

IN THE SUPREME COURT OF IOWA
NO. 19-1640

KRISTINA LEWIS,)	
)	BLACK HAWK COUNTY
Plaintiff-Appellant,)	CASE NO. LACV130978
)	
vs.)	
)	
HOWARD L. ALLEN INVESTMENTS,)	
INC.; METRO INVESTMENTS, LLC;)	
METRO INVESTMENTS EAST, LLC;)	
METRO INVESTMENTS FORT DODGE,)	
LLC; METRO INVESTMENTS)	
CONTRACT, LLC; METRO)	
INVESTMENTS CROSSROADS II,)	
LLC; METRO INVESTMENTS)	
CROSSROADS, LLC; METRO)	
INVESTMENTS MULTI-UNIT, LLC;)	
METRO INVESTMENTS DUBUQUE,)	
LLC; METRO INVESTMENTS MASON)	
CITY, LLC; HAA, LLC; YOGURT &)	
MORE, INC. d/b/a BRICK HOUSE)	
FROZEN YOGURT; AND HOWARD L.)	
ALLEN,)	
)	
Defendants-Appellees.)	

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE GEORGE L. STIGLER, JUDGE

BRIEF OF DEFENDANTS-APPELLEES
METRO INVESTMENTS, ET AL.

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CERTIFICATE OF FILING

I certify that on the 16th day of January, 2020, I filed this Brief of Defendants-Appellees Metro Investments, LLC; Metro Investments East, LLC; Metro Investments Fort Dodge, LLC; Metro Investments Contract, LLC; Metro Investment Crossroads II, LLC; Metro Investments Crossroads, LLC; Metro Investments Multi-Unit, LLC; Metro Investments Dubuque, LLC; Metro Investments Mason City, LLC; HAA, LLC; and Yogurt & More, Inc. d/b/a Brick House Frozen Yogurt with the Clerk of the Iowa Supreme Court by EDMS.

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CERTIFICATE OF SERVICE

I certify that on the 16th day of January, 2020, I served the following counsel of record with this Brief of Defendants-Appellees Metro Investments, LLC; Metro Investments East, LLC; Metro Investments Fort Dodge, LLC; Metro Investments Contract, LLC; Metro Investment Crossroads II, LLC; Metro Investments Crossroads, LLC; Metro Investments Multi-Unit, LLC; Metro Investments Dubuque, LLC; Metro Investments Mason City, LLC; HAA, LLC; and Yogurt & More, Inc. d/b/a Brick House Frozen Yogurt electronically through EDMS:

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

ISSUE I.

THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO DEFENDANTS ALLEN, ALLEN INVESTMENTS AND METRO INVESTMENTS, AS SAID DEFENDANTS OWED NO DUTY TO THE PLAINTIFF.

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ISSUE II.

THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO DEFENDANTS ALLEN, ALLEN INVESTMENTS AND METRO INVESTMENTS, FINDING THAT DEFENDANT ALLEN INVESTMENTS WAS NOT A “LANDLORD” AND THUS, NOT SUBJECTING DEFENDANTS TO LIABILITY TO PLAINTIFF UNDER THE IOWA URLTA.

Iowa Code Chapter 562A

Iowa Code §562A.15

Hollingsworth v. Schminkey, 553 N.W. 2d 591 (Iowa 1996)

Stalter v. Iowa Resources, Inc., 468 N.W. 2d 796 (Iowa 1991).

Iowa Code §562A.6

Junkin v. McClain, 221 Iowa 1084, 265 N.W. 362 (1936)

ROUTING STATEMENT

Defendants-Appellees Metro Investments, et al. state that this appeal should be transferred to the Iowa Court of Appeals for a decision as the issue on appeal is governed by well-established Iowa common law precedents and Iowa statutes. The case presents an application of existing legal principles related to real estate contracts and landlord-tenant relations, and presents issues that are appropriate for summary disposition (as occurred at the Iowa District Court level), thereby making the transfer of this case to the Iowa Court of Appeals appropriate. Iowa R. App. P. 6.1101 (3)(a) and (b).

Plaintiff-Appellant urges that this case be retained by the Iowa Supreme Court because the appeal “presents a substantial issue of first impression” as to Iowa Code Chapter 562A-Uniform Residential Landlord and Tenant Act (“URLTA”). Defendants-Appellees Metro Investments, et al. disagree, as the case presents the application of well-established Iowa legal principles on real estate contracts and landlord-tenant relations. Unless the appellate court decides to reject this well-established Iowa common law and give credence to Plaintiff’s unique interpretation of provisions of the URLTA, which would substantially affect the real estate and insurance industries in the state of Iowa, the issues in this appeal are otherwise narrowly limited to the parties to this case. Thus, transfer to the Iowa

Court of Appeals of this case is appropriate. Iowa R. App. P. 6.1101 (3)(a) and (b).

