

IN THE SUPREME COURT OF IOWA

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NO. 17-1964

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VINCENT ANGERER TRUST and  
DEWITT BANK & TRUST COMPANY,  
as Trustee of the Vincent Angerer Trust

Appellants,

vs.

SERENA KONRARDY and CARRIE RIGDON,

Appellees.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR CLINTON COUNTY,  
THE HONORABLE MARK R. LAWSON PRESIDING

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**APPELLANTS' APPLICATION FOR FURTHER REVIEW**

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**QUESTION PRESENTED FOR REVIEW**

- (1) Whether the one-year statute of limitations under Iowa Code section 633A.4503 begins to run when a beneficiary receives a letter from the Trustee describing the basis for the beneficiary's breach of trust claim

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## **STATEMENT SUPPORTING FURTHER REVIEW**

It is respectfully submitted that this Court should exercise its discretion under Iowa Rule of Appellate Procedure 6.1103(1)(b) and grant this Application for Further Review. The Court of Appeals affirmed the District Court's denial of Appellants' Motion for Summary Judgment, in which Appellants argued that the Appellees' breach of trust claims were barred by the one-year statute of limitations under Iowa Code section 633A.4503. (Iowa Court of Appeals Decision, October 10, 2018 (hereinafter "Decision") p. 7). The District Court's ruling was upheld despite there being a letter from the Trustee and multiple letters from Appellees' attorneys showing they had full knowledge of their claims more than one year prior to initiating the instant action. The Decision seems to be in conflict with section 633A.4503, which provides that the limitations period begins to run when the plaintiff receives a report—with "report" defined to include a letter from the Trustee—which provides sufficient information so she knows of or should inquire into the existence of her claim. Iowa Code § 633A.4504(1)–(4).

## **PROCEDURAL BACKGROUND**

This matter arises from a Petition in Equity filed by the Plaintiffs on or about March 15, 2017, alleging claims of breach of trust against the Trust

and the Bank. (App. 8). Plaintiffs claimed that the distributions they received from the Trust should have been valued as of the date of the distribution, rather than as of the date of Vincent Angerer's death. (App. 8–9). On September 1, 2017, Defendants filed their Motion for Summary Judgment, asserting that the Plaintiffs' claims should be dismissed because they were time-barred by the one-year statute of limitations under Iowa Code section 633A.4503. (App. 15).

On October 6, 2017, Judge Lawson entered an Order denying Defendants' Motion for Summary Judgment, despite the undisputed evidence that the Plaintiffs not only received accountings but a letter from the Trustee explaining how the Trust distributions were calculated; the Plaintiffs even sent a demand letter to the Trustee setting forth the very claims they are making in the present action, all of which took place more than one year prior to initiating this action. (App. 132). Defendants asked the District Court to reconsider its ruling and, in an Order filed on November 13, 2017, Judge Lawson denied Defendants' Motion to Amend or Enlarge on the same grounds. (App. 145). In its decision, dated October 10, 2018, the Iowa Court of Appeals affirmed the District Court's decision, finding there was a fact issue as to whether the Plaintiffs had sufficient knowledge of the existence of their claim. (Decision, p. 7).

## STATEMENT OF FACTS

Plaintiffs are beneficiaries of the Vincent Angerer Trust which was created on or about March 27, 1998. (App. 8; App. 29). Vincent Angerer died on May 30, 2010. (App. 8). The net value of the Trust Estate at the time of Vincent Angerer's death was \$1,751,260.98. (App. 49). Section 4(b)(i) of the Trust states in pertinent part the following:

**4. INCOME AND PRINCIPAL UPON GRANTOR'S DEATH.** *Upon the Grantor's death*, the Trustee shall hold, manage, invest and reinvest the Trust Estate, including any property added thereto by the Grantor's Last Will and Testament, and shall distribute the net income and principal, as follows:

...

