STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0840

Daniel Legg, et al.,
Respondents,

vs.

Gauge Construction Management & Development, Inc., et al.,
Defendants,
Department of Labor and Industry,
Contractor's Recovery Fund,
Appellant.

Filed May 5, 2009
Affirmed in part, reversed in part, and remanded
Stauber, Judge

St. Louis County District Court
File No. 69DUCV051918

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Considered and decided by Larkin, Presiding Judge; Minge, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from the district court's award to respondent-homeowners of a $50,000 judgment from the Contractor's Recovery Fund, appellant Commissioner of the Department of Labor and Industry argues that (a) recovery from the Fund was not permissible because the work for which the respondents recovered was performed by a subcontractor, and the Fund is not liable for the conduct of subcontractors; (b) the legal ramifications of the *Pierringer* release, signed by respondents, absolved the Fund of liability to respondents; (c) the district court used an incorrect measure of damages, thereby rendering the court's award of damages to respondent erroneous; and (d) the Fund is not liable for work performed before the contractor becomes licensed. We affirm in part, reverse in part, and remand.

FACTS

In the spring of 2002, respondents Daniel and Christine Legg entered into an agreement with Gauge Construction Management & Development, Inc. (Gauge) to construct a new home. To assist in the building of the home, Gauge hired several subcontractors, including Foster & Foster Construction, Inc. (Foster). Foster was hired to do roofing work, complete the framing, install the siding, and install the tongue-and-groove ceilings in the home. It is undisputed that Foster was not licensed at the time it began work on respondents' home, and did not become licensed until December 2003.

By the fall of 2003, the home had not been completed. Nevertheless, respondents moved into their unfinished home in October 2003. Shortly thereafter, respondents began

noticing problems with the home's construction. Respondents claimed that Foster had incorrectly installed the exterior siding and the tongue-and-groove ceilings. Respondents also claimed that there were various other defects in the home's construction unrelated to Foster's work.

Respondents' home was eventually completed in early 2004. Respondents subsequently obtained an estimate to repair the alleged faulty construction. The estimated cost of repair exceeded $200,000. Respondents then sued general contractor Gauge for the alleged negligent construction. Respondents later amended their complaint to include claims against Foster and several other subcontractors.

In August 2007, a mediation was held that was attended by all parties except Foster. As a result of the mediation, respondents accepted a settlement of $50,000 from Gauge and the other defendants except Foster. The parties settled pursuant to a *Pierringer* release, which preserved respondents' claims against Foster. Shortly thereafter, respondents obtained a $57,616 default judgment against Foster. Although respondents attempted to collect on their judgment, the writ of execution was returned on September 26, 2007, because the county sheriff was unable to locate Foster.

On September 28, 2007, respondents submitted an application to the district court for an order directing payment out of the Minnesota Contractor's Recovery Fund (the Fund). The Fund, created by the legislature in 1993, is part of Chapter 326 of the Minnesota Statutes, which regulates employments licensed by the state.[1] The purpose of

[1] In 2007, the Fund's controlling statutes were recodified in Chapter 326B. 2007 Minn. Laws ch. 135, art. 3, § 29, at 1322-27. However, the parties agree that most of the

the Fund is to compensate aggrieved homeowners who obtain a final judgment against a residential contractor for insufficient, fraudulent, or negligent performance where the contractor does not possess sufficient assets to reimburse the homeowners for their loss. Minn. Stat. § 326.975, subd. 1(a)(2)(i) (2006). The Fund is established by fees charged to residential building contractors when they apply for and renew their licenses. Minn. Stat. § 326B.89, subd. 3 (Supp. 2007). "[N]othing may obligate the [F]und for more than $50,000 per claimant, nor more than $75,000 per licensee." Minn. Stat. § 326.975, subd. 1(a)(3) (2006).

Appellant, the Commissioner of the Department of Labor and Industry (commissioner), is charged with administering the Fund and evaluating each application to determine whether the underlying statutory requirements have been met. Minn. Stat. § 326.975, subd. 1 (2006); Minn. Stat. § 326B.01, subd. 3 (Supp. 2007). If the commissioner believes that an application is without merit, the commissioner may defend the Fund upon a motion and/or at a hearing. Minn. Stat. § 82.43, subds. 9-11 (2006). If, after a hearing, the district court finds that a claim should be levied against the Fund, the district court shall "enter an order directed to the commissioner requiring payment from the fund of whatever sum it shall find to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this section." *Id.* subd. 12 (2006).

