STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0009

United Prairie Bank,
Appellant,

vs.

Galva Holstein Ag, L.L.C., et al.,
Respondents,

New Vision Feed, LLC, et al.,
Defendants,

Kerber Milling Co.,
Respondent,

Northwestern Bank,
Defendant.

Filed December 2, 2013
Affirmed
Hudson, Judge

Nicollet County District Court
File No. 52-CV-10-356

Thomas P. Melloy, Gray, Plant, Mooty, Mooty & Bennett, P.A., St. Cloud, Minnesota (for appellant)

Justin E. LeVan (pro hac vice), Beving Swanson & Forrest, P.C., Des Moines, Iowa; and

Robert Ward, William Oehler, Rochester, Minnesota (for respondents Galva Holstein)

Michael K. Riley, Sr., Krystal Pierce, Riley-Tanis & Associates PLLC, St. Peter, Minnesota (for respondent Kerber Milling Co.)

Joseph J. Witt, Minnesota Bankers Association, Eden Prairie, Minnesota (for amicus curiae Minnesota Bankers Association)

Considered and decided by Hudson, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

This is an appeal from declaratory judgment establishing priority over payments received for feed during the liquidation of a borrower's hog farm operation, as between appellant bank's security interest and respondents' agricultural supply dealers' liens established pursuant to Iowa Code §§ 570A.1–5 (2013). Appellant bank argues that the district court erred in declining to reduce the value of respondents' priority liens: (1) by the amount of payments received during each 31-day perfected lien period, with respect to those periods; (2) by the amount of payments received from appellant during a later period in which appellant paid respondents directly for feed; and (3) proportionately with respect to previously received livestock proceeds that were not placed in an escrow account for distribution. By notice of related appeal, respondents argue that the district court erred by limiting recovery on the liens to funds in the escrow account and by declining to add interest and finance charges to the lien amounts. We affirm.

FACTS

Jeffrey Ward, a resident of Nicollet County, owned and operated a livestock operation that raised and fed hogs in barns in Minnesota and Iowa. Ward obtained financing for his operation through a Waseca branch of appellant United Prairie Bank

(UPB). In May 2009, Ward signed a promissory note and security agreement in the amount of $4,500,035, which consolidated or renewed prior loans and provided additional funding for his hog operation. The security agreements for the May 2009 and previous loans granted UPB a security interest in Ward's farming property, including livestock and their proceeds, personal property, and deposit accounts. The May 2009 agreement contained an "open end credit" feature, which allowed Ward to borrow up to its full amount by August 5, 2009. UPB perfected its security interest by filing a financing statement.

Ward used a single checking account for his hog business; he deposited all proceeds from hogs sold into that account and received advances on the credit line with UPB into that account. He purchased feed for the hogs on open accounts from, among other feed suppliers, respondents Galva Holstein Ag, LLC; Hubbard Feeds, Inc.; and Kerber Milling Co.[1]

By 2009, Ward's operation was experiencing cash-flow problems because of high grain prices and low hog prices; his accounts with the feed suppliers had unpaid balances, with accrued interest charges. During the summer of 2009, after some of the feed suppliers indicated that they would not continue to supply feed for the operation unless they were paid, UPB decided to move Ward's operation to liquidation. Although UPB and the feed suppliers could not agree on the priority of their security interests or how to

[1] Kerber Milling Co. is represented by counsel in this appeal but has not filed a brief. Pursuant to stipulation, this court has dismissed the claims and cross-appeal of respondent Northwestern Bank, the assignee of another feed supplier, Performance Feeds.

deal with unpaid invoices, they decided to wait to sell the hogs until the hogs were fed to market weight. As the hogs were sold to Tyson Foods, a packer in Iowa, Ward delivered the checks from Tyson to UPB, which held them uncashed. UPB then filed this action, seeking a judgment declaring that respondents' security interests or statutory liens asserted as to the hogs and their proceeds were unenforceable or inferior to UPB's security interest. The uncashed checks were placed in an escrow account, which held $2,629,530.49 prior to trial.

