IN THE SUPREME COURT OF IOWA

No. 21-0774

MONROE COUNTY NO. EQEQ009517

QUALITY PLUS FEEDS, INC., Plaintiff-Appellee,

vs.

COMPEER FINANCIAL, FLCA, Defendant-Appellant,

and

ETCHER FAMILY FARMS, LLC, ETCHER FARMS, INC., AGRILAND FS, INC., DEWITT VETERINARY SERVICES, P.C. d/b/a DEWITT VETERINARY CLINIC, JASON DENNING, PRECISION PUMPING, INC. and ELMWOOD FARMS, LLC, Defendants.

APPEAL FROM THE IOWA DISTRICT COURT FOR MONROE COUNTY, HON. DANIEL P. WILSON

APPELLANT'S FINAL REPLY BRIEF

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A. Introduction.

Appellee Quality Plus Feeds, Inc.'s ("**Quality**") appellate argument has two overarching themes: namely that (1) a straight-forward application of Iowa's Agricultural Supply Dealer Lien statutes would be "unfathomably complex" and (2) applying the law, as written, would essentially result in the complete obliteration of Iowa's "fluid feed market." (Appellee's Br., *generally*). Neither theme has any merit. Nor are Compeer's "tracing" arguments novel or unprecedented, as Quality would like the Appellate Court to believe.

Compeer's "tracing" arguments follow from a reasonable reading of the relevant statutory provisions and from three cases decided in the last decade by the United States Bankruptcy Court for the Northern District of Iowa. Those cases are *Wells Fargo Bank v. Tama Benton Coop. (In re Shulista)*, 451 B.R. 867 (Bankr. N.D. Iowa 2011), *Schley v. Peoples Bank (Schley I)*, 509

B.R. 901 (Bankr. N.D. Iowa 2014), and *In re Schley (Schley II)*, 565 B.R. 655 (Bankr. N.D. Iowa 2017).[1]

This trilogy of cases interprets Iowa's Agricultural Supply Dealer Lien statutes in a manner that Compeer now respectfully requests the Appellate Court to adopt and apply to this case. While Quality suggests otherwise, applying Compeer's interpretation of these statutes would not disrupt Iowa's "fluid feed market." This is apparent from the fact that after *In re Shulista*, *Schley I,* and *Schley II* came down, feed suppliers took note – at least in federal bankruptcy court – but the feed market has not collapsed.

For example, the fact issues in *Schley I* that precluded summary judgment in that case were subsequently resolved through further discovery and the agricultural supply dealer liens in that case were summarily adjudicated in *Schley II*. *See Schley I*, 509 B.R. at 904 (denying summary judgment where a debtor purchased feed from two feed suppliers, the debtor operated two livestock facilities, and the record was "unclear what feed went to what site and fed what pigs."); *see also Schley II*, 565 B.R. at 661-62

[1] In addition to these three cases that specifically interpret Iowa Code § 570A.1 *et seq.*, Compeer also relies upon *Citizens Savings Bank v. Miller*, 515 N.W.2d 7 (Iowa 1994). (Appellant's Br., pp. 61-68). *Citizens'* priority disputes involving purchase money security interests and prior, perfected blanket security interests are nearly identical to the disputes on appeal in this case, and therefore the Appellate Court should follow *Citizens* as requested in Compeer's initial appellate brief. (*Id.*).

(holding that summary judgment in favor of a feed supplier was proper after discovery was completed following an initial denial of summary judgment; the record was fully developed as result of the completed discovery process, and the fully developed record established that there was "no dispute" that the specific livestock sold by a debtor actually consumed the specific feed sold by the feed supplier to that debtor).

Further, *In re Shulista*, *Schley I,* and *Schley II* have not generated a significant amount of subsequent litigation involving priority disputes between lenders and agricultural supply dealers. Thus, while Quality's brief is peppered with oft-repeated doomsday rhetoric, such hyperbole is merely a smokescreen covering the District Court's improper entry of judgment in favor of Quality notwithstanding the existence of multiple genuine issues of material fact with respect to Quality's Claims.[2] Put succinctly, *In re Shulista*, *Schley I,* and *Schley II* have *not* resulted in the destruction of Iowa's fluid feed market, and the Apocalypse will not occur if the Appellate Court reverses the District Court's Judgment & Decree.

With these principals and considerations in mind and for the reasons set forth herein and in its initial appellate brief, Compeer respectfully requests

[2] Unless expressly stated otherwise, capitalized terms in this Reply have the same definitions that are ascribed to capitalized terms in Compeer's initial appellate brief.

that the Appellate Court reverse the District Court's Judgment & Decree and remand the case with instructions to the District Court to enter judgment in favor of Compeer on its cross-motion.

B. Quality Incorrectly Assumes That Parties Must Start With the "Premise" That Agricultural Supply Dealers Are Automatically Entitled to "Superpriority."

