**IN THE SUPREME COURT OF IOWA**

Supreme Court No. 23-0679

**MEDARDO RIVERA,**
Plaintiff-Appellant,

v.

**CLEAR CHANNEL OUTDOOR, LLC, ET AL.,**
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE SCOTT J. BEATTIE

# FINAL BRIEF OF PLAINTIFF-APPELLANT AND REQUEST FOR ORAL ARGUMENT

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## ROUTING STATEMENT

This appeal should be retained by the Iowa Supreme Court because it presents a "substantial issue[] of first impression"—whether the statute of limitations may run against a void instrument. Iowa R. App. P. 6.1101(2).

## STATEMENT OF THE CASE

### A. Nature of the Case

Plaintiff-Appellant Medardo Rivera ("Rivera") seeks relief from the district court's grant of summary judgment to Defendants-Appellees, dismissing Rivera's action to quiet title in his land to remove a Grant of Perpetual Easements and Declaration of Restrictions ("Easement") that he contended was void. More specifically, Rivera seeks relief from the district court's holding that the recording of the Easement, regardless of whether it was void, triggered the statute of limitations under Iowa Code § 614.17A and barred his quiet title action.

### B. Course of Proceedings

Rivera filed his Petition to Quiet Title on March 17, 2022, with the Iowa District Court for Polk County. App at 5. On April 26, 2022, Defendant-Appellee Clear Channel Outdoor, LLC ("Clear Channel") filed its Answer and Affirmative Defenses. *Id.* at 30. Defendants-Appellees Lamar Media Corporation and TLC Properties, Inc. (together "Lamar") filed their Answer and Affirmative Defenses on May 2, 2022. *Id.* at 34. On November 23, 2022,

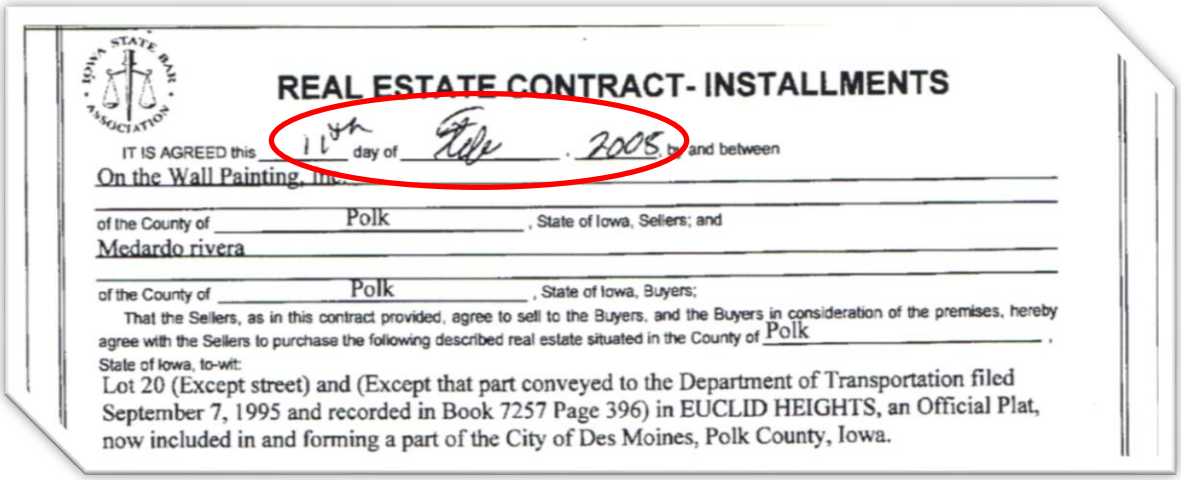
Lamar filed its Motion for Summary Judgment, *id.* at 38, which Clear Channel joined on December 8, 2022, *id.* at 41. Rivera filed his Resistance to Lamar's Motion for Summary Judgment on January 16, 2023. *Id.* at 43. On January 24, 2023, Lamar filed its Reply, which Clear Channel joined. *Id.* at 47, 55. On January 27, 2023, the district court held a hearing on Lamar's Motion for Summary Judgment. *Id.* at 57. At the hearing, Lamar introduced additional legal authority in support of its Motion, relying on *In re Est. of Hord*, 836 N.W.2d 1 (Iowa 2013) (hereinafter *Hord II*). As a result, the district court allowed the parties to file supplemental briefs addressing the authority. *See id.* at 59, 69. The district court issued its Order on Motion for Summary Judgment ("Order") on March 31, 2023. *Id.* at 75.

### C. Disposition in the District Court

The Order held that the purported Easement held by Defendants against Rivera's property, regardless of whether it was void, nevertheless triggered the statute of limitations under Iowa Code § 614.17A. It therefore concluded that Rivera's claim was time barred because Rivera brought his claim more than 10 years after the recording of the easement. *Id.* at 82.

