IN THE SUPREME COURT OF IOWA

No. 21-0774

MONROE COUNTY NO. EQEQ009517

QUALITY PLUS FEEDS, INC., Plaintiff-Appellee,

vs.

COMPEER FINANCIAL, FLCA, Defendant-Appellant,

and

ETCHER FAMILY FARMS, LLC, ETCHER FARMS, INC., AGRILAND FS, INC., DEWITT VETERINARY SERVICES, P.C. d/b/a DEWITT VETERINARY CLINIC, JASON DENNING, PRECISION PUMPING, INC. and ELMWOOD FARMS, LLC, Defendants.

APPEAL FROM THE IOWA DISTRICT COURT FOR MONROE COUNTY, HON. DANIEL P. WILSON

APPELLANT'S FINAL BRIEF

Dustan J. Cross AT0001856
Rick J. Halbur AT0014046
GISLASON & HUNTER LLP
2700 South Broadway
P.O. Box 458
New Ulm, MN 56073
Phone: (507) 354-3111
Fax: (507) 354-8447
dcross@gislason.com
rhalbur@gislason.com

Attorneys for Defendant-Appellant

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STATEMENT OF ISSUES

I. **Did the District Court Err in Granting Quality's Summary Judgment Motion Where Quality Failed to Satisfy its "Tracing" Obligations Under Iowa Code § 570A.1, *et seq.* and There Were Multiple Genuine Issues of Material Fact Regarding Whether Quality Had Accurately Calculated the Value of its Asserted Agricultural Supply Dealer's Liens?**

CASES

Diaz v. Thompson,
691 N.W.2d 744 (Iowa Ct. App. 2004) 32

Farmers Coop. Co. v. Ernst & Young, Inc. (In re Big Sky Farms Inc. ex rel. Ernst & Young, Inc.),
512 B.R. 212 (Bankr. N.D. Iowa 2014) 54

Gerst v. Marshall,
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II. Did the District Court Err in Denying Compeer's Summary Judgment Cross-Motion Where Quality Failed to Satisfy its "Tracing" Obligations Under Iowa Code § 570A.1, *et seq.*?

CASES

Citizens Savings Bank v. Miller,
515 N.W.2d 7 (Iowa 1994) ..... passim

State ex rel. Vega v. Medina,
549 N.W.2d 507 (Iowa 1996) 69

Wells Fargo Bank v. Tama Benton Coop. (In re Shulista),
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ROUTING STATEMENT

This case involves the application of existing legal principles regarding the "tracing" requirements for a party claiming entitlement to a "superpriority" agricultural supply dealer lien under Iowa Code § 570A.1, *et seq*. The case also involves the application of existing legal principles regarding whether summary judgment is proper when there are multiple genuine issues of material fact regarding whether an agricultural supply dealer lienholder has accurately calculated its asserted lien. As such, this case should be transferred to the Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101(3)(a).

STATEMENT OF THE CASE

A. Nature of the Case.

This action arose from a lender–borrower relationship that previously existed between Appellant Compeer Financial, FLCA f/k/a AgStar Financial Services, FLCA ("**Compeer**") and Etcher Farms, Inc. ("**EFI**"), Etcher Family Farms, LLC ("**EFF**"), and Elmwood Farms, LLC ("**Elmwood**") (collectively the "**Etcher Entities**"). The Etcher Entities each operated various dairy farms, and Compeer financed those operations at all times relevant to this appeal. Appellee Quality Plus Feeds, Inc.'s ("**Quality**") involvement in this

case stems from its delivery of feed supply to EFI and EFF – but not Elmwood – at various times pertinent to this appeal.

Specifically, from approximately late 2014 through early 2019, Compeer financed the Etcher Entities' farming operations. (App. 686-687, ¶ 5). The Etcher Entities' loans with Compeer were secured by both real estate and personal property collateral. Relevant to this appeal, Compeer perfected its security interests in the Etcher Entities' personal property between late 2014 and the first quarter of 2016. (App. 118, ¶ 5). Quality subsequently sold and delivered feed to EFI and EFF in late 2017 and early 2018.

The crux of this appeal involves a dispute between Compeer and Quality regarding these parties' respective priority to certain liquidated collateral previously owned by the Etcher Entities. Compeer claims priority to this collateral as the Etcher Entities' senior, secured lender, and Quality asserts priority as the claimed holder of a "superpriority" agricultural supply dealer's lien arising from the sale of certain feed to EFI and EFF.

On March 19, 2018, the Etcher Entities filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Iowa. (App. 119, ¶ 8). The Etcher Entities, Compeer, and Quality initially attempted to resolve their disputes throughout the course of these bankruptcy proceedings, but the bankruptcy court eventually dismissed those proceedings

on or around January 10, 2019. (*Id.*, ¶ 11). The lawsuit underlying this appeal followed the dismissal of the bankruptcy proceedings.

B. Relevant Events of the Prior Proceedings.

On March 13, 2020, Quality commenced this action by filing a petition for the foreclosure of its claimed agricultural supply dealer lien(s) (hereinafter "**liens**" or "**lien**"). (App. 10-106, *generally*). Quality's petition sought to foreclose its claimed lien in $317,308.51 of the Etcher Entities' "**Milk Check Proceeds**" and $1,027,904.09 of Cattle Sale Proceeds.[1] (*Id.*). The Milk Check Proceeds and Cattle Sale Proceeds constituted Compeer's collateral for the Etcher Entities' loans, and accordingly Compeer filed a counterclaim seeking to foreclose upon its prior, perfected blanket security interest in personal property owned by the Etcher Entities. (App. 107-156, *generally*). Compeer also raised two additional counterclaims against Quality for unjust enrichment and conversion. (*Id.*).

On November 24, 2020, Quality filed its Motion for Summary Judgment and several other pleadings in support of that motion. (App. 286-624).

[1] The "**Cattle Sale Proceeds**" are proceeds from the March and April 2019 sales of EFI's and EFF's cattle. (App. 687, ¶ 6).

On December 9, 2020, Compeer filed its Resistance to Quality's Motion for Summary Judgment and several other pleadings in support of its Resistance. (App. 625-820).

On December 18, 2020, Compeer filed its Cross-Motion for Summary Judgment and several other pleadings in support of its cross-motion. (App. 823-848).

On December 21, 2020, Quality filed a Reply in support of its motion. (App. 849-867). On January 5, 2021, Quality filed its Resistance to Compeer's Cross-Motion for Summary Judgment and several other pleadings in support of its Resistance. (App. 868-909). On January 12, 2021, Compeer filed a Reply in support of its cross-motion. (App. 910-922).

On February 5, 2021, the District Court held a hearing and took the two summary judgment motions under advisement. (App. 923-924). On April 20, 2021, the District Court issued its Ruling granting Quality's motion and denying Compeer's cross-motion. (App. 925-944). The District Court directed Quality to submit a proposed judgment or decree and provided Compeer with an opportunity to object to Quality's proposed final judgment or decree. (App. 942, ¶ 44).

On April 30, 2021, Quality filed a Proposed Order and Judgment Entry and a Motion to Tax Expert Witness Fees as Costs. (App. 945-951). Compeer

thereafter filed Resistances to both Quality's proposed order and motion to tax costs. (App. 952-962). Quality subsequently filed a Reply in support of its Proposed Order and Judgment Entry and an amended proposed order. (App. 963-974).

On May 20, 2021, the District Court entered its final Order, Judgment and Decree ("**Judgment & Decree**") and issued its Ruling on Quality's Motion to Tax Costs. (App. 975-979). On June 2, 2021, Compeer filed its Notice of Appeal. (App. 982-984).

C. Disposition of the Case in District Court.

In its April 20, 2021 Ruling, the District Court opened its analysis with an acknowledgment that it had to first decide the "tracing" dispute between the parties, as this dispute was the salient issue in the competing motions. Thus, the District Court first analyzed whether the relevant statutory language in Iowa Code § 570A.1, *et seq.* "requires [that] an agricultural supply dealer link their feed with the livestock that consumes it in order for the lien to attach. In other words, must the dealer 'trace' a path from the feed to the livestock." (App. 932, ¶ 18). The District Court concluded that the "legislature did not include a specific tracing requirement" in Iowa Code § 570A.3. (*Id.*). Rather, the District Court found that "a party asserting a lien must show a *reasonable link* between the feed provided by the supplier and the livestock . . . [and that]

section 570A.3 does *not* require a meticulous showing of the path from feed to a *specific* cow[.]" (App. 933, ¶ 19 (emphasis added)).

The District Court's conclusion on the "tracing" issue had a "domino effect" upon all of the other issues raised in the competing motions. Specifically, upon adjudicating the "reasonable link" "tracing" standard required to prove up an agricultural supply dealer's lien under Iowa Code § 570A.3, the Court concluded that Quality had satisfied this standard such that summary judgment was proper on Quality's motion and that Compeer's cross-motion should be denied.[2] (App. 933-934, ¶¶ 19-21; App. 938-939, ¶¶ 31-33).

In denying Compeer's cross-motion, the District Court explicitly rejected Compeer's interpretation of the "tracing" requirements under Iowa Code § 570A.3 and the relevant case law. (App. 938-939, ¶¶ 32-33). The District Court also denied Compeer's cross-motion based on its prior determination that Quality had a "superpriority" lien in the Milk Check Proceeds paramount to Compeer's prior, perfected security interest in those proceeds. (App. 938, ¶ 31).

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[2] The District Court further adjudicated that all of Compeer's affirmative defenses were unavailing. (App. 934-936, ¶¶ 22-26). The District Court also dismissed Compeer's unjust enrichment and conversion counterclaims on the grounds that Quality was entitled to the Milk Check Proceeds underlying those counterclaims. (App. 936-937, ¶¶ 27-29; App. 939, ¶ 34).

The District Court also denied Compeer's request that $113,553.31 of the Milk Check Proceeds generated from the sale of Elmwood's milk be turned over to Compeer. (App. 939-940, ¶ 35). Compeer argued that Quality was not entitled to this portion of the Milk Check Proceeds because Quality had never sold any feed to Elmwood and had never filed any UCC financing statements to perfect its lien as to this collateral; as a result, Quality could not claim a lien in Elmwood's milk check proceeds. (App. 845-846).

