IN THE IOWA DISTRICT COURT IN AND FOR MONROE COUNTY
(IOWA BUSINESS SPECIALTY COURT)

WINGER CONTRACTING COMPANY, Plaintiff, vs. CARGILL, INCOPORATED; HARRIS AND FORD, LLC; HF CHLOR-ALKALI, LLC; SOUTHLAND PROCESS GROUP, LLC; CARL A. NELSON & COMPANY; AMERICAN PIPING GROUP, AND JEFF BOITNOTT ENTERPRISES, INC. Defendants.	EQUITY NO. EQEQ009184 COMBINED RULING ON WINGER CONTRACTING COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND LEMARTEC ENGINEERING & CONSTRUCTION'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND CARGILL, INCORPORATED'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST WINGER CONTRACTING COMPANY AND CARGILL INCORPORATED'S CROSS-MOTION FOR SUMMARY JUDGMENT AGAINST LEMARTEC ENGINEERING
TRACER CONSTRUCTION, LLC Plaintiff, vs. CARGILL, INCORPORATED; HF CHLOR-ALKALI, LLC; JEFF BOITNOTT ENTERPRISES, INC.; WINGER CONTRACTING COMPANY; CARL A. NELSON & COMPANY; LEMARTEC ENGINEERING & CONSTRUCTION CORPORATION; FP CONTROL; VARCO) PRUDEN BUILDINGS; AMERICAN PIPING GROUP; TRI-CITY ELECTRIC COMPANY; TAI SPECIALTY CONSTRUCTION, INC.; SCHAUS-VORHIES CONTRACTING, INC.;	EQUITY NO. EQEQ009228 (Consolidated into EQEQ009184)

AMERITRACK TRAIL; GETHAMNN CONSTRUCTION COMPANY, INC.; CONVE AVS, INC.; LUNT RELIABILITY SERVICE, LLC; AND PETERSON CONTRACTORS, INC.	)
Defendants.	)

The following motions are before the Court for consideration. Plaintiff, Winger Contracting Company ("Winger"), filed a Motion for Partial Summary Judgment, on February 8, 2017 with a Memorandum and Statement of Undisputed Facts.[1] Defendant Lemartec Engineering & Construction Corporation ("Lemartec") filed a Motion for Partial Summary Judgment and Joinder in Winger's Motion for Partial Summary Judgment with a Memorandum and Statement of Undisputed Facts on February 24, 2017. Defendant Cargill, Incorporated ("Cargill") filed a joint Resistance to Winger's Motion for Partial Summary Judgment and Lemartec's Motion for Partial Summary Judgment and Cross-Motion for Partial Summary Judgment Against Winger and Cross-Motion for Partial Summary Judgment Against Lemartec with a Memorandum and Statement of Additional Facts in Response to Winger's Motion for Partial Summary Judgment and Statement of Additional Facts in Response to Lemartec's Motion for Partial Summary Judgment on March 15, 2017. Tracer Construction, LLC filed a Reply to Cargill's Resistance on March 28, 2017. [2] Winger filed a Reply Brief to Cargill's Brief in Resistance to Winger's Motion for Partial Summary Judgment on March 29, 2017. Cargill filed a Sur-Reply to the Winger and Tracer Reply Briefs on April 7, 2017. Lemartec filed a Reply Brief

[1] Winger's Motion for Partial Summary Judgment was joined, with no additional argument or authority, by: Tracer Construction, LLC; Carl A. Nelson & Company; Gethmann Construction Company, Inc.; Peterson Contractors, Inc.; Tri-City Electric Company; Tai Specialty Construction, Inc.; American Piping Group; Ameritrack Rail; Miller Insulation Company, Inc.

[2] Tracer's Reply Brief was joined, with no additional argument or authority, by: Carl A. Nelson & Company; Gethmann Construction Co.; and Peterson Contractors, Inc.

to Cargill's Brief in Resistance to Lemartec's Motion for Partial Summary Judgment on April 10, 2017. Cargill filed a Sur-Reply to Lemartec's Reply Brief on April 11, 2017.

The Court has considered counsels' briefs, the parties' exhibits, and the applicable law, and now makes the following ruling:

Factual Background and Proceedings

The following facts are undisputed. Cargill owns certain real property in Eddyville, Iowa. Cargill entered into a Lease Agreement dated June 24, 2013 with HF Chlor-Alkali, LLC ("HFCA") to allow HFCA to construct a chlor-alkali manufacturing facility (hereinafter "the Facility") on the Eddyville property. The Lease Agreement granted HFCA a leasehold interest in the land for a period of fifty years at a rent of $12,000 per year, and, as additional rent, all other sums of money required to be paid by HFCA to Cargill under the terms of the Lease. (Ex. 1, §3.01, §4.01).[3]

On July 23, 2013, a Memorandum of Lease was duly recorded with the Monroe County, Iowa Recorder in Book 2013, Page 1084. (Cargill Ex. A).[4] The Lease Agreement defined "Land" by the legal description of the parcels of land owned by Cargill upon which HFCA was granted a leasehold interest to build a Facility. (Plf. Ex. 1, §1.01V). The Lease Agreement defined

[3] All other amounts HFCA was required to pay Cargill under the Lease Agreement as rent were for reimbursement of costs actually incurred by Cargill for things such as property taxes and security services. The following is an exhaustive list of all other sums required to be paid by HFCA to Cargill under the Lease: (1) under §2.03, HFCA was required to reimburse Cargill (pursuant to the Site Security Services Agreement (Plf. Ex. 7)) for amounts paid by Cargill to a third party to provide security services for the Facility; (2) under Article 7, HFCA was required to reimburse Cargill for property taxes, use taxes and assessments levied on the Land or Facility that (a) were paid by Cargill before the creation of separate tax parcels for the Land and the Facility or (b) paid by Cargill due to HFCA's failure to timely pay such taxes to the appropriate government entity after the creation of separate tax parcels (in no event was HFCA responsible to pay taxes or assessments levied on Cargill's property, income or other taxable property); (3) under §12.04, in the event HFCA failed to obtain insurance satisfying its obligation under Article 12 and Cargill obtained and paid for such insurance, HFCA was required to reimburse Cargill for the amounts paid by Cargill; and (4) under §23.05 HFCA had a duty to not permit mechanic's liens to be filed against the Premises (defined under §1.01DD to collectively mean the Land, Facility and Easement Parcels), in the event this duty was breached and Cargill incurred expenses in discharging such liens, HFCA was required to reimburse Cargill for costs it actually incurred. (Plf. Ex. 1).

[4] No labor or material were furnished by any of the claimants herein prior to the date the Memorandum of Lease was duly recorded.

"Facility" as "all buildings, fixtures, structures, improvements, machinery, equipment and other tangible personal property purchased or constructed by Lessee from time to time and located on the Land." (Plf. Ex. 1, §1.01S). The Lease Agreement defined "Improvements" as "all buildings, fixtures, structures and other improvements built by Lessee on the Land and, if applicable, the Easement Parcels, from time to time during the Term." (Plf. Ex. 1 §1.101U). The Lease Agreement expressly defined "Cargill Property" to exclude the "Facility" and "Improvements." (Plf. Ex. 1, §1.01E). Under the Lease Agreement, "Lessee's Estate" is defined to mean "all of Lessee's right title and interest in its leasehold estate in the Land, its fee estate in the Improvements, its right, title and interest in "Lessee's Property" [defined to include all machinery, equipment, fixtures and trade fixtures owned or leased by Lessee and used in the Facility or on the Land], and its right, title and interest under this Lease." (Plf. Ex. 1, §§1.01Y & Z).

Under the Lease Agreement:

> All additions, alterations and improvements to the Land made from time to time over the Term, including, without limitation, the Facility, the Improvements and all of Lessee's Property located therein, shall be the property of Lessee and Lessee shall have title to all such additional, alterations and improvements, subject to the provisions of Article XIX herein.

(Plf. Ex. 1, §10.01).

Article XIX of the Lease Agreement, provides, in part:

> At the termination of this Lease or expiration of the Term, Lessee shall surrender possession of the Land to Cargill in good order and in safe condition and repair, except for ordinary wear and tear. Unless otherwise approved by Cargill in writing, Lessee shall have the obligation, as soon as commercially practicable after the expiration or earlier termination of this Lease, to remove any and all Improvements and Lessee's Property or other improvements of any nature and kind from the Land, and provided that the portion of the Land to which such items may have been affixed shall be restored by Lessee to substantially the condition existing on the Effective Date.

(Plf. Ex. 1, §19.01).

Under the Lease Agreement, HFCA had an unrestricted right to "encumber, hypothecate, assign, or mortgage Lessee's Estate to a Secured Creditor…" (Plf. Ex. 1, §23.06). However, the Lease Agreement expressly denied HFCA the authority to permit mechanic's liens to attach to the "Premises," which is defined collectively as the Land, the Facility and the Easement Parcels. (Plf. Ex. 1, §§23.05, 1.01DD). Under the Lease Agreement, Cargill and HFCA expressly disclaimed any partnership, joint venture or association between them. (Plf. Ex. 1, §22.14).

