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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0527**

Michelle Beeuwsaert, et al.,
Respondents,

vs.

Shah & Co. Ltd.,
Appellant.

**Filed March 4, 2019
Affirmed in part and reversed in part
Bjorkman, Judge**

Ramsey County District Court
File No. 62-CV-17-221

Patrick B. Moore, Joslin & Moore Law Offices, P.A., Cambridge, Minnesota (for respondents)

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Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Florey, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant accounting firm challenges the district court's denial of its breach-of-contract claims related to accounting and tax-preparation services it provided for respondents. Appellant also challenges the denial of its claim for attorney fees and the

award of damages to respondent corporation based on an IRS penalty. We affirm the denial of appellant's claims but reverse the damages award.

FACTS

Appellant Shah & Co. Ltd. is a Minnesota accounting firm. In 2002, it began providing accounting and tax-preparation services for respondents Robert Beeuwsaert and Michelle Beeuwsaert and their company, respondent Thunder Blades, Inc. For the Beeuwsaerts as a married couple, Shah & Co. provided tax-preparation services for tax years 2002-11, with written engagement letters for tax years 2008 through 2011. The Beeuwsaerts divorced in 2011, and Shah & Co. provided tax-preparation services for each of them individually for tax years 2012 and 2013, with written engagement letters for both years.¹ For Thunder Blades, Shah & Co. provided accounting and tax-preparation services for tax years 2003-14, with engagement letters for tax years 2008-11, 2013, and 2014.

Shah & Co.'s engagement letters consistently state that fees would "be based on standard hourly rates, for the actual time spent, plus out-of-pocket expenses," or "upon the amount of time required at standard billing rates plus out-of-pocket expenses"; none of the letters indicate any particular rate. Over the years, the Beeuwsaerts frequently requested—but never received—invoices for work performed on their behalf. Shah & Co.'s founding partner simply told them they could pay "when the cash flow improves." Nonetheless, the

¹ Though not included in the district court's findings, the record reflects that Shah & Co. also performed tax-preparation services for Michelle Beeuwsaert for tax year 2014, but without an engagement letter.

Beeuwsaerts and Thunder Blades made good-faith payments totaling \$15,700 between 2003 and 2015.

In April 2016, the Beeuwsaerts asked Shah & Co. to return their tax paperwork so they could work with a different accountant. Shah & Co. refused to do so until they paid all alleged balances due, but it did not issue any invoices. In July, the Beeuwsaerts repeated their request and asked to be “reasonably” invoiced for any outstanding fees. Shah & Co. again did not provide the paperwork and did not issue any invoices. The following month, Shah & Co. wrote to the Beeuwsaerts, stating that it had returned the required paperwork and would bill for services rendered “within the next few weeks.” But Shah & Co. did not return the paperwork or send any invoices.

Lacking the necessary documents, Thunder Blades was unable to timely file its 2015 tax returns. The IRS subsequently assessed Thunder Blades a penalty of \$2,730.

The Beeuwsaerts and Thunder Blades initiated an action in conciliation court, seeking return of their tax paperwork. After an October 3 hearing, the conciliation court ordered Shah & Co. to return the documents and bill the Beeuwsaerts and Thunder Blades for any outstanding balances, and continued the matter to December 2. Three days before the hearing, Shah & Co. sent invoices to the Beeuwsaerts and Thunder Blades demanding \$26,200 for services rendered to Thunder Blades for tax years 2003-10; \$12,600 for services rendered to Thunder Blades for tax years 2011-14; \$3,075 for services rendered to the Beeuwsaerts for tax years 2002-11; \$790 for services rendered to Robert Beeuwsaert for tax years 2012-13; and \$1,620 for services rendered to Michelle Beeuwsaert for tax years 2012-14. Shah & Co. credited the \$15,700 previously paid against the Thunder

Blades invoices, but none of the invoices stated an hourly rate or an accounting of time spent. The Beeuwsaerts and Thunder Blades did not pay, and Shah & Co. asserted counterclaims to recover the unpaid fees. The conciliation court ordered Shah & Co. to return the requested documents but awarded it \$1,000 as compensation for unpaid accounting services.

Shah & Co. removed the case to district court. After a bench trial, the district court determined that Shah & Co.'s breach-of-contract claims² fail for four reasons: (1) no contracts existed for years without a signed engagement letter, (2) the statute of limitations bars claims for fees incurred before 2011 because Shah & Co. failed to provide invoices within a reasonable time after services were performed, (3) the payments rendered and accepted are deemed full payment for the services performed, and (4) Shah & Co. failed to prove damages. The district court also denied Shah & Co.'s contract-based claim for attorney fees. And the court determined that Thunder Blades incurred damages as a result of Shah & Co.'s failure to return the requested tax documents, as required under Minn. Stat. § 326A.13(b) (2018), and entered judgment against Shah & Co. for \$2,730. Shah & Co. appeals.

² Shah & Co. also claimed unjust enrichment and promissory estoppel. The district court denied those claims, and Shah & Co. does not pursue them on appeal.

