IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 53040

JOHN KUMM and CHERYL KUMM, husband and wife,	)	
	)	**Boise, August 2026 Term**
Plaintiffs-Counterdefendants-Appellants,	)	**Opinion filed: November 12, 2026**
v.	)	**Melanie Gagnepain, Clerk**
THE WORK SHOP & SONS LTD, an Idaho corporation	)	
Defendant-Counterclaimant-Respondent,	)	
and	)	
KYLE CROMER and JESSICA CROMER, husband and wife, individually, and as the members of The Work Shop & Sons Ltd,	)	
Defendants-Respondents.	)	

Appeal from the District Court of the Second Judicial District of the State of Idaho, Clearwater County. Adam H. Green, District Judge.

The district court's order of dismissal is reversed and remanded for further proceedings.

Roberts | Freebourn, PLLC, Spokane, Washington, for Appellants. Chad Freebourn argued.

Blewett, Mushlitz, Hally, LLP, Lewiston, for Respondents Kyle Cromer, Jessica Cromer, and The Work Shop & Sons Ltd. Jonathan D. Hally argued.

MOELLER, Justice.

This appeal addresses whether a contract entered into by an unregistered contractor in violation of the Idaho Contractor Registration Act ("ICRA") is void or voidable as to an aggrieved project owner. *See* I.C. § 54-5217. John and Cheryl Kumm (the "Kumms" or "project owners") and the Work Shop & Sons Ltd ("the Work Shop") signed an "Independent Contractor Agreement"

("Agreement") to construct a stick-frame home on the Kumms' property. However, at the time the parties executed the Agreement, the Work Shop was not a registered contractor, placing it in violation of ICRA. After issues arose during construction, the Kumms sued the Work Shop and Kyle and Jessica Cromer (the "Cromers"), the sole owners of the Work Shop, for (1) breach of contract, (2) breach of the implied warranty of merchantability, and (3) fraudulent, malicious, and wrongful billing. The Work Shop counterclaimed, asserting that the Kumms prevented it from completing its work and unilaterally terminated the Agreement without cause.

The district court dismissed the Work Shop's counterclaims based on its failure to register as a contractor under ICRA. Later, the district court also dismissed the Kumms' claims and granted summary judgment to the Work Shop, ruling that because the Agreement was not a valid contract due to the Work Shop's failure to register as a contractor, the Agreement was also void as to the Kumms. The Kumms appealed. For the reasons we discuss below, we reverse the district court's dismissal of the Kumms' breach of contract claim on summary judgment and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 23, 2021, the Kumms and the Work Shop entered into an Agreement to construct a stick-frame home on the Kumms' property in Elk River, Idaho. The Kumms alleged that "[s]everal issues arose during the course of the project that were never corrected, including [but not limited to,] water continuing to leak under the foundation, mold in the subfloor, the building being left open to the elements over winter, [and] the site being graded improperly[.]" On November 5, 2022, the Kumms hired an experienced contractor to conduct an onsite inspection and obtain an estimate for the costs and repairs needed to finish the home, which listed numerous issues in need of remedy. In April 2024, after litigation commenced, the Kumms again obtained a report from a third party that estimated that repairs and completion work would cost $331,034.30. The Kumms argued both reports established that the Work Shop's construction was "defective, incomplete, and in need of repair."

The Kumms claimed they provided numerous opportunities for the Work Shop to correct these issues, but that it failed to do so. They also alleged that the Clearwater County Building Inspector issued multiple "Stop Work" orders because of the Work Shop's failure to complete these necessary repairs. On May 24, 2022, the Kumms provided the Work Shop with a Notice and Opportunity to Repair letter pursuant to the Notice and Opportunity to Repair Act ("NORA"). *See*

I.C. §§ 6-2501 to 6-2504. They claimed that the Work Shop had failed to correct the list of items outlined in the Stop Work orders. From August 2021 to January 2022, the Kumms paid the Work Shop $305,033.57 over the course of several invoices. They argued that these invoices were fraudulent, wrongful, and malicious because the Work Shop had not yet begun the work it listed in the invoices. In response, the Work Shop maintained that these were advance payments that were expressly allowed in the Agreement and typical in contractor agreements.

On September 2, 2022, the Kumms filed a complaint alleging that the Work Shop had fraudulently billed for its services, breached the Agreement, and breached the implied warranty of merchantability by failing to return to the property and complete construction. They amended their complaint on December 9, 2022. The Kumms' fraudulent billing claim was brought only against the Cromers, personally, and in later filings, the Kumms argued that the corporate veil should be pierced to hold the Cromers individually liable because they had failed to maintain a distinct identity from the Work Shop.

In its answer, the Work Shop argued that the assertion it failed to return to the job was misleading because the Work Shop had been prevented from completing the work before the Kumms filed their complaint. It claimed that the Kumms' issues began when melted snow seeped under the foundation. The parties then came to an oral agreement to let the area dry out and pour controlled density fill ("CDF") to prevent water from compromising the foundation further, but the Kumms brought an inspector on site before work was finished and ready for inspection. The Work Shop asserted that this was premature and contrary to ordinary practice because "[t]ypically, the contractor schedules the inspections when the work to be inspected is at the stage of completion to be inspected." After this inspection, the first Stop Work order was issued by the Clearwater County Building Inspector. The Work Shop maintained that the County Inspector stated that the problems identified during the inspection were not well founded because the work was neither complete nor ready for inspection. Thus, the work was not "defective," but merely unfinished. Clearwater County then advised the Work Shop to acquire the Kumms' approval to have the order lifted.

