

State of Minnesota

In Court of Appeals

No. A10-2167

New Vision Co-op.

Appellant.

vs.

Minnwest Bank, M.V..

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. Is New Vision Co-op's livestock production input lien on Chadley Arends' livestock valid?

· This issue was raised by Respondent Minnwest Bank in its Motion for Summary Judgment. Trial Court ruled that New Vision Co-op's livestock production input lien is not valid.

Minn. Stat. § 514.966

Dolder v. Griffen, 323 N.W.2d 773 (Minn. 1982)

Sullivan v. Credit River Township, 217 N.W.2d 502 (Minn. 1974).

2. Does New Vision Co-op's livestock production input lien on Chadley Arends' livestock extend to livestock which consumed feed provided by New Vision Co-op prior to giving notice pursuant to Minn. Stat. § 514.966?

· This issue was raised by Respondent Minnwest Bank in its Motion for Summary Judgment. Trial Court ruled that that New Vision Co-op's livestock production input lien does not extend to feed provided prior to giving notice pursuant to Minn. Stat. § 514.966.

Minn. Stat. § 514.966

STATEMENT OF THE CASE

Appellant New Vision Co-op ("New Vision") is a Minnesota cooperative based in Worthington, Minnesota. New Vision is in the business of selling livestock feed. In the instant case, New Vision provided feed for the benefit of Chad Arends. Chad Arends operated numerous hog feed barns. Arends is indebted to Respondent Minnwest Bank ("Minnwest") pursuant to numerous promissory notes he executed and delivered to Minnwest. Arends also executed a security agreement which pledged his livestock, among other things, as collateral for his indebtedness with Minnwest. When Arends defaulted on these promissory notes, Minnwest commenced the present action to

determine the validity, extent, and priority of security interests in Arends' livestock.

New Vision undertook the steps to perfect a livestock production input lien pursuant to Minn. Stat. § 514.966 in Arends' livestock that were fed with feed provided by New Vision. New Vision provided the required lien notification statement to parties claiming to hold a security interest in the livestock of Arends pursuant to Minn. Stat. § 514.966, subd. 3, including Minnwest. However, the envelope in which the lien notification statement was delivered did not contain the words "IMPORTANT-LEGAL NOTICE." While Minnwest received New Vision's lien notification statement, it did not respond to it. New Vision filed a UCC Financing Statement identifying Arends' livestock which were fed with feed provided by New Vision. Minnwest Bank claims a security interest in the livestock of Chad Arends that is superior to that of New Vision.

Minnwest initiated a motion for summary judgment claiming New Vision's livestock production input lien was invalid and did not attach to livestock which consumed New Vision's feed prior to sending livestock production input lien notification statements. The Redwood County District Court determined that New Vision's livestock production input lien was invalid and did not attach to livestock which consumed New Vision's feed prior to service of the livestock production input lien notification statement.

STATEMENT OF FACTS

Chad Arends operated a feeder pig operation in Redwood County. (Appellant's Appendix-3) Arends executed and delivered to Minnwest eight promissory notes in amounts ranging from \$75,000.00 to \$3,000,000.00 to finance his feeder pig operation. Id. Arends also executed a security agreement which granted Minnwest a security

interest in Arends' livestock and the proceeds of the livestock. Id. Arends defaulted on his obligations to Minnwest pursuant to the promissory notes and security agreement. (AA-4). At the time it commenced this action, Minnwest was in possession of proceed checks from the sale of Arends' livestock. (AA-5). These proceed checks were made payable to several parties claiming an interest in Arends' livestock. Id. Minnwest commenced the present action to determine the validity, extent, and priority of security interests in Arends' livestock.

