NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 260454-U

NO. 4-26-0454

FILED
November 25, 2026
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CRAIG HAYDEN,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
TRUE ACCORD, INC.,	)	No. 24LA155
Defendant-Appellee.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Lannerd and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's order dismissing the plaintiff's complaint under the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 *et seq.* (2024)) for lack of standing, finding that the FDCPA did not meet Illinois's requirements for statutory standing because it did not contain a plain and unambiguous statement of who could bring a cause of action, and plaintiff forfeited any other arguments against the trial court's ruling.

¶ 2 In July 2024, defendant, True Accord, Inc. (True Accord), e-mailed plaintiff, Craig Hayden, in an attempt to collect a debt for T-Mobile. Hayden called True Accord, and he asked both to pay the purported debt and dispute it. The representative responded that he could not do both. Hayden sued True Accord, alleging that both the e-mail and the phone conversation violated the federal Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 *et seq.* (2024)). In Hayden's second amended complaint, he relied on the alleged statutory violations themselves as the only injuries he suffered. True Accord filed a motion to dismiss under section

2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2024)), arguing that Hayden lacked standing to sue in an Illinois court. The trial court dismissed Hayden's second amended complaint with prejudice, although the record on appeal does not include the court's reasoning.

¶ 3 Hayden appeals. He argues that, under the Illinois Supreme Court's recent decision in *Faussett v. Walgreen Co.*, 2025 IL 131444, he had statutory standing to sue in an Illinois court. Alternatively, in his reply brief, he argues that he had common law standing.

¶ 4 For the reasons that follow, we affirm.

¶ 5 I. BACKGROUND

¶ 6 In November 2024, Hayden filed a complaint against True Accord, alleging violations of the FDCPA. The operative complaint for this appeal is Hayden's second amended complaint, which he filed in December 2025. There, Hayden claimed that True Accord was a "debt collector" under section 1692a(6) of the FDCPA (15 U.S.C. § 1692a(6) (2024)). Hayden alleged that in July 2024, he received an e-mail from True Accord attempting to collect a debt he owed to T-Mobile, but that e-mail did "not provide clear and conspicuous instructions for [Hayden] to opt out of future email communication." Hayden claimed this omission violated a Consumer Financial Protection Bureau regulation on opt-out notices that requires such a clear statement in certain electronic communications. 12 C.F.R. § 1006.6(e) (2024). Hayden further alleged that he called True Accord and "expressed that he would like to pay the debt, but that he disagreed and disputed that he owed the debt." According to Hayden, True Accord's representative responded that he could not both pay the debt and dispute it. Hayden claimed that this violated sections 1692e and 1692g of the FDCPA. 15 U.S.C. §§ 1692e, 1692g (2024). Hayden contended that True Accord engaged in unfair or unconscionable means to collect a

debt, in violation of section 1692f of the FDCPA. *Id.* § 1692f. He asked for statutory damages, attorney fees, and litigation expenses.

¶ 7 True Accord filed a motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2024)). Citing the Illinois Supreme Court's recent decision in *Faussett*, True Accord argued that Hayden lacked standing to sue in an Illinois court because he alleged no concrete injury. True Accord further argued that the alleged phone conversation did not violate the FDCPA.

¶ 8 In Hayden's response to True Accord's motion, Hayden urged the trial court to deny the motion without a hearing because True Accord improperly asserted the affirmative defense of lack of standing in a section 2-615 motion, rather than a section 2-619 motion. See 735 ILCS 5/2-615, 2-619 (West 2024). Alternatively, Hayden argued the alleged facts constituted violations of the FDCPA, and those statutory violations themselves were sufficient injury for standing in an Illinois court.

¶ 9 In reply, True Accord claimed that section 2-615 was an adequate basis for its motion because the affirmative defense of lack of standing was apparent on the face of the second amended complaint. Alternatively, True Accord asked the trial court to disregard the title of the motion and resolve the motion based on its substance.