The Work Shop claimed it received permission to continue work after contacting the Kumms, but another Stop Work order was soon issued because the Kumms believed water leaked under the foundation again. The Work Shop asserted that the water was an expected result of the CDF self-leveling process. Accordingly, its usual and expected remedy was to "put a fan in there

and let it dry out." Yet, during this second Stop Work order, the Work Shop was forced to leave the CDF unprotected, thereby causing the CDF to wash out when it rained again. A meeting was then set with the Work Shop, the building official, the inspector, and the Kumms. The Work Shop alleged that the inspector agreed that the Kumms' complaints stemmed from a misunderstanding, but because the CDF had washed away during the interim of the Stop Work order, it had to be removed and redone. The Work Shop agreed to redo the CDF and believed this was the plan agreed upon to move forward. Yet, soon after this meeting, the Work Shop received the Kumms' Notice and Opportunity to Repair letter, which placed the Work Shop "under the impression that [it] was not permitted back on the Kumm's [sic] property without the Kumm's [sic] permission." The Work Shop stated it was "confused by the letter as [it] had left the meeting with the understanding that the Kumms were fine with the construction and were fine with [it] to move forward with the completion of the work."

The Work Shop's counsel responded to the letter on June 22, 2022, writing, "I am providing a more informal response in hopes of resolving issues as it appears some of the problems may be due to timing issues and some mis-communications." He contacted the Kumms multiple times, including via email on July 14, 2022, stating, "[p]lease let me know if your clients had any response to the June 22nd letter . . . and whether or not they are permitting my client to complete the construction." Counsel asserted that he never received a response from the Kumms permitting completion. Instead, the next communication he received was a copy of the Complaint filed on September 2, 2022.

The Work Shop counterclaimed, asserting breach of contract via the prevention of construction and unilateral termination of the contract. It also asserted that the Kumms had "impaired a benefit of the contract which was to be enjoyed by [t]he Work Shop," thereby breaching the covenant of good faith and fair dealing.

Important to this appeal, the Work Shop's contractor registration expired on April 11, 2021, approximately 100 days before the Agreement was signed. The Work Shop claimed this was because it mistakenly failed to pay the annual administrative fee before its registration expired. On October 22, 2021, approximately 90 days after the Agreement was signed, the Work Shop paid the fee and the Idaho Division of Occupational and Professional Licenses reinstated its registration. The Kumms maintain that the Work Shop was an unregistered contractor when the parties executed the Agreement on July 23, 2021, in direct violation of ICRA, which states that "any

person acting in the capacity of a contractor . . . without a current registration . . . shall be guilty of a misdemeanor." I.C. § 54-5217(1). The Kumms argue that, under ICRA, a contractor may not enforce a contract for work performed while unregistered. I.C. § 54-5217(2).

On January 3, 2024, the Kumms moved for summary judgment against the Work Shop's counterclaims and asserted that the Work Shop's claims should all fail as a matter of law because it had violated ICRA. The Work Shop filed a memorandum in opposition to the Kumms' motion for summary judgment on January 23, 2024. The Work Shop argued that the district court should allow its recovery because it had substantially complied with ICRA by maintaining the statute's other, more costly requirements, such as maintaining general liability and worker's compensation insurance during the time in which the Work Shop's registration had lapsed.

The district court granted the Kumms' summary judgment motion and ruled that the Work Shop could not perform its contractual obligations without violating ICRA, thereby rendering the Agreement void and unenforceable as a matter of law. The court also ruled that the Work Shop's temporary lapse in registration lasted "far too long" to qualify as substantial compliance. The district court acknowledged that, while the result seemed harsh, it was applying the "plain and unambiguous" language of the statute. The court then ruled that because the Agreement was void, it could not form the basis for the Work Shop's claims and dismissed its counterclaims.

The Kumms then filed another motion for summary judgment addressing their breach of contract, implied warranty of merchantability,[1] and fraudulent billing claims. The Work Shop responded by filing its own motion for summary judgment seeking to dismiss the Kumms' claims. It argued that the breach of contract and implied warranty of merchantability claims stemmed from a contract previously ruled void and unenforceable by the court, which necessitated dismissal. The Work Shop also argued that the fraudulent billing claim should be dismissed because the claim was only brought against the Cromers personally, and there was insufficient evidence to pierce the corporate veil.

The Kumms filed a response to the Work Shop's motion for summary judgment and argued that the intent of ICRA was to penalize unlicensed contractors, not the innocent parties with whom

[1] The district court noted: "[i]n their briefing, the Kumms recharacterized this [implied merchantability] claim as alleging the construction breached the implied warranty of habitability." (Capitalization omitted.) On appeal, the Kumms characterized the claim as the implied breach of merchantability. Regardless of whether it is deemed a breach of the covenant of habitability or merchantability, this distinction is likely immaterial on appeal, as both warranties stem from the Agreement. Additionally, while the Kumms included this issue in their "Assignments of Error" on appeal, they failed to make any argument concerning it in their briefing.

they contract. Accordingly, they asserted that dismissal of the Kumms' claims was against public policy and the overall intent of the statute. The Kumms also asserted that conflicting evidence about the fraudulent billing claim and motion to pierce the corporate veil made dismissal improper.