With respect to the merits of this appeal, Quality's first error is its presumption that an agricultural supply dealer lien claimant must be entitled to an automatic "superpriority" lien status paramount to any other creditor with a prior, perfected lien. (Appellee's Br., pp. 34-35[3]). That is not the case. Agricultural supply dealer liens are "*strictly construed and limited in nature* . . . because these liens '*jump'* the *usual priority order*[.]" *Farmers Coop. Co. v. Ernst & Young, Inc. (In re Big Sky Farms Inc. ex rel. Ernst & Young, Inc.)*, 512 B.R. 212, 217 (Bankr. N.D. Iowa 2014) (emphasis added). Further, "there are limits to obtaining the super-priority status [with agricultural liens]." *In re Shulista*, 451 B.R. at 874.

The "baseline" assumption when reviewing priority disputes between a senior, secured lender with a prior, perfected security interest and an

[3] Citations to specific pages in Appellee's brief cite to Appellee's "proof" brief because Compeer did not have Appellee's "final" brief at the time that this "final" reply brief was e-filed. The pagination in Appellee's "proof" brief may not exactly match the pagination in Appellee's "final" brief.

agricultural supply dealer lien claimant is that courts apply "the principle of *limiting superpriority liens because they are inherently contrary to the UCC's general priority rule of first-in-time, first-in-right*." *Big Sky Farms*, 512 B.R. at 217 (emphasis added).

In this case, it is undisputed that Compeer is the senior, secured creditor and that it perfected its applicable security interests in Compeer's Collateral several years before Quality attempted to perfect its asserted liens. (Appellant's Br., pp. 18-19). Therefore, there is no presumed "superpriority" status for Quality. Rather, Quality needs to prove-up its asserted "superpriority" status, and it must do so in this case where the "court must . . . consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record." *Phillips v. Covenant Clinic*, 625 N.W.2d 714, 717-18 (Iowa 2001). Quality has not met that burden.

C. The District Court Erred in Granting Quality's Summary Judgment Motion Because There Were Multiple Genuine Issues of Material Fact Regarding Whether EFI's and EFF's Cattle That Were Sold in March and April 2019 Actually Consumed Any of the Feed that Quality Sold to EFI and EFF in Late 2017 and Early 2018.

After Quality recites its unfounded parade of horribles in the first forty-one (41) pages of its appellate brief, Quality next turns its attention to the legislative history of Iowa Code § 570A.1 *et seq.* and summarizes various

canons of statutory construction. (Appellee's Br., pp. 41-54). However, the legislative history of Agricultural Supply Dealer Lien statutes and well-established principles of statutory construction are not materially disputed, nor are they specifically relevant to the merits of this appeal.

Rather, the pertinent *issues* on appeal are whether the District Court properly entered summary judgment in favor of Quality and against Compeer even though there were multiple genuine issues of material fact with respect to Quality's "tracing" obligations under Iowa Code § 570A.1 *et seq.* Specifically, the primary questions reviewable by the Appellate Court are two-fold: first, has Quality established as an *undisputed material fact* that the feed that Quality sold to Defendant Etcher Farms, Inc. ("**EFI**") and Defendant Etcher Family Farms, LLC ("**EFF**") between September 4, 2017 and March 19, 2018 was consumed by the specific cattle that were liquidated in March and April 2019? Second, has Quality established as an *undisputed material fact* that the Milk Check Proceeds generated from the early 2019 sale(s) of milk can be "traced" to the specific cattle that may have consumed feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018?

Thus, the crux of this appeal does not materially depend upon the legislative history of Agricultural Supply Dealer Lien statutes and well-established principles of statutory construction. Rather, the propriety of the

District Court's Judgment & Decree depends upon the "record before the district court," which the Appellate Court must review "to decide whether a genuine issue of material fact exists and whether the court correctly applied the law." *Gerst v. Marshall*, 549 N.W.2d 810, 811-12 (Iowa 1996). "In doing so, [the Appellate Court] view[s] the facts in the light most favorable to the party opposing the motion for summary judgment." *Id.* It is, therefore, these *summary judgment principles* that should guide the Appellate Court's evaluation of the merits of this appeal, not legislative history and canons of statutory constructions that are neither meaningfully disputed, nor specifically relevant to the resolution of this appeal.

With these considerations in mind, the initial question relevant to this appeal is how many of EFI's and EFF's 2,278 cattle that were liquidated in March and April 2019 actually consumed feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018? The record does *not* provide *any* answers; Quality does *not* know how many of the 2,278 liquidated cattle actually consumed its feed that Quality sold to EFI and EFF in late 2017 and early 2018, and the District Court did *not* make any relevant findings on the subject.

In like manner, the next question relevant to this appeal is how many of the cows that produced the milk that generated the Milk Check Proceeds in

early 2019 actually consumed feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018? Again, the record does *not* provide *any* answers; Quality does *not* know, and the District Court did *not* make any relevant findings on the subject.

