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Farmers Nat. Bank v. Green River Dairy, LLC Respondent's Brief 1 Dckt. 40101

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In the Supreme Court of the State of Idaho

FARMERS NATIONAL BANK,)
)
Plaintiff/Appellant,)

vs.)
)

GREEN RIVER DAIRY, LLC;)
HERCULANO J. ALVES and FRANCES M.)
ALVES, husband and wife, dba GREEN)
RIVER DAIRY; HULL FARMS, INC.;)
EARNEST DANIEL CARTER dba CARTER)
HAY AND LIVESTOCK; LEWIS BECKER;)
JACK MCCALL; TIM THORNTON;)
)
Defendants/Respondents.)

Supreme Court No. 40101-2012
RESPONDENT'S BRIEF
(HULL FARMS, INC.)

LEWIS BECKER,)
)
Counterclaimant,)

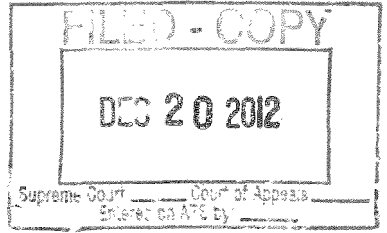
vs.)
)

FARMERS NATIONAL BANK,)
)
Counterdefendant.)

LEWIS BECKER,)
)
Cross-Claimant,)

vs.)
)

HERCULANO J. ALVES and FRANCES M.)
ALVES, dba GREEN RIVER DAIRY,)
)
Cross-Defendants.)



Gery W. Edson, ISB No. 2984
GERY W. EDSON, P.A.
250 South Fifth Street, Suite 800
P.O. Box 448
Boise, ID 83701
Phone: (208) 345-8700
Fax: (208) 389-9449
Email: gedson@gedson.com
Attorney for Hull Farms, Inc., Defendant/Respondent

John S. Ritchie, ISB No. 1790
COLEMAN, RITCHIE & ROBERTSON
Attorneys at Law
156 2nd Avenue West
P.O. Box 525
Twin Falls, ID 83303-0525
Phone: (208) 734-1224
Fax: (208) 734-3983
Email: crrtflaw@msn.com
Attorney for Farmers National Bank, Plaintiff/Appellant,
and Counterdefendant

William R. Hollifield, ISB No. 1251
Attorney at Law
1445 Fillmore Street, Suite 1106
P.O. Box 66
Twin Falls, ID 83303
Phone: (208) 734-5610
Fax: (208) 734-8077
Email: b@hollifieldlawoffice.com
Attorney for Tim Thornton, Defendant/Respondent

Brent T. Robinson, ISB No. 1932
ROBINSON, ANTHON & TRIBE
615 H Street
P.O. Box 396
Rupert, ID 83350
Phone: (208) 436-4717
Fax: (208) 436-6804
Email: btr@idlawfirm.com
Attorney for Green River Dairy, LLC, and Herculano J.
Alves and Frances M. Alves, dba Green River Dairy,
Defendant/Respondents and Cross Defendants

Andrew B. Wright, ISB No. 6812
WRIGHT BROTHERS LAW OFFICE
1166 Eastland Dr., N., Suite A
P.O. Box 226
Twin Falls, ID 83301-0226
Phone: (208) 733-3107
Fax: (208) 733-1669
Email:
awright@wrightbrotherslaw.com
Attorney for Jack McCall and Ernest
Daniel Carter, dba Carter Hay and
Livestock, Defendants/Respondents,
Counterclaimants, Cross-Claimants

William F. Nichols, ISB No. 3496
WHITE PETERSON GIGRAY
ROSSMAN NYE & NICHOLS, P.A.
5700 East Franklin Road, Suite 200
Nampa, ID 83687-7901
Phone: (208) 466-9272
Fax: (208) 466-4405
Email: wfn@whitepeterson.com
Attorney for Lewis Becker, Defendant/
Respondent, Counterclaimant and
Cross-Claimant

Scott A. Tshirgi, ISB No. 4247
SCOTT A. TSHIRGI, CHARTERED
209 West Main Street
Boise, ID 83702
Phone: (208) 287-8200
Fax: (208) 287-8202
Email: sat@satchartered.com
*Amicus Curiae for Idaho Dairymen's
Association, Inc.*

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STATEMENT OF CASE

A.

