IN THE SUPREME COURT OF IOWA
No. 21-0774
Monroe County Case No. EQEQ009517

QUALITY PLUS FEEDS, INC., Plaintiff–Appellee,
v.

COMPEER FINANCIAL, FLCA, Defendant–Appellant,

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
THE HONORABLE JUDGE DANIEL P. WILSON, DISTRICT COURT JUDGE

APPELLEE'S FINAL BRIEF

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals in accordance with Iowa Rule of Appellate Procedure 6.1101(3) because it involves the application of existing legal principles and is appropriate for summary disposition.

STATEMENT OF THE CASE

Nature of the Case

While the length of the briefing might suggest otherwise, this case is quite simple. It starts from this basic tenet: a feed supplier's lien is superior to a bank's lien. *See* Iowa Code § 570A.3. From there, a feed supplier's lien extends to all the livestock consuming the feed and their proceeds. *See id.*; *id.* §§ 554.9203(6), .9315(1)(*a*)–(*b*); *In re Schley*, 509 B.R. 901, 912–13 (Bankr. N.D. Iowa 2014) [hereinafter *Schley I*]. And it follows, to determine whether something is a proceed, the legislature did not intend an unfathomably complex retracing of steps, but a practical, reasonable approach. Thus, the question asked is simple: did the lender supply feed to the farm, and, if so, are the proceeds attributable to the livestock consuming the feed? Here, the answer is plainly yes, but Appellant, a bank, has sought to undermine the statute by seizing upon words in isolation and extrapolating from them a process so convoluted it would be entirely unrecognizable to the legislature and entirely unworkable for courts.

What Appellant requests is not simply that Appellee prove it supplied feed to the farms' cattle, but that Appellee reconstruct the path of each kernel of feed sold to each cow consuming it to the relative growth or milk production in such cow compared to other nutrients consumed to the exact

transaction when the exact cow or milk was sold to each dollar obtained separated from other dollars obtained from other milk and cows unless the process can be repeated for each such kernel of feed. If this were the case, no prudent feed dealer would ever, ever sell feed on credit. The District Court, on competing motions for summary judgment, correctly refused Appellant's request and reviewed the matter as a practical judge should.

To summarize the case, Appellee, Quality Plus Feeds, Inc. ("QPF"), sells feed. QPF sold feed on an ongoing basis to the "Etcher Farms," which are dairy farms. This feed was intended for and was consumed by the cattle on the farms. When the cows were milked, and later when all cattle were sold, the cash generated from such milk and cattle sales became identifiable proceeds of the cattle consuming the feed. Accordingly, QPF has a lien in such proceeds that is superior to the competing interest of the Etcher Farms' lender, Compeer Financial, FLCA ("Compeer"). It is simple, though Compeer wants it not to be so. QPF respectfully requests this Court affirm the District Court's judgment in all respects.

Course of Proceedings

QPF began this case with a filing of mixed Petition at Law and Petition in Equity for Foreclosure of Personal Property Collateral. (App. 10-106). First, QPF brought two legal claims for collection on an open account,

one each against Defendant Etcher Family Farms, LLC and Etcher Farms, Inc. (App. 15-17, ¶¶ 33–36, 41–44). Per Iowa Rule of Civil Procedure 1.420, QPF attached to its Petition the necessary proof of these open accounts and their respective amounts.[1] Then, naming the Etcher Farms again, as well as all other potential lienholders as Defendants, QPF initiated two claims for foreclosure of personal property, one each for the Etcher Farms' locations. (App. 16, 18, ¶¶ 37–40, 45–48). Later, noting Compeer's contention that another Etcher Entity, this one the out-of-state Elmwood Farms, LLC, may have some interest in the property, QPF amended its Petition to include such party to these counts of foreclosure. (App. 159, 162-165, ¶ 11, 33, 39–42, 47–50).

QPF obtained judgment by default against Defendants Etcher Family Farms, LLC, Etcher Farms, Inc., Elmwood Farms, LLC, Agriland FS, and Jason Denning.[2] Defendants DeWitt Veterinary Service, P.C. d/b/a DeWitt Veterinary Clinic and Precision Pumping, Inc., each stipulated to their inferior priority.[3] With QPF's legal claims against the Etcher Farms granted, and, with the exception of Compeer, all competing lienholders' interests

[1] App. 20-106; 255-257.

[2] App. 276-281; 821-822; 980-981.

[3] App. 271-275; 282-285.

determined to be inferior, QPF's case narrowed to what it is today, a priority dispute between QPF and Compeer. (App. 258-270).

Meanwhile, Compeer filed its own competing claim of foreclosure of personal property, this one limited to those proceeds designated the "Milk Check Proceeds," which were then held by agreement of the parties in a trust account.[4] (App. 118-123, 111-112, ¶¶ 25–29). Arising also from the Milk Check Proceeds, Compeer also made claims of unjust enrichment and conversion against QPF. (App. 118-123, 120-121, ¶¶ 16–20, 21–24).

QPF was the first to move for summary judgment, seeking the Court's declaration of its superior interest as against Compeer and the dismissal of Compeer's counterclaims.[5] Compeer resisted QPF's motion, asserting genuine issues of material fact precluded entry of summary judgment.[6] Compeer then submitted its own motion for summary judgment.[7] Compeer did not submit an additional statement of facts but incorporated its previous statement and affidavits. (App. 823). Compeer's Motion asked for judgment

[4] Compeer's request for relief on its counterclaim for foreclosure expressly limits itself to "the foreclosure of such security interests against the Milk Check Proceeds," and not the broader defined term, "Personal Property." App. 123.

[5] App. 286-289; 297-320; 290-296; 321-624.

[6] App. 625-627; 642-669; 628-641; 670-685; 686-820.

[7] App. 823-827; 828-848.

in its favor on QPF's claims of foreclosure, as well as judgment on its own claims of unjust enrichment, conversion, and foreclosure, seeking in the alternative a partial summary judgment on a portion of the Milk Check Proceeds. (App. 825-826). QPF submitted a reply in support of its own motion, (App. 849-867), and then a resistance to Compeer's motion, challenging Compeer's factual allegations and asserting Compeer could not establish priority as a matter of law.[8] With the matter thus submitted and thoroughly, thoroughly briefed, the District Court, the Honorable Daniel P. Wilson, District Court Judge, presiding, heard oral argument by video/telephonic conference, which was transcribed into the record. (App. 923-924).

On April 20, 2021, the District Court entered its ruling on the competing motions, granting QPF's motion in all respects and denying Compeer's in the same. (App. 925-944). The District Court concluded the agricultural supply dealer's lien statute section 570A.3, which provides that an agricultural supply dealer's lien applies to "livestock consuming the feed," "was intended to be a straightforward and uncomplicated process," and that to assert a lien a party "must show a reasonable link between the feed provided by the supplier and the livestock," but, "given the

[8] App. 868-870; 891-909; 871-890.

undemanding language used in the statute and the goal of promoting suppliers providing feed to struggling farmers on credit," that the statute "does not require a meticulous showing of the path from feed to a specific cow." (App. 932-933, ¶¶ 18–19). Looking for this link, the District Court found it, noting there was no dispute that QPF provided feed to the Etcher Farms that was consumed by the Etcher Farms' cattle. (App. 933-934, ¶¶ 20–21). Accordingly, the District Court entered summary judgment for QPF. (App. 933-934, ¶¶ 20–21).

The District Court then examined each of Compeer's affirmative defenses, finding summary judgment proper for QPF on all. (App. 934-936, ¶¶ 22–26). Specifically, that QPF filed its claims within the applicable statute of limitations, (App. 934, ¶ 22), that QPF's post-bankruptcy-petition perfection was not in violation of the bankruptcy court's automatic stay under 11 U.S.C. § 362(b)(3), (App. 935, ¶ 23), that adequate protection payments under 11 U.S.C. § 361 did not affect the value of QPF's lien, (App. 935, ¶ 24), that QPF's financing statement description of "all cows" at specified locations reasonably identified the collateral, (App. 935-936, ¶ 25), and that any possible dispute as to the number of cows purchased was so immaterial that it would not affect the outcome, (App. 936, ¶ 26).

Turning to Compeer's counterclaims, the District Court determined QPF received no enrichment, just or unjust, from holding the checks pending resolution and that, at any rate, "it is not unjust for the checks to remain in the trust account while the parties litigate this case given their disputed ownership." (App. 936-937, ¶ 28). As for conversion, given the District Court already determined QPF, and not Compeer, held a possessory right in the checks, it necessarily concluded Compeer could have no claim for conversion. (App. 937, ¶ 29).

With respect to Compeer's motion, the District Court rejected again Compeer's argument that QPF must complete meticulous "tracing," reasoning that "[c]ompliance with the 'tracing' requirement is not materially factually at dispute." (App. 938-939, ¶¶ 30–33). Addressing again the amounts held in trust, because "Compeer's arguments assume the Court has determined Quality Plus has no claim to the checks," and the opposite was true, the District Court found summary judgment improper for Compeer. (App. 939, ¶ 34). Finally, as for Compeer's request for partial summary judgment in a portion of the checks, those attributable to Elmwood Farms, LLC, given the District Court had already found Elmwood Farms, LLC held no interest in the checks and given the District Court's other rulings, the District Court denied Compeer's request. (App. 939-940, ¶ 35).

