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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1802**

Star Bank,
Respondent,

vs.

Robert W Anderson, et al.,
Defendants,

Bushmills Ethanol, Inc.,
Appellant.

**Filed July 15, 2024
Affirmed
Bjorkman, Judge**

Sherburne County District Court
File No. 71-CV-22-1562

Matthew J. Bialick, James R. Magnuson, MJB Law Firm, PLLC, Chanhassen, Minnesota;
and

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Kevin K. Stroup, Stoneberg, Giles & Stroup, P.A., Marshall, Minnesota; and

William E. Hanigan, Hanigan Law Group, PLC, Des Moines, Iowa (for appellant)

Joseph J. Witt, Teresa E. Rice, Minnesota Bankers Association, Eden Prairie, Minnesota
(for amicus curiae Minnesota Bankers Association)

Considered and decided by Bjorkman, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges (1) summary judgment enforcing respondent-bank's security interest in corn appellant purchased from a farmer who borrowed money from the bank and (2) attorney fees awarded as a sanction for asserting a frivolous counterclaim. We affirm.

FACTS

Respondent Star Bank commenced this action against appellant Bushmills Ethanol Inc. (Bushmills) and 14 other parties to recover under loan and security agreements it entered into with members of the Anderson family.¹ Members of the Anderson family have maintained large farming operations in central Minnesota over multiple generations. Several family members have obtained agricultural loans from Star Bank dating back to February 2014. In connection with these loans, Star Bank obtained security interests that it perfected by filing Uniform Commercial Code (UCC) and Central Notification System (CNS) financing statements with the Minnesota Secretary of State. Relevant to this appeal, in December 2016, Star Bank extended a \$1.4 million revolving farm operating line of credit (the loan) to Robert and his wife. The two signed an agricultural security agreement granting Star Bank a security interest in Robert's personal property including, "without limitation, all . . . crops grown, growing or to be grown."

¹ Because the family members share the same surname, we refer to individuals by their first name.

In 2019, Bushmills purchased \$457,494.62 worth of corn from Robert's nephew, Zachary, in seven separate transactions. Zachary delivered the corn to Bushmills in trucks owned by Robert; delivery tickets retained by Bushmills identify the truck owner as "ANDEBOB." Bushmills paid for the corn with checks made out to Zachary. Zachary did not own any of the Anderson farming operations in 2019, had not borrowed money from Star Bank, and was not listed on Star Bank's UCC or CNS financing statements on file with the Minnesota Secretary of State.

Because Robert did not repay the loan, in March 2021 Star Bank sued Robert and his wife in Benton County District Court pursuant to the loan and security agreement. One year later, Star Bank obtained a money judgment against them in the amount of \$1,777,046.78. The judgment also allowed Star Bank to "assess and seek recovery of additional costs, attorney's fees and post judgment interest as said items accrue."

In August 2022, Star Bank commenced this action against Robert and other members of the Anderson family and affiliated parties who had done business with the Andersons alleging, in relevant part, that it is entitled to recover the proceeds from Zachary's sale of Robert's corn to Bushmills. Bushmills asserted a counterclaim for contributory negligence based on Star Bank's reasonable knowledge that other family members could and did "front" the sale of Robert's corn. The counterclaim alleged that Star Bank "knew or should have known of the risk that Robert would conspire to sell his corn to a buyer like Bushmills, and it had a duty to protect itself."

