

IN THE SUPREME COURT OF IOWA
No. 21-0774
Monroe County Case No. EQEQ009517

QUALITY PLUS FEEDS, INC., Plaintiff–Appellee,
v.
COMPEER FINANCIAL, FLCA, Defendant–Appellant,

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
THE HONORABLE JUDGE DANIEL P. WILSON,
DISTRICT COURT JUDGE

APPELLEE’S AMENDED APPLICATION FOR FURTHER REVIEW
OF THE DECISION OF THE IOWA COURT OF APPEALS
FILED APRIL 27, 2022

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QUESTIONS PRESENTED FOR REVIEW

1. What exactly must an agricultural supply dealer prove to be entitled to a superpriority lien as provided in Iowa Code chapter 570A?
2. Did the Court of Appeals err by (a) failing to answer the question above and (b) relying upon the Appellant's mere speculation and conjecture to reverse the District Court's order granting summary judgment to Appellee?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

The Court of Appeals has entered a decision in conflict with past decisions of this Court. *See* Iowa R. App. P. 6.1103(1)(b)(1). The Iowa Supreme Court, like all other courts to review Iowa Code chapter 570A, has rejected any interpretation of the statute that would impose impractical and cumbersome prerequisites upon a supply dealer's right to a superpriority lien. *See Oyens Feed and Supply, Inc. v. Primebank*, 879 N.W.2d 853, 865 (Iowa 2016) [hereinafter *Oyens II*]; *Oyens Feed and Supply, Inc. v. Primebank*, 808 N.W.2d 186, 194 (Iowa 2011) [hereinafter *Oyens I*]; *see also In re Schley*, 565 B.R. 655, 661 (Bankr. N.D. Iowa 2017) [hereinafter *Schley II*]; *In re Schley*, 509 B.R. 901, 914 (Bankr. N.D. Iowa 2014) [hereinafter *Schley I*]. Yet the Court of Appeals has done precisely this by reversing the District Court's well-reasoned grant of summary judgment and remanding for a "complex and fact-intensive exercise" solely to resolve speculative and immaterial questions raised in resistance, contrary to well-established principles of summary judgment. *See* Iowa R. Civ. P. 1.981(5). The Court of Appeals decision threatens the continued viability of Iowa's agricultural lien law, and thus the continued viability of struggling Iowa farms, also raising an issue of broad public importance this Supreme Court should ultimately determine. *See* Iowa R. App. P. 6.1103(1)(b)(4).

BRIEF

Iowa law provides that a feed supplier's lien is superior to a bank's lien. *See* Iowa Code § 570A.3. The legislature wrote this law in response to the 1980s farm debt crisis to incentivize feed suppliers to extend supply on credit to struggling farmers, giving the supplier security so that a farmer had what they needed to keep their animals alive despite being underwater with their bank. *See* Wyatt P. Peterson, *Revised Article 9 and Agricultural Liens: An Iowa Perspective*, 8 Drake J. Ag. L. 437, 445 (2003); Thomas E. Salsbery & Gale E. Juhl, *Chapter 570A Crop and Livestock Lien Law: A Panacea or Pandora's Box*, 34 Drake L. Rev. 361, 363, n. 14 (1985). Accordingly, courts to examine the statute have looked to this legislative history, this purpose of the statute, to interpret its sometimes-ambiguous language. Thus, to the question of, "what proof is required to establish a lien?", it must not be answered with an unfathomably complex retracing of each kernel of feed to each cow at the trough, but with a reasonable approach that recognizes the practical realities of farming and feed supply as well as the unique legislative history of this statute. *Oyens II*, 879 N.W.2d at 865; *Oyens I*, 808 N.W.2d at 194; *see also Schley II*, 565 B.R. at 661; *Schley I*, 509 B.R. at 914.

The Iowa District Court interpreted this statute and followed this authority to enter summary judgment in favor of the feed supplier, Quality Plus Feeds, Inc. (“QPF”), against the farms’ bank lender, Compeer Financial, FLCA (“Compeer”). The District Court reasoned there are two, “simple requirements” to obtain the lien: (1) “that a farmer purchase feed from an agricultural supply dealer,” and (2) “that livestock consume the feed.” (District Court Ruling ¶ 18). *See* Iowa Code §§ 554.9203(6), .9315(1)(a)–(b), 570A.3. The legislature, given the language chosen and its “goal of promoting suppliers providing feed to struggling farmers on credit,” must have intended this “to be a straightforward and uncomplicated process.” (District Court Ruling ¶¶ 18–19). Accordingly, the District Court correctly found, “section 570A.3 does not require a meticulous showing of the path from feed to a specific cow.” (District Court Ruling ¶ 19). As QPF had clearly established “a reasonable link between the feed provided . . . and the livestock,” the District Court awarded it that small share of the livestock’s total cash proceeds to which it was entitled. (District Court Ruling ¶¶ 20–21).

I. THE COURT OF APPEALS RELIED ON SPECULATION TO REJECT SUMMARY JUDGMENT.

The Court of Appeals reversed. It did so by refusing to interpret the statute, refusing, as it put it, to “resolve nuances of the applicability of

various sections of the Iowa Code related to priority between competing perfected security interests and agricultural-supply-dealer liens.” (Opinion of Court of Appeals p. 4). Instead, it deferred, because “[n]avigating the competing priority rules in Iowa Code chapters 554 and 570A is a somewhat complex and fact-intensive exercise” in which it did not want to engage on appeal from summary judgment. (Opinion of Court of Appeals p. 5). The Court of Appeals reversed and remanded for further factfinding only because of the blatant speculation of Compeer, which had posited unsupported absurdities such as, “Maybe the farms resold the feed and starved their cattle instead,” and, “Maybe the farms sold the cows that did eat QPF’s feed, purchased cheaper cattle, fed them something else, and pocketed the difference.”¹ These “questions left unanswered,” the Court of Appeals concluded, were just too many to grant summary judgment. (Opinion of Court of Appeals p. 5). These questions were not asked based on existing facts in the record, they were hardly even inferences based on those facts; they were, unabashedly, speculation and conjecture. *But see Castro v. State*, 795 N.W.2d 789, 795 (Iowa 2011) (“An inference to create a triable

¹ As the Court of Appeals does not post its past arguments, but only its livestreams, these are necessarily paraphrased. What counsel for Quality Plus does recall, vividly, is counsel for Compeer asking questions such as these and then adding, rhetorically, “Am I speculating? Absolutely, but *they* [gestures towards opposing counsel’s table] cannot prove it didn’t happen.”

issue in response to a motion for summary judgment cannot be based on conjecture or speculation.” (Citing *Blackston v. Shook & Fletcher Insulation Co.*, 764 F.2d 1480, 1482 (11th Cir. 1985) (“In considering a motion for summary judgment, . . . [a]ll reasonable inferences arising from the undisputed facts should be made in favor of the nonmovant, but an inference based on speculation and conjecture is not reasonable.”)); *Banwart v. 50th Street Sports, L.L.C.*, 910 N.W.2d 540, 545 (Iowa 2018) (“[A]n inference is not legitimate if it is “based on speculation or conjecture.” Thus, “[s]peculation is not sufficient to generate a genuine issue of fact.” (First quoting *McIlravy v. N. River Ins.*, 653 N.W.2d 323, 328 (Iowa 2002), then quoting *Hlubeck v. Pelecky*, 701 N.W.2d 93, 95 (Iowa 2005))).

In remanding the matter, the Court of Appeals did not think it was requiring “burdensome and intensive recordkeeping documenting a separate lien on each animal for the amount of feed that animal consumed,” but if it has not done so, then it has left the parties completely without guidance as to how to proceed. Compeer, for its part, has consistently demanded and will be certain to demand on remand that QPF present incontrovertible proof that each and every one of those cows milked and sold in 2019—which is to say, literally *thousands* of cows—had come up to the feed trough when QPF provided the farms with feed on credit in 2017 and 2018. (And, further, that

it determine, for each and every cow, whether it was born on the farm or purchased, and then, sold, and for how much.)

There is no conceivable reason to require such “tracing” in this case. The farms in question, the Etcher Farms, were regular customers of QPF. (App. 290–291, ¶¶ 2–5). QPF provided the farms with feed and nutrients for all stages of their operation, calf to dry cow. (App. 291, ¶ 6); (App. 377–424). When the farms were struggling, QPF provided them—on credit—hundreds of thousands of dollars of feed in twice-monthly deliveries. (App. 291–292, ¶¶ 11–12); (App. 377–424). The farms, after all, had thousands of cattle to feed, (App. 633 ¶ 13), and QPF was their primary feed supplier, (App. 886 ¶ 34 (response)). There is no reason to suspect that the farms did anything other with this feed than give it to their cows, and their nutritionist agreed that all cows would be getting the same feed for dietary consistency. (App. 291, ¶ 7). Compeer has never identified any factual support for its *speculation* that the farms may not have fed all their cows the feed, that they may have eaten it themselves or sold it to others, presumably. It was—it is—undisputed that all cows on the farms at the time QPF was supplying feed on credit consumed that feed.

