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Tiller White, LLC v. Canyon Outdoor Media, LLC Appellant's Brief Dckt. 43482

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TILLER WHITE, LLC,)	
)	Supreme Court Docket No. 43482-2015
Plaintiff-Respondent,)	
vs.)	
)	APPELLANT'S BRIEF
CANYON OUTDOOR MEDIA, LLC,)	
)	
Defendant-Appellant.)	
)	
)	

Appeal from the District Court of the Third Judicial
District of the State of Idaho, in and for the County of Canyon

Honorable Christopher S. Nye
District Judge, Presiding

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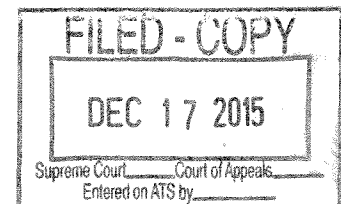


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I. STATEMENT OF FACTS

A. Nature Of The Case

This appeal concerns the Respondent, Tiller White, LLC's (hereinafter "Tiller White") constructive notice of an unrecorded easement involving property it acquired and, at a minimum, its failure to conduct a reasonable and prudent investigation to ascertain the status of an easement possessed by a third party, Appellant, Canyon Outdoor Media, LLC (hereinafter "Canyon Outdoor") who owns an advertising billboard sign standing 40 feet in height and 30 feet in width affixed to the property before the acquisition of the property by Tiller White, in spite of having actual and constructive knowledge of the following undisputed facts:

- 1) Tiller White had actual knowledge that the advertising billboard sign had been situated on the property for nearly three (3) years before the acquisition of the property;
- 2) The advertising billboard sign was not owned by the Sellers;
- 3) Tiller White was provided and thoroughly read and reviewed the terms of a lease pertaining to the billboard sign before and after its offer was made and accepted by Sellers;
- 4) Tiller White had actual knowledge that the Sellers received a lump sum payment and it would not be receiving any rental income associated with the advertising billboard sign after acquisition of the property;
- 5) The only provision in the lease which provided for a lump sum payment specifically expressed that a lump sum payment would be made for the acquisition of a permanent easement on the property; and
- 6) Tiller White made no attempt to contact or communicate with Canyon Outdoor to determine its interest in the property.

The Court erred in ruling that Canyon Outdoor's failure to record the easement conclusively rendered Canyon Outdoor's easement invalid and unenforceable. Further, the

district court erred in ruling that Tiller White was protected as a bona fide purchaser under Idaho Code §§ 55-606 and 55-812 despite the undisputed facts regarding Tiller White's knowledge of the foregoing facts which provided Tiller White notice of the easement and Tiller White's failure to further investigate in good faith the true interest and claim of Canyon Outdoor.

B. Procedural History

On February 12, 2014, Tiller White filed its Complaint against Canyon Outdoor alleging that that Canyon Outdoor's lease expired and that it was a bona fide purchaser of the property and therefore requesting the billboard sign be removed. The case was assigned to the magistrate court. *See, R.*, pp. 5-7.

On June 6, 2014, Canyon Outdoor filed its special appearance and motion to dismiss complaint on grounds of lack of proper service and lack of subject matter jurisdiction. *See, R.*, p. 2.

On July 10, 2014, the magistrate court transferred the case to the district court. *See id.*

On August 7, 2014, Canyon Outdoor filed its Answer to the Complaint. *See, R.*, pp. 8-11.

On April 10, 2015, Tiller White and Canyon Outdoor stipulated to present the case by Motion for Summary Judgment. *See, R.*, p. 3.

On April 16, 2015, the Court entered its Order granting the parties stipulation to present case by motion for summary judgment. *See id.*

On April 10, 2015, Canyon Outdoor filed its Motion for Summary Judgment, along with its supporting memorandum and affidavits. *See, R.*, pp. 12-98.

On April 29, 2015, Tiller White filed its Response to Canyon Outdoor's Motion for Summary Judgment, along with its supporting memorandum and affidavit. *See, R.*, pp. 99-117.