Over the course of this litigation, Star Bank settled or dismissed its claims against all parties other than Bushmills and recovered \$1,807,800 of the \$2,160,631.47 due on the

Benton County judgment. Star Bank then moved for summary judgment on its claims against Bushmills. It argued that the undisputed record shows Bushmills purchased “fronted corn” that was sold by Zachary but belonged to Robert and was subject to Star Bank’s security interest, and that because Bushmills did not satisfy the security interest or obtain a lien waiver, it is liable to Star Bank for the value of the corn it purchased. Star Bank separately moved to dismiss Bushmills’ counterclaim as “legally baseless and objectively frivolous.”²

The district court granted summary judgment in Star Bank’s favor, concluding that the undisputed record evidence established that the corn Bushmills purchased from Zachary belonged to Robert and was therefore subject to Star Bank’s security interest. And because Star Bank was not listed as a joint payee on any of the checks, and Bushmills did not obtain a lien release from Star Bank pertaining to the fronted corn, Bushmills is liable to Star Bank in the amount of \$352,831.47. The district court also determined that Bushmills’ counterclaim was frivolous, dismissing it and ordering Bushmills to pay Star Bank \$1,500 in attorney fees as a sanction.

Bushmills appeals.

² Star Bank served its motion on Bushmills before filing it with the district court. Bushmills did not withdraw its counterclaim within the 21-day safe-harbor period provided in Minn. R. Civ. P. 11.03(a)(1).

DECISION

I. Star Bank is entitled to judgment as a matter of law.

Summary judgment is appropriate if the moving party shows that “there is no genuine issue as to any material fact” and it is “entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. In opposing summary judgment, the nonmoving party may not “rely upon speculation,” *Limberg v. Mitchell*, 834 N.W.2d 211, 219 (Minn. App. 2013) (quotation omitted), but must produce competent, admissible evidence that creates a genuine issue for trial, *Twin Cities Metro-Certified Dev. Co. v. Stewart Title Guar. Co.*, 868 N.W.2d 713, 720 (Minn. App. 2015). A genuine fact issue exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008).

We review a district court’s summary-judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp.*, 790 N.W.2d 167, 170 (Minn. 2010). “In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Id.* And we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Hickman v. SAFECO Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005).

Article 9 of the UCC, as incorporated in Minnesota statutes, generally provides that a creditor’s perfected security interest in personal property is effective against both the debtor and any third party who purchases or obtains possession of the personal property. Minn. Stat. § 336.9-201(a) (2022); *see also Fin Ag, Inc. v. Hufnagle, Inc.*, 720 N.W.2d 579, 581-83 (Minn. 2006). The rule excepts a buyer in the ordinary course of business, even if

the creditor perfected its security interest and the buyer is aware of the interest. Minn. Stat. § 336.9-320(a) (2022). But this exception does not apply to a “person buying farm products from a person engaged in farming operations.” *Id.* (the farm-products exception).

In such circumstances:

A buyer of farm products takes subject to a security interest created by the seller if—

. . . .

(2) in the case of a farm product produced in a State that has established a central filing system—

(A) the buyer has failed to register with the Secretary of State of such State prior to the purchase of farm products; and

(B) the secured party has filed an effective financing statement or notice that covers the farm products being sold

7 U.S.C. § 1631(e)(2)(A)-(B) (2018).

Minnesota has a central filing system under which secured lenders like Star Bank may file a CNS financing statement with the Minnesota Secretary of State. Minn. Stat. §§ 336A.03-.04 (2022). The secretary of state uses the CNS financing statements to create a searchable list of all sellers whose farm products are subject to security interests. Minn. Stat. § 336A.08 (2022). By filing a CNS financing statement, secured lenders put buyers on notice and allow them to “protect themselves from some, but not all, security interests.” *Hufnagle*, 720 N.W.2d at 582.³ And this process protects agricultural lenders with security interests in farm products that can be easily liquidated by farmers. Charles W. Wolfe,

³ Buyers are expected to check the list before purchasing farm products. *Hufnagle*, 720 N.W.2d at 583.

Section 1324 of the Food Security Act of 1985: Congress Preempts the “Farm Products Exception” of Section 9-307(1) of the Uniform Commercial Code, 55 UMKC L. Rev. 454, 456-58 (1987).