The next question then, is what happened to these cows; are they the cows that generated the proceeds, or did the farms replace them with new

cows? The total identified proceeds are in the amount of \$1,345,212.60, cash, from the sale of milk and, ultimately, the liquidation of the entire herd. (App. 293–94, ¶¶ 17–24). This simplifies the analysis, as there is no need to determine whether this or that cow was sold, when all were sold. At any rate, the evidence shows Compeer purchased exactly 117 cows prior to the sale. (App. 882–883, ¶¶ 882–83). If we draw the inference in favor of Compeer and assume these cows did not eat feed supplied on credit, and assume further they were not purchased with the cash proceeds of other collateralized cows, then we should subtract them from the total proceeds to reduce that available by approximately \$35,100—or 2.6 percent of the total. (App. 52–53, 878–79). QPF’s lien is a mere \$348,306.30. (App. 976, ¶ 4). This is the folly of Compeer’s demand and now, the Court of Appeals’ decision. For this factual investigation to produce a meaningful result, for the resolution of the dispute to materially impact the outcome, *see Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015) (“An issue of fact is ‘material’ only when the dispute involves facts which might affect the outcome of the suit, given the applicable governing law.”) (Quoting *Wallace v. Des Moines Indep. Cmty. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008)).), seventy-six percent of the proceeds would have to have been derived from something *other* than cattle fed by QPF. If only a quarter of the proceeds

came from the milking and sale of QPF-fed cows, it would cover QPF's entire lien. Which is exactly why the District Court entered summary judgment—the farms just could not have experienced that kind of turnover in livestock. (App. 934, ¶ 21).

The final questionable issue of fact identified by the Court of Appeals was acquisition price, which is to ask, were the cows born on the farm or were they purchased, as the latter would require further calculation of the lien amount. *See* Iowa Code § 570A.5(3); *Oyens II*, 879 N.W.2d at 865–66. Except for the 117, the record establishes the farms raised their own cows. They are a dairy, which is by definition in the business of making baby cows to get the mothers' milk. An obvious fact affirmed by the nutritionist. (App. 291, ¶ 7). Moreover, we know the farms had calves, because QPF sold them “calf starter” feed, (App. 291, ¶¶ 5–6), and because the farms themselves repeatedly reported in the bankruptcy that 100 percent of their cattle was “self-raised,” (App. 676–681). Once again, the only response Compeer had was speculation—perhaps the farms made purchases they did not report, perhaps, but this did not create a *genuine* issue of fact. *See* Iowa R. Civ. P. 1.981(5) (“An adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise

provided in this rule, *must set forth specific facts* showing there is a genuine issue for trial.”).

II. THE COURT OF APPEALS MADE AN UNTENABLE INTERPRETATION OF THE STATUTE.

In remanding this case, the Court of Appeals not only disregarded the underlying facts and the fundamental principles of summary judgment, it disregarded the legislature’s intent. As the District Court correctly found, this case “really comes down to enforcement of legislative determinations that have been made in Iowa granting priority to agricultural supply dealers, even over the priority granted to other secured lenders to a debtor.” (App. 942, ¶ 41). The bottom line is the parties disagree as to how to interpret this statute. The Court of Appeals erred in refusing to answer the question, and, in doing so, implicitly supporting Compeer’s interpretation.

On further review, this Court need only apply its well-established principles of statutory interpretation to vacate the Court of Appeals and restore the decision of the District Court. “The purpose of statutory interpretation is to determine the legislature’s intent.” *Doe v. Iowa Dept. of Human Services*, 786 N.W.2d 853, 858 (Iowa 2010). “The words used in the statute evidence that intent.” *State v. White*, 563 N.W.2d 615, 617 (Iowa 1997). The court must “seek to determine the fair and ordinary meaning of the statutory language at issue.” *Commerce Bank v. McGowen*, 956 N.W.2d

128, 133 (Iowa 2021). However, in giving “the language of the statute its fair meaning,” the court is not to “extend its reach beyond its express terms.” *In re Marshall*, 805 N.W.2d 145, 158 (Iowa 2011). Instead, the court is to “read a statute as a whole and give it ‘its plain and obvious meaning, a sensible and logical construction.’” *Gardin v. Long Beach Mortg. Co.*, 661 N.W.2d 193, 197 (Iowa 2003) (quoting *Hamilton v. City of Urbandale*, 291 N.W.2d 15, 17 (Iowa 1980)) (emphasis added). “Additionally, legislative intent is derived not only from the language used but also from ‘the statute’s subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of the various interpretations.’” *State v. Dohlman*, 725 N.W.2d 428, 431 (Iowa 2006) (quoting *Cox v. State*, 686 N.W.2d 209, 213 (Iowa 2004)). An “impractical or absurd” result, particularly one inconsistent with the purpose of the statute, must be avoided at all costs. *See id.*

To determine the purpose of the statute, the object sought to be accomplished, and the underlying policies, the court should consider its legislative history. *See Doe*, 786 N.W.2d at 858. The legislative history of this statute has been thoroughly explored by courts and commentators, and its absence from the Court of Appeals opinion—and Compeer’s briefing—is telling. What they avoided is that Iowa’s crop and livestock lien law is a

direct result of the 1980s farm debt crisis, after which the legislature implemented changes meant to protect farmers in the event of a future disaster. *See* Salsbery & Juhl, *Chapter 570A*, 34 Drake L. Rev. at 363, n. 14 (1985); *Schaefer v. Putnam*, 841 N.W.2d 68, 76 (Iowa 2013) (describing the history of the farm debt crisis, its consequences, and the response of stakeholders and the legislature). While the present troubles facing farmers are not themselves an issue before the Court, suffice to say that the protections of chapter 570A are more important now than ever.

To protect farmers by ensuring they had access to credit, the legislature had to balance the interests of the competing stakeholders, giving each certain benefits in a fair compromise. *In re Crooked Creek Corp.*, 427 B.R. 500, 506 (Bankr. N.D. Iowa 2010), *overruled on other grounds by Oyens I*, 808 N.W.2d at 192–94. The bank lenders got the benefit of greater notice in the form of serial dealer financing statements, while the dealers got the benefit of superpriority, and the farmers got access to credit. *See In re Shulista*, 451 B.R. 867, 881 (Bankr. N.D. Iowa 2011); Salsbery & Juhl, *Chapter 570A*, 34 Drake L. Rev. at 387. In this way, The legislative history tells us exactly what the legislature intended, which is, in short, “**to encourage a fluid feed market without burdening cooperatives and farmers,**” *Oyens I*, 808 N.W.2d at 194 (emphasis added), and thereby

address the catch-22 facing leveraged farmers. Salsbery & Juhl, *Chapter 570A*, 34 Drake L. Rev. at 363–64 (describing how an overleveraged farmer would be unable to obtain financing, so unable to plant his crops, so would be unable to pay his bills, and so on). Any interpretation must advance that intent.

Unfortunately, the Court of Appeals decision rejects this intent, sends this case back to the District Court for senseless, impractical factfinding so laborious that no feed supplier will attempt to assert a lien again. This was Compeer’s goal all along, having stated as much in their Reply Brief, footnote 9: “Compeer lost millions of dollars on its loans to EFI, EFF, and Elmwood. *[Compeer’s] losses would have been significantly less had Quality not improvidently supplied feed on credit* [A]ffirming the Judgment & Decree would incentivize agricultural supply dealers to make imprudent feed sales to farmers” Feed sales are “imprudent” only in the eyes of Compeer; in the eyes of the farmer, it is a lifeline. The legislature sided with the farmers. The Court of Appeals was not entitled to disagree.

In addition to the legislative history, the textual canons of statutory interpretation also reveal the problems inherent in Compeer’s position. Specifically, Compeer’s statutory interpretation is based on a strained reading of an isolated phrase: “livestock consuming the feed,” from Iowa

Code section 570A.3(2). Relying on this phrase alone, Compeer violates the canon of reading the statute as a whole. *See Gardin*, 661 N.W.2d at 197. The statute states:

An agricultural supply dealer who provides an agricultural supply to a farmer shall have an agricultural lien as provided in section 554.9102. . . . The lien applies to all of the following:

1. Crops which are produced upon the land to which the agricultural chemical was applied, produced from the seed provided, or produced using the petroleum product provided. . . .
2. Livestock consuming the feed. However, the lien does not apply to that portion of the livestock of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the feed.

