

IN THE SUPREME COURT OF IOWA

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Supreme Court No. 18-0261  
Black Hawk County No. ESPR059855

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John E. Rottinghaus and Dessie Rottinghaus  
Claimants/Appellants

vs.

Lincoln Savings Bank, Fiduciary of the Estate of Sandra R. Franken  
Defendant/Appellee

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**APPEAL FROM THE DISTRICT COURT OF BLACK HAWK COUNTY**  
**Honorable David P. Odekirk, Judge**

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CLAIMANTS-APPELLANTS  
JOHN E. ROTTINGHAUS AND DESSIE ROTTINGHAUS'  
APPLICATION FOR FURTHER REVIEW FROM THE COURT OF APPEALS  
DECISION FILED MAY 1, 2019

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## QUESTIONS PRESENTED FOR REVIEW

Appellants John E. Rottinghaus and Dessie Rottinghaus submits the following questions presented for review by this Court in accordance with Iowa R. App. P. 6.1103(1)(c)(1):

**Question No. 1.** Did the Court of Appeals erroneously conclude that the District Court did not err in granting summary judgment for the Estate because the language of Iowa Code §614.17A rendered the right of first refusal given to John and Dessie Rottinghaus unenforceable?

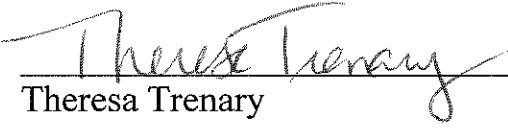
**Question No. 2.** Did the Court of Appeals fail to view this case as a simple breach of contract case and therefore not subject to Iowa Code §614.17A (2017)?

**CERTIFICATE OF ELECTRONIC FILING AND SERVICE**

I certify that on the 16<sup>th</sup> day of May, 2019, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System, which will send notification of electronic filing to the following opposing counsel. Per Iowa Rule 16.317(1)(a)(2), this constitutes service of the document for the purposes of the Iowa Court Rules.

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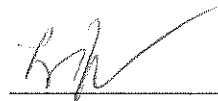
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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
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REQUIREMENTS**

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) and 6.1103(4) because this Application for Further Review contains 1,943 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
  
2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in Times New Roman 14 font.

ATTORNEYS FOR APPELLANTS/CLAIMANTS



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## STATEMENT SUPPORTING FURTHER REVIEW

This case involves the limitations placed upon a right of first refusal contained in a Deed from Mr. and Mrs. Rottinghaus to Sandra Franken which was prepared and signed on December 23, 1973 by the same law firm that represented the Estate of Sandra Franken initially in this action (Exhibit B herein).

The Claimants were only notified that the property involved had been transferred after the Estate had transferred the property. The only recourse left to the Claimants was to file a claim against the Estate for the loss of this contractual right that had been ignored by the Estate.

The decision by the District Court and the Court of Appeals (with a dissent by Chief Justice Vogel) constitutes an erroneous application of Iowa Code §614.17A(1) and the ability of the Estate to raise this belated defense to the claim filed by the Claimants in the Estate.

The errors made by the Court of Appeals call for further review by this Court under Iowa R. App. P. 6.1103(b)(1), (2) and (3). Should further review be granted on all or any of the above grounds, the Claimants respectfully ask that the Court review all issues addressed by the district court in its ruling granting Defendants' motion for summary judgment, from which this appeal is taken.



## **BRIEF IN SUPPORT OF REQUEST FOR FURTHER REVIEW**

### **STATEMENT OF THE CASE**

This action was brought by John E. Rottinghaus and Dessie Rottinghaus, as claimants against Michael D. Rottinghaus in the Estate of Sandra R. Franken (Claim in Estate, App. pp. 14-15). The Claimants asked for a hearing on their claim (Request for Hearing Upon Claim, App. p. 17). The claimed amount sought against the Estate was \$195,000.00 for the sale of property owned by the Decedent, Sandra Franken f/k/a Sandra Kipp (*see* Exhibit A attached to Claim, App. pp. 14-16). In summary, the Deed from Mr. and Mrs. Rottinghaus to Sandra Franken and her husband at the time the Deed was signed (James Kipp) it reserved the right of first refusal to Mr. and Mrs. Rottinghaus to repurchase the property. (The Deed was signed December 21, 1973). The Estate filed a Notice of Disallowance of the Claim (Disallowance, App. p. 18).