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legislative changes are not applicable to this case because they became effective after respondents submitted their application to the Department of Labor.

Here, after reviewing respondents' application for recovery from the Fund, the commissioner rejected respondents' claim on the basis that (1) respondents cannot recover from the Fund for judgments obtained against subcontractors; (2) respondents failed to provide any proof that Foster's work was deficient; and (3) the *Pierringer* release operates to make respondents' claim to the Fund a nullity because they are responsible to satisfy the Fund's subrogation interest. An evidentiary hearing was then held on the matter. Following the hearing, the district court found in favor of respondents and determined that the total cost of repair for the work done by Foster was $57,616. Thus, the court ordered the Fund to pay $50,000 to respondents. This appeal followed.

D E C I S I O N

I.

The commissioner argues that the statutory language applicable to the Fund demonstrates that the Fund is not liable for the actions of a subcontractor. Thus, the commissioner argues that because Foster is a subcontractor, the district court erred in concluding that respondents are eligible to recover from the Fund.

Statutory interpretation is a question of law subject to de novo review. *Metro. Sports Facilities Comm'n v. County of Hennepin*, 561 N.W.2d 513, 515 (Minn. 1997). The object of statutory interpretation is to determine and give effect to the legislature's intent. Minn. Stat. § 645.16 (2006). If the words in a statute are clear and unambiguous, the court must give effect to the plain meaning of the language. *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986).

Minn. Stat. § 326.975, subd. 1 (2006), entitled "**CONTRACTOR'S RECOVERY FUND**," states:

> In addition to any other fees, each applicant for a license under sections 326.83 to 326.98 shall pay a fee to the contractor's recovery fund. The contractor's recovery fund is created in the state treasury and must be administered by the commissioner in the manner and subject to all the requirements and limitations provided by section 82.43 with the following exceptions . . . .

Thus, Minn. Stat. § 326.975, consists of the Fund's enabling legislation, and Minn. Stat. § 82.43 (2006), is the statute that governs administration of the Fund.

Citing language from section 82.43, subdivision 7, the commissioner argues that applicants are only eligible to recover from the Fund if (1) there has been a transaction between the owner and the judgment debtor and (2) the judgment debtor performed acts for which a license was required. We disagree. Although Minn. Stat. § 326.975, subd. 1, mandates that the commissioner administer the Fund under section 82.43, the plain language of the statute also provides that certain "exceptions" to the requirements and limitations of section 82.43 are applicable. One of the "exceptions" is contained in Minn. Stat. § 326.975, subd. 1(a)(2)(i). This statute provides that the purpose of the fund is

> to compensate any aggrieved owner or lessee of residential property located within this state who obtains a final judgment in any court of competent jurisdiction against a licensee licensed under section 326.84, on grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance arising directly out of any transaction when the judgment debtor was licensed and performed any of the activities enumerated under section 326.83, subdivision 19, on the owner's residential property or on residential property rented by the lessee, or on new

> residential construction which was never occupied prior to purchase by the owner . . . .

Minn. Stat. § 326.975, subd. 1(a)(2)(i).

We note that the phrase in Minn. Stat. § 82.43, subd. 7, limiting recovery to instances where the judgment debtor performed "acts for which a license is required" is absent from Minn. Stat. § 326.975, subd. 1(a)(2)(i). Rather, Minn. Stat. § 326.975, subd. 1(a)(2)(i), simply limits recovery to the "failure of performance arising directly out of any transaction when the judgment debtor was licensed and performed any of the activities enumerated under section 326.83, subdivision 19." Minn. Stat. § 326.975, subd. 1(a)(2)(i). Therefore, because Minn. Stat. § 326.975, subd. 1(a)(2)(i), is a specific "exception" to the requirements and limitations of section 82.43, and the exception specifically eliminates any requirement that the judgment debtor be performing "acts for which a license is required," we conclude that the alleged requirement that Foster be performing acts for which a license is required is not applicable to the eligibility requirements of the Fund.

As previously stated, the commissioner also argues that a claimant may only recover from the Fund if the failure of performance arose "directly out of any transaction when the judgment debtor was licensed." Minn. Stat. § 326.975, subd. 1(a)(2)(i). The commissioner emphasizes that respondents' claim against Foster does not arise directly out of any transaction with Foster because there was no privity of contract between Foster and respondents.