(Emphases added). To read the phrase “livestock consuming the feed” to mean attachment cow-by-cow would also require the Court to read subsection 1, “crops which are produced,” to mean attachment bean-by-bean. Clearly, the legislature was not articulating such a process, but was setting out a scheme of general attachment, shown by the introductory phrase, “applies to all” of the crops or livestock. *Id.* Yet the Court of Appeals decision, while *stating* “[t]his would not require burdensome and intensive recordkeeping documenting a separate lien on each animal for the amount of feed that animal consumed,” in effect requires just that.

Further, Compeer’s interpretation asks the Court to extend, enlarge, and change the meaning of the statute beyond its express terms. *See In re*

Marshall, 805 N.W.2d at 158. Nowhere in section 570A.3 does the legislature impose the *specific-cow-by-specific-cow* tracing requirement Compeer asserts. Again, the “fair and ordinary meaning” of the legislature’s choice of word, “livestock” (and not, “each cow”), implies attachment in the plural, not the singular. *See Commerce Bank*, 956 N.W.2d at 133. This is similar to the decision of the Iowa Court of Appeals in *Adair County Farm Service v. Creston Feed & Grain, Inc.*, a case in which an input dealer claimed an interest in grain crop from a variety of fields. 390 N.W.2d 608, 609 (1986). The bank there argued the dealer could not establish an interest unless it could “trace the grain so as to identify which fields produced the grain that was purchased by the various elevators.” *Id.* at 611. The court rejected the argument, as the evidence established attachment to “all crops,” so specific tracing of supply-to-crop-to-elevator was not required. *See id.* This is the only practical interpretation.

Finally, Compeer’s interpretation is not “sensible” or “logical.” *See Gardin*, 661 N.W.2d at 197. Again, the court must look to “the statute’s subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of the various interpretations.” *Cox*, 686 N.W.2d at 213. Here: (A) The subject matter is livestock feed, which as the Iowa Supreme Court has noted before,

“is often supplied on an ongoing basis” and requires flexibility. *Oyens I*, 808 N.W.2d at 194. (B) The purpose is the protection of the supply dealer, who would not have access to the information Compeer requires. (C) The policy is a fluid feed market, which would immediately dam up if feed dealers were forced to choose between the burdens Compeer requests and taking the very high risk of nonpayment. (D) The remedy is a lien, but a lien only available with such detailed records may as well not exist. And (E), the consequence of Compeer’s interpretation would, as the District Court rightly stated: “gut protections for agricultural suppliers. This would discourage those suppliers from working with farmers, both financially troubled famers and more stable farmers.” (App. 941-942, ¶ 40). In contrast, the consequence of QPF’s interpretation is that feed dealers are encouraged to supply to underwater farms, giving them the chance at turning things around. In sum, if Compeer’s construction is the “literal” one, then it is “absurd,” “unjust,” “inconsistent with the purposes and policies of the act,” and must be disregarded. *Walden*, 870 N.W.2d at 848 (quoting *Sherwin-Williams Co.*, 789 N.W.2d at 427). The Court of Appeals failed to consider the practical impact of its decision, not just for this case, but for every farmer in the State of Iowa.

By supporting Compeer and remanding this case, the message the Court of Appeals sent is clear: the right to an agricultural lien in Iowa is a dead letter. Because what good is a right that cannot be established? This is exactly why in practically every case addressing chapter 570A, the court has ruled in favor of a flexible approach that encouraged the feed market. *Schley II*, 565 B.R. at 661; *Schley I*, 509 B.R. at 914; *Oyens II*, 879 N.W.2d at 857; *Oyens I*, 808 N.W.2d at 195. Each court has acknowledged the legislative history, the goals to be accomplished. None have imposed a strict, literal interpretation on isolated words.

The District Court followed these courts and held the statute, based on its “undemanding language” and its “goal of promoting suppliers providing feed to struggling farmers on credit,” does not “require a meticulous showing of the path from feed to a specific cow.” (App. 933, ¶ 19). In fairness to Compeer and banks like it, the District Court did hold that a party asserting a lien must show a reasonable link between the feed provided and the livestock. (App. 933, ¶ 19). This is a fair outcome for both parties, and it is supported by the statutory language. The Court of Appeals, at best, dodged the question, and at worst, it adopted Compeer’s strained reading of the statute. This Court should vacate the Court of Appeals and affirm the judgment of the District Court.

III. IF NOTHING ELSE, THE COURT OF APPEALS ERRED IN RESTORING COMPEER'S COUNTERCLAIMS AND MISCELLANEOUS AFFIRMATIVE DEFENSES.

As a final matter, there was simply no reason to reinstate Compeer's affirmative defenses and counterclaims, which the Court of Appeals did without any meaningful analysis. Each has been thoroughly disproved, separate and apart from the other issues in the case.

A. The Amount of the Lien was Correctly Calculated.

With respect to the amount of the lien, the District Court foreclosed on the Proceeds subject to the action and, as Compeer holds the Cattle Sale Proceeds and had disputed the right to the Milk Check Proceeds, entered judgment against Compeer in the amount of \$348,306.30 plus court costs. (App. 976, ¶ 4). This amount is indisputably the retail cost of the feed, before any finance charges, fees, interest, or other applicable amounts, and after applying partial payments to the principal debt in the manner most favorable to Compeer. *See* Iowa Code § 570A.3. The District Court made an independent judgment as to the amount lienable under Iowa law, and it should have been affirmed.

B. The District Court Correctly Disregarded Adequate Protection Payments.

As the District Court correctly noted, nowhere in the law governing adequate protection payments does it "state that adequate protection

payments affect the value of a lien.” (App. 935, ¶ 24). “The purpose of providing ‘adequate protection’ is to insure that a secured creditor receives in value essentially what he bargained for.” *In re Sharon Steel Corp.*, 159 B.R. 165, 169 (Bankr. W.D. Pa. 1993). These payments are permitted by 11 U.S.C. § 361(1) “to the extent that the . . . use, sale, or lease [of the collateral] . . . results in a decrease in the value of such entity’s interest in such property.” In other words, the farms were permitted to use the cows, milk them, breed them, sell them, etc., and QPF was entitled to adequate protection payments in exchange. But these payments, intended by Congress “to preserve the secured creditor’s position as it existed at the time of the filing,” *Matter of Melson*, 44 B.R. 454, 456–57 (Bankr. D. Del. 1984), do not set off the lien, as doing so would lessen the secured creditor’s position. *See In re Cason*, 190 B.R. 917, 927 (Bankr. N.D. Ala. 1995). The District Court was correct: “Compeer does not resist or make attempt to defend this affirmative defense.” (App. 935, ¶ 24). Yet, because of the Court of Appeals, absent this Court’s intervention, the parties are left to contend with it again.

C. The Liens were Exempt from the Bankruptcy Stay.

That leaves only one affirmative defense left, which has to do with the automatic stay imposed in bankruptcy. The District Court correctly determined that QPF was permitted to file for post-petition perfection

despite the automatic stay, as is expressly permitted by 11 U.S.C. § 362(b)(3). (App. 935, ¶ 23). This statute states, “The filing of a [bankruptcy] petition . . . does not operate as a stay . . . of any act to perfect . . . an interest in property to the extent that the trustee’s rights and powers are subject to such perfection under section 546(b)” 11 U.S.C. § 362(b)(3). The referenced § 546(b) creates an exception to the bankruptcy trustee’s avoidance powers for “any generally applicable law that permits perfection of an interest in property be effective against an entity that acquires rights in such property before the date of such perfection.” 11 U.S.C. § 546(b). In short, a bankruptcy automatic stay does not apply to superpriority liens. *See In re Aznoe Agribiz, Inc.*, 416 B.R. 755, 766 (Bankr. D. Mont. 2009) (perfection of ag lien does not violate the automatic stay). *See also In re TNT Farms*, 226 B.R. 436, 445 (Bankr. D. Idaho 1998) (accord). Yet still the Court of Appeals reinstated this defense.

D. The Counterclaims are Plainly Meritless.

The last issue raised in QPF’s Motion for Summary Judgment was Compeer’s counterclaims. The District Court issued a thorough analysis of Compeer’s counterclaims independent of its ruling on the underlying priority issue. The simple fact is—regardless of priority—the parties *agreed* to hold the Milk Check Proceeds in a trust account pending resolution of the dispute.

(App. 293-294, ¶¶ 21–22). Accordingly, there is no mal intent, nothing unjust in following through. *See Endress v. City of Cedar Rapids*, 922 N.W.2d 524, 577 (Iowa 2019) (setting forth elements of unjust enrichment); *In re Estate of Bearbower*, 426 N.W.2d 392, 394 n. 1 (Iowa 1988) (setting forth elements of conversion). Essentially, Compeer asked the Court to hold that anytime there is a dispute over priority, the victor also is entitled to recovery in tort or equity. This is ridiculous and was appropriately denied. Yet, the Court of Appeals reinstated them, and all of Compeer’s affirmative defenses, without any analysis.