DECISION

I. Shah & Co.’s claims for services performed prior to 2011 are barred by the statute of limitations.

A breach-of-contract claim is subject to a six-year statute of limitations. Minn. Stat. § 541.05(1) (2018). When a contract provides for payment upon demand, “the statute of limitations does not begin to run until an actual demand for payment is made.” *Bannitz v. Hardware Mut. Cas. Co.*, 17 N.W.2d 372, 373 (Minn. 1945). But the demand “must be made within a reasonable time.” *Id.* The amount of time reasonable for such a demand “is ordinarily the period of the statute of limitations” but depends on the circumstances of the case. *Id.* at 373-74. Whether a claimant demanded payment under a contract within a reasonable time is a “question for the trier of fact.” *Id.* at 374. We will not disturb a district court’s finding on this question unless it is clearly erroneous. Minn. R. Civ. P. 52.01; *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

Shah & Co. argues that the district court erred by finding that it failed to timely demand payment for services performed prior to 2011. Citing *Bannitz*, Shah & Co. asserts that its 2016 demand was timely because “the relationship between the parties here involved a level of trust and confidence that is . . . not typical in a creditor-debtor relationship.” We are not persuaded. *Bannitz* involved a long-time employee who did not seek to recover sales commissions that accrued early in his career until he separated from the employer. 17 N.W.2d at 373-74. Our supreme court held the delay was reasonable because of the parties’ ongoing relationship, particularly the trust and confidence the employer-debtor placed in the employee. *Id.* at 374. In contrast, this case does not involve

an employment relationship; the Beeuwsaerts and their company retained Shah & Co. to perform accounting services. Indeed, any trust relationship went the other direction, as the Beeuwsaerts and their company placed their trust and confidence in Shah & Co. See *Vernon J. Rockler & Co. v. Glickman, Isenberg, Lurie & Co.*, 273 N.W.2d 647, 650 (Minn. 1978) (recognizing that accountants “owe their clients a duty of reasonable care”). And unlike the employer in *Bannitz*, which could have tendered the commissions to its employee at any time, the Beeuwsaerts and their company were deprived of the ability to pay for services as they were rendered because Shah & Co. unilaterally declined to issue invoices despite the Beeuwsaerts’ repeated requests.

Overall, the record amply supports the district court’s finding that Shah & Co. “had the ability to invoice after work was done” and unreasonably failed to do so. Accordingly, the district court did not clearly err by determining that claims for work performed more than six years before they were filed—those from before 2011—are barred by the statute of limitations.

II. Shah & Co. failed to establish damages resulting from its remaining contract claims.

A claim for breach of contract “fails as a matter of law if the plaintiff cannot establish that he or she has been damaged by the alleged breach.” *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 578-79 (Minn. App. 2004). Damages “need not be proved with certainty” but cannot be “remote, conjectural, or speculative.” *Id.* at 579. Shah & Co.’s engagement letters uniformly state an agreement to charge the Beeuwsaerts and Thunder Blades “based on standard hourly rates, for the actual time spent, plus out-of-pocket

expenses.” But its contract claim is premised on November 2016 invoices that reflect annual flat fees. The district court discredited Shah & Co.’s contention that the Beeuwsaerts agreed to pay a flat fee. And Shah & Co. presented no evidence of the actual time it spent providing services to Thunder Blades and the Beeuwsaerts, the reasonable value of that time, or the expenses it incurred. On this record, we discern no error by the district court in denying Shah & Co.’s breach-of-contract claims for 2011 and beyond.³

III. The district court did not abuse its discretion by denying attorney fees.

“Attorney fees are not recoverable unless authorized by statute or contract.” *Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005), *review dismissed* (Minn. Nov. 15, 2005). We review a district court’s decision regarding an award of attorney fees for an abuse of discretion. *Id.*

Shah & Co. contends it is entitled to attorney fees based on provisions in its 2013 and 2014 engagement letters that if “any collection action is required to collect unpaid balances due to [Shah & Co.],” the Beeuwsaerts and Thunder Blades agree to reimburse “all costs associated with collection activities, including, but not limited to attorney fees.” But Shah & Co. acknowledges that its attorney-fee claim is contingent on the success of its contract claims. Because the district court did not err by denying Shah & Co.’s breach-of-contract claims, it did not abuse its discretion by declining to award attorney fees.

³ Shah & Co. also challenges the district court’s finding that its contract claims are barred by an accord and satisfaction between the parties. Because we affirm the district court’s denial of the contract claims on the merits, we decline to address this alternative argument.

IV. The district court erred by awarding damages to Thunder Blades.

Minnesota law requires an accountant to “furnish to a client or former client, upon request and reasonable notice,” a copy of the accountant’s working papers and any accounting or other records that the client provided the accountant. Minn. Stat. § 326A.13(b). Shah & Co. argues that the district court erred by awarding Thunder Blades \$2,730 as damages for violation of this statute because Thunder Blades failed to prove that it actually paid, or will be required to pay, the IRS penalty. We agree.

An award of actual damages “repay[s] actual losses.” *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 141 (Minn. 2017). Damages cannot be “remote, conjectural, or speculative.” *Jensen*, 688 N.W.2d at 579.

On the record before us, Thunder Blades’ obligation to pay the \$2,730 penalty is speculative. The IRS notice directs Thunder Blades to pay the penalty but also invites the company to “provide a signed detailed letter of explanation” indicating its “acceptable reason for filing [the] return late,” which, if the IRS accepts the explanation, may result in the penalty being removed or reduced. Thunder Blades presented no evidence that it paid the penalty or that the IRS rejected its explanation and demanded payment. Accordingly, the district court erred by awarding unproven damages.

Affirmed in part and reversed in part.