The district court agreed with the Work Shop and dismissed the Kumms' claims with prejudice. It found that the Kumms' claims could not survive as a matter of law because they arose from a void and unenforceable contract. Moreover, dismissal of the claims was not against public policy because the Kumms had not been left without redress. While no adequate remedy existed *under the contract*, they had retained the ability to pursue claims in equity. In their Notice and Opportunity to Repair letter, the Kumms demonstrated awareness of their ability to file equitable claims by writing, "if you fail to provide a written response, [the Kumms] will have no other alternative but to seek all remedies available to them in law and in equity." Despite this statement, the district court noted that, "[w]hile unjust enrichment was raised as an affirmative defense to the dismissed counterclaims, no affirmative equitable claims were brought by [the Kumms]." The Kumms have not challenged the court's ruling on their equitable claims on appeal.

The district court also ruled that there was insufficient evidence to pierce the corporate veil and, based on this analysis, the fraudulent billing claim brought against the Cromers failed as a matter of law. Lastly, the court declined to grant either party attorney fees or costs because the mutual dismissal of claims had resulted "in what [was] essentially a draw." With no prevailing party, the court ruled that each party would bear its own attorney fees and costs. The Kumms timely appealed.

II. STANDARDS OF REVIEW

This Court reviews a grant of summary judgment de novo, employing the same standard used by the district court in ruling on the motion for summary judgment. *Kelso v. Applington*, 173 Idaho 738, 742, 548 P.3d 363, 367 (2024). "Summary judgment is appropriate 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' " *Summerfield v. St. Luke's McCall, Ltd.*, 169 Idaho 221, 228, 494 P.3d 769, 776 (2021) (quoting I.R.C.P. 56(a)). "All disputed facts are to be construed liberally in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the nonmoving party." *Foster v. Traul*, 145 Idaho 24, 28, 175 P.3d 186, 190 (2007). "To create a genuine issue of material fact, there must be more than a mere scintilla of evidence or slight doubt but instead [there] must be evidence upon which a jury may rely."

Smallwood v. Little, 176 Idaho 857, ___, 583 P.3d 149, 153 (2026) (citing *Fragnella v. Petrovich*, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012)).

If there are no genuine issues of material fact, the case presents a pure question of law over which this Court exercises free review. *Hastings v. Idaho Dep't of Water Res.*, 173 Idaho 704, 710–11, 547 P.3d 1190, 1196–97 (2024) (citation omitted).

III. ANALYSIS

A. The Kumms properly appealed the district court's summary judgment rulings.

As a preliminary matter, the Work Shop argues that the Kumms' appeal is not properly before this Court. It argues that the district court's denial of the Kumms' summary judgment motion is not an appealable order under the Idaho Appellate Rules. We address this threshold issue before evaluating the merits of the Kumms' arguments on appeal.

"It is well settled . . . that an order denying a motion for summary judgment is an interlocutory order from which no direct appeal may be taken," and that such an order is not among the judgments appealable as a matter of right under Idaho Appellate Rule 11. *Am. Bank v. BRN Dev., Inc.*, 159 Idaho 201, 205–06, 358 P.3d 762, 766–67 (2015) (citation modified). The rule is intended to prevent an appellant who has had a trial on the merits from ignoring the trial record and relying on a superseded record as the factual basis for its appeal. *Garcia v. Windley*, 144 Idaho 539, 542, 164 P.3d 819, 822 (2007). Here, the Kumms have not asked us to review the denial of their motion for summary judgment in isolation. The district court also granted summary judgment to the Work Shop, dismissing the Kumms' claims and entering the final judgment from which they appeal. That final judgment is appealable as a matter of right and on appeal we may review the grant of summary judgment that produced it. I.A.R. 11(a)(1); *see Grover v. Wadsworth*, 147 Idaho 60, 66, 205 P.3d 1196, 1202 (2009) (reviewing a grant of summary judgment on appeal from the resulting final judgment). Therefore, we can review the grant of summary judgment dismissing the Kumms' breach of contract claim.

Moreover, the Kumms adequately preserved the issue in their opening brief on appeal. Their brief includes a section labeled "Assignments of Error" which stated: "The Trial Court erred by refusing to grant Plaintiffs' motion for summary judgment on their claims for breach of contract and related breach of implied warranty of merchantability." Taken alone, this would seem to support the Work Shop's argument. However, in the "Statement of Issues Presented on Appeal," they identified the following issue: "Did the Trial Court err when [it] found the Idaho Contractor

Registration Act rendered the Contract Void and Unenforceable against the Work Shop?" Thus, the Kumms were clearly asserting that both the denial of summary judgment to them, and the granting of summary judgment to the Work Shop, were erroneous. This issue is consistent with the gravamen of the Kumms' appellate briefing, which consistently argues that the district court erred in dismissing their contract claims because, on summary judgment, the Agreement was deemed void under ICRA. The Kumms later clarified their argument in their reply brief by noting that the Kumms were "appealing the Memorandum Decision and Order that not only denied Plaintiffs' Motion for Summary Judgment but [also] granted the Work Shop's summary judgment motion dismissing the Kumms' claims." (Emphasis omitted.)

