
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

STOCKMAN BANK OF MONTANA, a
Montana banking corporation,

Supreme Court No. 20060119

Plaintiff and Appellee

v.

AGSCO, INC., a North Dakota
corporation, Capital Harvest, Inc., d/b/a
Capital Harvest Finance Company, a
North Dakota corporation, individually
and as agent for AGSCO, INC., Farmers
Union Oil Company of Williston, a
North Dakota cooperative association,
MON-KOTA, Inc., a Montana
corporation, Betaseed, Inc., a Minnesota
corporation, Central Insurance Agency, a
North Dakota corporation, Steven D.
Cayko, a/k/a Steve Cayko, Perry
Elletson, a/k/a Perry E. Elletson, Ron
Gross, a/k/a Ronnie Gross, Edward P.
Ochs, a/k/a Eddie Ochs, Tom Ochs,
Mark Brunelle, Kelly Brunelle, and Bill
Sheldon

Defendants

and

Farmers Union Oil Company of
Williston, a North Dakota cooperative
association,

Third-party Plaintiff

v.

Hardy Farm, Inc., and Jim Hardy,

Third-party Defendants

v.

Betaseed, Inc., a Minnesota corporation,

Defendant and Appellant.

BRIEF OF DEFENDANT/APPELLANT
BETASEED, INC.

Appeal from Order Granting Plaintiff Summary Judgment
Northwest Judicial District
McKenzie County, North Dakota
McKenzie County Civil No. 03-C-00012
The Honorable Gerald H. Rustad

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STATEMENT OF ISSUES

- I. WHETHER THE DISTRICT COURT ERRED IN GRANTING A RULE 56 SUMMARY JUDGMENT MOTION AGAINST THE DEFENDANT BETASEED, INC. AND IN DENYING BETASEED'S MOTION FOR SUMMARY JUDGMENT BY:
 - A. CONCLUDING AS A MATTER OF LAW THAT DEFENDANT BETASEED, INC. DID NOT STRICTLY COMPLY WITH THE FILING AND NOTICE REQUIREMENTS AS ORDERED BY NORTH DAKOTA LAW;
 - B. CONCLUDING AS A MATTER OF LAW THAT DEFENDANT BETASEED, INC.'S AGRICULTURAL SUPPLIER'S LIEN WAS INVALID;
 - C. FAILING TO ADDRESS DEFENDANT BETASEED, INC.'S ARGUMENT THAT PLAINTIFF STOCKMAN BANK OF MONTANA LACKS STANDING TO CONTEST THE VALIDITY OF DEFENDANT BETASEED, INC.'S AGRICULTURAL SUPPLIER'S LIEN;
 - D. CONCLUDING AS A MATTER OF LAW THAT DEFENDANT BETASEED, INC. WAS NOT ENTITLED TO ANY PROCEEDS ON DEPOSIT WITH THE DISTRICT COURT; AND
 - E. CONCLUDING AS A MATTER OF LAW THAT PLAINTIFF STOCKMAN BANK OF MONTANA WAS ENTITLED TO SUMMARY JUDGMENT.

STATEMENT OF CASE

This is an appeal from the McKenzie County District Court's January 23, 2006 Order granting Plaintiff Stockman Bank of Montana's (hereinafter "Stockman Bank" or "Plaintiff") motion for summary judgment pursuant to Rule 56 of the North Dakota Rules of Civil Procedure against Defendant Betaseed, Inc. (hereinafter "Betaseed" or "Defendant").

This action was initiated against Betaseed by a Summons and Complaint dated February 7, 2003. (App. 17-73). The Complaint alleged, as it pertains to Betaseed, that the Agricultural Supplier's Lien asserted by Betaseed was invalid due to Betaseed's failure to strictly comply with North Dakota lien and notice requirements and, thus, should not be given priority over the security interest held by Stockman Bank.

