IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-1794

POLK COUNTY NO. LACL155126

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LINDA BETZ,
Plaintiff-Appellant

v.
REBECCA MATHISEN, ERIC MULLER, KELLY RASMUSSEN, AND MICHAEL WILSON
Defendants-Appellees.

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APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY
THE HONORABLE PATRICK SMITH

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APPELLANT'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW

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I. This Court Should Reject Appellees' Request and Review the Only Question that Should be Decided Short of Trial: Does the Discovery Rule Apply to Defamation Claims?

This appeal came to the Court for two narrow reasons: the district court declined to extend the discovery rule to this defamation case and it determined that Linda Betz was on inquiry notice of the defamation she asserted in her petition, the source and origins of which she was completely ignorant when she filed her first lawsuit (*Betz I)*. The Court of Appeals correctly decided the issues appealed.

Regarding application of the discovery rule to defamation claims, the court issued a narrow ruling, holding "that the discovery rule applies to a defamation claim in circumstances such as this, where the allegedly defamatory statements were inherently secretive, inherently undiscoverable, or not a matter of public knowledge." (Opinion at 9). If the Court decides the discovery rule applies, the rest of the case can be resolved through ordinary trial court processes.

Regarding the question of whether Betz was on inquiry notice of the defamatory statements, the court held that "[r]esolving the factual question of what Betz knew and when she knew it will need to be resolved on remand by motion practice-other than a motion to dismiss-or trial." (Opinion at 10). The Court of Appeals is correct, the question of what Betz knew and when she knew it is the kind of detailed factual inquiry that should be reserved for post-discovery trial or motion practice.

II. This Court Should Hold that the Discovery Rule Applies to Defamation Claims.

Intimately connected to the question of when Betz knew of the statements on which her suit rests is the discovery rule doctrine and its application on these facts. Whether the discovery rule applies – is the only issue requiring review by the Iowa Supreme Court. (Iowa R. App. P. 6.1103(b)(2)). Appellant will not rehash all of the arguments made in her brief to the Court of Appeals in support of this conclusion. The Court of Appeals decision found for Betz holding "that the discovery rule applies to a defamation claim in circumstances such as this, where the allegedly defamatory statements were inherently secretive, inherently undiscoverable, or not a matter of public knowledge." (Opinion at 9).

In reaching its conclusion, the Court of Appeals had to overrule prior unpublished precedent (*Stites* and *Davenport*) that were wrongly decided. Though this Court had yet to weigh-in fully on the question, given the Iowa Supreme Court's history of pragmatic use and application of the discovery rule and adjacent doctrines like equitable tolling, this argument did not seem like a reach. Within the narrow confines of the facts of this case, to not apply the discovery rule would nullify Betz's ability to enforce her right to correct the record. (Opinion at 5-6). Therefore, Betz respectfully requests that should this Court, take up this issue, that it adopt the reasoning of the Court of Appeals, and hold that the discovery rule applies to defamation cases in the limited circumstances wherein the defamatory statements "were inherently secretive, inherently undiscoverable, or not a matter of public knowledge."(Opinion at 9).

III. The Court of Appeals Correctly Concluded that the Question of Whether Betz was on Inquiry Notice Should be Decided by the Trier of Fact.

Regarding the question of whether Betz was on inquiry notice of the defamatory statements, the court held that "[r]esolving the factual question of what Betz knew and when she knew it will need to be resolved on remand by motion practice-other than a motion to dismiss-or trial." (Opinion at 10). The Court of Appeals is correct, the question of what Betz knew and when she knew it is the kind of detailed factual inquiry that should be reserved for post-discovery trial or motion practice. Betz was not on inquiry notice of the false complaint made by subordinate Rebecca Mathisen (and the other alleged defamatory statements at issue) and the decision of the Court of Appeals should be affirmed.