Although the Kumms' opening brief may have inartfully set forth this issue in their "Assignments of Error," we conclude that a fair reading of the entirety of their opening brief makes it manifestly clear that they were appealing both the dismissal of their claims based on the denial of their motion for summary judgment *and* the granting of summary judgment in the Work Shop's favor. These two rulings worked in concert and formed the basis of the final judgment dismissing the Kumms' case. Therefore, we conclude that the Kumms' appeal is properly before this Court.

B. We decline to consider the Kumms' implied warranty of merchantability claim and their motion to pierce the corporate veil because they failed to support these issues with relevant argument and authority.

The Idaho Appellate Rules require that the appellant's brief "contain the contentions of the appellant with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon." I.A.R. 35(a)(6). This Court has also maintained that "[w]e will not consider claims that are not supported by relevant argument and authority." *Turner v. Turner*, 155 Idaho 819, 824, 317 P.3d 716, 721 (2013); *see also State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) ("When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.").

The Kumms only briefly mentioned the implied warranty of merchantability in their "Assignments of Error" on appeal, where they argue that "[t]he Trial Court erred by refusing to grant Plaintiffs' motion for summary judgment on their claims for breach of contract and related breach of implied warranty of merchantability." They also failed to mention their motion to pierce the corporate veil and hold the Cromers personally liable for fraudulent billing in their briefings. Accordingly, because the Kumms have failed to include relevant argument or authority as required, their implied warranty of merchantability claim is not preserved. Additionally, because they have

failed to include a relevant argument against the Cromers personally and individually, this issue is deemed waived on appeal. However, they have properly preserved their breach of contract claim, which will be considered below.

C. The district court erred by ruling that the Agreement was unenforceable as to both parties.

The district court found that the Work Shop was not a registered contractor as required under ICRA and concluded that this rendered the Agreement void and unenforceable for both parties. Neither party challenges the finding that the Work Shop violated ICRA by failing to timely register as a contractor before entering into the Agreement. Moreover, neither party challenges that the Work Shop cannot bring or maintain an action under the Agreement. The issues on appeal concern whether the ICRA violation renders the contract void or voidable and whether the Kumms may still be able to recover under the Agreement.

The Kumms' main argument on appeal is that ICRA does not render the Agreement void and unenforceable against both parties. The Work Shop argues that the Kumms' statutory analysis ignores well-settled law that establishes that, under ICRA, the Agreement is illegal, void, and unenforceable. While we agree with the Work Shop that prior caselaw indicates that unregistered contractors may not enforce a contract under ICRA, whether a contract that violates ICRA is truly illegal and void or merely voidable has not been addressed.

This matter presents an issue of first impression for this Court. In a typical dispute involving an unregistered contractor under ICRA, it is the contractor that is attempting to enforce the contract to recover compensation. Idaho Code section 54-5217(2) provides:

> *No person engaged in the business or acting in the capacity of a contractor*, unless otherwise exempt, *may bring or maintain any action* in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter without alleging and proving that he was a duly registered contractor, or that he was otherwise exempt as provided for in this chapter, at all times during the performance of such act or contract.

I.C. § 54-5217(2) (emphasis added). Based on this language, we have consistently held that an unregistered contractor is precluded by Idaho Code section 54-5217(2) from enforcing a contract entered in violation of the statute. *AED, Inc. v. KDC Invs., LLC*, 155 Idaho 159, 167–68, 307 P.3d 176, 184–85 (2013). We have referred to such contracts as "illegal" and "void," and have refused to enforce them. *See, e.g.*, *Farrell v. Whiteman*, 146 Idaho 604, 609, 200 P.3d 1153, 1158 (2009) ("[C]ontracts which involve consideration that is expressly prohibited by the relevant prohibitory

statute are void." (emphasis omitted)); *see also Zimmerman v. Brown*, 30 Idaho 640, 45-46, 166 P. 924, 926 (1917) ("Where a license is prescribed by statute . . . , contracts violative thereof because of lack of the license are void."). However, these cases focused on the noncomplying contractor's ability to recover under the contract; therefore, the distinction between the contract being genuinely void and unenforceable rather than merely voidable did not matter. Here, for the first time, we are met with an issue in which this distinction matters.

"The fact that a particular contract is described by statute or regulation as 'illegal,' 'unenforceable,' or 'void' is merely the beginning, not the conclusion, of the inquiry[.]" Restatement (Third) of Restitution and Unjust Enrichment § 32 cmt. a (2011). This is borne out by the fact that "the word 'void' has been used, even by judges and the framers of statutes, where 'voidable' is meant." *Contract*, *Black's Law Dictionary* (12th ed. 2024) (quoting William R. Anson, *Principles of the Law of Contract* 20–21 (Arthur L. Corbin ed., 3d Am. ed. 1919)). We note that this Court, along with many others, has often misused or conflated the words "void" and "illegal" when describing contracts that violate ICRA. We take this opportunity to clarify the difference between a truly void contract and a voidable contract.