CONCLUSION

The Court of Appeals decision must be vacated, and the District Court’s judgment reinstated. The District Court, closest to the voluminous record, closest to the practicalities of a trial in this matter, entered a well-reasoned decision that dutifully considered the intentions of the Iowa legislature. The Court of Appeals erred by reversing this based simply upon Compeer’s blatant speculation. Crucially, the Court of Appeals erred by failing to provide the parties any guidance on how Iowa Code chapter 570A must be implemented on remand. The Iowa Supreme Court must step in, interpret the statute, and set the matter straight.

Accordingly, QPF respectfully requests this Court grant this Application for Further Review, vacate the decision of the Court of Appeals, and reinstate and affirm the rulings of the District Court.

Dated May 19, 2022.

Respectfully submitted,

/s/ Alexander M. Johnson

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ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on May 19, 2022, I electronically filed this document with the Clerk of the Iowa Supreme Court by using the Iowa Judicial Branch electronic filing system, which will send notice of electronic filing to all parties and attorneys of record.

/s/ Alexander M. Johnson

May 19, 2022
Date

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION**

This application complies with the typeface and type-volume requirements of Iowa Rule of Appellate Procedure 6.1103(4) because:

this application has been prepared in a proportionally spaced typeface using Times New Roman in 14 point, and contains 4,746 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a), or

this application has been prepared in monospaced typeface using [state name of typeface] in [state font size], and contains [state the number of] lines of text, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Alexander M. Johnson

May 19, 2022

Date

IN THE COURT OF APPEALS OF IOWA

No. 21-0774
Filed April 27, 2022

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, Daniel P. Wilson,
Judge.

A financial institution appeals the grant of summary judgment to a creditor
making a competing claim to collateral. **AFFIRMED IN PART, REVERSED IN
PART, AND REMANDED.**

Dustan J. Cross and Rick J. Halbur of Gislason & Hunter, LLP, New Ulm,
Minnesota, for appellant.

Thomas D. Story, Alexander M. Johnson, and Jennifer E. Lindberg of
Brown, Winick, Graves, Gross, and Baskerville, P.L.C., Des Moines, for appellee.

Heard by Bower, C.J., and Schumacher and Ahlers, JJ.

AHLERS, Judge.

A dairy-cattle operation failed and was liquidated. The proceeds were not enough to satisfy the claims of all creditors, leading to this tussle between two creditors competing for those proceeds. The district court granted summary judgment in favor of one creditor over the other, leading to this appeal.

I. Background¹

The dairy-cattle operation consists of three entities: Etcher Family Farms, LLC (EFF); Etcher Farms, Inc. (EFI); and Elmwood Farms, LLC (Elmwood). Compeer Financial, FLCA (Compeer) is a financial institution that has loaned money to one or more of the entities to finance their operations since 2014. The loans are secured by real and personal property. The unpaid loan balances exceed the value of the proceeds at stake in this case.

Quality Plus Feeds, Inc. (Quality Plus) is a feed and nutrient dealer that provided its product to EFF and EFI to feed to their cattle in late 2017 and early 2018. For ease of reference, we will refer to all product Quality Plus provided as “feed.”² Quality Plus was not paid for the feed it sold to EFF and EFI. The proceeds at stake in this case would satisfy the unpaid balance owed to Quality Plus. The question is whether Quality Plus has a valid claim to those proceeds.

¹ The background we provide is intended for informational purposes only. It does not bind the parties or the district court on remand.

² See Iowa Code § 570A.1(8) (2020) (defining “feed” as “a commercial feed, feed ingredient, mineral feed, drug, animal health product, or customer-formula feed which is used for the feeding of livestock, including but not limited to feed as defined in section 198.3”).

In March 2018, all three entities of the dairy-cattle operation filed for chapter 11 bankruptcy. Those bankruptcy proceedings were dismissed in January 2019.

The cattle owned by EFF and EFI were sold later in 2019, yielding proceeds totaling \$1,027,904.09. Cattle owned by all three entities also produced milk that was sold in 2019, yielding milk-sale proceeds of \$317,308.51. The cattle-sale and milk-sale proceeds totaling \$1,345,212.60 are the funds over which Compeer and Quality Plus are fighting.

Compeer claims it has a prior, perfected security interest in the collateral and is therefore entitled to all the relevant proceeds.³ Quality Plus asserts that it has an agricultural-supply-dealer lien in the proceeds under Iowa Code chapter 570A that has priority over Compeer's security interests.⁴

Quality Plus filed this action seeking to establish its priority in the proceeds. Compeer denied Quality Plus's claim, asserted affirmative defenses, and asserted a counterclaim. The counterclaim asserts claims of unjust enrichment, conversion, and foreclosure of a security interest. The counterclaim relates to the milk-sale proceeds and Quality Plus's action in asserting an agricultural-supply-dealer lien in the proceeds with respect to milk sold by Elmwood—an entity to which Quality Plus never sold feed.

³ See Iowa Code § 554.9322(1) (generally setting priority among conflicting security interest and agricultural liens on a first-in-time, first-in-right order).

⁴ See Iowa Code § 570A.5(3) ("A lien in livestock feed shall have priority over an earlier perfected lien or security interest 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.").

Quality Plus and Compeer filed competing motions for summary judgment. The district court granted Quality Plus's motion for summary judgment and denied Compeer's, resulting in judgment in Quality Plus's favor against Compeer in the amount of \$348,306.30 and foreclosure of its agricultural-supply-dealer liens in that amount. In entering judgment, the court determined Compeer's defenses did not defeat Quality Plus's claims and dismissed Compeer's counterclaims. Compeer appeals. Compeer asserts that Quality Plus should not have been granted summary judgment and Compeer should have.

II. Analysis

The parties ask us to resolve nuances of the applicability of various sections of the Iowa Code related to priority between competing perfected security interests and agricultural-supply-dealer liens. But resolution of those nuances depends on the facts, and the material facts have not been determined at this stage of the proceeding. So, while the parties ask us to address issues pertaining to competing claims of priority, we instead resolve this appeal on the basis of our rules and standards related to summary judgment.

We review rulings on motions for summary judgment for corrections of legal error.⁵ Summary judgment in a party's favor is appropriate if that party "demonstrates that there are no disputed issues of material fact and that application of the law to the undisputed facts compels judgment in that party's favor."⁶

⁵ *Buboltz v. Birusingh*, 962 N.W.2d 747, 751 (Iowa 2021).

⁶ *Buboltz*, 962 N.W.2d at 754.

After reviewing the affidavits⁷ and other supporting documentation submitted in support of the dueling summary-judgment motions, we conclude there are too many questions left unanswered to permit granting summary judgment to either party. Navigating the competing priority rules in Iowa Code chapters 554 and 570A is a somewhat complex and fact-intensive exercise. In this case, it requires consideration of which entities' cattle were supplied with Quality Plus's feed and what happened to those cattle, as the lien attaches only to the cattle consuming the feed⁸ and their proceeds.⁹ To the extent Quality Plus asserts a lien in proceeds, the proceeds would need to be identifiable and traced to subsequent assets.¹⁰ This would not require burdensome and intensive recordkeeping documenting a separate lien on each animal for the amount of feed that animal consumed,¹¹ but it requires some level of identification of the proceeds.¹² Identifying the proceeds here requires answers to questions about such things as

⁷ Compeer asks us not to consider one or more affidavits submitted by Quality Plus because they are not based on the personal knowledge of the affiants, as required by Iowa Rule of Civil Procedure 1.981(5). While there may be some merit to Compeer's contention, we do not need to resolve this claim, because, even if we accept Quality Plus's affidavits as being based on the personal knowledge of the affiants, they are not sufficient to remove all genuine issues of material fact.

⁸ See Iowa Code § 570A.3(2) (limiting the feed supplier's lien to "[l]ivestock consuming the feed").

⁹ See *In re Schley*, 509 B.R. 901, 914 (Bankr. N.D. Iowa 2014) (determining "that agricultural liens extend to proceeds").

¹⁰ See *Citizens Sav. Bank v. Miller*, 515 N.W.2d 7, 9 (Iowa 1994) (noting the replacement cattle can meet the definition of proceeds if received upon disposition of the original cattle, but the proceeds must be identifiable and "traceable" to later-acquired assets).

¹¹ See *In re Schley*, 565 B.R. 655, 661 (Bankr. N.D. Iowa 2017) (noting it would defeat the legislative intent behind chapter 570A of maintaining a fluid feed market if "burdensome and intensive recordkeeping" were required to track "a separate lien on each animal for the amount of feed that that animal consumed" before a feed dealer could establish a lien).

