STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1761

State of Minnesota,
Appellant,

vs.

Minnesota School of Business, Inc.
d/b/a Minnesota School of Business, et al.,
Respondents.

Filed June 3, 2019
Affirmed in part, reversed in part, and remanded
Rodenberg, Judge

Hennepin County District Court
File No. 27-CV-14-12558

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Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

In this appeal after remand by the supreme court of an action by the state against respondents, appellant State of Minnesota argues that the district court erred by (1) determining, contrary to the earlier supreme court decision in this case, that respondents

were only required to have a license to make loans with interest rates over 8%, and limiting remedial relief to those loans with over 8% interest; and (2) declining to award damages for all amounts paid by students on illegal loans, including prejudgment interest, and declining to award attorney fees and costs. We affirm the district court's conclusions that only those loans with interest rates above 8% were unlawful and that loans with interest rates over 8% are void as illegal. We reverse the district court's denial of the remedies provided for in Minn. Stat. § 8.31, subd. 3a (2018), and its prejudgment-interest denial. We remand to the district court to order that respondents must make restitution for all amounts paid on loans with an interest rate over 8% and to determine and award attorney fees, costs and disbursements, and prejudgment interest in conformity with this opinion.

FACTS

Respondents Minnesota School of Business and Globe University Inc. operated for-profit, post-secondary schools that offered educational services in the State of Minnesota until 2016. Respondents offered loans to "students for a maximum of $3,000 to $7,500 per loan, usually at interest rates between 12 and 18 percent, depending on the timing and type of loan." *State v. Minn. Sch. of Bus., Inc.*, 899 N.W.2d 467, 469 (Minn. 2017) (*MSB II*). However, in 2013, respondents reduced the interest rate to 8% on loans with a cosigner and to 12% on loans without a cosigner; in 2014, respondents reduced the interest rate to 8% for all borrowers. Respondents were not licensed to issue loans under Minnesota Statutes chapter 56. *Id.* at 468, 476.

In 2014, appellant, through then-Attorney General Lori Swanson, sued respondents, alleging that respondents had defrauded students in violation of Minn. Stat. § 325F.69

(2012) (count 1), and had engaged in deceptive trade practices in violation of Minn. Stat. § 325D.44 (2012) (count 2).[1] In 2015, the state amended the complaint to add "claims against the [respondents] for lending without the license required by Minn. Stat. § 56.01(a) (2016) (count 3), and charging usurious interest rates in violation of Minn. Stat. § 334.01, subd. 1 (2016) (count 4)." *MSB II*, 899 N.W.2d at 470. The "amended complaint sought permanent statutory injunctive relief under Minn. Stat. § 8.31, subd. 3 (2016)," to prohibit respondents from continuing to make usurious and unlicensed loans. *Id.* at 470.

In September 2015, both parties moved for summary judgment. "The State's summary judgment motion asked the district court to 'enjoin [respondent's] illegal lending,'" and its proposed order "included permanent statutory injunctions against usurious and unlicensed lending." *Id.* Respondents argued "that their lending was not usurious under Minn. Stat. § 334.16, subd. 1 (2016), and that they were not required to obtain a license under Minn. Stat. § 56.01(a)." *Id.* The district court denied the state's motion for summary judgment. It granted respondents' motion for summary judgment, in part, by dismissing counts 3 and 4.

The state took an interlocutory appeal from the district court's denial of summary judgment. *Id.* A special-term panel of this court concluded that this court had jurisdiction over the interlocutory appeal because the district court had denied the state an injunction. *State v. Minn. Sch. of Bus., Inc.*, 885 N.W.2d 512, 515 (Minn. App. 2016) (*MSB I*), *rev'd,* 899 N.W.2d 467 (Minn. 2017). We affirmed the district court's ruling on the merits,

[1] These claims are not before us on appeal.

holding that (1) respondents' loans were open-end credit plans under Minn. Stat. § 334.16; (2) because the loans did not "exceed the 18% maximum interest rate . . . they [were] not usurious;" and (3) because the rates were not usurious, respondents were not required to be licensed under Minn. Stat. § 56.01(a). *Id.* at 522.

The state successfully petitioned for further review, and the supreme court reversed. *MSB II*, 899 N.W.2d at 469. The supreme court held, in relevant part, that respondents' "loans were not made pursuant to open-end credit plans under Minn. Stat. § 334.16, subd. 1(a). It follows that the [respondents] charged usurious interest rates in violation of Minn. Stat. § 334.01, subd. 1." *MSB II*, 899 N.W.2d at 475.