The Lease Agreement references and incorporates six "Ancillary Agreements." The Lease Agreement defined "Ancillary Agreements" as "the Site Security Services Agreement, the Easement Agreements, the Chemical Purchase and Supply Agreement, the Product Supply Agreement (between Cargill and Harris & Ford, LLC), the Process Water Service Agreement, and the Process Waste Water Service Agreement." (Plf. Ex. 1, §1.01(B)). Section 3.02(g) of the Lease Agreement states that a condition precedent to the Lease was that "the parties will have entered into all of the Ancillary Agreements satisfactory to each, in its sole discretion." (Plf. Ex. 1, §3.02(g)). The Lease Agreement provides for termination upon breach of any obligation, breach of any "Ancillary Agreement," or in the event a party becomes insolvent. (Plf. Ex. 1, §20.01). In the event of a default and a successor lessee succeeds HFCA's obligations, the proposed successor is required to have "assumed, paid, and agreed to perform all obligations of Lessee under the Chemical Purchase and Supply Agreement and the Ancillary Agreements…" (Plf. Ex. 1, §23.07(e)). Further, the Lease Agreement may only be assigned to a Secured Creditor in lieu of foreclosure of a Lessee Mortgage if the "…assignee assumes the Lessee's obligations under this Lease (including, without limitation, the payment of all rent and other charges as they

become due and the requirements that any assignment be approved by Cargill, and provided that any assignee assumes and agrees to pay and perform all obligations of Lessee under the Ancillary Agreements)…" (Plf. Ex. 1, §23.07(i)).

The first Ancillary Agreement is the Chemical Purchase and Supply Agreement whereby Cargill agreed to purchase and HFCA agreed to supply a "long-term stable supply of sodium hydroxide and hydrochloric acid for use at its [Cargill's] processing facilities." (Plf. Ex. 3, p.1). Pursuant to the Chemical Purchase and Supply Agreement, Cargill agreed to buy and HFCA agreed to sell sodium hydroxide and hydrochloric acid satisfying an agreed upon specification, at an agreed upon price, in agreed upon quantities for an agreed upon Initial Term of ten years. (Plf. Ex. 3). The Chemical Purchase and Supply Agreement recognizes that Cargill and HFCA are parties to the Lease Agreement and that HFCA leased property from Cargill "in order to construct and operate a facility capable of supplying the Products to Buyer [Cargill]…" (Plf. Ex. 3, p.1). Conditions precedent to the Chemical Purchase and Supply Agreement were "(i) the execution and commencement of the Ancillary Agreements and (ii) Seller's completion of the Chlor-Alkali Facility." (Plf. Ex. 3, Article II.A, p. 1).

Another Ancillary Agreement was the Product Supply Agreement by and between Cargill and Harris & Ford, L.L.C., an affiliate of HFCA. The agreement recognizes that by the Chemical Purchase and Supply Agreement, Cargill contracted with HFCA to purchase sodium hydroxide and hydrochloric acid. (Plf. Ex. 4, p.1). Pursuant to Section 2 of the Product Supply Agreement, Cargill agreed to sell and Harris & Ford, L.L.C. agreed to buy certain quantities of sodium hydroxide and hydrochloric acid at the same price set forth in the Chemical Purchase and Supply Agreement, for an agreed upon Initial Term of ten years. (Plf. Ex. 4). Specifically, Harris &

Ford, L.L.C. agreed to purchase the following quantities of sodium hydroxide and hydrochloric acid from Cargill:

> (a) Caustic that exceeds the actual volume of Caustic required by Cargill's processing facilities as set forth in Exhibit C to the [Chemical Purchase and Supply Agreement]; and
>
> (b) HCl that exceeds the sum of (i) the actual volume of HCl required by Cargill's processing facilities as set forth in Exhibit C to the [Chemical Purchase and Supply Agreement]…

(Plf. Ex. 4, Section 2).

Another Ancillary Agreement was the Process Water Service Agreement whereby Cargill agreed to supply water, an essential ingredient for HFCA's production of hydrochloric acid, caustic soda, and sodium hydroxide, to HFCA. The Process Water Service Agreement was linked to the other agreements entered into between Cargill and HFCA. The Process Water Service Agreement refers to the "Lease," pursuant to which HFCA occupies the land on which the Facility is to be built, to the Chemical Supply Agreement, under which HFCA is required to supply Cargill's Product requirements, as well as to other "Ancillary Agreements." (Plf. Ex. 5, p.1). Pursuant to the Process Water Service Agreement, Cargill agreed to supply and HFCA agreed to purchase "Process Water" at a rate not to exceed 450 gallons per minute and 610,000 gallons per day at a monthly cost of $27,000 and a monthly usage fee ("Usage Fee") of $0.60/1,000 gallons. (Plf. Ex. 5, Section 2, Section 4). Section 2 of the Process Water Service Agreement provides "Cargill acknowledges and agrees that this Agreement is not an exclusive arrangement for the supply of Process Water…" (*Id.*).

Another Ancillary Agreement was the Process Waste Water Treatment Services Agreement, pursuant to which Cargill agreed to treat HFCA's Process Waste Water up to a specified maximum amount, for an agreed upon price. (Plf. Ex. 6). The Process Waste Water

Treatment Services Agreement was linked to the other agreements entered into between Cargill and HFCA. The Process Waste Water Treatment Service Agreement refers to the "Lease," pursuant to which HFCA occupies the land on which the Facility is to be built, to the Chemical Supply Agreement, under which HFCA is required to supply Cargill's Product requirements, as well as to other "Ancillary Agreements." (Plf. Ex. 6, p.1). The Process Waste Water Treatment Services Agreement required HFCA to pay a connection fee of $500 per month and a surcharge if the "Process Waste Water" generated by HFCA exceeded the specified maximum amount. (Plf. Ex. 6, Sections 7, 8).

Another Ancillary Agreement was the Site Security Services Agreement by and between Cargill and HFCA, pursuant to which Cargill agreed to engage a third party supplier to provide security-related services to the Facility. (Plf. Ex. 7, p.1). Under the Site Security Services Agreement, HFCA agreed to reimburse Cargill for its ratable portion of the amounts actually charged to Cargill by the third party supplier for security-related services. (Plf. Ex. 7, Section 2). Pursuant to Section 1 of the Site Security Services Agreement, Cargill represented and warranted that "Supplier is a third-party entity that is not owned, either fully or partially, or directly or indirectly, by Cargill or any affiliate of Cargill." (Plf. Ex. 7, Section 1). In addition, pursuant to Section 1 of the Site Security Services Agreement, HFCA retained the discretion to obtain security services in addition to the services to be provided by the third party supplier Cargill engaged. (*Id.*).

The final Ancillary Agreement is the Easement Agreement, pursuant to which Cargill allowed HFCA additional access to Cargill property. The Easement Agreement does not factor into the Court's analysis and is referenced only for completeness.

In order to finance construction of the Facility, Cargill assisted HFCA in obtaining $80 million in bond financing through the Iowa Finance Authority. (Plf. Ex. 9). As part of the bond financing agreement, U.S. Bank issued a letter of credit guaranteeing payment to the bond trustee, and HFCA agreed to reimburse U.S. Bank for payments made under the letter of credit (Reimbursement Agreement). (Cargill Ex. D (App. 128-209)). Under the Reimbursement Agreement, HFCA covenanted to U.S. Bank that it would execute and deliver a Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the Leasehold Mortgage). (Cargill Ex. D, §5.8 (App. 157)). Pursuant to the Leasehold Mortgage, HFCA granted a first priority leasehold mortgage lien and security interest to U.S. Bank, encumbering, among other things, all of HFCA's right, title and interest to the Leasehold and the Facility. (Plf. Ex. 10, §1.1).[5] Relatedly, a condition precedent to U.S. Bank's obligation to issue the letter of credit guaranteeing payment to the bond trustee was that Cargill agree to purchase the rights and obligations of U.S. Bank under the Reimbursement Agreement if HFCA defaulted (Put Agreement). (Cargill Ex. D §3.1(a) (App. 146); Cargill Ex. E (App. 210-222)). HFCA also obtained at least $40 million in financing from Cargill Financial Services International ("CFSI"), a subsidiary of Cargill, which HFCA was obligated to repay with interest (Prepayment Agreement). (Plf. Ex. 9).

To construct the Facility, HFCA entered into a contract with Carl A. Nelson & Company ("Nelson & Company") and a contract with Conve & AVS, Inc. ("Conve"), to provide general contracting services for constructing the Facility (collectively the "General Contractor Defendants"). (Winger Petition ¶¶ 8-12). The following entities each entered into contracts with one or more of the General Contractor Defendants, under which each was to serve as a

[5] The Leasehold Mortgage was duly recorded with the Monroe County, Iowa Recorder on August 29, 2013, in Book 2013, Page 1283. (Plf. Ex. 10, page 1 ("Recorder's Cover Sheet")).

subcontractor for the purpose of constructing the Facility: Winger Contracting Company; Southland Process Group, LLC; Lemartec Corporation; FPControl.com. LLC; American Piping Group, Inc.; Tri-County, Inc.; Tri-City Electric Company of Iowa; TAI Specialty Construction, Inc.; Schaus-Vorhies Contracting, Inc.; Prime Construction Services, LLC; Ameritrack Railroad Contractors, Inc.; Gethmann Construction Company, Inc.; Tracer Construction LLC; Lunt Reliability Service, LLC; Tarsco Bolted Tank Inc.; Peterson Contractors, Inc.; Brace Integrated Services, Inc.; Miller Insulation Co., Inc.; Star Equipment, Ltd.; HR Green Inc.; and Jeff Boitnott Enterprises, Inc. (collectively, the "Subcontractor Parties" and together with the General Contractor Defendants, the "Mechanics Lienholders"). None of the Mechanics Lienholders entered into any contract with Cargill regarding the construction of the Facility or other improvements to the Land.