¹² See *Citizens*, 515 N.W.2d at 9.

whether cattle that consumed Quality Plus feed were sold, whether replacement cattle were purchased, or whether the cattle ended up in the Elmwood herd.¹³ An additional unsettled question is what the purchase price was, if any, for the cattle sold by EFF and EFI that generated the sale proceeds fought over here. This is important because Quality Plus could only get priority over Compeer's prior, perfected security interest "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."¹⁴ While some of the cattle sold may have been born into the herd, thus giving them an acquisition price of zero,¹⁵ it has not been conclusively established whether all or just some of the cattle sold were born into the herd. Whether any cattle in the herd were purchased and, if so, what the acquisition price was are additional fact questions for which no answer is definitively provided. These unanswered questions contribute to the need to deny summary judgment.

To some degree, Quality Plus seems to acknowledge that some of the questions listed above remain unanswered. Quality Plus seeks to sidestep this problem by suggesting that resolution of these questions is not a *material* question

¹³ Even though Quality Plus did not supply feed to Elmwood, Quality Plus points to the possibility that Elmwood ended up with cattle that were subject to a Quality Plus lien, which calls into question whether that lien continued in milk or sale proceeds generated from those cattle. Whether that happened, and the extent to which it happened, is just one of the many unanswered questions that contribute to the conclusion that summary judgment is not appropriate.

¹⁴ See Iowa Code § 570A.5(3) (setting the limit of the priority of an agricultural-supply-dealer lien).

¹⁵ See *Oyens Feed & Supply, Inc. v. Primebank*, 879 N.W.2d 853, 865–66 (Iowa 2016) (holding that livestock born into a farming operation have "a zero acquisition price for purposes of Iowa Code section 570A.5(3)").

of fact.¹⁶ It argues that, because the size of the contested pot (\$1,345,212.60) is so much bigger than the claimed lien (\$348,306.30), even if the unanswered questions are resolved in Compeer's favor, all it will do is reduce the size of the contested pot, but not to the point that the pot is too small to cover the claimed lien. So, Quality Plus argues, the disputed facts are not material, because they will not change the outcome.¹⁷ While we agree that the end result may be that resolution of these factual disputes does not change the outcome, it is speculative to reach that conclusion based on this record. The unanswered questions create a genuine issue as to whether the contested pot is indeed bigger than the claimed lien. We will not speculate in order to grant summary judgment.

III. Conclusion

The unanswered questions referenced above are not intended as an exhaustive list. They simply highlight some of the important questions not answered by this record. Before we, or the district court, can resolve the priority disputes at issue in this case, there must be answers to the factual questions needed to navigate the statutes. Those factual questions may need to be answered by a trial.

Finding genuine issues of material fact that preclude the grant of summary judgment for either party, we reverse that part of the district court's order granting summary judgment to Quality Plus. This reversal includes reversal of that part of the district court's ruling that rejected Compeer's affirmative defenses and

¹⁶ See Iowa R. Civ. P. 1.981(3) (permitting summary judgment when "there is no genuine issue as to any *material fact*" (emphasis added)).

¹⁷ See *Banwart v. 50th St. Sports, L.L.C.*, 910 N.W.2d 540, 544 (Iowa 2018) ("A fact is material when it might affect the outcome of a lawsuit.").

dismissed Compeer's counterclaims. Compeer's affirmative defenses and counterclaims are reinstated. We affirm the part of the district court's order that denied Compeer's motion for summary judgment.

We remand for further proceedings consistent with this opinion after denial of both parties' motions for summary judgment. Costs of appeal shall be assessed equally between Quality Plus and Compeer.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number
21-0774

Case Title
Quality Plus Feeds, Inc. v. Compeer Financial

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IN THE IOWA DISTRICT COURT FOR MONROE COUNTY

<p>QUALITY PLUS FEEDS, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>COMPEER FINANCIAL, FLCA, ETCHER FAMILY FARMS, LLC., ETCHER FARMS, INC., AGRILAND FS, INC., DEWITT VETERINARY CLINIC, JASON DENNING, PRECISION PUMPING, INC., and ELMWOOD FARMS, LLC.,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">NO. EQEQ 009517</p> <p style="text-align: center;">RULING ON MOTIONS FOR SUMMARY JUDGMENT</p>
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Hearing was held February 5, 2021, concerning the Motion for Summary Judgment filed November 24, 2020 by Plaintiff Quality Plus Feeds, Inc. (Quality Plus) and Compeer Financial, FLCA's Motion for Summary Judgment (Compeer Financial) filed December 18, 2020. Hearing was held via GoToMeeting and was reported. Attorneys Alexander M. Johnson and Thomas D. Story appeared for Quality Plus. Attorney Rick J. Halbur appeared for Defendant Compeer Financial.

PRIOR PROCEEDINGS

1. In its Petition filed March 13, 2020, Quality Plus in four counts pled Count I – Collection on Open Account (Etcher Family Farms, LLC); Count II – Foreclosure of Personal Property (New London); Count III – Collection on an Open Account (Etcher Farms, Inc.); and Count IV – Foreclosure of Personal Property (Lovilia). In its Amended Petition filed May 4, 2020, Quality Plus added a defendant – Elmwood Farms, LLC.

With its Answer filed April 15, 2020, Compeer Financial pled several affirmative defenses and counterclaimed against Quality Plus in three counts including Count I – Unjust Enrichment; Count II – Conversion; and Count III – to foreclose its security interest in personal property.

At the time of the February 5, 2021 hearing, all defendants had been defaulted out or reached a stipulation regarding priority with the exception of Compeer Financial and Jason Denning. The merits of the pending summary judgment motions involve Quality Plus and Compeer Financial.

A non-jury trial is set to commence August 24, 2021, and is projected to take three days to submit. The parties obtained a mediation release that was filed February 28, 2020.

2. On August 20, 2020, the Court entered default judgments against Etcher Family Farms, LLC; Etcher Farm, Inc.; and Agriland FS, Inc. The Court's orders specified that any interest the parties-in-default possessed in the proceeds is junior and inferior to Quality Plus, Inc.'s lien. The Court also approved a stipulation agreement between Quality Plus Inc., Compeer Financial, FLCA, and DeWitt Veterinary Services, P.C. d/b/a DeWitt Veterinary Clinic. Pursuant to the stipulation, the Court determined any interest of DeWitt Veterinary Clinic is junior and inferior to any interests held by Quality Plus Feeds, Inc. and Compeer Financial, FLCA. Further, DeWitt Veterinary Clinic was dismissed from this action.

3. On November 18, 2020, Quality Plus Feeds, Compeer Financial, and Precision Pumping, Inc. filed with the Court a joint stipulation stating that Precision Pumping, Inc. agreed to waive its lien rights to the New London and Lovilia proceeds. The parties

further agreed that the payments specified in paragraphs 5, 6, and 7 of the agreement were rightfully paid to Precision and that the other parties did not have any claims to those amounts.

4. On December 9, 2020, the Court entered a default judgment against Elmwood Farms, LLC. The Court's order specified that any interest possessed by Elmwood Farms, LLC in the proceeds is junior and inferior to Quality Plus's lien.

5. The parties remaining at this stage in the litigation are plaintiff Quality Plus, defendant Compeer Financial, and defendant Jason Denning.

6. In its Motion for Summary Judgment filed November 24, 2020, Quality Plus asserts that its agricultural supply dealer's lien takes priority over other interests, including preceding perfected security interests held by a lender. In this regard, Quality Plus cites Iowa Code Chapter 570A and asserts a "superpriority" as an agricultural supply dealer.

7. In its Motion for Summary Judgment filed December 18, 2020, Compeer Financial seeks dismissal of Counts II and IV of Quality Plus' Amended Petition (Foreclosure of Personal Property – New London and Lovilia). Compeer Financial also requests judgment in its favor on Counts I, II, and III of its counterclaim filed April 15, 2020.

Judgment is sought by both Quality Plus and Compeer Financial exceeding \$300,000. By agreement, milk check proceeds in the amount of \$317,308.51 are being held in Quality Plus' counsel's trust account, pending the outcome of this case.

Defendant Jason Denning did not file any response to the Motions and did not appear at hearing. The Court concludes Denning takes no position on the Motions.

LEGAL STANDARD FOR SUMMARY JUDGMENT

8. Summary judgment is proper only when the entire record demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007) (citing *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 903 (Iowa 1996)); Iowa R. Civ. P. 1.981(3). An issue of fact is material when a dispute exists that may affect the outcome of the suit, given the applicable governing law. *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992) (citing *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988)). The requirement that the issue be genuine “means the evidence is such that a reasonable jury could return a verdict” for the party resisting the motion. *Id.* (citing *Hike*, 427 N.W.2d at 159). In determining whether a motion for summary judgment should be granted, the court ““must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of the case.”” *Id.* (quoting *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987)).