On May 7, 2015, Canyon Outdoor filed its memorandum in response to Tiller White's memorandum. *See, R.*, pp. 118-127.

On May 14, 2015, the parties presented oral argument on the Motion for Summary Judgment before the district court. *See, R.*, p. 3.

On June 4, 2015, the District Court entered its Memorandum Decision and Order. *See, R.*, pp. 128-136.

On June 22, 2015, Judgment was entered consistent with the Court's Memorandum Decision and Order. *See, R.*, pp. 137-138.

On July 31, 2015, Canyon Outdoor filed its Notice of Appeal. *See, R.*, pp. 139-142.

C. Statement of Facts

Glenn and Rachel Knapp (hereinafter the "Knapps") were the previous owners of the real property located at 901 12th Avenue South, Nampa, Idaho 83651, and more particularly described as:

Lot 5 in Block 36 of WATERHOUSE ADDITION TO NAMPA, Canyon County, Idaho, according to the official plat thereof, filed in Book 1 of Plats at Page 15, records of said County.

See, R., pp. 54 and 68.¹

The Knapps were approached by a representative of Lockridge Outdoor Advertising Agency who offered to lease a portion of their land to construct, operate and maintain an advertising billboard sign. *See id.*, pp. 54-55 and 68-69. The parties negotiated some of the terms for the lease and agreed upon a number of terms, including but not limited to A) an annual rental payment of \$1,500 or 15% of the structure's revenue, whichever was greater; B) a ten (10) year term with an automatic renewal provision of five (5) years to be exercised by the tenant

¹ The complete citation in the Record for the Affidavits of Glenn Knapp and Rachel Knapp is *R.*, pp. 54-67 and 68-78, respectively.

after the expiration of the original term; and C) the option to buy a permanent easement with egress and ingress rights to service the billboard sign for a lump sum payment of \$10,000 thus voiding the yearly contractual rental payment. *See id.*, pp. 55 and 69. On February 26, 2003, the Knapps executed the Sign Lease and Mr. Knapp executed the Sign Lease before a notary public the following day. *See id.*, pp. 58-61 and 72.²

Shortly after the Knapps executed the Sign Lease, Tiller White's representative, Dr. Daniel Tiller, discussed and reviewed the terms of the lease with Mr. Knapp. *See, R.*, p. 85.³

After the Sign Lease was executed, it was assigned to Canyon Outdoor. *See, R.*, p. 35.

In April of 2003, Curtis Massood of Canyon Outdoor met and introduced himself to the Knapps. *See id.* Mr. Massood, again, met with the Knapps in May of 2003 where they discussed the acquisition of an easement for a lump sum per the terms of the Sign Lease. *See, R.*, pp. 36, 55, and 69. The parties agreed to a lump sum payment of \$12,000 and executed a Perpetual Easement Agreement. *See id.* Canyon Outdoor inadvertently failed to record the Perpetual Easement Agreement.

Before purchasing the easement, the Knapps and Canyon Outdoor originally contemplated locating the billboard sign between the Knapps then existing building and Tiller White's building. *See, R.*, pp. 37 and 56. Tiller White objected to this original location and demanded the billboard sign be relocated to the other side of the Knapps' then existing building. *See id. See also, R.*, p. 84.⁴ Canyon Outdoor complied with Tiller White's objection and relocated the billboard sign to the other side of the Knapps' then existing building.

² The Sign Lease executed by the Knapps are reflected on Exhibits A and B attached to the Affidavit of Glenn Knapp and Exhibit A attached to the Affidavit of Rachel Knapp.

³ The specific reference in the Record and to Exhibit A attached to the Affidavit of Ed Guericabeitia in Support of the Motion for Summary Judgment are p. 14, Ll. 14-25, p. 15, Ll. 24-25, p. 16, Ll. 1-23. p. 14, Ll. 14-25, p. 15, L. 25, p. 16, Ll. 1-23.

⁴ The specific reference to Exhibit A attached to the Affidavit of Ed Guericabeitia in Support of the Motion for Summary Judgment is p. 13, Ll. 1-17.