The Estate filed a Motion for Summary Judgment on October 6, 2017, and for the first time argued that Iowa Code §614.17A provides a 10 year limitations period for bringing the type of claim that Mr. and Mrs. Rottinghaus made in this case (Defendant's Motion for Summary Judgment, App. pp. 39-40).

The Claimants resisted the Motion for Summary Judgment on October 25, 2017 (Claimants' Resistance to Defendant's Motion for Summary Judgment, App. pp. 73-74).

The District Court decided in favor of the Estate based almost entirely on Iowa Code §614.17A(1) and the recent decision by the Iowa Court of Appeals, *West Lake Properties, L.C. v. Greenspon Property Management, Inc.*, 2017 WL 4317297 (Iowa App. September 27, 2017) that the right of first refusal was an interest in real estate and therefore falls within the scope of Iowa Code §614.17A. The result of this interpretation was that the Court found that the right of first refusal in the 1973 Deed was barred by Iowa Code §614.17A (Court Order January 19, 2018, App. pp. 97-96).

This appeal to the Court of Appeals followed.

### **STATEMENT OF THE FACTS**

Dessie Rottinghaus and her husband, John Rottinghaus, sold a portion of the farm owned by Dessie Rottinghaus to her sister-in-law, Sandra Kipp, and her husband, James Kipp, in 1973 (*see* Exhibit A attached to Defendant's Statement of Undisputed Material Facts, App. p. 50 and Inventory p. 1, App. p. 5). The Deed contained the following language:

“Grantees hereby agree that they will not sell or otherwise convey the premises described above to any person other than grantors without first giving grantors the opportunity to purchase the premises at a price equal to any bona fide offer to purchase the premises made by any other person. In the event any person offers to purchase the said premises from the grantees, the grantees shall notify the grantors immediately and grantors shall have fifteen (15) days to purchase the property at the same price as offered.”

The language was written by the attorneys for Mr. and Mrs. Rottinghaus (Motion to Disqualify Counsel, p. 1, App. p. 27). This case was in some respects unique because of the involvement of the same firm with both the Claimants and the Decedent for over 40 years.

An Estate was opened for Sandra Franken (f/k/a Sandra Kipp) in Black Hawk County. During the pendency of the Estate, the Executor decided to sell the property in question. The Executor did not notify the Claimants of the impending sale of the property and the first inkling Mr. and Mrs. Rottinghaus had of the sale was when the new buyers started to take down a fence near their property. (There is no claim by the Executor that notice was given to the Rottinghauses). The Franken property was surrounded by the Rottinghaus property and so as to preserve the Rottinghaus property if the Franken (Kipp) property was ever sold they wanted the first right of refusal to match any third party offer for the property (Tr. hearing November 16, 2017, pp. 13-14).

When Mr. and Mrs. Rottinghaus found out the property had been sold, they filed their claim in the Estate to get reimbursement for their lost right. Unless they were notified of an offer, they had no right to exercise their right of first refusal. Mr. and Mrs. Rottinghaus filed the claim in the Estate when the sale was a *fait accompli*.

## ARGUMENT

### A. Scope of Review.

This Court's review of a motion for summary judgment is for corrections of errors at law. *Wallace v. Des Moines Indep. Cmt. Sch. Dist. Bd. Of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008).

### B. The Court of Appeals erroneously upheld the District Court's Decision that Iowa Code §614.17A rendered the right of first refusal of the Claimants' unenforceable.

