

IN THE SUPREME COURT OF IOWA

SAMIR M. SHAMS,)
)
 Applicant/Appellee,)
)
 vs.)
) S.C. NO. 15-1344
 SONA HASSAN,)
)
 Resister/Appellant.)

APPEAL FROM
THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE JEANIE KUNKLE VAUDT, JUDGE

APPELLEE'S APPLICATION FOR FURTHER REVIEW
OF THE COURT OF APPEALS' RULING,
FILED JANUARY 25, 2017

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Questions Presented

1. Did the court of appeals err in reversing the district court when the appellant expressly raised one error – the district court should have given a particular instruction to the jury – but the court of appeals reversed on a much broader issue – “refusing to submit the statute-of-limitations legal defense” to the jury – an error never explicitly raised in the district court nor in the appeal?
2. With no case directly on point, did the court of appeals err in holding that the issue of whether Plaintiff’s claims were time-barred by the statute of limitations was a question of fact for jury rather than a question of law for the court?

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Application for Further Review

COMES NOW Applicant/Appellee, Samir Shams, and in support of his application for further review of the Court of Appeals Ruling, filed January 25, 2017, states:

1. The parties tried the case in Polk County, presided by the honorable Jeannie Vaudt, from March 30 through April 13, 2015, based on Shams' claims against Appellant/Defendant, Sona Hassan, for conversion, breach of contract, and breach of fiduciary duty. (App. at 212:all.) Upon a jury's verdict, the court entered judgment for Shams against Hassan in the amount of \$148,501.60. (App. at 173-176, 199-201.) Hassan appealed.
2. In her appeal, Hassan never raised the issue of whether it was error for the district court to fail to give *any* instruction on whether Shams' claims were time-barred by the statute of limitations.¹ Rather, Hassan only raised the

¹ Hassan admits that this alleged error was not directly raised because she states in her reply brief, "*Implicit* in Hassan's Motion for New Trial and Motion for Judgment Notwithstanding the Verdict in Hassan's claim that the trial court erred in not submitting an instruction to the jury on Iowa's Statute of Limitations

issue that the district court erred by failing to give Hassan's *specific jury instruction* regarding whether Shams' claims were time-barred by the statute of limitations. Because the district court found Hassan's proffered jury instruction mistakenly stated the law, it refused to give the instruction. Hassan never offered a substitute verdict or requested the court to fashion its own verdict.

3. The Supreme Court assigned this case to the court of appeals for disposition.
4. On January 25, 2017, the court of appeals reversed the district court and remanded the case for a new trial. (Ct. App. Ruling, attached hereto (hereinafter "Ruling").)
5. Contrary to Hassan's argument in the district court and her briefing in the appeal, the court of appeals reversed on the much broader point that there was substantial evidence in the record to support the "time-barred" defense and, therefore, the district court erred by failing to let the jury decide that

...” (Appellant’s Reply Br. p2 (emphasis added)); *see also Sun Valley Iowa Lakes Ass’n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996) (“Parties cannot assert an issue for the first time in a reply brief.”).

issue. (Ct. App. Ruling p5-11.) Notably, on the actual issue raised by Hassan, that Hassan's proffered jury instruction should have been given at trial, the court of appeals concluded the district court was correct in refusing to give Hassan's instruction stating:

Significantly, the proffered jury instruction did not accurately define the discovery rule and, upon these facts, reversible error would have existed if the jury had been instructed as proposed by Hassan without also correctly instructing on the discovery rule.

(Ct. App. Ruling p14-15 (citation and note omitted).)

6. This Court should grant further review of the court of appeals' opinion because:

a. First, the court of appeals' ruling "conflicts" with well-established legal principles regarding the preservation of error. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Specifically, Hassan never raised the issue at the district court or on appeal that it was error for the district court *not* to let the jury decide whether Shams' claims were time-barred by the statute of limitations. Yet, the court of appeals reversed on that very point. (Ct. App. Ruling p5-11.) By reversing the

lower court on an issue not raised at trial and, therefore, not preserved for appellate review, the court of appeals decision is in conflict with those cases. *Id.*; see Iowa R. App. P. 6.1103(1)(b)(1). Further, this is not the situation where the appellate court could evade the error-preservation issue by finding the district court “*considered* the issue and necessarily ruled on it, even if the court’s reasoning is ‘incomplete or sparse[]’.” See *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012) (citing *Meier*, 641 N.W.2d at 540). Hassan wanted a specific jury instruction. The court rejected that specific instruction. If Hassan still wanted some (or any) instruction given to the jury on the “time-barred” issue, Hassan should have brought that to the district court’s attention. Hassan did not; therefore, she failed to preserve that error for review. See *Lockard v. Carson*, 278 N.W.2d 871, 873 (Iowa 1980) (“Objections to instructions must be sufficiently specific to alert the trial court to the basis of complaint so that, if error does exist, the court may correct it before placing the case in the hands of the jury.”).

