

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).

2026 IL App (3d) 250447-U

Order filed September 21, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

SKYWAY BROKERAGE, INC.,	)	Appeal from the Circuit Court
	)	of the 18 th Judicial Circuit,
Plaintiff-Appellant,	)	Du Page County, Illinois.
	)	
v.	)	Appeal No. 3-25-0447
	)	Circuit No. 24-LA-456
GREAT AMERICAN INSURANCE	)	
COMPANY,	)	The Honorable
	)	Jennifer L. Barron,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE ANDERSON delivered the judgment of the court.
Justices Brennan and Davenport concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by granting a section 2-615 motion to dismiss when the plaintiff was unable to establish its right to enforce the terms of the insurance policy. Because Supreme Court Rule 191 (eff. Jan. 4, 2013) is inapplicable to motions brought pursuant to section 2-615 (735 ILCS 5/2-615 (West 2024)), we need not address the merits of issues arising out of that Rule.

¶ 2 After the plaintiff freight broker obtained a judgment on behalf of its customer against the insured of the defendant in the instant case, it filed a complaint seeking to enforce contractual rights under the insurance policy. In its complaint, the plaintiff broker sought to enforce contractual

rights both under a provision contained in an appendix to the policy and as its customer's subrogee. After the dismissal of its original and amended complaints, the plaintiff appealed. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The defendant, Great American Insurance Company, issued an insurance policy to Onpoint Logistics, LLC, that covered any legal liability Onpoint incurred due to damage to cargo while it was in transit. In February 2022, plaintiff Skyway Brokerage, Inc., a freight broker, filed a complaint in the United States District Court for the Northern District of Illinois on behalf of its customer, Wood Technologies (Wood Tech), against Onpoint for damage to cargo shipped by Onpoint. Skyway and Onpoint entered into a \$7000 settlement agreement, but Onpoint did not make the required payments. Due to Onpoint's breach of the settlement agreement, the District Court ordered it to pay Skyway \$11,585.00, the settlement amount plus sanctions.

¶ 5

In April 2024, Skyway filed its first complaint in the Du Page County circuit court against Great American, seeking recovery under the cargo insurance policy issued to Onpoint. That complaint was dismissed pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2024)), as were Skyway's amended and second-amended complaints.

¶ 6

On May 7, 2025, Skyway filed its third-amended verified complaint ("complaint"), alleging that Great American breached the insurance contract and acted in bad faith. The complaint asserted that Wood Tech had incurred a cargo loss covered by the Great American policy and later assigned and subrogated its rights under that policy to Skyway in a written agreement. Skyway attached the subrogation agreement and the federal judgment establishing the carrier's liability to its complaint.

¶ 7

To support its claim, Skyway cited a policy provision that provided coverage for the "property of others." Relying on Appendix A of the policy, Skyway claimed that Great American

had failed to pay for losses “ ‘for the account of whom it may concern’ or to its customer or the owner of the covered property.” Great American again filed a motion to dismiss pursuant to section 2-615, asserting that Skyway could not allege facts showing it was either a party to the policy or a direct and intended third-party beneficiary of that policy.

¶ 8 Skyway then filed a combined motion seeking both leave to conduct limited discovery pursuant to Code section 2-619 (735 ILCS 5/2-619 (West 2024)) to obtain the full insurance policy and an extension of time to respond to the motion to dismiss. The trial court held a hearing on Skyway’s combined motion on July 17, 2025, denying it in its entirety.

¶ 9 After a hearing on Great American’s motion to dismiss, the trial court also dismissed Skyway’s third-amended verified complaint with prejudice. Skyway filed a timely notice of appeal from the dismissal order and from the order denying its motion for limited discovery.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Skyway raises four issues: whether (1) the trial court erred by dismissing its second- and third-amended complaints pursuant to section 2-615 when standing is an affirmative defense that must be raised in a section 2-619(a)(9) motion; (2) dismissal pursuant to section 2-619(a)(9) was barred because the motions were not supported by affidavits that complied with Illinois Supreme Court Rule 191(a); (3) it was an abuse of discretion to deny Skyway’s motion for limited discovery; and (4) the third-amended complaint sufficiently alleged Skyway’s right to enforce the insurance policy as an intended third-party beneficiary or a subrogee to survive the motion to dismiss.

