

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1303**

Lighthouse Management Inc.,
Plaintiff,

vs.

Oberg Family Farms, et al.,
Defendants,

American Federal Bank,
Appellant,

Gateway Building Systems, Inc.,
Respondent,

CITYWide Electric, L.L.C.,
Respondent,

Bell Bank,
Respondent.

**Filed August 30, 2021
Reversed and remanded
Reilly, Judge**

Clay County District Court
File No. 14-CV-19-2628

Jacob B. Sellers, Greenstein Sellers PLLC, Minneapolis, Minnesota; and

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(for appellant)

Joseph A. Turman, Turman & Lang, Ltd., Fargo, North Dakota (for respondent/cross-
appellant Gateway Building Systems, Inc.)

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North Dakota (for respondent CITYWide Electric, L.L.C.)

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Considered and decided by Bryan, Presiding Judge; Reilly, Judge; and Slieter, Judge.

SYLLABUS

Whether a grain bin constitutes a real-estate fixture or personal property is a question of fact to be determined by the factfinder after considering these factors: (1) whether the grain bin can be removed without leaving the real property in a substantially worse condition than before; (2) whether the grain bin can be removed without breaking it into pieces and damaging the grain bin itself; (3) whether the grain bin has any independent value once removed from real property; and (4) the intent of the parties.

OPINION

REILLY, Judge

This dispute follows the sale of real property in a civil assignment-for-the-benefit-of-creditors proceeding. The issue on appeal is which creditors' liens have priority. Appellant mortgage-holder and cross-appellant general-contractor challenge the district court's resolution of cross-motions for summary judgment and its mechanic's lien determinations. We reverse and remand. We also deny respondent Bell Bank's motion to strike.

FACTS

I. Structure of Oberg Farming Operations

This case arose from farming operations conducted by Oberg Family Farms. Chad Oberg is the son of Richard Oberg. Chad Oberg is married to Leslie Oberg and Richard Oberg is married to Laurel Oberg (collectively, the Obergs).¹

The Obergs owned and operated a large grain farm near Moorhead. They formed Oberg Family Farms to run their general farming operations. Although the Obergs own Oberg Family Farms, Richard and Chad operate it. Oberg Family Farms does not hold title to any of the assets of the farm and instead rents equipment each year from Oberg Family EQ Group, LLC (Oberg Family EQ), a Minnesota limited liability company.

The Obergs also own Oberg Family EQ. Oberg Family EQ owned all of the personal property on a 20.87 acre parcel of real property, which the parties call the bin site.² The corporate statements of Oberg Family EQ identified the personal property it owned on the bin site as including machinery, grain bins, grain dryers, fuel tanks, facilities, warehouses, hoppers, and hopper bins, a shed, and other farming equipment. Each year, Oberg Family EQ leased its property and equipment to Oberg Family Farms, and Richard and Laurel leased the bin site to Oberg Family Farms.

¹ Because several individuals have the same last name, we use the first names in later references.

² Richard and Laurel owned this 20.87 acres of real property at 4310 110th Avenue North in Moorhead.

II. Banking Relationship Between the Obergs and Bell Bank

The Obergs conducted most of their farm-related banking activities with respondent Bell Bank. To secure repayment of Oberg Family EQ's and Oberg Family Farm's debts to Bell Bank, Oberg Family EQ executed agricultural security agreements granting Bell Bank a blanket security interest in all of the equipment on the bin site. Bell Bank's security interest included accounts, equipment, vehicles, deposit accounts, farm products, general intangibles, livestock, and crops. Bell Bank first perfected its security interest in August 2010, when its predecessor-in-interest filed financing statements under the Uniform Commercial Code (the UCC) for the personal property. Bell Bank's security interest continues through the relevant time. In March 2019, Bell Bank obtained a mortgage for the bin site real property and equipment. Bell Bank is the only party with a first-perfected security interest on the bin-site equipment.³

III. Construction of New Grain Bin

In May 2018, Chad spoke with Kevin Johnson, the president and owner of respondent/cross-appellant Gateway Building Systems, Inc. (Gateway), about acquiring a new large grain bin for the bin site. Gateway is a licensed contractor that sells and constructs grain storage. Several years earlier, Johnson learned that a property owner in Iowa was willing to give away a 132-foot diameter grain bin to anyone who would agree to remove the bin from the original location and transport it elsewhere. Johnson contacted Chad, one of his existing customers, who expressed interest in the bin.

³ AFB filed a mortgage on the bin site in 2018.

Chad and Johnson dispute the nature of their agreement. Chad contends that Johnson's company, Gateway, agreed to act as general contractor for moving and reconstructing the grain bin on the bin site. According to Johnson, however, Chad agreed to act as general contractor and take responsibility for the site work, the concrete work, and the electrical work.