(b) The Trustee shall divide the remainder of the Trust Estate, *as then constituted*, including any property added thereto by the Grantor's Last Will and Testament, and any additions thereto and accumulated or undistributed income thereon, as follows:

(i) The Trustee shall divide the Trust Estate into separate shares, equal in value, one (1) such share for the benefit of each of the Grantor's then surviving siblings, and if a sibling has predeceased with a spouse surviving, then one (1) such share for the deceased sibling's spouse, and one (1) such share for the descendants, collectively, of any deceased sibling of the Grantor who has no spouse surviving. *The Trustee shall distribute [subject to the provisions of subparagraph 4(d) hereof] each share set aside for the descendants of a deceased sibling of the Grantor who has no spouse surviving, to such descendants, per stirpes.*

(App. 32–33).

At the time of his death Vincent Angerer had three (3) surviving siblings, each entitled to one (1) share of the remainder of the Trust Estate under Section 4(b)(i). (App. 49). Vincent Angerer also had one surviving spouse of a deceased sibling, who was entitled to one (1) share of the remainder of the Trust Estate under Section 4(b)(i), and three descendants of a deceased sibling with no surviving spouse: (1) Rita Goedken, daughter of deceased sibling, Cecilia Howard; and (2) Plaintiffs, Serena Konrardy and Carrie Rigdon, daughters of Cecilia’s pre-deceased son, John Howard. (App. 50). Thus, under Section 4(b)(i) of the Trust, the remainder of the Trust Estate was divided into five (5) shares, as set forth above. (App. 50).

As descendants of a deceased sibling of Vincent Angerer, with no surviving spouses, Plaintiffs were each entitled to a one-fourth interest in one of the five (5) shares. (App. 50). The language of Section 4(b)(i) of the Trust—i.e. “Upon the death of the Grantor,” and “as then constituted”—unambiguously provides that the Plaintiffs’ interest in their share of the Trust Estate is vested and valued at the time of Vincent Angerer’s death.

Each of the Plaintiffs was paid income from the Trust in the amount of \$1,250.00 and \$85,089.74 for their share of the Trust Estate. (App. 50). The 2010 and 2011 Annual Reports of the Leonard Vincent Angerer Trust

show the income and distributions paid to Plaintiffs. (App. 54; App. 57; App. 50). On October 19, 2011, Plaintiffs each signed a Waiver, Receipt and Release as to Final Distribution of Assets for a Beneficiary of the Vincent Angerer Trust. (App. 60–61). On or around the date on which the Plaintiffs signed their respective Waivers, they were provided a Trust accounting showing the distributions and income paid by the Trustee during the year 2011. (App. 51).

On or about August 11, 2015, Plaintiffs’ then-attorney, Michael E. Rock, sent a letter to Roger Hill, DeWitt Bank & Trust Company, claiming the trustee did not properly distribute the Trust’s assets to the Plaintiffs. (App. 66). The August 11, 2015 letter states, “In talking with Serena Konrardy and Carrie Rigdon, as children of John Edward Howard, Jr., they were seemingly treated differently than the remaining trust beneficiaries.” (App. 66). In response to the August 11, 2015 letter from attorney Michael E. Rock, Roger Hill sent a letter dated August 19, 2015, setting forth the trustee’s reasoning for the distributions to the Plaintiff-beneficiaries. (App. 67). Enclosed with the August 19, 2015 letter was a copy of the Trust accountings for the years 2010, 2011, and 2012. (App. 67). Via letter dated September 9, 2015, Attorney Michael E. Rock acknowledged receipt of the August 19, 2015 letter and enclosures. (App. 72).



## ARGUMENT

### **I. THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S RULING**

In its decision dated October 10, 2018, the Court of Appeals affirmed the District Court's ruling that there was a genuine issue of material fact as to whether the Plaintiffs initiated the present action within the one-year statute of limitations period under Iowa Code section 633A.4503.

Specifically, the Court of Appeals found the Defendants failed to make "a sufficient showing that the plaintiffs reasonably should have known of the existence of the claim based on an accounting or report they provided to the plaintiffs." (Decision, p. 7). For the reasons set forth more fully below, this matter should be accepted on further review.