¶ 12 A. Section 2-615 Dismissals & Enforceability of Contract Rights

¶ 13 Initially, Skyway contends that the trial court improperly granted Great American’s section 2-615 motions to dismiss its second-and third-amended complaints because standing may be raised

only in a section 2-619 motion to dismiss. While Skyway acknowledges that this court may look beyond the motion’s statutory designation to its substance, it argues that a dismissal must be reversed if the error in designation prejudiced the nonmovant. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994). Because the propriety of Great American’s section 2-615 motion to dismiss is closely tied to its merits, we address both issues together.

¶ 14 A section 2-615 motion to dismiss asserts that a complaint is legally insufficient on its face. 735 ILCS 5/2-615 (West 2024); *Mercado v. S&C Electric Co.*, 2025 IL 129526, ¶ 18. In considering the motion, a court must accept all well-pleaded facts and reasonable inferences as true and construe the allegations in the light most favorable to the plaintiff. Dismissal under section 2-615 motion is proper only if it is clear that the plaintiff cannot prove any set of facts that would allow recovery. *Id.* We review the grant of a section 2-615 motion to dismiss *de novo*, examining whether the complaint’s allegations, when viewed in the light most favorable to the complainant, are sufficient to state a cause of action upon which relief may be granted. *Berry v. City of Chicago*, 2020 IL 124999, ¶ 25.

¶ 15 In contrast, a section 2-619(a)(9) motion to dismiss also admits all well-pleaded facts and reasonable inferences as true but may be granted only if the claim “is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (West 2020); *Mercado*, 2025 IL 129526, ¶ 19. Lack of standing is an example of the type of “affirmative matter” that may be properly raised in a section 2-619(a)(9) motion to dismiss. *Petta v. Christie Business Holdings Co., P.C.*, 2025 IL 130337, ¶ 18.

¶ 16 While here “standing” was referenced in the pleadings and the parties’ arguments, the underlying basis for Great American’s section 2-615 dismissal motions is more nuanced than that. The underlying basis for the motions is that Skyway’s complaint failed to show it had any

contractual rights under the cargo insurance policy issued by Great American. If Skyway cannot sufficiently show it was entitled to seek enforcement of the contractual rights in the policy, its complaint was legally insufficient on its face and subject to dismissal pursuant to section 2-615 as a matter of law.

¶ 17 The factual allegations in Skyway’s complaint asserted that: (1) Wood Tech was the seller and shipper of the cargo goods; (2) Skyway was Wood Tech’s freight broker; (3) Skyway hired Onpoint as the freighter carrier for Wood Tech’s cargo shipment; (4) Onpoint had a cargo insurance policy issued by Great American; (5) Wood Tech’s shipment was damaged in transit or while in Onpoint’s custody; (6) after Great American denied the damage claim, Skyway filed a lawsuit against Onpoint in federal court and ultimately received a judgment award; (7) “acting as a customer, assignee, *bona fide* subrogee, and third-party beneficiary of the policy—and having an insurable interest in the policy issued by Great American,” Skyway requested payment of the judgment from Great American; and (8) after Great American denied its claim, Skyway filed the instant lawsuit.

¶ 18 In count I of its complaint, asserting breach of contract, Skyway alleged that it or Onpoint “performed all obligations required under any and all agreements with [Great American],” that Skyway was a third-party beneficiary of the policy, and that it had an insurable interest in the cargo. The complaint also specifically alleged that “[Great American] breached the agreement with [Skyway]” and requested damages.

¶ 19 In counts 2 and 3 of its complaint, asserting claims of bad faith, Skyway reiterated its prior allegations and added that Great American “vexatiously and unreasonably delayed the settlement of [Skyway’s] claims” and that “Great American’s conduct—including its material misrepresentations, unreasonable denial of coverage, and shifting justifications—constitutes a

breach of its duty of good faith and fair dealing owed to [Skyway].” We note that, while “every contract contains an implied duty of good faith and fair dealing” (*Hartz Construction Co., Inc. v. Village of Western Springs*, 2012 IL App (1st) 103108, ¶ 28), it “is not an independent source of duties for the parties to a contract” (*Seip v. Rogers Raw Materials Fund, L.P.*, 408 Ill. App. 3d 434, 443 (2011)).