From July 2018 to September 2018, the Obergs prepared the bin site for the arrival of the grain bin from Iowa. Obergs' farm employees performed excavation and backfilling work at the bin site, according to Joe Horner, Gateway's construction manager. Horner explained that Chad arranged for and "hired unknown individuals or a contractor" to pour concrete for the project. Gateway's work included dismantling and removing the bin and its footings from the property in Iowa, and hiring a large forklift to unload parts of the bin from semi-trailers at the bin site in Moorhead. Gateway made many deliveries to the bin site from October to November 2018. Once the real property was prepared, Gateway reconstructed the bin between November and December 2018.

Chad also hired respondent CITYWide Electric LLC (CITYWide), an electrical contractor, in July 2018, to provide electrical work at the site. Brent Michelsen, CITYWide's owner, stated that Chad acted as a general contractor who hired and controlled CITYWide and the other contractors working at the site. CITYWide concluded its installation work in February 2019, and continued to provide service work to the Obergs through April 2019.

IV. Financing for New Grain Bin

In August 2018, Chad approached appellant American Federal Bank (AFB) about financing the construction and installation of the new grain bin on the bin site. AFB hired an appraiser to conduct an appraisal on the bin site and the real property. The appraisal concluded that all of the existing structures were improvements to real property. The appraiser's report stated that the bin site, including the real property, had an "as is" valuation of \$3,850,000, and an "as completed" valuation of \$5,325,000 once the new grain bin construction was completed.

In September 2018, AFB loaned \$900,000 to the Obergers for construction of the new grain bin. AFB took out a mortgage on the bin site, which included the real property and all the buildings, structures, and fixtures on the property. AFB ordered a title search that did not reveal any competing mortgages, mechanic's liens, or fixture filing statements for the bin site.⁴ In December 2018, AFB made a second loan to Chad and Leslie for \$700,000. AFB took out a second mortgage on the bin site real property and its buildings, structures, and fixtures as security for the second loan. AFB did not discover any competing mortgages, mechanic's liens, or fixture filing statements on the property when it recorded the second mortgage.

V. Mechanic's Liens and Assignment

Gateway sent an invoice to the Obergers for \$280,000 for the amount owed when Gateway erected the grain bin. The Obergers failed to pay this invoice. In March 2019,

⁴ The record is not clear why AFB did not discover Bell Bank's fixture filing statements.

Gateway's officer signed a mechanic's lien statement on behalf of Gateway for \$600,000 for work related to the relocation of the grain bin and the partial assembly of the bin on the Oberg's property. Gateway mailed a copy of the mechanic's lien statement to Richard and Laurel and recorded it in the county recorder's office. Gateway did not serve its mechanic's lien statement either personally or by certified mail on Richard and Laurel.

CITYWide sent multiple invoices to the Oberg's for payment, totaling \$47,575 for parts and materials. The Oberg's failed to pay CITYWide for all the amounts due and owing in connection with the electrical work performed at the property. CITYWide recorded a mechanic's lien statement and filed it with the county recorder's office in April 2019.

Because of the Oberg's insolvency and inability to pay their debts, an assignment-for-the-benefit-of-creditors action was commenced under Minn. Stat. §§ 577.11-.18 (2020) and Minn. Stat. §§ 576.21-.53 (2020) by filing an assignment with the district court (the assignment). The district court appointed respondent Lighthouse Management Inc. as the receiver and assignee. The assignment covered the Oberg's property, including the bin site with all the buildings and fixtures located on the site, and any equipment located on the bin site that did not constitute buildings or fixtures. This property is collectively the sale property.

In September 2019, the district court approved the sale, free and clear of liens and encumbrances. The district court approved a purchase agreement to sell the sale property to Gateway for \$1,400,000, less closing costs and receivership costs (the sale proceeds). The net sale proceeds were paid to, and held by, Lighthouse. The district court confirmed

the sale in December 2019. The sale proceeds remain in the possession, custody, and control of Lighthouse.

Four parties—AFB, Bell Bank, Gateway, and CITYWide—each claimed an interest in the sale proceeds following the liquidation of the Oberg's property. AFB asserts that it holds two mortgages on the bin site property and claims an interest of \$1,673,793.90, plus interest and attorney fees. Bell Bank asserts that it holds a mortgage on the bin site property and a UCC filing on the equipment, and claims an interest of \$4,547,607.17.⁵ Gateway claims it holds a mechanic's lien interest in the bin site of \$699,659.99. CITYWide claims it holds a mechanic's lien interest in the bin site of \$47,575.

