

CASE NO. A04-2176

STATE OF MINNESOTA  
IN SUPREME COURT

FIN AG, INC.,

*Respondent,*

vs.

HUFNAGLE, INC., f/k/a P & H TRUCKING, INC.,  
COOPERATIVE SAMPO, LLOYD A. AND  
JANET LUNDQUIST d/b/a J & L FEEDS,

*Defendants,*

KENT MESCHKE POULTRY FARMS, INC.,

*Petitioner,*

and

RED RIVER COMMODITIES, INC.  
d/b/a GREEN VALLEY BEAN,

*Defendant.*

RESPONDENT'S BRIEF

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## STATEMENT OF ISSUES

1. Under the Food Security Act, does a buyer who purchases crops encumbered by a creditor's security interest, as to which security interest the creditor has completed a central notice filing, take the crops subject to the security interest if no waiver of the same is obtained or the sale proceeds are not received by the creditor?

Trial Court held: Yes.

Court of Appeals held: Yes.

### Authorities:

7 U.S.C. § 1631(d); 7 U.S.C. § 1631(e)(3); 7 U.S.C. § 1631(c)(5);  
Minn. Stat. § 336.9-307(1) (1999).

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Vacura v. Haars Equipment, Inc., 364 N.W.2d 387 (Minn. 1985).

2. Is the UCC financing statement filed in good faith by Fin Ag in the wrong county nonetheless effective against a party, such as Meschke, that had knowledge of the security interest?

Trial Court held: This issue was not raised in the Trial Court.

Court of Appeals held: Yes.

### Authorities:

Minn. Stat. § 336.9-401 (1999);

D & R Star, Inc. v. World Bowling, Inc., 619 N.W.2d 772 (Minn. App.  
2000);

Production Credit Assn. of West Central Minn. v. Bartos, 430 N.W.2d  
238 (Minn. App. 1988).

## STATEMENT OF THE CASE

This is an appeal from the Order for Judgment and Judgment by the Honorable Thomas A. Godzala, Judge of the District Court, Morrison County, dated June 18, 2003 granting Respondent/Plaintiff Fin Ag, Inc.'s ("Fin Ag") motion for summary judgment against Appellant/Defendant Kent Meschke Poultry Farms, Inc. ("Meschke"). (A. 1-4) Fin Ag moved for summary judgment on the issue of Meschke's conversion of crops in which Fin Ag held a security interest. The Order for Judgment and Judgment of June 18, 2003 was amended to allow immediate appeal to the Minnesota Court of Appeals on September 16, 2003 by a separate Order of Judge Godzala. (A. 5-6) Accordingly, Meschke appealed to the Minnesota Court of Appeals which subsequently affirmed the Trial Court's ruling on July 19, 2005. (A. 157-174)

## STATEMENT OF FACTS

In 1999, Fin Ag made an operating loan to individuals by the name of Larry J. Buck and Ronda L. Buck d/b/a Buck Farms (hereinafter collectively the "Bucks"). (A. 54-55, 61-62) To collateralize this debt, the Bucks granted Fin Ag a security interest in certain of their personal property including, but not limited to, crops and all proceeds thereof. (A. 55, 64-70) To perfect this security interest, Fin Ag filed UCC financing statements as required by law. (A. 55, 72-90) Additionally, to obtain protection under the Federal Food Security Act and Minnesota's central notice system, Fin Ag completed a central notice filing with the Minnesota Secretary of State. (A. 55, 91-92)

Between October 30, 1999 and March, 2000, the Bucks sold a substantial quantity of their 1999 corn to Meschke. (A. 55, 57-58, 93-103) On some sales, Meschke issued checks listing Larry Buck and Fin Ag as payees. (A. 101, 103) On other sales, checks were issued that named only Larry Buck. (A. 99, 100) Finally, on certain sales, checks were issued to third parties—namely the Bucks' minor children, Ryan and Mickey Buck, (A. 93, 94, 96, 97) and individuals named Paul Zuk and Mark Tooker (employees of the Bucks). (A. 95, 98, 102) All the checks issued to Ryan and Mickey Buck and Paul Zuk and Mark Tooker were endorsed over to the Bucks and deposited in the Bucks' bank account. (A. 93-98, 102) None of the sale proceeds represented by the checks made payable solely to Larry Buck or checks issued in the names of the above-mentioned third parties were ever received by Fin Ag. (A. 60)

Ultimately, when Fin Ag learned of the Bucks' sale of crops to Meschke in the names of Larry Buck (which checks did not list Fin Ag as a payee), Ryan Buck, Mickey Buck, Mark Tooker and Paul Zuk, Fin Ag brought suit against Meschke for conversion of Fin Ag's crop collateral. Fin Ag sought summary judgment on its claim against Meschke. That motion was granted (A. 3-6) and judgment entered against Meschke in the amount of \$45,573.09. (A. 1-2)

### **STANDARD OF REVIEW**

Fin Ag concurs with the standard of review outlined by Meschke.

