IN THE SUPREME COURT OF IOWA

NO. 23-0679

MEDARO RIVERA,

PLAINTIFF-APPELLANT

V.

CLEAR CHANNEL OUTDOOR, LLC, LAMAR MEDIA CORPORATION, TLC PROPERTIES, INC. AND ALL UNKNOWN CLAIMANTS CLAIMING ANY RIGHT, TITLE OR INTEREST IN THE PROPERTY,

DEFENDANTS-APPELLEES.

APPEAL FROM MARCH 31, 2023 RULING ON MOTION FOR SUMMARY JUDGMENT BY IOWA DISTRICT COURT FOR POLK COUNTY, THE HONORABLE SCOTT J. BEATTIE EQCE087429

APPELLEES LAMAR MEDIA CORPORATION AND TLC PROPERTIES, INC.'S FINAL BRIEF

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals under Iowa R. App. P. 6.1101(3)(a) because it involves application of existing legal principles to the instant case. Specifically, this case calls for a straightforward application of the holding *In re Estate of Hord*, 836 N.W.2d 1 (Iowa 2013).

STATEMENT OF FACTS

Defendant-Appellee TLC Properties, Inc. is an affiliate entity of Lamar Advertising Company (App. 146, ¶ 2), and this brief will refer to the two entities jointly as "Lamar."

Plaintiff-Appellant Medardo Rivera ("Rivera") filed his petition on March 17, 2022.

The property at issue in this case is legally described as:

> 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

and is also legally described as:

> Lot Twenty 20 (Except Street conveyed in fee to City of Des Moines in Warranty Deed dated August 10, 1964, recorded September 1, 1964, in Book 3619, Page 481) and (Subject to easement conveyed to the Department of Transportation in Document recorded September 7, 1995, 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

("Property"). (App. 6, ¶ 3).

Prior to February 11, 2008, On the Wall Painting, Inc. ("On the Wall") was the record fee simple owner the Property at issue in this

case. (App. 86-89). On February 11, 2008, On the Wall (as contract vendor) and Rivera (as contract vendee) entered into an installment contract for the purchase of the property. (App. 86-89). However, the installment contract was not recorded until February 20, 2008 at 7:40 am. (App. 86). On February 11, 2008, On the Wall (the owner of the Property) granted a perpetual easement ("Easement") to Clear Channel Outdoor, Inc. ("Clear Channel"), and the Easement was recorded on February 20, 2008 at 9:51 am. (App. 90-101).

Current Lamar Advertising Company of Des Moines real estate Manager Jason Pomrenke was employed by Clear Channel in 2007 and has both first-hand knowledge of the existence of the signs at issue on the Property from at least 2007 to the present, as well as historical knowledge of the signs dating back to at least 1967. (App. 146-147, ¶ 5-8). In 1967, Clear Channel (or its predecessor-in-interest) obtained at least two permits for outdoor advertising signs (i.e. billboards) on the Property. (App. 147, ¶ 8). Then, in 1980, Clear Channel (or its predecessor-in-interest) erected and has maintained two outdoor advertising signs (i.e. billboards) on the Property and

the signs at issue in this case are in the same location today as they were in 1980. (App. 147, ¶¶ 9 and 11). As of the time this case commenced, the signs were in place for at least 42 years.

On February 20, 2008 at 9:48am, On the Wall recorded an Affidavit of Possession (dated February 11, 2008), which swore and affirmed under oath that:

> Clear Channel Outdoor, Inc. . . . is in possession of the two (2) billboards on the real estate. That this affidavit is made . . . for the purpose of confirming title to the above described real estate under the provisions of Sections 614.17 and 614.17A, Code of Iowa, and other statutes relative thereto.

(App. 110-112). Since that time, the signs and Easement have been transferred to Lamar. (App. 130-145). Lamar traces its recorded interest in the Property back to On the Wall (App. 90-101 and 130-145). Lamar (or its predecessors-in-interest) have been in possession of the Property by virtue of the signs since at least the time the Easement was recorded (and in fact have been in possession for more than 40 years – since no later than 1980). (App. 147, ¶ 11).