- b. Second, this case has “broad public importance that this Court should ultimately” decide because there is no Iowa precedent stating that an issue of whether a plaintiff’s claim is time-barred by the statute of limitations is

a factual question for the jury or a legal question for the judge. *See* R. 6.1103(1)(b)(4). The court of appeals found that the issue was one of fact to be decided by the jury. (Ct. App. Ruling p8-9.) This Court should decide the point and hold that such an issue is a legal issue for the trial court to decide.

WHEREFORE Applicant/Appellee, Samir Shams, requests that the Supreme Court grant further review of the court of appeals' decision, vacate it, and affirm the district court.

Statement of the Facts

Shams and Hassan are siblings. Around 2003, Shams left the United States for work in Iraq. (App. at 213:9-220:7, 8¶6, 9¶12.) Prior to his departure from the United States, Shams and Hassan entered an oral agreement whereby Hassan would have access to Shams' bank account to provide for Shams' personal and his children's expenses. (App. at 213:9-220:7, 242:22-243:12, 8¶3, 8¶6, 9¶9.) Shams opened a checking account in a bank located in Des Moines, Iowa, to deposit the income he earned while he was abroad. (App. at 243:13-19, 8¶6.) Shams then gave Hassan signed blank checks that she would use to draw money as needed. (App. at 243:20-22, 9¶¶7-8.) The parties

agreed that any money drawn by Hassan would be used solely for the needs and expenses of his three children and to pay Shams' bills. (App. at 243:7-12, 9¶9.) From 2003 through 2006, Hassan breached their agreement by using the money for her personal desires. (See App. at 244:2-277:4, 9¶11.) Hassan wrote checks to herself for thousands of dollars. (*Id.*) Hassan fraudulently concealed her actions and/or intent to use Shams' money and not return it to him. (App. at 224:16-24, 225:3-226:21.) Demonstrating her concealment, Shams asked for \$50,000 in 2009, which Hassan forwarded to him. (App. at 227:25-228:23.) In 2010, Shams discovered Hassan's self-serving actions and demanded his money from her. (App. at 227:25-231:23, 232:3-24.) She refused to return any of it. (App. at 228:24-231:23; see App. at 232:3-24.)

At virtually every stage of this case after the Iowa Supreme Court remanded the case for further proceedings², Hassan sought to dismiss Shams' case on the grounds of that the statute of limitations barred his claims against her. Each time, Hassan argued the same point. In summary, Hassan claimed that Shams discovered Hassan misused his money as early as June 2006. Shams did not sue Hassan until July 26, 2011. Asserting the applicable statute of

² *Shams v. Hassan*, 829 N.W.2d 848 (Iowa 2013).

limitations established by Iowa Code section 614.1(4) required Shams to sue within five years (by June 2011), Hassan argued Shams' claims were time-barred. In resistance, Shams claimed that he did not discover Hassan's wrongdoing until 2010 when he demanded the return of his funds from Hassan and she refused. Upon her refusal, he filed suit. Because he did not discover Hassan's actions until she refused to return the money to him in 2010, he was well within the five-year limitations statute when he sued.

Hassan first raised the issue in a motion for summary judgment. (App. at 20-34.) Shams resisted. (App. at 35-37, 38-39, 40-142.) The district court denied the motion. (App. at 143-147.)

Hassan raised the issue again in her motion for directed verdict when Shams rested. (App. at 281:9-284:5 (referencing that a statute of limitations is one to be decided as a matter of law), 283:8-13.) Shams resisted. (App. at 284:8-304:10.) The trial court never expressly ruled on Hassan's motion, but Hassan proceeded with her defense, signaling that the court denied Hassan's motion. (App. at 304:11-305:19.)