The District Court nevertheless found that Quality was entitled to this $113,553.31 of the Milk Check Proceeds generated from the sale of Elmwood's milk because "*some* of the Etcher cows [that consumed Quality's feed] *may* have been transported to Elmwood Farms. . . [and] Elmwood Farms played a role in the Etcher Farms dairy operation . . . [but the] exact role [was] unknown to the Court." (App. 939-940, ¶ 35). In sum, the District Court granted all of the relief sought by Quality in its motion and denied all of the relief requested in Compeer's cross-motion.

On May 20, 2021, after a series of filings in connection with Quality's Proposed Order and Judgment Entry, the District Court entered its Judgment & Decree consistent with the District Court's prior determination that Quality's motion should be granted, and Compeer's cross-motion should be denied. (App. 975-977).

STATEMENT OF FACTS

I. Background Information.

Quality is a corporation organized under the laws of the State of Iowa, and it is in the business of supplying feed to farmers. (App. 158, ¶ 3; App. 255-256, ¶¶ 2, 5, 8). Compeer is an instrumentality under the laws of the United States pursuant to the Farm Credit Act of 1971, as amended, and it is in the business of financing agricultural operations. (App. 686, ¶ 4).

The Etcher Entities each owned and operated various dairy farms for several decades until early 2019 when all of their farming operations ceased. At all times pertinent to this appeal, Compeer financed the Etcher Entities' dairy operations and Quality sold feed to these operations on credit.

Specifically, from approximately late 2014 through early 2019, Compeer financed the Etcher Entities' farming operations. (App. 686-687, ¶ 5). In connection with providing this financing, Compeer obtained and perfected several security interests in the Etcher Entities' personal property ("**Personal Property**"), including without limitation the cattle and milk (and proceeds from the sales of the same) that are at issue in this case. (App. 687, ¶ 6).

From approximately late 2017 through early 2018, Quality sold feed to EFI and EFF – but not Elmwood – on credit. (App. 256, ¶¶ 5, 8). Quality claims to have provided feed on credit to EFI from July 28, 2017 through March 30, 2018, and to EFF from September 25, 2017 through March 29, 2018. (*Id.*).

As outlined in detail below, there is no question that Compeer obtained and perfected its security interests in the Personal Property more than two and a half years *before* the purported creation of Quality's asserted liens. This conclusion follows because all of the security agreements that created Compeer's security interests in the Personal Property were entered into on various dates between December 11, 2014 and March 4, 2016. (App. 687, ¶ 8). Further, Compeer perfected its security interests in the Personal Property by filing various UCC financing statements and amendments to the same with the Iowa Secretary of State, with Compeer's initial UCC financing statement being filed on December 18, 2014. (App. 687-688, ¶¶ 9-10, 12 (citing UCC financing statements and amendments)).

Accordingly, Compeer's security interests in the Personal Property were perfected on December 18, 2014, which was more than two and a half years *before* Quality even *attempted* to perfect its purported liens in a portion of the Personal Property. (App. 688, ¶¶ 10, 12). The dates of perfection are

undisputed because Quality filed its first UCC financing statement on October 5, 2017 and its last UCC financing statement was filed on March 28, 2018. (App. 342, 348-349, 367).

Quality's October 5, 2017 filing of its first UCC financing statement was no coincidence. Admittedly, the Etcher Entities had struggled to make a profit from at least late 2014 onward, but by the Fall of 2017 they were in dire financial straits. This prompted Compeer to send a notice of acceleration and demand for payment of $16,697.969.57 of indebtedness on October 25, 2017. (App. 516-517).

At around this same time, the Etcher Entities needed to purchase feed on credit because they could not pay for their feed at the time of delivery. This is where Quality entered the picture in this case. As mentioned above, from approximately late 2017 through early 2018, Quality sold feed to EFI and EFF – but not Elmwood – on credit. (App. 256, ¶¶ 5, 8).

By early 2018, the Etcher Entities had not turned around their failing dairy operations. Seeking to reorganize their debts, the Etcher Entities each individually filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of Iowa on March 19, 2018. (App. 688, ¶ 13). Eventually, the Etcher Entities' individual bankruptcy cases were

consolidated into one bankruptcy proceeding in that Court, Case No. 18-00554-lmj11 ("**Consolidated Bankruptcy Case**"). (*Id.*, ¶ 14).

The Etcher Entities were unable to successfully reorganize their debts in their Consolidated Bankruptcy Case. On December 5, 2018, Compeer filed a motion to dismiss the Consolidated Bankruptcy Case. (App. 689, ¶ 15). The Consolidated Bankruptcy Case was dismissed on or around January 10, 2019. (*Id.*, ¶ 16).

Following the dismissal of the Consolidated Bankruptcy Case, Compeer, Quality, and the Etcher Entities began to experience difficulties while the Etcher Entities were seeking to liquidate their assets to satisfy their financial obligations to Compeer. These difficulties arose from disputes between these parties regarding (a) where various Milk Check Proceeds should be deposited, and (b) Quality's failure to "trace" it's asserted liens and the alleged "superpriority" of the same above Compeer's prior, perfected security interests in the Etcher Entities' Personal Property.

II. The Milk Checks.

Following the dismissal of the Consolidated Bankruptcy Case, the Etcher Entities, Compeer, and Quality were all named as payees on various milk checks issued by Dairy Farmers of America ("**DFA**") from the sales of milk from the Etcher Entities' milk cows. (*Id.*, ¶ 20).

Quality demanded that its name be placed on DFA milk checks for milk sold by the Etcher Entities – even though Quality never sold feed to Elmwood – because Quality's attorney acknowledged that the three Etcher Entities had intermingled their respective dairy herds at all times relevant to the dispute between the Etcher Entities, Compeer, and Quality regarding the respective lien priorities in Etcher Entities' cattle and milk. (App. 690, ¶ 21 (citing App. 740-743)).

Put another way, Quality's attorney claimed an entitlement to Elmwood's milk produced in the first quarter of 2019 because it was *hypothetically* conceivable to her that this entity's cattle producing milk in 2019 *could have* consumed cattle feed that Quality sold to EFI and EFF between September 4, 2017 through March 19, 2018 (i.e., the time period during which Quality claims to have perfected various agricultural supply dealer liens).[3] (App. 690, ¶ 22).

After the Etcher Entities, Compeer, and Quality were all named as payees on various milk checks issued by DFA in connection with the sale of milk from the Etcher Entities' milk cows during the first quarter of 2019, Quality subsequently turned over hundreds of thousands of dollars' worth of milk check proceeds to Compeer following the dismissal of the Consolidated

[3] *See* footnote 5 below regarding how this "lien period" is calculated.

Bankruptcy Case. (*Id.*, ¶ 23). Then, around approximately mid-April 2019, Quality unilaterally and without authorization decided to retain the last remaining $317,308.51 of Milk Check Proceeds. (*Id.*).

On several occasions in and after May 2019, Compeer demanded that Quality turn over the Milk Check Proceeds to Compeer, but Quality refused to do so. (*Id.*, ¶ 24). Of the $317,308.51 in Milk Check Proceeds that Quality is wrongfully withholding from Compeer, $113,553.31 of such proceeds came from the sale(s) of Elmwood's milk in the first quarter of 2019. (*Id.*). That is problematic because, as stated previously, Quality never sold or otherwise provided any feed to Elmwood for which Quality can claim an agricultural supply dealer's lien. (App. 691, ¶ 24).

Upon information and belief, Quality is simply holding $113,553.31 of the Milk Check Proceeds that came from the sale(s) of Elmwood's milk because Quality knows that the Etcher Entities intermingled their three respective dairy herds at all times pertinent to this lawsuit. (*Id.*, ¶ 25). Quality has not and apparently cannot "trace" EFI's and EFF's *specific* cattle that consumed Quality's feed sold between September 4, 2017 through March 19, 2018 to the Milk Check Proceeds. (*Id.*).

III. The Cattle Sales.

Quality's failure to "trace" any of its supposedly lienable feed to EFI's and EFF's cattle liquidated in March and April 2019 was the other significant dispute that arose following the dismissal of the Consolidated Bankruptcy Case. This problem arose because Quality had taken no efforts before, during, or after the Consolidated Bankruptcy Case to ensure that its asserted liens would remain "traceable" to the specific livestock proceeds that Quality now seeks to enforce its asserted liens against.

The admittedly limited record before the District Court regarding what livestock may have consumed Quality's feed sold from September 4, 2017 through March 19, 2018 can be summarized as follows:

As a threshold matter, on June 30, 2017 – approximately two months before Quality claims to have perfected its first lien – the Etcher Entities each reported the following information about their respective dairy herds:

Cattle inventories per entity as of 6/30/17	**Cow #**	**Young stock#**
Etcher Farms Inc.	748	2,606
Etcher Family Farms, LLC	1,222	0
Elmwood Farms LLC	1,256	0
Total Cattle		**5,832**

(App. 671, ¶ 6 (citing App. 677, 679, 681)).

Then, as of March 19, 2018, the Etcher Entities collectively claimed to own a total of **5,492** cattle. (App. 688, ¶ 13 (citing App. 704; App. 528, App. 575)).

On March 31, 2018 – approximately two weeks after the Etcher Entities each filed for bankruptcy – they each reported the following information about their respective dairy herds:

Cattle inventories per entity as of 3/31/18	**Cow #**	**Young stock #**
Etcher Farms Inc.	868	2471
Etcher Family Farms, LLC	1211	0
Elmwood Farms LLC	1101	0
Total Cattle		**5,651**

(App. 671, ¶ 7 (citing App. 676, 678, 680)).

Then, on December 1, 2018 – approximately one month before the Consolidated Bankruptcy Case was dismissed – the Etcher Entities each reported the following information about their respective dairy herds:

Cattle inventories per entity as of 12/1/18	**Cow #**	**Young stock#**
Etcher Farms Inc.	577	982
Etcher Family Farms, LLC	1,282	
Elmwood Farms LLC	1,209	
Total head		**4,050**

(App. 672, ¶ 8 (citing App. 683, 684, 685)).

In sum, on March 31, 2018 – approximately two weeks after the commencement of the bankruptcy proceedings – the Etcher Entities owned 5,651 cattle, but their dairy herd numbers were down to 4,050 cattle (i.e., a loss of more than 1,600 cattle) by December 1, 2018. (App. 671-672, ¶¶ 7-8).

