DRAKE LAW SCHOOL
GENERAL PRACTICE REVIEW

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REAL ESTATE CASE LAW AND LEGISLATIVE UPDATE

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Case Law

A. Slashfrog, LLC d/b/a All Day Homes v. Ethan Quick and Jordan Quick

Iowa Court of Appeals No. 19-0031. Filed November 27, 2019

Slashfrog, LLC entered into a purchase agreement with the Quicks to purchase a 12 unit apartment complex; two single family units and a commercial duplex. The Agreement was entered into on January 30, 2017, and was to close on June 30, 2017. The purchase price of the property was $630,000. The Defendants, the Quicks, were not represented by counsel. After the Agreement was entered into fire damage on the commercial duplex caused work that had to be performed on the commercial duplex prior to the closing in June of 2017. During the course of the work Slashfrog wrote Quicks asserting failure to complete the scope of work repairs. Slashfrog indicated they would go ahead and close with a $30,000 reduction in the total purchase price. Quicks rejected that proposal. There was also an argument by Slashfrog that the Quicks had recently entered into undisclosed leases of the property extending past the closing date in violation of the Agreement. The Agreement provided that no new leases would be executed unless first approved by the Buyer of the property. Quicks indicated that they were in full compliance of the Agreement and that any leases could be terminated prior to the June 30, 2017, closing date. The closing did not occur on June 30 and Slashfrog sent a formal notice of default to the Quicks. The Quicks responded with their own letter stating Slashfrog was in default. Slashfrog claimed that the Quicks breached the contract. Slashfrog sought monetary damages in a suit filed on July 26, 2017. Quicks answered and filed a counterclaim alleging breach of contract and unconscionability. On October 1, 2018, the Court granted summary judgment for Slashfrog rejecting Quicks' counterclaim that the Agreement was unconscionable. During the trial on the remaining issues, Slashfrog withdrew its claim of fraudulent inducement and on December 7, 2018 the Court entered a ruling finding both parties materially breached the Agreement without excuse and dismissing both parties' breach-of-contract clams. An appeal then ensued by both Slashfrog and the Quicks.

The Court found no error on the summary judgment that determined that the Quicks' claim for unconscionability was not founded. The Court found that there was no evidence of unconscionability. The doctrine of unconscionability encompasses both procedural abuses arising from the contract's formation and substantive abuses related to the contract's terms. Procedural unconscionability involves an advantaged party's exploitation of a disadvantaged party's lack of understanding, unequal bargaining power between the parties as well as the use of fine print and convoluted language. Substantive unconscionability involves whether or not the substantive terms of the Agreement are so harsh or oppressive that no person in his or her right senses would make it. Finally, whether an Agreement is unconscionable must be determined at the time it was entered into by the parties. The Court determined that the unconscionability argument of Quick occurred after the parties entered into the Purchase Agreement. The Court found that the allegations do not support a claim of unconscionability because their concerns appeared after the Purchase Agreement was executed. The Court of Appeals affirmed the dismissal of the Quicks' unconscionability claim.

On the breach of contract claims the Court went through an analysis of the elements of a breach of contract claim which states that a party asserting the breach must prove it "performed all the terms and conditions required under the contract." The elements of a breach of contract are (1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under the contract; (4) the defendants breached the contract in some particular way and (5) that plaintiff has suffered damages as a result of the breach. A party's own breach must be material to defend its breach of contract claim. The Court in this case found both parties breached the contract. The Court found that both parties' breach of contract claims failed because both parties materially breached the Agreement. The Court found that Slashfrog breached the Agreement by insisting that the Quicks complied with a scope of work and time is of the essence Agreement which both were groundless.

The Court found that Slashfrog breached the Agreement by asserting the scope of work and time of essence arguments. These assertions breached the duty of good faith and fair dealing under the Agreement.

The Quicks breached the Agreement in that no leases for the property will extend beyond the date of closing which had not otherwise been disclosed to Slashfrog. The Court found that this breach has a material breach of the agreement.

The Court of Appeals modified the District Court's ruling and awarded the Quicks the earnest money deposit because they had substantially performed the agreement.

B. JAR Farms, LTD, et al. v Certified Materials, Inc.
Iowa Court of Appeals No. 18-1240. Filed July 3, 2019

JAR Farms, LTD brought this action to establish a prescriptive easement over portions of property owned by Certified Materials, Inc. JAR Farms, LTD owned both a North 40 parcel, as well as a South 300 parcel. For JAR Farms, LTD to gain access to the South 300 parcel, the owner had to have access across a lane that was adjacent to the JAR North 40 to the East which also joined the Westerly side of the Certified Materials, Inc. parcel. Apparently, when Certified Materials purchased the property, they determined that the lane had drifted away from a thirty-foot ingress/egress easement that had been entered into between the previous parties who were owners of the property. There were certain electrical line easement poles that prohibited a large truck from gaining access to the JAR Farms parcel without going onto the property owned by Certified Materials, Inc. Certified Materials, Inc. constructed a fence on the westerly portion of their property. JAR Farms brought this action seeking a prescriptive easement, as well as a preliminary injunction to prevent the construction of the fence. The preliminary injunction was granted, but later dismissed and the court found that there was a prescriptive easement across the Certified Material's property. Certified Materials appealed the district court ruling.

Certified Materials acquired a four-acre parcel in May 2015. In 2016, it began construction of a chain link fence along the boundary it shares with of JAR Farms North 40. The gravel access lane used by JAR Farms strays from the thirty-foot easement that

was granted on the Certified Materials land. JAR Farms filed this action seeking an injunction to stop the construction of the fence and also a determination that it is entitled to prescriptive easement.