Construction of the Facility did not go as planned, and the Mechanics Lienholders were not paid in full for the work in constructing the Facility. While the parties to those contracts dispute who is to blame for the construction problems and the failed contracts, those issues are not relevant to the current summary judgment filings concerning priority of liens. The Mechanics Lienholders have each filed mechanic's liens based on their work on the Facility, and each seeks to foreclose their mechanic's lien against Cargill's fee interest in the real property on which the Facility sits. The Mechanics Lienholders filed their mechanic's liens based on their work on the Facility in 2015 and early 2016. Monroe County Case No. EQEQ009184 was filed on September 8, 2015. Monroe County Case No. EQEQ009228 was filed on May 12, 2016.

On July 15, 2016, U.S. Bank declared default under the Reimbursement Agreement, [6] causing the bond trustee to declare the total amount under the bond financing, $80,051,125.68, due immediately. U.S. Bank paid off the bonds pursuant to the letter of credit. On July 21, 2016, U.S. Bank exercised the Put Agreement and Cargill paid to U.S. Bank the amount of $81,447,000.12 under the Put Agreement on July 22, 2016. (Cargill Ex. F (Recitals) (App. 223)). On July 25, 2016, U.S. Bank assigned and transferred to Cargill all of its right, title and interest in and to, among other things, the Leasehold Mortgage (Assignment of Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing). (Cargill Ex. F, §2 (App. 223)). The Assignment of Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing was duly recorded with the Monroe County, Iowa Recorder on July 28, 2016 in Book 2016, Page 979. (Cargill Ex. G, p.1 Recorder's Cover Sheet (App. 227)).

On September 12, 2016 the Court entered a Case Management Order recognizing that:

> 3. Early Adjudication: The parties agreed and the court concurs that an early determination of the priority of the lienholders Iowa Code Chapter 572 mechanics liens in relation to any claimed mortgage or security interest held by Cargill, Inc. is a core threshold issue and should be adjudicated as soon as practical.

In furtherance of this goal, the Court directed the parties to use the following procedure to bring the issue before the Court:

> (c) Motion for Partial Summary Judgment: By February 15, 2017, counsel for Winger and Tracer, in consultation with counsel for all lienholders will prepare and move for partial summary judgment on the issue of the priority of the parties mechanics liens in relation to the collateral held by Cargill as described above. Notwithstanding the above, each party may, at is option, file a separate motion for summary judgment

[6] On March 1, 2016, HFCA failed to make a bond interest payment. Under the letter of credit, U.S. Bank made the bond interest payment, but HFCA did not reimburse U.S. Bank. HFCA also failed to pay quarterly fees to U.S. Bank in March 2016 and June 2016.

On February 8, 2017, Winger[7] filed a Motion for Partial Summary Judgment, seeking a judgment from the Court that the general contractor and subcontractor mechanic's liens attached to Cargill's fee interest in its real property and such liens were also superior to Cargill's mortgage liens in the improvements on the real property. On February 24, 2017, Lemartec joined Winger's Motion for Partial Summary Judgment and further moved for partial summary judgment on the basis that Lemartec commenced work on the project before the U.S. Bank construction mortgage lien (which was subsequently assigned to Cargill) was filed.

On March 15, 2017, Cargill filed its joint Resistance to Winger's and Lemartec's Motions for Partial Summary Judgment, introducing for the first time in the briefing revisions to the mechanic's lien statutes contained in Iowa Code Chapter 572. On March 28, 2017, Tracer Construction, LLC filed a Reply to Cargill's Resistance, raising arguments in response to Cargill's discussion of the revised statutes in Cargill's Resistance.[8] On March 29, 2017, Winger filed a Reply to Cargill's Resistance, raising new arguments in response to Cargill's discussion of the revised statutes in Cargill's Resistance. On April 10, 2017, Lemartec filed a Resistance to Cargill's Cross-Motion for Summary Judgment and Reply Brief in Support of its Motion for Partial Summary Judgment, introducing for the first time in the briefing 21 additional statements of fact and the legal issue concerning whether its work (through its subcontractor, Peterson Contractors, Inc.) performed directly on the land entitles Lemartec to a lien on Cargill's fee interest. On April 11, 2017, Cargill filed a Sur-Reply to Lemartec's Reply Brief raising arguments in response to Lemartec's newly introduced facts and legal issue.

[7] Winger's Motion for Partial Summary Judgment was joined, with no additional argument or authority, by: Tracer Construction, LLC; Carl A. Nelson & Company; Gethmann Construction Company, Inc.; Peterson Contractors, Inc.; Tri-City Electric Company; Tai Specialty Construction, Inc.; American Piping Group; Ameritrack Rail; Miller Insulation Company, Inc.

[8] Tracer's Reply Brief was joined, with no additional argument or authority, by: Carl A. Nelson & Company; Gethmann Construction Co.; and Peterson Contractors, Inc.

Applicable Law and Analysis

I. Summary Judgment Standard

A motion for summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3) (2015). The moving party carries the burden of proving the absence of a fact issue. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002) (citations omitted). "If reasonable minds could differ on how to resolve an issue, then a genuine issue of material fact exists." *Id.* However, speculation and mere allegations are not material facts. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95-96 (Iowa 2005) (citations omitted).

In ruling on a motion for summary judgment, the court must look at the facts in a light most favorable to the nonmoving party. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record. *Id.* "An inference is legitimate if it is 'rational, reasonable, and otherwise permissible under the governing substantive law.'" *Smith v. Shagnasty's Inc.*, 688 N.W.2d 67, 71 (Iowa 2004) (quoting *McIlravy*, 653 N.W.2d at 328). But an inference based on "speculation or conjecture" is not to be indulged. *Id.*

If summary judgment cannot be granted with regard to the entire action, the Court may grant partial summary judgment on the material facts that "exist without substantial controversy and [determine] what material facts are actually and in good faith controverted." Iowa R. Civ. P. 1.981(4). The court will deem these material facts that are not controverted as established at trial. *Id.*

II. Analysis

Before the Court are the following issues: (1) whether any of the Mechanics Lienholders' mechanic's liens attach to Cargill's fee interest in the real property identified in the mechanic's liens, and (2) the priority of liens between Cargill's Leasehold Mortgage and the Mechanics Lienholders' liens in HFCA's Leasehold Interest in the land and its ownership interest in the Facility and Improvements as a result of Cargill receiving an assignment of the Leasehold Mortgage from U.S. Bank. Before addressing these issues in turn, the Court will briefly define the interests held by Cargill and HFCA.

A. Interests held by Cargill and HFCA

Cargill owns the fee interest to the real property upon which the Facility was constructed. Cargill entered into a Lease Agreement with HFCA whereby Cargill gave HFCA a contractual right to possess the real property for a period of fifty years, giving HFCA a leasehold interest in the real property. The leasehold interest is "an estate carved out of the fee-simple title." *Queal Lumber Co. v. Lipman*, 200 Iowa 1376, 206 N.W. 627, 628 (1925). When a lessee enters into a contract for improvements, "[i]t is too elementary to need discussion that the lien claimants cannot acquire a greater interest in the real estate than that held by the lessee." *Id.*

Under the Lease Agreement, HFCA owns the Facility, defined to include "all buildings, fixtures, structures, improvements, machinery, equipment and other tangible personal property purchased or constructed by Lessee." (Plf. Ex. 1, §1.01S).The Lease Agreement expressly provided that any additions, alterations, and improvements are the property of HFCA, such that HFCA would have title to such additions, alterations, and improvements. (Plf. Ex. 1, §10.01).

Upon termination, the Lease requires HFCA to remove any and all Improvements and Lessee's Property. (Plf. Ex. 1, §19.01)

Thus, under the terms of the Lease Agreement, Cargill owns the real property in fee, HFCA has a leasehold interest in the real property for a period of fifty years, and HFCA has all title and ownership of the Facility.

B. Whether the Mechanic's Liens Attach to Cargill's Fee Interest in the Land

A mechanic's lien is a creature of statute; its availability is driven by the doctrines of restitution and prevention of unjust enrichment. *Carson v. Roediger*, 513 N.W.2d 713, 715 (Iowa 1994). "It is true that mechanic's liens stem from principles of equity which require paying for work done or materials delivered. But the lien itself is purely statutory in nature, dependent solely on statutory authority for its existence." *Baumhoefener Nursery, Inc. v. A & D P'ship, II*, 618 N.W.2d 363, 366 (Iowa 2000) (internal citations and marks omitted). "The law governing mechanic's liens is rooted in statute, for the common law provided no such protection for persons who improve real property." *Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 708-12 (Iowa 1985). Iowa Code Chapter 572 governs mechanic's liens. Iowa Code section 572.2 defines who is entitled to a mechanic's lien, and to what property that mechanic's lien may attach. *See* IOWA CODE § 572.2 (2017). When interpreting a statute, the Court's "primary goal is to ascertain the legislature's intent." *State v. Pub. Employ't Relations Bd.*, 744 N.W.2d 357, 360-61 (Iowa 2008). The starting place is the language of the statute. "If the statutory language is plain and the meaning clear, [the Court does] not search for legislative intent beyond the express terms of the statute." *Pub. Employ't Relations Bd.*, 744 N.W.2d at 360-61 (quoting *Horsman v. Wahl*, 551 N.W.2d 619, 620-21 (Iowa 1996)).

Iowa Code section 572.2(1) provides:

> Every person who furnishes any material or labor for, or performs any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of internal or external improvement, and those engaged in grading, sodding, installing nursery stock, landscaping, sidewalk building, fencing on any land or lot, by virtue of any contract with the owner, owner-builder, general contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated or upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired, to secure payment for the material or labor furnished or labor performed.