VI. Motion Practice and District Court Order

AFB, Bell Bank, Gateway, and CITYWide each moved for summary judgment to determine the parties' respective interests in the sale proceeds. The district court issued an order partially granting the parties' motions and directing entry of judgment. The district court determined that the structures located on the bin site constituted personal property covered by Bell Bank's liens, and did not constitute fixtures covered by AFB's mortgages. As a result, the district court determined that Bell Bank had first priority to the sale proceeds. The district court determined that the bin site equipment and structures made up most of the value of the bin site. The district court determined that Gateway's asserted mechanic's lien was invalid because Gateway did not provide prelien notice. The district

⁵ The Oberg's property also included a parcel of real property identified as the bunker site. Bell Bank holds a security interest on the bunker site. Bell Bank was the only party claiming an interest in the sale proceeds from the bunker site. This issue is not before us on appeal.

court also concluded that CITYWide's asserted mechanic's lien was valid and that it had first priority for the sale proceeds from the bin site. Based on these determinations, the district court (1) awarded Bell Bank 86.4% of the sale proceeds, (2) did not award Gateway any of the sale proceeds, and (3) collectively awarded AFB and CITYWide 13.6% of the sale proceeds, with CITYWide receiving its entire request of \$47,575 and AFB receiving the balance of the 13.6% share.

AFB appealed the district court's decision adjudicating the parties' interests in the sale proceeds and granting summary judgment in Bell Bank's favor. Gateway filed a notice of related appeal challenging the district court's mechanic's lien decision, which we determined constituted a proper cross-appeal.

ISSUES

1. Did the district court err by granting summary judgment?
2. Did the district court err in its mechanic's-lien rulings?
3. Should portions of AFB's brief be stricken from the appellate record?

ANALYSIS

I. The district court erred by granting summary judgment in Bell Bank's favor and against AFB because there are material facts in dispute.

a. Legal Standard

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898

N.W.2d 653, 657 (Minn. App. 2017), *review denied* (Minn. Sept. 27, 2017). A material fact is one that affects the outcome of the case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). We view “the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving part[y].” *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted). “[W]hen the material facts are not in dispute, an appellate court will review the district court’s grant of summary judgment de novo.” *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016). The interpretation of a statute also presents a question of law, which we review de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

b. Whether a grain bin is personal property or a fixture involves a case-by-case analysis by a factfinder.

AFB and Gateway argue that summary judgment was inappropriate because there are genuine issues of material fact. AFB argues that the bin-site structures are fixtures subject to its 2018 mortgages. Gateway also argues that the structures should be treated as real, not personal, property. By contrast, Bell Bank argues that the bin-site structures are personal property and subject to Bell Bank’s security interests, which were first perfected in 2010. The district court determined that “the grain bins are personal property and not fixtures.” AFB and Gateway challenge this determination on appeal.

The heart of the dispute is whether the grain bin constitutes a fixture or personal property. As the district court recognized, there are few Minnesota cases on point regarding grain bins such as the one at issue. The district court therefore looked to caselaw from other jurisdictions and concluded that grain bins do not qualify as fixtures. *See, e.g.*,

Fed. Land Bank of Omaha v. Swanson, 438 N.W.2d 765 (Neb. 1989) (holding grain bins are not fixtures because of their impermanent attachment to land); *McCarthy v. Bank*, 423 A.2d 1280, 1282 (Pa. Super. Ct. 1980) (holding grain bins are not fixtures because they can be moved without damaging real property).

On appeal, AFB urges us to determine that grain bins of a certain size are fixtures as a matter of law. *See, e.g., Bellemare v. Gateway Builders, Inc.*, 420 N.W.2d 733, 736 (N.D. 1988) (holding a 10,000-bushel grain bin anchored to a cement slab by bolts qualified as a fixture). We decline to adopt a per se rule that a grain bin of a certain size qualifies as a fixture as a matter of law. Instead, we hold that whether a grain bin is personal property or a fixture is a fact-specific inquiry and the factfinder must determine the issue case-by-case considering the following multi-factor test we adopt here. As the supreme court observed in *Holy Ghost Catholic Church of Two Harbors v. Clinton*, 211 N.W. 13, 15 (Minn. 1926), “The lines between personal property and fixtures are so close and so nicely drawn that no precise and fixed rule can be laid down to control all cases. It is difficult, if not impossible, to give a definition of the term ‘fixtures’ which may be regarded of universal application. Each case must be more or less dependent upon its own peculiar facts.”