Lamar has no disagreement with Rivera's recitation of the procedural history included in his brief. However, Rivera omitted a

pertinent procedural matter. On January 19, 2023, Lamar filed a Motion for Leave to Amend to Bring Counterclaim. (App. 148-158). In that motion, Lamar sought to be permitted to file a counterclaim against Rivera to establish a prescriptive easement in Lamar's favor relative to the two signs at issue in this case. (App. 148-158).

When the District Court granted Lamar's motion for summary judgment, the District Court stated in a footnote that its ruling on the motion for summary judgment rendered Lamar's motion for leave to amend moot and, thus, took no action on the motion. (App. 84).

ARGUMENT

This District Court's ruling was proper and should be affirmed for the reasons set forth below.

I. THE DISTRICT COURT CORRECTLY RULED THAT RIVERA'S CLAIM IS BARRED

A. Preservation of Error

Lamar agrees Rivera has preserved error on the arguments Rivera raised in his proof brief.

B. Standard of Appellate Review

Lamar agrees with Rivera that the standard of review is for correction of errors at law.

C. Argument

The District Court properly granted Lamar's motion for summary judgment and, therein, correctly ruled that Rivera's claims are time-barred under Iowa Code § 614.17A.

Rivera's petition is to quiet title under the theory that Lamar has no right to maintain its signs on the Property because of the timing of the grant of the Easement compared to the execution of the real estate installment contract for the sale of the Property. The gist of Rivera's complaint is that at the time the Easement to Lamar's

predecessor-in-interest was granted, the grantor lacked equitable title to convey any right in the property to Lamar (or its predecessor). Rivera asks that the Court declare that the easement be void and that Lamar be barred and estopped from claiming any right to the property. Rivera desires for the Court to declare Lamar's right void to remove an alleged cloud on title. This is a claim is barred by Iowa Code § 614.1(5) and § 614.17A.

The time permitted for bringing a quiet title action is ten years because it is an action to recover possession of real property. *Dwight v. City of Des Moines*, 156 N.W. 336, 340 (Iowa 1916). In *Dwight*, the Court stated that a quiet title action must be brought within ten years from the time the defendant took possession of the property. In *Chadek v. Alberhasky*, 111 N.W.2d 297 (Iowa 1961), the Iowa Supreme Court ruled that quiet title actions must be brought within ten years as an action for recovery of real property, specifically citing § 614.1(6). In 1961, the statute of limitations for recovery of real

property was contained in § 614.1(6).[1] Today, the same text for the ten-year limitation on actions for recovery of real property is contained in § 614.1(5). Other than the changing of the citation, the text of the statute as it applies to the limitations period is the same now as it was at the time of the *Chadek* decision.

1) Iowa Code § 614.17A Applies to this Case

Additionally, Iowa Code § 614.17A contains a ten-year time limitation for bringing a quiet title action under certain circumstances. That statute states:

> After July 1, 1992, an action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate if all the following conditions are satisfied:
>
> > a. The action is based upon a claim arising more than ten years earlier or existing for more than ten years.
> >
> > b. The action is against the holder of the record title to the real estate in possession.

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[1] *See* Code of Iowa (1958) located at https://www.legis.iowa.gov/docs/shelves/code/ocr/1958%20Iowa%20Code.pdf, specifically at PDF pages 2294-2295.

> 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.

The Iowa Supreme Court's ruling in *In re Estate of Hord*, 836 N.W.2d 1 (Iowa 2013)[2] is controlling here. Rivera's attempts to distinguish *Hord* are not convincing. Moreover, Rivera's brief conspicuously omitted the most crucial portion of the Iowa Supreme Court's ruling in *Hord*. Without a doubt, the Iowa Supreme Court ruled in *Hord* that even the alleged existence of a void transaction does not preclude application of § 614.17A. If the existence of a void deed versus a voidable deed would have made any difference in that case, surely the Iowa Supreme Court would have addressed this issue in its opinion. However, the Court's ruling is clear: even a

[2] Rivera refers to the Iowa Supreme Court's decision in this case as *Hord II*. To Lamar's knowledge, there is no separate proceeding or subsequent appeal from the *Hord* case where the reference to "II" after a case name would be typically employed. Rivera assumes Rivera's "*Hord II*" reference to mean the Iowa Supreme Court's ruling in that case on June 21, 2013 distinguished from the Iowa Court of Appeals' vacated August 8, 2012 ruling. Lamar will thus refer to the case as *Hord*.

contention that a conveyance is void does not preclude the application of § 614.17A.