The District Court then articulated a section captioned "FURTHER COURT ANALYSIS," in which it both summarized and provided additional reasoning for its ruling. The District Court found the essence of the question for it was "whether Plaintiff Quality Plus sold feed used for cattle that were milked and/or subsequently sold that created the proceeds disputed between Quality Plus and Compeer Financial." (App. 940, ¶ 36). "If so," the District Court stated, "the priority of an agricultural supplier dealer (Quality Plus) entitles it to prevail." (App. 940, ¶ 36). While noting there were some disputed facts, the District Court reminded the parties that "[t]he determinative issue is whether the facts upon which these two parties do not agree, create a material and genuine issue precluding the Court's resolution of this matter on summary judgment." (App. 940, ¶ 37). The District Court found none. (App. 940-942, ¶¶ 38–41). In other words, the District Court, considering the millions in available proceeds from the thousands of cows, found any ambiguity in whether this or that cow was specifically traceable immaterial, as certainly there were enough traceable proceeds to satisfy QPF's comparatively minimal lien. (App. 930-931, 940, ¶¶ 13–14, 37).

To put its Ruling into effect, the District Court requested QPF submit a proposed order for its review. (App. 942, ¶ 44). On April 30, 2021, QPF did so, along with a motion to tax expert fees. (App. 945-948; 949-951).

Compeer then submitted objections to the proposed order, among them that the judgment should be reduced by a certain amount for an alleged lack of timely perfection and by another amount for the erroneous inclusion of "non-lienable finance charges." (App. 955-957, ¶¶ 10, 13, 15). QPF responded to Compeer's objection and submitted an amended proposed order containing appropriate changes. (App. 963-970; 971-974). Specifically, with respect to the alleged lack of timely perfection on a small portion ($27,304.07) of the claim, QPF noted Compeer had never made this argument before and this was not an opportunity to relitigate the underlying summary judgment; and with respect to non-lienable charges, QPF quoted from its Reply, which had specified the calculations used and stated that, while $404,118.53 is the total amount claimed, $348,306.30 would be that amount most favorable to Compeer, i.e., without finance charges and after the application of partial payments against the principal. (App. 967-968, ¶¶ 22–26).

The District Court took the matter under its review and, after making further revisions to QPF's proposed order, entered its Order, Judgment and Decree on May 20, 2021. (App. 975-977). The District Court opted for the Compeer-favorable $317,308.51 judgment amount, reflecting the exclusion of finance charges. (App. 976, ¶ 5). The District Court did not, however,

grant—or even address—Compeer's request for an additional deduction of $27,304.70 for allegedly unperfected claims. (App. 976, ¶ 5). Compeer did not move for reconsideration under Iowa Rule of Civil Procedure 1.904(2).

On June 2, 2021, Compeer appealed. (App. 982-984).

STATEMENT OF THE FACTS

QPF, formed in 1975, is a feed and nutrition supplier serving Iowa, western Illinois, and northeast Missouri. (App. 290, ¶ 1). The Etcher Farms were long-time customers of QPF, purchasing the nutrition necessary for the operation at all stages of production, in mixes designated "calf starter," "big heifer," and "dry cow," among others. (App. 290-291, ¶¶ 2–6). The Etcher Farms would feed this to all of the cows on their farms when the feed was received. (App. 291, ¶ 7). To be clear, the Etcher Farms would not feed some of their cattle QPF-supplied feed, and other cattle feed from other sources; for dietary consistency, all cattle would eat feed from the same sources (though there could be a variety of sources on a given day, as the Etcher Farms would also purchase supplements to the QPF-supplied feed, such as cottonseed, pea hulls, corn silage, alfalfa, straw and hay, from other suppliers). (App. 439, ¶ 11; App. 886, ¶ 34). There is not and has never been any evidence to the contrary. During the relevant time, September 25, 2017 through March 30, 2018, QPF supplied the Etcher Farms with feed on an ongoing basis, at least twice a month. (App. 451-498). While it is unknown exactly how many cows were on the Etcher Farms on any given day, at the Farms' lowest point in the midst of bankruptcy the Farms never reported less than 4,000. (App. 877-878, ¶¶ 13–14). In short, if a cow was among those

thousands passing through the Etcher Farms from September 25, 2017 to March 30, 2018, it consumed QPF-supplied feed.

Unfortunately, as indicated by the reference to bankruptcy proceedings, in late 2016 the Etcher Farms experienced serious financial difficulties. (App. 291, ¶ 8). Things were bad enough that around a year later, Compeer, the Etcher Farms' lender, would accelerate their debt to Compeer—at the time already a whopping $16,697,969.57. (App. 291, ¶ 9). To operate, the Etcher Farms needed to purchase their feed on credit, which QPF agreed to provide through an open account. (App. 291-292, ¶¶ 10–12). Over the course of around six months of supply with limited payment, the Etcher Farms incurred, after finance charges, around $400,000 in debt to QPF. (App. 21-22, 23, 59-91, 92-106). To protect its rights, QPF filed monthly UCC Financing Statements, each referencing Iowa Code chapter 570A and identifying the collateral as "all cows now owned by debtor" located at the respective property to which the feed was supplied. (App. 292, ¶¶ 13–14). Despite QPF's support, the Etcher Farms filed for bankruptcy in early 2018, (App 293, ¶ 15), though Compeer would succeed in having the bankruptcy proceedings dismissed around a year later, (App. 880, ¶¶ 18–19).

While they still could, the Etcher Farms continued to sell milk to their sole purchaser, Dairy Farmers of America ("DFA"). (App. 293, ¶¶ 16–17).

Per QPF's request, DFA named it and Compeer as additional payees on checks issued April 16, 2019, and May 16, 2019, totaling $317,308.51. (App. 293, ¶¶ 17–20). With both QPF and Compeer named as payees, the parties had to reach an agreement to ensure the checks did not go stale and protect both their competing interests while their dispute over priority was ongoing; accordingly, they mutually agreed to deposit the checks in QPF's counsel's trust account. (App. 293-294, ¶¶ 21–22). They specifically agreed the checks would remain in the trust account pending "a final Order of the Court and/or agreement of Compeer and Quality."[9] (App. 293-294, ¶ 21).

In the meantime, things were not going well for the Etcher Farms or their cattle. According to the Etcher Farms' reports in bankruptcy, hundreds of cows would die or be culled, sold, or traded during bankruptcy. (App. 876-879, ¶¶ 10–16). Though, apparently, the Etcher Farms were able to purchase a small number—117—to add to the herd. (App. 878-879, ¶ 16). Still, the Etcher Farms were forced to close, and all their remaining cattle were sold. (App. 294, ¶¶ 23–24). From the New London location, 1,223 cattle were sold for a collective $714,764.55. (App. 294, ¶ 23; App. 52).

[9] Compeer argues that it later wished to renege on this deal, both in part (that the sole Elmwood Farm check should not have been included) and in whole (that QPF should turn all checks over to Compeer), though this was never made express in the parties' communications and, at any rate, was not raised until after the parties reached agreement and deposited the checks. (App. 884-885, ¶¶ 28–31).

From the Lovilia location, 1,055 cattle were sold for a collective $313,139.54. (App. 294, ¶ 24; App. 53). Compeer took and is presumably holding the cash from these sales. (App. 881, ¶ 22). This comes to $1,027,904.09 in "Cattle Sale Proceeds" and, with the $317,308.51 in "Milk Check Proceeds," a total $1,345,212.60 in cash "Proceeds" plainly traceable to the cattle on the Etcher Farms.[10]

With this background, the case began.

[10] As for what happened to the remaining cows, it is unknown at this time, but immaterial given the proceeds available satisfy QPF's claim with many hundreds of thousands in excess. (App. 881, ¶ 22).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DETERMINED QPF'S PERFECTED AGRICULTURAL SUPPLY DEALER'S LIENS HAD PRIORITY.

Error Preservation

QPF generally agrees that Compeer has preserved error on the arguments made in reference to tracing, acquisition prices, adequate protection payments, the bankruptcy stay, and the calculation of QPF's lien, but notes one exception: Compeer failed to raise and secure an order upon its claim that QPF's lien must be reduced by a further $27,304.07 based upon the perfection period (this argument appearing now in section I.E.b of Compeer's brief). *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Accordingly, this portion of Compeer's argument on appeal was waived.