9. The party requesting summary judgment bears the burden of proof. *Clinkscates v. Nelson Sec., Inc.*, 697 N.W.2d 836, 841 (Iowa 2005) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 677 (Iowa 2004)). “A court entertaining a motion for summary judgment must view the evidence in the light most favorable to the nonmoving party.” *Id.* (citing *Harris*, 679 N.W.2d at 677). “Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences

from them and thereby reach different conclusions.” *Id.* (citing *Walker Shoe Store, Inc. v. Howard's Hobby Shop*, 327 N.W.2d 725, 728 (Iowa 1982)). The nonmoving party should be afforded every legitimate inference that can be reasonably deduced from the evidence. *Id.* (citing *Cent. Nat'l. Ins. Co. v. Ins. Co. of N. Am.*, 522 N.W.2d 39, 42 (Iowa 1994)). However, “[t]he resistance must set forth specific facts constituting competent evidence to support a prima facie claim.” *Hoefler v. Wisconsin Educ. Ass’n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991) (citing *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989); *Prior v. Rathjen*, 199 N.W.2d 327, 330 (Iowa 1972)). The adverse party “may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.” Iowa R. Civ. P. 1.981(5).

Speculation is not sufficient to generate a genuine issue of fact. *Walls v. Jacob North Printing Co.*, 618 N.W.2d 282, 284 (Iowa 2000). “A fact issue is generated if reasonable minds can differ on how the issues should be resolved, but if the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper.” *Uhl v. City of Sioux City*, 490 N.W.2d 69, 74 (Iowa App. 1992).

FINDINGS OF FACT

10. The Court finds the following facts relevant and undisputed. Etcher Family Farms, LLC, is an Iowa limited liability company operating a farm in New London, Iowa. Etcher Farms, Inc. is an Iowa corporation operating a farm in Lovilia, Iowa. The two Etcher entities together operated a dairy business, which included the buying and selling of cows, raising of cows, and selling their milk. Quality Plus sold feed for Etchers’ cows.

11. Compeer Financial is a federal land credit association under the Farm Credit Act of 1971 and a lender to the Etcher entities. Compeer financed the Etcher and Elmwood farming operations from late 2014 through early 2019. Financing was obtained by granting Compeer security interests in personal property, which included the cattle and milk of Etcher and Elmwood, as well as the proceeds from the sale of the cattle and milk. These security interests were perfected by filing UCC Financing Statements between 2014 and 2016, the first being filed December 18, 2014.

12. In late 2016, Etcher Farms began to experience financial troubles. On October 25, 2017, Compeer sent Etcher Farms a Notice of Acceleration and Demand for Payment in the amount of \$16,697,969.57, plus interest. Quality Plus continued to sell feed to Etcher Farms on credit. The total amount owed to Quality Plus for the feed is disputed by the parties.

13. Quality Plus filed numerous UCC Financing Statements naming Etcher Farms as the debtor, the first on October 5, 2017. The filings specified they were pursuant to Iowa Code section 570A as an agricultural or supply dealer's lien and identified the collateral as the Etcher cows and "all milk produced from said cows; and proceeds and/or product thereof; and all proceeds of insurance collected on the account of the loss of such livestock."

14. On March 19, 2018, the two Etcher entities each filed petitions for voluntary bankruptcy. While bankruptcy proceedings were ongoing, Etcher Farms continued to sell milk. Quality Plus requested that Etcher Farms buyer, Dairy Farmers of America, name Quality Plus and Compeer on the checks for payment. In April and May of 2019, five checks were issued by Dairy Farmers of America, all included Quality Plus and Compeer

as payees. Counsel for Quality Plus and Compeer agreed that the checks would be endorsed by the parties and then deposited into the Brown Winick trust account pending the disposition of this case.

Between March and April of 2019, the cows located at the Etcher Family Farms, LLC facility in New London were sold for \$714,764.55. Between March and May of 2019, the cows at the Etcher Farms, Inc.'s facility in Lovilia were sold for \$313,139.54.

15. Quality Plus puts forth multiple arguments in support of summary judgment. The first concerns whether an agricultural supply dealer must be able to “trace” their feed to the cattle and subsequent proceeds. An agricultural supply dealer lien is codified at Iowa Code section 570A.3, which states, in relevant part:

An agricultural supply dealer who provides an agricultural supply to a farmer shall have an agricultural lien as provided in section 554.9102. The agricultural supply dealer is a secured party and the farmer is a debtor for purposes of chapter 554, article 9. The amount of the lien shall be the amount owed to the agricultural supply dealer for the retail cost of the agricultural supply, including labor provided. The lien applies to all of the following:

2. Livestock consuming the feed. However, the lien does not apply to that portion of the livestock of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the feed.

16. Compeer argues that for Quality Plus to be entitled to summary judgment, it would need to show that it is undisputed that the specific cattle at issue consumed the particular feed Quality Plus provided, and that Quality Plus has failed to do so. It appears to the Court that the fundamental issue at dispute here is the construction and interpretation of section 570A.3, and may be resolved on summary judgment. *Hegeman v. Kelch*, 666 N.W.2d 531 (Iowa 2003); *Kolbe v. State*, 625 N.W.2d 721 (Iowa 2001).

17. Statutory construction is only appropriate when a statute is ambiguous. *State v. McCullah*, 787 N.W.2d 90 (Iowa 2010). Ambiguity in a statute exists when “reasonable minds could differ or be uncertain as to the meaning of the statute.” *Id.* at 94 (quoting *Carolán v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996)). To resolve ambiguity and determine legislative intent, the court should consider the language of the statute, the objects sought to be accomplished, the evils sought to be remedied, and a reasonable construction that will effectuate the statute’s purpose rather than one that will defeat it. *IBP, Inc. v. Harker*, 633 N.W.2d 322 (Iowa 2001). The primary goal of statutory interpretation is to determine the legislature’s intent. *DuTrac Cmty Credit Union v. Hefel*, 893 N.W.2d 282 (Iowa 2017) (quoting *State v. Howse*, 875 N.W.2d 684, 691 (Iowa 2016)). Absent a statutory definition, courts are to give words their ordinary and common meaning. *Id.*

18. As the parties have interpreted the requirements of section 570A.3 differently, the Court concludes the statute is ambiguous and statutory construction is appropriate. The pertinent language is “the lien applies to all the following: livestock consuming the feed.” The Court must determine whether this language requires an agricultural supply dealer link their feed with the livestock that consumes it in order for the lien to attach. In other words, must the dealer “trace” a path from the feed to the livestock. As the parties note, there is no Iowa case directly addressing this issue. The legislature did not include a specific tracing requirement in Section 570A.3. The only requirements of the statute are 1) that a farmer purchase feed from an agricultural supply dealer and 2) that livestock consume the feed. Based upon the simple requirements chosen by the legislature, the Court finds that a lien under 570A.3 was intended to be a straightforward and uncomplicated process. This conclusion is consistent with the Iowa Supreme Court’s

holding in *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186 (Iowa 2011), in which the Court held that livestock feed providers were not required to comply with the certified request procedure in order to achieve superpriority status. In *Oyens*, the Court recognized the statute was passed during the farm crisis, and that “the legislature presumably sought to encourage a fluid feed market.” 808 N.W.2d at 195.

19. The plain language of the statute requires the livestock consume the feed. As the statute says nothing more on the subject, the Court must give the words their ordinary and common meaning. As such, the Court finds that a party asserting a lien must show a reasonable link between the feed provided by the supplier and the livestock. However, given the undemanding language used in the statute and the goal of promoting suppliers providing feed to struggling farmers on credit, the Court finds that section 570A.3 does not require a meticulous showing of the path from feed to a specific cow. Such an interpretation would be inconsistent with the language and purpose of section 570A.

20. The next issue before the Court is whether Quality Plus has satisfied this reasonable link between the feed and the cows for entitlement to summary judgment. It is undisputed that the UCC Filing Statements identify all Etcher cows, and that Quality Plus provided multiple types of feed to Etcher Farms. Quality Plus also provided 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. Compeer does not dispute the general proposition that Etcher Farms fed their cows feed from Quality Plus, but there is dispute as to how many cows were owned by Etcher Farms during the applicable time.