Under Iowa law, an easement by prescription is created when a person uses another's land under a claim of right or color of title, openly, notoriously, continuously, and hostilely for ten years or more. In this case, there was no color of title so that the claim of JAR Farms was based on a claim of right. To prove the proof of easement the evidence must be clear, convincing and satisfactory. The issue in this case was whether or not Certified Materials and its predecessor had express notice of the claim of adverse possession under the prescriptive easement theory. This express notice requirement exists to help place the true owner of land on notice of the adverse use of the land by another. The requirement ensures that the landowner knows another's use of the property is claimed as a right hostile to the landowner's interest in the land. Otherwise, the landowner may incorrectly assume the other's use results merely from the landowner's willingness to accommodate the other's desire or need to use the land. The notice must be actual or from known facts of such nature as to impose a duty to make inquiry which would reveal the existence of an easement. The law imputes to a purchaser such knowledge as he would have acquired by the exercise of ordinary diligence. Thus, where the easement is open and visible, the purchaser of the servient tenement will be charged with notice. Certified Materials argued that they did not have notice of the claim of right. A claim of right must be established by certain acts, including maintaining and improving land, to claim the ownership. Here, there was nothing to indicate that JAR Farms did anything to improve this easement area, other than occasionally putting rock on part of the lane. Other cases dealing with the notice of claim of right have dealt with substantial improvements made by the person asserting the prescriptive easement which clearly would indicate a claim of ownership and notice to the owner of the property where the prescriptive easement crosses. Here the court found that JAR Farms failed to establish by clear and convincing evidence that express notice was given to of any claim of right to any portion of the land now owned by Certified Materials. The lack of this requisite element is fatal to JAR Farms claim to a prescriptive easement. Therefore the Court of Appeals reversed the district court on this issue.

The Court also addressed the issue of whether or not a real estate case such as this type of case images should be used in the appeal brief. The Court in several footnotes provided as follows:

"This appeal brings to mind the words of Judge Posner:

> Appellate lawyering is an oververbalized activity. There is, as we have remarked before, little appreciation of the power of images even in cases, such as trademark cases, in which visual impressions have controlling legal significance. The appellate lawyer's adage might be, a word is worth a thousand pictures. 'Tain't so. The court stated that here, the parties spent pages upon pages in their briefs setting forth legal descriptions of the properties involved but did not include any diagrams or maps. The legal descriptions, one a page long, look like Greek to anyone but a title examiner.

> A judge responding to a survey commented: "The use of pictures, maps, and diagrams not only breaks up what a be dry legal analysis; it also helps us better understand the case as it was presented to the trier of fact. Although our Rules of Appellate Procedure are silent on the use of images in Appellate Briefs, they certainly do not prohibit the inclusion of the pictures, maps, charts, and other visual images. Inclusion of visuals in the brief eliminates the distraction to the reader of having to leave the brief, open the appendix, and scroll to see the image."

C. David and Rachael Sokol v. Robert and Eileen Morrissey
Iowa Court of Appeals No. 18-1200. Filed July 24, 2019

This case deals with an issue involving the building of a home by the Defendants, Robert and Eileen Morrissey. The Plaintiffs, the Sokols, purchased the home a number of years ago. There has been various litigation regarding this matter, but the issue before the court in this case, was whether or not the Defendant Morrissey, as the builder-vendor, breached the implied warranty of good and workerlike construction. The five elements of this implied warranty are as follows:

> (1) the house was constructed to be occupied as a home; (2) the house was purchased from the builder-vendor, who constructed it for the purpose of sale; (3) the house was not constructed in a good and work[er]like manner; (4) the buyer was unaware of the defect [and had no reasonable means of discovery it]; and (5) the buyer suffered damages.

This case has been before the district court on a couple of other issues and on appeal, but the issue before the Iowa Court of Appeals is whether or not the district court's determination that the buyer was aware of the defect at the time of the purchase was proper. In this case the Sokols had made an offer to purchase the property and had an inspector do an inspection of the property prior to the purchase. A number of defects were discovered after the purchase and this case ensued where the Plaintiffs were seeking damages against the builder-vendor. The issue before the court in this particular appeal was whether or not the district court's determination that the buyers were aware of the defects and they had ways to visually discover them was proper. The Court of Appeals found that this particular element is heavily fact based. In this case the district court meticulously sorted through the trial testimony. It then decided the Sokols had not met their burden to show they were without reasonable means to discover the defects they now allege. It pinpointed evidence from Baker, the Sokols' expert witness, undermining their position that they could not have reasonably discovered the problems before completing the home purchase. The Court of Appeals affirmed the district court finding that the one element of breach of implied warranty of good and workerlike construction had not been met in that the buyer had not proven it was unaware of the defect and had no reason or means of discovering it.

D. JLL LLC v. City of Cedar Falls, et al.
Iowa Court of Appeals No. 18-1171. Filed July 24, 2019

In this case the City of Cedar Falls sought to condemn a property from JLL LLC. A compensation commission assessed damages at $527,197. JLL appealed the appraisement of damages to the district court and a jury awarded JLL $630,000. JLL filed an application for attorneys fees of $147,690 and $78,999.67 in costs. The court awarded attorney fees of $141,345; $15,000 for the cost of an appraisal; and statutory expert witness fees of $150 for each of the three experts. JLL appealed the issue regarding what costs could be assessed against the City. Iowa Code §6B.33 does indeed require an acquiring agency to "pay all costs occasioned by the appeal." But, according to the Iowa Court of Appeals, as well as other decisions, costs do not include all litigation expenses, as JLL contends. The court determined that costs in other fee-shifting statutes demonstrate reimbursement for litigation expenses to those allowed as taxable court costs. The court determined that the request for $51,000 for its appraiser's written/oral appraisal report of $43,000 plus the additional $8000 review appraisal of the City's appraisal was not proper. The district court awarded $15,000 for the appraisal finding that the additional costs were not costs that were allowed to be assessed under the appropriate statute. The court found that in the *Soward* case, the express mention of attorney fees [and one appraisal fee] implies exclusion of all other expenses. The only other expenses that were allowed were expert witness fees of $150 per expert, as allowed under Iowa Code §622.72 to be taxed as taxable costs. The decision of the district court was therefore affirmed.