Compeer even admits that it did not obtain an order on this point: "[N]either 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 . . . ." (Appellant's Brief p. 53). As for raising it, Compeer claims to have

addressed it during the summary judgment hearing (but not, it must concede, in its extensive briefing), but it is clear from the cited lines that it did not. Compeer's counsel discussed only the lien period generally, before directing the District Court to the potential for a partial payment applied to previous, allegedly unperfected amounts. (App. 1015, Tr. 31:7–17). This is not the same argument Compeer makes now, nor, even if it were construed to be, was it raised with sufficient specificity. Thus, it's absence from the District Court's Ruling is unsurprising.

Instead, this "error" was first raised in resistance to QPF's proposed judgment entry, (App. 956, ¶ 13), which by then was far too late to make such a claim. Regardless, as, again, Compeer concedes, the District Court did not address it at all. It was then on Compeer to move for reconsideration or enlargement—which it failed to do. *See Meier*, 641 N.W.2d at 537 ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal."). Thus, even assuming Compeer's belated argument was properly raised, this Court will "routinely hold that when an issue is raised in a motion but not decided in the district court ruling, the issue is not preserved for review." *33 Carpenters Const., Inc. v. State Farm Life and Cas. Co.*, 939 N.W.2d 69, 75–76 (Iowa 2020) (citing *UE Local*

893/IUP v. State, 928 N.W.2d 51, 61 (Iowa 2019); *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 884 (Iowa 2014); *Meier*, 641 N.W.2d at 540–41). This Court should not deem error preserved on this issue and decline to address Compeer's claim the judgment amount be reduced by an additional $27,304.07 for lack of timely perfection.

Standard of Review

QPF agrees the standard of review on rulings for summary judgment is correction of errors at law, *see Hollingshead v. DC Misfits, LLC*, 937 N.W.2d 616, 618 (Iowa 2020) ("The standard of review for summary judgment is correction of errors of law."), as is this Court's standard of review on statutory interpretation, *see Commerce Bank v. McGowen*, 956 N.W.2d 128, 132–33 (Iowa 2021) ("This case presents a question of statutory interpretation, and our review of the district court's decision is for the correction of errors at law."). *See also Homan v. Branstad*, 887 N.W.2d 153, 164 (Iowa 2016) ("When resolving an appeal from a district court ruling on a summary judgment motion requires us to resolve a legal question involving statutory interpretation, we review the district court ruling on the statutory interpretation question for correction of errors at law.").

Merits

Like in its attack on summary judgment, Compeer fires off a barrage of arguments that, while incapable of striking at the heart of QPF's claim, seek to create a distraction of such significance this Court simply concedes. As it was before the District Court, it will not work. When the smoke clears, QPF is still standing with a secured claim so small compared to the available proceeds that Compeer's efforts to pick out 117 cows here, another feed supplier there, make no dent at all in the protection available. But what Compeer really wants is for the agricultural supply dealer lien process to be so laborious, so intensive, so pointlessly elaborate, that no dealer ever asserts a claim again. On a fundamental level this is not what the legislature intended, nor is it what practice requires. QPF respectfully requests this Court affirm the District Court's grant of QPF's Motion for Summary Judgment in all respects and reject Compeer's efforts once and for all.

A. Perfected agricultural supply dealer's liens have "superpriority."

The initial problem with Compeer's argument is it starts from a faulty premise. Compeer believes we should start from the proposition that it, the bank, is the first-filed superior, and the claims of all others must be viewed with suspicion. Not so. We must start from QPF's *super*priority. Framing the

analysis in this way better supports the statutory structure designed by the legislature.

To begin, QPF is an "agricultural supply dealer" who sold "feed" as an "agricultural supply" to the Etcher Farms, which are each a "farmer." (App. 290-291, ¶¶ 1–6). Accordingly, it is beyond dispute that QPF is entitled to a lien, as Iowa Code section 570A.3 expressly states: "An agricultural supply dealer who provides an agricultural supply to a farmer *shall have an agricultural lien* as provided in section 554.9102." (Emphasis added). Moreover, this lien is no mere tangential interest; it is a lien with "superpriority," which is both "priority over a lien or security interest that applies subsequent to the time that the agricultural supply dealer lien is perfected" *and* "priority over an earlier perfected lien or security interest."[11] Iowa Code § 570A.5(1), (3). In other words, priority over everyone, including banks like Compeer.

The analysis then, must focus on this lien's amount, which is "the amount owed to [QPF] for the retail cost of the agricultural supply," and the

[11] This superpriority extends to "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), which is a concept discussed elsewhere in this brief. The remainder of the lien does not have inferior priority, but instead, "equal priority" to all prior perfected interests. *See* Iowa Code § 570A.5(2).

property to which it attached, which is all "[l]ivestock consuming the feed."[12] Iowa Code § 570A.3(2). It is this latter point on which Compeer spends the majority of its words, and thus the first addressed in this brief.

B. The undisputed facts established QPF's rights in the Proceeds.

Once attached, an agricultural supply dealer's lien continues in the proceeds. Iowa Code § 570A.3; *id.* §§ 554.9203(6), .9315(1)(*a*)–(*b*); *see also Schley I*, 509 B.R. at 912–13 ("Giving an agricultural supply dealer a lien that can only be enforced against the collateral . . . but not the proceeds of that collateral could lead in many circumstances . . . to provide little protection for the agricultural supplier. Such a reading . . . [would be] contrary to the purposes of the statute . . . ."). To be fair to Compeer, that a security interest attaches to only "identifiable proceeds of collateral" is not a controversial statement, nor is it controversial that proceeds commingled with other property are identifiable "to the extent that the secured party

[12] With limited exception, there is no dispute on QPF's perfection, as the undisputed facts establish the filing of financing statements covering all feed sold in the preceding 31 days. Iowa Code §§ 570A.4(2), .5(1)–(3). (App. 292, ¶¶ 13–14). While Compeer had previously argued that QPF's financing statements were misleading, it has abandoned this argument on appeal. *See Baker v. City of Iowa City*, 750 N.W.2d 93, 102–03 (Iowa 2008) (holding a party fails to preserve error when that party fails to advance any argument or cite any authority in his or her brief to support a claim); *Lindaman v. Bode*, 478 N.W.2d 312, 317 (Iowa Ct. App. 1991) ("We consider arguments not raised on appeal to be waived."); *see also* Iowa R. App. P. 6.903(2)(g)(3).

identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law . . . with respect to commingled property of the type involved." Iowa Code § 554.9315(1)(*b*), (2)(*b*). What is controversial, however, is the method of tracing Compeer asks this Court to require, which is something akin to finding a needle in a haystack and then tracking down that specific needle's manufacturer, purchase price, purchase date, useful life expectancy, and elemental composition, all documented in contemporaneously recorded writings by experts.

First, though, are threshold matters. All money obtained from the sale of the Etcher Farms' milk and the cattle themselves are cash proceeds in which QPF's lien continues. *See* Iowa Code § 570A.3(2); *id.* § 554.9102(1)(*ah*)(4), UCC cmt. 4(a) (defining farm products); *id.* § 554.9102(1)(*bl*)(1), (3) (defining proceeds); *In re Underbakke*, 60 B.R. 705, 708 (Bankr. N.D. Iowa 1986) (finding milk is a proceed of livestock, a farm product). Moreover, to the extent there were any exchanges, replacements, or other shifting around of cattle during the relevant time, if they were obtained by disposition of QPF-fed cattle, they too are proceeds. *See Citizens Sav. Bank v. Miller*, 515 N.W.2d 7, 9 (Iowa 1994). This shows just

how effective the UCC is at protecting the secured party's interests, and it also shows just how much it would take to impact QPF's lien.

In this case, there is at least $1,345,212.60 in cash the parties agree is traceable to the Etcher Farms' cattle or their milk. (App. 293-294, ¶¶ 17–20, 23–24). The bulk of this from the sale of literally thousands of cows, the remainder of their milk. (App. 293-294, ¶¶ 17–20, 23–24). Surely, there are more proceeds, as Compeer helpfully points out might include items purchased from the earlier sale of cattle such as adequate protection payments, professional fees, or operating expenses, (App. 882-883, ¶ 25), but, given the ready availability of the Milk Check and Cattle Sale Proceeds and the amount of QPF's lien—a mere $317,308.51—there is no need to explore these other potential proceeds.

In fact, for any of this to matter, at least $1,027,904.09, or around 76 percent, of the combined Cattle Sale and Milk Check Proceeds have to be attributable to sources other than the underlying collateral. If only 25 percent of the available Proceeds are traceable to the collateral, then the entire exercise is pointless, as there would already be enough Proceeds to cover QPF's lien. This is the practical reality that Compeer has refused to acknowledge, arguing instead for the absolute and absurd requirement that not a dollar be given unless it can be "traced" to a specific—*specific*—cow,

and not only that, but accompanied by documentary, contemporaneously recorded "proof" that this specific cow ate QPF-supplied feed.