In support of their argument, the Appellees rely on the dissenting opinion of the *en banc* panel of the Court of Appeals: "Once a person is aware that a problem exists, the person has a duty to investigate 'even though the person may not have knowledge of the nature of the problem that caused the injury.'" (Opinion at 13-14 (quoting *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 736 (Iowa 2008)). The Appellees' argument that the dissent latched on to is half-a-bubble off. The argument, distilled to its essence is: because Betz pled a defamation claim in the first case, doing so constituted constructive knowledge of a fact—indeed the fact—about which she could not have known at the time she made her initial defamation claim. The dissenting opinion's

reliance on *Buechel* is mistaken as the facts in that case align more closely to the facts in *Mormann v. Iowa Workforce Development*, 913 N.W.2d 554 (Iowa 2018). Both cases stand for the proposition that where a plaintiff has knowledge of prima facie facts supporting the underlying claim, the plaintiff cannot avail herself of the discovery rule to save the claim. *Mormann*, 913 N.W.2d at 576-77.

In her first suit against the Bank, Betz filed a defamation claim alleging that the statements made to a federal agency in an 8-K form filed with the SEC constituted a defamatory statement. (Amended Petition at 15-16, *see also Betz v. Fed. Home Loan Bank of Des Moines*, 549 F.Supp. 3d 951, 956). The federal district court dismissed that claim on a motion to dismiss. (Opinion at 3).

In *Betz I*, and in accordance with Iowa's notice pleading standard, Betz put the Bank on notice of what she believed in good faith to be an actionable claim. Iowa R. Civ. P. 1.402(2). The rule does not require a plaintiff to allege facts that she guesses *might* lead to a claim. Nor does the rule mandate that a plaintiff plead facts about which she is unaware. Betz *knew* that that the Bank had issued the 8-K to the SEC regarding her termination – and that was the only specific basis upon which she based her defamation claim. (App. Vol. II p. 25). Regarding the argument that Betz referenced other potential defamatory statements, the federal district court that addressed the defamation claim in the first lawsuit summarized the claim as about the 8-K filing:

> Plaintiff alleges that FHLB's failure to include in the written statement that her termination from employment was "without cause," as had been included in the Form 8-Ks filed in relation to the termination of at least three male executives within six to seven months of Plaintiff's firing, implied that her employment termination was with cause. *Id*. ¶¶ 100, 101. Plaintiff alleges such failure implied

> that she was incompetent as an information security executive, and thus the statement-or lack thereof-injured and attacked her professional reputation. Id. ¶¶102, 103. Plaintiff further alleges "Defendants have also made additional slanderous and libelous statements regarding Plaintiff's ability to perform her job or surrounding the circumstances of her termination, which include, but are not limited to statements made to the Bank's regulator, the Federal Housing Finance Agency. *Id.* ¶105.

Betz, 549 F.Supp. 3d at 961.

The court then summarized the Bank's assertion regarding the defamation claim--demonstrating that it understood Betz's defamation claim to be about the 8-K:

> Defendants do not dispute Plaintiff has sufficiently pleaded the elements of publication and whether the statement was about Plaintiff. Rather, Defendants contend the statement contained with the Form 8-K was privileged and incapable of a defamatory meaning. Defendants also contend Plaintiff's claim fails because the statement was true and she cannot prove malice. As noted above, because this action involves a claim of libel per se, Plaintiff need not prove the disputed elements of malice, falsity, or injury.

Id. 962-63.

In the end, there is no way for Betz to have known of the internal and confidential complaint Mathisen made, or the follow-on effects of the complaint until discovery was well under way in the first suit. All the labels hung on the case, whether called inquiry notice or constructive knowledge, do not equate to Betz knowing or even could have known about the internal and confidential complaint or any other alleged defamatory statements that were untrue. Had she known of the false and defamatory internal complaint, and the defamatory statements that followed, Betz should have been held to the normal and customary statute of limitations. But she did not know and could not know of those facts until long after they were made and, therefore, the discovery rule should apply.

The public policy of not holding a plaintiff to knowledge she could not otherwise have is summed up by the Court of Appeals: that it would be entirely contrary to justice "to charge a plaintiff with knowledge of facts which are unknown to and inherently unknowable." (Opinion at 8). This is ultimately the question: what did Betz know and when did she know it? Betz asserts that she knew nothing of the defamatory statements made by Appellees employees until well into the discovery phase of *Betz I*.

