Affirmed and Memorandum Opinion filed May 5, 2026.

In The

Fourteenth Court of Appeals

NO. 14-25-00063-CV

MARIA L. RINCON, ROBERTO RINCON, AND JOSE RINCON, Appellants

V.

LEXINGTON INSURANCE CO., Appellee

On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 2023-04154

MEMORANDUM OPINION

Appellants Maria, Roberto, and Jose Rincon sued appellee Lexington Insurance Company directly to recover a judgment the Rincons secured from Lexington's insured, Carlton Woods Holdings. Lexington filed a Rule 91a motion to dismiss challenging the Rincons' standing to maintain suit directly against the insurer. The trial court granted the motion and dismissed the Rincons' suit. In four issues the Rincons assert the trial court erred in dismissing their claims. Concluding

the Rincons lack standing to sue Lexington directly, we affirm.

BACKGROUND[1]

The Rincons were members of The Club at Carlton Woods (the Club), which was owned by Carlton Woods Holdings, LLC (Carlton Woods). The Rincons maintained wine lockers at the Club under the Club's wine locker agreements. The Rincons eventually learned that several bottles of wine, which had been purchased from the Club and stored in the Club's wine lockers, were missing. In 2016, the Rincons sued Carlton Woods seeking damages for their missing wine. In 2021, the dispute was submitted to arbitration and the arbitrator found in favor of the Rincons on their claims for breach of the wine locker agreements. The arbitrator awarded the Rincons $311,265 in actual damages ($293,025 to Maria and Roberto Rincon, and $18,240 to Jose Rincon), plus $742,306.70 in attorneys' fees and litigation expenses, and $56,840 in arbitration-related expenses. The award totaled $1,110,411.70, exclusive of interest. A Harris County District Court confirmed the award and, on January 19, 2022, signed a final judgment ordering that the Rincons were entitled to recover from Carlton Woods.

In 2023, the Rincons sued seven insurance companies whom they alleged insured Carlton Woods under multiple "all-risk insurance policies." The Rincons asserted causes of action for breach of contract, breach of the duty of good faith and fair dealing, and unfair or deceptive insurance practices. The Rincons also sought a declaratory judgment stating that each of the policies provides coverage to Carlton Woods for the judgment entered in favor of the Rincons, that none of the policy exclusions apply, that the policies cover the damages, interest, and attorneys' fees awarded to them, and that Carlton Woods's failure to notify the insurance companies

[1] Because we are required to accept the Rincons' factual allegations as true, our background is premised on their live pleading.

of the loss did not prejudice the companies and does not excuse their obligation to pay. The Rincons further sought declaratory judgment that they have standing and capacity to seek insurance benefits either as judgment creditors or third-party beneficiaries of the policies.

Six of the seven insurance companies filed motions to dismiss pursuant to Texas Rule of Civil Procedure 91a asserting that the Rincons lacked standing to sue the insurance companies for a debt owed by their insured. The trial court granted all Rule 91a motions. The seventh insurance company filed a motion for summary judgment, which was also granted.

In Lexington's Rule 91a motion it asserted the Rincons' claim for breach of contract had no basis in law because neither their pleadings, nor Lexington's policies, established a valid, enforceable contract between the Rincons and Lexington. Lexington asserted that the Rincons' claims for breach of the duty of good faith and fair dealing and for unfair and deceptive insurance practices failed because contractual liability is a prerequisite to those claims. Lexington further asserted that the Rincons could not assert their claims as third-party beneficiaries. Lexington argued that the Rincons' declaratory judgment action must also be dismissed because it is dependent on a contractual relationship, which the Rincons failed to plead.

The Rincons responded to the Rule 91a motion asserting they had standing as creditors or third-party beneficiaries of the policies.

The trial court held a hearing on the Rule 91a motions at which Lexington averred that its insurance policies, which were attached to the Rincons' pleading, were issued as first-party, all-risk commercial property insurance policies to the Howard Hughes Corporation and its affiliated subsidiaries, one of which was Carlton Woods. The Rincons argued that they were third-party beneficiaries of the policies

by virtue of their status as judgment creditors.