¶ 20 The allegations of breach of contract and bad faith conduct by Great American all rely on the existence of a valid and enforceable contract between Skyway and Great American. Skyway’s subrogation claim, in turn, relies on contractual rights it allegedly obtained through its subrogation agreement with Wood Tech, its client.

¶ 21 In its dismissal motions, Great American argued that Skyway failed to include sufficient factual allegations to maintain its causes of action because it was neither a party nor an intended third-party beneficiary to the insurance contract between Onpoint and Great American. Accordingly, we examine whether Skyway sufficiently alleged that it either possessed contractual rights as an intended third-party beneficiary of the policy or obtained those rights through the subrogation agreement with Wood Tech.

¶ 22 Skyway argues that the trial court improperly “resolve[d] contractual ambiguity, weigh[ed] competing interests, *** decide[d] factual disputes” and “[drew] inferences against the nonmovant” when it found that Skyway had no contractual rights under the cargo policy. It claims that whether it is a subrogee, an intended third-party beneficiary under Appendix A, or a “ ‘customer’ authorized to receive payment under the policy language, are issues requiring interpretation of contractual language and legal effect.” By failing to accept the allegations and reasonable inferences in Skyway’s complaint on those questions, the trial court committed error. We disagree.

¶ 23 Illinois is a fact-pleading state, meaning that Skyway “must allege facts sufficient to bring a claim within a legally recognized cause of action.” *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004). Factual deficiencies in a complaint cannot be saved by applying the rule of liberal construction. *Nuccio v. Chicago Commodities, Inc.*, 257 Ill. App. 3d 437, 443 (1993). Accordingly, the facts in Skyway’s complaint were required to support the mandatory elements of the causes of action it asserted. *Hanson v. Hyatt Corp.*, 196 Ill. App. 3d 618 (1990). Here, that meant the complaint had to establish a sufficient factual basis for Skyway’s alleged possession of contract rights under the cargo policy. “Conclusional statements of fact or law will not suffice to state a cause of action regardless of whether they succeed in generally informing the defendant of the nature of the claim against him or her.” *Winfrey v. Chicago Park District*, 274 Ill. App. 3d 939, 943 (1995).

¶ 24 Skyway’s attachment of a “Certificate of Liability Insurance” to its complaint showing Onpoint as the only insured under the policy indicates that Skyway had no contractual rights as a party. Similarly, the complaint’s allegation that Skyway “performed all obligations required under any and all agreements with [Great American]” is also insufficient, without more, to demonstrate that it had any contractual duties or possessed direct contractual rights. Indeed, Skyway does not assert that it and Great American were parties to any contractual agreement at all. As a non-party, it is difficult to imagine what policy obligations Skyway could have been required to fulfill.

¶ 25 In arguing that it had contractual rights as a third-party beneficiary and/or subrogee, Skyway relied on Appendix A of the policy, which was attached to its complaint. Appendix A provided:

“Adjustment and Payment of Loss

At our option, we may adjust the ‘loss’ with and pay to;

- a. You, for the account of whom it may concern; or
- b. Your customer, or the owners of the Covered Property.”

During the hearing on Great American’s motion to dismiss the second-amended complaint, Skyway’s counsel asserted that the “you” in Appendix A referred to Onpoint. Skyway argued that it was “the direct third-party beneficiary” of the contract under the language in Appendix A “because it’s Onpoint to the account of who it may concern or us under the contract under the accounts liability” because Skyway allegedly had an insurable interest in the cargo constituting the “covered property.”

¶ 26 We conclude that Appendix A does not support Skyway’s claim to contractual rights under the policy. That provision merely gives Great American the *option* to make payment on a covered property loss to Onpoint (designated in Appendix A as “you”), Onpoint’s customer, or Wood Tech. Giving the insurer an “option” of selecting which entity to pay for a covered loss falls far short of intentionally granting direct third-party rights to that entity. The creation of that option in Appendix A did not impose a contractual obligation on Great American to make payment for the covered damages to any particular listed entity. After construing the language of Appendix A as a matter of law, we conclude that neither Skyway nor Wood Tech, as the owner of the covered property, had a contractual right to direct payment from Great American. The trial court did not err by rejecting Skyway’s reliance on that language to survive Great American’s motion to dismiss for failure to state a valid cause of action.