In *Hufnagle*, our supreme court analyzed the farm-products exception and addressed how grain fronting impacts the respective rights of grain buyers and those who hold security interests in the grain. As in this case, *Hufnagle* involved a buyer who purchased corn during multiple transactions from someone other than the original owner. 720 N.W.2d at 583. The buyer was a registered farm-products dealer, so he received the secretary of state’s list of sellers whose farm products were subject to security interests. *Id.* Because the sales at issue involved a seller who was not the original owner, the list did not provide notice of the lender’s security interest, and the buyer did not include the lender in the payments. *Id.* at 583-84. When the original owner failed to repay its loan, the lender sued the buyer for conversion of its collateral in the corn. *Id.* at 584. Our supreme court affirmed summary judgment in favor of the lender, concluding that under these circumstances,

no matter what factual assumptions we make, there are none under which [buyer] could take the corn free of [lender’s] security interest. This is because if we view [original owner] as the seller, we must conclude that [buyer’s] rights are subject to [lender’s] security interest under section 1631 because [lender] filed an “effective financing statement” that put [buyer] on notice of [lender’s] security interest in [original owner’s] products. And, if we view the [sellers] as the sellers, we must conclude that [buyer’s] rights are subject to [lender’s] security interest, under either section 1631 of Minnesota’s UCC, because both statutes only protect a buyer from a security interest created by the seller and not from a security interest created by an undisclosed owner, which continues in the product despite the sale.

Id. at 585-86.

Here, it is undisputed that Star Bank filed an effective financing statement with the secretary of state covering Robert's farm products. Bushmills argues that there is a genuine issue of material fact as to who owned the corn that it purchased from Zachary. And it asserts that *Hufnagle* does not apply to the facts of this case or, in the alternative, that we should overrule the supreme court's decision in *Hufnagle*. Neither argument convinces us to reverse.

First, the record defeats Bushmills' contention that material fact issues preclude summary judgment as to who owned the corn Bushmills purchased from Zachary. In support of summary judgment, Star Bank submitted the following evidence: Robert's May 2021 plea agreement in federal court in which he stipulated that he sold 375,343 bushels of corn between December 2017 and July 2019 using his nephew's name; Robert's rule 36 admissions in this case that Zachary is his nephew, some of the corn sales were made under Zachary's name, and Zachary did not have his own farming operation in 2018-2020; and Zachary's admission that he did not own the corn he sold to Bushmills.⁴ This evidence, along with Bushmills' delivery tickets indicating all of the corn was delivered in trucks owned by Robert, support the determination that the corn belonged to Robert. Bushmills' counsel acknowledged as much during the summary-judgment hearing when the district court asked:

⁴ Zachary did not respond to requests for admissions; they are deemed admitted under Minn. R. Civ. P. 36.01.

So what I understand then is the parties agree that Star Bank lent Robert Anderson money which was secured by his crops, properly perfected and secured, and then Zachary Anderson sold some of Robert Anderson's crops to your client Bushmills, and when Bushmills paid for that they didn't list Star Bank on the check; is that fair to say?

Bushmills' counsel responded, "Correct."

As in the district court, Bushmills does not point us to any competent evidence that the corn it purchased from Zachary was owned by anyone other than Robert. Instead, it argues that ownership of the delivery truck is not—in and of itself—conclusive evidence of ownership of the corn and that Star Bank is at fault because it should have kept better track of the Anderson family's loans, banking transactions, and business practices. At oral argument in this court, Bushmills' counsel acknowledged that if we reverse summary judgment and the case proceeds to trial, the only evidence Bushmills will offer as to ownership of the corn is the purported errors and shortcomings in Star Bank's general lending practices.⁵ Because such evidence is speculative at best and immaterial to the dispositive issue of who owned the corn Zachary sold to Bushmills, and because it is undisputed that Star Bank had a security interest in the corn and received no proceeds from the sale, Star Bank is entitled to judgment as a matter of law.

