

23982, 24001, 23984

ISSUES

- I. DOES THE FOOD SECURITY ACT OF 1985, 7 U.S.C. § 1631, PROTECT THE SALE BARNS FROM LIABILITY TO FIN-AG FOR CONVERSION WHEN THE SELLER OF FIN-AG'S COLLATERAL CATTLE WAS NOT LISTED ON FIN-AG'S FINANCING STATEMENT?

Judge Kean found that under § 1631, Pipestone Livestock was protected from liability to the extent it was acting as a commission merchant, but concluded that on certain sales, Pipestone Livestock was acting as a lender and was not protected from liability. Judge Timm found that SD Livestock was not protected by § 1631, but acknowledged his decision was contrary to the purpose of § 1631.

- FDIC v. Bowles Livestock Comm'n Co., 937 F.2d 1350 (8th Cir. 1991)
- Lisco State Bank v. McCombs Ranches, Inc., 752 F.Supp. 329 (D. Neb. 1990)
- Ashburn Bank v. Farr, 426 S.E.2d 63 (Ga. Ct. App. 1992)
- Consol. Nutrition, L.C. v. IBP, Inc., 2003 SD 107, 669 N.W.2d 126
- 7 U.S.C. § 1631
- 9 C.F.R. § 205.1-205.214

- II. ARE ALL OF FIN-AG'S CLAIMS BARRED BY SDCL § 57A-9-609.1 BECAUSE FIN-AG DID NOT PROPERLY OFFER TO FILE A CRIMINAL COMPLAINT, AND ARE SOME OF FIN-AG'S CLAIMS ARISING FROM CERTAIN SALES AT SD LIVESTOCK TIME-BARRED BY § 609.1?

Judge Kean and Judge Timm concluded that Fin-Ag had adequately complied with the statute by making an offer to file a criminal complaint to counsel for the Sale Barns and Berwalds. Judge Timm ignored the fact that Fin-Ag's claims against SD Livestock included nine sales barred by the 24-month statute of limitations in § 609.1.

- SDCL § 57A-9-609.1

III. SHOULD FIN-AG BE ALLOWED TO RECOVER FOR CONVERSION WHEN IT DID NOT PRESENT EVIDENCE THAT IT HAD A SECURITY INTEREST IN THE CATTLE SOLD BY C&M DAIRY, DID NOT ESTABLISH THAT THE SALES WERE UNAUTHORIZED, AND DID NOT PROVE THAT IT HAD BEEN DAMAGED OR THAT ANY ALLEGED DAMAGES COULD NOT HAVE BEEN AVOIDED OR MITIGATED?

Neither Judge Kean nor Judge Timm required Fin-Ag to prove the elements of its conversion cause of action.

- Chem-Age Indus., Inc. v. Glover, 2002 SD 122, 652 N.W.2d 756
- North Central Kansas Prod. Credit Ass'n v. Washington Sales Co., Inc., 577 P.2d 35 (Kan. 1978)
- First Bank of Okarche v. Lepak, 961 P.2d 194 (Okla. 1998)
- Security State Bank v. Benning, 433 N.W.2d 232 (S.D. 1988)

IV. DOES FIN-AG HAVE AN ENFORCEABLE SECURITY INTEREST WHEN IT AUTHORIZED BERWALDS' CATTLE SALES AND FAILED TO PROPERLY AMEND ITS FINANCING STATEMENT?

Judge Kean did not address this. Judge Timm held that Fin-Ag retained the right to enforce its security interest.