IOWA CODE § 572.2(1) (2017).

An "owner" under Iowa Code Chapter 572 is defined as "the legal or equitable titleholder of record." IOWA CODE § 572.1(8) (2017). "On many occasions the Iowa Supreme Court has refused to enforce a mechanic's lien when the contractor has performed work pursuant to an express contract with someone other than the owner of the property." *Giese Const. Co., Inc. v. Randa*, 524 N.W.2d 427, 430 (Iowa Ct. App. 1994) (citations omitted).

Pursuant to the recorded Lease Agreement, HFCA is the titleholder of record to the Facility, and Cargill is the titleholder of record for the land on which the Facility is situated. The Mechanics Lienholders entered into contracts with either HFCA, the lessee in the real property on which the Facility is situated for a period of fifty years and owner of the Facility (which includes the building and related improvements), or with Nelson & Company and/or Conve, the general contractors for the Facility, to provide material and/or labor to construct the Facility. The Mechanics Lienholders did not enter into any contracts with Cargill. Under the plain language of Iowa Code section 572.2(1), the parties agree that the Mechanics Lienholders' liens attach to the Facility itself.[9] The issue before the Court is whether the Mechanics Lienholders' liens also attach to the land on which the building is situated, i.e., Cargill's fee interest in the land.

[9] Whether Cargill's Leasehold Mortgage takes priority over the Mechanics Lienholders liens is a different question from whether the mechanic's liens attach to the Leasehold Interest and to the Facility.

Winger contends the Mechanic's Liens attach to Cargill's fee interest in the land by virtue of the Mechanics Lienholders entering into contracts with Cargill's alleged agent, HFCA. To support this contention, Winger cites to *Dennison & Partridge v. Romp*, 244 Iowa 204, 56 N.W.2d 601 (1953) and *Stroh Corp. v. K & S Dev. Corp.*, 247 N.W.2d 750 (Iowa 1976). The Court finds Winger's reliance on *Romp* and *Stroh* unpersuasive. The analysis in *Romp* and *Stroh* relied upon provisions of Iowa Code Chapter 572 that were subsequently revised in 2007 and in 2012. Furthermore, the present case is factually distinguishable from *Romp* and *Stroh*. Accordingly, even if the principles enunciated in *Romp* and *Stroh* survived the subsequent revisions to Iowa Code Chapter 572, the Court is unable to reach the conclusion that Cargill made HFCA its agent for the erection of the Facility or that the factors to be considered under *Romp* and *Stroh* point to the conclusion that the Mechanics Lienholders should be entitled to a lien on the fee.

Alternatively, Winger alleges the Mechanics Lienholders' liens attach to Cargill's fee interest because Cargill was a joint-venture partner with HFCA. For reasons set forth below, the Court also finds this argument unpersuasive. The Court will address the amendments to Iowa Code Chapter 572, the implied agency principles enunciated in *Romp* and *Stroh*, and the parties' arguments relating to joint venture in turn.

i. Amendments to Iowa Code Chapter 572

Prior to 2007, Iowa Code section 572.1(1) provided: "Every person who shall furnish any material or labor for…any building or land for improvement, alteration, or repair thereof,…by virtue of any contract with the owner, *the owner's agent, trustee*, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated…" IOWA CODE § 572.1(1) (2005) (emphasis added). In 2007, reference to

the phrase "owner's agent or trustee" was removed from Iowa Code section 572.2(1). 2007 Ia. Legis. Serv. Ch. 83, H.F. 774 § 3. The deletion of the phrase "owner's agent or trustee" was intentional, as revealed in the numerous other provisions that were similarly amended to remove reference to an agent or trustee. *See* 2007 Ia. Legis. Serv. Ch. 83, H.F. 774, § 2 (amending Iowa Code § 572.1(5) (removing the phrase "the owner's agent, or trustee" from the definition of "subcontractor"); § 4, amending Iowa Code § 572.8; § 6, amending Iowa Code § 572.10; and § 17, amending Iowa Code § 572.28).

Similarly, the legislature has revised the definition of term "owner" in Iowa Code chapter 572. Prior to 2007, the term "owner" was defined as: "every person for whose use or benefit any building, erection, or other improvement is made, having the capacity to contract, including guardians." IOWA CODE § 572.1(3) (2005). In 2007, the definition of "owner" was amended to include the record titleholder, retaining the definition that included "every person for whose benefit any building, erection, or other improvements is made…" 2007 Ia. Legis. Serv. Ch. 83, H.F. 774, § 2. However, the definition was again changed in 2012, effective January 1, 2013, eliminating the explanatory phrase about benefited persons, and leaving "owner" to be defined simply as: "the legal or equitable titleholder of record." IOWA CODE § 572.1(8) (2017); *see* 2012 Ia. Legis. Serv. Ch. 1105, H.F. 675, § 2. The explanatory phrase about benefitted persons was "intended to extend the definition of the term 'owner' so as to include persons who would not ordinarily be held to come within its meaning." *Jones v. Osborn*, 108 Iowa 409, 79 N.W. 143, 144 (1899); *Schoeneman Lumber Co. v. Davis*, 200 Iowa 873, 205 N.W. 502, 502 (1925).

"In interpreting statutes, [Iowa Courts] strive to give meaning to statutory changes the legislature has enacted. When an amendment to a statute adds or deletes words, a change in the law will be presumed unless the remaining language amounts to the same thing. When

interpreting amendments, [Iowa Courts] will assume the amendment sought to accomplish some purpose and was not a futile exercise." *Davis v. State*, 682 N.W.2d 58, 61 (Iowa 2004) (internal citations omitted); *see also State v. Spoonmore*, 598 N.W.2d 311, 311-12 (Iowa 1999) (recognizing deletion of phrase had meaning); *Louie's Floor Covering, Inc. v. DePhillips Interests, Ltd.*, 378 N.W.2d 923, 924-25 (Iowa 1985) (discussing changes to Chapter 572 and declining to apply prior caselaw that conflicted with the plain language of the amended statutes).

Further, "the legislature is presumed to know prior judicial construction of statutory terms and an amendment substituting a new term or phrase for the one previously construed indicates that the former construction did not correspond with legislative intent…" *State v. Phelps*, 417 N.W.2d 460, 462 (Iowa 1988). "Any material change in language of an original statute is presumed to indicate a change in legal rights." *Id.* (citing *State ex. Rel. Palmer v. Board of Supervisors*, 365 N.W.2d 35, 37 (Iowa 1985).

The parties dispute the import of the revisions to Iowa Code Chapter 572. Cargill asserts the 2007 amendment to Iowa Code section 572.2(1) eliminated an owner's agent from the list of persons whose contracts with a material or labor provider can subject the owner's property to a mechanic's lien. Winger asserts the 2007 amendment to Iowa Code section 572.2(1) eliminated an owner's agent from the list of persons against whom a mechanic's lien may be filed. Winger urges the Court to consider the Explanation included with the "Introduced" version of the bill that ultimately resulted in the 2007 amendment to Iowa Code section 572.2(1).[10] The explanation

[10] The Iowa Legislature maintains no record of floor debates as does the U.S. Congress. Absent something similar to the Congressional Record, in interpreting amendments to statutes, Iowa courts have referred to the "Explanation" found on the introduced bill. *Homan v. Branstad*, 887 N.W.2d 153, 169 (Iowa 2016) ("The explanation in the bill in which the 1951 act was derived from included the following: "This bill is suggested by the Board of Control. It is felt that the change in the official names of the state insane hospitals would be helpful to the mental welfare of the patients therein." H.F. 592, 54th GA, explanation (Iowa 1951).").However, it is worth noting that the original explanation does not change as the bill is amended in either the House or Senate. It should also be noted that since 2014 the Iowa legislature has taken to adding a disclaimer under the "Explanation" contained in House and Senate

of the bill from which the 2007 amendment to Iowa Code section 572.2(1) was derived (Explanation) included the following:

> This bill relates to a mechanic's lien. The bill eliminates owner agents and trustees from the list of persons against whom a mechanic's lien may be filed. Current law allows the owner, owner's agent, or trustee of the property to be charged with a mechanic's lien on property affected by the construction or improvements by a contractor or subcontractor.

H.F. 774, 82nd G.A., explanation (Iowa 2007).

The Explanation, however, makes little sense in the context of mechanic's liens. Mechanic's liens are charged against property, not against persons or entities. *See, e.g.,* IOWA CODE § 572.2(1) (2015) (providing that a person who provides certain materials or labor "by virtue of any contract with the owner, owner-builder, contractor, or subcontractor *shall have a lien upon such building or improvement*, *and land* belonging to the owner on which the same is situated") (emphasis added); IOWA CODE § 572.8(1) (2015) ("A person shall perfect a mechanic's lien by posting to the mechanics' notice and lien registry internet site a verified statement…setting forth [*inter alia*]:…(b) The legal description that adequately describes *the property to be charged with the lien*.") (emphasis added); *W.P. Barber Lumber Co. v. Celania*, 674 N.W.2d 62, 64-65 (Iowa 2003) ("The mechanic's lien only attaches to the real property on which the benefit was conferred, even though the action is not pleaded against the property, i.e., it is not styled *in rem*…When we remarked in *Redman* and *Society Linnea* that an action to enforce a mechanic's lien is not an action *in rem*, we were simply pointing out a plaintiff may not file an action against the property absent a showing of an agreement with an owner, or one who at that time had an estate or interest in the land.") (internal quotations and citations omitted).

