

STATE OF MINNESOTA
IN COURT OF APPEALS

No. A10-2167

New Vision Co-op,

Appellant,

vs.

Minnwest Bank, M.V.,

Respondent.

RESPONDENT'S BRIEF AND ADDENDUM

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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. Did Appellant New Vision Co-op (“**New Vision**”) have a livestock production input lien with priority over the perfected security interest of Respondent Minnwest Bank (“**Minnwest**” or the “**Bank**”) when:

a. Minn. Stat. § 514.966 subd. 3(b) states¹:

(b) 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." Delivery of the notice must be made by certified mail or another verifiable method.

b. New Vision delivered a lien-notification statement to Minnwest Bank by certified mail in a plain white envelope without the words “IMPORTANT – LEGAL NOTICE” on the envelope.

The Trial Court held that New Vision failed to comply with Minn. Stat. § 514.966 subd. 3(b) and, therefore, Minnwest Bank had a priority security interest ahead of the New Vision livestock production input lien. (Trial Court Order, filed July 20, 2010, pp. 3, 5-6, Appellant’s Appendix (“**App.**”)AA88, AA90-91.)

Authority:

Minn. Stat. § 514.966, subd. 3.

Minn. Stat. § 645.16.

Minn. Stat. § 645.44, subds. 1, 16.

Klingelhutz v. Woodsmen Construction, Inc., 455 N.W.2d 98 (Minn. Ct. App. 1990).

Niewind v. Carlson, 628 N.W.2d 649 (Minn. Ct. App. 2001).

1. The text of Minn. Stat. § 514.966, the agricultural input lien statute, is included in this brief as Addendum A. (Minn. Rule App. Proc. 128.04.) All other references in this brief are to the Appendix attached to the Appellant’s Brief.

2. If Minnwest Bank received the lien-notification statement on July 7, 2009, and New Vision only supplied feed on credit for which it was not paid prior to July 7, 2009, does Minn. Stat. § 514.966, subd. 3, provide a priority livestock production input lien for feed supplied prior to the date notice was received by the Bank?

The Trial Court held that livestock production input lien priority only applied to feed supplied after the notice was delivered and, therefore, New Vision did not have a priority lien for feed delivered prior to July 7, 2009. (Trial Court Order, p. 3, 5-6, App. AA88, AA91-93) (“**Trial Court Order, p. __, App. AA __**”).

Authority:

Minn. Stat. § 514.966, subd. 3.

A decision by the Court of Appeals to affirm the Trial Court decision on either one of these two issues resolves this appeal. If the lien-notification to Minnwest Bank did not comply with the statute (Issue No. 1), the New Vision lien priority claim fails, and the Court does not need to address Issue No. 2. If the lien only applies to the delivery of feed after the lien-notification was received by the Bank (Issue No. 2), then the New Vision priority lien claim fails regardless of whether the method of lien-notification complied with the statute.

STATEMENT OF THE CASE

Respondent Minnwest Bank agrees with Appellant’s Statement of the Case.

STATEMENT OF FACTS

Chadley Arends (“**Arends**”) owned and operated a feeder pig and crop farm operation based in Redwood County, Minnesota. (*Affidavit of Kirby Josephson dated April 12, 2010*, (“**Josephson Aff.**”) ¶ 1, App. AA38.) Arends executed and delivered to Minnwest certain promissory notes, including a note dated February 11, 2005. (*Josephson Aff.*, ¶ 2, App. AA38.) To secure the indebtedness evidenced by the notes, Chadley Arends and Karla Arends executed and delivered to Minnwest a Security Agreement dated February 11, 2005, granting Minnwest a security interest in the following personal property to secure the indebtedness evidenced by the notes:

All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles, Crops, Farm Products, Livestock (including all increases and supplies) and Farm Equipment; and proceeds and products thereof.

(*Josephson Aff.*, ¶ 3, App. AA38.)

Minnwest filed a UCC-1 financing statement with the Minnesota Secretary of State on February 28, 2005. (*Josephson Aff.*, ¶ 4, App. AA38; Exhibit A-1, App. AA41.) Arends defaulted on his obligations to Minnwest Bank. (*Josephson Aff.*, ¶ 5, App. AA38.)

