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IN THE SUPREME COURT OF IOWA

No. 25-0760
Bremer Co. No. LACV006856

SCOTT R. BUSS and JULIE S. BUSS,
Plaintiffs-Appellants,

vs.

LANA L. LUHRING, individually and
LANA LUHRING d/b/a LAIRD &
LUHRING LAW OFFICE,
Defendants-Appellees.

Appeal from the Iowa District Court for Bremer County
The Honorable Ashley Sparks

REPLY BRIEF OF APPELLANTS

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Statement of Issues Presented for Review

I. The District Court erred when it ruled Buyers could not establish proximate cause as a matter of law.

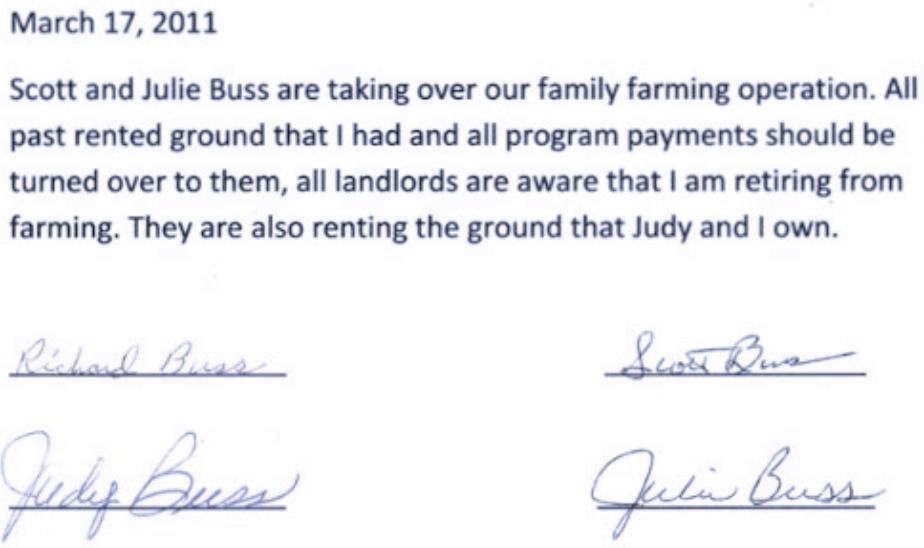
II. Buyers' claims were timely filed such that the statute of limitations provides no ground for granting summary judgment.

Response to Appellees' Misstatements of Fact

In their brief, Appellees' made the following misstatements of fact, either directly or by implication:

A. "The Busses knew at the 2011 meeting there was no written document that guaranteed Richard and Judy's oral statements insuring access to the real estate on which the grain bins stood." (Appellees' Brief p. 12).

The implication of this statement, that Plaintiffs-Appellants Scott & Judy Buss (Buyers) knew they had no right to access the grain bins is absolutely unfounded. The Buyers were taking over the family farm operation of Scott's parents, Richard and Judy Buss (Sellers). (D0031 Defendants' Statement of Facts 3/6/25 (DSOF) ¶¶ 2, 15). As Buyers and Sellers agreed:



March 17, 2011

Scott and Julie Buss are taking over our family farming operation. All past rented ground that I had and all program payments should be turned over to them, all landlords are aware that I am retiring from farming. They are also renting the ground that Judy and I own.

Richard Buss Scott Buss

Judy Buss Julie Buss

(D0036 Plaintiffs' Disputed Facts 3/21/25 (PSOF) at 7 ¶ 7 Ex. 3a).

The document Defendants-Appellees' Lana L. Luhring, individually and Lana Luhring d/b/a Laird & Luhring Law Office (Lawyers) were to prepare was a lease with option to purchase seven large grain bins. (D0015 Amended Petition 2/19/24 at 2-3 ¶¶ 9, 13). Given the nature of the large grain bins, the lease/purchase document ***had to*** include a possessory interest in the land underneath the grain bins, and an easement to access them, or it would have been worthless. (D0036 Plaintiffs' Response to Defendants' Statement of Facts 3/21/25 (RSOF) at 1-2 ¶ 4). As Plaintiff-Appellant Julie Buss testified:

