

NO. A11-1732

State of Minnesota
 In Court of Appeals

First National Bank,

Respondent,

vs.

Profit Pork, LLC,

Respondent,

Deere & Company,

Respondent,

Schwartz Farms,

Respondent,

New Vision Coop,

Respondent,

Ag Partners, LLC,

Respondent,

Alan J. Ruesch,

Respondent,

Frank Riley,

Respondent,

Land O'Lakes Purina Feed LLC,

Respondent,

Cooperative Elevator Association,

Respondent,

Slater Bros.,

Respondent,

Gary Slater,

Respondent,

Kent Slater,

Respondent,

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APPELLANT'S REPLY BRIEF

John Slater,	<i>Respondent,</i>
Prinsburg Farmers Coop,	<i>Respondent,</i>
Alan Ahlers,	<i>Respondent,</i>
Chris Kremer,	<i>Respondent,</i>
Green Prairie Coop.,	<i>Respondent,</i>
Wilmont-Adrian Cooperative,	<i>Appellant,</i>
Brett Evers,	<i>Respondent,</i>
Brett Evers, et al.,	<i>Respondents,</i>
Alan Ahlers,	<i>Respondent,</i>
John Doe, et al.,	<i>Respondents.</i>

APPELLANT'S REPLY BRIEF

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ARGUMENT IN REPLY TO RESPONDENT'S BRIEF

1. Respondent's Assertion that a Valid Feeder's Lien Requires a Possessory Element is Untenable Under both the Plain Language of the Statute and Respondent's Own Argument.

The Court should give effect to all provisions of a statute, and not one word, phrase or sentence should be deemed superfluous, void or insignificant. *Fish v. Commissioner of Minnesota Dept. of Human Services*, 748 N.W.2d 360 (Minn. App. 2008); *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412 (Minn. 2005). Upon review, the Court is "prohibited from adding words to a statute, and cannot supply what the legislature either purposefully omitted or inadvertently overlooked." *Tracy State Bank v. Tracy Garvin Co-op*, 573 N.W.2d 393, 395 (Minn. App. 1998) (citation omitted).

Respondent argues the Court should ignore the express disjunctive construction of Minn. Stat. § 514.966, subd. 4 (2010) affording lien priority for contributing to the feeding of another's livestock, among several other specified services. Because this argument finds no support in the categorical construction of the Livestock Lien Statute, which bases lien priority on the nature and totality of services provided, Respondent is forced to argue that the Court must insert new language into the statute permitting a feeder's lien to exist only when an entity has "responsibility for possessing the livestock."

Respondent's supposition of a possessory element is incorrect for several reasons, including the differing levels of lien priority granted veterinarians under the Livestock Lien Statute, as pointed out in Appellant's principal brief. Respondent confronts the dichotomy between the "emergency veterinary services" language in Minn. Stat. § 514.966, subd. 1 (2010) and the "medical or surgical treatment" language in Minn. Stat. § 514.966, subd. 4(a) by pointing out the exceptions to "veterinary medicine" found in Minn. Stat. § 156.12, subd. 1 (2010).¹ Respondent fails to realize the two-fold problem with such an argument. First, the dehorning or castration of livestock in no way requires possession of or "responsibility for" the livestock in question. Second, if the legislature

¹ "The practice [of veterinary medicine] shall not be construed to include the dehorning of cattle and goats or the castration of cattle, swine, goats, and sheep, or the docking of sheep." Minn. Stat. § 156.12, subd. 1 (2010).

wanted to limit “medical or surgical treatment” to the activities outlined in Minn. Stat. § 156.12, subd. 1, the legislature could have easily cited to that provision.

Although Respondent asserts the terms “raise” and “day-to-day care” “properly describe the overall context of the feeder’s lien provision,” Respondent has no answer for the inclusion of multiple services in the feeder’s lien provision requiring no element of possession or responsibility for “raising” livestock. Respondent is forced to adopt the illogical argument that an entity or individual who “contributes to the feeding” of livestock should be required to have “responsibility for possessing the livestock,” whereas an entity or individual providing “medical or surgical treatment” to livestock or engaging in the “shoeing” of the livestock has no such requirement. Such a distinction is found nowhere in the language of Minn. Stat. § 514.966, subd. 4.

2. Several of Respondent’s Statements Concerning the Facts of the Case are Unsupported by the Record as Established and/or Based Solely Upon Conjecture and Hearsay.

Respondent claims Appellant was not involved in every step of the feeding process of Profit Pork’s livestock. Respondent bases this claim on the Affidavit of Jared Hinsch submitted by Appellant. *See* A.A. 35. The affidavit reads in pertinent part:

[t]hat the process by which Defendant Wilmont-Adrian provided feed to Defendant Profit Pork was as follows: 1) Profit Pork personnel contacted Defendant Wilmont-Adrian to request a certain level of ration based on the age of the pig and Profit Pork’s particular needs; 2) Defendant Wilmont-Adrian rolled and cracked the grain to an industry micron size; 3) Defendant Wilmont-Adrian mixed the grain with a variety of different materials based on Profit Pork’s particular request, including but not limited to corn, soybean meal, minerals, and antibiotics; 4) Defendant Wilmont-Adrian delivered the mixed feed to one or more of the livestock production facilities that contained hogs owned by Profit Pork; and 5) Wilmont-Adrian deposited the feed into the bulk storage tanks located at the livestock production facilities that contained hogs owned by Profit Pork.

