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Farmers Nat. Bank v. Green River Dairy, LLC Respondent's Brief 2 Dckt. 40101

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IN THE SUPREME COURT OF THE STATE OF IDAHO

FARMERS NATIONAL BANK,
Plaintiff-Counterdefendant-Appellant,

vs.

GREEN RIVER DAIRY, LLC;
HERCULANO J. ALVES and FRANCES M.
ALVES, husband and wife, dba GREEN
RIVER DAIRY,

Defendants-Cross Defendants-
Respondents,

and

ERNEST DANIEL CARTER dba CARTER
HAY AND LIVESTOCK; LEWIS BECKER;
JACK McCALL,

Defendants-Counterclaimants-
Cross Claimants-Respondents,

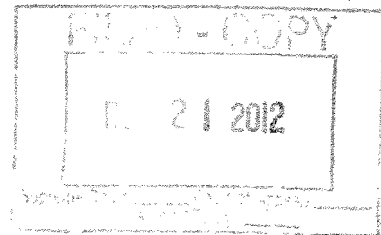
and

HULL FARMS, INC.; TIM THORNTON,

Defendants-Respondents.

)
) **RESPONDENT'S BRIEF OF**
) **LEWIS BECKER**

)
) Supreme Court Docket No. 40101-2012
) Twin Falls County Docket No. 2011-5226



Appeal from the District Court of the Fifth Judicial District for Twin Falls County.
The Honorable G. Richard Bevan, District Judge, Presiding

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STATEMENT OF THE CASE

Respondent Lewis Becker is in agreement with the Statement of the Case as set forth by Farmers National Bank in the Appellant's Brief.

ISSUES PRESENTED ON APPEAL

Whether the District Court correctly interpreted I.C. § 45-1802 as creating a lien on agricultural products that extends to livestock that consume the agricultural products with priority over competing security interests.

ATTORNEY FEES ON APPEAL

Respondent Lewis Becker claims attorney fees on appeal pursuant to Idaho Code § 45-1809. This section provides that in an action to enforce an agricultural commodity dealer's lien "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." A successful lien claimant is therefore entitled to an award of reasonable attorney's fees by statute.

ARGUMENT

A. The plain language of the statute evidences the legislature's intent that the lien created by I.C. § 45-1802 attaches to livestock.

Under Idaho law statutory interpretation begins with the literal language of the statute. The words are given their plain, usual and ordinary meanings, and where a statute is unambiguous "the clearly expressed intent of the legislative body must be given effect and the court need not consider rules of statutory construction." *State Dept. of Health and Welfare v. Hudelson*, 146 Idaho 439 (2008). If a statute is ambiguous, it is the duty of the court to use statutory construction to determine the intent of the legislature. *State v. Yzaguirre*, 144 Idaho 471, 475 (2007). A statute is ambiguous when the language of the statute is capable of more

than one reasonable construction. *Id.*; *Carrier v. Lake Pend Oreille Sch. Dist. No. 84*, 142 Idaho 804 (2006).

The relevant language of the agricultural lien statute is contained in I.C. § 45-1802. This statute reads as follows:

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 second sentence of this statute was added in a statutory amendment in 1989. *See* IDAHO SESSION LAWS 1989, c. 299. The plain language of this amendment implies that the legislature intended for the lien to attach to livestock that consume agricultural products. The sentence addresses how the purchaser of the agricultural products “uses” those products with regard to his livestock. It states that the lien attaches regardless of whether the use of the products increases or maintains the value of the livestock. While the sentence does not explicitly state that the lien “may attach” to the livestock, it implies that the lien attaches to livestock whether it increases the value of the livestock or only maintains the value of the livestock. Contrary to the suggestions of Farmers National Bank, implication and inference are permissible means of discerning the intent of the legislature in enacting a statute. The goal of statutory interpretation “is to give effect to the purpose of the statute and the legislative intent in enacting it, which may be implied from the language used or inferred on grounds of policy or reasonableness.” *The Senator, Inc. v. Ada County Bd. of Equalization*, 138 Idaho 566, 570 (2003); *State v. Hickman*, 146 Idaho 178, 184 (2008). The sentence added by the amendment would make little sense if not understood to imply that the lien attaches to livestock because the

verb “used” in the context of the sentence clearly refers to feeding the products to livestock. There would be no reason for the legislature to discuss how the products are “used” if the lien only attached to agricultural products before they were fed to livestock, and was extinguished as soon as the livestock consumed the products.