The dramatic reduction of over 1,600 dairy cattle is at least somewhat attributable to the cattle death losses, cattle purchases, cull sales, and inter-company transfers of cattle that took place between March 31, 2018 and September 30, 2018, which are summarized below as follows:

	EFF	**EFI**	**Elmwood**
Culled Cows	(134)	(113)	(224)
Dead Cows	(93)	(59)	(54)
Young Stock Died		(276)	
Heifers Sold		(55)	
Animals Sold/Transferred to EFF		(116)	
Animals Sold/Transferred to Elmwood		(184)	
Heifers Traded for Milk Cows		(545)	
Adjustments for Inventory Differences		(259)	(54)
Bring on (Calves Born)		341	
Heifers Transferred to Milking Herd		286	
Transferred	41		355
Purchased cows	117		
Cows From Traded Heifers	18		

(App. 672, ¶ 9).

The above-summarized numbers only cover the time period of March 31, 2018 through September 30, 2018 and not the entire duration of the

Consolidated Bankruptcy Case because the Etcher Entities failed to provide significant information about their cattle death losses, cattle purchases, cull sales, and inter-company transfers of cattle from October 1, 2018 through approximately April 2019 when the last of the Etcher Entities' respective dairy herds were liquidated. (App. 672-673, ¶ 10).

While the record is limited as to the Etcher Entities' cattle death losses, cattle purchases, cull sales, and inter-company transfers of cattle that occurred during the course of the Consolidated Bankruptcy Case, a number of items stand out. For example, over 1,600 of the Etcher Entities' dairy cattle were liquidated by sale or death loss between March 31, 2018 and September 30, 2018. (App. 673, ¶ 11). In addition, during this time period at least 845 cattle owned by the three Etcher Entities were being traded amongst themselves or sold to third parties. (*Id.*). EFI also made "adjustments" in its herd inventory for 259 cattle that it simply could not account for. (*Id.*). Finally, EFF purchased at least 117 cows and transferred another 41 cows (but nobody knows where). (*Id.*).

In sum, the record reflects that thousands of cattle that Quality claims to have fed between September 4, 2017 and March 19, 2018 were dying, being transferred, sold, or simply disappearing from the Etcher Entities' facilities between March 31, 2018 and September 30, 2018, which is only

approximately *half* of the time that the Etcher Entities were in bankruptcy. *(Id.*, ¶ 12).

It is unknown what animal death losses, sales, and transfers took place between approximately October 1, 2018 and early March 2019. (App. 673-674, ¶ 13). Based upon the December 1, 2018 borrowing base, the Etcher Entities reported that their collective dairy herds included 4,050 animals as of December 1, 2018, but a total of 2,920 cattle[4] owned by the Etcher Entities were liquidated in March and April 2019 with the proceeds from these sales going to Compeer. (*Id.*). That means that approximately 1,130 cattle (i.e., 4,050 – 2,920) disappeared between December 1, 2018 and early March 2019 with no record of whether they died, were sold, and/or otherwise disposed of. (*Id.*).

However, at least some of the roughly 1,600 missing cattle that presumably died or were sold from March 19, 2018 through approximately January 10, 2019 could have consumed the feed that Quality supplied to EFI and EFF between September 4, 2017 through March 19, 2018 (i.e., the time period during which Quality claims to have perfected various agricultural supply dealer liens). (App. 689, ¶ 18). The same holds true for the

[4] Of these 2,920 cattle owned by the Etcher Entities, a total of 2,278 cattle were owned by EFI and EFF. (App. 691, ¶ 26).

approximately 1,130 additional cattle that disappeared without a trace between December 1, 2018 and early March 2019.

Further, while thousands of cattle that Quality claims a lien in were disappearing during the more than nine–month course of the Consolidated Bankruptcy Case (and immediately thereafter), the Etcher Entities were spending hundreds of thousands of dollars on (a) adequate protection payments to various creditors, (b) various professional fees, and (c) operating their farming operations. (App. 689, ¶ 19). Whether the proceeds from the post-petition sales of Etcher Entities' dairy herds were used to purchase new cattle for Etcher Entities' various dairy herds – or spent on any of items (a)-(c) referenced in this paragraph – is unknown. (*Id.*).

Further, at least EFF purchased additional dairy cattle during the course of the Consolidated Bankruptcy Case in 2018, and these animals were reported as additions to EFF's dairy herd. (App. 674, ¶ 14). Specifically, EFF purchased at least 117 cows between March 31, 2018 and September 30, 2018. (*Id.*). These 117 cows were purchased *after* the commencement of the Consolidated Bankruptcy Case. (*Id.*). It does not appear that these 117 cows were purchased from EFI. (*Id.*). Accordingly, these 117 cows could *not* have *possibly* consumed *any* of the feed purchased by EFI and EFF from Quality from September 4, 2017 through March 19, 2018. (*Id.*).

In addition, at least some of the cattle purchased by EFF during the course of the Consolidated Bankruptcy Case in 2018 and 2019 were presumably sold in March and April 2019. (*Id.*, ¶ 15). Therefore, at least some of the Cattle Sale Proceeds that Quality claims a lien in probably come from the sale of cattle that could not have possibly consumed feed that Quality sold to EFI and EFF between September 4, 2017 through March 19, 2018. (*Id.*).

IV. Other Feed Suppliers.

Another issue relevant to the enforceability of Quality's asserted lien is the fact that Quality was not the only feed supplier for EFI and EFF. It is undisputed that EFI and EFF purchased feed from over one dozen feed suppliers, including at least one other supplier – namely Dairy Consulting Services, LLC ("**Dairy Consulting**") – which claims to have a *perfected* feed lien in EFI's cattle for feed supplied to EFI from September 4, 2017 through March 19, 2018. (App. 691, ¶ 27 (citing App. 763, 770, 773, Compeer's Answers to Interrogs. Nos. 17, 24, Ex. A)). Specifically, Dairy Consulting claims a *perfected* agricultural supply dealer's lien in EFI's cattle for feed provided between September 4, 2017 through March 19, 2018, in the total amount of $72,454.16. (App. 691, ¶ 28 (citing App. 775)).

V. Quality's Ever-Shifting Damages Calculations and Compeer's Damages Calculation.

Finally, over the course of three years of bankruptcy and District Court litigation, Quality has been unable to provide a consistent calculation of its damages. Specifically, over the course of approximately three years and before two different Courts, Quality has asserted that its "lienable/superpriority" amount due and owing for feed sold to EFI and EFF was (a) $322,989.46; (b) $348,400.94; (c) $348,306.30; and then on April 30, 2021, Quality revised its claimed damages again after the District Court granted Quality's motion and alleged that its asserted lien had increased to (d) $404,118.53. (App. 954, ¶ 5 (citing App. 654-656; *see also* App. 946, ¶ 4)).

In sum, from 2018 through 2021, Quality represented to a Bankruptcy Court and the District Court that its asserted "superpriority" liens equaled anywhere from $322,989.46 to $404,118.53, a statistically significant $81,129.07 discrepancy. (App. 954, ¶ 6).

In contrast, Compeer's damages calculations – which establish its entitlement to the Milk Check Proceeds and Cattle Sale Proceeds as the Etcher Entities' senior, secured creditor – are well established in the record. Specifically, as of March 24, 2020, EFI owed Compeer a total of $5,783,997.02. (App. 692, ¶ 31). As of March 24, 2020, EFF owed Compeer $1,975,615.02. (*Id.*). While Compeer has obtained some of EFI's and EFF's

collateral that may reduce down the above-cited indebtedness figures to some extent, that collateral – which is *not* involved in this case – has *not* been fully liquidated as of December 9, 2020. (*Id.*). Accordingly, EFI's and EFF's indebtedness to Compeer has not been satisfied. (*Id.*).

ARGUMENT

I. The Appellate Court Should Reverse the District Court's Grant of Summary Judgment in Favor of Quality Because Quality Failed to Satisfy its "Tracing" Obligations Under Iowa Code § 570A.1, *et seq.* and There Were Multiple Genuine Issues of Material Fact Regarding Whether Quality Had Accurately Calculated the Value of its Asserted Agricultural Supply Dealer's Liens.

A. Preservation of Error.

Compeer preserved this issue for appellate review based upon the motions, other submissions by the parties, as well as the orders and rulings entered by the District Court. (*See* Appellant's Br. above, pp. 12-14 (citing District Court filings, rulings, orders, and judgment entry where this issue was raised or otherwise addressed below)).

B. Scope and Standard of Review.

While cases such as this involving the foreclosure of agricultural supply dealer liens and security interests are equitable proceedings that are ordinarily subject to de novo review, that is not the proper standard of review in an equity case involving an appeal from a grant of summary judgment. Iowa R. App.

P. 6.907; *see also Lyon v. Willie*, 288 N.W.2d 884, 894 (Iowa 1980) (acknowledging that "even in an equity case we cannot find facts de novo in an appeal from summary judgment.").

Rather, the standard of review for this appeal is for the "correction of error at law." Iowa R. App. P. 6.907; *see also U.S. Bank Nat'l. Ass'n v. Lamb*, 874 N.W.2d 112, 115 (Iowa 2016) (acknowledging that appellate courts "review rulings on motions for summary judgment for correction of errors at law.").

Further, the dispositive issue on appeal is whether the District Court properly construed and interpreted the statutory obligations of a lien claimant under Iowa's Agricultural Supply Dealer Lien statutes, Iowa Code § 570A.1, *et seq.*, which confirms the proper standard of review in this case. *Diaz v. Thompson*, 691 N.W.2d 744, 745 (Iowa Ct. App. 2004) (acknowledging that a "district court's construction and interpretation of a statute" is reviewable "for corrections of errors at law.").

C. Summary Judgment Standard.

Under Rule 1.981 of the Iowa Rules of Civil Procedure, the moving party must satisfy two components before a court will grant summary judgment: first, there must be no genuine issue as to any material fact; and second, the moving party must be entitled to judgment as a matter of law. *See*

Iowa R. Civ. P. 1.981(3); *see also K & W Elec., Inc. v. State,* 712 N.W.2d 107, 112 (Iowa 2006). A genuine issue of material fact "is generated if reasonable minds can differ on how the issue should be resolved." *K & W Elec., Inc.*, 712 N.W.2d at 112. An issue of fact is material only when the dispute is over facts that might affect the outcome of the litigation, given the applicable governing law. *Phillips v. Covenant Clinic,* 625 N.W.2d 714, 717 (Iowa 2001). "The burden is on the party moving for summary judgment to prove the facts are undisputed." *Id.*

"Even if facts are undisputed, summary judgment is not proper if reasonable minds could draw from them different inferences and reach different conclusions." *Goodpaster v. Schwan's Home Serv., Inc.*, 849 N.W.2d 1, 6 (Iowa 2014). "The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record." *Phillips,* 625 N.W.2d at 717-18. "An inference is legitimate if it is 'rational, reasonable, and otherwise permissible under the governing substantive law.'" *Id.* at 718.