Several cases guide us in articulating the test to determine whether a grain bin is a fixture or personal property. *Holy Ghost*, 211 N.W. at 13; *Hanson v. Vose*, 175 N.W. 113 (Minn. 1919); *Minn. Valley Breeders Ass’n v. Brandt*, 348 N.W.2d 115 (Minn. App. 1984). In *Holy Ghost*, appellant owned a premises that it had used as a house of worship, but which was later used as a place for entertainment. 211 N.W. at 14. It leased the premises

to respondents to be used as an assembly hall and theater. *Id.* Respondents installed a sloping floor and screen to operate a moving picture business. *Id.* After the lease ended, respondents removed the floors and the screen and vacated the premises. *Id.* The removal of the screen and the floors damaged the property, and appellant served a civil suit to recover damages. *Id.* Following a trial, the district court directed a verdict for respondents on the ground that the floors and screen constituted trade fixtures, which the tenants had the right to remove. *Id.* The issue presented on appeal was whether the screen and the floor were, indeed, trade fixtures.⁶ *Id.* at 15. The supreme court held that whether the floor and the screen were trade fixtures was a question for the jury, and reversed the district court's directed verdict. *Id.* at 15-16. In its analysis, the supreme court defined a "fixture" as follows:

To constitute a fixture, the thing must be of an accessory character and must be, in some way, in actual or constructive union with the realty and not merely brought upon it. That the thing is removable with but little injury to the building is a factor to be considered, so also that it was installed by a tenant; that it is not removable without being taken to pieces, and is practically worthless when removed, are circumstances to be considered in determining the intent of the parties and the character of the addition.

⁶ We recognize that *Holy Ghost* addressed trade fixtures, and that trade fixtures are distinguished from fixtures. A "fixture" is "[p]ersonal property that is attached to land or a building and that is regarded as an irremovable part of the real property," while a "trade fixture" is "[r]emovable personal property that a tenant attaches to leased land for business purposes." *Black's Law Dictionary* 782 (11th ed. 2019). But *Holy Ghost* has been cited in nonprecedential cases analyzing whether something is a fixture or personal property. *See, e.g., Newport Island Yacht Club v. Inver Grove Heights Marina, Inc.*, No. C5-94-1204, 1995 WL 70215, at *1 (Minn. App. Feb. 21, 1995) (considering whether docks were fixtures to real estate), *review denied* (Minn. March 29, 1995). We therefore consider *Holy Ghost* informative to our analysis.

Id. at 15-16.

In *Hanson*, the supreme court considered whether ranges, stoves, and beds installed in apartment building units had become a part of the real property such that they could not be removed from the units. 175 N.W. at 114. The supreme court explained that a fixture becomes real property if it cannot be removed without leaving the property “in a substantially worse condition than before.” 175 N.W. at 114; *see also Behrens v. Kruse*, 140 N.W. 114, 117 (Minn. 1913) (“That a so-called fixture is removable with little injury to the building is an important consideration in this connection.”). Because these items could be removed without material injury to the building, the supreme court determined that they did not become a part of the real property. 175 N.W.2d at 114-15.

The parties’ intent is also an important factor in a fixture analysis. In *Minnesota Valley Breeders Ass’n*, the court of appeals considered whether the respondent could recover possession of a grain silo sold under a security agreement. 348 N.W.2d at 117. The decision acknowledged that Minnesota courts may consider the intent of the parties in determining whether an item qualifies as personal property or as a fixture. *Id.* We affirmed the district court’s determination after trial that the grain silo constituted personal property because, among other factors, the parties explicitly agreed in the security agreement that the grain silo “is and shall remain personal property, and shall not constitute fixtures or real estate.” *Id.* at 116-17; *see also Holy Ghost*, 211 N.W. at 15 (observing that “[i]n the absence of an express agreement to the contrary, the intention of the parties as to the nature of the additions must be ascertained from the particular circumstances of the case”).

With this guidance in mind, we hold that the factors set forth in *Holy Ghost, Hanson* and *Minnesota Valley Breeders Ass'n* are relevant in determining whether the grain bin here is a fixture or personal property:

- (1) whether the grain bin can be removed without leaving the real property in a substantially worse condition than before;
- (2) whether the grain bin can be removed without breaking it into pieces and damaging the grain bin itself;
- (3) whether the grain bin has any independent value once removed from the real property; and
- (4) the intent of the parties.

In analyzing this case under these factors, we do not include one of the *Holy Ghost* factors, whether the item was installed by a tenant. *Holy Ghost* noted that the lessee's actions were a relevant factor to consider in determining whether the items were fixtures. *Id.* at 15-16. Here, this factor is not relevant because the Oberg's owned the property and had the grain bin installed.

Applying the remaining factors to the case before us, we determine that genuine issues of material fact preclude summary judgment.

i. Can the grain bin be removed without leaving the real property in a substantially worse condition than before?