By judicial fiat, the District Court invented a "reasonable link" standard whereby an agricultural supply dealer lien claimant can establish its entitlement to a lien simply by "show[ing] a *reasonable link* between the feed provided by the supplier and the livestock . . . [and further found that] section 570A.3 does *not* require a meticulous showing of the path from feed to a *specific* cow[.]" (App. 933, ¶ 19 (emphasis added)). Setting aside the fact that the District Court's "reasonable link" "tracing" standard appears nowhere in the case law interpreting Iowa Code § 570A.1 *et seq.*, how the District Court found its "reasonable link" standard satisfied in this case is even more problematic.

Specifically, the District Court held that Quality had satisfied the "reasonable link" "tracing" requirement by Quality's submission of "an affidavit of Jared Johnson, who provided services as a nutritionist consultant to *Etcher Family Farms, LLC, Etcher Farms, Inc., and Elmwood Farms, LLC*.

Johnson stated that feed purchases would have *generally* been fed to *all* of the dairy cows for consistency." (App. 933, ¶ 20 (emphasis added)).[4]

Quality and the District Court relied exclusively upon the above-referenced affidavit of Mr. Jared Johnson to establish that "[t]here is no dispute Quality Plus sold feed to Etcher Farms entities that was consumed by Etcher cattle." (App. 934, ¶ 21). There was no other evidence relied upon by the District Court or Quality in establishing this allegedly "undisputed fact."

But a close review of that affidavit testimony demonstrates that Mr. Johnson had no personal knowledge regarding whether or not Quality's feed sold to EFI and EFF between September 4, 2017 and March 19, 2018 was even *delivered* to EFI and EFF. In like manner, Mr. Johnson had no personal

[4] The District Court also stated that "Compeer does *not* dispute the general proposition that Etcher Farms *fed* their cows feed from Quality Plus[.]" (App. 933, ¶ 20 (emphasis added)). That finding is not supported by the record. It is undisputed that Quality *sold* feed to EFI and EFF between September 4, 2017 and March 19, 2018. But *no* admissible evidence has been entered into the record regarding (a) when any feed sold between September 4, 2017 and March 19, 2018 was delivered, if at all, to EFI and EFF, (b) how many cattle, if any, consumed any feed sold to EFI and EFF between September 4, 2017 and March 19, 2018, and (c) whether any of the 2,278 cattle that were liquidated in March and April of 2019 (from which the "Cattle Sale Proceeds" were generated) were the actual animals – or offspring of the same – that consumed the feed that Quality admittedly *sold* to EFI and EFF between September 4, 2017 and March 19, 2018. Compeer's acknowledgement that Quality sold some feed to EFI and EFF between September 4, 2017 and March 19, 2018 does not establish that such feed was thereafter delivered to EFI and EFF, and it certainly does not establish that such feed was consumed by any of the livestock that were liquidated in March and April of 2019.

knowledge regarding whether or not Quality's feed sold to EFI and EFF between September 4, 2017 and March 19, 2018 was *actually consumed* by any of the 2,278 cattle that were liquidated in March and April 2019. Similarly, Mr. Johnson had no personal knowledge regarding whether or not the cows that produced the milk that generated the Milk Check Proceeds in the first quarter of 2019 *actually consumed* any of the feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018.

These conclusions follow directly from Mr. Johnson's affidavit testimony, which provides in relevant part that "based on [Mr. Johnson's] experience as a nutritionist, I *believe* that feed purchased would have *generally been fed to all of the dairy cows at EFF at the time of the purchase* in order to maintain a consistent diet." (App. 439, ¶ 11 (emphasis added)). It is axiomatic that a moving party cannot establish an "undisputed material fact" in support of that party's summary judgment motion based solely upon the mere stated "belief" of an affiant who has no personal knowledge to testify as to the relevant "facts" that the affiant "believes."

In addition, Mr. Johnson stated earlier in his affidavit that he worked as a nutrition "consultant to *EFF from February 2018 through March 2019*. As part of this consulting arrangement, nutritionists from Nelson provided site

visits to the Etcher Dairies on a monthly basis[.]"[5] (App. 438, ¶ 2 (emphasis added)). Thus, the District Court was wrong when it found that Mr. Johnson was a nutritionist consultant to *EFI*, EFF, and *Elmwood*. Rather, Mr. Johnson had no connection to EFI and Elmwood whatsoever. And Mr. Johnson was only involved with EFF for a less than seven-week period during which only a small portion of Quality's potentially lienable feed was sold.

For example, the record reflects that Quality sold $239,966.74 worth of feed to *EFF* from September 25, 2017 through March 19, 2018. (App. 21-22). But Mr. Johnson began employment as a nutritionist consultant for EFF beginning on some undisclosed date in February 2018, so the only possible time period that he could provide admissible testimony about the consumption of Quality's feed at EFF was (at best) February 1, 2018 through March 19, 2018. During that less-than seven-week period, Quality sold EFF only **$45,993.92** worth of feed. (*Id.*).