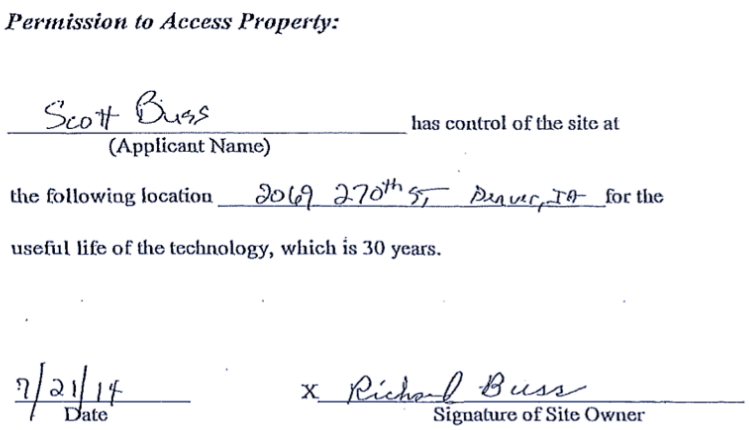
> We had a conversation with Lana after his parents left. I said can we stay a little bit and she says yeah. And I said you see what we're dealing with, Judy has reservations about things

> and she can be difficult. ***We need these ironclad so that there is no way that we lose in this situation.*** I said you heard her say she wants the boys to inherit it. I said ***but you also heard them say once we paid that off, the ground would be ours. I said we have to make sure that there's not a door left open that we're going to lose in this.*** I said you know farming, your family - big farmers in our area …. ***the intent of what we were doing she completely understood.***

(D0036 PSOF at 1-2 ¶ 4; *see also* D0036 Plaintiffs' Disputed Facts 3/21/25 (PSOF) at 6 ¶ 5 - "At that point we weren't worried because it was stated right there and Lana was going to be preparing these documents so that we were safe.").

B. "Richard and Judy never at any time intended to grant the Busses and easement interest." (Appellees' Brief p. 12).

Without an easement interest, how on earth could the Buyers have accessed the grain bins? Moreover, Sellers executed informal documents memorializing their intent to grant an easement. (D0031 DSOF Ex. P Permission to Access Property 3/6/2025).



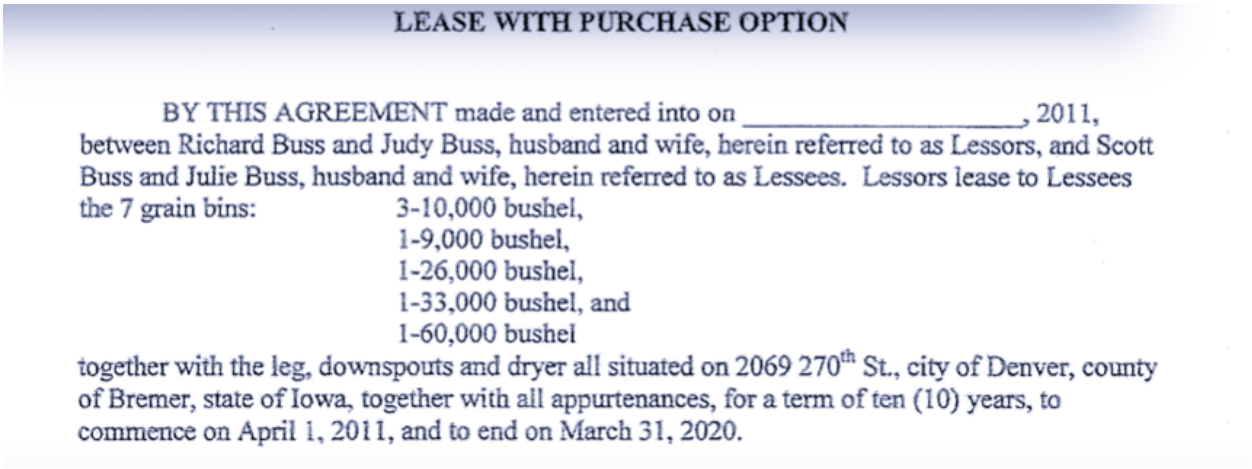
Permission to Access Property:

Scott Buss (Applicant Name) has control of the site at the following location 2069 270th St Brayton for the useful life of the technology, which is 30 years.

