

TRUST LAW: SETTLOR IGNORANCE OF APPLICABLE LAWS
MAY CONSTITUTE A MISTAKE OF LAW UNDER NORTH
DAKOTA CENTURY CODE SECTION 59-12-15

In re Matthew Larson Trust Agreement

2013 ND 85, 831 N.W.2d 388

ABSTRACT

In *In re Matthew Larson Trust Agreement*, the North Dakota Supreme Court held that the mistaken legal effects caused by a settlor's ignorance of applicable laws may warrant trust reformation under North Dakota Century Code section 59-12-15 if the moving party proves beyond clear and convincing evidence that such effects negate the settlor's intentions in creating the trust. With this conclusion, the court unequivocally rejected the application of contracting principles within the context of trust reformation claims. As a matter of first impression in North Dakota, *Matthew Larson* resolves a number of questions under North Dakota trust reformation law, but the decision unfortunately leaves some issues unresolved, the most important of which is *Matthew Larson's* applicability to commercial trust reformation claims. Because contracting principles will control commercial trust reformation claims, the North Dakota Supreme Court will have to qualify *Matthew Larson* so to apply solely to noncommercial trust reformations. In doing so, North Dakota will have to adopt a bifurcated trust reformation scheme that recognizes two distinct categories of trust reformation claims that are premised upon the exchange of consideration or the lack thereof.

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I. FACTS

Throughout the years, William and Patricia Clairmont, Matthew Larson’s grandparents, created various irrevocable trusts for the benefit of their grandchildren.¹ In 1996, the Clairmonts created the Matthew Larson Trust Agreement, which directed the trust’s trustee to equally distribute the trust’s remainder to Matthew’s brothers and sisters if Matthew died before

1. In re Matthew Larson Trust Agreement, 2013 ND 85, ¶ 3, 831 N.W.2d 388, 390.

the trustee completely distributed the trust and Matthew left no surviving issue.² Additionally, in 2009, the Clairmonts created the Matthew J. Larson Irrevocable Retirement Trust II Agreement,³ which provided that Matthew's brothers and sisters would equally benefit from the trust if Matthew died intestate and without a spouse who had attained the age of sixty or any other descendants.⁴

Matthew later died intestate with no decedents.⁵ Prior to Matthew's death, Matthew's parents, Greg and Cindy Larson,⁶ divorced.⁷ Greg Larson subsequently fathered N.J.L. and L.M.L., both of whom were Matthew's half-blooded siblings.⁸ Since Matthew died intestate, North Dakota Century Code section 30.1-04-07 dictated that both N.J.L. and L.M.L. were entitled to inherit the trust benefits the same as Matthew's full-blooded siblings.⁹ The Clairmonts, who intended to limit the trusts' benefits to their lineal descendants,¹⁰ were unaware of North Dakota Century Code section 30.1-04-07 or its implications at the time they executed either trust.¹¹ Accordingly, the Clairmonts petitioned the district court to reform both trusts under North Dakota Century Code section 59-12-15.¹² The district court applied contracting principles¹³ to conclude that a settlor's ignorance of applicable laws cannot constitute a mistake of law under North Dakota Century Code section 59-12-15.¹⁴ Additionally, even if the law allowed trust reformation based upon the effects caused by a settlor's ignorance of applicable laws, the court found no evidence that the Clairmonts explicitly sought to restrict the trust benefits to their lineal decedents.¹⁵ Therefore, the court denied the Clairmonts' reformation claim and allowed N.J.L. and L.M.L. to benefit from both trusts.¹⁶

2. *Id.*

3. *Id.* ¶ 5, 832 N.W.2d at 390.

4. *Id.* ¶ 5, 831 N.W.2d at 390-91.

5. *Id.* ¶ 6, 831 N.W.2d at 391.

6. Cindy Larson was one of the Clairmonts' four children. *Id.* ¶ 2, 831 N.W.2d at 390.

7. *Id.*

8. *Id.*

9. "Relatives of the half blood inherit the same share they would inherit if they were of the whole blood." N.D. CENT. CODE § 30.1-04-07 (1973).

10. *Matthew Larson*, ¶ 6, 831 N.W.2d at 391.

11. *Id.* ¶ 22, 831 N.W.2d at 396.

12. Courts may reform a trust "if it is proved . . . that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement." N.D. CENT. CODE § 59-12-15 (2007).

13. *Matthew Larson*, ¶ 11, 831 N.W.2d at 392.

14. *Id.*

15. *Id.* ¶ 11, 831 N.W.2d at 393.