¶ 10 On March 23, 2026, the trial court held a hearing on True Accord's motion to dismiss. The docket entry for that hearing states, "For reasons stated on the record, the Court granted said [motion to dismiss] with prejudice pursuant to [section 2-615]." The record on appeal does not include a transcript or other record of the court's statements at that hearing, and the court issued no written order.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Hayden appeals the trial court's order granting True Accord's motion to dismiss. He claims that True Accord's alleged violations of the FDCPA in the e-mail and phone call were sufficient injuries for statutory standing in Illinois courts. In his reply brief, he further claims that True Accord failed to prove that he did not satisfy the requirements for common law standing in Illinois. Alternatively, he asks that if we affirm the trial court's dismissal, we at least remand with instructions that he be allowed leave to file a third amended complaint.

¶ 14 The trial court granted True Accord's motion to dismiss under section 2-615 of the Code. A motion under this section "challenges the legal sufficiency of a complaint based on defects apparent on its face." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). We review an order granting such a motion *de novo*. *Id.* "In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Id.* We also construe the allegations in the light most favorable to the plaintiff. *Id.*

¶ 15 Initially, we observe that the parties have not provided a record of the trial court's reasoning in dismissing the second amended complaint. The court's docket entry indicates that it stated its reasoning on the record after the hearing on True Accord's motion. The parties have not provided a record or even a summary of that hearing, and the court did not issue an accompanying written order. In Illinois,

> "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the

appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

Moreover, "[i]n the absence of a proper record, a reviewing court may dismiss the appeal, or alternately summarily affirm the judgment of the trial court." *Beck v. DayOne PACT*, 2023 IL App (1st) 221120, ¶ 29.

¶ 16 Here, True Accord's only argument before the trial court for dismissal of all Hayden's claims was lack of standing, and the parties agree on appeal that this was the basis of the court's ruling. Moreover, because "we are reviewing a motion to dismiss with respect to the pleadings, our review is *de novo*, and we perform the same analysis that the trial court would perform." *Id.* Therefore, summary dismissal is not necessary. *Id.* Nevertheless, Hayden is the appellant, and he bore the burden of providing a sufficiently complete record. We will resolve any doubts resulting from the incompleteness against him.

¶ 17 A. The FDCPA

¶ 18 We begin with a brief overview of the relevant terms of the FDCPA. Section 1692(e) of this federal statute states, "It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e) (2024). Under section 1692e, "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." *Id.* § 1692e. Similarly, section 1692f states, "A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt." *Id.* § 1692f. Finally, section 1692k provides,

> "Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is

liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 *per centum* of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs." *Id.* § 1692k.

¶ 19 B. Standing

¶ 20 True Accord moved for dismissal of Hayden's FDCPA claims based on lack of standing in an Illinois court. "[T]he standing doctrine is one of the devices by which courts attempt to cull their dockets so as to preserve for consideration only those disputes which are truly adversarial and capable of resolution by judicial decision." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 488 (1988). The purpose of the standing requirement is "to preclude persons who have no interest in a controversy from bringing suit." *Glisson v. City of*

Marion, 188 Ill. 2d 211, 221 (1999). Illinois courts are not bound by federal rules for standing. *Fausett*, 2025 IL 131444, ¶¶ 35-37. Instead, in Illinois courts, "Illinois standing law applies, even with a federal statute." *Id.* ¶ 37. In Illinois, "[t]here is common-law standing, which requires an injury in fact to a legally recognized interest [citation], and there is statutory standing, which requires the fulfillment of statutory conditions to sue for legislatively created relief." *People v. Johnson*, 2021 IL 125738, ¶ 31. "Standing is a question of law that we review *de novo*." *Davis v. Yenchko*, 2024 IL 129751, ¶ 16.

¶ 21 1. *Statutory Standing*

¶ 22 Hayden argues in his opening brief that he had statutory standing under the FDCPA. For statutory standing, a legislature that has created a right of action " 'may determine who shall sue, and the conditions under which the suit may be brought.' " *Johnson*, 2021 IL 125738, ¶ 31 (quoting *Wilson v. Tromly*, 404 Ill. 307, 310 (1949)).