Farmers National Bank argues that the second sentence serves to clarify the first sentence by stating that the lien will attach to the feed regardless of how the purchaser uses the feed. Farmers cites *Stonecipher v. Stonecipher*, 131 Idaho 731 (1998) as providing an example of a statutory amendment that serves only to clarify an existing statute. In *Stonecipher*, the legislature clarified an existing statute by providing a list of illustrative examples of an action to collect child support arrearages. In contrast, the 1989 amendment to I.C. § 45-1802 as interpreted by Farmers clarifies nothing. Under Farmers’ interpretation, the lien exists only so long as the feed has not been used. Whether a purchaser uses feed to increase the value of livestock or to maintain it is not pertinent to a lien that exists only so long as the feed is unused. The references to “livestock” certainly do nothing to clarify that the lien only attaches to agricultural products before they are used as feed, as Farmers contends. Farmers’ interpretation that the statutory amendment serves only to clarify the statute is not reasonable.

The Idaho Dairymen’s Association as amicus curiae argues that the District Court’s reading is contrary to the plain meaning of the statute. The Association argues that the subject of the second sentence of I.C. § 45-1802 is “the lien created in this chapter,” the remainder of the sentence does nothing to modify this subject, and therefore the lien remains the same as the lien created by the original 1983 statute. This argument is circular. The question at issue in this case is the nature of the “lien created in this chapter.” It cannot be presumed that the “lien created in this chapter” is one that only applies to unused animal feed and therefore the intent of the

legislature in enacting the amendment was to create only a lien that applies to animal feed. The intent of the legislature must be discerned from the plain meaning of I.C. § 45-1802 as amended, or if ambiguous must be determined by external evidence.

The Dairymen's Association further argues that the District Court's interpretation is inconsistent with the remainder of the Act because other sections of the Act make no reference to liens attaching to livestock. The Association points out that the definition of "agricultural product" in I.C. § 45-1801 does not refer to livestock, that I.C. §§ 45-1803, 45-1804, and 45-1805 make no mention of livestock, and faults the District Court for focusing primarily on I.C. § 45-1802 and not on other sections of the Act. This argument ignores the fact that it was I.C. § 45-1802 that was amended in 1989 and that it is the interpretation of that section that is in dispute. The legislature presumably intended to change the meaning of the statute when it was amended. See *Gonzalez v. Thacker*, 148 Idaho 879, 883 (2009). The district court focused on § 45-1802 because its task was to determine the purpose of the amendment, and how the amendment affected the meaning of the statute as a whole. Moreover, the reliance of the Association on supposedly conflicting provisions of the original 1983 act is misplaced. Amendment of an act operates as a repeal of provisions of the amended act which are changed by and repugnant to the amendatory act. See 73 AM.JUR.2D Statutes § 284 (2012). The amendment calls into question the continued vitality of any conflicting provisions of the original act.

B. Policy considerations support the District Court's interpretation that the lien attaches to livestock that consume agricultural products.

The plain language of a statute forms the basis for interpretation of an unambiguous legislative act, but in the event a statute is found to be ambiguous external evidence and public policy become relevant to determine legislative intent. *Thompson v. City of Lewiston*, 137 Idaho

473 (2002); *State v. Hickman*, 146 Idaho 178 (2008). While the District Court concluded that I.C. § 45-1802 is unambiguous, policy considerations support the District Court's interpretation even if the statute is in fact ambiguous.

Lien statutes are “liberally construed “with a view to effect their objects and promote justice.” *Baker v. Boren*, 129 Idaho 885, 895 (Ct. App. 1997) (citing *Metropolitan Life Ins. Co. v. First Security Bank of Idaho*, 94 Idaho 489, 493 (1971)). Statutory liens are remedial in nature and their purpose is “to provide protection to laborers and materialmen who have added directly to the value of the property of another by their materials or labor.” *Id.* In the case of an agricultural commodities lien statute, the evident purpose of the statute is to protect farmers and dealers who sell feed to livestock operations. If farmers do not have some assurance of payment for the feed they sell, they will have less incentive to sell their products on credit to be used as feed for livestock, and livestock operations will have more difficulty obtaining feed. If a dairy farm or other livestock operation cannot obtain adequate feed, its livestock will not produce livestock products or offspring and will not maintain their value. The agricultural commodities producers and dealers “[add] directly to the value of the property of another” by providing the materials livestock owners need to “maintain” or “increase” the value of their livestock. This also explains why the legislature would provide for the statutory lien to take priority over a competing security interest in I.C. § 45-1805. If the lien did not take priority over a competing security interest, it would be of little value because in the event of a default the seller of livestock feed could never get paid unless the bank's loan was paid in full. Granting higher priority to the lien provides an incentive for suppliers to provide the inputs necessary for the livestock operation to stay in business. It is reasonable to infer that the legislature intended to protect the interests of farmers who provide feed to owners of livestock, and that its 1989 amendment was intended to

ensure that the lien would attach to the livestock or to livestock products regardless of how the feed was used.

