



Out of Home Advertising Association of America

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Turning Your Lease into an Easement

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Billboard sites are becoming scarcer, and growing government regulation of these locations has further driven up their value. Operators are moving away from the traditional lease model toward securing permanent easement interests to better protect these sites and preserve the long-term value of these assets. Many billboard leases include provisions that give the lessee the right to purchase an easement at the billboard site. The timing and terms of these provisions, and the laws governing them, vary widely. This Legal Report analyzes a recent Texas Court of Appeals decision addressing such a provision and explores the various legal issues that can arise. While the case concerns Texas law, it provides a useful framework for litigating or negotiating similar easement rights in other jurisdictions.

On March 11, 2026, the Fifth District Court of Appeals in Dallas, Texas issued its opinion in *Lamar Advantage Outdoor Company, L.P. v LaCore Enterprises, LLC, Harlow Investments, LTD., and Harlow Land Co., LTD*, No. 05-23-00210-CV (Tex. App.—Dallas Mar. 11, 2026). The case involved Lamar’s right to purchase an easement under its billboard sign pursuant to a provision in the billboard lease concerning the sign site. In the decision, the Court analyzes several legal issues that may arise in similar disputes within the industry.

The case originated in the 199th District Court in Collin County, which entered judgment in favor of the current and former property owners (LaCore and Harlow), declaring that Lamar had “no right of possession or access to” the property or the billboard, and awarded LaCore attorney’s fees, including conditional appellate fees. However, in a comprehensive 37-page opinion, the Court of Appeals reversed the trial court’s judgment in its entirety, rendering judgment in favor of Lamar on all issues presented, and remanded the case to the trial court for further proceedings consistent with its findings. [Opinion](#)

Background

This case has a complex factual history that dates back to 2006, when Lamar purchased the billboard from another company and subsequently entered into a new lease with the landowner and co-defendant in this case, the Harlows’ real

estate entity. The lease had an initial term of five years, with an option to renew for an additional five years. The lease contained a provision granting Lamar the “option” to purchase an easement on the property in connection with any sale of the property by the lessor or its successors. A portion of the lease language regarding this option provides:

If LESSOR desires to sell or otherwise transfer any Interest in the property upon which the sign is situated, LESSOR grants LESSEE an option to purchase a perpetual easement (servitude) encompassing the sign and the access, utility service and visibility rights set forth herein. LESSEE must elect to exercise this option within thirty (30) days after written notification of LESSOR’s desire to sell. LESSEE’s failure to exercise this option within said period shall be a waiver of this option. The price for such easement (servitude) shall be...

Prior to the sale at the center of the dispute, the property was transferred several times between entities associated with the Harlows (and one that was not), and Lamar did not exercise its easement purchase option during any of those transfers. However, in 2018, Harlow sold the property to LaCore without notifying Lamar. Lamar first learned of the sale when LaCore instructed Lamar to cancel the rent check that it had sent to Harlow after the sale and reissue the check to LaCore instead. Lamar complied with the request and immediately exercised its option to purchase an easement under the sign. While LaCore accepted rent payments for several months and even sent Lamar a W-9 form to facilitate the payments, it ultimately refused to execute the easement conveyance document, claiming that Lamar had no right to purchase the easement.

Thereafter, Lamar filed suit for breach of contract and sought specific performance. In response, LaCore stopped accepting the rental payments, returned the uncashed checks to Lamar, and sent Lamar a notice to vacate the property, asserting that the lease had expired. Lamar informed LaCore that it would halt operation of the billboard pending the outcome of the litigation but would not remove the billboard due to local government regulations that would prevent the sign from being re-erected should Lamar prevail in the lawsuit after its removal. LaCore then placed a double-locked chain-link fence around the base of the billboard and began using the billboard to display its own advertising. Following multiple hearings and a bench trial, the trial court entered final judgment in favor of LaCore on all claims, finding that Lamar had “no right of possession or access” to the property or the billboard, and awarded attorney’s fees to LaCore. Lamar subsequently appealed.

The Court of Appeals opinion issued in favor of Lamar addressed several key legal issues concerning easement purchase rights in billboard leases.