Betaseed's Answer (App. 74-79) asserted that it had provided Hardy Farms with seed product in the amount of Forty Three Thousand Nine Hundred Forty-one and no/100 Dollars (\$43,941.00), had filed a North Dakota Agricultural Supplier's Lien as a result of Hardy Farms' non-payment and that it had complied with all of the requirements of N.D.C.C. § 35-31-02 so as to have a valid Agricultural Supplier's Lien against Hardy Farms for the 2002 sugar beet crop yield. (App. 74-79).

On or about November 19, 2004, Stockman Bank and Betaseed simultaneously moved the District Court for an Order granting each party summary judgment pursuant to Rule 56 of the North Dakota Rules of Civil Procedure. Both parties submitted briefs, exhibits and affidavits in support of its Motion. Both parties further submitted briefs in opposition to the other's summary judgment Motions.

The matter of summary judgment came before the Honorable Gerald H. Rustad of the McKenzie District Court on February 3, 2005. Respective arguments of counsel were submitted to the Court for consideration that day. On January 23, 2006 an Order was entered granting Plaintiff Stockman Bank's Motion for Summary Judgment. (App. 80-81). In its Judgment dated February 8, 2006, the Court declared that Betaseed had not strictly complied with the filing and notice requirements as required by North Dakota law and, therefore, its Agricultural Supplier's Lien was invalid. The Court further ordered that Betaseed was not entitled to any proceeds on deposit with the Court. (App. 67-72). By nature, given that the Court granted Summary Judgment in favor of Stockman Bank, the Court also denied Betaseed's Motion for Summary Judgment.

Notice of Entry of Judgment was served on or about February 13, 2006. (App. 82-87). Betaseed timely served and filed its Notice of Appeal on April 11, 2006. (App. 88-89).

Thereafter, on April 25, 2006 Betaseed filed a Motion for Limited Remand with the Supreme Court so as to allow the Trial Court to resolve and address various matters pending with the Trial Court. (App. 90-91). On May 11, 2006, the Trial Court entered an Order regarding deposited funds pending appeal. (App. 92-93).

STATEMENT OF FACTS

The Plaintiff Stockman Bank is a Montana banking corporation with an office in Sidney, Montana. Stockman Bank served as the primary lender for Hardy Farm, Inc. (“Hardy Farms”), a North Dakota Corporation, for the 2001 and 2002 growing seasons. Jim Hardy is a farmer in North Dakota and Montana. During pertinent times to this lawsuit, Jim Hardy was Vice President of Hardy Farms. During pertinent times to this lawsuit, J.W. Hardy, Jr. was President of Hardy Farms. Betaseed is a Minnesota corporation that provides seed products to farmers.

On or about November 30, 2001, Hardy Farms, by and through Jim Hardy, ordered 540 units of beet seed at a cost of \$43,605.00 from Defendant Betaseed subject to “fall terms.” (App. 94-98). Hardy Farms later exchanged seed for a smaller size seed in order to accommodate its planter. Id.

As of April 3, 2002, Hardy Farms was indebted to Betaseed in an amount of \$43,941.00 (App. 99). On June 21, 2002, Betaseed, by and through its sales representative, Daniel Watts, filed an Agricultural Supplier’s Lien/Notice with the North Dakota Secretary of State. Id. The Agricultural Supplier’s Lien attached to Hardy Farms’ sugar beet crop as of that date. Id. Betaseed utilized the North Dakota Secretary of State’s Agricultural Supplier’s Lien/Notice ASL-2 form as discussed in N.D.C.C. § 35-31-02. See blank ASL-2 form with instructions. (App. 87-88). Betaseed abided by and followed all instructions accompanied with the ASL-2 form.

It is extremely important to point out that Jim Hardy, an Officer of Hardy Farms, Inc. during the pertinent time period herein, testified that he urged the suppliers of Hardy Farms, Inc. that it was in trouble and that the suppliers should “protect yourself” by filing

agricultural suppliers liens. See excerpt of June 24, 2004 sworn deposition of Jim Hardy. (App. 102-103). Furthermore, in a sworn affidavit submitted to the Court, Jim Hardy emphasized that he and another official of Hardy Farms, Inc. encouraged its suppliers to file agricultural supplier liens. See November 18, 2004 sworn affidavit of Jim Hardy. (App. 104-112).