The supreme court separately considered whether respondents "were required to obtain a Chapter 56 lending license under Minn. Stat. § 56.01(a)" if respondents either engaged in unlicensed lending generally *or* engaged in unlicensed lending and charged interest rates higher than 8%. *Id.* at 475-76. The state contended that, under chapter 56, respondents were required to be licensed to make loans and were prohibited from charging interest rates above 8%. *Id.* at 476. Respondents countered that, under chapter 56, they were only required to be licensed if they *both* engaged in making loans and "charged an interest rate greater than 8 percent that was not otherwise authorized for non-licensees." *Id.*

The supreme court did not resolve this issue, instead noting:

> We need not decide which of the parties' interpretations is correct, because under either interpretation the [respondents] were required to obtain a Chapter 56 license. At oral argument, the [respondents] conceded that, under their interpretation, they would be required to obtain a Chapter 56 license if their

> loans were not made pursuant to open-end credit plans under Minn. Stat. § 334.16, subd. 1(a). Because we hold that the [respondents'] loans were not so made, Minn. Stat. § 334.16 did not authorize the [respondents] to charge an interest rate above 8 percent. Instead, the [respondents] were required to obtain a Chapter 56 license. Their failure to do so means they engaged in unlicensed lending in violation of Minn. Stat. § 56.01(a).

Id. The supreme court remanded to the district court for further proceedings consistent with the opinion. *Id.*

On remand, the state moved the district court for an order that:

> (1) [respondents'] illegal loans be declared void and cancelled, and accordingly, borrowers are not obligated to pay any amounts owing on the loans; (2) [respondents] be permanently enjoined from engaging in any collection on such loans and not sell or assign the loans to any third party; (3) [respondents] correct negative reporting on the borrowers' credit reports related to the illegal loans; (4) [respondents] release and provide official transcripts and diplomas that they have withheld due to delinquent payments on the illegal loans; and (5) [respondents] return all payments of principal, interest, and other charges (plus interest on the amounts) that the borrowers paid on the loans.

The state argued that such relief was available under Minn. Stat. § 8.31 (2018), the attorney general's parens patriae powers, and the district court's equitable authority. Respondents argued that the only relief available was a moot permanent injunction addressing loans with interest rates over 8% and that respondents were entitled to a trial to assert various defenses against the state's claims.

On October 17, 2017, the district court entered an order permanently enjoining respondents from making further unlicensed loans and from seeking or receiving payment, referring for collection, or attempting to collect any money on *any* loan (regardless of

interest rate) issued prior to the date of the order. However, the district court, in light of the appellate history, concluded that relief other than an injunction was "not in the scope of the Supreme Court's directive, where the appeal was jurisdictionally limited to the denial of injunctive relief." The district court further concluded that:

> Even assuming without deciding that the [respondents] are correct in their statutory interpretation of Minn. Stat. § 8.31 set forth in their brief, the State is correct in arguing that under its more general *parens patriae* powers, "this enforcement action lies in equity," and that "restitution is an equitable remedy." . . . The State is proceeding *parens patriae*, and it may *seek* equitable relief, including restitution. However, whether it is entitled to such relief is a matter for the Court to consider after trial, where the Court can determine the facts and scope of the loans, whether restitution is appropriate under the *parens patriae* doctrine, and how the equities weigh.

The remaining issues were tried to the district court sitting without a jury. In its trial memorandum, the state argued three theories which it claimed authorized restitution for student debtors: (1) the loans were void under Minnesota Statutes chapters 56 and 334; (2) section 8.31, subdivisions 3 and 3a, empower the attorney general to seek remedial measures; and (3) the state could pursue relief for student debtors as parens patriae. Respondents posited that the district court should "modify the injunction to remove from its scope loans issued with interest rates at 8% or less."

Following the bench trial, the district court issued findings of fact and an order that amended the previously issued injunction to apply only to loans with an interest rate above 8%,[2] voided all previously issued loans with interest rates above 8% issued after January 1,

[2] The state argues on appeal, in a footnote, that the district court improperly modified the permanent injunction in the absence of a significant change of circumstances, but the state

2009, and ordered respondents to repay all interest (but not principal) paid on loans with interest rates above 8% under the doctrine of parens patriae. The district court did not order full restitution for all student debtors with loans of over 8% interest. It declined to award the state pre-judgment interest on the amounts of restitution it ordered respondent to pay.

Judgment was entered on October 1, 2018. Respondents paid the judgment. On October 30, 2018, the state appealed to this court and petitioned for accelerated review by the supreme court. The supreme court denied the petition for accelerated review, and we therefore consider the issues raised.

D E C I S I O N

I. The district court did not err in concluding that chapter 56 only applies to unlicensed loans with interest rates greater than 8%.

The parties disagree concerning whether the district court complied with the supreme court's instructions on remand for further proceedings in *MSB II*, 899 N.W.2d at 476, and whether the district court correctly interpreted chapter 56.

A. The supreme court's opinion in *MSB II* does not address respondents' loans with an interest rate of 8% or less.

The state argues that the district court erroneously permitted respondents "to relitigate liability as to their unlicensed lending for loans with an interest rate of 8% or less despite the Supreme Court's final decision to the contrary and then erroneously interpreted section 56.01(a)." The state contends that the supreme court's decision "recognized" the state's argument "that *all* of [r]espondents' lending was illegal" in light of respondents'

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does not request any relief from this alleged error. Consequently, we decline to address this issue.

concession at oral argument that a chapter 56 license was necessary for loans over 8% that were not open-end credit plans. Therefore, the state argues, the supreme court's opinion is final and binding with respect to all loans, including those with interest of 8% or less. Respondents counter that the issue before the supreme court was whether respondents' loans with interest rates greater than 8% were open-end credit plans. Respondents characterize the supreme court's opinion as "entirely focused on loans that charged an interest rate greater than 8 percent" and that the supreme court did not address which party's interpretation of chapter 56 was correct.