7/21/14 Date

x Richard Buss Signature of Site Owner

For laypeople who were relying on their attorney, the lease itself would appear to convey everything Buyers asked for:



LEASE WITH PURCHASE OPTION

BY THIS AGREEMENT made and entered into on _____, 2011, between Richard Buss and Judy Buss, husband and wife, herein referred to as Lessors, and Scott Buss and Julie Buss, husband and wife, herein referred to as Lessees. Lessors lease to Lessees the 7 grain bins:

3-10,000 bushel,
1-9,000 bushel,
1-26,000 bushel,
1-33,000 bushel, and
1-60,000 bushel

together with the leg, downspouts and dryer all situated on 2069 270th St., city of Denver, county of Bremer, state of Iowa, together with all appurtenances, for a term of ten (10) years, to commence on April 1, 2011, and to end on March 31, 2020.

(D0031 DSOF Ex. C Lease p. 1). It identifies the address of the grain bins, as well as "all appurtenances" a term that, to laypeople, means the land on which they sit. (D0036 PSOF Ex. 3 Affidavit ¶¶ 4-6). Likewise, the purchase clause also (to laypeople) appears to convey the land on which the bins sat: "It is agreed that Lessees shall have the option to purchase the above described property." (D0031 DSOF Ex. C Lease p. 3).

Argument

I. The District Court erred when it ruled Buyers could not establish proximate cause as a matter of law.

Lawyers do not dispute that Lawyer Luhring drafted the lease with option to purchase the grain bins. (Appellees' Brief p. 12 - "Luhring … the 2011 grain bin lease after she prepared it in 2011.")

And as Lawyers have noted, it has been adjudicated that the grain bin lease with option to purchase did not transfer the land on which the grain bins sit, nor did it carry an easement. (Appellees' Brief p. 16).

This begs two questions: (1) why did Lawyer Luhring draft a document that did not do what her clients requested; and (2) why did Lawyer Luhring not advise her clients that the purchase option on the grain bin lease would be worthless because they would get neither the land nor access?

"[A] lawyer shall abide by a client's decisions concerning the objectives of representation and … shall consult with the client as to the means by which they are to be pursued." Iowa R. Prof. Conduct 32:1.2(a). It is not reasonably disputed that Buyers requested that the purchase option include title to the land underneath the bins and an easement.

As Buyer Judy testified, she expressly told Lawyer Luhring: "you also heard them say once we paid that off, the ground would be ours… we have to make sure that there's not a door left open that we're going to lose in this." (D0036 Plaintiffs' Statement of Facts (PSOF) at 1-2 ¶ 4). By not including the land and access in the document, Lawyers proximately

caused Buyers' injuries, as they would not have purchased the worthless grain bins had they known. (Id.)

Likewise, as Lawyer Luhring knew that the purchase option did not include the land and an easement, she knew the purchase of the bins would be worthless, which triggered her duty to advise Buyers of this fact - and she did not; as Lawyers noted, after the Sellers sold the land to Douglas in October 2020, Buyers were locked out of all access to the grain bins they had bought - rendering them worthless. (D0031 Attachment Ex. N).

"In representing a client, a lawyer shall exercise independent professional judgment and render candid advice" including "considerations… economic … that may be relevant to the client's situation." Iowa R. Prof. Conduct 32:2.1.

Accordingly, had Lawyers advised that the purchase option was worthless, Buyers would not have suffered the injury of loss of value of the grain bins they purchased; this establishes the "but for Luhring's negligence, their loss of injury would not have occurred." *Blackhawk Bldg. Sys. Ltd. v. Law Firm of Aspelmeier, Fisch, Power, Warner & Engberg*, 428 N.W.2d 288, 290 (Iowa 1988).

Thus, even if it is true that the Sellers, like the Parsons in *Blackhawk*, never intended to transfer the land,[1] that does not dispense with the fact that Lawyers were the proximate cause of Buyers' injury. *Blackhawk*, 428 N.W.2d at 290-91. This is because Buyers at all times informed Lawyers of what they wanted, so it was Lawyers' responsibility to draft the document accordingly, or to advise them that the purchase option was worthless. *Stanwood v. Wishard*, 128 F. 499, 503 (S.D. Iowa 1902) ("It is "the duty of an attorney to report to his client and keep him advised of the facts."); *Diaz v. State*, 896 N.W.2d 723, 728 (Iowa 2017) ("An attorney fails to fulfill this duty when the attorney fails to advise a client of the … consequences" discussing those of a plea on immigration status).