This Court might rightfully wonder what method exactly Compeer demands. QPF does as well. Compeer's initial proposition, that cash be traceable to the Etcher cows and their milk, is one thing, but then it goes much, much further. At places in its briefing, Compeer has demanded affirmative proof of at least the following:

- The identity of each of the cows on the farm, presumably by number if such a number is available, or perhaps by name or physical description if not.
- Whether each such cow was born on the farm or purchased, and, if purchased, for how much.
- Whether each such cow consumed QPF feed, and, if so, for each time consuming feed, when and how much of such feed it consumed, the price of the feed consumed on that occasion, and whether it consumed feed from any other sources at any other time of its life (and, if it did consume anything else, when, what, and how much again, and then, incredibly, how much the cow grew because of this supplementary feed as compared to QPF feed, i.e., what "new value" was attributable to each).
- The location of each such cow at all points in time and including any times in which the cow changed location (a sort of cow chain-of-custody), and particularly when such cow was sold or exchanged, and then, if so, how the proceeds received in disposition were used.
- Whether such cow produced milk and, if so, how much milk each such cow produced, when such milk was produced, how much such milk was sold for each time milk was produced, and even how much of the milk was produced due to the supply of QPF feed, presumably on a scientific analysis of cellular respiration.

The above is non-exhaustive, as Compeer has never managed to articulate exactly what would be sufficient, declining in discovery and still, to this day, failing to set forth a clear answer.

So, to what facts does Compeer point that might make such a process appropriate here? None of substance. Compeer relies heavily on the representation that one of the Etcher Farms, during the bankruptcy, purchased 117 cows with some amount of scrabbled together cash, maybe from the sale of other (QPF-fed) cows, maybe not. These 117 "replacement" cows, Compeer argues, could not possibly have consumed QPF feed,[13] so, if cash from their sale is included in the Proceeds it must now be excluded. (App. 878-879, ¶ 16). Assuming these cows are not themselves proceeds, 117 cows, at an approximate median sale price of $300,[14] results in a $35,100 deduction from the Proceeds. Or 2.6 percent of the total. This does

[13] In fact, we know they did consume QPF feed, Compeer is just emphasizing that the QPF-supplied feed consumed by these cows would not be the same QPF-supplied feed on credit (unless a grain of on-credit feed was left in the bottom of the bin from an earlier delivery).

[14] Sale prices per head in the 2019 sale of the Etcher Farms' cattle ranged greatly, from as low as penny-a-pound to as high as $831.39 a head. In the largest sale, that of 395 cattle from the Lovilia farm, the cattle were sold at $256.36 a head. (App. 52-53).

not affect the outcome. And this is the *only* thing Compeer notes that might.[15]

This type of dispute over the minutiae is exactly what the District Court meant to avoid by granting summary judgment. (App. 942, ¶ 41 ("Continuing this lawsuit to litigate issues on the margins, would in the end, benefit no one.")). In this case, where "virtually all" of the disputed proceeds came from the collateral, summary judgment was appropriate in QPF's favor. *See Ellefson v. Centech Corp.*, 606 N.W.2d 324, 336–37 (Iowa 2000) (identifying proceeds in account and affirming summary judgment in secured lender's favor as "virtually all of the cash" came from the collateral). Perhaps there is a case where some greater and specific proof might be required, where the available proceeds are not so much more than the claim. But it is emphatically not this case.

C. The statute imposes no elaborate and unworkable "tracing" requirement.

Practicalities aside, why does Compeer argue such a requirement exists, legally? This is a question of statutory interpretation, in which the Court is guided by several well-established principles. "The purpose of

[15] Compeer raises the issue of cattle-death, noting the apparent loss of thousands in the time prior to liquidation of the herd. But if cattle in which QPF had a lien died, QPF simply no longer has that collateral. This does not affect QPF's lien in the surviving cattle, which were sold for far more than QPF needs to satisfy its lien.

statutory interpretation is to determine the legislature's intent." *Doe v. Iowa Dept. of Human Services*, 786 N.W.2d 853, 858 (Iowa 2010). "The words used in the statute evidence that intent." *State v. White*, 563 N.W.2d 615, 617 (Iowa 1997); *see also Doe v. State*, 943 N.W.2d 608, 610 (Iowa 2020) ("Any interpretive inquiry thus begins with the language of the statute at issue."). The court must "seek to determine the fair and ordinary meaning of the statutory language at issue." *Commerce Bank v. McGowen*, 956 N.W.2d 128, 133 (Iowa 2021). However, in giving "the language of the statute its fair meaning," the court is not to "extend its reach beyond its express terms." *In re Marshall*, 805 N.W.2d 145, 158 (Iowa 2011); *see also Auen v. Alcoholic Beverages Div., Iowa Dept. of Commerce*, 679 N.W.2d 586, 590 (Iowa 2004) ("Under the guise of construction, an interpreting body may not extend, enlarge, or otherwise change the meaning of a statute.").

Instead, the court is to "read a statute as a whole and give it 'its plain and obvious meaning, *a sensible and logical construction*.'" *Gardin v. Long Beach Mortg. Co.*, 661 N.W.2d 193, 197 (Iowa 2003) (quoting *Hamilton v. City of Urbandale*, 291 N.W.2d 15, 17 (Iowa 1980)) (emphasis added). "Additionally, legislative intent is derived not only from the language used but also from 'the statute's subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies

provided, and the consequences of the various interpretations.'" *State v. Dohlman*, 725 N.W.2d 428, 431 (Iowa 2006) (quoting *Cox v. State*, 686 N.W.2d 209, 213 (Iowa 2004)). An "impractical or absurd" result, particularly one inconsistent with the purpose of the statute, must be avoided at all costs. *See id.*; *see also State v. Walden*, 870 N.W.2d 842, 848 (Iowa 2015) ("'[E]ven in the absence of statutory ambiguity, departure from literal construction is justified when such construction . . . would produce an absurd and unjust result and the literal construction is clearly inconsistent with the purposes and policies of the act.'" (Quoting *Sherwin-Williams Co. v. Iowa Dept. of Rev.*, 789 N.W.2d 417, 427 (Iowa 2010))).

To determine the purpose of the statute, the object sought to be accomplished, and the underlying policies, the court should consider its legislative history. *See Doe*, 786 N.W.2d at 858. The legislative history of this statute has been thoroughly explored by courts and commentators, and its absence from Compeer's briefing is telling. What Compeer tries to avoid is that Iowa's crop and livestock lien law is a direct result of the 1980s farm debt crisis, after which the legislature implemented changes meant to protect farmers in the event of a future disaster. *See* Thomas E. Salsbery & Gale E. Juhl, *Chapter 570A Crop and Livestock Lien Law: A Panacea or Pandora's Box*, 34 Drake L. Rev. 361, 363, n. 14 (1985); *Schaefer v. Putnam*, 841

N.W.2d 68, 76 (Iowa 2013) (describing the history of the farm debt crisis, its consequences, and the response of stakeholders and the legislature). This future disaster, the Court will note, is here.[16] While the present troubles facing farmers is not itself an issue before the Court, suffice to say that the protections of chapter 570A are more important now than ever.

To protect farmers by ensuring they had access to credit, the legislature had to balance the interests of the competing stakeholders, giving each certain benefits in a fair compromise. *In re Crooked Creek Corp.*, 427 B.R. 500, 506 (Bankr. N.D. Iowa 2010) ("It appears that in attempting to

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[16] At the confluence of ongoing trends of consolidation and overproduction as well as the global pandemic's consequent disruption, decreased prices, increased costs, and lack of capital, dairy farmers are trapped in the midst of a "perfect storm." *See* Jim Cornall, *Study Says Pandemic was US Dairy's "Perfect Storm*, Dairy Reporter, Aug. 24, 2020, https://bit.ly/3BsIACb; Robert Ferris, *Pandemic Fallout is Severely Threatening US Dairy Farms*, CNBC, May 6, 2020, https://cnb.cx/3ysRDBb; Qingbin et al., *Impacts of the COVID-19 Pandemic on the Dairy Industry: Lessons from China and the United States and Policy Implications*, Journal of Integrative Agriculture 19(12): 2903–2915 (2020), https://bit.ly/38zTl9j; *See also* CBS Pittsburg, *Problems on the Farm: Pandemic Impacting Dairy Farmers Ability to Move Product*, Oct. 15, 2020, https://cbsloc.al/3mKgXgt; The Baltimore Sun, *Carroll County Dairy Farmers See Outlook Go from 'Really Good' to 'Really Bad' in COVID-19 Pandemic*, June 8, 2020, https://bit.ly/37BpwWj; ABC News, *Dairy Farmers Dumping Milk Amid COVID-19: Pandemic's Impact on the Dairy Industry*, April 21, 2020, https://abcn.ws/37zY6Qx; Wisconsin State Journal, *Things Were Looking Up for Dairy Farmers, then COVID-19 Pandemic Disrupted the Global Economy*, April 18, 2020, https://bit.ly/38fwhw0; Civil Eats, *The Coronavirus Pandemic is Pushing Dairy Farms to the Brink*, April 8, 2020, https://bit.ly/3nCaZ2r.