At the close of the evidentiary record, Hassan renewed her motion to dismiss/directed verdict. (Tr. 1065:16-1069:8.) Hassan provided to the court Connecticut and California legal authority supporting her claim for a jury instruction based on the statute of limitations, but gave no specific citations to

the court. (App. at 310:20-314:8; *see* App. at 315:24-317:25.) Hassan refers the court back to the “authority cited to the Court initially in the initial motion for summary judgment”, but that motion fails to cite any authority other than Iowa cases. (App. at 313:1-16; *see generally* App. at 20-34.) During the argument, Hassan states: “I think, as a matter of law, based on that, that he was on notice in June.” (App. at 312:4-5.) The court denied Hassan’s motion for a directed verdict. (App. at 316:2-317:7.)

Hassan then asked for a specific instruction to be given regarding the statute of limitations. (App. at 319:9-322:3.) That proposed instruction stated:

The defendant has raised as a defense to the plaintiff’s claims of oral contract, conversion, fraud and breach of fiduciary duty that the plaintiff cannot prevail on that claim with the time allowed by [the] law. There are state statutes that specify how much time a person has to bring certain kinds of claims. These are called statutes of limitation. A person cannot recover on a claim that is brought after the time period that applies to a particular claim, even if it is only one day late. The statute of limitation that applies to each of the above claims provides that the claim must be brought within 5 years of the date the incident occurred. The plaintiff brought his suit against the defendant on July 26, 2011. A claim for oral contract, conversion, fraud, and breach of fiduciary duty, based on acts or occurrences that took place more than 5 years before the date is barred by the statute of limitation. You must decide when each act or occurrence on which bases his claim occurred. If any of these acts or occurrences took place more than 5 years before the plaintiff brought suit, then a claim based on that act or occurrence is barred by the statute of limitation.

(App. at 211; *see* App. at 320:10-321:17.) Shams objected to the proposed instruction because it misstated Iowa law, particularly since the proposed instruction was more akin to a personal injury action and it gave no mention to when Shams discovered Hassan's bad acts leading to the lawsuit – when Hassan converted the money to her own personal use rather than when the parties entered into the contract regarding the funds. (Tr. 1283:6-19.) After considering the arguments, Judge Vaudt ruled:

The Court notes that the Court has previously denied the motion to dismiss in this matter that was essentially premised upon the same argument. Mr. Shams is contending that there was a breach of agreement, and the other claims that roll along with that that he has pled, as a consequence of conversation that was had allegedly between him and the defendant concerning the return of his money after there had been, again allegedly, some investment in real estate, and that occurred later than a date that would trip the statute of limitations that [Hassan] is arguing is applicable.

So on that basis, because I have granted the – because I did not grant the motion to dismiss because I didn't feel that there was an issue there, I am going to let the case go to the jury without the instruction that [Hassan] has proposed for the reasons that, A, it's not a stock; B, I don't think it applies; and C, as it is drafted, I believe the jurisdictions that [Hassan] found the instruction located in, used it for purposes that were not associated with the kinds of claims we have asserted here.

So for all of those reasons, I am going to not submit *that instruction* to the jury. But we've made a record for the benefit of counsel on why [Hassan] thinks it should be submitted, when [Shams] believes it is not to be submitted, and why the Court has ultimately concluded that that instruction should not be submitted.

(Tr. 1284:9-1285:10 (emphasis added).) The court then submitted the case to the jury.

The jury returned a verdict in favor of Shams on his claim and for Hassan on her counterclaim. The jury ordered Hassan to pay Shams \$148,501.60 based upon a jury's verdict for conversion, breach of contract, and breach of fiduciary duty; it also awarded \$14,566.25 in Hassan's favor based on Shams' libel, and also found Shams responsible for \$15,000 for punitive damages. (App. at 173-176.)

Both parties filed motions for new trial and motions for judgment notwithstanding the verdict. (App. at 177-180, 181-183, 184-185, 186-188.)

Both parties resisted the other's motions. (App. at 192-194, 189-191, 197-198.)

The court denied both parties' post-trial motions. (App. at 202-208.)

Germane here, the court ruled:

The statute of limitations instruction [Hassan] proposed was properly withheld from the jury as to all of [Shams]'s claims she asserts it applied to. This proposed instruction is not the law in Iowa and does not include the discovery rule. Furthermore, the evidence presented was sufficient for the jury to conclude that [Shams] and [Hassan] entered into a new oral agreement in June of 2006, and his claims for breach of contract, conversion, and breach of fiduciary duty occurred in 2010 when [Hassan] declined to return additional money to [Shams].

(App. at 203-204.) After denying both parties post-trial motions, the court entered judgment based on the jury's verdict. (App. at 199-201.) Hassan appealed, Shams did not.

