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# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* GUSTAFSON IRREVOCABLE ELDER TRUST.

RICHARD H. GUSTAFSON,

Appellant,

v

HUNTINGTON NATIONAL BANK, Trustee of the GUSTAFSON IRREVOCABLE ELDER TRUST,

Appellee.

UNPUBLISHED
October 12, 2026
1:15 PM

No. 371533
Midland Probate Court
LC No. 24-003420-TV

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

In this civil trust action, appellant, Richard H. Gustafson, appeals as of right the probate court's opinion and order granting summary disposition to appellee, Huntington National Bank, trustee for the Gustafson Irrevocable Elder Trust (the Trust), under MCR 2.116(C)(7) (statute of limitations). The probate court held that, at the time of a November 2022 report informing appellant of the one-year limitations period for breach-of-trust claims, appellant's potential claims had been adequately disclosed, triggering the one-year limitations period in MCL 700.7905(1)(a) and precluding appellant's claims related to the purchase of a condominium. We affirm.

## I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from a family dispute concerning the administration of the Trust, which was created by appellant's father, Richard B. Gustafson.[1] In 2002, Richard established the Trust,

[1] Because many of the family members involved in this matter share the same surname, we will refer to them by their given names. However, because appellant and his father share the same first

wherein he named his wife and appellant's mother, Betty Lou Gustafson, as the income beneficiary; and his two sons, appellant and Christopher L. Gustafson, as the remainder beneficiaries. Article V of the Trust, which governs the "Distribution of Income and Principal to the Grantor's Spouse," provides, in pertinent part:

> Commencing with the date of death of the Grantor, the Trustee shall, after paying the necessary expenses of the management and presentation of the Trust property, pay over to or for the benefit of Grantor's spouse (herein "Betty Lou Gustafson"), in convenient installments, during her lifetime so much of the annual net income and such amount or amounts of principal as the Grantor's spouse may, from time to time, require, in the sole discretion of the Trustee and consistent with the value of the Trust, which, together with any funds available from other sources known to the Trustee, maintain Grantor's spouse as nearly as possible in the mode of living to which she was accustomed prior to Grantor's death.

Article XI of the Trust, which pertains to "Records and Accountings," states, in relevant part:

> The Trustee shall maintain full and accurate books of account and records of receipts and disbursements and other financial transactions relative to the Trust estate, all of which shall be available for inspection at any reasonable time by any beneficiary of this Trust.

Following the execution of the Trust, appellant became estranged from his parents, with Richard notifying the trustee at that time of the breakdown of familial relationship via letter, stating:

> I write this letter with a heavy heart; however, after many years of disheartening occurrences we have become seriously estranged from our oldest son, [appellant]. As a result, certain items require your assistance. We make these changes after much thought, soul searching[,] and time. I do this of my own free will without any coercion whatsoever and my wife's knowledge and consent.
>
> Enclosed you will find an updated "Instructions for and by RBG" which are applicable upon my death. As you will note, they are signed and witnessed. They intentionally make no provisions for my son, [appellant]. Unfortunately, inasmuch as my Trust is irrevocable[,] I am unable to remove him as a beneficiary. Upon my death, I request that no one advise [appellant]. A word of caution, upon my death, [appellant] will possibly attempt to interfere in some form or fashion, beware!

Richard passed away on November 6, 2018. Huntington is the present trustee of the Trust.

For several years, Richard and Betty Lou lived in a condominium located in Saginaw, Michigan. Appellant purchased the condominium in 2003 as a residence for his parents and

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name and surname, we will refer to appellant by his party designation, and all references to "Richard" solely pertain to appellant's father.

entered into a 30-year lease agreement with Richard and Betty Lou. Richard and Betty Lou provided $40,000 as a down payment and consideration for the transaction, while appellant financed the remaining $142,000 of the property's purchase price. Initially, following Richard's passing, Betty Lou continued to lease and reside in the condominium. However, on July 20, 2021, Betty Lou contacted Huntington, requesting assistance to purchase the condominium from appellant because appellant informed Betty Lou of his intention to sell the condominium. According to appellant, "Betty Lou damaged the Condominium to such a great extent that [appellant] sought the aid of other legal counsel to negotiate with Betty Lou for the purpose of buying [appellant] out of the property."

