

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 12, 2012**

Diane M. Fremgen  
Clerk of Court of Appeals

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**Appeal No. 2010AP2295**

**Cir. Ct. No. 2008CV300**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**3 RIVERS ADVERTISING, INC.,**

**PLAINTIFF-APPELLANT,**

**V.**

**ANTHONY J. AUGELLI, JR. AND KATHIE J. AUGELLI,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from a judgment of the circuit court for Richland County:  
EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 HIGGINBOTHAM, J. 3 Rivers Advertising, Inc. appeals the circuit court's judgment entered following a trial to the court declaring Anthony and Kathie Augelli owners of the billboard located on real estate purchased by the Augellis, and awarding the Augellis the leasing fees for the billboard from the date

of their purchase of the subject real estate. 3 Rivers also appeals the circuit court's partial summary judgment dismissing 3 Rivers' claim for tortious interference with contract.<sup>1</sup> We affirm.

## BACKGROUND

¶2 3 Rivers Advertising, Inc. is an outdoor advertising company located in Boscobel, Wisconsin. Roderick Dull is president of 3 Rivers and has been in the outdoor advertising business for twenty-five years. 3 Rivers entered into a land-use agreement with Center Lanes, Inc. in September 1992 to erect and maintain a billboard on property located at 27589 Highway 14 East, Town of Orion, Richland County (the property). Tom Hauber signed the land-use agreement on behalf of Center Lanes, Inc. Hauber owned Center Lanes Bowling Alley which was located on the property.<sup>2</sup> The land-use agreement stated:

This agreement is between Center Lanes, Inc. and 3 Rivers Advertising regarding the use of property owned by Center Lanes, Inc., for purpose of installing and maintaining a billboard owned by 3 Rivers Advertising.

Specific provisions are as follows:

Landowner agrees to allow 3 Rivers Advertising to install and maintain a rental Billboard on Property belonging to "Center Lanes, Inc.," In the town of Richland at the location presently occupied by Center Lanes. This Contract shall be considered as an easement and therefore shall be transferred with and as part of any change of ownership to such property until such time that both parties agree to terminate this contract.

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<sup>1</sup> The circuit court also dismissed the Augellis' claim for tortious interference with contract against 3 Rivers. The Augellis do not appeal the court's dismissal of their claim.

<sup>2</sup> Center Lanes Bowling Alley was destroyed by fire prior to 2008, but the record does not identify a specific date.

3 Rivers Advertising agrees to erect and maintain good legibility of a new sign advertising “Center Lanes” on this same property. 3 Rivers Advertising will install this sign as complete payment for use of land on which 3 Rivers Advertising Billboard will be erected....

Terms of Contract: This contract shall begin immediately upon the receipt of valid state and local sign permits and shall terminate only at which time both parties jointly agree to terminate.

Pursuant to the terms of the land-use agreement, 3 Rivers erected a billboard on the property. 3 Rivers also installed a sign advertising Center Lanes on the property. As set forth in the land-use agreement, the billboard advertising Center Lanes constituted payment for the use of land and easement on which 3 Rivers erected the billboard. Although the land-use agreement provided for an easement, 3 Rivers never recorded the easement with the local register of deeds or any other governmental entity.

¶3 In March 2008, Anthony and Kathie Augelli began negotiations for the purchase of the property with Hauber’s realtor, Ray Starnes. The Augellis noticed the billboard on the property, but did not approach the billboard due to the deep snow. Only the back of the billboard was visible from the property, and it contained no markings or identifications. The Augellis made an offer to purchase the property for \$55,000. In the offer and in reference to the billboard, the Augellis added a provision regarding “leased property” which reads: “If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller’s rights under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) ... lease(s), if any, are *to be disclosed and transferred to Buyers (Billboard).*” (Emphasis added.) Hauber counteroffered, raising the purchase price to \$62,500.