Iowa Code section 633A.4504 provides the following, in pertinent part, with regard to the time limitations for bringing a claim for breach of trust:

Unless previously barred by adjudication, consent, or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received an accounting pursuant to section 633A.4213 or other report that adequately discloses the existence of the claim, unless a proceeding to assert the claim is commenced within one year after the receipt of the accounting or report. *An accounting or report adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.*

Iowa Code § 633A.4504(1) (emphasis added). The undisputed evidence on the summary judgment record showed that the Plaintiffs received an accounting of the Trust on or around the date they signed their respective waivers in October 2011. (App. 51). There was no evidence presented by the Plaintiffs denying that they received the accounting. (*See App.* 105). This accounting showed the income and distributions paid to each of them during that calendar year. Under the plain language of section 633A.4504, the statute of limitations began to run when the Plaintiffs received the accountings in October 2011 and expired sometime in October 2012, over four years prior to the Plaintiffs initiating the present action. Because they failed to commence this action within one year of receiving the Trust accounting, the Plaintiffs' claims are barred under Iowa Code section 633A.4504.

Even if the statute of limitations under section 633A.4504 did not begin to run in October 2011 when the Plaintiffs initially received the Trust accounting, the limitations period undoubtedly began to run in August or September 2015 when they received a report that fully disclosed the claims they are asserting in the present case. Pursuant to the plain terms of section 633A.4504, the one-year statute of limitations can also begin to run when the beneficiary receives an "other report that adequately discloses the

existence of the claim . . . .” Iowa Code § 633A.4504. Iowa Code section 633A.4504(4) broadly defines the term “report” as follows: “For the purposes of this section ‘report’ means a document *including but not limited to a letter* delivered by or on behalf of the Trustee to a beneficiary of the Trust.” Iowa Code § 633A.4504(4).

The summary judgment record clearly established that the Plaintiffs received a “report” that adequately disclosed the existence of their claims. In fact, the *only* evidence of whether Plaintiffs’ claims had been adequately disclosed was undisputed. Several letters exchanged between the Trustee and Plaintiffs’ then-counsel were presented to the District Court. As stated above, the definition of “report” under section 633A.4504 explicitly includes letters from the Trustee. The substance of those letters clearly and undeniably demonstrated that the Plaintiffs knew of their present claims between August 11, 2015 and September 9, 2015, at the latest.

Again, the crux of Plaintiffs’ claim is that the Trustee valued their shares as of the date of death of Vincent Angerer, not as of the date of distribution. In the letter dated August 19, 2015, sent from the Trustee to Plaintiffs’ then-counsel, it is stated: *“I call your attention to the schedule of assets as of date of death of Vincent Angerer.”* (App. 67) (emphasis added). That letter clearly and unambiguously informed the Plaintiffs that

their shares were valued as of date of death, the very substance of their breach of trust claims. The following are additional excerpts from those letters, making it clear the Plaintiffs had knowledge of their claims when those letters were sent:

**08/11/2015 Letter from Plaintiffs' Counsel to Trustee:** In talking with Serena Konrardy and Carrie Rigdon . . . they were seemingly treated differently than the remaining trust beneficiaries. (App. 66).

**08/11/2015 Letter from Plaintiffs' Counsel to Trustee:** It would appear that their proportionate and share of the trust paid out on a significantly reduced basis and that *they were not fully advised of the potential value of the real estate involved.* (App. 66) (emphasis added).

**08/11/2015 Letter from Plaintiffs' Counsel to Trustee:** *Why were they not fully and completely informed as to the potential value of the real estate in question* and why did they not ultimately share in the sale on a far more significant basis? (App. 66) (emphasis added).

**08/19/2015 Letter from Trustee to Plaintiffs' Counsel:** I call your attention to the schedule of assets as of date of death of Vincent Angerer. All assets were professionally valued according market value or appraisal. I also call your attention the attached accountings for calendar years 2010, 2011 and 2012. (App. 67).

**09/09/2015 Letter from Plaintiffs' Counsel to Trustee:** Given the early payment date for Serena Konrardy and Carrie Rigdon and *the ultimate shares at the time of sale of real estate*, it would appear that my clients are significantly prejudiced. (App. 72) (emphasis added).

**09/09/2015 Letter from Plaintiffs' Counsel to Trustee:** In the absence of a clear basis upon which the heirs and my clients

were treated differently; *we are hereby make [sic] formal demand for equal treatment under the actual sale price of the real estate in question.* (App. 72) (emphasis added).

