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Westlakes v. Greenspon

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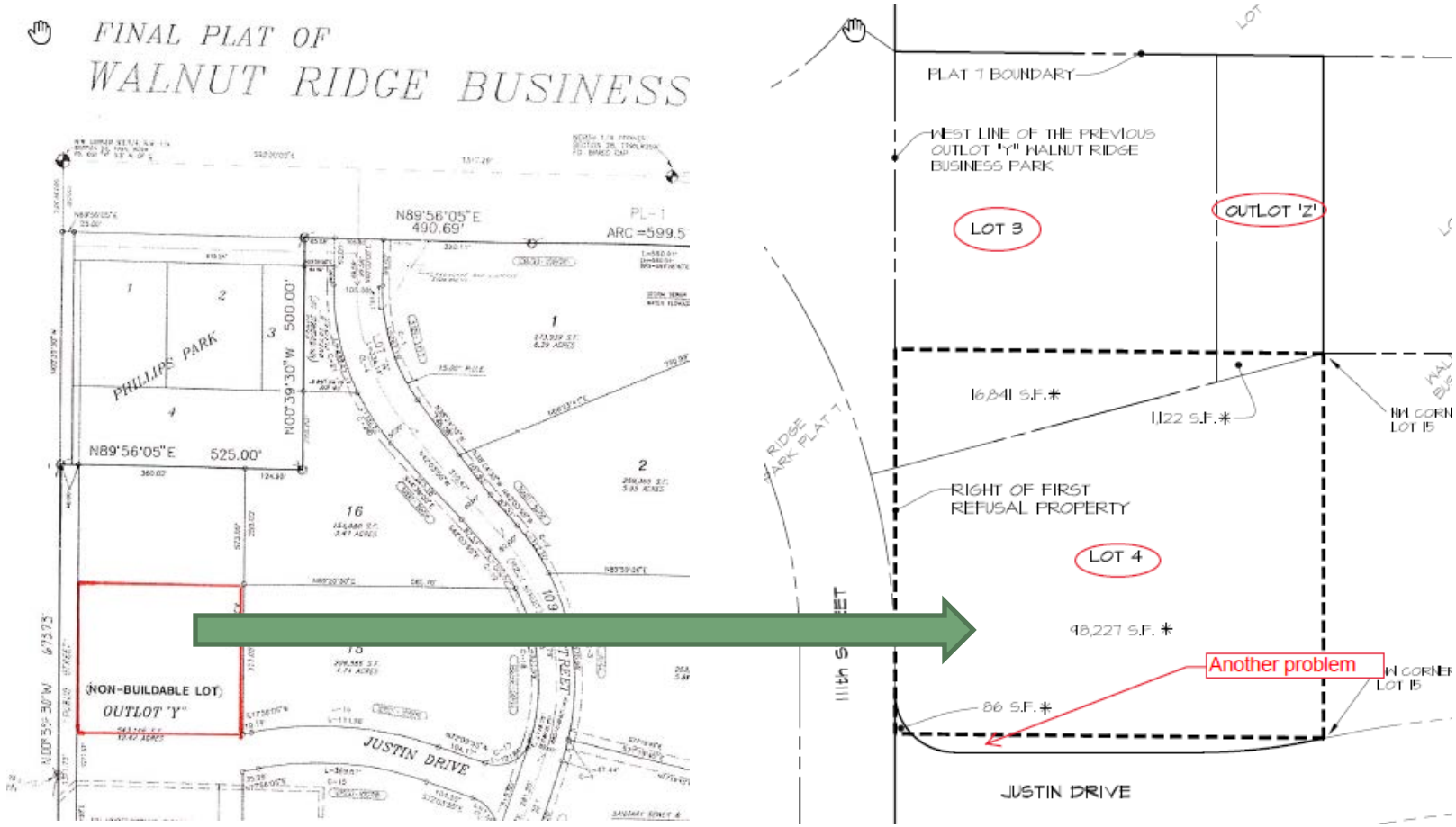
FACTS OF THE WEST LAKES CASE

- 1997 contract that includes a ROFR for an unplatted area
- Standard ROFR to match bona fide third party offers. Book 7658, Page 618.
- Property is replatted and the ROFR covers portions of three lots.
- 19 years goes by without a bona fide offer.
- Developer wants to improve one of the lots but ROFR clouds title.
- Developer files a quiet title action alleging the ROFR is unenforceable because Greenspon failed to file a verified claim under I.C.A. 614.17A

Sidebar: What Not to Do



PROVISIONS OF SECTION 614.17A

Section 614.17A provides as follows:

(1) 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.

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.

