that the fee-shifting provision of N.D.C.C. § 27-08.1-04 applies only to a removing defendant 36

i. The district court failed to construe N.D.C.C. § 27-08.1-04 in a manner consistent with its legislative intent 38

ii. The district court failed to reconcile its construction of N.D.C.C. § 27-08.1-04 with other related statutes and rules 41

iii. The district court failed to interpret N.D.C.C. § 27-08.1-04 in a manner that avoids absurd or ludicrous results 46

C. The district court misinterpreted and misapplied N.D.C.C. § 27-08.1-04 by failing to award IBF the full amount of attorney fees incurred in prosecuting its claims..48

Conclusion 51

TABLE OF AUTHORITIES

Paragraph #

Cases

Apple Creek Tp. v. City of Bismarck, 271 N.W.2d 583 (N.D. 1978) 32, 35, 40

Continental Cas. Co. v. Kinsey, 499 N.W.2d 574 (N.D. 1993)..50

Gaab v. Ochsner, 2001 ND 195, 636 N.W.2d 669 41

Grinnel Mut. Reinsurance Co. v. Thompson, 2010 ND 22, 778 N.W.2d 526..................25

In re D&P Terminal, Inc., 2012 ND 149, 819 N.W.2d 491..................................31, 36, 46

In re Midgett, 2007 ND 198, 742 N.W.2d 803 ....31, 36, 41

Johnson v. State, 705 N.W.2d 830 (N.D. 2005) 41, 44

Lynch v. Sweeney, 2007 ND 81, 732 N.W.2d 377 48

Medcenter One, Inc. v. N.D. State Bd. of Pharmacy, 1997 ND 54, 561 N.W.2d 634 ....31, 32

N.D. Dep't of Transp. v. Rosie Glow, LLC, 2018 ND 123, 911 N.W.2d 334 29

Raaum v. Powers, 396 N.W.2d 306 (N.D. 1986) 41, 42

State v. Brown, 2009 ND 150, 771 N.W.2d 267 ....31, 36, 38, 46

State v. Fasteen, 2007 ND 162, 740 N.W.2d 60..31, 32

Svanes v. Grenz, 492 N.W.2d 576 (N.D. 1992) 41, 42

Wayne-Juntunen Fertilizer Co. v. Lassonde, 474 N.W.2d 254 (N.D. 1990) 44

Werling v. Champion Healthcare Corp., 1999 ND 173, 598 N.W.2d 820 ....32, 35

Statutes

N.D.C.C. § 27-08.1-04.. passim

N.D.C.C. § 28-27-02... 24

Rules

N.D.R.App.P. 4(a)(1) 24

N.D.R.Civ.P. 15(a)(2) 18

N.D.R.Civ.P. 15(c) 29, 43, 44

N.D.R.Civ.P. 30(b)(6) 19

N.D.R.Civ.P. 33 26

N.D.R.Civ.P. 34 26

N.D.R.Civ.P. 54(e) 1, 4, 5, 22, 29

Constitutional Provisions

N.D. Const. art. VI, § 6 24

STATEMENT OF THE ISSUE

[¶1] Whether the district court misinterpreted or misapplied N.D.C.C. § 27-08.1-04 in denying Interior by France's motion for attorney fees under N.D.R.Civ.P. 54(e).

STATEMENT OF THE CASE

[¶2] Interiors by France commenced a small claims action against Mitzel Builders, Inc. ("Mitzel Builders") and Leeroy Mitzel for their failure to pay the amount due and owing IBF for work IBF completed for Mitzel Builders and Leeroy Mitzel. App. 5. In answering IBF's claim affidavit, Mitzel Builders submitted a request to remove the matter to district court and a formal answer, denying all of IBF's allegations. App. 106. Shortly after removal, IBF filed a pro se motion to amend its complaint to substitute Mitzel Builders for Mitzel Contractors, Inc. ("Mitzel Contractors") because it came to believe that Mitzel Contractors was involved in the payment dispute with IBF. See Index No. 12 (IBF's pro se request to amend claim complaint). The district court did not act upon this motion.

[¶3] Once the small claims action was removed to district court, IBF exercised the rights granted to it under the North Dakota Rules of Civil Procedure and conducted discovery and moved to amend its complaint to name Mitzel Builders, Mitzel Contractors, Leeroy Mitzel, and Eddy Mitzel as defendants. The parties then engaged in months of contentious, drawn-out litigation that included numerous discovery disputes and contested motions. On May 8, 2018, three weeks before trial, Leeroy Mitzel was deposed in his capacity as the owner and employee of both Mitzel Builders and Mitzel Contractors. During his deposition, Leeroy Mitzel suddenly admitted liability for the payment dispute with IBF on behalf of Mitzel Contractors and agreed to pay the entire amount due and owing, including all compounding finance charges.

[¶4] In light of Leeroy Mitzel's admissions, the district court cancelled the three-day jury trial and urged the parties to reach an agreement that allowed IBF to be a prevailing party for purposes of its claim for attorney's fees under N.D.C.C. § 27-08.1-04. The parties submitted a Confession of Judgment authorizing judgment to be taken against Mitzel Contractors for $18,967.02, which was the full amount IBF sought plus interest, and specifically reserved the issue of costs and attorney fees under N.D.R.Civ.P. 54(e) and N.D.C.C. § 27-08.1-04 for the district court's consideration. App. 165-66.

[¶5] On July 3, 2018, IBF filed a motion for attorney fees under N.D.R.Civ.P. 54(e) and N.D.C.C. § 27-08.1-04. Index No. 151. On July 17, 2018, Mitzel Contractors filed a brief in opposition to IBF' motion. Index No. 165. IBF then filed its reply brief in support of its motion for attorney fees. Index No. 171. On August 27, 2018, the district court issued its *Memorandum Opinion and Order Regarding Motion by Interiors by France for Attorney's Fees* (the "*Memorandum Opinion*"), denying IBF's motion for attorney fees. See generally App. 208. On that same day, the district court also issued its *Order for Judgment*. App. 224. Judgment was entered in favor of IBF on August 29, 2018. App. 222. Notice of entry of the district court's order was filed by IBF on February 17, 2015. App. 223. Notice of appeal was filed by IBF on November 1, 2018. App. 225.

STATEMENT OF THE FACTS

[¶6] This matter stems from a small claim action brought by IBF in regard to a dispute over payment for supplies and services IBF provided for a home that was built by Mitzel Contractors and owned by Mitzel Builders. See App. 8 (IBF's Claim Aff.). Mitzel Builders is a land developer that purchases land to develop into residential property and is solely owned by Leeroy Mitzel, who is also the company's only employee. See App. 10

(Leeroy Mitzel's Dep. 30:19-25, 35:22-36:4). Mitzel Contractors is a construction company that was, at one time, owned and operated jointly by Leeroy Mitzel and his son, Eddy Mitzel. See App. 64 (Eddy Mitzel's Dep. 17:15-18:1 (Eddy was formerly a minority shareholder of Mitzel Contractors)).