More importantly, in his sworn affidavit filed with the Court, Mr. Hardy stated that with respect to the notice issue raised by Stockman Bank, that he was well aware that if Hardy Farms did not pay its suppliers that the suppliers were certainly free to file an Agricultural Supplier's Lien. Id. He goes on to state that:

“5. It has come to my attention that Stockman Bank is alleging that Betaseed's Agricultural Supplier's Lien is not valid because of an alleged notice requirement pursuant to the following language under Section 35-31-02(5) of the North Dakota Century Code:

“Before a supplier's lien is filed, a billing statement for the supplies furnished must include notice to the agricultural producer that if the amount due to the agricultural supplier is not satisfied a lien may be filed.”

6. It is true that none of Betaseed's billing statements contained the above-described notice.

7. Having been a long-time farmer in Montana and North Dakota, I was well aware that if Hardy Farms did not pay its suppliers, the suppliers were certainly free to file an Agricultural Supplier's Lien. Because Hardy Farms had advised many of its suppliers to file the Agricultural Supplier's Lien in the first place, it was not necessary that Hardy Farms be provided with notice in a billing statement as to the ramifications of non payment—we were already well aware of that.”

In a nutshell, this case boils down to whether or not a farmer's actual knowledge that a supplier can file a lien upon nonpayment to the ag supplier is somehow legally outweighed by a third party creditor (not privy to the transaction) claiming that a one line notice in the supplier's billing statement vitiates the validity of the agricultural supplier's

lien filed by the supplier. Does a technicality trump reality and actual knowledge?

As stated previously, the hearing regarding summary judgment was held before the Honorable Gerald H. Rustad on February 3, 2005. On January 23, 2006 the Court entered an Order granting Plaintiff Stockman Bank's Motion for Summary Judgment and denying Betaseed's Motion for Summary Judgment. (App. 80-81).

The Court did not issue a Memorandum Opinion along with its Order and Judgment that would detail the rationale, reasoning and case law which led to the Court's final conclusion to grant Stockman Bank summary judgment. The Court further did not address Betaseed's assertion that Stockman Bank lacked standing to contest the validity of Betaseed's prior notice with respect to Hardy Farms and the filing of the Agricultural Supplier's Lien.

LAW AND ARGUMENT

I. Summary Judgment Must be Reversed and Summary Judgment Must be Granted in Favor of Betaseed.

In granting summary judgment against Betaseed, Betaseed respectfully submits that the District Court misinterpreted the intent behind the applicable statute, N.D.C.C. § 35-31-02, which lays out the procedure required to obtain an Agricultural Supplier's Lien. The District Court ruled that Betaseed had failed to comply with North Dakota lien and notice requirements as required by the statute. The District Court, however, failed to apply the correct standard of review or fully consider the facts and legislative history that points directly to the opposite conclusion.

A. Standard of Review.

The standard of review for summary judgments aptly summarized is:

Under N.D.R. Civ. P. 56, a summary judgment should be granted only if it

appears that there are no issues of material fact or any conflicting inferences which may be drawn from those facts. The party seeking summary judgment has the burden to clearly demonstrate that there is no genuine issue of material fact. In considering a motion for summary judgment, the court may examine the pleadings, depositions, admissions, affidavits, interrogatories, and inferences to be drawn from the evidence to determine whether summary judgment is appropriate. The court must view the evidence in a light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the evidence. Courts must also consider the substantive standard of proof at trial when ruling on a motion for summary judgment.