Further review should be granted pursuant to Iowa R. App. P. 6.1103(1)(b)(1), (2) and (3) because the Iowa Court of Appeals has rendered a decision contrary to Iowa law that if left unchallenged, would change the legal principles relating to rights of first refusal under Iowa law.

The District Court and the Court of Appeals both had the task of interpreting the language of Iowa Code §614.17A. As the Iowa Supreme Court has stated the first point for statutory interpretation is the statutory text. *In Re A.M.*, 856 N.W.2d 365, 371 (Iowa 2014).

The dissent by Chief Justice Vogel has adopted this approach. First, the dissent states that the right of first refusal is not an interest in real estate because the Claimants were never given notice or opportunity to exercise their right (*see* Exhibit A attached hereto p. 9 and *Tuecke v. Tuecke*, 131 N.W.2d 794, 796 (Iowa 1964) ("...an option to purchase is not an interest in the real estate until

exercised...”). The very first section of Iowa Code §614.17A provides that “...an action shall not be maintained...to recover or establish an interest in or claim to real estate...” (Iowa Code §614.17A(1), *Tuecke* takes the right of first refusal out of the purview of Iowa Code §614.17A by its language.

In addition, the courts may be confusing a right of first refusal with a “use” restriction or a “reversion” which arguably are covered by the language of Iowa Code §614.17A.

As the leading Treatise on Examination of Iowa Title states:

The ordinary “use” was a limitation on the use of land, and a “reversion” was a right of the grantor, or his assigns, to retake the land at any time in the future if a designated event occurred or did not occur. For example, a provision in a grant that the land granted be used only for certain purposes, or not be used for forbidden purposes, constituted a “use,” while a provision that upon the happening or nonhappening of a certain event title would “revert,” constituted a “reversion.

Marshall, Iowa Title Opinions and Standards, Second Edition, 1982, §12.3(A), p. 270.

Based on these definitions, the right of first refusal contained in the subject deed does not meet the definitions of “reversion” or “use restriction.” First, the right of first refusal is not a reversion. The Claimants do not have the right to “retake” the property upon the occurrence of any designated event. Title in the

property does not “revert” to the grantor upon the happening or nonhappening of any event. The grantor simply has the right to match any sale price.

As was also pointed out by the dissent and by the Claimants in their brief herein, the statutory language of Iowa Code §614.17A states that for the section to apply the action must be against the record titleholder of the real estate (Iowa Code §614.17A(2)). This is a case of statutory construction. The court *In Re A.M.*, 856 N.W.2d 365, 371 (Iowa 2014) also stated that when courts are construing statutory provisions they need to determine legislative intent and also to review statutory text. If those principles are applied in this instance, the Estate certainly does not have any ability to raise Iowa Code §614.17A as a defense based upon the plain language of the statute because it was not a record titleholder of the real estate.

**C. The Claimants by filing a claim against the Estate were seeking damages for breach of their contractual right of first refusal contained in the Deed (Exhibit B attached hereto).**

The dissent by Chief Justice Vogel properly views this as a breach of contract case (*see* Exhibit A, p. 10). The grantee, Sandra Franken, through the Executor in her Estate, did not notify Mr. and Mrs. Rottinghaus of the sale of the property. The dissent by Chief Justice Vogel succinctly summed up the Iowa law that indicates that the right of first refusal is a contractual right as follows:

*“See Knepper v. Monticello State Bank, 450 N.W.2d 833, 836 (Iowa 1990) (“A [right of first refusal] merely requires the owner, when and if he [or she] decides to sell, to offer the property first to the person entitled to the [first*

refusal].”); 17 C.J.S. *Contracts* § 58 (2019) (defining the right of first refusal as “limit[ing] the right of the owner to dispose freely of his or her property by compelling him or her to offer it first to the party who has the first right to buy”); *see also* 77 *Am. Jur. 2d Vendor & Purchaser* § 30 (2019) (“A contractual right of first refusal is neither a property interest nor a nonvested version of the same; instead, a right of first refusal is a personal and contractual right and does not run with the land as to which the right is given.”).