¶4 Prior to accepting the counteroffer, the Augellis inquired of Hauber's agent, Starnes, about ownership of the billboard. In response to the Augellis' inquiry, Starnes handwrote "Seller represents that Billboard is part of property" on the counteroffer. At the time Starnes added this representation, Hauber had not yet signed the counteroffer. Anthony Augelli then placed his initials next to the handwritten representation and both Anthony and Kathie signed the counteroffer. The purchase was completed according to schedule. Nothing in the title report revealed any owner of the billboard other than Hauber. The Augellis never spoke to Hauber during the purchase process; all discussions were with Starnes only.

¶5 After closing, the Augellis contacted Fillback Ford (the entity currently advertising on the billboard) to obtain lease payments for that advertising. In that contact, the Augellis learned for the first time that Roddy Signs was making a claim to the billboard and receiving rent payments from Fillback Ford.<sup>3</sup>

¶6 As seen only from the highway side of the billboard, the billboard had a tag affixed that read "Affordable Outdoor Advertising" above "Division of Roddy's Signs Inc. Boscobel 608-375-7446." The tag was put on the billboard when Roddy's Signs, Inc. was leasing the billboard from 3 Rivers. The phone number listed on the tag reached an office where both 3 Rivers and Roddy's Signs, Inc. were located.<sup>4</sup> Due to the dispute between 3 Rivers and the Augellis, Fillback

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<sup>3</sup> The Augellis claim that prior to the commencement of this lawsuit, they were unaware of the existence of the agreement between 3 Rivers and Hauber.

<sup>4</sup> Roderick Dull has a 50% share of 3 Rivers Advertising, Inc. He also is the owner of Roddy's Signs, Inc.

Ford has withheld payment of rent to either 3 Rivers or the Augellis to the present date, on the premise that it does not want to pay the wrong party.

¶7 3 Rivers brought suit against the Augellis alleging tortious interference with contract and seeking a declaration that it had an easement interest in the billboard. The Augellis answered, denying 3 Rivers' allegations, and counterclaimed, also alleging tortious interference with contract and seeking a declaration that they were the true owners of the billboard. On cross-motions for partial summary judgment, the trial court dismissed both parties' claims of tortious interference with contract and 3 Rivers' claim for declaration of an easement. It left for trial the issue of ownership of the billboard and the allocation of rental payments.

¶8 After a trial to the court, the court concluded that the Augellis were bona fide purchasers for value without notice because 3 Rivers failed to take reasonable and proper steps to perfect its easement or otherwise protect its interest in the billboard by failing to record the lease agreement with the county register of deeds. The trial court held that the Augellis were the proper owners of the entire property, including the billboard, and awarded the Augellis the leasing fees owed by Fillback Ford for use of the billboard. 3 Rivers appeals both the summary judgment decision dismissing its tortious interference with contract claim and the court's decision following trial awarding the Augellis the billboard and leasing fees. Additional facts, as necessary, are set forth in the discussion section.

### **STANDARD OF REVIEW**

¶9 As we explained above, we review the trial court's order denying 3 Rivers' motion for partial summary judgment. We review a grant of summary judgment de novo, applying the same methodology as the circuit court. *State v.*

*Bobby G.*, 2007 WI 77, ¶36, 301 Wis.2d 531, 734 N.W.2d 81. Summary judgment is appropriate when the affidavits and other submissions show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2009-10).<sup>5</sup> We draw all reasonable inferences from the evidence in the light most favorable to the non-moving party. *Burbank Grease Servs., LLC v. Sokolowski*, 2006 WI 103, ¶40, 294 Wis. 2d 274, 717 N.W.2d 781.

¶10 We also review the trial court’s decision following trial awarding the billboard and the leasing fees to the Augellis. When the trial court sits as the fact finder, it is the ultimate arbiter of the witnesses’ credibility, and we must uphold its factual findings unless they are clearly erroneous. *Kersten v. H.C. Prange Co.*, 186 Wis. 2d 49, 56, 520 N.W.2d 99 (Ct. App. 1994). We are not bound, however, by the circuit court’s conclusions of law; we review conclusions of law de novo. *Landwehr v. Landwehr*, 2006 WI 64, ¶8, 291 Wis. 2d 49, 715 N.W.2d 180.