Nature of the Case

This case arises from the District Court Order awarding summary judgment in favor of commodity dealers (Respondents) against the bank (Appellant) who claims a superior security interest in the proceeds from sale of dairy cows.

The Appellant brought suit in Twin Falls County District Court against Respondents, Hull Farms, Inc., Earnest Daniel Carter, dba Carter Hay and Livestock, Lewis Becker, Jack McCall and Tim Thornton, all of whom held validly perfected agricultural commodity dealer liens for hay, haylage and other commodities sold to Green River Dairy, LLC, and Herculano Alves and Frances Alves for the benefit of their dairy cows.

In each case, the Agricultural Commodity Dealers sold commodities to Alves and Green River Dairy after they filed for bankruptcy protection and were operating under a Plan of Reorganization.

Farmer's National Bank asserts that as a result of its perfected Article IX security interest in dairy cows and in proceeds, that its lien takes priority over the later filed Agricultural Commodity Dealer Liens filed pursuant to Idaho Code §45-1801, et seq.

When the Alves' bankruptcy was ultimately dismissed, Farmer's National Bank repossessed and sold the dairy cows which consumed the agricultural products sold by Respondents.

B.

Course of the Proceedings

Farmer's National Bank sued the Respondents in District Court seeking a determination that its UCC-1F Financing Statements took priority over the proceeds realized from the sale of dairy cows over subsequently filed Agricultural Commodity Dealer liens properly perfected under Idaho Code §45-1801. Each of the Respondents filed Answers to the Complaint filed by Farmer's National Bank. In some instances, Respondents filed Counterclaims and Cross-Claims to have their priorities determined to be superior to that of Farmer's National Bank.

After briefing the issues by all parties, the District Court treated Farmer's National Bank and the competing Counterclaims as cross-motions for summary judgment. The Court entered its Judgment on May 30, 2012, in favor of the Commodity Dealer Lien claimants (Respondents in this forum) and an Amended Judgment on August 29, 2012, awarding costs and attorney fees to Respondents. Farmer's National Bank subsequently filed a Notice of Appeal and an Amended Notice of Appeal to the Judgment and the Amended Judgment.

C.

Statement of the Facts

Hull Farms does not have specific information regarding the bulk of the assertions made in Appellant's Statement of Facts, but concedes that Farmer's National Bank asserts a prior security interest in the livestock of Green River Dairy, LLC, and Defendants Alves. The next relevant portion of Appellant's Statement of Facts, which bears repeating, appears on page 5 of Appellants Brief and admits as follows:

That subsequent thereto the five Agricultural Commodity Dealers delivered agricultural products to Green River Dairy, all of which agricultural products were fed to cattle owned by Green River Dairy. Those parties filed agricultural commodity dealer liens on products delivered. The respective liens claimed by each of those parties are itemized on Appendix A of this Brief.

Appellant's Brief, page 5.

In addition to the lien in dairy cows, Farmers held a security interest in Alves' milk proceeds and received payments from Alves for milk checks during the time Respondents provided feed for the dairy cows.

ISSUES PRESENTED ON APPEAL

1. Does the Agricultural Commodity Dealer Lien Statute take priority over a previously perfected security interest in livestock.
2. Whether Idaho Code §45-1802 extends to proceeds, including livestock which consume the feed subject to a valid lien.

ATTORNEY FEES ON APPEAL

Hull Farms seeks recovery of its costs and attorney fees pursuant to Statute specifically, Idaho Code §45-1809. That section provides in relevant part as follows:

Any number of persons claiming liens against the same property under this chapter may join in the same action, and when separate actions are commenced, the court may consolidate them. The court shall also, as part of the cost, allow the moneys paid for filing and recording the claim, **and a reasonable attorney's fee for each person claiming a lien.**

Idaho Code §45-1809. (Emphasis added).

