

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1432**

Farmers Mill & Elevator, Inc.,
Appellant,

vs.

Ivan D. Kohout,
Defendant,

Roundbank,
Respondent.

**Filed May 24, 2021
Affirmed
Ross, Judge**

Scott County District Court
File No. 70-CV-19-9204

Jared D. Peterson, Fafinski Mark & Johnson, P.A., New Ulm, Minnesota; and

Tyler P. Brimmer, Jamie P. Briones, Fafinski Mark & Johnson, P.A., Eden Prairie,
Minnesota (for appellant)

Michael S. Dove, Rhett P. Schwichtenberg, Gislason & Hunter LLP, New Ulm, Minnesota
(for respondent)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

This case involves a lien-priority dispute between a bank and a grain elevator, each having a security interest in a farmer's harvested crops based on the bank's issuing the farmer a loan and the grain elevator's later supplying the farmer with crop-production inputs. The grain elevator followed the statutory procedure to attempt to leapfrog the bank's lien priority by notifying the bank of the elevator's crop-production-input interest. The bank responded with a letter rejecting the elevator's lien claim but did not use the same terms used in the lien-priority statute. The district court concluded that the bank's letter was sufficient and granted it summary judgment in this priority suit. We hold that the bank's letter sufficiently indicates its refusal to issue a letter committing to extend credit for the cost of the crop-production inputs, meeting the statutory requirement and thwarting the elevator's priority-change attempt. We therefore affirm.

FACTS

This priority dispute concerns competing liens on crops produced on Ivan and Pamela Kohout's Scott County farm. In 2011, Roundbank extended the Kohouts credit secured by a lien on future crops. In 2017, grain-elevator Farmers Mill & Elevator Inc. supplied Ivan Kohout with crop-production inputs secured by a lien on the crops. On March 29, 2018, Farmers Mill used a statutory tool to establish lien priority over Roundbank's lien, sending Roundbank a letter through counsel along with a "Lien-Notification Statement." Roundbank responded by letter on April 2, 2018, rejecting the elevator's claimed lien. Farmers Mill replied 23 days later, asserting that Roundbank's

response letter failed to constitute either a letter of commitment or written refusal to issue a letter of credit, which are the responses designated by Minnesota Statutes section 514.964, subdivision 3(d) (2020). Farmers Mill asserted alternatively that Roundbank failed to send the Kohouts a copy of its response within ten days after receiving the lien-notification statement, as also required under the same statute. Farmers Mill insisted that these two failures gave its lien automatic priority over Roundbank's lien for the Kohouts' 2017 crops. The next day, April 23, Roundbank sent its April 2 response letter to Ivan Kohout.

Farmers Mill sued Roundbank seeking a judgment declaring its lien superior to Roundbank's. The parties submitted cross-motions for summary judgment. The district court reasoned that the language in Roundbank's April 2 response letter was sufficient under the statute to maintain Roundbank's priority, and it reasoned that the bank's missing the statutory ten-day notice-to-farmer requirement did not disqualify it from maintaining lien priority. It therefore denied summary judgment for Farmers Mill and granted summary judgment for Roundbank.

Farmers Mill appeals.

DECISION

Farmers Mill appeals from the district court's grant of summary judgment favoring Roundbank. We review a grant of summary judgment de novo to determine whether genuine issues of material fact exist and whether the district court erred in applying the law. *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017); Minn. R. Civ. P. 56.01. We view the facts and resolve all doubts and inferences in the light most

favorable to the party opposing the summary-judgment motion. *Montemayor*, 898 N.W.2d at 628. The parties do not dispute the facts.

Our opinion will therefore turn on how we apply Minnesota Statutes section 514.964. That statute governs the creation, perfection, and priority of agricultural liens, including Farmers Mill's crop-production-input lien. When multiple parties have security interests in the same crops, the statute determines the priority and provides a means for a crop-production-input supplier to advance its lien ahead of a lender's earlier lien. Minn. Stat. § 514.964, subds. 3, 7 (2020). A crop-production-input supplier must first "notify a lender of a crop production input lien by providing a lien-notification statement [containing specific information] to the lender in an envelope marked 'IMPORTANT - LEGAL NOTICE.'" *Id.*, subd. 3(b)-(c) (2020). The statute directs how a lender can prevent the crop-production-input supplier's lien from taking priority:

Within ten calendar days after receiving a lien-notification statement, the lender must respond to the supplier with either:

(1) a letter of commitment for part or all of the retail cost or anticipated costs of the crop production input as set forth in the lien-notification statement; or

(2) a written refusal to issue a letter of commitment. A copy of the lender's response must be provided to the person for whom the financing was requested.

Id., subd. 3(d) (2020). "If a lender responds with a refusal to provide a letter of commitment, the rights of the lender and the supplier are not affected." *Id.*, subd. 3(e) (2020). But "[i]f a lender does not respond under paragraph (d) to the supplier within ten calendar days after receiving the lien-notification statement," the lender's lien loses priority

to the supplier's lien. *Id.* subd. 3(f) (2020). This appeal requires us to decide whether Roundbank's response letter constitutes "a written refusal to issue a letter of commitment" and, if so, whether its failure to send its responsive letter to the Kohouts within ten days after receiving the elevator's lien-notification statement disqualifies it from maintaining lien priority.