First, there is a factual dispute whether the grain bin can be removed without damaging the real property on which it sits. The district court found that "the grain bins can be removed without substantially damaging the real property." Bell Bank's vice president testified in her affidavit that grain bins are typically installed so that they may be moved "while . . . ensuring that no material, permanent, or substantial injury occurs to either the grain bins or surrounding land." But Gateway's construction manager, Horner,

offered conflicting testimony. Horner stated that the cost of removing the concrete slab and restoring the property “to its condition prior to the construction of grain bins and/or buildings on the property would be prohibitive and far exceed the cost of agricultural land in the vicinity of the [b]in [s]ite.” Thus, there is a dispute whether the grain bin can be removed without damaging the real property.

ii. Can the grain bin be removed without damaging the grain bin itself?

Second, there is a genuine issue of material fact whether the grain bin can be removed without breaking it into pieces and damaging the grain bin itself. Bell Bank’s officer, Paulson, stated that the grain bin was “attached” to real property in that it sits on top of a concrete slab, secured into place with clips. Paulson also noted that accessories to the grain bins, such as fans, augers, conveyors, and power exhausts, are also not attached directly to real property and may be “moved and detachable without any problems.” The district court found Paulson’s affidavit persuasive and stated that the grain bin could be readily removed by unclipping the bin from the concrete slab and “tak[ing] [it] apart in sections for transport.” But AFB and Gateway provided contrary evidence. Gateway’s president, Johnson, noted that a grain bin must be disassembled to move it. Horner similarly stated that moving the grain bin from Iowa to Minnesota required eleven semi-loads of grain bin parts and materials. It will be for the factfinder to determine whether this grain bin can be removed again without breaking it into pieces and damaging it.

iii. Does the grain bin have independent value once removed from the real property?

Third, there is a question of fact whether the grain bin has independent value once it is removed from the real property. The district court noted that the grain bin “has already been moved once” when it was relocated from Iowa to Minnesota, suggesting that it has “value separate from the value of the real estate.” Bell Bank’s officer described grain bins as “typically high-value assets” that “are routinely removed from the land and then resold.” Bell Bank’s appraiser also submitted an affidavit and supporting materials stating that grain bins have value on their own, separate and distinct from the real property. But a competing affidavit from Gateway’s president suggests that the grain bin could not be moved without rendering it nearly worthless. Gateway’s president stated that in his experience, “[t]he cost of moving a grain bin involves disassembling the bin, removal of the underlying foundation and/or footings and sidewalls and a complete reconstruction at a different location. As a result of the relocation cost, a grain bin in place has very little sale value.” And, as AFB argues, this fact is evident because the landowner in Iowa, who originally owned the grain bin, was willing to give it away for free to anyone willing to take it. It is reasonable at this stage to credit the non-moving party’s factual statement and conclude that the district court erred when it credited the moving party’s factual assertions.

iv. Did the parties intend the grain bin to be a fixture or personal property?

Fourth, the parties dispute their intent. AFB argues that “there was no evidence on the record that the [Obergs] ever regarded the [grain bin and its supporting structures] as anything other than ‘buildings and improvements’ to the [b]in [s]ite.” AFB notes that the

Obergs described the bin site structures as “buildings and improvements” on their financial statements and tax documents. The district court observed that Chad submitted an affidavit in which he stated that Oberg Family EQ, which owned all of the personal property, depreciated the bin as personal property on its taxes. Based on this evidence, the district court determined that “the intent of Oberg Family EQ Group was to include the grain bins and other assets as personal property.” AFB challenges the weight to be given to Chad’s affidavit. But at the summary-judgment stage, the district court must not “weigh facts or determine the credibility of affidavits and other evidence.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). There is a genuine issue of material fact about whether the parties intended for the grain bin structure to be considered a fixture or personal property.

We conclude that there are many factual disputes here. And “[t]he district court’s function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). As a result, a court deciding a summary-judgment motion must not make factual findings or credibility determinations or otherwise weigh evidence relevant to disputed facts. *Id.* The district court erred by weighing the evidence at the summary-judgment stage and concluding that the bin-site structures were personal property rather than fixtures.⁷

⁷ Bell Bank argued that even if the bin-site structures are fixtures, then the UCC’s trade-fixture exception applies. AFB disputed this argument and claimed that this determination is erroneous because Oberg Family EQ was not a lessee of the bin site and there are material facts in dispute. “[A] fixture is considered tangible personal property, rather than real

II. AFB's Alter-Ego Argument

AFB argues that there is a genuine issue of material fact as to whether Oberg Family EQ was an alter ego of the Obergs and owned all of the bin-site structures. The district court rejected this argument as unsupported by the record. AFB claims there are genuine issues of material fact, but failed to adequately brief this issue or cite any pertinent caselaw. We therefore find this argument forfeited. *See In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 506 n.2 (Minn. 2015) (declining to consider “inadequately briefed” argument); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (recognizing that inadequately briefed arguments are forfeited).