(2) a. The claimant within ten years of the date on which the claim arose or first existed must file with the county recorder in the county where the real estate is located a written statement which is duly acknowledged and definitely describes the real estate involved, the nature and extent of the right of interest claimed, and the facts upon which the claim is based…

WHAT THE COURT HELD

A. A right of first refusal is an interest in land as defined under Section 614.17A because it is a servitude that directly restrains alienation of an interest in land (with the Court defining "servitude" as a legal device that creates a right or an obligation that runs with land or an interest in land) (West Lakes, pp 5-6).

B. The right of first refusal arose as an interest in land from the date of its recording and not from the date any cause of action on such interest accrued (West Lakes, p. 7). See In re Hord and Lang.

C. Because Greenspon did not file a claim to preserve its right of first refusal within 10 years after the recording of the right of first refusal, it is no longer enforceable under the terms of Section 614.17A (West Lakes, p. 7).

D. Because Iowa's marketable title act shares the goal of improving the system for transferring real property, first refusal rights should be subject to the recording demands of Section 614.17A (West Lakes, p. 6).

E. In the absence of constitutional concerns, it is not for the Court to overlook the language of the statute to reach a particular result deemed unjust under the particular circumstances of the case (West Lakes, p. 8).

WHAT THE WEST LAKES COURT DID NOT HOLD

- The Court did not address the argument raised by Greenspon on appeal that Section 614.17A should not affect the right of Greenspon to seek contractual damages for breach of contract, since that argument was not preserved by Greenspon at the district court level (West Lakes, p. 7).

Claim Arises Upon Recordation

- In re Hord, 836 N.W. 2d 1 (Iowa 2013) (hereinafter "Hord") cited from the Lane case the court's determination of the difference between when a claim "arises" and when a clam "accrues" thereon, and held that a claim under Section 614.17A arises or exists on the date the instrument creating the interest was recorded, such that even a future interest is deemed to arise or exist when the interest appears of record, and not when it vests, becomes possessory or becomes actionable (Hord, p. 7).
- The Supreme Court has stated in the Lane case, and in citing the Lane case in the Hord case, with regard to the equity of applying Section 614.17A strictly to cut off the claims of remainder interests in those cases, that "it may be that the legislature did not intend this provision to apply to such a case as the present" but "as we view it, the language of the statute is plain and unambiguous", and "there can be little doubt of the desirability of statutes giving greater effect and stability to record titles" (Lane, p. 555).
- In the West Lakes case, the Court responded to the assertion by Greenspon that the application of Section 614.17A to the facts of that case would be inequitable by citing the case of Martin v Martin, 720 N.W.2d 732, 738 (Iowa 2006) where it held that "absent constitutional concerns it is not for the courts to overlook the language of the statute to reach a particular result deemed unjust under the particular circumstances of the case" (West Lakes, p. 8).

Conclusion

The Iowa courts, up to and through the West Lakes decision, interpret Section 614.17A as being applicable to interests in or claims to real estate:

- which were recorded in the records more than ten years ago;
- for which no claim to preserve such interest has been filed within the last ten years;
- whether or not they are possessory interests;
- whether or not they are yet enforceable as an interest adverse to the possession and ownership of the current titleholder in possession;
- even if they are contractual interests between the parties that are involved in the dispute; and
- whether or not the ten year chain of title of the party relying on Section 614.17A as a defense goes back at least ten years to a title event which both postdates the date on which the interest or claim arose and is free of any recognition of or reference to such interest or claim.

Plain Language of Statute Controls

The Iowa courts base such holdings and interpretations of the application of Section 614.17A in large part upon:

1. The duty of a court to strictly apply the plain language of the statute to fact situations to which such language would apply, without consideration of equitable arguments against such application; and

2. The determination that since Section 614.17A, as a marketable title act rather than a statute of limitations, allows claims to be preserved and extended by timely filing of a claim to extend, the aggressive enforcement of this statute is justified by the benefits such marketable title acts have on simplifying the determination of marketable title (no matter that this may beg the question of whether the statutory provisions of Section 614.17A are adequately clear as to which interests or claims are subject to the requirement of filing claims to extend).

West Lakes Creates Uncertainty – Possible Fixes

Possible areas of focus in connection with such statutory modification could be as follows:

1. Lessen the need for the Iowa courts to take on the roll of "defining" what an interest or claim in land is, to the extent possible, so that we can avoid to a greater extent the case by case application by the courts of the statute to additional types of interests.

2. Clarify that the interests or claims in real estate to which the statute applies are to be possessory interests, i.e. those interests or claims which could result in the current titleholder being divested of ownership and possession now or in the future by the claimant, in order to avoid possible application of the statute by court interpretation to nonpossessory claims deemed servitudes, such as easements, covenants, liens for Association dues, etc.

3. Clarify that the statute is not applicable to interests which are never cut off by Section 614.36 of the Marketable Title Act or which are addressed by other marketable title statutes such as 614.24.

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