

**IN THE SUPREME COURT OF IOWA**

No. 22-0848

IN THE IOWA DISTRICT COURT FOR WAPELLO COUNTY

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SUNDANCE LAND COMPANY, LLC

Appellant,

vs.

PHILLIP REMMARK AND BOBBIE  
REMMARK,

Appellee.

CASE NO. EQEQ112440

APPELLANT'S FINAL BRIEF AND  
REQUEST FOR ORAL ARGUMENT

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APPEAL FROM THE DISTRICT COURT OF  
WAPELLO COUNTY

JUDGE WYATT PETERSON

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**APPELLANT'S FINAL BRIEF**

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. SUNDANCE LAND COMPANY, LLC IS THE OWNER OF THE SUNDANCE REAL ESTATE IN FEE SIMPLE AS SHOWN BY THE RECORD TITLE AND THE PRESUMPTION THAT SUNDANCE LAND COMPANY IS THE OWNER WAS NOT OVERCOME AT TRIAL. THE RULING OF THE TRIAL COURT SHOULD BE REVERSED.

CASES:

*Carroll Airport Commission v. Danner*, 927 N.W.2d 635(Iowa 2019)  
*In re Trust No. T-1 of Trimble*, 826 N.W.2d 474 (Iowa 2013)  
*Jeffrey v. Grosvenor*, 261 Iowa 1052, 157 N.W.2d 114, 122 (1968)  
*Matter of Guardianship of L.Y.*, 968 N.W.2d 882 (Iowa 2022)  
*Sherbonday v. Surring*, 188 N.W. 831, 835 (1922)  
*Shine v. State*, 458 N.W.2d 864, 866 (Iowa App. 1990)  
*State ex rel. Iowa Dept. of Natural Resources v. Burlington Basket Co.*,  
651N.W.2 d 29, 34 (Iowa 2002)  
*Thompson v. Thompson*, 39 N.W.2d 132, 138 (Iowa 1949)  
*Wilcox v. Pinney*, 98 N.W.2d 720, 722 (Iowa 1959)

- II. THE COMMON OWNERSHIP OF THE SUNDANCE REAL ESTATE AND THE REMMARK REAL ESTATE TERMINATED ANY ACQUIESCENCE AS TO A LEGAL BOUNDARY EXISTING PRIOR TO THE PERIOD OF COMMON OWNERSHIP AND THE RULING OF THE TRIAL COURT FINDING A BOUNDARY BY ACQUIESCENCE SHOULD BE REVERSED.

CASES:

*Carroll Airport Commission v. Danner*, 927 N.W.2d 635(Iowa 2019)  
*Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 P.2d 1258, 1261  
(1993)  
*Conklin vs. Newman*, 115 N.E. 849, 850 (1917)  
*Matter of Guardianship of L.Y Salazar vs. Terry*, 911P.2d 1086, 1089  
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*Patton v. Smith*, 71 S.W.187, 190 (1902)  
*Salazar vs. Terry*, 911P.2d 1086, 1089, 1092 (Colorado 1996)  
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*Strong v. Garrett*, 57 N.W. 715 (Iowa 1894)  
*Witt v. Reavis*, 284 Or. 503, 587 P.2d 1005, 1008 (1978)

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5 Richard R. Powell, *Powell on Real Property* Section 62.02 [10]at 62-19 (1994)-Illinois

7 *Thompson on Real Property* § 60.08(b)(1) at 479 (David A. Thomas ed., 1994)

Julie L. Pulkrabek, 13 Ia. Practice Series Section 14:5 Merger of estates – at law (2020)

Olin L. Brouder, *The Practical Location of Boundaries*, 56 MICH. L. Rev. 487, 530(1958)

III. THE REMMARKS HAVE NOT PROVEN THEIR CLAIM OF BOUNDARY BY ACQUIESCENCE BY CLEAR AND CONVINCING EVIDENCE TO REBUT THE PRESUMPTION OF THE RECORD TITLE AND THE RULING OF THE TRIAL COURT SHOULD BE REVERSED.

CASES:

*Carroll Airport Commission v. Danner*, 927 N.W.2d 635(Iowa 2019)

*Brown vs. McDanel*, 156 N.W.2d 349, 352 (Iowa 1968)

*De Viney v. Hughes* 243 Iowa 138 (1952)

*Jeffrey v. Grosvenor*, 261 Iowa 1052, 157 N.W.2d 114, 122 (1968)

*Mayhugh v. Dea*, 871 N.W.2d 705 (Iowa App. 2015)

*Ollinger v. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997)

*Shine v. State*, 458 N.W.2d 864, 866 (Iowa App. 1990)

*Sille v. Shaffer*, 297 N.W.2d 379, 381(Iowa 1980)

*Tewes v. Pine Lane Farms*, 522 N.W.2d 801, 806 (Iowa 1994)

*Thompson v. Thompson*, 39 N.W.2d 132, 138 (Iowa 1949)

STATUTES: Iowa Code Section 650.14

IV. IF THE RULING OF THE TRIAL COURT IS AFFIRMED, THE COURT SHOULD PROTECT THE LEGAL ACCESS OF SUNDANCE TO THE SUNDANCE REAL ESTATE.

CASES:

*Bankers Surety, Co. v. Linder*, 137 N.W.2d 496, 499 (Iowa 1912)

*Holi-Rest, Inc. v. Treloar*, 217 N.W.2d 517, 527 (Iowa 1974)

*Holten v. Construction Machinery, Company*, 202 N.W.2d 348, 363-364 (Iowa 1972)

*Moser v. Thorpe Sale Corp.*, 256 N.W.2d 900 (Iowa 1977)

**ROUTING STATEMENT**

This case should be retained by the Iowa Supreme Court as it represents legal issues not yet decided by the Iowa Appellate Courts. The real estate of the Appellant and the real estate of the Appellee's were both owned by the same party from May 14, 2014 through April 24, 2017, a period of almost three years.

The Appellant contends that common ownership of parcels extinguishes a claim of Boundary by Acquiescence for a boundary line running through the common owned property. It appears this issue has not been treated in any reportable decision of the Iowa Appellate Courts. The issue of common ownership and its effect on the legal theory of boundary by acquiescence is a substantial issue and qualifies for retention under Iowa Rule of Appellate Procedure 6.1101(1)(c).

**STATEMENT OF THE CASE**

**A. NATURE OF THE CASE.**

This is a quiet title action concerning adjoining landowners in Wapello



County, Iowa. The Plaintiff, Sundance Land Company, LLC is holder of record title and claims title to real estate legally described as the North Half of the Southwest Quarter of Section 3, Township 17 North, Range 14 West of the 5<sup>th</sup> P.M. in Wapello County, Iowa as shown in a deed recorded in Book 2018 Page 3862 of the records in the office of the Wapello County, Iowa Recorder. The Defendants, Remmark, hold record title to the adjoining real estate to the south described as the South Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 West of the 5<sup>th</sup> P.M. in Wapello County, Iowa except public highway and except the West 25 acres thereof, and except the Southeast corner of the Southeast Quarter of the Southwest Quarter, lying South and East of the public highway. The Remmarks claim that the northern boundary of their property is not as is shown by their deed but lies north of their deeded property line pursuant to the legal theory of boundary by acquiescence. The Plaintiff, Sundance Land Company, LLC, filed a petition to quiet the title to the real estate established in its deed and demands that any encroachments of the Remmarks be removed from its real estate. The Defendants, Remmark, counterclaimed for determination of a different boundary under the legal theory of boundary by acquiescence.

**B. COURSE OF PROCEEDINGS.**

Sundance Land Company, LLC filed a petition in equity on June 5, 2020.

(APP. 6-10) The petition included a count for petition for quiet title of real estate that had been conveyed as well as a count for trespass and request for injunction. (APP. 6-10) The Defendants, Phillip and Bobbie Remmark, filed their answer and counterclaim on July 27, 2020. (APP. 11-12). In their Answer the Remmarks admitted that Sundance was the owner of the North Half of the Southwest Quarter of Section 3, Township 17 North, Range 14, Wapello County, Iowa and that Sundance had acquired its title through the deed of conveyance recorded as document 2018-3862 of the records of the Wapello County Recorder (APP.6; APP. 11) Despite admitting that Sundance owned the Sundance Real Estate in its answer, the Remmarks counterclaimed that the boundary between the parties had shifted to the North under the doctrine of boundary by acquiescence. (APP.12) Sundance Land Company, LLC filed a reply to the counterclaim on August 11, 2020 denying the claims of the Remmarks to boundary by acquiescence. (APP.13-14) The reply further asserted that the Remmarks claim to the real estate arose by reason of deed by a trustee and was therefore barred under Iowa Code Section 614.14(5)(b) of the Code of Iowa. (APP. 13-14). The Remmarks filed a motion for summary judgment on June 3, 2021. (APP. 17-18) Sundance Land Company, LLC filed a resistance to motion for summary judgment on June 21, 2021. (APP. 21-23) A hearing on the motion for summary judgment was held on July 19, 2021. (APP. 24) The

Court filed its ruling on July 23, 2021 wherein the court found that there were genuine issues of material fact which precluded summary judgment and that the motion for summary judgment was denied. (APP. 28-29)

The case was tried before the Court on August 4, 2021 pursuant to prior trial setting order. (APP. 15-16) The Court filed its Findings of Fact, Conclusion of Law and Ruling on March 7, 2022. (APP. 41-57) The Court found that substantial evidence exists that the boundary line recognized and acquiesced in for ten years is not the survey line shown in Trevor Brown's survey, but rather is north of that line. (APP.50). The court then stated "The court must next determine the exact location of the boundary line between the properties in accordance with the above finding". (APP. 52). The Court then stated "Where boundary lines are not established in the trial, a commission should be appointed to establish the boundary." (APP.52) The court further found that based upon the court's ruling on Remmarks' counterclaim that Sundance Land Company, LLC's petition to quiet title, claim for trespass and request for injunction were denied and dismissed. (APP. 56)

Sundance Land Company, LLC timely filed a motion to Reconsider, Enlarge and Amend under Rule 1.904 (2) of the Iowa Rules of Civil Procedure. (APP. 58-62). The Court issued a ruling without hearing on April 20, 2022 which denied the Plaintiff's motion. (APP. 63-64) Sundance Land Company,

LLC timely filed a notice of appeal on May 17, 2022. (APP.65)

**C. STATEMENT OF THE FACTS.**

Keith Davis is the President of Sundance Land Company, LLC ("Sundance") (Tra. Page 68, lines 4-6). On September 18, 2018 Sundance purchased real estate located in Wapello County, Iowa which was legally described as follows:

The North Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 Wapello County, Iowa (the "Sundance Real Estate") (Tra. Page 68 line 18 through Page 69, Line 1; APP. 87).

