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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0396**

Nutripro Feeds,
Appellant,

vs.

Stages Pork, LLC, et al.,
Respondents.

**Filed December 11, 2017
Reversed and remanded
Reilly, Judge**

Nobles County District Court
File No. 53-CV-14-592

William J. Wetering, Hedeem, Hughes & Wetering, Worthington, Minnesota (for appellant)

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Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges an award of prejudgment interest. Because the district court erred when it ruled that prejudgment interest accrued from the date of service of the amended complaint, not the date the claim arose, we reverse and remand.

FACTS

Respondent Bruce Stanton formed Stages Pork in 2006 as its sole owner, organizer, and officer. Appellant Nutripro Feeds sold pig feed to Stages Pork on credit from 2006 to 2009. Stages Pork encountered financial difficulties and, in June of 2009, defaulted on its obligations to Nutripro. On July 27, 2009, Nutripro served Stages Pork and Stanton with a complaint naming both as parties and claiming an unpaid balance of \$334,000. In August 2009, respondents served an answer; Stanton denied any responsibility for Stages Pork's unpaid feed bills to Nutripro. In late 2009, Stages Pork began liquidating its assets to satisfy obligations to its creditors. The Stages Pork liquidation produced its final proceeds in June 2010, and formally concluded winding up in 2012.

Following a period of inactivity on the part of both parties, Nutripro filed the action in district court in June of 2014. On January 18, 2016, Nutripro amended its complaint to include corporate-veil-piercing allegations. Following a bench trial, the district court pierced the corporate veil, found Stanton personally liable to Nutripro, and entered a judgment for Nutripro. Nutripro requested prejudgment interest in the amount of \$381,897.60, accruing from July 27, 2009, the date it served Stages Pork and Stanton with the initial complaint. The district court awarded Nutripro prejudgment interest accruing from January 18, 2016—the date the district court found that Stanton was clearly put on notice for his potential personal liability under a corporate-veil-piercing theory. The district court calculated the interest owed to be \$25,690.75. This appeal followed.

DECISION

Nutripro challenges the district court's prejudgment-interest award, arguing that the district court erred when it determined that the service of the amended complaint was the date to begin calculating prejudgment interest. Prejudgment-interest awards are reviewed de novo. *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 390 (Minn. App. 2004), *review denied* (Minn. Aug. 25, 2004).

In Minnesota, both statute and common law govern prejudgment-interest awards. Minn. Stat. § 549.09 (2016); *Trapp v. Hancuh*, 587 N.W.2d 61, 63 (Minn. App. 1998); *see also Hogenson v. Hogenson*, 852 N.W.2d 266, 272 (Minn. App. 2014). At common law, when the damages are ascertainable, interest begins to accrue at the rate prescribed by Minnesota Statutes section 334.01 from the date a claim arose. *Hogenson*, 852 N.W.2d at 272. Damages are ascertainable if “the amount demanded [could] be ascertained by computation or reference to generally recognized standards and [did] not depend on a contingency.” *Trapp*, 587 N.W.2d at 64. Courts apply common-law principles whenever possible and apply the statutory framework only where damages are not ascertainable. *Hogenson*, 852 N.W.2d at 273-74.

Damages are not ascertainable if they depend on “contingencies or jury discretion.” *Hogenson*, 852 N.W.2d at 274 (citation omitted). Examples of unascertainable damages include the valuation of a partnership interest, *Trapp*, 587 N.W.2d at 64, the value of converted stock and property, the amount of damages for a trespass, *Hogenson*, 852 N.W.2d at 274, complex contractual disputes with conflicting clauses, *N. Petrochem. Co. v. Thorsen & Thorshov, Inc.*, 297 Minn. 118, 132, 211 N.W.2d 159, 169 (1973), and

personal injury or injury to reputation, *Potter v. Hartzell Propeller, Inc.*, 291 Minn. 513, 518, 189 N.W.2d 499, 504 (1971). Whether damages are ascertainable is a question of fact to be resolved by the fact-finder. *Trapp*, 587 N.W.2d at 63. A district court's findings of fact will not be reversed unless clearly erroneous. *Id.*

Here, the district court ruled that the damages for which Stanton was responsible were not ascertainable until he was put on notice of Nutripro's corporate-veil-piercing claims. The district court reasoned that, since Stanton believed that Stages Pork's LLC would shield him from personal liability, he could not truly ascertain his liability to Nutripro until he was made aware of Nutripro's corporate-veil-piercing claims. The district court noted that Stanton could reasonably calculate the *amount* due, but not necessarily the amount of his *liability* as an individual.

But the ascertainability doctrine concerns the amount of damages, not the degree to which a person is legally liable. *See Potter*, 291 Minn. at 518, 189 N.W.2d at 504. The prejudgment-interest doctrine likewise is unrelated to whether a party may be liable pursuant to piercing the corporate veil. Indeed, "[t]he underlying principle is that one who cannot ascertain the *amount* of damages for which [they] *might be held liable* cannot be expected to tender payment and thereby stop the running of interest." *Id.* (emphasis added).

In fact, this is a clear-cut case of ascertainable damages. Nutripro manufactured and delivered feed products to Stages Pork. As of July 2009, the date Nutripro served the original complaint, Stages Pork owed Nutripro \$334,000 for the delivered feed. The amount of damages was clearly ascertainable: \$334,000. The fact that the district court

subsequently pierced the corporate veil, making Stanton, the only member of Stages Pork, personally liable did not alter the amount of money owed to Nutripro.

Because its damages were ascertainable, Nutripro is entitled to prejudgment interest under common law from the date its claim arose. But Nutripro did not argue for accrual from the date its claim arose and instead argued for a later date—the date the action commenced. We reverse and remand this case to the district court. We instruct the district court to grant Nutripro prejudgment interest from the date the action commenced.

Reversed and remanded.