IN THE IOWA SUPREME COURT

SUPREME COURT NO. 19-1302

MIDWESTONE BANK,

Plaintiff/Counterclaim Defendant/Appellee,

v.

HEARTLAND CO-OP,

Defendant/Counterclaimant/Appellant.

APPEAL FROM THE DISTRICT COURT FOR STORY COUNTY
THE HONORABLE ANGELA L. DOYLE

APPELLANT'S FINAL BRIEF

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ROUTING STATEMENT

This case should be retained by the Supreme Court because the issues raised in this appeal presents substantial issues of first impression and urgent issues of broad public importance to Iowa's agriculture industry. Iowa R. App. P. 6.1101(2)(c), (d).

STATEMENT OF THE CASE

This is an appeal by Heartland Co-op from the Iowa District Court for Story County's May 31, 2019 Rulings on Motions for Summary Judgment and subsequent July 3, 2019 Ruling on Heartland Co-op's Motion to Enlarge or Amend Ruling on Motions for Summary Judgment. Under a conversion theory, the District Court ruled that MidWestOne Bank was allowed to claw back the costs of necessary grain drying and storage services provided by Heartland Co-op that it had retained from grain proceeds, which also served as collateral for the grain seller's loan from MidWestOne Bank, even though a substantial number of the grain sale transactions occurred prior to two years before the filing of the Petition. Heartland Co-op noticed its appeal on August 1, 2019.

STATEMENT OF FACTS

MidWestOne Bank ("**Bank**") is a state bank incorporated under the Iowa Banking Act, with its principal place of business located in Iowa City,

Johnson County, Iowa. (Heartland Counterclaim Pet. ¶ 1; Bank Answer ¶ 2)(App. 43; 57). Heartland Co-op ("**Heartland**") is a Cooperative Association with its principal place of business in West Des Moines, Polk County, Iowa, and operates as a licensed grain dealer under Iowa law. (Heartland Counterclaim Pet. ¶ 1; Bank Answer ¶ 1)(App. 43; 57). Justin R. Harker and Ashley N. Harker ("**Harker or Harkers**"), a married couple, were in the business of farming, which included the commercial production of corn and soybeans. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 4)(App. 206).

Heartland operates a grain handling facility in Cambridge, Story County, Iowa, where the Harkers routinely sold and delivered their grain. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 5)(App. 206). The Harkers and Heartland had an agreement for, among other things, the storage and drying of grain produced by the Harkers. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 10)(App. 206-207). The Harkers borrowed money from the Bank to pay for their farm operating expenses in the years 2013 through 2016 under certain respective Promissory Notes dated February 1, 2013, February 20, 2014, March 4, 2015, and February 29, 2016, (Pet. ¶¶ 2-4; Heartland MSJ Appendix Ex. D – Promissory Notes)(App. 8; 107-129). The Bank obtained a security interest in Harkers' farm products, including crops, and the proceeds of farm products under an Agricultural Security Agreement dated February

20, 2014. (Pet. ¶ 6; Pet. Ex 1 – Security Agreement)(App. 8; 12-17). The Bank filed its UCC-1 Financing Statement with the Iowa Secretary of State on February 29, 2012, which described in its collateral position as "all farm products." (Pet. ¶ 10; Heartland MSJ Appendix Ex. F – Financing Statement)(App. 10; 137-138).

Under the terms of the Security Agreement, the Harkers provided the Bank with a Schedules of Buyers for Harker corn and beans ("**Schedules of Buyers**") on March 9, 2015, December 15, 2016, and January 28, 2016, respectively, which identified Heartland. (Pet. Ex. 2 – Schedules of Buyers)(App. 18-23). Among other things, in the Schedules of Buyers, the Harkers (identified as the Grantors therein) verified that the list of buyers was a "list of those buyers, selling agents, and commission merchants to whom Grantor may sell, consign, or transfer the Farm Products as designated." (Pet. Ex. 2 – Schedules of Buyers)(App. 18-23). Under the terms of the Security Agreement, the Harkers could only sell grain to buyers identified in the Schedules of Buyers: "Grantor represents and warrants to Lender that Grantor will sell, consign, lease, license, exchange, or transfer the Collateral only to those persons whose names and addresses have been set forth on sales schedules delivered to Lender." (Pet. Ex. 1 – Security Agreement at 2)(App. 13).