Second, *Hufnagle* is controlling precedent that we are bound to follow. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018); see Minn. Const. art. VI, § 2 ("The court of

⁵ This argument is consistent with the evidence Bushmills offered in support of dismissing Star Bank's motion for summary judgment, which we, like the district court, find insufficient.

appeals shall have appellate jurisdiction over all courts, except the supreme court . . .”). And Bushmills’ effort to distinguish *Hufnagle* on the basis that it was not a willing participant in the fronting scheme is not convincing. The supreme court’s analysis in *Hufnagle* did not turn on the buyer’s actual knowledge of who owned the corn. Rather, it is grounded in the plain language of 7 U.S.C. § 1631 (2018) and Minnesota’s version of the UCC. *Hufnagle*, 720 N.W.2d at 586. We decline Bushmills’ invitation to depart from long-standing supreme court precedent.

II. The district court did not abuse its discretion by awarding \$1,500 in sanctions for Bushmills’ frivolous counterclaim.

A district court may impose sanctions—including attorney fees—against a party that asserts claims or defenses that are neither “warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.” Minn. R. Civ. P. 11.02(b), 11.03. We review a district court’s award of sanctions under Minn. R. Civ. P. 11 for an abuse of discretion. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *rev. denied* (Minn. Mar. 15, 2011). “A party challenging the district court’s choice of a sanction has the difficult burden of convincing an appellate court that the district court abused its discretion.” *Miller v. Lankow*, 801 N.W.2d 120, 127 (Minn. 2011). A district court abuses its discretion when it bases its conclusions on “an erroneous view of the law.” *Id.*

Bushmills argues that the attorney-fee award⁶ is “procedurally and substantively flawed” because its contributory-negligence claim was sound and that even if it mistakenly

⁶ Bushmills does not challenge the amount of the attorney fees awarded.

designated a defense as a counterclaim, the district court should have treated it as a proper defense under Minn. R. Civ. P. 8.03 (“When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on such terms as justice may require, shall treat the pleading as if there had been a proper designation.”). And Bushmills asserts that it had a good-faith basis for asserting contributory negligence, namely, that *Hufnagle* should be overruled. We are not persuaded.

First, we see no error in the district court’s assessment that Bushmills’ claim for contributory negligence does not state a valid cause of action; it is an affirmative defense. *H.L. Elliott Jobbing Co. v. Chicago, St. P., M. & O. Ry. Co.*, 161 N.W. 390, 390-91 (Minn. 1917). It is undisputed that Star Bank brought this fact to Bushmills’ attention in the October 2022 safe-harbor notice and that Bushmills took no steps to withdraw its counterclaim to correct what it now labels a mistake at any time prior to the September 2023 summary-judgment hearing. In other words, the record does not suggest Bushmills was operating under a mistaken assumption that the district court was required to remedy by treating the counterclaim as a proper defense under Minn R. Civ. P. 8.03.

Second, Bushmills’ contributory-negligence claim is neither supported by existing law nor by a nonfrivolous argument for changing the law. Existing Minnesota law does not impose a duty on secured lenders to protect buyers from fronted corn sales. Even assuming our supreme court decided to overrule its decision in *Hufnagle*, Bushmills’ contributory-negligence claim fails on the undisputed record. As the district court concluded, “the events giving rise to the alleged duty [Robert’s 2021 criminal prosecution] occurred multiple years after the [2019] grain fronting had occurred.”

In sum, it is undisputed that Star Bank notified Bushmills of its improper claim as required by Minn. R. Civ. P. 11.02 and 11.03 and that Bushmills failed to withdraw it. On this record, we discern no abuse of discretion by the district court in awarding attorney fees as a sanction.⁷

Affirmed.

⁷ Bushmills also argues that at least a portion of the \$353,831.47 judgment against it represents attorney fees awarded by the district court in the Benton County action, for which it is entitled to a jury trial under *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49 (Minn. 2012). But Bushmills cites no legal support for the proposition that resolution of a distinct legal action with an attorney-fee component entitles it to a jury trial in this case. We generally do not consider arguments made without legal support. *See State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issues that were inadequately briefed). And we note that the amount Star Bank collected in the prior action reduced Bushmills' liability for the corn it purchased from \$457,494.62 to \$352,831.47.