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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2268**

U. S. A. Lamp and Ballast Recycling, Inc.,  
an Ohio corporation,  
Appellant,

vs.

Luminaire Recyclers, Inc., et al.,  
Respondents.

**Filed October 9, 2012  
Affirmed  
Collins, Judge\***

Ramsey County District Court  
File No. 62-CV-09-10338

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Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Collins,  
Judge.

**UNPUBLISHED OPINION**

**COLLINS**, Judge

This appeal is from a judgment following a bench trial of appellant's breach-of-contract and related claims arising out of respondents' alleged failure to pay for recycling

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

services provided by appellant and respondents' failure to dispose of hazardous waste according to the terms of the parties' contract. Appellant asserts that the district court erred by (1) failing to sanction respondents for spoliation of evidence based on respondent's failure to maintain records; (2) denying appellant damages on its breach-of-contract claim based on the conclusion that appellant sought speculative, future damages; (3) declining to award double damages, attorney fees, and costs under Minn. Stat. § 116.071 (2010); and (4) summarily dismissing appellant's claims for successor liability and fraudulent misrepresentation. We affirm.

## **FACTS**

Appellant U.S.A. Lamp and Recycling Inc. (U.S.A. Lamp) provided recycling services for lamps, light bulbs, and polychlorinated biphenyl (PCB) ballasts. Respondent Luminaire Recyclers Inc. (Luminaire) provided recycling and disposal services for hazardous materials, including PCB ballasts. Luminaire disposed of PCB ballasts for U.S.A. Lamp, and U.S.A. Lamp recycled fluorescent bulbs, lamps, and other similar products for Luminaire.

U.S.A. Lamp brought this breach-of-contract action against Luminaire and respondent John Miller, Luminaire's owner, (1) seeking payment on 14 invoices totaling \$81,082.28; (2) requesting \$2,000,000 to reclaim and incinerate hazardous waste that had been disposed of in a landfill by Luminaire; and (3) claiming that Luminaire had abandoned hazardous waste on U.S.A. Lamp's property. Initially, U.S.A. Lamp conceded that it owed Luminaire \$48,172.60 but later amended its complaint to contest the validity of those invoices as well, on the ground that the materials had been disposed

of in landfills in violation of an agreement to incinerate. U.S.A. Lamp also added Luminaire Environmental and Technologies, Inc., (Luminaire Environmental) a recycling company formed by Miller in September 2009, as a defendant. Luminaire counterclaimed against U.S.A. Lamp for breach of contract, unjust enrichment, civil theft, and conversion. U.S.A. Lamp filed a pretrial motion for sanctions against Luminaire for spoliation of evidence, which the district court deferred for decision pending completion of trial. The case was tried to the court.

Between December 2008 and April 2009, U.S.A. Lamp sent 14 invoices to Luminaire for services provided totaling \$81,082.28. Luminaire contested the validity of 9 of the 14 invoices, contending that (1) the shipments never occurred; (2) the bill of lading accompanying the invoices were not signed by Luminaire; and (3) the bill of lading were fabricated by U.S.A. Lamp.

Miller testified that U.S.A. Lamp had a reputation for presenting inaccurate or falsely inflated invoices, and, therefore, before paying U.S.A. Lamp, he scrutinized the invoices for accuracy by reviewing the materials shipped and verifying that a Luminaire representative had signed off on each shipment. Mark Eldridge, who handled shipments for Luminaire, testified that both his direct supervisor and Miller required a signature by a Luminaire representative on the shipping papers for all shipments leaving Luminaire, both to comply with federal regulations and to ensure invoice accuracy. Eldridge testified that Luminaire was particularly careful to make sure that shipments were accurately documented when dealing with U.S.A. Lamp because U.S.A. Lamp had a reputation for inflating billings. Miller testified that, based on the parties' course of

dealing, he would “reasonably expect” U.S.A. Lamp to have a copy of the papers signed by a Luminaire representative.

After the trial was completed, the district court denied U.S.A. Lamp’s motion for sanctions for spoliation of evidence; regarding the contested invoices, the district court found that U.S.A. Lamp failed to satisfy its burden of proving that the shipments occurred. The district court denied U.S.A. Lamp’s claim for \$2,000,000 to exhume, reclaim, and incinerate PCB waste deposited in a landfill contrary to the parties’ agreement that the PCB waste would be incinerated and U.S.A. Lamp’s claim that Luminaire abandoned hazardous waste on U.S.A. Lamp’s property. The district court denied Luminaire’s claim for \$48,172.60 for disposal of PCB waste because Luminaire disposed of the waste in a manner contrary to the parties’ agreement. The district court denied U.S.A. Lamp’s motion for amended findings but granted Luminaire’s motion to dismiss Luminaire Environmental and Miller from the action. This appeal followed.