We disagree. Minn. Stat. § 326.975, subd. 1(a)(2)(i), provides in relevant part that: "[T]he purpose of the fund is . . . to compensate any aggrieved owner . . . of residential property . . . who obtains a final judgment . . . against a licensee licensed under section 326.84, on grounds of . . . failure of performance arising directly out of any transaction when the judgment debtor was licensed . . . ." Nowhere does the statute state that the transaction must arise out of a direct transaction between the owner and licensee. Rather, the statute simply requires that the owner obtain a final judgment against a licensee for failure of performance, and the failure of performance must arise directly "out of *any* transaction when the judgment debtor was licensed." *Id.* (emphasis added). Such a situation occurred here: (1) Foster failed to perform; (2) Foster's failure to perform arose directly out a transaction with Gauge; and (3) the failure of performance occurred when Foster was licensed.

Moreover, the commissioner's interpretation of the term "transaction" is overly narrow. As respondents point out, the term "transaction" is not synonymous with the term "contract," and the common usage of the word "transaction" means "simply the act of conducting business." This interpretation of the term "transaction" is consistent with the common legal definition of the term. For example, Black's Law Dictionary defines "transaction" as: "The act or an instance of conducting business or other dealings. Something performed or carried out; a business agreement or exchange. Any activity involving two or more persons." *Black's Law Dictionary* 1503 (7th ed. 1999).

Here, respondents hired Gauge to construct the home. Gauge, in turn, hired Foster to perform much of the work set forth in the contact between Gauge and respondents.

Although there was no privity of contract with respondents, Foster was performing work on behalf of respondents. We hold that this relationship between respondents, Gauge, and Foster constituted a "transaction" within the meaning of Minn. Stat. § 326.975, subd. 1(a)(2)(i).[2]

The commissioner further argues that this court should reverse the district court's decision because its interpretation of the relevant statutory language pertaining to the Fund is entitled to deference. But a reviewing court is not bound by an agency's interpretation of a statute. *Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978). Deference is owed an agency's interpretation of its governing statute only when the statutory language is technical in nature and the interpretation is one of longstanding application. *Id.* The rule does not apply when statutory language is clear and unambiguous. *In re Mortician License Application of Werner*, 571 N.W.2d 600, 601 (Minn. App. 1997).

Here, the statutory language of Minn. Stat. § 326.975, subd. 1(a)(2)(i), is unambiguous. Nowhere in the statute is privity of contract required between the owner and the licensee. Rather, the statute simply requires that the failure of performance arise directly out of any transaction where the judgment debtor is licensed. Because Minn. Stat. § 326.975, subd. 1(a)(2)(i), unambiguously does not require privity between an owner and a licensee, we need not defer to the commissioner's interpretation of the

[2] Notably, the plain language of the "Contractor Recovery Fund" statute, as amended in 2007, now provides that "[t]he commissioner shall only pay compensation from the fund for a final judgment that is *based on a contract directly between the licensee and the homeowner*." Minn. Stat. § 326B.89, subd. 5 (2008) (emphasis added).

Fund's recovery statutes. Accordingly, the district court did not err in concluding that the Fund is liable for the actions of subcontractors.

II.

The commissioner also contends that the district court failed to consider the legal ramifications of respondents' *Pierringer* release. The legal effect of a *Pierringer* release presents a question of law subject to de novo review. *See Vang v. Vang*, 490 N.W.2d 647, 650 (Minn. App. 1992) (interpretation of effect of settlement agreement on insurance contract is question of law), *review denied* (Minn. Nov. 17, 1992).

Developed from *Pierringer v. Hoger*, 21 Wis.2d 182, 124 N.W.2d 106 (1963), the elements of a *Pierringer* release are:

> (1) The release of the settling defendants from the action and the discharge of a part of the cause of action equal to that part attributable to the settling defendants' causal negligence; (2) the reservation of the remainder of plaintiff's causes of action against the nonsettling defendants; and (3) plaintiff's agreement to indemnify the settling defendants from any claims of contribution made by the nonsettling parties and to satisfy any judgment obtained from the nonsettling defendants to the extent the settling defendants have been released.

