

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0455**

Ming Le Lu,
Respondent,

vs.

Mohammad Sabri,
Appellant,

Muna Sabri AKA Mona Sabri, et al.,
Defendants.

**Filed March 11, 2024
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CV-21-4353

Daniel L. M. Kennedy, Kennedy & Cain PLLC, Minneapolis, Minnesota (for respondent)

Matthew S. Greenstein, Justice Ericson Lindell, Greenstein Sellers PLLC, Minneapolis,
Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Smith, Tracy M., Judge;
and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Following a jury verdict against him for damages, appellant-defendant challenges the district court's award of preverdict interest under Minnesota Statutes section 334.01 (2022). Appellant argues that the district court erred by finding that respondent-plaintiff's

damages were readily ascertainable as of the date that the claims arose. Because the district court's finding is not clearly erroneous, we affirm.

FACTS

On March 8, 2021, respondent Ming Le Lu sued appellant Mohammad Sabri.¹ In his amended complaint, Lu alleged that Sabri misappropriated \$553,000 that Lu had invested in 2015 in starting a United States business with the goal of obtaining an EB-5 immigrant visa.² Specifically, Lu alleged that, over the course of seven months in 2015, he wired three sums of money, totaling \$553,000, that Sabri was to use to build out a grocery store and pursue Lu's visa but that Sabri had instead used the money for his own benefit. Lu asserted five claims—breach of contract, common-law fraud, securities fraud, unjust enrichment, and fraudulent transfer. For his breach-of-contract claim, Lu alleged that Sabri was liable “for interest on the amount owed at the statutory rate of 6% per year.” The amended complaint's prayer for relief included a request for “an amount exceeding \$50,000 for actual damages, plus interest at the statutory rate.” Lu requested a jury trial.

During pretrial discussions, the parties raised the issue of prejudgment interest. The parties agreed to remove that issue from the jury instructions and the special verdict form. Before the jury began deliberations, the parties stipulated to dates for the accrual of prejudgment interest as follows:

¹ Defendants Muna Sabri AKA Mona Sabri, et al., take no part in this appeal.

² In 2015, visas were available to people who invested at least one million dollars in a new business in the United States that was to create at least ten qualified jobs. 8 U.S.C. § 1153(b)(5) (2012).

1. In the event Minn. Stat. § 334.01 is controlling as to the issue of interest in this matter, the parties agree that simple interest accrued at a rate of 6% per annum beginning on the following dates:

- a. Breach of contract: February 29, 2016
- b. Common Law Fraud, Securities Fraud, and

Unjust Enrichment:

As to Plaintiff's payment of \$310,000: March 9, 2015

As to Plaintiff's payment of \$233,000: May 11, 2015^[3]

As to Plaintiff's payment of \$20,000: Sept. 29, 2015

c. Fraudulent transfer:

As to Plaintiff's payment of \$310,000: March 10, 2015

As to Plaintiff's payment of \$233,000: May 18, 2015

As to Plaintiff's payment of \$20,000: Sept. 30, 2015

2. In the event Minn. Stat. § 549.09 is controlling as to the issue of interest in this matter, the parties agree that simple interest accrued at a rate of 10% per annum beginning on March 8, 2021.

During the seven-day jury trial in August 2022, Sabri presented evidence of alleged expenses related to creating a new business, arguing that those expenses were paid for with funds from Lu's investment and therefore, Lu's investment had been spent appropriately. In accordance with the jury instructions and the special verdict form, the jury was asked to decide liability and the amount of damages. At the conclusion of the jury trial, the jury found Sabri liable for all of Lu's claims and found that \$553,000 would "fairly and adequately compensate" Lu for his damages.