16. *Id.*

II. LEGAL BACKGROUND

In recent decades, benefactors have increasingly turned to trusts for estate planning, probate avoidance, and commercial transactions.¹⁷ This trust proliferation unfortunately exposed the porous and mercurial nature of the existing statutory and common laws concerning trusts, much to the legal community's chagrin.¹⁸ In an effort to remedy this dismay, the Uniform Law Commission commissioned and adopted the Uniform Trust Code ("UTC").¹⁹ The UTC amalgamated existing principles and certain reforms²⁰ into a comprehensive set of codes that sought to provide consistency and uniformity across the law.²¹

Like many states, changing contemporary circumstances rendered North Dakota's existing common and statutory laws progressively antiquated.²² Prior to 2007, North Dakota's trust law, which consisted of only basic governing principles and procedures,²³ remained largely unchanged since its codification in 1877.²⁴ Problematically, the relative absence of any case law interpreting these laws exacerbated the dilating disconnect between this existing statutory scheme and contemporary realities.²⁵ In response to this antiquation, the North Dakota Legislature codified the UTC in 2007 as North Dakota Century Code title 59,²⁶ and the UTC now generally governs trust creation and administration in North Dakota.²⁷

A. REFORMATION PRINCIPLES UNDER NORTH DAKOTA CENTURY CODE SECTION 59-12-15

Section 415 of the UTC, which North Dakota codified verbatim as North Dakota Century Code section 59-12-15, governs trust reformations²⁸

17. Kirsten Franzen & Bradley Myers, *Improving the Law Through Codification: Adoption of the Uniform Trust Code in North Dakota*, 86 N.D. L. REV. 321, 323 (2010).

18. UNIF. TRUST CODE prefatory note (2000).

19. Franzen & Myers, *supra* note 17, at 323.

20. David M. English, *The Uniform Trust Code (2000): Significant Provisions and Policy Issues*, 67 MO. L. REV. 143, 149 (2002).

21. UNIF. TRUST CODE prefatory note (2000).

22. See N.D. LEG. COUNCIL, UNIF. TRUST CODE—BACKGROUND MEMORANDUM, Comm. on the Judiciary, 59th Sess., at 3 (N.D. 2005), available at <http://www.legis.nd.gov/assembly/59-2005/docs/pdf/79025.pdf>.

23. Franzen & Myers, *supra* note 17, at 326.

24. *Id.* at 325.

25. N.D. LEG. COUNCIL, *supra* note 22, at 3.

26. *Matthew Larson*, ¶ 13, 831 N.W.2d at 394.

27. The North Dakota Legislature did not adopt the UTC in whole. See Franzen & Myers, *supra* note 17, at 331.

28. UNIF. TRUST CODE § 415 (2000).

and is applicable to both testamentary and inter vivos trusts.²⁹ The UTC drafters derived this section from Restatement (Third) of Property: Donative Transfers section 12.1³⁰ (“Restatement”) and other common law principles.³¹ These sections allow reformation because a mistake should not be allowed to defeat settlor intent.³² The UTC adopted this permissive policy for section 415 to provide judicial flexibility³³ in achieving the paramount objectives of properly effectuating settlor intent³⁴ and preventing unjust enrichment.³⁵

Under UTC section 415, reformation is appropriate where a mistake of law or fact, whether in inducement or expression, affects the trust’s specific terms and where such a mistake negates the settlor’s intentions in creating the trust.³⁶ For these purposes, a mistake of fact occurs where a party’s belief does not correspond with the material facts of a transaction.³⁷ Contrastingly, a mistake of law occurs where a party misunderstands the legal consequences of a particular course of action.³⁸ Providing illumination on the issue, the Restatement furnishes eight illustrations of these mistakes in application.³⁹

Most pertinent to this discussion, the Restatement expounds the principle of mistake of law by misapplication of law in Illustration 7.⁴⁰ In this illustration, the settlor intended to create a revocable trust but unknowingly failed to expressly reserve the power of revocation required by law.⁴¹ The applicable law subsequently barred the settlor from revoking the trust when the settlor so desired.⁴² In this situation, the Restatement

29. David English, *supra* note 20, at 149.

30. RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 cmt. b (Tentative Draft No. 1, 1995).

31. *See* UNIF. TRUST CODE § 415 cmt. (2000). The Uniform Law Commission intended for the Restatement to aid in interpreting UTC § 415.

32. RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 cmt. c (2001).

33. *See* UNIF. TRUST CODE Art. 4, Refs & Annos. (2000).

34. *Id.*; Estate of Taylor, 522 A.2d 641, 642 (Pa. Super. Ct. 1987) (effectuating settlor intent is controlling unless contrary to law).

35. RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 cmt. b (2001).

36. UNIF. TRUST CODE § 415 (2000). A mistake of expression occurs where the trust, as a result of a scrivener’s error, misstates the settlor intentions, includes a term that the scrivener should have excluded, or excludes a term that the scrivener should have included. Contrastingly, a mistake of inducement occurs where the trust, as a result of settlor error, reflects the settlor’s intent but the settlor based such intent upon a mistake of fact or law. *Id.* cmt.

37. *See* BLACK’S LAW DICTIONARY 1092 (9th ed. 2009).

38. *See* Matthew Larson, ¶ 19, 831 N.W.2d at 395.

39. RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 (2001).

40. *Id.* cmt. i., illus. 7.