The Bank sent its Notices to Buyer of Security Interest in Farm Products under the Federal Food Security Act, dated February 20, 2014, December 15, 2015, and February 1, 2016, respectively, to Heartland, notifying Heartland of the Bank's security interest in the Harkers' grain raised in, among other places, Story County, Iowa. These Notices stated, "All proceeds are to be paid jointly to Debtor and Secured Party. All proceeds are to be delivered or mailed to Debtor." (Pet. Ex. 3 – Notices of Security Interest; Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 6)(App. 24-29; 206).

On January 7, 2014, Mr. Harker sold Heartland 33,402.65 bushels of corn for $4.23 per bushel, for a total price of $141,293.21. Heartland withheld $9,420.39 from the January 2014 sale proceeds for the cost of drying and storing the corn. (Amdd Answer & CC Ex. A – Jan. 2014 Settlement Sheet)(App. 48). Heartland also withheld from the sale proceeds $2,234.01 for warehouse storage of corn delivered on or priced on January 7, 2014, plus $156.38 in tax. *Id*; (Heartland Counterclaim Pet. ¶ 8; Bank Answer ¶ 8)(App. 44; 48; 58).

On March 17, 2014, Mr. Harker sold Heartland 6,250 bushels of corn for $4.52 per bushel, for a total price of $28,250. Heartland withheld $26,861.80 from the March 2014 sale proceeds for the cost of drying and

storing the corn. (Heartland Counterclaim Pet. ¶ 9; Amdd Answer & CC Ex. B – March 2014 Settlement Sheet; Bank Answer ¶ 9)(App. 45; 49; 58).

On August 25, 2014, Mr. Harker sold Heartland 2,902.32 bushels of corn for $3.43 per bushel, for a total price of $9,954.96. Heartland withheld $756.52 from the August 2014 sale proceeds for the cost of drying and storing the corn. (Heartland Counterclaim Pet. ¶ 10; Amdd Answer & CC Ex. C – August 2014 Settlement Sheet; Bank Answer ¶ 10)(App. 45; 50; 58).

On October 5, 2015, Mr. Harker sold Heartland 9,659.5 bushels of corn for $3.82 per bushel, for a total price of $36,899.29. Heartland withheld $5,072.40 from the October 2015 sale proceeds for the cost of drying and storing the corn. (Heartland Counterclaim Pet. ¶ 11; Amdd Answer & CC Ex. D. – October 2015 Settlement Sheet; Bank Answer ¶ 11)(App. 45; 51; 58).

On December 23, 2016, Mr. Harker sold Heartland 8,600.34 bushels of soybeans for $10 per bushel, for a total price of $86,003.40. Heartland withheld $35,070.30 from the December 2016 sale proceeds for the cost of drying and storing the soybeans. (Heartland Counterclaim Pet. ¶ 12; Amdd Answer & CC Ex. E – December 2016 Settlement Sheet; Bank Answer ¶ 12)(App. 45; 52; 58).

On February 24, 2017, Mr. Harker sold Heartland 55,361.29 bushels of corn at $3.20 per bushel, for a total price of $177,156.13. Heartland withheld

$323.88 from the 2017 sale proceeds for the cost of drying and storing the corn. (Heartland Counterclaim Pet. ¶ 13; Amdd Answer & CC Ex. F – February 2017 Settlement Sheet; Bank Answer ¶ 13)(App. 45; 53; 58).

The amounts retained, above, by Heartland were for storing and drying the Bank's collateral. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 10)(App. 206-207). These costs were withheld with the consent of the Harkers, were reasonable and necessary, occurred in the normal course of business between the Harkers and Heartland, and reflected well-accepted industry practice. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶¶ 7-10)(App. 206-207). It is necessary for grain to be dried properly before it can be stored in order to protect against, among other things, mold, discoloration, and insect damage. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 7)(App. 206). Withholding storing and drying charges upon the sale of grain is a standard practice throughout the State of Iowa, regardless of whether the grain is subject to a security interest (Heartland Appendix Resist MSJ Ex. P. – Frazer Aff. ¶ 7)(App. 353). Iowa's grain industry has always operated by first paying storing and drying charges upon the sale of grain. (Heartland Appendix Resist MSJ Ex. P. – Frazer Aff. ¶ 8)(App. 353). The grain drying and storing services provided to the Harkers and Bank came at cost to Heartland in the form, among other things, of utilities, maintenance, and labor. (Heartland MSJ

Appendix Ex. O – Bailey Aff. ¶ 8)(App. 206). The amounts offset from grain sale proceeds by Heartland were not used to service or pay any other debt the Harkers owed to Heartland. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 8–13)(App. 206–207).