¶ 23 Hayden argues that the FDCPA, properly interpreted, provides terms for statutory standing. "Our primary goal when construing a statute is to determine and give effect to the legislature's intent." *People ex rel. Glasgow v. Carlson*, 2016 IL 120544, ¶ 17. "The most reliable indicator of legislative intent is the statutory language itself, given its plain and ordinary meaning whenever possible." *People v. Davis*, 2021 IL 126435, ¶ 17. We "should not read into a statute exceptions, conditions, or limitations not expressed by the legislature but instead must enforce clear and unambiguous statutory provisions as written." *Id.* When Illinois courts interpret federal statutes, "we look to the decisions of the United States Supreme Court and federal circuit and district courts." *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶ 33. We are bound by the decisions of the United States Supreme Court, but the weight we give to "federal circuit and district court interpretations of federal law depends on factors such as

uniformity of law and the soundness of the decisions." *Id.* "The construction of a statute is a question of law that we review *de novo*." *People v. Manning*, 2018 IL 122081, ¶ 16.

¶ 24 The Illinois Supreme Court recently addressed statutory standing for a federal statute in *Faussett*. There, the plaintiff filed a class-action suit against the Walgreen Company (Walgreens), alleging that Walgreens violated section 1681c(g) of the federal Fair and Accurate Credit Transactions Act of 2003 (FACTA) (15 U.S.C. § 1681c(g) (2018)), which is part of the Fair Credit Reporting Act (FCRA) (*id.* § 1681 *et seq.*). *Faussett*, 2025 IL 131444, ¶¶ 1, 5. The plaintiff alleged that she purchased prepaid debit cards from Walgreens, and she received receipts that listed the first six and the last four digits of the debit card numbers. *Id.* ¶ 3. The plaintiff claimed that this violated section 1681c(g)'s requirement that receipts include no more than the last five digits of any card number. *Id.* ¶ 5. The plaintiff further claimed that this violation increased the risk that her identity would be stolen. *Id.*

¶ 25 The supreme court considered whether the plaintiff had standing to sue in Illinois courts, beginning with statutory standing. The court considered the text of the FCRA and determined that its "liability provisions that allow for the enforcement of FACTA fail to include standing language. In other words, Congress did not expressly define the parties who have the right to sue for the statutory damages established in FCRA." *Id.* ¶ 40. Specifically, the court considered section 1681c(g)(1) of FACTA, which stated,

> " 'Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—
>
> (1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.' " *Id.* ¶ 43 (quoting 15 U.S.C. § 1681c(g) (2018)).

The court also considered section 1681p of the FCRA, which stated,

" 'An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.' " *Id.* (quoting 15 U.S.C. § 1681p (2018)).

The court determined that "[b]oth sections are silent as to who may bring the cause of action." *Id.* ¶ 44.

¶ 26 In reaching this conclusion, the court contrasted FACTA and the FCRA with Illinois's Biometric Information Privacy Act (Privacy Act) (740 ILCS 14/1 *et seq.* (West 2016)) and the Probate Act of 1975 (Probate Act) (755 ILCS 5/1-1 *et seq.* (West 2002)). Section 20(a)

of the Privacy Act provided, "*Any person aggrieved by a violation of this Act shall have a right of action* in a State circuit court or as a supplemental claim in federal district court against an offending party." (Emphasis added.) 740 ILCS 14/20(a) (West 2016); see *Faussett*, 2025 IL 131444, ¶ 41; see also *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 21. Similarly, in *In re Estate of Schlenker*, 209 Ill. 2d 456, 462 (2004), the court found section 8-1 of the Probate Act (755 ILCS 5/8-1 (West 2002)) contained a provision for statutory standing, which stated that, within six months after of admission of a will to probate, "*any interested person may file a petition* in the proceeding for the administration of the testator's estate or, if no proceeding is pending, in the court in which the will was admitted to probate, to contest the validity of the will." (Emphasis added.) 755 ILCS 5/8-1 (West 2002). The *Faussett* court explained that neither FACTA nor the FCRA contained a comparable provision. Instead, "unlike section 20 of the Privacy Act and section 8-1 of the Probate Act, the plain and unambiguous language of sections 1681n(a) and 1681p does not state the consumer or an aggrieved person may file the cause of action." *Fausett*, 2025 IL 131444, ¶ 44. Accordingly, the court concluded that statutory standing was not available under FACTA. *Id.*