New Vision supplied feed to Arends. (*Josephson Aff.*, ¶ 7, App. AA38.) On June 29, 2009, New Vision filed a UCC-1 financing statement with the Minnesota Secretary of State. (*Josephson Aff.*, ¶ 13, App. AA40; Exhibit A-3, App. AA43.) On July 7, 2009, Minnwest received correspondence from New Vision that purports to be a lien-notification. The lien-notification statement and the envelope the lien-notification was mailed in are in the Bank’s files. (*Josephson Aff.*, ¶ 14, App. AA40; Exhibits A-4 (App. AA44) and A-5 (App. AA45).)

The envelope the lien-notification statement was mailed in was not marked with the statement "IMPORTANT-LEGAL NOTICE." (*Josephson Aff.*, ¶ 15, App. AA40; Exhibit A-5 (AA45-47).) The certified mail receipt shows a July 7, 2009 delivery date. (*Affidavit of Frank McDowell dated May 3, 2010*, ¶ 8, App. AA69; (Exhibit 3, App. AA73).)

The lien-notification statement asserts a lien for all feed supplied from "May 1, 2009 to December 31, 2009." (*Josephson Aff.*, ¶ 16, App. AA40.) All of the Arends pigs were sold before the summary judgment motion, at issue in this appeal, was filed, and the proceeds were held in escrow. The current dispute between New Vision and Minnwest Bank is in regards to a priority lien claim to hog proceeds for feed delivered by New Vision on credit prior to July 7, 2009, the date the lien-notification statement was received by Minnwest Bank. (*McDowell Aff.*, ¶ 8, App. AA69.)

STANDARD OF REVIEW

Respondent Minnwest Bank agrees that this appeal presents issues of statutory construction, which are questions of law and a *de novo* standard of review is proper.

ARGUMENT

Summary judgment is appropriate where the pleadings and discovery, together with affidavits, show that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. All material facts and inferences are construed in favor of the nonmoving party. *Grondahl v. Bulluck*, 318 N.W.2d 240, 242 (Minn. 1982). As set out above, there are essentially four sets of material facts that are not in dispute. First, the Arends pigs at issue were sold and resulted in cash proceeds.

New Vision has the burden to prove the existence and extent of its interests in the livestock proceeds.² However, Minnwest stipulated that New Vision can trace its statutory lien to the \$281,503.04 in livestock proceeds at issue in this appeal. (Trial Court Order, p. 2, App. AA87.) Second, there was no factual or legal dispute that Minnwest Bank has a valid, perfected security interest in the livestock proceeds claimed by New Vision.

Third, there is no factual dispute that New Vision delivered to Minnwest a notice by certified mail on July 7, 2009. There is also no dispute that the envelope that contained the notice did not have the legend “IMPORTANT-LEGAL NOTICE” on the envelope or any of those words. The lien-notification statement was not dated, and stated the purported lien was for all feed supplied from “May 1, 2009 to December 31, 2009.” Minnwest did not respond to the lien-notification. Finally, there is no dispute that the \$281,503.04 in livestock proceeds at issue in this appeal relate only to feed provided by New Vision to Arends on credit before July 7, 2009. (Trial Court Order, p. 2, App. AA87.)

I. NEW VISION FAILED TO PROPERLY GIVE NOTICE AND FAILED TO ESTABLISH PRIORITY OVER MINNWEST BANK’S SECURITY INTEREST.

A. Compliance With Statutory Notice Requirements is Mandatory.

The first issue before the Court of Appeals is whether the Minn. Stat. § 514. 966 notice requirements are mandatory, or merely directive. (See Section I.B. of New Vision’s

2. It is well established that under Minnesota law, a Chapter 514 statutory lien claimant has the burden of proof. See *Jadwin v. Kasal*, 318 N.W.2d 844 (Minn. 1982) (burden is on party seeking lien to clearly segregate items and their value at trial); See also, *Pittsburg Plate Glass*

Appeal Brief, pp.10-12.) New Vision asserts a livestock production input lien under Minn. Stat. § 514.966, subd. 3. The first part of Minn. Stat. § 514.966, subd. 3, states:

(a) 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.

(b) 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". Delivery of the notice must be made by certified mail or another verifiable method.

This appeal presents an issue of statutory construction. New Vision admits that the delivery of the agricultural lien notice to Minnwest Bank was defective under Minn. Stat. § 514.966, subd. 3(b). The envelope which contained the notice failed to contain the statutory mandated words: "IMPORTANT – LEGAL NOTICE." This subsection has three requirements and states that the feed supplier shall:

- (1) provide a lien-notification statement to the lender, with the required information;
- (2) in an envelope marked "IMPORTANT – LEGAL NOTICE;" and
- (3) must be sent by certified mail or other verifiable method.