New Vision provided feed for the benefit of Arends' feeder pig operation at numerous sites in southern Minnesota between February 9, 2009, and July 8, 2009. (AA-68). As early as late April 2009, Minnwest was aware that New Vision was providing feed to Arends' pig operation. Id. Minnwest had knowledge that Arends' hogs were consuming feed provided by New Vision. On June 4, 2009, representatives of New Vision and Minnwest negotiated terms of an agreement to ensure that Arends' pigs continued to be fed. Id. New Vision sought payment of Arends' outstanding feed bill. Id. Additionally, New Vision wished to make arrangements for immediate payment of future feed deliveries to Arends' pig operation. Id. Minnwest sought to procure continuing feed deliveries to ensure its collateral, Arends' pigs, was protected and did not decrease in value. Id. Ultimately, New Vision and Minnwest entered into an Agreement on June 4, 2009. (AA-71). Pursuant to the Agreement, payments were made on Arends' feed account with New Vision and Minnwest began paying for feed delivered after the date of the agreement. However, the agreement did not provide for payment of Arends' account balance of \$281,503.04 for feed purchased prior to execution of the agreement.

While New Vision and Minnwest agreed to develop a payment schedule for Arends' open account balances which existed prior to the written agreement, no agreement on a payment schedule was ever reached. (AA-69). New Vision provided proposed payment schedules to Minnwest. Id. However, Minnwest refused to agree to New Vision's proposed payment schedule. As a result, New Vision ceased providing feed for Arends' feeder pig operation in July 2009.¹

After it ceased providing feed to Arends' feeder pig operation, New Vision sought to obtain a livestock production input lien pursuant to Minn. Stat. § 514.966 on Arends' pigs. New Vision prepared the required a lien notification statement. (AA-72). New Vision mailed a copy of this lien notification statement to Minnwest on July 6, 2009, via certified mail. (AA-70). The lien notification statement was received by Carol Felleon on July 7, 2009, at Minnwest's Redwood Falls location. (AA-73). The phrase "IMPORTANT-LEGAL NOTICE" is not printed on the exterior of the envelope in which the lien notification statement was mailed to Minnwest. (AA-46-7) On June 29, 2009, New Vision filed a UCC-1 Financing Statement to perfect its Livestock production input lien with respect to Arends' pigs. (AA-74). Minnwest has never responded to New Vision's lien notification statement. Id.

¹ New Vision also asserted that Minnwest failed to pay for all feed delivered for the benefit of Arends' feeder pig operation after execution of the June 4, 2009 agreement. New Vision claimed that Minnwest failed to pay for feed in the amount of \$23,027.74. However, New Vision and Minnwest reached a settlement regarding this claim.

STANDARD OF REVIEW

In an appeal from summary judgment, this court must determine whether genuine issues of material fact exist and whether the district court erred in applying the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990). The court must view the evidence in the light most favorable to the nonmoving party. Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). “Any doubt as to whether issues of material fact exist is resolved in favor of the party against whom summary judgment was granted.” Lubbers v. Anderson, 539 N.W.2d 398, 401 (Minn. 1995) (citing Rathbun v. W.T. Grant Co., 219 N.W.2d 641, 646 (Minn. 1974)).

The interpretation of a statute is a question of law and, on review, the Court of Appeals is not bound by the decision of the trial court. McClain v. Begley, 465 N.W.2d 680, 682 (Minn. 1991). Therefore, cases involving interpretation of a statute are given a de novo review on appeal. Brown v. Allstate Ins. Co., 466 N.W.2d 54, 55 (Minn. Ct. App. 1991).

ARGUMENT

I. NEW VISION’S FAILURE TO INCLUDE THE WORDS “IMPORTANT-LEGAL NOTICE” ON ITS LIEN NOTIFICATION STATEMENT TO MINNWEST DOES NOT RENDER ITS LIEN INVALID.

Minn. Stat. § 514.966, subd. 3 provides:

A supplier furnishing livestock production inputs in the ordinary course of business has a livestock production input lien for the unpaid retail cost of the livestock production input. A perfected livestock production input lien that attaches to livestock may not exceed the amount, if any, that the sales price of the livestock exceeds the greater of the fair market value of the livestock at the time the lien attaches or

the acquisition price of the livestock. A livestock production input lien becomes effective when the agricultural production inputs are furnished by the supplier to the purchaser.