The Sundance Real Estate was purchased for the price of \$236,000 as determined by the transfer tax paid on the recording of the deed to the Sundance Real Estate (APP. 87). Sundance received title to the Sundance Real Estate by Warranty Deed dated September 18, 2018 and filed of record September 19, 2018 in book 2018 page 3862 of the records of the Wapello County Iowa Recorder (APP. 87). An aerial photograph of the Sundance Real Estate is shown on Exhibit 12A as the parcels with blue checkmarks in them (APP.123; TRA. Page 69, Lines 5-15). Sundance borrowed funds to purchase the Sundance Real Estate and the Sundance real estate is subject to a mortgage securing debt in the amount of \$350,000 (TRA. Page 70, Lines 2-11; APP 88-101).

Philip Remmark and Bobbie Remmark (the "Remmarks") are the owners of the adjoining real estate lying directly south of the Sundance Real Estate which is legally described as follows:

The South Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 West of the 5th P.M., in Wapello County, Iowa, except public Highway as now located and except the West 25 acres thereof, and except the Southeast corner of the Southeast quarter of the Southwest Quarter, lying south and east of the public Highway (the "Remmark Real Estate"). (APP. 6-7; APP. 11; APP.106)

The Remarks acquired the Remmark Real Estate by Warranty Deed dated April 18, 2017 and filed of record April 24, 2017 in book 2017 page 1693 of the records of the Wapello County Iowa Recorder. (APP. 6-7; APP. 11; APP.106)

Sundance and Remmarks both acquired their respective parcels of real estate from Scott Brian Hubbell and Mary Sue Hubbell (the "Hubbells") (APP. 87,106). The Hubbells owned both properties from May 9, 2014 to April 18, 2017 (APP.102-103,106,110-115; TRA. Page 88, Lines 15-20). Prior to owning the Sundance Real Estate and the Remmark Real Estate, Scott Hubbell rented both the Sundance Real Estate and the Remmark Real Estate continuously from 1996 until he purchased the Remmark real estate on contract in 2005 and continued to rent the Sundance Real Estate until he purchased that farm in 2014

(TRA. Page 84, Line 1 to Page 85, Line 13).

The legal boundary between the Sundance Real Estate and the Remmark Real Estate as set forth in the respective deeds of conveyance is determined by the governmental survey system. (TRA. Page 39, Line 11 to Page 40, Line 24). Trevor Brown is a licensed land surveyor and civil engineer in the State of Iowa. (TRA. Page 33, Lines 6-9) Mr. Brown has been a licensed land surveyor since 2005. (TRA. Page 33, Lines 10-12). Mr. Brown was asked to mark the aerial photograph of the parcels located in the North Half of the Southwest Quarter of Section 3 and did so as shown on Exhibit 12A. (TRA. Page 35, Line 22 to Page 36, Line 7; APP 123) Mr. Brown submitted an expert report in this record shown as Exhibit 16. (APP. 127-144; TRA. Page 36, Line 17 to Page 37, Line 1). The second to the last page of Exhibit 16 is a recorded copy of Mr. Brown's Retracement Plat of Survey. (TRA. Page 37, Lines 2-6).

Mr. Brown was originally hired to do a Retracement plat of Survey for the North Half of the Southwest Quarter of Section 3 (known in this record as the Sundance Real Estate). (TRA. Page 35, Lines 22-24) Mr. Brown began his work by doing a search at the courthouse to look for any documentation at the Recorder's office that would include any surveys that were done on the property or adjacent property as well as surveys that were performed around that entire section. (TRA. Page 37, Line 25 to Page 38, Line 4) Mr. Brown did not find any

other surveys of the Sundance Real Estate or the Remmark Real Estate. (TRA. Page 46, Line 23, to Page 47, Line 4) He also obtained copies of the deeds of the landowner for this portion of the section as well as adjacent landowners. (TRA. Page 38, Lines 4-6) Mr. Brown discovered a deed from Linda Handling to Scott Brian Hubbell for the Sundance Real Estate known in this record as Exhibit P3. (TRA. Page 38, Lines 15-25) Mr. Brown also discovered evidence of vacation proceedings for a road that used to exist in the area. (TRA. Page 47, Lines 19-25) Part of that road has not been vacated from Lake Road to where the concrete pad is. (TRA. Page 66, Lines 6-10) Having not been vacated it is still an existing county road. (TRA. Page 66, Lines 11-13)

After gathering documentary evidence Mr. Brown then tried to locate points pursuant to the Governmental Survey System. (TRA. Page 39, Line 10 to Page 42, Line 16) Having established the four corners in the Southwest Quarter of Section 3, Trevor Brown was then able to establish the line that defined the north and south halves of the quarter section. (TRA. Page 43, Lines 9-12) That line ran through the middle of the quarter section. (TRA. Page 43, Lines 13-17) It is the line that runs through the middle of the survey and is the southern boundary line of the North Half of the quarter section. (TRA. Page 43, Lines 21-25) Mr. Brown then found that there was encroachment of an existing structure and a concrete pad and pursuant to surveying standards showed that the

encroachment details on the survey. (TRA. Page 44, Lines 1-6) An encroachment is a situation where a permanent structure is crossing a property line onto a different property owner's ground. (TRA. Page 44, Lines 16-19) Mr. Brown found that a machine shed was shown to be encroaching upon the north half of the quarter section by 18.73 feet to 20.07 feet. (TRA. Page 44, Lines 20-23) Mr. Brown also found a concrete pad was encroaching at its maximum by 21.16 feet on the Sundance Real Estate. (TRA. Page 44, Lines 24-25) The resulting Retracement Plat of Survey shows a summary of Trevor Brown's findings and measurements in the South Half of Section 3. (TRA. Page 45, Lines 2-6) Mr. Brown then recorded his Retracement Plat of Survey in the records of the Wapello County, Iowa Recorder in Book 2018 Page 457. (TRA. Page 45, Lines 7-14)

It was the opinion of Mr. Brown that the southern boundary line of the North Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 West is as shown on his Retracement Plat of Survey. (TRA. Page 45, Lines 15-22) His opinion was made on a reasonable degree of certainty pursuant to the rules and regulations of his profession. (TRA. Page 45, Line 23 to Page 46, Line 1)

When all attempts to resolve the encroachments were unsuccessful, Sundance commenced this action seeking to have the court declare that it is the



owner in fee simple title to the Sundance Real Estate and require the Remmarks to remove their encroachments from the Sundance Real Estate (TRA. Page 74, Line 13 to Page 75, Line 11).

Scott Hubbell started renting the Sundance Real Estate in 1995. (TRA. Page 84, Lines 16-18) At that time, the real estate was owned by Larry Handling and Linda Handling. (APP. 104; TRA. Page 84, Line 12-15) When he rented the Sundance Real Estate from the Handlings, Scott Hubbell was total control of the Sundance Real Estate. (TRA. Page 85, Lines 14-22) During the time he rented the property from Linda Handling she was not present on the property very often. (TRA. Page 85, Lines 14-17) Linda Handling did not direct what Scott Hubbell did on the Sundance Real Estate. (TRA. Page 85, Lines 18-19) During the time he rented the Sundance Real Estate he used it for the raising of row crops and he pastured cattle on the farm in the winter. (TRA. Page 84, Lines 16-21)

Scott Hubbell rented the adjoining Remmark Real Estate starting in 1995 or 1996. (TRA. Page 84, Lines 7-11) In the first year he rented the Remmark Real Estate, he produced hay on the property. (TRA. Page 84, Lines 23-25) After the first year, he produced row crops. (TRA. Page 84, Line 25 to Page 85, Line 1) The owner of the Remmark Real Estate at the time that Scott Hubbell began renting it in 1995 was Hobart Sims and Mary Sims. (TRA. Page 84,