[¶7] Pursuant to a joint venture agreement made between Leeroy Mitzel and Eddy Mitzel sometime before 2014, they agreed to operate Mitzel Contractors as the company that built new residential homes upon the lots owned and developed by Mitzel Builders. See App. 64 (Eddy Mitzel Dep. 38:4-40:4 (Eddy Mitzel describing terms of agreement with Leeroy Mitzel)). To finance the construction of these homes, Mitzel Builders would offer the lots it owned as collateral to secure financing for Mitzel Contractor's construction loans. Once the homes that were constructed by Mitzel Contractors were sold, Mitzel Contractors would pay Mitzel Builders for the residential lot. See App. 10 (Leeroy Mitzel Dep. 27:3-22 (Leeroy Mitzel provided collateral for Eddy Mitzel so he could obtain the necessary financing to build homes on the lots owned by Leeroy Mitzel and/or Mitzel Builders), 70:19-20 (Mitzel Builders owned the lot the subject home was built upon but had not been paid by Mitzel Contractors)); see e.g., App. 101 (warranty deed showing Mitzel Builders as the record title owner of property upon which the subject home was built).

[¶8] On September 12, 2014, Mitzel Contractors signed a proposal that requested IBF to furnish flooring and carpeting to a home built by Mitzel Contractors in the Ridgefield 2nd Addition (the "subject home"), which is a housing development located in Bismarck, North Dakota. See App. 103 (IBF's proposal). According to the proposal, IBF installed the flooring and carpet requested by Mitzel Contractors. On November 19, 2014, IBF

issued a final invoice to Mitzel Contractors for $10,206.44. Although there were no complaints or issues regarding the work IBF performed, Mitzel Contractors refused to remit payment to IBF.

[¶9] Sometime in 2015, IBF contacted both Leeroy Mitzel and Eddy Mitzel to request payment for the amount due and owing to IBF. Because Leeroy Mitzel and Eddy Mitzel had a falling-out as business partners, which included numerous lawsuits between themselves and their various business ventures, they both denied responsibility for the debt, blamed the other, and refused to pay IBF the amount due and owing. See App. 10 (Leeroy Mitzel Dep. 126 (Leeroy told France that he "better call Eddy on it.")), App. 64 (Eddy Mitzel Dep. 80:1-12 (Mitzel saying: "I told France to lien it.")). In April 2016, Eddy forfeited his ownership of Mitzel Contractors and Leeroy decided to dissolve Mitzel Contractors as a corporation and ceased all business operations. See App. 10 (Leeroy Mitzel Dep. 95:1-4 (Leeroy stating Mitzel Contractors does not exist anymore)).

[¶10] On September 28, 2016, IBF commenced a small claims action against Mitzel Builders and Leeroy Mitzel, seeking recovery of $14,897.04. App. 8 (IBF's Claim Aff.). Prior to commencing this action, IBF contacted the Burleigh County Record's Office to confirm that Mitzel Builders was the company that owned the home that Mitzel Contractors constructed. See App. 104 (France Splonskowski Aff.). In response to IBF's claim affidavit, Mitzel Builders and Leeroy Mitzel filed a joint request to remove the matter to district court and a joint answer to IBF's claim affidavit.[1] See App. 106, 107. IBF then filed a pro se motion to amend its claim affidavit to substitute Mitzel Contractors for Mitzel

[1] Throughout the course of this matter, Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel were represented by attorney David Schweigert and acted in concert due to Leeroy Mitzel's ownership of Mitzel Builders and Mitzel Contractors.

Builders after it came to believe that Mitzel Contractors was involved in the payment dispute with IBF. See Index No. 12 (Holly Splonskowski submitted an informal request to "amend the complaint to change the name of the defendants to Mitzel Contractors, Inc and LeeRoy Mitel."). This motion was never acted upon.

[¶11] On December 22, 2016, a hearing was held in which the parties stipulated to a scheduling order and set the matter for trial. Based upon discussion with counsel for Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel, IBF was led to believe that Mitzel Contractors – not Mitzel Builders – was the correct defendant. IBF therefore agreed to amend its complaint to substitute Mitzel Contractors for Mitzel Builders and to ensure that the complaint complied with the more rigorous procedural requirements of district court. On February 27, 2017, IBF, Mitzel Builders, and Leeroy Mitzel submitted a stipulation allowing IBF to file its Amended Complaint (the "First Amended Complaint") to assert the following claims against Mitzel Contractors: (1) breach of contract; (2) quantum meruit; and (3) unjust enrichment. App. 109 (Stipulation to Am. Compl.), 115 (IBF's Am. Compl.). After the First Amended Complaint was filed, but more than a month after its response deadline expired, Mitzel Contractors submitted its amended answer, summarily denying all of IBF's allegations. See generally App. 120. In doing so, Mitzel Contractors did not offer any reference to the decision to remove the case by Mitzel Builders and Leeroy Mitzel or lodge any objections concerning the application of the fee-shifting provisions of N.D.C.C. § 27-08.1-04. See generally id.

[¶12] After amending its claim affidavit, IBF attempted to prosecute its claims by serving upon Mitzel Contractors written discovery, including interrogatories, requests for production, and requests for admission. In response, Mitzel Contractors provided

numerous incomplete and insufficient responses to IBF's discovery requests in which it denied that it entered into a contract with IBF, that IBF completed the work as alleged, and that Mitzel Contractor owed IBF any amounts and refused to produce any of the requested documents. See generally App. 124 (MCI's responses to IBF's discovery). Mitzel Contractors also refused to allow IBF to depose Leeroy Mitzel, who was purported to be the individual "most knowledgeable of facts and circumstances involved in [the] case." App. 123 (Def.'s Resp. to Interrog. No. 3).

[¶13] Because IBF was unable to obtain the information necessary to prosecute its claims against Mitzel Contractors through discovery, it was forced to seek information from third parties. After issuing numerous subpoenas, IBF obtained information from a local title company that confirmed that Eddy Mitzel falsified closing documents for the sale of the subject home on behalf of Mitzel Contractors and Mitzel Builders, claiming that there were no outstanding debts or liens in order to sell the home. See App. 135-38 (on behalf of Mitzel Builders and Mitzel Contractors, Eddy Mitzel submitted affidavits to Quality Title during the closing of the subject home). IBF also came to discover through conversations with counsel for Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel that Leeroy Mitzel personally paid approximately two million dollars towards Mitzel Contractors' debt after Eddy Mitzel forfeited his ownership interest in Mitzel Contractors and Leeroy Mitzel dissolved it as a company – and after IBF provided materials and services for the subject home. Cf. App. 10 (Leeroy Mitzel Dep. 86:10-87:8 (Leeroy Mitzel personally paid the subcontractors owed by Mitzel Contractors after Eddy Mitzel forfeited his interest in the company)).