Shortly after acquiring the easement, Canyon Outdoor commenced construction of the billboard sign. *See, R.*, p. 37. The sign stands 40 feet in height and 30 feet in width thus clearly putting any subsequent buyer on constructive notice of a potential interest or claim on the subject property. *See id.* The construction and erection of the billboard sign was completed in May of 2003. *See id.*

The construction of a billboard sign of this size required digging out a footing of a minimum of four (4) feet in diameter and 20 feet in depth. *See id.* The billboard sign consists of a pole and head which are constructed on the ground during the digging process. *See id.* A crane is used to lift and install the pole and head into the footing. *See id.* Afterwards, approximately ten (10) yards of concrete is poured into the footing to secure and stabilize the pole. *See id.* Electricity is then brought to the pole to illuminate the lights facing the advertising sign. *See id.* The overall hard cost to construct and erect the pole is generally between \$40,000 to \$50,000 depending on the conditions of the property. *See id.* This cost does not include the soft costs of obtaining government approvals, building permits, purchasing an easement or other incidental costs associated with setting up the billboard sign to commence operations which costs vary in range depending on the particular state and county the sign is to be located. *See id.*

Once constructed and erected, the billboard sign can withstand 40 psf (“pounds per square foot”) which is equivalent to 120 to 130 mile per hour wind gales. *See id.*

Canyon Outdoor paid \$10,000 for the assignment and rights to the Sign Lease from Lockeridge, \$12,000 to the Knapps for the easement and \$40,000 to construct and erect the billboard sign for a total cost of \$62,000. *See, R.*, p. 38.

Upon the payment of the lump sum and construction of the billboard sign, the terms of the Perpetual Easement Agreement were fully performed. *See, R.*, pp. 56 and 69.

Prior to and after the erection of the billboard sign, Tiller White had approached the
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Knapps on several occasions to determine their interest and desire to sell their property. *See, R.*, p. 85.⁵

In February of 2006, Tiller White approached the Knapps and offered to buy their property for \$225,000. *See, R.*, pp. 56 and 69-70. At the time, their property was not listed for sale. *See id.* Mr. Knapp told Dr. Tiller that he had received a lump sum payment of \$12,000 from Canyon Outdoor and that the agreement provided free advertising if one face was vacant and asked if that was a deal breaker. *See, R.*, pp. 56 and 87-88.⁶ Dr. Tiller responded it was not a deal breaker. *See, R.*, p. 56. The Knapps accepted the offer and they closed on the sale in early March of 2006. *See, R.*, pp. 56, 69-70 and 87.⁷

Prior to the closing, Tiller White had received and read the terms of the Sign Lease and knew Mr. Knapp received a lump sum payment. *See, R.*, pp. 85-88.⁸ Despite knowing this information, Tiller White never contacted Canyon Outdoor to confirm the status of its interest in the subject property. *See, R.*, p. 88.⁹ Dr. Tiller admitted that the only investigation and due diligence performed in determining whether any other interests existed on the subject property was reviewing the Sign Lease, discussions with Mr. Knapp, and obtaining a title policy which did not reflected a recorded easement. *See id.*¹⁰

Dr. Tiller acknowledged that by acquiring the property Tiller White was subject to and assumed the terms of the lease. *See, R.*, p. 89.¹¹

⁵ The specific reference to Exhibit A is p. 16, Ll. 6-16.

⁶ The specific reference to Exhibit A is p. 22, Ll. 11-25, p. 23, ll. 1-22, p. 29, Ll. 9-13.

⁷ The specific reference to Exhibit A is p. 25, L. 12.

⁸ The specific reference to Exhibit A is p. 16, Ll. 3-5, p. 21, Ll. 20-23, p. 22, Ll. 23-25, p. 23, ll. 1-22, and p.29, Ll. 9-13.

⁹ The specific reference to Exhibit A is p. 28, Ll. 11-25.