## DISCUSSION

¶11 We organize our discussion of the issues as follows. We first address the trial court’s decision following the trial to the court awarding the billboard and the leasing revenues to the Augellis. We then address the court’s summary judgment order dismissing 3 Rivers’ tortious inference with contract claim against the Augellis and declaring 3 Rivers had no property interest in the billboard.

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<sup>5</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

## A. DECISIONS FOLLOWING TRIAL TO THE COURT

¶12 Two issues were tried to the court: (1) which party owned the billboard; and (2) which party was entitled to the income stream from the billboard. Both issues required the court to determine whether the Augellis were bona fide purchasers for value without notice of 3 Rivers' claim on the billboard, pursuant to WIS. STAT. §§ 706.08(1)(a) and 706.09(2)(a). In concluding that the Augellis were bona fide purchasers for value without notice, the trial court found that 3 Rivers did not provide affirmative notice of its easement interest in the billboard because it failed to perfect its interest in the sign easement by not recording the leasing agreement with the county register of deeds. The court further found that the billboard provided no information that 3 Rivers, or anyone else, owned it. The court also found that the Augellis made "due and diligent inquiry" into who owned the billboard by seeking confirmation through Hauber's realtor that the billboard belonged to the property and by having a title company conduct a title search to determine whether the Hauber property contained any encumbrances.

¶13 On appeal, 3 Rivers argues that the Augellis are not bona fide purchasers for value without notice because it provided affirmative notice of its interest in the billboard, in keeping with WIS. STAT. § 706.09(2)(a) and *Anderson v. Quinn*, 2007 WI App 260, ¶21, 306 Wis. 2d 686, 743 N.W.2d 492; that the Augellis did not conduct a "due and diligent inquiry" to determine who owned the billboard, as required by § 706.09(2)(a) and *Anderson*, 306 Wis. 2d 686, ¶21; and that the use of the billboard was "actual, visible, open and notorious," within the meaning of § 706.09(2)(a) and under the facts of *Anderson*, 306 Wis. 2d 686, ¶21.

¶14 In response, the Augellis argue that the trial court properly concluded that they were bona fide purchasers for value without notice, pursuant to WIS. STAT. §§ 706.08(1)(a) and 706.09(2)(a). In support, the Augellis assert that the court properly found that 3 Rivers failed to protect its easement interest in the billboard by not recording the easement with the county register of deeds; that the Augellis had no notice, actual or constructive, that 3 Rivers owned the billboard until after they purchased the property from Hauber; that they made “due and diligent inquiry” into who owned the billboard by asking Hauber’s realtor to provide documentation of any leases that came with the property and information on who owned the billboard; and that the billboard’s presence on the property, standing alone, did not constitute use that was “actual, visible, open and notorious.”

¶15 For the following reasons, we conclude that the trial court properly concluded that the Augellis were bona fide purchasers of value without notice under WIS. STAT. §§ 706.08(1)(a) and 706.09(2)(a) and that the court’s conclusion was supported by the record.

¶16 WISCONSIN STAT. § 706.08(1)(a) protects purchasers of real estate against adverse claims that are not properly recorded as provided by law. *See Associates Fin. Servs. Co. of Wis., Inc. v. Brown*, 2002 WI App 300, ¶9, 258 Wis. 2d 915, 656 N.W.2d 56. Section 706.08(1)(a) provides that “every conveyance that is not recorded as provided by law shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate or any portion of the same real estate whose conveyance is recorded first.” A purchaser or mortgagee in good faith is one without notice of existing rights in land. *Grosskopf Oil, Inc. v. Winter*, 156 Wis. 2d 575, 584, 457 N.W.2d 514 (Ct. App. 1990).



¶17 WISCONSIN STAT. § 706.09(1)<sup>6</sup> provides that “[a] purchaser for a valuable consideration, without notice as defined in sub. (2) ... shall take” priority over an adverse claim. “To be entitled to the benefits of [§ 706.09], a purchaser must not have notice of the adverse claim ....” *Schapiro v. Security Sav. & Loan Ass’n*, 149 Wis.2d 176, 186, 441 N.W.2d 241 (Ct. App. 1989). “Though

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<sup>6</sup> WISCONSIN STAT. § 706.09 provides in pertinent part:

(1) WHEN CONVEYANCE IS FREE OF PRIOR ADVERSE CLAIM. A purchaser for a valuable consideration, without notice as defined in sub. (2), and the purchaser’s successors in interest, shall take and hold the estate or interest purported to be conveyed to such purchaser free of any claim adverse to or inconsistent with such estate or interest, if such adverse claim is dependent for its validity or priority upon:

....