- Rushmore State Bank v. Kurylas, Inc., 424 N.W.2d 649 (S.D. 1988)
- Gretna State Bank v. Cornbelt Livestock Co., 436 N.W.2d 795 (Neb. 1990)
- Humboldt Trust & Savings Bank v. Entler, 349 N.W.2d 778 (Iowa Ct. App. 1984)
- Mercantile Bank of Springfield v. Joplin Regional Stockyards, Inc., 870 F.Supp. 278 (W.D. Mo. 1994)

Statement of the Issues Presented

- I. **Whether the Food Security Act of 1985, 7 U.S.C. § 1631, protects the Sale Barns from liability to Fin-Ag for conversion when the Sale Barns Deal With a Fictitious Seller.**

Fin-Ag v. Pipestone Livestock

Judge Kean ruled that the Food Security Act protected Pipestone Livestock for the sale that occurred on February 5, 2004. He further ruled that Pipestone Livestock was not protected for the remaining sales in which it acted as a lender and paid itself to cover prior purchases by the Berwalds.

Fin-Ag v. SD Livestock

Judge Timm ruled that the Food Security Act did not provide protection to SD Livestock.

Aberdeen Production Credit Ass'n v. Redfield Livestock Auction, Inc., 379 N.W.2d 829 (S.D. 1985);
Sanborn County Bank, Inc. v. Magness Livestock Exchange, Inc., 410 N.W.2d 565 (S.D. 1987);
Consolidated Nutrition, L.C. v. IBP, Inc., 2003 SD 107,669 N.W.2d 126;
Food Services of America v. Royal Heights, Inc., 871 P.2d 590 (Wash. 1994)
7 U.S.C. § 1631

II. Whether Fin-Ag complied with SDCL § 57A-9-609.1 and whether certain sales are barred by the two-year statute of limitations.

Fin-Ag v. Pipestone Livestock

Judge Kean held that the plain reading of SDCL § 57A-9-609.1 required only that Fin-Ag offer to file a complaint and that the letter dated February 22, 2005 complied with the statutory requirement.

Fin-Ag v. SD Livestock

Judge Timm held that Fin-Ag complied with SDCL § 57A-9-609.1 by offering to file a complaint in its February 22, 2005 letter. Judge Timm also allowed recovery for transactions that occurred more than two years before the filing of the second conversion action.

SDCL § 57A-9-609.1

III. Whether there is sufficient evidence to find that Fin-Ag had a security interest in the cattle that were sold through the Sale Barns, whether such sales were unauthorized, and whether Fin-Ag suffered any damages as a result of the sales.

Fin-Ag v. Pipestone Livestock

Judge Kean held that the cattle sales were not authorized, that Pipestone Livestock interfered with Fin-Ag's security interest in such cattle, and that Pipestone Livestock was liable for monetary damages equal to the amounts it paid to itself as a result of the sales.

Fin-Ag v. SD Livestock

Judge Timm held that the Berwalds were the sellers of the cattle and that Fin-Ag did not waive or release its security interests in the cattle. The Court further held that Fin-Ag retained its interests in the cattle sale proceeds and awarded compensable damages equal to the total amount of the sales made out of trust. Finally, Judge Timm noted that no legal authority was cited by SD Livestock for its claim that Fin-Ag did not have a compensable loss.

Sanborn County Bank, Inc. v. Magness Livestock Exchange, Inc.,
410 N.W.2d 565 (S.D. 1987)
Aberdeen Production Credit Ass'n v. Redfield Livestock Auction,
Inc., 379 N.W.2d 829 (S.D. 1985)

- IV. **Whether Fin-Ag retained its security interests in the cattle sold through the Sale Barns and whether it was obligated to amend its financing statement.**

Fin-Ag v. Pipestone Livestock

Judge Kean held that neither C&M Dairy nor Pipestone Livestock had authority to sell the collateral cattle, and to the extent that the FSA did not provide protection to Pipestone Livestock, Fin-Ag retained its security interests. The Court did not address whether Fin-Ag was obligated to amend its financing statement.

Fin-Ag v. SD Livestock

Judge Timm held that Fin-Ag neither waived nor released its security interests and that it was not required to amend its financing statement.

State v. Olson-Lame, 2001 SD 51, 624 N.W.2d 833