We note at the outset that this court is "bound by supreme court precedent," a duty to which we scrupulously adhere. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). "Appellate courts review a district court's compliance with remand instructions under the deferential abuse of discretion standard." *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). A district court abuses its discretion on remand if "it makes findings on a subject not included in the appellate court's remand instructions." *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 633 (Minn. 2017).

Here, the supreme court's opinion in *MSB II* did not direct the district court to enter judgment in favor of the state, but instead instructed the district court to conduct further proceedings in conformity with the opinion. *MSB II*, 899 N.W.2d at 476. On remand, the district court construed the remand instructions in light of the jurisdictional posture of the earlier appeal. It concluded that the remand instruction concerned only the issues related to the appealed-from denial of an injunction. The district court also concluded that, because the "remedies the State requests, other than injunctive relief, are remedies that

would stem from the State's purported status as *parens patriae*, and this Court's equitable powers," a trial was necessary to determine whether the state was entitled to additional remedies.

In *MSB II*, the supreme court concluded that respondents' "loans were not made pursuant to open-end credit plans under Minn. Stat. § 334.16, subd. 1(a). It follows that the [respondents] charged usurious interest rates in violation of Minn. Stat. § 334.01, subd. 1." *MSB II*, 899 N.W.2d at 475. The supreme court went on to note that the parties offered different interpretations of chapter 56's licensure requirement. *Id.* at 476. The supreme court further noted that respondents "[*did*] *not contest that they were in the business of making loans, but contend that Minn. Stat. § 334.16, subd. 1 authorized them to charge an interest rate greater than 8 percent.* Therefore, [respondents] argue, they did not need a Chapter 56 license." *Id.* at 476 (emphasis added). The supreme court determined that it

> need not decide which of the parties' interpretations is correct, because under either interpretation the [respondents] were required to obtain a Chapter 56 license. At oral argument, the [respondents] conceded that, under their interpretation, they would be required to obtain a Chapter 56 license if their loans were not made pursuant to open-end credit plans under Minn. Stat. § 334.16, subd. 1(a). Because we hold that the [respondents'] loans were not so made, Minn. Stat. § 334.16 did not authorize the [respondents] to charge an interest rate above 8 percent. Instead, the [respondents] were required to obtain a Chapter 56 license. Their failure to do so means they engaged in unlicensed lending in violation of Minn. Stat. § 56.01(a).

Id.

The supreme court's opinion considered *only* respondents' loans with interest rates above 8%. *See id.* The supreme court first determined that respondents' loans with interest

rates above 8% were not permitted open-end credit plans, but instead were usurious. *Id.* at 475. Next, the supreme court noted chapter 56's requirement for licensing and that both sides offered different interpretations, the same positions the parties have before us in this appeal. *Id.* at 475-76. However, the supreme court expressly refrained from deciding which interpretation was correct, because respondents conceded at oral argument before the supreme court that, if the loans were "not made pursuant to open-end credit plans," respondents were required to be licensed under chapter 56. *Id.* at 476. It appears to us that respondents' concession, made in the context of a discussion of open-end credit plans with interest over 8%, only pertained to whether a chapter 56 license was required for loans with interest rates above 8%. Consequently, the supreme court's discussion of chapter 56 licensing seems to have concerned only loans with interest rates above 8%. *See MSB II*, 899 N.W.2d at 475-76.[3]

The state contends that the supreme court's "decision is the law of this case and constitutes a final disposition of the Chapter 56 liability issue in favor of the State with respect to all of Respondents' lending." Respondents do not appear to contest that argument regarding loans with interest rates above 8%, but argue that, because the question of loans with interest rates of 8% or less was never addressed in *MSB II*, they are therefore

[3] The state also argues that respondents should have petitioned for rehearing if they disagreed with the supreme court's interpretation of this oral-argument concession and "the consequence of their concession as recognized by the Supreme Court." But because the supreme court refrained from making any determinations about loans with interest rates of 8% or less, no petition for rehearing was necessary. *See MSB II*, 899 N.W.2d at 475-76. As respondents note, "[t]here was no reason for the [respondents] to petition the Supreme Court for re-hearing on something that the Supreme Court never ordered" or considered.

free to litigate that issue. In *Mattson v. Underwriters at Lloyds of London*, a case to which both parties cite, the supreme court addressed the question "of the finality of appellate judgments." 414 N.W.2d 717, 720 (Minn. 1987). *Mattson* stated that "issues not determined in the first appeal may, on remand, be litigated." *Id.* This is precisely our situation.