Even if we reached the issue, we discern no error in the district court's determination. The district court noted that Oberg Family EQ “operates independently of the individual Obergs and Oberg Family Farms” and “is a business entity formed under the statutes of Minnesota and its independence is evidenced by the various security agreements, asset lists, lease agreements, and tax documents.” The record supports the district court. Oberg Family EQ is a limited-liability holding company for the Obergs, established in 2010. Chad testified in an affidavit that Oberg Family EQ owned the bin-

property, when it is used for trade purposes and if removal does not result in material and permanent damage to the real estate.” *Comm'r of Revenue v. Dahmes Stainless, Inc.*, 884 N.W.2d 648, 656 (Minn. 2016). The district court determined that even if the bin-site structures did not constitute personal property, then they were trade fixtures and Bell Bank was the only party with an interest. But the determination whether equipment qualifies as a trade fixture is a question of fact for the factfinder. *Cent. Chrysler Plymouth, Inc. v. Holt*, 266 N.W.2d 177, 179 (Minn. 1978). And “the district court is not to find facts by resolving disputes at the summary judgment stage.” *J.E.B. v. Danks*, 785 N.W.2d 741, 747 (Minn. 2010). The district court's trade-fixture finding at the summary judgment stage is erroneous.

site structures and leased them to Oberg Family Farms each year. Oberg Family EQ listed the bin-site structures on its tax returns and balance sheets. AFB has not identified facts supporting its alter-ego argument. Thus, we determine that the district court did not err on this issue.

III. The district court’s findings related to the mechanic’s liens were erroneous.

We next consider the district court’s application of the mechanic’s lien statute to CITYWide and Gateway. Chapter 514 governs the rights and liabilities of the parties to a mechanic’s lien. *See* Minn. Stat. §§ 514.01-.17 (2020). Under the statute:

Whoever performs engineering or land surveying services with respect to real estate, or contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated, whether under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, that is to say, for the erection, alteration, repair, or removal of any building

Minn. Stat. § 514.01; *see also Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 758 (Minn. 2010).

“[A] lien claimant must follow the statutory procedures to perfect a mechanic’s lien.” *Premier Bank*, 785 N.W.2d at 758. “To the extent there is ambiguity, mechanic’s lien laws are strictly construed as to the question of whether a lien attaches, but are liberally construed after the lien is created with respect to the enforcement of the lien.” *Ryan Contracting Co. v. O’Neill & Murphy, LLP*, 883 N.W.2d 236, 243 (Minn. 2016).

The district court determined that CITYWide and Gateway were both entitled to protect their interests through mechanic's liens. The district court found that CITYWide held a valid mechanic's lien against the Oberg's property, but that Gateway did not hold a valid mechanic's lien. We address each decision in turn.

a. The district court erred by granting summary judgment in CITYWide's favor and against AFB and determining that CITYWide was entitled to a mechanic's lien.

The district court determined that CITYWide was entitled to a mechanic's lien because, although it violated the statutory notice requirements, an exception applied. AFB appeals this determination. The questions presented are: (1) whether the district court erred in determining that actual notice overcame the statutory requirement that service must be perfected by certified mail or personal service, and (2) whether there are unresolved factual issues over the "same ownership" exception to the prelien-notice requirement.

i. Proper Service

AFB argues that CITYWide's mechanic's lien statement is void because CITYWide failed to effect proper service. "To perfect a mechanic's lien, a lien claimant must file and serve a statement of the claim within 120 days of completing work on the property." *Eclipse Architectural Grp., Inc. v. Lam*, 814 N.W.2d 692, 696 (Minn. 2012); *see also* Minn. Stat. § 514.08. The claimant must serve a copy of the lien statement "personally or by certified mail on the owner or the owner's authorized agent or the person who entered into the contract with the contractor." *Eclipse Architectural Grp.*, 814 N.W.2d at 696 (quotation omitted).

CITYWide mailed a copy of the lien statement to the Oberg's by U.S. Mail, but did not serve it by certified mail or by personal service. The district court acknowledged that CITYWide “did not provide prelien notice,” but claimed that the “defect” in service was “not material and service was proper” because the Oberg's had actual notice of the lien statement.⁸ The district court erred. “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2020). The plain language of a statute is the “touchstone” of statutory interpretation. *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005). A law should be construed “to give effect to all its provisions,” Minn. Stat. § 645.16, and “no word, phrase, or sentence should be deemed superfluous, void, or insignificant,” *ILHC of Eagan, LLC*, 693 N.W.2d at 419.