Under the terms of the Security Agreement between the Bank and the Harkers, among other things, the Harkers (identified as the Grantor, therein), agreed to the following:

> **Care and Preservation of the Crops**. Grantor shall (1) At seasonable and proper times and in accordance with the best practices of good husbandry attend to and care for the crops and the tillage of the land and do, or cause to be done, any and all acts that may at any time be appropriate or necessary to grow, farm, cultivate, irrigate, fertilize, prune, harvest, pick, clean, preserve, and protect the crops; (2) Not commit or suffer to be committed any damage to, destruction of, or waste of the crops; (3) Permit Lender and any of its employees and agents to enter upon the premises where the crops are located at any reasonable time and from time to time for the purposes of examining and inspecting the crops and the premises; (4) Harvest and prepare the crops for market and promptly notify Lender when any of the corps are ready for market; (5) Keep the crops separate and capable of being identified; and (6) Promptly give Lender written notice of any disease to, any destruction of, any depreciation in the value of, or any damage to the crops.

(Pet. Ex. 1 – Security Agreement at 2)(App. 13) (emphasis added).

> **Repairs and Maintenance**. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in

> effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.
>
> . . . .
>
> **Compliance with Governmental Requirements**. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral . . . .

(Pet. Ex. 1 – Security Agreement at 3)(App. 14).

Heartland charges for its drying and storing services, which it makes known to its patrons like the Harkers. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 9)(App. 206). Heartland publishes the prices for these services every year and files them with the Iowa Department of Agriculture and Land Stewardship. *Id.* As collateral for a loan or loans from the Bank, the Bank benefited and was enriched from the subject grain produced by the Harkers being dried and stored properly by Heartland. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 12)(App. 207). The Bank was on constructive and inquiry notice that Heartland was withholding funds to offset drying and storing costs for the subject grain. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 9; Bank's Resp. to Heartland's Fact ¶ 19; Heartland Appendix Resist MSJ Ex. P. – Frazer Aff. ¶ 7)(App. 206; 320; 353). Until this suit, the Bank willingly allowed storage and drying charges to be deducted from their proceeds checks

in the past, that Heartland relied upon in processing the Harker payments. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 11)(App. 207). The Bank negotiated and cashed each of the proceeds checks Heartland sent to the Bank for the sale of Harker grain. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 14)(App. 207).

ARGUMENT

I. THE COMMON LAW DISCOVERY RULE EXCEPTION TO THE STATUTE OF LIMITATIONS DOES NOT APPLY TO THE BANK'S COMMERCIAL CONVERSION CLAIMS BROUGHT UNDER IOWA'S VERSION OF THE UNIFORM COMMERCIAL CODE.

A. Preservation of Error

The application of the discovery rule exception to the two-year statute of limitations on the Bank's claims, "founded on a secured interest in farm products" as codified in Iowa Code Section 614.1(10), was presented and ruled upon by the District Court. (05/31/2019 Rulings on MSJs at 7-10)(App. 428-431). Error was preserved. *See UE Loc. 893/IUP v. State*, 928 N.W.2d 51, 60 (Iowa 2019) (citing *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)).

B. Standard of Review

Review of summary judgment rulings is for correction of errors at law. *C & J Vantage Leasing Co. v. Outlook Farm Golf Club, LLC*, 784 N.W.2d 753, 756 (Iowa 2010). Further:

> "Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012)). "We view the evidence in the light most favorable to the nonmoving party." *Luana Sav. Bank v. Pro-Build Holdings, Inc.*, 856 N.W.2d 892, 895 (Iowa 2014)). "The court must consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record." *Thornton v. Am. Interstate Ins.*, 897 N.W.2d 445, 460 (Iowa 2017) (quoting *McIlravy v. N. River Ins.*, 653 N.W.2d 323, 328 (Iowa 2002)).

UE Loc. 893/IUP v. State, 928 N.W.2d 51, 59 (Iowa 2019).

C. Argument

The District Court correctly interpreted and applied Iowa Code Section 614.1(10) to the Bank's conversion claims, agreeing with Heartland that any claim predicated on Bank's secured interest in the subject grain (a farm product) was limited to the two-year period preceding the filing of the Petition on March 16, 2018, and not the longer five-year period reserved for conversion clams, generally. (05/31/2019 Rulings on MSJs at 8)(App. 429). Chapter 614 of the Iowa Code provides, in relevant part:

> Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:
> . . .
> 10. **Secured interest in farm products.** Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor.