"[A] void contract is '[a] promise for breach of which the law neither gives a remedy nor otherwise recognizes a duty of performance by the promisor . . . . [S]uch a promise is not a contract at all; it is the 'promise' or 'agreement' that is void of legal effect.' " *Drug Testing Compliance Grp., LLC v. DOT Compliance Serv.*, 161 Idaho 93, 101, 383 P.3d 1263, 1271 (2016) (second alteration in original) (quoting Restatement (Second) of Contracts § 7 cmt. a (1981)). "A void contract is void as to everybody whose rights would be affected by it if it were valid." 17A Am. Jur. 2d *Contracts* § 9. Thus, "void contracts are deemed never to have existed in the eyes of the law." *Drug Testing Compliance Grp.*, 161 Idaho at 101, 383 P.3d at 1271 (quoting *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 827, 367 P.3d 208, 222 (2016)). Conversely, "[a] voidable contract 'is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to extinguish the power of avoidance.' " *Id.* at 100–01, 383 P.3d at 1270–71 (quoting Restatement (Second) of Contracts § 7 (1981)); *see also Contract*, *Black's Law Dictionary* (12th ed. 2024) (A voidable contract is "a contract that is void as to the wrongdoer but not void as to the party wronged, unless that party elects to treat it as void.").

With this key distinction in mind, we will consider ICRA and the parties' arguments.

1. ICRA expressly applies only to contractors.

The district court found that the Work Shop was not a registered contractor, as required under ICRA. Therefore, it concluded that this rendered the Agreement void and unenforceable for *both* parties. Again, the relevant portion of ICRA states that "[n]o person engaged in the business or acting in the capacity of a contractor, unless otherwise exempt, may bring or maintain any action . . . ." I.C. § 54-5217(2). In coming to this conclusion, the district court reasoned that all contracts in which an unregistered contractor is a party violate ICRA; therefore, the court concluded that all contracts that violate ICRA are void and unenforceable by both parties. However, it did not grapple with the plain language of the statute, which only prohibits an unregistered "contractor" from "bring[ing] or maintain[ing]" an action. *Id.* This distinction is important when it is not a contractor but a project owner that is "bring[ing] or maintain[ing]" the action.

The Kumms argue that section 54-5217(2) of ICRA, by its plain language, applies only to contractors, not the project owner under a contract. They further argue that this indicates that ICRA only makes a contract unenforceable as to the unregistered contractor—not illegal and unenforceable for *both* parties. Thus, they assert that this means contracts entered into by contractors in violation of ICRA are unenforceable as to the unregistered contractor, but voidable as to the project owner only.

"Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. Only where the language is ambiguous will this Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations." *City of Idaho Falls v. H-K Contractors, Inc.*, 163 Idaho 579, 582, 416 P.3d 951, 954 (2018) (quoting *Curlee v. Kootenai Cnty. Fire & Rescue*, 148 Idaho 391, 398, 224 P.3d 458, 465 (2008)). This Court also construes statutory language so that "no part is rendered superfluous or insignificant." *JK Homes, LLC v. Brizzee*, 174 Idaho 307, 310, 554 P.3d 568, 571 (2024) (quoting *Friends of Farm to Mkt. v. Valley County*, 137 Idaho 192, 197, 46 P.3d 9, 14 (2002)).

We hold that Idaho Code section 54-5217(2) only prohibits unregistered contractors from bringing a suit to enforce a contract. The plain language of Idaho Code section 54-5217(2) specifically refers to whether an unregistered contractor may bring or maintain an action for compensation under a contract entered in violation of ICRA. Nowhere in the statute does it state or imply that a project owner may not bring or maintain an action, or that they will be otherwise

penalized for entering into a voidable contract under ICRA. To read section 54-5217(2) otherwise would require us to read language into the provision that is neither present nor included in the statute. We decline to do so. *See Nelson v. Evans*, 166 Idaho 815, 820, 464 P.3d 301, 306 (2020) ("[T]he courts 'are not free to rewrite a statute under the guise of statutory construction.' " (quoting *State v. Doe* (*In re Doe*), 147 Idaho 326, 329, 208 P.3d 730, 733 (2009))). "The interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written. " *Verska v. Saint Alphonsus Reg'l Med. Ctr*., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (citation modified).

For these reasons we hold that the prohibitions in section 54-5217(2) expressly and unambiguously apply to unregistered contractors only.

2. Contracts that violate ICRA are voidable, not void.

The Kumms argue that the Agreement is not void and unenforceable against both parties because (1) the intent of ICRA was to penalize contractors, not the innocent parties with whom they contract, and (2) refusing contract-based relief would impermissibly frustrate public policy. The Work Shop argues that, under this Court's decision in *AED*, 155 Idaho 159, 307 P.3d 176, the Agreement is illegal and unenforceable as to both parties; therefore, it is void. In *AED*, an Idaho-based corporation contracted to sell and remove a bridge that crossed the Ohio River between Ohio and West Virginia. *Id.* at 161–62, 307 P.3d at 178–79. The corporation was not licensed in West Virginia at the time the contract was formed and it did not obtain a license until after the agreement was signed. *Id.* When a dispute arose between the parties, the corporation filed suit. *Id.* at 162, 307 P.3d at 179. This Court held that the contract was void and illegal, analyzing the issue under both ICRA and West Virginia's equivalent statute. *Id.* at 166–69, 307 P.3d at 183–86. "[A] contract for work subject to the requirements of the ICRA is illegal if the contractor is unregistered when the contract is executed because the consideration consists of an act that is contrary to law and public policy." *Id.* at 167, 307 P.3d at 184. Additionally, this Court noted that section 54-5217(2) "expressly limits an unregistered contractor's ability to enforce contracts." *Id.* at 168, 307 P.3d at 185.