¶ 27 Next, we consider whether Skyway sufficiently established that it possessed contractual rights as a third-party beneficiary of the policy. Not all third-party beneficiaries of a contract enjoy the benefits that come from enforcing contractual rights. While a third-party beneficiary that is intentionally created by the contracting parties may sue under the contract, an incidental

beneficiary has no such rights and, thus, cannot seek to enforce any of the contractual provisions. *Hutsonville Community Unit School District No. 1 v. Illinois High School Ass'n*, 2021 IL App (5th) 210308, ¶ 17. Under Illinois law, “a third-party is a direct rather than an incidental beneficiary only if the contracting parties manifest in their contract an intention to confer a benefit upon a third party.” *Popp v. Dyslin*, 149 Ill. App. 3d 956, 963 (1986). That intent “must affirmatively appear from the contract’s language.” *Ball Corp. v. Bohlin Building Corp.*, 187 Ill. App. 3d 175, 177 (1989). Although the contract need not specifically name the third-party beneficiary, it must sufficiently describe a class of intended beneficiaries. *Popp*, 149 Ill. App. 3d at 964. If the contract lacks an adequate description, it does not create an intended third-party beneficiary. “The plaintiff bears the burden of showing that the parties to the contract intended to confer a direct benefit on him.” *Marque Medicos Fullerton, LLC v. Zurich American Insurance Co.*, 2017 IL App (1st) 160756, ¶ 46. “[I]t is not enough that the parties to the contract know, expect or even intend that others will benefit. The contract must be undertaken for plaintiff’s direct benefit, and the contract itself must affirmatively make this intention clear.” *Popp*, 149 Ill. App. 3d at 964.

¶ 28 Skyway argues that the language in Appendix A shows that Onpoint’s “customers” were intended to be third-party beneficiaries of the policy. We disagree. As we previously concluded, by providing Great American with the “option” to select the recipient of the policy proceeds, the parties did not grant a right to receive those proceeds to any of the listed entities. *Supra* ¶ 26. Skyway’s reliance on three decisions from other jurisdictions, *Folger Coffee Co. v. Great American Insurance Co.*, 333 F. Supp. 1272 (W.D. Mo. 1971), *Paktank Louisiana, Inc. v. Marsh & McLennan, Inc.*, 688 F. Supp. 1087 (E.D. La. 1988), and *St. Paul Fire & Marine Insurance Co. v. Murray Plumbing & Heating Corp.*, 65 Cal. App. 3d 66 (1976), cannot overcome the conclusive effect of the policy language and Illinois law.

¶ 29 The same analysis also leads us to reject Skyway’s claim that it was entitled to rely on its contractual rights as a subrogee of Wood Tech. Wood Tech has no more rights as an intended third-party beneficiary under the language in Appendix A than does Skyway. Because, as a matter of law, Skyway’s complaint failed to sufficiently establish that either it or Wood Tech was an intended third-party beneficiary of the policy between Onpoint and Great American, neither entity had a right to sue to enforce the insurance contract. The trial court did not err in dismissing Skyway’s third-amended complaint when Skyway failed to show it was entitled to bring an action to enforce any rights under the policy.

¶ 30 B. Rule 191(a) Affidavit

Skyway next argues that, if Great American’s section 2-615 motion to dismiss is treated as challenging Skyway’s standing under section 2-619, the trial court erred by granting the motion because it was not accompanied by the affidavit required in Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013). Because we have concluded that Great American’s motion was properly brought pursuant to section 2-615 under the facts of this case, we decline to treat it as a section 2-619 motion to dismiss. For that reason, we need not address the merits of Skyway’s Rule 191 affidavit claim.

¶ 31 C. Denial of the Motion for Limited Discovery

Finally, Skyway asserts that the trial court erred by denying its request for limited discovery under Supreme Court Rule 191(b) (eff. Jan. 4, 2013) prior to ruling on Great American’s motion to dismiss. Like Rule 191(a), Rule 191(b) is not applicable to motions raised pursuant to section 2-615. We need not address the merits of Skyway’s Rule 191(b) discovery argument.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the orders of the circuit court of Du Page County dismissing Skyway's third-amended complaint and denying its motion for limited discovery.

¶ 34 Affirmed.