

State of Minnesota

In Court of Appeals

No. A10-2167

New Vision Co-op,

Appellant,

vs.

Minnwest Bank, M.V.,

Respondent.

APPELLANT'S REPLY BRIEF

Richard W. Sobalvarro - 204638
Gregory J. Hauptert (#0320213)
RAJKOWSKI HANSMEIER, LTD.
11 Seventh Avenue North
P.O. Box 1433
St. Cloud, MN 56302-1433
Telephone: (320) 251-1055

Thomas P. Melloy (#191425)
GRAY PLANT MOOTY
MOOTY & BENNETT, P.A.
1010 West St. Germain, Suite 600
St. Cloud, MN 56301
Telephone: (320) 252-4414

Attorney for Appellant

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

INTRODUCTION1

ARGUMENT2

I. THE LACK OF THE PHRASE “IMPORTANT-LEGAL NOTICE” DOES NOT AFFECT PRIORITY OF APPELLANT’S LIEN2

II. NEW VISION COOP SUBSTANTIALLY COMPLIED WITH MINN. STAT. §514.966.....4

III. MINN. STAT. § 514.966 DOES NOT CREATE PRIORITY ONLY FOR LIENS WHICH ATTACH AFTER SERVICE OF THE LIEN NOTIFICATION STATEMENT5

IV. MINN. STAT. § 514.966 SUBD. 8(I) IS NOT APPLICABLE WHEN A LIEN NOTIFICATION STATEMENT HAS BEEN SERVED AND NO REPLY IS PROVIDED7

CONCLUSION.....8

TABLE OF AUTHORITIES

CASES

Rhodenbaugh v. City of Bayport, 450 N.W.2d 608, 612 (Minn. Ct. App. 1990)2

In re Eigenheer, 453 N.W.2d 349, 354 (Minn. Ct. App. 1990)2

Niewind v. Carlson, 628 N.W.2d (Minn. Ct. App. 2001)2, 3

Statutes

Minnesota Statute § 514.9661, 4, 5, 7, 8

INTRODUCTION

The main issue in this matter is the lack of the phrase “IMPORTANT-LEGAL NOTICE” on the envelope of Appellant New Vision Coop’s livestock production input lien notification statement. Respondent Minnwest Bank (“Minnwest”) argues that the tenants of statutory interpretation require a strict interpretation of the livestock production input lien statute. While Minnwest relies on one method of statutory interpretation, it summarily dismisses another accepted method of statutory interpretation. Specifically, Minnwest discounts the established method of determining whether a statutory provision is mandatory or directory. When the legislature does not include the consequences of the failure to comply with a statutory provision, such provisions are deemed directory. With respect to Minn. Stat. § 514.966, the legislature did not include the consequences for failure to include the above referenced notice on the envelope of the lien notification statement.

Additionally, the plain language of Minn. Stat. § 514.966 provides that a lien extends to inputs provided prior to service of the lien notification statement. The statute expressly references transactions that have already taken place, in addition to future transactions. This clearly indicates that the lien notification statement may be served after sales of inputs have already occurred. This is similar to the procedure for other statutory liens, such as the mechanic’s lien.

ARGUMENT

I. THE LACK OF THE PHRASE “IMPORTANT-LEGAL NOTICE” DOES NOT AFFECT PRIORITY OF APPELLANT’S LIEN.

Failure to comply with directory, as opposed to mandatory, provisions is generally not fatal. Rhodenbaugh v. City of Bayport, 450 N.W.2d 608, 612 (Minn. Ct. App. 1990). “A statute that does not declare the consequences for failure to comply with a requirement is generally held to be directive, not mandatory.” In re Eigenheer, 453 N.W.2d 349, 354 (Minn. Ct. App. 1990).

There is no confusion in this matter concerning creation of a lien on livestock and the issue of priority. Appellant’s livestock production input lien attached to Chad Arends’ livestock when it provided feed to the livestock. This lien was perfected pursuant to statute by filing a UCC financing statement. The lien notification statement requirements contained in Minn. Stat. § 514.966 concerns priority of liens. However, the trial court ruled that Appellant “failed to fulfill the lien requirements.” (AA-91). This determination implies that the failure to include the notice on the envelope of Appellant’s lien notification statement somehow invalidates Appellant’s livestock production input lien. The issue is not whether a lien exists; it is whether Appellant’s lien is superior to Respondent’s lien. The lien notification statement only determines priority of liens, not whether they are valid or not.