The Work Shop argues that, under *AED*, because the Agreement explicitly violated ICRA, the Agreement is illegal and void. Thus, it maintains that neither party can recover under the contract. However, the Work Shop has not shown how *AED* specifically applies to the facts of this

case. While both *AED* and the present case concern contracts in which one of the parties is an unregistered contractor, the facts of the present case are materially distinguishable. In particular, unlike in *AED*, here it is the *project owners*, the Kumms, who are attempting to enforce the Agreement. We agree that *AED* is controlling in its analysis that an unregistered contractor may not enforce a contract in violation of ICRA. This Court has long held that "where a license is prescribed by statute . . . for the protection of the public as a requisite to engaging in a particular trade or business . . . and it is made penal to carry on such trade or business without a license, . . . recovery cannot be had by a[n unlicensed] person for his services performed . . . ." *Johnson v. Delane*, 77 Idaho 172, 176, 290 P.2d 213, 215 (1955) (stating the rule, though ultimately allowing recovery where the services were performed out of state). However, this Court has yet to address whether an innocent project owner may still recover under such contracts; nor have we determined whether these contracts should be rendered voidable rather than void. For the reasons we explain below, we clarify our opinion in *AED* only to the extent it may have mischaracterized a contract that violates ICRA as void as to *all* parties—such a reading of *AED* is incorrect. Its central holding that an unregistered contractor may not enforce such a contract is unaffected.

First, we note that whether a contract is illegal is a question of law. *Trees v. Kersey*, 138 Idaho 3, 6, 56 P.3d 765, 768 (2002) (first citing *Morrison v. Young*, 136 Idaho 316, 318, 32 P.3d 1116, 1118 (2001); and then citing *Quiring v. Quiring*, 130 Idaho 560, 566, 944 P.2d 695, 701 (1997)). When an illegal act is the consideration for a contract, it is unenforceable. *Farrell*, 146 Idaho at 609, 200 P.3d at 1158 (citing *Quiring*, 130 Idaho at 566, 944 P.2d at 701); *Barry v. Pac. W. Constr., Inc.*, 140 Idaho 827, 832, 103 P.3d 440, 445 (2004). This Court has refused to enforce such contracts. *Taylor v. AIA Servs. Corp.*, 151 Idaho 552, 565, 261 P.3d 829, 842 (2011) (quoting *Wernecke v. St. Maries Joint Sch. Dist. No. 401*, 147 Idaho 277, 287, 207 P.3d 1008, 1018 (2009)). With this in mind, we consider the parties' arguments below.

While this Court has occasionally allowed unregistered contractors to recover under ICRA, every such case afforded only equitable relief. *See, e.g.*, *Farrell*, 146 Idaho at 613, 200 P.3d at 1162 (allowing an unlicensed architect to recover damages under the doctrine of unjust enrichment for services provided after he became duly licensed in Idaho); *see also Barry*, 140 Idaho at 833–34, 103 P.3d at 446–47 (holding an unlicensed subcontractor could recover under the theory of unjust enrichment). Moreover, this Court has highlighted that, "[i]f a bargain is illegal . . . only because the party promising it is forbidden by statute or ordinance to do so, the prohibition is

aimed at that party only and he is the only wrongdoer." *Williams v. Cont'l Life & Accident Co.*, 100 Idaho 71, 73, 593 P.2d 708, 710 (1979). In cases where an innocent party attempts to recover from a statutorily illegal promise, "the courts have frequently enforced the bargain . . . in favor of a party for whose benefit the law was intended and against a party toward whom the prohibition or penalty was directed." *Id.*

Courts in other jurisdictions have confronted this same issue with licensing statutes that resemble ICRA. For example, in *Epps v. 4 Quarters Restoration LLC*, the Michigan Supreme Court held that a contract under a similar statute was voidable, not *void ab initio* as the plaintiffs argued. 872 N.W.2d 412, 430 (Mich. 2015). The registration provision[2] at issue in that case was substantially similar to Idaho Code section 54-5217(2). In *Epps*, the plaintiffs hired a builder to perform restoration services on their home. 872 N.W.2d at 414–15. Unknown to the plaintiffs at the time they entered the agreement with the contractor, the builder's license had been revoked. *Id.* Issues arose when the builder discontinued work on the plaintiffs' home despite the plaintiffs claiming that the restoration had not been completed and was unsatisfactory. *Id.* at 415. The plaintiffs sought to have the agreement with the builder declared "illegal, void, and unenforceable." *Id.* at 416. The Wayne County Circuit Court, citing the pertinent statute, held that the contract was void and unenforceable. *Id.*