The Appellate Court examines the "record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law." *Gerst v. Marshall*, 549 N.W.2d 810, 811-12 (Iowa

1996). "In doing so, [the appellate court] view[s] the facts in the light most favorable to the party opposing the motion for summary judgment." *Id.*

D. The District Court Erred in Granting Quality's Summary Judgment Motion Because Quality Failed to "Trace" the Feed that it Sold in Late 2017 and Early 2018 to EFI's and EFF's Cattle That Were Sold in March and April 2019.

a. There Were Multiple Genuine Issues of Material Fact Regarding Quality's Failure to "Trace" its Feed to Compeer's Collateral Liquidated in the First Quarter of 2019.

The District Court erred in determining that a lien claimant under Iowa Code § 570A.1, *et seq.* need only demonstrate a "reasonable link" between the feed provided by the supplier and the livestock to which the lien supposedly attaches.

Rather, in order to enforce an asserted lien in the Cattle Sale Proceeds and the Milk Check Proceeds (collectively "**Compeer's Collateral**"), Quality would need to show that it is undisputed that the *specific* cattle sold in March and April 2019 (from which the Cattle Sale Proceeds were generated), as well as the *specific* cattle that produced the milk that was sold in the first quarter of 2019 (the sales of which generated the Milk Check Proceeds), *all* consumed the *particular feed* that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018.[5]

[5] There is no dispute that September 4, 2017 through March 19, 2018 is the

This conclusion follows because Iowa law expressly provides that an agricultural supply dealer's lien can *only* attach to "[l]ivestock consuming the feed." Iowa Code § 570A.3(2); *Schley v. Peoples Bank (In re Schley)*, 509 B.R. 901, 907 (Bankr.N.D.Iowa 2014) (acknowledging that an agricultural feed supply lien can only attach to livestock that consumed the agricultural supply dealer's feed); *Wells Fargo Bank v. Tama Benton Coop. (In re Shulista)*, 451 B.R. 867, 876 (Bankr. N.D. Iowa 2011) (acknowledging that an agricultural supply dealer's "lien applied to the [debtor's] livestock (the pigs) that consumed the feed." (citing Iowa Code § 570A.3(2)). Iowa Code § 570A.3(2) and the above-referenced case law do *not* provide that a lien claimant need only show a "reasonable link" between the feed provided and the livestock the lien is sought to be enforced against. As demonstrated in greater detail below, these authorities stand for the proposition that a lien

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sole time period when Quality could have conceivably perfected its asserted liens. This conclusion follows because Quality filed its first UCC financing statement on October 5, 2017, and agricultural supply liens are limited to the 31-day look-back period prior to filing a financing statement, which in this case is September 4, 2017. Iowa Code § 570A.4(2). Further, Quality was fully compensated for all feed that it sold to EFI and EFF *after* March 19, 2018 (i.e., the date the Etcher Entities filed for bankruptcy) (App. 260, ¶ 10). This means that any purported liens could not attach after March 19, 2018 because an agricultural supply dealer's 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*." Iowa Code § 570A.3(2) (emphasis added).

claimant must "trace" the subject feed provided to any livestock that the lien may attach to.

Accordingly, the District Court erred in granting Quality's summary judgment motion because Quality did not even attempt to satisfy its "tracing" obligations under Iowa's supply dealer lien statutes or Rule 1.981(3) of the Rules of Civil Procedure.[6] Instead, Quality merely complained that such obligations would be "all-but impossible for a feed dealer . . . to accomplish." (App. 303). While it is true that Quality was unable to satisfy its "tracing" obligations on summary judgment – which is why the District Court's decision should be reversed – it is not the case that feed supply dealers are

[6] In support of its motion, Quality merely concluded in summary fashion that the "feed the Etcher Farms purchased would *generally* have been fed to *all* the dairy cows, calves, and heifers on the farms." (App. 291, ¶ 7 (citing App. 438-440) (emphasis added)). Quality's summary conclusion on this crucial evidentiary matter is based solely upon the affidavit testimony of an individual who made his observations following his review of "a flash drive" that the affiant obtained from Quality in *October 2019*, which is *more than two years after* Quality first claims to have perfected its lien on September 4, 2017. (*See* App. 438, ¶ 4). Further, Quality's affiant had no relationship with EFF whatsoever until February 2018 (*Id.*, ¶ 2), even though the time period during which Quality claims to have perfected liens is between September 4, 2017 through March 19, 2018. For the foregoing reasons, Quality's' affidavit testimony cited in this footnote is based upon the "observations" of an individual who has no foundation to make such testimony. Therefore, this affidavit testimony should not be considered because it is not based upon "personal knowledge," nor is it "admissible in evidence" because it fails to show that the affiant is "competent to testify as to the matters stated therein." Iowa R. Civ. P. 1.981(5).

precluded from obtaining any relief. In this case, Quality would need to simply complete discovery on various disputed factual issues before filing another summary judgment motion or trying its case to a trier of fact.

Further, Quality is simply incorrect when it alleges that "tracing" its feed to liquidated livestock is an "all-but impossible" obligation to satisfy. In fact, other feed suppliers have successfully enforced agricultural supply dealer's liens where there were no factual disputes involved. *See In re Schley*, 565 B.R. 655, 661-62 (Bankr. N.D. Iowa 2017) (holding that summary judgment in favor of a feed supplier is proper when there is "no dispute" that the *specific* livestock sold by a debtor actually consumed the *specific* feed sold by the feed supplier to said debtor).

In contrast, the record before the District Court in this case demonstrates that there are multiple genuine issues of material fact regarding whether the feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018 was consumed by the *specific* cattle that were liquidated in March and April 2019. In like manner, there are multiple genuine issues of material fact regarding whether Milk Check Proceeds generated from the early 2019 sale(s) of milk can be traced to the *specific* cattle that may have consumed feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018.

For example, as of June 30, 2017 (i.e., approximately two months prior to September 4, 2017 when Quality claims to have first perfected its liens), the Etcher Entities collectively owned a total of 5,832 cattle. (App. 632, ¶ 10). Then, after the September 4, 2017 through March 19, 2018 time period during which Quality claims to have perfected all of its liens, the Etcher Entities each filed for bankruptcy protection on March 19, 2018, at which time the Etcher Entities owned 5,492 cattle. (App. 633, ¶ 11). Thus, the size of the Etcher Entities' dairy herds decreased by 340 cattle (5,832 cattle – 5,492 cattle) from June 30, 2017 through March 19, 2018. The size of the Etcher Entities' herds then increased by 159 animals from 5,492 cattle on March 19, 2018 to 5,651 cattle on March 31, 2018. (*Id.*, ¶ 13).

Then, on December 1, 2018 – approximately one month before the Consolidated Bankruptcy Case was dismissed – the Etcher Entities reported that their dairy herd numbers were down to just 4,050 cattle (i.e., a loss of more than 1,600 cattle from March 31, 2018 through December 1, 2018). (App. 633-634, ¶ 14).

As discussed above, the dramatic reduction of over 1,600 dairy cattle is at least somewhat attributable to the cattle death losses, cattle purchases, cull sales, and inter-company transfers of cattle that took place between March 31, 2018 and September 30, 2018. (App. 634, ¶ 16). The cattle death losses,

cattle purchases, cull sales, and inter-company transfers of cattle summarized above only cover the time period of March 31, 2018 through September 30, 2018 and not the entire duration of the Consolidated Bankruptcy Case because the Etcher Entities failed to provide significant information about their cattle death losses, cattle purchases, cull sales, and inter-company transfers of cattle from October 1, 2018 through approximately April 2019 when the last of the Etcher Entities' respective dairy herds were liquidated. (App. 634-635, ¶ 17).

However, while the record is limited as to the Etcher Entities' cattle death losses, cattle purchases, cull sales, and inter-company transfers of cattle that occurred during the course of the Consolidated Bankruptcy Case, a number of items stand out. For example, over 1,600 of the Etcher Entities' dairy cattle were liquidated by sale or death loss between March 31, 2018 and September 30, 2018. (App. 635, ¶ 20). In addition, during this time period at least 845 cattle owned by the Etcher Entities were being traded amongst themselves or sold to third parties. (*Id.*). EFI also made "adjustments" in its herd inventory for 259 cattle that it simply could not account for. (*Id.*). Finally, EFF purchased at least 117 cows and transferred another 41 cows (but nobody knows where). (*Id.*).

In sum, the record reflects that thousands of cattle that Quality claims to have fed between September 4, 2017 and March 19, 2018 were dying, being

transferred, sold, or simply disappearing from the Etcher Entities' respective facilities between March 31, 2018 and September 30, 2018, which is only approximately *half* of the time that the Etcher Entities were in bankruptcy. (*Id.*, ¶ 21).

It is unknown what animal death losses, sales, and transfers took place between approximately October 1, 2018 and early March 2019. (App. 636, ¶ 22). Based upon the December 1, 2018 borrowing base, the Etcher Entities reported that their collective dairy herds included 4,050 animals as of December 1, 2018, but only 2,920 cattle owned by the Etcher Entities were liquidated in March and April 2019, with the proceeds from these sales going to Compeer. (*Id.*). That means that approximately 1,130 cattle (i.e., 4,050 – 2,920) disappeared between December 1, 2018 and early March 2019 with no record of whether they died, were sold, and/or otherwise disposed of. (*Id.*).

Consequently, at least some of the roughly 1,600 missing cattle that presumably died or were sold between March 19, 2018 through approximately January 10, 2019 could have consumed the feed that Quality supplied to EFI and EFF between September 4, 2017 through March 19, 2018 (i.e., the time period during which Quality claims to have perfected various agricultural supply dealer liens). (*Id.*, ¶ 23). The same holds true for the approximately

1,130 additional cattle that disappeared without a trace between December 1, 2018 and early March 2019.

Further, while thousands of cattle that Quality claims a lien in were disappearing during the more than nine–month course of the Consolidated Bankruptcy Case, the Etcher Entities were spending hundreds of thousands of dollars on (a) adequate protection payments to various creditors, (b) various professional fees, and (c) operating their farming operations. (*Id.*, ¶ 24). Whether the proceeds from the post-petition sales of the Etcher Entities' dairy herds were used to purchase new cattle for their various dairy herds – or spent on any of items (a)-(c)[7] referenced in this paragraph – is unknown. (*Id.*).