[¶14] In light of this newly discovered evidence, IBF moved the Court for leave to amend the First Amended Complaint to name Mitzel Builders, Leeroy Mitzel, and Eddy Mitzel as defendants and to assert and/or reassert the following counts:

Count 1 – Breach of Contract (By Plaintiff Against Mitzel Contractors)

Count 2 – Quantum Meruit (By Plaintiff Against Mitzel Contractors)

Count 3 – Unjust Enrichment (By Plaintiff Against All Defendants)

Count 4 – Alter Ego (By Plaintiff Against Mitzel Contractors and Mitzel Builders, Individually)

(the "Second Amended Complaint"). App. 141; see Index No. 30 (IBF's motion to amend the First Amended Complaint). Mitzel Contractors did not object or provide a response to IBF's motion, and as a result, the Court deemed Mitzel Contractors' failure to respond to be an admission that the motion was meritorious. As a result, the Court granted IBF's motion to amend the First Amended Complaint. App. 139.

[¶15] On December 27, 2017, Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel filed a joint answer to the Second Amended Complaint, collectively denying all of IBF's allegations. See App. 141(Defs.' Answer to IBF's Second Am. Compl.)). Once again, no references were made in regard to the decision to remove the case by Mitzel Builders and Leeroy Mitzel and no objections were lodged in regard to the application of the fee-shifting provisions of N.D.C.C. § 27-08.1-04. Instead, Leeroy Mitzel and his companies acted as one defendant with Leeroy Mitzel making all decisions pertaining to this lawsuit and Attorney Schweigert serving as counsel for all three parties. See App. 10 (Leeroy Mitzel Dep. 48:1-20 (Leeroy Mitzel describing his authority over Mitzel Builders)). Throughout the course of litigation, Leeroy Mitzel and his two companies were almost indistinguishable in that they filed numerous joint motions and pleadings. See e.g., App.

150 (Mitzel Builders, Mitzel Contractors and Leeroy Mitzel's joint answer to IBF's second amended complaint); Index Nos. 48 (joint motion to bifurcate and stay discovery), 84 (joint brief in opposition to IBF's motion to compel), 102 (joint motion for Rule 16 pretrial conference), and 133 (joint response opposing IBF's motion to strike Defendants' untimely and improper amended answers). Not until it was time to apportion liability for the debt owed to IBF did Leeroy Mitzel and his companies attempt to suddenly act as separate and distinct defendants. See e.g., App. 150 (Mitzel Contractors' amended answer which attempts to admit partial liability shortly before trial), 153 (Leeroy Mitzel and Mitzel Builders' joint amended answer which attempts to divert liability to Mitzel Contractors shortly before trial).

[¶16] After answering the Second Amended Complaint, Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel acted in concert to intimidate and frustrate IBF's attempts to collect the debt of which it was legally entitled. In response to additional discovery requests served upon Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel by IBF, Leeroy Mitzel and his companies lodged baseless objections and refused to comply with their obligations under the Rules of Civil Procedure. Leeroy Mitzel and his companies also inexcusably delayed and frustrated IBF's ability to conduct depositions and filed numerous procedurally improper motions – all of which are discussed in detail in various motions filed by IBF. See e.g., Index Nos. 84 (IBF's Br. in Supp. of Mot. to Compel Disc.), 130 (IBF's motion to strike defendants' answers as procedurally improper), 152 (IBF's brief in support of motion for attorney fees). By doing so, Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel forced IBF to incur substantial attorney's fees to address their refusal to facilitate discovery and the belligerent litigation tactics employed throughout this matter.

[¶17] In response to the Second Amended Complaint, Eddy Mitzel retained separate counsel and submitted his own answer. See App. 160 (Eddy's Answer to IBF's Second Am. Compl.). Because he forfeited his ownership interest in Mitzel Contractors and was not involved in the decision to remove the matter to district court, Eddy Mitzel objected to IBF's claims for attorney's fees under N.D.C.C. § 27-08.1-04. See id. at ¶ 33. Throughout the course of litigation, Eddy Mitzel has cooperated in IBF's discovery attempts.

[¶18] In April 2018, after months of refusing to cooperate in IBF's discovery efforts, Leeroy Mitzel finally agreed to be deposed in his individual capacity as well as his capacity as owner of Mitzel Builders and Mitzel Contractors. On April 30, 2018, without obtaining IBF's written consent or the district court's leave to amend, Mitzel Builders and Leeroy and Mitzel Contractors filed separate amended answers directing liability away from Mitzel Builders and Leeroy Mitzel and towards Mitzel Contractors. Compare App. 153 (Mitzel Builder and Leeroy Mitzel's Am. Answer to Second Am. Compl.), with App. 156 (Mitzel Contractor's Am. Answer to Second Am. Compl.). In its amended answer, Mitzel Contractors admitted that IBF furnished and installed certain services and materials to the subject home but denied that a contract existed between it and IBF and that any work was done pursuant to the alleged contract. App. 156, at ¶¶ 11,17, and 18 (MCI's Am. Answer to Second Am. Compl.). Because the defendants' respective amended answers were procedurally improper under N.D.R.Civ.P. 15(a)(2) and brought in bad faith or with dilatory motives, IBF moved to strike the defendants' amended answers. See Index Nos. 129-30. IBF's motion to strike Defendants' procedurally improper amended answers was not acted upon.

[¶19] On May 8, 2018, three weeks before trial, Leeroy Mitzel finally agreed to allow IBF to depose him in his individual capacity as well as in his capacity as owner of Mitzel Builders and Mitzel Contractors. Because Leeroy Mitzel was designated as the corporate designee under N.D.R.Civ.P. 30(b)(6) for Mitzel Builders and Mitzel Contractors, these three depositions were run simultaneously. See Index No. 161 (deposition notices for Leeroy, Mitzel Builders, and Mitzel Contractors). During the depositions, Leeroy Mitzel made numerous admissions on behalf of himself, Mitzel Builders, and Mitzel Contractors in regard to the payment dispute with IBF and details concerning the operation of Mitzel Builders and Mitzel Contractors. In an attempt to avoid the application of N.D.C.C. § 27-08.1-04 and shift liability to Mitzel Contractors, the company no longer in business, Leeroy suddenly admitted that Mitzel Contractors signed the proposal at issue, that IBF provided the services and labor for the subject home, and that Mitzel Contractors owed the entire amount due and owing, including the agreed-upon finance charges. See App. 10 (Leeroy Mitzel's Dep. 133:6-135:6). These admissions came on the heels of Mitzel Contractors' amended answer in which denied it denied the existence of the alleged contract or that Mitzel Contractors was obligated to pay the finance charges assessed against the amount due and owing to IBF. See App. 156, at ¶¶ 11,17, and 18 (MCI's Am. Answer to Second Am. Compl.).

