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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

CAMPGROUNDS, U.S.A., an Oregon
Corporation, and DENNIS KING,

Plaintiffs,

vs.

CITY OF DES MOINES, IOWA,

Defendant-Cross Petition
Defendant-Appellee,

and

ROBERT L. RICE,

Defendant-Cross Petitioner-
Appellant.

Filed September 23, 1980

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Appeal from Polk District Court - Ted Miller, Judge.

Cross-petitioner appeals from a summary judgment for cross-petition defendant in
a quiet title action. AFFIRMED.

William Wheatacraft, P.C., Des Moines, Iowa, for appellant Rice.

Jenifer L. Mercer of Jones, Hoffmann & Davison, Des Moines, Iowa, for plaintiff.

Nelda Barrow Wells, Assistant City Attorney, for defendant-cross petition
defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, carter and Johnson, JJ.

Cross-petitioner, Robert L. Rice, appeals from a summary judgment for cross-petition defendant, City of Des Moines, in a quiet title action. The primary action between the plaintiff and defendants has been otherwise disposed of and is not in issue here.

The cross-petition here involved contains allegations that in 1935 the City of Des Moines acquired land adjacent to that now owned by cross-petitioner Rice; that the consideration paid by the City was \$1 and covenants to build a road on the City's new land and a spur onto the sellers' retained land; that the City has not built the roads; and that because of the alleged failure of consideration, "title reverted to the owners of the land to be benefited, which is the property owned by Robert L. Rice."

The City ultimately moved for summary judgment, claiming that the suit was barred by section 614.24, The Code, and also barred by section 614.17, The Code. The trial court granted the City's motion for summary judgment under both of these statutory provisions and dismissed Rice's cross-petition with prejudice. Rice contends on appeal that section 614.24, The Code, is inapplicable to his claim because that statute only applies to provisions of deeds or contracts "reserving or providing for any reversion, reverted interests or use restrictions." In light of the language of paragraph nine of Rice's cross-petition, we can understand why the City (and the trial court) deemed his action to be based on a theory of reversion or reverted interests. But, even assuming, as Rice now contends, that his theory is rescission, rather than reversion, we agree with the trial court's alternative finding that his claim is barred by section 614.17, The Code, as that section existed prior to July 1, 1970 (see Acts 1961 (59 G.A.) ch. 286, section 4).

In its ruling, the trial court correctly concluded "the 1970 amendment to section 614.17 did not revive or permit an action to be brought or maintained upon any claim or cause of action barred by the statute in force prior to July 1, 1970." This is expressly provided by the present version of section 614.17. Rice's action is based upon a claim arising or existing prior to January 1, 1950 to recover real estate or to establish an interest therein against the holder of record title in possession, which is shown to have held record title within the chain of title since February 14, 1940 (the date the 1935 deed was recorded). Rice's claim is therefore subject to the bar of section 614.17 unless within one year from and after July 4, 1961, he or his predecessors in title filed in the Polk County recorder's office a statement in writing, duly acknowledged, describing the real estate involved and the nature or extent of the right or interest claimed. No such filing is shown of record. There is, therefore, no issue of fact remaining for trial, and the City was entitled to judgment as a matter of law. The trial court's order so providing is affirmed.

AFFIRMED.