Idaho has followed the American Rule which only allows attorney fees when provided by contract or permitted by statute. *Hellar v. Cenarrusa*, 106 Idaho 571, 682 P.2d 524 (1984); *Idaho Power Co. v. Idaho Public Utilities Commission*, 102 Idaho 744, 639 P.2d 442 (1981). This Court has previously stated that the Idaho Legislator has provided for the award of attorney fees in clearly defined limited contexts. *Idaho Department of Health and Welfare v. Southfork Lumber Co.*, 123 Idaho 146, 845 P.2d 564 (1993) at page 567 citing *Idaho Power id.*, at 751, 639 P.2d 449.

It is clear in the present case that the Idaho Legislator intended for the recovery of attorney fees as a remedial measure for those individuals or entities who are required to pursue lien rights to recover payment for their agricultural commodities. Idaho Code §45-1809 provides for “a reasonable attorney’s fee for each person claiming a lien.”

An award of attorney’s fees on appeal is appropriate when the party defending the award prevails on appeal. *Boise Truck and Equipment, Inc., v. Hefer Logging, Inc.*, 107 Idaho 824, 693 P.2d 470 (Ct. App. 1984). See also, *Spidell v. Jenkins*, 111 Idaho 857, 727 P.2d 1255 (Ct. App. 1986).

Alternatively, Hull Farms requests fees pursuant to Idaho Code §12-120(3) as prevailing party. Moreover, Idaho Code §12-120(3) mandates an award of attorney fees on appeal in commercial transactions when the party prevails. *Erickson v. Flynn*, 138 Idaho 430, 64 P.3d 959 (Ct. App. 2002)

Conversely, Appellant has inappropriately sought recovery of costs under Idaho Code

§10-1210. That section, however, only provides for the recovery of costs in the limited context of declaratory judgment actions to the prevailing party, not for attorney fees and on appeal to the Supreme Court. Additionally, no costs would be awarded to a non-prevailing party.

ARGUMENT

A.

Introduction

The issue on appeal to this Court is one of statutory interpretation concerning a statute not previously analyzed by this Court. This Court is asked to decide which creditor has priority in proceeds from the sale of livestock between a statutorily created lien in agricultural products and their proceeds or a security lender's UCC-1F lien on livestock.

There is no dispute that both parties followed Idaho law in perfecting their respective security interest. The Agricultural Commodity Dealer claimants (Respondents in this appeal), all followed the letter of the law in properly perfecting their Agricultural Commodity Dealer liens. Similarly, Appellant, Farmer's National Bank, filed UCC-1F Financing Statements on Green River Dairy's livestock. This Court is called upon to interpret the priorities and apparent conflict in these two statutory schemes.

B.

Standard of Review

The Appellant seeks review of an order for summary from the District Court in favor of Respondents. Judge Bevan's ruling in the District Court was based on summary judgment

standards, IRCP 56 and consequently, no factual disputes were considered in his opinion. Judge Bevan's decision is squarely rooted in an analysis of the apparent conflict between a UCC-1 F filing and a statutory lien, namely Idaho Code §45-1802. In such cases, the reviewing court reviews questions of statutory interpretation *de novo*, exercising free review of the issue below. *Gonzalez v. Thacker*, 148 Idaho 879, 881, 231 P.3d 524, 526 (2009). See also, *VFP VC v. Dakota Co.*, *supra*; *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007), and *Lockheed Martin Corp. v. Idaho State Tax Commission*, 142 Idaho 790, 793, 134 P.3d 641, 664 (2006).

C.