The dissent went on to point out that the Estate was not the titleholder (*see* Exhibit A, p. 7) (citing Iowa Code §633.350). The statutory section invoked by the Estate clearly applies only to actions against the record titleholder. Iowa Code §614.17A(2).

The action of the Claimants should have been allowed to continue against the Estate based upon the contractual nature of the claim involved.

## CONCLUSION

As the dissent by Chief Justice Vogel points out, the ban of Claimants’ action by majority decision of the Iowa Court of Appeals is contrary to Iowa law as set forth in the statute Iowa Code §614.17A and the case law set forth in this application and opinion of Justice Vogel. The Claimants’ pray for further review by the Iowa Supreme Court and for such other and further relief as the Court deems just and equitable.

**ATTORNEY'S COST CERTIFICATE**

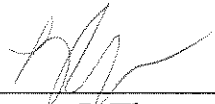
I, Larry J. Thorson, hereby certifies that the actual cost of printing the necessary copies of the preceding Appellants' Application for Further Review from the Court of Appeals Decision filed May 1, 2019 was the sum of \$0.00.



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Larry J. Thorson

**ATTORNEYS FOR APPELLANTS/CLAIMANTS**



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IN THE COURT OF APPEALS OF IOWA

No. 18-0261  
Filed May 1, 2019

**JOHN E. ROTTINGHAUS and DESSIE ROTTINGHAUS,**  
Plaintiffs-Appellants,

vs.

**LINCOLN SAVINGS BANK, FIDUCIARY OF THE ESTATE OF SANDRA R.  
FRANKEN,**  
Defendant-Appellee.

---

Appeal from the Iowa District Court for Black Hawk County, David P.  
Odekirk, Judge.

John and Dessie Rottinghaus appeal from the district court's order granting  
the estate's motion for summary judgment. **AFFIRMED.**

Larry J. Thorson of Ackley, Kopecky & Kingery, LLP, Cedar Rapids, for  
appellant.

Mark A. Roberts and Jared F. Knight of Simmons Perrine Moyer Bergman  
PLC, Cedar Rapids, for appellee.

Considered by Vogel, C.J., and Vaitheswaran and Mullins, JJ.

**VAITHESWARAN, Judge.**

We must decide whether the district court erred in concluding a probate claim was barred by a ten-year deadline governing interests in or claims to real estate.

The facts are essentially undisputed. In 1973, John and Dessie Rottinghaus sold real estate to James and Sandra Kipp. The deed contained the following "right-of-first-refusal" provision:

Grantees hereby agree that they will not sell or otherwise convey the premises described above to any person other than grantors without first giving grantors the opportunity to purchase the premises at a price equal to any bona fide offer to purchase the premises made by any other person. In the event any person offers to purchase the said premises from the grantees, the grantees shall notify the grantors immediately and grantors shall have fifteen (15) days to purchase the property at the same price as offered.

Sandra Kipp, also known as Sandra Franken, eventually became the sole owner of the property. After she died, her estate sold the property to a third party. The sale took place in 2016.

The Rottinghauses filed a probate claim asserting the estate sale amounted to a breach of the right of first refusal contained in their 1973 contract with the Kipps. The estate moved for summary judgment, relying in part on Iowa Code section 614.17A (2017). That provision states, "[A]n action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate if . . . [t]he action is based upon a claim arising more than

ten years earlier or existing for more than ten years.”<sup>1</sup> Following a hearing, the district court granted the summary judgment motion.

On appeal, the Rottinghauses contend (1) section 614.17A was not “timely raised as a defense,” (2) the estate was not “a proper party” to raise section 614.17A as a defense, and (3) the language of sections 614.17A and 614.24 does not “bar the action by the claimants.”