Huntington determined that the purchase of the condominium was favorable to Betty Lou compared to the transfer of the lease to the new owner because "that would have made the Condo less marketable and showings of the Condo would have been a disruption to Betty Lou, impacting her standard of living." Huntington further resolved that it was appropriate to fund the purchase of the condominium with a distribution from the Trust because it was "in accordance with the Settlor's intent in the Trust and would allow [Betty Lou] to hold title to the Condo to ensure that she could maintain her standard of living," and bar her eviction from the condominium. On August 2, 2021, Huntington approved a discretionary distribution request of $238,238 for the purchase of the condominium, presumably based on its valuation of the property.

On September 12, 2022, appellant and Betty Lou executed a "buy-sell agreement" regarding the condominium, with the purchase price listed as $201,000. On November 16, 2022, Saginaw Bay Area Title Agency generated a buyer's closing statement providing that the purchase price, title charges, and recording fees amounted to $201,185 for the purchase of the condominium. During the closing process, Christopher served as Betty Lou's agent under durable power of attorney. Internal Huntington communications indicate that a wire transfer of $201,185 from the Trust funded the condominium purchase. Appellant was allegedly unaware that a distribution from the Trust was used to finance the purchase of the condominium. A warranty deed was subsequently executed conveying the condominium from appellant to Betty Lou. On November 23, 2022, a quitclaim deed was executed providing that the condominium would transfer to Christopher after Betty Lou's passing, purportedly unbeknownst to appellant.

As a remainder beneficiary, appellant received monthly statements from Huntington, detailing mutual funds, short-term investments, other assets, cash distributions, and further financial information related to the Trust. As pertinent to the present case, the November 2022 trust statement listed, under the "cash distributions" section, a transaction of $201,185, on November 23, 2022, with the description, "DISTRIBUTION SAGINAW BAY AREA TITLE AGENCY HAWC APPROVED DISTRIBUTION FOR PURCHASE OF HOUSE," referring to the purchase of the condominium. The November 2022 trust statement also included the following disclosure, which was similarly provided in previous monthly statements:

> If your account is governed by the laws of the State of Michigan:
>
> This report details activity in your account. Please contact your administrative officer with any questions you have about matters covered in this report. Pursuant to Michigan law, we are hereby advising you that, should you find

> it necessary, you have one (1) year from the date of issuance of this report to commence a judicial proceeding regarding matters disclosed in this report.

After receiving this statement, appellant contacted Huntington on December 14, 2022, requesting further information "about the short-term investment movement in the asset allocation" of the Trust. On January 25, 2023, Huntington responded:

> As you are not the current beneficiary for the trust, a statement is provided to you as future beneficiary only, and I am limited as to any additional information I may provide to you. The statements are self-explanatory and very easy to read. I hope they provide information to you on the status of the trust account for your future interest.

On January 30, 2023, appellant's counsel sent a letter to Huntington requesting further financial documentation related to the Trust.

On March 12, 2023, appellant's counsel sent a second letter to Huntington, acknowledging that appellant received the monthly accounting statements for October 2022 and November 2022 as to the Trust, but questioning the "$400,000.00 swing in the value ending in November 2022." Appellant's counsel further requested, in addition to the monthly accounting statements, annual accounting statements, annual income tax returns, an annual itemization of all disbursements made from the Trust, and a fee breakdown as to Huntington's services.