Therefore, Mr. Johnson had *no* personal knowledge regarding whether *any* of the first **$193,972.82** worth of feed that Quality sold to *EFF* from

[5] Notably, Mr. Johnson does not indicate in his affidavit whether he ever personally visited EFF's farm(s) at any time between February 1, 2018 and March 19, 2018 (i.e., the time period within the "lien window" when Mr. Johnson served as EFF's nutritionist). The record, therefore, does not establish that Mr. Johnson ever personally witnessed the delivery or consumption of even one bushel of Quality's feed.

September 25, 2017 through January 31, 2018 was even delivered to EFF, much less consumed by EFF's cattle that were thereafter liquidated more than a year later in March and April 2019. *See* Iowa R. Civ. P. 1.981(5) (providing that affidavit testimony in support of summary judgment is inadmissible unless it is based on "personal knowledge, [and the testimony sets forth] . . . such facts as would be admissible in evidence, and [the affidavit affirmatively shows that] . . . the affiant is competent to testify to the matters stated therein.").

Even more glaring, the record also reflects that Quality sold $110,340.69[6] worth of feed to *EFI* from July 28, 2017 through March 19, 2018 (*see* App. 23), but, as noted, Mr. Johnson *never* served as a nutritionist consultant for *EFI*. Mr. Johnson therefore could not establish as an "undisputed material fact" that all feed that Quality sold to *EFI* from September 4, 2017 through March 19, 2018 was consumed by EFI's cattle that were liquidated in March and April 2019 because Mr. Johnson had no personal knowledge upon which to make such a statement. Iowa R. Civ. P. 1.981(5). He was therefore not competent to testify on these matters. *Id.*

[6] However, the first $27,304.07 is not lienable because this feed was purchased prior to September 4, 2017 (i.e., the earliest date that Quality can claim a lien). (Appellant's Br., pp. 52-53).

Finally, Mr. Johnson's testimony is also flawed because it also relies upon his review of a "software program called Dairy Comp 305 which is often used by dairies to assist in managing their operations" . . . and in . . . October 2019 Mr. Johnson "was provided with a flash drive by Jerry Stukerjurgen at Quality Plus Feed." (App. 438, ¶¶ 3-4). Mr. Johnson "accessed the flash drive using Dairy Comp 305 and upon review of the data[,]" Mr. Johnson arrived at his conclusions[7] stated in his affidavit. (App. 438, ¶ 5).

However, the record does not reflect who "Jerry Stukerjurgen" is, why he would have a "flash drive" identifying any admissible or relevant facts pertinent to this case, nor any information regarding whether or not the "facts" stored on this "flash drive"[8] are accurate. In sum, on the whole and in its parts, Mr. Johnson did not lay the necessary foundation to establish his affidavit testimony as admissible evidence upon which the District Court could legitimately rely when making its factual findings and legal conclusions.

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[7] Dairy Comp 305 is a software program that does *not* even track feed usage or inventory. This is so well-known in the dairy industry that the Appellate Court may take judicial notice of this fact. *Rhoades v. State*, 848 N.W.2d 22, 31 (Iowa 2014) (explaining criteria for taking judicial notice of facts).

[8] According to Mr. Johnson, Quality's "flash drive" proves that Quality fed all of EFF's and EFI's animals, but that "flash drive" only contains "data regarding EFF's dairy cows." (App. 438-439, ¶¶ 3-13). The mysterious "flash drive" contained no data regarding EFI's or Elmwood's cattle.

Accordingly, the District Court erred in finding that Mr. Johnson was competent to testify on these matters based on the District Court's above-referenced erroneous finding that Mr. Johnson had served as a nutritionist consultant for EFF, *EFI*, and *Elmwood*. The District Court's erroneous finding on this crucial issue thereafter led to the improper entry of summary judgment in Quality's favor.

The District Court merely presumed that all (or at least *enough*) of the 2,278 cattle liquidated in March and April 2019 *must have* consumed feed that Quality sold to EFI and EFF approximately 12-18 months prior to the March and April 2019 cattle sales. A mere presumption that cattle liquidated in the first quarter of 2019 *must have* eaten certain feed that was sold 12-18 months beforehand does not, by itself, establish an "undisputed material fact" in support of a moving party's summary judgment motion. And this is all the more true where, as here, this "presumption" is based exclusively upon affidavit testimony from any individual who never had any connection to EFI or Elmwood – and only a very limited connection to EFF – during the relevant time period.

Further, it "is also well-settled [that] . . . a party must plead ultimate facts and cannot rely upon *conclusions* by themselves[]" when moving for summary judgment. *Schulte v. Mauer*, 219 N.W.2d 496, 500 (Iowa 1974)

(emphasis added). Here, Quality argues that even though it is known that at least *some* of the 2,278 cattle sold in March and April 2019 could not have possibly consumed any of Quality's "lienable" feed, "[t]his does not affect the outcome . . . [t]his type of dispute over *minutiae*[9] is exactly what the District Court meant to avoid by granting summary judgment." (Appellee's Br., pp. 40-41). The record is incomplete and undeveloped regarding how many of the liquidated cattle may have consumed Quality's potentially lienable feed because EFI, EFF, and Elmwood only produced dairy records for approximately half of their nine-month time period in bankruptcy.