Iowa Code § 614.1(10) (2018). The basis of the Bank's conversion claims is that the Bank's security interest, as reflected in its February 29, 2012 UCC-1 Financing Statement, in the sale proceeds of the Harkers' farm products (grain) was superior to Heartland's interest in those same farm products. (Pet. ¶ 10; Bank's Stmt of Undisputed Facts in Supp. of Plaintiff's MSJ at 9)(App. 10; 307) (citing Iowa Code § 554.9315 for its position that an agricultural lien attaches to identifiable proceeds of collateral). The Bank filed its Petition on March 16, 2018. The Bank's Petition included four transactions that occurred prior to March 16, 2016, or two years before the Petition file date: January 7, 2014 ($9,420.39); March 17, 2014 ($26,861.80); August 25, 2014 ($756.52); and, October 5, 2015 ($5,072.40) (Pet. ¶ 9(a)-(d))(App. 9), for a total damage claim of $42,111.10.

However, the District Court then applied the discovery rule exception to the statute of limitations governing the Bank's claims, reasoning that because the Bank did not obtain the respective settlement sheet information for the grain sales until 2017; that the discovery rule tolled the statute of

limitations period under Section 614.1(10). (05/31/2019 Rulings on MSJs at 8)(App. 429). The District Court erred when it applied the discovery rule exception to the Bank's pre-March 16, 2016 claims. The discovery rule exception to the statute of limitations does not apply to a commercial conversion claim arising from Iowa's version of the Uniform Commercial Code. *See Husker News Co. v. Mahaska State Bank*, 460 N.W.2d 476, 477–79 (Iowa 1990) (in a lengthy discussion, giving preeminence to the UCC's presumption "in favor of predictability and finality of commercial transactions" and joining the majority rule that the discovery rule does not apply to commercial disputes under the UCC)(citing cases); Iowa Code § 554.1103(1)(c) (and "to make uniform the law among the various jurisdictions")); *see Mormann v. Iowa Workforce Dev.*, 913 N.W.2d 554, 569 (Iowa 2018) (continuing to distinguish between general application of the discovery rule and claims brought under the UCC, "where a fundamental purpose of the statute is to establish clear rules for rapid commercial transactions.")(citing, among other cases, *Husker News Co.*, 460 N.W.2d at 479). In *Husker*, the Court accepted the reasons for rejecting the discovery rule "in commercial conversion cases as being (1) the need for finality in transactions involving negotiable instruments, and (2) the presumption that property owners know where their property is located." *Husker News Co.*,

460 N.W.2d at 478 (emphasis added) ("Strict application of the limitation period, while predictably harsh in some cases, best serves the twin goals of swift resolution of controversies and "certainty of liability" advanced by the U.C.C.").

The similarity between *Husker* and the present case provides further support for Heartland's position. Both cases deal with whether the discovery rule applies in cases involving conversion claims in the UCC context. In *Husker*, the Court reaffirmed the need for finality and swift resolution of cases under the UCC. It also reasoned that the narrower limitation set out in Iowa Code § 554.4406 (on "a customer's right to bring a breach of warranty action against its bank for wrongfully paying a check over a forged endorsement" under the UCC) affirmed the policy of the need for a mechanical application of negotiable instrument law. *Husker News Co*., 460 N.W.2d at 478.

Here, the dispute involves the existence and/or priority of two parties' interests in collateral sale proceeds when the two parties contributed to the value of the collateral in question—the Bank as a secured creditor and Heartland as the provider of storage and grain services for the collateral. The present case falls squarely within *Huskers* affirmation of the UCC's preference for finality and swift resolution of disputes. The shorter limitations period in Section 614.1(10), akin to Section 554.4406 discussed in *Husker*,

also affirms the policy that in commercial transactions involving farm products, where the production of a year's crop or livestock can involve multiple lenders, suppliers and vendors—the law favors finality and swift resolution of disputes. *Husker News Co*., 460 N.W.2d at 478; *see also Farmers Coop. Co. v. Swift Pork Co*., 602 F. Supp. 2d 1095, 1110 (N.D. Iowa 2009) ("The evident purpose behind § 614.1(10), which shortens the limitations period from five years under § 614.1(4) to two years for claims founded on secured interests in farm products, is to hasten resolution of such claims.").

Accordingly, Heartland requests the Court find that the discovery rule does not apply to the Bank's UCC conversion claims for the grain sales that occurred before March 16, 2016, and thus are time barred under Iowa Code Section 614.1(10), and find that a reduction of the Bank's judgment, as a matter of law, in the principal amount of $42,111.10 is proper, and remand to the District Court with instructions consistent with these findings.