On March 23, 2023, Huntington responded:

> This is in response to your letter dated March 12, 2023. You requested that [appellant] receive statements monthly. Your client has been receiving account statements since at least July of 2021, mailed to his address . . . . If this address is not accurate, please have him notify me in writing. All activity, including distributions, fees, investment transactions, etc., are detailed in the statements, and comply with the requirements of MCL 700.7814 for reporting to beneficiaries.
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> Trust income tax returns are considered internal work product and are not provided to beneficiaries.
>
> The November 2022 statement clearly shows all activity for the month, as well as a summary of year-to-date activity (1/01/2022-11/30/2022). You mention in your letter a "$400,000 swing" in the value of the trust. As your client should be aware from the statements he receives, a total of $259,539 was distributed to or for the benefit of the primary beneficiary, your client's mother. This included a distribution of $201,185 to purchase a condominium for the primary beneficiary to reside. Fees charged during that period totaled $10,309.31, which is a fee of 1% calculated monthly based upon the market value of the prior month end. Federal and state income taxes in the amount of $4,207 were paid from the trust during that period as well.

* * *

> We will not be providing any additional itemization of the disbursements from the trust. Although you state in your letter that we have "merely listed totals on the statements," that is inaccurate. There is detail on the statement of to whom payment was made and for what purpose.

On May 4, 2023, a second quitclaim deed was executed, reiterating that the condominium be conveyed to Christopher after Betty Lou's passing, and further stating:

> If [appellant] or anyone on his behalf files an action challenging the enforceability of this Deed as it is plainly written, with or without probable cause or good faith, it is my wish that such person obtain absolutely nothing from my estate including this real property and that my personal representative file in the same court a request for sanctions against the contesting party and notify the entity having jurisdiction over the law license, if any, of such challenger of the filing of a frivolous and malicious challenge to this Deed.

On February 1, 2024, appellant filed a petition in the probate court requesting, in part: (1) the removal of Huntington as trustee of the Trust, (2) an accounting of the Trust, and (3) the imposition of a constructive trust on the condominium. Appellant advanced breach of fiduciary duty claims against Huntington asserting: (1) Huntington improperly limited disclosure of financial information related to the Trust to appellant, (2) Huntington inappropriately authorized "a significant principal distribution, with the purchase of the Condominium, that is inconsistent with the value of the Trust and that depleted [appellant's] remainder interest," and failed to have the Trust maintain ownership of the condominium, (3) Huntington neglected to notify appellant that the Trust was involved in the purchase of the condominium, and (4) Huntington permitted Betty Lou to execute a "ladybird deed" as to the condominium to appellant's detriment. To his petition, appellant attached, in part, photographs of the November 2022 monthly statement of the Trust, notably missing the last two pages of legal disclosures. However, in his petition, appellant did not advance any explanation or argument regarding the pertinent statute of limitations or the alleged omission of the legal disclosures.

On February 23, 2024, Huntington responded denying the allegations regarding its breach of fiduciary duties and raising as an affirmative defense, in part, that the "statute of limitations has elapsed for [appellant] to raise any claims related to anything disclosed in any Trust statement it received more than one year before the commencement of this proceeding." On April 9, 2024, Huntington moved for summary disposition under MCR 2.116(C)(7), (8) (failure to state a claim on which relief can be granted), and (10) (no genuine issue of material fact), contending that appellant's claims were barred by the statute of limitations governing breach of fiduciary duty claims, MCL 700.7905, because appellant failed to commence a proceeding within a year of the alleged breach, despite the November 2022 monthly statement adequately disclosing the existence of a potential claim as to the purchase of the condominium.

Huntington further asserted that appellant "does not dispute that he received copies of the November 2022 Trust statement or that the statement included notice of the l-year statute of limitations," and Huntington also provided secondary copies of the subject monthly statement on January 25, 2023. Huntington additionally noted that appellant acknowledged that he received monthly statements regarding the Trust as early as July 2021. Huntington alternatively argued that

it acted in accordance with the Trust because the Trust required that Huntington maintain Betty Lou's "mode of living to which she was accustomed prior to [Richard's] death," and the purchase of the condominium ensured that Betty Lou would not face eviction and continue living in her home.