STATEMENT OF THE CASE

NATURE OF THE CASE

As to the Plaintiff-Appellant's the Statement of the Case, the statements set forth therein are accurate, except for the following statement, "Defendant Allen Investments argue it had no ownership interest in 323 Archer Avenue . . . ". Instead, Defendant Howard L. Allen (hereinafter "Allen"), not Defendant Allen Investments, argued that he had no ownership interest in 323 Archer Avenue or ever leased the subject property to the Plaintiff. (Appendix, 185). On the other hand, Defendant Howard L. Allen Investments, Inc. (hereinafter "Allen Investments") admitted that it was the contract seller and deed holder of the property located at 323 Archer Avenue in Waterloo, Iowa. (App., 171).

In addition to the statements contained in Plaintiff-Appellant's Statement of the Case, Plaintiff's Petition also included claims against Defendants-Appellees Metro Investments, LLC; Metro Investments East, LLC; Metro Investments Fort Dodge, LLC; Metro Investments Contract, LLC; Metro Investments Crossroads II, LLC; Metro Investments Crossroads, LLC; Metro Investments Multi-Unit LLC; Metro Investments Dubuque, LLC; Metro Investments Mason City, LLC; HAA,

LLC; and Yogurt & More, Inc. d/b/a Brick House Frozen Yogurt (hereinafter collectively “Metro Investments”). (App., 30-38). As to Defendants Metro Investments, Plaintiff asserted that Defendants Metro Investments were vicariously liable for the negligent acts of Defendants Allen and Allen Investments because Defendants Metro Investments were merely “alter egos” of the other named Defendants and had engaged in voidable transactions with the other Defendants, thereby subjecting them to liability under the provisions of Iowa Code §§684.4-684.6. (App., 37-38).

COURSE OF PROCEEDINGS

Also in addition to Plaintiff’s Statement of the Case as to the course of proceedings in this case, on October 4, 2018, Defendants Metro Investments also filed a Motion for Summary Judgment. (App., 186-189). In their Motion, Defendants Metro Investments joined Defendants Allen and Allen Investments on their Motion contending that Defendants Allen and Allen Investments were not liable to Plaintiff under the URLTA and that Defendants Allen and Allen Investments owed no common law duty to Plaintiff. (App., 187). Defendants Metro Investments also asserted in their Motion for Summary Judgment that the undisputed material facts in this case revealed that said Defendants were not alter egos of the other named Defendants, that no fraudulent or voidable transactions occurred with the other Defendants, and that Defendants Metro Investments were

not otherwise vicariously liable for any negligent acts of Defendants Allen and Allen Investments. (App., 187-188).

The Iowa District Court, in the hearing held on the Motions for Summary Judgment filed by Plaintiff and by Defendants Allen, Allen Investments and Metro Investments, and in the Court's ruling filed May 10, 2019, did not address Defendants Metro Investment's Motion for Summary Judgment as to the alleged grounds for holding said Defendants vicariously liable for the acts of the other named Defendants. (App., 133-134, Tr. 14:19-15:23; App., 141-142, Tr. 22:24-23:10). The District Court's ruling found that Defendants Allen and Allen Investments were not liable under the URLTA to Plaintiff and owed no common law duty to Plaintiff, resulting in a dismissal of Plaintiff's claims against Defendants Allen and Allen Investments. That dismissal of Plaintiff's claims against Defendants Allen and Allen Investments effectively rendered as moot the issues of vicarious liability asserted by Plaintiff against Defendants Metro Investments. (App., 144-148). Thus on appeal, the issues before this Court are limited to whether Defendants Allen and Allen Investments are liable under the URLTA to the Plaintiff and whether Defendants Allen and Allen Investments owed a common law duty to said Plaintiff. Defendants Metro Investments will remain as Defendants-Appellees in this case in the event this Court reverses the District Court's ruling, thereby potentially subjecting Defendants Metro

Investments to vicarious liability for the alleged negligent acts of Defendants Allen and Allen Investments.

STATEMENT OF THE FACTS

Defendants-Appellees Metro Investments agree with the Statement of Facts set forth in Plaintiff-Appellant's Brief and adopt said statements herein by reference thereto.