[9] Compeer lost millions of dollars on its loans to EFI, EFF, and Elmwood. Those losses would have been significantly less had Quality not improvidently supplied feed on credit to EFI and EFF long after it was apparent that these dairies were going to fail. If Quality had ceased its imprudent feed sales much earlier, EFI's and EFF's cattle would not have died; they would have been promptly liquidated much earlier than they were. That would have resulted in significantly less financial losses for everyone. The disputes between Quality and Compeer are not, therefore, mere "minutiae" as Quality cavalierly asserts, but instead involve a feed supply dealer asserting "superpriority" to certain proceeds without establishing any entitlement to the same under well-established summary judgment principles and after that lien claimant carelessly "racked-up" huge debts that it knew could only be collected from EFI's and EFF's lender, given EFI's and EFF's insolvency. Quality makes much ado of the legislative history of Iowa Code § 570A.1 *et seq.* while ignoring the fact that affirming the Judgment & Decree would incentivize agricultural supply dealers to make imprudent feed sales to farmers with no meaningful risk given that – according to Quality – no meaningful "tracing" needs to be accomplished to assert "superpriority" to those farmers' livestock.

Curiously, Quality did not seek any discovery from these entities in the District Court action, which could have clarified and developed the record further. Thus, the record does not reflect whether only a small number or a substantial portion of the 2,278 cattle sold in March and April 2019 may have consumed Quality's "lienable" feed sold to EFI and EFF from September 4, 2017 through March 19, 2018. Quality merely asserts that "Compeer's efforts to pick out 117 cows here, another feed supplier there, make no dent[]" in Quality's supposed entitlement to certain proceeds belonging to Compeer. (Appellee's Br., p. 34). Quality makes such arguments based on the premise that "[p]erhaps there is a case where some greater and specific proof might be required, *where the available proceeds are not so much more than the claim*. But it is emphatically not this case." (Appellee's Br., p. 41) (emphasis added); (*see also* Appellee's Br., p. 38 ("[i]f *only 25 percent* of the available Proceeds are traceable to the collateral, then the entire exercise is pointless, as there would already be enough Proceeds to cover [Quality's asserted] lien.") (emphasis added)).

But Quality's presumption (it is not anything more than that) that "there are more than enough proceeds" to satisfy Quality's asserted lien – and therefore no detailed "tracing" need be attempted – does not satisfy a moving party's summary judgment burden. In fact, Quality's presumption is very

similar to the facts in *Schulte* where a party tried to oppose a properly supported summary judgment motion by their "conclusory allegations to the effect [that the moving party] misapplied funds which, if properly allocated, would have been more than sufficient to satisfy their obligations." *Schulte*, 219 N.W.2d at 501. If a non-moving party cannot defeat summary judgment by merely asserting conclusory allegations and defenses unsupported by the record, then a *moving* party like Quality – which has a *higher* burden – cannot legitimately rely upon similar conclusory allegations unsupported by the record to *obtain* summary judgment.

In this case, Quality jumped the gun by moving for summary judgment before submitting admissible evidence – if such evidence even exists – regarding whether Quality's feed sold to EFI and EFF from September 4, 2017 through March 19, 2018 could be "traced" to Compeer's Collateral liquidated in March and April 2019. Contrary to Quality's protestations, it may not have been all that difficult to obtain such admissible evidence or to establish relevant material facts on this subject.

For example, Quality could have served requests for admissions on EFI, EFF, and Elmwood asking them to admit that all the feed that EFI and EFF purchased from Quality between September 4, 2017 and March 19, 2018 was consumed by all the cattle liquidated in March and April 2019. Quality could

have served similar requests for admissions to establish similar "material facts" regarding the feed consumption of the cows that produced the milk that generated the Milk Check Proceeds in early 2019. Quality could have deposed EFI, EFF, and Elmwood. Quality curiously did not pursue any discovery from these three defendants – perhaps out of a concern as to what it would find. Instead, Quality relied upon the flawed affidavit testimony of an individual who never laid the necessary foundation for admitting any of the "facts" asserted in his testimony into the record as admissible evidence.

In sum, Quality did not establish the necessary "undisputed material facts" in support of its motion. The District Court therefore erred in granting that motion. There were other avenues that Quality could have pursued to establish material facts in support of its claims, which did not involve an "unfathomably complex" "tracing" exercise. Quality neglected to do so, and as a result summary judgment should not have been granted in its favor. Accordingly, the Judgment & Decree should be reversed.

D. The District Court Erred in Granting Quality's Summary Judgment Motion Because There Were Multiple Genuine Issues of Material Fact Regarding Whether Quality Had Accurately Calculated its Asserted Liens.

a. Introduction.