After the probate court granted appellant's motion to file an amended petition and adjourn Huntington's motion for summary disposition, appellant filed a first amended petition on May 10, 2024, reiterating his prior allegations against Huntington and asserting novel claims of "silent fraud/fraudulent concealment" and civil conspiracy against Huntington. Appellant contended that internal Huntington communications disclosed during discovery indicated "Huntington purposefully caused the Condominium to be purchased by Betty Lou, instead of the Trust, because Betty Lou desired to transfer the property at her death in a way that excluded [appellant]," and Huntington "intentionally concealed their intentions to fund the Condominium purchase from [appellant], a remainder beneficiary." On May 30, 2024, Huntington responded generally denying the allegations underlying appellant's claims and reasserting the statute of limitations as an affirmative defense.

Appellant further responded to Huntington's motion for summary disposition arguing that his claims were not subject to the statute of limitations because the November 2022 monthly statement did not provide adequate notice of the breach of fiduciary duty and the pertinent legal disclosure was in "fine print on the backside of page eight (8) of this ten (10) page statement." Appellant further contended that the statute of limitations was tolled because Huntington "attempted to fraudulently conceal its intended goal—to divest [appellant] of appreciable Trust assets for the benefit of other Trust Beneficiaries."

On June 5, 2024, the probate court held a hearing, in part, regarding Huntington's motion for summary disposition; the parties advanced arguments consistent with their respective briefings. Appellant's counsel further contended that appellant did not receive the complete November 2022 monthly statement, specifically the pages detailing the legal disclosures. Huntington's counsel disagreed, arguing that appellant was "put on notice" and "he was bringing mom to the table about the transaction." The court took the matter under advisement.

On June 17, 2024, the probate court issued an opinion and order granting Huntington's motion for summary disposition under MCR 2.116(C)(7). The court likened the instant case to *Kilian v TCF Nat'l Bank*, 343 Mich App 621; 997 NW2d 745 (2022), and *Ducharme v Ducharme*, 305 Mich App 1; 850 NW2d 607 (2014), opining that appellant "is precluded by MCL 700.7905(l)(a) because he received a report that adequately disclosed the existence of a potential claim for breach of trust and adequately informed the trust beneficiary of the time allowed for commencement of a proceeding." The probate court further reasoned:

> Specifically, [appellant] received a statement in November 2022 disclosing the real estate transaction for $201,185.00 prior to December 14, 2022. The Court concludes this same report along with other similar prior reports provided sufficient information so that [appellant] knew of the potential claim or should have inquired into the potential claim's existence as contemplated by MCL 700.7905(2). In fact, the statement was adequate and further, [appellant] was aware of his legal rights because he questioned the short term investment amounts set forth on the same

> statement as evidenced by his December 14, 2022 email to Huntington which states: "I am inquiring about the short-term investment movement in the asset allocation in the above mentioned trust in the statements attached. If you could please explain these movements." Not only is this Court convinced that [appellant] received the November[] 2022 statement prior to his December 14, 2022 email, he was aware of his right to question the contents of those statements because he questioned the short term investment strategy reflected on the reports.
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> The statements provided by Huntington to [appellant] since approximately July[] 2021 that were sent to [appellant's] address also included the requisite language identifying the one year statute of limitations found in MCL 700.7905(1)(a) limiting the period in which he could file a claim.
>
> In the instant case, this Court finds that the reports provided to [appellant] prior to December 14, 2022[,] disclosed each of these potential claims as required by MCL 700.7905. The Court further finds that [appellant] received and questioned the information contained on the statement as evidenced by his December 14, 2022 email. The Court further finds that the statements contained the language outlining the fact that [appellant] had one year to take action. [Appellant] filed his petition with the Court on February 1, 2024. More than one year elapsed between [appellant's] receipt of the report and his filing of the instant petition. The Court holds that the claims were properly categorized as breaches of trust and are therefore time-barred by the applicable one-year statute of limitations set [forth] in MCL 700.7905(l)(a).

Following entry of this opinion and order, the present appeal ensued.

## II. ANALYSIS

Appellant argues that summary disposition was improper on statute-of-limitations grounds. We disagree.