41. *Id.*

42. *Id.*

dictates that the court should reform the trust so as to include a power of revocation if the moving party satisfies its onus of production.⁴³

The party seeking reformation, which may include a trust's settlors,⁴⁴ trustees, or beneficiaries,⁴⁵ bears the burden of proving each of UTC section 415's elements⁴⁶ by clear and convincing evidence.⁴⁷ In determining whether the movant satisfies this burden, the court must consider all direct and circumstantial evidence pertinent to establishing settlor intent,⁴⁸ regardless of whether such evidence contradicts the meaning of the trust's language.⁴⁹ Courts may consider this potentially suspect evidence because such evidence may be correct⁵⁰ and the challenger's heightened burden of production sufficiently hedges against the erroneous reliance on fraudulent or mistaken evidence.⁵¹ Provided that the movant demonstrates the virtue of its reformation claim, the court may consider the proper method of reformation and whether any circumstances exist that might preclude reformation.

B. JUDICIAL REFORMATION AND DEFENSES TO REFORMATION

Certain circumstances will forestall a trust reformation claim, regardless of whether the movant satisfies its burden of production. For instance, reformation is inappropriate where a settlor experienced a *post hoc* change of heart or where a settlor failed to properly prepare and execute the trust documents.⁵² Additionally, a reformation claim is ineffective where the unintended beneficiary, without knowledge of the circumstances justifying reformation, changes its position in a manner that would render

43. *Id.*

44. N.D. CENT. CODE § 59-12-13 (2010).

45. N.D. CENT. CODE § 59-12-15 (2010).

46. RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 cmt. c (2001).

47. *Id.* “[U]nder the clear and convincing standard, the evidence must be such that the trier of fact is reasonably satisfied with the facts the evidence tends to prove as to be led to a firm belief or conviction.” *Zundel v. Zundel*, 278 N.W.2d 123, 130 (N.D. 1979).

48. RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 cmt. b (2001). Permissible direct evidence may include evidence concerning the settlor's statements, letters, or conversations with the agent charged with drafting the trust. Permissible circumstantial evidence may include evidence concerning the circumstances under which the settlor created the trust. *Id.* cmt. d.

49. UNIF. TRUST CODE § 415 cmt. (2000). In imposing the heightened standard of clear and convincing evidence, the Restatement disposes of the plain meaning rule. RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 cmt. d (2001).

50. *Id.*

51. *Id.*

52. *Id.* cmt. h.

reformation inequitable.⁵³ Moreover, laches prohibits reformation where reformation would be inequitable because of temporal considerations.⁵⁴ If none of these defenses to reformation are available, the court may consider how to properly reform the trust.

The UTC affords a great deal of judicial discretion and flexibility in reforming trusts so as to effectuate settlor intent.⁵⁵ In reconciling the given circumstances with the nature of the mistake, courts may strike the language tending to cause the mistake or add language tending to resolve the mistake.⁵⁶ In determining the most appropriate form of reformation, a court must necessarily predicate its reformation order based upon the particularities of a given situation.⁵⁷ After determining the most appropriate method of reformation, the judicial issuance of the reformation order retroactively reforms the trust as of the date the settlor executed the trust.⁵⁸

C. TRUST REFORMATION V. CONTRACTUAL REFORMATION

The aforementioned principles of trust reformations are peculiarly related to those principles governing contractual reformations. Under contracting law, reformation is inappropriate unless the parties make a mutual mistake about the contract's legal effects because the parties exchanged consideration for the contract's benefits.⁵⁹ Under trust law, a settlor's unilateral mistake generally warrants trust reformation⁶⁰ because the beneficiary exchanged no consideration for the trust's benefits.⁶¹ Accordingly, the exchange of consideration or the lack thereof distinguishes

53. *Id.* cmt. m. It should be noted that the mere erroneous distribution of trust assets does not preclude reformation. *Id.* cmt. f.

54. *Id.* cmt. m. Passage of time may also bar a claim for reformation by virtue of an applicable statute of limitations. *Id.*

55. See UNIF. TRUST CODE § 415 cmt. (2000).

56. *Id.*

57. *Id.*

58. Judicial orders for reformation are applicable from the date of execution because "[r]eformation does not change the agreement; it enforces the agreement." *Brinker v. Wobaco Trust Ltd.*, 610 S.W.2d 160, 166 (Tex. App. 1980). However, the relation back to the date of origination does not apply to certain parties. See *Van Den Wymelenberg v. United States*, 397 F.2d 443, 445 (7th Cir. 1968) (relation back inapplicable to nonparties); *L. E. Myers Co. v. Harbor Ins. Co.*, 384 N.E.2d 1340, 1346 (Ill. App. Ct. 1978) (relation back inapplicable where it would violate public policy).

59. N.D. CENT. CODE § 9-03-14 (1943); *Carlson v. Sweeney et al.*, 895 N.E.2d 1191, 1199 (Ind. 2008).

60. *Moore v. Adkins*, 576 P.2d 245, 253 (Kan. Ct. App. 1978); *Brinker*, 610 S.W.2d at 163-64; *Joseph W. deFuria, Jr., Mistakes in Wills Resulting from Scriveners' Errors: The Argument for Reformation*, 40 CATH. U. L. REV. 1, 32 (1990).