Argument

In her appeal, Hassan did *not* allege error in the district court's denial of her motion for summary judgment, motion for directed verdict, motion for new trial, or motion for judgment notwithstanding the verdict which all asserted that Shams' claims were time-barred under the applicable statute of limitations. Rather, Hassan argued the district court erred by failing to give an instruction to the jury regarding the applicable statute of limitations. Shams raised the preservation of error issue in his appeal brief, but the court of appeals made no mention of it, assuming it was preserved. (See Ct. App. Ruling p5-11.) The court of appeals decision decides a major issue that Hassan never raised – whether the time-barred issue was one for the jury or the court. Yet, the court of appeals states that the district court erred in failing to submit the issue to the jury when there was no legal precedent requiring it to be given to the jury and Hassan never raised that as an issue for appellate review. Those errors justify granting further review.

- 1. Did the court of appeals err in reversing the district court when the appellant expressly raised one error – the district court should have given a particular instruction to the jury – but the court of appeals reversed on a much broader issue – “refusing to submit the statute-of-limitations legal defense” to the jury – an error never explicitly raised in the district court nor in the appeal?.**

Hassan argued the district court erred by failing to give the jury a specific instruction as offered in Court Exhibit A – not that the district court erred in failing to give the statute-of-limitations issue to the jury. (App. at 211.) She claims she was entitled to the instruction because there were disputed facts as to when Shams discovered Hassan’s wrongdoing. (*See generally* Br. arg. II.) Citing the five-year statute of limitations per Iowa Code section 614.1(4) (2015), Hassan claims the court should have instructed the jury to consider that Shams learned of Hassan’s wrongdoing in June 2006, and, as the argument goes, because Shams did not file suit until July 2011, Shams’ claim is time-barred. However, Hassan’s proffered jury instruction, (Court Ex. A), is misleading and misstates established law because the instruction failed to provide information on the discovery rule. *Hallett Const. Co. v. Meister*, 713 N.W.2d 225, 231 (Iowa 2006). The discovery rule applied to Shams’ claims. *See id.*

The error Hassan raised in her appeal is the claim that the court should have given her specifically proffered instruction. Any argument that another

instruction should have been given is not properly preserved for appellate review. *Lockard*, 278 N.W.2d at 873 (“Objections to instructions must be sufficiently specific to alert the trial court to the basis of complaint so that, if error does exist, the court may correct it before placing the case in the hands of the jury.”); *see Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”). At trial, Shams specifically argued against Hassan’s instruction because it incorrectly stated Iowa law (which the court of appeals agreed with). It is patently unfair to then reverse on an error not asserted by Hassan – that she was entitled to the statute-of-limitations instruction when she never complained of that at trial.

Shams argued against submitting Hassan’s specific instruction. It was Hassan’s burden to raise the error and/or object to the jury instructions that an instruction on the time-barred issue should have been submitted to the jury. *See Meier*, 641 N.W.2d at 537. The reason for the *Meier* Rule is to preserve the fundamental integrity of judicial decisions. *Id.* If a party is able to dispute on appeal a trial court’s adverse ruling on a ground not presented to the trial court, then all such rulings can be challenged and overturned for reasons that were not the trial court’s mistake. *Id.*; *cf. In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996) (“When appellate courts unduly refine these important, but often

conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize.”).

Despite the discovery rule applying here, Hassan insisted on giving a misleading instruction, particularly:

A claim for oral contract, conversion, fraud, and breach of fiduciary duty, based on acts or occurrences that took place more than 5 years before the date is barred by the statute of limitation. You must decide when each act or occurrence on which bases his claim occurred. If any of these acts or occurrences took place more than 5 years before the plaintiff brought suit, then a claim based on that act or occurrence is barred by the statute of limitation.

(Court Ex. A (App. at 211.)) The instruction never mentions when Shams may have discovered “each act or occurrence on which bases his claim occurred”. Hassan was not entitled to have the court give the jury a misleading instruction – it is reversible error if the instruction misleads or confuses the jury or otherwise misstates Iowa law. *See Hendricks & Cooper v. Wallis*, 7 Clarke 224, 230-32 (Iowa 1858) (holding that a jury instruction given by the court that misrepresented Iowa’s law on the applicable statute of limitations justified a new trial); *see Breneman Martin & Co. v. Edwards*, 55 Iowa 374, 7 N.W. 621, 622 (1880) (reversing trial court for a “clearly erroneous” jury instruction on the statute of limitations). Considering Hassan’s instruction, the district court expressly found as one of the grounds to reject it was the instruction’s failure to “include

the discovery rule.” (App. at 202-203; *see* Tr. 1284:9-1285:10.) The court of appeals agreed finding “reversible error would have existed” had the court given Hassan’s proffered instruction. (Ct. App. Ruling p9.) Despite these well-established principles, the court of appeals reversed holding that the district court erred because Hassan was entitled to some instruction on the time-barred issue. That error was not preserved for appellate review, and the court of appeals erred by reversing on that point. This Court should vacate the court of appeals’ decision and affirm the district court.

