

2012 IL App. (1st) 110681-U

FIRST DIVISION  
February 21, 2012

No. 1-11-0681

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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MICHAEL CLIFTON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 CH 3431
	)	
ARCADIA REAL ESTATE DEVELOPING and	)	
INVESTMENT COMPANY, Doing Business as	)	Honorable William Maki,
Arcadia Custom Home Builders, FARMERS	)	Judge Presiding.
INSURANCE GROUP and TRUCK INSURANCE	)	
EXCHANGE,	)	
	)	
Defendants	)	
	)	
(Alea London Limited,	)	
	)	
Defendant-Appellee).	)	

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JUSTICE HALL delivered the judgment of the court.

Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

**ORDER**

¶ 1 **Held:** The complaint for declaratory judgment was properly dismissed where the injured plaintiff lacked standing to bring a declaratory judgment against the tortfeasor's insurer.

¶ 2 Plaintiff Michael Clifton appeals from the dismissal of his complaint for declaratory judgment against defendant Alea London Limited (Alea).<sup>1</sup> On appeal, plaintiff Clifton contends that: (1) he had standing to bring a declaratory judgment action against his tortfeasor's insurer; and (2) the doctrine of *res judicata* did not bar his complaint for declaratory judgment. We determine that plaintiff Clifton lacked standing to file a complaint for declaratory judgment against defendant Alea and affirm the dismissal of the complaint.<sup>2</sup>

¶ 3 Plaintiff Clifton was injured while working on a construction site for his employer, Brock Electric, Inc. (Brock). He filed a personal injury suit against the general contractor, Arcadia Developing & Investment Company (Arcadia).

¶ 4 Arcadia filed a declaratory judgment suit seeking a declaration that defendant Alea owed a duty to defend and indemnify it in the Clifton personal injury suit. Plaintiff Clifton was not named in and did not receive notice of Arcadia's declaratory judgment suit. The circuit court granted defendant Alea's motion to dismiss count I of Arcadia's suit without prejudice. Arcadia filed an amended complaint for declaratory judgment but voluntarily dismissed it.

¶ 5 Plaintiff Clifton filed the instant declaratory judgment suit, in which he sought a declaration that defendant Alea owed a duty to defend and indemnify Arcadia. He alleged that he

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<sup>1</sup>Alea London Limited is now known as Catalina London Limited.

<sup>2</sup>The record on appeal contains a first amended complaint. In its August 27, 2010, order, the circuit court granted plaintiff Clifton leave to file an amended complaint as an offer of proof.

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was a necessary party to Arcadia's declaratory judgment action and the failure to join him as a party to the Arcadia suit renders any orders in that case voidable.

¶ 6 Defendant Alea filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010) (the Code)). The motion alleged that plaintiff Clifton lacked standing to bring a declaratory judgment suit and that the suit was barred by the prior judgment in Arcadia's declaratory judgment complaint against defendant Alea. The circuit court granted the motion to dismiss. After the denial of his motion for reconsideration, plaintiff Clifton filed this appeal.

¶ 7 ANALYSIS

¶ 8 The circuit court dismissed plaintiff Clifton's suit for lack of standing and on *res judicata* grounds. We agree that plaintiff Clifton lacked standing and therefore do not address whether *res judicata* bars his suit.

¶ 9 I. Standard of Review

¶ 10 Our review of a dismissal under section 2-619 of the Code is *de novo*. *Westmeyer v. Flynn*, 382 Ill. App. 3d 952, 954-55 (2008). Lack of standing is an affirmative defense and is properly raised in a section 2-619(a)(9) motion to dismiss. *Record-A-Hit, Inc. v. National Fire Insurance Co. of Hartford*, 377 Ill. App. 3d 642, 648 (2007). Similar to our review of the grant of summary judgment, we consider whether there was a genuine issue of material fact that precluded dismissal or, absent a genuine fact question, whether dismissal was proper as a matter of law. *Westmeyer*, 382 Ill. App. 3d at 955.

¶ 11

## II. Discussion

¶ 12 Plaintiff Clifton contends that he had standing to bring a complaint for declaratory judgment in this case, relying on *Reagor v. Travelers Insurance Co.*, 92 Ill. App. 3d 99 (1980).

In *Reagor*, the appellate court held that an injured party had standing to bring an action for declaratory judgment against a tortfeasor's insurer. The court found that a genuine controversy existed between the injured party and the insurer as to the coverage issue, which could not be disposed of by an agreement between the insured and the insurer that no coverage existed. The court rejected the insurer's argument that there was no legal relationship between it and the injured party. The court found that the injured party was a beneficiary of the liability policy.

Therefore, he had rights under the policy and was "a real party in interest to the liability insurance contract." *Reagor*, 92 Ill. App. 3d at 103. Since there was a genuine controversy and a sufficient legal relationship existed between the injured party and the tortfeasor's insurer, the injured party had standing to bring a declaratory judgment action against the insurer. *Reagor*, 92 Ill. App. 3d at 103.

¶ 13 Defendant Alea points out that in *Dial Corp. v. Marine Office of America*, 318 Ill. App. 3d 1056 (2001), this court limited the holding in *Reagor* to cases where: "(1) an injured party has filed suit against an insured tortfeasor; (2) the insurer of the tortfeasor has not provided a defense to its insured; and (3) neither the insured nor the insurer has filed a declaratory judgment action to determine the scope of the insurer's policy." *Dial Corp.* 318 Ill. App. 3d at 1063.

¶ 14 In the instant case, Arcadia filed a declaratory judgment action against defendant Alea to determine the issue of coverage. Plaintiff Clifton maintains that neither *Reagor* nor *Dial*

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*Corporation* contemplated the situation in this case where the injured party was not made a party to the declaratory judgment action between the insured tortfeasor and the insurer but has not directed our attention to any case drawing that distinction. Moreover, unlike *Reagor*, in the instant case there was no agreement between the tortfeasor and its insured that no coverage existed. In the instant case, by filing its complaint for declaratory judgment, Arcadia sought a legal determination as to the scope of the insurance coverage under its policy with defendant Alea.

¶ 15 We conclude that plaintiff Clifton lacked standing to bring a declaratory judgment action against defendant Alea. Therefore, dismissal of the instant complaint for declaratory judgment pursuant to section 2-619(a) of the Code was proper.

¶ 16 Affirmed.