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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0654**

Producers Livestock Credit Corporation,
Respondent,

vs.

Jeff Benson, Defendant,

Benedict Weiland,
Appellant.

**Filed March 11, 2019
Affirmed
Smith, Tracy M., Judge**

Polk County District Court
File No. 60-CV-17-1277

Jeff C. Braegelmann, Christopher E. Bowler, Gislason & Hunter LLP, New Ulm,
Minnesota (for respondent)

Zenas Baer, Zenas Baer Law Office, Hawley, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellant Benedict Weiland, a feedlot operator, challenges the district court's
summary judgment declaring that Weiland waived his statutory feeder's lien and therefore
had no interest in the proceeds of the sale of cattle that had been financed by respondent

Producers Livestock Credit Corporation (PLCC). Because the district court did not err in concluding that there is no genuine issue of fact that Weiland waived his interest in the cattle and that PLCC is entitled to judgment as a matter of law, we affirm.

FACTS

PLCC is an agricultural lender. It financed the purchase of cattle by farmers Perry and Laurie Duden. As of January 2016, the Dudens had six loans with PLCC. The loans were identified with numbers, from 403 to 408 (Notes¹ 403 to 408). Debts were incurred only under Notes 403, 404, and 405. Though the loans were individually secured with all of the Dudens' cattle, a head count of cattle was assigned to each loan.

The Dudens kept their cattle at different locations. The Dudens and PLCC, over the course of their dealings, agreed to restructure the loans so that the cattle assigned to each loan would be at a certain location; in other words, they agreed to "track" the location of each herd of cattle by the loan to which the herd was assigned.

In May 2016, the Dudens moved about 240 head of Holstein steers (the Holstein steers²) they had under Note 404 to Weiland's feedlot. Consistent with the agreement between PLCC and the Dudens, PLCC transferred the head count and the corresponding dollar amount to Note 407. The balance of Note 404 was decreased, and that of Note 407

¹ When used in this abbreviated form, "Note" refers to the whole arrangement, including the loan/security agreements that accompany the promissory note.

² It is unclear from the record whether the feeder's lien sought by Weiland is strictly confined to the 240 head of Holstein steers. Because the point is immaterial to the analysis, we use the term "the Holstein steers" broadly to mean the herd in which Weiland's asserted lien rights are held.

was increased, by the value of the Holstein steers. This transfer was the first entry made on Note 407, which was a revolving line of credit.

Under Minn. Stat. § 514.966, subd. 4 (2018), a commercial feeder obtains a feeder's lien on livestock for the value of the materials or services provided to care for the livestock. When PLCC learned that the Holstein steers were placed on Weiland's feedlot, it sent Weiland a feedlot waiver and consent form for him to sign to prevent him from becoming a competing lienholder in the Holstein steers. Weiland signed the feedlot waiver on June 6, 2016. It stated:

In consideration of the Promissory Note(s), Loan Agreement(s), and Security Agreement(s) to be entered into between [PLCC] . . . and [the Dudens] . . . for the advance of funds for the purchase of 1000 head +/- of cattle (the "Collateral") located on . . . [Weiland's feedlot] (the "Premises") . . . [,]

. . . .

[Weiland] consents to the feeding of the Collateral on the Premises and irrevocably waives and relinquishes to [PLCC] all rights and all claims and demands of every kind . . . against the Collateral now located or to be located on the Premises.

Thereafter, through unrelated transactions, Notes 404 and 405 were cleared out. As of December 2016, only Notes 403, 406, and 407 had loan balances. The Dudens ultimately defaulted on those Notes, and, in May 2017, the Dudens' cattle were sold at auction. A proceeds check for \$415,000.19 was issued. Weiland claimed a feeder's lien on the proceeds. PLCC brought a declaratory judgment action against Weiland, seeking a judicial

determination that it was entitled to the entirety of the proceeds.³ PLCC and Weiland brought cross motions for summary judgment. The court granted summary judgment in favor of PLCC because it decided that there was no genuine dispute of fact that Weiland, by signing the feedlot waiver, effectively waived his interest in the Holstein steers.

This appeal followed.

DECISION

On appeal from summary judgment, appellate courts review de novo “whether a genuine issue of material fact exists” and “whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). The evidence is viewed “in the light most favorable to the party against whom summary judgment was granted.” *Id.* at 76-77. Under Minn. R. Civ. P. 56.01,⁴ “[t]he court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” The district court granted summary judgment in favor of PLCC because it decided that (1) no genuine issue existed

³ PLCC also brought the action against another putative lienholder, Jeff Benson. Benson and PLCC settled their dispute, and Benson was dismissed from the case.