In the *Hord* appellants' briefs, they argued that the deed at issue was void. The appellants wrote:

> First, the conveyances by Quit Claim Deed to Lois were **void** because the conveyances were in contradiction of the spendthrift clause in the Trust. As clearly set forth In re Olsen v. Youngerman, 136 Iowa 404, 113 N.W. 938 (Iowa 1907), the Trustee and beneficiaries of a spendthrift trust cannot enter into an agreement to violate the terms of the Trust as clearly set forth in the Trust. Thus, any interest received by the beneficiaries from the Trustee is not an after-acquired interest (because the Deeds were **void**), but will simply be a vested interest in the real property. Since there is no after-acquired interest, Iowa Code § 557.4 (2011) does not apply.

Appellants' Final Brief, 2011 WL 11529483, 42 (Iowa Nov. 14, 2011) (emphasis added). The Appellants also included the following in their reply brief: "The Appellee[']s reasoning is flawed. The conveyances by assignment and quit claim deed to Lois Hord were **void** because the conveyances were in contradiction of the spendthrift clause in Carl Hord's Trust." Appellants' Final Reply Brief, 2011 WL 11529485, 9 (Iowa Nov. 14, 2011) (emphasis added).

In *Hord*, the Iowa Supreme Court acknowledged the arguments that the conveyances at issue were void and nevertheless ruled that § 614.17A barred the claims in that case. The Iowa Supreme Court stated: "The remainder beneficiaries argue their claims arose upon Lois's death in 2009 because the conveyances and quitclaim deeds were void as violations of the spendthrift clause in Carl's will and because Waugh was not obligated to distribute the farmland until Lois died." *Hord,* 836 N.W.2d 1 at 5. The Supreme Court ended its opinion with the following:

> 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 estate 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 (emphasis added). The Iowa Supreme Court has held that even if a deed is void and even if the proponent of voiding the deed

argues that § 614.17A is not implicated, that statute nevertheless bars claims of the very type that Rivera raises here.

The *Hord* ruling makes sense. Section 614.17A's preclusion of actions to challenge the validity of a prior conveyance is consistent with § 614.22(2)(a), which applies to tax deeds, guardian's deeds, executor's deeds, and other kinds of deeds. In fact, § 614.22(2)(a) even explicitly cuts off challenges to declare a prior conveyance void or invalid.

Moreover, § 614.17A is a marketable title statute that is designed to give stability and effect to record titles, which is desirable. *See Matter of Estate of Franken*, 944 N.W.2d 853, 860 (Iowa 2020), *as amended* (Aug. 17, 2020). There is no case law or rationale which supports ignoring the plain language of the statute to create exceptions when there is a claim of a predecessor deed being void or otherwise deficient. In fact, such an exception would render the statute meaningless because it would serve no purpose if it could be so easily circumvented. In fact, there is no reason at all for the legislature to have enacted § 614.17A if it was not meant to act as a

bar to claims for real estate brought more than 10 years after a supposedly void transaction because otherwise the simple statute of limitation in § 614.1(5) would bar the claim on its own. *See Beverage v. Alcoa, Inc.*, 975 N.W.2d 670, 685 (Iowa 2022) ("We generally read legislation in a manner to avoid rendering portions of a statute superfluous or meaningless.").

Other states have reviewed the effect of marketable title statutes on claims involving allegations of void deeds. In Florida, even a forged deed does not act as an exception to the marketable title statute. *Marshall v. Hollywood, Inc.*, 236 So. 2d 114 (Fla. 1970). In applying the marketable title statute in Florida, the Court rejected the petitioner's argument that prior case law held that forged deeds were void and ruled that the statute cut off such a rule:

> In view of the special nature of this Act and its special purpose, the assertion that its construction and application must be bound by precedents relating to less comprehensive acts does not make good sense and cannot make good law. The clear Legislative intention behind the Act, as expressed in F.S. s 712.10, F.S.A., was to simplify and facilitate land title transactions by allowing persons to rely on a record title as described by F.S. s 712.02, F.S.A., subject only to such limitations as appear in F.S. s 712.03, F.S.A. To accept petitioner's arguments would be

> to disembowel the Act through a case dealing with a factual situation of a nature precisely contemplated and remedied by the Act itself. This we cannot do.