¹⁰ The specific reference to Exhibit A is p. 28, Ll. 4-10.

¹¹ The specific reference to Exhibit A is p. 31, Ll. 5-11.

In its Memorandum Decision and Order, the district court found the easement agreement executed by the Knapps and Canyon Outdoor was unenforceable against Tiller White, holding “[T]he recordation issue is dispositive.” *See, R.*, p. 131.

III. ISSUES PRESENTED ON APPEAL

A) Whether the District Court erred in finding as a matter of law that Canyon Outdoor’s easement was unenforceable against Tiller White pursuant to Idaho Code § 55-815 and that Tiller White was a bona fide purchaser under Idaho Code §§ 55-606 and 55-812.

IV. LEGAL ARGUMENT

A. Standard of Review

In this case, the claim before the district court was a quiet title action and therefore, the parties stipulated to present the case by motion for summary judgment rendering the district court sitting as the trier of fact.

In its Memorandum Decision and Order, the district court set out the applicable standard of review explained in *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 93 P.3d 685 (2004) on cross-motions for summary judgment:

On appeal from the grant of a motion for summary judgment, this Court employs the same standard as used by the district court originally ruling on the motion. (Citation omitted). Summary judgment is proper “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). The fact that both parties move for summary judgment does not in and of itself establish that there is no genuine issue of material fact. (Citations omitted). The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and this Court must evaluate each party’s motion on its own merits. (Citation omitted).

. . . When an action will be tried before the court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences. (Citations omitted). The test for

reviewing the inferences drawn by the trial court is whether the record reasonably supports the inferences. (Citations omitted).

Id., 140 Idaho at 361-62, 93 P.3d at 691-92.

B. The District Court erred in finding as a matter of law that the Perpetual Easement Agreement was unenforceable against Tiller White under Idaho Code § 55-815 and that Tiller White was protected as a bona fide purchaser under Idaho Code §§ 55-606 and 55-812.

In its Memorandum Decision and Order, the district court held that the recordation of the easement agreement, or lack thereof in this case, was dispositive on the issue. The district court's rationale and reasoning in support of its holding was as follows:

Plaintiff did not know about the unrecorded easement until 2013. Defendant argues that Plaintiff's knowledge of various facts put it on notice of the easement, such that "good faith" required a more thorough investigation. This Court disagrees. Glen Knapp only explicitly told Plaintiff about the lease, and the only document Plaintiff saw at the time of purchase was the lease agreement. Plaintiff has a title policy issued, which due to the non-recording did not disclose the easement. Similarly, the warranty deed had no restrictions and made no mention of the easement.

Defendant's argument is that Plaintiff should have connected the dots regarding the lump sum payment and the possibility of having advertising space to arrive at the conclusion that Defendant might have an easement. However, this information did not make the easement an "open and obvious" inconsistent claim. (Footnote omitted). Under these facts, Plaintiff conducted a reasonable investigation of the premises and was under no duty to inquire further to discover Defendant's unrecorded easement. Plaintiff was a bona fide purchaser with respect to the easement.

See, R., pp. 131-32.

The district court's rationale and reasoning in finding Tiller White as a bona fide purchaser under Idaho Code §§ 55-606 and 55-812 is erroneous. The district court's reasoning omits and neglects genuine and undisputed material facts in the record which refute and overturn its conclusion as a matter of law.

Specifically, Idaho Code § 55-606 titled "Conclusiveness of conveyance – Bona fide purchasers" provides:

Every grant or conveyance of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer, who in good faith, and for a valuable consideration, acquires a title or lien by an instrument or valid judgment lien this is first duly recorded. (Emphasis added).

In addition, Idaho Code § 55-812 titled “Unrecorded conveyance void against subsequent purchasers” reads:

Every conveyance of real property other than a lease for a term not exceeding one (1) year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded. (Emphasis added).

Notwithstanding the foregoing statutes, Idaho Code § 55-815 applies in this case and states:

Unrecorded instruments valid between parties – An unrecorded instrument is valid as between parties thereto and those who have notice thereof. (Emphasis added).