[¶20] In addition to suddenly admitting to IBF's breach of contract claim, Leeroy Mitzel admitted that the only reason this case was removed to district court was because he does not allow any lawsuits against him in small claims court. See App. 10 (Leeroy Mitzel Dep. 49:1-12 (Leeroy Mitzel stated he "do[es]n't do small claims court" and removed it based upon personal preference)). Although Leeroy Mitzel knew Mitzel Contractors owed IBF

for worked IBF performed, he denied responsibility and blamed Eddy Mitzel for the amount due and owing. See id. (Leeroy Mitzel's Dep. 130:10-131:7). Rather than moving to dismiss the lawsuit against Mitzel Builders in small claims court for IBF's failure to name the correct party, which surely would have been granted if Mitzel Builders was wrongly named party, Leeroy Mitzel removed the case to district court, lodged countless meritless defenses to IBF's allegations, and forced the parties into expensive, drawn-out litigation – only to admit liability weeks before trial.

[¶21] On May 16, 2018, at the request of IBF, a pretrial conference was held to determine whether there were any triable issues remaining and how the parties should proceed. Because no factual disputes existed in light of Leeroy Mitzel's admissions regarding the payment dispute, the district court cancelled the three-day trial scheduled for May 25, 2018, and insisted that the parties reach an agreement that allowed IBF to be a prevailing plaintiff for purposes of its claim for attorney's fees under N.D.C.C. § 27-08.1-04. After a dispute regarding the amount of finance charges to which IBF was entitled, the parties reached an agreement in which Mitzel Contractors confessed judgment in favor of IBF and remitted payment to IBF in the amount of $18,967.02. See App. 165 (Confession of Judgment). The parties agreed to resolve the remaining issue of costs and attorney's fees through motion to the Court. Id.

[¶22] Pursuant to the Confession of Judgment and the parties' agreement, IBF submitted a motion for costs and attorney fees under N.D.R.Civ.P. 54(e) and N.D.C.C. § 27-08.1-04, arguing that as a prevailing plaintiff if was entitled to the full amount expended in prosecuting its claims against Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel. See Index Nos. 151-52. In response to IBF's motion, Mitzel Builders, Mitzel Contractors, and

Leeroy Mitzel, once again, joined together to submit a joint brief in opposition, arguing – as one party – that because Mitzel Contractors admitted full liability under the contract with IBF and was not the defendant that removed the matter to district court, the fee-shifting provisions of N.D.C.C. § 27-08.1-04 did not apply. See Index. No 165.

[¶23] On August 27, 2018, a hearing was held on IBF' motion for attorney fees in which the district court received argument from all of the parties. Later that day, the district court issued its *Memorandum Opinion*, denying IBF's motion for attorney fees. App. 20. In reaching its decision, the district court held that despite IBF's arguments to the contrary, the fee-shifting provision of N.D.C.C. § 27-08.1-04 was not ambiguous and, when applied, did not require a defendant to pay attorney fees to a prevailing plaintiff unless that defendant was the party responsible for removing the action to district court. See id. at ¶¶ 26 ("The Court concludes that [N.D.C.C. § 27-08.1-04] does not require that a non-removing defendant, Mitzel Contractors, pay attorney's fees to Interiors by France for the action Interiors by France initiated against Mitzel Contractors through the First Amended Complaint . . . ."), 28 ("This Court concludes that N.D.C.C. § 27-08.1-04 is not ambiguous in the context of this case . . . ."). The district court entered judgment in favor of IBF on August 29, 2018. IBF filed notice of entry of judgment on September 10, 2018, and a notice of appeal on November 1, 2018.

JURISDICTIONAL STATEMENT

[¶24] IBF's appeal from the district court's *Memorandum Opinion and Order Regarding Motion by Interiors by France for Attorney's Fees, entered August 27, 2018*, and *Judgment*, entered August 29, 2018, by the District Court for the South Central Judicial District, County of Morton. This appeal is timely under N.D.R.App.P. 4(a)(1). This Court has jurisdiction under N.D. Const. art. VI, § 6, and N.D.C.C. § 28-27-02.

STANDARD OF REVIEW

[¶25] In deciding whether a district court has misinterpreted or misapplied the law, this Court reviews a district court's interpretation of a statute de novo. Grinnel Mut. Reinsurance Co. v. Thompson, 2010 ND 22, ¶ 9, 778 N.W.2d 526.

LAW AND ARGUMENT

I. The district court misinterpreted N.D.C.C. § 27-08.1-04 in denying Interior by France's motion for attorney fees under N.D.R.Civ.P. 54(e).

[¶26] As discussed above, this matter began as a small claims action and was removed under N.D.C.C. § 27-08.1-04 by Mitzel Builders and Leeroy Mitzel. App. 106. Once the small claims action was removed to district court, IBF utilized the rights and privileges associated with a formal lawsuit, namely the rights and privileges granted to it by the North Dakota Rules of Civil Procedure. After conducting discovery under Rules 33 and 34 of the North Dakota Rules of Civil Procedure, IBF obtained information that required various amendments to its pleadings to name the correct parties despite attempts by Mitzel Builders, Mitzel Contractors and Leeroy Mitzel to obfuscate the facts underlying the payment dispute. Through continued discovery efforts, IBF obtained admissions from Leeroy Mitzel that eventually resulted in IBF securing a judgment in its favor for the entire amount in dispute. App. 222.

[¶27] After obtaining judgment in its favor, IBF moved the district court for an award of attorney fees under the fee-shifting provision of N.D.C.C. 27-08.1-04, which provides a mandatory award of attorney fees to a plaintiff who prevails in an action removed to district court. See Index Nos. 151-52. Section 27-08.1-04 of the North Dakota Century Code specifically states:

> If the defendant elects to remove the action from small claims court to district court, the district court shall award attorney's fees to a prevailing plaintiff.

(emphasis added). Because IBF obtained a judgment in its favor after the small claims action it commenced was removed to district court and was a "prevailing plaintiff," IBF argued it was entitled to an award of attorney fees against Mitzel Contractors under N.D.C.C. § 27-08.1-04. Alternatively, because Mitzel Builders and Leeroy Mitzel were the parties that were technically responsible for removing the small claims action to district court, IBF argued it was entitled to an award of attorney fees against Mitzel Builders and Leeroy Mitzel. See Index No. 152. In response, Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel opposed IBF's motion, arguing that a strict reading of N.D.C.C. § 27-08.1-04 provided that IBF was not entitled to an award of attorney fees because it failed to obtain a judgment against the parties responsible for removing the small claims action to district court – Mitzel Builders or Leeroy Mitzel. See Index No. 165, at ¶ 28 (stating that the fee shifting provisions of N.D.C.C. § 27-08.1-04 do not apply to "non-removing defendants or parties who were not even involved in the lawsuit at the time of removal.").