2. With no case directly on point, did the court of appeals err in holding that the issue of whether Plaintiff’s claims were time-barred by the statute of limitations was a question of fact for jury rather than a question of law for the court?

There is no Iowa case that definitively states an issue of whether a plaintiff’s claim is time-barred by the statute of limitations is a legal issue to be decided by the jury, not the court. At least one case, *Gabelmann v. NFO, Inc.*, 571 N.W.2d 476, 481 (Iowa 1997), decided the issue as a matter of law. Hassan herself offered no legal authority in the trial court, other than a Connecticut case (which there is no citation in the trial record), that the statute of limitations was a jury question. The court of appeals cited several cases standing for the proposition that because there was a “factual dispute whether the statute of limitations had expired or was tolled, and the jury should have been instructed

on the issues in some manner such as written interrogatories.” (Ct. App. Ruling p10.) Yet, the court also acknowledged “validity of a limitations defense or the application of a statute of limitations is a question of law, and the decision as to whether a particular statute of limitations is applicable to an action is a matter of law.” (*Id.* p9-10 (citing 54 C.J.S. *Limitations of Actions* § 437 (2016).) This Court should establish a clear rule for future cases when an issue of whether a claim is time-barred is one for the jury or the court. Here, the district court correctly refused to submit the question to the jury, and this court should vacate the court of appeals opinion and affirm the district court.

Request for Oral Argument

Counsel for Appellee respectfully requests to be heard in oral argument upon submission of this case.

Respectfully submitted,

/s/ Andrew B. Howie

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Certificate of Service

Pursuant to Iowa Appellate Procedure 6.701 and 6.901, the undersigned hereby certifies that on the 13th day of February 2017, the Application for Further Review was filed with the Supreme Court via EDMS and electronically served on all parties of record.

/s/ Andrew B. Howie

Andrew B. Howie

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 3,692 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Garamond.

/s/ Andrew B. Howie

Signature

February 13, 2017

Date

IN THE COURT OF APPEALS OF IOWA

No. 15-1344
Filed January 25, 2017

SAMIR M. SHAMS,
Plaintiff/Counterclaim Defendant-Appellant,

vs.

SONA HASSAN,
Defendant/Counterclaimant-Appellee.

Appeal from the Iowa District Court for Polk County, Jeanie Kunkle Vaudt,
Judge.

Sona Hassan appeals from judgment entered against her on claims by
Samir Shams of conversion, breach of fiduciary duty, and breach of oral contract.

REVERSED AND REMANDED FOR NEW TRIAL.

Steven C. Reed of the Law Offices of Steven C. Reed, Des Moines, for
appellant.

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West
Des Moines, for appellee.

Considered by Danilson, C.J., and Doyle and McDonald, JJ.

DANILSON, Chief Judge.

Sona Hassan appeals from judgment entered against her on claims by her brother, Samir Shams, for conversion, breach of fiduciary duty, and breach of oral contract. Hassan contends the trial court erred in refusing to submit a proposed jury instruction on the statute-of-limitations affirmative defense. Because we conclude Hassan was entitled to submission of a jury instruction or interrogatory on the statute-of-limitations theory, we reverse.

I. Background Facts & Proceedings.

This matter stems from the breach of one or two oral agreements between siblings Shams and Hassan. Shams was going overseas to work. In 2003, Hassan agreed to manage a checking account for Shams for the sole purpose of providing money for Shams' children and Shams' personal expenses. Shams signed three booklets of checks—left otherwise blank—and gave them to Hassan to use. Shams went abroad sometime in April or May 2003.

In May 2006, Shams returned to the United States and, while visiting Hassan in Maryland, inquired about the statements for his bank account. Hassan did not have the bank statements because they were sent to their brother in Arizona. While subsequently visiting his brother in Arizona, Shams did not receive the bank statements, but was given a record of checks that indicated funds had been withdrawn and paid to bank accounts belonging to Hassan. Shams testified that when he returned to Maryland in June 2006 he asked Hassan about his money. Hassan informed Shams his money was safe, she had used it to purchase a piece of land they would divide and sell for profit, and Shams would receive a return on the investment. Hassan told Shams if he

needed money she would provide it to him, and all of his money would eventually be returned.