Galva, Hubbard, and UPB moved for summary judgment. The district court granted in part Galva's and Hubbard's motions, concluding that, as suppliers asserting agricultural liens, they were not required to comply with the statutory certified-request procedure outlined in Iowa law in order to obtain lien priority.[2] The district court also concluded that an agricultural lien arising under Iowa Code § 570A.3(2) follows and attaches to the proceeds of the livestock that consumed the feed. The district court concluded, however, that genuine issues of material fact remained as to the specific amounts of Galva's and Hubbard's liens and what portion of the hog-sale proceeds the suppliers were entitled.

After a three-day bench trial, the district court issued findings of fact establishing the amounts of each supplier's perfected liens for feed delivered to each of Ward's barns,

[2] *See* Iowa Code § 570A.2 (2013) (outlining procedure whereby lienor submits a certified request to a financial institution and receives a memorandum indicating that the debtor has sufficient net worth or a line of credit to secure payment of the supply). After the district court's summary judgment, the Iowa Supreme Court also concluded that a feed supplier was not required to comply with the statutory certified request procedure. *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 193 (Iowa 2011).

the acquisition costs of the hogs in those barns, the difference between the hogs' sale price and acquisition costs, and the amounts of the perfected liens for the hogs fed at each barn that could be traced to the proceeds in escrow. Based on these findings, the district court concluded that: (1) Galva had a perfected agricultural supply dealer lien of $437,638.27, for which it was entitled to distribution from the escrow account, as well as an additional lien amount, which could not be traced to the funds in escrow; (2) Hubbard had a perfected lien of $210,978.25, all of which could be traced to the funds in escrow; (3) Kerber had a perfected lien of $63,507.83, but that none of that amount could be traced to the funds in the escrow account; and (4) UPB had a perfected security interest in the remaining amount in the escrow account, $720,825.84, to which it was entitled. The district court ordered interest accrued in the escrow account to be distributed pro rata to each party recovering funds from that account. This appeal follows.

D E C I S I O N

UPB disputes the district court's method of applying the Iowa agricultural-lien statutes, Iowa Code Chapter 570A, to arrive at the amounts of respondents' priority liens under that chapter.[3] Arguments of statutory interpretation present questions of law, which an appellate court reviews de novo. *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 188 (Iowa 2011). But we review for clear error the district court's findings of fact on the amounts that are included in the feed suppliers' priority liens. *See Dull v. Iowa Dist. Court for Woodbury Cnty.*, 465 N.W.2d 296, 297 (Iowa App. 1990).

[3] The parties agree that Iowa law applies in this proceeding.

In 1984, the Iowa legislature enacted Iowa Code Chapter 570A with a stated purpose of creating a lien against livestock that consume feed to secure payment of the feed's retail cost. *Oyens*, 808 N.W.2d at 188. That chapter provides that an agricultural supply dealer who sells feed to a farmer on a retail basis has an agricultural lien in the livestock that consumes the purchased feed. Iowa Code § 570A.1, .3(2) (2013). The amount of that lien is "the amount owed to the agricultural supply dealer for the retail cost of the [feed], including labor provided." Iowa Code § 570A.3 (2013). But the lien "does not apply to that portion of the livestock of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the feed." *Id.*, .3(2).

The statute specifies the agricultural supply dealer as a secured party and the farmer as a debtor for purposes of article 9 of Iowa Code Chapter 554, Iowa's version of the Uniform Commercial Code (UCC). *Id.*; *Farmers Coop. Co. v. Swift Pork Co.*, 602 F. Supp. 2d 1095, 1108 (N.D. Iowa 2009). The agricultural lien becomes effective when the farmer purchases the agricultural supply, and it must be perfected by filing a financing statement with the secretary of state within 31 days after the date of purchase. Iowa Code § 570A.4 (1), (2).