Minn. Stat. § 514.966, subd. 3. “A supplier shall notify a lender of a livestock production input lien by providing a lien-notification statement to the lender in an envelope marked ‘IMPORTANT-LEGAL NOTICE.’” Minn. Stat. § 514.966, subd. 3(b). “The lien-notification statement must disclose the following: (1) the name and business address of the lender that is to receive notification; (2) the name and address of the supplier claiming the lien; (3) a description and the date or anticipated date or dates of the transaction and the retail cost or anticipated costs of the livestock production input; (4) the name and address of the person to whom the livestock production input was furnished; (5) the name and address of the owner of the livestock, the location where the livestock will be raised, and a description of the livestock; and (6) a statement that products and proceeds of the livestock are covered by the livestock input lien.” Id.

A. New Vision’s Livestock Production Input Lien on Arends’ Livestock Should Be Liberally Construed.

Minnesota Statutes contain numerous methods to obtain an involuntary lien for labor and materials. One of these liens is the livestock production input lien. Similar to other liens allowed pursuant to statute, the purpose of the livestock production input lien is to provide security and a means of ensuring payment for materials provided. In the case of the livestock production input lien, the lien is meant to secure payment for livestock inputs, such as feed. The security afforded to the party that provides the inputs is a lien on the animals that benefited from the inputs. In the instant case, the inputs are

feed provided by New Vision and the benefited livestock consist of Arends' pigs that consumed New Vision's feed.

The purpose of the livestock production input lien is to allow the feed supplier to be paid from the sale proceeds when livestock that consumed the supplier's feed is sold. This allows for payment to the feed supplier for the feed consumed by the livestock in the event the livestock owner fails to pay for the feed. Minn. Stat. § 514.966 also provides a mechanism which allows a feed supplier's input lien to obtain priority over an existing lien against livestock that consumed the feed provided by the supplier. The supplier achieves priority over an existing lien holder when the existing lien holder fails to respond to a lien notification statement provided by the supplier.

As there is a lack of published decisions concerning statutory agricultural liens in Minnesota, this is a case of first impression. As a result, it is necessary to examine how similar statutory liens in Minnesota are interpreted. Additionally, an examination of similar agricultural lien statutes in other jurisdictions provides insight on the issues raised in this matter. Other statutory liens, such as mechanics' liens, are construed liberally once the lien has attached. As with these other liens, the livestock production input lien statute should be liberally construed to protect the persons the statute intends.

Since there are no existing opinions on the current livestock production input lien statute, we must look for guidance on interpretation of the statute elsewhere. Minnwest argued that the livestock production input lien should be examined in the same manner as a mechanics' lien. The District Court agreed with Minnwest. The District Court compared the instant case with a mechanics lien case in which the prelien notice was not

provided in bold type and determined that New Vision's lien was invalid for failure to follow necessary statutory criteria. (AA-90-1). Comparison of the prelien notice requirements of a mechanics lien to the lien notification statement required by the livestock production input lien statute is not proper as each notice has a different purpose.

“[M]echanics lien statutes have been liberally construed to effectuate their purpose of protecting the rights of workmen and materialmen who furnish labor and material for the improvement of real estate, and that a construction which will sustain the lien is preferable to one which will invalidate it” Minnesota Wood Specialties v. Mattson, 274 N.W.2d 116, 119 (Minn. 1978). Mechanics liens are only strictly construed on the question of whether the lien attaches. See Dolder v. Griffen, 323 N.W.2d 773, 780 (Minn. 1982). They are liberally construed once the lien has attached. Id. The mechanics lien statute expressly states that “[a] person who fails to provide the notice shall not have the lien and remedy provided by this chapter.” Minn. Stat. § 514.011, subd. 1.

Mechanics liens are strictly construed concerning attachment of the lien. Once the lien has attached, the lien is liberally construed. The District Court and Minnwest improperly compare required prelien notice of a mechanics lien to the lien notification statement of the livestock production input lien. With respect to livestock production input liens, attachment of the lien is a separate and distinct issue and is not related to the lien notification statement. The statute section at issue, Minn. Stat. § 514.966, subd. 3, pertains to priority of the livestock production input lien with respect to a competing security interest, it does not pertain to the issue of whether the lien attaches. A livestock

production input lien attaches when inputs are furnished. Minn. Stat. § 514.966, subd. 3. The lien then must be perfected by filing a financing statement pursuant to the Uniform Commercial Code. New Vision filed a financing statement. (AA-74). This caused New Vision's livestock production input lien to attach to Arends' hogs at the locations stated in the financing statement on June 29, 2009 as of the date feed was furnished by New Vision. Supplying feed and the subsequent filing of a financing statement caused New Vision's livestock production input lien to attach to Arends' hogs.