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "Summary disposition under MCR 2.116(C)(7) is appropriate when the undisputed facts establish that the [party's] claim is barred under the applicable statute of limitations." *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013). As previously explained by this Court:

> When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis

> for recovery, dismissal is inappropriate. [*Dextrom v Wexford Co*, 287 Mich App 406, 428-429; 789 NW2d 211 (2010) (citations omitted).]

Questions of statutory interpretation and the application of a statute are reviewed de novo. *Buhl v Oak Park*, 507 Mich 236, 242; 968 NW2d 348 (2021).

In the present case, the probate court granted summary disposition pursuant to MCL 700.7905, which states in pertinent part:

> (1) The following limitations on commencing proceedings apply in addition to other limitations provided by law:
>
> (a) A trust beneficiary shall not commence a proceeding against a trustee for breach of trust more than 1 year after the date the trust beneficiary or a representative of the trust beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the trust beneficiary of the time allowed for commencing a proceeding.
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> * * *
>
> (2) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the trust beneficiary or representative knows of the potential claim or should have inquired into the potential claim's existence.

This Court has previously addressed the application of this statute in *Kilian* and *Ducharme*.

In *Kilian*, 343 Mich App at 626-638, this Court examined whether the one-year limitations period in MCL 700.7905(1)(a) barred the plaintiffs' claims for actions that occurred between April 2010 and November 2013, when the plaintiff filed suit in November 2019. The *Kilian* Court held, "If a beneficiary has received a report that informs the beneficiary of the one-year limitations period in MCL 700.7905, the beneficiary has one year to commence a proceeding for potential claims for breach of trust that the beneficiary knew of or should have inquired into at that time." *Id*. at 641. As to the *Kilian* plaintiffs, this Court determined that "at the time of the November 2013 statement, the statements adequately disclosed the existence of potential claims for breach of trust before that date, plaintiffs received 'a report' that was consistent with MCL 700.7905(1)(a)." *Id*. at 633. This Court declined plaintiffs' assertion that the five-year limitations period in MCL 700.7905(3)(a) governed the matter because "they did not receive a report that both disclosed the existence of the potential claim for breach of trust and also informed them of the time allowed to commence a proceeding until November 2013." *Id*. at 632. Rather, this Court opined, "Plaintiffs' interpretation would make different limitations periods apply depending on whether a trustee included a notice in one report but not another, even if potential claims had been adequately disclosed in previous reports." *Id*. at 633.

The *Kilian* Court further ruled that the existence of the plaintiffs' potential claims for breach of trust arising from actions taken by the defendant between April 2010 and November 2013 was adequately disclosed because "the reports provided a detailed line-item list of income and expenditures," and the account statements specifically identified each transaction relevant to

the inquiries concerning the potential mismanagement of the trust. *Id*. at 633-638. Accordingly, this Court resolved that the plaintiffs were prohibited from bringing an action in November 2019 related to the defendant's conduct between April 2010 and November 2013, "because plaintiffs had received notice of the one-year limitations period in a November 2013 report and should have inquired into the existence of their potential claims for breach of trust at that time." *Id*. at 641.

In *Ducharme*, 305 Mich App at 6-9, this Court addressed whether an accounting adequately disclosed the existence of a potential breach of trust claim, such that MCL 700.7905(1)(a) applied. The *Ducharme* Court resolved that the plaintiff's claims were time-barred under MCL 700.7905(1)(a) because the final account of the family trust included the items that formed the basis of the plaintiff's complaint and the one-year limitations period disclosure, yet the plaintiff filed suit more than a year later. *Id.* at 8-9. This Court further noted that the "plaintiff's own communications and affidavit disclose knowledge of the claims," as, approximately a month after the issuance of the final account, the plaintiff's counsel "asserted that several questions remained unanswered but that he wanted the distributions to continue," and plaintiff's affidavit detailed that "he objected to every accounting, which indicates that the accountings provided sufficient detail to form the basis of an objection." *Id*. at 9. Thus, this Court concluded that the trial court properly granted summary disposition pursuant to MCR 2.116(C)(7). *Id*. at 3, 9.