## STATEMENT OF THE FACTS

On February 11, 2008, third party On the Wall Painting, Inc. ("OTWP") and Rivera entered into a real estate contract for the purchase of a property located at 2420 Euclid Avenue, Des Moines, Iowa 50310 (the "Property"):



REAL ESTATE CONTRACT- INSTALLMENTS

IT IS AGREED this 11th day of Feb. 2008, by and between

On the Wall Painting, Inc.

of the County of Polk, State of Iowa, Sellers; and

Medardo rivera

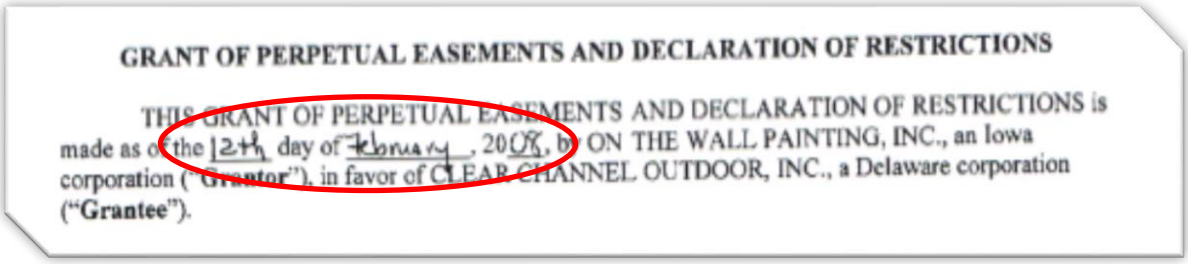
of the County of Polk, State of Iowa, Buyers;

That the Sellers, as in this contract provided, agree to sell to the Buyers, and the Buyers in consideration of the premises, hereby agree with the Sellers to purchase the following described real estate situated in the County of Polk, State of Iowa, to-wit:

Lot 20 (Except street) and (Except that part conveyed to the Department of Transportation filed September 7, 1995 and recorded in Book 7257 Page 396) in EUCLID HEIGHTS, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

*Id.* at 86–89.

On February 12, 2008, OTWP granted the Easement affecting the Property in favor of Clear Channel:



GRANT OF PERPETUAL EASEMENTS AND DECLARATION OF RESTRICTIONS

THIS GRANT OF PERPETUAL EASEMENTS AND DECLARATION OF RESTRICTIONS is made as of the 12th day of February, 2008, by ON THE WALL PAINTING, INC., an Iowa corporation ("Grantor"), in favor of CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation ("Grantee").

*Id.* at 90–101.

On February 20, 2008, at 7:40:39 a.m., the Installment Contract between OTWP and Rivera was recorded with the Polk County, Iowa, Recorder's Office. *Id.* at 86. Two hours later the same day—on February 20,

2008, at 09:51:20 a.m.—the Easement was recorded with the Polk County, Iowa, Recorder's Office. *Id.* at 90.

In 2016, Defendant Clear Channel purported to assign whatever interest it had in the Easement to CCOI HOLDCO SUB II, LLC, that, the same year, also purported to assign whatever interest it had in the Easement to Defendant TLC Properties (Lamar). *Id.* at 114–17, 130–33 ("Assignments").

On February 6, 2018, OTWP executed a Warranty Deed for the Property in favor of Rivera, making no mention of the Easement or any easements on the Property. *Id.* at 16 (Petition ¶ 5, Attachment 2). The Warranty Deed was recorded with the Polk County, Iowa, Recorder's Office on February 8, 2018. *Id.*

## ARGUMENT

### I. ERROR PRESERVATION

Error is preserved. Rivera raised the issues addressed on appeal in his Memorandum of Authorities in Support of His Resistance to Defendants' Motion for Summary Judgment and in his Supplemental Resistance to Defendants' Motion for Summary Judgment to Respond to Defendants' Additional Authority. *Id.* at 59.

### II. STANDARD OF REVIEW

Review of a district court's ruling on a motion for summary judgment, even on an action brought in equity, "is for the correction of errors at law."

*L.N.S. v. S.W.S.*, 854 N.W.2d 699, 702 (Iowa Ct. App. 2013) (citing *Freedom Fin. Bank v. Estate of Boesen*, 805 N.W.2d 802, 806 (Iowa 2011)).

## III. THE DISTRICT COURT ERRONEOUSLY HELD THE STATUTE OF LIMITATIONS RUNS AGAINST A VOID INSTRUMENT

The district court ruled in its Order that "the statute of limitations began to run with the filing of the installment contract and the perpetual easement on February 20, 2008. *The fact that the perpetual easement may have been void does not alter that start date*." App. at 82 (emphasis added).

