

## LexisNexis® Agricultural Law *NetLetter*

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### **\*\* HIGHLIGHTS \*\***

- \* A Justice of the Saskatchewan Court of Queen's Bench has dismissed an application for summary judgment by an agricultural co-operative seeking to recover debt for poultry feed supplied to one of its members. The Court concluded that there was a genuine issue to be tried based on the co-operative's membership applications, credit agreement and documents which, among other things, described the co-operative as a supplier of pooled products and which claimed a security interest in product which it sold to its members. Invoices issued by the feed wholesaler were directed to the co-operative, rather than the poultry farmer who received the feed. [Editor's Note: Cooperatives are reasonably common in the agricultural community. They often act as a suppliers of inventory (such as livestock), farm inputs (such as feed) and financial services. Cooperatives which provide loans or credit must be careful to ensure that their security, loan and member documents clearly exclude liability for claims of this nature.]. (Prairie Feed Co-Operative Ltd. v. Stilborn, [CALN/2015-002](#), [2014] S.J. No. 765, Saskatchewan Court of Queen's Bench)

### **\*\* NEW CASE LAW \*\***

*Prairie Feed Co-Operative Ltd. v. Stilborn*; [CALN/2015-002](#), Full text: [\[2014\] S.J. No. 765](#); [2014 SKQB 428](#), Saskatchewan Court of Queen's Bench, B. Scherman J., December 31, 2014.

Cooperatives -- Liability to Members for the Supply of Defective Products.

Prairie Feed Co-operative Ltd. ("Prairie Feed") applied to the Saskatchewan Court of Queen's Bench for summary judgment for the balance claimed by it against Lloyd Stilborn and Joy Stilborn (the "Stilborns") for poultry feed provided to the Stilborns through a third party supplier, Federated Co-operatives Limited ("Federated").

The Stilborns argued that the poultry feed they received was defective.

Prairie Feed took the position that matters of the quality of feed were solely between the Stilborns and Federated, and that Prairie Feed only acted as a financier or credit provider for the Stilborns to purchase the feed from Federated.

Decision: Scherman, J. [at para. 12] dismissed the application for summary judgment.

Scherman, J. observed there were a number of matters in evidence which supported the proposition that there was a genuine issue as to whether Prairie Feed was both a supplier of product and credit [at para. 9] including the following:

1. There was no express statement in neither the application for membership in Prairie Feed, or the credit application which stipulates that credit was being applied for to finance purchases from third party suppliers. Rather, the credit agreement expressly proved that Prairie Feed was being granted a "security interest in any and all merchandise purchased from the Co-op..."
2. A signed credit policy document indicated that members had the ability to pay for credit through VISA and Mastercard which was in some respects not consistent with Prairie Feed's argument that credit was being provided as a lender.
3. The invoices issued for product from Federated were addressed to Prairie Feed rather than the Stilborns, which supported the argument that Prairie Feed was re-selling the same product to its customer.
4. Correspondence sent by the manager and sole employee of Prairie Feed described it as an "independent retail co-op buying group".

The Court concluded [at para. 10] as follows:

"[10] While PFCL may have no involvement in the manufacture and delivery of the feed, that does not mean that they did not purchase the feed and resell it to the Stilborns..."

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### \*\* CREDITS \*\*

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