### **SUMMARY OF ARGUMENT**

The Trial Court and Court of Appeals properly found no material factual dispute existed with respect to Meschke's conversion of the crop collateral of Fin Ag. Based on the uncontested facts, Fin Ag was entitled to judgment against Meschke as a matter of law.

### **ARGUMENT**

#### **I. Food Security Act**

The federal Food Security Act ("FSA") was enacted in 1985 to provide uniformity in state laws governing secured transactions in farm products. 7 U.S.C. § 1631. Pursuant to 7 U.S.C. § 1631(d), the FSA is applicable if Meschke is "a buyer in the ordinary course of business" and it buys a "farm product" from "a seller engaged in farming operations." *Id.*

Under the FSA a security interest in crops remains effective against a buyer of the crops in a central notice state, such as Minnesota, if the secured creditor

makes a central notice filing as to its lien, and the crop buyer either does not remit the sale proceeds to the secured creditor or obtain a waiver of the creditor's security interest. Accordingly, Section 1631(e)(3) states:

3. in the case of a farm product produced in a State that has established a central filing system, the buyer—
  - (A) receives from the Secretary of State of such State written notice as provided in subsection (c)(2)(E) or (c)(2)(F) that specifies both the seller and the farm product being sold by such seller as being subject to an effective financing statement or notice; and
  - (B) does not secure a waiver or release of the security interest specified in such effective financing statement or notice from the secured party by performing any payment obligation or otherwise.

7 U.S.C. § 1631(e)(3).

The Minnesota Court of Appeals held the FSA was applicable to Meschke's purchase of the subject crops, and under 7 U.S.C. § 1631(e)(3) Meschke took title to those crops subject to Fin Ag's security interest.

**1. The Court of Appeals Correctly Found Meschke had Failed to Raise a Factual Dispute as to Whether the Bucks were the "Sellers" and Fin Ag was Entitled to Judgment Under the FSA.**

Meschke argues that in finding there was no material factual dispute that the Bucks were the seller of the grain (i.e. were the owners), as opposed to the "Tooker Sellers," the Minnesota Court of Appeals went too far in its analysis of what constitutes "possession" under Minnesota law. See Appellant's Brief at 12. Meschke asserts that the doctrine of "constructive possession" has no application to FSA cases and nothing in the record shows the Bucks had any interest in, or

intended to retain ownership and control over the grain the “Tooker Sellers” sold to Meschke. See Appellant’s Brief at 13-14.

As an initial matter, it is contradictory for Meschke to be complaining about the Court of Appeals analysis of the meaning of “possession” which was intended as a “threshold determination” of whether the FSA applies to Meschke’s purchase of crops. Fin Ag, Inc., 700 N.W.2d at 517-18. Presumably, Meschke *wants* the FSA to apply because it is relying on Section 1631(d) to allow it to take the crops free of Fin Ag’s security interest. If the Court of Appeals had determined the FSA *did not* apply to Meschke’s purchase of the grain, then Meschke cannot claim protection under Section 1631(d) of the FSA and Fin Ag’s security interest continues under Minnesota law. See Minn. Stat. § 336.9-307(1)(1999). Fin Ag’s security interest continues because the “Tooker Sellers” would be deemed to have sold inventory to Meschke and under Section 336.9-307(1) Meschke could not have taken the crops free of Fin Ag’s security interest in that the same was not created by the “Tooker Sellers.” See infra, Section 3 discussion. In any event, the Court of Appeals held the FSA was applicable to Meschke’s purchase of the crops, and that Meschke purchased the crops subject to Fin Ag’s security interest because Fin Ag fell within an exception to the FSA.

In order for the FSA to apply and allow Meschke to purchase the grain free of Fin Ag’s security interest, Meschke must: (i) be a “buyer who in the ordinary course of business”, (ii) buys a “farm product”, (iii) “from a seller engaged in farming operations.” 7 U.S.C. § 1631(d). The Court of Appeals focused on the

definition of “farm product” in determining that the Trial Court properly held the FSA applied to Meschke’s purchase of the crops. The FSA defines farm product as “an agricultural commodity such as wheat, corn, soybeans, or a species of livestock...used or produced in farming operations...that *is in the possession of a person engaged in farming operations.*” 7 U.S.C. § 1631(c)(5)(emphasis added). The Court of Appeals determined the FSA was applicable to Meschke’s purchase of the crops because Meschke had failed to raise a factual dispute that someone other than the Bucks were in “possession” of the crops.