The Validity of the Lease

The Court of Appeals first considered whether the defendants were bound by the lease and whether the lease was in effect at the time of the sale, as the defendants claimed the lease had expired several years earlier at the end of the renewal term. The Court noted that the lease originally ran from November 2006 through November 2011 and was renewed for an additional five-year term ending in November 2016. The defendants argued that because the lease expired in 2016, Lamar had no right to receive notice of the sale to LaCore, which occurred in 2018.

Citing *Coinmach Corp. v Aspenwood Apartment Corp.*, 417 S.W.3d 909 (Tex. 2013), the Court held that, even though the renewal term had expired, Lamar became a tenant at will, and the Harlow defendants continued to be bound by the terms of the lease. The court explained that Lamar was a tenant at will rather than a tenant at sufferance because it continued to possess the land with the landlord's consent. The Court further found that the terms of the lease continued to "govern the new arrangement absent an agreement to the contrary." Because Lamar continued to make rental payments under the lease and Harlow accepted them, the Court concluded that "a new lease agreement arose upon the expiration of the lease term using the terms of the original lease."

The Purchase Right Option

The Court next addressed whether the purchase right contained in the lease was in effect at the time of the sale of the property to LaCore. In doing so, the court examined the distinction between an option to purchase and a right of first refusal, noting that the latter is also referred to as a preemptive or preferential purchase right. Citing *Jarvis v Peltier*, 400 S.W.3d 644, 649 (Tex. App. —Tyler 2013, pet. denied), the Court explained that the terms "right of first refusal" and "option" have distinct meanings, as a right of first refusal "empowers its holder with a preferential right to purchase the subject property on the same terms offered by or to a bona fide purchaser...An option, on the other hand, is a privilege or right that the owner of the property gives another to buy certain property at a fixed price within a certain time." The holder of an option can unilaterally compel the sale of the property at any time during the term of the option whereas the holder of a right of first refusal (or preferential purchase option) may only compel a sale once the right is triggered by an offer to buy the property by a third party. In that sense, the right of first refusal operates as a dormant option that only arises when an offer to buy the property is made. Applying this framework, the Court concluded that

although the provision in the lease was labeled an option, its substance and function was that of a right of first refusal.

The Rule Against Perpetuities Did Not Apply

LaCore then argued that Lamar’s purchase right violated the rule against perpetuities because it lacked a definite “end date.” The Court rejected this argument, holding that the rule of perpetuities was not implicated because the purchase right might never vest. Specifically, the right , might never have been triggered had the lessor not desired to sell the property or had the lease terminated before the purchase right could be triggered. Citing *Cherokee Water Co. v. Forderhause*, 641 S.W.2d 522, 526 (Tex. 1982), the Court found that where a purchase right might never arise, it does not constitute an unreasonable restraint on alienation of the property.

The Validity of the Purchase Right after Lease Expiration

The Court next addressed LaCore’s argument that the purchase right provision did not survive the expiration of the lease when Lamar became a holdover tenant. In construing the lease, the Court focused on the parties’ intent and examined whether the lease contained any language addressing the duties of the parties after expiration of the lease. Relying on *6500 Cedar Springs, L.P. v. Collector Antique, Inc.*, No. 05-98-00386-CV, 2000 Tex. App. LEXIS 5583, at *5 (Tex. App. – Dallas Aug. 21, 2000, no pet.) (mem. op.), the Court stated that the right of first refusal carries forward to a holdover tenancy where the lease states that the transferee agrees to perform the terms of the lease and does not expressly state that the right of first refusal does not apply to subsequent transfers of the leasehold. The Court noted that Lamar’s lease was only two pages long and did not include specific language concerning whether the purchase right survived the expiration of the lease. The Court also emphasized that any renewal of the lease was expressly “subject to the same terms and conditions of the original Lease” and that the lease was binding on the successors of both the lessee and lessor. Based on this language, the Court concluded that the purchase right provision survived the expiration of the lease and continued during the holdover tenancy. Although LaCore urged the Court to apply California law instead of Texas precedent, the Court declined, noting that as an intermediate court, it was bound to follow Texas law.