Based on the foregoing statutes, the district court’s holding that the recordation issue in this matter, alone, was dispositive is clearly erroneous as a matter of law as Idaho Code § 55-815 provides that an unrecorded instrument can still be valid and enforceable against “those who have notice thereof” which would include purchasers reflected in Idaho Code §§ 55-606 and 55-812. Under the undisputed facts set forth herein regarding Tiller White’s knowledge of the Sign Lease, terms of the Sign Lease, the Knapps’ receipt of a lump sum payment, knowledge of the substance of a provision contained in the easement, Tiller White conclusively had notice of Canyon Outdoor’s unrecorded easement. Thus, the unrecorded easement is enforceable against Tiller white as provided for in Idaho Code § 55-815.

The district court also erred in finding that Canyon Outdoor’s easement was not enforceable against Tiller White because Tiller White was a “bona fide” purchaser of the Knapps’ property. Under Idaho law, a bona fide purchaser is defined as a purchaser who

acquires property, in good faith, and for valuable consideration without notice of any adverse claims of another. *Imig v. McDonald*, 77 Idaho 314, 318, 291 P.2d 852, 855 (1955).

In light of the fact that an unrecorded instrument may still be valid and enforceable against purchasers who have notice of a potential interest held by another, the issue becomes what is and constitutes “notice.”

Under Idaho’s Recording Act, notice can be either actual knowledge or constructive knowledge. *Sun Valley Springs Ranch, Inc. v. Kelsey*, 131 Idaho 657, 661, 962 P.2d 1041, 1045 (1998). Constructive knowledge is that knowledge a reasonably prudent purchaser would have obtained from a reasonable investigation. *Weitz v. Green*, 148 Idaho 851, 858-59, 230 P.3d 743, 750-51 (2009).

In *Kaupp v. City of Hailey*, 110 Idaho 337, 715 P.2d 1007 (App.1986), the Idaho Court of Appeals further elaborated on what constituted constructive knowledge:

Imputed or constructive knowledge is the law’s substitute for actual knowledge. It is a legally postulated notice of facts not otherwise perceived or recognized. Such notice may arise from official records and other documents by which a person is legally bound, from communications to an agent or predecessor in interest, or from knowledge of certain facts which should impart notice of the ultimate fact in issue. . . **In such situations, extemporaneous facts which are sufficient to lead a reasonably prudent person upon an inquiry of a possible conflicting interest, will be treated as providing constructive notice.** (Citation omitted). . . **When a property owner possesses knowledge of extemporaneous facts which would reasonably indicate the possibility of an adverse use on the property, the owner is required to investigate.** (Citation omitted).

Id., 110 Idaho at 340, 715 P.2d at 1010. (Emphasis added).

Absent recordation or proof of actual knowledge, the issue becomes the meaning of the term “in good faith” as used in the statutes above to qualify a subsequent purchaser as a bona fide purchaser. “Good Faith means a party purchased the property without knowing of any adverse claims to the property.” *Sun Valley Springs Ranch, Inc. v. Kelsey*, 131 Idaho at 661, 962 P.2d at 1045.

In *Langroise v. Becker*, 96 Idaho 218, 526 P.2d 178 (1974), the Idaho Supreme Court stated:

The purpose of the recording act in a race-notice jurisdiction, like Idaho, is to allow recorded interests to be effective against unrecorded interests when the recorded interest is taken for a valuable consideration and in good faith, i.e., **without knowledge, either actual or constructive.** (Citation omitted). . . **One who purchases or encumbrances with notice of inconsistent claims does not take in good faith, and one who fails to investigate the open or obvious inconsistent claim cannot take in good faith.** (Citation omitted).

Id., 96 Idaho at 220, 526 P.2d at 180.

. . . To guide the factfinder . . . , we must define the duty of investigation put upon the purchaser or encumbrancer. In *Paurley v. Harris*, 75 Idaho 112, 268 P.2d 351 (1954), a case dealing with the rights of a grantee whose grantor had settled a boundary dispute by an unrecorded agreement and acquiescence in the new line, the Court said:

“One buying property in the possession of a third party is put on notice of any claim of title or right of possession by such third party, which a reasonable investigation would reveal.” (Citation omitted).