Article-9 priority rules apply to an agricultural supply dealer lien that is effective or perfected, except as provided by Iowa Code § 570A.5 (2013). *See* Iowa Code § 554.9322(7) (2013). Section 570A.5 (3) states that "[a] lien in livestock feed shall have priority over an earlier-perfected lien or security interest to the extent of the difference between the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater." Thus,

"section 570A.5(3) provides feed dealers superiority in part of the livestock collateral—the new value presumptively attributable to the feed." *Oyens*, 808 N.W.2d at 190. But "[t]he superpriority lien . . . applies only to the new value presumably created by the feed, not the acquisition value of the livestock subject to the [prior] lender's security interest." *Id*. at 194. Once the extent of the lien has been determined, in order to maintain its security interest, a secured creditor must be able to trace the proceeds from sale of the collateral as derived from the collateral. *See* Iowa Code § 554.9315 (2013); *Ellefson v. Centech Corp.*, 606 N.W.2d 324, 336 (Iowa 2000).

UPB has not challenged the district court's findings of fact as to the amounts of feed delivered to Ward's barns, the value of the payments made to the feed suppliers, the sale proceeds from the hogs, or the time periods of respondents' perfected liens. *See In re Shulista*, 451 B.R. 867, 876–77 (Bankr. N.D. Iowa 2011) (holding that an agricultural supply dealer's superpriority lien under Chapter 570A is perfected only for feed sold in the 31 days prior to the filing of a financing statement and does not extend to future advances or later amounts sold). Rather, UPB challenges the district court's findings on the amounts and priority of respondents' perfected agricultural liens based on the application of Chapter 570A.

As an initial matter, Galva and Hubbard argue that UPB lacks standing to contest the amount of their statutory feed suppliers' liens. But the district court's declaratory judgment determined the priority of UPB's secured interest in Ward's farm operation, and UPB has standing to assert the priority of that interest over the feed suppliers' liens. *See Alons v. Iowa Dist. Court for Woodbury Cty.*, 698 N.W.2d 858, 864 (Iowa 2005)

(stating that a complaining party has standing to sue if that party has a "specific personal or legal interest in the litigation" and is "injuriously affected") (quotation omitted).

I

UPB argues that the district court erred by interpreting Chapter 570A to allow the respondents to apply feed payments made during the 31-day perfected periods to older, unperfected debt. To address UPB's argument, we examine the language of Chapter 570A. "In resolving statutory disputes, [the] ultimate goal is to ascertain and give effect to the intent of the legislature." *Oyens*, 808 N.W.2d at 193 (quotation omitted). In so doing, the court looks to both the statute's language and its purpose, viewing the statute as a whole, "not just isolated words or phrases." *Id*. (quotation omitted). If a statute's language is plain and unambiguous, the court applies its express terms and does not search beyond those terms to seek legislative intent. *Horsman v. Wahl*, 551 N.W.2d 619, 620–21 (Iowa 1996). The court seeks a reasonable interpretation that will best achieve the purpose of the statute and avoid absurd results. *Harden v. State*, 434 N.W.2d 881, 884 (Iowa 1989).

UPB argues that the agricultural-lien statute, read as a whole, requires payments for feed made during each 31-day perfected lien period to be applied to reduce the amount of the lien applicable to that period. UPB points to the language of section 570A.4, which creates a 31-day perfected lien period, and the language of section 570A.3, which states that the lien "shall be the amount owed" and "does not apply to that portion of the livestock of a farmer who has paid all amounts due." Iowa Code §§ 570A.4, .3(2). UPB argues that, taken together, these provisions show a legislative

intent that in calculating the amount of the perfected lien the court "must take into account both feed delivered and payments received during the same 31-day lien window." Otherwise, UPB argues, an agricultural-lien claimant would be able to artificially inflate the value of its perfected lien by paying off invoices from an earlier time period.

But Chapter 570A does not expressly state the proposition that UPB urges. Legislative intent is determined "from the words chosen by the legislature, not what it should or might have said." *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008) (quotation omitted). Chapter 570A contains no language requiring the application of amounts owed for prior purchases of feed, for which no lien was filed, to reduce a perfected lien for later purchases of feed. *Cf. Tracy State Bank v. Tracy-Garvin Coop.*, 573 N.W.2d 393, 305–396 (Minn. App. 1998) (holding that language in Minnesota agricultural lien statute requiring lien notification statement describing "the retail cost or anticipated costs of the agricultural production input" did not encompass a revolving debt arrangement, where debt could be paid down and then re-borrowed within a perfected lien period) (quotation omitted).