E. Roberta R. Countryman, Trustee of the Ronald W. Woodbury Generation Skipping Trust v. Charles B. Lex
Iowa Court of Appeals No. 18-0979. Filed July 24, 2019

Countryman owned farmland in Webster County, Iowa. She alleged that Lex permitted trees to grow over the private tile on [the trust's] land with the result that the roots of the trees entered and obstructed the private tile, preventing it from carrying drainage waters from [the trust's] land to the county tile. The district court ordered Lex to replace the obstructed tile with new 12-inch plastic, corrugated, non-porous tile. The court also ordered damages for crop losses to Countryman. Lex contended the district court should not have found an easement "on subsurface tiling from the trust property onto [his] property. His belief was that Countryman failed to prove an easement by: (1) express grant or reservation, (2) prescription, (3) necessity, or (4) implication. Countryman counters that the trust had a statutory and common law "right to drain its land via subsurface drainage tile across Lex's land to the county's main tile." Countryman implies the right arises independently of the four types of easements enumerated by Lex. The Iowa Court of Appeals agreed with Countryman and affirmed the decision of the district court.

Iowa Code §468.621 authorizes "[o]wners of land" to "drain the land in the general course of natural drainage by constructing or reconstructing open or covered drains, discharging the drains in any natural watercourse or depression so the water will be carried into some other natural watercourse." The provision has survived in largely the same form for more than a century. Here the tile drain moved from Countryman's property across Lex's property to a county drain tile system. The court found there is little dispute that the trust property was at a higher elevation than Lex's property and the general course of natural drainage was from the southern portion of the trust property through the Lex

property. Testimony at the district court level indicated that the waterflow went from the trust property across Lex's property. The tile in question had been beneath both properties for a long time with an expert pegged construction of the line to at least in the 1970s. The court found that the defendant obstructed the tile line to prevent the natural flow of water and the general law regarding this issue of obstruction is as follows:

> "The general principle of law is 'that the owner of the upper or dominant estate has a legal and natural easement in the lower or servient estate for the drainage of surface waters, that the natural flow or passage of the waters cannot be interrupted or prevented by the servient owner to the detriment or injury of the dominant proprietor and that the owner of the dominant estate may cast an additional quantity of surface water upon the servient estate; if in so doing, he does not thereby do substantial damage to the servient estate."

The Court of Appeals affirmed the district court finding that Lex obstructed the natural waterway to the detriment of the trust.

F. Jorge Oscar Sanchez and Eligio Sanchez Estrella v. RR&A Holdings, LLC
Iowa Court of Appeals No. 18-1607. Filed August 21, 2019

RR&A Holdings, LLC sold certain property in Marshall County to the Plaintiffs, Sanchez and Estrella. The contract contained the standard forfeiture clause, as well as Time is of the Essence clause and provided for a purchase price with a down payment and a balloon payment due with monthly payments during the term of the contract. There were certain modifications made to the contract which extended the balloon payment date. Payments were late on occasion and not made, as well as the balloon payment. In January of 2018, RR&A served the Sanchezes with a notice of forfeiture, alleging they defaulted on the contract by failing to make the monthly payments and failing to make the balloon payment when it became due. The notice reflected an unpaid balance, including interest, of $87,922.01 and included a spreadsheet from the accountant. The notice gave the Sanchezes thirty days to cure the default, after which the contract would be forfeited. The Sanchezes petitioned the court to enjoin the forfeiture, alleging the forfeiture (1) incorrectly stated the contract date between the parties, (2) failed to provide a detailed accounting of the missed payments, and (3) failed to provide the correct amount needed to remedy the alleged missed payments. They alleged RR&A was claiming more money than what was owed. On March 8, RR&A recorded an affidavit in support of the forfeiture and then thereafter served a thirty-day notice of "Termination of Non-Residential Tenancy and Demand for Possession". They moved to stay the termination of the tenancy until the court resolved the litigation. That stay was granted. After a one-day trial, the district court found that the Sanchezes "failed to perform their payment obligations arising from the real estate contract from the beginning". They rejected the Sanchezes' arguments regarding the sufficiency of the notice of forfeiture. Even though the notice referred to the contract by the wrong date, it provided the correct document reference number as required under Iowa Code §656.2, which does not state that the notice had to state the date of the contract. The

Court also found there is no misapplication of the payments and therefore reaffirmed the forfeiture.

On appeal, the Sanchezes alleged that the contract forfeiture does not identify which payments the Sanchezes failed to make under the contract and the court went through an analysis that "[E]quity abhors a forfeiture", therefore "forfeiture statutes are to be construed strictly against a forfeiture, with the burden to show full and strict compliance with the statutory procedures upon the party seeking forfeiture." Even though 'forfeitures are not favored does not mean they will never be enforced.". Here the court found that under the requirements of Iowa Code §656 had been met by the contract vendors. The Sanchezes also asked the district court to give them additional time to cure the forfeiture which was denied by the district court. The Court of Appeals went through analysis of Iowa Code §656.4 which provides a vendee thirty days after completed service of the notice of forfeiture to perform the breached terms identified in the forfeiture notice. The district court denied the request for additional time by the Sanchezes' stating as follows:

> The plaintiffs want an opportunity to cure their default now. Fifteen months have passed since the default, and six months have passed since the deadline set by the Notice of Default. Even if the parties and the court were in agreement about the amount of the default, there would be no equity in allowing the plaintiffs to restore their good standing by now making a payment due fifteen months ago when no payments have been made in the last year.