Further, at least EFF purchased additional dairy cattle during the course of the Consolidated Bankruptcy Case in 2018, and these animals were reported as additions to EFF's dairy herd. (App. 637, ¶ 25). Specifically, EFF purchased at least 117 cows between March 31, 2018 and September 30, 2018. (*Id.*). These 117 cows were purchased *after* the commencement of the Consolidated Bankruptcy Case. (*Id.*). It does not appear that these 117 cows were purchased from EFI. (*Id.*). Accordingly, these 117 cows could *not* have

[7] If Quality's asserted liens attached to proceeds from the sale(s) of livestock that were subsequently spent on items (a)-(c) referenced above, Quality needs to enforce its liens against *those* proceeds – which are long since gone – instead of seeking to collect from Compeer's Collateral that Quality has not "traced" its liens to.

possibly consumed *any* of the feed purchased by EFI and EFF from Quality from September 4, 2017 through March 19, 2018. (*Id.*).

At least some of the cattle purchased by EFF during the course of the Consolidated Bankruptcy Case in 2018 and 2019 were presumably sold in March and April 2019. (*Id.*, ¶ 26). Therefore, at least some of the Cattle Sale Proceeds that Quality claims a lien in probably come from the sale of cattle that *could not have possibly* consumed feed that Quality sold to EFI and EFF between September 4, 2017 through March 19, 2018. (*Id.*).

In sum, the record reflects that thousands of cattle that Quality claims to have fed between September 4, 2017 and March 19, 2018 were dying, being transferred, sold, or simply disappearing from the Etcher Entities' respective facilities from March 19, 2018 (i.e., the date the Etcher Entities filed for bankruptcy) through approximately April 2019 when the last of the Etcher Entities' cattle were liquidated.

The District Court disregarded all of these factual disputes regarding Quality's "tracing" obligations. The District Court instead found that the limited record before it sufficiently demonstrated a "reasonable link" between the feed Quality sold to EFI and EFF in late 2017 and early 2018 to Compeer's Collateral liquidated in the first quarter of 2019.

However, the case law interpreting Iowa Supply Dealer Lien statutes establishes that Quality was not entitled to summary judgment because it had failed to satisfy its "tracing" obligations. For example, in the first *In re Schley* case, a debtor purchased feed from *two* feed suppliers, the debtor operated *two* livestock facilities, and the record was "unclear what feed went to what site and fed what pigs." *In re Schley*, 509 B.R. at 904.

The first *In re Schley* case held that summary judgment in favor of one feed supplier was inappropriate when *two* feed suppliers supplied feed to a debtor and the record was unclear whether the debtor's livestock *actually consumed feed from the feed supplier seeking summary judgment.* *Id.* at 907 (finding that "there are genuine issues of material fact on . . . whether the livestock Debtors sold consumed the feed [the lien claimant] supplied[.]"). This case is nearly identical to the first *In re Schley* case because the record is undeveloped and incomplete, but the limited record does reflect that at least 117 cattle presumably liquidated in March and April 2019 could not have possibly consumed feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018.

Accordingly, the District Court should have followed *In re Schley* and denied Quality's motion for at least three reasons. First, Quality has not shown that the *specific* cattle liquidated in March and April 2019 consumed

the *specific* feed that Quality sold to EFI and EFF from September 4, 2017 through March 19, 2018. Second, the same holds true with respect to Quality's failure to "trace" the subject feed to the cows that produced the milk from which the Milk Check Proceeds were generated in the first quarter of 2019. Third, Quality was not EFI's and EFF's only feed supplier from September 4, 2017 through March 19, 2018; as a result, summary judgment cannot be granted in favor of Quality. *In re Schley*, 509 B.R. at 907.

This conclusion follows because Iowa law "provides feed dealers superiority in *part* of the livestock collateral—*the new value presumptively attributable to the feed*." *Oyens Feed & Supply, Inc. v. Primebank (Oyens I)*, 808 N.W.2d 186, 190 (Iowa 2011) (emphasis added). Therefore, since other feed suppliers were supplying "new value" in Compeer's Collateral during the relevant time period (i.e., September 4, 2017 through March 19, 2018), then, at a minimum, there is a genuine issue of material fact regarding what "new value" to this collateral is attributable to each feed supplier. *In re Schley*, 509 B.R. at 907. It is undisputed that EFI and EFF purchased feed from over one dozen feed suppliers, including at least one other supplier – Dairy Consulting – which claims to have a perfected feed lien in EFI's cattle for feed supplied to EFI from September 4, 2017 through March 19, 2018. (App. 639, ¶ 34

(citing App. 763, 770, 773, Compeer's Answers to Interrogatory Nos. 17, 24, Ex. A)).

Specifically, Dairy Consulting claims a *perfected* agricultural supply dealer's lien in EFI's cattle for feed provided between September 4, 2017 through March 19, 2018, in a total amount of $72,454.16. (App. 639, ¶ 35 (citing App. 775)). Pursuant to the first *In re Schley* case, the District Court should not have granted Quality's motion due to the existence of a genuine priority dispute between Compeer and these two feed suppliers. *In re Schley*, 509 B.R. at 907. This is especially true here, where Dairy Consulting was not a party to the action and therefore could not have its asserted lien rights determined by the District Court.

In sum, the District Court improperly granted Quality's motion because the facts in this case are nearly identical to the facts in the first *In re Schley* case, which that Court found to preclude summary judgment in favor of a feed supplier seeking that relief. *In re Schley*, 509 B.R. at 907. Instead, the District Court did not even bother to address Compeer's arguments based on *In re Schley*. The Appellate Court should follow *In re Schley* and accordingly reverse the District Court's final judgment in favor of Quality.

b. There Were Multiple Genuine Issues of Material Fact Regarding the Absence of Admissible Evidence Pertaining to the "Acquisition Prices" of the Livestock That Quality Claims its Asserted Liens Attached to.

In its five-sentence treatment of the issue, the District Court also improperly dismissed Compeer's affirmative defense regarding the "acquisition prices" of EFI's and EFF's cattle liquidated in March and April 2019. (App. 936, ¶ 26).

Specifically, even if Quality could otherwise "trace" its feed to Compeer's Collateral, Iowa law provides 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." Iowa Code § 570A.5(3) (emphasis added). Thus, even if Quality's feed sold between September 4, 2017 and March 19, 2018 was consumed by *all* of the livestock that EFI and EFF liquidated in March and April 2019,[8] Quality was still obligated to prove on summary judgment what the "acquisition prices" were for those livestock. *Id.* Compeer first raised this affirmative defense in its Answer to Quality's

[8] The "sale price" of this livestock is the full amount of the Cattle Sale Proceeds.

Petition by arguing that Quality "has not shown and cannot show that any difference even existed between the acquisition prices and fair market values and/or sale prices of the subject livestock." (App. 117, ¶ 53).

In response to Compeer's affirmative defense, Quality moved for summary judgment and simply asserted – *with no citation to the record* – that "Etcher Farms paid *no* acquisition price for their livestock – they raised them from birth."[9] (App. 314 (emphasis added)). As the moving party, it was *Quality's burden* to establish the material facts in support of its claims, but Quality did not complete *any* discovery on this issue. Quality apparently believes it can establish that each and every one of the 2,278 cattle that EFI and EFF liquidated in March and April 2019 were "raised . . . from birth" by EFI and EFF, by simply alleging the same with no citation to the record. (App. 314-315).

[9] Quality is making this assertion because there is no dispute that if the subject livestock were born on EFI's or EFF's farms, then this livestock would have no acquisition price such that Quality's lien would attach to all of the Cattle Sale Proceeds. *Oyens Feed & Supply, Inc. v. Primebank (Oyens II)*, 879 N.W.2d 853, 864-65 (Iowa 2016) (holding that "section 570A.5(3) allows an agricultural supply dealer with a perfected lien on a farrow-to-finish producer's herd to assert superpriority to the full extent of the value of feed purchased because we conclude animals born and raised in the farmer's farrow-to-finish operation have no 'acquisition price' as that term is used in section 570A.5(3)." (emphasis added)).

However, Quality cannot establish this "fact" by a mere assertion with no support in the record. Rather, Iowa R. Civ. P. 1.981(5) provides that affidavit testimony to establish this "fact" must be "made on *personal knowledge*, shall set forth such facts as would be *admissible in evidence*, and *shall show affirmatively that the affiant is competent to testify* to the matters stated therein." (emphasis added). Further, the record reflects that at least some of the 2,278 animals that were liquidated in March and April 2019 were purchased from other sources. (*See* Appellant's Br. above, pp. 28-29). Based on the admittedly limited record, at least 117 animals of the 2,278 animals that were liquidated in March and April 2019 were purchased from somewhere and therefore must have had some "acquisition price." (*Id.*). Accordingly, the District Court improperly granted summary judgment because Quality never satisfied its burden in showing that the 2,278 animals that were liquidated in March and April 2019 had no "acquisition price."

Quality attempted to shift its burden on summary judgment by summarily concluding with no citation to the record that "Compeer has presented no evidence to contradict [Quality's] *understanding and belief*" on the acquisition prices of EFI's and EFF's livestock. (App. 315 (emphasis added)). However, Quality cannot establish an "undisputed fact" based upon its mere "understanding and belief" of EFI's and EFF's farming operations

because Quality has presented no admissible evidence regarding the "acquisition prices" of these entities' livestock. Further, Compeer had no such obligation to contradict a supposedly "undisputed fact" that Quality did not establish on the record before the District Court. Consequently, the District Court's dismissal of Compeer's affirmative defense on this issue should be reversed.

E. The District Court Erred in Granting Quality's Summary Judgment Motion Because There Were Multiple Genuine Issues of Material Fact Regarding Whether Quality Had Accurately Calculated the Value of its Asserted Liens.

a. Introduction.

The Appellate Court should also reverse the District Court's grant of summary judgment because Quality failed to demonstrate that it had accurately calculated the amount of its purported liens. Indeed, over the course of approximately three years and before two different Courts, Quality asserted that its "lienable/superpriority" amount due and owing for feed sold to EFF and EFI was (a) $322,989.46; (b) $348,400.98; (c) $348,306.30; and (d) $404,118.53. (App. 954, ¶ 5 (citing App. 654-656; *see also* App. 946, ¶ 4)).