Co. v. Brown, 152 Minn. 325 (1922) (where lienable and nonlienable items are commingled on lien statement, it is the burden of the claimant to segregate and prove value).

New Vision must comply with each of the three requirements of the statute. It cannot pick and choose which requirements of the statute with which it will comply. Is it ok to give the required notice in a properly marked envelope, but not use certified mail? Is it ok to satisfy steps (2) and (3), but fail to include a lien notice document “with the required information?” The answer to both questions is “no.” The feed supplier can no more ignore the mandate for the words on the envelope than it can ignore the requirement that it is delivered by certified mail. The rules of statutory construction are explicit on this point. The statute contains the word “shall.” Minnesota Stat. § 645.44 states:

Subdivision 1. **Scope.** The following words, terms and phrases used in Minnesota Statutes or any legislative act shall have the meanings given them in this section, unless another intention clearly appears.

Subd. 16. **Shall.** “Shall’ is mandatory.

New Vision asserts that the statutory requirements are directive and not mandatory because the legislature “did not declare the consequences of a failure to comply.” (New Vision Brief, p. 10.) However, this argument and the reliance on New Vision’s cited cases is misplaced in the context of this statute. Two of the cases New Vision cites address requirements on operations of governmental or quasi-governmental bodies. *Ullon v. Independent Sch. Dist. 112*, 515 N.W.2d 615 (Minn. Ct. App. 1994) involved a school district and *Sullivan v. Credit River Township*, 217 N.W.2d 502 (Minn. 1974) involved a township and application of the open meeting laws. The law at issue in *State v. Moseng*, 95 N.W.2d 6 (Minn. 1959) was a penal statute. In the present dispute, the issue is the statutory mechanism by which New Vision achieves the benefit of a priority lien over the Minnwest

Bank perfected security interest. (*See* discussion in section II, below.) If New Vision’s argument prevails and the statutory requirements as merely directive, New Vision could disregard all three elements of the lien-notification statute and still achieve the benefits of a priority lien because the statute “does not declare the consequences for failure to comply.” This argument turns the statute on its head.

The request by New Vision that the Court of Appeals interpret the three separate requirements as directive and then allow the feed supplier to disregard one or more of the three requirements on a case-by-case basis, should be rejected. Each requirement of the statute is mandatory. The New Vision lien-notification as delivered to Minnwest Bank was defective. It cannot serve as the basis to establish a livestock production input lien that has priority over the perfected security interest held by Minnwest Bank in the hog proceeds.

B. Substantial Compliance is Not Adequate.

1. A Standard of Substantial Compliance Should Not Be Applied.

New Vision attempts to argue its way around the defect in its lien-notification by asserting a claim of “substantial compliance.” New Vision’s defense is contrary to the plain language of the statute and the rules of statutory construction. Minnesota Stat. § 645.16 states:

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When words of the law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

Minnesota courts have explicitly followed these rules of statutory construction when interpreting the lien statutes. “[A]lthough the remedial intent of the legislature may be considered, the clear language of a statute cannot be disregarded in the name of pursuing the spirit rather than the letter of the law.” *Niewind v. Carlson*, 628 N.W.2d 649, 651 (Minn. Ct. App. 2001) (also citing Minn. Stat. § 645.16). Once the courts head down the road of looking for “substantial compliance,” all sorts of new, and unnecessary, factual issues come into play.

At the outset, the burden is on the feed supplier to put the statutory notice language on the envelope. If the envelope does contain the statement “IMPORTANT-LEGAL NOTICE,” then the burden shifts to the bank to direct the notice to the right person within the bank to respond. Without the statutory notice language on the face of the envelope, a clerical person may not recognize the importance of the correspondence and just file the correspondence in the borrower’s file without presenting the correspondence to the appropriate person. From the feed supplier’s perspective, there could be an issue of whether the notice was addressed to the correct person, or even the correct branch of the bank so that it was likely to get to the right person within the bank.

If the notice is on the envelope and the feed supplier complies with the other statutory requirements, the bank is not allowed to make an argument as to how the notice was handled internally, and whether the notice ended up in the hands of the right person. If a bank fails to do so and fails to respond within the ten (10) days, the bank loses its priority.