Meschke correctly states that the FSA does not define “possession.” See Appellant’s Brief at 12-13. However, Meschke’s citation to AG Services of America, Inc. v. United Grain, Inc., 75 F.Supp.2d 1037, 1042 (D. Neb. 1999) for the proposition that state law *cannot* be used to interpret the meaning of “possession” is misleading. The federal court in AG Services of America stated it was federal law that governs the adequacy and effect of an *Effective Financing Statement*. Id. (emphasis added). Since the FSA actually defines “effective financing statement” it naturally follows that federal law should govern in that instance. 7 U.S.C. § 1631(c)(4). However, as the issue of “possession” is not defined in the FSA or in the Uniform Commercial Code, it is natural to look to state law for the proper interpretation of the word. See First National Bank in Lenox v. Lamoni Livestock Sales Co., 417 N.W.2d 443, 447-48 (Iowa 1987) citing Jacobson v. Aetna Casualty & Sur. Co., 46 N.W.2d 871 (1951).

Contrary to Meschke's assertion, the Court of Appeals did not add constructive possession to the scope of "possession" under the FSA. See Appellant's Brief at 12-15. Instead, the Court of Appeals simply determined that Meschke had failed to raise a material factual dispute relating to the terms and conditions under which the "Tooker Sellers" came into possession of the Bucks' crops, such that they would be deemed "sellers" under the FSA. Meschke did not dispute that the Bucks grew the crops purchased. (A. 54-60) Meschke presented two affidavits in an attempt to raise a factual dispute as to whether the Bucks were the owners of the crops sold to Meschke. (A. 12-13, 106-110) The Court of Appeals found these affidavits lacked significant probative value because any subjective belief about who owned the subject crops "did not determine possession for purposes of FSA application." Fin Ag, Inc., 700 N.W.2d at 518. In addition, Kent Meschke's claim he was told by an unnamed third party that some of the crops he was buying were owned by Ryan Buck, Mickey Buck, Paul Zuk and Mark Tooker would be hearsay and is inadmissible opinion testimony pursuant to Rule 802 of the Rules of Evidence. (A. 107) Meschke also presented cancelled checks to establish that someone other than the Bucks possessed or were the "owners" of the crops. (A. 93-98, 102) Since the checks were signed over to the Bucks and deposited in the Bucks' bank account, the Court of Appeals concluded the checks had limited probative value on the issue of possession. Fin Ag, Inc., 700 N.W.2d at 518. The Court of Appeals correctly found the FSA was applicable because Meschke had failed to raise a factual dispute as to whether the Bucks or

the “Tooker Sellers” were in possession of the crops. Fin Ag, Inc., 700 N.W.2d at 517-18 citing DLH, Inc. v. Russ, 566 N.W.2d 60, 71 (Minn. 1997) (No genuine issue of material fact exists, however, “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.”)

Meschke’s reliance on Schluter v. United Farmers Elevator, 479 N.W.2d 82 (Minn. App. 1991) as support for its claim that the “Tooker Sellers” had sufficient possession of the subject crops to allow Meschke to take free of Fin Ag’s security interest is without basis. Schluter did not involve an analogous situation. In Schluter, the *farmer* sued a grain elevator for conversion when the independent trucker, that the farmer had entrusted with his grain, sold the grain to the defendant elevator and pocketed the funds. Id. at 83-84. Schluter did not involve a claim by a creditor with a security interest in crops as to which a central notice filing had been made (as is the case at bar). In its decision, the Schluter Court did not examine the FSA or Minn. Stat. § 336.9-307(1) (prior to the adoption of revised Article 9) as these statutes relate to the rights of secured creditors. Instead, the Court examined the issue of entrustment in that particular situation where the independent trucker had been engaged in the practice of buying grain from various farmers, hauling it to the elevator and selling it. Id. at 83. Both the farmers and the elevator had done business with the trucker in this manner prior to the

transaction in dispute. Id. In the case at bar, the only evidence provided by Meschke as to how the “Tooker Sellers” came into possession of the subject grain was the affidavit of Kent Meschke stating “persons delivering the corn...told [him] and/or his employees that the grain being delivered belonged to and was owned by the persons [to be made out on the check]” and he followed those directions. (A. 107) Once again, this statement is hearsay testimony and therefore inadmissible. See Minn. R. Evid. 802.

Meschke and the Minnesota Grain and Feed Association (“MGFA”) as *amicus curiae* incorrectly argue the Court of Appeals inserted an element of “constructive knowledge” in its finding that Fin Ag fell within the exception under Section 1631(e)(3). See Appellant’s Brief at 15-21; Amicus Brief at 8. The Court of Appeals did not apply a “constructive knowledge” test or imply that Meschke “should have known.” See Appellant’s Brief at 16. In determining Fin Ag fell within the exception under Section 1631(e)(3), the Court of Appeals simply found Fin Ag properly filed an effective financing statement with the Secretary of State and Meschke, as a registered buyer, presumptively received notice of Fin Ag’s interest in Buck’s crops. Fin Ag, Inc., 700 N.W.2d at 519. That is all that is required for Fin Ag to fall within the exception under Section 1631(e)(3) and the Court of Appeals decision is correct. 7 U.S.C. § 1631(e)(3).