Lines 7-8; APP. 116-118) Mr. and Mr. Sims had acquired the real estate in October of 1961. (APP. 119) During the farm tenancy, Mr. and Mrs. Sims conveyed the real estate to the Sims Family Trust in October of 1995. (APP. 116-118) During the time that Scott Hubbell rented the Remmark Real Estate from Mr. and Mrs. Sims or the Sims Family Trust, he was in total control of the real estate. (APP. 116-118, 119; TRA. Page 85, Line 23 to Page 86, Line 2). Before he purchased either farm, and while he was renting both parcels, Scott Hubbell paid for a Machine Shed to be built on the combined property. (TRA. Page 90, Lines 4-22). The Machine Shed is shown as a gray square on Exhibit 12A. (APP. 120-122, 123; TRA. Page 90, Lines 4-12) After he had acquired both parcels, Scott Hubbell put a concrete pad and a Grain Bin on his combined property. (TRA. Page 90, Line 23 to Page 91, Line 11)

Mr. Hubbell purchased the Remmark Real Estate from the Sims Family Trust by contract dated June 30, 2005 which was recorded in Book 2005 Page 3485 of the records of the Wapello County, Iowa Recorder. (APP. 110-115; TRA. Page 86, Lines 6-22) Mr. and Mrs. Hubbell received a deed in satisfaction of the contract from the Sims Family Trust on May 12, 2014 which was recorded in Book 2014 Page 1821 of the records of the Wapello County, Iowa Recorder. (APP. 107-109; TRA. Page 87, Lines 2-12) Mr. and Mrs. Hubbell then purchased the Sundance Real Estate by deed recorded May 12, 2014 in

Book 2014 Page 1819 of the records of the Wapello County, Iowa Recorder. (APP. 102-103) Scott Hubbell and his wife Mary Sue Hubbell owned both the Remmark Real Estate and the Sundance Real Estate from May 9, 2014 to April 18, 2017, a period of almost 3 years. (TRA. Page 88, Lines 15-20) Including his time on the farms as tenant and owner, Scott Hubbell was in possession both the Sundance Real Estate and the Remmark Real Estate continuously from 1995 through April of 2017 a period of 22 years. (TRA. Page 88, Line 21 to Page 89, Page 1; Page 94, Lines 7-11).

In the 22 years Mr. Hubbell rented and owned the Sundance Real Estate and the Remmark Real Estate, the boundary line between the two properties really didn't matter to him because he farmed both farms on either side the boundary line. (TRA. Page 89, Lines 2-12; Page 101, Lines 4-20) No one ever made an issue about the boundary line. (TRA. Page 89, Lines 2-8; Page 101 Lines 4-13) During the entire time of Mr. Hubbell's tenancy, Linda Handling never made any statements to him where the boundary line was. (TRA. Page 89, Lines 2-5) When Scott Hubbell rented the Remmark Real Estate to the south of the Sundance Real Estate, that property was owned either by Hobart Sims and Mary Kay Sims or the Sims Family Trust. (APP 107-109, 110-115, 116-118, 119, 145) No owners of the Remmark Real Estate at the time ever made any statements to Scott Hubbell concerning the boundary line. (TRA. Page 89, Lines

6-8, Page 92, Line 22 to Page 93, Line 1)

When Mr. Hubbell owned both the Sundance Real Estate and the Remmark Real Estate for a period of almost three years, the boundary line between those parcels didn't matter because he owned both parcels and continued to farm both parcels. (TRA. Page 89, Lines 2-22; Page 101, Lines 14-20) When Mr. Hubbell owned both properties he did not think he had a boundary inside his property which divided the property from himself. (TRA. Page 89, Lines 13-22; Page 101, Lines 14-17) Mr. Hubbell thought there would be no reason to have a boundary line between property that he owned on both sides of the line. (TRA. Page 101, Lines 14-20) Scott Hubbell testified that he really didn't know where the boundary line was between the Sundance Real Estate and the Remmark Real Estate. (TRA. Page 116, Lines 7-10; Page 119 Lines 22-24) He really didn't really care about where the boundary line was because he first farmed on both sides of the property line and later owned both properties on either side of the boundary line. (TRA. Page 89, Lines 2-18, Page 101, Lines 4-20)

In connection with the survey work conducted by professional land surveyor Trevor Brown, Mr. Brown noted that there was an old fence line north of the survey line that marked the old right of way line of the abandoned roadway. (TRA. Page 53, Lines 16-23) Mr. Brown testified that abandoned

right of way lines are not automatically boundary lines between properties. (TRA. Page 53, Line 24 to Page 54, Line 1) In Wapello County, Iowa, the county acquires an easement for the purpose of constructing and maintaining a roadway. (TRA. Page 54, Lines 4-7) When roads get vacated, the easement that the county had acquired would disappear and the full ownership would go to the parties on either side of the roadway center if it went along the section line. (TRA. Page 54, Lines 8-13) Mr. Brown also determined that there was similar right of way line south of the old county road and a fence line that ran along that line as well in the past. (TRA. Page 54, Lines 18-23; Page 61, Lines 20-25; Page 62, Lines 1-4) After reviewing the evidence on the site, Mr. Brown concluded that the boundary line was on the section line that was established in the Retracement Plat of Survey. (TRA. Page 62, Lines 11-14)

Scott Hubbell acknowledges that there was an old dilapidated fence inside the combined property when he started renting the properties. (TRA. Page 89, Lines 18-22) Mr. Hubbell never treated the old dilapidated fence as the boundary line between the two properties. (TRA. Page 89, Lines 23-25; Page 92, Lines 19-22), To him it was just a fence. (TRA. Page 89, Lines 23-25) Scott Hubbell mowed on both side of the fence. (TRA. Page 90, Lines 1-3) In 2004, Scott Hubbell tore out the fence from the southeast corner of the Sundance Real Estate to the behind the machine shed. (TRA. Page, 91, Line 14-24) The fence

was really not a fence anymore at that time. (TRA. Page 92, Lines 3-4) Anything could walk through it and it was full of junk and trees. (TRA. Page 91, Line 25 to Page 92, Line 4) Scott Hubbell was trying to clean up the area and make it look better. (TRA. Page 91, Line 25 to Page 92, Line 2) Scott Hubbell never treated this fence as the boundary line and none of the owners ever treated the dilapidated fence as the boundary line between their properties. (TRA. Page 92, Line 19 to Page 93, Line 1) Scott Hubbell replaced the old dilapidated fence with a new fence. (TRA. Page 93, Lines 2-5) The purpose of the new fence was to keep cattle on the Sundance Real Estate in the winter time. (TRA. Page 93, Line 2-14) Scott Hubbell took out the fence in 2010 and there has been no fence there since that time. (TRA. Page 93, Line 17 to Page 94, Line 6)

## I.

**SUNDANCE LAND COMPANY, LLC IS THE OWNER OF THE SUNDANCE REAL ESTATE IN FEE SIMPLE AS SHOWN BY THE RECORD TITLE AND THE PRESUMPTION THAT SUNDANCE LAND COMPANY IS THE OWNER WAS NOT OVERCOME AT TRIAL. THE RULING OF THE TRIAL COURT SHOULD BE REVERSED.**

### **PRESERVATION OF ERROR**

This issue was presented to the court under the petition of Sundance for quiet title. The Court issued its Findings of Fact, Conclusions of Law and Ruling on March, 7, 2022. (APP. 41-57) Sundance timely filed a motion to Reconsider, Enlarge and Amend under Rule 1.904 (2) of the Iowa Rules of Civil

Procedure on March 22, 2022. (APP. 58-62) The Court entered its ruling on the motion on April 20, 2022. (APP. 63-64) This issue was preserved when Sundance timely filed a Notice of Appeal on May 17, 2022. (APP. 65)

### **STANDARD OF REVIEW**

The parties agreed that this case would be tried in Equity. (TRA. Page 8, Lines 1-6) Generally, the Supreme Court's review of a decision by the district court following a bench trial depends upon the manner in which case was tried to the court. *Carroll Airport Commission v. Danner*, 927 N.W.2d 635(Iowa 2019). The Supreme Court's review of cases tried in equity is de novo. *In re Trust No. T-1 of Trimble*, 826 N.W.2d 474 (Iowa 2013). Therefore, the standard of review in this case is de novo.

### **ARGUMENT**

Sundance Land Company, LLC has pled a cause of action to quiet the title of the Sundance Real Estate in Sundance. The plaintiff in a quiet title action must succeed on the strength of his or her own title and not simply on the weakness of the defendant's title. *State ex rel. Iowa Dept. of Natural Resources v. Burlington Basket Co.*, 651 N.W.2d 29, 34 (Iowa 2002); *Wilcox v. Pinney*, 98 N.W.2d 720, 722 (1959); *Sherbonday v. Surring*, 188 N.W. 831, 835 (1922). The plaintiff bears the initial burden to prove her title by a preponderance of the evidence. *State ex rel. Iowa Dept. of Natural Resources*, 651 N.W. 2d at 34.

Under Iowa law, the owner of record title is presumed to be the owner of the real estate. *Id.* The presumption of ownership which follows the legal title can be only overcome only by evidence that is clear and convincing. *Shine v. State*, 458 N.W.2d 864, 866 (Iowa App. 1990); *Jeffrey v. Grosvenor*, 261 Iowa 1052, 157 N.W.2d 114, 122 (1968). A preponderance of the evidence is not sufficient. *Thompson v. Thompson*, 39 N.W.2d 132, 138 (Iowa 1949).

