

No. 14-1965

**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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In re ESTATE OF ANIELA JENDRUSIAK,	)	Appeal from the Circuit Court
Deceased	)	of Cook County.
	)	
(Anne Jentry,	)	
	)	
Plaintiff-Appellant,	)	
	)	No. 10 P 4218
Theresa Wachel-Carso, Individually and as	)	
Successor Trustee of the Aniela Jendrusiak Trust	)	
Dated December 2, 1997, as amended, and as	)	
Executor of the Estate of Aniela Jendrusiak,	)	
Zbigniew Dominik, and Maria Dominik,	)	
	)	Honorable Susan M. Coleman
Defendants-Appellees.)	)	Judge Presiding

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JUSTICE SIMON delivered the judgment of the court.  
Justices Neville and Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court improperly dismissed the case with prejudice on the basis that plaintiff lacks standing.

¶ 2 This case is before us after being dismissed in the circuit court on the basis that plaintiff

lacks standing to pursue the claims. The question presented on appeal is whether the beneficiary

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of a trust has standing to sue when the trustee is unwilling to pursue collection of a debt allegedly owed to the trust by a third party. Because the answer is yes, we reverse.

¶ 3

### BACKGROUND

¶ 4 Plaintiff Anne Jentry is the beneficiary of a trust settled by her mother, Aniela Jendrusiak. Jendrusiak died on July 27, 2008. Jendrusiak was the initial trustee, but upon her death, defendant Theresa Wachel-Carso became the trustee. Defendants Zbigniew and Maria Dominik were friends of Jendrusiak. During her lifetime, Jendrusiak loaned the Dominiks money so that they could purchase a home. The loans were evidenced by promissory notes and the Dominiks made monthly payments for several years.

¶ 5 Jendrusiak executed several declarations of trust during her life. She executed one declaration of trust on May 17, 1995 and another on December 2, 1997. On May 24, 2003, Jendrusiak executed a document that purported to amend her trust arrangement. That document is directed at the 1995 declaration of trust and refers to the loan to the Dominiks. The purported amendment cites the address of their home and states that in the event of Jendrusiak's death, "the principal balance then owing on said property[] shall be forgiven and the mortgage and note for same are to be cancelled and marked as having been paid in full." When Jendrusiak died, her assets, including the promissory note evidencing the loan to the Dominiks, poured over to the 1997 trust, and the trust eventually became the holder of the note. Wachel-Carso, in her role as trustee, communicated to the Dominiks on multiple occasions that the loan was forgiven and that they no longer needed to make payments. On Wachel-Carso's instructions, the Dominiks stopped making payments.

¶ 6 Plaintiff, as the beneficiary of the trust, objected to the cessation of payments. She

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contends that the purported amendment is void and that the Dominiks must repay the loan.

Plaintiff served a demand on Wachel-Carso imploring her to pursue payment of the loan.

Wachel-Carso sided with the Dominiks and refused to take any action against them. Plaintiff then

filed this case against Wachel-Carso and the Dominiks. She alleges that the purported

amendment is void because it is connected to the 1995 trust while the 1997 trust is the holder of the

note. Plaintiff also alleges that Zbigniew Dominik exerted undue influence over Jendrusiak and,

therefore, the loan should not be deemed forgiven. Defendants filed a motion to dismiss arguing,

among other things, that Plaintiff lacks standing. Defendants' theory is that only the trustee has

the capacity to sue over nonpayment of an obligation owned by the trust, so plaintiff has no such

right. The trial court agreed and dismissed the case for lack of standing. Plaintiff appeals

arguing that she has standing as the beneficiary because the loan is valid and is in default yet the

trustee refuses to take any steps to collect it.

¶ 7

#### ANALYSIS

¶ 8 We review the dismissal of a complaint *de novo*. *Sandholm v. Kuecker*, 2012 IL 111443,

¶ 55. Defendants' motion to dismiss was brought pursuant to the section of the Code of Civil

Procedure that allows a defendant to file a combined motion directed at a pleading. 735 ILCS

5/2-619.1. Defendant interposes arguments for involuntary dismissal under both section 2-615

and section 2-619.