[¶28] After a hearing was held on IBF's motion, the district court issued its *Memorandum Opinion*, denying IBF's motion for attorney fees. See App. 208. In support of its decision, the district court held that N.D.C.C. § 27-08.1-04 was clear and unambiguous and that when applied to the facts of this dispute, it does not require a "non-removing defendant," such as Mitzel Contractors, to pay attorney fees under the statute's fee-shifting provisions. Id. at ¶¶ 26-28.

[¶29] In reaching its decision to deny IBF's motion for attorney fees as a "prevailing plaintiff" under N.D.R.Civ.P. 15(c), the district court misinterpreted and misapplied

N.D.C.C. § 27-08.1-04. Rather than applying the fee-shifting provision of N.D.C.C. § 27-08.1-04 in a manner that attempts to reconcile the statute's ambiguous language with the context and original purpose of the statute, the district court applied the strict language of N.D.C.C. 27-08.1-04 in a manner that not only ignores the intent of the legislature but completely nullifies the statute as well. Because this Court is required to construe a statute liberally with a view towards effectuating its legislative intent, promoting justice, and avoiding absurd or unjust results, the district court's decision to deny IBF's motion for attorney fees under N.D.R.Civ.P. 54(e) and N.D.C.C. § 27-08.1-04 should be reversed and IBF should be awarded the full amount of attorney fees expended in prosecuting its claims against Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel as provided for in N.D.C.C. § 27-08.1-04. Alternatively, if this Court finds that the district court must determine which defendant is responsible for attorney fees or the amount of fees to which IBF is entitled, IBF argues the district court's decision should be reversed and remanded for further and an award. See N.D. Dep't of Transp. v. Rosie Glow, LLC, 2018 ND 123, ¶ 25, 911 N.W.2d 334 (Court reversed court's failure to award costs and remanded for "further findings and an award.").

A. The district court misinterpreted and misapplied N.D.C.C. § 27-08.1-04 by finding the language of N.D.C.C. § 27-08.1-04 to be unambiguous.

[¶30] In its *Memorandum Opinion*, the district court misinterpreted and misapplied N.D.C.C. § 27-08.1-04 by holding the statute was unambiguous and clear on its face. See generally App. 208. Throughout its decision, the district court described the statutory language of N.D.C.C. § 27-08.1-04 as "clear" and "not ambiguous." See id., at ¶¶ 27-28. In doing so, the district court refused to consider the legislative history materials or the practical effects of its interpretation of N.D.C.C. § 27-08.1-04. Instead, the district court

narrowly construed and the fee-shifting provision of N.D.C.C. § 27-08.1-04 and applied it in a manner that was completely contrary to the legislative intent and N.D.C.C. ch. 27-08.1 and that results in absurd and ludicrous results. See e.g., id. at ¶ 33.

[¶31] It is well-established that the interpretation of a statute is a question of law that is fully reviewable by this Court. Medcenter One, Inc. v. N.D. State Bd. of Pharmacy, 1997 ND 54, ¶ 13, 561 N.W.2d 634. In construing a statute, a court's primary goal is to ascertain the legislative intent by first looking to the plain language of the statute and giving each word its ordinary meaning. See State v. Brown, 2009 ND 150, ¶ 15, 771 N.W.2d 267 (internal quotation marks and citations omitted). When the statute's wording is "clear and free of all ambiguity," the letter of the statute cannot be "disregarded under the pretext of pursuing its spirit." Id. (internal quotation marks and citations omitted). "If, however, the language of the statute is ambiguous or if adherence to a strict reading of the statute would lead to an absurd or ludicrous result, a court may consider extrinsic aids, such as legislative history, to interpret a statute." State v. Fasteen, 2007 ND 162, ¶ 8, 740 N.W.2d 60. The court must "presume the legislature did not intend an absurd or ludicrous result or unjust consequences" and it must construe all statutes in a practical manner that "giv[es] consideration to the context of the statutes and the purpose for which they were enacted." Brown, at ¶15. Furthermore, in interpreting a statute, it is imperative that the court does not read or apply any one statute in isolation; instead, the court must consider the "practical effects of the particular construction" of a statute, attempt to harmonize that construction with other existing statutes, and "avoid absurd or ludicrous results." In re D&P Terminal, Inc., 2012 ND 149, ¶ 17, 819 N.W.2d 491 ("Statutes are not to be read in isolation or applied in a vacuum . . . and we must consider the practical effects of a particular

construction and avoid absurd or ludicrous results.") (internal quotation marks and citations omitted); In re Midgett, 2007 ND 198, ¶ 12, 742 N.W.2d 803 ("This Court must 'harmonize statutes to avoid conflict between them.'") (citations omitted).

[¶32] A statute will be considered ambiguous if it is "susceptible to meanings that are different, but rational." Fasteen at ¶ 8; see also Apple Creek Tp. v. City of Bismarck, 271 N.W.2d 583, 586 (N.D. 1978) (a statute is ambiguous if its language is of "doubtful meaning."). Said otherwise, if two parties offer competing but plausible interpretations of a statute, that statute will be considered ambiguous. See Medcenter One, Inc. v. N.D. State Bd. of Pharm. at 638 ("[A] statute is ambiguous if it is susceptible to differing, but rational meanings."); Apple Creek Tp. at 587 ("Because the interpretations of section 40-47-01.1, N.D.C.C., asserted by both parties are plausible, we find that the term "unincorporated territory" is ambiguous."). For example, in Apple Creek Tp. v. City of Bismarck, the district court was tasked with interpreting the statutory definition of "unincorporated territory." 271 N.W.2d 583, 587. Because the parties each offered "plausible interpretations of the statute," the district court in Apple Creek held that the statute was ambiguous and used extrinsic aids to interpret the statute in a manner consistent with the legislative intent. Id. at 586. In Werling v. Champion Healthcare Corp., the Court upheld a district court's finding that the Wage Collection Act was ambiguous when the parties offered persuasive interpretation of the statute. In reaching its decision, the Court noted that the parties strongly disagreed on the interpretation and legislative intent of the Wage Collection Act, but it ultimately held that because one of the party's arguments was supported by the "legislative history and administrative construction" of the chapter 34-14, the chapter of the North Dakota Century Code that contains the Wage Collection Act, the

district court did not err in finding the statute ambiguous. 1999 ND 173, ¶ 45, 598 N.W.2d 820.