II. HEARTLAND'S UNJUST ENRICHMENT CLAIM CANNOT AND DOES NOT REQUIRE PRIVITY OF CONTRACT WITH THE BANK; THE UCC DOES NOT FORBID EQUITABLE REMEDIES; AND, THERE ARE GENUINE ISSUES OF MATERIAL FACTS IN DISPUTE THAT WARRANT TRIAL

A. Preservation of Error

Heartland's claim for unjust enrichment was presented and ruled upon by the District Court. (05/31/2019 Rulings on MSJs at 26–27; Br. in Supp. of Heartland's Mot. to Enlarge or Amend at 10–12; Ruling on Heartland Co-op's Mot. to Enlarge or Amend Rulings on MSJs at 2)(App. 447-448; 471-473; 494). Error was preserved. *See UE Loc. 893/IUP v. State*, 928 N.W.2d 51, 60 (Iowa 2019)).

B. Standard of Review

Review of summary judgment rulings is for correction of errors at law. *C & J Vantage Leasing Co. v. Outlook Farm Golf Club, LLC*, 784 N.W.2d 753, 756 (Iowa 2010). Further:

> "Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012)). "We view the evidence in the light most favorable to the nonmoving party." *Luana Sav. Bank v. Pro-Build Holdings, Inc.*, 856 N.W.2d 892, 895 (Iowa 2014)). "The court must consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record." *Thornton v. Am. Interstate Ins.*, 897 N.W.2d 445, 460

(Iowa 2017) (quoting *McIlravy v. N. River Ins.*, 653 N.W.2d 323, 328 (Iowa 2002)).

UE Loc. 893/IUP, 928 N.W.2d at 59.

C. Argument

1. The District Court erred in dismissing Heartland's Unjust Enrichment Claim for lack of privity with the Bank.

The District Court ruled that Heartland failed to establish the elements for unjust enrichment, reasoning that "any theory of unjust enrichment arising from the services provided by Heartland is properly asserted against Harker, not the Bank," because "[a]ny agreement for drying and storage of the grain was between Harker and Heartland." (05/31/2019 Rulings on MSJs at 26–27)(App. 447-448). The error in the District Court's reasoning is that a plaintiff cannot bring a claim for unjust enrichment where an express contract regarding the same subject matter exists, as there was between Heartland and the Harkers. *See Chariton Feed & Grain, Inc. v. Harder*, 369 N.W.2d 777, 791 (Iowa 1985) ("An express contract and an implied contract cannot coexist with respect to the same subject matter, and the former supersedes the latter."); *Kunde v. Est. of Bowman*, 920 N.W.2d 803, 807 (Iowa 2018), *as amended on denial of reh'g* (Jan. 4, 2019). Accordingly, Heartland is foreclosed, as a matter of law, from making an implied contract claim, like unjust enrichment, against the Harkers. Moreover, "case law is clear that the broad doctrine of

unjust enrichment captures indirect benefits from third parties." *Criterion 508 Sols., Inc. v. Lockheed Martin Servs., Inc.*, 806 F. Supp. 2d 1078, 1103 (S.D. Iowa 2009); *see State, Dept. of Human Servs. ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 152 (Iowa 2001). In *Criterion 508 Solutions., Inc*., the U.S. District Court for the Southern District of Iowa summarized the law on this point:

> The doctrine of unjust enrichment flows from the principle that, at the expense of another, a party should not be unjustly enriched, receive property, or receive benefits without paying just compensation. *Credit Bureau Enters., Inc. v. Pelo,* 608 N.W.2d 20, 25 (Iowa 2000). "A third-party claim based on unjust enrichment only requires that a legally cognizable claim exists, not the actual assertion of that claim." *State, Dept. of Human Serv. ex rel. Palmer v. Unisys Corp.,* 637 N.W.2d 142, 152 (Iowa 2001). Unjust enrichment provides restitution for the injured party, based upon the following recovery elements: "(1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances." *Id.* at 154–55; *see also Iowa Waste Systems, Inc. v. Buchanan County,* 617 N.W.2d 23, 29 (Iowa Ct. App. 2000). Unjust enrichment is a broad doctrine and includes the conferral of indirect benefits, including "benefits conferred by third parties." *Palmer* at 155. The critical inquiry is that the benefit received be at the expense of the plaintiff. *Id.* (citing *Guldberg v. Greenfield,* 259 Iowa 873, 146 N.W.2d 298, 301 (1966)); *see also Slade v. M.L.E. Inv. Co.,* 566 N.W.2d 503, 506 (Iowa 1997) ("A plaintiff seeking recovery under this doctrine must prove the defendant received a benefit that in equity belongs to the plaintiff").