21. The record does not clearly establish how many cows were owned by Etcher Farms on any given day. Most of the filings that comprise the record at this stage do not total the number of cows. The source of information that appears to be most relevant is the numbers reported by the Etcher entities and Elmwood Farms in Compeer's Exhibit A, which are herd schedules. Quality Plus does not dispute those numbers were reported, but does dispute whether the numbers are complete and accurate. Further, there is dispute concerning 117 cows that may or may not have been purchased during the bankruptcy proceeding and that may or may not have been sold in 2019. However, the Court finds summary judgment is proper. There is dispute regarding the number or identity of cows to which the agricultural supply dealer lien could attach. There is no dispute Quality Plus sold feed to Etcher Farms entities that was consumed by Etcher cattle. Quality Plus is still owed for some of this feed.

22. Quality Plus also seeks summary judgment on Compeers affirmative defenses, which largely are matters of law the Court may address on summary judgment. The first concerns the statute of limitations. The parties agree that Iowa Code section 614.1(10) is the applicable statute of limitations. The subsection states: "Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor." The Court agrees with the interpretation of Quality Plus. The triggering event of the limitations period is the sale of the farm product. The farm product at issue here is the cows and the milk produced, which were sold in 2018 and 2019. This action was filed in March of 2020, within the limitations period. As such, the Court determines that summary judgment is proper.

23. Next is Compeer's allegation that Quality Plus violated the bankruptcy court's automatic stay. Under 11 U.S.C.A. section 362, an automatic stay is issued upon the filing of a petition with the bankruptcy court. Compeer argues that the automatic stay prevents Quality Plus from conducting "any act to create, perfect, or enforce any lien against property of the estate" pursuant to section 362(a)(4). Quality Plus argues perfection of their liens after the filing of the bankruptcy petition is allowed by section 362(b)(3), which "permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection" by a "generally applicable law" under 11 U.S.C.A. section 546(b)(1)(A). As one bankruptcy court phrased it: "if perfection of a lien has no retroactive effect it does not fall within the section 546(b) exception." *In re Matter of Gotta*, 47 B.R. 198, 202 (Bankr.W.D.Wis.1985). The Court finds that Iowa agricultural supply dealer lien does afford the dealer rights in the property before perfection as stated in section 570A.4, which states the lien is effective when the farm purchases the agricultural supply. As such, the Court determines that Quality Plus's post-petition perfection is not in violation of the bankruptcy court's automatic stay. Summary judgment is proper on this issue.

24. Quality Plus next seeks summary judgment regarding Compeer's affirmative defense concerning protection payments. Compeer does not resist or make attempt to defend this affirmative defense. Adequate protection is codified at 11 U.S.C.A. section 361. At no point in section 361 does the statute state that adequate protection payments affect the value of a lien, therefore, the Court determines summary judgment is proper.

25. The next argument at issue is whether the UCC financing statements filed by Quality Plus accurately and specifically identify the collateral. Sufficiency of financing

statement descriptions is governed by Iowa Code section 554.9108, which requires a description to reasonably identify the collateral. The Court concludes that Quality Plus identifying the collateral as “all cows” at specific locations does reasonably identify the collateral. As such, the Court finds that summary judgment is proper on this affirmative defense.

26. The last affirmative defense upon which Quality Plus seeks summary judgment is whether the lien is limited to the amount of the difference between acquisition price and the fair market value of the cows when the lien attaches. Quality Plus argues that all the cows were raised by Etcher and therefore there is no acquisition price. There is a dispute that at least 117 cows were purchased. Nevertheless, the Court determines summary judgment is proper on this affirmative defense. The possible dispute regarding the number of cows is not so material as to change the ultimate outcome.

27. Finally, Quality Plus argues that Compeer’s counterclaims of unjust enrichment and conversion should be dismissed. The first argument of Quality Plus assumes the validity and priority of its lien has already been established. For the reasons stated above, the Court has made such a finding on summary judgment. Quality Plus also argues that Compeer could not succeed on the unjust enrichment and conversions claims even without the establishment of a superpriority lien as the parties agreed to hold the checks. Compeer argues the holding of the checks was simply to protect the assets regardless of who ultimately was awarded the proceeds.

28. The elements of unjust enrichment are 1) the defendant was enriched by the receipt of a benefit; 2) the enrichment was at the expense of the plaintiff, and 3) it is

unjust to allow the defendant to retain the benefit under the circumstances. *State, Dept. of Human Services ex rel. Palmer v. Unisys Corp.* 637 N.W.2d 142, 154-155 (Iowa 2001). In response to Quality Plus, Compeer asserts that the agreement to hold the checks does not prevent Compeer from filing the counterclaims. While Compeer argues that Quality Plus has not cited any sources to support its argument, Compeer does not set forth any specific facts showing that there is a genuine issue for trial as required by Rule 1.981. As such, the Court determines that summary judgment is proper. The first element requires Compeer to prove that Quality Plus have been enriched by the holding of the checks. Compeer argues in its pleadings that the retention of the checks is a benefit. The Court disagrees. Quality Plus receives nothing by holding the checks. Further, it is not unjust for the checks to remain in the trust account while the parties litigate this case given their disputed ownership. Therefore, the Court agrees the claim of unjust enrichment should be dismissed.

29. Conversion is the “wrongful control or dominion over another’s property contrary to that person’s possessory right to the property.” *Blackford v. Prairie Meadows Racetrack and Casino, Inc.*, 778 N.W.2d 184, 188 (Iowa 2010). The elements are 1) ownership by the plaintiff or other possessory right in the plaintiff greater than that of the defendant, 2) exercise of dominion or control over chattels by defendant inconsistent with, and in derogation of, plaintiff’s possessory rights thereto; and 3) damage to plaintiff. *In re Matter of Estate of Bearbower*, 426 N.W.2d 392 (Iowa 1988). At the heart of a conversion claim is a possessory right. That issue is disputed here as the parties both assert claim to the checks. Given the Court’s determinations on other issues, summary judgment is proper.

Motion for Summary Judgment filed by Compeer

30. Compeer filed a Motion for Summary Judgment on December 18, 2020. Quality Plus filed a resistance to the Motion on January 5, 2021. Again, Defendant Jason Denning did not respond to the Motion. Neither Compeer nor Quality Plus assert any additional facts and rely upon those set forth in reference to the Motion filed by Quality Plus.

31. Compeer's first argument is that its security interests are superior to that of any lien asserted by Quality Plus. There is no real dispute that Compeer is a secured party and perfected its security interest prior to Quality Plus filing UCC Financing Statements. The remainder of Compeer's first argument is that it has priority as it was first to file. Typically, priority disputes are governed by Chapter 554, however the general rules are modified by Iowa Code section 570A.5. Thus, any dispute regarding priority will be affected by the determination of whether Quality Plus possesses a perfected agricultural supply dealer lien. As the Court has already stated, based upon prior determinations, there are no genuine and material factual issues that preclude judgment on the existence of an agricultural supply dealer lien. Therefore, the Court finds that summary judgment in favor of Compeer Financial is not appropriate here.

32. Compeer's next argument concerns the "tracing" obligation under section 570A.3. The Court incorporates paragraphs 15-21 herein. The Court has determined that Quality Plus is entitled to judgment as a matter of law. Compeer argues that Quality Plus has failed to complete "tracing" and summary judgment is proper. The Court disagrees. The undisputed evidence shows that Quality Plus provided feed to Etcher farms, and the UCC Financing Statements filed by Quality Plus covered Etcher cattle. The evidence

does not generate a material fact question. Therefore, summary judgment in favor of Compeer Financial is not proper here.

33. Compeer argues that *Citizens Sav. Bank, Hawkeye, Ia. v. Miller*, supports the conclusion that Count II and Count IV of the Quality Plus Petition should be dismissed. This argument is based again upon the conclusion that Quality Plus has not “traced” its lien upon the collateral. Compliance with the “tracing” requirement is not materially factually at dispute and summary judgment is not proper.

34. Compeer also seeks summary judgment on its counterclaims against Quality Plus regarding the milk checks that remain in a trust account belonging to counsel for Quality Plus. Compeer’s arguments assume the Court has determined Quality Plus has no claim to the checks. That determination is appropriate on summary judgment, and as a result, the issue to whom the checks belong is also resolved. Compeer is not entitled to judgment as a matter of law on its counterclaims of unjust enrichment and conversion. The Court further finds that summary judgment is improper regarding counterclaim Count III.

35. Finally, Compeer argues it is entitled to one of the checks remaining in the trust account. The check at issue is in the amount of \$113,553.31 and was issued by Dairy Farmers of America to Compeer, Quality Plus, and Elmwood Farms. Compeer argues that even if Quality Plus has a valid and perfected agricultural supply dealer lien, the check is for milk proceeds from Elmwood Farms, not Etcher Farms, and the lien only covers Etcher Farm proceeds. Quality Plus resists by pointing out that Compeer has stated that some of the Etcher cows may have been transported to Elmwood Farms, which generates a factual dispute as to whether Quality Plus has a claim to the Elmwood

Farms milk proceeds. The record, namely the herd schedules, indicates the Elmwood Farms played a role in the Etcher Farms dairy operation. The exact role is unknown to the Court. However, based on prior proceedings, summary judgment in favor of Compeer, is not proper. (See paragraph 4 of this Ruling.)