Meschke’s and MGFA’s assertion that Meschke cannot be liable under the FSA unless he knew the crops purchased were owned by the Bucks is unsupported by the statutory language of the FSA. The FSA is a strict liability statute that

requires a lien creditor, such as Fin Ag, to protect its security interest by providing *notice* of its interest by either giving direct notice to buyers of farm products or by filing an effective financing statement with the Secretary of State. See 7 U.S.C. § 1631(e)(1) and (e)(3). Notice is not synonymous with requiring knowledge on the part of a buyer. Indeed, under the FSA a buyer's knowledge of a security interest in a farm product is completely irrelevant to whether the buyer takes the property subject to the security interest. 7 U.S.C. § 1631(d) (the buyer "shall take free of a security interest created by the seller, even though the security interest is perfected; and the buyer *knows of the existence of such interest.*") (emphasis added). Under the FSA, it is *notice* that is the critical element and knowledge is irrelevant to whether the buyer takes subject to the secured creditor's security interest.

In construing a statute, such as the FSA, a court begins by "examining the text, not by 'psychoanalyzing those who enacted it.'" Farm Credit Midsouth, PCA, v. Farm Fresh Catfish Co., 371 F.3d 450, 452 (8<sup>th</sup> Cir. 2004) (citations omitted) (finding the direct notice language of Section 1631(e)(1) of the FSA requires strict compliance whereas a central notice filing in Section 1631(e)(2) simply requires substantial compliance). There is simply nothing in the language of the FSA indicating Meschke's knowledge of the true ownership of the crops (whether it is constructive or actual) is relevant. Under the FSA, the critical issue is one of notice and whether the creditor properly complied with FSA requirements for an effective financing statement. It is undisputed that Fin Ag properly filed an effective financing statement with the Minnesota Secretary of State. (A. 91-92)

Therefore, the Court of Appeals correctly held that Fin Ag fell within the exception of 7 U.S.C. § 1631(e)(3).

Moreover, Meschke's argument that the FSA requires a buyer to have actual knowledge of "hidden liens" because Minnesota law protects good faith buyers of grain is without support in Minnesota law on the UCC. See Appellant's Brief at 20-21. The Minnesota Court of Appeals has indicated that a UCC financing statement "is designed only to provide general notice or warning that certain collateral might already be encumbered." Production Credit Assn. of West Central Minn. v. Bartos, 430 N.W.2d 238, 241 (Minn. App. 1988). The claim that Minnesota law generally protects good faith purchasers from hidden interests is also incorrect. For example, good faith is not a defense to a conversion claim. Hoyt v. Duluth & Iron Range R. Co., 115 N.W. 263, 264 (Minn. 1908). The intent, knowledge, or motive of the converter in an action for conversion is immaterial. Larson v. Archer-Daniels-Midland Co., Inc., 32 N.W.2d 649, 650 (Minn. 1948); Dain Bosworth Inc., v. Goetze, 374 N.W.2d 467, 471 (Minn. App. 1985) (The "[i]nnocent misapplication or deprivation of funds owned by others is in the law no less a conversion because such was done innocently or in ignorance.") Thus, Meschke's reliance on his unsubstantiated claim that he had no knowledge of the "hidden possessor" is completely irrelevant under well-established Minnesota law on conversion liability. Similarly, a longstanding proposition of the common law provides that one who does not have title to good cannot transfer title to a buyer, even a bona-fide purchaser for value who had no

notice the goods were stolen. Thus, a thief cannot pass title to stolen goods even to an innocent person who pays for the stolen goods. See Johnson v. Martin, 92 N.W. 221 (Minn. 1902) (conversion action brought against grain broker by the owner of the grain which had come into the possession of the broker by the criminal act of a third person, where the broker has sold the grain and paid the proceeds to the criminal, it is no defense that the broker acted throughout in entire good faith, without negligence, and in the belief that the criminal was the owner of the property). Contrary to Meschke's assertion, the requirement of knowledge is not a common thread in Minnesota law.

Finally, Meschke and the MGFA claim the FSA was enacted to shift the risk of loss to the lenders who finance farming operations, rather than imposing that burden on buyers by exposing them to double payments. While it is evident that Congress was concerned with the plight of buyers of farm products that were routinely exposed to double payments, there is no statutory language in the FSA explicitly stating the intent is to shift all risk of loss to the lenders. 7 U.S.C. § 1631(a)(2). Rather, the obvious intent of the FSA is to encourage states to enact a practical method for discovering the existence of security interests in farm products. 7 U.S.C. § 1631(a)(1). Or in other words, to enact a "central filing system." 7 U.S.C. § 1631(c)(2). Fin Ag fully complied with its duty to file an effective financing statement under the Food Security Act and cannot be forced to take further steps to secure its interest that is not required by the Act. Agriliance, L.L.C., v. Runnells Grain Elevator, Inc., 272 F.Supp.2d 800, 809 (S.D. Iowa