The district court did not decide whether the Easement was void. *Id.* Instead, the district court relied on *Hord II* for the proposition that the statute of limitations under Iowa Code § 614.17A applied to a void or voidable instrument, and therefore it did not matter whether the Easement was void. *Id.*

For the reasons that follow, the Easement here clearly is void, and it clearly matters. The district court's ruling and reliance on *Hord II* for the proposition that the statute of limitations in Iowa Code 614.17A runs against a void instrument is incorrect.

### A. The Easement is Void *Ab Initio*

"Iowa follows the equitable conversion doctrine." *Pierce v. Farm Bureau Mut. Ins. Co.*, 548 N.W.2d 551, 555 (Iowa 1996) (citing *Larson v. Metcalf*, 207 N.W.382, 383 (Iowa 1926)). Under the doctrine, Rivera became

owner of the Property when the prior owner (as vendor) and Rivera (as vendee) executed the real estate contract on February 11, 2008:

> [T]he legal cliche, that equity treats that as being done which should be done, is the basis of the theory of equitable conversion. Hence, when the vendee contracts to buy and the vendor to sell, though legal title has not yet passed, in equity the vendee becomes the owner of the land, [and] the vendor of the purchase money. In equity the vendee has a real interest and the vendor a personal interest. Equity treats the executory contract as a conversion, whereby an equitable interest in the land is secured to the purchaser for whom the vendor holds the legal title in trust. This is the doctrine of equitable conversion.
>
> **By the doctrine of equitable conversion under an executory contract of sale, the equitable estate, in its entirety, passes immediately to the purchaser at the moment the contract becomes effective** and the bare legal title for security purposes remains in the vendor. **The purchaser of the land is looked on and treated as the owner thereof**, and the vendor, though holding the legal title, holds it as a trustee for the purchaser, and the vendee holds the purchase money in trust for the vendor.

*Pierce*, 548 N.W.2d at 555 (quoting 8A George W. Thompson, *Thompson on Real Property* 4447, at 273-75 (Grimes ed. 1963) (emphasis added)); *see In re Estate of Lundgren*, 98 N.W.2d 839, 842 (Iowa 1959) ("Upon execution and delivery of the contract Bernice held the equitable title . . . ."); *In re Estate of Miller*, 119 N.W. 977, 978 (Iowa 1909) ("It has been held repeatedly by this court that when a landowner enters into a contract of sale whereby the purchaser agrees to buy, and the owner to sell, and whereby the vendor retains the legal title until the purchase money or some part thereof be paid, the

ownership of the real estate, as such, passes to the purchaser, and that from such time forth the vendor holds the legal title as security for a debt and as trustee for the purchaser. The interest acquired by the vendee is 'land,' and the right and interest conferred by the contract upon the vendor is 'personal property.'").

Because Rivera owned the Property in fee simple on February 11, 2008, the prior owner (OTWP) had no authority to subsequently convey the Easement to another party (Clear Channel) on February 12, 2008. Nor was there any authority for the other party (Clear Channel) to later assign its interest in the Easement to others (ultimately, Lamar). And because authority was lacking, the Easement and the Assignments are void:

> The deed is absolutely void. For the very obvious reason that it was made without authority. The deed can have no effect whatever, if there was a want of authority to execute it by the single partner. **All instruments executed in the absence of authority are void.** Want of authority in such a case strikes at the very life of the instrument. **It is in fact not the deed of the party it purports to bind.** The position, we think, demands no further attention.

*Loeb v. Pierpont & Tuttle*, 12 N.W. 544, 546 (Iowa 1882).

Other courts similarly recognize that a conveyance without authority is void. *See Fitzpatrick v. Kent*, 458 P.3d 943, 946–47 (Idaho 2020) (recognizing that "one cannot have an easement in his own lands," and that "[s]uch an easement is void *ab initio*"); *Citizens State Bank v. Caney Inv.*, 733

S.W.2d 581, 586 (Tex. App.—Houston [1st Dist.] 1987) ("A deed is void when it is executed by a person wholly without authority to do so."), *rev'd on other grounds by* 746 S.W.2d 477 (Tex. 1988); *Autrey v. Lake*, 112 S.W.2d 434, 435 (Ark. 1937) (recognizing the "purported easement was and is void and of no effect" because it was not acknowledged by husband and wife as required); *Pulaski Mining Co. v. Vance*, 48 S.W.2d 834, 836 (Ark. 1932) ("The lease having been executed without authority, it was necessarily void."). The results in these cases reflect common sense: you can't convey what you don't own.