The initial letter from Plaintiffs' then-counsel makes it clear that by August 11, 2015, the Plaintiffs had not only retained counsel but were clearly aware that the Trust's real estate had increased in value and that they believed they were entitled to a greater distribution from the Trust. That letter expressly states, "In talking with Serena Konrardy and Carrie Rogdon, as children of John Edward Howard, Jr., they were seemingly treated differently than the remaining trust beneficiaries." (App. 66). The letter from Roger Hill to Michael Rock, dated August 19, 2015, then confirms and explicitly informs the Plaintiffs' former counsel that the subject real estate was valued as of the death of Vincent Angerer. With that letter the Plaintiffs were again provided a copy of the Trust accounting for the years 2010, 2011, and 2012. That letter also enclosed a valuation of the Trust assets as of the date of Vincent Angerer's death. Receipt of this letter and the enclosures was confirmed by counsel for the Plaintiffs via letter dated September 9, 2015. Finally, in a letter dated September 9, 2015, leaving no doubt they were aware of the existence of their claims, the Plaintiffs, through their former attorney, make a formal demand that the Defendant revalue the real estate, the same remedy sought in the present lawsuit.

In sum, the letters explicitly demonstrate that the Plaintiffs had full knowledge of the existence of their claims back in August or September 2015. The letters specifically address the real estate values in the Trust and the Plaintiffs' claim that they received an improper distribution; then, in September 2015, the Plaintiffs actually made a formal demand for the very remedy they seek in the present action. The undisputed evidence clearly demonstrated that the Plaintiffs were not only aware of their claims in August or September 2015, they had, in fact, already asserted those claims by way of formal demand to the Trustee. They had certainly received a "report," via letter from the Trustee, under section 633A.4504 that adequately disclosed the existence of their claims. Thus, the latest date on which the one-year statute of limitations could have commenced running was in August or September 2015. The Plaintiffs did not initiate this action until March 2017, well beyond the expiration of the one-year statute of limitations under Iowa Code section 633A.4504. For this reason, the Plaintiffs' claims are barred, and the Court of Appeals erred in affirming the District Court's denial of Defendants' Motion for Summary Judgment .

### **CONCLUSION**

The Iowa Court of Appeals erred in affirming the District Court's denial of the Defendants' Motion for Summary Judgment on the statute of

limitations issue. The undisputed record demonstrated that the Plaintiffs had received an accounting or “other report” that disclosed the existence of their claims more than one year prior to initiating their breach of trust action. This included a letter from the Trustee to the Plaintiffs’ attorney; letters from the Trustee are expressly included in the definition of “report” under the statute. In fact, more than one year prior to filing the lawsuit, they made a formal demand setting forth the very claims they assert in this action. Thus, the Plaintiffs’ claims of breach of trust are barred by the one-year statute of limitations under Iowa Code Section 633A.4503.

It is respectfully submitted that the Iowa Supreme Court should grant further review in this matter, and, upon such review, reverse the decision of the Iowa Court of Appeals and overturn the District Court’s ruling on Defendants’ Motion for Summary Judgment, remanding the case to the District Court for entry of judgment and determination of attorneys’ fees.

VINCENT ANGERER TRUST AND  
DEWITT BANK & TRUST COMPANY,  
Appellants

By: /s/ Elliott R. McDonald III  
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ATTORNEYS FOR APPELLANTS



**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION TYPEFACE REQUIREMENTS AND TYPE STYLE  
REQUIREMENT**

1. This Appellants' Application for Further Review complies the type-volume limitation of Iowa R. App. P. 6.1103(4) because:

This brief contains 2,745 words, excluding the parts of the application exempted by Iowa. R. App. P. 6.1103(4).

2. This Appellants' Application for Further Review complies with the typeface and type-style requirements of Iowa R. App. P. 6.1103(1)(c) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point Times New Roman font.

/s/ Ryan F. Gerdes  
Ryan F .Gerdes

October 29, 2018  
Date

**CERTIFICATE OF SERVICE AND FILING**

I certify that on the 29th day of October, 2018, I, the undersigned, did file electronically this Appellants' Application for Further Review with the Clerk of the Iowa Supreme Court using the Electronic Document Management System.