The court affirmed the district court.

G. Gregory Ragsdale v. David Wireman
Iowa Court of Appeals No. 18-1437. Filed August 21, 2019

Ragsdale purchased property from Richard and Anita Wright which property is landlocked property adjacent to the property owned by David Wireman. In 1988, the Wright's filed an application to condemn a strip of land owned by Wireman and another landowner to allow them to gain access to their land. This particular process was allowed by Iowa Code §471. Twenty-eight years later, Ragsdale purchased the Wrights' property. He sued Wireman, alleging Wireman trespassed on the tract of land that was subject to the condemnation proceedings. He sought a declaratory judgment and injunctive relief excluding Wireman and the general public from this tract of land that was the access to his land locked property. Wireman filed an answer denying Ragsdale's claims and counterclaim alleging Ragsdale had "no right, estate, lien, or interest in [his] land south of and adjacent to the roadway created by the condemnation proceeding." The district court agreed with Wireman in finding that the roadway was for public use and could not be restricted to private use for Ragsdale. The court reasoned:

> "Section 471.4(2), Code of Iowa 1987, grants upon owners of land without a way to the land the right to take private property for public use. This section sets forth the location and dimensions of the property which may be

> condemned for public use and rights and responsibilities regarding this property after condemnation has been completed."

The court determined that the statute was clear that the condemnation was for public purposes and not for private purposes. Condemnation cannot be used for private purposes but only for public use. Iowa Const. art. 1, § 18 states that "Private property shall not be taken for public use without just compensation…."). Even though the condemnation application made reference to a "driveway", "private driveway", and "easement", that terminology cannot convert the access road into anything other than a public way. The court therefore found that the road in question was for public use and not private use.

H. S & A 786, LLC d/b/a Downtown Pantry v. City of Des Moines Zoning Board of Adjustment

Iowa Court of Appeals No. 18-1109. Filed September 25, 2019

A conditional use permit was granted to Downtown Pantry allowing it to sell food and alcoholic beverages under a CUP originally issued in 2010. The Pantry has a location at Sixth Avenue and Walnut Street in Des Moines, Iowa. The CUP issued on November 26, 2013 restricted the sale of liquor or wine as far as the location in the store as well as how much revenue could be obtained from the sale of wine and liquor. The Conditional Use Permit also stated that the conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit. After operating for a number of years, the Neighborhood Inspection Zoning Administrator SuAnn Donovan sent a letter to the Pantry's owners stating she was seeking a reconsideration of the CUP because the business had become a nuisance. She indicated that reports from the City of Des Moines Police Department, security guards with the Financial Center and area residents [cite] loitering, alcohol sales to intoxicated persons and criminal behavior and patrons causing problems for the people in the area and residents in the Fleming Building which create an attractive nuisance in the neighborhood. A hearing before the Board of Adjustment resulted in the revocation of the CUP. The owners of the Pantry appealed that decision through a writ of certiorari stating there was not evidence to support the allegation that there was a nuisance.

There was testimony from several individuals that the Pantry sold alcohol and single serving bottles to individuals who then became intoxicated outside the Pantry and loitering in the area. There was no evidence of any violations by the Pantry and a supporter of the Pantry argued that revocation was targeting the homeless and there is a lack of resources for the homeless. On appeal, the district court reversed the Board of Adjustment finding that there was not substantial evidence to support the nuisance claim and that the revocation of the CUP was arbitrary and unreasonable. The district court found that Downtown Pantry never received a citation from the city for selling to an intoxicated person and had never received a citation for any wrongdoing. The court also found that the revocation was arbitrary and unreasonable stating that:

> This court finds it is unreasonable, arbitrary, and capricious to revoke Downtown Pantry's CUP permitting it to sell liquor, beer, and wine. An

> action is arbitrary and unreasonable when it is "not authorized by the statute authorizing the board's power or that is contrary to or unsupported by the required facts." Revoking Downtown Pantry's CUP to sell alcohol will not eliminate alcohol sales in the immediate area nor will it likely eliminate the nuisance. The Board acknowledged as much, stating "[a]ll you're doing is pushing poor people and homeless people to some other location, probably downtown. You're not solving the problem." Hy-Vee sells a much wider variety of the same types of alcoholic products a few blocks away. There was no evidence that Hy-Vee refuses to sell alcohol to people who may subsequently consume alcohol publicly, loiter downtown in a nearby area furnished with multiple public benches, or engage in any other illegal acts in the area.

The decision of the Board of Adjustment was reversed. The Court of Appeals affirmed District Court decision.

I. Farm Credit Services of America, FLCA v. Braaksma

Iowa Court of Appeals No. 18-0514. Filed October 23, 2019

Farm Credit Services of America brought this action to foreclose on two notes secured by mortgages on agricultural land. Prior to the summary judgment hearing Braaksma's filed a motion to continue the matter under Iowa Code §654.15 alleging that there had been excessive rain in the spring and as a result of those climatic conditions resulted in lower yields. One of the prerequisites for §654.15(1)(a) motion was admission to some indebtedness and breach of their obligations. Prior to the hearing that was set by the court allowing the summary-judgment hearing, the Braaksma's filed an answer admitting all of Farm Credit's allegations. After a telephonic hearing, the district court denied the motion for continuance, finding:

> Said motion was not timely nor made in good faith. Only upon review of Plaintiff's resistance did Braaksma amend [its] answer admitting to the allegations of petition. The Motion itself was deficient in presenting any credible evidence that any rainfall caused the troubles of Braaksma. The Motion to Continue was filed as a last ditch effort to delay these proceedings."

The court also granted Farm Credit's motion for summary judgment.