ERROR PRESERVATION

Defendants-Appellees Metro Investments agree with the Plaintiff-Appellant's statements on error preservation. Defendants-Appellees Metro Investments would further state that the District Court's Ruling on the Motions for Summary Judgment also effectively dismissed Defendants Metro Investments as a party-defendants for the same reasons Defendants Allen and Allen Investments were dismissed by the District Court in its ruling. (App., 144-148).

SCOPE AND STANDARD OF REVIEW

Defendants-Appellees Metro Investments agree with the Plaintiff-Appellant's statements on the scope of review and standard of review as set forth in her Brief.

ARGUMENT

ISSUE I.

THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO DEFENDANTS ALLEN, ALLEN INVESTMENTS AND METRO INVESTMENTS, AS SAID DEFENDANTS OWED NO DUTY TO THE PLAINTIFF.

In its ruling on the motions for summary judgment, the District Court correctly found that under well-established Iowa common law, Defendants owed no duty to the Plaintiff as to the maintenance of the home and real estate located at 323 Archer Avenue in Waterloo, Iowa. The District Court noted the undisputed facts that Defendant Allen Investments sold on contract the property at 323 Archer Avenue to Javier Escobar Flores and Benito Rodrigues Dela Rosa (hereinafter collectively “Flores and Dela Rosa”), on November 10, 2009. In 2014, Flores and Dela Rosa leased the property at 323 Archer Avenue to the Plaintiff and Stevie Thomas, to be used as a residence for Plaintiff and Mr. Thomas. Thereafter, a fire occurred during the overnight hours of November 6-7, 2014 at 323 Archer Avenue, resulting in severe injuries to Plaintiff. (App., 145). In her Petition, Plaintiff alleged that Defendants Allen and Allen Investments were liable for Plaintiff’s injuries and damages because said Defendants failed to install and maintain fire alarms and/or fire extinguishment devices in said home. (App., 33).

The District Court correctly observed that after Defendant Allen Investments conveyed in 2009 its interest in the property at 323 Archer Avenue to Flores and Dela Rosa by a real estate contract, Defendant Allen Investments had no control over the real estate or authority to enter upon the real estate. (Ruling, p. 4). This lack of control or authority over the premises was the basis for the District Court's ruling, applying Iowa common law, that Defendants Allen and Allen Investments owed no duty to the Plaintiff as to the maintenance of the property at 323 Archer Avenue at the time of the fire. (App., 147).

In reaching its decision, the District Court cited with approval with the Iowa Supreme Court's holding in Junkin v. McClain, 221 Iowa 1084, 265 N.W. 362 (1936). (Ruling, pp. 2-3). In the Junkin decision, the Iowa Supreme Court addressed the nature of a vendor's interest in real estate being sold under a contract of sale. The District Court correctly quoted the Iowa Supreme Court's decision as follows:

“It has been held repeatedly by this court that when a landowner enters into a contract of sale whereby the purchaser agrees to buy, and the owner to sell, and whereby the vendor retains the legal title until the purchase money or some part thereof be paid, the ownership of the real estate, as such, passes to the purchaser, and that from such time forth the vendor holds the legal title as security for a debt and as trustee for the purchaser. The interest acquired by the vendee is “land” and the right and interest conferred by the contract upon the vendor is “personal property.” ”

Junkin v. McClain, 265 N.W. at 365, quoting, Wood v. Schwartz, 212 Iowa 462, 470, 236 N.W. 491, 494 (1931), quoting, In Re Estate of Miller, 142 Iowa 563, 566, 119 N.W. 977, 978 (1909).

The Iowa Supreme Court in Junkin went on to hold that a real estate contract vendor holds legal title simply as security for the contract vendee's remaining debt (the balance of the purchase price), said retained right being the "personal property" of the vendor. Junkin v. McClain, 265 N.W. at 366.

Given that Defendant Allen Investments' interest in the real estate at 323 Archer Avenue in Waterloo was that of a contract vendor and thus, only a "personal property" interest (rather than an interest in the land) the District Court then analyzed Defendant Allen Investments' potential liability for alleged neglected maintenance of the property. The District Court cited the Iowa Supreme Court's decision in Hollingsworth v. Schminkey, 553 N.W. 2d 591 (Iowa 1996). In Hollingsworth, the claimant asserted that the defendants Steven Woodford and Susan Woodford caused damages and injuries to the plaintiff by reason of said defendants being negligent in failing to keep and maintain their driveway in a good and safe condition. Hollingsworth v. Schminkey, 553 N.W. 2d at 599. The driveway allegedly had ruts which damaged the muffler on the station wagon of defendant Schminkey, which resulted in carbon monoxide poisoning and later a

fire to the station wagon, from which the plaintiff was injured while trying to rescue defendant Schminkey. Hollingsworth v. Schminkey, 553 N.W. 2d at 594.