(b) *Conveyance outside chain of title not identified by definite reference.* Any conveyance, transaction or event not appearing of record in the chain of title to the real estate affected, unless such conveyance, transaction or event is identified by definite reference in an instrument of record in such chain....

....

(2) NOTICE OF PRIOR CLAIM. A purchaser has notice of a prior outstanding claim or interest, within the meaning of this section wherever, at the time such purchaser’s interest arises in law or equity:

(a) *Affirmative notice.* Such pressure has affirmative notice apart from the record of the existence of such prior outstanding claim, including notice, actual or constructive, arising from use or occupancy of the real estate by any person at the time such purchaser’s interest therein arises, whether or not such use or occupancy is exclusive; but no constructive notice shall be deemed to arise from use or occupancy unless due and diligent inquiry of persons using or occupying such real estate would, under the circumstances, reasonably have disclosed such prior outstanding interest; nor unless such use or occupancy is actual, visible, open and notorious ....

§ 706.08 does not use the word ‘notice,’ the requirement that a bona fide purchaser lack notice of an adverse claim to extinguish that claim has long been understood to be a part of the statute.” *Bank of New Glarus v. Swartwood*, 2006 WI App 224, ¶24, 297 Wis. 2d 458, 725 N.W.2d 944. “A purchaser or mortgagee takes its interests in good faith, [under § 706.08] if it is ‘without notice, constructive or actual, of a prior conveyance.’” *Brown*, 258 Wis. 2d 915, ¶11 (quoting *Kordecki v. Rizzo*, 106 Wis. 2d 713, 719-720, 317 N.W.2d 479 (1982)).

¶18 Under WIS. STAT. § 706.09(2)(a), a purchaser of land has affirmative notice, actual or constructive, “arising from use or occupancy” of land (1) “by any person” (2) “at such the time the purchaser’s interest ... arises” (3) “whether or not such use or occupancy is exclusive.” In addition, constructive notice exists “from use or occupancy” only if (1) “due and diligent inquiry of persons using or occupying” the land “would, under the circumstances, reasonably have disclosed such prior outstanding interest,” and (2) the “use or occupancy is actual, visible, open and notorious.” See *Anderson*, 306 Wis. 2d 686, ¶21 (quoting § 706.09(2)(a)).

¶19 In this case, the trial court concluded that the Augellis exercised reasonable due diligence in determining the ownership of the billboard prior to purchasing the property. Supporting this conclusion were the court’s following findings:

- (1) The Augellis sought and obtained an affirmative representation from the seller that the billboard was part of the property and included in the sale;
- (2) They searched the record and found no recorded interest of 3 Rivers, or anyone else, in the billboard or any easement by 3 Rivers on the property; and

(3) Even if they had seen the tag on the billboard, nothing on the tag indicated a claim of ownership of the billboard.

¶20 As an initial matter, it is undisputed that 3 Rivers did not record its land-use agreement with the county register of deeds and therefore the recording requirements of WIS. STAT. § 706.08(1)(a) for providing notice of its easement interest in the subject property were not met. We therefore turn to determine whether the Augellis had affirmative notice, actual or constructive, of 3 Rivers' interest in the billboard under WIS. STAT. § 706.09(2)(a).

¶21 3 Rivers contends that the facts of this case establish that it met the criteria under WIS. STAT. § 706.09(2)(a) for providing affirmative notice to the Augellis that it had an easement interest in the billboard and that the trial court erred by ruling otherwise. 3 Rivers points to evidence that (1) it was using the billboard (2) at the time the Augellis purchased the property from Hauber, and (3) that its use of the billboard was not exclusive.