61. *Carlson*, 895 N.E.2d at 1199.

the two bodies of law so that contracting principles are generally inapplicable to trusts.⁶²

This differentiation is imperative because of how these bodies of law consider the mistaken legal effects caused by one's ignorance of applicable laws. Under contracting law, one's ignorance of applicable laws cannot warrant contractual reformation because courts will not interfere with a contract where the contract represents the parties' intentions but one party misunderstood the contract's legal effects.⁶³ Contrastingly, under trust law, courts have generally found that the mistaken legal effects caused by a settlor's ignorance of applicable laws constitutes a mistake of law because the trust is strictly gratuitous.⁶⁴ Saliently, courts will still grant a trust reformation where a settlor was negligent in discovering a potential mistake⁶⁵ or where the mistake arises because of a settlor's lack of care.⁶⁶ Because of these differing standards, determining whether contracting or trust laws are applicable to a given reformation claim will most likely dictate the disposition of the claim.⁶⁷

D. PRIOR APPLICATION OF NORTH DAKOTA CENTURY CODE SECTION 59-12-15

Although the North Dakota Supreme Court never had occasion to interpret North Dakota Century Code section 59-12-15 prior to *Matthew Larson*,⁶⁸ the court previously applied North Dakota Century Code section 59-12-15 to other trust reformation claims. In *Agnes M. Gassmann Trust Wells Fargo Bank v. Reichert*,⁶⁹ a trust's distributional provisions erroneously conflicted with the settlors' intentions.⁷⁰ On appeal, the court only considered whether the proffered evidence indicated that the district

62. *Id.*

63. *Hovden v. Lind*, 301 N.W.2d 374, 379 n.1 (N.D. 1981); 66 AM. JUR.2d *Reformation of Instruments* § 17 (1973) ("Where the thought to be expressed was the idea that the parties intended to convey, then the mistake is only one of legal consequences, and there can be no relief by way of reformation.").

64. RESTATEMENT (SECOND) OF TRUSTS § 333 (1959). It should be noted that there is some authority to the contrary. See *Webb v. Webb*, 301 S.E.2d 570, 576 (W.Va. 1983) ("it is recognized that a party may not avoid the legal consequences on the ground of mistake . . . where such mistake is the result of the negligence of the complaining party.").

65. *Brinker*, 610 S.W.2d at 164.

66. RESTATEMENT (FIRST) OF RESTITUTION § 59 (1937); RESTATEMENT (THIRD) OF PROP.: DONATIVE TRANSFERS § 12.1 cmt. 1 (2001).

67. See generally RESTATEMENT (THIRD) OF TRUSTS § 63 cmt. a (2003); *Moore*, 576 P.2d at 253.

68. *Matthew Larson*, ¶ 12, 831 N.W.2d at 393.

69. 2011 ND 169, 802 N.W.2d 889.

70. *Id.* ¶ 4, 802 N.W.2d at 891.

court's reformation order was clearly erroneous.⁷¹ The court, finding in the negative, affirmed the district court's reformation order.⁷² Because *Reichert* concerned issues associated with adequacy of evidence rather than interpretations of law, *Reichert* provided little guidance for *Matthew Larson's* issues of first impression.

III. ANALYSIS

In *Matthew Larson*, the North Dakota Supreme Court, with Justice Crothers writing for the majority, determined that the mistaken legal effects caused by a settlor's ignorance of applicable laws may constitute a mistake of law under North Dakota Century Code section 59-12-15 if the moving party proves beyond clear and convincing evidence that such effects negate the settlor's intentions in creating the trust.⁷³ Because the Clairmonts satisfied this burden, the court ordered reformation of both trusts so that only the Clairmonts' lineal descendants could benefit from the trusts, which excluded N.J.L. and L.M.L. as beneficiaries.⁷⁴ In coming to such conclusions, the court held that principles controlling contractual reformations and trust interpretations are inapplicable to trust reformations.⁷⁵ Justice Maring joined the majority's findings of law,⁷⁶ but would have remanded the case for additional fact-finding.⁷⁷

A. TRUST REFORMATION, CONTRACT PRINCIPLES, AND IGNORANCE

The question of the proper interpretation of North Dakota Century Code section 59-12-15 was a matter of first impression in North Dakota.⁷⁸ In his brief, Greg Larson urged the court to refer to the contracting principles articulated in North Dakota Century Code section 9-03-14⁷⁹ in interpreting North Dakota Century Code section 59-12-15.⁸⁰ Since ignorance of applicable laws cannot constitute a mistake of law under North Dakota Century Code section 9-03-14,⁸¹ Greg Larson concluded that the

71. *Id.* ¶ 8, 802 N.W.2d at 892.

72. *Id.* ¶ 23, 802 N.W.2d at 896.

73. *Matthew Larson*, ¶ 20, 831 N.W.2d at 396.

74. *Id.* ¶ 27, 831 N.W.2d at 398.

75. *Id.* ¶ 16, 831 N.W.2d at 395.

76. *Id.* ¶ 33, 831 N.W.2d at 399.