## **D E C I S I O N**

### **I.**

U.S.A. Lamp argues that the district court erred in denying its motion for sanctions against Luminaire for spoliation of evidence and in ruling on related evidentiary issues.

“The term ‘spoliation’ generally refers to the destruction of relevant evidence by a party.” *Willis v. Ind. Harbor Steamship Co.*, 790 N.W.2d 177, 184 (Minn. App. 2010), *review denied* (Minn. Dec. 22, 2010). Spoliation may be subject to “sanction when a party knows or should know that the evidence should be preserved for pending or future litigation.” *Id.* “The district court has broad authority in determining what, if any,

sanction is to be imposed for spoliation of evidence.” *Id.* “The propriety of a sanction for the spoliation of evidence is determined by the prejudice resulting to the opposing party.” *Hoffman v. Ford Motor Co.*, 587 N.W.2d 66, 71 (Minn. App. 1998).

U.S.A. Lamp sought sanctions against Luminaire for spoliation of bill of lading for all shipments of waste received from customers and sent to U.S.A. Lamp and other parties for disposal. Citing 40 C.F.R. § 273.39(a) (2011), which requires large quantity handlers of universal waste to keep a record of each shipment of universal waste received at a facility, U.S.A. Lamp argues that Luminaire’s failure to maintain those records was a violation of federal law and, therefore, Luminaire should have been sanctioned.

U.S.A. Lamp asserts that documents showing waste received by Luminaire were relevant to proving it was entitled to the amounts claimed in its invoices because those documents could have been used to show that Luminaire did not use other transporters to dispose of the waste. U.S.A. Lamp cites no authority showing that the recording requirement in 40 C.F.R. § 273.39(a) was intended to apply to a breach-of-contract claim. More important, USA Lamp had access to the documents necessary to prove its claim. To support its claims for the amounts due on the nine disputed invoices, U.S.A. Lamp submitted invoices and bill of lading signed by a representative of U.S.A. Lamp but not by any representative of Luminaire. Luminaire presented evidence that it required shipping paper for all shipments leaving Luminaire to be signed by a Luminaire representative and that, based on the parties’ course of dealing, a reasonable expectation was that U.S.A. Lamp would have a copy of the papers signed by a Luminaire representative. U.S.A. Lamp, therefore, could have protected its interests by securing and

retaining a copy of the invoices or shipping papers signed by a Luminaire representative.

U.S.A. Lamp also argues that the district court erred in denying its motion for spoliation sanctions because Miller lied during his deposition regarding the volume of Luminaire's business during late 2008 and early 2009. We disagree. Read as a comparison to Luminaire's previous business volume shown in the record, Miller's testimony does not appear to be a deliberate misstatement and did not cause U.S.A. Lamp prejudice.

In U.S.A. Lamp's reply brief, it argues that U.S.A. Lamp transported only 3 of the 14 disputed shipments and that Luminaire transported the rest. But U.S.A. Lamp cites to no evidence showing the practice for documenting shipments that it received. Thus, U.S.A. Lamp fails to show that the shipping papers would not have been signed by a Luminaire representative.

A party seeking reversal must show both error and prejudice resulting from that error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). Because there was evidence that U.S.A. Lamp could have secured and retained copies of shipping papers signed by a Luminaire representative for shipments transported by U.S.A. Lamp and because U.S.A. Lamp cited no evidence showing the practice for documenting shipments that it received, U.S.A. Lamp has failed to show prejudice, and we cannot conclude that the district court erred in denying U.S.A. Lamp's motion for spoliation sanctions.

U.S.A. Lamp also argues that it should have been allowed to conduct discovery from third parties to which Luminaire shipped waste for disposal to show that not all

waste received by Luminaire was accounted for and, therefore, waste unaccounted for must have transported by and/or shipped to U.S.A. Lamp.

Parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party . . . . Relevant information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Minn. R. Civ. P. 26.02. Evidence may be excluded if cumulative and unnecessary.