Here, the statute required CITYWide to serve a copy of the lien statement “personally or by certified mail.” Minn. Stat. § 514.08, subd. 1(2). To ignore the term “certified” would render it superfluous and fail to give it effect. Courts strictly construe statutory requirements for attachment and creation of a mechanic’s lien, but once a lien is established, the statutes are liberally construed. *Ryan Contracting Co.*, 883 N.W.2d at 243.

⁸ The district court relied on *Har-Ned Lumber Co. v. Amagineers, Inc.*, 436 N.W.2d 811 (Minn. App. 1989). The claimant served a lien statement by certified mail but the recipient evaded service and refused to accept it. *Har-Ned*, 436 N.W.2d at 815. The court determined that the recipient’s evasive conduct, coupled with actual notice of the lien statement, constituted sufficient notice. *Id.* CITYWide did not send the notice by certified mail or through personal service, and there are no allegations that the Oberg's evaded service. *Har-Ned* does not apply.

Because CITYWide did not serve the lien statement by certified mail or through personal service, the district court erred by determining that service was proper.

ii. Same-Ownership Exception

Having determined that the district court erred by concluding that CITYWide satisfied the prelien-notice requirements, we next consider whether an exception excuses CITYWide's failure to comply with the service requirements.

Failure to strictly comply with prelien-notice requirements defeats a lien claimant's mechanic's lien. *Wong v. Interspace-W., Inc.*, 701 N.W.2d 301, 302-03 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005). There are, however, exceptions to the prelien-notice requirement. *Ryan Contracting*, 883 N.W.2d at 243; *see also* Minn. Stat. § 514.011, subds. 4a-4c. The "same ownership" exception provides that "[t]he notice required by this section shall not be required to be given where the contractor is managed or controlled by substantially the same persons who manage or control the owner of the improved real estate." Minn. Stat. § 514.011, subd. 4a. This exception recognizes cases in which "the owner is not unsuspecting" because lien notice requirements seek "to remedy the unfairness arising from the foreclosure of mechanics liens on property of *unsuspecting* owners." *Nor-Son, Inc. v. Nordell*, 369 N.W.2d 575, 578 (Minn. App. 1985) (quotation omitted) (emphasis in original), *review denied* (Minn. Sept. 13, 1985). The burden of proving an exception to the prelien notice rests on the claimant. *Diethelm v. Cavanaugh*, 349 N.W.2d 608, 610 (Minn. App. 1984).

CITYWide claims the same-ownership exception applies because Chad acted as his own general contractor on the bin-site project. The district court agreed with CITYWide's

position and found that the same-ownership exception applied because Chad was both the property owner and the general contractor. Based on this finding, the district court determined that CITYWide's failure to comply with the prelien-notice requirements did not invalidate the lien.

This decision was erroneous. Generally, whether an owner acted as a general contractor is a question of fact. *Nw. Wholesale Lumber, Inc. v. Citadel Co.*, 415 N.W.2d 399, 404 (Minn. App. 1987), *review denied* (Minn. Feb. 12, 1988). And here, there are genuine issues of material fact whether Chad acted as the general contractor on the bin-site project. Certain facts suggest that CITYWide worked at the direction of Chad. For example, CITYWide's owner, Michelsen, stated that Chad hired CITYWide to provide electrical work. Michelsen stated that Chad hired and controlled CITYWide's work and provided direction about electrical specifications and equipment. Even so, the district court itself noted that "the record is less clear regarding the agreement that CITYWide had with the property owners." The factfinder needs to resolve these competing facts at trial.

The district court relied on *Pelletier Corp. v. Chas. M. Freidheim Co.*, 383 N.W.2d 318 (Minn. App. 1986), *review denied* (Minn. May 16, 1986), to support its determination that an exception applied.⁹ This reliance was misplaced. In *Pelletier*, the president of a real-estate company acted as a licensed contractor developing lots for sale for a real-estate development project. *Id.* at 319. The parties developed the facts at a bench trial; then the

⁹ The district court also relied on *Nw. Wholesale Lumber, Inc. v. Citadel Co.*, which cited the statutory language but did not otherwise perform a substantive analysis of the issue. 457 N.W.2d 244, 249 (Minn. App. 1990). We do not consider this case instructive.

district court, acting as factfinder, determined the president was the general contractor and the same-ownership exception applied. *Id.* at 320-22. On appeal, we concluded the district court did not err in finding the president was a contractor. *Id.* at 322.