In such a case, the purported conveyance must be void *ab initio*. After all, being able to convey what you don't own would "seriously offend" the law: "A contract is void *ab initio* if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract." *Void*, Black's Law Dictionary (11th ed. 2019); *see id.* (defining the term "void" as "[o]f no legal effect; to null," and recognizing that something that is "void *ab initio*" is "[n]ull from the beginning, as from the first moment when a contract is entered into"). Here, the parties to the purported Easement could not have elected to affirm or reject it because they were without authority to do so, which is why the Easement is void not voidable. *See Voidable*, Black's Law Dictionary (11th ed. 2019) (defining

"voidable" as "[v]alid until annulled," that is, "capable of being affirmed or rejected at the option of one of the parties").

Furthermore, the grantee (Clear Channel) to the purported Easement was not a good faith purchaser for value because it had record notice of Rivera's purchase of the Property at the time they recorded the Easement. *Compare* App. at 86 (noting the Contract was recorded at **7:40:39 a.m.** on February 20, 2008), *with id.* at 90 (noting the Easement was recorded at **09:51:20 a.m.** on February 20, 2008).

The Easement must be, and is, void *ab initio*.

### B. The District Court Erroneously Relied on *Hord II* for the Proposition that the Statute of Limitations May Run Against a Void Instrument

To understand the district court's error in this case, it is first necessary to explain the facts and circumstances of *In re Estate of Hord*, as revealed in the Iowa Court of Appeal's ruling in *Hord I* (No. 1-1004 / 11-0935, 2012 Iowa App. LEXIS 616, at *8 (Iowa Ct. App. Aug. 8, 2012)), and the Iowa Supreme Court's ruling in *Hord II* (836 N.W.2d 1 (Iowa 2013)). That explanation appears below, followed by the reasons why the Iowa Supreme Court's ruling in *Hord II* does not support the district court's ruling in this case, and why it left the door open for the Iowa Supreme Court to finally decide the issue of

first impression presented by Rivera's appeal: does the statute of limitations under Iowa Code § 614.17A run against a void instrument?

### 1. Summary of In re Estate of Hord

Carl Hord's will placed his half interest in farmland in trust, naming his wife, Lois, as the life beneficiary of the trust. *Hord II*, 836 N.W.2d at 2. Upon her death, the farm would pass in equal shares to their niece and five nephews ("Remainder Beneficiaries"). *Id.* The will included a "spendthrift" clause stating that "[n]o interest" granted to the Life Beneficiary or the Remainder Beneficiaries "shall be transferable, assignable, or become subject to any encumbrances by any beneficiary . . . prior to the actual distribution by the Trustees to the beneficiary." *Id.*

Carl passed away, and his will was admitted to probate in 1992. *Id.* In 1993, the attorney for the trust reached out to five of the six Remainder Beneficiaries, asking on behalf of Lois if they "might relinquish his or her interest in the farmland to Lois." *Id.* at 2-3. These Remainder Beneficiaries agreed to assign their interests and executed and recorded quitclaim deeds in favor of Lois in 1993. *Id.* at 3.

Lois then died in 2009, when the Remainder Beneficiaries received a copy of Carl's will and learned for the first time of the spendthrift clause. *Id.* In addition, they learned that "Lois's will bequeathed her entire interest in the

farmland to [a third party], including the remainder interests acquired from her niece and nephews." *Id.* As a result, the five Remainder Beneficiaries brought a claim in 2010 to get their future interests back, arguing the "spendthrift clause rendered their assignments and quitclaim deeds void, [and] that they did not have interests to convey at the time of the assignments and quitclaim deeds." *Id.*

The district court determined the quitclaim deeds "were voidable up until Lois's death," *Hord I*, 2012 Iowa App. LEXIS 616, at *8, and therefore "revocable until the property was distributed from [Carl's] Trust to Lois's estate," *Hord II*, 836 N.W.2d at 3. That is, upon Lois's death, the district court determined the "[R]emainder [B]eneficiaries' right to revoke their assignments terminated . . . because equitable title immediately passed to Lois's estate upon termination of [Lois's] life estate." *Id.* The district court also found that "section 614.17A did not bar the action because the [R]emainder [B]eneficiaries' cause of action did not arise until the termination of life estate upon Lois's death." *Id*. However, because the district court found Lois's estate received equitable title at Lois's death, the property remained her estate, and the Remainder Beneficiaries' claim failed.

The Iowa Court of Appeals reversed, holding the "spendthrift clause operated to prohibit any transfer or assignment by the remainder beneficiaries

of their rights to future payment from the trust and, as a result, their transfers were invalid. The Iowa Court of Appeals also rejected [the estate's] defenses based upon the ten-year statute of limitations contained in Iowa Code section 614.17A." *Id.* at 3–4; *see Hord I*, 2012 Iowa App. LEXIS 616, at *11–15.