The Idaho Dairymen's Association argues that interpreting the statute to provide for the lien to attach to livestock would undermine "the certainty required for financing dairy operations." *Amicus Curiae's Brief of the Idaho Dairymen's Association* at 10. This argument fails to consider that notice of the agricultural commodity dealer's lien may be filed with the secretary of state under I.C. § 45-1804. This provides notice to other creditors of the existence of the lien and allows them to take account of its existence. Moreover, it is within the power of the legislature to prefer the interests of one group of creditors over another, and legislatures routinely do so. Statutory liens exist to protect particular groups of creditors, such as laborers or local businesses that provide goods or services on credit. These lien statutes often grant priority over competing security interests of financial institutions. *See, e.g.*, I.C. § 45-303(2) (granting priority to farm laborer's liens); I.C. § 45-304(2) (granting priority to seed liens); I.C. § 45-806 (granting priority to liens for repairs on personal property). Article 9 of the Uniform Commercial Code recognizes that statutory agricultural liens may be granted priority over prior perfected security interests, provided that the liens are "perfected" to provide notice to other creditors, including holders of security interests.¹ *See* I.C. § 28-9-322(g). If granting priority to agricultural liens completely undermines the system of commercial financing this apparently escaped the attention of the drafters of Article 9, and of the legislatures of other states that provide for agricultural liens to attach to livestock and grant these liens super-priority by statute. *See, e.g.*, MINN. STAT. § 514.945; N.D. CENT.CODE § 35-31-01; TEX. CODE ANN. § 188.002; KAN. STAT. ANN. § 58-243; WYO. STAT. ANN. § 29-8-104.

¹ The Association's argument that the agricultural liens of Sellers were unperfected is addressed below.

C. The issue of whether the agricultural liens of the Sellers were perfected under the Uniform Commercial Code was not raised before the District Court and is therefore waived.

The Idaho Dairymen's Association argues that the Respondent's agricultural liens were not perfected under Article 9 of the Uniform Commercial Code and therefore do not have priority over the security interest of Farmers National Bank. This issue was not raised or argued before the trial court and is therefore waived for purposes of this appeal. *See Krempasky v. Nez Perce County Planning and Zoning*, 150 Idaho 231, 236 (2010).

If this issue is not deemed to be waived, it should be noted that contrary to the arguments of the Association filing a financing statement is not necessarily required to perfect a lien for purposes of Article 9. The Uniform Commercial Code requires agricultural liens to be "perfected" in order to have priority granted to them by a lien statute. I.C. § 28-9-322(g). In *Stockman Bank of Montana v. Mon-Kota, Inc.*, 343 Mont. 115, 180 P.3d 1125 (2008), the Montana Supreme Court considered whether an agricultural lien claimant's lien had been perfected under Article 9 of the Uniform Commercial Code. The lien claimant had not filed a UCC financing statement, but had filed a notice of lien with the Secretary of State as required by the agricultural lien statute. The Montana court concluded that this notice of lien was sufficient to perfect a lien under Article 9 because it contained the same information required on a financing statement and it was filed in the same office. Requiring lien claimants to file a UCC financing statement in addition to the notice of lien would be an unnecessary formality because the notice function had already been served by the notice of lien. *Id.* at 132-33. By this standard, all of the Respondent's lien claims have been perfected by the filing of a notice of lien under I.C. § 45-1804.

The related argument that I.C. § 45-1805 does not grant priority over security interests to liens in livestock likewise addresses an issue that was not raised or argued before the District

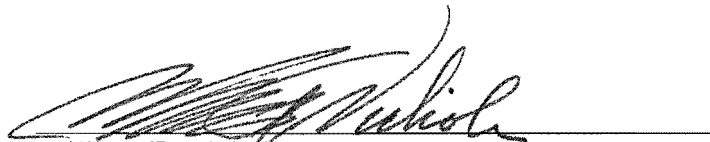
Court and is therefore waived. Even if this issue were properly before the Court this argument is without merit. Idaho Code § 45-1805 establishes the priority of “the lien created by section 45-1802, Idaho Code.” The interpretation of I.C. § 45-1802 controls the interpretation of I.C. § 45-1805. Whatever lien is created by I.C. § 45-1802 is granted priority over a competing security interest by I.C. § 45-1805.

CONCLUSION

For the foregoing reasons the Amended Judgment entered by the District Court on August 29, 2012 should be affirmed.

Dated this 21st day of December, 2012.

WHITE PETERSON



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2012, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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