On appeal, the Michigan Supreme Court reversed, holding: "contracts involving an innocent homeowner and an unlicensed residential builder are voidable. . . . Our courts have for decades indicated that a homeowner may be able to enforce contracts with an unlicensed builder, and that such contracts are not necessarily a nullity from the outset." *Id.* at 430. Thus, the court concluded that, under the statute, contracts between a homeowner and unlicensed builder were voidable, not void. *Id.* To hold otherwise, the court stated, would go against the purpose of the statute to protect innocent homeowners. *Id.* at 426. The court also noted that the asymmetrical nature of the statute leaving the power of enforcement in the homeowner's hands suggested that contracts under the statute were voidable, not void. *Id.* at 427. Moreover, the court pointed to the

[2] The Michigan provision reads: "A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract." Mich. Comp. Laws Ann. § 339.2412(1) (West 2008).

absence of language suggesting that a contract made in violation of the statute would be *void ab initio*. *Id.* at 428; *see also Dobson v. Archibald*, 523 P.3d 1190, 1196 (Wash. 2023) (en banc) (citations omitted) (finding that, while Washington's registration statute bars the contractor from bringing suit, it does not render the contract void or illegal).

Here we find that the present case involves an issue more like what the Michigan Supreme Court considered in *Epps* than what we considered in *AED* or any prior Idaho case. As stated earlier, the plain language of ICRA only precludes the contractor from bringing suit, not the innocent project owner. Thus, the language of ICRA and persuasive authority suggest that contracts entered in violation of ICRA are not void but voidable, meaning that, although the contractor cannot enforce such a contract, it remains enforceable at the option of the project owner. *See Dobson*, 523 P.3d at 1196 ("The effect of nonregistration under this statute is that the contractor cannot recover in court, not that the contract is rendered void or illegal.").

As stated above, the language of section 54-5217(2) expressly prohibits unregistered contractors from filing suit, but it is silent about whether a project owner may maintain an action or recover based on a contract voidable under ICRA. We conclude that this silence supports asymmetrical enforceability when an action to enforce the contract is brought by an innocent project owner. Importantly, this Court has previously recognized under ICRA that "in some cases the public interest is best served by permitting the unregistered contractor some recovery." *Genho v. Riverdale Hot Springs, LLC*, 174 Idaho 894, 905, 560 P.3d 1041, 1052 (2024) (first citing *Farrell*, 146 Idaho at 611–12, 200 P.3d at 1160–61; and then citing *Barry*, 140 Idaho at 833–34, 103 P.3d at 446–47). We need look no further than the "Declaration of Policy" contained in the text of ICRA, which states that "the practice of construction in the state of Idaho affects the public health, safety and welfare of its citizens" and "that it is in the public interest to provide a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction." I.C. § 54-5202. Consequently, the statute's purpose in protecting the public interest is advanced by treating contracts between a project owner and unregistered contractor as voidable rather than void. If all such contracts are void in the strictest sense of the word, it would render the law ineffectual because it would leave a project owner harmed by an unregistered contractor with no remedy under the law.

We acknowledge that Idaho follows the common law rule that "a contract prohibited by law is illegal and hence unenforceable. This same rule applies equally to contracts that are violative

of public policy." *Miller v. Haller*, 129 Idaho 345, 351, 924 P.2d 607, 613 (1996) (citations omitted). However, ICRA only expressly precludes the contractor from bringing suit, it does not bar an innocent project owner. ICRA subjects only the contractor to criminal liability and it contains no provisions suggesting that the illegality of the contractor's actions is somehow imputed to a project owner. *See* I.C. § 54-5217. And importantly, as just noted, ICRA was intended to protect the public from "incompetent, dishonest, or unprincipled practitioners of construction." I.C. § 54-5202. Therefore, there is no basis for us to conclude that ICRA amounts to a legislative declaration that the policy of Idaho is to provide no contractual relief for an innocent project owner who has been injured by the actions of an unregistered contractor.

In conclusion, we hold that Idaho Code section 54-5217(2) should be interpreted to provide that contracts entered in violation of ICRA are voidable at the election of the project owner. As noted, in the past, this Court has misused or conflated the terms "illegal," "unenforceable," and "void" when discussing contracts that violate ICRA. This is understandable because the cases that gave rise to these characterizations have only been presented by unregistered contractors asking this Court to enforce these contracts. In those cases, it did not matter whether this Court properly termed the contracts as void or voidable because in the end we declined to enforce the contracts. When this Court has granted relief to an unregistered contractor under a contract that violates ICRA, we have allowed the contractor to seek equitable relief, such as unjust enrichment, as a matter of public policy and only for services rendered *after* they registered. Thus, we have consistently held that the contract was unenforceable by the contractor. All of this is consistent with our holding today that contracts found to violate ICRA are voidable as to a project owner. Our decision in *AED* is clarified to the extent that it suggested that contracts entered into by an unregistered contractor who has not obtained licensing are illegal and void as to *all* parties.

Accordingly, we conclude that while the Agreement is voidable as to the Kumms, it is not void. This means that while the Work Shop cannot bring or maintain an action to enforce or seek compensation under the Agreement, the Kumms still can.