2003). In Runnells, the district court found the buyer liable for conversion under Iowa law and rejected the buyer's contention that it believed the farmer/seller's representation that the crops were owned by certain other individuals (subsequently listed as sole payees on the checks) and it had no way of knowing that the crops sold were those described in a notice that was properly filed by the creditor under the requirements of the FSA. Id. at 806-07. Contrary to Meschke's assertion that a *buyer* is entitled to rely solely on the CNS database and accept whatever it says at face value, the Runnells Court found that "[s]ecured lenders, [such as Fin Ag], are entitled to rely on the effectiveness of due notice under the Food Security Act and cannot be forced to take further steps to secure their interests that the Food Security Act does not require." Id. at 809.

**2. Even if the "Tooker Sellers" were Deemed to be "Seller[s] Engaged in Farming Operations" Under the FSA, Meschke Still Cannot Take Free of Fin Ag's Security Interest because the "Tooker Sellers" Did Not Create the Security Interest.**

Meschke's assertion that the "Tooker Sellers" were the actual "sellers" under the FSA is legally irrelevant. Even if Meschke had presented evidence to the Trial Court sufficient to support its claim that the Bucks sold some of their crops to Mickey Buck, Ryan Buck, Mark Tooker and Paul Zuk (i.e. the "Tooker Sellers"), who then sold the same to Meschke, as a matter of law, Fin Ag would still be entitled to judgment against Meschke. Under the Food Security Act, if the "Tooker Sellers" purchased crops from the Bucks (i.e. the first sale), they were obligated to either obtain a waiver of Fin Ag's security interest or make payment

to Fin Ag. 7 U.S.C. § 1631(e). It is undisputed that no waiver was given or payment received. As a consequence, pursuant to 7 U.S.C. § 1631(e)(3), the “Tooker Sellers” acquired the crops of the Bucks subject to Fin Ag’s security interest. A later (i.e. second) sale of the crops by the “Tooker Sellers” to Meschke did not cut off the security interest of Fin Ag in the crops.

Assuming *arguendo* that the “Tooker Sellers” fell within the ambit of Section 1631(d) as a “seller engaged in farming operations,” Meschke’s difficulty is that under Section 1631(d) “a buyer who in the ordinary course of business buys a farm product from a seller engaged in farming operations shall take free of a security interest created by the seller...” 7 U.S.C. § 1631(d) (emphasis added). However, the “Tooker Sellers” (i.e. the Bucks’ minor children and two employees) did not create the security interest Fin Ag seeks to enforce. It is important to note that the term “seller” is used twice in Section 1631(d). Meschke’s assertion that it should take free of Fin Ag’s security interest because the “Tooker Sellers” were in fact the “seller” under Section 1631(d) of the FSA is an illogical construction of the language of the FSA. Assuming that the “Tooker Sellers” were deemed to be “a seller engaged in farming operations,” it is impossible for Meschke to take free of Fin Ag’s security interest because the FSA only contemplates taking free of a “security interest *created by the seller*” and the “Tooker Sellers did not create Fin Ag’s security interest. In effect, Meschke’s tortuous construction of Section 1631(d) would have the “Tooker Sellers” be deemed the “seller engaged in farming operations” for the first time “seller” is used in Section 1631(d) and

conveniently allow Meschke to take free of “a security interest created by the seller” (meaning the Bucks security interest) when “seller” is used for the second time in Section 1631(d). It is an absurd assertion that the “Tooker Sellers” can be the “seller” for the first part of Section 1631(d), yet the Bucks are the “seller” for the second part to allow Meschke to take free of Fin Ag’s security interest.

The Trial Court and Court of Appeals correctly found Fin Ag’s security interest was enforceable under the FSA. Even if Meschke’s assertion the FSA was applicable to Meschke’s purchase of crops from the “Tooker Sellers” because they were “sellers engaged in farming operations” is correct, Meschke still takes subject to Fin Ag’s security interest under the language of the FSA. The “Tooker Sellers” did not create the security interest Fin Ag seeks to enforce—that security interest was created by Larry and Ronda Buck. Therefore, Meschke simply cannot take free of Fin Ag’s security interest because it was not created by the “Tooker Sellers.”