Id. at 119-20.

The Oklahoma Supreme Court has clarified that the marketable title act does not necessarily create a statute of limitations because it instead extinguishes interests in favor of facilitating land title transactions:

> The Act's conceptual underpinnings distinguish it from a statute of limitations. The latter bars the owner's remedy when his suit is not filed within the prescribed period. It may be tolled and, unless affirmatively pleaded, it is deemed waived. Marketable title legislation, on the other hand, has for its target the right itself. It operates to extinguish any claim or interest, vested or contingent, present or future, unless the claimant preserves his claim by filing a notice within a thirty-year period. If a notice is not filed, the claim is lost. Interests are thus extinguished because claimants failed to record, not because they failed to sue. One whose interest is extinguished by the terms of the Act may be one who never has had an accrued cause of action.
>
> The purpose of the Act is to simplify and facilitate land title transactions by allowing persons to rely on a record title, subject only to certain statutory limitations. This is accomplished by eliminating those ancient defects and stale claims against the title to real property which are not properly preserved—to the end that the period of record search may be limited to relatively recent instruments. To

> hold as suggested by the City would frustrate the Act's beneficial effect and substantially defeat the legislative objective.

Mobbs v. City of Lehigh, 655 P.2d 547, 550-51 (Okla. 1982).

Iowa Code § 614.17A was enacted in 1991. The Legislature did not carve out an exception to the marketable title statute for situations where a claimant argues the chain of title for the party in possession was based on a void transaction. If the Legislature wanted to allow old claims based on an allegedly void transaction, it could have done so, but it did not. The Legislature is deemed to have known the law and to the extent the prior case law on tax deeds relied upon by Rivera can even be applied here, the Legislature abrogated that law (as applied to this circumstance) by drafting a plain and unambiguous statute which is meant to eliminate petitions exactly like this present one.

Creation of an exception of allegedly void easements would read into § 614.17A an exception which the Legislature did not include and would be contrary to the purpose of the law. *See* Iowa R. App. P. 6.904(3)(m) ("In construing statutes, the court searches for the

legislative intent as shown by what the legislature said, rather than what it should or might have said").

Moreover, § 614.17A is more akin to a statute of repose than a traditional statute of limitation. In Iowa Code Chapter 614, which is generally the statute containing statutes of limitations and statutes of repose, different wording is used for different portions of the statute. Here, in § 614.17A, the statute states that "an action shall not be maintained . . ." when the applicable elements apply. The word "maintain" appears elsewhere in Chapter 614, but not in any of the other traditional statutes of limitation. In fact, the word only appears in Subchapter II of Chapter 614 in the following sections: 614.14[3]; 614.16[4]; 614.17[5]; 614.17A[6]; 614.20[7]; 614.22[8] and 614.24.[9] These

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[3] "action based upon an adverse claim arising on or after January 1, 2009, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained. . ."

[4] "Sections 614.14 and 614.15 do not . . . permit an action to be brought or maintained upon any claim or cause of action which is barred by a statute in force prior to July 1, 1991."

provisions differ from the traditional statutes of limitations in § 614.1, wherein that statute provides "Actions may be brought within the

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[5] "An action based upon a claim arising or existing prior to January 1, 1980, shall not be maintained. . . to recover real estate in this state or to recover or establish any interest in or claim to real estate . . ."

[6] "After July 1, 1992, an action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate. . ."

[7] "Sections 614.17 through 614.19 do not limit or extend the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 614.15, nor do they limit or extend the time within which actions may be brought or maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate . . . "

[8] "On and after January 1, 1992, an action shall not be maintained to set aside, cancel, annul, declare void or invalid, or to redeem from a tax deed, guardian's deed, executor's deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, or sheriff's deed, if the deed has been recorded in the office of the recorder for more than ten years.";

[9] "No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained . . . to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance. . ."

times limited as follows, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared. . .”