Bunce v. A.P.I., Inc., 696 N.W.2d 852, 855 (Minn. App. 2005). A *Pierringer* release's legal effect "is that each tortfeasor pays only its proportionate share of liability, and no more, and, thus, there can be no liability for contribution." *Id.* at 856. Therefore, the settling tortfeasor is ordinarily "dismissed with prejudice from the lawsuit, and all cross-claims for contribution between the settling defendant and the remaining defendants are likewise dismissed." *Rambaum v. Swisher*, 435 N.W.2d 19, 22 (Minn. 1989).

Here, it is undisputed that prior to obtaining a judgment against Foster, respondents entered into a *Pierringer* release with Gauge and all other co-defendants except Foster. The commissioner argues that based on the *Pierringer* release, respondents are ineligible to collect from the Fund because "(1) respondents agreed to accept liability for any uncollectible amounts; (2) a 'circuity of obligation' would be created by operation of law; and (3) respondents are attempting to recover from the Fund liability that belongs to Gauge and respondents."

A. Respondents' obligation to indemnify pursuant to Pierringer release

Minn. Stat. § 604.02 states that: "When two or more persons are severally liable, contributions to awards shall be in proportion to the percentage of fault attributable to each, except that the following persons are jointly and severally liable for the whole award: (1) a person whose fault is greater than 50 percent." Minn. Stat. § 604.02, subd. 1 (2006). Subdivision 2 of that statute provides:

> Upon motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's equitable share of the obligation is uncollectible from that party and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

Minn. Stat. § 604.02, subd. 2 (2006).

The commissioner argues that in the absence of a *Pierringer* release, respondents could have sought to reallocate the uncollectible balance due on the judgment from Foster to Gauge and the other co-defendants pursuant to Minn. Stat. § 604.02. But the

commissioner contends that "[w]hen respondents settled under a *Pierringer* release, they preserved their claims against [Foster] and agreed to accept liability for the uncollectible portion of any ensuing judgment under Minn. Stat. § 604.02." The commissioner argues that because it is undisputed that respondents were unable to collect against Foster, their agreement to accept liability for the uncollectible portion of the judgment precludes them from recovering from the Fund.

We disagree. As stated above, the legal effect of the *Pierringer* release is that if respondents were unable to recover from Foster, they were prohibited from reallocating the uncollectible balance to the settling defendants under Minn. Stat. § 604.02. *See Bunce*, 696 N.W.2d at 855 (stating that one of the elements of a *Pierringer* release is the plaintiff's agreement to indemnify the settling defendants from any claims of contribution made by the nonsettling parties and to satisfy any judgment obtained from the nonsettling parties to the extent the settling defendants have been released). There is nothing in the release that prohibits respondents from obtaining damages from the Fund. Moreover, there is no statutory language prohibiting recovery from the Fund when the claimant has entered into a *Pierringer* release with a licensed tortfeasor. As respondents point out, the Fund is established specifically to provide compensation for homeowners who cannot collect on a judgment against a licensed contractor. That is exactly the situation here. Based on the *Pierringer* release, respondents can no longer recover from the settling defendants, and the record shows that respondents were unable to recover from Foster. Accordingly, the execution of the *Pierringer* release does not restrict respondents' ability to collect from the Fund.

B. Circuity of obligation

The commissioner argues that the *Pierringer* release created a circuity of obligation. To support its claim, the commissioner cites Minn. Stat. § 82.43, subd. 17 (2006), which states that when a claimant recovers from the Fund, the Fund has the right of subrogation against the judgment debtor. The commissioner argues that if it were able to recover against Foster, and Foster successfully established a cross-claim against Gauge for some or all of the $50,000, respondents would be required to pay that money back to the Fund pursuant to the *Pierringer* release. Thus, the commissioner argues that the *Pierringer* release creates a circuity of obligation that is inconsistent with legislative intent and leads to an absurd result.

We conclude that the commissioner's argument is without merit. Pursuant to section 82.43, subdivision 17, the commissioner has the right of subrogation against Foster and arguably against any party Foster may successfully cross-claim against. But as respondents point out, there has never been any cross-claim for contribution by Foster against Gauge or any other party. Thus, the commissioner's circuity of obligation argument is merely speculative, and the procedural posture of this case is within the contemplated statutory language. Moreover, even if respondents were ultimately required to repay to the Fund any claim for contribution obtained by Foster against a released party, the result would ultimately be fair because respondents would only be entitled to retain their fair share of the judgment against Foster. Thus, we cannot conclude that any circuity of obligation that may result would be so absurd as to conflict with legislative intent.