*Criterion 508 Sols., Inc.,*806 F. Supp. 2d at 1102. Here, without an express agreement between Heartland and the Bank for drying and storing services,

the law allows an implied contract claim of unjust enrichment against the Bank.

2. The District Court erred by disallowing the equitable remedy of unjust enrichment in a UCC case.

The District Court also erred when it appeared to accept the Bank's argument that Heartland's unjust enrichment claim could not go forward because doing so would impair the purposes of the UCC. (05/31/2019 Rulings on MSJs at 27)(App. 448). The UCC allows courts to apply equitable principles in cases governed by Article 9. *See* Iowa Code § 554.1103 ("this chapter must be liberally construed and applied to promote its underlying purposes and policies which are: . . . 2. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions."). "Since the doctrine of unjust enrichment has not been displaced by the particular provisions of Article 9, the doctrine may supplement its provisions." *Ninth Dist. Prod. Credit Ass'n v. Ed Duggan, Inc.*, 821 P.2d 788, 795 (Colo. 1991). Other courts, like the Colorado Supreme Court in *Ninth District Production Credit Ass'n,* have allowed unjust enrichment claims in similar cases. *See Producers Cotton Oil Co. v. Amstar Corp.,* 242 Cal. Rptr. 914 (1988).")

(allowing unjust enrichment claim by buyer who paid harvesting costs without first receiving subordination from secured lender). In *Producers Cotton*, the court characterized the facts where the necessary costs for harvesting were paid out of the sale proceeds of the crop (sugar beets), which served as collateral subject to the perfected interest of the producer's lender. The Court said these costs "present a classic case for establishing an implied in law contract, or quasi-contract . . . for [the] harvesting costs." *Producers Cotton,* 242 Cal. Rptr. at 926. In *Producers Cotton*, the lender knew the crop was being harvested and made no inquiry to how it would be paid, and benefitted by receipt of the net proceeds of the sale. *Id*. "Under the common law equitable doctrine of implied in law or quasi-contract, [the party paying for the harvesting services] had the right to recover from the lender the costs . . . by way of offset." *Id*. at 927. Important to the *Producers Cotton* is not that the lender had actual knowledge of the expected offset from sale proceeds, but that the lender nonetheless acquiesced to it when it made no inquiry under the circumstances. *Id*. at 926 (knowing harvesting costs would be necessary and making no inquiry as to how they would be paid).

In *Ninth District Production Credit Ass'n*., a supplier of corn and trucking services brought an unjust enrichment claim against a lender for repayment of the supplier's goods (corn) and services to be paid from the

proceeds of a sale of cattle. 821 P.2d at 793. Though not an "offset" case as here, the same issue was raised: "whether a creditor that holds a perfected security interest in collateral can be held liable to an unsecured creditor based on a theory of unjust enrichment for benefits that enhance the value of the collateral." *Id*. The court, there, answered not always, and went to reconcile the cases (some cited by the District Court here in its adverse decision against Heartland, *e.g.*, *Peerless Packing Co., Inc. v. Malone & Hyd*e, 376 S.E.2d 161 (W.Va. 1988)) where a court denied an unjust enrichment claim when "the secured creditor has no more than general knowledge that an unsecured creditor was supplying goods to the debtor." *Ninth Dist. Prod. Credit Ass'n*, 821 P.2d at 795. The court went on to find that, in those cases, there "were no facts to indicate that the secured creditor initiated or encouraged the transaction by which the unsecured creditor enhanced the value of the secured collateral when the unsecured creditor supplied goods or services to the debtor." *Id*.

Here, the undisputed evidence is that the Bank, a participant in Iowa's agriculture industry, knew and gave permission to its borrower to keep and sell grain to Heartland, sent notices of its lien interest in the grain to Heartland, knew that storage of grain in Iowa is required at a licensed public facility, knew that drying was necessary to maintain and enhance the quality of the