The fact that the lien notification statement only affects priority of the liens is an important distinction in this matter. The trial court compared the lien notification statement to a pre-lien notice pursuant to a mechanic’s lien. The court decided the case of Niewind v. Carlson, 628 N.W.2d. 649 (Minn. Ct. App. 2001). In Niewind, the pre-lien

notice of a mechanic's lien was not provided in bold font, nor in capital letters. The court in Niewind determined that the pre-lien notice did not comply with the statute which specifically required the notice to be provided in bold font and in capital letters.

Ultimately, the court in Niewind determined that since the contractor failed to comply with all statutory requirements for the pre-lien notice, its mechanic's lien did not attach to the property at issue. The reason for this is that mechanic's liens are strictly construed as to the question whether a lien attaches. Furthermore, the mechanic's lien statute expressly states that a person who fails to provide the pre-lien notice shall not have a lien.

The lien notification statement with respect to a livestock production input lien is not the equivalent of a pre-lien notice of a mechanic's lien. A livestock production input lien becomes effective when the inputs are furnished by the supplier. Therefore, the lien attaches at the time the inputs are provided. Creation of the lien is not affected by the lien notification statement. The lien notification statement only relates to priority of the lien. Because the lien notification statement only relates to priority, one cannot equate a deficiency with the lien notification statement to a deficiency with the pre-lien notice of a claimed mechanic's lien. While mechanic's liens are strictly construed on the question of whether the lien attaches, they are liberally construed once the lien has attached. If the lack of the notice on the exterior of the envelope of the lien notification statement was construed in the same manner as a mechanic's lien, the issue of lack of the phrase "IMPORTANT-LEGAL NOTICE" on the envelope would have to be liberally construed since the lien has already attached.

Another distinction between the mechanic's lien statute and the livestock production input lien statute is that the mechanic's lien statute provides for a consequence for failure to provide the required notice. Minn. Stat. § 514.966 is silent as to the consequences for failure to comply with all statutory requirements. The fact that the legislature saw fit not to include such a consequence indicates that the lien notification statement requirements are simply directory rather than mandatory. As a result, the failure to include the notice on the exterior of the lien notification statement envelope does not invalidate the lien or prevent Appellant from obtaining priority over Respondent due to Respondent's failure to reply to the lien notification statement.

Also, the fact that the livestock production input lien statute is only directory, establishes that only substantial compliance with the statute is necessary. This is consistent with the interpretation of other Minnesota Statutes and other agricultural lien statutes. As previously stated, even mechanic's liens are liberally construed after the lien at issue has attached. If this matter was to be examined in a manner similar to that of a mechanic's lien, the effectiveness of a lien notification statement would have to be liberally construed as it relates to priority, not whether the lien attaches. Also, other jurisdictions, such as North Dakota, only require substantial compliance with statutory requirements for an agricultural lien.

II. NEW VISION COOP SUBSTANTIALLY COMPLIED WITH MINN. STAT. §514.966

Minn. Stat. §514.966 contains numerous requirements for obtaining a livestock production input lien. These requirements include service of the lien notification

statement. This lien notification statement must include in excess of ten different items of information. (See Minn. Stat. §514.966, Subd. 3(c)). This is excluding the provision regarding the phrase “IMPORTANT-LEGAL NOTICE” on the exterior of the envelope. The lien notification statement must be provided to all parties claiming a lien on the livestock at issue. Therefore, a supplier must determine who claims a lien on the livestock. This is another step a supplier must take. Additionally, a supplier must perfect the lien by filing a UCC Financing Statement.

In this case, Appellant prepared a lien notification statement that included all of the required information. Appellant also determined which parties were claiming a lien on the livestock of Chad Arends. The lien notification statement was sent to all parties claiming a lien on Chad Arends’ livestock. Finally, Appellant filed a UCC Financing Statement to perfect its livestock production input lien. Of all the requirements placed on it to obtain a livestock production lien, Appellant made one simple mistake and failed to put the notice on the envelope. The fact that there are numerous steps necessary to obtain a livestock production input lien and that Appellant failed to comply with only one of the requirements shows that it substantially complied with the statutory requirements. All requirements, except one, were satisfied.