I certify that on the 29th day of October, 2018, I, the undersigned, did serve this Appellants' Application for Further Review on the attorney for the Appellees listed below via electronic service of the Electronic Document Management System. Upon information and belief, the attorney for the Appellees is a registered filer pursuant to Iowa R. Civ. P. 16.201.

*/s/ Ryan F. Gerdes*\_\_\_\_\_

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IN THE COURT OF APPEALS OF IOWA

No. 17-1964  
Filed October 10, 2018

**SERENA KONRARDY and CARRIE RIGDON, n/k/a CARRIE BURMEISTER,**  
Plaintiffs-Appellees,

**vs.**

**VINCENT ANGERER TRUST and DEWITT BANK & TRUST COMPANY, as  
Trustee of the Vincent Angerer Trust,**  
Defendants-Appellants.

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Appeal from the Iowa District Court for Clinton County, Mark R. Lawson,  
Judge.

The defendants appeal the order denying their motion for summary  
judgment. **AFFIRMED.**

Elliott R. McDonald III and Ryan F. Gerdes of McDonald, Woodward &  
Carlson, P.C., Davenport, for appellants.

Harold J. DeLange II, Davenport, for appellees.

Considered by Vaitheswaran, P.J., and Doyle and Mullins, JJ.

**DOYLE, Judge.**

The defendants, the Vincent Angerer Trust and DeWitt Bank & Trust Company, applied for interlocutory appeal of the order denying their motion for summary judgment.<sup>1</sup> The Iowa Supreme Court granted their application and transferred the case to this court. Having considered the claims before us, we affirm.

**I. Background Facts and Proceedings.**

Vincent Angerer established the Vincent Angerer Trust in 1998. The trust document provides that upon Angerer's death, the trustee divide the estate into equal shares for each of Angerer's five siblings. Each share would constitute a separate trust to provide for the siblings and their surviving spouses during their lifetime. When both a sibling and the sibling's spouse died, the trust document provides that the trustee distribute that trust share to the living descendants of that sibling.

Angerer died in May 2010. Because one of Angerer's siblings and her spouse had predeceased Angerer, their shares of the trust were immediately distributable to their descendants—Serena Konrardy and Carrie Burmeister. Although the trustee did not pay their distribution until October 2011, it determined their shares based on the net value of the trust assets at the time of Angerer's death, which was \$1,751,260.98.

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<sup>1</sup> The parties captioned their appellate filings: Vincent Angerer Trust and Dewitt Bank & Trust Company, as trustee, Appellants vs. Serena Konrardy and Carrie Rigdon, Appellees. "The appeal shall be captioned under the title given to the action in the district court, with the parties identified as appellant and appellee." Iowa R. App. P. 6.109(2) (2017). The caption of this opinion follows the district court caption.

The trust assets increased in value after Angerer's death. Because the trustee re-valued the trust assets when another of Angerer's siblings died in 2013, the descendants of that sibling received a greater distribution than that received by Konrardy and Burmeister.

In March 2017, Konrardy and Burmeister filed this action against the Vincent Angerer Trust and DeWitt Bank & Trust Company as its trustee. They asked the court to order the trustee to determine their shares based on the trust's value at the date of distribution rather than at the date of Angerer's death.

The defendants moved for summary judgment, arguing in part the action was untimely and the language of the trust requires the distribution to Konrardy and Burmeister be based on the value of the assets at the date of Angerer's death. The district court denied defendants' motion, finding a genuine issue of material fact existed concerning whether the action is time barred. It also determined the trust's language does not, as a matter of law, require distributions to Konrardy and Burmeister be made based on the date of Angerer's death values.

## **II. Scope and Standard of Review.**

Summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). To prevail on a motion for summary judgment, the moving party must show the material facts are undisputed and, applying the law to those facts, the moving party is entitled to judgment as a matter of law. *See id.*; *Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015).