**3. If the FSA is Not Applicable to the “Tooker Sellers” Because They Were Not a “Seller Engaged in Farming Operations,” Then Meschke’s Purchase of Crops is Still Subject to Fin Ag’s Security Interest.**

Minnesota law, rather than the FSA would determine Meschke’s liability for conversion if the sellers of the crop it purchased were Mickey Buck, Ryan Buck, Mark Tooker and Paul Zuk (i.e. the “Tooker Sellers”) and they were not deemed to be engaged in farming operations. Section 1631(d) of the FSA applies only to crop sales by individuals or entities engaged in farming operations. See 7 U.S.C. § 1631(d) (“a buyer who in the ordinary course of business buys a farm

product from a *seller engaged in farming operations...*”) Thus, if the “Tooker Sellers” were not farmers, in their hands the crops would have been deemed inventory. See Minn. Stat. § 336.9-109 cmt. 4 (1999) (“When crops or livestock or their products come into the possession of a person not engaged in farming operations they cease to be ‘farm products.’”) Meschke presented no evidence that the “Tooker Sellers” were engaged in farming operations.

Even if Meschke had presented evidence to the Trial Court sufficient to support a claim the Bucks sold some of their crops to the “Tooker Sellers,” who then sold the same to Meschke, as a matter of law, Fin Ag would still be entitled to judgment against Meschke. Under the Food Security Act, if the “Tooker Sellers” purchased crops from the Bucks (i.e. the first sale), they were obligated to either obtain a waiver of Fin Ag’s security interest or make payment to Fin Ag for the crops. It is undisputed that no waiver was given or payment received. Accordingly, if the crops became inventory when transferred to the “Tooker Sellers,” then Fin Ag’s security interest continued in the crops despite sale to Meschke (i.e. the second sale) because *Fin Ag’s security interest was created by the Bucks*—not by the “Tooker Sellers.” Minn. Stat. § 336.9-307(1) (1999) states that “[a] buyer of goods in the ordinary course of business...takes free of a security interest *created by the seller...*” (emphasis added); see Vacura v. Haars Equipment, Inc., 364 N.W.2d 387, 393 (Minn. 1985) (The “security interest created by [the] seller” as used in Minn. Stat. § 336.9-307(1) refers only to a security interest given by the seller as debtor and does not refer to any other

security interest); see also Exchange Bank of Osceola v. Jarrett, 588 P.2d 1006 (Mont. 1979) (the court acknowledging that although defendant had no way of learning the property purchased was subject to a security interest created by the true owner of the goods, the Uniform Commercial Code clearly provided protection only as to security interests created by the seller and not third parties). In that Fin Ag's security interest continued in any crops sold by the Bucks to the "Tooker Sellers," and subsequent re-sale of the crops by the "Tooker Sellers" did not cut off the security interest of Fin Ag, any dispute as to the identity of Meschke's seller is legally irrelevant.

**4. Meschke's Assertion that a Secured Creditor Should be Required to File Effective Financing Statements for All Potential "Grain Fronters" is Inconsistent with the Language of the FSA and Wholly Impracticable.**

Meschke argues that the public policy behind the FSA was to eliminate "guesswork" for grain buyers and the Court of Appeals ruling now places a burden of investigation on the buyers when it should actually be on the lenders. See Appellant's Brief at 15-20. In other words, since Meschke did not have actual knowledge that the crops were actually owned by the Bucks it should be relieved of liability for conversion because that is what Congress intended. Id. Similarly, the MGFA argues a buyer's actual notice of the "true owner" is required for the FSA exception under 7 U.S.C. § 1631(e) and Chapter 336A. See Amicus Brief at 8-15. Once again, the FSA is a strict liability statute that simply requires a lien creditor, such as Fin Ag, to protect its security interest by providing *notice* of its

interest by either giving direct notice to buyers of farm products or by filing an effective financing statement with the Secretary of State. See 7 U.S.C. § 1631(e)(1) and (e)(3).

Meschke has consistently argued that it should take free of Fin Ag's security interest because Fin Ag did not file an effective financing statement that identifies the "Tooker Sellers." See Appellant's Brief at 22; Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment at 7. Yet Meschke does not indicate how Fin Ag could legally have complied with Meschke's unprecedented suggestion that Fin Ag file an effective financing statement against the "Tooker Sellers" (i.e. the Bucks' two minor children and two employees). The FSA and Minn. Chapter 336A clearly state that an effective financing statement contains:

- (i) the name and address of the secured party;
- (ii) the name and address of the person indebted to the secured party;
- (iii) the social security number, or other approved unique identifier, of the debtor or, in the case of the debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number, or other approved unique identifier, of such debtor; and
- (iv) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, and the name of each county or parish in which the farm products are produced or located.

7 U.S.C. § 1631(c)(4)(C); accord Minn. Stat. § 336A.03(2). There is no dispute that Fin Ag complied with the requirement of filing an effective financing statement with the Minnesota Secretary of State. (A. 91-92) Meschke's argument that Fin Ag should have filed an effective financing statement naming the "Tooker

Sellers” is fatally flawed because an effective financing statement requires the name, address and security number of the *person indebted to the secured party*. 7 U.S.C. § 1631(c)(4)(C)(ii-iii). The “Tooker Sellers” were not indebted to Fin Ag, and there is no possible way for Fin Ag to have complied, which it is not statutorily required to do, with Meschke’s impractical assertion that secured creditors should file effective financing statements for all possible “grain fronters.” Meschke’s unprecedented assertion that it should take free of Fin Ag’s security interest because Fin Ag did not file an effective financing statement on the “Tooker Sellers” is wholly unsupported by the statutory language of the FSA and Minn. Ch. 336A.