Beginning with the timeliness issue, the Rottinghauses correctly assert “[d]efendants have a duty to plead the statute of limitations if they wish to rely on it.” *Porter v. Good Eavespouting*, 505 N.W.2d 178, 182 (Iowa 1993). Allowable pleadings are “a petition and an answer, a reply to a counterclaim denominated as

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<sup>1</sup> The provision states in full:

1. After July 1, 1992, an action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate if all the following conditions are satisfied:

a. The action is based upon a claim arising more than ten years earlier or existing for more than ten years.

b. The action is against the holder of the record title to the real estate in possession.

c. The holder of the record title to the real estate in possession and the holder’s immediate or remote grantors are shown by the record to have held chain of title to the real estate for more than ten years.

2. a. The claimant within ten years of the date on which the claim arose or first existed must file with the county recorder in the county where the real estate is located a written statement which is duly acknowledged and definitely describes the real estate involved, the nature and extent of the right of interest claimed, and the facts upon which the claim is based. The claimant must file the statement in person or by the claimant’s attorney or agent. If the claimant is a minor or under a legal disability, the statement must be filed by the claimant’s guardian, trustee, or by either parent.

b. The filing of a claim shall extend for a further period of ten years the time within which such action may be brought by any person entitled to bring the claim. The person may file extensions for successive claims.

3. Nothing in this section shall be construed to revive any cause of action barred by section 614.17.

Iowa Code § 614.17A.

such; an answer to a cross-claim, if the answer contains a cross-claim, a cross-petition, if a person who was not an original party is summoned . . . , and an answer to cross-petition, if a cross-petition is served.” Iowa R. Civ. P. 1.401. A motion “is not a ‘pleading.’” Iowa R. Civ. P. 1.431.

That said, a “defendant may first raise an affirmative defense in a motion for summary judgment as long as the plaintiff is not prejudiced.” *McElroy v. State*, 637 N.W.2d 488, 497 (Iowa 2001). Indeed, summary judgment motions have routinely served as the vehicle for submitting statute of limitations defenses. See, e.g., *Wunschel v. IDA Holding Co.*, 407 N.W.2d 341, 343 (Iowa 1987) (affirming denial of statute-of-limitations defense raised in summary judgment motion); *Jacobson v. Union Story Tr. & Sav. Bank*, 338 N.W.2d 161, 164 (Iowa 1983) (“[T]he trial court correctly granted the defendant bank summary judgment on the ground that suit was barred by the statute of limitations.”).

The estate filed its summary judgment motion within the pleading deadline set forth in the trial scheduling order. Hearing on the motion was not scheduled for another forty days. Accordingly, the Rottinghauses suffered no prejudice from the estate’s late assertion of the defense. See *Taylor v. Farm Bureau Mut. Ins. Co.*, No. 07-1580, 2008 WL 4525496, at \*7 (Iowa Ct. App. Oct. 1, 2008) (finding no prejudice where an affirmative defense was mentioned in a summary judgment motion and was raised at various other points during the litigation); *Ralston v. Am. Family Mut. Ins. Co.*, 04-0662, 2004 WL 2952677, at \*3 (Iowa Ct. App. Dec. 22, 2004) (concluding plaintiff had “adequate time to conduct discovery and prepare a resistance to the summary judgment request”).

The second issue—whether the estate was a proper party to raise the statute of limitations issue—was not considered by the district court. Accordingly, error was not preserved. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”).

Finally, as the district court concluded, the language of section 614.17A renders the right of first refusal unenforceable. The court was persuaded by the reasoning of this court’s opinion in *West Lakes Properties, L.C. v. Greenspon Property Management, Inc.*, No. 16-1463, 2017 WL 4317297, at \*2 (Iowa Ct. App. Sept. 27, 2017). There, we held a right of first refusal granted almost twenty years earlier was not enforceable under section 614.17A. We agree *West Lakes* is persuasive authority for the court’s conclusion. Here, as there, the right of first refusal on which the Rotthouses premise their claim indisputably arose more than ten years before the claim was filed, and the Rotthouses do not challenge or did not preserve error on the remaining requirements of the provision. See Iowa Code § 614.17A. We discern no error in the district court’s conclusion.