Statutory Interpretation

The universal axiom in any appellate review of statutory interpretation is to begin with the literal words of the statute and to then apply their plain and ordinary meaning. This Court has previously stated that it:

. . . interprets statutes according to the plain, express meaning of the provision in question, and we will resort to judicial construction only if the provision is ambiguous, incomplete, absurd, or arguably in conflict with other laws.

Sand Point Independent Highway District v. Board of Commissioners, 138 Idaho 887, 890, 71 P.3d 1034, 1037 (2003); *VFP VC v. Dakota Co.*, 141 Idaho 326, 331, 109 P.3d 714, 719 (2005)

In such cases, the Court prefers the rational, obvious meaning of the statute, preferable to other interpretations which would make portions of the statute void or redundant; *id* at 891; *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007); *Verska v. St. Alphonsus Regional Medical Center*, 151 Idaho 889, 893, 265 P.3d. 502, 506 (2011) and *State v. Schwartz*, 139 Idaho

360, 362, 79 P.3d 719, 721 (2003). This Court has repeatedly stated that if a statute is not ambiguous, no further inquiry is necessary:

We have consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.

Verska quoting *City of Sun Valley v. Sun Valley Company*, 123 Idaho 665, 667, 851 P.2d 961, 963 (1993).

. . . we have never revised or voided an unambiguous statute on the ground that it is patently absurd or would produce absurd results when construed as written, and we do not have the authority to do so. “The public policy of legislative enactments cannot be questioned by the courts and avoided simply because the courts might not agree with the public policy so announced.”

Verska, at 896, 265 P.3d at 509 (quoting *State vs. Village of Garden City*, 74 Idaho 513, 525, 265 P.2d 328, 334 (1953) ; See also, *Booth v. State*, 151 Idaho 612, 262 P.3d 255 (2011).

D.

The District Court Properly Found the Statute as Unambiguous

The focus of the District Court’s opinion centered on a review of the Agricultural Commodity Dealer’s lien and specifically, Idaho Code §45-1802. That statute provides as follows:

§45-1802. Lien created – Who may have. – An agricultural commodity producer or an agricultural commodity dealer who sells, or delivers under contract or bailment, an agricultural product has a lien on the agricultural product or the proceeds of the sale of the agricultural product as provided in section 45-1804 Idaho Code. The lien created in this chapter may attach regardless of whether the purchaser uses the agricultural product purchased to increase the value of his livestock or whether he uses the agricultural product purchased to maintain the value, health or status of his livestock without actually increasing the value of his agricultural product.

The Court focused its attention on the language of the statute and concluded that the lien on agricultural product and “the proceeds” of the sale of the agricultural product extended to livestock which ingested the agricultural product. The Court further focused its attention on the second sentence of the statute which in its plain and ordinary meaning states that the lien attaches “regardless of whether the purchaser uses the agricultural product purchased to increase the value of his livestock. . . or to maintain the value, health or status of his livestock.”

Appellant argues that the District Court’s interpretation either is in error or that the statute is indeed ambiguous. The Appellant would have this Court disregard the second sentence of the statute or draw the conclusion that the second sentence requires a change in pre-existing law. The “change” which Appellant and Amicus suggest is that pre-existing perfected security interest in livestock can be trumped by an Agricultural Commodity Dealer’s lien since priorities were already dealt with by the legislature.

Taking the language of the statute and applying the literal words does affect a different result. The statute clearly calls for the attachment of an agricultural lien regardless of whether livestock had ingested the feed or increased their value.

The real issue is whether the lien which is described in Idaho Code §45-1802 which includes “proceeds” extends in priority to prior perfected liens. That question is definitively answered in Idaho Code §45-1805.

Idaho Code §45-1805. Priority of Lien - The lien created by section 45-1802, Idaho Code, *is preferred to a lien or security interest in favor of a creditor of the purchaser, regardless of whether the creditor’s lien or security interest attaches to the agricultural product or proceeds of the sale of the agricultural product before or after the date on which the lien created by section 45-1802, Idaho*

Code, attaches.

Idaho Code §45-1805. (Emphasis added).