B. Chapter 56 does not require licensure if a lender makes loans for less than $100,000 at interest rates of 8% or less.

The state argues that section 56.01(a) requires *all* non-financial-institution lenders making loans under $100,000 to first obtain a license, regardless of the interest rates charged, and requires that the interest rates charged not be usurious. Respondents do not contest that they were "engaged in the business of making loans" or that they were unlicensed when they made the loans at issue, but argue that section 56.01(a)'s licensing requirement applies only when a lender issues loans under $100,000 at interest rates higher than what would otherwise be permitted under the usury statute (8%) or otherwise allowed under an exception in chapter 56.

The district court agreed with respondents' interpretation. The district court determined that "the Supreme Court's holding—that only [respondents'] loans with interest rates above 8% were unlawful—follows exactly the prohibitions of Minn. Stat. § 56.01."

Minn. Stat. § 56.01(a) provides:

> Except as authorized by this chapter and without first obtaining a license from the commissioner, no person shall engage in the business of making loans of money, credit, goods, or things in action, in an amount or of a value not

> exceeding [$100,000], and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if not a licensee under this chapter.

Minn. Stat. §§ 56.01(a), .131, subd. 1(a) (2018); *see also* Minn. Stat. § 56.002 (2018) (excluding "banks, savings associations, trust companies, licensed pawnbrokers, [and] credit unions" from the licensure requirement). Section 56.01(a) permits a licensed lender to charge either an annual percentage rate not exceeding 21.75% or the total of 33% interest on the first $1,200 of unpaid principal and 19% on the remaining unpaid principal exceeding $1,200. Minn. Stat. §§ 47.59, subds. 1(k) (defining financial institution as "a regulated lender organized under chapter 56"), 3(a), 56.131, subd. 1(a) (2018).

Appellate courts review the interpretation of a statute de novo. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). A reviewing court must first determine whether the statute's language is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). "A statute is ambiguous when its language is subject to more than one reasonable interpretation." *Riggs*, 865 N.W.2d at 682. In interpreting a statute, statutory "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2018). If a statute is not ambiguous, the statute's plain meaning controls. *Dupey v. State*, 868 N.W.2d 36, 39 (Minn. 2015).

The main problem with the state's interpretation of section 56.01(a) is that it ignores the phrase "*and* charge, contract for, or receive on the loan a greater rate of interest . . . *than the lender would be permitted by law to charge if not a licensee under this chapter*." Minn. Stat. § 56.01(a) (emphasis added). In other words, non-financial-institution lenders

who are "engaged in the business of making loans" under $100,000 must obtain a license in order to charge interest rates up to 21.75%. Minn. Stat. §§ 47.59, subds. 1(k), 3(a), 56.131, subd. 1(a). However, unlicensed lenders may make loans, provided the interest rates charged do not exceed the general 8% limit in section 334.01. Minn. Stat. §§ 56.01(a), 334.01, subd. 1 (2018). The language of section 56.01(a) may be a bit awkward, but it is not ambiguous.

The state contends that the district court's construction produces an absurd result, which courts presume the legislature not to intend. *See* Minn. Stat. § 645.17(1) (2018). The state, however, only makes a conclusory argument that the district court's interpretation would require the state to issue "license[s] to make *usurious* loans" and that the state cannot sanction illegal activities. This argument overlooks the fact that the 8% limit in section 334.01 is a default interest ceiling subject to statutory exceptions. *See Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 647 (Minn. 1974) (noting that there "are several statutory exceptions to this interest ceiling"). If a lender is permitted, through a statutory exception, to charge an interest rate above the general 8% limit, that statutorily-permitted rate is, ipso facto, not usurious. *See id.* at n.3 (listing, in part, interest rates permitted under chapter 56 as exceptions to the usury statute).

The state also argues that we should construe the statute liberally in favor of consumers. *See Gov't al Research Bureau, Inc. v. Borgen*, 28 N.W.2d 760, 766 (Minn. 1947) ("As a remedial statute, it is to be construed liberally for the advancement of the remedy."). But we cannot construe a statute contrary to its plain language. *See Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 438 (Minn. 2009) ("We cannot rewrite a statute

under the guise of statutory interpretation."). This statute is unambiguous, and we therefore have no occasion to liberally construe it.[4]

The state also argues that section 56.01(a) must be read in pari materia with other sections of the act. The state points to section 56.15, subdivision 1, which provides:

> No *licensee* shall directly or indirectly, charge, contract for, or receive any interest, discount, charges, or consideration *greater than the lender would be permitted by law to charge if the lender were not a licensee hereunder* upon the loan, use or forbearance of money, goods, or things in action, or upon the loan, use or sale of credit, *of the amount or value of more than that regulated by this chapter*.

Minn. Stat. § 56.15, subd. 1 (2018) (emphasis added).

Although sections 56.01(a) and 56.15, subdivision 1, use similar language, they are referring to different *entities*. Section 56.01(a) addresses which lenders must obtain a license, while section 56.15, subdivision 1, refers to the interest-rate limitation placed on those lenders who are licensed. *See* Minn. Stat. §§ 56.01(a), .15, subd. 1. Section 56.15 clarifies that a licensee may not charge the 27.15% interest rate otherwise allowed by chapter 56 on amounts exceeding $100,000. Minn. Stat. § 56.15, subd. 1. If a loan exceeds $100,000, a *licensed* lender is limited to interest rates they "would be permitted by law to charge if the lender were not a licensee [under chapter 56]." *Id.*

Moreover, the district court's interpretation is also consistent with section 56.18, captioned "Unlicensed Persons Not to Make Loans." Section 56.18 reads:

[4] In effect, the state is asking this court to disregard the last clause of Minn. Stat. § 56.01(a) ("and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if not a licensee under this chapter"), which is 34 words in total.