Hart Constr. Co. v. American Fam. Mut. Ins. Co., 514 N.W.2d 384, 388 (N.D. 1994) (citations and quotations omitted). The question of whether summary judgment was properly granted is reviewed de novo on the entire record. Heart River Partners v. Goetzfried, 2005 ND 149, ¶ 8, 703 N.W.2d 330, 335. On appeal, the Supreme Court must determine if the information available to the trial court actually precluded the existence of a genuine issue of material fact which entitled the moving party to summary judgment. Id. Summary judgment is appropriate solely against parties failing to establish a factual dispute on an essential element of a claim on which they will bear the burden of proof at trial. Martin v. Berg, 2005 ND 108, ¶ 9, 697 N.W.2d 723, 726. “The district court should not grant summary judgment when a dispute exists over a genuine issue of material fact.” Nationwide Mut. Ins. Companies v. Lagondinski, 2004 ND 147, ¶35, 683 N.W.2d 903 (citing Boe v. Rose, 1998 ND 29, ¶ 15, 574 N.W.2d 834). The court must not draw favorable inferences and make ‘findings’ on disputed facts to support a summary judgment ruling. Greenfield v. Hill, 521 N.W.2d 87, 92 (N.D. 1994).

In this matter, while Betaseed readily agrees that a Summary Judgment Ruling was appropriate, Betaseed submits that it was entitled to Summary Judgment in its favor as opposed to Summary Judgment being entered in favor of Stockman Bank.

B. Summary Judgment Must Be Reversed and Summary Judgment must be entered in favor of Betaseed because the District Court Erred As A Matter of Law.

1. The District Court Erred as a Matter of Law in Concluding that Betaseed did not Strictly Comply with the Filing and Notice Requirements of North Dakota Law.

a. Betaseed's Agricultural Supplier's Lien Notice Contained All Required Elements.

Agricultural supplier's liens in North Dakota are a creature of statute. Under North Dakota law, an agricultural supplier's lien is created upon filing "a verified statement in the office of the recorder of any county in this state or in the office of the secretary of state" within 120 days after the agricultural supplies are provided. N.D.C.C. § 35-31-02.

The verified statement required by N.D.C.C. § 35-01-02 requires that certain information be provided, including:

- (1) The name and address of the person to whom the supplies were furnished.
- (2) The name and address of the supplier.
- (3) A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with a reasonable description, including the county as to the location of the crops, agricultural products, or livestock and the year the crop is to be harvested or was harvested.
- (4) A description and value of the supplies and the first date furnished.
- (5) The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person to whom the supplies were furnished.

N.D.C.C. § 35-31-02. As permitted by the statute, the North Dakota Secretary of State has prepared a form, as well as instructions on how to complete the form, to be used in order to assure compliance with the statute.

In late 2001, Hardy Farms ordered Forty Three Thousand Nine Hundred Forty-One and no/100 Dollars (\$43,941.00) worth of sugar beet seed from Betaseed. The seed was furnished to Hardy Farms on or about April 3, 2002. On or about June 21, 2002, after non-payment by Hardy Farms, Betaseed filed a form Agricultural Supplier's Lien/Notice with the McKenzie County Recorder's office. The June 21, 2002 Notice stated that the seed was first furnished to Hardy Farms on April 3, 2002, which was well within the 120-day limit set by N.D.C.C. § 35-31-02. The Notice further included all of the other information required by N.D.C.C. § 35-31-02 by noting:

- (1) The supplies were furnished to Hardy Farms, Rte 2, Box 2274, Fairview MT, 59221, contact person Jim Hardy.
- (2) The supplier of the seed was Betaseed, Inc. 1788 Marshall Rd, Shakopee, MN, 55379-0195.
- (3) Described the crops as "Sugar Beets contracted to: Holly Sugar Corp., Sidney, T 59270"; described the location of the crops as "McKenzie County, ND. 6 Miles North of Fairview, MT on ND Hwy 58"; and stated the year of harvest was to be 2002.
- (4) Described the supplies as "540 units of sugar beet seed."
- (5) Included the purchaser's taxpayer identification number of 81-0404174.

By including this information, Betaseed provided all of the information required by statute. By filing the Notice with all of the required information, within 120 days of

the date that the supplies were furnished, a lien arose in favor of Betaseed. N.D.C.C. § 35-31-02.

- b. Betaseed's Lien has Priority Over All Other Liens and Encumbrances Except an Agricultural Processor's Lien.