[¶33] In the present case, the parties submitted differing but plausible interpretations of the fee-shifting provision of N.D.C.C. § 27-08.1-04 and disagreed as to whether the statutory language was ambiguous. Section 27-08.1-04 of the North Dakota Century Code specifically states:

> If the defendant elects to remove the action from small claims court to district court, the district court shall award attorney's fees to a prevailing plaintiff.

In its motion for attorney fees, IBF argued that although the fee-shifting provision of N.D.C.C. 27-08.1-04 makes clear that the district court "shall" award attorney fees to a "prevailing plaintiff," the statute does not specify or identify the party that would be responsible for paying these attorney fees in a case involving multiple defendants that were added throughout the course of the formal proceeding chosen by the removing defendant. See Index No. 152, at ¶ 24. More specifically, IBF argued that the language of N.D.C.C. § 27-08.1-04 is not written to apply to situations in which, after removal, the plaintiff is forced to amend its complaint to name one or more additional defendants who are intrinsically related to the removing defendant and then obtains a judgment against one of those additional defendants. Id. at ¶ 21. Because the fee-shifting provision of N.D.C.C. § 27-08.1-04 lacks the express language needed to apply to the present case or to address the litigation tactics of Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel, IBF urged the district court to apply the statute broadly and in favor of the plaintiff so as to effectuate the fundamental purpose of the fee-shifting provision of N.D.C.C. 27-08.1-04 – to discourage parties from improperly utilizing the statute's removal provisions as a way to frustrate and

intimidate a plaintiff's ability to resolve a simple dispute through informal means – and grant its motion for attorney fees. See id. at ¶¶ 21-22. Specifically, IBF requested that the district court apply the fee-shifting provision of N.D.C.C. § 27-08.1-04 against Mitzel Contractors because that is the party IBF obtained a judgment against. Alternatively, IBF argued Mitzel Builders and Leeroy Mitzel should be required to IBF's attorney fees because they were the parties responsible for removing the action from small claims court to district court. See Index No. 171, at ¶ 18.

[¶34] On the other hand, Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel asserted in their joint brief that the language of N.D.C.C. § 27-08.1-04 is "exceedingly clear" and the statute's fee-shifting provisions only apply "if the original removing party loses to the plaintiff at district court." Index No. 165, at ¶ 14. Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel, therefore, argued that because IBF obtained a judgment against Mitzel Contractors but not Mitzel Builders or Leeroy Mitzel, IBF did not prevail against the removing defendants and was not entitled to attorney fees under N.D.C.C. § 27-08.1-04. Id. at ¶¶ 12-14. In doing so, these defendants failed to cite to any authority or legislative history materials to support this argument or application of N.D.C.C. § 27-08.1-04. However, at the hearing on IBF's motion for attorney's fees, counsel for Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel suggested that the fee-shifting provision of N.D.C.C. ¶ 27-08.1-04 was clear and unambiguous on its face because the other sentences contained in the statute could be read to provide the context and clarity necessary to interpret the statute as the Legislature intended. See App. 169 (Mot. Hearing Tr. 20:7-21:10). Again, the defendants did not present any authorities to further support this claim.

[¶35] Because the interpretations of the fee-shifting provision of N.D.C.C. § 27-08.1-04 asserted by IBF and Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel are both plausible, and arguably persuasive, the language of N.D.C.C. § 27-08.1-04 should have been deemed ambiguous in terms of how the statute should apply in cases involving multiple parties or post-removal amendments to the parties' pleadings, such as the present case. See Werling v. Champion Healthcare Corp. at ¶ 45 (this Court upheld district court's finding that statute was ambiguous when parties offered differing, persuasive arguments regarding the statute's interpretation and application); Apple Creek Tp. v. City of Bismarck at 586 (a statute is ambiguous when both parties offer a "plausible" interpretation of the statute). By holding that the fee-shifting provision of N.D.C.C. § 27-08.1-04 is "not ambiguous" and refusing to consider extrinsic aids in interpreting and applying the statute to the facts of the present case, the district court misinterpreted and misapplied the statue.

B. The district court misinterpreted and misapplied N.D.C.C. § 27-08.1-04 by finding that the fee-shifting provision of N.D.C.C. § 27-08.1-04 applies only to a removing defendant.

[¶36] As stated above, when interpreting a statute, a court must construe the statute liberally with a view towards effectuating its legislative intent, promoting justice, and avoiding absurd or unjust results by first looking to the plain language of the statute and giving each word its ordinary meaning. See State v. Brown at ¶ 15 (citations omitted). In interpreting a statute, it is imperative that the court does not read or apply any one statute in isolation; instead, it must consider the "practical effects of the particular construction" of a statute, attempt to harmonize that construction with other existing statutes, and "avoid absurd or ludicrous results." In re D&P Terminal, Inc. at ¶ 17 ("Statutes are not to be read in isolation or applied in a vacuum . . . and we must consider the practical effects of a

particular construction and avoid absurd or ludicrous results.") (internal quotation marks and citations omitted); In re Midgett at ¶ 12 ("This Court must 'harmonize statutes to avoid conflict between them.").

[¶37] In the present case, the district court narrowly interpreted the fee-shifting provision of N.D.C.C. § 27-08.1-04 so as to apply only when a plaintiff prevails against the defendant who removed the original action to district court, and it denied IBF's motion for attorney fees. In reaching its decision, the district court refused to consider any extrinsic aids, such as legislative history, in interpreting N.D.C.C. § 27-08.1-04 and refused to reconcile its interpretation of the statute's fee-shifting provisions with other related statutes and rules. As a result, the district court interpretation and application of N.D.C.C. § 27-08.1-04 was contrary to the statute's very purpose and produced absurd results. Because the district court failed to interpret N.D.C.C. § 27-08.1-04 in a manner that effectuates its legislative purposes, harmonizes its construction with other related statutes and rules, and produces sound results intended by the legislature, the district court misinterpreted and misapplied the statute in denying IBF's motion for attorney fees.

i. The district court failed to construe N.D.C.C. § 27-08.1-04 in a manner consistent with its legislative intent.

[¶38] It is well-established that in order to interpret and apply an ambiguous statute, a court must use extrinsic aids to ascertain the statute's legislative intent. In doing so, a court must "presume the legislature did not intend an absurd or ludicrous result or unjust consequences" and the statute in question must be construed "in a practical manner, giving consideration to the context of the statute[] and the purpose for which [it was] enacted." State v. Brown at ¶ 15.