This appeal was made by the Braaksmas arguing that the district court should have held an evidentiary hearing on their motion to continue before granting Farm Credit's motion for summary judgment. The district court as well as the Iowa Court of Appeals held that the motion to continue was not timely and that it was not filed in good faith. The court also found that there was an evidentiary hearing at the time of the motion for summary judgment that did satisfy the statute and therefore the decision of the Iowa District Court was affirmed by the Iowa Court of Appeals. The Iowa Court of Appeals stated that the

district court did not abuse its discretion in finding the record made at the hearing was sufficient to decide the Braaksmas did not file their motion to continue in good faith.

J. Douglas D. Hickman and Susan A. Hickman v. Ringgold County, Iowa
Iowa Court of Appeals No. 19-0123. Filed November 6, 2019

The county served a notice of intent to condemn 0.7 acres of land owned by the Plaintiffs. The Hickman's were informed their land was needing to be acquired by Ringgold County for the construction of a new road for the future location of a new concrete batch plant. The Hickman's filed this lawsuit challenging the county's proposed action and alleged the condemnation was "in violation of [Iowa Code] §6A.22(2)(a)(3)" because it was "solely for the purpose of facilitating the incidental private use of the Central Iowa Ready-Mix cement plant." Following a bench trial, the district court dismissed the Hickman's petition. The Hickmans moved for enlarged findings of fact which was denied and this appeal followed. Iowa Code §6A.22(1) states:

> In addition to the limitations in section 6A.21, the authority of an acquiring agency to condemn any private property through eminent domain may only be exercised for a public purpose, public use, or public improvement. The provision provides several definitions of "public use," "public purpose," or "public improvement," including the following: "private use that is incidental to the public use of the property, provided that no property shall be condemned solely for the purpose of facilitating such incidental private use."

The issue before the court was whether or not the incidental benefit to the concrete plant was enough to find the condemnation to be improper and illegal. The court found that the county was substantially authorized to upgrade the road. Iowa Code § 306.27 states that:

> "[T]he boards of supervisors as to secondary roads on their own motion may change the course of any part of any road . . . to straighten a road, or to cut off dangerous corners, turns or intersections on the highway, or to widen a road above statutory width. . ."

According to the County supervisor, the road in question needed to be upgraded. If the upgrade to the road had been solely for the purposes of economic development, that would have been improper, but with the authority of the board of supervisors to upgrade roads, the court found that the condemnation was not inappropriate.

K. 129 State, L.L.C. and Patricia J. Brown as Trustees v. Howard 209, L.C.
Iowa Court of Appeals No. 19-0667. Filed February 5, 2020

This appeal from the District Court in Story County presents the question of whether a Petition alleging the violation of a use restriction was timely filed. Howard 209, L.C. obtained title to certain property in an Ames subdivision and leased it to third parties.

The lease violated a restrictive covenant requiring the property to be "occupied and used as the primary residence of the then current titleholders" and prohibiting the property from being "used and occupied as property for which rental income [was] to be received." The covenant was included in a 2007 warranty deed.

129 State, L.L.C. as a titleholder of real property within that subdivision sued Howard 209 for injunctive relief. Howard 209 moved for summary judgment arguing that the Petition was barred by the ten-year statute of limitations under Iowa Code §614.17A which states in part, "An action shall not be maintained to recover or establish an interest in or claim to real estate if it is based upon a claim arising more than ten years earlier or existing for more than ten years." 129 State filed a cross-motion for summary judgment arguing that the provisions of Iowa Code §614.24 were applicable which is a twenty-one year statute of limitations dealing with restrictive covenants. Iowa Code §614.24 provides in part, "No action based upon any claim arising or existing by reason of the provisions of any deed providing for any use restrictions in and to the land therein described shall be maintained against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed. The district court concluded that the twenty-one limitation period was applicable and therefore the restrictive covenant was still in existence and granted the summary judgment of 129 and enjoined Howard 209 from leasing the property to third parties. This appeal then ensued where Howard 209 contends that the ten year statute of limitations of 614.17A is applicable.

The Appeals Court went through an analysis of 614.17A into 614.24 and *West Lakes* which dealt with the applicability of 614.17A to a right of first refusal. The Iowa Court of Appeals affirmed the district court finding that the 614.24 statute was the operative statute of limitations. The court found that because 129'x petition falls squarely within the twenty-one year limitations period set forth in section 614.24, the district court did not err in concluding the petition was timely and in granting 129's cross motion for summary judgment.

L. Chipokas, L.L.C. v. Casey's Marketing Company
Iowa Court of Appeals No. 18-2231. Filed January 9, 2020

Chipokas owned certain property in Linn County, Iowa. It owned one lot that was divided into two adjoining parcels. Lot 1A was for development and Lot 1B was an undeveloped bare ground. In 2001 Chipokas entered into a transaction with Nordstrom Oil Company which was comprised of two separate leases. The convenience store lease (hereinafter "CSL") and the bare ground lease (hereinafter "BGL"). The CSL lease provided that Chipokas would lease Lot 1A to Nordstrom for the construction of a convenience store. Chipokas leased an adjoining undeveloped ground to Nordstrom. The term of each lease ran to June 30, 2012, and allowed Nordstrom to renew six times of five-year terms. Section 4.1 of the CSL also contained the following renewal condition:

> "The exercise of any renewal option hereunder shall require the exercise of the option to renew the BGL as defined in Exhibit D attached hereto."

In 2006, Caseys and Nordstrom entered into an asset purchase agreement where Caseys purchased certain HandiMart stores from Nordstrom including the convenience store located on Lot 1A. Lot 1B was specifically excluded from the purchase and the lease of 1B was not assigned to Caseys. In 2012, Caseys informed Chipokas it wished to exercise the option to renew the CSL. It stated it had no intention of renewing the BGL lease because it did not own that leasehold interest. Chipokas permitted Caseys to renew the CSL without renewing the BGL lease in 2012. In 2016, Caseys again informed Chipokas it wished to exercise its option to renew the CSL. Chipokas brought this action seeking a breach of contract and declaratory judgment claiming Caseys was obligated to renew the BGL upon renewal of the CSL. The lower court granted summary judgment to Caseys holding that their interpretation of the contact language indicated Caseys had no obligation to renew the BGL at the time it renewed the CSL. On review, the Iowa Court of Appeal agreed. The court stated:

> "In the construction of written contracts, the cardinal principle is that the intent of the parties must control, and except in cases of ambiguity, that is determined by what the contract itself says."