In Hollingsworth, the Iowa Supreme Court affirmed the granting of summary judgment dismissing plaintiff Hollingsworth's claim against Mr. and Mrs. Woodford. This Court noted that Mr. and Mrs. Woodford had sold the property on contract to defendant Schminkey two years before the accident and therefore, did not occupy or control the premises. Because Mr. and Mrs. Woodford no longer occupied or controlled the premises, the Court found that Mr. and Mrs. Woodford had no duty to maintain the property in a good and safe condition, including the driveway. Hollingsworth v. Schminkey, 553 N.W. 2d at 599. The Court further noted that the question of a duty being owed is a question of law for the court. Hollingsworth v. Schminkey, 553 N.W.2d at 599, citing, Downs v. A & H Constr., Ltd., 481 N.W.2d 520, 522 (Iowa 1992). The Court then cited with approval its earlier holding that an "owner" who sells property loses control of the use of the property and is no longer liable for injury to others on the property." Hollingsworth v. Schminkey, 553 N.W. 2d at 599, quoting, Stalter v. Iowa Resources, Inc., 468 N.W.2d 796, 798 (Iowa 1991).

Thus based upon this well-established Iowa common law that a real estate contract vendor who no longer controls or occupies the premises has no duty to keep or maintain the premises in a good and safe condition, the District Court

correctly found that Defendants Allen and Allen Investments owed no duty to the Plaintiff by reason of their 2009 real estate contract conveyance after which they “had absolutely no control or authority to enter upon 323 Archer”. (App., 147). The District Court’s ruling equates to good and practical common sense, given that Defendants Allen and Allen Investments could not be said to have failed to install or maintain fire alarms and/or fire extinguishment devices at the 323 Archer Avenue home when they had no control over the property or authority to enter upon said property to install said alarms or fire extinguishment devices. That authority and control was transferred to Defendants Flores and Dela Rosa, who had acquired full rights and interests in the land and home to maintain the property which they subsequently leased to Plaintiff and Mr. Thomas.

ISSUE II

THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO DEFENDANTS ALLEN, ALLEN INVESTMENTS AND METRO INVESTMENTS, FINDING THAT DEFENDANT ALLEN INVESTMENTS WAS NOT A “LANDLORD” AND THUS, NOT SUBJECTING DEFENDANTS TO LIABILITY TO PLAINTIFF UNDER THE IOWA URLTA.

In its Ruling, the District Court rejected Plaintiff’s argument that Iowa Code Chapter 562A, the Iowa URLTA, changed the common law precluding liability of a real estate contract vendor for injuries or damages arising from a failure to maintain the real estate. (App., 147). A close reading of the Iowa URLTA and public policy considerations all support the District Court’s conclusions finding no

liability of Defendants Allen, Allen Investments and Metro Investments to Plaintiff under Iowa Code Chapter 562A.

- A. Under the facts of this case, Defendant Allen Investments was not a “landlord” under the specific provisions of the Iowa URLTA, thus not subjecting it to liability to the Plaintiff.

The Plaintiff correctly noted that under Iowa Code §562A.15, a landlord must “comply with the requirements of applicable building and housing codes materially affecting health and safety”, and “make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.” Iowa Code §562A.15(1)(a)(1) - (2). The question in this case is who is the “landlord” responsible for maintaining fit and habitable premises, under Iowa Code §562A.15(1)(a)(1) - (2). Based upon the Iowa common law recited under Issue I of this Brief, Defendant Allen Investments, as the contract vendor, would not be the “landlord”, as a contract vendor no longer has control of the use of the property and thus, no duty to keep or maintain the property in a good and safe condition. Hollingsworth v. Schminkey, 553 N.W. 2d at 599; Stalter v. Iowa Resources, Inc., 468 N.W. 2d at 798.