The parties submitted written arguments on the issue of prejudgment interest. Lu argued that Minnesota Statutes section 334.01 applied and that, under that statute, he was

³ There is no dispute that Lu's three payments totaled \$553,000. It appears that the parties in their stipulation misstated the dollar amount of Lu's second payment on May 11, 2015, as "233,000." The record demonstrates that this payment totaled \$223,000.

entitled to preverdict interest at the rate of 6% as of the date that the claims arose—specifically, as of the respective dates set forth in the first paragraph of the parties’ stipulation. Sabri argued that Minnesota Statutes section 549.09 (2022)—not section 334.01—applied and that, under section 549.09, Lu was entitled to preverdict interest at the rate of 10% as of the date that the case was commenced in 2021. Following a hearing, the district court found that Lu’s damages were “readily ascertainable” at the time that the claims arose and that section 334.01 therefore applies. Accordingly, the district court awarded Lu preverdict interest at a rate of 6% from the applicable dates in the stipulation. The district court also concluded that Lu was entitled to prejudgment interest from the date of the verdict to the date of the entry of judgment at a rate of 10% under section 549.09.

Sabri appeals.

DECISION

Sabri challenges the district court’s award of preverdict interest under Minnesota Statutes section 334.01.⁴ He argues that the district court erred by finding that Lu’s damages were readily ascertainable as of the date that the claims arose. Lu argues that Sabri waived this argument about preverdict interest and that, even if Sabri did not waive the argument, his damages were readily ascertainable. We address Lu’s waiver argument first.

⁴ In his responsive brief, Lu challenges how the district court applied sections 334.01 and 549.09 in determining the prejudgment interest between the date that the case was commenced and the date of the verdict. But Lu did not file a notice of related appeal under Minnesota Rule of Civil Appellate Procedure 106. Thus, Lu’s challenge is not properly before this court, and we decline to address it. *See City of Rochester v. Kottschade*, 896 N.W.2d 541, 546 n.3 (Minn. 2017) (stating that “a notice of related appeal is required to ‘obtain review of a judgment or order entered in the same underlying action that may adversely affect respondent’” (quoting Minn. R. Civ. App. P. 106)).

Waiver

Lu contends that Sabri waived his argument about preverdict interest by failing to raise it as “an affirmative defense” in his answers to Lu’s complaint and amended complaint.⁵ This contention is not persuasive. As Sabri notes in his reply brief, preverdict interest is not “a separate and actionable claim for relief”; it is “a component of damages.” *See Lienhard v. State*, 431 N.W.2d 861, 866 (Minn. 1988) (concluding “that pre-verdict interest is an aspect of compensatory damages”). Because preverdict interest is not a claim, but is instead an element of damages, Sabri did not waive his argument about preverdict interest even though he did not raise it in his answers.

Readily Ascertainable Damages

Sabri argues that the district court erred by finding that Lu’s damages were readily ascertainable and awarding preverdict interest under section 334.01. Instead, he contends, preverdict interest should have been calculated under section 549.09.

Section 549.09, subdivision 1(b), states:

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

⁵ Lu also contends that Sabri waived his argument because Sabri agreed not to have the jury decide the issue of preverdict interest. To the extent that Lu is arguing that the jury needed to determine whether his damages were readily ascertainable, that argument is unsupported by any reference to relevant caselaw, and we reject it.

For an award over \$50,000, interest accrues at a rate of 10% per year until paid. Minn. Stat. § 549.09, subd. 1(c)(2).

In *Hogenson v. Hogenson*, this court interpreted the phrase “[e]xcept as otherwise . . . allowed by law” used in subdivision 1(b). 852 N.W.2d 266, 272-74 (Minn. App. 2014). There, we concluded that the phrase “requires that preverdict interest be calculated under existing common-law principles whenever possible.” *Id.* at 273-74. We determined that, “[b]ecause preverdict interest was allowed for conversion claims under common law, preverdict interest should be calculated from the date of conversion at 6% under section 334.01 to the date of the verdict *if* the damages are ascertainable or liquidated.” *Id.* at 274. But, if damages were not “readily ascertainable,” or if a claim did not allow for preverdict interest before the 1984 amendment to section 549.09, subdivision 1,⁶ then “preverdict interest should be calculated exclusively under section 549.09, subd[ivision] 1(b).” *Hogenson*, 852 N.W.2d at 274. All other preverdict interest “should be calculated under the appropriate subdivision of section 549.09 in every case.” *Id.*