¶22 The Augellis do not seriously dispute that these facts fit the first three criteria under WIS. STAT. § 706.09(2)(a) for providing affirmative notice. Their dispute lies with whether they had constructive notice of 3 Rivers' interest in the billboard under the criteria set forth in the statute.

¶23 3 Rivers argues that the Augellis' inquiry into the ownership of the billboard was not due and diligent within the meaning of WIS. STAT. § 706.09(2)(a) and *Anderson*. In support, 3 Rivers criticizes the Augellis for talking only to Starnes, Hauber's realtor, regarding the billboard. 3 Rivers also criticizes the Augellis for not talking directly with Hauber during the negotiations or the closing to determine who owned the billboard. In 3 Rivers' view, asking

Starnes who owned the billboard was insufficient to satisfy the “due and diligent inquiry” requirement of the statute.<sup>7</sup>

¶24 In support, 3 Rivers relies on *Anderson*, 306 Wis. 2d 686, ¶22. In *Anderson*, the Andersons purchased property with a condominium development on both sides. *Id.*, ¶3. Years prior to when the Andersons purchased their land, their land and the condominium units were owned as a single parcel and operated as a resort. *Id.*, 4. The declaration of condominium ownership referred to the condominium as “Black Mallard Condominium.” *Id.* The declaration included several easements in favor of the unit owners and the condominium association, including “A ‘non-exclusive right of ingress and egress over and through that certain road easement as set forth’ in a legal description.” *Id.* The declaration was not recorded under the names of the owners; it was recorded and indexed under “Black Mallard Condominium.” *Id.*, ¶5. Thus, any person searching the register of deeds’ records for conveyances under the owners’ names would not locate the Black Mallard declaration. *Id.*

¶25 Consequently, when the Andersons purchased their land from the original owners’ successors in title, the legal description did not contain any reference to the easements in favor of Black Mallard beyond certain statements not relevant here. *Id.*, ¶6. The Andersons were advised by their broker and title insurer that there were no easements of record for the subject parcel and that they would be able to shut down the driveway that ran across their parcel and construct

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<sup>7</sup> 3 Rivers also appears to argue that the Augellis were required to inquire into the value of the sign, in order to comply with the “due and diligent inquiry” requirement. We reject this argument because 3 Rivers does not explain the relevance of the Augellis’ failure to inquire into the value of the sign under the “due and diligent inquiry” requirement in WIS. STAT. § 706.09(2)(a).

a cabin there. *Id.*, ¶7. However, during one of the Andersons' first visits to the property, the secretary of the condominium association handed them a copy of the declaration and told Ms. Anderson about the easements. *Id.*

¶26 The Andersons filed a lawsuit against the Black Mallard unit owners, seeking an order to void the easements in the declaration and a permanent injunction barring the unit owners from exercising any of their rights under the declaration. *Id.*, ¶8. Following a trial to the bench, the court concluded that the easements were valid and enforceable against the Andersons. *Id.*, ¶9.

¶27 On appeal, the Andersons argued that they were good faith purchasers without notice of the easements, pursuant to WIS. STAT. § 706.09(1). *Id.*, ¶18. We rejected this argument and concluded that the Andersons “had notice of the declaration through the unit owners’ use of the property ....” *Id.*, ¶19. Pertinent here, we agreed with the trial court’s analysis that the Andersons would have learned of the easements had they asked the unit owners about their use of the driveway in front of the property the Andersons intended to purchase. *Id.*, ¶¶22-23. We concluded that the fact that the Andersons could have asked the unit owners about their use of the driveway, along with the trial court’s finding that the driveway was actual, visible, open and notorious, and that the unit owners were using the driveway at the time the Andersons purchased the property, constituted constructive notice under § 706.09(2)(a).

¶28 3 Rivers attempts to analogize the facts of this case with the facts in *Anderson*, and argues that, had the Augellis asked Fillback Ford or called the telephone number on the billboard, they would have learned of 3 Rivers’ easement. 3 Rivers argues that the Augellis’ failure to call Fillback Ford prior to closing, to call the telephone number listed on the billboard’s tag, or to examine

the billboard to determine its ownership—all of which, claims 3 Rivers, would have led the Augellis to discover 3 Rivers owned the billboard—is comparable to the failure of the buyers in *Anderson* to ask the unit owners using the driveway in front of the property purchased by the buyers about their use of the driveway, and similarly constituted insufficient inquiry under the statute.