Under North Dakota law, an agricultural supplier's lien, such as that held by Betaseed, is entitled to priority over all other liens and encumbrances other than agricultural processor's liens under North Dakota Century Code Chapter 35-30. N.D.C.C. § 35-31-03.

- c. Betaseed's Lien and Priority as Against Third Parties is not Affected by Betaseed's Failure to Give Written Notice to the Debtor.

As noted above, by statute, a lien is created in favor of Betaseed upon the filing of the verified statement with the county recorder. It cannot be disputed that the verified statement was filed and that the lien in favor of Betaseed was created. The county recorder accepted Betaseed's verified statement. Despite Betaseed's apparent failure to include "notice" language on its billing statement that, if the amount due to the agricultural supplier is not satisfied, a lien may be filed, the agricultural supplier's lien was created and perfected upon filing. See N.D.C.C. § 35-31-02. Through various communications with Hardy Farms, it is absolutely undisputed that Hardy Farms, Inc. had actual knowledge that if it did not pay the Betaseed bill, that Betaseed could file an Agricultural Supplier's Lien. In fact, Hardy Farm's Inc. encouraged Betaseed to do so! In other words, the intent of the statute in the first place, to put the agricultural producer on notice that a supplier's lien may be filed immediately upon non-payment, was already well known in this case. Thus, Betaseed has substantially complied with the enumerated requirements and, most importantly, the intent of N.D.C.C. § 35-31-02.

- i. Betaseed substantially complied with the requirements of North Dakota Century Code Section 35-31-02.

North Dakota's statutory lien laws are considered to be "remedial" and, as such, they should be construed to effectuate their purpose of protecting those who contribute labor, skills or materials." In re Bernstein, 230 B.R. 144, 150 (Bankr. D.N.D. 1999) (citing North Dakota Mineral Interests v. Berger, 509 N.W. 251, 255 (N.D. 1993)). The North Dakota Supreme Court has consistently required only "substantial compliance" with the lien law before enforcing a lien and the priority it carries. See, e.g., In re Glinz, 46 B.R. 266, 273 (Bankr. D.N.D. 1984) (citing Agricultural Bond & Credit Corp. v. Courtenay Farmers Coop. Ass'n, 251 N.W. 881, 887 (N.D. 1933)). See also Ask, Inc. v. Wegerle, 286 N.W.2d 290, 294 (N.D. 1979); Agricultural Bond & Credit Corp. v. Courtenay Farmers' Co-op. Ass'n, 251 N.W. 881, 887 (N.D. 1933); Huether v. McCaull-Dinsmore Co., 204 N.W. 614 (N.D. 1925).

When interpreting North Dakota's statutory lien provisions, the courts have focused on whether or not an inadvertent mistake or error in complying with the statutory lien provisions will mislead those looking at the records registry. See In re Glinz, at 273 (citing Murie v. National Elevator Co., 236 N.W. 269, 271 (N.D. 1931)). Other courts have held similarly, "[W]hether there has been substantial compliance by the lien claimant depends upon the degree of noncompliance with the letter of the statute, the policy which underlies the particular statutory provision in question, and the prejudice which may have resulted to either the owner of the property or other third parties who have an interest in" the property. McGregor Co. v. Heritage, 631 P.2d 1355, 1357 (Ore.

1981) (quoting Beneficial Finance Co. v. Wegmiller Bender Lumber Co., 402 N.E.2d 41, 45 (Ind. Ct. App. 1980)).

As noted above, Betaseed has complied with all of the elements of N.D.C.C. § 35-31-02, but for the billing statement notice requirement to the debtor. The requirement of notice to the debtor, however, serves only to benefit the debtor.¹ There is to be no benefit to a third party in giving the debtor such notice being, nor is there any requirement that third parties be given such notice. In fact, only in a case where litigation such as this ensues, would a third party creditor ever know whether a debtor received billing statement notice prior to the filing of the lien. In this case, it cannot be disputed that the lien notice filed by Betaseed was sufficient to give record notice of the lien to all third parties, and, as such, no third party creditor in this litigation has a basis upon which to claim prejudice and Betaseed must be determined to have substantially complied with N.D.C.C. § 35-31-02.