The most demanding standard of proof applied to civil cases is clear and convincing evidence. *Matter of Guardianship of L.Y.*, 968 N.W.2d 882 (Iowa 2022). Evidence is ‘clear and convincing’ when there are no ‘serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *Id.*

Sundance has proven that it is the owner of title in fee simple to the real estate described in deed dated September 18, 2018 and filed September 19, 2018 in book 2018 at page 3862 in the office of the Wapello County, Iowa Recorder (APP. 87) based on the record made at trial. In this case, Sundance's Warranty Deed from the Hubbells conveys the “North Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 Wapello County, Iowa.” (APP. 87) Moreover, each and every deed for the Sundance Real Estate prior to the Hubbell/Sundance deed dating back to 1941 also conveys the full portion of the North Half of the Southwest Quarter of Section 3. (APP. 105,104,102-103)



Nothing in the Remmark's deed conveys them any part of the North Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 Wapello County, Iowa (APP. 106) The deed to Sundance Land Company LLC therefore constitutes record title to the "North Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 Wapello County, Iowa." (APP. 87)

Furthermore, the survey conducted by professional surveyor Trevor Brown establishes the boundaries of the "North Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 Wapello County, Iowa." According to Trevor Brown's professional survey, the southernmost boundary of the "North Half of the Southwest Quarter of Section 3, Township 71 North, Range 14 Wapello County, Iowa" is a line that extends through a portion of the machine shed and concrete silo pad that exists on what the Remmarks contend to be their land. (APP. 143-144; TRA. Page 45, Lines 15-22) Nobody disputes the accuracy of Trevor Brown's survey. Therefore, Sundance Land company proved that it is the presumed owner of the disputed land up to the legal boundary established by the Retracement Plat of Trevor Brown.

In addition to the deed of conveyance and the recorded Retracement Plat of Survey of Trevor Brown, other evidence supports the title of Sundance Land Company, LLC in the Sundance Real Estate. Sundance paid consideration of \$236,000.00 for the Sundance Real Estate as shown by the real estate transfer

tax paid on the face of the deed (APP. 87); (\$376.80 which is the transfer stamps for \$236,000 as set forth in section 428A.1(2) of the Code of Iowa); (TRA. Page 68, Lines 11-25). Sundance received the Sundance Deed in consideration for the payment of the purchase price (APP.87; TRA. Page 69, Lines 21-24). Sundance granted a mortgage on the Sundance Real Estate as set forth in mortgage recorded in book 2018 at page 3864 (APP. 88-101). Sundance has paid the real estate taxes on the property described in the Sundance Deed since the purchase (TRA. Page 77, Lines 1-4). There is no evidence in this record that the Remmarks have paid any consideration for any part of the Sundance Real Estate or paid any real estate taxes associated with the Sundance Real Estate.

Sundance has proven its record title by a preponderance of the evidence. Having proven its title to the Sundance Real Estate by the recording of a deed conveying the real estate, Sundance is presumed to be the owner of the Sundance Real Estate unless the presumption is overcome by clear and convincing evidence. As discussed below, this presumption of ownership was not overcome at trial and the Court should rule that Sundance Land Company, LLC is the owner of the Sundance in fee simple. Therefore, Sundance respectfully requests that the court decree that Sundance is the owner in fee simple of all of the real estate described in its Petition and that the Defendants Phillip Remmark and Bobbie Remmark and all persons claiming by, through or

under them be forever barred and estopped from having or claiming any right, title or interest in and to said real estate. Sundance would also request that the court order the Remmarks to remove any and all encroachments from the Sundance Real Estate.

## II.

**THE COMMON OWNERSHIP OF THE SUNDANCE REAL ESTATE AND THE REMMARK REAL ESTATE TERMINATED ANY ACQUIESCENCE AS TO A LEGAL BOUNDARY EXISTING PRIOR TO THE PERIOD OF COMMON OWNERSHIP AND THE RULING OF THE TRIAL COURT FINDING A BOUNDARY BY ACQUIESCENCE SHOULD BE REVERSED.**

### **PRESERVATION OF ERROR**

This issue was presented to the court under the petition of Sundance for quiet title and in defense of the counterclaim filed by the Remmarks. The Court issued its Findings of Fact, Conclusions of Law and Ruling on March, 7, 2022. (APP. 41-57) Sundance timely filed a motion to Reconsider, Enlarge and Amend under Rule 1.904 (2) of the Iowa Rules of Civil Procedure on March 22, 2022. (APP. 58-62) The Court entered its ruling on the motion on April 20, 2022. (APP. 63-64) This issue was preserved when Sundance timely filed a Notice of Appeal on May 17, 2022. (APP. 65)

### **STANDARD OF REVIEW**

The parties agreed that this case would be tried in Equity. (TRA. Page 8, Lines 1-6) Generally, the Supreme Court's review of a decision by the district court following a bench trial depends upon the manner in which case was tried to the court. *Carroll Airport Commission v. Danner*, 927 N.W.2d 635(Iowa 2019). The Supreme Court's review of cases tried in equity is de novo. In re Trust No. T-1 of Trimble, 826 N.W.2d 474 (Iowa 2013). Therefore, the standard of review in this case is de novo.

### **ARGUMENT**

The Remmarks filed a counterclaim asserting that the boundary between the Sundance Real Estate and the Remmark Real Estate was different than the boundary shown in the deed of conveyance to Sundance and the survey of Trevor Brown. (APP. 10-11) The Remmarks claim that the boundary line is north of the boundary line shown in the survey of Trevor Brown under the legal theory of boundary by acquiescence.

Any claim to a boundary by acquiescence was destroyed when Scott Hubbell and Mary Sue Hubbell acquired the Sundance Real Estate when they already owned the adjoining Remmark Real Estate. The common ownership of the two tracts of land eradicated the significance of any acquiescence as to the legal boundary existing prior to the period of common ownership as a matter of

law. *Salazar vs. Terry*, 911P.2d 1086, 1089 (Colorado 1996). Unity of ownership destroys the need for boundary fences. *Id* at 1092. The issue here is not whether the common owner intended that the two tracts of land merge. *Id*. Rather, what is relevant is the effect of the unity of ownership on the legal significance of the fence. *Id*. Once the two tracts fell under common ownership, the fence no longer served any legal purpose, i.e., there was no need for an internal boundary to separate land belonging to one owner. *Id*. When the two tracts again came under separate ownership, the process of acquiescence and adverse possession commenced afresh. *Id*.

The real estate owned by Sundance Land Company, LLC and the real estate owned by Phillip Remmark and Bobbie Remmark came from a common owner. (APP. 87, 106) Scott Brian Hubbell and Mary Sue Hubbell owned the Sundance Real Estate and the Remmark Real Estate at the same time. (APP. 102, 87, 110, 107-108; TRA. Page 88, Lines 15-20) It is undisputed that the Hubbells owned both properties from May 9, 2014 through April 18, 2017. (EXB. 102-103,106,110-115; TRA. Page 88, Lines 15-20) Pursuant to the authorities stated above once the two tracts fell under common ownership, the fence no longer served any legal purpose. There was no need for an internal boundary to separate land belonging to the same owners. The common ownership of the two tracts of land eradicated the significance of any

acquiescence as to the legal boundary existing prior to the period of common ownership as a matter of law.

A merger occurs when a greater estate and a less coincide and meet in one and the same person without any intermediate estate. Julie L. Pulkrabek, 13 Ia. Practice Series Section 14:5 Merger of estates – at law (2020); *Strong v. Garrett* 57 N.W. 715 (Iowa 1894); In such a case the less is merged in the greater estate, not the greater in the less. *Id.* If it is assumed for the purposes of argument under the legal theory advanced by Remmarks that before purchasing the Sundance Real Estate (APP. 102) Scott Hubbell and Mary Hubbell owned the Remmark Real Estate according to their contract (APP. 110-115) and had a possessory claim to real estate up to the claimed boundary line under the theory of boundary by acquiescence, then when Hubbells acquired fee title to all of the Sundance Real Estate by the deed recorded in book 2014 at page 1819 (APP 102) the lesser possessory estate interest in a boundary by acquiescence was merged in the fee title conveyed to them by the deed. Having acquired fee simple title to the Sundance Real Estate after already owning the Remmark Real Estate the fence lost its legal significance (if any) by merger of the lesser estate into the greater estate.

The effect that common ownership has on the legal theory of boundary by acquiescence does not appear to have been treated in any reported case in Iowa. This appears to be an issue of first impression in the State of Iowa.

The effect common ownership of land on both sides of a purported line has on the legal theory of boundary by acquiescence has been addressed in other jurisdictions. In *Salazar vs. Terry*, 911P.2d 1086 (Colorado 1996) cited above, the Colorado Supreme Court had a fact pattern similar to one as the case at bar. In *Salazar*, there was a boundary line dispute wherein one of the parties claimed that boundary by acquiescence had been established in a fence that ran between the two respective properties. Both of the respective properties were owned by a predecessor in title, Mills Ranches, Inc., between November 3, 1977 and November 18, 1977. The fence in question had existed since 1888. The Supreme Court of Colorado held as follows:

“Unity of ownership destroys the need for boundary fences.”

*Salazar*, 911 P2d at 1092... The issue here is not whether the common owner intended that the two tracts of land merge. Rather, what is relevant is the effect of the unity of ownership on the legal significance of the fence. The acquiescence to the fence as the boundary separating the two tracts of land was wiped out when common ownership of both tracts was held for a period of 15 days. Once the two tracts fell under common

ownership, the fence no longer served any legal purpose, i.e., there was no need for an internal boundary to separate land belonging to one owner.