We believe that this is the appropriate rule in determining good faith under the recording act, i.e., that one cannot be a good faith purchaser or encumbrancer when a reasonable investigation of the property would have revealed the existence of the conflicting claim in question.

Id., 96 Idaho at 220-21, 526 P.2d at 180-81.

See also, Farrell v. Brown, 111 Idaho 1027, 1033, 729 P.2d 1090, 1096 (App. 1986)

(“[W]hatever is notice enough to excite the attention of a man of ordinary prudence and prompt him to further inquiry, amounts to notice of all such facts as a reasonable investigation would disclose.”). *See also, Imig v. McDonald*, 77 Idaho 314, 318, 291 P.2d 852, 855 (1955) (“Further, one who purchases property with sufficient knowledge to put him, or a reasonably prudent person, on inquiry is not a bona fide purchaser.”).

When determining whether a party is a bona fide purchaser, the Court must look at what notice the party had **before and up to the time the party recorded its interest.** *Sun Valley Hot*

Springs Ranch v. Kelsey, supra. See also, Trunnel v. Fergel, 153 Idaho 68, 72, 278 P.3d 938, 942 (2012) (A party must show that at the time of the purchase he paid a valuable consideration without notice, actual or constructive, of any outstanding adverse rights of another.).

To determine whether Tiller White was a bona fide purchaser, the Court must look to the undisputed facts, information and documents Tiller White possessed and reviewed **before and up to the time** it purchased and recorded its interest.

In 2003, Tiller White had actual knowledge that its predecessors in interest, Glenn and Rachel Knapp, entered into a lease with a billboard company for the construction and erection of a billboard advertising sign. At that time, Tiller White admitted to speaking with Glenn Knapp and had physically seen and reviewed the lease executed by the Knapps. *See, R.*, p. 85.¹²

Further corroborating Tiller White had actual knowledge of a third party's interest in the property was the fact that Tiller White objected to the original location where the billboard sign was to be situated, so Canyon Outdoor relocated the billboard sign to the other side of the then existing building where the billboard sign stands to this day.

In 2006, Tiller White offered to purchase the Knapps' property for \$225,000 which was accepted. Prior to closing and recording its deed, Tiller White received, read and thoroughly reviewed the terms of the sign lease. *See, R.*, p. 88.¹³ In addition to reviewing the sign lease, Dr. Tiller had discussions with Mr. Knapp regarding the terms and obligations of Canyon Outdoor and its billboard sign. In its discussions with Mr. Knapp, Tiller White admitted and acknowledged that Mr. Knapp represented that they had received a lump sum payment and that Tiller White would not be receiving any rental payments on the lease. *See, R.*, p. 87-88.¹⁴ Mr. Knapp further represented to Tiller White that if a face on the billboard sign was vacant that

¹² The specific reference to Exhibit A is p. 16, Ll. 3-5 and Ll. 17-25.

¹³ The specific reference to Exhibit A is p. 26, Ll. 1-3.

¹⁴ The specific reference to Exhibit A is p. 22, Ll. 23-25, p. 23, ll. 1-22, p.29, Ll. 9-13.

Tiller White could obtain free advertising on the sign. *See*, R., p. 87.¹⁵

Tiller White acknowledged and admitted that when it acquired the Knapps' property, it knew it acquired the property subject to the terms of the lease. *See*, R., p. 89.¹⁶

A material term of the Sign Lease provided that the Lessor (the Knapps) could sell a permanent easement to the Lessee (Canyon Outdoor). Specifically, it stated:

Lessor reserves the right to, at any time throughout the term of the lease, to sell Lessee a permanent easement with ingress and egress rights to service structure for a one time lump sum of \$10,000 thus voiding the yearly contractual payment aforementioned. (Emphasis added).