C. Fund's liability for more than the correct apportionment of fault

The commissioner further argues that the legal effect of the *Pierringer* release is that the Fund is liable for more than Foster's apportionment of fault. To support its claim, the commissioner argues that the evidence in the record shows that based on a correct apportionment of fault, Gauge, as the general contractor, was liable for most, if not all, of the judgment obtained against Foster. Thus the commissioner argues that because the district court failed to determine the proportionate share of liability to respondents, Gauge and Foster, the error results in an impermissible double-recovery, violating the scope and purpose of the Fund.

The commissioner's argument assumes that because the district court did not allocate any fault to anyone other than Foster, that the district court did not consider the possibility that somebody other than Foster may have been at fault, and therefore liable, for all or part of the judgment against Foster. But by not apportioning fault to anybody other than Foster, the district court implicitly rejected the commissioner's claim that fault should be allocated to somebody other than Foster. *See Roberge v. Cambridge Coop. Creamery*, 248 Minn. 184, 195, 79 N.W.2d 142, 149 (1956) (holding denial of motion for amended findings is equivalent to a finding contrary to that sought in motion). The district court had all the evidence and testimony before it, and apparently found respondents' testimony and evidence more credible. *See In re Welfare of D.L.*, 486 N.W.2d 375, 380 (Minn. 1992) (stating that the district court is in the best position to weigh the evidence and make credibility determinations). Accordingly, there are no legal ramifications related to the *Pierringer* release that would absolve the Fund from liability.

III.

The commissioner argues that the district court erred in awarding damages to respondents because the court used the incorrect measure of damages when calculating respondents' damages. Generally, the amount and extent of damages is a question of fact. *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 789 (Minn. 1989). But whether the district court's theory of valuation of damages is speculative or erroneous is a question of law. *Id.*

Here, in calculating respondents' damages, the district court concluded:

> [Respondents'] damages with regard to the siding work done by Foster Construction are $44,200. Repairs for the ceiling work done by Foster Construction cost $13,416. The total for work done by Foster Construction while it was licensed is, thus, $57,616.00. [Respondents] obtained a default judgment against Foster Construction in this amount on September 10, 2007. Pursuant to the recovery fund statute, [respondents'] damages are capped at $50,000.
>
> [Respondents] are entitled to judgment against the Contractor's Recovery Fund in the amount of $50,000.

These are the same damages which respondents proved at the earlier default hearing.

The commissioner argues that the district court's award of damages to respondents is erroneous because in calculating respondents' damages, the court used the "cost-to-repair" measure. The commissioner argues that the appropriate measure of damages to be used to recover from the Fund is the claimant's "actual and direct out of pocket loss." Thus, the commissioner argues that because the correct measure of damages was not used by the district court, the matter must be reversed.

We agree. Under Minn. Stat. § 82.43, subd. 7, the amount a claimant can recover from the Fund is limited to "actual and direct out of pocket loss in the transaction." The limitation of recovery to "out of pocket loss" is also consistent with language contained in the Contractor's Recovery Fund statute. *See* Minn. Stat. § 326.975, subd. 2 (2006) (stating that Fund claims that do not exceed the jurisdiction limits for conciliation court may be paid at an accelerated basis, but payments from the Fund may not exceed the claimant's "actual and direct out-of-pocket loss"). Minnesota courts have defined "out-of-pocket" to mean the "difference between the actual value of the property received and the price paid for the property." *B.F. Goodrich Co. v. Mesabi Tire Co.*, 430 N.W.2d 180, 182 (Minn. 1988). Similarly, Black's Law Dictionary defines "out-of-pocket loss" to mean "[t]he difference between the value of what the buyer paid and the market value of what was received in return." *Black's Law Dictionary* 957 (7th ed. 1999).

Respondents argue that the commissioner's "out of pocket loss" measure of damages is limited to real estate fraud and misrepresentation cases where the "out of pocket losses" refers to the resulting difference in the market value of the affected real estate. To support their claim, respondents cite *N. Petrochemical Co. v. Thorsen & Thorshov, Inc.*, which states that in faulty construction cases,

> the preferred measure of damages is to take either the cost of reconstruction in accordance with the contract, if this is possible without unreasonable economic waste, or the difference in the value of the building as contracted for and the value as actually built, if reconstruction would constitute unreasonable waste.