3. Judicial estoppel is inapplicable to the present case.

The Work Shop argues that the Kumms are judicially estopped from arguing the Agreement is not void because they previously argued the opposite before the district court. We disagree.

Judicial estoppel "precludes a party from advantageously taking one position, then subsequently seeking a second position that is incompatible with the first." *Carter Dental, P.A. v. Carter*, 174 Idaho 131, 139, 551 P.3d 1225, 1233 (2024) (quoting *Med. Recovery Servs., LLC v. Eddins*, 169 Idaho 236, 243, 494 P.3d 784, 791 (2021)). The doctrine allows for inconsistency in pleading claims or defenses and is more concerned with inconsistent or incompatible positions in later litigation. *See Herndon v. City of Sandpoint*, 172 Idaho 228, 239, 531 P.3d 1125, 1136 (2023) (citing *McCallister v. Dixon*, 154 Idaho 891, 894, 303 P.3d 578, 581 (2013)).

> The policies underlying preclusion of inconsistent positions are general considerations of the orderly administration of justice and regard for the dignity of judicial proceedings. Judicial estoppel is intended to protect against a litigant playing fast and loose with the courts. Because it is intended to protect the dignity of the judicial process, it is an equitable doctrine invoked by a court at its discretion.

Carter Dental, 174 Idaho at 139, 551 P.3d at 1233 (citation modified) (quoting *Eddins*, 169 Idaho at 243, 494 P.3d at 791). Here, the alleged inconsistency occurred within the same case.

Assuming, *arguendo*, that the doctrine is applicable here, the Kumms did argue below, in their initial motion for summary judgment on the Work Shop's breach of contract claims, that the Agreement was illegal and void as a matter of law. However, the basis for that argument was that the Work Shop was not registered as required by ICRA at the time the parties entered the Agreement; thus, the Work Shop could not recover for breach of contract. They never contended the Agreement was void as to themselves. On appeal, the Kumms argue that the trial court's "[f]inding the contract void and preventing [the] Kumm[s] from obtaining relief for breach of contract is contrary to the purpose and spirit of [Idaho Code section] 54-5217." They further stated that ICRA "does not state that any contract entered into with an unregistered contractor is illegal or void"; rather, it only prohibits the unregistered contractor from recovering under the contract.

The Kumms' positions are consistent. Both below and on appeal, the Kumms have maintained that the Work Shop cannot enforce the Agreement against them because the Work Shop was unregistered under ICRA. They did not argue below that the Agreement was void as to themselves, and they do not contend otherwise now. Their position on appeal—that ICRA bars the contractor's recovery but does not extinguish the owner's right to enforce—is consistent with, not contrary to, the position they took below. Thus, we hold that the Kumms are not judicially estopped from arguing that the Agreement is not void.

D. Attorney Fees

The Kumms seek attorney fees on appeal under Idaho Code section 12-120(3). This section provides a prevailing party attorney fees where "the commercial transaction comprises the gravamen of the lawsuit." *BrunoBuilt, Inc. v. Briggs Eng'g, Inc.*, 171 Idaho 729, 737, 525 P.3d 1122, 1130 (2023) (quoting *Idaho Transp. Dep't v. Ascorp, Inc.*, 159 Idaho 138, 141, 357 P.3d 863, 866 (2015)). "The term 'commercial transaction' is defined to mean all transactions except transactions for personal or household purposes." I.C. § 12-120(3). "For a commercial transaction to be present for the purposes [of Idaho Code section] 12-120(3) 'each party to the transaction must enter the transaction for a commercial purpose.' " *Treasure Valley Home Sols., LLC v. Chason*, 171 Idaho 655, 661, 524 P.3d 1272, 1278 (2023) (quoting *Buku Props., LLC v. Clark*, 153 Idaho 828, 836, 291 P.3d 1027, 1035 (2012)).

We conclude that section 12-120(3) does not apply because the Kumms' claims under the Agreement pertain to the construction of a personal home. As a result, their claims are related to a personal or household transaction, rather than a commercial transaction. *See id.* at 661–62, 524 P.3d at 1278–79 (holding that, when there is a lack of evidence of a commercial purpose, section 12-120(3) does not apply to the sale of a personal residence); *Frontier Dev. Grp., LLC v. Caravella*, 157 Idaho 589, 599, 338 P.3d 1193, 1203 (2014) ("[T]he [appellants'] purpose for entering into the agreement with [respondents] was to construct a house for their personal use; therefore the transaction was not commercial."). Therefore, we decline to award the Kumms attorney fees on appeal.

IV. CONCLUSION

For the reasons stated above, we hold that, while contracts that violate ICRA are unenforceable by an unregistered contractor, they are voidable and remain enforceable at the option of the project owner. Therefore, we reverse the district court's order dismissing the Kumms' breach of contract claim on summary judgment and remand for further proceedings consistent with this opinion. Although the Kumms are not entitled to attorney fees on appeal, as the prevailing parties they are entitled to an award of costs as a matter of course. I.A.R. 40(a).

Chief Justice BRODY, Justices BEVAN, ZAHN, and MEYER CONCUR.

(This matter was decided prior to the retirement of Chief Justice Bevan and he participated fully.)