Chipokas argued that paragraph 2 of the assignment agreement obligated Caseys to renew the BGL which provided:

> "Assignee hereby assumes all of the obligations of the Assignor as Lessee under the Lease [CSL] arising on and after the Effective Time."

The lease for the CSL contained language that required Caseys to exercise the option to renew the BGL if they were going to exercise the option on the CSL. The Iowa Court of Appeals looked at the various language in the document as well as the fact that Chipokas consented to the assignment of the CSL lease without requiring the BGL lease to be assigned to Caseys. The assignment language in the lease document provided that the consent of Chipokas would not be unreasonably withheld. Chipokas believed that they did not have the right to withhold consent but the court found that they did for legitimate reasons. The Iowa Court of Appeals held that:

> "In the end, for whatever reason, Chipokas made the business judgment to consent to the assignment of the CSL to Caseys without inquiry into Caseys obligation to lease the adjoining bare ground. It cannot complain now about its own failure to raise the issue before consenting to the assignment."

The court also found that the terms of Section 4.1 which required the exercise of the option on the CSL as well as the BGL remain unaltered, but it only had operative effect when the lessee of the CSL and the BGL were the same entity. Chipokas failed to raise the issue of the BGL with Nordstrom and Caseys before consenting to the assignment of the CSL. The decision of the district court was affirmed.

M. Capstone Group, Inc. v. Guthrie County Board of Review

Iowa Court of Appeals No. 18-2147. Filed January 9, 2020

Capstone Group, Inc. is a tax exempt 501(c)(3) corporation. In 2013, Capstone bought The New Homestead nursing facility in Guthrie Center. Before the purchase, the facility received property tax relief as a charitable non-profit entity. To aid with the purchase of the facility Capstone used a donation from a non-profit entity that had once owned skilled nursing care facilities in other states. This facility serves a five-county area in rural Iowa. It provides for independent living, assisted living and skilled nursing facilities. The facility never removes an individual if they do not pay what is owed. Capstone has received a cumulative profit of 1.22% since 2013. Healthcare of Iowa, a third-party for-profit company manages the facility and Capstone pays Healthcare a percentage of the revenues for its management services plus an additional monthly fee for accounting. The district court found that the property was not tax exempt as a charitable organization. This appeal then ensued. Iowa Code §427.1(8) provides that all ground and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural and religious institutions and societies solely for their appropriate objects and not leased or otherwise used or under construction with a view to pecuniary profit are exempt from taxation. Iowa courts have identified three factors to determine whether or not a charitable entity can claim this exemption:

> "(1) the entity was a charitable institution at the time of the claimed exemption, (2) the entity did not operate the facility with a view to pecuniary profit, and (3) the actual use of the facility was solely for the appropriate objects of the charitable institution."

The inquiry is whether Capstone facility operated as a charitable institution and this inquiry is a fact question. The gratuitous or partly gratuitous care of elderly persons is a charitable purpose. The court looked at the minimal profit that the company made at 1.22% and also looked at what it did for the community as well as for the residents that stayed in the facility. This healthcare company that managed the facility is a profit company. This factor does not invalidate the claimed property tax exemption for charitable purposes of Capstone. The district court's decision was reversed.

N. Standard Water Control Systems, Inc. v. Michael D. Jones and Cori Jones
Iowa Supreme Court No. 17-2009. Flied February 7, 2020

This case has been on appeal several times and reported by the undersigned in previous outlines. As the Supreme Court stated:

> "Long-running litigation, like a species in the order lepidoptera, often goes through a metamorphosis. The difference is that the final stage of a legal metamorphosis is not a butterfly. Rather, as here, it is frequently a battle over attorney fees."

In this case, Standard Water was successful in obtaining a mechanic's lien foreclosure decree against the owners and their home in the amount of $4,900 plus

approximately $58,000 in attorneys fees. The holder of the judgment sought to sell the property at a sheriff's sale and prior to the sheriff's sale the owners asserted that the judgment including attorneys fees violated their homestead rights. They maintained that the house is a homestead and could not be sold to pay the contractor's attorneys fees. The district court agreed but held that the assertion of the homestead rights was too late and that it had to be asserted prior to the decree of foreclosure being entered. The Iowa Supreme Court agreed with the homeowners in part saying we conclude that in principle the homeowners are right. Homestead rights generally prevail over a mechanic's lien for attorneys fees. Neither the homestead law nor the mechanic's lien statute contain specific language to the contrary and in that event the homestead law must go first. *See* Iowa Code §561.16. However, the Court held that the homeowners' assertion of homestead rights in this case came too late. The homeowners needed to raise their homestead exemption before the district court entered a foreclosure decree recognizing that the contractor had a mechanic's lien for both the unpaid principal amount and attorneys fees "senior and superior to any right, title or interest owned or claimed by" the homeowners, not later when the decree was being executed. Therefore, the district court decision was affirmed. The Court of Appeals decision was affirmed in part and vacated in part.