When the two tracts again came under separate ownership, the process of acquiescence in adverse possession commenced afresh. *Id.*

The Colorado Supreme Court in *Salazar* also looked at other jurisdictions addressing the issue.

**1. Missouri.** In *Patton vs. Smith*, 71 S.W.187 (1902), the Missouri Supreme Court held that the defendant got and paid for only what was described in his deed and that “when Remelius became the owner of both tracts, he wiped out and abandoned any agreed dividing line if there ever was one.” *Patton*, 71 S.W. at 190. Specifically, the Patton court was convinced by the following: In 1883, Remelius became owner of both tracts, and evidence shows that, when some question arose, thereafter, as to the location of the survey line, he said it made no difference, in as much he owned all the land on both sides of the line, wherever it may be. So that even if the possession of Kennedy had been hostile to Remelius and even if Kennedy had intended to claim the line established as the survey line by the county surveyor, without regard to whether that was the true line or not, and even if Kennedy and Remelius had agreed on the line established by the county surveyor, never the less



when Remelius became the owner of both tracts of land, all such questions became immaterial. There was no adverse holding thereafter by Remelius as the owner of one tract against himself as the owner of the other tract, and there was no longer any question of an agreed line dividing the two tracts. *Id.*, 71 S.W. at 190.

**2. Illinois.** Similarly, in *Conklin vs. Newman*, 115 N.E. 849 (1917) the Illinois Supreme Court held that when title to both tracts of land is held in one person “any agreement and division that had theretofore been made while ownership of the two tracts was in different persons ceased to exist or be effective because the two portions of the fence at issue ceased to be appurtenant to any particular parts of the tract.” *Id.*, 115 N.E. at 850; see also 5 Richard R. Powell, *Powell on Real Property* Section 62.02 [10] at 62-19 (1994) “A division fence often loses its utility and always loses its legal significance when separate ownership of the parcels is merged in one owner.”; Olin L. Brouder, *The Practical Location of Boundaries*, 56 MICH. L. Rev. 487, 530 (1958) (“Where after a boundary agreement, title to the parcels affected became united, it has been held that a subsequent grantee of one of the parcels takes according to the terms of his deed unaffected by the agreement.”)

Furthermore, the court in Salazar supported its conclusions by the doctrine of merger as it applies to easements and concluded that the analysis of merger in said context was analogous to merger of rights of landowners to boundary line fences. The Court held as follows:

Our conclusion is reinforced by the doctrine of merger as it applies to extinguishment of easements *Id.* at 1090. Easements and boundaries affect the relationship between parcels of land. *Id.* at 1091. When the dominant and servient estates come under common ownership, the need for the easement is destroyed. *Id.* Specifically, “[i]f the owner of an easement in gross comes into ownership of an estate in the servient tenement, the easement terminates to the extent that the ownership of that estate permits the uses authorized by the easement.” 7 *Thompson on Real Property* § 60.08(b)(1) at 479 (David A. Thomas ed., 1994) (footnote omitted); *see also Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 858 P.2d 1258, 1261 (1993) (“When one party acquires present possessory fee simple title to both the servient and dominant tenements, the easement merges into the fee of the servient tenement and is terminated.”); *Witt v. Reavis*, 284 Or. 503, 587 P.2d 1005, 1008 (1978) (“if at any time the owner in fee of the dominant parcel acquires the fee in

the servient parcel *not* subject to any other outstanding estate, the easement is then extinguished by merger”) (emphasis in original). *Id.*

By analogizing to the doctrine of merger in the easement context, we do not intend to equate easements with boundary fences. *Id.* at 1092. There are no dominant and servient estates created by boundary fences. *Id.* Nevertheless, the easement analysis is relevant and applicable by analogy to boundary fences. As with easements, unity of ownership destroys the need for boundary fences.... In sum, the issue here is not whether the common owner intended that the two tracts of land merge. The common owner's intent becomes relevant only if manifested in the deed. Rather, what is relevant is the effect of the unity of ownership on the legal significance of the fence. *Id.*

In all of the cases set forth above, courts found that when one owner became the owner of both properties on either side of a line once claimed to be established by acquiescence that said lesser estate in real estate merged with the fee, the line lost its legal significance and the clock began running anew under the respective boundary by acquiescence statute.

The case at bar is similar to the *Salazar* case and the cases reference therein. In *Salazar*, the Colorado Supreme Court indicated that common ownership of only 15 days was enough to destroy any claim of boundary by

acquiescence under the doctrine of merger. In this case, Scott Brian Hubbell and Mary Sue Hubbell owned both respective properties for almost 3 years. When Scott Brian Hubbell and Mary Sue Hubbell took title to both the Remmark Real Estate and the Sundance Real Estate, all claims of the fence in question being a boundary line established by acquiescence lost their legal significance, were terminated and merged into the fee interest. In the end, Mr. and Mrs. Remmark were conveyed exactly what they purchased and nothing more. When the Hubbells gained ownership of both properties the legal significance of the fence was terminated. The clock for determining boundary by acquiescence would then start over when the Hubbells' relinquished the common owned title to the Remmarks on April 18, 2017. Since the required 10-year period has not elapsed since the common ownership was terminated the claims of the Remmarks for boundary by acquiescence must fail.

Remmarks appear to take the position that when a landowner takes title to both properties on either side of a purported boundary line the same owner is required to subsequently convey property to that purported line regardless of the time that elapses between the common ownership and the subsequent conveyance, the agreement that he makes with a subsequent purchaser and regardless of the legal description in the deed between the landowner and the subsequent purchaser. Under this theory the subsequent purchaser would also

be bound to take title to a purported line even if they never intended to. How far down the chain of title can a remote grantee claim a boundary by acquiescence?

Remmarks make such a claim based on the actions of owner who has not owned an interest in the real estate for over 16 years (the Sims Family Trust).

Clearly the law of boundary by acquiescence must have its limits. The limits of the legal theory are reached when the real estate is owned on both sides by the same owner and there is no boundary line inside the common owned property.

That is the case here and the claims of boundary by acquiescence must fail.

Therefore, Sundance respectfully requests that the court reverse the finding of the trial court concerning boundary by acquiescence, decree that Sundance is the owner in fee simple of all of the real estate described in its Petition and that the Defendants, Phillip Remmark and Bobbie Remmark, and all persons claiming by, through or under them be forever barred and estopped from having or claiming any right, title or interest in and to said real estate. Sundance would also request that the court order the Remmarks to remove any and all encroachments from the Sundance Real Estate.

### III.

**THE REMMARKS HAVE NOT PROVEN THEIR CLAIM OF BOUNDARY BY ACQUIESCENCE BY CLEAR AND CONVINCING PROOF TO REBUT THE PRESUMPTION OF THE RECORD TITLE AND THE RULING OF THE TRIAL COURT SHOULD BE REVERSED.**

## **PRESERVATION OF ERROR**

This issue was presented to the court through the defense of the counterclaim of Remmarks. The Court issued its Findings of Fact, Conclusions of Law and Ruling on March, 7, 2022. (APP. 41-57) Sundance timely filed a Motion to Reconsider, Enlarge and Amend under Rule 1.904 (2) of the Iowa Rules of Civil Procedure on March 22, 2022. (APP. 58-62) The Court entered its ruling on the motion on April 20, 2022. (APP. 63-64) This issue was preserved when Sundance timely filed a Notice of Appeal on May 17, 2022. (APP. 65)

## **STANDARD OF REVIEW**

The parties agreed that this case would be tried in Equity. (TRA. Page 8, Lines 1-6) Generally, the Supreme Court's review of a decision by the district court following a bench trial depends upon the manner in which case was tried to the court. *Carroll Airport Commission v. Danner*, 927 N.W.2d 635(Iowa 2019). The Supreme Court's review of cases tried in equity is de novo. *In re Trust No. T-1 of Trimble*, 826 N.W.2d 474 (Iowa 2013). Therefore, the standard of review in this case is de novo.

## **ARGUMENT**

In the counterclaim of the Remmarks, they claimed that the boundary

between the Sundance Real Estate and the Remmark Real Estate lied north of the true survey line pursuant to the legal theory of boundary by acquiescence. (APP. 10-11) Iowa law provides the following with regards to the legal theory of boundary by acquiescence:

Iowa Code Section 650.14 provides as follows:

If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized acquiesced in, such recognized boundaries and corners shall be permanently established.

Iowa law defines acquiescence as follows:

It is the **mutual** recognition by **two** adjoining landowners for **ten years or more** that a line, definitely marked by a fence or in some manner, is the dividing line between them. [Emphasis added]. *Sille vs. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). Acquiescence exists when **both** parties acknowledge and treat the line as a boundary. *Sille* 297 N.W.2d at 381; *Ollinger vs. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997); *Tewes vs. Pine Lane Farms, Inc.*, 522 N.W.2d 801,806 (Iowa 1994) Knowledge on the part of **both** parties is a condition precedent for the existence of acquiescence. *Sille* 297 N.W.2d at 381. All parties must be aware that the asserted property line is being treated as a boundary.

*Tewes*, 522 N.W.2d at 806; *Sille*, 297 N.W.2d at 381; It is true that recognition may be by conduct or claim asserted, but it must be by both parties. *Brown vs. McDanel*, 156 N.W.2d 349, 352 (Iowa 1968). It is sufficient knowledge if both parties are aware of the fence or other line and of the fact that both adjoining landowners are, for the required period, treating it as a boundary. *Sille*, 297 N.W.2d at 381. Acquiescence in the existence of a fence as a barrier, not as a boundary, is not such recognition as will establish it as the true line.” *Brown v. McDaniel*, 156 N.W.2d 349, 352 (Iowa 1968).