III. MINN. STAT. § 514.966 DOES NOT CREATE PRIORITY ONLY FOR LIENS WHICH ATTACH AFTER SERVICE OF THE LIEN NOTIFICATION STATEMENT.

Respondent also claims that a lien notification is essentially a pre-lien notice and only affects priority with respect to liens obtained after service of the lien notification statement. However, the livestock production input lien statute does not support such an

interpretation. First, there is no reference in the statute regarding the timeframe in which the lien notification statement must be served. Specifically, the statute does not provide that the lien notification statement must be served prior to the lien attaching or prior to inputs being furnished. Additionally, the lien notification statement is not referred to as a pre-lien notice or other term that would indicate it was to be served prior to attachment or perfection of a lien. The livestock production input lien is also able to be perfected within six months of providing inputs. The fact that such a long length of time is allowed in which to perfect the lien indicates that perfection and notification of the lien can occur after the lien has attached or become effective. Finally, the requirements of the lien notification statement indicate that it is meant to apply to prior sales of inputs.

One of the requirements of the lien notification statement is that it provides for the date or dates of transactions. The statute also references anticipated dates of transactions. Since any future transaction would have to be anticipated, there is no need to include the “date” of transactions. This reference to the “date” of transactions expressly refers to a transaction that has occurred in the past. Another requirement of the statute is to provide the name and address of the person to whom the livestock production input “was furnished.” This clearly does not reference a future transaction. It specifically references a transaction that occurred in the past. If the lien notification statement was not meant to apply to past transactions, these two provisions would not have been drafted in the manner in which they were.

The concept of a “springing lien” is not uncommon. Respondent argues that the concept of a “springing lien” is somehow unfair. A mechanic’s lien in Minnesota could

be considered such a lien. In numerous cases, a pre-lien notice is not required for a mechanic's lien. A mechanic's lien can be filed within 120 days of the last work performed by a party. Priority of a mechanic's lien and other liens on real estate is determined by the date work was commenced. Therefore, it is possible that a mechanic's lien obtains priority over another lien in real estate without prior notice to the other lien holder. This is essentially the effect that Respondent claims is unfair in the instant case. Since the same effect occurs in other statutory liens, a similar result with respect to livestock production input liens is acceptable.

IV. MINN. STAT. § 514.966 SUBD. 8(D) IS NOT APPLICABLE WHEN A LIEN NOTIFICATION STATEMENT HAS BEEN SERVED AND NO REPLY IS PROVIDED.

Minn. Stat. § 514.966 subd. 3(f) provides as follows when a lender does not respond to a lien notification statement:

If a lender does not respond under paragraph (d) to the supplier within ten calendar days after receiving the lien-notification statement, a perfected livestock production input lien corresponding to the lien-notification statement has priority over any security interest of the lender in the same livestock or their proceeds for the lesser of:

- (1) the amount stated in the lien-notification statement; or
- (2) the unpaid retail cost of the livestock production input identified in the lien-notification statement, subject to any limitation in paragraph (a).

Minn. Stat. § 514.966 subd. 3(f). "Except as provided in paragraph (i), a perfected livestock production input lien under this section has priority against all competing security interests as provided in subdivision 3 in livestock and the products and proceeds thereof."

Minn. Stat. § 514.966 subd. 8(h). "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.” Minn. Stat. § 514.966 subd. 8(i).

Minn. Stat. §514.966, Subd. 8(i), is simply a recitation of the general method of determining priority pursuant to the UCC. This provision simply means that if a livestock production input lien is effective prior to a lender giving value to a debtor, the livestock production input lien is first in time and has priority. However, if the supplier provides a lien notification statement pursuant to Minn. Stat. §514.966, Subd. 3 and the lender does not respond, the supplier’s lien achieves priority over the lender’s. This is what occurred in the instant case. Respondent may have given value to Chad Arends prior to Appellant’s lien. However, Appellant provided a lien notification statement to Respondent and Respondent failed to respond to it.

CONCLUSION

For the above reasons, Plaintiff respectfully requests reversal of District Court’s order on Respondent’s motion for summary judgment.

Dated this 16th day of February, 2011.

RAJKOWSKI HANSMEIER LTD.

By 

Richard W. Sobalvarro – 204638

Gregory J. Haupt - 0320213

Attorneys for Appellant New Vision Co-op

11 Seventh Avenue North

P.O. Box 1433

St. Cloud, Minnesota 56302

Telephone: (320) 251-1055