deal with farm credit problems, the legislature tried to strike a balance among the various stakeholders . . . ."), *overruled on other grounds by Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 192–94 (Iowa 2011) [hereinafter *Oyens I*]. "Although the intent was to protect the dealers, the legislature showed their concern for the financial situation of most farmers and lenders at the time by requiring more notice and filing requirements than had been previously required by agricultural liens." Wyatt P. Peterson, *Revised Article 9 and Agricultural Liens: An Iowa Perspective*, 8 Drake J. Ag. L. 437, 445 (2003) In other words, the bank lenders got the benefit of greater notice in the form of serial dealer financing statements, while the dealers got the benefit of superpriority, and the farmers got access to credit. *See In re Shulista*, 451 B.R. 867, 881 (Bankr. N.D. Iowa 2011); Salsbery & Juhl, *Chapter 570A*, 34 Drake L. Rev. at 387 (noting Iowa Code chapter 570A is a "compromise between the interests of agricultural supply dealers and financial institutions"). In this way, the legislature addressed the following catch-22, a "classic dilemma" facing leveraged farmers:

> [A] farmer who was indebted to a financial institution . . . would seek additional credit from the financial institution for the seed, fertilizer, and petroleum products for spring planting. Typically, the financial institution would have its previous advances secured in collateral of the farmer. As the farmer's debt began to equal or exceed the value of the collateral, the financial institution would become hesitant to loan additional sums without adequate collateral. If the farmer was unable to

> obtain financing from the financial institution for the spring planting, he might then have turned to an agricultural supply dealer for a sale of the needed items on credit. A prudent agricultural supply dealer when confronted with the financial condition of the farmer and the secured position of the bank in the collateral of the farmer would not likely extend credit and, therefore, be subject to the financial institution's superior secured position. As a result, if the farmer was unable to plant his crops, he would be unable to make his payments on his debt, and the unraveling of the farming operation would begin. The farmer needed credit to plant a new crop and without a new crop generating cash flow the farmer could not pay his old debts.
>
> It was this dilemma that chapter 570 was most likely intended to address by providing the agricultural supply dealer in that instance with the possibility of obtaining a more enhanced position in the crops and livestock of the farmer. With the possibility of a superior or equal interest in the crops and livestock of the farmer, the agricultural supply dealer would be more willing to extend credit which would allow the farmer to continue farming.

Salsbery & Juhl, *Chapter 570A*, 34 Drake L. Rev. at 363–64. The legislative history tells us exactly what the legislature intended, which is, in short, "to encourage a fluid feed market without burdening cooperatives and farmers." *Oyens I*, 808 N.W.2d at 194. Any interpretation must advance that intent, lest there be a second farm debt crisis, the first of which "not only devastated farms, small banks, and agribusinesses, but also destroyed farmers and their families." *Schaefer*, 841 N.W.2d at 76

In addition to the legislative history, the textual canons of statutory interpretation also reveal the problems inherent in Compeer's position.

Specifically, Compeer's statutory interpretation is based on a strained reading of an isolated phrase: "livestock consuming the feed," from Iowa Code section 570A.3(2). Relying on this phrase alone, Compeer violates the canon of reading the statute as a whole, *see Gardin,* 661 N.W.2d at 197. Because, as a whole, the statute states:

> An agricultural supply dealer who provides an agricultural supply to a farmer *shall have* an agricultural lien as provided in section 554.9102. The agricultural supply dealer is a secured party and the farmer is a debtor for purposes of chapter 554, article 9. The 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. The lien *applies to all* of the following:
>
> > 1. Crops which are produced upon the land to which the agricultural chemical was applied, produced from the seed provided, or produced using the petroleum product provided. The lien shall not apply to any crops so produced upon the land after four hundred ninety days from the date that the farmer purchased the agricultural supply.
> >
> > 2. Livestock consuming the feed. However, 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.

(Emphases added). To read the phrase "livestock consuming the feed" to mean attachment cow-by-cow would also require the Court to read subsection 1, "crops which are produced," to mean attachment bean-by-bean. Clearly, the legislature was not articulating such a process, but was setting out a scheme of general attachment, shown by the introductory

phrase, "applies *to all*" of the crops or livestock. *Id.* The only limitation the legislature imposed, with respect to livestock, was payment in full, and even this limitation does not apply cow-by-cow, but by "portion." *Id.*

Further, Compeer's interpretation asks the Court to extend, enlarge, and change the meaning of the statute beyond its express terms, which this Court must not do. *See In re Marshall*, 805 N.W.2d at 158; *Auen*, 679 N.W.2d at 590. Nowhere in section 570A.3 does the legislature impose the *specific*-cow-by-*specific*-cow tracing requirement Compeer asserts. The "fair and ordinary meaning" of the legislature's choice of word, "livestock" (and not, "each cow"), implies attachment in the plural, not the singular. *See Commerce Bank*, 956 N.W.2d at 133. This is similar to the decision of the Iowa Court of Appeals in *Adair County Farm Service v. Creston Feed & Grain, Inc.*, a case in which an input dealer claimed an interest in grain crop from a variety of fields. 390 N.W.2d 608, 609 (1986). The bank there argued the dealer could not establish an interest unless it could "trace the grain so as to identify which fields produced the grain that was purchased by the various elevators." *Id.* at 611. The court rejected the argument, as the evidence established attachment to "all crops," so specific tracing of supply-to-crop-to-elevator was not required. *See id.* The legislature, and as shown by this case and the *Adair* case, the industry, assumes attachment by group.

Finally, Compeer's interpretation is not "sensible" or "logical." *See Gardin*, 661 N.W.2d at 197. Again, the court must look to "the statute's subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of the various interpretations." *Cox*, 686 N.W.2d at 213. Here: (A) The subject matter is livestock feed, which as the Iowa Supreme Court has noted before, "is often supplied on an ongoing basis" and requires flexibility. *Oyens I*, 808 N.W.2d at 194. (B) The purpose is the protection of the supply dealer, who would not have access to the information Compeer requires. (C) The policy is a fluid feed market, which would immediately dam up if feed dealers were forced to choose between the burdens Compeer requests and taking the very high risk of nonpayment. (D) The remedy is a lien, but a lien only available with such detailed records may as well not exist. And (E), the consequence of Compeer's interpretation would, as the District Court rightly stated: "gut protections for agricultural suppliers. This would discourage those suppliers from working with farmers, both financially troubled famers and more stable farmers." (App. 941-942, ¶ 40). In contrast, the consequence of QPF's interpretation is that feed dealers are encouraged to supply to underwater farms like the Etchers', giving them the chance at turning things around, just as the legislature intended. In sum, if Compeer's construction is the "literal"

one, then it is "absurd," "unjust," "inconsistent with the purposes and policies of the act," and must be disregarded. *Walden*, 870 N.W.2d at 848 (quoting *Sherwin-Williams Co.*, 789 N.W.2d at 427).

Compeer has never addressed these canons of construction. It has simply seized upon the phrase "[l]ivestock consuming the feed" and taken it to places the legislature never thought it could go. The closest Compeer has come to acknowledging the consequences of its interpretation is its Appellant's Brief, in which it disingenuously argues "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"—before arguing at length that no amount of discovery would ever be sufficient. It also claims, "other feed suppliers have successfully enforced agricultural supply dealer's liens"—before acknowledging in such case that "there were no factual disputes involved." *See In re Schley*, 565 B.R. 655, 661–62 (Bankr. N.D. Iowa 2017) [hereinafter *Schley II*]. Compeer's demands are insurmountable, which we can see from the very case Compeer cites in support.

In *Schley II*, the bank, having been rebuffed in *Schley I* from limiting the dealer's interest to the underlying collateral,[17] argued instead that "[l]ivestock consuming the feed" limits the lien "to the cost of the feed that was consumed by the pigs that generated the proceeds at issue." 565 B.R. at 659. In other words, just like Compeer, the bank in *Schley II* argued that the dealer must trace the feed supplied to each specific pig. *See id.* The court rejected this argument using the canons of statutory interpretation Compeer ignores. First, the court construed the statute in its whole, rejecting the bank's laser-focus on the phrase "livestock consuming the feed" and looking instead to that same section's statement on the lien amount, which "shall be the amount owed to the agricultural supply dealer for the retail cost of the

[17] Compeer argues *Schley I* supports its interpretation because the District Court remanded for further proceedings on whether the pigs sold were fed the supplier's feed. This was largely dicta, the court resolving the issue instead on whether the supplier was paid in full, 509 B.R. at 907, but from what is available it is clear the dicta is distinguishable. For example, in *Schley I*, there were, like here, two farms, but unlike here, the supplier did not present evidence they fed both farms, (App. 291, ¶ 5). *Cf.* 509 B.R. at 904. For another, the amount of uncertainty was significant, with a full half of the pigs potentially unfed by the supplier; unlike here, where all of the cattle, except for *maybe* 117 purchased later, were fed by QPF, (App. 291, ¶ 7). *Cf. Id.* at 907. Still more, in *Schley I*, the entire farm was not liquidated—only a portion, which means, unlike here, that the remaining portion may have been the supplier-fed, the sold portion fed by another, which is *further* unlike the case at bar, in which QPF was the main supplier and all others provided mere supplementary feed, (App. 294, ¶¶ 23–24; App. 439, ¶ 11; App. 886-887, ¶ 34). *Cf. id.* As discussed in the substantive text above, there may be a case where greater proof is required, but it is not this one, and as shown by *Schley II*, it was not that one either.