⁴ The district court applied the former version of rule 56, which was recently “revamped” to more “closely follow” the federal rules. Minn. R. Civ. App. P. 56 2018 advisory comm. cmt. When promulgating amendments to rule 56, effective on July 1, 2018 and applicable to pending cases, the supreme court specifically indicated that amended language on the standard for granting summary judgment reflects recent Minnesota caselaw. *Order Promulgating Amendments to Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018). Because the legal standard is unchanged, we cite to the current version of rule 56.01, even though the district court’s decision was issued before the amended rule took effect.

as to whether Weiland waived his interest in the Holstein steers and (2) PLCC was entitled to judgment as a matter of law. Each decision will be addressed in turn.

I. There is no genuine dispute whether Weiland waived his interest in the Holstein steers.

Whether a person waived his or her right is generally a question of fact. *Minneapolis Elec. Lamp Co. v. Fed. Holding Co.*, 221 N.W. 645, 646 (Minn. 1928). But summary judgment is appropriate when only one reasonable inference can be drawn from the undisputed facts. *City of Savage v. Varey*, 358 N.W.2d 102, 105 (Minn. App. 1984), *review denied* (Minn. Feb. 27, 1985). The contents of the feedlot waiver are undisputed, and it is undisputed that Weiland signed the waiver. The issue is whether it is reasonable to infer from the evidence that Weiland did not waive his interest in the Holstein steers. Weiland makes three arguments why such an inference is reasonable, none of which is persuasive.

A. The waiver was knowing.

First, Weiland argues that the inference of nonwaiver is reasonable because he lacked the requisite knowledge to waive his interest in the cattle. Under *Engstrom v. Farmers & Bankers Life Ins. Co.*, waiver “is a voluntary relinquishment of a known right”—“[b]oth intent and knowledge . . . are [the] essential elements.” 41 N.W.2d 422, 424 (Minn. 1950). Weiland asserts that he did not know the true nature of the document he signed; having read through the feedlot waiver quickly, he interpreted it to be an assurance that he “was going to have a lien.” Weiland’s claimed misunderstanding, however, cannot establish a lack of the requisite knowledge because a waiver may be based on constructive knowledge. *See Alsleben v. Oliver Corp.*, 94 N.W.2d 354, 358 (Minn. 1959) (“The requisite

knowledge may be actual or constructive.”). The feedlot waiver gives conspicuous notice that it extinguishes, rather than preserves, the rights of the signer—it states that the signer “irrevocably waives and relinquishes to [PLCC] all rights and all claims and demands of every kind.” Given the language of the waiver and Weiland’s signature, no reasonable inference could be drawn that Weiland lacked the constructive knowledge to waive his interest.

B. The waiver covers feeder’s liens.

Second, Weiland argues that the inference of nonwaiver is reasonable because a feeder’s lien is not within the scope of the feedlot waiver. This argument also runs contrary to the plain language of the document. The feedlot waiver states that Weiland waives and relinquishes to PLCC “all rights and all claims and demands of every kind.” This sweeping description of the rights waived leaves no room for a reasonable inference that it does not cover feedlot liens.

C. The waiver covers the Holstein steers.

Third, Weiland argues that the inference of nonwaiver is reasonable because, by signing the feedlot waiver, he waived his interest in a *different* herd of cattle than the Holstein steers. He relies on the statement in the feedlot waiver that the waiver is “[i]n consideration of the Promissory Note(s), Loan Agreement(s), and Security Agreement(s) to be entered into between [PLCC] . . . and [the Dudens].” He makes two arguments why this language could reasonably be read to refer to cattle other than the Holstein steers.

First, he contends that “the Promissory Note(s), Loan Agreement(s), and Security Agreement(s)” refers only to Note 407 because at the top of the waiver is written

“Promissory Note and Loan Agreement # [407].” This means, he argues, that the feedlot waiver does not cover the Holstein steers because the stated purpose of Note 407 was to “advance funds for [the Dudens’] purchase of up to 1000 head of cattle weighing approximately 250 lbs” and the Holstein steers weighed 900 pounds. In addition, he asserts, Note 407 does not relate to the Holstein steers because the Dudens had the Holstein steers before any obligation was incurred under Note 407; the entry made to Note 407 in relation to the Holstein steers was for tracking purposes, not for a disbursement of purchase money.⁵

Second, Weiland argues, the phrase “the Promissory Note(s), Loan Agreement(s), and Security Agreement(s) *to be entered into* between [PLCC] . . . and [the Dudens]” may be reasonably read to apply to some future loan arrangement and thus not cover the Holstein steers because PLCC had financed them well before Weiland signed the waiver. (Emphasis added.)