It is well settled that the burden is upon the party claiming a boundary line different from that disclosed by the survey to establish the alleged acquiescence by clear proof. *Mayhugh v. Dea*, 871 N.W.2d 705 (Iowa App. 2015); *Brown*, 156 NW2d at 351.

In the ruling of the trial court, it found as follows:

"The court finds that substantial evidence exists that the boundary line recognized and acquiesced in for ten years is not the survey line shown in Trevor Brown's survey, but rather is north of that line." (APP. 50).

The record made at trial does not support the finding made by the court and the finding of boundary by acquiescence should be reversed. First of all, the



Remmarks failed to prove that two adjoining landowners acquiesced in the treatment of boundary different than the surveyed line for the required ten-year period. Secondly, the Remmarks failed to prove a definite line acquiesced to by adjoining landowners. None of these requirements were proven by the clear and convincing evidence based on this trial record. For the purposes of this trial Sundance has already proven that it is the owner of record title to the Sundance Real Estate. (APP. 87; TRA. Page 68, Line 11 to Page 69, Line 1) Under Iowa law, the owner of record title is presumed to be the owner of the real estate. *State ex rel. Iowa Dept. of Natural Resources*, 651 N.W. 2d at 34. The presumption of ownership which follows the legal title can be only overcome only by evidence that is clear and convincing. *Shine v. State*, 458 N.W.2d 864, 866 (Iowa App. 1990); *Jeffrey v. Grosvenor*, 261 Iowa 1052, 157 N.W.2d 114, 122 (1968). A preponderance of the evidence is not sufficient. *Thompson v. Thompson*, 39 N.W.2d 132, 138 (Iowa 1949). The Remmarks have failed to prove their claim of boundary by acquiescence by the required standard of clear and convincing evidence to overcome the presumption of record title to the Sundance Real Estate in Sundance and therefore, the Court's finding of boundary by acquiescence was not supported by the required quantum of proof in the trial record and the ruling of the Court should be reversed. Each of these areas will be examined below.

**A. The Remmarks failed to prove mutual acquiescence by two adjoining landowners for a period of over 10 years.**

Acquiescence exists when **both** parties acknowledge and treat the line as a boundary. *Sille*, 297 N.W.2d at 381; *Ollinger vs. Bennett*, 562 N.W.2d 167, 170 (Iowa 1997); *Tewes vs. Pine Lane Farms*, 522 N.W.2d 801, 806 (Iowa 1994). Knowledge on the part of **both** parties is a condition precedent for the existence of acquiescence. *Sille*, 297 N.W.2d at 381. **All parties must be aware that the asserted boundary is being treated as the boundary.** *Tewes*, 522 N.W.2d at 806. It is sufficient knowledge if **both** parties are aware of the fence or other line and of the fact that **both** adjoining landowners are for the required period treating it as a boundary.

The ruling of the trial court is devoid of any finding as to when a period of acquiescence for boundary began, when the ten-year requirement was satisfied or who the adjoining landowners were during the time of acquiescence on each side of the boundary line. The Remmarks have failed to prove the requirements of acquiescence. They have failed to prove that two different adjoining landowners were aware of the fence or other line and of the fact that both adjoining landowners are for the required period treating it as the boundary. It is significant that the trial court omitted the requirement that both adjoining landowners treat the purported line as the boundary for the required

period when it set forth the authorities and the requirements for acquiescence. (APP. 46-47) The Remmarks have simply failed to prove the most basic requirement of boundary by acquiescence that two adjoining landowners acquiesced to a different line for a period of over ten years.

Exhibit P17 in this record shows a chain of title for the Remmark Real Estate and the Sundance Real Estate and provides an analysis of who the adjoining landowners were throughout the history of the title to the properties. (APP. 145) This exhibit was based on the deeds of record on file in the office of the Wapello County, Iowa Recorder. (APP 87,88-101,102-103,104,105,106,107-109,110-115,116-118,119).

When the record of title ownership is examined and compared with the evidentiary record it is clear that the Remmarks did not prove acquiescence by adjoining landowners for a period of ten years or more. The most important testimony concerning the boundary line between the Sundance Real Estate and the Remmark Real Estate came from Scott Hubbell. Scott Hubbell possessed and later owned both the Sundance Real Estate and the Remmark Real Estate from 1995 through 2017 a period of 22 years. (TRA. Page 94, Lines 7-11) During this time period Scott Hubbell first farmed both sides of this purported line and later owned the real estate on both sides of this purported line. (TRA. Page 85 Lines 2-10; Page 88, Line 21 to Page 89 Line 1) During this time

period Scott Hubbell mowed on both sides of this old fence line. (TRA. Page 89, Line 23 to Page 90, Line3) During the 22 years he used both properties, the boundary line did not matter because he farmed both properties (TRA. Page 101, Lines 4 - 13). Scott Hubbell stated he never treated an old dilapidated fence line as the boundary line. (TRA. Page 92, Lines 19-22) He thought it was just a fence. (TRA. Page 89, Line 23 to Page 90, Line 1) He further testified that none of the owners of the Sundance Real Estate or the Remmark Real Estate treated the old dilapidated fence as the boundary line. (TRA. Page 92, Line 23 to Page 93, Line 1, Page 101, Line 4-13) The trial record is clear that at least since 1995 the party who was in control and used both parcels did not treat the purported line as the boundary line.

The Remmarks had the prior landowner, Linda Handling, testify. Linda Handling admits that she did not live on the Sundance Real Estate when she owned it. (TRA. Page 10, Lines 2 - 10) Linda Handling rented the Sundance Real Estate to Scott Hubbell beginning in 1995 and Scott Hubbell continued to rent that property until he purchased it in 2014. (TRA. Page 83, Line 17 to Page 85, Line 14) During the time Scott Hubbell rented the Sundance Real Estate, he had total control over it. (TRA. Page 84, Lines 20-22) Linda Handling did not direct what Hubbell did on the Sundance Real Estate. (TRA. Page 84, Lines 18-19) In addition, Linda Handling was not present on the Sundance Real Estate.

(TRA. Page 84, Line 14-17) Despite her lack of possession and contact with the real estate that she owned, Linda Handling testified that she believed that her boundary line on the south was marked by a fence line. (TRA. Page 13, Lines 6-9) Despite this belief, she never communicated this fact to her tenant who had rented the property from her from 1995 through 2014. (TRA. Page 89, Lines 2-5) In addition, there is no evidence whatsoever that she ever communicated her belief to any owner of the adjoining Remmark Real Estate. Finally, and most importantly, Linda Handling and Scott Hubbell were not adjoining landowners for ten years. Scott Hubbell purchased the Remmark Real Estate in June of 2005 (APP. 110-115). In addition to renting her property, Scott Hubbell was the adjoining landowner of Linda Handling from June of 2005 until May of 2014 when the Hubbells purchased the Sundance Real Estate. (APP. 110-115; TRA. Page 85, Lines 7 - 13, Page 88, Lines 15-20) This is a period of 8 years and 11 months which is not enough time for the 10-year acquiescence to take place.

Although the absentee landlord-owner, Linda Handling, testified that she believed that the southern boundary line to her property was a fence, there is absolutely no evidence in this record of the testimony from any other adjoining landowner of the Remmark Real Estate (excepting the Remmarks) that they treated the same line as the boundary line. Although the Remmarks have

testified that they thought the boundary line was other than the surveyed line, they have only owned the property since 2017. (APP. 106) At the time of filing the petition, they had only owned the property for three years which is not enough time for acquiescence to have occurred. (APP.6-10; APP. 106).

The landowner of the Remmark Real Estate before the Remmarks was Scott Brian Hubbell and his wife, Mary Sue Hubbell. The Hubbells owned both the Sundance Real Estate and the Remmark Real Estate from May 9, 2014 to April 18, 2017. (TRA. Page 88, Lines 15-20; APP. 145) As set forth in Issue II above, their common ownership destroyed any legal significance of the fence as a boundary and the process of establishing boundary by acquiescence began again when they conveyed the property the Remmarks (See issue II above). Even before the Hubbells owned both the Sundance Real Estate and the Remmark Real Estate, however, the Hubbells did not treat any fence line as the boundary line between the Sundance Real Estate and the Remmark Real Estate. (TRA. Page 92, Lines 19-22; Page 101, Lines 4-20)