> No person, *except as authorized in this chapter*, shall, directly or indirectly, charge, contract for, or receive any interest, discount, or consideration *greater than the lender would be permitted by law to charge if that person were not authorized hereunder* upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit *of the amount regulated by this chapter*.

Minn. Stat. § 56.18 (2018) (emphasis added). This section, in relation to the entirety of chapter 56, supports the conclusion that unlicensed lenders may lawfully loan amounts under $100,000 so long as the interest rates charged are not "greater than the lender would be permitted by law to charge if that person were not authorized [under chapter 56]." *Id.*

In sum, the plain language of section 56.01(a) requires a lender to be licensed only when that lender makes loans of $100,000 or less and charges interest above what would otherwise be permitted under the usury statute. Because the supreme court's opinion in *MSB II* did not address respondents' loans with interest rates below 8%, the district court properly addressed this issue on remand. We affirm the district court's holding that only respondents' loans with interest rates above 8% were unlawful.

II. Minn. Stat. § 8.31 authorizes the attorney general to seek damages, civil penalties, and attorney fees on behalf of student debtors whose loans had interest rates greater than 8%.

At the district court, the state argued that it had standing to seek monetary compensation and other remedies for student debtors because section 8.31 authorizes the attorney general to recover full refunds, prejudgment interest, civil penalties, and attorney fees.

The district court concluded after trial that, because "violations of Minn. Stat. § 334 or Chapter 56 are 'unlawful practices in business, commerce, or trade,' the state is

expressly authorized under Minn. Stat. § 8.31, subd. 3 to obtain injunctive relief." The district court then engaged in statutory interpretation of Minn. Stat. § 8.31, subds. 3 and 3a, to determine if the state is authorized to seek remedies under subdivision 3a for respondents' violations of chapters 56 and 334.

Section 8.31, subdivision 3, provides the attorney general authority, stating:

> In addition to the penalties provided by law for violation of the laws referred to in subdivision 1, specifically and generally, . . . to require the payment of civil penalties, to require payment into the general fund, and to appoint administrators as provided in subdivision 3c. On becoming satisfied that any of those laws has been or is being violated, or is about to be violated, the attorney general shall be entitled, on behalf of the state; (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law; and (b) to sue for and recover for the state, from any person who is found to have violated any of the laws referred to in subdivision 1, a civil penalty, in an amount to be determined by the court, not in excess of $25,000.

Minn. Stat. § 8.31, subd. 3.

Section 8.31, subdivision 3a, provides:

> In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.

Minn. Stat. § 8.31, subd. 3a.

The district court reasoned that, because subdivision 3 authorizes the attorney general to seek an injunction for violations of "the laws referred to in subdivision 1, *specifically and generally*," while relief under subdivision 3a is limited to "any of the laws referred to in subdivision 1," permitting the attorney general to seek remedies under subdivision 3a would render subdivision 3's language superfluous. Because "Chapter 56 is not specifically referenced in subdivision 1 of Minn. Stat. § 8.31," the district court determined that the state is not permitted to seek the remedies provided under subdivision 3a. The district court did not address the last sentence of subdivision 3a. But the district court concluded that the attorney general has parens patriae authority to seek equitable relief for impacted student debtors.[5]

The state argues that the district court erred in construing section 8.31 as restricting it from pursuing "anything but injunctive relief . . . because [chapter 56] was not specifically cited in subdivision 1 of section 8.31." The state also contends that the district court's interpretation "is contrary to the plain language of section 8.31 and frustrates the enforcement of important consumer-protection statutes." Respondents agree with the district court's statutory construction and argue that, because chapter 56 is not specifically listed in subdivision 1 of section 8.31, the state may not seek remedies under subdivision 3a of that statute.

[5] Because, as discussed below, we conclude the state had authority to assert a claim under section 8.31 against respondents, we do not separately address the district court's application of the attorney general's parens patriae authority.

Appellate courts review the interpretation of a statute de novo. *Riggs*, 865 N.W.2d at 682. A reviewing court must first determine whether a statute's language is ambiguous on its face. *Thonesavanh*, 904 N.W.2d at 435. "A statute is ambiguous when its language is subject to more than one reasonable interpretation." *Riggs*, 865 N.W.2d at 682. If the court determines a statute is not ambiguous, the statute's plain meaning controls. *Dupey*, 868 N.W.2d at 39.