For the following reasons, we conclude that Roundbank's response letter constitutes a written refusal to issue a letter of commitment. The bank's response plainly rejected the elevator's claimed lien:

Today Roundbank received a Lien Notification Statement from your firm claiming a lien for Farmers Mill & Elevator, Inc. against Ivan D. Kohout and Pamela J. Kohout. Roundbank rejects the lien claim and asserts it[s] rights to the collateral and proceeds thereof.

The bank's letter clearly does not parrot the terms used in the statute, "refusal" and "letter of commitment." But the statute does not state that those precise terms are necessary for a response to constitute a written refusal. Farmers Mill essentially asks us to require those terms. We decline to do so. Under the separately assigned roles of government divided into distinct branches, it is neither our duty nor within our authority in the judiciary to add to a statute a requirement the legislature chose not to include. *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 119 (Minn. 2001). And we can see in other provisions that, when the legislature wants to require parties to use specific language in a communication, the legislature knows how to do so. In secured-transaction statutes, the legislature tends to specify when it requires exact language, by using quotations marks and capitalized text. *See, e.g.*, Minn. Stat. §§ 336.9-601(i), 550.365, subd. 2, 559.209, subd. 2, 582.039,

subd. 2 (2020). Even in this very statute at issue here, the legislature requires a crop-production-input supplier to send its notification letter in an envelope marked with exact, specified words denoted with quotation marks and capitalized text, and for the letter to include precise information. *See* Minn. Stat. § 514.964, subds. 3(b)–(c). The bank was not required to use any particular phrases or words to state a refusal.

Our question then becomes whether the terms used in Roundbank’s letter sufficiently communicate that it was refusing to issue a letter of commitment to cover the costs of the crop-production input indicated in Farmers Mill’s notification. A “letter of commitment,” which is undefined by statute, is “[a] lender’s written offer to grant a mortgage loan. The letter generally outlines the loan amount, the interest rate, and other terms.” *Black’s Law Dictionary* 340 (11th ed. 2019). This current definition is the same one the legislature was presumably operating under in 2000 when it enacted the statute. *See Black’s Law Dictionary* 266 (7th ed. 1999). Put simply, a written refusal to issue a letter of commitment is a written refusal to extend a loan.

Although we see this as a close case, we think Roundbank’s imprecise response language sufficiently communicated that it did not intend to extend credit to cover the cost of the production inputs. The statute requires a lender to respond “under paragraph (d)” by either extending a letter committing to extend credit or stating that it is refusing to issue such a letter. *See* Minn. Stat. § 514.964, subds. 3(d)–(f). The circumstances leading to the letter here (including the elevator’s notice of its interest, the elevator’s reference to the priority-shifting statute, and the timing of Roundbank’s notice months after the elevator supplied the crop-production input rather than contemporaneously) tend to inform the

meaning of Roundbank's immediate and express rejection of the elevator's claimed lien. It is self-evident that Roundbank was responding "under paragraph (d)," and it did so in a writing that, as between including a letter of commitment or refusing to extend one, can only be interpreted as refusing. Under these circumstances, we hold that in expressly and unqualifiedly "reject[ing] the lien claim" that Farmers Mill had asserted in its lien notice, Roundbank implicitly insisted on remaining the priority lienholder and therefore impliedly declared its refusal to accept any role in covering the cost of the crop-production inputs, including by extending credit. Although using the statutory language would have made its intentions clearer, we hold that the district court correctly construed Roundbank's responsive letter.

Again declining Farmers Mill's invitation to add language to the statute, we also hold that Roundbank did not lose its lien priority by waiting more than ten days to provide the Kohouts with its responsive letter. Although the statute requires a lender to provide the crop-production-input buyer with its letter responding to the crop-production-input supplier's lien notification, it imposes the ten-day deadline only on providing the letter to the supplier, not to the buyer. Minn. Stat. § 514.964, subd. 3(d) ("Within ten calendar days after receiving a lien-notification statement, the lender must respond *to the supplier*." (emphasis added)). Equally fatal to the elevator's position, the statute also attaches the consequence for failing to meet the deadline only to the lender's duty to respond to the supplier, not to its duty to provide it also to the buyer. *Id.* subd. 3(f) (2020) ("If a lender does not respond under paragraph (d) *to the supplier* within ten calendar days after receiving the lien-notification statement," the lender's lien loses priority to the supplier's

lien. (emphasis added)). Because the legislature placed the ten-day deadline only on the lender's response to the supplier and directs the deadline penalty to apply only to the lender's failure to timely respond to the supplier, the district court correctly refused to alter the lien priority based on the timing of Roundbank's notice to the Kohouts.

Affirmed.