¶ 27 Here, the FDCPA is plainly more like the FCRA and FACTA than the Privacy Act or the Probate Act. Hayden directs us to no clear statement in the FDCPA that any aggrieved person may sue. Instead, he attempts to infer statutory standing from other provisions. For example, Hayden argues that Congress identified who is authorized to sue through provisions such as, "[A]ny debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person." 15 U.S.C. § 1692k(a) (2024). Hayden claims that this statement indicates that "any person" whose rights under the FDCPA are violated has statutory standing.

¶ 28 *Faussett* disregarded essentially the same inference. The provision in FACTA stating, "Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer" (15 U.S.C. § 1681c(g) (2018)) was not a sufficiently clear statement to establish statutory standing. *Faussett*, 2025 IL 131444, ¶¶ 43-44. If FACTA's statement of who is liable was insufficient, then the FDCPA's statement of who is liable is also insufficient.

¶ 29 Hayden argues that we should interpret multiple provisions of the FDCPA together. He highlights the references to "any action by an individual," to "each named plaintiff," and to "other class members," in section 1692k(a)(2)(a), and the reference to "the number of persons adversely affected" in section 1692k. 15 U.S.C. § 1692k(a)(2)(A)-(B) (2024). He also relies on the broad prohibitions against any unfair means or deceptive practices in sections 1692e and 1692f. *Id.* §§ 1692e, 1692f. Citing *Learning Resources, Inc. v. Trump*, 607 U.S. 229, 250 (2026), Hayden urges us to interpret read all these provisions in the light of their " 'neighboring words.' " According to Hayden, interpreted together, these provisions indicate that anyone aggrieved by any violation of the FDCPA has standing to sue, without proof of actual damages.

¶ 30 These provisions do not help Hayden. Even if these provisions indicate that someone who violates the FDCPA incurs liability to anyone—whether an individual, a named plaintiff, part of a class, or otherwise, regardless of actual damages—these provisions still do not distinguish this case from *Faussett*. The plaintiff in *Faussett* asserted her claim individually and as a class representative. *Faussett*, 2025 IL 131444, ¶ 1. She requested statutory damages, punitive damages, attorney fees, and costs. *Id.* ¶ 5. Later, when discussing common law standing, the court noted the plaintiff's only alleged harm was a speculative risk of future identity theft. *Id.* ¶ 50. But in determining whether the FCRA and FACTA contained a provision for statutory

standing, the supreme court did not ask whether Congress intended for the FCRA or FACTA to impose liability in such circumstances, without actual damages. *Id.* ¶¶ 40-44. Instead, the absence of any plain and unambiguous statement of who "may file the cause of action" in the FCRA and FACTA was decisive. *Id.* ¶ 44. Therefore, even if we interpret all the provisions on which Hayden relies together and conclude that a debt collector can be liable to anyone for any violation of the FDCPA, with or without actual damages, under *Faussett*, that does not equate to a plain statement of the right to invoke statutory standing in Illinois courts.

¶ 31 Hayden also attempts to read statutory standing into the FDCPA using several interpretative aids. He argues that the purpose of the FDCPA and the legislative history require us to find that any violation of the FDCPA confers standing in Illinois courts. He also urges us to incorporate federal case law into FDCPA. Each of these attempts fails to distinguish this case from *Faussett*.