Pursuant to this understanding or agreement, in 2009, Shams requested \$50,000 to purchase a house, and Hassan provided the requested amount. However, when Shams requested the return of all of his remaining money in 2010, Hassan denied the request and told Shams his money had been spent.

The evidence in the record reflects that while managing Shams' checking account, Hassan wrote many checks payable to herself, totaling \$269,980.66.

Shams filed the petition in this matter on July 26, 2011, asserting claims for breach of oral agreement, conversion, bad faith, fraud, and breach of fiduciary duty. Jury trial was held March 30 through April 10, 2015. At the close of testimony, the parties made a record on jury instructions. Counsel for Hassan submitted a proposed jury instruction on the statute-of-limitations affirmative defense:

The defendant has raised as a defense to the plaintiff's claims of oral contract, conversion, fraud and breach of fiduciary duty that the plaintiff cannot prevail on that claim because he did not bring suit on that claim with[in] the time allowed by the law. There are state statu[t]es that specify how much time a person has to bring certain kinds of claims. These are called statutes of limitation. A person cannot recover on a claim that is brought after the time period that applies to a particular claim, even if it is only one day late. The statute of limitation that applies [to] each of the above claims provides that the claim must be brought within 5 years of the date the incident occurred. The plaintiff brought his suit against the defendant on July 26, 2011. A claim for oral contract, conversion, fraud, and breach of fiduciary duty, based on acts or occurrence that took place more than 5 years before that date is barred by the statute of limitation[s]. You must decide when each act or occurrence on which the plaintiff bases his claim occurred. If any of these acts or occurrences took place more than 5 years before the plaintiff brought suit, then a claim based on that act or occurrence is barred by the statute of limitation[s].

On the issue of the proffered jury instruction, the trial court stated:

Mr. Shams is contending that there was a breach of agreement, and the other claims that roll along with that that he has pled, as a consequence of conversation that was had allegedly between him and the defendant concerning the return of his money after there had been, again allegedly, some investment in real estate, and that occurred later than a date that would trip the statute of limitations that [counsel for Hassan] is arguing is applicable.

. . . I am going to let the case go to the jury without the instruction that [counsel for Hassan] has proposed for the reasons that, A, it's not a stock; B, I don't think it applies; and C, as it is drafted, I believe the jurisdictions that [counsel for Hassan] found the instruction located in, used it for purposes that were not associated with the kinds of claims we have asserted here.

So for all of those reasons, I am not going to submit that instruction to the jury.

On April 13, 2015, the jury entered its verdict for judgment against Hassan on the conversion, breach of fiduciary duty, and breach of contract claims, and ordered payment of damages to Shams in the amount of \$148,501.60. On April 27, 2015, Hassan filed a motion for judgment notwithstanding the verdict and motion for new trial. The trial court entered judgment on May 13, 2015. Hearing on the posttrial motions was held on May 15, 2015. In its July 14, 2015 order on Hassan's posttrial motions, the court again addressed the statute-of-limitations jury-instruction issue. The court held:

The statute of limitations instruction [Hassan] proposed was properly withheld from the jury as to all of [Shams'] claims she asserts it applied to. This proposed instruction is not the law in Iowa and does not include the discovery rule. Furthermore, the evidence presented was sufficient for the jury to conclude that [Shams] and [Hassan] entered into a new oral agreement in June of 2006, and his claims for breach of contract, conversion, and breach of fiduciary duty occurred in 2010 when [Hassan] declined to return additional money to [Shams].

Hassan now appeals, asserting the trial court erred in refusing to submit the proposed jury instruction on the statute-of-limitations theory.

II. Standard of Review.

“[W]e review refusals to give a requested jury instruction for correction of errors at law.” *Alcala v. Marriot Int’l, Inc.*, 880 N.W.2d 699, 707 (Iowa 2016).