Fin Ag has followed the law in utilizing Minnesota’s central notice system. Fin Ag filed an effective financing statement. Fin Ag did everything that was reasonably necessary to protect its interest.<sup>1</sup> Like it or not, the loss must fall on one of these two parties. In determining where the loss falls, the Trial Court and the Minnesota Court of Appeals correctly concluded that the Food Security Act requires a decision in Fin Ag’s favor.

## **II. The UCC-1 Financing Statements Filed by Fin Ag in Hubbard and Wadena County Are Effective Because They were Filed in Good Faith and Meschke Could Not Reasonably Disclaim Knowledge or Notice of Fin Ag’s Secured Interest.**

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<sup>1</sup> The Court of Appeals noted Meschke did not deny having knowledge of Fin Ag’s interest in Buck’s crops or receiving records from the secretary of state. *Fin Ag, Inc.*, 700 N.W.2d at 519. “Instead, the record shows that Meschke had repeatedly issued checks to both Fin Ag and Buck as copayees, which reflects its awareness that Fin Ag had a secured interest in crops owned by Buck.” *Id.* While this statement by the Court of Appeals was interpreted by Meschke and MGFA as inserting a “constructive knowledge” requirement on the buyer, this should more properly be viewed as the Court of Appeals notation that Meschke had failed to take reasonable steps to protect its interest.

Meschke suggests on appeal that Fin Ag failed to perfect its security interest in the Bucks' crops because Fin Ag filed its UCC-1 financing statement in Hubbard and Wadena Counties (where the crops were grown) instead of filing in Itasca County (where the Bucks' resided). See Appellant's Brief at 22-26. This argument was never raised at the Trial Court level. The Court of Appeals erroneously indicated that Meschke raised this argument in its oral argument opposing the summary judgment motion. Fin Ag, Inc., 700 N.W.2d at 520. In reviewing the transcript of the summary judgment motion, Meschke's counsel made one vague, generalized reference to Fin Ag's duty to perfect its security interest by filing a UCC in the debtor's county of residence.<sup>2</sup> See Trans. of Summary Judgment Oral Argument at 25-26. At no time did Meschke's counsel claim Fin Ag failed to do this. No argument was ever made by Meschke's counsel as to Fin Ag filing in Wadena and Hubbard Counties instead of Itasca County. Certainly, there is no indication in Judge Godzala's June 18, 2003 Order and Memorandum indicating this issue was before the Trial Court. (A. 1-4) As a consequence, it cannot be considered by the Minnesota Supreme Court. Thayer v.

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<sup>2</sup> Meschke's counsel stated the following during oral argument:

"The lender has got a job to do three things. The lender has got to get an executed security agreement. It has to properly file a UCC-1, which ordinarily would be in the county of the debtor's residence. And in some cases, it must be signed. And it must obtain under a Chapter 336(a) an effective financing statement. That must be filed in the UCC division of the office of the Secretary of State."  
Trans. of Summary Judgment Oral Argument at 25-26.

See also Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment at 6-7 (stating "In order for a lender to have an effective lien on a farmer's grain, the lender must obtain the following: 1.) Obtain a security agreement signed by the debtor; 2.) Obtain a UCC-1 signed by the debtor and filed in the County of the debtor's residence; 3.) Obtain an Effective Financing Statement signed by the debtor and filed with the UCC Division of the Minnesota Secretary of State.")

American Financial Advisors, 322 N.W.2d 599, 604 (Minn. 1982) (on appeal, the court can only review issues that the record shows were presented to and considered by the trial court in deciding the matter before it.) Thus, this claim of Meschke should not be considered. Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988).

In addition to failing to raise the argument at the Trial Court level, the question of whether Fin Ag's security interest was perfected is not relevant to Meschke's liability. There is no requirement under the FSA for the creditor's security interest to be perfected. The only requirement is that a secured creditor make a proper central notice filing. Thus, it is irrelevant whether Fin Ag's security interest was perfected since Fin Ag's correctly filed an effective financing statement. The FSA was not intended to alter state law on the creation of security interests or the priority of those interests as between competing creditors; rather, the intent was to define when a buyer of farm products took subject to the security interest of a *particular* creditor. AG Services of America, Inc., v. United Grain, Inc., 75 F.Supp.2d 1037, 1044 (D. Neb. 1999) citing Mark V. Bodine, Clear Title: A Buyer's Bonus, a Lender's Loss—Repeal of U.C.C. § 9-307(1) Farm Products Exception by Food Security Act of § 1324 [7 U.S.C. 1631], 26 Washburn L.J. 71, 93-94(1986).