¶29 The facts in *Anderson* are distinguishable from this case. As we explained, in *Anderson* the use of the driveway by the unit owners was plainly obvious, which should have alerted the buyers to the possibility that their claim to the property was not exclusive. Here, there was nothing about the mere presence of the billboard on Hauber’s property that should have alerted the Augellis to the possibility of a prior claim to the billboard. In addition, unlike in *Anderson* where the buyers were apprised of the easement by the secretary of the condominium association, here, the property owner’s agent, Starnes, represented to the Augellis that the billboard belonged to the property that the Augellis were purchasing. That is, in this case, rather than being told as in *Anderson* of an easement claim on the property being purchased, here the Augellis were told the opposite—that no easement came with the property and that the billboard belonged to the property.

¶30 The Augellis argue that they exercised reasonable due diligence in determining ownership of the sign prior to purchasing the subject property. They contend that 3 Rivers is a corporation and nowhere on the billboard, whether on the back (the side facing the property) or on the tag at the bottom in front (viewable only from the highway and only 12” by 24”-48” in size) does the name 3 Rivers appear or, for that matter, the identification of *any* owner of the billboard. They also argue that their inquiry of the seller regarding the billboard, including any leases or ownership, was sufficiently diligent within the meaning of the statute.

¶31 We conclude that the trial court properly determined that the Augellis did not have affirmative notice, actual or constructive, within the meaning of WIS. STAT. § 706.09(2)(a), of 3 Rivers’ easement interest in the subject billboard. We first observe that 3 Rivers does not challenge the trial court’s factual findings. Thus, whether the facts as found by the court meet the requirements of § 706.09(2)(a) is a question of law, which we review de novo. *Milwaukee Symphony Orchestra, Inc. v. DOR*, 2009 WI App 69, ¶¶12-13, 318 Wis. 2d 261, 767 N.W.2d 360.

¶32 Under Wisconsin law, a purchaser is under an obligation to seek out information regarding potential encumbrances on the real property of which he or she is seeking to obtain ownership. See *Hoey Outdoor Adver., Inc. v. Ricci*, 2002 WI App 231, ¶¶18-20, 256 Wis. 2d 347, 653 N.W.2d 763.<sup>8</sup> The Augellis did this on multiple occasions. They sought and obtained affirmative representations by the seller’s agent, Starnes, that the billboard went with the property. The Augellis specifically requested in their offer to purchase information as to all leases:

“If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller’s rights under said

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<sup>8</sup> In *Hoey Outdoor Advertising, Inc. v. Ricci*, 2002 WI App 231, ¶19, 256 Wis. 2d 347, 653 N.W.2d 763, we noted that a purchaser of property has a duty under WIS. STAT. § 706.09(2)(a) to make a due and diligent inquiry into any prior claims on the land and that a purchaser has three sources of information from which a purchaser can make this determination:

- (1) the records in the office of the register of deeds where the basic rights involved are recorded; (2) other public records to discover rights that usually are not recorded in the office of the register of deeds, i.e., judgments and liens; and (3) the land itself, to discover by observation the rights that arise outside the recording system by virtue of possession or use. The purchaser is chargeable with knowledge of the location of the land’s boundaries as against third persons.

(Citations omitted.)

lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) ... lease(s), if any, are *to be disclosed and transferred to Buyers (Billboard)*. (Emphasis added.)

When the billboard issue was not specifically addressed in Hauber's counteroffer asking for an additional \$7500, the Augellis again discussed their concern about the status of the billboard with Starnes. Starnes then handwrote on the counteroffer, as a representation by Hauber, that "Seller represents that Billboard is part of property," and Anthony Augelli initialed it. Based on this representation, the Augellis agreed to the higher purchase price and signed the counteroffer. Prior to closing, the Augellis had a title search done and no record of any easement or ownership interest was discovered.