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bills, which states: "The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly."

The list of "owner, owner-builder, contractor, or subcontractor"—which no longer includes the owner's agent—provides the necessary contractual relationship giving rise to the mechanic's lien.[11] But the lien is "upon" or "charged against" the building or improvement for which the material or labor were provided "by virtue of a contract" with the owner. IOWA CODE § 572.8(1) (2015); *Celania*, 674 N.W.2d at 64-65. The lien extends to the land on which the building or improvement is situated, but only if the land "belong[s] to the owner." IOWA CODE §§ 572.2(1), 572.5 (2017). [12] Changing the list of people with whom a contractual relationship is required has no effect on who is charged with the mechanic's lien because the lien is charged against the property, not the person. Because a mechanic's lien is a claim against the real property on which the benefit was conferred, Winger's interpretation of the 2007 amendment removing the phrase "owner's agent" from Iowa Code section 572.2(1) would mean the amendment served no meaningful purpose. *Davis v. State*, 682 N.W.2d 58, 61 (Iowa 2004) ("When interpreting amendments, [Iowa courts] will assume that the amendment sought to accomplish some purpose and was not a futile exercise.") (citations omitted); *Celania*, 674 N.W.2d at 65 (a judgment of foreclosure on a mechanic's lien is not a personal judgment and does not result in personal

[11] "Trustee" was also deleted from this list by HF774. However, HF774 also amended the definition of "owner" to include "the record titleholder." Thus, a contract with a trustee provides the necessary contractual relationship giving rise to the mechanic's lien because the trustee holds record title to all real property held in trust.

[12] The phrase "belonging to the owner" must be given meaning. IOWA CODE § 4.4(2) (2017) ("The entire statute is intended to be effective."). Further, in other sections of Chapter 572, a lien attaches without this limiting language. *See, e.g.,* IOWA CODE § 572.7 (2017) (providing for lien on land which internal improvements are made without limiting to land "belonging to the owner"). The disparate inclusion of language in one section of an Act and exclusion from another is purposeful and intentional. *See Russello v. United States*, 464 U.S. 16, 23 (1983). Winger's reliance (Winger Br. p. 30) on Iowa Code section 572.5 to support its contention that the Mechanics Lienholders' liens attach to Cargill's fee interest is unpersuasive. Section 572.2 determines the property to which the lien attaches. Pursuant to section 572.2, the lien attaches to the building or improvement for which the material and labor were provided, and the lien also attaches to the fee interest in the land, but only if there is a contract with the owner of the improvement and the land belongs to the improvement owner. IOWA CODE § 572.2(1) (2017). Section 572.5 does not change this analysis. Rather, section 572.5 merely provides that if a mechanic's lien attaches to the land on which the building sits under section 572.2(1), then that lien extends to the entire land. *See* IOWA CODE § 572.5 (2017).

liability against the owner of the property in question; the mechanic's lien only attaches to the real property).

Furthermore, resort to rules of statutory construction, including the legislative history, is only proper when the statute is ambiguous. *See* IOWA CODE § 4.6 (2017) ("*If a statute is ambiguous*, the court in determining the intention of the legislature, may consider among other matters" a list of considerations, including legislative history (emphasis added)). "If the statutory language is plain and the meaning clear, [the Court does] not search for legislative intent beyond the express terms of the statute." *State v. Pub. Employ't Relations Bd.*, 744 N.W.2d 357, 360-61 (Iowa 2008); *cf Milner v. Department of Navy*, 562 U.S. 562, 572 (2011) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text. We will not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language."). The Mechanics Lienholders did not enter into any contracts with Cargill, the owner of the land. The Mechanics Lienholders each had a contract with HFCA (or with HFCA's general contractors), the "owner" of the Facility. A plain reading of Iowa Code section 572.2(1) reveals that by virtue of those contracts, the Mechanics Lienholders have a lien on the Facility; however, the land on which the Facility is situated does not belong to HFCA, so those liens do not attach to the land.

In reaching this conclusion, the Court has considered Winger's assertion that this interpretation of Iowa Code section 572.2(1) is untenable under *Painters & Allied Trades Local Union v. City of Des Moines*, 451 N.W.2d 825 (Iowa 1990). The Court finds this argument unavailing because *Painters* simply stands for the proposition that a statute is to be construed based on the words actually used, not the words a legislature might have used. *See Painters*, 451 N.W.2d at 826. *Painters* does not address the situation of a legislative change that expressly

deletes language; nor does it supersede cases dealing with that specific situation, which hold that when the legislature amends a statute by deleting words, there is a presumption that the legislature intended a change in the law. *See Davis*, 682 N.W.2d at 61.

Furthermore, Winger's assertion that this interpretation of Iowa Code section 572.2(1) would preclude mechanic's liens from attaching to one-third of the property in Iowa misconstrues the changes made by the legislature. If a corporation wants to construct a building on its land, it enters into a contract with a builder. That the corporation's principal signs the contract as the corporation's agent does not make the contract any less a contract with the owner, the corporate principal. Agency principles apply to bind the corporation to the contract made in its name and on its behalf. But that is not what is at issue in the present case. The Mechanics Lienholders did not enter into contracts naming Cargill as a contracting party, with HFCA merely signing as Cargill's agent. The Mechanics Lienholders entered into contracts with HFCA or HFCA's general contractors. There is no dispute the contracts are with HFCA, not with Cargill. Reliance on a contract with Cargill's alleged agent, HFCA, is no longer sufficient to give rise to a mechanic's lien under the plain language of Iowa Code section 572.2(1). Pursuant to Iowa Code section 572.2, there must be a contract with the owner before the lienholder's lien attaches to the land belonging to the owner upon which the building sits. IOWA CODE § 572.2(1) (2017).

This conclusion is bolstered by the legislature's 2013 revision to the definition of the term "owner" under Iowa Code chapter 572. Prior to 2013, the definition of "owner" included "every person for whose benefit any building, erection, or other improvements is made…" IOWA CODE § 572.1(4) (2011). Effective January 1, 2013, "owner" was revised to simply mean "the legal or equitable titleholder of record." IOWA CODE § 572.1(8) (2017); *see* 2012 Ia. Legis. Serv. Ch. 1105, H.F. 675, § 2. The evolution of "owner" from being more of a concept to being a defined

term with a precise meaning is consistent with the legislature implementing the mechanic's lien registry and the focus on notice and certainty.

In its separate Reply Brief, Tracer argues that use of the word "equitable" in the new definition of "owner" means equitable principles still apply. "It is true that mechanic's liens stem from principles of equity which require paying for work done or materials delivered. But the lien itself is purely statutory in nature, dependent solely on statutory authority for its existence." *Baumhoefener Nursery, Inc. v. A & D P'ship, II*, 618 N.W.2d 363, 366 (Iowa 2000) (internal citations, quotations, and brackets omitted). Tracer's argument overlooks the context in which the word "equitable" is used. "Owner" is now defined as "the legal or *equitable titleholder* of record." IOWA CODE § 572.1(8) (2017) (emphasis added). An equitable titleholder would include a vendee purchasing property on contract, where the legal title remains in the vendor, but the equitable title vests in the vendee. *See, e.g., Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 708-12 (Iowa 1985) (addressing property sold on contract). The requirement that an "owner" is a titleholder of "record" focuses on certainty and notice—limiting ownership to what is contained in the record of the property. *See id.* at 712 (rejecting claim of implied contract where contractors were on constructive notice from recorded documents that the contracting party did not own the property). This is consistent with the legislature prescribing a precise definition to the term "owner" upon implementing the mechanic's lien registry. *See* 2012 Ia. Legis. Serv. Ch. 1105, H.F. 675, §§ 2, 25.

The legislature's amendments to Chapter 572 to remove reference to an "owner's agent" and prescribe a precise definition of "owner" bring certainty to Chapter 572. Mechanics are on notice of what property to which their lien will attach and can protect themselves through contract. A recorded deed puts contractors on notice of the owner of property, so the contractor knows

whether he is contracting with an owner for purposes of protecting himself. *See Clemens*, 368 N.W.2d at 710 ("The recorded deed, however, gave these contractors all the notice that the law requires. It put them on constructive notice that Guzeman no longer had such a beneficial interest of record as would support a mechanic's lien against the property."). In the same way, a recorded lease puts contractors on notice of the lessor's interests and the lessee's interests in the relevant property.

The revisions to Iowa Code chapter 572 are significant because the cases cited by Winger—*Romp* and *Stroh*—relied upon an agency relationship between the lessor and lessee to satisfy the requirement that there be a contract with the "owner, [or] the owner's agent" before a mechanic's lien could attach to the lessor's interest in the land on which the improvements were made or the building constructed. The cases cited by Winger also relied upon the definition of "owner" which included every person for whose use or benefit any building, erection, or other improvement is made.