Pelletier is distinguishable. The parties in *Pelletier* had a trial at which a factfinder weighed the evidence and ultimately found that an exception applied. “[T]he function of the district court on a motion for summary judgment is not to weigh the evidence.” *DLH*, 566 N.W.2d at 70. Here, the facts are disputed on this issue. The district court made multiple factual findings in its summary-judgment order, including a finding that Chad was the general contractor. Because there is conflicting evidence related to the “same ownership” exception, the district court erred.¹⁰

b. The district court erred by granting summary judgment against Gateway and determining that Gateway was not entitled to a mechanic’s lien.

The district court determined that Gateway was not entitled to a mechanic’s lien because it failed to comply with the statutory notice requirements and no exception applied. In its cross-appeal, Gateway argues that the district court erred by concluding that an exception did not apply.

The district court determined that although the same-ownership exception applied to CITYWide, it did not apply to Gateway because Chad acted as the contractor for CITYWide, but did not act as the contractor for Gateway. The district court reasoned that:

Even though Chad [] appeared to be involved with the decision making [with Gateway] on some level, it does not appear that his involvement rose to the level of general contractor when

¹⁰ AFB also argues the district court’s order contains contradictory findings of fact. Because we reverse, we do not consider the district court’s factual findings any further.

there is clear evidence that Gateway had assumed that role. Gateway was acting as contractor, not the Oberg's; therefore, the same owner exception does not apply and Gateway's mechanic's lien fails.

We disagree. As stated above, whether an owner acted as a general contractor is a question of fact. *Nw. Wholesale Lumber, Inc.*, 415 N.W.2d at 404. Again, there are genuine issues of material fact about Chad's role in the bin-site project. AFB contends that Gateway provided a bid to Chad for Gateway to act as general contractor on the bin-site project. But Gateway's president, Johnson, stated that Chad did not accept this initial bid. Johnson stated that Chad agreed to take responsibility for the bin-site work, the concrete work, and the electrical work, while Gateway took responsibility for constructing the bin and installing certain equipment. The record contains evidence that the Oberg's were responsible for excavating and compacting the sand fill for the real property supporting the bin. The Oberg's also directed their farm employees to perform the excavation and backfilling work at the site. Gateway's employee, Horner, stated that Chad "hired unknown individuals or a contractor to pour the necessary concrete for the project, including the unloading tunnel, the aeration tunnels, the sidewalls, and the concrete floor for the [grain bin]."

The district court based its decision in part on the fact that Richard submitted a building permit application in September 2018, naming Gateway as the general contractor. But Gateway claims Richard named Gateway as the general contractor without Gateway's knowledge or consent. Gateway also contends that it assumed none of the duties Chad performed as general contractor on the bin-site project, no matter what Richard stated on

the building permit. Given this record, we conclude that there are questions of fact about whether the Obergers acted as general contractor on the bin-site project. These facts should be developed at trial and are not appropriate for resolution at the summary-judgment stage. *See DLH*, 566 N.W.2d at 70 (cautioning district courts against weighing evidence at summary judgment). The district court erred by granting summary judgment against Gateway on this basis.

IV. Bell Bank’s Motion to Strike is Denied

Bell Bank moved to strike portions of AFB’s brief as beyond the scope of our review. “An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.” *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Bell Bank contends that AFB should not be permitted to argue that there are material facts in dispute because, in district court, AFB claimed that there were *not* material facts in dispute. Whether there were material facts in dispute was raised to, and considered by, the district court. Thus, those arguments are properly before this court on appeal and we deny Bell Bank’s motion to strike.¹¹

¹¹ Bell Bank asserts that AFB and Gateway should not be permitted to change their theory of the case by claiming there are factual issues in dispute, which they did not argue below. Bell Bank relies on *Am. Family Mut. Ins. Co. v. Thiem*, for the proposition that these parties “tacitly agreed” that there were no genuine issues of material fact in dispute. 503 N.W.2d 789, 790 (Minn. 1993) (“The parties themselves, in their cross-motions for summary judgment, have tacitly agreed that there exist no genuine issues of material fact and that the matter could be resolved by reference to [the relevant materials in the record].”). This argument is not persuasive. AFB and Gateway filed summary-judgment motions asserting they were entitled to relief as a matter of law. These motions do not constitute a tacit

DECISION

We reverse and remand the district court's summary-judgment decision because material fact issues exist and this matter is not appropriate for summary disposition. We also reverse and remand the district court's decisions related to CITYWide's and Gateway's mechanic's liens. We deny Bell Bank's motion to strike.

agreement that there would be no fact issues precluding summary judgment for Bell Bank, since no such motion was pending.