Having concluded the claim was unenforceable under section 614.17A, we find it unnecessary to address the Rottinghouses’ alternate claim under section 614.24. We conclude the district court did not err in granting summary judgment for the estate.

**AFFIRMED.**

Mullins, J., concurs specially; Vogel, C.J., dissents.

**MULLINS, Judge** (concurring specially).

I concur in the majority opinion. I write separately to address two issues. Because the majority opinion necessarily addresses only the facts of this case and the issues properly presented, the opinion may not be the last word on whether there are facts upon which a holder of a right of first refusal could make a successful claim for breach of contract against the grantor of the right.

Secondly, I do not believe the *West Lakes* decision is written as broadly as suggested by the dissent, and should not be read to decide rights beyond the right of first refusal under the facts presented.

**VOGEL, Chief Judge** (dissenting).

Because I view this case as a simple breach of contract claim and not subject to Iowa Code section 614.17A (2017), I respectfully dissent. In 1973, when Dessie M. Rottinghaus and John E. Rottinghaus as grantors conveyed their property to James Kipp and Sandra Kipp (later Franken) as grantees, the Rottinghauses bargained for a right of first refusal. It was a contractual right, which obligated the grantees, if they receive an offer for the property, to “notify the grantors immediately and grantors shall have fifteen (15) days to purchase the property at the same price as offered.” See *Knepper v. Monticello State Bank*, 450 N.W.2d 833, 836 (Iowa 1990) (“A [right of first refusal] merely requires the owner, when and if he [or she] decides to sell, to offer the property first to the person entitled to the [first refusal].”); 17 C.J.S. *Contracts* § 58 (2019) (defining the right of first refusal as “limit[ing] the right of the owner to dispose freely of his or her property by compelling him or her to offer it first to the party who has the first right to buy”); see also 77 Am. Jur. 2d *Vendor & Purchaser* § 30 (2019) (“A contractual right of first refusal is neither a property interest nor a nonvested version of the same; instead, a right of first refusal is a personal and contractual right and does not run with the land as to which the right is given.”).

When Sandra Franken died in March 2014, she died as the record title holder. The estate could not and did not become the title holder. Instead, as an asset of Franken’s estate the property was merely “subject to the possession” of the executor. See Iowa Code § 633.350. Franken’s will directed the property be sold, and it was sold under the authority of the executor in a Court Officer’s Deed. However, prior to the sale, the executor failed to give the Rottinghauses notice of

the sale, as was required under the 1973 contract. Their remedy was to file a claim in the estate, against the actions of the executor, for money damages for breach of contract.

The estate, through the executor, asserted a defense under Iowa Code section 614.17A. But as the Rottinghauses assert, the estate is not a proper party to assert such a defense because the estate never “held title.” An action that may be limited under section 614.17A must be brought against a title holder. See Iowa Code § 614.17A(1)(b) (“The action is against the holder of the record title to the real estate in possession.”). The record title holder in this case was the new buyer, who had nothing to do with the executor failing to give notice of the sale to the Rottinghauses.

Moreover, section 614.17A cannot be used to defend against the Rottinghauses’ breach of contract claim. Section 614.17A is part of a series of “statutes designed to shorten the period of search required to establish title in real estate and give effect and stability to record titles by rendering them marketable and alienable—in substance to improve and render less complicated the land transfer system.” *Chicago & N.W. Ry. Co. v. City of Osage*, 176 N.W.2d 788, 793 (Iowa 1970). Section 614.17A in particular is utilized to clear title to a claimed possessory interest in real estate, adverse to the record title holder. See *In re Estate of Hord*, 836 N.W.2d 1, 6 (Iowa 2013) (discussing section 614.17A and its predecessors); see also, e.g., *Gibson v Gibson*, 217 N.W. 852, 854–55 (Iowa 1928) (holding a claim is considered “an action for the recovery of real property” if the claimant seeks rights, possession, or title to real property). Contrary to the district court’s finding, the Rottinghauses’ right of first refusal was not “an interest