Even if the Appellate Court does not reverse the Judgment & Decree based on Compeer's foregoing arguments, the Judgment & Decree should still

be reversed because the District Court erred in the calculation of Quality's asserted liens.

b. The District Court Erred in Approving Quality's Request That it be Granted a "Superpriority" Lien With Respect to $27,304.07 of Feed Sold Outside the "Lien Perfection" Time Period of September 4, 2017 through March 19, 2018.

As an initial matter, Compeer has already demonstrated that the District Court improperly included $27,304.07 of non-lienable charges in the $348,306.30 judgment against Compeer. (Appellant's Br., pp. 52-53). Quality does not attempt to defend on the merits the inclusion of this $27,304.07 in the judgment. Instead, Quality contends that this argument was not preserved for appellate review. (Appellee's Br., pp. 31-33).

As a threshold matter, Compeer made this argument on three separate occasions before the entry of the Judgment & Decree. First, Compeer mentioned this issue in its Memorandum of Authorities resisting Quality's motion. (App. 655-656 (arguing that Quality failed to accurately calculate its asserted liens because its invoices to EFI and EFF identified payments "which may or may not apply to lienable charges or the retail cost of feed depending upon whether the payments made between September 4, 2017 and March 19, 2018 *applied to debts that were incurred before September 4, 2017 (and therefore to unperfected lien indebtedness)*" (emphasis added)). Second,

Compeer raised this argument again at the February 5, 2021 oral argument and thereafter raised it a third time in an extensive May 4, 2021 submission made at the request of the District Court. (App. 997 at Tr., p. 13:7-13:17; App. 952, fnt. 1; App. 955, ¶¶ 8-9, fnt. 3). Accordingly, Compeer was not required to raise this argument a fourth time in a motion to reconsider.

In its May 4, 2021 Resistance and Objection, Compeer noted that Quality's proposed order filed on April 30, 2021 requested, for the first time, that a $404,118.53 judgment be entered against Compeer; Compeer resisted Quality's proposed order by arguing that Quality's $404,118.53 proposed judgment included $83,116.30 of non-lienable charges (i.e., $55,812.23 in non-lienable finance charges + $27,304.07 for non-lienable feed sold prior to September 4, 2017). (App. 952-954, ¶¶ 1-5, fnt. 1; App. 955-956, ¶¶ 8-10, fnt. 3).

The District Court responded by entering its Judgment & Decree with a $348,306.30 judgment against Compeer. (App. 976, ¶ 4). This $55,812.23 reduction from Quality's requested judgment of $404,118.53 was for the non-lienable finance charges identified in Compeer's May 4, 2021 Resistance and Objection, but the District Court did not reduce the judgment by another $27,304.07 for non-lienable feed sold prior to September 4, 2017. (*Id.*). Therefore, the District Court ruled on Compeer's argument regarding the

improper inclusion of $27,304.07 for non-lienable feed in the $348,306.30 judgment by rejecting Compeer's objections on this subject and including this $27,304.07 in the $348,306.30 judgment against Compeer. (*Id.*).

The District Court's "short shrift" treatment of Compeer's objection to including this $27,304.07 in the $348,306.30 judgment was nonetheless sufficient to preserve the issue for appellate review. This conclusion follows because a detailed analysis of every argument is not required for an error to be preserved. Iowa law provides that "[t]he claim or issue raised does not actually need to be used as the basis for the decision to be preserved, *but the record must at least reveal the court was aware of the claim or issue and litigated it*." *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002) (emphasis added).

The District Court clearly read Compeer's May 4, 2021 Resistance and Objection[10] because it incorporated many of Compeer's objections into the Judgment & Decree. "Where the trial court's ruling . . . necessarily decides [an] issue [before the court], that is sufficient to preserve error." *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012). The District Court's decision to reduce Quality's judgment by $55,812.23 for the non-lienable finance charges

[10] This was a supplemental submission that the District Court expressly requested.

but not reduce the judgment by another $27,304.07 for the charges incurred before September 4, 2017 demonstrates that the District Court evaluated Compeer's May 4, 2021 Resistance and accepted some, but rejected other, objections made by Compeer in that Resistance.

Finally, Quality's error preservation argument is too narrow. As referenced above, error preservation pertains to "issues" that were raised before the District Court; a district court decision does not need to extensively evaluate individual "sub-arguments" raised by a litigant on each specific issue to preserve error. *See Sibley State Bank v. Zylstra*, No. 19-0126, 2020 WL 4814072, fnt. 16 (Iowa Ct. App. Aug. 19, 2020). Compeer thoroughly litigated the *issue* of the calculation of Quality's asserted liens, and the District Court subsequently ruled on that broad issue. Therefore, Compeer's specific objection to the inclusion of this $27,304.07 for non-lienable feed sold prior to September 4, 2017 in the $348,306.30 judgment was preserved for appellate review.

c. The District Court Erred in Not Deducting From the Judgment at Least $25,000.00 That Quality Received in Adequate Protection Payments During the Consolidated Bankruptcy Case.