Appellant contends that the November 2022 monthly statement did not constitute "a report" that was consistent with MCL 700.7905 because it did not adequately disclose the existence of potential claims for breach of fiduciary duty, particularly those arising out of the purchase of the condominium. Pursuant to MCL 700.1215, a section of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*., a beneficiary has knowledge if the person has actual knowledge, has received a notice or notification, or "[f]rom all the facts and circumstances known to the person at the time in question, the person has reason to know it." Much like *Kilian* and *Ducharme*, it is evident that the information that appellant had at the time of the subject monthly statement was sufficient to inform him that he had these potential causes of action. See *Kilian*, 343 Mich App at 633-637; see also *Ducharme*, 305 Mich App at 8-9.[2]

The November 2022 monthly statement delineated, under the "cash distributions" section, a transaction of $201,185, on November 23, 2022, with the description, "DISTRIBUTION SAGINAW BAY AREA TITLE AGENCY HAWC APPROVED DISTRIBUTION FOR PURCHASE OF HOUSE." Appellant, as the owner and seller of the condominium, was necessarily aware of the condominium's purchase price, the title agency involved in consummating the sale, and the closing date, as reflected in the executed deed. Given this information, it is difficult to discern what additional information was necessary to establish that the transaction concerned the acquisition of the condominium for Betty Lou. At minimum, these circumstances provided appellant with sufficient information to recognize the potential existence of a claim, or at the very least, to prompt further inquiry into whether such a claim existed.

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[2] Although MCL 700.7104(1)(c), as amended by 2024 PA 1, was the statute cited in *Kilian* and *Ducharme* for the applicable knowledge standard and has since been repealed, MCL 700.1215 contains an identical standard regarding "[k]nowledge of facts; circumstances," and both provisions are part of the EPIC.

Additionally, the November 2022 monthly statement plainly contained sufficient detail to permit appellant to challenge the transaction, as demonstrated by his December 2022 e-mail to Huntington seeking additional information concerning short-term investment activity, and his counsel's subsequent correspondence questioning Huntington's management of the Trust. See *Ducharme,* 305 Mich App at 9. Although appellant asserts that the statement did not disclose Huntington's purported improper motive for acquiring the property for Betty Lou, that contention does not alter the fact that the statement expressly identified the purchase of the condominium. Thus, the statement provided appellant with sufficient information to question or investigate the transaction and inquire into any potential claim arising from it within the limitations period.

Next, appellant contends that he did not receive proper notice of the one-year limitations period in MCL 700.7905(1)(a) because Huntington did not provide complete monthly statements, which included the pertinent legal disclosures. In support of this contention, appellant asserts that both his petition and amended petition included photographs of the November 2022 monthly statement, which contained only 8 of the document's 10 pages. Appellant further argues that the present case is distinct from *Kilian* and *Ducharme* because the plaintiffs in the cited cases did not dispute receiving notice of pertinent limitations period.

Preliminarily, we note appellant did not expressly allege in either his petition or amended petition that the monthly statements failed to include the pertinent legal disclosures concerning the time for commencing a proceeding. Instead, in response to Huntington's motion for summary disposition, appellant advanced two seemingly inconsistent arguments. First, he asserted that he "denies having received the back of page (8) of the statement where it allegedly contains said fine print notice." Second, he contended that the "fine print notice" was insufficient to apprise him of the application limitations period. We find these arguments unpersuasive.

Appellant concedes that he received monthly statements concerning the Trust beginning in 2021. Yet he neither pleaded nor argued the preceding monthly statements likewise omitted the pertinent legal disclosures. Rather, appellant maintains that the November 2022 monthly statement detailing the challenged purchase of the condominium was provided without its final two pages, which happened to contain the notice regarding the limitations period. Huntington, however, produced copies of the October and November 2022 monthly statements, both of which contain the pertinent disclosure providing, "Pursuant to Michigan law, we are hereby advising you that, should you find it necessary, you have one (1) year from the date of issuance of this report to commence a judicial proceeding regarding matters disclosed in this report."