III. Analysis.

The district court must give a requested jury instruction if the instruction (1) correctly states the law, (2) has application to the case, and (3) is not stated elsewhere in the instructions. *Beyer v. Todd*, 601 N.W.2d 35, 38 (Iowa 1999); see *Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 5 (Iowa 2009) (“It is error for a court to refuse to give a requested instruction where it ‘correctly states the law, has application to the case, and is not stated elsewhere in the instructions.’” (citation omitted)). “Parties are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record.” *Beyer*, 601 N.W.2d at 38. “When we weigh the sufficiency of the evidence to support a requested instruction, we review the evidence in the light most favorable to the party seeking the instruction.” *Weyerhaeuser Co. v. Thermogas Co.*, 620 N.W.2d 819, 824 (Iowa 2000). “Error in giving or refusing to give a particular jury instruction does not merit reversal unless it results in prejudice to the party.” *Wells v. Enter. Rent-A-Car Midwest*, 690 N.W.2d 33, 36 (Iowa 2004).

We therefore consider whether there was substantial evidence in the record supporting submission of Hassan’s statute-of-limitations jury instruction.

Under application of the discovery rule, Hassan contends the Iowa Code section 614.1(4) (2011) five-year statute of limitations began to run in June 2006 when Shams was aware of checks indicating Hassan had withdrawn funds from his account paid to Hassan. Shams asserts the parties reached a new agreement in June 2006 by which Shams allowed Hassan to use his money, understood any funds from his account would be paid to him upon request, and believed all of his money would eventually be returned. Shams contends his causes of action did not accrue until he was told his money was all gone.

A cause of action does not begin at the time of contracting but when the cause of action “accrue[s].” Iowa Code § 614.1; see *Bob McKiness Excavating & Grading, Inc., v. Morton Bldgs., Inc.*, 507 N.W.2d 405, 408 (Iowa 1993) (“It is well settled that no cause of action accrues under Iowa law until the wrongful act produces loss or damage to the claimant.”). Accordingly, whether Shams’ claims arise out of the original agreement in 2003—or a subsequent agreement in 2006 as urged by Shams—the statute of limitations begins when the cause of action accrues.

The parties also debate when Shams was aware of the cause of action because, as both parties acknowledge, Iowa follows the discovery rule.

Under the discovery rule, the statute of limitations begins to run when the injured person discovers or in the exercise of reasonable care should have discovered the allegedly wrongful act. . . . The rule is based on the theory that a statute of limitations should not bar the remedy of a person who has been excusably unaware of the existence of the cause of action.

Franzen v. Deere & Co., 377 N.W.2d 660, 662 (Iowa 1985) (citations omitted).

Thus, “[u]nder the discovery rule, ‘the statute of limitations does not begin to run until the injured person has actual or imputed knowledge of all the elements of the cause of action.’” *Hook v. Lippolt*, 755 N.W.2d 514, 521 (Iowa 2008) (quoting *Franzen*, 377 N.W.2d at 662). “[L]imitations begin to run when a claimant gains knowledge sufficient to put [the claimant] on inquiry.” *Franzen*, 377 N.W.2d at 662 (citation omitted). Moreover, a cause of action for fraud, one of Shams’ claims, is not “deemed to have accrued until the fraud . . . complained of shall have been discovered by the party aggrieved.” Iowa Code § 614.4.

Here, neither party disputes Shams became aware his money was missing from his bank account when he visited the United States in 2006. Although Shams knew at that point his money had not been expended solely for his children or his own needs, he asserts this was not the injury upon which he bases his claims. Sham contends that after June 2006 he believed his money would be returned to him upon request because it simply existed in another form, namely, a real-estate investment. Shams testified as to his understanding in June 2006:

Q. Did you discuss with her what happened to your money?

A. Yes.

Q. Okay. What did you ask her? A. Said, what happened to my money?

Q. Okay. And what did she say? A. She said, your money’s safe. Your money is safe. And I—we both—we went to buy a piece of land connected to the house we bought in Rose Lane.

... ..

Q. Okay. What did—during this conversation did she tell you anything about how your money was going to be kept safe? A. By using my money for to buy the land.

Q. Okay. Did she tell you anything about how you could get your money back? A. Said after we divide the land to six pieces, you’re going to have a piece, which you are going to sell it for

\$300,000, each one. That means you're going to double your money.

Q. Okay. Did she say anything about what you could do in the meantime since you didn't have access to your money? A. She said in the meantime, I'm going to open checking account. She put me in an account with Chevy Chase Bank, and she's going to deposit \$1000 a month for my own use when I go overseas.

.....