As outlined above, it is no longer sufficient to show a contract with the owner's agent; there must be a contract with the owner before the lienholder's lien attaches to the land belonging to the owner upon which the building sits. IOWA CODE § 572.2(1) (2017). In addition, the owner is clearly limited to the titleholder of record. IOWA CODE § 572.1(8) (2017). Accordingly, the subsequent revisions to Iowa Code chapter 572 supersede a mechanic's lien attaching to a lessor's fee interest under the agency principles enunciated in *Romp* and *Stroh*. "If statutory authority has preempted a right provided by case precedent, the common law must give way." *Rieff v. Evans*, 630 N.W.2d 278, 285 (Iowa 2001); *Louie's Floor Covering*, 378 N.W.2d at 924-25 (discussing changes to Chapter 572 and declining to apply prior caselaw that conflicted with the plain language of the amended statutes). Because the Mechanics Lienholders did not enter

into any contracts with Cargill, the owner of the land, the Mechanic's Lienholders have a lien on the Facility, but those liens do not attach to Cargill's fee interest.

ii. Agency Principles Under *Romp* and *Stroh*

Although the amendments to Iowa Code chapter 572 are dispositive as to whether the Mechanics Lienholders' liens attach to Cargill's fee interest, the Court also concludes that an analysis of the case law governing whether a lessee is acting as an agent of a lessor within contemplation of the mechanic's lien statute does not lead to a different result.

"It is settled that mere knowledge of or consent to the making of improvements by a lessee or vendee does not ordinarily subject the interest of the lessor or vendor to a mechanic's lien." *Romp*, 56 N.W.2d at 603. "A mechanic's lien claimant must prove either an express or implied contract with or on behalf of the lessor or vendor in order to claim a lien against the lessor's realty." *A & W Elec. Contractors, Inc. v. Petry*, 576 N.W.2d 112, 114 (Iowa 1998). If the lien claimant establishes an express or implied agreement whereby the lessee is contractually bound to improve the lessor's property, the lien claimant must ordinarily further establish that:

> (1) such improvements made will become the property of the lessor in a comparatively short time, (2) the additions or alterations were in fact substantial, permanent and beneficial to the realty and were so contemplated by the parties to the lease agreement, and (3) that the rental payments reflected the increased value of the property as a result of those improvements.

Ringland-Johnson-Crowley Co. v. First Central Service Corp., 255 N.W.2d 149, 152 (Iowa 1977); *see also Knudson v. Bland*, 253 Iowa 614, 618, 113 N.W.2d 242, 244 (1962); *Romp*, 56 N.W.2d at 604; *Stroh*, 247 N.W.2d at 752; *Cassaday v. DeJarnette*, 251 Iowa 391, 396-97, 101 N.W.2d 21, 25 (1960) (the "desire to do equity should not be extended unduly, for the creditor also is required to act reasonably. To raise such implications the better rule would require claimant to show by a preponderance of the evidence that the additions or alterations were in fact

substantial, permanent and beneficial to the realty, and were so contemplated by the parties to the agreement.").

While the Court is of the opinion that the Lease Agreement and Ancillary Agreements between Cargill and HFCA required HFCA to erect improvements on the leased real estate, the Court cannot reach the conclusion that Cargill thereby made HFCA its agent for the erection of the improvements or that the improvements were made for the benefit of Cargill under *Romp* and *Stroh*.

In *Romp*, the principle case relied upon by Winger, the lessor leased land to the lessees, who were required to construct a building for the purpose of growing mushrooms. *Romp*, 56 N.W.2d at 605. The lessees constructed the necessary building with financing procured from the lessor. *Id.* at 602. Simultaneous with the execution of the lease, the lessees mortgaged the buildings on the real estate to the lessor as security for her financing. *Id.* at 603. The lease was for five years with a provision for a possible extension. *Id.* at 605. "At the end of that time the lease ended with no provision for removal of the improvements." *Id.* The amount of rent contemplated a value greater than the land without the building. *Id.* In the event of default, the lease required the lessees to quit and surrender and gave the lessor the right to forfeit the lease and all rights of the lessees. *Id.* The lessees defaulted and were required to surrender and forfeit their rights under the lease. *Id.* Prior to default, the lessees entered into agreements with a materialman to "furnish material for the buildings which were considered necessary for the proper raising of mushrooms." *Id.* at 601. The materialman provided materials to the lessees for the buildings necessary to raise the mushrooms, until the lessees were so indebted that the materialman refused to deliver further material. *Id.* at 602. The materialman filed a lien claim and sought foreclosure.

The *Romp* Court found that under these facts, the lessor "made her lessees agents for the construction of the buildings to the extent that her interest in the realty became subject to the plaintiff's claim for mechanic's lien." *Id.* at 606. The *Romp* Court rejected the lessor's argument that she had no contract with the materialman based on the language of Iowa Code section 572.2 (1950), requiring a contract with the owner "or his agent." "The terms of Code section 572.2, supra, are sufficiently met if the contract is made with an agent of the owner, and one who by contract express or implied, oral or written, requires his lessee to improve the realty during the term of the lease will generally constitute such lessee his agent for the purpose of procuring material and labor, within the meaning of the statute." *Romp*, 56 N.W.2d at 606. The *Romp* Court also relied upon the definition of "owner" contained in Iowa Code section 572.1 (1950), which included every person for whose use or benefit any building, erection, or other improvement is made. "She [lessor] was an 'owner,' within the terms of the statutory definition set out above; the improvements, in view of her contract with Romp and Nigro [lessees] and her ownership of the realty upon which they were located, were for her benefit." *Id.* The *Romp* Court held that mere knowledge of or consent to the making of improvements by a lessee does not ordinarily subject the interest of the lessor to a mechanic's lien, but that if the lessor has by agreement, express or implied, contracted with the lessee for the improvement of his real estate, he should be held to have subjected his interest to the mechanic's lien claim for the reasonable value of the material or labor furnished, particularly where the lease is so drawn that buildings erected become the property of the lessor after a comparatively short term, or where the improvement is such as to increase materially the amount of the stipulated rent. *Id.* Certainly the improvements here did not become the property of Cargill in a comparatively short time. In fact, per the Lease Agreement,

they never became the property of Cargill. Moreover, it cannot be argued that rent of $12,000 per year reflected the increased value of the property as a result of the improvements.

In *Southern Surety Co. v. York Tire Service*, 209 Iowa 104, 227 N.W. 606 (1929),[13] the Supreme Court of Iowa ruled that no lien attached to the landlord's fee interest under the mechanic's lien statute under analogous facts. In *York Tire*, the defendant owner and his wife leased property to the tenant, with provisions in the lease agreement that the tenant would erect a building upon the property and that the tenant "should have a right to remove said building or buildings from said premises at the expiration of the lease, and should remove the same if notified by the owner or landlord so to do." *Id.* at 606. The tenant entered into a written contract with the plaintiff contractor for the erection of a building on the lot. *Id.* After work had progressed, the tenant breached his contract by failing to make payments to the contractor, and the contractor filed a mechanic's lien upon the property. *Id.* The *York Tire* Court determined that the real estate was not subject to the lien because the owner of the lot was not an "owner" under the terms of the mechanic's lien statute. Specifically, the *York Tire* Court determined that the building erected on the property was not for the "use or benefit" of the owner because the building was to be removed by the tenant at the end of the lease term. *Id.* at 607. The *York Tire* Court held "[t]he contract, as stated, provides that, at the expiration of the lease, the lessee was to remove the building. Under these circumstances, it cannot be said that the building was for the benefit of Blowers [the owner]." *Id.* at 607. The *York Tire* Court reasoned that "[t]o charge the land in such a case would be equivalent to saying that a landowner may not consent to the erection of an improvement on the leased premises without rendering them liable to the payment of the cost incurred. Such, of course, is not the law." *Id.* at 607 (quoting *Oregon Lumber Co. v. Beckleen*, 130 Iowa 42, 106 N.W. 260 (1906)).

[13] A case not cited by the parties.

Here, the Lease Agreement between Cargill and HFCA requires HFCA to remove the Facility and any and all improvements from the property at the end of the fifty-year lease, unless otherwise approved by Cargill. (Plf. Ex. 1, §9.01) ("Unless otherwise approved by Cargill in writing, Lessee shall have the obligation, as soon as commercially practicable after the expiration or earlier termination of this Lease, to remove any and all Improvements and Lessee's Property or other improvements of any nature and kind from the Land, and provided that the portion of the Land to which such items may have been affixes shall be restored by Lessee to substantially the condition existing on the Effective Date."). The Lease Agreement provides further that the Facility and all improvements made by HFCA "shall be the property of Lessee and Lessee shall have title to all such additional, alterations and improvements." (Plf. Ex. 1, §10.01). As held by the Supreme Court of Iowa in *York Tire*, a mechanic's lien cannot attach to a lessor's fee interest when a building is erected by a tenant pursuant to an agreement with the landlord-owner if the tenant may, and shall if required by the landlord, remove the building when the lease terminates. *York Tire*, 227 N.W. at 607; *see also Iowa Builders' Supply Co. v. Petersen*, 221 Iowa 978, 267 N.W. 716, 718 (1936) (discussing *York Tire*).

Winger also relies upon *Stroh Corp. v. K & S Development Corp*., 247 N.W.2d 750 (Iowa 1976). In *Stroh*, the written lease between the defendant owner and the lessee required the lessee to construct a car-wash and gasoline facility on the lot at an estimated cost of $50,000. *Stroh*, 247 N.W.2d at 751. Plans were to be approved by the owner and when final construction costs were verified, the owner was to reimburse the lessee up to the sum of $50,000. *Id.* The lease provided that the lessee would not permit any liens to attach, or if attached, they would be discharged and released within thirty days. *Id.* The lease provided further that "[t]itle to all real estate improvements vested in the lessor when completed." *Id.* at 752. The *Stroh* Court found the value

of the building accounted for the amount of the rent payment, and "[t]he improvements became the property of the lessor at once." *Id*. Under these facts, the *Stroh* Court affirmed the trial court's conclusion that the mechanic lien at issue attached to the lessor's fee interest. The *Stroh* Court was not deterred by the lease language relating to mechanic's liens because "the lease was unrecorded" and the lease "recognized the validity of potential liens by requiring the lessee to cause such liens to be released within 30 days." *Id.* at 752-53.