¶33 Regarding 3 Rivers' argument that the Augellis were required to contact Fillback Ford or to call the telephone number on the tag prior to closing to determine who owned the billboard, we conclude it was reasonable, under the circumstances of this case, for the Augellis to ask Hauber, through his real estate agent, who owned the billboard and whether the billboard came with the land. Once the Augellis learned from Hauber's realtor that the billboard belonged to the property, the Augellis reasonably ceased their inquiry into who owned the billboard.

¶34 In summary, we conclude, under the facts of this case, that the Augellis conducted a "due and diligent inquiry of persons ... occupying" the land to determine whether any person had an interest in the billboard. *See* WIS. STAT. § 706.09(2)(a).

¶35 3 Rivers next argues that the Augellis had constructive notice under WIS. STAT. § 706.09(2)(a) that it had an interest in the billboard because 3 Rivers'



use of the billboard was “actual visible, open and notorious.” Specifically, 3 Rivers points out that it was undisputed that the billboard was located on the property, that an advertisement was plainly on the billboard, that it was readily apparent that the billboard was being maintained, and that 3 Rivers possessed an annual permit for the billboard.

¶36 In response, the Augellis argue that the facts do not support 3 Rivers’ argument that its use of the billboard was “actual, visible, open and notorious.” They acknowledge that the billboard had an advertisement for Fillback Ford. The Augellis point out, however, that the tag at the bottom of the billboard did not have 3 Rivers’ name on it, nor did the tag or the billboard indicate that any particular person or business owned the billboard, let alone 3 Rivers. Thus, the Augellis reason, while the billboard itself was obvious, it was not obvious from looking at it as to who owned it. As a result, the Augellis argue, they had no reason to believe that anyone other than Hauber owned the billboard or to further inquire into who owned it.

¶37 The trial court ruled that the Augellis did not have constructive notice of 3 Rivers’ interest in the billboard by its mere presence on the property. The court found that the tag on the billboard was insufficient to provide notice to others of 3 Rivers’ ownership claim of the billboard under WIS. STAT. § 706.09(2)(a). The court observed that the tag contained no obvious information as to the billboard’s owner and that while the tag had two names on it, none of the names included 3 Rivers. The court did acknowledge that a “prospective buyer” could have called the telephone number placed on the tag. However, in light of the other factors it considered in making its decision—such as 3 Rivers’ failure to record the easement and the due and diligent inquiry made by the Augellis—the court did not give much consideration to this point.

¶38 We conclude, based on the record before us, that 3 Rivers’ “use” of the billboard was not “actual, visible, open and notorious” within the meaning of WIS. STAT. § 706.09(2)(a). As the trial court pointed out, the mere presence of the billboard on the property was insufficient to provide constructive notice to the Augellis of 3 Rivers’ claim to the billboard. No reasonable prospective buyer would be able to determine who owned the billboard by simply observing the presence of the billboard on the property. In addition, the trial court reasonably found that the two names on the billboard, along with a telephone number, provided no notice that 3 Rivers claimed an interest in the billboard. Significantly, the record shows that 3 Rivers’ name could not be found on any part of the billboard. Thus, even if the Augellis thoroughly examined the billboard itself, they would not have been able to determine that 3 Rivers had anything to do with the billboard, let alone held a prior claim to it. In any event, as we have explained, we agree with the Augellis that once they received confirmation from Hauber’s realtor that the billboard went with the property, there was no reason to further inquire into who owned it.

¶39 In sum, we conclude that the trial court properly concluded, based on the facts adduced at trial, that the Augellis were bona fide purchasers for value without notice of 3 Rivers’ claim to the billboard. Accordingly, the trial court properly awarded the billboard and the leasing fees from Fillback Ford to the Augellis.

## B. SUMMARY JUDGMENT DECISION

¶40 3 Rivers appeals the trial court’s decision on summary judgment dismissing its tortious interference with contract claim against the Augellis, and

declaring that 3 Rivers had no property interest in the billboard. We first address 3 Rivers' argument that it has a property interest in the billboard.