- ii. The legislative history surrounding the notice requirement was not intended to be a legal “tripwire” used to invalidate proper agricultural supplier’s liens.

It was during the 1997 legislative session the requirement that a “billing statement” be provided to the producer warning if a potential lien was implemented. The legislative history, however, clearly indicates that the notice requirement was never intended to be a “legal tripwire” under the circumstance that the agricultural producer would otherwise be on notice of a potential lien.

¹ Even as to the debtor, the notice serves almost no purpose, as upon receiving the notice the debtor is given no special rights by which the debtor could subsequently prevent the filing of the verified statement upon the debtor’s default. See N.D.C.C. § 35-31-01.

Specifically, it appears the 1997 legislative session sought to address some specific issues which could arise regarding the use of agricultural supplier's liens.² See Legislative History. (App. 113-150). The notice provision was sought because, in the year 1996, some farmers had received supplies using a line of credit arrangement. A lien was then obtained, not just for the amount of the supplies, but for the amount of the entire line of credit. Thus, even though the farmer paid off the amount of the supplies purchased in 1996, a lien was continued for new goods purchased in 1997. The Legislature was clearly disturbed with this result, as were the banks.

For this reason, the notice requirement was implemented. The initial proposal would have required notice to be given within ten (10) days after a lien was filed to anyone else who had a security interest or lien against the same crops. See, e.g., [S.B. 2324, Version 78323.0100, § 4, language in § 35-31-02(6) contained within Legislative History. (App. 119). Ultimately, this proposal was dropped and the language simply requiring the producer provide some notice to the debtor that a lien could be claimed was included at the end of N.D.C.C. § 35-31-02.

In adopting this provision, there was clearly concern about adopting a "legal tripwire." See Testimony of Steve Strege, North Dakota Grain Dealers Association, House Agriculture Committee, at 2, March 13, 1997. (App. 125). In response to this concern, Representative Warner asked, "Are we creating too many hurdles to be jumped if a lien should go to court?" (App. 126). Representative Nicholas responded by saying: "I think we can determine what the court will do with this. This is more so that the

² Pursuant to N.D.R.App.P. 28(g), the complete legislative history for the 1997 legislative session with regard to agricultural processor and supplier lien filings under N.D.C.C. § 35-30-01, N.D.C.C. § 35-30-02, N.D.C.C. § 35-31-01 and N.D.C.C. § 35-31-02, Senate Bill No. 2324 is attached to this brief as a part of the Appendix in this matter.

farmer has some notification that — at least you know that the supplier is going to put a lien on whatever and you won't have a big surprise when you go to pick up your check from the elevator.” Id. (Emphasis added). Representative Kroeplin had the last word during the hearing noting: “I think we should be careful not to put in a tripwire where the elevator or the oil company loses [sic.] their lien on a technicality.” (App. 127). (Emphasis added).

The legislative history also reflects that there was specific discussion as to whether notice was to be given to the lender - the answer was “No, not in this bill.” (App. 125).

The legislative history thus clarifies the point that the supplier's lien statute was never intended to be narrowly construed so as to require “strict compliance” or create a “tripwire” preventing proper supplier's liens from enforcement. Rather, the Legislature wished for the provisions to be read as a whole in order to ensure fairness. In this case, it cannot be disputed that Hardy Farms was not only aware of the potential for a lien, but had in fact suggested to Betaseed that they file a lien. See Affidavit of Jim Hardy with invoices referenced therein attached (App. 104-112.) See also sworn deposition testimony of Jim Hardy (App. 100-101) wherein Mr. Hardy and Hardy Farms specifically indicate that it encouraged suppliers, including Betaseed, to file agricultural supplier's liens against the Farms in order to protect their various interests.

As Hardy Farms, in its time of trouble, encouraged its agricultural supplier's, including Betaseed, to protect themselves by filing agricultural supplier's liens, Hardy Farms was on notice and aware that such liens could and would be filed. Thus, the intent of the notice provision of N.D.C.C. § 35-31-02 was clearly met, i.e., Hardy Farms had

actual knowledge that a lien could be filed upon non payment.