77. *Id.* ¶ 40, 831 N.W.2d at 401.

78. *Id.* ¶ 12, 831 N.W.2d at 393.

79. N.D. CENT. CODE § 9-03-14 (1943) (providing what constitutes a mistake of law under contracting law).

80. *Matthew Larson*, ¶ 14, 831 N.W.2d at 394.

81. *See supra* Part II.C.

Clairmonts were not entitled to reformation.⁸² Contrastingly, the Clairmonts argued that reformation was appropriate under North Dakota Century Code section 59-12-15 because a mistake of law created a result that was inconsistent with their intentions in creating the trusts.⁸³

The North Dakota Supreme Court considered these positions and began its analysis by reciting the aforementioned principles of trust reformation law.⁸⁴ Under North Dakota Century Code section 59-12-15, reformation is appropriate where the petitioner shows by clear and convincing evidence what the settlors' intentions were in creating the trust and that a mistake affected the trust's terms.⁸⁵ Citing the UTC comments, the court noted that it must refer to the Restatement for illustrations of reformation principles in application.⁸⁶ Additionally, the court stipulated that it was bound by the UTC's general purpose of providing uniformity and consistency in the law in interpreting the rules of reformation.⁸⁷ With the policy objectives of effectuating settlor intent⁸⁸ and preventing unjust enrichment⁸⁹ in mind, the court turned to the matters at hand.

Beginning with the first issue for disposition, the court declined Greg Larson's invitation to apply contracting principles within the context of trust reformations.⁹⁰ The court emphasized the fact that contractual reformations require that the parties make a mutual and substantially similar mistake about the contract's legal effect because courts are hesitant to create unagreed upon bargains.⁹¹ Courts do not require this mutuality for trust reformations because the trust only concerns the settlor's intentions in making the donative gift.⁹² Because the issue of exchanged consideration creates a fundamental distinction between the two bodies of law,⁹³ the court found that principles governing contractual reformations do not control trust reformations.⁹⁴

82. Brief for Appellant, ¶ 45, In re Matthew Larson Trust Agreement, 2013 ND 85, 831 N.W.2d 388 (No. 2012-0319).

83. *Matthew Larson*, ¶ 68, 831 N.W.2d at 391.

84. *Id.* ¶ 10, 831 N.W.2d at 391; *Id.* ¶¶ 12-13, 831 N.W.2d at 393-94.

85. *Id.* ¶ 13, 831 N.W.2d at 394.

86. *Id.*

87. *Id.* ¶ 12, 831 N.W.2d at 393.

88. *Id.* ¶ 10, 831 N.W.2d at 391.

89. *Id.* ¶ 13, 831 N.W.2d at 394.

90. *Id.* ¶ 14, 831 N.W.2d at 394.

91. *Id.* ¶ 15, 831 N.W.2d at 395.

92. *See id.* ¶ 16, 831 N.W.2d at 395.

93. The court implied that its analysis was not all encompassing by referring readers to existing case law from other jurisdictions. *Id.* ¶ 15, 831 N.W.2d at 394-95.

94. *Id.*

Since North Dakota Century Code section 9-03-14 and its progeny could not aid in interpreting North Dakota Century Code section 59-12-15, the court continued its analysis by addressing whether the mistaken legal effects caused by a settlor's ignorance of applicable laws may constitute a mistake of law under North Dakota Century Code section 59-12-15. Because North Dakota Century Code title 59 lacks a definition as to what constitutes a mistake of law,⁹⁵ the court referred to and adopted the definition found in Black's Law Dictionary,⁹⁶ which provides that a mistake of law is "[a] mistake about the legal effect of a known fact or situation."⁹⁷ After this promulgation, the court noted that the mistake of law in inducement referred to in North Dakota Century Code section 59-12-15 arises where the trust provisions accurately reflect the settlor's intent but the settlor erroneously included or excluded a certain term because of a misapplication of existing law.⁹⁸ Pursuant to the comments of UTC section 415,⁹⁹ the court referred to the Restatement for illustrations of these principles in application.¹⁰⁰

Stating that Restatement Illustration 7 was analogous to the case at bar, the court determined that a settlor's awareness of an applicable law is not required for an action to constitute a mistake of law.¹⁰¹ The court specifically observed that Illustration 7 did not state that the settlor was aware of the applicable law, only that the settlor misapprehended the law's legal effects.¹⁰² Accordingly, because the Clairmonts' misapprehended the legal effects of using the term "brothers and sisters," the district court erred in finding that, as a matter of law, the Clairmonts' failed to satisfy the requirements of North Dakota Century Code section 59-12-15.¹⁰³ However, the court noted that the legal effects caused by the Clairmonts' ignorance would warrant reformation of the trusts only if the Clairmonts provided clear and convincing evidence of such effects.¹⁰⁴

95. *Id.* ¶ 17, 831 N.W.2d at 395.

96. *Id.*

97. BLACK'S LAW DICTIONARY 1092 (9th ed. 2009).

98. *Matthew Larson*, ¶¶ 17-18, 831 N.W.2d at 395.