By contrast, in *Queal Lumber Co. v. Lipman*, 200 Iowa 1376, 206 N.W. 627 (1925), the Supreme Court of Iowa concluded that a lessee was not the lessor's agent based on the terms of the lease. In *Queal*, the lessor leased property for a 25-year term under a lease stating the premises should be used for a restaurant and the lessee agreed to complete construction of the restaurant in a specified time period. *Queal*, 206 N.W. at 627-28. The lease was recorded and included a term prohibiting the "lessee or any one claiming by, through, or under lease, [from] hav[ing] any right to file or place any mechanic's lien of any kind or character whatsoever upon said premises." At the expiration of the 25-year lease, the improvements became the property of the lessor. *Id.* at 628.

The *Queal* Court relied on the parties' right to contract and the provisions in the lease agreement relating to mechanic's liens, which were recorded and made publicly available, to conclude that the lessee was not an implied agent for the lessor. *Queal*, 206 N.W. at 629. The *Queal* Court held: "It is fundamental, under Iowa mechanic's lien law, that, before one can successfully maintain a lien, he must have a contract with the owner, his agent, trustee, contractor or subcontractor." *Id.* at 628. Because none of the lienholders had contracts with the lessor, they had nothing to enforce against the lessor's interest in the property. While it was suggested that the tenant was the owner's agent within the meaning of the statute, Iowa Code §

3089 (1897), the *Queal* Court rejected this argument "because the lease specifically provides otherwise, and the cases cited to support this doctrine by the lienholders herein are all cases wherein the facts are such that the court could imply the agency." *Id.* at 629. The *Queal* Court concluded that the lien claimants were entitled to foreclosure of the lien and a sale of the tenant's interest in the property to satisfy their claim, but that the improvements and the leasehold interest must be held together "and that the improvements cannot be removed from the present location." *Id.* at 629.

It is important to note that the *Stroh* Court recognized *Queal's* continuing validity and distinguished *Queal* on the basis that in *Queal* the "recorded lease disavowed the lessee's agency and specifically gave notice to potential lienholders they had no right to file liens." *Stroh*, 247 N.W.2d at 752; *see Queal*, 206 N.W. at 629 (stating lessee could not be lessor's agent "because the lease specifically provides otherwise"); *see also Perkins Supply & Fuel Serv. V. Rosenberg*, 226 Iowa 27, 282 N.W. 371, 373 (1938) ("Reading these agreements found in the lease in their entirety, we are unable to discover an appointment of the lessees as agents to bind the lessors or their real estate for improvements the lessees might see fit to make…. the lease itself provides otherwise").

The Lease Agreement between Cargill and HFCA expressly disavows that HFCA is Cargill's agent. Under the Lease Agreement, Cargill and HFCA expressly disclaimed any partnership, joint venture or association between them. (Plf. Ex. 1, §22.14).The Lease Agreement expressly denied HFCA the authority to permit mechanic's liens to attach to the Premises, which is defined collectively as the Land, the Facility and the Easement Parcels. (Plf. Ex. 1, §§23.05, 1.01DD). The Lease Agreement was recorded on July 23, 2013, giving notice to potential lienholders of HFCA's interest in the Facility, its lack of interest in the land, and its status as

independent of—and not an agent for—Cargill. The parties had every right to provide by contract whether HFCA would act as Cargill's agent, and they contracted against such a relationship. The Mechanics Lienholders were aware, or ought to have been aware, of the terms of the Lease Agreement because it was recorded. This case involves sophisticated parties and the construction of an industrial plant. The Court will not infringe upon these sophisticated parties' right of private contract. *See Perkins Supply*, 282 N.W. at 373 (stating lessors "had the right, in good faith, to enter into a contract with their lessees that all improvements should be made by lessees at their own expense" and "[t]o hold otherwise would be to infringe upon the right of private contract").[14]

Further, the three factors Iowa courts historically consider in determining whether a lessee is acting as an agent of a lessor prior to the amendments to Chapter 572 reveal that HFCA was not acting on behalf of Cargill. The Lease Agreement was for fifty years; even after that period of time, the Facility and all improvements made by HFCA remained HFCA's property; ordinary wear and tear was excepted from HFCA's duty to maintain the Premises; the Lease Agreement requires HFCA to remove the Facility and any and all improvements from the property at the end of the fifty-year lease, unless otherwise approved by Cargill; and the lease payments—$12,000 per year for the entire fifty-year term—do not contemplate an increased value in Cargill's land. Under these terms, and the cases cited above, there is neither legal nor

[14] The Supreme Court of Iowa decision *Reese Gabriel & Co. v. Cornell*, 172 Iowa 734, 154 N.W. 1002 (1915) is also instructive. In *Reese Gabriel & Co. v. Cornell*, the husband of the owner contracted to build a home on her lot, but a supplier of lumber was not paid and attempted to enforce a lien against the wife's property. Even though the wife received full benefit of the improvement, the court refused to impose a lien on the property, stating:

> [I]f Cornell contracted in his own behalf for the erection of the house and the contractor dealt with him with that understanding, Mrs. Cornell, the owner of the realty on which the house was erected, is not thereby rendered liable to the contractor or subcontractors, even though he might have bound her by contract in her behalf had he been so disposed, or even though she may have contributed something thereto, as the old house, toward the enterprise.

172 Iowa at 737, 154 N.W. at 1004.

factual support for the Mechanics Lienholders' contention that HFCA was acting as Cargill's agent. HFCA did not have authority, actual or apparent, to act as Cargill's agent.

Finally, the equities in this case do not militate in favor of the Mechanics Lienholders to the extent they did for the claimants in *Romp* and *Stroh*. In *Romp* and *Stroh* the lienholders were unable to attach their liens even to the improvements because the improvements became the property of the landlord at the end of the lease. *See, e.g., Romp, Stroh*. Here, Cargill is seeking to protect its interests in the fee of the land. Cargill does not dispute that Mechanics Lienholders' liens attach to the Facility itself. Moreover, in this case, the prior recorded Lease Agreement disavowed the lessee's agency and expressly denied HFCA the authority to permit mechanic's liens to attach to the Premises, which is defined collectively as the Land, the Facility and the Easement Parcels. *See Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 709 (Iowa 1985) ("Contractors have constructive notice of all information contained in recorded documents and have a duty of inquiring concerning circumstances disclosed in those records."); *Cassaday*, 101 N.W.2d at 25 (the "desire to do equity should not be extended unduly, for the creditor also is required to act reasonably."). The Mechanics Lienholders could have sought to bind Cargill by contract had they been so inclined, but for whatever reason, they chose not to. Pursuant to the Mechanics Lienholders' contracts, their liens attach to the Facility, but do not attach to Cargill's fee interest.

iii. Joint Venture

Next, Winger alleges the Mechanics Lienholders' liens attach to Cargill's fee interest because Cargill was a joint-venture partner with HFCA. In support of this proposition, Winger alleges the Lease Agreement and Ancillary Agreements demonstrate Cargill and HFCA anticipated an ongoing and continuing business relationship and that Cargill received, or stood to

receive, additional benefit beyond the normal rent resulting from the Lease Agreement. Winger also emphasizes that CFSI facilitated the financing for HFCA to construct the Facility through the Iowa Finance Authority. According to Winger, Cargill and HFCA combined their property, effort, money, skill, and knowledge for their mutual benefit, which constitutes a joint venture. For reasons that follow, the Court disagrees.

A joint venture "is characterized by a joint proprietary interest in the subject matter, a mutual right to control, a right to share in the profits and a duty to share the losses." *Brewer v. Cent. Const. Co.*, 241 Iowa 799, 806, 43 N.W.2d 131, 136 (1950). "[A] gateway requirement of a joint venture is a showing that the participants have agreed to share in the profits and losses." *Peoples Trust & Sav. Bank v. Security Sav. Bank*, 815 N.W.2d 744, 756 (Iowa 2012) (citing *Skemp v. Olansky*, 249 Iowa 1, 7-8, 85 N.W.2d 580, 584 (1957) (joint venture not present where no showing of sharing of profits and losses and only assistance in obtaining a loan)). Under the terms of the various agreements between Cargill and HFCA, the parties are not in a joint venture. The Lease Agreement expressly provides that HFCA, not Cargill, owns the Facility. Thus, there is no "joint proprietary interest." *Brewer*, 43 N.W.2d at 136. Additionally, none of the Ancillary Agreements gives Cargill a right to share in HFCA's profits; nor do any of the Ancillary Agreements require Cargill to share in HFCA's losses. *Peoples Trust*, 815 N.W.2d at 756 (describing the sharing of profits and losses as "a gateway requirement of a joint venture"). None of the relevant agreements gives Cargill "a mutual right to control" HFCA's operations. *Brewer*, 43 N.W.2d at 136. Further, while one motivation for Cargill in entering into the agreements with HFCA was undoubtedly to assure itself a steady supply of inputs it needed for its production such as HCl and caustic soda, it agreed to pay for those products by entering an arms-length transaction with HFCA, presumably at a price considered to be fair by both parties. No party

anywhere enters into a contract without a perceived benefit. The fact that Cargill stood to receive the benefit of its bargain does not transform it into a joint venturer with HFCA. Finally, the Lease Agreement expressly disclaimed any partnership, joint venture or association between Cargill and HFCA. (Plf. Ex. 1, §22.14).