O. James W. Palensky, et al. v. Story County Board of Adjustment
Iowa Court of Appeals No. 18-2156. Flied March 4, 2020

This case deals with a decision by the Story County Board of Adjustment allowing for the construction of a boy's youth addiction treatment facility in Story County, Iowa. During the hearing to approve the conditional use permit there was some opposition by neighbors to the construction of the facility. Ultimately, the CUP was approved. This decision was appealed by the Palenskys where they filed a petition for a writ of certiorari. They filed the petition within the time period to file within 30 days after the decision. The Palenskys argued that there were no written findings of fact from the CUP application hearing. The district court agreed with that interpretation and sustained the writ of certiorari annulling the prior board proceedings and remanding the matter back to the board to prepare written findings of fact. The standard of review and a writ of certiorari matter is to review correction of errors at law. The Iowa Supreme Court has stated that boards of adjustments must prepare written findings of fact on all issues presented in any adjudicatory procedure from 1979. The ultimate goal is to create a record sufficient to enable a reviewing court to determine with reasonable certainty the factual basis and legal principles upon which the board acted. The court has also stated that sometimes the mere filing of meeting minutes is sufficient for a written findings of fact by the board. Here the court found that there was no written decision filed by the board. Although the record does contain meeting minutes from the March 1 and 15 meeting there is nothing to indicate these meeting minutes were approved or posted publicly to satisfy the official filing standard. The court indicated that although they were able to see the board's questions regarding topics including but not limited to elopements, placement of proposed buildings and conditions recommended by the commission the Court of Appeals was unable to determine the factual basis and legal principles underlying the board's decision to grant the CUP.

P. Blue Grass Savings Bank v. Community Bank & Trust Company

Iowa Supreme Court No. 19-0657. Filed March 27, 2020

This case deals with an interpretation of Iowa Code §654.12A. Section 654.12A provides in part as follows:

> Subject to section 572.18, if a prior recorded mortgage contains the notice prescribed in this section and identifies the maximum credit available to the borrower, then loans and advances made under the mortgage, up to the maximum amount of credit together with interest thereon, are senior to indebtedness to other creditors under subsequently recorded mortgages and other subsequently recorded or filed liens even though the holder of the prior recorded mortgage has actual notice of indebtedness under a subsequently recorded mortgage or other subsequently recorded or filed lien. So long as credit is available to the borrower, payment of the outstanding mortgage balance to zero shall not extinguish the prior recorded mortgage if it contains the notice prescribed by this section. The notice prescribed by this section for the prior recorded mortgage is as follows: NOTICE: This mortgage secures credit in the amount of ..... Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

Blue Grass Savings Bank made certain loans to a farmer between April 11, 2011, and March 2017. In 2014 the bank obtained a mortgage on the farm property with a future advance clause contained in the mortgage. The clause had the correct language contained in it and had a maximum amount secured by the mortgage of $148,000. The indebtedness that was owed to Blue Grass Savings Bank was in an approximate amount of $556,000. Thereafter, the farmer took out another loan from Community Bank & Trust Company in the approximate amount of $589,000. In 2018, Blue Grass filed a foreclosure proceeding. The issue between the parties is whether or not the first bank's lien on the farm has priority for all amounts due to Blue Grass Savings Bank or only up to $148,000, plus interest. The lower court determined that the mortgage to Blue Grass Savings Bank not only secured the $148,000 but also secured all amounts due Blue Grass Savings Bank up to the amount loaned of $556,000. The Iowa Supreme Court in reviewing the code section determined that mortgage only secured the mortgage amount up to $148,000. The note to Blue Grass Savings Bank contained the dragnet language "plus all present and future debts from mortgagor to lender." Blue Grass tried to argue that Iowa Code §654.12A only applies to advances made by a bank that occur after the later mortgage is recorded. Blue Grass argues that the loans to the farm was made prior to any loans being made by Community Bank & Trust Company to the farmer and therefore the first mortgage secured all of the debt owed to Blue Grass. The Iowa Supreme Court found that the Iowa Code §654.12A draws no distinction between advances made before the subsequent mortgage is recorded and those made after recording. The Court went through an analysis of why Iowa Code §654.12A was enacted and the legislative history indicates that it was enacted to take care of any issue regarding line of credit mortgages where an amount due from a borrower would be paid to zero and then advances made secured by the same mortgage.

The Iowa Supreme Court found that $148,000 is the principal amount after which Blue Grass's mortgage has priority over Community Bank's mortgage based upon the language and legislative intent of Iowa Code §654.12A. The court declined to interpret that section to only apply to advances made by Blue Grass after the second mortgage was recorded. The district court's decision was reversed.

Q. Miller v. Scott County Board of Review
Iowa Court of Appeals No. 19-1038. Filed April 29, 2020

Miller challenges the district court order affirming the Scott County Board of Review's classification of his Bettendorf property as residential. There was also a challenge regarding the valuation. He contends he primarily uses the property for agricultural purposes and it is a misclassification to classify it as residential. The Scott County Board of Review as well as the district court upheld the designation of property as residential in finding Miller was a hobby farmer. This appeal then ensued. Property owners may challenge their tax assessments on the ground the property has been misclassified. *See* Iowa Code §441.37(1)(a)(1)(c). For assessment purposes the property's classification is to be decided on the basis of its primary use. The district court found the property was residential rather than agricultural and made this assessment. The property has never provided a profit from the agricultural portion of the property and if the property is for sale it would be sold as a residential property not as agricultural property. When the Millers bought the property it was a residential property. While the property is slightly over 10 acres in size it is surrounded by property being developed as residential property. The best use of the property is for residential purposes. The biggest asset of the property is not the farmland but the residence. Mr. Miller is a hobby farmer and the board of review determined that the property is primarily a residential property. This is supported by the evidence. The property consisted of approximately 10 acres, 4.9 acres were slough land, 5.3 acres was used primarily for agricultural purposes, and of that amount 1.7 acres accommodates his residence leaving 3.6 acres for farming. The court of appeals agreed with the district court that the primary use of the property was not agricultural but residential and therefore the classification was correct.