It is undisputed that Fin Ag filed its UCC statements in Hubbard County, Wadena County and with the Secretary of State. Fin Ag did not file in Itasca County until after the sales at issue took place. See Minn. Stat. § 336.9-401(1)(b)

(1999). The only evidence in the record as to the Buck's county of residence is their mailing address in Grand Rapids, MN (which is located in Itasca County) on the UCC statements. (A. 72-73, 75-76, 78-79, 82-85, 87-88) However, as the Court of Appeals correctly held, Fin Ag's security interest is nevertheless effective because Fin Ag made the filing in good faith and Meschke had knowledge of the contents of Fin Ag's financing statement. See Minn. Stat. § 336.9-401(2) (1999). Meschke's argument that Fin Ag had the burden of proof to demonstrate good faith on its part is without merit and in any event, the record is sufficient to show Fin Ag acted in good faith in filing in Hubbard and Wadena Counties.

Fin Ag made its UCC filings in Hubbard County and Wadena County because that is where the farmland on which the Bucks' crops were located. (A. 72-90) (see Exhibit A to all UCC filings indicating which parcels are located in Wadena County and which are located in Hubbard County). If Meschke's assertion that Fin Ag has the burden of proof to demonstrate good faith is correct, then Fin Ag has met its burden of production on this issue. See Production Credit Assn. of West Central Minn. v. Bartos, 430 N.W.2d 238, 242 (Minn. App. 1988) (holding creditor acted in good faith when filing in county where collateral was located although creditor failed to file with secretary of state).

The record also demonstrates that Meschke had actual knowledge of Fin Ag's security interest, such that it is entitled to the good faith exception in Minn. Stat. § 336.9-401(2). Under Minnesota's version of the UCC, "a holder of a perfected security interest is charged with knowledge of the contents of a misfiled

U.C.C.-1 under section 336.9-401(2), when it had actual knowledge of the critical information required in a properly filed U.C.C.-1.” D & R Star, Inc. v. World Bowling, Inc., 619 N.W.2d 772, 776 (Minn. App. 2000). The critical information includes a general description of the collateral encumbered, and the names and addresses of the debtor and secured party. Id. As the Court of Appeals noted, the record contains copies of checks issued to Buck and Fin Ag as copayees, which is indicative of the fact that Meschke was aware that Fin Ag had an interest in Bucks’ the crops. (A. 143, 145) Additionally, Meschke’s affidavit stating it was a registered buyer under Minnesota’s Central Notification Filing System establishes that Meschke received effective financing statement records from the secretary of state. (A. 107) Meschke’s established prior dealings with the Bucks establish its notice of the contents of Fin Ag’s effective financing statement filing since the CNS-1 filing includes a general description of the collateral encumbered and the names and addresses of the debtor and secured party.<sup>3</sup> (A. 91-92)

The Minnesota Court of Appeals correctly held that Fin Ag has demonstrated, as a matter of law, its perfected interest in the Bucks’ crops as against Meschke.

### CONCLUSION

The District Court for the County of Morrison properly found that the facts concerning Fin Ag’s claim against Meschke were not in dispute and the same

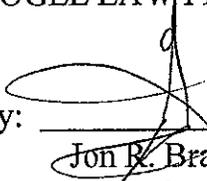
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<sup>3</sup> For a listing of Product Codes see the definitions supplied by the Minnesota Secretary of State. This listing can be found in the directions provided for CNS-1 filings at <http://www.sos.state.mn.us/docs/cns-1.pdf>. In the case of Fin Ag’s CNS-1 filing, a product code of 100 was listed and this is defined as “all crops.” (A. 91)

compelled entry of judgment in favor of Fin Ag and against Meschke as a matter of law. The Minnesota Court of Appeals properly affirmed the District Court's judgment. The Minnesota Supreme Court should affirm the District Court's judgment.

Dated this 16<sup>th</sup> day of December, 2005.

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ATTORNEYS FOR RESPONDENT,  
FIN AG, INC.

RE: Fin Ag, Inc. v. Hufnagle, Inc., et al.

Appeal Case No. A04-2176

STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF CASS )

AFFIDAVIT OF SERVICE  
BY MAIL

Lori Thrall, first duly sworn on oath, does depose and say: She is a resident of County of Cass, City of West Fargo, State of North Dakota, is of legal age and not a party to or interested in the above entitled matter.

On December 2, 2005, your affiant served the following document:

**RESPONDENT'S BRIEF**

by placing true and correct copies in envelopes addressed as follows:

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and causing them to be placed in the mail at Fargo, North Dakota with first-class postage prepaid.

Lori Thrall  
Lori Thrall

Subscribed and sworn to before me this 2<sup>nd</sup> day of December, 2005.

Jill Nona  
Notary Public