However, in order to put the bank in that legal position, the feed supplier must comply with all the statutory notice requirements, including putting the words stated in the statute on the outside of the envelope delivered to the bank.

The “substantial compliance” defense asserted by New Vision would open up all of these factual issues. In other words, New Vision argues that the notice language on the envelope requirement is superfluous. The court must assume that the legislature did not intend such a result. “In ascertaining the intention of the legislature the courts may be guided by the following presumptions ... (2) the legislature intended the entire statute to be effective and certain.” Minn. Stat. § 645.17. As written, the statute is effective and certain, and New Vision would strip that certainty from the statute and replace it with a fact laden “substantial compliance” standard.

In support of its substantial compliance argument, New Vision references the mechanics lien statute which states: “A person who fails to provide notice shall not have the lien.” Minn. Stat. § 514.011, subd. 1. (New Vision Brief, p. 9.) New Vision then states that the agricultural lien statute does not have a similar provision. This is a different statutory scheme than the agricultural lien statutes at issue here. If the mechanics lien claimant fails to give notice to the owner, there is no lien. However, failure to give notice to the owner of the livestock does not defeat the livestock production input lien. If the feed supplier provides a benefit in the form of the feed for animals, which are likely in the owner’s possession or under the owner’s control, the feed supplier has the benefit of the lien. If there was no lender,

or the lender was paid in full, the lien would still be in place against the owner's interest without regard to any lien-notification to the lender.

New Vision confuses the creation of lien against an owner of the animals and the issue of priority between an agricultural lien holder and a secured lender. The secured lender with a properly filed and perfected lien gets the benefit of that lien unless there is a statutory lien that overrides it. By failing to give the proper notice under the statute, New Vision fails to achieve lien priority over the Minnwest Bank security interest. New Vision has a valid lien, but it is subordinate to the Minnwest Bank security interest.

This is a simple and straightforward statutory scheme. It is not burdensome for the feed supplier to properly comply with Minn. Stat. § 514.966, subd. 3(b). The feed supplier just has to mark the outside of an envelope with statutory language, consisting of three words, and send it by certified mail. If the feed supplier complies with the statute and the bank fails to respond within ten (10) days, the outcome is clear. Conversely, if the feed supplier fails to comply with the notice requirements, the outcome is also clear. For these reasons, Minnesota courts require strict compliance with Chapter 514 statutory liens. *See Klingelhutz v. Woodsmen Construction, Inc.*, 455 N.W.2d 98 (Minn. Ct. App. 1990) (required strict compliance with statutory pre-lien notice requirements); *Niewind*, 628 N.W.2d 652 (substantial compliance with Chapter 514 statute is not sufficient; “[i]f the legislature had merely intended to require that notice be set out in a manner likely to bring it to the attention of the buyer, it would have said so. Instead, the legislature stated that the [Chapter 514 lien] notice ‘*must be* in at least 10-point bold type if printed, or in capital

letters, if typewritten.” (emphasis added)). The agricultural lien statute is no exception to these requirements of strict compliance to overcome the existing rights of a secured party.

2. New Vision Failed to Meet a Substantial Compliance Standard.

The circumstances of this case do not support a claim for substantial compliance, even if that test might be available in other cases. As set out above, the statute sets out three separate requirements for delivery of the lien-notification statement to the lender. (See Section I.A. above). New Vision failed completely to satisfy one of those requirements when it failed to put any form of words “IMPORTANT –LEGAL NOTICE” on the outside of the envelope. For example, if New Vision put the words “IMPORTANT-LEGAL DOCUMENT” on the envelope, the substantial compliance argument would be very different and may be persuasive. But a complete failure to even attempt to comply with the statute cannot be saved by a substantial compliance analysis.

One of the cases cited by New Vision illustrates this point. In *Stockman Bank of Montana v. AGSCO, Inc.*, 728 N.W.2d 142 (N.D. 2007), the North Dakota Supreme Court examined an agricultural supplier’s lien filed with the North Dakota Secretary of State. 723 N.W.2d at 146. The content of the notice is set out in the statute. 723 N.W.2d at 151. The bank claimed that the notice as filed did not contain the information required by the statute. The court held that the language and descriptions in the notice substantially complied with the statute. 723 N.W.2d 151-52. In *Stockman*, the notice was properly filed and there was language in the notice that addressed the information required by the statute. In the New Vision case, the issue is not the language in the notice itself, rather the failure to even attempt

to put the required statutory language on the outside of the envelope. A complete failure to even attempt compliance with one of the three statutory requirements cannot be re-characterized as substantial compliance because the other two statutory requirements are satisfied.