The lien notification statement and the lack of three words on the envelope mailed to Minnwest does not relate to the issue of lien attachment, it only concerns priority of security interests between Minnwest and New Vision. This is confirmed by the mechanics lien and livestock production input lien statutes. The mechanics lien statute expressly states that a "person who fails to provide notice shall not have the lien." Minn. Stat. § 514.011, subd. 1. While there is no similar provision in Minn. Stat. § 514.966, it does expressly state when the lien attaches. The statute provides that the lien attaches at the time the inputs are furnished to the purchaser and is perfected upon the filing of a UCC financing statement. Minn. Stat. § 514.966, subd. 3; Minn. Stat. § 514.966, subd. 6. The fact that the mechanics lien statute expressly states the prelien notice is a condition precedent to the creation of a lien while Minn. Stat. § 514.966 does not, illustrates that a comparison of the prelien notice requirements of a mechanics lien and the lien notification statement for a livestock production input lien is not proper. While the prelien notice expressly states that it relates to the attachment of a lien, the lien

notification statement does not. This important difference in the two statutes makes a comparison of the two statutes on this issue impossible.

B. Lien Notification Statement Requirements of Minn. Stat. § 514.966 Are Directory, Not Mandatory.

When a statutory question involves failure of expression rather than ambiguity of expression, courts are not free to substitute amendment for construction and thereby supply the legislative omissions. State v. Moseng, 95 N.W.2d 6, 11-2 (Minn. 1959). Courts are prohibited from adding words to a statute and cannot supply what the legislature either purposely omitted or inadvertently overlooked. Ullom v. Independent Sch. Dist. No. 112, 515 N.W.2d 615, 617 (Minn. Ct. App. 1994). “[A] statute which does not declare the consequences of a failure to comply may be construed as a directory statute.” Sullivan v. Credit River Township, 217 N.W.2d 502, 507 (Minn. 1974). Failure to comply with a directory statute does not necessarily invalidate action taken with respect to that statute. Id.

While the livestock production input statute provides that a notice should be placed on the envelope of the lien notification statement, it does not state the consequences for the failure to do so. The fact that the livestock production input lien statute does not expressly state the consequences of a failure to comply with its provisions establishes that compliance with the statute is not mandatory. See Sullivan, 217 N.W.2d at 507. This is another important distinction between mechanics liens and livestock production input liens. The mechanics lien statute specifically states that failure to provide the prelien notice precludes attachment of a lien. There is no such provision

with respect to the livestock production input lien or the lien notification statement.

The District Court relied upon Niewind v. Carlson, 628 N.W.2d 649 (Minn. Ct. App. 2001) in determining that New Vision's lien was invalid. In Niewind, the party seeking to obtain a mechanics lien failed to use the required bold type in the prelien notice. This court strictly construed the prelien notice requirements as the issue related to attachment of the lien and determined the lien was invalid for failure to provide proper notice. The District Court relied on this decision and determined that the "statutory language" required on the envelope was mandatory. (AA-90). Ultimately, the District Court reasoned that since the language is mandatory, New Vision's lien is invalid.

Finding that the lien notification statement requirements are mandatory does not comport with case law concerning statutory construction. If the requirements for the lien notification statement were intended to be mandatory, the legislature would have included consequences for failure to strictly comply, as they did with the mechanics lien statute. Since the legislature did not include consequences, the requirements are simply directory and failure to strictly comply with these requirements does not invalidate New Vision's livestock production input lien.

Additionally, New Vision's lien notification statement should be liberally construed. As previously stated, Mechanics liens are construed liberally after the lien has been created. See Dolder, 323 N.W.2d at 780. The lien notification statement does not relate to attachment of the lien. It relates solely to priority. Therefore, if the livestock production input lien is to be treated in a manner similar to the mechanics lien, lien notification statements must be liberally construed since the lien has already attached.

Since issues raised after the lien has attached are to be liberally construed, only substantial compliance, rather than strict compliance is required.