Section 614.1(11), which governs actions based on improvements to real property, is a statute of repose. *Bob McKiness Excavating & Grading, Inc. v. Morton Bldgs., Inc.*, 507 N.W.2d 405 (Iowa 1993). A statute of repose “terminates any right of action after a specified time has elapsed, regardless of whether or not there has as yet been an injury.” *Id*. at 408. “Under a statute of repose, therefore, the mere passage of time can prevent a legal right from ever arising.” *Id*. In ruling that the claims in *Bob McKiness Excavating & Grading* were barred by the statute of repose, the Court stated:

> McKiness’ argument fails to distinguish between an ordinary statute of limitations and a statute of repose. Under subsection 614.1(11), a statute of repose, McKiness’ cause of action was eliminated before the injury occurred and before the cause of action accrued. We find the plain language of the statute evinces a legislative policy decision to close the door after fifteen years on certain claims arising from improvements to real property. We therefore hold the discovery rule does not apply to causes of action that fall within subsection 614.1(11).

Id. at 409.

Section 614.1(11) is similar in structure to § 614.17A in that the statute states that no action can be filed after the certain passage of time from an event. Section 614.1(11) states: "an action arising out of the unsafe or defective condition of an improvement to real property . . . shall not be brought more than the number of years specified below. . ." This "shall not be brought" language is very similar to the "shall not be maintained" language in § 614.17A. This is different from the language used in other statutes of limitation in § 614.1:

> Actions may be brought within the times limited as follows, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:
>
> > 1. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.
> >
> > 2. *Injuries to person or reputation — relative rights — statute penalty.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.
> >
> > 3. *Against sheriff or other public officer.* Those against a sheriff or other public officer for the nonpayment of money collected on execution within three years of collection.

4. *Unwritten contracts — injuries to property — fraud — other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsections 8 and 10.

5. *Written contracts — judgments of courts not of record — recovery of real property and rent.*

a. Except as provided in paragraph "*b*", those founded on written contracts, or on judgments of any courts except those provided for in subsection 6, and those brought for the recovery of real property, within ten years.

b. Those founded on claims for rent, within five years.

6. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years, except that a time period limitation shall not apply to an action to recover a judgment for child support, spousal support, or a judgment of distribution of marital assets.

8. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to
pay wages, within two years.

Based on the wording of § 614.17A, the time limitation in that statute is more akin to a statute of repose than a statute of limitation. This is consistent with both the holding in *Hord* and the purpose of a marketable title statute. *Mobbs*, 655 P.2d at 550-51 (holding that marketable title statute extinguishes claims as is distinct from a statute of limitations).

Moreover, § 614.17A works in tandem with a prescriptive easement claim and this is additional support for why § 614.17A can run against an allegedly void deed. Under § 614.17A, the proponent must prove:

> 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.

Under a claim for prescriptive easement, the proponent must show: (1) use of another's land; (2) under claim of right or color of title; (3) openly, notoriously, and hostilely; (4) for ten years or more. *Johnson v.*

Kaster, 637 N.W.2d 174, 178 (Iowa 2001) (easement by prescription "is based on the principle of estoppel"). Both doctrines require a ten year lapse of time, some claim to record title, and use (i.e. possession/open, notorious, and hostile) of the property. An offensive claim for a prescriptive easement and the defense of the preclusive effect of § 614.17A rely on the same basic tenets. These similarities provide more support for the notion that § 614.17A can still run against an allegedly void deed because the real gist of the statute and an easement by prescription claim are based on the principle of estoppel that one should not delay more than 10 years to challenge another's use of real property.

The District Court correctly ruled that § 614.17A applies here to bar Rivera's claims.

2) Lamar is in Possession of the Property

One of the elements of § 614.17A requires Lamar to be in possession of the property. That element is easily met.