The lender is entitled to rely on the statute to retain priority over the livestock production input lien if the feed supplier falls to satisfy all the requirements established by the statute. If the lien input supplier wants the benefit of the statute, it need only read the statute and comply. It is undisputed that New Vision Co-op failed to comply with the statute. The livestock production input lien asserted by New Vision is subordinate to the security interest held by Minnwest Bank. No further inquiry is required. The Trial Court correctly decided this issue, and its decision should be affirmed.

II. THE LIEN PRIORITY, IF IT EXISTS, DOES NOT EXTEND TO FEED SUPPLIED PRIOR TO THE NOTICE.

All feed supplied by New Vision to Arends, at issue in this appeal, was supplied prior to July 7, 2009. Minnwest Bank received the lien-notification statement on July 7, 2009. Lien priority does not extend to feed supplied before the bank received notice of the lien claim. Minn. Stat. § 514.966, subd. 3.

New Vision may argue it has an livestock production input lien effective as of the date it supplied feed to the owner of the animals. However, the lien claim between the owner and the feed supplier is not the issue before this Court. The issue before this Court is whether that feed supplier's livestock production input lien has priority over Minnwest Bank's security

interest. New Vision asserts a statutory lien under Minn. Stat. § 514.966. Minnesota Stat. § 514.966, subd. 8(i) states:

A perfected livestock production input lien has priority over a competing security interest in the livestock and proceeds and products thereof if the livestock production input lien is effective before the secured party has given value to the debtor. (Emphasis added).

Section 514.966, subd. 8(i) was added to the livestock production lien in 2001. *Minnesota Laws 2001, c.57 § 5, eff. July 1, 2001.* The earlier version did not include this language. “Value” is a critical concept under the Uniform Commercial Code Revised Article 9. Minnesota Stat. § 336.9-203(a) provides that a security interest does not attach until “value has been given [by the secured party].” The “value” is the funds that were loaned by the bank to the debtor. It is not disputed that Arends executed and delivered to Minnwest certain promissory notes, including a note dated February 11, 2005. Value was given to Arends upon execution of the notes, and the funds were directed to Arends for use in his farming operation.

Under Minn. Stat. § 514.966 subd. 3, a livestock production input lien is “effective” “when the agricultural production inputs are furnished by the supplier to the purchaser.” Minn. Stat. § 514.966 subd. 3(a). Section 514.966, subd. 8(i), clearly states that a perfected livestock production lien has priority if the livestock production input lien was effective before the secured party gave value to the debtor. Under the statute, even if New Vision has a perfected statutory lien against Arends, the owner of the hogs, the lien is subordinate to the perfected security interest of Minnwest Bank.

This limitation on the priority of the livestock production input lien is further illustrated by a comparison with other priority provisions of subd. 8. For example, subd. 8(a) states:

(a) Except as provided in paragraph (b) [dealing with competing veterinarian's liens], a perfected veterinarian's lien under this section has priority over all of competing security interest and all agricultural liens on the same animals.

The veterinarian's lien "has priority over all competing security interest." However, the livestock production input lien is only superior to a "competing security interest" if the livestock production input lien is effective before the secured party has given value to the debtor. Minnwest Bank gave value before the New Vision lien was effective and, therefore, Minnwest Bank held a priority security interest in the Arends hogs. In order to overcome the priority security interest of the Minnwest Bank, New Vision must provide the lien notice as required by Minn. Stat. § 514.966, subd. 3(b) before supplying feed.

If the feed supplier gives the statutory notice, the bank has an opportunity to respond. Minn. Stat. § 514.966, subd. 3(d). If the bank responds with a commitment to pay for the feed or fails to respond, then the feed supplier knows it is protected with either the commitment or the lien priority. Minn. Stat. § 514.966, subs. 3(e), (f). If the bank responds with a written refusal to make the commitment, then the status of the parties is unchanged and the bank's security interest priority remains in place. Minn. Stat. § 514.966, subd. 3(e). The feed supplier can then decide whether to take the risk of providing the feed with the knowledge that the lender retains its priority security interest. In this way, all of the parties have notice of the status of the matter before the feed supplier begins to supply feed.