99. UNIF. TRUST CODE § 415 cmt. (2000).

100. *Matthew Larson*, ¶¶ 18-19, 831 N.W.2d at 395.

101. *Id.*

102. *Id.* ¶ 19, 831 N.W.2d at 395.

103. *Id.* ¶ 20, 831 N.W.2d at 396.

104. *Id.*

B. SUFFICIENCY OF EVIDENCE WARRANTING REFORMATION

Citing the district court's findings of facts, the court found that the Clairmonts satisfied this onus of production.¹⁰⁵ The Clairmonts each testified that they intended for only their lineal grandchildren to benefit from the trusts in the event that one of their grandchildren passed before the trusts' natural expirations.¹⁰⁶ Additionally, the attorney who drafted the first trust testified that he never discussed the potential implications of North Dakota Century Code section 30.1-04-07 with the Clairmonts¹⁰⁷ and that he never understood it to be the Clairmonts' intentions to include N.J.L. and L.M.L. as beneficiaries.¹⁰⁸ Furthermore, one of the trustees testified that the Clairmonts created the trusts to protect their grandchildren's long-term financial viability.¹⁰⁹ Based upon such information, the court concluded that the Clairmonts never intended to include N.J.L. or L.M.L. as beneficiaries and that the trusts should be reformed accordingly.¹¹⁰

C. INTERPRETATION PRINCIPLES INAPPLICABLE TO REFORMATIONS

With this conclusion, the court disregarded Greg Larson's argument that the proffered evidence failed to evince clear and convincing evidence.¹¹¹ Greg Larson contended that the court should discern the Clairmonts' intentions from the face of the trust documents.¹¹² Specifically, Greg Larson argued that the Clairmonts actually intended to allow persons not of Clairmont lineage to benefit from the trusts because each trust allowed as much under limited circumstances.¹¹³ Accordingly, Greg Larson concluded that N.J.L. and L.M.L. should remain beneficiaries of both trusts because such inclusion would be consistent with the trusts' language.¹¹⁴

The court, conceding that courts will discern settlor intent from the trust document if the document is unambiguous,¹¹⁵ rejected Greg Larson's argument because such principles are applicable only to trust

105. *Id.* ¶ 27, 831 N.W.2d at 398.

106. *Id.* ¶ 22, 831 N.W.2d at 396.

107. *Id.* ¶ 23, 831 N.W.2d at 396-97.

108. *Id.*

109. *Id.* ¶ 24, 831 N.W.2d at 397.

110. *Id.* ¶ 27, 831 N.W.2d at 397.

111. *Id.* ¶ 25, 831 N.W.2d at 397.

112. *Id.*

113. *Id.* For instance, Matthew could designate a potential beneficiary or convey his trust assets to creditors. *Id.*

114. *Id.*

115. *Id.*

interpretations.¹¹⁶ The court observed that trust interpretation and reformation claims are inherently dissimilar because interpretation claims solely concern language already contained within the trust document whereas reformation claims may involve the addition or subtraction of language from the original document.¹¹⁷ Thus, the court rejected Greg Larson's argument and found that principles of trust interpretations are inapplicable to trust reformations.¹¹⁸

D. MAJORITY'S CONCLUSION

In concluding its analysis, the court again noted that the district court misconstrued the law in rejecting the Clairmonts' reformation claim because the legal effects caused by a settlor's ignorance of applicable laws may warrant trust reformation under North Dakota Century Code section 59-12-15.¹¹⁹ Given the totality of the record, the court opined "that the only conclusion to be reached is that a mistake of law was made affecting the terms of the trusts and the Clairmonts' intent."¹²⁰ In order to rectify this mistake in light of the foregoing principles, the court remanded the case to the district court with the instruction to reform both trusts so that only those individuals of Clairmont lineage could benefit from the trusts.¹²¹

E. MARING CONCURRING IN PART AND DISSENTING IN PART

Justice Maring concurred in the majority's conclusions of law.¹²² However, Justice Maring found that there was insufficient evidence to make a warranted conclusion as to whether the Clairmonts met their standard of production¹²³ because the available evidence was susceptible to conflicting interpretations.¹²⁴ As such, Justice Maring would have remanded the case for further fact-finding.¹²⁵

IV. IMPACT

As a matter of first impression, *Matthew Larson* presents a number of questions moving forward as trusts become increasingly popular amongst a

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* ¶ 28, 831 N.W.2d at 397.

120. *Id.* ¶ 27.

121. *Id.* ¶ 27.

122. *Id.* ¶ 31, 831 N.W.2d at 398 (Maring, J., concurring).

123. *Id.* ¶¶ 32-33, 831 N.W.2d at 399.

124. *Id.* ¶ 39, 831 N.W.2d at 401.