Winger places much reliance upon the fact that CFSI arranged the financing through the Iowa Finance Authority bonds for HFCA to construct the Facility. CFSI's efforts in arranging financing for HFCA to construct the Facility, however, do not support a finding that there is a joint venture between HFCA and Cargill. *Skemp*, 85 N.W.2d at 584 (joint venture not present where no showing of sharing of profits and losses and only assistance in obtaining a loan).

To the extent Winger asserts Cargill was really the financier of the Facility, instead of U.S. Bank, that does not change the analysis. The cases Winger relies upon—primarily *Romp* and *Stroh*—involved cases where the landlord funded construction for a building in which the landlord received the ownership under the lease agreement, such that the landlord was constructing its own building. The Lease Agreement makes clear that is not the case here. HFCA owned the Facility, both at the time of its construction and at the end of the Lease Term. Moreover, Cargill did not "purchase" U.S. Bank's obligations. Cargill was required by the Put Agreement to reimburse U.S. Bank if HFCA defaulted on its loan agreement with U.S. Bank. Pursuant to the Put Agreement, Cargill was required to make good on HFCA's default and reimburse U.S. Bank $81,447,000.12. As an assignee of U.S. Bank's rights under the Leasehold Mortgage, Cargill steps into the shoes of U.S. Bank, including the timing of its recording and the resulting priority. Winger's suggestion that this is a windfall for Cargill is not entirely persuasive given the $81,447,000.12 Cargill reimbursed U.S. Bank under the Put Agreement and the

financing HFCA received from CFSI under the Prepayment Agreement. Furthermore, Cargill finds itself in its current position because HFCA defaulted on its loan agreement with U.S. Bank.

C. Cargill's Priority as Assignee of the Leasehold Mortgage

U.S. Bank had a construction mortgage lien on the HFCA Facility recorded on August 29, 2013. Iowa Code section 572.18(1) governs priority between mechanic's liens relative to non-construction based liens, giving mechanic's liens priority over other liens except those "liens of record prior to the time of the original commencement of the claimant's work or the claimant's improvements." IOWA CODE § 572.18(1) (2017). "Construction mortgage liens shall be preferred to all mechanics' liens of claimants who commenced their particular work or improvement subsequent to the date of the recording of the construction mortgage lien." IOWA CODE § 572.18(2) (2017). For purposes of Iowa Code section 572.18(2), "a lien is a 'construction mortgage lien' to the extent that it secures loans or advancements made to directly finance work or improvements upon the real estate which secures the lien." *Id.*

The U.S. Bank Leasehold Mortgage was a construction mortgage lien within the meaning of Iowa Code section 572.18(2), where the Loan Documents provided for a Construction Fund and the proceeds were required to be used for the construction of the Facility. (Cargill Ex .B, §3.3 & Ex. C, §§6.6 & 6.7 (App. 19, 92)). The U.S. Bank Leasehold Mortgage was executed on August 28, 2013 and recorded on August 29, 2013. The only Lienholder to claim a work commencement date prior to August 29, 2013 in these Summary Judgment proceedings is Lemartec.

When HFCA defaulted on its payment obligations, U.S. Bank exercised its rights under the Put Agreement to require Cargill to pay U.S. Bank for the outstanding obligations. While Cargill was required to assume the obligations of U.S. Bank pursuant to the Put Agreement,

Cargill also received an assignment of U.S. Bank's rights under the Leasehold Mortgage. Thus, Cargill now has all of the rights U.S. bank had under its Leasehold Mortgage, including priority dating to August 29, 2013. *See* IOWA CODE § 572.18(4) (giving assignee of mortgage same priority as original mortgagee). Accordingly, Cargill is entitled to summary judgment finding that its Leasehold Mortgage takes priority over all mechanic's liens premised on work commenced after August 29, 2013.

D. Lemartec's Priority

The only Mechanics Lienholder to claim a work commencement date prior to August 29, 2013 in these Summary Judgment proceedings is Lemartec. Lemartec entered into a contract with Conve on August 1, 2013. (Lemartec App. 3-28). In its Motion for Partial Summary Judgment, Lemartec set forth eight paragraphs of alleged undisputed facts, provided an affidavit alleging "Lemartec commenced its work…on August 20, 2013" (Lemartec App. 29), and attached pictures showing that dirt was being moved by dump trucks and top soil was removed on August 20, 2013 and August 27, 2013. (Lemartec App. 31-40). Thereafter, Lemartec filed a Reply Brief to Cargill's Resistance and set forth 21 additional statements of fact, asserting it entered into a contract with its subcontractor, Peterson Contractors, Inc. ("Peterson"), for over $2 million to perform "the complete scope of site work." (Lemartec SOAF ¶ 6). Lemartec claims that Peterson (not Lemartec) delivered heavy equipment and installed a "construction entrance road" prior to August 29, 2013, which was used by individuals attending a groundbreaking ceremony on August 22, 2013.

The Court finds that it would be inappropriate to consider the additional 50 pages worth of evidence Lemartec set forth for the first time in its Reply Brief. The Court finds further that there is a fact issue concerning exactly what work was performed by Lemartec prior to U.S.

Bank's filing of its construction mortgage on August 29, 2013. This issue of material fact must be resolved before the Court can determine whether Lemartec "commenced" work for purposes of the Iowa Code chapter 572.

Lemartec's Reply Brief also raises a new legal theory to support its contention that its mechanic's lien attaches to Cargill's fee interest. Lemartec initially joined Winger's Motion for Partial Summary Judgment, wherein Winger argued that the mechanic's liens attach to Cargill's land by way of contracts with Cargill's agent, HFCA. Lemartec, in its Reply Brief, raises a different legal issue; namely, whether the work Lemartec (through its subcontractor, Peterson) performed directly to the land entitles Lemartec to a lien on Cargill's fee interest under Iowa Code section 572.2(1).

Iowa Code section 572.2(1) provides that those who provide material or labor for the "construction or repair of any work of internal or external improvement" are entitled to a lien on the "building or improvement, and land *belonging to the owner* on which the same is stated." IOWA CODE § 572.2(1) (2017) (emphasis added). Iowa Code section 572.2(1) provides further that those who perform "grading, sodding, installing nursery stock, landscaping, sidewalk building, [or] fencing on any land or lot" are separately entitled to a lien "upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired." *Id.* Notably, the latter—improvements directly to the land—are entitled to a lien on the land so improved without limiting the lien to land "belonging to the owner" of the building for which improvements were made. Although Lemartec presents a clever argument, parties cannot assert an issue for the first time in a reply brief. *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 641 (Iowa 1996) (citation omitted). If an issue is asserted for the first time in a reply brief, Iowa courts will

not consider the issue. *Id.* Furthermore, the Court finds there are genuine issues of material fact that preclude the entry of summary judgment under this legal theory.

Lemartec admits that $2.4 million of its $25 million contract with Conve was for site work it subcontracted to Peterson, and the remaining work was for construction of the building. (Lemartec Reply SOAF ¶ 19). Lemartec also concedes that the entirety of the site work was performed by Peterson, who also has filed a lien against the property. Lemartec's mechanic's liens total just over $3 million. (Lemartec Statement of Fact and Brief, filed 2/24/17, at 2 ¶ 5). Thus, Lemartec was apparently paid $22 million. In light of the foregoing, the Court finds there are genuine issues of material fact concerning: whether the unpaid $3 million from Lemartec's $25 million contract was for the site work, how much Lemartec paid to Peterson for the site work, whether the unpaid balance owed to Lemartec was for Lemartec's other work on the HFCA Facility, and whether Lemartec's lien is limited to a lien on HFCA's building, where Peterson, rather than Lemartec, provided the site work that directly benefitted the land.

Because fact issues remain concerning whether the work performed by Lemartec's subcontractor, Peterson, amount to "commencement" of work for purposes of setting the priority date for Lemartec's mechanic's lien, the extent of Lemartec's lien is inappropriate for summary judgment. To the extent Lemartec's Motion for Partial Summary Judgment goes to the separate issue of a lien attaching directly to Cargill's land, it was a newly raised issue in Lemartec's Reply Brief, and there is a genuine issue of material fact concerning whether Lemartec was paid in full for the site work.

RULING

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, with the exception of Lemartec Engineering & Construction, none of the Mechanics Lienholders' liens attach to

Cargill's fee interest in the land identified in the mechanic's liens. It is further ORDERED, ADJUDGED AND DECREED that the Court reserves ruling on whether Lemartec Engineering & Construction's lien attaches to Cargill's fee interest in the land. It is further ORDERED, ADJUDGED AND DECREED that as a result of the assignment of the Leasehold Mortgage from U.S. Bank to Cargill, Cargill has a mortgage interest in the Facility as well as in HFCA's Leasehold Interest in the land. It is further ORDERED, ADJUDGED AND DECREED that Cargill's Leasehold Mortgage was recorded on August 29, 2013, and Cargill's Leasehold Mortgage takes priority over all mechanic's liens premised on work commenced after that date. The Court finds there is a genuine issue of material fact relating to the date Lemartec Engineering & Construction commenced work, and therefore the Court reserves ruling as to whether Cargill's Leasehold Mortgage takes priority over Lemartec Engineering & Construction's mechanic's lien. The Court directs the clerk to provide copies of this Ruling and Order to the counsel of record. All of the above is SO ORDERED.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
EQEQ009184	WINGER CONTRACTING COMPANY VS CARGILL INCORPORATED

So Ordered

John Telleen, District Court Judge,
Seventh Judicial District of Iowa