[¶39] In the present case, after determining that the language of N.D.C.C. § 27-08.1-04 was "not ambiguous," the district court refused to consider the statute's legislative history or the overarching purpose of the Small Claims Act in its application of the statute to the facts of the present case. App. 208, at ¶ 28. Instead, the district court narrowly interpreted the fee-shifting provision of N.D.C.C. § 27-08.1-04 to apply only when a plaintiff prevails against a defendant who is responsible for removing the action to district court and denied IBF's motion for attorney fees. Id., at ¶ 30. As a result, the district court found IBF did not obtain a judgment against the original removing defendants Mitzel Builders and Leeroy Mitzel and denied IBF's motion for attorney fees. Id. at ¶ 41.

[¶40] According to the district court's narrow interpretation of N.D.C.C. § 27-08.1-04, defendants can avoid the application of the statute's fee-shifting provisions by carefully manipulating the removal process to ensure the removing party does not have judgment obtained against it. This construction of N.D.C.C. § 27-08.1-04 not only ignores the legislative intent of the statute, but is completely contrary to its fundamental purposes, which is to discourage parties from improperly utilizing the statute's removal provisions as a way to frustrate and intimidate a plaintiff's ability to resolve a simple dispute through informal means. See App. 226 (Hearing on H.B. 1064 Before the H. Judiciary Comm., 59th Leg. Assembly (N.D. Jan. 10, 2005) (Rep. Klemin, member H. Judiciary Comm., discussing support of fee-shifting provision as a deterrent to abuse of the removal provision)). Because the district court adopted a construction of N.D.C.C. § 27-08.1-04 that is contrary to the legislative intent and ignores the context and purpose for which the statute was enacted, this Court, on appeal, must reject the district court's construction of N.D.C.C. § 27-08.1-04 and apply its fee-shifting provisions against Mitzel Contractors and

in favor of IBF. Alternatively, IBF requests that this Court liberally apply the ambiguous language of N.D.C.C. § 27-08.1-04 to grant its motion for attorney fees and to order Mitzel Builders and Leeroy Mitzel to pay those fees as the parties responsible from removing this action from small claims court to district court. See Apple Creek Tp. v. City of Bismarck at 585 (statutes must be "construed liberally, with a view to effecting its objects and to promoting justice").

ii. The district court failed to reconcile its construction of N.D.C.C. § 27-08.1-04 with other related statutes and rules.

[¶41] When interpreting and applying a statute, a district court must also attempt to reconcile its proposed construction of the statute with other related statutes and rules so as to avoid conflicts between them. See In re Midgett at ¶ 12 ("This Court must "harmonize statutes to avoid conflicts between them."). Because N.D.C.C. § 27-08.1-04 is a remedial statute that is a part of the Small Claims Act, it must be liberally construed and applied in order to effectuate the fundamental purpose of the Small Claims Act, which is to encourage informal resolution of simple disputes. See Svanes v. Grenz, 492 N.W.2d 576, 578 (N.D. 1992) ("[T]he relief sought by a layperson must be liberally construed to effectuate the purpose of the Small Claims Act.)"; Raaum v. Powers, 396 N.W.2d 306, 309 (N.D. 1986) ("With such a noble and praiseworthy purpose behind it, the Small Claims Act will be construed in favor of maintaining its simplicity and informality."); see also Gaab v. Ochsner, 2001 ND 195, ¶ 5, 636 N.W.2d 669 (remedial statute should be construed "liberally, with a view to effecting its objects and to promoting justice."). Moreover, because this matter became a civil action once it was removed to district court, and as a result, N.D.C.C. § 27-08.1-04 must be applied in manner that does not conflict with the rules and statutes applicable in civil proceedings, such as the North Dakota Rules of Civil

Procedure. Cf. Johnson v. State, 705 N.W.2d 830, 833–34 (N.D. 2005) (because a post-conviction proceeding is civil in nature, all rules and statutes applicable in civil proceedings are available to the parties).

[¶42] In the present case, the district court refused to consider the overarching purpose of the Small Claims Act in its interpretation and application of the fee-shifting provision of N.D.C.C. § 27-08.1-04. Instead, the district court applied N.D.C.C. § 27-08.1-04 in a manner that frustrates a plaintiff's ability to resolve simple disputes in small claims court because this application allows Defendants to nullify the statute's fee-shifting provision, which was meant to deter improper removal to district court, by careful manipulation of the removal process. App. 208, at ¶ 31; but see See Svanes v. Grenz at 578 ("[T]he relief sought by a layperson must be liberally construed to effectuate the purpose of the Small Claims Act.)"; Raaum v. Powers at 308 ("With such a noble and praiseworthy purpose behind it, the Small Claims Act will be construed in favor of maintaining its simplicity and informality."). Said otherwise, by carefully utilizing the removal procedure to ensure that the removing defendant does not have judgment taken against it, defendants in multi-defendant cases will be able to completely avoid the application of N.D.C.C. 27-08.1-04 in cases that are removed to district court.

[¶43] Moreover, in formulating its construction of N.D.C.C. § 27-08.1-04, the district court refused to reconcile its proposed interpretation with the statutes and rules associated with formal civil proceedings. According to it *Memorandum Order*, the district court rejected IBF's argument that all amendments it made to its pleadings relate back to the original claim affidavit under N.D.R.Civ.P. 15(c) and described the arguments as "legally flawed." App. 208, at ¶ 42; see also id., at ¶ 43. In doing so, the district court offered no

analysis of why it refused to apply Rule 15(c)'s relation back principles to this case; instead, the district court stated that because the "correct party" was not named in the "flawed" claim affidavit, it would be improper to adopt IBF's argument that Rule 15(c) applied. See id., at ¶¶ 43-44.

[¶44] Because the district court's narrow interpretation of the fee-shifting provision of N.D.C.C. § 27-08.1-04 is contrary to the legislative intent of the statute and stands in direct conflict with the application of the Small Claims Act and the North Dakota Rules of Civil Procedure, this Court must reject the district court's construction of N.D.C.C. § 27-08.1-04 and the application of its fee-shifting provision. Instead, this Court should interpret and apply N.D.C.C. § 27-08.1-04 in a manner that not only encourages informal resolution of disputes in small claims court but one that also harmonizes its application with that of the other statutes and rules associated with formal civil proceedings, such as the North Dakota Rules of Civil Procedure. Johnson v. State at 833-34 (if a proceeding is civil in nature, then all rules and statutes applicable in civil proceedings are available to the parties). For example, because Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel were controlled by one party and all shared common knowledge of the underlying facts of the dispute, this Court's interpretation of N.D.C.C. § 27-08.1-04 should be constructed so as to allow the relation back principles of N.D.R.Civ.P. 15(c) to apply as they would in any other civil proceeding. See Wayne-Juntunen Fertilizer Co. v. Lassonde, 474 N.W.2d 254, 255 (N.D. 1990) ("The classic case satisfying Rule 15(c) and, thus, supporting relation back of an amended complaint, involves a corporation that knew prior to the expiration of the statute of limitations that it, and not a subsidiary, was the proper defendant and it would have been sued but for a mistake concerning the identity of the proper party."). In other words,

because Mitzel Builders, Mitzel Contractors, and Leeroy Mitzel were all aware that Mitzel Contractors was the party that entered into the agreement with IBF and that, but IBF making a mistake regarding the proper party, Mitzel Contractors would have been sued, IBF's amended pleadings should relate back to the initial Claims Affidavit. Id.