125. *Id.* ¶ 40, 831 N.W.2d at 401.

burgeoning class of aging benefactors. First, because *Matthew Larson* appears to create conflicting interpretations concerning the consequences of one's ignorance within North Dakota trust law, the court may have to elaborate on the consequences of one's ignorance in other trust contexts and the extent to which the court may be willing to redefine other established legalese in the limited context of trust reformation claims. Second, the North Dakota Supreme Court may have to elaborate on the extent to which, if any, it is willing to rely upon contracting principles to help develop North Dakota trust reformation law. Finally, because contracting principles will control commercial trust reformation claims, the North Dakota Supreme Court will have to qualify *Matthew Larson* so to apply solely to noncommercial trust reformations, which will necessarily create two classes of trust reformation claims in North Dakota.

A. MISTAKE OF LAW DEFINED

As a matter of first impression, *Matthew Larson* will surely influence the development of North Dakota trust law. Specifically, the decision defines what constitutes a mistake of law under North Dakota Century Code title 59¹²⁶ and takes an expansive interpretation of this definition to include the mistaken legal effects of unknown applicable laws.¹²⁷ However, the extent of this influence remains unclear because *Matthew Larson*'s interpretation conflicts with the North Dakota Supreme Court's previous holdings in other facets of trust law.

In the trust interpretation case of *Langer v. Pender*,¹²⁸ the North Dakota Supreme Court stated that “[w]hen you intend the facts to which the law attaches a consequence, you must abide the consequence whether you intend it or not.”¹²⁹ With this statement, the court seemed to memorialize the adages that a “reasonable person is deemed to know the law” and “ignorance of the law is no excuse”¹³⁰ within the context of North Dakota trust law. Under these canons, ignorance is no mistake¹³¹ because a party may be indemnified of liability after committing a mistake but must account for its ignorance.¹³² By distinguishing *Langer*¹³³ and articulating a new

126. *Id.* ¶ 17, 831 N.W.2d at 395.

127. *Id.* ¶ 19, 831 N.W.2d at 395.

128. 2009 ND 51, 764 N.W.2d 159.

129. *Id.* ¶ 29, 764 N.W.2d at 168 (quoting *In re Estate of Duemeland*, 528 N.W.2d 369, 371 (N.D. 1995)).

130. *Retired Pub. Emp. Council of Wa. v. State Dept. of Ret. Sys.*, 16 P.3d 65, 68 (Wash. Ct. App. 2001).

131. *Am. Sur. Co. of N.Y. v. Groover*, 14 S.E.2d 149 (Ga. Ct. App. 1941).

132. *Brock v. O'Dell*, 21 S.E.2d 976, 978 (S.C. 1895).

definition of a mistake of law that absolves the consequences of settlor ignorance, *Matthew Larson* thusly creates conflicting interpretations concerning the consequences of one's ignorance within North Dakota Century Code title 59.

This conflict raises numerous questions. For instance will *Langer* or *Matthew Larson's* position on ignorance and its associated consequences control when the North Dakota Supreme Court considers issues of first impression in other facets of trust law? Additionally, since the court interpreted the term mistake of law contrary to longstanding edicts, would the court be willing to reinterpret other established legalese for the limited purpose of trust reformation claims? The recent proliferation of trust usage will assuredly lead to an increase in litigation and the need for future elaboration on these and other questions.

B. INFLUENCE OF CONTRACTING PRINCIPLES

Matthew Larson's influence on North Dakota trust law will also stem from the fact the decision seems to create a precarious relationship between contracting and trust reformation law in North Dakota. It is curious that the North Dakota Supreme Court belabored the point that contracting principles do not govern trust reformations yet cited a contractual reformation case¹³⁴ and adopted a governing definition for the term "mistake of law" that Black's Law Dictionary derived from established contracting law.¹³⁵ This reliance on contracting principles raises an important question: notwithstanding the fact that contracting principles do not govern trust reformations, can contracting principles at least influence North Dakota trust reformation law after *Matthew Larson*?

The aforementioned circumstances imply in the affirmative and such an inference is consistent with larger trends in the law. Throughout the years, contracting and trust law have steadily converged to the extent that there no longer remains any material distinction between contracting and trust law in numerous respects.¹³⁶ Some commentators conclude that this convergence emanates from the fact that trusts are fundamentally a "contractarian institution"¹³⁷ and that trust law is actually a subset of

133. *Matthew Larson*, ¶ 26, 831 N.W.2d at 397.

134. *Id.* ¶ 10, 831 N.W.2d at 391 (citing *Spitzer v. Bartleson*, 2009 N.D. 179, 773 N.W.2d 798).

135. Black's Law Dictionary specifically refers to the cases contained in Contracts Keynote 93(4) as the basis of its definition. BLACK'S LAW DICTIONARY 1092 (9th ed. 2009).

136. John H. Langbein, *The Contractarian Basis for the Law of Trusts*, 105 YALE L.J. 625, 652-55 (1995).

137. *Id.* at 628.

contract law.¹³⁸ The convergence of trust and contracting law in these respects has manifested itself in the observation that courts have increasingly referred to trusts as contracts.¹³⁹ Thus, one can construe the North Dakota Supreme Court's limited deference to contracting principles in developing *Matthew Larson* as consistent with larger trends in trust law.