Other Minnesota Statutes and agricultural liens in other jurisdictions merely require substantial compliance with statutory provisions. For example, statutory notice is required when a governmental entity seeks to extend the time limit for ruling on a zoning request pursuant to Minn. Stat. §15.99. Minnesota courts have recognized that only substantial compliance with statutory provisions is necessary in this context. See City of Minneapolis v. Wurtele, 291 N.W.2d 386, 391 (Minn. 1980). In North Dakota, only substantial compliance with the statutory requirements for an agricultural supplier's lien is necessary. See Stockman Bank of Montana v. Agsco, Inc., 727 N.W.2d 742 (N.D. 2007). In Stockman, the party seeking an agricultural lien failed to provide a notice to the purchaser that an agricultural lien may be filed if the agricultural supplies are not paid for. The North Dakota Supreme Court found that the lack of this notice was not fatal since the purchaser was aware a lien could be filed without the notice. Id. at 749. Only substantial compliance with the notice requirement was necessary.

C. New Vision's Lien Notification Statement Substantially Complied with Minn. Stat. § 514.966.

New Vision's lien notification statement to Minnwest substantially complied with Minn. Stat. § 514.966. The lien notification statement provided to Minnwest by New Vision contained: 1) the name and business address of Minnwest; 2) the name and address of New Vision; 3) a description and the dates of Arends' feed purchases, along with the anticipated amount of Arends' feed purchases; 4) the names and addresses of

persons to whom feed was furnished; and 5) the names and address of the owner of the livestock, locations where the livestock were raised, and a description of the livestock. (AA-72). The notice was mailed to Minnwest via certified mail. The lien notification statement was received by Carol Felleson on July 7, 2009, at Minnwest's Redwood Falls location. The copy of the envelope provided by Minnwest shows that the envelope was opened and the contents were presumably read. (AA-46-7). In fact, the only requirement that the notice did not satisfy was the inclusion of the notice on the exterior of the envelope. All other statutory requirements were met. Since New Vision's lien notification statement included all but one of the requirements, it substantially complied with the statutory requirements for a lien notification statement.

Furthermore, New Vision's lien notification statement substantially complied with the underlying reason for requiring a notice on the envelope. The only purpose for requiring such a notice on an envelope is to entice the recipient of the sealed envelope to open the envelope and review the contents of the envelope. In this case, that purpose was achieved. The photocopy of the envelope provided by Minnwest clearly shows that the envelope has been opened. (AA-47). Minnwest has not claimed that the envelope was not opened within ten days of its receipt. Minnwest received the lien notification statement and opened the envelope, even though it did not contain the phrase "IMPORTANT-LEGAL NOTICE". Once the envelope was opened, this phrase has no additional purpose since the recipient has reviewed the most important portion of the lien notification statement, the lien notification statement itself. Since the purpose of the notice on the envelope, namely to open the envelope, was achieved without the notice on

the envelope, the lack of the notice is not fatal to New Vision's livestock production input lien or its claim of priority over Minnwest. The fact that Minnwest received and opened the envelope containing the lien notification statement confirms that New Vision's lien notification statement substantially complies with the requirements of Minn. Stat. § 514.966.

II. LIVESTOCK PRODUCTION INPUT LIENS RELATE BACK TO THE DATE INPUTS ARE PROVIDED.

“A livestock production input lien becomes effective when the agricultural production inputs are furnished by the supplier to the purchaser.” Minn. Stat. § 514.966, subd. 3(a). “A livestock production input lien must be perfected by six months after the last date that livestock production inputs are furnished the obligor.” Minn. Stat. § 514.966, subd. 6(d).

Minnwest argued in its motion for summary judgment that New Vision's livestock production input lien does not relate back to feed sales prior to the date of its lien notification statement to Minnwest. The District Court agreed with Minnwest. The District Court cited a portion of Minn. Stat. § 514.966, subd. 3, which provides that the lien notification statement must include the “location where the livestock will be raised,” as support for its decision. Additionally, the District Court found that a letter of commitment can only relate to bills and charges to be incurred in the future. Since the statute requires a lender to issue a letter of commitment or refuse to issue a letter of commitment, the District Court reasoned that the statute must pertain only to future transactions. However, when Minn. Stat. § 514.966 is examined in its entirety, it is clear

that the livestock production input lien is intended to relate back to sales of feed that occurred prior to service of the lien notification statement.