Specifically, throughout the Consolidated Bankruptcy Case, Quality represented to the Bankruptcy Court that the value of its "perfected" (i.e., "superpriority") lien against Compeer's Collateral was **$322,989.46**

($83,036.52 for EFI + $239,952.94 for EFF). (App. 691, ¶¶ 29-30, App. 783, App. 785; App. 809, App. 811).[10]

Then, Quality initiated this lawsuit and – without explanation – revised its calculation of its "perfected/superpriority" lien upward from its previously stated $322,989.46 to **$348,400.98**. (App. 160, ¶ 18).

Quality thereafter moved for summary judgment and revised its claim again by alleging a "perfected" lien in the total amount of **$348,306.30**, before revising that claimed "perfected" lien again – in the very same pleading – by stating that "the retail cost of the feed is a collective **$348,400.98**." (App. 299; App. 302).

The District Court subsequently issued its Ruling granting Quality's motion, but because the record was unclear regarding what damages Quality was claiming,[11] the District Court directed Quality to submit a proposed order and judgment to identify its damages. (App. 941-942, ¶¶ 40(a), 44).

Instead of choosing one of three damages calculations that it had previously represented to two different Courts, Quality increased its claimed

[10] In these same submissions, Quality also asserted an additional "unperfected" lien in the total amount of **$83,035.42** ($41,572.43 for EFI + $41,462.99 for EFF), for a total "perfected/superpriority" lien claim and "unperfected" claim in the total amount of **$406,024.88** ($322,989.46 "perfected/superpriority" lien + $83,035.42 "unperfected" lien). (*Id.*).

[11] This fact alone should have precluded the entry of summary judgment.

"perfected/superpriority" lien again by claiming – without explanation – that its lien had increased to **$404,118.53**. (App. 946, ¶ 4). Compeer filed a Resistance and the District Court entered judgment against Compeer for **$348,306.30**, without explaining its reasoning for selecting this calculation of Quality's asserted lien. (App. 952-958, *generally*; App. 976, ¶ 4).

In sum, Quality never provided a consistent explanation regarding (1) what the value of its purported "perfected/superpriority" liens and "unperfected" liens were, or (2) how it calculated the value of its purported "liens." Indeed, since Quality was unable to provide a consistent calculation of its purported liens against Compeer's Collateral, these discrepancies alone show that Quality's motion should not have been granted.

Quality appears to have experienced difficulty in calculating its asserted liens because, among other things, the invoices that itemize the feed that Quality provided between September 4, 2017 and March 19, 2018 are (a) sometimes illegible and unclear, plus the invoices (b) identify payments that EFI and EFF made on their accounts, which may or may not apply to lienable charges or the retail cost of feed depending upon whether the payments made between September 4, 2017 and March 19, 2018 applied to debts that were incurred before *September* 4, 2017 (and therefore to "unperfected" lien indebtedness) and/or whether these payments went to fees and interest that are

not lienable under Iowa law. (App. 451-498). Again, the record is entirely unclear as to how Quality calculated its purported liens such that summary judgment should not have been granted to Quality.

b. The District Court Erred in Approving Quality's Request That it be Granted a "Superpriority" Lien With Respect to $27,304.07 of Feed Sold Outside the "Lien Perfection" Time Period of September 4, 2017 through March 19, 2018.

The District Court's grant of summary judgment should also be reversed because it appears that included within the $348,306.30 judgment was $27,304.07 of non-lienable charges that were incurred *before* the relevant lien period commenced on September 4, 2017. Specifically, Quality sold feed to EFI on July 28, 2017, August 11, 2017, and August 24, 2017 for a total amount of $27,304.07. (App. 171). This $27,304.07 is undisputedly *not* lienable because these charges were incurred before September 4, 2017, which was the date that the agricultural supply dealer lien period commenced because Quality's first UCC financing statement was filed on October 5, 2017. Iowa Code § 570A.4(2).

Quality's invoices appear to show that EFI's payments on its statement were not applied to the $27,304.07 incurred from the sale of feed before September 4, 2017. (App. 171). Accordingly, this $27,304.07 in "unperfected" – and therefore "non-superpriority" lien charges – was

improperly included within the $348,306.30 judgment amount against Compeer.

Further, neither the District Court's Ruling nor its subsequent Judgment & Decree addressed Compeer's arguments regarding this $27,304.07 in "unperfected" – and therefore "non-superpriority" lien charges – even though this issue was raised at the summary judgment hearing and in at least one Compeer Resistance. (App. 997 at Tr., p. 13:7-13:17; App. 952, fnt. 1; App. 955, ¶¶ 8-9, fnt. 3).

c. The District Court Erred in Not Deducting From the Judgment at Least $25,000.00 That Quality Received in Adequate Protection Payments During the Consolidated Bankruptcy Case.

The Judgment & Decree should also be reversed because the District Court failed to deduct at least $25,000.00 in adequate protection payments that Quality received from the Etcher Entities during the Consolidated Bankruptcy Case from the total amount of Quality's asserted lien. Accordingly, the $348,306.30 judgment amount against Compeer has been overstated by at least $25,000.00.[12]

[12] While the record reflects that Quality received *at least* $25,000.00 in adequate protection payments, Quality has never disclosed the precise amount of these adequate protection payments.

Compeer raised this affirmative defense in its initial and Amended Answer (App. 115-116, ¶ 48; App. 267, ¶ 47). Quality thereafter obtained a dismissal of this affirmative defense by alleging– without citing any legal authority – that "the approximately $25,000 in adequate protection payments did not reduce its perfected, superpriority lien, but should be taken from the amounts outstanding but *unperfected*, to which it was still entitled payment . . . Accordingly, the adequate protection payments do not set off [Quality's] superpriority lien." (App. 312-313) (emphasis added).

However, there is no basis in law for Quality's theory regarding how its undisclosed adequate protection payments should be applied to its asserted "unperfected" lien. What Quality is *really* alleging is that at least $25,000.00 in adequate protection payments that Quality previously received should be applied to its "unperfected" lien (i.e., its *unsecured* debt*)* instead of being first applied to Compeer's perfected security interest and senior secured debt. (*Id.*). Iowa courts have repeatedly rejected such claims by feed suppliers because "superpriority" supply dealer liens are "*strictly construed and limited in nature* . . . because these liens 'jump' the usual priority order[.]" *Farmers Coop. Co. v. Ernst & Young, Inc. (In re Big Sky Farms Inc. ex rel. Ernst & Young, Inc.)*, 512 B.R. 212, 217 (Bankr. N.D. Iowa 2014). Specifically, "there are limits to obtaining the super-priority status [with agricultural liens]. The

key limit at issue here is that the super priority is allowed under Iowa law only insofar as the supply dealer has *perfected* its lien[.]" *In re Shulista*, 451 B.R. at 874 (emphasis in original).

The facts in this case are identical to *In re Shulista* where there was a dispute between a senior, secured lender and an agricultural supply dealer regarding the scope of the supply dealer's perfected lien. *Id.* at 870-71. Here, as in *In re Shulista*, the "perfection question is *critically important* here because the agricultural supply dealer has priority over an earlier perfected lienholder *only to the extent the agricultural supply dealer's lien is perfected*." *Id.* at 876 (citing Iowa Code § 570A.5) (emphasis added).

The District Court agreed with Quality that this "critically important" distinction between perfected and unperfected liens was immaterial in calculating the value of Quality's asserted liens. Because the District Court refused to subtract Quality's not-fully-disclosed adequate protection payments in an amount of at least $25,000.00 from Quality's lien claims, the District Court's Judgment & Decree should be reversed. This relief is warranted because, at a minimum, there is a genuine dispute of material fact regarding whether Quality's allegedly "perfected" lien (i.e., the judgment amount entered against Compeer) has been accurately calculated.

d. The District Court Erred in Not Deducting $65,870.59 From the Judgment, Which Quality is Not Entitled to Because This "Lien" Was "Perfected" in Violation of the Bankruptcy Code's Automatic Stay.

The Judgment & Decree should also be reversed because the District Court's calculation of Quality's asserted "superpriority" lien – and the corresponding amount of the judgment against Compeer – has been overstated by $65,870.59.

As admitted by Quality, "two-out-of fourteen of [Quality's] financing statements" were filed on March 28, 2019, which was nine days *after* the Etcher Entities filed for bankruptcy protection on March 19, 2018. (App. 309-310). These two financing statements purported to perfect liens in all feed that Quality sold to EFI and EFF between February 28, 2018 and March 19, 2018. Iowa Code § 570A.4(2). The total amount of feed sold during this time period equals $65,870.59. (App. 339-341). Quality's attempt to perfect liens on March 28, 2018, which was *after* the Etcher Entities filed for bankruptcy, did not perfect any liens in connection with feed sold between February 28, 2018 and March 19, 2018 because such actions violated the Bankruptcy Code's automatic stay.

The automatic stay expressly prohibits a creditor from engaging in "any act to create, perfect, or enforce any lien against property of the estate[.]" 11 U.S.C.A. § 362(a)(4). Accordingly, "[t]he overwhelming majority of the

circuits hold that an action in violation of the automatic stay is *void*...." *In re Donovan*, 266 B.R. 862, 867 (Bankr.S.D.Iowa 2001) (citing *In re Vierkant*, 240 B.R. at 322) (emphasis added). "The acts in violation of the automatic stay *have no effect and are a nullity*." *In re Donovan*, 266 B.R. at 867 (citing *In re Ring*, 178 B.R. at 578) (emphasis added). Indeed, the "lack of efficacy of the act which violates the stay is *not* dependent on a trustee's strong arm avoidance powers." *In re Donovan*, 266 B.R. at 867 (citing *In re Ring*, 178 B.R. at 578) (emphasis added).

Thus, Quality's "actions taken in violation of the automatic stay are *void*." *In re Donovan*, 266 B.R. at 867 (citing *In re Vierkant*, 240 B.R. at 325) (emphasis added). As a result, even if Quality has some perfected liens in Compeer's Collateral, the District Court incorrectly calculated those liens because it included a total of $65,870.59 for feed sold to EFI and EFF between February 28, 2018 and March 19, 2018 in the judgment entered against Compeer, but this $65,870.59 cannot be a part of Quality's asserted "superpriority" liens.

In sum, the District Court's Judgment & Decree should be reversed because the District Court did not subtract this $65,870.59 from Quality's lien claims.