Despite this observation, however, *Matthew Larson* still makes it unclear as to where exactly North Dakota trust reformation law figures into the relational dichotomy of trust and contracting law. Contracting law will certainly not govern certain trust reformation claims after *Matthew Larson*.¹⁴⁰ However, the court's citations at least imply that contracting principles may guide the development of trust reformation law. Accordingly, in the future, the North Dakota Supreme Court may have to elaborate on the extent to which, if any, it is willing to rely upon contracting principles in developing North Dakota trust reformation law.

C. FUTURE NEED TO DISTINGUISH *MATTHEW LARSON*

In determining *Matthew Larson*'s future applicability, it is imperative to note that parties have increasingly turned to trusts to conduct business transactions as assets held in commercial trusts¹⁴¹ far exceed those held in noncommercial trusts.¹⁴² This increased pervasiveness makes it nearly inevitable that North Dakota courts will encounter claims seeking reformation of commercial trusts. However, *Matthew Larson* will be of little import in these situations because the North Dakota Supreme Court predicated *Matthew Larson* upon the reasoning that contracting principles do not govern trust reformations for want of consideration.¹⁴³

In recognizing *Matthew Larson*'s limited future applicability, one must recognize that, with commercial trusts, the parties exchange consideration for transferring trust benefits.¹⁴⁴ This recognition is of the utmost importance because, "where the owner of property receives consideration for making a transfer of the property in trust, the rules applicable to

138. *Id.* at 627.

139. David Horton, *Unconsonability in the Law of Trusts*, 84 NOTRE DAME L. REV. 1675, 1677 n.8 (2009).

140. *Matthew Larson*, ¶ 16, 831 N.W.2d at 395.

141. Here, the term "commercial trust" refers to "a trust that implements bargained-for exchange." John H. Langbein, *The Secret Life of the Trust: The Trust as an Instrument of Commerce*, 107 YALE L.J. 165, 167 (1997).

142. English, *supra* note 20, at 149. Here, noncommercial trusts refers to those trusts that do not qualify as commercial trusts.

143. *Matthew Larson*, ¶ 16, 831 N.W.2d at 394-95.

144. See Langbein, *supra* note 137, at 167.

transfers for value and to contracts are applicable.”¹⁴⁵ Applying these contracting principles to commercial trusts, courts may reform a commercial trust only where the parties make a mutual mistake of law or fact.¹⁴⁶ Under this principle, the legal effects caused by a settlor’s ignorance of applicable laws would not warrant reformation because reformation is only appropriate under such circumstances where the parties make a mutual mistake of law or fact.¹⁴⁷ Thus, *Matthew Larson* would have resulted in a different outcome had Matthew exchanged consideration for the enjoyment of the trust benefits.

Due to this contradictory conclusion, the North Dakota Supreme Court will have to stipulate that the conclusion that “[b]ecause the creation of a trust is different than the execution of a contract, legal principles related to reformation of a contract do not control in trust cases”¹⁴⁸ strictly applies to the reformation claims of noncommercial trusts. Pursuant to this stipulation, North Dakota will have to recognize two distinct categories of trust reformation claims that are premised upon the exchange of consideration or the lack thereof.¹⁴⁹ The creation of this bifurcated categorization is of paramount importance because, as seen above, the characterization of a particular trust as commercial or noncommercial and the associated applicability or inapplicability of contracting principles may dictate the disposition of a reformation claim. Therefore, *Matthew Larson* will almost assuredly not be the court’s final interpretation of North Dakota Century Code section 59-12-15.

V. CONCLUSION

In *In re Matthew Larson Trust Agreement*, the North Dakota Supreme Court held that the mistaken legal effects caused by a settlor’s ignorance of applicable laws may warrant trust reformation under North Dakota Century Code section 59-12-15 if the moving party proves beyond clear and convincing evidence that such effects negate the settlor’s intentions in creating the trust. In coming to this conclusion, the court articulated a new and expansive definition of the term mistake of law for the purposes of North Dakota Century Code title 59. With these conclusions, the court also held that principles governing contractual reformations are inapplicable to

145. RESTATEMENT (SECOND) OF TRUSTS § 333 cmt. e (1959).

146. *See supra* Part II.C.

147. *Id.*

148. *Matthew Larson*, ¶ 16, 831 N.W.2d at 395.

149. Some authority appears to recognize such a distinction. *See Moore*, 576 P.2d at 253; RESTATEMENT (THIRD) OF TRUSTS § 62 cmt. a (2003).

trust reformations. Despite these clarifications, *Matthew Larson* leaves numerous questions unanswered and other issues potentially muddled, the most important of which is the broadly worded conclusion that contracting principles cannot control trust reformation claims. For the foregoing reasons, such an unqualified pronouncement may have been misguided. Consequently, because contracting principles will control commercial trust reformation claims, the North Dakota Supreme Court will have to qualify *Matthew Larson* so to apply solely to noncommercial trust reformations. In doing as much, North Dakota will have to recognize a bifurcated trust reformation scheme that involves two classes of trust reformation claims that are premised upon the exchange of consideration or lack thereof.

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