The affidavit goes on to explain:

[t]hat Defendant Wilmont-Adrian contracted for nutritionist services for Profit Pork, employed a record keeping system that tracked the swine performance records of Profit Pork, and provided a stage feeding program for Profit Pork's livestock to adjust feeding parameters as the livestock increased in size.

Respondent either inadvertently or intentionally misrepresents the Affidavit of Jared Hinsch by suggesting that Profit Pork, not Appellant, was responsible for determining the correct level of ration based on the age of the pig and Profit Pork's particular needs. In point of fact, these determinations were a direct result of the above services provided to Profit Pork by Appellant. *See also* A.A. 37 – 39. Respondent wants the Court to ignore the fact that Appellant's services were directly tied to the growth and well-being of Profit Pork's livestock.² To assert Profit Pork was directly involved in tracking the growth of their livestock and ordered specific rations based on nutritionist information assumes facts not in the record.³

Respondent argues that both Appellant and Respondent New Vision admit all "feed suppliers offer certain services in addition to selling feed, but the purpose of those services relates to selling feed." Appellant has made no such assertion, and Respondent can cite to none. As for the New Vision statement, Respondent relies on the Affidavit of Frank McDowell. *See* R.A. 73. Mr. McDowell claims that "[t]he services provided by Wilmont-Adrian Cooperative to Profit Pork are the same services any other feed provider provides, including New Vision Coop."⁴ There is absolutely no evidence in the record to show Mr. Dowell is in any way familiar with the specific services provided by Appellant to Profit Pork, and the claims regarding what services "all feed suppliers" provide can only be described as conjecture not applicable to Appellant's lien claim.

² An entity entitled to a feeder's lien contributes to the feeding of another's livestock ". . . at the request of the owner or legal possessor of the livestock." Minn. Stat. § 514.966, subd. 4(a)(2) (2010). The fact that Profit Pork took the *initial* (and necessary) step to contact Appellant and retain its feed services does nothing to discount Appellant's contribution to the feeding of Profit Pork's livestock.

³ Respondent has not provided factual evidence at any point, in the form of affidavit or otherwise, to refute the totality of services provided by Appellant to the livestock of Profit Pork.

⁴ Interestingly, the Affidavit of Frank McDowell makes no reference to New Vision providing such services to Profit Pork's livestock, even though it is undisputed that New Vision was a feed supplier to Profit Pork over the time period in question, which could explain why New Vision pursued a livestock production input lien rather than a feeder's lien in the livestock.

In arguing the disposition of Profit Pork's livestock was conducted in a commercially reasonable manner, Respondent submits several questionable statements. Because Respondent failed to appraise the livestock in any way prior to the sale, Respondent dubiously analogizes private bids by potential buyers to an unbiased appraiser. To contend that valuation by a financially interested party is similar to the valuation by a disinterested third party with a professional responsibility to accurately assess potential market price offends basic common sense. Similarly, proffering the statements by New Horizon Farms, LLP that some of the livestock inventory "has been badly neglected both for health treatments and vaccinations" and "appears to going downhill quickly" as anything other than bargaining tactics is dubious at best.⁵ See A.A. 48. This is particularly true when New Horizon admits in the same paragraph that no health examination by a qualified veterinarian was performed, making any statements on health and particularly vaccination history highly suspect. *Id.*

Respondent claims to have discussed the sale with Profit Pork's creditors, tacitly suggesting approval for the sale was granted by the same, but failed to provide any evidence of such discussions at either the district court or appellate level.⁶ Appellant provided evidence confirming several attendees of the farmer-lender mediation session held prior to sale encouraged Respondent not to sell the livestock prior to full market weight so a reasonable sale price could be attained for the livestock. See A.A. 60-61. Respondent additionally argues that "out of over a dozen creditors only Appellant has formally claimed that Respondent acted imprudently." Respondent fails to mention that unlike Appellant many of those creditors were paid in full directly out of the proceeds of the sale and therefore had no reason to object. See A.A. 58.

Ultimately, and regardless of how Respondent chooses to selectively recite the facts of this case, the Court must view the evidence "in the light most favorable to the

⁵ Respondent has submitted no evidence concerning the health of the livestock prior to sale from an individual with the proper qualifications to make such a determination.

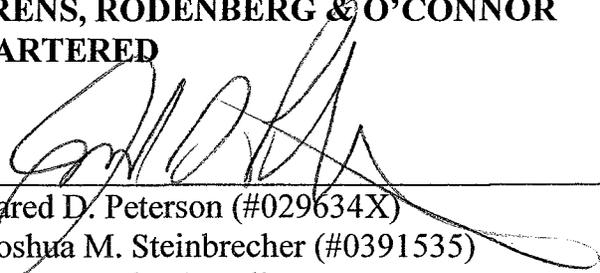
⁶ The Affidavit of Darwin Kruse does suggest the sale was discussed "with Profit Pork and other creditors," but fails to identify said creditors and ultimately concedes it was Profit Pork who agreed to the sale to the highest bidder. See R.A. 15.

party against whom [summary] judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Dated: February 24, 2012

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Minn. R. App. P. 132.01, subd. 1 and 3, contains 1,643 words and was prepared using Microsoft Office Word 2007.

Dated this 24th day of February, 2012.



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