The Easement in this case states: "Grantor hereby grants to Grantee and its grantees, successors and assigns **a perpetual,**

exclusive easement ("Sign Easement A") for the **construction,** maintenance, repair, dismantling, replacement, alteration, **improvement, operation**, (whether physically on-premise or via remotely changeable off-premise technology or other technology as shall be available to Grantee from time to time), illumination and use of outdoor advertising sign structures, appurtenances and related property and equipment ("Billboard A") **over, under, upon and across** that portion of the Real Estate legally described and depicted on Exhibit B attached hereto and made a part hereof (the "Sign Easement Area A")." (App. 91-92).

The Easement grants an **exclusive** right to Lamar (and its predecessors) for the construction, improvement, and operation of a physical sign over, under, upon, and across the property. There is a physical sign driven into the ground and reaching into the sky. No other party, including the grantor, has a right to use that portion of the property where Lamar has erected signs. In fact, it is physically impossible for the area where the sign is affixed in the ground surrounded by concrete footings to be possessed in any sense of the

word by any party other than Lamar. Rivera's reliance on non-Iowa case law stating an easement is non-possessory does not fit the reality of the easement here. First, this Easement is **perpetual**. Second, in reality, how else could one actually describe the sign's existence on the parcel if it is not in possession of a part of the parcel? The sign is present, perpetually, and is affixed and attached to the ground permanently with underground concrete footings. Lamar is in possession under every sense of the word.[10]

10

a. POSSESSION, *Black's Law Dictionary* (11th ed. 2019) "2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object."
b. *Constructive Possession*, POSSESSION, *Black's Law Dictionary* (11th ed. 2019) "1. Control or dominion over a property without actual possession or custody of it. — Also termed *effective possession*."
c. *Exclusive Possession*, POSSESSION, *Black's Law Dictionary* (11th ed. 2019) "The exercise of exclusive dominion over property, including the use and benefit of the property."
d. ACT OF POSSESSION, *Black's Law Dictionary* (11th ed. 2019) "1. The exercise of physical control over a corporeal thing, movable or immovable, with the intent to own it."

3) *Lamar's Claim is Shown by the Record*

The final element required under § 614.17A is that Lamar's possession is derived from the recorded chain of title for more than ten years. Again, this element is easily met.

Lamar's chain of title for possession of the portions of the Property upon which the signs are located extends back to Clear Channel and then to On the Wall (from which Rivera's chain of title also begins).

Although Rivera includes two sentences claiming that Lamar is not a record title holder, Rivera failed to support such argument with any citations to law and that argument is waived. *See* Iowa R. App. P. 6.903(5)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue").

Nevertheless, Lamar is record holder of the easement and has been since January 7, 2016. (App. 130-145). Prior to that, Lamar's predecessor in interest CCOI Holdco Sub II, LLC was the record

holder of the easement before immediately assigning the easement to Lamar on the same day it received the same from Clear Channel. (App. 114-129). Prior to that, Clear Channel was the record holder of the easement from February 11, 2008 until January 7, 2016. (App. 90-101). Clear Channel obtained its interest from On the Wall, which is the same root from which Rivera obtained his interest in the property. (App. 90-101).

As Rivera acknowledged in his brief, record title is distinct from equitable title. There is no doubt that Lamar's interest in the property by virtue of the easement is of-record. (App. 130-145). That is what the second and third prongs of § 614.17A require. Arguing that Lamar is not the record holder of the easement because the

easement was void is circular and does not defeat the simple fact that Lamar is record holder of the easement.[11]

4) *Iowa Code § 614.17A Ran Against Rivera while he was a Contract Vendee*

Iowa Code § 614.17A ran against Rivera even when he was a contract vendee and Rivera has not argued to the contrary, and any new argument is improper and should be disregarded. In any event, it is well established that a vendee under a real estate installment contract has a cause of action for trespass or for recovery of real property. *See Right of vendee under executory contract to bring action*