We review an order granting summary judgment for correction of errors at law. See *Barker v. Capotosto*, 875 N.W.2d 157, 161 (Iowa 2016). Our review is limited to two questions: (1) whether there is a genuine dispute regarding the existence of a material fact and (2) whether the district court correctly applied the law to the undisputed facts. See *Homan v. Branstad*, 887 N.W.2d 153, 164 (Iowa 2016). A material fact is one that may affect the outcome of the action, and a dispute over the existence of a fact is genuine if reasonable minds can differ as to how the factual question should be resolved. See *id.* “Even if facts are undisputed, summary judgment is not proper if reasonable minds could draw from them different inferences and reach different conclusions.” *Walker Shoe Store v. Howard’s Hobby Shop*, 327 N.W.2d 725, 728 (Iowa 1982).

In determining whether summary judgment should have been granted, we view the facts in the light most favorable to the nonmoving party. See *Nelson*, 867 N.W.2d at 6. We likewise draw all legitimate inferences supported by the record in favor of the nonmoving party. See *id.*

### **III. Discussion.**

The defendants contend the trial court erred in denying their motion for summary judgment. They advance two arguments on appeal. First, they argue the action is untimely. Second, they argue the plaintiffs’ claim fails on the merits because the language of the trust “clearly and unambiguously” requires distribution of the assets to Konrardy and Burmeister be based on the date of Angerer’s death rather than at the time of distribution.

### A. Statute of Limitations.

The defendants argue the plaintiffs' action is untimely under Iowa Code section 633A.4504 (2017), which applies only to breach-of-trust claims.<sup>2</sup> It requires "a beneficiary who has received an accounting . . . or other report that adequately discloses the existence of the claim" to file the claim within one year after receipt of the accounting or report. Iowa Code § 633A.4504(1). A claim is adequately disclosed under this section if the accounting or report provides "sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence." *Id.* For a beneficiary who is an adult and reasonably capable of understanding the accounting or report, the accounting or report is deemed to have been received when "it is received by the adult personally." *Id.* § 633A.4504(2)(a). Therefore, if the trust provided Konrardy and Burmeister an accounting or report that disclosed or would have led to the

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<sup>2</sup> The plaintiffs dispute that they raised a breach-of-trust claim and, therefore, section 633A.4504 is inapplicable. Instead, the plaintiffs argue their action seeks judicial intervention in the trust's administration. See *id.* § 633A.6202(1) (stating a trust beneficiary may petition the court concerning the internal affairs of the trust). Although the administration of a trust generally proceeds free of judicial intervention, see *id.* § 633A.6201, interested parties may invoke the court's jurisdiction to intervene in the trust's administration in order to construe the terms of a trust and to instruct the trustee, see *id.* § 633A.6202(2)(a), (f). Here, the plaintiffs asked the court to construe the trust provisions to value the trust assets at the time of distribution rather than the time of Angerer's death and to instruct the trustee to distribute their share accordingly.

A breach of trust occurs when a trustee violates a duty owed to a beneficiary. See *id.* § 633A.4501(1). One of these duties is to administer the trust according to its terms. See *id.* § 633A.4201(1); *Turner v. Iowa State Bank & Tr. Co.*, 743 N.W.2d 1, 5 (Iowa 2007); see also Iowa Code § 633A.6301(1) (defining a fiduciary matter for sections 633A.6301-.6307 to include the internal matters of a trust as defined in section 633A.6202(2)). Among the remedies a beneficiary may request of a court in a breach of trust is to compel the trustee to perform duties and redress the breach by payment. See Iowa Code § 633A.4502.(1)(a), (c).

The district court found section 633A.4504 applies to the action because "[b]y arguing the trustee favored one class of beneficiaries over another by its determination of a valuation date, the beneficiaries are necessarily arguing the trustee breached a duty." We find no error.

discovery of a breach-of-trust claim more than a year before they filed their petition in March 2017, any breach-of-trust claim is barred.

The district court found there was a factual dispute as to whether the trust provided Konrardy and Burmeister with an accounting or report that adequately disclosed the existence of the claim. Specifically, the court questioned whether the plaintiffs knew or reasonably should have inquired into the existence of a breach-of-trust claim based on the reports they received from the trust:

The 2010 and 2011 reports did not inform the plaintiffs that the value of the farmland in the Angerer trust was appreciating in value, or how that appreciation would be allocated *vis-à-vis* the beneficiaries. While annual reports were filed showing the *income* paid to the various beneficiaries, the reports do not reflect that the farmland was appreciating in value. The 2010 annual report indicates the real estate values are date-of-death values. The 2011 report does not even report the value of the substantial land holdings. There is no notation the farmland has increased in value.

