

IN THE SUPREME COURT OF IOWA

No. 11-1842

Filed April 4, 2014

**THE VILLAGE AT WHITE BIRCH TOWN
HOMEOWNERS ASSOCIATION,**

Appellant,

vs.

**NORANDEX BUILDING MATERIALS DISTRIBUTION, INC.,
RBM-II, L.C., and WOLF CONSTRUCTION COMMERCIAL, INC.,**

Appellees.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Homeowners' association seeks further review of court of appeals decision affirming district court's grant of summary judgment to subcontractors. **AFFIRMED BY OPERATION OF LAW.**

George A. LaMarca, Ryan C. Nixon, and Philip J. DeKoster of LaMarca & Landry, P.C., Des Moines, for appellant.

Steven K. Scharnberg and Eric G. Hoch of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee Norandex Building Materials Distribution, Inc.

Jeffrey D. Stone of Whitfield & Eddy, P.L.C., Des Moines, for appellee RBM-II, L.C.

William L. Dawe and Patrick T. Vint of Hopkins & Huebner, P.C.,
Des Moines, for appellee Wolf Construction Commercial, Inc.

Charles F. Becker of Belin McCormick, P.C., Des Moines, for
amicus curiae.

CADY, Chief Justice.

White Birch Town Homeowner's Association (White Birch HOA)¹ filed suit against various subcontractors that provided materials and services during the construction of the Village at White Birch. The suit, which was brought after the general contractor/developer of the community filed for bankruptcy, alleged negligence and breach of the implied warranty of workmanlike construction. The subcontractors moved for summary judgment on White Birch HOA's claims, and the district court granted the motions. White Birch HOA appealed, and the court of appeals affirmed the district court's grant of summary judgment. White Birch HOA sought, and we granted, further review.

After reviewing the record and considering the arguments presented, the justices are equally divided. The Iowa Code provides: "When the supreme court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision of the supreme court is of no further force or authority." Iowa Code § 602.4107 (2013).

The court, being equally divided, declares this case affirmed by operation of law. See Iowa Code § 602.4107. For affirmance of the decision of the court of appeals and district court judgment, Cady, C.J., and Waterman and Zager, JJ.; for vacation of the decision of the court of appeals and reversal of the district court judgment, Wiggins, Hecht, and Appel, JJ.

AFFIRMED BY OPERATION OF LAW.

Mansfield, J., takes no part.

This opinions shall not be published.

¹White Birch's individual homeowners assigned to White Birch HOA their rights to claims and damages arising from the building defects affecting townhomes in White Birch.