agricultural supply." *Id.* at 660. It found the bank's interpretation also violated the rule against surplusage and in favor of specific provisions, in that the legislature would not have addressed the lien amount specifically had it intended the general phrase, "livestock consuming the feed," to control. *See id.* at 660–61. And finally, the court held, "even if section 570A.3 were ambiguous, the legislative history behind it—'the objects sought to be accomplished and . . . the evils sought to be remedied'—would compel the Court to reject the Bank's position." *Id.* at 661 (quoting *Holiday Inns Franchising v. Branstad*, 537 N.W.2d 724, 728 (Iowa 1995)). The court stated the following, which is especially applicable to Compeer's argument:

> Here, the Bank's proposed interpretation would frustrate the intent behind chapter 570A. It would discourage a fluid feed market because of the burden on agricultural supply dealers to document a separate lien on each animal for the amount of feed that that animal consumed. The potential limit agricultural supply dealers would face on their liens if unable to track the amount of feed each animal consumed would discourage them from supplying feed to fully leveraged farmers. To safely establish such a lien would involve burdensome and intensive recordkeeping, feed separation between livestock, and ongoing 'detailed and elaborate records' of how much feed each animal consumed. These consequences would be contrary to the legislature's intent.

Id. (emphases added).

Compeer is advancing practically the same interpretation the *Schley II* court already rejected (in fact, Compeer's interpretation is more

burdensome, as even the bank in *Schley II* would have allowed calculation by percentage). *See id.* at 659. Like the bank in *Schley II*, Compeer seeks to restore that "classic dilemma," placing farmers and feed suppliers in an untenable position and undoing what the legislature had accomplished. This shortsighted goal of recovery now fails to acknowledge the harm such an interpretation would inflict later, as without suppliers like QPF willing to deal with farmers on credit, Compeer's debtors stand no chance of repaying their loans and their collateral which, without feed, will die.

This is exactly why in practically every case addressing chapter 570A, the court has ruled in favor of a flexible approach that encouraged the feed market. In *Oyens I*, the Iowa Supreme Court determined superpriority exists "independent of the chapter's certified request provisions." 808 N.W.2d at 195. In *Oyens Feed & Supply, Inc. v. Primebank* (the second time), that livestock born in the farmer's facility have no acquisition price. 879 N.W.2d 853, 857 (Iowa 2016) [hereinafter, *Oyens II*]. In *Schley I*, that the lien continues in livestock proceeds. 509 B.R. at 914. And, again, in *Schley II*, for a second time that "detailed and elaborate records" were not required. 565 B.R. at 661. Each court has acknowledged the legislative history, the goals to be accomplished. None have imposed a strict, literal interpretation on isolated words.

The District Court followed these courts and held the statute, based on its "undemanding language" and its "goal of promoting suppliers providing feed to struggling farmers on credit," does not "require a meticulous showing of the path from feed to a specific cow." (App. 933, ¶ 19). In fairness to Compeer and banks like it, the District Court did hold that a party asserting a lien must show a reasonable link between the feed provided and the livestock. (App. 933, ¶ 19). This is a fair outcome for both parties, and it is supported by the statutory language. This Court should affirm.

D. Compeer's miscellaneous challenges are meritless.

While some of Compeer's affirmative defenses have fallen off its filings at each stage (abandoning first its statute of limitations argument, and now its financing statement specificity argument), there are still many to contend with as part of Compeer's overall strategy of raising a material question of fact from nothing. The District Court appropriately rejected them.

1. *The collateral had no acquisition price*.

In *Oyens II*, the Iowa Supreme Court ruled that livestock raised from birth carry no acquisition price. 879 N.W.2d at 865. The Court reached this decision based on legislative intent, finding "the legislature could not have intended to make feed suppliers engage in an elaborate accounting process to

demonstrate the extent of their priority," as this "would frustrate the legislature's intent 'to encourage a fluid feed market.'" *Id.* (quoting *Oyens I*, 808 N.W.2d at 194). Thus, while superpriority is limited per section 570A.5(3) to "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," this limitation has no application to farrow-to-finish operations. *See id.* Relying on *Oyens II*, the District Court found Compeer's allegation of the purchase of 117 cows "is not so material as to change the ultimate outcome," and thus correctly rejected this affirmative defense. (App. 936, ¶ 26).

Compeer challenges the District Court's ruling by asserting again that QPF must prove each and every one of the cows milked and sold was raised on the farm. This is incorrect. QPF presented evidence establishing what should be undisputed: that virtually all of the cattle on the Etcher Farms were born there. First, this is a dairy, where a necessary feature of milk production is regular calf production. (App. 291, ¶ 4). Second, it is clear there were calves on the farm because the Etcher Farms regularly purchased (from QPF) "calf starter" feed. (App. 291, ¶¶ 5–6). Third, an affidavit sworn by the Etcher Farms' nutritionist stated as much. (App. 291, ¶ 7). Fourth, in Compeer's own Motion for Summary Judgment, it submitted Dairy Herd

Schedules that almost always report 100 percent of the cattle on the farms were "self-raised." (App. 676-681). Compeer responded to this evidence merely by denying the sworn statement and pointing again to the 117 cows. This is insufficient.

"A resistance to a motion for summary judgment must contain sufficient specific facts constituting admissible evidence as to put into issue elements of fact which are material to the court's determination." *Willets v. City of Creston*, 433 N.W.2d 58, 63 (Iowa Ct. App. 1988); *see also* Iowa R. Civ. P. 1.981(5) ("An adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered."). Like with tracing, Compeer is not able to generate a disputed issue of fact, it is only able to claim QPF has not proved an otherwise undisputed issue to its satisfaction. Absent more facts, the potential purchase of 117 cows was not enough to deny summary judgment.

2. *The District Court entered judgment in the correct amount*.

With respect to the amount of the lien, the District Court foreclosed on the Proceeds subject to the action and, as Compeer holds the Cattle Sale

Proceeds and had disputed the right to the Milk Check Proceeds, entered judgment against Compeer in the amount of $348,306.30 plus court costs. (App. 976, ¶ 4). Compeer, noting different figures have been put forward at points in this multiple-year and multiple-court long case, asserts the record was too unclear for summary judgment. Not so, as has been set forth multiple times, because $348,306.30 is indisputably the retail cost of the feed, before any finance charges, fees, interest, or other applicable amounts, and after applying partial payments to the principal debt in the manner most favorable to Compeer. *See* Iowa Code § 570A.3 QPF has explained its calculations as follows:

> QPF has supplied feed to Etcher Family Farms, LLC on credit in the amount of $239,437.81.[18] (App. 291, ¶ 11). It has similarly supplied feed to Etcher Farms, Inc. on credit in the amount of $108,868.49.[19] (App. 292, ¶ 12). These are the amounts as stated "before any finance charges, fees, interest, or other applicable amounts," (App. 291-292, ¶¶ 11–12), which is

[18] As of March 29, 2018, there was a total amount owed of $239,532.49. (App. 340). Thereafter, two things happened: (1) a finance charge of $41,943.87, and (2) a partial payment of $94.68 was received. The total of $239,437.81 reflects the application of the partial payment to the principal and the exclusion of the finance charge from the total and is thus the most generous calculation to Compeer.

[19] As of March 30, 2018, the total amount owed was $110,340.69. (App. 341). Thereafter, two things happened: (1) a finance charge of $14,268.36 was assessed, and (2) a partial payment of $1,472.10 was received. The total of $108,868.49 reflects the application of the partial payment to the principal and the exclusion of the finance charge from the total and is thus the most generous calculation to Compeer.

> in recognition of Iowa Code section 570A.3's provision, "The 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." Thus, a total of $348,306.30, using the calculation most favorable to Compeer.[20]

(App. 860). Compeer's reference to amounts set forth in the bankruptcy matter is a distraction. What Compeer should be doing is challenging QPF's calculation now; but all it ever does is agree the invoices can be difficult to read. The District Court made an independent judgment as to the amount lienable under Iowa law, and it should be affirmed.

3. *There is no set-off for adequate protection payments*.

As the District Court correctly noted, nowhere in the law governing adequate protection payments does it "state that adequate protection payments affect the value of a lien." (App. 935, ¶ 24). Compeer raises the issue again, but fails to refute the District Court's conclusion. Adequate protection payments do not set off QPF's superpriority liens.