F. Conclusion.

The Appellate Court should reverse the Judgment & Decree because there are multiple genuine issues of material fact that precluded the District Court from properly granting Quality's motion. Specifically, there are multiple genuine issues of material fact regarding whether Quality has "traced" the feed it sold to EFI and EFF between September 4, 2017 and March 19, 2018 to the *specific* cattle that were liquidated in March 2019 and April 2019. In like manner, there are multiple genuine issues of material fact regarding whether the Milk Check Proceeds generated from the early 2019 sale(s) of milk can be "traced" to the *specific* cattle that may have consumed feed that Quality sold to EFI and EFF between September 4, 2017 and March 19, 2018.

Further, even assuming *arguendo* that Quality has satisfied its "tracing" obligations under Iowa Code § 570A.1, *et seq*., there are multiple genuine issues of material fact regarding whether the District Court accurately calculated Quality's asserted liens. This means that there are multiple genuine issues of material fact regarding whether the District Court accurately calculated the $348,306.30 judgment that was entered against Compeer. For

the foregoing reasons, Compeer respectfully requests that the Judgment & Decree be reversed.[13]

However, instead of remanding the case back to the District Court for further discovery, for the reasons set forth below the Appellate Court should order the District Court to enter judgment in favor of Compeer on its cross-motion.

II. The Appellate Court Should Reverse the District Court's Denial of Summary Judgment in Favor of Compeer and Instead Order the District Court to Grant Compeer's Cross-Motion Because Quality Failed to Satisfy its "Tracing" Obligations Under Iowa Code § 570A.1, *et seq.*, and as a Result, Compeer is Entitled to All of Compeer's Collateral as the Etcher Entities' Senior, Secured Lender.

A. Preservation of Error.

Compeer preserved this issue for appellate review based upon the motions, other submissions by the parties, as well as the orders and rulings entered by the District Court that are cited above. (*See* Appellant's Br. above, p. 31 (citations omitted)).

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[13] The District Court also dismissed Compeer's unjust enrichment and conversion counterclaims, but these counterclaims were dismissed based on the District Court's determination that Quality had a "superpriority" lien in Compeer's Collateral that was paramount to Compeer's prior, perfected security interests in this collateral. (App. 936-937, ¶¶ 27-29; App. 939, ¶ 34). If the Judgment & Decree is reversed on any of the issues addressed above, then the District Court's dismissal of Compeer's unjust enrichment and conversion counterclaims should also be reversed.

B. Scope and Standard of Review.

The standard of review for this issue on appeal is for the "correction of error at law," for the same reasons that are briefed above. (*Id.*, pp. 31-32 (citations omitted)).

C. The District Court Erred in Denying Compeer's Summary Judgment Motion Because Compeer is Entitled to All of Compeer's Collateral as the Etcher Entities' Senior, Secured Lender Due to Quality's Failure to "Trace" the Feed to Compeer's Collateral.

a. Introduction.

As referenced above, the District Court's erroneous interpretation of a lien claimant's "tracing" obligations under Iowa Code § 570A.1, *et seq*. had an adverse "domino effect" upon Compeer's affirmative defenses and cross-motion. For the foregoing reasons, the District Court's determinations on the "tracing" issue and the calculation of Quality's asserted liens/the judgment amount were wrong. As a result and based on the arguments advanced immediately below, Compeer respectfully requests that the Court remand this case back to the District Court to enter summary judgment in favor of Compeer and against Quality. Granting such relief would result in the dismissal of all of Quality' claims.

Compeer is entitled to this relief because it is undisputed that Compeer's security interests in Compeer's Collateral attached to and were

perfected in this collateral over two and a half years *before* Quality even *attempted* to perfect liens in Compeer's Collateral (i.e., the Cattle Sale Proceeds and the Milk Check Proceeds). Indeed, Quality does not contest that Compeer's security interests in its collateral were perfected before Quality sought to perfect its asserted liens, and the District Court correctly determined that there is no "dispute that Compeer is a secured party and perfected its security interest prior to Quality Plus filing UCC Financing Statements." (App. 938, ¶ 31).

Assuming *arguendo* that the Appellate Court rejects the District Court's "reasonable link" "tracing" interpretation of Iowa Code § 570A.3, the only dispute between Compeer and Quality would be whether Quality's failure to satisfy its "tracing" obligations should result (a) in a remand to the District Court for further discovery to be completed, or (b) an appellate order to the District Court instructing it to enter summary judgment in favor of Compeer and against Quality.

b. Pursuant to the *Citizens Savings Bank v. Miller* Case, the Appellate Court Should Remand the Case and Order the District Court to Grant Compeer's Cross-Motion.

For the foregoing reasons, Quality's failure to "trace" its above-referenced feed to Compeer's Collateral warrants the reversal of the Judgment & Decree. Further, on remand the District Court should be ordered to grant

Compeer's cross-motion due to Quality's failure to complete its "tracing" obligations. This follows from *Citizens Savings Bank v. Miller*, 515 N.W.2d 7, 9 (Iowa 1994), where the Iowa Supreme Court held that a lender with a prior, perfected security interest was entitled to summary judgment against a subsequently perfected lender with a purchase money security interest ("**PMSI**") in dairy cattle where the holder of the PMSI could not "trace" the proceeds from the sale(s) of the subject collateral to the debtor's collateral subject to the PMSI.

The Appellate Court should follow *Citizens* and accordingly order the District Court to dismiss Count II (Foreclosure of Personal Property – New London) and Count IV (Foreclosure of Personal Property – Lovilia) of Quality's Amended Petition (collectively "**Quality's Claims**"). This conclusion follows because the priority dispute between Compeer and Quality is nearly identical to the facts in *Citizens* where a party claiming "superpriority" over a senior, secured lender had its "superpriority" lien extinguished because the party claiming the "superpriority" lien could not "trace" its lien to a debtor's *specific* livestock collateral. *Citizens*, 515 N.W.2d at 9.

Specifically, *Citizens* involved a conflict between two creditors who each claimed priority in fifteen head of dairy cattle owned by two defendants

("**Dale & Arlene**") in the early 1990's. *Id.* at 8. The dispute was between a senior, secured lender ("**First Bank**") that had loaned money to finance Dale & Arlene's farming operation and another bank ("**Second Bank**") that had a PMSI in James' (Dale & Arlene's son) one-half interest in forty-seven dairy cows.[14] *Id.* Since February 1982, the First Bank had financed Dale & Arlene's farming operation and had properly perfected its security interest in Dale & Arlene's livestock and agricultural equipment. *Id.* In January 1983, the Second Bank's PMSI attached to James' one-half interest in forty-seven dairy cows and was properly perfected. *Id.* There was no dispute regarding the chronological order of the First Bank's and Second Bank's respective security interests: the First Bank had properly perfected its security interest in Dale & Arlene's livestock and agricultural equipment *before* the Second Bank had perfected its PMSI in James' one-half interest in forty-seven dairy cows. *Id.* Further, the parties stipulated that the Second Bank had a PMSI in the forty-seven dairy cows. *Id.*

James' dairy operation failed, and as a part of a refinancing plan approximately fifteen of James' dairy cows were incorporated into Dale's herd in 1983. *Id.* Dale agreed to satisfy James' debt to the Second Bank by

[14] Dale & Arlene's dairy operation was separate from James' dairy operation. *Id.*

executing a new promissory note, and Dale subsequently gave the Second Bank a blanket security interest in "[a]ll farm equipment, all farm products including livestock, all feed and supplies used in farming operations, and additions and replacements of accessions, parts and equipment...." *Id.* "Subsequent continuation security agreements given in June and July 1987 refer specifically to '15 dairy cows assumed from James Miller in the fall of 1983 and any changes or replacements thereof.'" *Id.*

By September 1992, Dale and Arlene's respective debts to both the First Bank and Second Bank were in default. *Id.* Their secured debts to the First Bank totaled $128,801.29, and the secured debt to the Second Bank totaled $10,337.07. *Id.* Both banks obtained judgments on the banks' respective debts, but following the entry of these judgments the question of the banks' respective priority in the fifteen dairy cows arose. *Id.* It was undisputed that, absent the Second Bank's PMSI claim in fifteen of Dale & Arlene's cattle, the First Bank's security interest in all the livestock would have been entitled to priority under the UCC because the First Bank's security interest in said collateral was perfected first. *Id.* at 9.

The Iowa Supreme Court held that in order to jump ahead of the First Bank's prior, perfected security interest, the Second Bank needed to produce "*proof that fifteen cattle currently in* [Dale & Arlene's] *herd are traceable to*

those originally encumbered by [the Second Bank's] *lien*." *Id.* (citing *Humboldt Trust & Sav. Bank v. Entler*, 349 N.W.2d 778, 783 (Iowa 1984) (emphasis added)). Admittedly, it would have sufficed if the remaining fifteen cattle in the early 1990's had been identified as cattle that had directly replaced the original fifteen cows that James had transferred to Dale's herd in 1983[15]; but the Second Bank conceded that, given the passage of time, it could not directly "trace" the fifteen cattle remaining in Dale's herd in the early 1990's to the original fifteen cows that James had transferred to Dale's herd in 1983. *Citizens*, 515 N.W.2d at 9.

Consequently, the Iowa Supreme Court affirmed the district court's grant of summary judgment in favor of the First Bank and against the Second Bank on the basis that the Second Bank's PMSI in the original fifteen cattle was *extinguished* by the Second Bank's failure to "trace" the proceeds from the disposition of the original fifteen cattle to the last fifteen cattle that remained in Dale's herd in the early 1990's. *Id.* at 8-9. Put another way, the Iowa Supreme Court affirmed that the Second Bank's PMSI in the original fifteen cattle was *extinguished* such that the First Bank was entitled to the

[15] The Iowa Supreme Court arrived at this conclusion on the basis that "replacement cattle" "could meet the statutory definition of proceeds if received upon the 'other disposition of' the original cattle." *Citizens*, 515 N.W.2d at 9.

remaining fifteen cattle for two reasons. First, the Second Bank could not prove that the fifteen remaining cattle in the early 1990's were the original fifteen dairy cows transferred to Dale's herd in 1983. *Id.* Second, the Second Bank could not prove that the fifteen remaining cattle in the early 1990's were "replacement cattle" that had directly replaced the original fifteen dairy cows upon the disposition of original fifteen dairy cows. *Id.*

This case is nearly identical to the facts in *Citizens*. Accordingly, the Appellate Court should conclude that any purported lien held by Quality has been extinguished by Quality's failure to "trace" the proceeds from the cattle that it fed between September 4, 2017 and March 19, 2018 to Compeer's Collateral that was liquidated during the spring of 2019.