The Iowa Supreme Court reversed again on further review, affirming the district court. *Hord II*, 836 N.W.2d at 2. According to the Iowa Supreme Court, the "dispositive issue" in the case was "whether Iowa Code section 614.17A bars the [R]emainder [B]eneficiaries from enforcing the terms of the trust." *Id*. at 5. In answering that question in the affirmative, it first recognized the three elements required to apply the statute of limitations under section 614.17A:

> *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.

*Id.* (quoting Iowa Code § 614.17A(1)).

Next, the court looked to two cases, *Lane v. Travelers Ins. Co. of Hartford*, 299 N.W. 553 (Iowa 1941) and *Lytle v. Guilliams*, 41 N.W.2d 668 (Iowa 1950), that dealt with "future interests" under a "similar" statute—614.17—to determine when a claim involving a future interest first arises or

exists (in relation to the first element of either statute). Based on *Lane* and *Lytle*, the court held that "for the purposes of section 614.17, a claim involving a future interest arises or exists when the interest appears of record, not when it vests, becomes possessory, or becomes actionable." 836 N.W.2d at 7. As a result, the Remainder Beneficiaries' action arose or existed when their future interests were created and appeared of record—i.e., when Carl Hord's will was entered into probate at his death in 1992.

The court short-circuited the rest of the analysis (i.e., it did not specifically address the remaining two elements), summarizing its holding as follows:

> Both the remainder beneficiaries and the estate claim interests in the disputed real estate. Lois's estate claims entitlement to the disputed real estate through the recorded quitclaim deeds received from the remainder beneficiaries seventeen years ago, while the remainder beneficiaries claim that the recorded quitclaim deeds are void and that Iowa Code section 614.17A is not implicated. Yet, Lois Hord's claimed interest in the real estate has been spread on the real estate records for more than ten years without dispute. Under the circumstances, we believe that Iowa Code chapter 614.17A clears title to the real state in favor of the estate of Lois Hord because more than ten years have elapsed from the recording of the quitclaim deeds.

*Id.* at 7–8. The Iowa Supreme Court therefore affirmed the result of the district court (which, as noted earlier, had found the Remainder Beneficiaries' interests were merely "voidable" not void). *Id.*

### 2. *In re Estate of Hord* does not stand for the proposition that the statute of limitations runs against a void instrument

The Iowa Supreme Court made two important conclusions in *Hord II*. First, the Remainder Beneficiaries' future interests in the farmland (or, in the words of Iowa Code § 614.17A(1)(a), their "claim" to the farmland) had existed for more than ten years because "a claim involving a future interest arises or exists when the interest appears of record, not when it vests, becomes possessory, or becomes actionable." *Id.* at 7. Thus, although the Remainder Beneficiaries' claims on their future interests would not have vested until Lois Hord died in 2009, their claims arose or existed as of the probate of Carl Hord's will in 1992.[1] The first element of Iowa Code § 614.17A(1)(a) was therefore satisfied—the Remainder Beneficiaries' "action [i.e., their lawsuit filed in 2010] [wa]s based upon a claim [i.e., their future interests conveyed to them through the probate of Carl Hord's will in 1992] arising more than ten years earlier or existing for more than ten years." Iowa Code § 614.17A(1)(a).

[1] This holding differentiated the Iowa Supreme Court's decision from the initial decision by the district court. *See Hord II*, 836 N.W.2d at 3 (stating the district court found that "section 614.17A did not bar the action *because the [R]emainder [B]eneficiaries' cause of action did not arise until the termination of life estate upon Lois's death*" (emphasis added)). Other than this difference, the decisions from the Iowa Supreme Court and the district court were consistent, with both concluding that the quitclaim deeds transferred the farmland to Lois's Estate.

Second, the Iowa Supreme Court did not allow the Remainder Beneficiaries to enforce the spendthrift trust in Carl Hord's will, holding "the applicable statute of limitations bars the remainder beneficiaries from enforcing the terms of the spendthrift clause of the decedent's will." *Hord II*, 836 N.W.2d at 1. Importantly, because the Remainder Beneficiaries could not enforce the spendthrift trust, the Iowa Supreme Court necessarily held that the quitclaim deeds were valid, not void. The quitclaim deeds may have been voidable, at worst, from the time of their conveyance in 1993 until the time of Lois Hord's death in 2009. But the quitclaim deeds were valid when the Remainder Beneficiaries' future interests vested with Lois's death in 2009. Whether valid in 2009 or voidable before then, the Iowa Supreme Court necessarily held the quitclaim deeds provided proof of the second and third elements under section 614.17A(1)(b)-(c)—i.e., that the "The [Remainder Beneficiaries'] action [wa]s against the holder [i.e., Lois's Estate] of the record title [i.e., the quitclaim deeds] to the real estate in possession," Iowa Code § 614.17A(1)(b), and that Lois's Estate and its "immediate or remote grantors . . . held chain of title to the real estate for more than ten years," *id.* § 614.17A(1)(c).