See R., pp. 43, 58-59 and 72.

The provision abovementioned is the only provision in the lease which referenced a "lump sum" payment and the purchasing of an "easement." No other provisions in the lease utilized those specific and unique terms. *See id.*

Furthermore, Mr. Knapp's representation that Tiller White could possibly receive free advertising was not a term in the lease, but, in fact, was a term provided in the Addendum of the Perpetual Easement Agreement executed by the Knapps and Canyon Outdoor. *See id. See also*, R., pp. 49, 65 and 76.

Thus, Tiller White's knowledge of the terms of the Sign Lease, the payment of the lump sum which could only relate to the purchase of an easement under the Sign Lease, that no payment of rent for the sign would be made and its knowledge of a term only contained in the Addendum to the Perpetual Easement Agreement conclusively establishes that Tiller White had actual notice of the easement and is enforceable against Tiller White under Idaho Code 55-815. At a minimum, Tiller white had constructive notice of the easement and Tiller white could not be entitled to protection as a bona fide purchaser. Dr. Tiller considered himself a sophisticated and

¹⁵ The specific reference to Exhibit A is p. 25, Ll. 17-23.

¹⁶ The specific reference to Exhibit A is p. 31, Ll. 8-11.

informed buyer of real estate. *See, R.*, p. 83.¹⁷ Despite his sophistication and experience in acquiring real estate and his admission of reviewing the Sign Lease, and more particularly the provision providing for the sale of an easement for a lump sum, before acquiring the property, Tiller White never made any attempt to contact Canyon Outdoor to confirm whether or not it may or possibly had an easement interest in the subject property.

The district court stated that Tiller White had no duty and could not “have connected the dots regarding the lump sum payment and the possibility of having advertising space to arrive at the conclusion that [Canyon Outdoor] might have an easement.” However, the district court’s statement ignores the material and undisputed facts including that Tiller White reviewed the lease and read the provision which authorized the sale of an easement for a lump sum payment **before it closed and recorded its deed.**

Instead, Tiller White stated that the only investigation it conducted was having a title policy issued, discussions with Mr. Knapp and reviewed the Sign Lease. *See, R.*, p. 88.¹⁸

Contrary to the district court’s conclusion, Tiller White received and reviewed a document that contained a provision for the option to sell an easement on a lump sum payment voiding the annual rental payments. In addition, it had communications with its predecessor in interest acknowledging receipt of a lump sum payment and who represented terms that were not incorporated in the lease it reviewed, but only included within the easement agreement. Tiller White possessed sufficient knowledge of certain facts that disclosed knowledge of the ultimate fact at issue; i.e. whether Canyon Outdoor possessed an easement on the property, BEFORE it purchased and recorded its deed.

As expressed by the Idaho Court of Appeals in *Wood v. Simonson*, 108 Idaho 699, 703-

¹⁷ The specific reference to Exhibit A is p. 9, Ll. 7-9.

¹⁸ The specific reference to Exhibit A is p. 28, Ll. 4-25 and p. 29, Ll. 1-8.

04, 701 P.2d 319, 323-24 (App.1985):

However, if facts appear which would cast suspicion upon the vendor in the eyes of the reasonably prudent person, the purchaser “does not discharge his duty [to investigate] by making inquiry of his vendor alone, and hence the fact that the purchaser is misled by the vendor’s false statements is usually not sufficient to protect him. (Citations omitted).

Accordingly, Tiller White possessed constructive knowledge of sufficient facts which reasonably indicated the possibility of an adverse claim on the property held by Canyon Outdoor which by law imposed a duty and required Tiller White to conduct a reasonable and prudent investigation to ascertain the potential status of any adverse claim. *See Kaupp v. City of Hailey, supra*. Tiller White did not perform a reasonable and prudent investigation under the undisputed facts in the record.

The evidence and record reflects the billboard sign stands 40 feet in height and 30 feet in width and is constructed into the ground and is not easily removable or detachable from the property. The billboard sign was an obvious structure that would put any prospective buyer on notice that a third party may have an interest in the property.