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[11] *See Raub v. General Income Sponsors of Iowa, Inc.*, 176 N.W.2d 216, 219 (Iowa 1970). In that case, a warranty deed from Raub to General Income Sponsors was obtained by fraud. General Income Sponsors then mortgaged the property. The issue in the case was whether the banks were entitled to enforce their liens as bona fide purchasers. Importantly for this present matter, even the though the Iowa Supreme Court already determined General Income Sponsors obtained the deed by fraud, the Court still recognized that General Income Sponsors was the legal title holder to the property. *Id.* at 219 ("The evidence clearly establishes both mortgages were taken from the **legal title holder**, General Income Sponsors of Iowa, Inc., and each defendant paid valuable consideration for its mortgage.") (emphasis added). This is because legal title holder only means who the recorded documents show as holding the property interest at issue. Lamar is absolutely the record holder of the easement.

against third person for damage to land, 151 A.L.R. 938 (Originally published in 1944) ("It is a general rule that the vendee in an executory contract for the sale of land, who has thereunder possession or the immediate right to possession, may maintain an action for damages against third-party trespassers or tort-feasors for injuries affecting either his possessory rights or the freehold, and recover full damages. . ."); *Williams v. Goodwin*, 116 Cal. Rptr. 200, 209 (Cal. App. 3d Dist. 1974) ("It is well settled that the person in actual possession is a proper party plaintiff in an action for trespass to real property."); *Garrett v. Beers*, 155 P. 2, 3 (Kan. 1916) ("Ordinarily one who buys real estate and enters into possession under a contract of purchase is the owner of it against all comers, excepting possibly the vendor holding the legal title, and may maintain an action as owner for damages to the property."); *Hueston v. Mississippi & Rum River Boom Co.*, 79 N.W. 92, 93 (Minn. 1899).

Similarly, in *Dwight*, *supra*, the Iowa Supreme Court stated in dicta that the statute of limitations continues to run from the date of

the defendant's taking possession of the property and is not stopped by transfers of interest:

> If any cause of action accrued in favor of this plaintiff or his grantors based on the act of the defendant in taking possession of this land, that cause of action accrued immediately upon the defendant's entering upon the land and dispossessing plaintiff's grantors.
>
> Assuming that the plaintiff succeeded to the rights of his grantors, the action should have been brought within 10 years from the dispossession. This statute applies as well to actions in equity as to actions in law. It is in the nature of an action to recover the possession of real property within the meaning of the statute.
>
> That a cause of action accrues and the period of limitation begins to run from the date of the ouster. The plaintiff's cause of action, if any he had, is barred by the statute of limitations.

Dwight, 156 N.W. at 340. Thus, even while he was a vendee, Rivera could have filed an action to challenge Lamar's interest in the Property. He chose not to do so and his rights in this regard have been extinguished.

Section 614.17A ran against Rivera even while he was a contract vendee.

5) ***At Most, the Easement is Voidable, Not Void as Alleged by Rivera***

As demonstrated above, regardless of whether the easement is void or voidable, Iowa Code § 614.17A bars the claim. To the extent the Court rules to the contrary, the District Court's decision should still be affirmed because, at most, the easement is voidable not void (and the standard of statute of limitation of § 614.1(5) applies).

Importantly, the easement was granted by the title owner of the property ***before*** there was any recording of the real estate installment contract between On the Wall and Rivera. Lamar's predecessor in interest was a good faith purchaser for value, and it is fundamental law that a good faith purchaser for value can obtain rights to property even if obtained from a party without equitable title. The bona fide purchaser doctrine itself precludes any conclusion that an easement granted by one who may be without equitable title is void as opposed to voidable. *Wright v. Howell*, 35 Iowa 288, 291-92 (1872) ("It is now the settled American doctrine that a *bona fide* purchaser for valuable consideration is protected under these statutes as adopted in this country, whether he purchases from a fraudulent grantor or a

fraudulent grantee, and that there is no difference in this respect between a deed to defraud subsequent creditors and one to defraud subsequent purchasers. They are voidable only, and not void absolutely.") (italics in original).

Rivera argues that Clear Channel (and therefore Lamar) could not be a good faith purchaser for value because it had record notice of Rivera's purchase "at the time [Lamar] recorded the Easement." (Appellant Proof Br. at 14). This is an incorrect application of the law. The rules for determining a bone fide or good faith purchaser for value are the same as the protection extended by Iowa's recording act: § 558.41. *Raub*, 176 N.W.2d at 219.