The Purchase Right Was Not Waived by Lamar

LaCore also argued that Lamar had waived its purchase right by failing to exercise it during previous sales of the property. Again relying on *6500 Cedar Springs*, the Court rejected this argument, explaining that a right of first refusal “[does] not

expire the first time the right holder [chooses] not to invoke it.” Instead, the Court noted that each right of first refusal is triggered anew with each specific offer, and the waiver of the right only applies to the “specific transaction for which the right is attached,” not to any future sales.

The Purchase Right Can Be Enforced against a Subsequent Purchaser

LaCore further argued that it lacked privity of contract with Lamar and therefore could not be bound by the purchase right contained in Lamar’s lease with Harlow. Lamar, in contrast, argued that LaCore took the property subject to the purchase right because it had knowledge of both Lamar’s billboard and the associated lease rights. The Court again relied on Jarvis, holding that a contract is enforceable against a subsequent purchaser who has actual or constructive notice of the contract. Although LaCore disputed that it had actual notice of the lease, it did not address Lamar’s contention that LaCore had constructive notice of the lease, which was demonstrated by the following: (1) LaCore contacted Lamar five days after the sale of the property to notify Lamar it was the new owner; (2) LaCore directed Lamar to cancel rental payments sent to Harlow and to send rental payments to LaCore as the new owner, providing a completed W-9 to Lamar to facilitate the payments; and (3) Lamar cancelled the rental check to Harlow and reissued it to LaCore as instructed. The Court further noted that LaCore “deposited and accepted” that rental payment, as well as subsequent rental payments.

As a result, the Court concluded that LaCore had constructive notice of Lamar’s rights. According to Texas law, when a property interest by a third party “is apparent based on reasonable inspection of the property, the purchaser is charged with inquiry notice.” Based on this precedent, the Court held that LaCore was aware of Lamar’s interest in the property, as the billboard bearing its nameplate was clearly visible on the property and therefore “had a responsibility to investigate what terms of the Lease might still be in force during the holdover tenancy.”

Breach of Contract

Based on the above analysis, the Court held that: (1) Lamar was a tenant at will; (2) Defendants were bound by the lease; (3) the preferential purchase right did not violate the rule against perpetuities; (4) the purchase right was not waived; and (5) LaCore’s ownership of the property was subject to the lease, and LaCore stood in the shoes of Harlow. Accordingly, the Court reversed the trial court’s judgment in favor of LaCore on Lamar’s breach of contract claim and likewise reversed the award of attorney’s fees to LaCore.

Conversion Claim of Lamar

The Court also reversed the trial court’s ruling on Lamar’s claim for conversion of the billboard, which required Lamar to prove that: (1) it “owned, had legal possession of, or was entitled to possession of” the billboard; (2) LaCore “unlawfully and without authorization, assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with” Lamar’s rights; (3) Lamar “made a demand for the property”; and (4) LaCore “refused to return the property.”

In reaching its conclusion, the Court examined whether the billboard constituted personal property, a trade fixture, or a permanent improvement. Citing *Remington Sherman Automatic, LLC v. FMG North Tex., LLC*, No. 05-22-01366-CV, 2023 Tex. App. LEXIS 9624 (Tex. App.—Dallas, Dec. 27, 2023, pet. denied) (mem. op.), the Court noted that the lease expressly provided that Lamar retained ownership of the structure and had the right to remove it. Based on this language, the Court determined that the billboard was Lamar’s personal property and, accordingly, the trial court erred in granting judgment in favor of LaCore on Lamar’s conversion claim.

Conclusion

As I mentioned at the beginning of this report, this opinion is based on Texas law and is not binding precedent in other jurisdictions. Nevertheless, it may serve as a useful roadmap for analyzing similar right of first refusal issues that may arise in billboard lease disputes. At the time of this report, LaCore is seeking an en banc review of the decision, and there may still be more ahead in this case before the final conclusion. Even so, this offers a thorough discussion of several key legal principles in this practice area that may be instructive.

This Legal Report is not intended to provide legal advice concerning any specific matter but is a general legal discussion regarding this topic. Further, I would like to thank my partner, Lauren Beverly, for her assistance and contributions to this article.