Scott Hubbell testified that he began renting the Sundance Real Estate in 1995 and the Remmark Real Estate in the following year. (TRA. Page 83, Line 17 through Page 84, Line 15) Mr. Hubbell rented these properties continuously from 1996 through 2014, a period of 18 years. (TRA. Page 84, Line 16 to Page 85, Line 13) During this time, he was the party that was in possession of both

sides of the purported line asserted by the Remmarks. (TRA. Page 84, Line 16, Page 85, Line 13) During this time, the boundary line between the Remmark Real Estate and the Sundance Real Estate did not matter to Scott Hubbell because he farmed both sides. (TRA. Page 101, Lines 4-9) During the time that he was a tenant, the landowner of the Sundance Real Estate, Linda Handling, never stated to Scott Hubbell where the boundary line was. (TRA. Page 89, Lines 2-5) Similarly, the owner of the Remmark Real Estate during the time he rented the property, Hobart Sims and Mary Sims and later the Sims Trust, never made statements to Scott Hubbell where the boundary line was. (TRA. Page 89, Lines 6-8; Page 92 Line 23 to Page 93 Line 1) The boundary line between the properties simply did not matter because he farmed everything. (TRA. Page 89, Lines 2-12, Page 101, Lines 4-20) There was no reason to have a boundary line for property he owned on both sides. (TRA. Page 101, Lines 14-20) Furthermore, the fence line that the Remmarks purport to be established as the boundary by acquiescence was never treated by Scott Hubbell as a boundary line fence. (TRA. Page 92, Lines 19-22) He thought the fence was just a fence. (TRA. Page 89, Line 23 to Page 90 line 1) None of the owners of either property ever treated the fence purported to be the boundary line as the boundary line. (TRA. Page 92, Line 23 to Page 93, Page 1) He mowed on both sides of the fence. (TRA. Page 89, Line 23 to Page 90, Line 3). Scott Hubbell testified that

he tore out an old fence row in about 2004. (TRA. Page 91, Lines 14-18) The fence line he tore out commenced near the southeast corner of the Sundance Real Estate to behind the machine shed. (TRA. Page 91, Lines 19-24) At the time, he removed the fence it really wasn't a fence anymore. (TRA. Page 91, Line 25 to Page 92, Line 4) Anything could walk through it and it was full of junk and trees. (TRA. Page 91, Line 25 to Page 92, Line 4) Mr. Hubbell testified that he put the fence back so he could keep cattle in on the Sundance Real Estate in the winter. (TRA. Page 93, Lines 2-11) Mr. Hubbell then stated that he took the fence out again in 2010 and did not replace it. (TRA. Page 93, Line 17 to Page 94, Line 3) Mr. Hubbell testified he never treated the dilapidated fence as the boundary between the Remmark Real Estate and the Sundance Real Estate and that the owners of the respective properties never treated the dilapidated fence as the boundary line between their properties. (TRA. Page 92, Line 19 to Page 93, Line 1) Clearly, Scott Hubbell who owned or rented the properties since the year of 1995 did not treat the line purported by the Remmarks as the boundary line between their respective properties.

Prior to the Hubbells owning the Remmark Real Estate, the Remmark Real Estate was owned by the Sims Family Trust from March of 1995 to June of 2005. (APP. 110-115,116-118,145) The Trust was the adjoining neighbor of Linda Handling during the entire time it owned the Remmark Real Estate.



(APP. 145) There is absolutely no evidence in this record whatsoever about what the trustee of the Sims Family Trust believed their boundary line to be. Scott Hubbell was the tenant of the Remmark Real Estate during this entire time. (TRA. Page 84, Lines 2-6)

Similarly, before the Sims Family Trust owned the Remmark Real Estate, the Remmark Real Estate was owned by Hobart C. Sims and Mary Kay Sims. (APP. 116-118, 119, 145) They owned the property from October 1961 to March of 1995. (APP. 116-118, 119, 145) Neither Hobart C. Sims, Mary Kay Sims or any member of the Sims family ever testified at trial concerning their ownership of the property or what they thought their boundary line was. In addition, there was no evidence of ownership of any adjoining landowner of the Sims Family Trust other than Linda Handling who would have owned the adjoining property next to the Sims Family Trust from 1991 to 1995. (APP. 145) This four-year period is not enough to establish acquiescence for the required 10-year period.

The only other evidence that the boundary line was anything other than the surveyed line was not through the testimony of the adjoining landowner but from a neighbor. Although Jerry Breon testified that Hobart Sims told him he thought his boundary line to be a fence, Mr. Breon only became the owner of his property in 1999. (TRA. Page 156, Line 2-6) Mr. Breon did not know Mr. Sims

before he moved into his house. (TRA. Page 161, Line 25 to Page 162, Line 2).

This conversation with Mr. Sims obviously took place when Mr. Sims was no longer an owner of the Remmark Real Estate because Mr. Sims had conveyed the title to the Remmark Real Estate back in 1995. (APP. 110-115,116-118,145). At that time, the Remmark Real Estate was owned by the Sims Family Trust. (APP.116-118,145)

Furthermore, the testimony of Jerry Breon is suspect in this case. Jerry Breon repeatedly testified that he didn't want the boundary line to be the surveyed line because he thought it would devalue his home. (TRA. Page 157, Lines 1-18; Page 160, Line 11-16; Page162, Line12 to Page 164, Line 17). Mr. Breon further testified that it was better for him and his property if the boundary line is where the old fence was. (TRA. Page 163, Line 17-20) Mr. Breon testified that he thought if the boundary line was determined to be the surveyed line that he would lose parts of his driveway and that the determination would devalue his home. (TRA. Page 162, Line 21 to Page 164, Line 17, Page160, Lines 11-16, Page 157, Lines 10-18). The statement of Jerry Breon concerning his recollection of a prior owner of the Remmark Real Estate who had not owned the Remmark Real Estate since 1995 is hearsay at best, is self-serving for the benefit of Jerry Breon and clearly does not arise to the clear and convincing evidence needed to establish acquiescence and rebut the presumption of record

title in Sundance.

In summary, the Remmarks did not prove evidence that two adjoining landowners acquiesced to a boundary line for a period of over ten years by clear and convincing evidence necessary to rebut the presumption of record title in Sundance. They did not establish that two adjoining landowners were aware of the line and the fact that both adjoining landowners were for the required period treating it as the boundary. The court makes no finding on when a period of acquiescence began, when the period of acquiescence ended and who the landowners were at the time the boundary was established. At the very most the evidence shows that one absentee landowner on one side of the fence thought her boundary was a fence. There no evidence of a landowner of the Remmark Real Estate during the time Linda Handling owned the Sundance Real Estate treating the line advanced by the Remmarks as a boundary line for a ten-year period. To the contrary the party who rented both properties since 1996 and later owned the adjoining Remmark Real Estate for 8 years stated he never treated the purported line as the boundary line between the Sundance Real Estate and the Remmark Real Estate. (TRA. Page 92, Lines 19-22) Having failed to prove that two adjoining landowners treated a different line as the boundary line between them for ten years by clear and convincing evidence the claim of by boundary by acquiescence made by the Remmarks must fail and the

record title of Sundance must be confirmed.

**B. The Remmarks did not prove acquiescence by parties to a definite line and therefore their claim of boundary by acquiescence must fail and the ruling of the trial court should be reversed.**

A requirement to prove boundary by acquiescence is a line definitely marked by a fence or some manner as the dividing line between them. *Sille vs. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980). Acquiescence in the existence of a fence as a barrier, not as a boundary, is not such recognition as will establish it as the true line. *Brown v. McDaniel*, 156 N.W.2d 349, 352 (Iowa 1968). The judgment establishing a boundary must be sufficiently definite to run a line in accordance therewith. *De Viney v. Hughes*, 243 Iowa 138 (1952).

In this case, the Remmarks have failed to prove that adjoining landowners acquiesced to a definite line as the boundary between them. In this case, the Court did not find that the Remmarks had proven that the boundary between the Remmark Real Estate and the Sundance Real Estate was a definite line. With regards to the location of the boundary line, the Court held as follows:

“The court must next determine the exact location of the boundary line between the properties in accordance with the above finding (of boundary by acquiescence) ...where boundary lines are not established in the trial, a commission should be appointed to establish the disputed boundary.” (APP. 52)

These statements by the Court are a misstatement of Iowa law as regards

to the requirements of boundary by acquiescence. In Iowa, the Remmarks have the burden of proof to prove boundary by acquiescence by clear proof. In this case, to overcome the presumption of record title in Sundance the proof must be clear and convincing. This includes not only that acquiescence occurred but also the requirement of proof of a definite line. The Remmarks cannot and did not prove a definite line between the two properties was acquiesced in.

In this case, the Court admits that the actual line was not established at trial when it said that "where boundary lines are not established in the trial a commission should be appointed to establish the disputed boundary." (APP. 52) It was error for the Court to determine a boundary which had not been proven at trial. The Remmarks did not prove acquiescence to a definite line and therefore the Remmarks have failed to meet their burden of proof and their claim of boundary by acquiescence fails. As a result of Remmarks' failure to prove their requirements of boundary by acquiescence the finding of the trial court concerning boundary by acquiescence must be reversed.

The evidence in this case does not support a finding of definite line between the properties and no such finding was made by the Court. The Court acknowledges that most of the evidence at trial focused on the eastern portion of the disputed boundary line from east side of the parties' properties to the west side of the machine shed. (APP. 52) The Court first makes a finding of the

boundary line from the east to the fence post in back of the machine shed. (APP. 52) The Court then held that the evidence is insufficient to determine the boundary beyond this point. (APP. 53) The Court stated that little testimony was given and the photographs are not sufficiently clear for the Court to determine the boundary. (APP. 53) Despite there being no evidence to determine the boundary west from these fence posts, the Court determined that a commission of fence viewers should be appointed to locate the boundary line from the ending point noted above to the western most point of the Remmark Real Estate sharing a boundary with the Sundance Real Estate. (APP.54) Pursuant to the authorities stated above, once Sundance Land Company, LLC proved it was the owner of record title, the presumption is that the boundaries as is shown by the record title. The boundaries as shown by the record title were as shown by the survey of Trevor Brown. There is no evidence to prove that the boundary west of the fence posts in back of the machine shed is anything other than as shown in the deeds of conveyance. The trial court appears to attempt to change the boundary line established by the deeds of conveyance and Trevor Brown's survey without evidence to support such a change. Clearly, there was no definite line established in the trial record west of the fence posts in back of the machine shed. The boundary line for the property from this point are as shown by the deeds of conveyance and the presumption of title to that point has not been

overcome by any evidence in this record. Therefore, the ruling of the trial court seeking to change this portion of the legal boundary between the properties of should be reversed.