Section 558.41(1) states: "An instrument affecting real estate is of no validity against subsequent purchasers for a valuable consideration, without notice . . . unless the instrument is filed and recorded in the county in which the real estate is located, as provided in this chapter." The focus of the statute – and the good faith purchaser for value analysis – is based on the time of conveyance and is not altered by later recorded notice: "If [purchaser] had no notice at

the time when he advanced his money and received his deed of trust in security therefor, no subsequent notice can affect him or in any way cut down his rights. He is in law considered as occupying as high ground as an absolute purchaser from the moment he parts with his money." *Barney v. McCarty*, 1864 WL 214, 15 Iowa 510, 514 (1864) (emphasis added). It is not a race to the Recorder that determines rights, but rather whether, at the time of purchase, the subsequent purchaser was on notice of other prior conveyances as shown by the record.

It does not matter what the record showed at the time Clear Channel *recorded* the Easement. The good faith purchaser analysis instead focuses on what the recorded showed *at the time of the purchase*. Here, the record is undisputed that *at the time Clear Channel purchased the Easement*, the purchase agreement with Rivera had not yet been recorded. That Rivera, subsequent to the Easement, recorded the purchase agreement before Clear Channel recorded the Easement is completely irrelevant to the analysis of whether Clear Channel was a good faith purchaser for value at the time Clear

Channel purchased the Easement. Clear Channel was a good faith purchaser for value. Thus, all case law cited by Rivera which relies on the application of the statute of limitations to a void deed is inapplicable here.

Further, it makes no difference that Lamar acquired the Easement from Clear Channel (the initial good faith purchaser) after Rivera recorded the installment contract because a good faith purchaser can transfer good title even if the transferee is aware of potential equitable claims of others. *Koch v. Kiron State Bank of Kiron*, 297 N.W. 450, 464 (Iowa 1941) ("The principle is akin to the well established one that a bona fide purchaser can transfer a good title even to one who purchases with notice of equitable claims of others."); *see also East v. Pugh*, 32 N.W. 309, 310 (Iowa 1887) ("It is a rule that the holder of a good title clothes his grantee with the same rights, and conveys to him the same title, which he holds himself. It is not necessary for Myers to show that the grantees intervening between him and Porter purchased without notice of the mortgage."); *Brace v. Reid*, 1852 WL 43 (Iowa 1852) ("The principle will not be

controverted that a purchaser, with notice, will be protected, if he derived his title from a *bona fide* purchaser without notice.").

Because Clear Channel and Lamar were good faith purchasers for value, the case law relied upon by Rivera for disregarding statutes of limitation are inapplicable.[12] This case is not about the highly statutorily-proscribed procedure of tax deeds. This case is about whether a contract vendee can maintain an action to adjudicate rights to property more than ten years after the easement was granted, more than ten years after Lamar's predecessor recorded an affidavit of possession, and more than 40 years after Lamar's signs first entered the property. The District Court properly determined that Rivera's claims cannot stand and must be dismissed.

[12] Regardless, the case law relied upon by Rivera concern statutes of limitations applied to void tax deeds. Tax deeds are governed by Iowa Code Chapter 448 and there are, in fact, statutes of limitations that apply to defective tax deeds. For example, § 448.6 describes the mechanism to challenge a tax deed and it is subject to the time limitations in § 448.12.

CONCLUSION

For all the foregoing reasons, the Judgment of the District Court should be affirmed.

In the event the Court reverses the District Court's decision, this matter must be remanded to the District Court for further proceedings, including, consideration of Lamar's motion for leave to amend to bring its counterclaim for the establishment of a prescriptive easement.

REQUEST FOR ORAL SUBMISSION

Lamar believes this matter may be submitted on the briefs, but in the event oral arguments are held, Lamar requests to participate in such argument.

CERTIFICATE OF COST

Undersigned counsel certifies there was no cost paid by Lamar as contemplated by Iowa R. App. P. 6.903(2)(j).

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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/s/William M. Reasoner 11/14/2023

Signature Date

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 2023, I electronically filed the foregoing document with the Clerk of the Court by using the Iowa Judicial Branch electronic filing system which will send a notice of electronic filing to the following:

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