"The purpose of providing 'adequate protection' is to insure that a secured creditor receives in value essentially what he bargained for." *In re Sharon Steel Corp.*, 159 B.R. 165, 169 (Bankr. W.D. Pa. 1993). This is another compromise reached by the legislature, this the U.S. Congress, who in revising the law for the benefit of debtors also "realized the need to

[20] The calculation of $348,400.98 would apply the $94.68 partial payment to the finance charge, rather than the principal.

protect creditors from unfair treatment," and, "[h]ence, it codified the concept of adequate protection into the several aggressive remedies available to debtors and bankruptcy trustees." *In re O'Connor*, 808 F2d 1393, 1396 (19th Cir. 1987). These payments are permitted by 11 U.S.C. § 361(1) "to the extent that the . . . use, sale, or lease [of the collateral] . . . results in a decrease in the value of such entity's interest in such property." In other words, the Etcher Farms were permitted to use the cows, milk them, breed them, sell them, etc., and QPF was entitled to adequate protection payments in exchange. But these payments, intended by Congress "to preserve the secured creditor's position as it existed at the time of the filing," *Matter of Melson*, 44 B.R. 454, 456–57 (Bankr. D. Del. 1984), do not set off the lien, as doing so would lessen the secured creditor's position. *See In re Cason*, 190 B.R. 917, 927 (Bankr. N.D. Ala. 1995) ("Adequate protection payments are payments on the claim. However, *they should not be credited to the secured portion of the claim* because the secured claim is determined based on a valuation of collateral at the hearing on confirmation.").

Once again, Compeer does not address the legislature's intent or the authority cited by QPF, but instead grabs ahold of language in isolation. This time, the language comes from a case, *Shulista*, in which the court simply noted the importance of the perfection question. 451 B.R. at 874. But the

Shulista case has nothing at all to do with adequate protection payments, which were not an issue; the dispute focused instead on whether the dealer was required to file serial financing statements—as QPF did here, (App. 292, ¶¶ 13–14). *See id.* at 876, 881. The District Court was correct: "Compeer does not resist or make attempt to defend this affirmative defense." (App. 935, ¶ 24).

4. *The bankruptcy stay did not apply to QPF's liens*.

That leaves only one affirmative defense left, which has to do with the automatic stay imposed in bankruptcy. The District Court correctly determined that QPF was permitted to file for post-petition perfection despite the automatic stay, as is expressly permitted by 11 U.S.C. § 362(b)(3). (App. 935, ¶ 23). This statute states, "The filing of a [bankruptcy] petition . . . does not operate as a stay . . . of any act to perfect . . . an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) . . . ." 11 U.S.C. § 362(b)(3). The referenced § 546(b) creates an exception to the bankruptcy trustee's avoidance powers for "any generally applicable law that permits perfection of an interest in property be effective against an entity that acquires rights in such property before the date of such perfection." 11 U.S.C. § 546(b). In short, a bankruptcy automatic stay does not apply to superpriority liens.

Compeer raises the issue again but again fails to address the exception of § 362(b)(3). Compeer does not even respond to all the authority QPF has identified permitting the postpetition perfection of other superpriority liens. *See In re 229 Main Street Ltd.*, 262 F.3d 1, 8–9 (1st Cir. 2001) (environmental superliens); *In re AR Accessories Group, Inc.*, 345 F.3d 454, 458 (7th Cir. 2003) (wage earners' liens); *In re Roser*, 613 F3d 1240, 1248 (10th Cir. 2010) (purchase-money security interests); *In re Thomas*, 355 B.R. 166, 175–76 (Bankr. N.D. Cal. 2006) (parking ticket liens); *In re Victoria Grain Co. of Minneapolis*, 45 B.R. 2, 5–6 (Bankr. D. Minn. 1984) (mechanic's liens); *see generally* 9 A.L.R. Fed. 3d Art. 9, *Construction and Application of 11 U.S.C.A. § 362(b)(3)* (West, Westlaw, made current weekly). Tellingly, Compeer also fails to address a case exactly on point, holding "§ 362(b)(3) excepts [an agricultural supply dealer's] perfection of its agricultural liens from the stay under § 362(a)." *In re Aznoe Agribiz, Inc.*, 416 B.R. 755, 766 (Bankr. D. Mont. 2009). *See also In re TNT Farms*, 226 B.R. 436, 445 (Bankr. D. Idaho 1998) (accord). In its Resistance, Compeer had half-heartedly argued these cases were persuasive authority only; now, it appears to concede their applicability.

E. Compeer's Counterclaims are Similarly Meritless.

The last issue raised in QPF's Motion for Summary Judgment was Compeer's counterclaims. Compeer claims in a footnote that the District Court dismissed its unjust enrichment and conversion counterclaims because the District Court had already determined QPF held priority over Compeer. This was indeed *a* reason, but it was not the *only* reason. The District Court issued a thorough analysis of Compeer's counterclaims independent of its ruling on the underlying priority issue. Specifically, with respect to unjust enrichment:

> The first element requires Compeer to prove that Quality Plus has been enriched by the holding of the checks. Compeer argues in its pleadings that the retention of the checks is a benefit. The Court disagrees. Quality Plus receives nothing by holding the checks. Further, it is not unjust for the checks to remain in the trust account while the parties litigate this case given their disputed ownership. Therefore, the Court agrees the claim of unjust enrichment should be dismissed.

(App. 936-937, ¶ 28). And, with respect to conversion, "At the heart of a conversion claim is a possessory right. That issue is disputed here as both parties claim rights to the checks. Given the Court's determinations on other issues, summary judgment is proper." (App. 937, ¶ 29). The District Court was correct in both counts and should be affirmed. *See Endress v. City of Cedar Rapids*, 922 N.W.2d 524, 577 (Iowa 2019) (setting forth elements of

unjust enrichment); *In re Estate of Bearbower*, 426 N.W.2d 392, 394 n. 1 (Iowa 1988) (setting forth elements of conversion).

The simple fact is—regardless of priority—the parties *agreed* to hold the Milk Check Proceeds in a trust account pending resolution of the dispute. (App. 293-294, ¶¶ 21–22). Accordingly, there is no mal intent, nothing unjust in following through. Compeer fails to present any evidence contesting the existence of this agreement, which it had confirmed in writing. Essentially, Compeer asked the Court to hold that anytime there is a dispute over priority, the victor also is entitled to recovery in tort or equity. This is ridiculous and was appropriately denied.

II. THE DISTRICT COURT CORRECTLY DETERMINED THE FACTS FAILED TO ESTABLISH COMPEER'S PRIORITY.

Error Preservation

QPF generally agrees that Compeer has preserved error on the arguments raised in section II of its Appellant's Brief, specifically, those arguments that Compeer raised initially in its Motion for Summary Judgment.

However, QPF notes, and Compeer concedes, that Compeer raises a brand-new argument on appeal. This argument relates to checks written collectively to Compeer, QPF, and an Etcher Farms-related entity, Elmwood. (Appellant's Brief p. 69, n. 16). Specifically, Compeer raises, for

the first time, an argument that QPF was obligated to obtain a mediation release from Elmwood pursuant to Iowa Code section 654A.6(1)(*a*). While the issue is ultimately immaterial, this Court need not address a waived argument. *Meier*, 641 N.W.2d at 537. As Compeer admits, "this issue was not raised until the submission of [its] appellate brief." While Compeer argues it is entitled to an exception from the error preservation rules for matters of subject matter jurisdiction, *see State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2000), this is not a jurisdictional issue. *See, e.g.*, *Schaefer*, 841 N.W.2d at 82 (holding "the jurisdictional prerequisite provision's effect is limited" and finding it inapplicable to counterclaims); *Crop Production Services, Inc. v. Hogan Brothers, LLC*, No. 17-CV-0069, 2017 WL 7693379, *3 (N.D. Iowa Sept. 21, 2017) (finding jurisdictional prerequisite inapplicable to personal guarantees). Elmwood was named as a defendant (and judgment by default was entered against it), but a farmer–creditor dispute is not before the Court; before the Court is a creditor–creditor dispute.

Standard of Review

QPF agrees the standard of review is again for correction of errors at law but must highlight the relative burdens. Now, it is Compeer's motion under review, and the motions had asked distinct questions. In QPF's, the

question was whether the undisputed facts were sufficient to establish QPF's superpriority lien, and consequently what was required under the statute to establish such lien. Compeer's motion is not the reverse of QPF's motion, but instead asked the court to find, before the close of discovery and without a trial, that QPF could not possibly prove it is entitled to any of the disputed proceeds. Accordingly, after resolving the questions of statutory interpretation inherent in both motions, the Court must, on review of Compeer's motion, determine whether the District Court was correct that Compeer failed to prove that even taking the evidence in the light most favorable to QPF and drawing all legitimate inferences in its favor, a reasonable person could never find QPF was entitled to a lien in any amount. *See Homan*, 887 N.W.2d at 163–64; *Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015); *Wallace v. Des Moines Indep. Cmty. Sch. Dist. Bd. of Dirs.*, 754 N.W.2d 854, 857 (Iowa 2008). *See also Schley I*, 509 B.R. at 914–15 (remanding for further proceedings to determine "either [that the feed dealer] has been paid in full or that the portion of the pigs sold *had* ***not*** *been fed by* ***any*** *of the feed [the dealer] supplied*, as the Bank suggests" (emphases added)). If summary judgment was not appropriate for QPF, as Compeer argues, then it would certainly be inappropriate to grant it to Compeer.