[¶45] Therefore, because the district court failed to reconcile its construction of N.D.C.C. § 27-08.1-04 with other related statutes and rules, such as the Small Claims Act or the North Dakota Rules of Civil Procedure, IBF respectfully requests that this Court reject the district court's interpretation of N.D.C.C. § 27-08.1-04.

iii. The district court failed to interpret N.D.C.C. § 27-08.1-04 in a manner that avoids absurd or ludicrous results.

[¶46] In interpreting an ambiguous statute, it is imperative that a court does not read that statute in insulation or attempt to apply it in a vacuum. In re D&P Terminal, Inc. at ¶ 17 ("Statutes are not to be read in isolation or applied in a vacuum . . . and we must consider the practical effects of a particular construction and avoid absurd or ludicrous results."). Instead, a court must consider the practical effects of its particular construction and avoid absurd, ludicrous, or unjust results. See State v. Brown at ¶ 15 (internal quotation marks and citations omitted).

[¶47] In the present case, the district court interpreted and applied N.D.C.C. § 27-08.1-04 in a manner that applies the statute's fee-shifting provisions only in cases where the plaintiff obtains a judgment against the defendant responsible for removal. By doing so, the district court offers a construction of N.D.C.C. § 27-08.1-04 that allows defendants to essentially nullify the statute's fee-shifting provision by careful manipulation of the statute's removal procedure. Because the fee-shifting provision of N.D.C.C. § 27-08.1-04 was intended to discourage parties from improperly removing cases to frustrate and

intimidate a plaintiff's ability to seek relief in small claims court, it would be absurd to adopt the district court's interpretation and application of the statute when that interpretation completely neutralizes the deterrent effects of the statute. Therefore, this Court should reject the district court's misinterpretation and misapplication of N.D.C.C. § 27-08.1-04 and apply its fee-shifting provision in a manner that is consistent with the statute's purpose and that avoids absurd, ludicrous, and unjust results.

C. The district court misinterpreted and misapplied N.D.C.C. § 27-08.1-04 by failing to award IBF the full amount of attorney fees incurred in prosecuting its claims.

[¶48] Under N.D.C.C. § 27-08.1-04, a prevailing plaintiff is entitled to the full amount of attorney's fees incurred in bringing its claims against Leeroy and his two companies. According to the statute's legislative directive, its fee-shifting provision is intended to prevent or discourage parties from improperly utilizing the statute's removal provisions as a way to frustrate and intimidate a plaintiff's ability to resolve a simple dispute through informal means. See App. 226 (Hearing on H.B. 1064 Before the H. Judiciary Comm., 59th Leg. Assembly (N.D. Jan. 10, 2005) (Rep. Klemin, member H. Judiciary Comm., discussing support of fee-shifting provision as a deterrent to abuse of the removal provision)). Although a decision to award attorney's fees is generally within a district court's broad discretion, the fee-shifting provision of N.D.C.C. § 27-08.1-04 specifically mandates that a district court must award a prevailing plaintiff its attorney's fees in any matter removed from small claims court to district court. See Lynch v. Sweeney, 2007 ND 81, ¶ 10, 732 N.W.2d 377 ("A decision to award attorney fees is generally in the court's discretion . . . .").

[¶49] As discussed in its motion for attorney fees, in order to prosecute its claims against Leeroy, Mitzel Builders, and Mitzel Contractors, IBF was forced to incur $66,968.00 in attorney's fees. See Index No. 152, at ¶ 26. Although this amount dwarfs the actual amount in dispute, these attorney's fees were necessary in light of Leeroy Mitzel's relentless obstruction of the discovery process and vexatious and belligerent litigation tactics. Rather than allowing this simple dispute to be resolved in small claims court as it should have been, Leeroy Mitzel removed the matter to district court and launched a campaign to obfuscate the matter and prevent IBF from pursuing its valid claims against him and his companies. However, once faced with the overwhelming evidence against him and his companies, Leeroy Mitzel admitted liability on behalf of Mitzel Contractors, confessed judgment in favor of IBF, and remitted payment to IBF for the full amount due and owing. See Leeroy Mitzel Dep. 133:6-135:6 (Leeroy Mitzel admitted Mitzel Contractors was the party responsible for the debt owed to IBF).

[¶50] Therefore, based upon the plain language of N.D.C.C. § 27-08.1-04, IBF requests this Court to award it the full amount of attorney's fees incurred in this matter. In doing so, this Court can ensure that it properly effectuates the purposes of N.D.C.C. § 27-08.1-04 by discouraging abuse of the statute's removal provision and harmonizes the statute with the overarching purposes of the Small Claims Act and other related statutes. See Continental Cas. Co. v. Kinsey, 499 N.W.2d 574, 580 (N.D. 1993) (courts "attempt related statutory provisions, giving meaningful effect to each provision, while accomplishing the legislative objective.") (citations omitted).

CONCLUSION

[¶51] In sum, after determining that N.D.C.C. § 27-08.1-04 was not ambiguous, the district court interpreted the statute based upon its explicit language without any regard for the intent and purpose of the fee-shifting provision of N.D.C.C. § 27-08.1-04. Under its narrow interpretation of N.D.C.C. § 27-08.1-04, the district court specifically held that the statute's fee-shifting provisions only applied if the plaintiff obtained a judgment against the original removing party – not a defendant added after removal. Because this interpretation ignores the entire intent and purpose of the fee-shifting provisions of N.D.C.C. § 27-08.1-04 and results in absurd or ludicrous results, this Court must reject the district court's construction of the statute and properly apply the statute as proposed by IBF and award it the full amount of attorney fees it incurred in prosecuting its claims.

Dated: February 11, 2019.

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By *<u>/s/ Andrew L. Askew</u>*

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Interiors by France, Plaintiff and Appellant, v. Mitzel Contractors, Inc. d/b/a Mitzel Homes, Mitzel Builders, Inc., Leeroy Mitzel, an individual, and Eddy Mitzel, an individual, Defendants and Appellees.	Supreme Court No. 20180399 Civil Case No. 30-2016-CV-00803 **CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2019, the following document:

1. Appellant's Brief;
2. Appendix to Appellant's Brief; and
3. Certificate of Service

were filed electronically by e-mail with the Clerk of the North Dakota Supreme Court at supclerkofcourt@ndcourts.gov and were served electronically and by regular mail on the following:

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