Sabri challenges only whether Lu’s damages were readily ascertainable. Damages are readily ascertainable “when the amount demanded can be ascertained by computation or reference to generally recognized standards and does not depend on a contingency.” *Trapp v. Hancuh*, 587 N.W.2d 61, 64 (Minn. App. 1998). Damages are not readily ascertainable when the amount depends on “contingencies or jury discretion.” *Hogenson*, 852 N.W.2d at 274 (quotation omitted). Whether damages are readily ascertainable is a

⁶ In 1984, the Minnesota Legislature amended section 549.09, subdivision 1, to allow for preverdict interest on most claims. 1984 Minn. Laws ch. 399, § 1, at 35-36.

question of fact for the fact-finder. *Trapp*, 587 N.W.2d at 63. The district court’s findings of fact are reviewed for clear error. Minn. R. Civ. P. 52.01; *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). A finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). When reviewing findings of fact for clear error, appellate courts “view the evidence in a light favorable to the findings.” *Id.*

Here, the district court found that Lu’s damages “were readily ascertainable as the entire amount of funds transferred from [Lu] to [Sabri].” The court noted that the jury made no adjustment calculations and “wholly rejected” Sabri’s defense that some of the funds from Lu’s investment had been spent appropriately. The court also found that Sabri was “aware of the amount of money” that Lu had invested and that he had misappropriated. The court found no risk of surprise to Sabri as to the amount of Lu’s damages.

Sabri argues that, because the jury was asked to decide liability and the amount of Lu’s damages, if any, Lu’s damages “were contingent upon the factual findings of the jury” and therefore were not readily ascertainable. To support this argument, Sabri cites *Blehr v. Anderson*, a case in which this court determined that the respondent’s medical-expense damages were not readily ascertainable. 955 N.W.2d 613, 623 (Minn. App. 2021). In *Blehr*, the appellant disputed the percentage of fault to be allocated and the amount of the respondent’s medical-expense damages—specifically, the appellant denied that the respondent’s alleged injuries required future medical expenses. *Id.* The jury was asked to decide the amount of the respondent’s medical-expense damages, if any. *Id.* We concluded

that, because the amount of the respondent's medical-expense damages depended on jury discretion, the damages were not readily ascertainable. *Id.*

Contrary to Sabri's suggestion, *Blehr* does not support the broad rule that he proposes—that, “if the jury is required to determine liability and damages, then the damages are not readily ascertainable.” In *Potter v. Hartzell Propeller, Inc.*, the supreme court stated that “[a] dispute as to the amount of damages should not in all circumstances bar the accrual of interest on the damages.” 189 N.W.2d 499, 504 (Minn. 1971). The court explained: “The question is not whether the parties agreed on the amount of damages *but whether [the] defendant could have determined the amount of his potential liability from a generally recognized objective standard of measurement*, such as readily ascertainable market value.” *Id.* (emphasis added). It added: “The underlying principle is that one who cannot ascertain the amount of damages for which he might be held liable cannot be expected to tender payment and thereby stop the running of interest.” *Id.*

Here, Sabri knew that Lu had invested \$553,000 to start a business for the purpose of obtaining a visa. At the time that the three payments totaling \$553,000 were made, Sabri knew or should have known that he would have to repay the funds if he did not use them for their proper purpose. The jury performed no calculations but for a computation of Lu's three payments totaling \$553,000. Lu's damages did not depend on a contingency or jury discretion. Accordingly, the district court did not err by finding that Lu's damages were readily ascertainable and calculating preverdict interest under section 334.01.

Affirmed.