Under the facts of this case, it is clear that Betaseed substantially complied with the requirements of North Dakota law and that its agricultural supplier's lien, which was filed with respect to Hardy Farms, is a valid, enforceable agricultural supplier's lien.

- iii. Hardy Farms, as the agricultural producer, is the only party with standing to contest the validity of Betaseed's prior notice.

Even if this Court were to somehow conclude that Betaseed's Agricultural Supplier's Lien was procedurally not in compliance, reversal of the Summary Judgment granted in favor of Stockman Bank is still mandated. Despite being clearly raised at the District Court level, that Court failed to address Betaseed's standing argument, i.e., that Hardy Farms is the only party with standing to contest the validity of Betaseed's agricultural supplier's lien. Hardy Farms does not and has not challenged the validity of Betaseed's lien and, in fact, has supported the same and acknowledged that it was on notice prior to the lien filing. Undoubtedly, Hardy Farms was the only party intended to be protected by the notice provision of the statute. The intent and purpose of pre-lien notice in North Dakota is **to give notice to the debtor**. As Representative Nicholas emphasized, the concern with notice is about the farmer. Such pre-lien notice has no benefit, nor does it seek to benefit, other third party creditors. To interpret the requirement of pre-lien notice as for the benefit of a third party is to give this statute an absurd and unintended result.

It is black letter law that the terms of a statute must be "construed logically so as to not produce an absurd result." Schwind v. Director, N.D. Dept. of Transp., 462 N.W.2d 147, 149 (N.D. 1990). This is true even when it requires an interpretation

contrary to the letter of the law. Samdahl v. North Dakota Dept. of Transp. Director, 518 N.W.2d 714, 717 (N.D. 1994). In Samdahl, the North Dakota Supreme Court rejected the argument that the giving of notice of intent to suspend a driver's license was jurisdictional. Id. The Court continued that despite the fact that the giving of notice did not comply with the letter of the law, it would be an absurd result to enforce the law in the absence of any showing of prejudice. Id.

Beyond the facial absurdity of applying the pre-lien notice provisions in favor of third parties, there is the more fundamental question of whether a third party even has standing to challenge the failure of Betaseed to provide the required pre-lien notice to the debtor. The courts recognize that the lack of a required notice is a defense that is personal to the party that was entitled to the notice. See, e.g., Shelby Mut. Ins. Co. v. Della Ghelfa, 489 A.2d 398, 407 (Conn. Ct. App. 1985) ("It is axiomatic that due process rights are personal, and cannot be asserted vicariously.") Compare In re Gatlinburg Motel Enterpr., Ltd., 119 B.R. 955, 962 (Bankr. E.D. Tenn. 1990) (holding that statute of frauds is a defense that is personal to the party sought to be charged, and is not a defense available to a third party). Although an older case, the comments of the Illinois Court of Appeals in Chicago Wood Piling Co. v. Anderson, 39 N.E.2d 702, 705 (Ill. Ct. App. 1942) appear to be as true today as when first spoken: "Our attention has not been called to any case, where it is claimed that the notice was defective than any one except the party upon whom the notice should have been served, can raise the question." The Court thus held that even if the required notice was not properly served that the "appellants are not in a position to urge that question as a ground for reversal." Id.

More recently, the Florida Court of Appeals reached a similar conclusion in

Public Health Trust of Dade County v. Carroll, 509 So.2d 1232 (Fla. Ct. App. 1987). In that case, the Court held that a lien obtained by a hospital could not be attacked by the patient on the basis of the failure to give the patient notice or the fact that it was not timely obtained, where the lien ordinance did not require the patient to be given notice and the patient therefore had no standing to contest the lien. Id. at 1233-34. Simply put, even if Betaseed were considered by this Court to have failed to substantially comply with the statutory lien requirements, neither the Plaintiff, nor any other third party to the transaction Betaseed engaged in with the debtor, is entitled to challenge the validity of Betaseed's pre-lien notice.