Plaintiff attempts to circumvent the aforestated Iowa common law regarding real estate contract vendors, by focusing on the definition of “landlord” under the Iowa URLTA. In her Brief, Plaintiff correctly notes that Iowa Code §562A.6(5) defines “Landlord” as “the owner, lessor, or sublessor of the dwelling unit or the

building of which it is a part . . .” Plaintiff argues in her Brief that if there are distinct and separate owners, lessors and sublessors of the rental unit, all of those individuals or entities are landlords as to the tenant who is occupying the rental unit under a rental agreement. Based upon that false impression, the Plaintiff then has the Court look at the definition of “owner” under Iowa Code §562A.6(6), which is defined as “one or more persons, jointly or severally, in whom is vested: (a) All or part of the legal title to the property; or (b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.” Iowa Code §562A.6(6)(a) and (b).

The flaw in Plaintiff’s argument is focused on Iowa Code §562A.6(5) as to the definition of “landlord”. A tenant’s landlord can be the sublessor of the rental unit, if the rental agreement is a sublease; it can be the lessor of the rental unit if the rental agreement is a first lease; or the landlord could be the owner of the property if some other rental agreement exists from which the tenant is leasing the property specifically from the property owner. The term “tenant” includes the existence of a rental agreement for occupancy by lease of the dwelling unit. See Iowa Code §562A.6(16). Given that the legislature did not use the word “and” in defining who could be the landlord of the rental unit, the landlord of a tenant under a rental agreement to occupy a rental unit is not required to include all three potential interests (owner, lessor or sublessor) in the dwelling unit or building. Use

of the term “or” requires instead an analysis of the rental agreement and in that context, the determination can be made as whether the landlord is the owner, lessor or sublessor of the dwelling unit.

The Plaintiff’s argument that with respect to any dwelling unit being leased, the “landlord” under the rental agreement must include all of the owners, lessors and sublessors of the dwelling unit, is erroneous for a number of reasons. First, the definitions set forth under Iowa Code §562A.6 of the Iowa URLTA apply to specific terms “unless the context otherwise requires”. Iowa Code §562A.6. Requiring that an “owner” always be included as a “landlord” under every rental agreement with a tenant occupying a rental unit does not comport with the specific language of Iowa Code §562A.6, which utilizes the word “or”, rather than “and”, in defining who is the landlord under a specific rental agreement. To contend to the contrary that an “owner” is the landlord under every rental agreement with a tenant of a rental unit means that in the context of other provisions of the Iowa URLTA, the tenant must interact, contract with, communicate, pay, etc. all owners of the property, lessors of the property and sublessors of the property, and pursue their tenant remedies applicable under Article IV of the URLTA as against all such individuals and entities. It is impractical and highly doubtful that a tenant, when entering into a rental agreement to occupy a dwelling unit, understands or believes that their landlord is not only the named lessor or sublessor listed in the rental

agreement, but also includes all owners and other lessors and sublessors of the dwelling unit, with which they must locate, communicate and engage. In this case, Plaintiff's lease was with Benito Rodrigues Dela Rosa. (Depo. Ex. 102).

Plaintiff and the co-tenant, Mr. Thomas, reasonably had no knowledge, belief or expectation that their landlord also included the real estate contract vendor, Defendant Allen Investments, with which they were to communicate and interact under the terms of their lease agreement. (App., 195-196, Tr. 25:18-26:9; App., 200-203; Tr. 6:24-7:24, 20:18-21:11).

Second, the specific statutory language used to define "landlord" utilizing the term "or" rather than "and" in defining who a landlord would be under a specific rental agreement comports with Iowa common law regarding the liability of a real estate contract vendor who no longer has control over or authority to enter upon the rental premises. Had the Iowa legislature intended to include all real estate owners, including real estate contract vendors who have no control over the premises, as landlords to a tenant under a rental agreement to occupy the dwelling unit, the legislature would have used the word "and" to include all such owners. Instead the common sense and practical interpretation of this statutory definition of "landlord" limited the landlord, in this case, to the named lessor under the rental agreement, Benito Rodrigues Dela Rosa, who had control and authority to enter upon the property to maintain or repair the dwelling unit.