Quality also argues that its $348,306.30 judgment should not be reduced on account of at least $25,000.00 of adequate protection payments that Quality received during the pendency of the Consolidated Bankruptcy

Case. (Appellee's Br., pp. 58-60). Quality relies exclusively upon one case from a bankruptcy court in Alabama in support of its argument that adequate protection payments should not be credited to a secured portion of a creditor's claim. (*Id.*, pp. 59-60). The District Court erred in dismissing an entire body of case law that holds otherwise.

Specifically, "Congress intended the concept of adequate protection for . . . protecting the secured claim holder from *diminution of the value of the collateral securing the debt*." *Matter of Orlando*, 53 B.R. 245, 246-47 (Bankr. W.D. Mo. 1985) (emphasis added). As such, adequate protection payments are to protect secured creditors holding secured claims, not those with an unsecured claim.[11] *Id.* "The majority of courts have held that payments intended to provide adequate protection should be credited towards reducing the *secured* portion of the creditor's total claim *where there is no depreciation in the value of collateral*." *In re Weinstein*, 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998) (citing cases) (emphasis added).

Applying adequate protection payments to an unsecured portion of a claim "is simply not possible" because "that would be an unauthorized transfer under 11 U.S.C. § 549 and in violation of the prohibition against

[11] By refusing to credit its adequate protection payments to its alleged "superpriority" secured claims, Quality is effectively applying those payments to its unsecured claims against EFI and EFF.

paying unsecured creditors in a reorganization other than through a Plan." *In re Spacek*, 112 B.R. 162, 165 (Bankr. W.D. Tex. 1990).

A creditor may not apply adequate protection payments to an unsecured portion of its claim because the creditor's position would improve in relation to other creditors in violation of the purpose of adequate protection and the bankruptcy code. *See In re Reddington/Sunarrow Ltd. P'ship*, 119 B.R. 809, 814 (Bankr. D.N.M. 1990) (stating that "an unsecured creditor is entitled to be protected *to the extent its collateral is depreciating*, but its position is not to be improved in relations to other creditors." (emphasis added)). In *In re Markos Gurnee Partnership*, a court found that a creditor was required to credit $174,000.00 of prior adequate protection payments against that creditor's *secured* claim because the adequate protection payments were not actually "needed to offset a decline in the value" of the creditor's *secured* interest. 252 B.R. 712, 719-20 (Bankr. N.D. Ill. 1997).

In its three-sentence treatment of Compeer's adequate protection arguments, the District Court made no relevant findings regarding whether Quality's claimed "collateral" had depreciated during the Consolidated Bankruptcy Case. Such a finding was required – as stated by the foregoing authorities – before the District Court could properly determine how Quality's

not-yet fully disclosed adequate protection payments should have been applied to Quality's asserted "secured lien."

d. There Were Multiple Genuine Issues of Material Fact Regarding the "Acquisition Prices" of the Livestock That Quality Claims its Asserted Liens Attached to.

Quality's "acquisition price" argument is interesting because, for the first time, Quality attempts to cite to the record in support of its unsubstantiated assertion that all (or at least some unknown but still "more than a sufficient amount") of the 2,278 cattle liquidated in March and April of 2019 had no "acquisition price." (Appellee's Br., pp. 54-56). However, a close evaluation of Quality's four citations to the record demonstrates that Quality has no real evidentiary support for this argument. Compeer will address each of Quality's "record citations," in turn.

"First, this is a dairy, where a necessary feature of milk production is regular calf production. (QPF SUF ¶ 4). Second, it is clear there were calves on the farm because the Etcher Farms regularly purchased (from QPF) 'calf starter' feed. (QPF SUF ¶¶ 5–6)." (Appellee's Br., p. 55).

To the limited extent that Quality's citation to the record actually supports Quality's first point, the fact that dairies produce calves does *not* establish that all or even most of the 2,278 cattle liquidated in March and April of 2019 had no "acquisition price." Rather, the record is entirely unclear on

this subject. Further, the fact that EFI and EFF sometimes purchased "calf starter" from Quality does not mean that all or even most of the 2,278 cattle liquidated in March and April of 2019 had no "acquisition price."

Quality next asserts: "Third, an affidavit sworn by the Etcher Farms' nutritionist stated as much. (QPF SUF ¶ 7)." (Appellee's Br., pp. 55-56). That statement misstates the record because Mr. Johnson *never* personally served as EFI's or Elmwood's nutritionist. He therefore cannot be credibly cited for the proposition that all or even most of the 2,278 cattle liquidated in March and April of 2019 had no "acquisition price."

Finally, Quality concludes: "Fourth, in Compeer's own Motion for Summary Judgment, it submitted Dairy Herd Schedules that almost always report 100 percent of the cattle on the farms were 'self-raised.' (Exhibit A to O'Connor Affidavit pp. 1–6)." (Appellee's Br., p. 56). The records that Quality cites for this proposition are incomplete, as they only go through September 30, 2018. That incomplete set of records simply does not establish that all or even most of the 2,278 cattle liquidated in March and April of 2019 had no "acquisition price."