Furthermore, the Court seeks first to determine boundary by acquiescence and then seeks to determine where the boundary line is. This is not Iowa law. A party is required to prove both a definite line and acquiescence to that line. The fence east from the fence posts in back of the machine shed is also not shown to be a definite line in this record. With regards to the eastern most point of this boundary line, the Court held that "the eastern most point of the boundary line is the corner post next to Jerry Breon's property as shown in Exhibit S and **possibly** page 4 of Exhibit Z". (APP. 52) Neither Exhibit S or page 4 of Exhibit Z show the existence of a corner post on Jerry Breon's property or its location. Exhibit S is an aerial photograph of both the Sundance Real Estate and the Remmark Real Estate and the location of no corner post can be determined from testimony in the record regarding Exhibit S. Furthermore, page 3 and page 4 of Exhibit Z appear to be fence posts but there is nothing in the record that shows the location of these particular posts. Similarly, the Court found that the wooden fence posts also appear in Exhibits S & T slightly northeast of the machine shed. Exhibits S & T are aerial photographs and location of no fence posts can be seen on either of these exhibits. The record does not contain the

exact location of the corner post next to Jerry Breon's property nor does it contain identification of fence posts northeast of the machine shed. These are the two points that the Court connected to constitute its determined boundary line. The record does not contain the location of the corner post in back of Jerry Breon's house and further, does not provide the exact location of purported fence posts laying northeast of the machine shed. Having not determined the end point and beginning point for this eastern portion of the Court's determined boundary the record does not support the Court's determination of a boundary. Clearly based on this record, a definite boundary line was not determined and therefore Remmarks claim of boundary by acquiescence must fail the Court's ruling must be reversed.

In summary, the Remmarks have not proven mutual acquiescence by two adjoining land owners for a period of 10 years to a boundary line. In addition, the definite line acquiesced to was not proven. Since Sundance has proven it is the owner of record title to the Sundance Real Estate it is presumed to be the owner of the title unless the presumption is overcome by clear and convincing evidence. The Remmarks did not meet their burden and the ruling of the trial court should be reversed. Therefore, Sundance respectfully requests that the court reverse the finding of the trial court concerning boundary by acquiescence, decree that Sundance is the owner in fee simple of all of the real estate described



in its Petition and that the Defendants Phillip Remmark and Bobbie Remmark and all persons claiming by, through or under them be forever barred and estopped from having or claiming any right, title or interest in and to said real estate. Sundance would also request that the court order the Remmarks to remove any and all encroachments from the Sundance Real Estate.

#### IV.

**IF THE RULING OF THE TRIAL COURT IS AFFIRMED, THE COURT SHOULD PROTECT THE LEGAL ACCESS OF SUNDANCE TO THE SUNDANCE REAL ESTATE.**

#### **PRESERVATION OF ERROR**

This issue was preserved for appeal when Sundance asked for a ruling on the issue in the Motion to Reconsider, Enlarge and Amend filed by Sundance and then timely filed an appeal following a ruling on the motion. In its motion Sundance specifically requested the trial court enlarge and amend its ruling to protect the legal access of Sundance when it said: " In addition to the requests for ruling on the matters set forth above Sundance respectfully requests that the court enlarge and amend its ruling to provide Sundance legal access from the current public road to the real estate known in this record as the "Sundance Real Estate". The ruling of the court cuts off legal access of Sundance to the public road." (APP. 59-62).

The Court issued its Findings of Fact, Conclusions of Law and Ruling on March, 7, 2022. (APP. 41-57) Sundance timely filed a Motion to Reconsider, Enlarge and Amend under Rule 1.904 (2) of the Iowa Rules of Civil Procedure on March 22, 2022. (APP. 58-62) The Court entered its ruling on the motion on April 20, 2022. (APP. 63-64) This issue was preserved when Sundance timely filed a Notice of Appeal on May 17, 2022. (APP. 65)

### **STANDARD OF REVIEW**

The parties agreed that this case would be tried in Equity. (TRA. Page 8, Lines 1-6) Generally, the Supreme Court's review of a decision by the district court following a bench trial depends upon the manner in which case was tried to the court. *Carroll Airport Commission v. Danner*, 927 N.W.2d 635(Iowa 2019). The Supreme Court's review of cases tried in equity is de novo. In re Trust No. T-1 of Trimble, 826 N.W.2d 474 (Iowa 2013). Therefore, the standard of review in this case is de novo.

### **ARGUMENT**

The invocation of equity jurisdiction permits the necessary reach and flexibility in working out the equities among the parties. *Moser v. Thorpe Sale Corp.*, 256 N.W.2d 900 (Iowa 1977); *Holi-Rest, Inc. v. Treloar*, 217 N.W.2d 517, 527 (Iowa 1974). Whenever a situation exists which is contrary to the

principles of equity and which can be redressed within the scope of judicial action, a court of equity would devise a remedy to meet the situation though no similar relief has been given before. *Holten v. Construction Machinery, Company*, 202 N.W.2d 348, 363-364 (Iowa 1972). The power of a court of equity is not limited to settling the rights of the parties upon what has been done in the past, but it reaches forth and declares their duties and rights for the future. *Moser*, 256 N.W.2d at 907; *Bankers Surety, Co. v. Linder*, 137 N.W.2d 496, 499 (Iowa 1912). In quiet title suits, as in all equity suits, chancery jurisprudence has no immutable rules, but lights its own pathway, blazes its own trail, paves its own highway; it is, in short, an appeal to the conscience of the court. *Moser*, 256 N.W.2d at 907.

In this case, Sundance pled a petition for quiet title. (APP. 6-10). The relief requested included but was not limited to such other further relief as the court may deem equitable in the premises. (APP. 6-7) As set forth above, Sundance argues that the decision of the trial court should be reversed. If, for purposes of argument, however, it is assumed that the ruling of the trial court is affirmed the new boundary line would cut off legal access that Sundance uses to access its remaining real estate. In the event that the ruling of the trial court is affirmed, Sundance would have paid \$236,000.00 for its property, lost a portion of its property under the determination of a new boundary line and have lost its

legal access to its property. Clearly, this is an inequitable result which a court of equity can remedy.

Linda Handling stated that the road depicted on Exhibit S going west and heading back to the barn was the access road to her property. (TRA. Page 17, Line 17 to Page 18, Line 9; APP. 75.) There was a gate on the fence line that provided access to her land. (TRA. Page 17, Line 17 to Page 18, Line 16; APP. 75). Keith Davis testified that legal access is obtained through the gravel entrance on the southeast corner of the property through the county roadway. (TRA. Page 78, Lines 20-24) Location of this entry can be shown on Exhibit S. (TRA. Page 17, Line 17 to Page 18, Line 9; APP. 75) Scott Hubbell testified that he had an agreement with Phillip Remmark and Bobbie Remmark to allow access to the Sundance Real Estate. (TRA. Page 118, Line 19 to Page 119, Line 9) Jerry Breon testified that there was a gate in the fence which controlled access to the eighty acres. (TRA. Page 158, Lines 5-12)

Sundance respectfully requests that the Court reverse the ruling of the trial court regarding boundary by acquiescence for the reasons previously set forth in the other divisions of this brief. If, however, the Court affirms the ruling of the trial court, Sundance would respectfully request that the access rights of Sundance that have existed for decades be maintained so as to allow the continuance of legal access to the Sundance Real Estate from Lake Road

heading west over the gravel access road and through the entrance as shown on Exhibit S. (APP. 75)

### **CONCLUSION**

Sundance has proven that it holds record title to the Sundance Real Estate and under Iowa Law it is presumed to be the owner unless the presumption is overcome by clear and convincing evidence. The Remmarks have not met their burden. Any claim to a boundary line by acquiescence was extinguished when Scott and Mary Sue Hubbell owned both properties on either side of the claimed line and the time period began anew when the Hubbells conveyed the Remmark real Estate to the Remmarks. The Remmarks have only owned the Real Estate for 3 years and this is not enough time to establish acquiescence to the line they claim is the boundary line. Finally, the Remmarks failed to prove acquiescence by two adjoining landowners to a definite line as required by Iowa Law. For all of these reasons the ruling of the trial court should be reversed.

If the Court affirms the ruling of the trial court, Sundance would respectfully request that the access rights of Sundance that have existed for decades be maintained so as to allow the continuance of legal access to the Sundance Real Estate from Lake Road heading west over the gravel access road and through the entrance as shown on Exhibit S. (App. 75)

Therefore, Sundance respectfully requests that the court reverse the finding of the trial court concerning boundary by acquiescence, decree that Sundance is the owner in fee simple of all of the real estate described in its Petition and that the Defendants Phillip Remmark and Bobbie Remmark and all persons claiming by, through or under them be forever barred and estopped from having or claiming any right, title or interest in and to the Sundance Real Estate. Sundance would also request that the court order the Remmarks to remove any and all encroachments from the Sundance Real Estate.

**REQUEST FOR ORAL SUBMISSION**

The Appellant request that this matter be submitted to the court for determination with oral argument.

Respectfully submitted,

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