The livestock production input lien statute specifically states that a “livestock production input lien becomes effective when the agricultural production inputs are furnished by the supplier to the purchaser.” Minn. Stat. § 514.966, subd. 3(a). This provision clearly states that the lien becomes effective upon the date the inputs are actually supplied. If the effective date of the lien was intended to be dependent on when a lien notification statement was served, the statute would have expressly stated that the effective date was related to the date the notice was sent, not the date the inputs are supplied. Additionally, as previously stated, the lien notification statement does not relate to the creation of a lien, it only affects priority of competing liens. In the instant case, the unpaid inputs were supplied as early as May 1, 2009. (AA-69). Therefore, according to the plain meaning of the statute, the livestock production input lien of New Vision became effective when the inputs were supplied to Arends.

The fact that a portion of Minn. Stat. § 514.966, subd. 3 states that the lien notification statement is required to include the “location where the livestock will be raised” is not conclusive evidence that the livestock production input lien is not intended to relate back to input sales prior to service of the lien notification statement. First, Minn. Stat. § 514.966 provides for other agricultural liens, namely veterinarian’s, breeder’s, and feeder’s liens. These liens attach at the time the services were provided and do not require service of a lien notification statement. Only perfection by filing a UCC financing statement is necessary. The veterinarian’s and breeder’s lien may be perfected

within 180 days and six months, respectively, of providing the service. These liens attach without notice to an existing lien holder. They even obtain priority over existing lien holders without providing notice. Since there is no notice required concerning these liens, there is no doubt that they relate back to services provided prior to perfection of the lien. The fact that Minn. Stat. § 514.966 allows other types of agricultural liens to relate back, indicates that the intent of the statute is to allow a livestock production input lien to relate back to the dates inputs were provided, regardless of the date the lien notification statement was served.

Minn. Stat. § 514.966, subd. 3 also provides that a lien notification statement must include “the date or anticipated date or dates of the transaction.” Minn. Stat. § 514.966, subd. 3(c)(3). If the livestock production input lien was only intended to pertain to future input sales, the lien notification statement would not need to include the “date” or “dates” of the transactions. It would only need to include the “anticipated date or dates.” The term “date” or “dates” can only refer to transaction dates that occurred in the past. If the statute was intended to apply only to future transactions, it would only be necessary for the notice to refer to the “anticipated date or dates” as a future transaction could only be anticipated. However, the statute refers to the “date” or “dates” of transactions. This can only refer to transactions that have already occurred. If the only transactions referred to are future transactions, the only proper manner to refer to such transactions is to use the term “anticipated.” Since transaction dates are referred to with the term “anticipated” and without the term “anticipated,” it is clear that Minn. Stat. § 514.966 contemplates a lien which relates back to the date the inputs were provided.

Minn. Stat. § 514.966, subd. 3(c) contains another provision that indicates the intent to allow a livestock production input lien to relate back to prior transactions. A lien notification statement must also include “the name and address of the person to whom the livestock production input was furnished.” Minn. Stat. § 514.966, subd. 3(c) (4)(emphasis added). Clearly, this provision does not pertain to a future transaction. If this provision was intended to refer only to future transactions, it would require identification of the person to whom the livestock production input will be furnished. Nevertheless, the statute was drafted in a manner in which it expressly refers to past transactions. As a result, this particular provision can only be interpreted to refer to a transaction that has already occurred. The word “was” refers to an event that has already occurred. Since this provision refers to a past transaction and the livestock production input lien attaches when inputs are furnished, the statute contemplates notifying a lender of transactions that have already taken place and a lien that has already attached.