New Vision argues that the feed supplier may give the notice after it already supplied feed and still get the full benefit of the statutory priority for all the feed it supplied. As with the procedure for properly delivering the notice discussed above, New Vision converts a simple, straightforward statute, which protects all of the parties, into a statute that protects only the feed supplier. New Vision now wants to insert into this coherent statutory scheme a lien that the Trial Court correctly described as a lien that “would ‘spring’ to priority without a lender’s knowledge or expectation,” and the period of time covered by this “springing lien” could “extend back to inputs that occurred months, or potentially years, earlier.” (Trial Court Order, p. 7, App. AA92.)

Under the Trial Court decision, all parts of the lien statute are read together, not individually. *Id.* The feed supplier has knowledge of the bank’s security interest because it is perfected by filing with the Secretary of State. The feed supplier can protect itself by giving the lien-notification before it supplies any feed, and need not rely on the concept of a “springing lien.” The statutory structure as described in the Trial Court decision sets forth a mechanism to provide relevant information to the bank and feed supplier on a timely basis so each can protect its own interest, or suffer the consequences of failing to do so. The introduction of the “springing lien,” covering feed provided prior to the date the lien-notification is received by the bank, upsets this statutory balance. (Trial Court Order, pp. 6-8, App. AA91-93.)

The Trial Court correctly found that the language in the feed lien statute supports the conclusion that the agricultural input lien relates only to feed supplied after proper delivery

of the notice. The notice must include “the name and address of the owner of the livestock, the location where the livestock will be raised, and a description of the livestock.” Minn. Stat. § 514.966, subd. 3(c)(5). “It [the statute] speaks specifically to acts occurring in the future. It does not reference acts occurring in the past.” (Trial Court Order, p.7, App. AA92.) The Trial Court also correctly describes the “letter of commitment,” or refusal to issue a “letter of commitment,” as relating to future events:

A ‘letter of commitment’ is clearly a document intended to address payment of bills and charges to be incurred in the future. A letter of commitment is not consistent with the idea that it would be payment for services or supplies already tendered. If it were to be services and supplies already tendered, then it would more appropriately be payment, not commitment.

(Trial Court Order, p. 8, App. AA93.)

New Vision attempts to counter this analysis by referring to two subparagraphs of the lien-notification section. (New Vision Brief, pp. 16-17.) Section 514.966, subd. 3, states:

(c) The lien-notification statement must disclose the following:

...

(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.

The reference to “the date or anticipated date or dates of the transaction” in subparagraph (c)(3) can be read to refer to a future “date” already agreed upon to begin providing feed, as well as “anticipated date or dates” for the continued delivery of feed

on credit in the future. This puts the bank on notice of whether this is a one-time or limited transaction, or a more opened-ended commitment to provide feed in the future.

The inclusion of the word “was” in subparagraph (c)(4) does, grammatically, refer to a past event. However, relying on that word alone to create this springing lien for feed delivered prior to notice is inconsistent with the other language in the statute. Such a conclusion is also contrary to the overall statutory scheme described above to establish priorities between a lender with a filed, perfected security interest and a feed supplier who voluntarily decides to start providing feed on credit before giving the statutory lien-notification. Until it receives the lien-notification, the bank is entitled to rely on the filed notice of its security interest.

The Trial Court correctly decided that the lien-notification only applied to feed delivered after the notice was received by the Bank. Because the lien claim by New Vision was only for feed delivered on credit prior to July 7, 2009, the Trial Court correctly rejected that priority lien claim and awarded the hog proceeds at issue to Minnwest Bank.

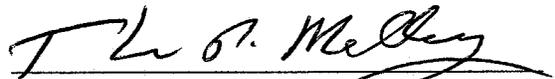
CONCLUSION

The Court of Appeals should affirm the decision of the Trial Court on both issues in this appeal. The lien-notification provided to Minnwest Bank by New Vision was defective because the outside of the enveloped did not contain the statutorily mandated words “IMPORTANT-LEGAL NOTICE.” The defective notice defeats New Vision’s claim of

priority over the Bank's security interest. If the court agrees with Minnwest Bank on this point, then it need not decide the second issue in this appeal.

If the court finds that the delivery of the notice was not defective, then the priority claim of New Vision should be rejected because the lien only applies to feed delivered on credit after delivery of the notice. There was no feed delivered after the date the notice was received by Minnwest Bank, and thus, the Court of Appeals should affirm the decision of the Trial Court.

Dated this 4th day of February, 2011.



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