But that is not the situation here. The quitclaim deeds in *Hord II* were valid and enforceable at the time of the Remainder Beneficiaries' suit, but the

Easement here was void *ab initio*.[2] As a result, *Hord II* does not stand for the proposition that the statute of limitations runs against a void instrument, and the district court incorrectly relied on *Hord II* in ruling against Rivera in this case. In addition, for the reasons addressed next, the statute of limitations does not apply to a void instrument.

### C. Iowa Law and Other Jurisdictions Hold That Statutes of Limitations Do Not Apply to Void Conveyances

Although Iowa cases have not addressed the issue of whether the statute of limitations applies to a void easement, there is plenty of support for this proposition in a line of Iowa cases that recognize a void tax deed will not start the applicable statute of limitations (that required actions for the recovery of real property for the payment of taxes be brought within five years of the tax deed).

For example, in *Nichols v. McGlathery*, 43 Iowa 189 (1876), the disputed property in Nichols was assessed two taxes—one to the owner and a second to "owner unknown." In 1861, the property was sold for taxes under the "owner unknown's" assessment, and the defendant acquired a tax deed pursuant to "owner unknown's" sale in 1864. *Nichols*, 43 Iowa at 190. The

[2] It should also be emphasized, as a significant difference between the case at bar and *In re Estate of Hord*, that the Remainder Beneficiaries were the ones that deeded their future interests in the farmland to Lois Hord. In contrast, Rivera did not grant the Easement to anyone in this case.

plaintiff, however, paid the taxes under the actual owner's assessment, and subsequently brought an action to set aside the defendant's purported ownership of the property via the tax deed. *Id.* The defendant argued, because the plaintiff brought the action more than five years after defendant obtained the tax deed, that plaintiff's action was time-barred. *Id.* at 191. But, the court held that the defendant's tax deed was void because "[t]here cannot be two valid assessments for the same tax," and only "[t]hat made to the owner is valid." *Id.* As a result, the court held that "the bar of the statute does not apply for that reason." *Id.*; *see Griffin v. Bruce*, 73 Iowa 126, 127 (1887) (recognizing that the sale of land for taxes is void when there is a "want of power to make the sale," and that "[i]n all this class of cases it has been held that the statute of limitations does not apply, because it has no basis to rest upon"). As summarized later by the court, "the deed being void, the statute of limitations has no application." *Burke v. Cutler*, 43 N.W. 204, 207 (Iowa 1889).

Other courts similarly recognize that void conveyances cannot, as a matter of law, provide the basis for a statute of limitations defense. *See Citizens State Bank*, 733 S.W.2d at 586 (recognizing that the "statute of limitations does not apply to a deed that is void"), *rev'd on other grounds by* 746 S.W.2d 477 (Tex. 1988); *Argyle v. Slemaker*, 585 P.2d 954, 958 (1978)

("A void deed is one that is invalid for any purpose, ineffective to convey legal title and unenforceable at law. Statutes of limitation are generally held to be inapplicable in actions brought by a landowner in possession seeking to quiet title and to set aside a void deed." (citations omitted)); *Salmer v. Lathrop*, 72 N.W. 570, 573 (S.D. 1897) ("The provision of a statute of limitations, to the effect that an action for the recovery of real property sold for taxes can only be commenced within a certain number of years from the date of the recording of the deed, will not run in favor of a tax deed that is void upon its face, even when the land intended to be conveyed by the tax deed has been in actual, open, and notorious possession of the holder of the void deed during the whole of the statutory period.").

The Kansas Supreme Court, in fact, held that the statute of limitations does not apply to a void deed. *Cox v. Watkins*, 87 P.2d 243, 247 (Kan. 1939). In so holding, the court distinguished the case of a plaintiff seeking to quiet title who created the void deed, and the case of a third party creating the void deed:

> **A forged deed, regular and valid on its face, and which has been recorded, may be canceled in equity as a cloud on the title of the true owner. (51 C. J. 156.) Ordinarily laches is not a bar to such an action**. (51 C. J. 200.) It is true that in a case in which plaintiff, in order to quiet his title, must have set aside some deed or instrument which he had executed, his right to set aside such deed or instrument may be barred by lapse of time, for which reason his action to quiet title is defeated. (*Foy v.*

> *Greenwade*, 111 Kan. 111, 206 P. 332; *Hinderliter v. Bell*, 114 Kan. 857, 221 P. 252; *Pinkerton v. Pinkerton*, 122 Kan. 131, 251 P. 416; *Smith v. Rector*, 135 Kan. 326, 10 P.2d 1077; *Terrill v. Hoyt*, ante, p. 51, 87 P.2d 238.)
>
> But that is not the situation here. **The deeds in question were not executed by plaintiff nor pursuant to any contract she made.** She is not attempting to rescind any former action she had taken, or any former contract she had executed. **As to her the deeds were pure forgeries, executed and put of record without her knowledge, and she received none of the consideration paid by the grantees named therein. So the rule frequently applied, that plaintiff must rescind or set aside some former transaction of his, or some instrument he previously had executed, has no application in this case**.