FURTHER COURT ANALYSIS

36. Boiled down to its essence, the salient question for the Court is whether Plaintiff Quality Plus sold feed used for cattle that were milked and/or subsequently sold that created the proceeds disputed between Quality Plus and Compeer Financial. If so, the priority of an agricultural supplier dealer (Quality Plus) entitles it to prevail.

37. There are facts at issue that are disputed as between Quality Plus and Compeer Financial. The determinative issue is whether the facts upon which these two parties do not agree, create a material and genuine issue precluding the Court's resolution of this matter on summary judgment.

38. The Court finds:

(a) Quality Plus is an agricultural supply dealer that sold feed to Etcher Farms, Inc. and Etcher Family Farms, LLC for the feeding of cattle.

(b) Quality Plus is a secured party pursuant to its agricultural lien on livestock that consumed the feed. Quality Plus' secured position was perfected by the timely filing of financing statements.

(c) Quality Plus has obtained a priority position in the Etcher cattle and milk proceeds under Iowa's agricultural supply dealer statute – Chapter 570A, Iowa Code.

(d) "Tracing requirements," if any, have been satisfied by Quality Plus with respect to feeding the Etcher cattle during the relevant time frame.

39. The Court finds, based upon the voluminous record on pending summary judgment motions, that Quality Plus is entitled to summary judgment. Compeer Financial's presentation and arguments as it relates to (1) tracing, (2) the calculation of liens, (3) acquisition price of certain cattle, (4) automatic stay provisions of the bankruptcy code; (5) descriptions used in financing statements, and (6) Compeer Financial's counterclaims are without merit.

40. The controlling purpose of the agricultural supply lien under Iowa Code Chapter 570A is to encourage a fluid seed and feed market. *Oyens Feed and Supply, Inc. v. Primebank*, 879 N.W.2d 853 (Iowa 2016.)

To construe the Chapter 570A lien provisions otherwise would gut protections for agricultural suppliers. This would discourage those suppliers from working with farmers, both financially troubled farmers and more stable farmers. The Court further finds:

(a) While there is some room for disagreement regarding calculation of Quality Plus' liens, no genuine issue of material fact has been generated as to the accuracy of that calculation. The Court finds the total amount to which Quality Plus is entitled based upon the priority of its liens is as claimed in its pleadings. Any interest which may have accrued on funds held in Quality Plus' lawyers trust account would be added to the foregoing amount.

(b) Quality Plus' actions concerning its liens, as it relates to automatic bankruptcy stays, do not affect the priority of its liens, at least to the extent set forth in this ruling.

(c) Quality Plus' financing statements were sufficiently specific to create a valid lien.

(d) Compeer Financial's counterclaims which include unjust enrichment, conversion, and to establish priority of their security interests are without merit and must be dismissed.

41. The financial position of Etcher Farms that led to this lawsuit is extremely unfortunate. The fact that a good-faith lender such as Compeer Financial and a feed supplier such as Quality Plus end up fighting over the proceeds from the liquidation of a large dairy operation in Iowa is likewise unfortunate. The Court's decision really comes down to enforcement of legislative determinations that have been made in Iowa granting priority to agricultural supply dealers, even over the priority granted to other secured lenders to a debtor. Continuing this lawsuit to litigate issues on the margins, would in the end, benefit no one.

RULING AND ORDER

IT IS THE RULING AND ORDER OF THE COURT:

42. Quality Plus' Motion for Summary Judgment filed November 24, 2020, is granted.

43. Compeer Financial's Motion for Summary Judgment filed December 18, 2020, is denied and dismissed.

44. Judgment is entered in favor of Plaintiff Quality Plus Feeds, Inc., and against Compeer Financial, FLCA, in an amount to be set forth in a subsequent judgment entry. Counsel for Quality Plus shall present a proposed judgment entry or decree by April 30, 2021. Counsel for Compeer Financial shall have until May 10, 2021 to file any objection to the proposed final order.

45. Plaintiff Quality Plus Feeds, Inc.'s agricultural supply dealer liens are foreclosed in favor of Quality Plus.

46. Subject to agreements between counsel and client, Brown, Winick, Graves, Gross and Baskerville, P.L.C., and a subsequent judgment entry, counsel for Plaintiff Quality Plus Feeds, Inc., is directed to pay over to Quality Plus Feeds, Inc., funds held in trust pursuant to this litigation, to the extent set forth in this ruling.

47. Costs are assessed to Defendant Compeer Financial, FLCA.

48. Claims, defenses of Defendant Jason Denning, if any, shall be determined by the Court on April 30, 2021. Default against Mr. Denning will be entered, unless compelling reasons not to enter default are presented, in writing, by April 30, 2021.

49. Clerk to notify counsel and any party whose interests have not been previously resolved by stipulation or entry of default, including Mr. Denning.

DATED APRIL 20, 2021.



State of Iowa Courts

Case Number
EQQ009517
Type:

Case Title
QUALITY PLUS FEEDS V COMPEER FINANCIAL, ET AL
OTHER ORDER

So Ordered

A handwritten signature in blue ink that reads 'Daniel P. Wilson' followed by a stylized flourish.

Daniel P. Wilson, District Court Judge,
Eighth Judicial District of Iowa

Electronically signed on 2021-04-20 10:33:24

IN THE IOWA DISTRICT COURT FOR MONROE COUNTY

<p>QUALITY PLUS FEEDS, INC.</p> <p>Plaintiff</p> <p>v.</p> <p>COMPEER FINANCIAL, FLCA; 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.</p> <p>Defendants.</p>	<p>CASE NO. EQEQ009517</p> <p>ORDER, JUDGMENT and DECREE</p>
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Hearing was held on Motions for Summary Judgment filed by Plaintiff, Quality Plus Feeds, Inc., and Defendant, Compeer Financial, on February 5, 2021. The Court entered its Ruling on Motions For Summary Judgment on April 20, 2021. Being otherwise fully advised in the premises, the Court now enters the following Order, Judgment and Decree:

1. Default judgments or stipulations regarding priority have been entered against all Defendants except Compeer Financial. Notably, default judgments were entered against Etcher Farms, Inc. and Etcher Family Farms, LLC in the amount of \$404,118.53. In addition, Defendants Etcher Family Farms, LLC, Etcher Farms, Inc., Agriland FS, Inc., DeWitt Veterinary Services, P.C. d/b/a DeWitt Veterinary Clinic, Precision Pumping, Inc., and Jason Denning have each been adjudged to hold, if any, only junior and inferior interests to those of Quality Plus and Compeer Financial.
2. Judgment is entered in favor of Plaintiff and against Defendants on its claims of Collection on an Open Account (Etcher Family Farms, LLC), Foreclosure of Personal

- Property (New London), Collection on an Open Account (Etcher Farms, Inc.), and Foreclosure of Personal Property (Lovilia).
3. Judgment is entered in favor of Plaintiff and against Defendant Compeer Financial on Compeer Financial's Affirmative Defenses and Counterclaims of Unjust Enrichment, Conversion and Foreclosure of Security Interest in Personal Property.
 4. Judgment is entered for the Plaintiff, Quality Plus Feeds, Inc. and against Defendant Compeer Financial for the unpaid Etcher invoices in the amount of \$348,306.30.
 5. The \$317,308.51 held in the BrownWinick Trust Account by prior agreement of the parties shall be paid over to Plaintiff and shall partially satisfy the Judgment herein. Any interest which may have accrued on these funds shall be added to the foregoing and paid over to Plaintiff.
 6. That portion of the cattle sale proceeds being held by Defendant Compeer Financial and necessary to satisfy the remainder of the Judgment herein shall be paid over to Plaintiff, Quality Plus Feeds, Inc. within fourteen (14) days of this judgment.
 7. Court costs, including Plaintiff's expert witness fees of \$450.00, are assessed against Defendant Compeer Financial and further Judgment is entered against Defendant Compeer for said costs.
 8. The interests of Defendant Jason Denning are hereby adjudged junior and inferior to those of Plaintiff and Compeer and are hereby foreclosed as to the Judgment proceeds awarded to Plaintiff.
 9. Clerk to notify.



State of Iowa Courts

Case Number
EQQ009517
Type:

Case Title
QUALITY PLUS FEEDS V COMPEER FINANCIAL, ET AL
ORDER FOR JUDGMENT

So Ordered

Daniel P. Wilson, District Court Judge,
Eighth Judicial District of Iowa

Electronically signed on 2021-05-20 11:31:09