In the absence of express statutory treatment, Iowa common law governs the feed suppliers' application of payments to Ward's debt owed for feed. *See Jackson Cnty. Pub. Hosp. v. Pub. Emp't Relations Bd.*, 280 N.W.2d 426, 431 (Iowa 1979). Generally, absent an agreement on the application of payments on an open account, the law applies payments as they are received to cancel the first-incurred debt. *Johnson v. Foster*, 101 N.W. 741, 742 (Iowa 1904); *see Lowden v. Iowa-Des Moines Nat'l Bank & Trust Co.*, 10

F. Supp. 430, 432–33 (S.D. Iowa 1935), *aff'd*, 84 F.2d 856 (8th Cir. 1936). Further, a transfer that prefers one creditor over another need not be voided if fair consideration was received. *Wilkin Elevator v. Bennett State Bank*, 522 N.W.2d 57, 61 (Iowa 1994). The feed suppliers had open accounts with Ward, and the record shows that Ward had no agreement with them as to the application of payments on his account. Therefore, the feed suppliers acted in a commercially reasonable manner by applying payments received during the 31-day perfected lien periods to past due invoices, and the district court did not err by declining to deduct those payments received from the perfected-lien amounts.

UPB also argues that the security agreement between Ward and UPB required Ward to protect UPB's interest against competing claims and that, because the feed suppliers had notice of UPB's security interest based on its filing with the Iowa Secretary of State, they were obligated not to induce Ward to apply payments in contravention of that agreement. But UPB provides no authority for this argument, and representatives of Galva and Hubbard testified that they were unaware of the terms of the security agreement. Because the feed suppliers were nonparties to UPB's security agreement between Ward and UPB, their rights cannot be adversely varied by that agreement. *See Herington Livestock Auction Co. v. Verschoor*, 179 N.W.2d 491, 494 (Iowa 1970) (stating general contract premise that the rights of a third party cannot ordinarily be "adversely varied by an agreement to which he is not a party or by which he is not otherwise bound").

II

UPB argues that the district court erred by failing to reduce Galva's and Hubbard's superpriority liens dollar-for-dollar by the amounts that UPB paid directly to the feed suppliers, which generally occurred after early October 2009. UPB points out that chapter 570A recognizes the general secured lender's priority up to the acquisition value of the livestock, *see Oyens*, 808 N.W.2d at 194, and that the feed suppliers' liens take priority only to the extent of "the difference between the acquisition price . . . and the sale price of the livestock," or the new value attributable to the feed. Iowa Code § 570A.5(3). UPB argues that, if a feed supplier has already been paid this new value, which is the full amount of its superpriority lien, either "during the course of the transaction or at the end of the transaction," that supplier is entitled to no additional lien amount. UPB argues that, under this theory, it would properly obtain full credit for its payment of feed bills, which added value to the hogs, and that this application of payments would encourage banks to share the risk of continuing to feed livestock to market.[4]

But the feed suppliers were seeking to collect on liens relating only to summer 2009, when they supplied feed for hogs in Ward's barns but were not paid for that feed. They were not seeking to recover under liens relating to the period after early October

[4] UPB argued before the district court that its payment of the later feed bills were payments advanced to preserve its collateral, which could be recovered against the debtor and the collateral, and that because the feed suppliers agreed to supply feed to the hogs, UPB should be allowed to capture the value added to the hogs under its blanket security interest. But the evidence shows that the feed suppliers did not agree that any increased value attributable to the feed paid for during the later period would be returned to UPB, and the district court apparently rejected UPB's argument.