Under section 8.31, the attorney general enjoys "broad and comprehensive authority to investigate, conduct discovery, and sue responsible parties to remedy violations, or potential violations, of the laws under subdivision 1." *Curtis v. Altria Grp., Inc.*, 813 N.W.2d 891, 898 (Minn. 2012). Subdivision 1 of section 8.31 provides, in relevant part, that the attorney general's duties include the duty to "investigate violations of the law . . . respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, [a series of specific acts that does not include chapters 56 or 334]." Minn. Stat. § 8.31, subd. 1. Subdivision 3 provides the attorney general broad authority to seek injunctions and civil penalties. *See id.*, subd. 3. Subdivision 3a "grants private citizens the right to act as a 'private' attorney general." *Ly v. Nystrom*, 615 N.W.2d 302, 313 (Minn. 2000). Specifically, subdivision 3a provides that "[*i*]*n any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.*" Minn. Stat. § 8.31, subd. 3a (emphasis added); *see State by Humphrey v. Alpine Air Prods., Inc.*, 490 N.W.2d 888, 896 (Minn. App. 1992) (concluding that the "award of costs and attorney fees . . . was specifically authorized by statute" under subdivision 3a), *aff'd*, 500 N.W.2d 788 (Minn. 1993).

The district court engaged in statutory interpretation of subdivisions 3 and 3a and focused heavily on the introductory language ("specifically and generally" and "referred to in"). But it failed to address subdivision 3a's final sentence, which provides that "[i]n any action brought by the attorney general pursuant to this *section*, the court may award any of the remedies allowable under this *subdivision*." Minn. Stat. 8.31, subd. 3a (emphasis added). In our view, it is telling that the legislature used the phrase, "pursuant to this *section*," indicating actions brought under the entirety of section 8.31 by the attorney general, but used "*subdivision*" in reference to the permitted remedies. Our reading of subdivision 3a's final sentence is that it unambiguously authorizes the attorney general to "recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief" when acting pursuant to section 8.31, which necessarily includes subdivision 1's broad grant of authority regarding "violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade." Minn. Stat. § 8.31, subds. 1, 3a. Simply put, the language of subdivision 3a plainly provides for the remedies the attorney general seeks.

Respondents cite to *State by Humphrey v. Ri-Mel, Inc.* to argue that the state may not seek remedies for violations of chapter 56 under subdivision 3a. 417 N.W.2d 102, 112 (Minn. App. 1987), *review denied* (Minn. Feb. 17, 1988). In *Ri-Mel*, however, the relevant question was whether the statute at issue fell within the scope of section 8.31. *See id.* at 111-12. There, we concluded that the Club Contracts Act did not fall under subdivision 3a because the Club Contracts Act was neither enumerated in section 8.31 nor "does [it] appear the legislature contemplated that actions based on violations of the Club Contracts

Act should be governed by Minn. Stat. § 8.31." *Id.* at 111. This conclusion was reached because the Club Contracts Act was enacted years after section 8.31 and provided specific remedies available to the attorney general. *Id.*

Ri-Mel and the Club Contracts Act are distinguishable from this case. Unlike the Club Contracts Act, section 56.01 was enacted in 1939, long before section 8.31, and does not identify or limit the specific remedies the attorney general may seek for violations of section 56.01. Additionally, and importantly, the supreme court has already recognized in this very case that violations of chapter 56 fall under section 8.31's ambit. *See MSB II*, 899 N.W.2d at 471-72. We are bound to follow that decision. *Curtis*, 921 N.W.2d at 346.

Even if we were to conclude that Minn. Stat. § 8.31 is ambiguous, which we do not, we would still arrive at the same conclusion.

We agree with the district court's recognition that "Chapters 56 and 334 are remedial statutes and that consumer protection statutes are generally broadly construed to protect consumers and to remediate violations of those laws." "Remedial statutes are generally entitled to liberal construction in favor of the remedy the statutes provide or the class they benefit." *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 232 (Minn. 2010). Similarly, section 8.31, subdivision 3a, is a remedial statute allowing private citizens to seek relief from unlawful business practices, by asserting the rights of the public. *See Ly*, 615 N.W.2d at 313-14. In that light, considering the remedial nature of both section 8.31 and chapter 56, which are to be interpreted in favor of consumers and whose statutory language does not prohibit chapter 56's inclusion in section 8.31, violations of chapter 56 fall under section 8.31's ambit.

Additionally, we are mindful of the supreme court's relevant case law discussing the nature of subdivision 3a and the attorney general's authority under section 8.31. The Minnesota Supreme Court has concluded that the attorney general has available "broader" remedies than a private litigant and that "the right of a private litigant to bring a lawsuit under subdivision 3a is part of the broader authority of the state AG to bring a lawsuit under subdivision 3 to enforce all remedies available to it, including the remedies under subdivision 3a." *Curtis*, 813 N.W.2d at 899; *see Ly*, 615 N.W.2d at 313. In *Curtis*, the supreme court held that, "[u]nder Minn. Stat. § 8.31, the State AG has the authority to bring a lawsuit under subdivision 3 on behalf of the State, and to seek not only the relief available to the State AG under subdivision 3, but also the relief available to a private litigant under subdivision 3a." *Curtis*, 813 N.W.2d at 900-01. This is settled law.