Merits

The District Court made the correct holdings. "[T]here are no genuine and material factual issues that preclude judgment [in QPF's favor] on the existence of an agricultural supply dealer lien." (App. 938, ¶ 31). "The undisputed evidence shows that Quality Plus provided feed to Etcher farms, and the UCC Financing Statements filed by Quality Plus covered Etcher cattle." (App. 938-939, ¶ 32). "Compliance with the 'tracing' requirement is not materially factually at dispute and summary judgment [in Compeer's favor] is not proper." (App. 939, ¶ 33). The District Court's ruling should be left undisturbed.

A. Compeer did not establish the undisputed facts entitled it to relief.

The District Court correctly denied Compeer's Motion for Summary Judgment principally because Compeer, by its own interpretation of the statute, needed to submit facts that indisputably established the cows milked and sold by the Etcher Farms were not the cows consuming QPF-supplied feed. (App. 938, ¶ 31). Compeer entirely failed to do so and, admitting that it failed to do so, seeks instead to obtain a ruling that allows banks, as a matter of law, to control when a dealer has a superpriority lien. Essentially, Compeer claims that anytime the bank disputes the dealer's "tracing," the district court must dismiss the case.

Compeer's entire argument is based on one paragraph of a three-page decision from the 1994 Iowa Supreme Court, *Citizens Savings Bank of Hawkeye, Iowa v. Miller*, 515 N.W.2d at 7. This paragraph, in full, is as follows:

> Replacement cattle, on the other hand, could meet the statutory definition of proceeds if received upon "other disposition" of the original cattle. To successfully claim PMSI priority on this ground, however, the proceeds must be identifiable. This would require proof that [the] fifteen cattle currently in the Millers' herd are traceable to those originally encumbered by Hawkeye's lien. Given the passage of time, Hawkeye concedes its inability to make that identification.

Id at 9 (citations omitted). From this paragraph Compeer has created seven pages of argument attempting to apply the *Citizens* case's obviously inapplicable holding to the case before the Court. By no stretch does the *Citizens* holding mean that any time any amount, no matter how small, of proceeds are commingled, the lien holder must engage in a laborious tracing process to establish its priority. That is not at all what the Iowa Supreme Court said. Accordingly, *Citizens* is inapplicable, and Compeer's attempts to attribute to it a meaning never intended by this Court should be rejected.

The case is not just legally inapplicable, it is factually distinguishable as well. In *Citizens*, the bank (the titular Citizens Saving Bank of Hawkeye, Iowa), obtained a purchase money security interest ("PMSI") in a one-half interest in a grand total of 47 cows. 515 N.W.2d at 8. Fifteen of these forty-

seven cows were then incorporated into the debtor's existing herd—in which Citizens did *not* have interest. *Id.* By the time of the case, these 15 cows had apparently died or been sold, because the parties shifted their analysis to whether any "replacement cattle" in the herd were proceeds of the original 15. *See id.* As noted above, Citizens conceded it could not state whether the specific 15 cows in which it held an interest had generated proceeds leading to the purchase of 15 more cows. *See id.* at 9.

In the Etcher Farms case, there were many thousands of cows, generating Proceeds sufficient to cover QPF's lien more than four-times over. (App. 13-14, ¶¶ 19–20, 23–24; App. 52-53; 876-879, ¶¶ 10, 13–16). In the Etcher Farms case, QPF fed all of the cows at both locations, not just 15 specific cows at one. (App. 291, ¶ 5). In the Etcher Farms case, only some of the collateralized cows died before sale, not all. (App. 294, ¶¶ 23–24; App. 879, ¶ 17). Really, the Etcher Farms case is the reverse of the *Citizens* case, because before this Court are proceeds that are virtually all attributable to QPF's collateral, with some non-collateral proceeds potentially mixed in. And of course, in *Citizens*, the bank conceded its inability to trace the proceeds, where here, the District Court has already determined QPF has shown a reasonable link to its collateral. (App. 933, ¶ 20).

The *Citizens* case *was not even an agricultural supply dealer case*. In a chapter 570A case, the interpretation of the statute must tip towards the dealer to "encourage a fluid feed market" and do away with "impractical and cumbersome" aspects of the law. *Oyens I,* 808 N.W.2d at 194. It cannot be read in a way that "would leave those suppliers with little or no practical protection and would discourage—rather than encourage—them from working with troubled farmers," "directly at odds with the purposes of the statute." *Schley I,* 509 N.R. at 912–13. Whatever the *Citizens* holding stands for, it cannot stand in the face of the protections afforded by the Iowa legislature to agricultural supply dealers and their farmer-customers.

As a final note on the *Citizens* case, the court there said nothing of the type of tracing required. It was not in dispute, the PMSI lender having conceded the issue. If it were in dispute, the PMSI lender might have argued for an opportunity to trace "by equitable principles" if necessary. Iowa Code § 554.9315(2)(*b*); 9 Anderson U.C.C. § 9-306:29 (3d ed.). As described in great length in part I.B of this Appellee's Brief, conducting reasonable tracing in this case shows the identifiable proceeds are more than enough to cover QPF's lien. Again, even if QPF were only able to show a mere *quarter* of the Proceeds were attributable to cows that ate its feed, it would still be entitled to recover in full.

Compeer's appeal on this issue relies exclusively on the inapposite *Citizens* case. What Compeer seeks is extraordinary on these facts, an order from this Court reversing summary judgment in QPF's favor and remanding with instructions to enter judgment in Compeer's. The *Citizens* holding cannot carry the weight Compeer places upon it. The District Court correctly denied Compeer's Motion for Summary Judgment.

B. Whether taken from the milk checks or from the cattle sale proceeds, the amount due QPF is the same.

In its last argument, Compeer contests payment of the judgment against it from a portion of the Milk Checks, this portion being written to Compeer, QPF, and the Etcher Farms' out-of-state farm, Elmwood. The District Court correctly rejected this argument, reasoning that to the extent there was a genuine dispute over Elmwood's role,[21] it was resolved when the Court granted QPF's Application for Default. (App. 927, 939, ¶¶ 4, 34). Moreover, the dispute, if any, is immaterial. The District Court ordered Compeer to pay QPF $348,756.30. (App. 976, ¶¶ 5, 7). Whether Compeer

[21] There is a genuine dispute over Elmwood's role, as cattle fed (by QPF) at the Etcher Farms may have been transferred to Elmwood. (App. 878-879, 880-881, 884, ¶¶ 16, 20–22, 28–29). If so, QPF's lien travelled with the cows, and then attached their milk proceeds. *See* Iowa Code § § 554.9325(1)(*a*)–(*c*), 570.3(2); *Schley I*, 509 B.R. at 912–13; *Underbakke*, 60 B.R. at 708. Although QPF must again note that the available proceeds, even assuming it has no right in the Elmwood checks at all, are still more than enough to cover its lien.

pays QPF out of the Elmwood checks (to which Elmwood has no further interest), out of the Cattle Sale Proceeds it presumably still holds, or out of its own cash, the result is the same. The issue only matters if this Court reverses the grant of summary judgment in QPF's favor, reverses the denial of Compeer's motion for summary judgment, and remands for further proceedings, which for the myriad reasons discussed in this Brief it should not do.

CONCLUSION

The District Court closed its analysis with this statement:

> The financial position of Etcher Farms that led to this lawsuit is extremely unfortunate. The fact that a good-faith lender such as Compeer Financial and a feed supplier such as Quality Plus end up fighting over the proceeds from the liquidation of a large dairy operation in Iowa is likewise unfortunate. The Court's decision really comes down to enforcement of legislative determinations that have been made in Iowa granting priority to agricultural supply dealers, even over the priority granted to other secured lenders to a debtor. Continuing this lawsuit to litigate issues on the margins, would in the end, benefit no one.

(App. 942, ¶ 41). Nothing further need be said on this case. QPF respectfully requests this Court affirm the District Court in all respects.

REQUEST FOR SUBMISSION WITHOUT ORAL ARGUMENT

As this case can be resolved summarily by application of existing legal principles, Appellee does not believe oral argument is necessary in this case and therefore does not request it. However, Appellee will be available for oral argument should this Court grant Appellant's request for oral argument or otherwise find oral argument appropriate or necessary.

Dated October 22, 2021.

Respectfully submitted,

/s/ Alexander M. Johnson

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on October 22, 2021, I electronically filed this document with the Clerk of the Iowa Supreme Court by using the Iowa Judicial Branch electronic filing system, which will send notice of electronic filing to all parties and attorneys of record.

/s/ Alexander M. Johnson October 22, 2021
Date

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/s/ Alexander M. Johnson October 22, 2021
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