Minn. R. Evid. 403. Because there was evidence that U.S.A. Lamp could have obtained copies of shipping papers signed by a Luminaire representative for shipments transported by U.S.A. Lamp and because U.S.A. Lamp cited no evidence showing the practice for documenting shipments that it received, U.S.A. Lamp failed to show that its discovery request was reasonably calculated to lead to the discovery of admissible evidence, and the district court did not err in denying the discovery request.

Citing *Jarecki Mfg. Co. v. Ryan*, 114 Minn. 38, 130 N.W. 948 (1911), U.S.A. Lamp argues that the district court erred in allowing testimony regarding Luminaire's documentation practices for waste handled by U.S.A. Lamp. The *Jarecki* court held that a witness's testimony regarding the contents of a business record should not have been admitted when the records themselves were not submitted. *Jarecki Mfg.*, 114 Minn. at 41, 130 N.W. at 948. Here, however, the evidence went to business practices, not the contents of records. Luminaire's contention was that the records did not exist because the shipments had not occurred. The district court did not err in allowing the testimony.

## II.

U.S.A. Lamp argues that the district court erred in denying damages on its claim that Luminaire improperly disposed of PCB waste in a landfill rather than by incineration.

“[T]here can be no recovery for damages which are remote, conjectural, or speculative.” *Carpenter v. Nelson*, 257 Minn. 424, 428, 101 N.W.2d 918, 921 (1960). “In a civil action the plaintiff has the burden of proving, by a preponderance of the evidence and to a reasonable certainty, the amount of future damages.” *Willis*, 790 N.W.2d at 188. We review the district court’s determination of damages for an abuse of discretion. *VanLandschoot v. Walsh*, 660 N.W.2d 152, 156 (Minn. App. 2003).

Although the district court determined that Luminaire breached the contract by delivering the PCB waste to a landfill and U.S.A. Lamp presented evidence on the cost of its exhumation, reclamation, and incineration, the district court found that the damages sought by U.S.A. Lamp were speculative. The district court “noted that the disposal occurred in an EPA approved and permitted landfill” and that it “was not an illegal dumping but instead a disposal in an area and a manner governmentally approved and intended for that purpose.” On appeal, U.S.A. Lamp points to no evidence showing a reasonable likelihood that it would ever be required to exhume, reclaim, and incinerate the PCB waste. Instead, U.S.A. Lamp argues that it “is entitled to the benefit of its bargain with [Luminaire] – to wit, incineration of its PCB waste.” U.S.A. Lamp’s claim for damages is essentially a request for specific performance. But specific performance is not an available remedy when there is an adequate remedy at law, such as damages.

*Schmitz v. Rinke, Noonan, Smoley, Deter, Colombo, Wiant, Von Korff and Hobbs, Ltd.*, 783 N.W.2d 733, 747 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010). If U.S.A. Lamp were required to exhume, reclaim, and incinerate the PCB waste, damages would be an adequate remedy. But because U.S.A. Lamp shows no evidence that such requirement is reasonably certain to occur, the district court did not err in its denial of damages.

### III.

U.S.A. Lamp argues that the district court erred in denying its claim for damages, attorney fees, and costs based on abandonment of hazardous waste under Minn. Stat. § 116.071 (2010).

U.S.A. Lamp's abandonment claim flows from its claim that Luminaire failed to pay the disputed invoices. The district court determined that U.S.A. Lamp failed to prove that Luminaire owed the amounts claimed in the disputed invoices. U.S.A. Lamp does not directly challenge the district court's ruling on that claim; rather, U.S.A. Lamp challenges the district court's denial of its motion for spoliation sanctions and the court's related evidentiary rulings. Because we affirm the district court's denial of spoliation sanctions and related evidentiary rulings, we also affirm the district court's denial of U.S.A. Lamp's related abandonment claim under section 116.071.

### IV.

The district court dismissed U.S.A. Lamp's fraudulent-misrepresentation claim against Miller based on the finding that Luminaire remained a viable entity able to respond to U.S.A. Lamp's claims. U.S.A. Lamp contends that Miller induced it into

accepting waste when Luminaire had no intention of paying for its disposal. But Luminaire refused to pay for the disposal on the ground that nine invoices were fraudulent, and evidence supports the district court's finding that U.S.A. Lamp failed to prove that the invoices were valid. Thus, the district court did not err in dismissing the fraudulent-misrepresentation claim.

Because we affirm the district court's rulings and judgment for Luminaire, we need not reach the issue of successor liability.

**Affirmed.**