Our reading of subdivision 3a, discussed above, is consistent with the supreme court's holdings that the attorney general has "broad and comprehensive authority." *Id.* at 898. Although a private claimant's authority under the statute derives from the attorney general's authority, "the remedies available to the State AG are broader than those available to a private litigant." *Id.* at 899; *see Ly*, 615 N.W.2d at 313 ("[T]he sweep of the statute can be no broader than the source of its authority—that of the attorney general."). Subdivision 3a does not *restrict* the attorney general's available remedies for violations that impact the public interest, but instead *expands* the remedies available to private claimants. This too is settled law.

The state also argues that the district court misapplied section 56.19 so as to preclude full relief to student debtors. Respondents contend that the state is prohibited from seeking

remedies because "Minn. Stat. § 56.19 provides the exclusive remedy for unlicensed lending. None of the other relief . . . that the State sought are included as remedies in [s]ection 56.19."

The district court concluded that "Chapter 56 provides its exclusive remedies" which "do not include restitution, interest, civil penalties, or attorneys' fees." And it is true that section 56.19, subdivision 4, provides that "[t]he remedies set forth in this section . . . are exclusive." Minn. Stat. § 56.19, subd. 4 (2018). However, section 8.31, subdivision 3a, specifically notes that its remedies are "[i]n addition to the remedies otherwise provided by law." Having concluded that section 8.31, subd. 3a, applies, it naturally follows that the state is permitted to seek the remedies outlined in subdivision 3a *in addition* to section 56.19's remedies.

The district court erred when it determined that the attorney general is prohibited from seeking the remedies provided for in Minn. Stat. § 8.31, subd. 3a.

III. Minn. Stat. § 56.19 permits full refunds to student debtors whose loans were at interest rates greater than 8%.

The state argues that the district court erred when it "improperly denied refunds for 'all amounts paid' as directed by section 56.19" and that the district court therefore improperly denied repayment of the principal amounts paid on illegal loans. The state also contends that, contrary to the district court's conclusion that section 8.31 prohibits additional remedies, "section 8.31 makes clear that its remedies are 'in addition to the remedies otherwise provided by law.'" Respondents argue that subdivision 3's language is "permissive."

As discussed, the district court concluded that the attorney general could assert a claim against respondents only under parens patriae authority. The district court concluded that, because the state was "pursuing equitable restitution" under parens patriae, the district court would look "to the equities to decide this relief." The district court acknowledged that, both under chapter 56 and the common law, a loan with an interest rate over 8% made by an unlicensed lender is void under Minn. Stat. § 56.19, subd. 3, and subject to repayment of interest and principal paid. The district court concluded:

> Under the circumstances here, it would be inequitable to allow students with loans at above 8% to keep all of the benefits of their education while depriving [respondents] of payment on the debt. First, it would place a student with a loan above 8% in a vastly different position than a student with a loan below 8%, because the first student would have to pay nothing for the loan, and the second student would have to pay both principal and interest, and both students would have received the same benefits. [Respondents] should be entitled to be paid for the educational benefits they provided—to say otherwise would impair [respondents'] rights on the debts, which is disallowed under Chapter 56. Minn. Stat. § 56.19, subd. 4 ("[A] violation of this Chapter does not impair the rights on a debt.").

The district court voided all loans with interest rates over 8% issued on or after January 1, 2009, and held that, because those loans are unlawful under chapters 56 and 334, student debtors "are not obligated to pay any amounts owing." But it did not order that respondents repay students any of the principal amount already paid on loans with interest over 8%.

As addressed in section I, above, all of respondents' loans that were issued with interest rates above 8% at any time on or after January 1, 2009, are illegal under chapter 56 and therefore void. Respondents did not cross-appeal from this portion of the district

court's order. Therefore, all loans with interest rates above 8% issued on or after January 1, 2009, are void and student debtors are not obligated to pay *any* amounts on said loans.

Section 56.19 provides:

> Subd. 3. **Unlicensed lenders.** If a person has violated this chapter by not obtaining a license when required to make loans subject to this chapter, the loan is void and the debtor is not obligated to pay any amounts owing. The debtor may recover from such persons all amounts paid.

Minn. Stat. § 56.19, subd. 3 (2018).

As stated, appellate courts review statutory interpretation de novo. *Riggs*, 865 N.W.2d at 682. Minn. Stat. § 56.19, subd. 3, unambiguously provides that a "debtor may recover . . . all amounts paid" on a void loan. Appellate courts generally interpret "may" as permissive and not mandatory. *See Klein Bancorporation, Inc. v. Comm'r of Revenue*, 581 N.W.2d 863, 866-67 (Minn. App. 1998), *review denied* (Minn. Sept. 22, 1998); *see also* Minn. Stat. § 645.44, subd. 15 (stating "may" is permissive). The word "may" in Minn. Stat. § 56.19, subd. 3, plainly and unambiguously relates to what the debtor is permitted to do: the debtor "may" sue for amounts paid on an invalid loan.