Moreover, correspondence from appellant's counsel to Huntington further demonstrates that appellant was aware of the opportunity to pursue legal action. See *Ducharme*, 305 Mich App at 9. Specifically, counsel's January 2023 and March 2023 letters reflect such awareness. In the letter dated January 30, 2023, plaintiff's counsel stated, "I will confirm if there has been compliance with the request in the next 30 days. If this continues to be an issue with Hunting[ton] National Bank, then the removal of Huntington National Bank as the Successor Trustee will be requested of the appropriate Probate Judge." In his March 12, 2023 letter, appellant's counsel warned, "I hope to avoid the filing of pleadings to remove Huntington Bank and seek a surcharge, so I am requesting once again that our client receive all the statements monthly along with any annual accountings provided to beneficiaries." Additionally, page eight of the November 2022 monthly statement bears the heading, "LEGAL DISCLOSURES PLEASE READ

CAREFULLY." While appellant claims that he did not receive the ensuing pages, the final sentence on page eight indicates that the disclosure continues onto subsequent pages stating, "You have an opportunity to validate the capability to deliver the required information in the appropriate format so that a timely calculation of deposit . . . ." Thus, given the notice on page eight to carefully review the disclosures and the clear indication that the disclosures continued after page eight, respondent's argument is unpersuasive.

Further, as noted previously, the record indicates that appellant reviewed the November 2022 monthly statement, as evidenced by his subsequent e-mail questioning the short-term investment movement in the asset allocation of the Trust, in addition to the correspondence from his counsel discussed above. In light of the foregoing, appellant's assertions concerning the alleged incompleteness of the November 2022 monthly statement amounts to speculation unsupported by the record, and "parties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact." *Libralter Plastics*, *Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). See also *Kincaid*, 300 Mich App at 537 (opining that because the defendants "initially established that they were entitled to summary disposition under MCR 2.116(C)(7) . . . the burden shifted to [plaintiff] to show that there was—at the very least—a question of fact about whether her claims were timely.") Accordingly, because the November 2022 monthly statement sufficiently disclosed the existence of a potential claim for breach of fiduciary duty and informed appellant of the time allowed for commencing a proceeding, the probate court properly granted summary disposition pursuant to MCR 2.116(C)(7) on the ground that the claims were time-barred under MCL 700.7905(1)(a).[3]

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[3] While appellant contends that the probate court did not sufficiently consider his novel claims of "silent fraud/fraudulent concealment" and civil conspiracy against Huntington such that a longer limitations period applied, it is evident that these claims were merely a restatement of his breach of fiduciary duty claims regarding the purchase of the condominium; thus, summary disposition under MCR 2.116(C)(7) remained appropriate. See *Kilian*, 343 Mich App at 639-640 (holding in response to the plaintiffs' argument that "the probate court erred by dismissing their personal claims, which were subject to either three- or six-year limitations periods," that it was not apparent from the plaintiffs' complaint that they "asserted any claims that were not dependent on defendant's having breached fiduciary duties. Because the statute of limitations precluded plaintiffs from raising claims related to defendant's fiduciary duties, the probate court did not clearly or obviously err by granting summary disposition of the entire complaint."); see also *Ducharme*, 305 Mich App at 7, 9. Further, although appellant contends that further discovery was warranted before the dismissal of his complaint, much like *Kilian*, 343 Mich App at 639, "the question for the purposes of the statute of limitations was whether plaintiffs had enough information available to them to determine whether they knew or should have known that they had a possible claim for breach of trust." Accordingly, as recognized by the *Kilian* Court, "[b]ecause this question is resolved by considering the information that plaintiffs actually had, discovery of information that plaintiffs did *not* have could not have helped to resolve whether summary disposition would be appropriate on statute-of-limitations grounds." *Id*. Lastly, while appellant argues the probate court improperly made findings of fact to resolve whether summary disposition

Affirmed.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense

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was appropriate, the probate court summarized the underlying facts based on appellant's pleadings and the evidence submitted by the parties, as permitted for the resolution of motions under MCR 2.116(C)(7). See *Dextrom*, 287 Mich App at 429 ("If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact.").