The District Court was required to consider and address the alternative arguments of both parties with respect to motions for summary judgment. In this action, the District Court's failure to address Betaseed's standing argument constituted error and grounds for reversal and remand. See Van Klootwyk v. Baptist Home, Inc., 2003 ND 112, ¶ 20, 665 N.W.2d 679, 687 (Reversing and remanding with instructions to trial court to consider the moving party's alternative grounds for summary judgment dismissal); See also Minex Resources, Inc. v. Morland, 467 N.W.2d 691, 697 (N.D. 1991) (Requiring trial court to address moving party's alternative argument on remand).

2. The District Court Erred as a Matter of Law in Concluding that Betaseed's Agricultural Supplier's Lien was Invalid.

As discussed and detailed above, Defendant Betaseed, Inc.'s Agricultural Supplier's Lien Notice contained all information and required elements as enumerated in N.D.C.C. § 35-31-02. Further, Betaseed substantially complied with the notice requirement of N.D.C.C. § 35-31-02 by and through communications with Jim Hardy of Hardy Farms. As of June 21, 2002, the date upon which Betaseed filed its Agricultural

Supplier's Lien/Notice ASL-2 form in the appropriate office with all of the required and pertinent information, a valid and proper agricultural supplier's lien arose in favor of Betaseed with respect to the Hardy Farm crop yield. The lien that arose is entitled to priority over Plaintiff's Stockman Bank's security interest in Hardy Farm and any production thereto.

As a result, the District Court should have granted Summary Judgment in favor of Betaseed and denied the Summary Judgment Motion of Stockman Bank.

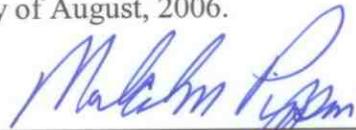
3. The District Court Erred as a Matter of Law in Concluding that Betaseed was not Entitled to Any Proceeds on Deposit with the District Court.

Betaseed's proper and perfected lien is entitled to priority under N.D.C.C. § 35-31-03. According to that section, an agricultural supplier's lien, such as that held by Betaseed, is entitled to priority over all other liens and encumbrances other than agricultural processor's liens. N.D.C.C. § 35-31-03. As such, Betaseed's lien and its claim to an interest in the crop yield of Hardy Farms is entitled to that priority. As such, Betaseed is entitled to Summary Judgment in its favor on its underlying claim, together with interest thereon, and the District Court erred as a matter of law in concluding that it was not.

CONCLUSION

For the foregoing reasons and such other reasons as may be advanced at oral argument, the Court is respectfully urged to reverse the Rule 56 summary judgment declaring Defendant Betaseed, Inc.'s agricultural supplier's lien invalid, to vacate the Judgment, and to order the District Court to enter summary Judgment in favor of Betaseed.

Respectfully submitted this 11 day of August, 2006.



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STATE OF NORTH DAKOTA)
 ss.
COUNTY OF WILLIAMS)

AFFIDAVIT OF SERVICE

WENDY SLOTSVE, being first duly sworn on oath, deposes and says that she is of legal age, a resident of Williston, North Dakota, not a party to nor interested in the action, and that she served the attached:

Brief of Defendant/Appellant Betaseed, Inc.; and

Appellant's Appendix

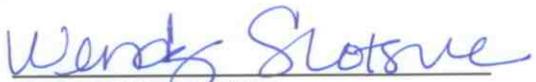
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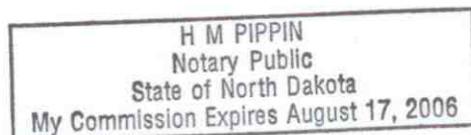
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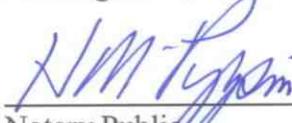
Via E-Mail at the above noted e-mail addresses on August 11, 2006, a true and correct copy thereof.

That the undersigned knows the person served to be the person named in the papers served and the person intended to be served.


WENDY SLOTSVE

SUBSCRIBED AND SWORN to before me on August 11, 2006.




Notary Public