Q. Did she ever indicate to you that if you needed money, you just had to ask her? A. Yes.

Consequently, after Shams became aware of the money missing from his account, he questioned Hassan and she assured Shams the money was invested in real estate to his benefit and would ultimately be returned to him. Whether Shams was diligent and used reasonable care to investigate when he first discovered checks had been written on his account contrary to his instructions was an issue not addressed by the jury. If presented with the issue, the jury could have determined that Shams did not need to investigate further due to Hassan's additional misrepresentations, his familial relationship with Hassan, and Hassan's perpetuation of Shams' belief that his money was available to him by providing the requested \$50,000 to Shams in 2009. The jury could have concluded Shams only became aware of his injury in 2010 when he requested the return of all of his money and was told there was nothing left. Notwithstanding, considering the evidence in a light most favorable to Hassan, the jury may have concluded that a reasonable person would not rely upon further representations by Hassan after discovering what appeared to be embezzlement of Shams' monies in bank account. Viewing the evidence in the light most favorable to Hassan, we conclude Hassan's assertion that the statute

of limitations began to run in June 2006 was supported by substantial evidence, entitling Hassan to a jury instruction on the statute-of-limitations theory.

We acknowledge, however, Hassan's proposed jury instruction did not fully state Iowa law. Significantly, the proffered jury instruction did not accurately define the discovery rule and, upon these facts, reversible error would have existed if the jury had been instructed as proposed by Hassan without also correctly instructing on the discovery rule. But our concern is with Hassan's legal theory—that the claims were barred by the statute of limitations—not the sufficiency of the evidence to support the instruction itself. "The court is required to instruct the jury as to the law applicable to all material issues in the case." Iowa R. Civ. P. 1.924. The applicability of the statute of limitations and the question whether the limitation period was tolled, were material issues supported by the pleadings and substantial evidence in the record. *Beyer*, 601 N.W.2d at 38. Without an instruction or interrogatory related to the statute of limitations, Hassan was unable to defend against the claims on this theory.

One authority has aptly summarized when a statute-of-limitations issue may be a question for the court or a question for the jury:

Ordinarily, whether or not a cause of action is barred by the statute of limitations is a mixed question of law and fact and may be either, according to the manner in which it is presented. Where the facts are not disputed, the question of whether the case is within the bar of the statute of [limitations] is one of law for the court, provided that the question is properly presented by the pleadings. Where, however, the facts are in doubt or in dispute, the question is not one of law but is one of fact to be determined by the jury or by the court where the trial is before the court alone.

The validity of a limitations defense or the application of a statute of limitations is a question of law, and the decision as to whether a particular statute of limitations is applicable to an action is a matter of law. If, however, the application of a statute of

limitations rests on questions of fact, it is generally an issue for a jury to decide. Particular matters have been found to be questions of fact for the trier of fact, such as whether the plaintiff did not know or should not have reasonably known the facts underlying the cause of action in time to reasonably comply with the limitations period; whether or not the plaintiff prosecuted the suit diligently after it was filed; whether the statute of limitations was tolled by the conduct of the defendant; whether an estoppel exists, preventing application of the statute of limitations to bar the plaintiff's claim, if more than one reasonable inference can be drawn from the evidence offered on such issue; and whether or not the plaintiff was under a personal disability at the time the cause of action accrued so as to suspend the running of the statute of limitations.

54 C.J.S. *Limitations of Actions* § 437 (2016) (footnotes omitted).

Here, we have a factual dispute whether the statute of limitations had expired or was tolled, and the jury should have been instructed on the issues in some manner such as written interrogatories. See *Vertman v. Drayton*, 272 N.W. 438, 440 (Iowa 1937) (“Before it could be determined whether the plaintiff's action was barred by the statute of limitations, it was necessary that several fact questions be determined, among which are concealment by the defendant of a cause of action against him in favor of the appellant, and of facts he was bound to disclose; when plaintiff discovered the fraud, and whether there was failure on her part to use due diligence in discovering the wrong. The determination of the facts was for the jury.”); see also *Dillon Cty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 332 S.E.2d 555, 561 (S.C. Ct. App. 1985) (“The question of whether a defendant's conduct lulled a plaintiff into a false sense of security and thereby prevented the plaintiff from filing suit within the statutory period is ordinarily one of fact for a jury to determine.”), *overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 462 S.E.2d 858 (S.C. 1995); see also *Pavone v. Kirke*, 801 N.W.2d 477, 496-497

(Iowa 2011) (explaining the use of general verdicts, special verdicts, and general verdicts with interrogatories).

IV. Conclusion.

We conclude the district court erred in refusing to submit the statute-of-limitations legal defense as raised by Hassan, and we reverse for a new trial.

REVERSED AND REMANDED FOR NEW TRIAL.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	Case Title
15-1344	Shams v. Hassan

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