Neither of Weiland’s interpretations is reasonable. Under both interpretations, Weiland construes the feedlot waiver to be a partial one limited specifically to some herd, other than the Holsteins, to be financed in the future. While partial waivers of liens “for a clearly expressed special purpose” are recognized, “where a general waiver is executed, and there is nothing in the context to show a contrary intention, there is nothing left for the court to do but enforce” it. *Lundstrom Constr. Co. v. Dygert*, 94 N.W.2d 527, 531 (Minn. 1959) (quotation omitted). The feedlot waiver is a general waiver. It explicitly states that

⁵ Weiland also points to the fact that the terms of Note 407 allowed the Dudens to incur a feeder’s lien. That fact, however, is immaterial. It is undisputed that the Dudens could incur a feeder’s lien; the question is whether PLCC obtained an effective waiver of it from Weiland.

Weiland “irrevocably waives and relinquishes to [PLCC] *all rights and all claims and demands of every kind . . . against the Collateral now located or to be located on the Premises.*” (Emphasis added.) The clause depended upon by Weiland—“In consideration of the Promissory Note(s), Loan Agreement(s), and Security Agreement(s) to be entered into between [PLCC] . . . and [the Dudens]”—is merely an acknowledgement of PLCC’s relationship with the Dudens. The clause does not restrict the effect of the feedlot waiver.

Also, nothing in the context in which Weiland executed the waiver shows an intent of the parties that was contrary to the general purpose of the feedlot waiver. *See id.* PLCC sought the feedlot waiver from Weiland shortly after the Dudens placed the Holstein steers on Weiland’s feedlot. The waiver form that PLCC sent to Weiland, and that he signed, said that it applied to “Collateral *now located*” on Weiland’s feedlot. (Emphasis added.) The only reasonable inference from these facts is that the feedlot waiver was to protect PLCC’s security interest in the Dudens’ cattle, including the Holstein steers. Moreover, at the time Weiland signed the feedlot waiver, he was not aware of the terms of Note 407. He therefore could not have believed that the feedlot waiver related to some 250-pound cattle to be financed with Note 407.

We conclude that the only reasonable inference to be drawn from the undisputed facts is that Weiland waived his interest in the Holstein steers. We next address whether PLCC is entitled to judgment as a matter of law.

II. PLCC is entitled to judgment as a matter of law.

Weiland argues that PLCC is not entitled to judgment as a matter of law because his feedlot waiver had to be, but was not, supported by consideration. Generally, waiver does

not need consideration. *Meagher v. Kavli*, 88 N.W.2d 871, 878-79 (Minn. 1958). But waiver of a mechanic's lien does. *Sussel Co. v. First Fed. Sav. & Loan Ass'n of St. Paul*, 232 N.W.2d 88, 90 (Minn. 1975). Weiland asserts that waiver of a feeder's lien also requires consideration because, like a mechanic's lien, a feeder's lien is a remedial, statutory lien intended to protect those who furnish materials or services that permanently benefit another.

Weiland, however, fails to cite any legal authority for the proposition that the rule requiring consideration for waiver of a mechanic's lien applies broadly to all remedial, statutory liens, *see, e.g.*, Minn. Stat. §§ 481.13 (attorney's lien), 514.68 (hospital lien), .964 (liens on crops), .966, subd. 1 (veterinarian's lien) (2018), or specifically to feeder's liens. It would be an extension of existing law to hold that the general rule for waiver—which does not require consideration—does not apply to waivers of feeder's liens. “[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987).

Even if this court were to extend the law to require consideration for waiver of a feeder's lien, the feedlot waiver here had consideration. PLCC supplied any necessary consideration when, upon learning the cattle were placed with Weiland, it did not demand payment on the loans (as it was entitled to do under the Notes), repossess the cattle, and remove the cattle from Weiland's feedlot; rather, in exchange for the waiver, PLCC permitted the cattle to remain at Weiland's feedlot, allowing Weiland, presumably, to earn income for his services. *See Estrada v. Hanson*, 10 N.W.2d 223, 225 (Minn. 1943) (“A

valuable consideration may consist of some benefit accruing to one party or some detriment suffered by the other . . .”).

In sum, because no genuine issue exists as to whether Weiland waived his interest in the Holstein steers and because PLCC is entitled to judgment as a matter of law, the district court did not err in granting PLCC summary judgment.

Affirmed.