The Appellate Court should reach this conclusion and order the District Court to enter summary judgment in favor of Compeer for at least three reasons. First, there is no dispute that Compeer's security interests attached to and were perfected in Compeer's Collateral at least two and a half years *before* Quality first *attempted* to perfect its purported liens in Compeer's Collateral. This is similar to *Citizens* where the First Bank had undisputedly perfected its security interests in certain livestock *before* the Second Bank had perfected its PMSI in the same. *Citizens*, 515 N.W.2d at 8.

Second, Quality's *sole* argument in support of its asserted "superpriority" lien in Compeer's Collateral rests upon the allegation that Quality properly perfected "agricultural supply dealer liens" in this collateral pursuant to Iowa Code § 570A.1 *et seq.* (App. 298-307, App. 309-311, App. 313-315). This is *fatal* to Quality's Claims because "agricultural supply dealer liens" under Iowa Code § 570A.1 *et seq.* are forms of purchase money financing liens that are *extinguished* as a matter of law under the *Citizens* case if the "superpriority" lien claimant cannot "trace" its asserted liens to the *specific* livestock collateral that has been liquidated. *See In re Shulista*, 451 B.R. at 874 (acknowledging that an "agricultural supply dealer" "may obtain 'superpriority' for its agricultural lien" and that "[t]his superpriority results *because agricultural liens 'are forms of purchase-money financing*.'" (citing *Production Credit Ass'n v. Farm & Town Indus., Inc.*, 518 N.W.2d 339, 344 (Iowa 1994) (emphasis added)); *see also Citizens*, 515 N.W.2d at 9 (holding that a PMSI lien is extinguished when a PMSI lien holder fails to "trace" its lien to the *specific* livestock collateral that has been liquidated). Accordingly, Quality was simply wrong when it asserted that it had no "tracing" obligations under Iowa statutes and case law.

Finally, this case and *Citizens* are analogous in that in *Citizens* the Iowa Supreme Court affirmed the *grant of summary judgment* in favor of a prior,

perfected and senior, secured lender against a subsequently perfected lender who could not fulfil its "tracing" obligations to establish its asserted "superpriority" of its subsequently perfected purchase money financing lien. *See Citizens*, 515 N.W.2d at 8-9. Consequently, Quality cannot be heard to say that its failure to satisfy its "tracing" obligations can be remedied by denying the cross-motion to allow further discovery to continue. Rather, this case was ripe for adjudication on Compeer's cross-motion.

In sum, even if Quality perfected its purported liens in Compeer's Collateral, the Appellate Court should still remand the case and instruct the District Court to dismiss Quality's Claims because Quality has not and cannot "trace" its purported liens to Compeer's Collateral.

c. Even if the Appellate Court Does Not Remand the Case and Order the District Court to Grant Compeer's Cross-Motion in Its Entirety, the Appellate Court Should Still Order Quality to Turn Over $113,553.31 of the Milk Check Proceeds.

Finally, even if the Appellate Court does not grant Compeer all of the relief that it seeks with respect to this second issue on appeal, the Appellate Court should still order Quality to deliver $113,553.31 of the Milk Check Proceeds to Compeer within ten (10) days of the Appellate Court's issuance of its decision on this appeal. This requested relief is appropriate because of the $317,308.51 in Milk Check Proceeds that Quality is wrongfully

withholding from Compeer, $113,553.31 of such Milk Check Proceeds come from checks that were issued by DFA to Compeer, Quality, and *Elmwood*. (App. 266, ¶ 45; *see also* App. 443-444, App. 447-448).

Quality should be ordered to immediately deliver the $113,553.31 in Elmwood milk check proceeds to Compeer because Quality does *not* even *claim* a lien in Elmwood's milk checks. Indeed, "Quality has never sold or otherwise provided any feed to Elmwood for which Quality can claim an agricultural supply dealer's lien." (App. 691, ¶ 24). And most importantly, *none* of Quality's UCC financing statements identify Elmwood as a debtor against whom Quality sought to perfect an agricultural supply dealer's lien. (App. 172-199). As a result, Quality cannot and does not claim an agricultural supply dealer's lien in *any Elmwood property*[16] because Quality failed to list Elmwood as a debtor in its UCC financing statements. Iowa Code § 570A.4(2) (identifying perfection requirements for agricultural supply dealer

[16] To the extent that Quality *does* claim a lien in Elmwood's property, this case should be dismissed for lack of subject matter jurisdiction because Quality never mediated its dispute with Elmwood, as indicated in Quality's mediation release. (App. 338). Obtaining a mediation release with respect to Elmwood was a "*jurisdictional prerequisite* to a creditor filing a civil action[.]" Iowa Code § 654A.6(1)(b) (emphasis added). While this issue was not raised until the submission of this appellate brief, a challenge to subject matter jurisdiction "may be raised at any time, even for the *first* time on appeal[.]" *State ex rel. Vega v. Medina*, 549 N.W.2d 507, 508 (Iowa 1996) (emphasis added).

liens); Iowa Code § 554.9502(1)(a) (identifying debtor identification requirements for a financing statement).

Thus, even if the Appellate Court does not grant Compeer all of the relief that it seeks with respect to this second issue on appeal, it should nonetheless remand this case with an order directed to Quality to promptly turn over the $113,553.31 in Elmwood milk check proceeds to which Quality has no conceivable claim because Quality has no lien in *any* of Elmwood's property.

CONCLUSION

For all the above-stated reasons, Compeer respectfully requests that the Appellate Court reverse the District Court's Judgment & Decree. In addition, based upon the forgoing arguments and legal authorities, the Appellate Court should remand the case and instruct the District Court to enter judgment in favor of Compeer on its cross-motion.

Alternatively, even if the Appellate Court does not order the District Court to grant Compeer's cross-motion in its entirety, Compeer respectfully requests that the Appellate Court remand this case with an order directing Quality to promptly turn over the $113,553.31 in Elmwood milk check proceeds to Compeer.

REQUEST FOR ORAL ARGUMENT

Compeer respectfully requests oral argument on the issues set forth in this appeal. There are multiple interrelated arguments and a complicated factual record. Thus, counsel may be able to assist the Appellate Court in clarifying the issues and facts presented.

Dated: October 19, 2021

/s/ Rick J. Halbur

Dustan J. Cross AT0001856
Rick J. Halbur AT0014046
GISLASON & HUNTER LLP
2700 South Broadway
P.O. Box 458
New Ulm, MN 56073
Phone: (507) 354-3111
dcross@gislason.com
rhalbur@gislason.com

Attorneys for Defendant-Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 13,561 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 14 pt. Times New Roman.

Dated: October 19, 2021

/s/ Rick J. Halbur

Dustan J. Cross AT0001856
Rick J. Halbur AT0014046
GISLASON & HUNTER LLP
2700 South Broadway
P.O. Box 458
New Ulm, MN 56073
Phone: (507) 354-3111
dcross@gislason.com
rhalbur@gislason.com

Attorneys for Defendant-Appellant

CERTIFICATE OF COSTS

The attorneys for Defendant-Appellant certify that the incurred costs for printing Appellant's Final Brief for service on the non-registered/non-efiling parties listed below was $118.40:

Etcher Family Farms, LLC
1422 576th Avenue
Lovilia, IA 50150 **(via U.S. Mail)**

Etcher Family Farms, LLC
1346 N Cesar Chavez Rd
Lot 1201
Alamo, TX 78516 **(via U.S. Mail)**

Etcher Farms, Inc.
1422 576th Avenue
Lovilia, IA 50150 **(via U.S. Mail)**

Etcher Farms, Inc.
1346 N Cesar Chavez Rd
Lot 1201
Alamo, TX 78516 **(via U.S. Mail)**

Agriland FS Inc.
420 N 10th Street
Winterset, IA 50273 **(via U.S. Mail)**

Agriland FS Inc.
421 N 10th Street
Winterset, IA 50273 **(via U.S. Mail)**

Elmwood Farms, LLC
1422 576th Avenue
Lovilla, Iowa 50150 **(via U.S. Mail)**

Elmwood Farms, LLC
1346 N Cesar Chavez Rd
Lot 1201
Alamo, TX 78516 **(via U.S. Mail)**

Dated: October 19, 2021

/s/ Rick J. Halbur

Dustan J. Cross AT0001856
Rick J. Halbur AT0014046
GISLASON & HUNTER LLP
2700 South Broadway
P.O. Box 458
New Ulm, MN 56073
Phone: (507) 354-3111
dcross@gislason.com
rhalbur@gislason.com

Attorneys for Defendant-Appellant

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on October 19, 2021, I caused the foregoing Appellants' Final Brief to be filed with the Iowa Supreme Court Clerk using the Electronic Document Management System (EDMS) which will send notification of such filing to the attorneys(s) of record who are registered with EDMS.

Also, the foregoing pleading has been mailed to the non-registered/non-efiling parties identified below at their respective mailing addresses:

Etcher Family Farms, LLC
1422 576th Avenue
Lovilia, IA 50150 **(via U.S. Mail)**

Etcher Family Farms, LLC
1346 N Cesar Chavez Rd
Lot 1201
Alamo, TX 78516 **(via U.S. Mail)**

Etcher Farms, Inc.
1422 576th Avenue
Lovilia, IA 50150 **(via U.S. Mail)**

Etcher Farms, Inc.
1346 N Cesar Chavez Rd
Lot 1201
Alamo, TX 78516 **(via U.S. Mail)**

Agriland FS Inc.
420 N 10th Street
Winterset, IA 50273 **(via U.S. Mail)**

Agriland FS Inc.
421 N 10th Street
Winterset, IA 50273 **(via U.S. Mail)**

Elmwood Farms, LLC
1422 576th Avenue
Lovilla, Iowa 50150 **(via U.S. Mail)**

Elmwood Farms, LLC
1346 N Cesar Chavez Rd
Lot 1201
Alamo, TX 78516 **(via U.S. Mail)**

Dated: October 19, 2021

/s/ Rick J. Halbur

Dustan J. Cross AT0001856
Rick J. Halbur AT0014046
GISLASON & HUNTER LLP
2700 South Broadway
P.O. Box 458
New Ulm, MN 56073
Phone: (507) 354-3111
dcross@gislason.com
rhalbur@gislason.com
Attorneys for Defendant-Appellant