This is the epitome of legal malpractice and its proximate cause. *See Kurtenbach v. TeKippe*, 260 N.W.2d 53, 56 (Iowa 1977) ("In determining the scope of the attorney's duty, courts must give effect to the fiduciary role of the attorney and the heavy responsibility this imposes on him to represent and protect the client's interests."); *Woods*

[1] Buyers do not concede that the Sellers never intended to transfer the land and grant an easement. Rather, Sellers changed their minds after the parties had a falling out. (D0036 PSOF at 7 ¶ 11).

v. Schmitt, 439 N.W.2d 855,864 (Iowa 1989) ("The jury was to decide whether Johnson breached the contract by failing to properly perform his abstract examination and to represent plaintiffs in the real estate closing. His duty was to insure plaintiffs that they had a merchantable title.").

Ultimately, the fact that the Sellers may dispute their intent to transfer the land and access, this is insufficient to create "the exceptional case in which such [lack of proximate cause] is so palpable, flagrant and manifest that reasonable minds may fairly reach no other conclusion." *Ackerman v. James*, 200 N.W.2d 818, 824 (Iowa 1972) (reversing a directed verdict for a defendant "where the evidence is conflicting [and] the undisputed facts are such that fair-minded man may draw different conclusions" which "is a question of fact for the jury and not one of law for the court.").

Accordingly, as the District Court far overstepped its role and usurped that of the jury, its grant of summary judgment must be reversed. *Id.*

II. Buyers' claims were timely filed such that the statute of limitations provides no ground for granting summary judgment.

Buyers' legal malpractice claim is subject to a five-year statute of limitations. I.C.A. § 614.1(4); *Vossoughi v. Polaschek*, 859 N.W.2d 643, 649 (Iowa 2015). Emotional distress damages arising from Lawyer's legal malpractice in this case are also subject to the five-year statute of limitations. *Venard v. Winter*, 524 N.W.2d 163, 165 (Iowa 1994) ("The actual nature of the action determines the proper statute of limitations. This determination turns on the nature of the right sued upon."). Here, the right sued upon was the loss of real property; hence, the five-year limitations period is appropriate.

The cause of action only accrued once "the attorney's act or omission, which constitutes the breach of duty, produces actual injury to the plaintiff's interest." *Skadburg v. Gately,* 911 N.W.2d 786, 792 (Iowa 2018) ("the cause of action accrues when the client sustains an actual, nonspeculative injury and has actual or imputed knowledge of [*all*] the other elements of the claim.").

Vossoughi is directly on point as its facts are a mirror-image of the present case. In *Vossoughi,* those plaintiffs entered into three agreements in September 2006, for the sale of real and personal property, in which payments were being made on the personal property. *Id.* at 645-56. In

March 2007, the attorney prepared a warranty deed for real property that was supposed to have a security interest guaranteeing continued payment for the personal property. *Id*. at 647. It did not. *Id*. In February 2008, the buyers stopped making payments on the personal property. *Id*.

The Iowa Supreme Court found that the actual injury that triggered accrual of the legal malpractice cause of action did not occur until February 2008 when the payments stopped. *Id*. at 652. That is, it did not accrue "when the plaintiffs executed the faulty warranty deed." *Skadburg*, 911 N.W.2d at 793. As the Court explained, accrual was only on the latter date - when the payments stopped - because "it was entirely possible the plaintiffs would have continued collecting contract payments … [and the faulty warranty deed] … cause the sellers no actual injury." *Vossoughi*, 859 N.W.2d at 652.

This is precisely what occurred here - until March 31, 2020, the date the lease expired, Buyers retained access to the grain bins and had suffered no injury; and, until they were locked out, it was entirely possible Sellers would have respected that access to the grain bins. (Dd0036 PSOF at 8 ¶ 15). Accordingly, as "[c]redibility determinations, the weighting of evidence, and the drawing of legitimate inferences from

the facts are functions of the jury," summary judgment could not have been granted. *Hedlund v. State*, 930 N.W.2d 707, 735 (Iowa 2019).

Therefore, Buyers' claims were timely filed such that the statute of limitations cannot form the basis for granting summary judgment.

Conclusion

For the reasons aforesaid, Plaintiffs-Appellants Scott and Julie Buss respectfully request this Court enter an Order reversing the District Court's grant of summary judgment.

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Certificate of Compliance

This brief complies with the requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because it has been prepared in a proportionally spaced typeface using Century Schoolbook in 14-point font and contains **1,911** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Marc S. Harding September 4, 2025

Certificate of Filing and Service

The undersigned certifies a copy of this brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon all parties to this appeal by EDMS on the 4th day of September 2025.

/s/ Marc S. Harding