¶ 32 First, we address Hayden's arguments related to the purpose and legislative history of the FDCPA. Hayden emphasizes that Congress's purpose in passing the FDCPA included "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e) (2024). Hayden also refers to legislators' statements expressing an ambitious goal of stopping all abusive debt collection practices. He cites Representative John Hall's statement that, "while we cannot legislate good manners *we could eliminate, by law, some of the more egregious instances of bad manners that amount to invasions of personal privilege*." (Emphasis added.) 123 Cong. Rec. 10,249 (1977) (statement of Rep. Hall). Hayden also cites other legislators who intended the FDCPA to respond to complaints from consumers of harassment from debt collectors, regardless of whether those consumers suffered financial damages. For example, he cites a report of a consumer complaining about a debt collector calling so frequently that the phone became

"unusable." *Id.* at 10,255 (statement of Rep. Annunzio). Based on the broad purpose of the FDCPA and these statements from legislators, Hayden argues that actual damages are not necessary for standing under the FDCPA and that Congress intended that anyone who alleges a violation by a debt collector has standing.

¶ 33 We reject these arguments. First, Congress might have intended to prohibit a broad range of abusive practices without necessarily expecting that a plaintiff could sue for any violation of the statute in any state court, without regard for the severity of the violation. Whether Congress did or did not intend this, Hayden's selected quotes do not discuss standing in state courts.

¶ 34 More importantly, for the purposes of statutory standing in Illinois, it does not matter if a debt collector can incur liability without actual damages. *Faussett* did not ask whether Congress intended for a person to be liable to consumers for statutory damages without proof of actual damage. *Faussett* asked whether Congress "expressly define[d] the parties who have the right to sue for the statutory damages established in FCRA." *Faussett*, 2025 IL 131444, ¶ 40.

¶ 35 Indeed, Hayden's focus on actual damages is misplaced. Even if he had alleged actual damages, he still could not invoke *statutory* standing in Illinois under the FDCPA. Regardless of whether a plaintiff alleges actual damages or not, if "Congress did not *expressly* empower" the plaintiff to sue, statutory standing is not available in Illinois. (Emphasis added.) *Id.* ¶ 44. Without a "plain and unambiguous" statement in the text of the statute, the *Faussett* court declined to find an exception to the traditional, common law requirements for standing in Illinois courts. *Id.*

¶ 36 Next, Hayden cites a variety of federal cases to support his contention that the FDCPA granted plaintiffs standing to sue without proof of actual damages. He cites *Keele v.*

Wexler, 149 F.3d 589, 593-94 (7th Cir. 1998) ("[The FDPCA] is blind when it comes to distinguishing between plaintiffs who have suffered actual damages and those who have not."), and *Gillespie v. Blitt & Gaines, P.C.*, 123 F. Supp. 3d 1029, 1035 (N.D. Ill. 2015). He also contends that we should interpret FACTA and the FCRA in light of the federal "zone-of-interest" test, which requires that "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Ass'n of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970). Hayden argues that this test is "necessary background to Congress' use, or lack of use, of language and terms when drafting federal statutes and is essential to correctly understand and interpret a federal statute such as the FDCPA."

¶ 37 Hayden's reliance on these federal cases is not compelling. First, as with Hayden's legislative purpose and legislative history arguments, we do not question whether the FDCPA provides for liability without proof of actual damages. Even if this is true, these federal cases cannot insert a plain and unambiguous provision into the text of the FDCPA. Although Illinois courts often give at least some weight to federal circuit and district court interpretations of federal law (see *State Bank of Cherry*, 2013 IL 113836, ¶ 33), here, we are not considering the proper interpretation of an ambiguous provision in the FDCPA. The requirements for statutory standing in Illinois courts are a matter of Illinois law, and under *Faussett*, whether a federal statute provides for liability without actual damages is not determinative. Moreover, our supreme court has unequivocally rejected the "zone-of-interests" test as a component of Illinois common law standing. *Greer*, 122 Ill. 2d at 491-92. Because our supreme court determined that this test was "not a useful addition to the doctrine of standing" (*id.* at 491), we decline to read this test into Illinois's approach to statutory standing.