297 Minn. 118, 124, 211 N.W.2d 159, 165 (1973). But *N. Petrochemical Co.* did not concern the Fund or the statutes administering the Fund. Of persuasive value is this court's reasoning in the unpublished case of *Kan v. Wensmann*.[3] In that case, the homeowners, during the construction of their home, paid to have "low-energy windows" installed. *Kan v. Wensmann*, C3-99-1186, 1999 WL 1216294, at *1 (Minn. App. Dec. 21, 1999). When the contractor failed to install the appropriate windows, the homeowners were awarded a judgment that constituted the amount it would cost to install the "low-energy" windows. *Id.* The district court subsequently ordered the Fund to pay the amount of the judgment because the homeowners were unable to collect from the contractors. *Id.* The Fund appealed, and this court reversed and remanded because the applicable statute limited recovery to the amount of actual and direct out-of-pocket loss. *Id.* at *2.

Here, as in *Kan*, the district court erroneously used the cost-to-repair measure of damages. Therefore, we reverse and remand for a recalculation of respondents' damages based on their direct out-of-pocket loss.

[3] Unpublished opinions are not precedential, but they may have persuasive value. *Andrew L. Youngquist, Inc. v. Cincinnati Ins. Co.*, 625 N.W.2d 178, 184 (Minn. App. 2001).

IV.

Finally, the commissioner argues that because Foster did not become licensed until shortly before the project was completed, the Fund is not liable for the work Foster performed before it was licensed. To support its claim, the commissioner cites language from Minn. Stat. § 326.975, subd. 1(a)(2)(i), which states that recovery from the Fund is permitted for "failure of performance arising directly out of any transaction *when the judgment debtor was licensed*." (Emphasis added.) Conversely, respondents argue that language from Minn. Stat. § 326.975, subd. 1(a)(4) (2006), controls the issue. This statute provides: "nothing may obligate the fund for claims based on a cause of action that arose before the licensee paid the recovery fund fee set in clause (1), or as provided in section 326.945, subdivision 3." Minn. Stat. § 326.975, subd. 1(a)(4).

We conclude that section 326.975, subdivision 1(a)(4), is not applicable to the issue. As the commissioner points out in much detail, this section was enacted to clarify the transition from surety bonds to the Fund. In enacting this statute, the legislature included a provision that specified its intent:

> By making the amendment in [Minn. Stat. § 326.975, subd. 1(a)(4)], the legislature is clarifying the original intent of the contractor's recovery fund law, Laws 1993, chapter 245, section 36, when it was enacted. The contractor's recovery fund replaces an earlier bonding requirement set forth in Minnesota Statutes, section 326.84 and 326.945.

1995 Minn. Laws ch. 169, § 7, at 544. Thus, the issue is controlled by Minn. Stat. § 326.975, subd. 1(a)(2)(i).

Under that statute, "each applicant for a license . . . shall pay a fee to the contractor's recovery fund." Minn. Stat. § 326.975, subd. 1(a). After the applicant has an application for licensure, the commissioner must act on the license request within 30 days of receiving the required information. Minn. Stat. § 326.89, subd. 1 (2006). Recovery from the Fund is then permitted for work performed "when the judgment debtor was licensed." Minn. Stat. § 326.975, subd. 1(a)(2)(i).

Based on our review of the statutes pertaining to the Fund, we conclude that recovery from the Fund is only permitted for work performed while Foster was licensed. The parties seem to agree that Foster was issued a license in mid-to-late December 2003, a month or so before the house was completed. However, the record indicates that Foster submitted its application for licensure in the late summer or early fall of 2003. At that time, Foster paid into the Fund. *See* Minn. Stat. § 326.975, subd. 1(a). Within 30 days of Foster submitting its application, the commissioner was required to act on Foster's request. *See* Minn. Stat. 326.89, subd. 1. We conclude that the date on which the commissioner was required to approve Foster's application for licensure is the date that Foster became licensed for purposes of liability to the Fund under section 326.975. Because this date may be earlier than mid-to-late December 2003, limited supplemental evidence may be necessary to establish the date on which Foster was licensed.

We also acknowledge that there may be instances when it may be difficult or impossible to determine what work was performed after the judgment debtor became licensed, and the relationship of this work to the damages sustained by the claimant. But in light of the statutory language contained in section 326.975, subdivision 1(a)(2)(i), we

must remand the issue for the district court to attempt to determine the extent of the damages sustained by respondents for the work performed by Foster for the period of time during which it was licensed.

Affirmed in part, reversed in part, and remanded.