1. 3 Rivers Claimed Interest In The Property Or Ownership Of The Billboard

¶41 3 Rivers argues that it possesses an interest in the billboard. In support, it relies on the 1992 easement agreement. 3 Rivers argues that, although it failed to record its easement agreement with the register of deeds, the Augellis had constructive notice of 3 Rivers' rights to the property as the possessor of the property. 3 Rivers reasserts that the Augellis would have received notice of 3 Rivers' claimed interest in the billboard had they conducted a sufficient inquiry regarding the use and possession by 3 Rivers of the billboard.

¶42 We reject this argument for the same reasons that we rejected 3 Rivers' arguments that the Augellis did not conduct a sufficient "due and diligent inquiry" under WIS. STAT. § 706.0 9(2)(a). More to the point, and as we have explained, once the Augellis received confirmation from Hauber through his realtor that the billboard was part of the property, it was reasonable for the Augellis to not conduct any further inquiry into who owned it. As we have also explained, the statutory method by which a purchaser of property establishes a claim of interests to that property is to record the pertinent documents with the county register of deeds and here it is undisputed that 3 Rivers failed to do so. Accordingly, we conclude the circuit court properly determined that 3 Rivers had no property interest in the billboard.

2. Tortious Interference With Contract Claim

¶43 3 Rivers argues that the trial court erred when it dismissed its claim against the Augellis for tortious interference with their contract with Fillback Ford.

3 Rivers contends that its summary judgment submissions met all of the elements of a claim for tortious interference with contract. We disagree.

¶44 The elements of a claim for tortious interference with a contract are:

(1) the plaintiff had a contract or a prospective contractual relationship with a third party, (2) the defendant interfered with that relationship, (3) the interference by the defendant was intentional, (4) there was a causal connection between the interference and damages, and (5) the defendant was not justified or privileged to interfere.

*Briesemeister v. Lehner*, 2006 WI App 140, ¶48, 295 Wis. 2d 429, 720 N.W.2d 531. We focus only on the fifth element—whether the Augellis were “justified or privileged to interfere” with 3 Rivers’ leasing agreement with Fillback Ford. We conclude that they were.

¶45 3 Rivers argues that the Augellis were not justified or privileged to interfere with its contract with Fillback Ford because 3 Rivers had created affirmative notice of its ownership claim in the sign, and further, that the Augellis failed to conduct a reasonable, due and diligent inquiry regarding who owned the billboard. 3 Rivers also argues that, even assuming that the Augellis had conducted a due and diligent inquiry, “this still did not justify their interference with the 3 Rivers/Fillback Ford contract.” In response, the Augellis argue that, as bona fide purchasers of value without notice of 3 Rivers’ claim to the billboard, they had every right to contact Fillback Ford to negotiate lease payment terms. We agree with the Augellis.

¶46 As we have concluded, the Augellis conducted a due and diligent inquiry into the ownership of the billboard and that in spite of their diligent efforts, the Augellis lacked affirmative notice of 3 Rivers’ interest in the billboard prior to their purchase of the Hauber property. As to the lease agreement between

3 Rivers and Fillback Ford for the billboard, it is undisputed that the Augellis first became aware of this lease thirty to sixty days after closing. Based on the representations by Hauber that there were no leases or other agreements relating to the billboard and that the billboard was part of the property, the Augellis proceeded as owners of the billboard, and informed 3 Rivers and Fillback Ford that any lease they may have relating to the billboard was no longer in force. The Augellis' actions were based on a good faith belief that there was no valid contract and that they were entitled to the revenues from Fillback Ford for its advertisement on the billboard.

¶47 Accordingly, we affirm the circuit court's dismissal of 3 Rivers' tortious interference with contract claim against the Augellis.

### CONCLUSION

¶48 We conclude, based on the facts of this case, that the Augellis were bona fide purchasers for value without notice under WIS. STAT. §§ 706.08(1)(a) and 706.09(2)(a) of the billboard and thus they own the billboard situated on their land. Therefore, the Augellis are entitled to all leasing fees due from Fillback Ford from the date of the Augellis' purchase of the property from Hauber. We further conclude, based on the summary judgment record, that the trial court properly dismissed 3 Rivers' tortious interference with contract claim against the Augellis.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.