The District Court’s finding that a “letter of commitment” can only relate to a future obligation is unsupported. Minn. Stat. § 514.966 provides that a lender must either issue a letter of commitment or refuse to issue a letter of commitment within ten days after receiving a lien notification statement. There is no definition of a letter of commitment in Minn. Stat. § 514.966 or any other Minnesota Statute. There is also nothing that prohibits issuance of a letter of commitment to pay a prior debt. A lender would not have to pay a supplier for inputs within ten days of receiving a lien notification statement, it would simply have to issue a letter of commitment to pay in the future. This can relate to a future debt or a past debt. A lender may want to commit to payment of

prior input sales to ensure that the supplier continues to provide inputs in the future. The supplier can continue to provide inputs knowing that if payment is not made from the sale proceeds of livestock, it can recover the amount it is owed from the lender. In any case, the District Court erred in finding that a letter of commitment can only relate to a future obligation.

Minn. Stat. § 514.966, subd. 6 also provides evidence that a livestock production input lien may relate back to past input sales. The statute provides that the livestock production input lien must be perfected within “six months after the last date the livestock production inputs are furnished to the obligor.” Minn. Stat. § 514.966, subd. 6(d). Perfection of the lien expressly relates to the dates the inputs were provided on. Perfection is not related to the date the lien notification statement was sent. This provision clearly indicates that a supplier may begin providing inputs without the intent to perfect a lien. The supplier may then perfect a lien up to six months later in the event the inputs are not paid for. Such an interpretation is also consistent with the manner in which inputs such as feed are purchased in Minnesota. Typically, a farmer will purchase feed on account and will be billed on a monthly basis. As a result, it is possible that over one month could elapse before a supplier becomes aware that a party has refused or failed to pay for livestock inputs. This allows the supplier to obtain a production input lien that relates back to the date the inputs were actually furnished.

This interpretation also comports with other Chapter 514 statutory liens and other jurisdictions. The Minnesota mechanics lien statute allows the mechanics lien to relate back to the first item of work performed on real estate even though a lien is not sought

until after the work has been completed. See Minn. Stat. § 514.05. The Minnesota mechanics lien statute is similar to the livestock production input lien statute in that they both contain provisions that expressly state that they relate back to the time the first inputs/work was furnished.

Also, other jurisdictions with similar agricultural lien statutes allow the lien to relate back to the date the inputs were supplied. In North Dakota, to obtain an agricultural supplier's lien, a lien statement must be filed within 120 days after the supplies are furnished. See N.D. Cent. Code § 35-31-01. The North Dakota agricultural supplier's lien has routinely been interpreted to relate back to inputs supplied up to 120 days prior to filing of the lien statement. See In Re Bernstein, 230 B.R. 144 (Bankr. N.D. 1999).

After examining the plain language of the statute, there can be no doubt that the livestock production input lien in Minnesota relates back to the date the inputs were supplied. The lien must then be perfected within six months after the date the inputs were supplied. In the instant case, New Vision provided feed, that was never paid for, as early as May 1, 2009. New Vision perfected its lien by filing a Financing Statement less than three months after May 1, 2009. The livestock production input lien statute specifically states that the lien relates back to the date the inputs were first supplied. This is confirmed by other Chapter 514 statutes and agricultural liens in other jurisdictions.

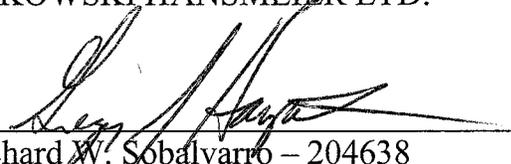
CONCLUSION

The District Court erred in applying the law in the instant case. First, the District Court erred in determining that a lien notification statement must be strictly construed

and that an envelope in which a lien notification statement is sent that does not contain the phrase "IMPORTANT-LEGAL NOTICE" causes a livestock production input lien to be invalid. A lien notification statement must be liberally construed so that only substantial compliance with required notice provisions is necessary. New Vision substantially complied with the lien notification requirements. Secondly, the District Court erred in determining that a livestock production input lien does not relate back to inputs provided prior to service of the lien notification statement. The plain meaning of the livestock production input lien statute clearly establishes that it allows creation and perfection of a livestock production input lien prior to service of a lien notification statement. Therefore, the District Court's order on Respondent Minnwest's motion for summary judgment should be reversed as Appellant New Vision's livestock production input lien substantially complied with statutory requirements and livestock production input liens clearly relate back to input transactions that occurred prior to service of a lien notification statement.

Dated this 7th day of January, 2011.

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