*Id.* (emphasis added). This case, of course, highlights the significant difference between the facts of *In re Estate of Hord* (where the Remainder Beneficiaries themselves executed the quitclaim deeds they later tried to claim were void) and the facts here (where a third party, without any lawful authority and without Rivera's knowledge, granted the Easement).

That the statute of limitations does not apply to a void conveyance is not an antiquated principle of law, or only applicable to cases involving tax deeds. Ohio courts, for example, have held relatively recently that the statute of limitations does not apply to void easements. *Taylor v. Taylor*, No. CV 2015 07 1709, 2017 Ohio Misc. LEXIS 3497, at *9 (Ct. Com. Pl. Apr. 19, 2017) ("[T]he prohibition on partition as stated in the conservation easement is 'void' (subject [t]o challenge at any time) - as opposed to being 'voidable'

(to which a statute of limitations may apply)." (citing *Reid v. Daniel*, No. 26494, 2015 Ohio App. LEXIS 2329, at *19 (Ohio Ct. App. June 19, 2015))), *rev'd on other grounds*, 110 N.E.3d 651 (Ohio Ct. App. 2018).

In addition, the United States Court of Appeals for the Tenth Circuit recently found that a restrictive condition on a deed was an unreasonable restraint on alienation, and therefore void, and as a result the statute of limitations did not apply. *Mindock v. Dumars*, No. 20-1236, 2022 U.S. App. LEXIS 12044, 2022 WL 1410017 (10th Cir. May 4, 2022). In *Mindock*, grandparents deeded property to their two grandchildren in 2007, but the deed contained a restrictive condition that prohibited either grandchild from alienating the property without the other's written consent. 2022 U.S. App. LEXIS 12044 at *1. When one of the grandchildren brought suit in 2018 to declare the restriction void, the other grandchild (Christina) moved for summary judgment on the basis of the statute of limitations as a defense. *Id.* at *1, 14.

In addressing this issue, the Tenth Circuit first recognized that the restrictive condition was void because "Colorado law voids any conditions restraining alienation of a fee simple estate." *Id.* at *1. The appellate court then affirmed the district court's decision that "found no statute of limitations

period applied because the restrictive condition was void at its inception," stating:

> We review a district court's interpretation and application of a statute of limitations de novo. *Barnes v. United States*, 776 F.3d 1134, 1139 (10th Cir. 2015).
>
> Christina moved for summary judgment arguing that either Colo. Rev. Stat. Ann. § 38-41-111 or § 13-80-102(1)(i) time barred Plaintiffs' original complaint. The district court found no statute of limitations period applied because the restrictive condition was void at its inception and thus never had any legal effect.
>
> On appeal, Christina claims the district court erred because it ruled on the merits of the case-by finding the restricting condition void-before addressing the statute of limitations issue. In doing so, she says, the district court impermissibly put the cart before the horse. But Christina offers no authority prohibiting a district court from examining an instrument's contents when deciding what statute of limitations, if any, applies. **And the authorities of which we are aware not only permit such a review, but compel it because whether any statute of limitations applies depends on whether an instrument is void.**[10] *See, e.g.*, *Lake Canal Reservoir Co. v. Beethe*, 227 P.3d 882, 884 (Colo. 2010) (finding that a deed was "void and therefore not subject to the statute of limitations"). So the district court permissibly considered the whether the restrictive condition was void when deciding whether a statute of limitations barred Plaintiffs' claim.
>
> > FN 10: *See also Riverside Syndicate, Inc. v. Munroe*, 882 N.E.2d 875, 878 (N.Y. 2008) (noting that the six-year statute of limitations for contract actions "does not make an agreement that was void at its inception valid by the mere passage of time"); *MZRP, LLC v. Huntington Realty Corp.*, No. 35692, 2011 WL 12455342, at *4 (W.Va. Mar. 10, 2011) (finding a tax deed void and explaining that no statute of limitations applies to void deeds); *Thompson v. Ebbert*, 160 P.3d 754, 757 (Idaho 2007) (finding a lease void and explaining that "[b]ecause the lease agreement was void ab initio, it could be challenged at any time");