Again, the plain language of the statute clearly defines that the Agricultural Commodity Dealer lien takes priority over the prior perfected secured lien in the same collateral. Applying the rules of statutory interpretation, the plain language clearly illustrates that the Idaho Legislature intended for the Agricultural Commodity Dealer lien to trump the prior perfected security interest in the same collateral. Any other interpretation is an absurdity which is not supported by a reasonable interpretation of either the first or second sentence of Idaho Code §45-1802 or the clearly defined priority as established in Idaho Code §45-1805.

E.

Priority Between Article 9 Liens and Agricultural Commodity Dealer's Liens

The Amicus Brief filed by the Idaho Dairymen's Association, tries in vain to supplant the priorities established in the Agricultural Commodity Dealer's Act by reference to Article 9 of Idaho's version of the Uniform Commercial Code.

Potential conflicts in security interests was anticipated by the Idaho Legislature and addressed in Idaho's revised version of the Uniform Commercial Code in 2001. Section 28-9-322 addresses the rules governing conflicting priorities with agricultural liens. In short, the Statute provides that in most circumstances, the first to file takes priority in conflicting security interests. However, there is a significant exception found in subsection (g) which provides as follows:

g. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating

the agricultural lien so provides.

Idaho Code §28-9-322.

This language cannot be more clear that an Agricultural Commodity Dealer lien which does provide for priority over a prior perfected security interest in Idaho Code §45-1805, trumps a prior perfected lien. That language cannot be more plain, obvious, or unambiguous. However, the comments incorporated at the time the Statute was passed, are particularly revealing. Comment 12 provides in relevant part as follows:

12. Agricultural Liens. Statutes other than this article may purport to grant priority to an agricultural lien as against a conflicting security interest or agricultural lien. Under subsection (g), if another statute grants priority to an agricultural lien, the agricultural lien has priority only if the same statute creates the agricultural lien and the agricultural lien is perfected. . . .

Inasmuch as no agricultural lien on proceeds arises under this Article, subsection (b) through (e) do not apply to proceeds of agricultural liens. ***However, if an agricultural lien has priority under subsection (g) and the statute creating the agricultural lien gives the secured party a lien on proceeds of the collateral subject to the lien, a court should apply the principal of subsection (g) and award priority in the proceeds to the holder of the perfected agricultural lien.***

Comment 12, Idaho Code §28-9-322. (Emphasis added).

This comment clearly illustrates that the Legislature considered the conflicting Article 9 UCC filings against subsequently filed Agricultural Commodity Dealer's liens and reaffirmed that the statutory lien took priority.

It has long been recognized under Idaho law that lien statutes are to be liberally construed in favor of the protected class. *Baker v. Boren*, 129 Idaho 885, 895 (Ct. App. 1997) , citing *Metropolitan Life Insurance Co. v. First Security Bank of Idaho*, 94 Idaho 489, 493 (1971). The

present case is illustrative of a remedial lien. The Legislature enacted Idaho Code §45-1802 for the sole purpose of protecting owners and dealers who sell their commodities and have no adequate remedy to insure their payment. As both Idaho Code §45-1805 and §28-9-322(g) illustrate, the Legislature clearly intended that later filed agricultural liens would take precedence over previously filed UCC-1F liens on the same collateral.

The hairsplitting engaged in by the Amicus Brief is unworthy of consideration. Again, the plain language of the statute clearly illustrates that a properly perfected Agricultural Commodity Dealer's lien can trump a prior perfected Article 9 lien. The statute cannot logically be interpreted in any other way.

To twist the statute to provide the outcome which the Appellant and Amicus propose, engages in the exact contortion which this Court has previously stated it would not do, even if the outcome resulted is a harsh result.

. . . public policy of legislative enactments cannot be construed by the courts and avoided simply because the courts might not agree with the public policy so announced.

State v. Village of Garden City, supra.