¶ 9 A section 2-615 motion attacks the sufficiency of a complaint and raises the question of

whether a complaint states a cause of action upon which relief can be granted. *Fox v. Seiden*, 382

Ill. App. 3d 288, 294 (2008). All well-pleaded facts must be taken as true and any inferences

should be drawn in favor of the non-movant. 735 ILCS 5/2-615; *Hammond v. S.I. Boo, LLC* (In re

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County Treasurer & Ex-Officio County Collector), 386 Ill. App. 3d 906, 908 (2008). Plaintiffs are not required to prove their case at the pleading stage; they are merely required to allege sufficient facts to state all elements that are necessary to constitute each cause of action in their complaint. *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007). A section 2-615 motion to dismiss should not be granted unless no set of facts could be proved that would entitle the plaintiff to relief. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008).

¶ 10 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint. 735 ILCS 5/2-619. The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of the litigation. *Henry v. Gallagher* (In re Estate of Gallagher), 383 Ill. App. 3d 901, 903 (2008). Although a section 2-619 motion to dismiss admits the legal sufficiency of a complaint, it raises defects, defenses, or some other affirmative matter appearing on the face of the complaint or established by external submissions, which defeat the plaintiff's claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (2008).

¶ 11 We are called to determine whether plaintiff has standing to sue in her capacity as the beneficiary of the trust. Of course, the rights and obligations arising under a trust are primarily dependent on the trust instrument itself. *Bangert v. Northern Trust Co.*, 362 Ill. App. 3d 402, 412-13 (2005). But the general principles of a trust relationship are codified in Illinois. The Trusts and Trustees Act (760 ILCS 5/1 *et seq.*) outlines the powers held by a trustee. 760 ILCS 5/4. One such power is to "compromise, contest, prosecute or abandon claims or other charges in favor of or against the trust estate." 760 ILCS 5/4.11. Generally, it is only the trustee who has standing to sue on behalf of the trust. See *Pierce v. Chester Johnson Electric Co.*, 117 Ill. App. 3d 867, 868-69 (1983); *Ready v. Ready*, 33 Ill. App. 2d 145, 152 (1961).

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¶ 12 But, the trustee is under a duty to the beneficiary to take reasonable steps to realize on claims that are held by the trust. Restatement (Second) of Trusts § 177. If the trust holds a contract claim against a third person, it is the trustee's duty to take reasonable steps to enforce the claim. *Id.* at cmt. a. Where the trustee could maintain an action against a third person but the trustee improperly refuses or neglects to bring the action, the beneficiary can maintain a suit against the trustee and the third person. *Ready*, 33 Ill. App. 2d at 152-53; Restatement (Second) of Trusts § 282 (1-2); See also Restatement (Second) of Trusts § 282 cmt. e.

¶ 13 The trial court recognized that a beneficiary has the legal capacity to bring suit when the trustee refuses to act on a claim, but went on to find that plaintiff does not have standing here because plaintiff did not allege that the trustee's failure to pursue the claim is improper or neglectful. But that is the whole basis of plaintiff's case. Plaintiff alleges that Zbigniew Dominik exerted undue influence over Jendrusiak to get her to execute the putative amendment to forgive the loan. Plaintiff also alleges that the amendment is ineffective because it refers to a different trust than the one that is the holder of the note. So, according to plaintiff, the loan obligations are still in force and the trust is owed in excess of \$100,000 that the trustee is willfully failing to collect. Defendants disagree and argue that the court should find that the loan was forgiven. But that issue is distinct from, or must be resolved as a precondition to, finding that plaintiff lacks standing.

¶ 14 Plaintiff is alleging precisely what is required to have standing as a beneficiary—that the trust has a claim against a third party, but that the trustee is improperly refusing to prosecute it. Plaintiff may very well be wrong about whether the trust has a claim against the Dominiks, but that is beyond the threshold question of whether she has standing to sue in her capacity as a beneficiary.

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Although there is some evidence on file that might demonstrate that Jendrusiak intended to forgive the loan upon her death, the trial court did not rule on the validity of the amendment nor did it dispose of the allegations of undue influence. We are not saying that the trust indeed has a valid claim against the Dominiks or that Wachel-Carso is acting improperly, just that the case cannot be resolved as a matter of law without those issues being addressed. Thus, on remand, the trial court must resolve the questions set forth above.

¶ 15 CONCLUSION

¶ 16 Accordingly, the trial court's judgment is reversed. The case is remanded for further proceedings consistent with this order.

¶ 17 Reversed and remanded.