Respondents argue that the "may" refers to the amount recovered, meaning that the district court may or may not order restitution in its discretion. We disagree. It cannot be that the legislature explicitly provided that illegal loans are void, but that a victim-debtor "may" (or may not) recover the amounts paid on such illegal loans. The only reasonable interpretation is that the word "may" refers to what relief the debtor is entitled to seek from the court. *See* Minn. Stat. § 56.19, subd. 3. The debtor may or may not seek relief, as the debtor chooses. But if the debtor (or the attorney general acting in the debtor's stead)

chooses to seek recovery of amounts paid on such a void loan, the amounts already paid are recoverable.

Here, after concluding that the state's authority to seek monetary restitution was limited to parens patriae, the district court proceeded under an equitable analysis to determine a proper remedy for respondents' illegal loans. But it also concluded that Minn. Stat. § 56.19, subd. 3, mandated voiding any remaining amounts owed for loans with interest rates above 8%. The district court cited no case law supporting the proposition that an "equitable" remedy must follow a statute in one aspect (i.e., whether to cancel remaining debt on usurious loans) but not in another aspect (i.e., whether to order restitution for all amounts paid on a void loan). The statute expressly allows the debtor under an illegal loan to recover "all amounts paid" without any further demonstration that such recovery is equitable. Minn. Stat. § 56.19, subd. 3. "All amounts paid" clearly includes both principal and interest.

We conclude that the district court erred by denying full repayment of amounts paid to respondents under usurious loans. We therefore reverse and remand to the district court and direct that it order repayment of all principal and interest paid on the illegal loans.

IV. The district court erred in declining to award prejudgment interest to the state on behalf of student debtors whose loans were at interest rates greater than 8%.

Finally, the state contends that the district court erred by refusing to award prejudgment interest which "is provided for under both common law and statute."

Minnesota statutes provide:

> Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed as provided in paragraph (c) from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first, except as provided herein.

Minn. Stat. § 549.09, subd. 1(b) (2018). This statute "unambiguously provides for preaward interest on all awards of pecuniary damages that are not specifically excluded by the statute." *Poehler v. Cincinnati Ins. Co.*, 899 N.W.2d 135, 141 (Minn. 2017). Prejudgment interest is prohibited if the "*judgments* or awards [are] not in excess of" $15,000. Minn. Stat. § 549.09, subd. 1(b)(4) (emphasis added) (applying Minn. Stat. § 491A.01 (2018)). If a judgment is greater than $50,000, "the interest rate shall be ten percent per year until paid." *Id.*, subd. 1(c)(2) (2018).

Here, the district court summarily concluded that section 8.31 "is quite specific about the remedies it allows, and it does not include . . . interest for violations of Chapter 56 or 334." Consequently, the district court concluded that "there [was] no basis in law for" prejudgment interest. The district court also noted that the remedies under chapter 56 "are exclusive."

This was error. As analyzed above, the attorney general is statutorily authorized under section 8.31 to seek remedies in addition to those specifically identified by chapter 56. *See* Minn. Stat. § 8.31. Under Minn. Stat. § 549.09 subd. 1(b), prejudgment interest is required if the award is not prohibited under section 549.09, subdivision 1(b)(1)-(5).

Respondents argue that Minn. Stat. § 549.09 (2018) is nevertheless inapplicable "for claims that are for less than $15,000." Respondents seem to be arguing that section 549.09

does not apply because the majority of student loans at interest rates greater than 8%, considered individually, were for less than $15,000.

Respondents' argument misapprehends the nature of this action. This action is not brought by individual students for amounts less than $15,000. Instead, the attorney general is suing on behalf of the state and the student debtors. *See State by Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 570 (Minn. App. 2005) ("[T]he state does not step into the shoes of individual [victims] in this case but acts as an independent party. The state is asserting a state interest that is based on the facts involving individual [victims]."). Minn. Stat. § 549.09, subd. 1(b)(4) bars prejudgment interest on "judgments or awards" that are less than $15,000. *See* Minn. Stat. §§ 491A.01, 549.09, subd. 1(b)(4). The judgment in this case far exceeds $15,000. That the judgment consists of multiple *claims* seems to us to be of no consequence. The plain language of section 549.09 refers to "judgments" and not the claims or portions of claims underlying a judgment. The judgment here is one on which section 549.09 allows for prejudgment interest.

Because the district court erred when it determined that prejudgment interest was not available, we reverse and remand to the district court to compute and award prejudgment interest under Minn. Stat. § 549.09.

In sum, the district court correctly concluded that it was permitted to address on remand respondents' loans with interest rates of 8% or less, because the supreme court did not address those loans in its earlier opinion in this case. We affirm the district court's holding that only respondents' "loans with interest rates above 8% were unlawful" under chapter 56. We also affirm the district court's determination that student debtors who

borrowed at interest rates above 8% at any time on or after January 1, 2009, are not obligated to pay those loans, which are void as illegal.

We reverse in part and remand to the district court to determine and award the amount of principal and interest paid on loans with interest rates above 8% on or after January 1, 2009, and to award appropriate attorney fees, costs and disbursements, civil penalties, and damages under section 8.31, subdivision 3a. Finally, we reverse the district court's denial of prejudgment interest and remand to the district court to calculate and award prejudgment interest on the resulting judgment under Minn. Stat. § 549.09.

Affirmed in part, reversed in part, and remanded.