The Appellees' argument that Betz's assertions regarding her belief in the possibility of defamatory statements (in connection with the 8-K) acknowledged during oral argument were sufficient to put her on notice of the hidden and secretive reports issued by the instant appellees misses the mark. In its application, the Appellees' quote *Bandstra v. Covenant Reformed Church,* 913 N.W.2d 19 (Iowa 2018) stating, "A party is placed on inquiry notice when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem." *Bandstra*, 913 N.W. 2d at 44 (quoting *Vossoughi v. Polaschek*, 859 N.W.2d 643, 652 n.4 (Iowa 2015)). But the law does not require the impossible. And it certainly does not require the clairvoyance to ascertain evidence in her own favor without engaging in discovery.

The Court of Appeals agreed that the "defamatory statements were inherently secretive in nature" and that even given reasonably diligent investigation the statements "would have [been] restricted or" Betz' access to them "nonexistent." (Opinion at 9). Therefore, Betz was not on any notice –inquiry or otherwise -- prior to March of 2021. Whether this assertion is true is naturally disputed by the Appellees. However, "[d]etermining what Betz knew and when she knew it such that a decision can be made

whether and to what extent the statute of limitations should be tolled by application of the discovery rule is a factual inquiry that cannot be resolved at this motion-to-dismiss stage of the proceedings." (Opinion at 10).

Therefore, the Court of Appeals determined that the question of notice/knowledge is one for the trier of fact at trial and remanded the case to the district court. *Id*. This Court should order the same result.

IV. The District Court Did Not Address, and the Appellees Did Not Cross-Appeal on the Issue of Claim Preclusion and the Court Should Decline to Address that Issue on Further Review.

In the event the Court takes this issue on further review, the Appellees are incorrect in asserting that they are in privity with their employer, the Bank. The Appellees rely heavily on *Peppmeier v. Murphy*, 708 N.W.2d 57(Iowa 2005) in support of their argument that the agents (defendants) of the principal (the Bank) were in privity with one another and, as such, the allegations in the present case are precluded. (Application at 29). Appellees misapply *Peppmeier*. The Appellees use *Peppmeier* to advance a theory of privity that flows upward from agent to principal, not downward from principal to agent. As the named parties in this case are all agents who allegedly made defamatory statements, this theory of privity does not apply. Moreover, the facts in *Peppmeier,* and the legal question it addresses, are fundamentally different than the facts and issues in this case. In *Peppmeier,* the plaintiff sought to hold the principal liable separately for the acts of the agent when the acts of the agent were the sole basis of liability against the principal. The Supreme Court found that the principal cannot be

vicariously liable for the agent's conduct where there has been a final adjudication that the agent is not liable.

> Because Peppmeier's claim against Heartland was based on the same facts that comprised her claim against Murphy, her claim against Heartland is necessarily barred. Stated another way, because Peppmeier's claim against Heartland was that of vicarious liability based on respondeat superior regarding Murphy's actions rather than on Heartland's independent tort, the summary judgment in favor of Murphy is res judicata in favor of Heartland. *Id*. at 66 (emphasis added).

Id. at 66.

In the *Betz I*, Betz sought to hold the Bank liable for the actions of its agents. In this case, Betz seeks to hold Appellees liable for their own conduct. Betz makes no argument or assertion in this case in an attempt to make the Bank liable for Appellees' conduct. The parties are different in case two (save for one) and the facts are different in case two and therefore *Peppmeier* cannot complete the lift urged by Appellees. The Appellees are not in privity with their employer, therefore the allegations in *Betz II* are not precluded by the summary judgement granted in *Betz I*.

In conclusion, Appellees' application for further review should either: 1) not be granted based on the soundness of the judgement of the Court of Appeals and the arguments made herein or 2) should be granted only on the issue of whether the discovery rule applies due to it being an issue of first impression.

Dated: April 7, 2025

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

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Dated: May 31, 2024

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on April 7, 2025, I electronically filed the foregoing with the Clerk of the Court for the Iowa Supreme Court by using the EDMS system. I certify that all participants in the case are registered EDMS users and that service will be accomplished by the EDMS system.

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