

IN THE SUPREME COURT OF IOWA

APPEAL NO. 21-0679
(Dallas County No. LACV042473)

AMANDA DESOUSA, f/k/a
AMANDA JOHNSTON,
Plaintiff-Appellee,

vs.

IOWA REALTY CO., INC.,
Defendant-Appellant,

and

MELISSA FYNAARDT
and MATTHEW FYNAARDT,
Defendants.

NATIONAL ASSOCIATION OF
REALTORS® AND IOWA
ASSOCIATION OF
REALTORS®' MOTION FOR
LEAVE TO FILE AMICI
CURIAE BRIEF IN SUPPORT
OF APPELLANT

COME NOW the National Association of REALTORS® (“NAR”) and the Iowa Association of REALTORS® (“IAR”) and, in support of their Motion for Leave to File Amici Curiae Brief in Support of Appellant Iowa Realty Co., Inc. (hereinafter “Appellant”), state as follows:

1. Iowa Rule of Appellate Procedure 6.906 allows non-parties to file an amicus curiae brief within a pending appeal under certain circumstances. The non-party may obtain permission to file such a brief by filing a motion for leave to file the amicus curiae brief, and the Appellate

Court has “broad discretion in determining whether an amicus curiae brief should be allowed.” Iowa R. App. P. 6.906(5).

2. Pursuant to Iowa Rule of Appellate Procedure 6.906(5)(a), a Court “will ordinarily grant a motion for leave to file an amicus curiae brief if . . . [t]he proposed amicus curiae has a unique perspective or information that will assist the court in assessing the ramifications of any decision rendered in the present case.” Iowa R. App. P. 6.906(5)(a)(3).

3. As described in detail below, the NAR and IAR have a unique perspective on the potential ramifications of any decision rendered in this matter.

4. The NAR was founded as the National Association of Real Estate Exchanges in 1908.

5. With over 1.4 million members, the NAR is America’s largest trade association.

6. The NAR’s membership is comprised of residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Currently, members belong to one or more of approximately 1,200 local associations or boards and 54 state and territory associations.

7. The NAR's mission is to empower REALTORS® as they preserve, protect, and advance the right to real property for all.

8. The IAR was formed in 1949.

9. Currently, the IAR has nearly 8,200 members, including Iowa brokers, licensed agents, inspection companies, mortgage companies, banks, and other companies affiliated with the real estate industry.

10. The IAR's mission includes: (a) empowering members, industry partners, and communities; (b) engaging the public on the value of home ownership and protecting private property rights; and (c) elevating integrity, inclusion, and transparency of the profession.

11. This appeal involves issues of great significance to the real estate industry. In particular, this appeal involves questions regarding whether and to what extent a real estate agent has a duty to others for purposes of premises liability in the underlying situation of prospective buyers touring a listed house--a situation encountered every day in the real estate industry. As such, this Court's decision could substantially change or otherwise affect the practices of thousands of real estate agents throughout Iowa, and potentially over a million real estate agents nationwide. With their decades of experience and 1.4 million and 8,200 members in the real estate industry respectively, the NAR and IAR have a unique perspective on the potential ramifications of the

District Court’s decision and the issues presented by the parties on appeal, and as such, the NAR and IAR desire to file an amici curiae brief in support of Appellant’s position in this appeal.

12. The NAR and IAR affirmatively state that the Iowa Supreme Court and Iowa Court of Appeals have regularly allowed statewide industry associations to file amicus curiae briefs in cases involving issues within those industries. *E.g.*, *MidWestOne Bank v. Heartland Co-op*, 941 N.W.2d 876, 882 (Iowa 2020) (Iowa Bankers Association, Agriculture Legal Defense Fund, and Iowa Institute for Cooperatives were each permitted to file an amicus curiae brief); *Griffin Pipe Prods. Co., Inc. v. Bd. of Review of Cty of Pottawattamie*, 789 N.W.2d 769, 772 (Iowa 2010) (noting that “[a]fter the case was submitted, the court invited the Iowa Attorney General, the Iowa Association of Business and Industry, and the Iowa Association of Counties to file amicus briefs. All three filed amicus briefs, which proved very helpful to the court in this case.”); *Sapp v. Purethane, Inc.*, 662 N.W.2d 374 (Iowa App. 2003) (Iowa Trial Lawyers Association was permitted to file an amicus curiae brief); *Mueller v. St. Ansgar State Bank*, 465 N.W.2d 659 (Iowa 1991) (Iowa Bankers Association was permitted to file an amicus curiae brief); *Bd. of Directors of Sioux City Cmty. Sch. Dist. v. Mroz*, 295 N.W.2d 447, 450 (Iowa 1980) (Iowa State Education Association was permitted to file an amicus curiae brief);

Briggs v. Bd. of Directors of Hinton Cmty. Sch. Dist., 282 N.W.2d 740, 744 (Iowa 1979) (Iowa Association of Elementary School Principals was permitted to file an amicus curiae brief); *Chicago Title Ins. Co. v. Huff*, 256 N.W.2d 17, 20 (Iowa 1977) (noting that the Court had been “materially aided in resolving these questions by able amicus curiae briefs submitted on behalf of intervenors, Iowa State Bar Association and Iowa Land Title Association.”); *State Bd. of Regents v. United Packing House Food & Allied Workers, Local No. 1258*, 175 N.W.2d 110, 119 (Iowa 1970) (Iowa Nurses Association was permitted to file an amicus curiae brief).

13. Based upon the foregoing, the NAR and IAR’s amici curiae brief will assist the Court in resolving the issues preserved for appellate review, and this Court should, therefore, grant this motion for leave.

WHEREFORE the National Association of REALTORS® and the Iowa Association of REALTORS® request that the Court grant their motion for leave to file an amici curiae brief and enter all such other relief the Court deems just, equitable and appropriate.

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2021, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

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