in” the real estate because, without notice of the sale, they were never given the opportunity to exercise their right. See *Tuecke v. Tuecke*, 131 N.W.2d 794, 796 (Iowa 1964) (stating that, “an option to purchase is not an interest in the real estate *until exercised*” (emphasis added)). Therefore, the Rottinghauses did not file a claim in Franken’s estate as “an action . . . to recover or establish an interest in or claim to real estate” under 614.17A(1). Rather, they sued on simple breach of contract principles, seeking money damages for the lost opportunity to purchase the property on the terms offered by the executor. Applying section 614.17A as a statute of limitations for the Rottinghauses’ breach of contract claim goes beyond the statute’s purpose of simplifying land transfers and record titles. See *Chicago & N.W. Ry. Co.*, 176 N.W.2d at 793.

For all these reasons, I respectfully dissent and would reverse the district court’s grant of summary judgment.



IOWA APPELLATE COURTS

State of Iowa Courts

**Case Number**  
18-0261

**Case Title**  
In re Estate of Franken

Electronically signed on 2019-05-01 08:35:48



# WARRANTY DEED - JOINT TENANCY

KNOW ALL MEN BY THESE PRESENTS: That DESSIE M. ROTTINGHAUS, JOHN E. ROTTINGHAUS, wife and husband

in consideration\* of the sum of One Dollar and other good and valuable consideration in hand paid do hereby Convey unto JAMES KIPP and SANDRA KIPP, husband and wife

Address of Grantee: \_\_\_\_\_  
As Joint Tenants with Full Rights of Survivorship, and not as Tenants in Common, the following described real estate, situated in Black Hawk County, Iowa, to-wit:

The North Three Hundred Ninety-four and five tenths (394.5) feet of the West Three Hundred Sixty-one and five tenths (361.5) feet of the Northeast one fourth (1/4) Northwest one-fourth (1/4) of Section Twenty-one (21), Township Eighty-eight (88) North, Range Twelve (12) West of the Fifth Principal Meridian in Black Hawk County, Iowa, excepting all legal streets and highways.

Grantees hereby agree that they will not sell or otherwise convey the premises described above to any person other than grantors without first giving grantors the opportunity to purchase the premises at a price equal to any bona fide offer to purchase the premises made by any other person. In the event any person offers to purchase the said premises from the grantees, the grantees shall notify the grantors immediately and grantors shall have fifteen (15) days to purchase the property at the same price as offered.

INDEXED  
COMPARED  
PAGED

STATE OF IOWA  
BLACK HAWK COUNTY  
this 14 day of APR 1973  
Auditor  
James Kipp

1973

BLACK HAWK COUNTY, IOWA  
Notary Public  
James Kipp  
My Comm. Expires 12/31/73

And the grantors do hereby Covenant with the said grantees, and successors in interest, that said grantors hold said real estate by title in fee simple; that they have good and lawful authority to sell and convey the same; that said premises are Free and Clear of all Liens and Encumbrances whatsoever except as may be above stated; and said grantors Covenant to Warrant and Defend the said premises against the lawful claims of all persons whatsoever, except as may be above stated.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the above described premises.

Words and phrases herein, including acknowledgment hereof, shall be construed as to the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

Signed this 14th day of APR 1973

\* Iowa Statute Chapter 220B, Sec. 200.1

STATE OF IOWA  
COUNTY OF BLACK HAWK  
On this 14th day of APR 1973, before me the undersigned, a Notary Public in and for said County, did appear and personally appeared DESSIE M. ROTTINGHAUS and JOHN E. ROTTINGHAUS, wife and husband

DESSIE M. ROTTINGHAUS  
JOHN E. ROTTINGHAUS  
REAL ESTATE TRANSFER TAX  
2-3-73

I do not know the identity of the persons named in and who executed the foregoing instrument and acknowledged that they executed the same of their voluntary act and deed

FRANK R. WILLIAMS, Notary Public in and for said County

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