Therefore, this Court's duty is to "interpret the meaning of the legislative enactments without regard to possible results." *Id.* See also, *Stonebrook Construction, LLC v. Chase Home Finance, LLC*, 152 Idaho 927, 277 P. 3d 374 (2012).

In this case, the Appellant would have the Court believe that merely by making an alternative argument for the interpretation of Idaho Code §45-1802, that the statute is ambiguous. Such is not the case and this Court has clearly stated that merely making alternative arguments

does not make a statute ambiguous. *State v. Yzaguirre*, supra; *Stonebrook Construction v. Chase Home Financing*, supra; and *Verska v. St. Alphonsus Regional Medical Center*, supra.

F.

Extent of the Lien

Judge Bevan interpreted the statute's language and use of the words "proceeds" to include livestock. To conclude otherwise, makes an absurdity of the statutes which specifically references the consumption of the agricultural goods by livestock.

Appellant relies heavily on a federal bankruptcy decision from the District of Idaho, *In re: Goedhart & Goedhart*, 03.3 IBCR 167 (Bankr. D. Idaho 2003) for the proposition that the Agricultural Commodity Dealer's lien is subordinate to a senior Article 9 lien. State courts are not bound by federal courts' interpretation of state law.

Moreover, with all due respect to Judge Pappas, the *Goedhart* opinion never considered comment 12 to Idaho Code §28-9-322(g) which clearly provides for the lien statute to take priority over a prior filed Article 9 lien.

The question of proceeds can lead to only one logical outcome. Since feed is ingested by livestock, proceeds must include livestock.

CONCLUSION

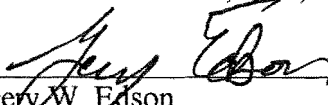
Judge Bevan's interpretation of Idaho Code §45-1802 is well reasoned and supported by a review of the statute and the totality of other Idaho laws --- namely, Idaho's version of the Uniform Commercial Code. The Agricultural Commodity Dealer's lien was created specifically

to grant a super priority lien in agricultural products and their proceeds to prior perfected liens. The Idaho Legislature has created priority liens in numerous cases including real estate, mining, timber, garage and warehouseman's liens that take precedence over prior perfected liens in the same collateral. Idaho Code §45-1805 makes clear that the priority afforded agricultural liens trumps pre-existing liens on the same collateral. Moreover, if the statute were not plain enough, comment 12 to Idaho Code §28-9-322(g) makes abundantly clear that a subsequently perfected Agricultural Commodity lien takes priority over the typical rule that first in time takes precedence.

For these reasons, Appellant's arguments should be overruled and judgment should be entered in favor of Respondents reaffirming Judge Bevan's decision.

Dated this 20th day of December, 2012.

GERY W. EDSON, P.A.,

by 
Gery W. Edson
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 20th day of December, 2012, I served a true and correct copy of the foregoing, by the method(s) indicated below, to the following parties:

John S. Ritchie
COLEMAN, RITCHIE & ROBERTSON
Attorneys at Law
156 2nd Avenue West
P.O. Box 525
Twin Falls, ID 83303-0525
crtrflaw@msn.com

William F. Nichols
WHITE PETERSON GIGRAY ROSSMAN
NYE & NICHOLS, P.A.
5700 East Franklin Road, Suite 200
Nampa, ID 83687-7901
wfn@whitepeterson.com

Brent T. Robinson
ROBINSON & ASSOCIATES
615 H Street
P.O. Box 396
Rupert, ID 83350
btr@idlawfirm.com

Andrew B. Wright
WRIGHT BROTHERS LAW OFFICE
1166 Eastland Dr., N., Suite A
P.O. Box 226
Twin Falls, ID 83301-0226
awright@wrightbrotherslaw.com

William R. Hollifield
Attorney at Law
1445 Fillmore Street, Suite 1106
P.O. Box 66
Twin Falls, ID 83303
b@hollifieldlawoffice.com

U.S. Mail Overnight Mail Facsimile E-Mail Attachment Hand Delivery



Gery W. Edson