grain, and knew that the necessary costs for those services could be offset from the proceeds of grain. (Pet. Ex. 2 – Schedules of Buyers; Pet. Ex. 3 – Notices of Security Interest; Heartland MSJ Appendix Ex. O – Bailey Aff. ¶¶ 3-12); Heartland MSJ Appendix Ex. P – Frazer Aff. ¶¶ 6-9)(App. 18-23; 24-29; 206-207; 353). Like the lender in *Producer's Cotton*, the Bank benefited from the net proceeds of the sale. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 12)(App. 207). Under the facts in this case, there is no way the Bank could be considered has having "no more than general knowledge" that Heartland would be supplying storage and drying services. *Ninth Dist. Prod. Credit Ass'n*, 821 P.2d at 795. The Bank sent Heartland notices of its lien. (Pet. Ex. 3 – Notices of Security Interest)(App. 24-29). The Bank demanded the Harkers name their grain buyers under the terms of the Security Agreement. (Pet. Ex. 1 – Security Agreement at 2)(App. 13). The Bank never complained before about offsets for necessary drying and storage services. (Heartland MSJ Appendix Ex. P – Frazer Aff. ¶ 9)(App. 353). The Bank negotiated the grain proceeds checks. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 14)(App. 207). Of course, the Bank—knowing Heartland was a buyer of the Harkers' grain and aware of the industry practices and customs, encouraged and authorized the Harkers to "cause . . . any and all acts that may at any time be appropriate or necessary to grow, farm, cultivate, irrigate,

fertilize, prune, harvest, pick, clean, preserve, and protect the crops . . . [and] Harvest and prepare the crops for market and promptly notify Lender when any of the corps are ready for market . . . ." (Pet. Ex. 1 – Security Agreement at 2)(App. 13). All these facts establish a course of dealing and acceptance of the industry custom and practice of sale proceeds being the source of payment for necessary costs to protect the grain.

Not only are unjust enrichment claims allowed in cases involving UCC Article 9 priority claims, they are embraced by courts where a strict adherence to priority order would produce an unjust result. Accordingly, Heartland requests that the Court reverse and remand this case and instruct the District Court to reinstate Heartland's claim for unjust enrichment, with further instruction to the trial court as necessary.

3. The facts support remand of Heartland's unjust enrichment claim for entry of summary judgment

Under the cases cited above, the factual record justifies, at the very least, a remand to the District Court for trial on Heartland's unjust enrichment claim. "[U]njust enrichment 'arises from the equitable principle that one shall not be permitted to unjustly enrich oneself by receiving . . . benefits without making compensation therefore.'" *Legg v. W. Bank*, 873 N.W.2d 763, 771 (Iowa 2016) (quoting *Ahrendsen ex rel. Ahrendsen v. Iowa Dep't of Human Servs.*, 613 N.W.2d 674, 679 (Iowa 2000)). Unjust enrichment exists when (1)

one party is enriched, (2) at the expense of the other, and (3) it would be unjust, under the circumstances, for the enriched party to retain the benefit. *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 577–78 (Iowa 2019) (citing *State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 154–55 (Iowa 2001). Unjust enrichment is a broad principle that allows recovery both when the unjust benefit was conferred directly or indirectly. *State ex rel. Palmer*, 637 N.W.2d at 155. The critical inquiry is whether the enriched party received the benefit at the expense of the other party. *Id.*

There is no dispute that Heartland's services increased the grain's value for the benefit of the Bank. Heartland stored and dried the grain thereby preventing the potential diminishment in value through rot, mold, or insect infestation, and increasing the ultimate value of the grain. The Bank could not have provided these services and would have been required to pay for them to a state-licensed grain dealer had the Harkers simply rolled into the local Bank branch with the grain and dropped it off. It would be unjust for the Bank to benefit from Heartland's drying and storing services—that increased the grain's value and ultimately the Bank's recovery—at Heartland's expense. As set out in the loan agreements and notices to buyers, the Bank knew that Heartland was providing these services, required the Harkers to care for and preserve their crops, and the Bank accepted the benefit, but now does not want

to pay for the necessary and indispensable services. (Pet. Ex. 3 – Notices of Security Interest)(App. 24-29).

The District Court took short shrift of the sworn affidavits offered by Heartland that were evidence that Heartland relied on the decades-long (if not more) industry custom and practice of grain buyers being allowed to offset the necessary costs of storage and drying grain required to preserve the grain before sending payment on to the producer and/or the holder of a secured interest in the grain. (Heartland MSJ Appendix Ex. O – Bailey Aff.; Heartland Appendix Resist MSJ Ex. P. – Frazer Aff.)(App. 204-207; 351-354). Indeed, the District Court never referenced Mr. Bailey's affidavit in its ruling and only referenced Mr. Frazer's sworn affidavit once. (05/31/2019 Rulings on MSJs at 19)(App. 440) (dismissing claims of Heartland's reliance on industry standards as "assertions only supported by the affidavit of Don Frazer, Heartland's Senior Credit Lender"). In response to these sworn statements from Heartland Senior Credit Lender (Frazer) and Chief Financial Officer (Bailey), with decades of experience between them in Iowa's agricultural industry, on the practices of that industry, the Bank offered no evidentiary rebuttal—none. The District Court accepted the Bank's denial of Heartland's sworn affidavits on its face, without reference to the record. (05/31/2019 Rulings on MSJs at 19)(App. 440).