According to the *Langroise* Court, Idaho law requires any prospective buyer with actual or constructive notice of a potential adverse claim to conduct a reasonable investigation to determine the status of the potential claim. In light of the fact that Tiller White read the Sign Lease including the option to sell an easement, knew the Knapps received a lump sum payment which term was only provided in one provision in the lease, and provided terms that were outside the lease, Tiller White had a duty and obligation to conduct further inquiry about the potential interest of Canyon Outdoor.

Here, Tiller White had constructive notice of a potential adverse claim which imposed upon it a duty to contact and communicate with Canyon Outdoor to determine whether Canyon Outdoor possessed an interest on the property before Tiller White purchased, closed and

recorded its deed to the property. This was a common and regular practice by prospective buyers of property which possessed a Canyon Outdoor billboard sign situated on it. *See R.*, pp. 38-40. Tiller White knew who the billboard company was back in 2003. *See R.*, p. 84.¹⁹ Prior to acquiring the property, a reasonable and prudent buyer would have contacted Canyon Outdoor to confirm its interest in the subject property in light of the fact that the lease provided the opportunity for the landlord to convey a permanent easement to Canyon Outdoor with a lump sum payment.

The *Langroise* Court held that the meaning of good faith in the Idaho Recording statutes required a reasonable investigation of open and obvious inconsistent claims and the failure to conduct this investigation was not good faith and would not render the buyer a bona fide purchaser of the property.

Tiller White was on constructive notice of the billboard sign and the potential of a permanent easement with a lump sum payment through the lease. Tiller White possessed this information before it purchased the property which information would have led a reasonable and prudent buyer to inquiry and investigate further.

Even though the Perpetual Easement Agreement was not recorded, Tiller White still had the duty and obligation to conduct a reasonable investigation of Canyon Outdoor's property interest under Idaho law in order to be considered a bona fide purchaser. Tiller White failed to perform a reasonable investigation that a reasonable and prudent buyer would have performed under the facts and circumstances that it possessed before the recording of its interest.

Accordingly, Tiller White cannot and should not be considered a bona fide purchaser under Idaho Code § 55-606 or Idaho Code § 55-812 and that Canyon Outdoor's easement has priority and should prevail pursuant to Idaho Code § 55-815.

¹⁹ The specific reference to Exhibit A is p. 13, Ll. 5-17.

V. ATTORNEY FEES ON APPEAL

Canyon Outdoor is asserting and claiming its reasonable attorney's fees and costs incurred on appeal pursuant to I.A.R. 40 and I.A.R. 41.

Attorney fees are awardable only where they are authorized by statute or contract. *Heller v. Cenarussa*, 106 Idaho 571, 682 P.2d 524 (1984).

Idaho Code § 12-121 provides, in part: “[I]n any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, . . .” The Idaho Supreme Court has held that an award of attorney fees on appeal will only be awarded when the Court is left with the abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably or without foundation. *Idaho Military Historical Society, Inc. v. Maslen*, 156 Idaho 624, 329 P.2d 1072 (2014).


Based on the undisputed evidence in the record and the Respondent's admissions of the facts and circumstances known to it before purchasing the property, any argument it may raise in opposition in an attempt to refute that it possessed constructive notice and had no duty to investigate the status of Appellant's interest in the property would be a frivolous and unreasonable defense in this appeal.

VI. CONCLUSION

Based on the undisputed evidence in the record, the foregoing case law, statutory authority and arguments above, Canyon Outdoor respectfully requests this Court enter its Order reversing the district court's ruling that Tiller White was a bona fide purchaser under the statutes and in favor of Canyon Outdoor possessing an enforceable easement having priority and prevailing over Tiller White's interest under Idaho Code § 55-815.

DATED this 17th day of December, 2015.

DAVISON, COPPLE, COPPLE & COPPLE


By: 
ED GUERRICABEITIA, of the firm
Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of December, 2015, a true and correct copy of the foregoing was served upon the following:

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Ed Guericabeitia