In her Brief, Plaintiff contended that Defendants Metro Investments argued at the hearing the effect of “or” with “and” as used in the definition of “owner” under Iowa Code Chapter 562A. First, Plaintiff is incorrect, as the argument focused on the effect of using the word “or” rather than “and” as to the definition of “landlord”, not “owner”, as discussed above. (App. 135-137, Tr. 16:12-18:6). Second, even if the Court were to analyze the definition of the term “owner” under Iowa Code §562A.6(6), this Court must find that Defendant Allen Investments is not an “owner”, given the Iowa Supreme Court’s holding, as discussed above, in Junkin v. McClain, 221 Iowa 1084, 265 N.W. 362 (1936). As noted above in the Junkin decision, Defendant Allen Investments was not an “owner” of the property at the time of the fire because, as the real estate contract vendor, Defendant Allen Investments, held a security interest in the contract purchaser’s remaining debt and this retained right constituted “personal property”. Junkin v. McClain, 256 N.W. at 366-367. Thus to hold to the contrary and find that Defendant Allen Investments is an “owner” would not only ignore the Iowa Supreme Court’s holding in Junkin, but would subject unfairly Defendant Allen Investments to liability for alleged neglectful maintenance of property over which said Defendant had no control or authority upon which to enter the property to maintain said property and/or perform repairs.

- B. Finding Defendant Allen Investments, as a real estate contract vendor, to be a “landlord” under the Iowa URLTA would be contrary to public policy, given the profound adverse impact it would have upon the real estate and insurance industries in the state of Iowa.

Plaintiff’s position in this case is to hold all real estate contract vendors of residential rental properties to be “landlords” subject to the duties and obligations of the Iowa URLTA, even though the contract vendor no longer has control over or authority to enter upon the property, and has no involvement in or is a party to the contract purchaser’s rental agreement with the tenant occupying the dwelling unit. Undoubtedly there are numerous residential rental properties throughout the state of Iowa which are being sold on contract, allowing contract purchasers to purchase the property through this seller-financing tool. Real estate contract vendors are willing to engage in these transactions, understanding that they are giving up control to maintain the property, with the contract serving as a security interest in the property in the event the contract purchaser defaults under this seller-financing alternative.

If the Plaintiff’s interpretation of Iowa Code §562A.6(5) defining “landlord” prevails, contract vendors will now face new unanticipated risks when utilizing this seller-financing method to sell residential rental properties, as they now face liability to current and future tenants of these properties even though the contract vendor has no involvement in negotiating the rental agreement with the tenant(s) nor has any control over the condition and maintenance of that rental property.

Such a risk to the contract vendor of potential liability to tenants of the property, with no corresponding control over the condition and maintenance of the property, will likely render the use of real estate contracts obsolete unless sufficient and affordable insurance can be secured to protect the contract vendor. Whether the insurance industry is willing to provide insurance coverage to protect against such a risk, however, is questionable given that the insured has no control over or ability to minimize the risk, given that the condition, maintenance and control of the property is entirely within the contract purchaser.

Similarly, if the Plaintiff's interpretation prevails so as to subject real estate contract vendors of residential rental properties to liability to tenants of the property under the Iowa URLTA, the risk of liability for other third party lenders, including such financial institutions as banks, credit unions, etc. also increases. The real estate contract vendor, like a third party lender, has no control over the condition and maintenance of the rental property. The contract vendor's contract, similar to a mortgage issued to a third party lender, acts as a security interest for the purchaser's/borrower's debt and does not include a possessory right or interest in the property. If Plaintiff's argument and interpretation prevails to hold this contract vendor, Defendant Allen Investments, liable as a "landlord" under the Iowa URLTA, lending institutions will be put on notice that they too could be held liable as a "landlord" under the Iowa URLTA for residential rental properties

against which they have a mortgage lien, given the expansive definition of “landlord” and “owner” for which the Plaintiff is advocating in this case.

CONCLUSION

For the reasons stated above, Defendants Metro Investments pray that this Court affirm the District Court’s dismissal on summary judgment of all of Plaintiff’s claims asserted against Defendants Allen, Allen Investments and Metro Investments. As a mere contract vendor, Defendant Allen Investments had no control or authority upon which to enter the premises to maintain its condition or make any necessary repairs. Thus under a practical, common sense interpretation of Iowa Code Chapter 562A as to the definitions of “landlord” and “owner” and applying well-established Iowa common law as to the liability of contract vendors for injuries on real estate over which vendors no longer have control or authority to maintain, this Court should affirm the District Court’s Ruling dismissing Plaintiff’s liability claims against Defendants-Appellees Allen, Allen Investments and Metro Investments.

REQUEST FOR ORAL ARGUMENT

Defendants-Appellees Metro Investments request to be heard on oral argument before the Court upon submission of this case.


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CERTIFICATE OF COST

I, Thomas C. Verhulst, hereby certify that the actual cost of reproducing the necessary copies of the preceding Brief of Defendants-Appellees Metro Investments, et al. consisting of 30 pages was \$ 0.00.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903 (1)(g)(1) because this brief contains 4450 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903 (1)(g)(1).

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