In the context of the circumstances of an unjust enrichment claim, the industry-wide practice followed by grain buyers and lenders is of Heartland's reliance and that the Bank was on constructive notice and should have known Heartland would offset necessary drying and storage charges for the Harkers' grain.

One of the policies of the UCC is to "permit the continued expansion of commercial practices through custom, usage, and agreement of the parties." Iowa Code § 554.1103(1)(b). Custom is a "practice that by its common adoption and long, unvarying habit has come to have the force of law." Black's Law Dictionary (11th ed. 2019). Usage is a "well-known, customary, and uniform practice, usu. in a specific profession or business." *Id*. As the District Court seemed to express doubt that Heartland had presented sufficient evidence to establish the grain industry's practice, which is inappropriate at the summary judgment stage because the Bank did not present any evidence refuting it. Heartland asked the Court to find, on this record, that the practice of the grain industry is to withhold grain for drying and storing charges. To the extent the Court cannot determine this as a matter of law, this is a disputed fact because Heartland has presented enough evidence to generate a genuine issue.

Heartland undeniably improved the grain and the Bank's argument that it did not benefit from the improvement in the grain's value lacks credibility. (Pl.'s Resp. to Def.'s Stmt. Undisputed Facts ¶ 20; Pl.'s Resp. to Def.'s Stmt. Add'l Facts at ¶ 7, 8)(App. 320; 387). The Bank received more from the grain proceeds than it would have if Heartland had not provided these services. (Pl.'s Resp. to Def.'s Stmt. Undisputed Facts ¶ 19; Pl.'s Resp. to Def.'s Stmt. Add'l Facts at ¶ 7, 12)(App. 320; 387-389). In addition, Heartland's drying protected the grain from rot, mold, and insect infestation, which increased its value. (Pl.'s Resp. to Def.'s Stmt. Undisputed Facts ¶ 19)(App. 320). The Bank recovered more money from the grain due to Heartland's services in drying and storing the grain.

The Bank's argument that Harker was contractually obligated to care for the grain does not refute that the Bank gained value because of *Heartland's* actions *i.e.* it was enriched. Whether the Bank was enriched is an objective fact that the Bank has not refuted. Whether the Bank was entitled to that enrichment is a question for the third element—whether the Bank was *unjustly* enriched by the grain's improvement. It is unfair to allow the Bank to benefit from Heartland's free drying and storage services when the Bank knew—through the norms, practices, and usages of the agricultural industry, that a grain buyer, like Heartland would offset the costs of those services from the

sale of the grain. Heartland respectfully requests that the Court amend the Order to find that it proved the elements of unjust enrichment or, alternatively, remand the case for trial on Heartland's unjust enrichment claim.

CONCLUSION

The Bank's claims arising from the sales of the subject grain occurring before March 16, 2016 are time barred under Iowa Code Section 614.1(10), and the Bank's judgment, as a matter of law, should be reduced in the principal amount of $42,111.10. Furthermore, neither the express contract with the Harkers nor the UCC prevent Heartland from bringing an unjust enrichment claim against the Bank. It is undisputed that the Bank was enriched by the drying and storage serviced provided by Heartland. The record shows the Bank was on notice of and acquiesced to Heartland's offset for drying and storage costs from the grain sale proceeds under the well-known practice in the agricultural industry and further evidenced by the Bank's own loan documents and notices of its lien interest in the Harker grain that was sent to Heartland. At the very least, the Bank's notice of Heartland's offset from grain sales for necessary services to protect the Bank's collateral is a material fact in dispute and should be submitted to the trier of fact to determine.

STATEMENT REGARDING ORAL ARGUMENT

Heartland Co-op requests oral argument.

Respectfully submitted,

/s/ Johannes H. Moorlach
/s/ Peter J. Chalik

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CERTIFICATE OF COST

I hereby certify that the cost of printing the foregoing Appellant's Final Brief was the sum of $ N/A.

/s/ Johannes H. Moorlach

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 pt and contains 6,294 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

/s/ Johannes H. Moorlach

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on December 17, 2019, I filed this Appellant's Final Brief electronically via EDMS. The undersigned further certifies that on December 17, 2019, Appellant's Final Brief was served upon all parties of record to the above cause via EDMS.

/s/ Johannes H. Moorlach