> *Moore v. Smith-Snagg*, 793 So.2d 1000, 1001 (Fla. Dist. Ct. App. 2001) (per curiam) ("[T]here is no statute of limitations in respect to the challenge of a forged deed, which is void *ab initio*.").
>
> Although Christina argues other jurisdictions have held that statutes of limitations apply to void deeds, we remain unpersuaded. True, the California Court of Appeals concluded that instruments void from their inception *are* subject to a statute of limitations. *See Walters v. Boosinger*, 205 Cal.Rptr.3d 895, 904 (Cal.Ct.App. 2016). But Colorado courts have rejected that position. *See Lake Canal Reservoir*, 227 P.3d at 886 ("[T]he statute of limitations will not apply where the tax deed is void, as a void deed gives the statute nothing for the statute to operate on." (quotation omitted)). **And the weight of authority from other jurisdictions supports the conclusion that a statute of limitations does not "give protection to a person in possession under a deed void upon the face of it." *Moore v. Brown*, 52 U.S. 414, 425 (1850).** So because the 2007 deed's restrictive condition was void from its inception, we affirm the district court's conclusion that no statute of limitations barred entry of declaratory judgment.

*Id.* at *15–17 (emphasis added); *see also Hancock v. Kulana Partners*, 452 P.3d 371, 378 (Haw. 2019) (holding that a deed procured by fraud is "void ab initio and not subject to any statute of limitations"); *Faison v. Lewis*, 32 N.E.3d 400, 407 (N.Y. Ct. App. 2015) ("[A] statute of limitations cannot validate what is void at its inception. Therefore, a void deed is not subject to a statutory time bar.").

Therefore, because the Easement was and is void *ab initio*, the statute of limitations does not apply, and the ruling of the district court must be reversed.

## IV. THE DISTRICT COURT ALSO ERRONEOUSLY HELD THAT THE ELEMENTS OF IOWA CODE § 614.17A HAD BEEN MET

In addition to finding the statute of limitations applied to the Easement, the district court found all of the elements under Iowa Code § 614.17A had been met. This was legal error for two reasons. First, because the Easement was void *ab initio*, Rivera's action is *not* "**against the holder of record title to the real estate** in possession." Iowa Code § 614.17A(1)(b) (emphasis added). The Defendants-Appellees are not the holders of anything—the Easement is void *ab initio*.

In addition, Defendants-Appellees, even if "holders," are not "in possession" because, as a matter of law, "[a]n easement is a 'nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.'" *Brandt Tr. v. United States*, 572 U.S. 93, 105 (2014) (quoting Restatement (Third) of Property: Servitudes § 1.2(1) (1998)). Easements are necessarily non-possessory rights, and therefore the Defendants-Appellees cannot be the "holder of the real estate *in possession*" to meet the second or third statutory elements. Iowa Code § 614.17A(1)(b) and (c) (emphasis added). *See Rottinghaus v. Lincoln Sav. Bank*, 944 N.W.2d 853, 862 Iowa (2020) ("[S]ection 614.17A is a statute of limitations that bars a certain type of action to enforce a **possessory** interest in real estate." (emphasis added)). As a result,

the Defendants-Appellees cannot invoke the statute. *Tesdell v. Hanes*, 82 N.W.2d 119, 120–23 (Iowa 1957) ("Only those who possess a title which complies with the conditions of [section 614.17A] are qualified to invoke its aid."). Rivera, in fact, is the only "holder of the record title to the real estate in possession," and only Rivera could invoke the statute against others claiming an interest therein.

## CONCLUSION

Rivera purchased his property free and clear of the purported Easement. A day after his purchase, the prior owner illegally granted the Easement to Defendants-Appellees, without Rivera's knowledge or consent and without even providing Rivera with record notice. Because the Easement is void *ab initio*, Defendants-Appellees cannot invoke the statute of limitations or otherwise meet the elements of the statute, and the ruling of the district court must be reversed.

## REQUEST FOR ORAL ARGUMENT

Rivera respectfully requests to be heard in oral argument.

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because this brief contains 5,851 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

This brief complies with the typeface requirements and the type-style requirements of Iowa Rule of Appellate Procedure 6.903(1)(e) and (f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point, Times New Roman font.

/s/ *Kirk W. Schuler*
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## CERTIFICATE OF FILING

The undersigned hereby certifies that Plaintiff-Appellant's Final Brief and Request for Oral Argument was electronically filed on November 15, 2023, in accordance with Chapter 16 of the Iowa Rules of Court.

/s/ *Kirk W. Schuler*
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that Plaintiff-Appellant's Final Brief and Request for Oral Argument was electronically filed on November 15, 2023, and thus served on:

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