The court also found the trust accounting provided to the plaintiffs at the time of distribution did not show the appreciation in the farmland's value.

The defendants counter that the plaintiffs knew of the existence of a claim no later than September 2015 based on correspondence sent by their attorney in August and September 2015, alleging the trustee treated Konrardy and Burmeister differently than other beneficiaries and failed to advise them of the potential value of the real estate involved. Because the plaintiffs initiated this action in March 2017, over one year later, the defendants claim it is untimely.

In rejecting the defendants' argument, the district court found the defendants never provided the plaintiffs with an accounting or report that adequately informed them of the existence of a breach-of-contract claim. In other words, even assuming the plaintiffs reasonably knew of the existence of a claim in



September 2015, this knowledge was not the result of an accounting or qualifying report they received from the defendants. Because the defendants have not made a sufficient showing that the plaintiffs reasonably should have known of the existence of the claim based on an accounting or report they provided to the plaintiffs, we affirm the order denying summary judgment on statute-of-limitation grounds.

### **B. Merits.**

In the alternative, the defendants contend they are entitled to summary judgment on the merits. They argue the trust language “clearly and unambiguously” requires distribution of the assets based on the date of Angerer’s death rather than at the time of distribution. In support of their argument, the defendants cite the following provision of the trust:

4. INCOME AND PRINCIPAL UPON GRANTOR’S DEATH. *Upon the Grantor’s death*, the Trustee shall hold, manage, invest and reinvest the Trust Estate, including any property added thereto by the Grantor’s Last Will and Testament, and shall distribute the net income and principal, as follows:

. . . .  
 (b) The Trustee shall divide the remainder of the Trust Estate, *as then constituted*, including any property added thereto by the Grantor’s Last Will and Testament, and any additions thereto and accumulated or undistributed income thereon, as follows:

(i) The Trustee shall divide the Trust Estate into separate shares, equal in value, one (1) such share for the benefit of each of the Grantor’s then surviving siblings, and if a sibling has predeceased with a spouse surviving, then one (1) such share for the deceased sibling’s spouse, and one (1) such share for the descendants, collectively, or any deceased sibling of the Grantor who has no spouse surviving. The Trustee shall distribute . . . each share set aside for the descendants of a deceased sibling of the Grantor who has no spouse surviving, to such descendants, per stirpes.

(Emphasis added.) The defendants read the requirement that the trustee divide the remainder of the estate “as then constituted” to relate back to the phrase “upon the Grantor’s death” in the first sentence of paragraph 4. In other words, they read the trust to require the trustee to divide the estate as it was comprised at the time of the grantor’s death.

The district court rejected the defendants’ interpretation as the only possible interpretation of the trust. It noted that the trust also requires the trustee to “hold, manage, invest and reinvest” the trust estate. The trust then requires the trustee to divide the remainder as then constituted, including any property added by the grantor’s will “and any additions thereto accumulated or undistributed income thereon.” The court interpreted the reference to “any additions thereto” as coming from holding, managing, and investing the property, and it determined the phrase “would arguably include an increase in the value of the property between death and distribution.” It determined:

A reasonable reading of the phrase “upon the Grantor’s death” would be that it merely defines when the trustee’s duties begin. The trust document is silent as to the date on which assets are to valued. The trust does not state that assets shall be distributed at date-of-death values, nor does it state that they should be distributed at date-of-distribution values. At best, the trust is ambiguous on this point although, as noted above, the trust settlor appears to have contemplated “additions” by “holding, managing, investing and reinvesting.”

We agree that the defendants failed to show that their interpretation of the trust document is correct as a matter of law. Accordingly, we affirm the order denying summary judgment in favor of the defendants.

**AFFIRMED.**



IOWA APPELLATE COURTS

State of Iowa Courts

**Case Number**  
17-1964

**Case Title**  
Konrardy v. Vincent Angerer Trust

Electronically signed on 2018-10-10 08:56:00