2009, when they were paid in full by UPB. Galva and Hubbard's position is consistent with the district court's findings that the feed suppliers had perfected lien amounts with respect to periods when they furnished feed to Ward's barns before early October 2009. With respect to these perfected lien periods, the district court made detailed findings as to the amounts of each feed supplier's superpriority liens, based on: (1) the acquisition price of hogs delivered to each barn; (2) the sale price of the hogs; (3) the difference between the sale price and the acquisition cost; and (4) the unpaid feed bills attributable to those hogs. The district court then made findings on the amounts of the perfected liens that could be traced to the proceeds in the escrow account. Based on the record, these findings are not clearly erroneous, and we conclude that the district court did not err in declining to apply the payments received during later periods from UPB to reduce the amounts of the perfected liens. As the feed suppliers argue, under the district court's approach, they are not receiving a windfall, but only preserving their liens as to feed they supplied to Ward's hogs during the perfected periods, for which they did not receive payment. We note that this result is also consistent with a policy of feed suppliers and banks sharing the risk of continuing to feed livestock to market and with Chapter 570A's goal of "encourag[ing] feed sales to livestock producers already burdened with bank debt." *Oyens*, 808 N.W.2d at 195.

UPB also points out that an alternative statutory evaluation method exists for calculating the feed suppliers' liens: the difference between the hogs' acquisition cost and their fair market value at the time the liens attached. *See* Iowa Code § 570A.5(3). UPB argues that "the only inference that can be reasonably drawn from the record" is that most

of the added value between the attachment of the lien and the sale of the hogs is attributable to feed supplied after early October 2009, when UPB was paying for the feed. But no specific evidence was presented on the hogs' fair market value at the time the liens attached, and we conclude that, absent such evidence, the district court did not err by failing to calculate the feed suppliers' liens based on this alternative evaluation method.

UPB also argues that the district court erred by failing to prorate the feed suppliers' recoverable amounts by the sale proceeds, acquisition costs, feed bills, and feed payments that were attributable to hogs already sold before the escrow account was established. But UPB cites no authority for this assertion, and we conclude that the district court did not err in its approach of analyzing the acquisition costs of the hogs whose proceeds were placed in the escrow account and ordering the satisfaction of liens to the extent that proceeds could be traced to funds deposited in that account.

III

By cross appeal, Galva argues that the district court erred by limiting recovery on its perfected liens to amounts held in the escrow account. But the district court appropriately distinguished the amount of the feed suppliers' perfected liens from the amounts of those liens that could be satisfied from funds in the escrow account; for instance, the district court found that Galva had a perfected lien amount of $134,005.45 that could not be traced to proceeds in the escrow account. *See* Iowa Code § 554.9315. As UPB points out, the possible satisfaction of those liens from other sources remains to be addressed in further litigation.

Galva and Hubbard also argue that the district court erred by failing to add invoiced interest and finance charges to the lien amounts awarded. They argue that these fees, to which Ward did not object, were charged in the regular course of business and are encompassed in the lien amount under Chapter 570A. Section 570A.3 specifically includes labor provided in the retail cost of the agricultural supply, for which a lien may be asserted. *See* Iowa Code §§ 570A.3 (stating that "[t]he amount of the lien shall be the amount owed to the agricultural supply dealer for the retail cost of the agricultural supply, including labor provided"); 570A.3(2) (stating that the lien does not apply to the "portion of the livestock of a farmer who has paid all amounts due . . . for the retail cost, including labor, of the feed"). We conclude that, by specifying that the lien amount is the "retail cost . . . of the feed," which includes "labor provided," the legislature intended to exclude other unidentified charges, such as interest and finance charges, from the scope of the lien. *See, e.g., Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 568 (Iowa 2011) (applying doctrine of *expressio unius est exclusio alterius*, or the express mention of one thing implies the exclusion of others not mentioned, to matter of statutory construction); *see also Oyens*, 808 N.W.2d at 193 (stating that "[w]hen construing a statute, [an appellate court] assess[es] the statute as a whole"). Therefore, we conclude that the district court did not err by declining to order interest and finance charges to be included in the feed suppliers' liens.

Affirmed.