¶ 38 In *Faussett*, our supreme court held that a plaintiff suing under a federal statute for only statutory damages and costs could not rely on statutory standing to sue in Illinois court because that federal statute was "silent as to who may bring the cause of action for damages." *Faussett*, 2025 IL 131444, ¶ 44. None of Hayden's attempts to distinguish this case from *Faussett* succeed. Accordingly, Hayden cannot rely on statutory standing.

¶ 39 2. *Common Law Standing*

¶ 40 Next, Hayden argues that True Accord failed to satisfy its burden of proving that Hayden lacked common law standing. "Under Illinois law, lack of standing is an affirmative defense, which is the defendant's burden to plead and prove." *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010). Hayden observes that True Accord moved to dismiss under section 2-615 of the Code. A motion to dismiss under section 2-615 relies on only the face of the complaint, and all well-pleaded allegations are taken as true and interpreted in the plaintiff's favor. *Doe v. Coe*, 2019 IL 123521, ¶¶ 20, 31. Hayden argues that True Accord could not prove the absence of a concrete injury based on solely the allegations in Hayden's own complaint. Hayden further argues that the alleged violations of the FDCPA provided sufficient injury for common law standing.

¶ 41 Certainly, the typical procedure for seeking dismissal based on an affirmative defense is a motion under section 2-619 of the Code, not section 2-615. See *Harper v. Health Care Service Corp.*, 2023 IL App (1st) 220078, ¶ 52 ("A section 2-619 motion asserts affirmative matter outside the complaint that defeats the cause of action."). Indeed, in *Clarke v. Community Unit School District 303*, 2012 IL App (2d) 110705, ¶ 36, the appellate court stated, "Because lack of standing is an affirmative defense, it must be raised in a motion to dismiss brought pursuant to section 2-619(a)(9) of the Code, and not in a section 2-615 motion." See

Kaden v. Pucinski, 287 Ill. App. 3d 546, 550 (1997) (refusing to consider the defendant's standing argument because it was included in a motion under section 2-615); see also *Senese v. Climatemp, Inc.*, 222 Ill. App. 3d 302, 317 (1991).

¶ 42 However, Hayden did not rely on True Accord's section 2-615 motion or common law standing in his opening brief on appeal. Instead, Hayden's opening brief argued only that he had statutory standing. Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) states, "Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Accordingly, Hayden has forfeited any argument for reversal based on common law standing or True Accord's reliance on section 2-615. See *Village of Downers Grove v. Village Square III Condominium Ass'n*, 2022 IL App (2d) 210098, ¶ 93 (rejecting the defendant's argument that was raised for the first time in the reply brief).

¶ 43 C. Dismissal with Prejudice

¶ 44 Finally, Hayden also argues in his reply brief that dismissal with prejudice was improper. He acknowledges that he had previous opportunities to amend his complaint, but he contends those prior amendments did not involve issues of standing. Accordingly, he argues that he should be granted leave to file another amended complaint.

¶ 45 We reject Hayden's claim. First, Hayden did not raise this argument in his opening brief, and it is forfeited. *Id.*

¶ 46 Moreover, Hayden's failure to provide a record of the trial court's reasoning is fatal to his claim. A trial court should dismiss a complaint with prejudice "only where it is clear that the plaintiff can prove no set of facts that would entitle it to relief." *Lake Point Tower Condominium Ass'n v. Waller*, 2017 IL App (1st) 162072, ¶ 21. Importantly, "[w]e review a court's decision to dismiss a complaint with prejudice for an abuse of discretion." *Id.* Here,

because we have no record of the trial court's reasoning in dismissing the second amended complaint with prejudice, we cannot evaluate its decision to determine if it abused its discretion. Instead, we resolve any doubts resulting from the incomplete record against Hayden, the appellant, and we presume that the trial court's order conformed with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. Accordingly, we affirm the dismissal with prejudice.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment.

¶ 49 Affirmed.