In sum, Quality never satisfied its burden of showing that the 2,278 animals that were liquidated in March and April 2019 had no "acquisition price." This materially affects this case because Quality can only claim a

"superpriority" lien "to the extent of the difference between the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater." Iowa Code § 570A.5(3).

E. Conclusion.

The Appellate Court should reverse the Judgment & Decree because there are multiple genuine issues of material fact that precluded the District Court from properly granting Quality's motion. However, instead of remanding the case back to the District Court for further discovery, for the reasons set forth below the Appellate Court should order the District Court to enter judgment in favor of Compeer on its cross-motion.

II. The Appellate Court Should Reverse the District Court's Denial of Summary Judgment in Favor of Compeer and Instead Order the District Court to Grant Compeer's Cross-Motion Because Quality Failed to Satisfy its "Tracing" Obligations Under Iowa Code § 570A.1, *et seq.*; As a Result, Compeer is Entitled to All of Compeer's Collateral as the Etcher Entities' Senior, Secured Lender.

A. Quality's Attempts to Distinguish the *Citizens Savings Bank v. Miller* Case Are Unpersuasive.

Compeer has already addressed how *Citizens Savings Bank v. Miller*, 515 N.W.2d 7 (Iowa 1994) should be applied to grant Compeer the relief that it seeks on this appeal. (Appellant's Br., pp. 61-68). In response, Quality

attempts to distinguish *Citizens* on a number of grounds, all of which are unpersuasive. (Appellee's Br., pp. 66-70).

Quality first asserts that *Citizens* is meaningfully distinguishable from this appeal because in this case there are "many thousands of cows," Quality allegedly fed all of EFI's and EFF's cows, and only some of Quality's "collateralized cows died before sale." (Appellee's Br., p. 68). However, nothing in *Citizens'* holding suggests that a party asserting "superpriority" only needs to satisfy "tracing" obligations when only a few cows are involved. Further, it has already been established that Quality completely misstates the record when it asserts without evidentiary support that Quality fed all of EFI's and EFF's cows. Finally, it is simply unknown from the limited record whether some or all of Quality's allegedly "collateralized cows died before sale." Thus, Quality fails to establish any meaningful "factual" or "legal" distinctions between this case and *Citizens*.

Accordingly, the Appellate Court should follow and apply *Citizens*, and remand this case with instructions to the District Court to dismiss Quality's Claims because Quality has not and cannot "trace" its purported liens to Compeer's Collateral.

B. Even if the Appellate Court Does Not Remand the Case and Order the District Court to Grant Compeer's Cross-Motion in Its Entirety, the Appellate Court Should Still Order Quality to Turn Over $113,553.31 of the Milk Check Proceeds.

Finally, even if the Appellate Court does not grant Compeer all of the relief that it seeks with respect to this second issue on appeal, the Appellate Court should still order Quality to deliver $113,553.31 of the Milk Check Proceeds to Compeer within ten (10) days of the Appellate Court's issuance of its decision on this appeal. Quality argues that it does not matter whether its judgment is paid out of Elmwood's $113,553.31 of the Milk Check Proceeds or some other funds held by Compeer, and for that reason this $113,553.31 of Milk Check Proceeds should not be returned to Compeer. (Appellee's Br., pp. 70-71). However, if the Appellate Court reverses the District Court's entry of summary judgment in favor of Quality but does not order the District Court to enter judgment in favor of Compeer on its cross-motion, then the issue of who should hold Elmwood's $113,553.31 of the Milk Check Proceeds on remand very much becomes an issue.

Quality never supplied "lienable" feed to Elmwood, and *none* of Quality's UCC financing statements identify Elmwood as a debtor against whom Quality sought to perfect an agricultural supply dealer's lien. (App. 172-199). As a result, Quality cannot and does not claim an agricultural supply dealer's lien in any Elmwood property. Accordingly, Quality should

not be permitted to hold these proceeds on remand in the event that the Appellate Court reverses the District Court's entry of summary judgment in favor of Quality but does not order the District Court to enter judgment in favor of Compeer on its cross-motion.

CONCLUSION

Based upon all of the arguments raised and legal authorities cited herein and in Compeer's initial appellate brief, Compeer respectfully requests that the Appellate Court grant all of the relief requested in Compeer's initial appellate brief.

Dated: October 19, 2021

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CERTIFICATE OF COMPLIANCE

The undersigned certifies:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 6,999 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 14 pt. Times New Roman.

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CERTIFICATE OF COSTS

The attorneys for Defendant-Appellant certify that the incurred costs for printing Appellant's Final Reply Brief for service on the non-registered/non-efiling parties listed below was $64.00:

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on October 19, 2021, I caused the foregoing Appellant's Final Reply Brief to be filed with the Iowa Supreme Court Clerk using the Electronic Document Management System (EDMS) which will send notification of such filing to the attorneys(s) of record who are registered with EDMS.

Also, the foregoing pleading has been mailed to the non-registered/non-efiling parties identified below at their respective mailing addresses:

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