R. Chayse Holdings, LLC v. Gary Toft, et al.
Iowa Court of Appeals No. 19-0373. Filed May 13, 2020

This case deals with a real estate purchase agreement that did not close as scheduled. The buyers brought this action for specific performance of the contract and the seller's counterclaimed for damages due to breach by the buyer of the purchase agreement and sought the earnest money from the realtor. The parties entered into a real estate contract which provided for a certain purchase price and a certain closing date. There were many extensions of the closing day but ultimately the final closing date was June 1, 2017. The transaction was a cash transaction and it was not contingent upon the buyer obtaining financing. The seller's signed all the closing documents and left the documents with the closing agent at the realtor's office. The buyer's attorney indicated that the lender for the buyer would have to close the transaction and the closing did not occur on the scheduled

date of June 1. After the closing did not occur on the scheduled date of June 1, the sellers indicated that they were not going to close as the buyer had breached the June 1 closing date. The attorney for the buyers responded that they objected to the speed of the actions of the sellers and considers their actions a breach of the purchase agreement. The buyers filed a suit for specific performance and monetary damages. The seller counterclaimed for breach of contract, receipt of the earnest money and attorneys fees for the contract. The district court found that the buyers had breached the contract as they were not ready to close on the date of closing and awarded to the sellers the earnest money as well as attorneys fees as provided for in the contract. The buyers attempted to argue that many times closings do not occur on the date set forth in the contract and therein they do not believe it was necessary to close on the date as set forth in the contract. The district court stated that the buyer was not entitled to specific performance because (1) it breached the purchase agreement by not making payment on or before the closing date, (2) it was negligent in seeking financing in a timely manner, (3) it breached by attempting to unilaterally modify the contract terms. The court of appeals affirmed the district court.

S. In the Matter of the Estate of Sandra R. Franken (Deceased), John E. Rottinghaus and Dessie Rottinghaus v. Lincoln Savings Bank, Fiduciary of the Estate of Sandra R. Franken
Iowa Supreme Court No. 18-0261. Filed June 12, 2020

The Estate of Sandra R. Franken sold property to a third party without giving the required notice to Rottinghaus who held a right of first refusal on the property. The issue before the Court was whether or not the right of first refusal contained in the deed and held by Rottinghaus was barred by Iowa Code §614.17A. The lower court as well as the Iowa Court of Appeals determined that 614.17A barred the right of Rottinghaus to assert a breach of the right of first refusal seeking monetary damages. The Iowa Supreme Court indicated that Iowa Code §614.17A does not preclude the Rottinghauses from the establishment of the right of first refusal. The Supreme Court said nothing in the statute extinguishes the right of first refusal or otherwise bars the plaintiff in establishing such a right of first refusal. Instead the court concluded that Iowa Code §614.17A is a statute of limitation that bars a certain type of action to enforce a possessory interest in real estate. The statute does not extinguish the underlying right itself given that the Rottinghaus' right of first refusal. The court distinguished between Iowa Code §614.17A being applicable to a possessory interest in real estate and a right to enforce the contact claim.

T. Karen Cohen v. David Clark and 2800-1, LLC
Iowa Supreme Court No. 18-2173. Filed June 30, 2020

This case involves the conflict between a landlord who has a building with a no pet policy and an attempt by the landlord to accommodate a neighboring tenant's emotional support animal. The landlord had a building in Iowa City that had a no pet provision. The plaintiff in this case, Karen Cohen, had severe allergies to pets. She signed a lease. Thereafter the landlord signed a lease with the other tenant who moved into the property. After the lease was signed, he made a request for a reasonable accommodation to allow an emotional support animal to be in the property. The landlord after some inquiries with the

Iowa Civil Rights Commission allowed the service animal to be on the premises. The dog caused the Plaintiff, Karen Cohen, to have severe allergies to the emotional support animal. The landlord attempted to mitigate the issue by subtle modifications to the building but those modifications were not successful. This action was brought by Karen Cohen against the tenant as well as the landlord seeking damages of one month's rent. The small claims court as well as the district court dismissed the action as there was no clear law on the subject matter. The Iowa Supreme Court reversed the decision finding that this case is fact specific held that because the Plaintiff had already entered into a lease with the landlord under the no pets provision that fact allowed the court to determine that the landlord should not have made a reasonable accommodation and allowed the other tenant to have an emotional support animal on the premises. This case was a 4-3 decision by the Iowa Supreme Court with Justice Appel, McDonald and Oxley dissenting.

U. Sibley State Bank v. Robert Zylstra, et al.
Iowa Court of Appeals No. 19-0126. Filed August 19, 2020

Sibley State Bank foreclosed on some property and obtained the foreclosure decree on two different farms. A sheriff's sale was held and one property bid was $974,284 and the other bid was $410,000. The debtor Braaksma assigned their redemption rights to Robert Zylstra. The day prior to the one-year expiration of the redemption rights, Zylstra tried to find out the amount to redeem. He went to the clerk's office and redeemed the principal amount of the obligations that did not include any amount for interest or other expenses that may have been incurred from the time of the foreclosure sale to the expiration date of the redemption. There were issues in this case regarding who Zylstra tried to contact to find out the correct amount. The district court determined that he did not redeem the correct amount as he did not include interest and other costs that were allowed under the statue. The Iowa Court of Appeals agreed with the district court finding that even though there was some confusion as to how he would find out what amount was due to redeem he had the ability to do so and he was not timely in redeeming the property. The district court decision was affirmed.

Legislation

1. Senate File 2137 - Extension of Mortgages.

2. Senate File 458 - Debts on Homestead.

3. Senate File 2481 - Certificate of Treasurer-Plat.

4. Senate File 2300 - Section 558A Disclosures and Trusts.

5. House File 2477 - Agricultural Experiences.

6. House File 2512 - Agricultural Zoning.