The trial court granted the motions to dismiss filed by the insurance companies and this appeal followed.[2]

ANALYSIS

In three issues the Rincons assert the trial court erred in granting Lexington's Rule 91a motion to dismiss because the Rincons have standing and capacity to maintain their suit against Lexington as: (1) judgment creditors; (2) third-party beneficiaries; and (3) bailees. In the Rincons' fourth issue they assert they have standing as third-party beneficiaries to pursue a claim under section 541.060 of the Insurance Code.

I. Standard of Review and Scope of Review

Rule of Civil Procedure 91a provides that "a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact." Tex. R. Civ. P. 91a.1. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. *Id*. A cause of action has no basis in fact if "no reasonable person could believe the facts pleaded." *Id*. "We review the merits of a Rule 91a motion de novo." *San Jacinto River Auth. v. Medina*, 627 S.W.3d 618, 628 (Tex. 2021).

We look solely to the pleading of the cause of action and any attachments to determine whether the dismissal standard is satisfied. *Clarke as Next Friend of B.D.C. v. Wolf*, 717 S.W.3d 918, 923 (Tex. App.—Houston [14th Dist.] 2025, no pet.). We construe the pleadings liberally in favor of the pleader, look to the pleader's

[2] After the Rincons filed their appeal, this court abated the appeal for mediation. Six of the insurance companies settled through mediation and we dismissed those companies from this appeal. Appellee Lexington Insurance Company is the only remaining appellee.

intent, and accept as true the factual allegations in the pleadings. *Cooper v. Trent*, 551 S.W.3d 325, 329 (Tex. App.—Houston [14th Dist.] 2018, pet. denied). In doing so, we apply the fair-notice standard of pleading. *Id*.; *see also* Tex. R. Civ. P. 45.

In ruling on a Rule 91a motion, a court may not consider evidence and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule of Civil Procedure 59. Tex. R. Civ. P. 91a.6. Rule 59 permits a party to attach to its pleading, "[n]otes, accounts, bonds, mortgages, records, and all other written instruments, constituting, in whole or in part, the claim sued on." Tex. R. Civ. P. 59. The Rincons attached the Lexington insurance policies to their pleadings. The policies provided coverage for 2013, 2014, and 2015. The trial court therefore properly considered the policies in ruling on the Rule 91a motion as they "constitute in whole or in part, the claim sued on." Tex. R. Civ. P. 59; *see Davis v. Homeowners of Am. Ins. Co.*, 700 S.W.3d 837, 846 n.6 (Tex. App.—Dallas 2023, no pet.) (insurance policy was appropriate Rule 59 exhibit as it related to breach of policy claim).

II. The trial court did not err in granting Lexington's Rule 91a motion to dismiss.

In the Rincons' first three issues they assert the trial court erred in granting Lexington's Rule 91a motion because they have standing and capacity to sue Lexington as judgment creditors, third-party beneficiaries, and bailees.

To bring suit, a party must have standing and capacity. *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 848 (Tex. 2005). Standing concerns whether a party has a sufficient relationship with the lawsuit to have a justiciable interest in its outcome. *Id*. The standing doctrine requires that there be a real controversy between the parties that will be resolved by the judicial declaration sought. *Id*. at 849. Capacity concerns the personal qualifications of a party to litigate. *Id*. at 848. A party

has capacity when it has the legal authority to act. *Id*. at 848–49; *see also Fuller v. McCulloch*, No. 14-23-00436-CV, 2025 WL 2217432, at *5 (Tex. App.—Houston [14th Dist.] Aug. 5, 2025, no pet.) (mem. op.). As a threshold matter, Lexington did not challenge the Rincons' capacity to sue, but challenged their standing to sue Lexington directly. We therefore address the Rincons' standing to bring their causes of action against Lexington.

A. Breach of Contract

The Rincons first assert that Lexington breached its policies by failing to provide coverage to them. To establish standing to assert a claim for breach of contract, a party must prove its privity to the agreement or that it is a third-party beneficiary. *Young v. Bella Palma, LLC*, No. 14-17-00040-CV, 2022 WL 578442, at *7 (Tex. App.—Houston [14th Dist.] Feb. 25, 2022, no pet.) (mem. op.).

Privity is established by proof that the defendant was a party to an enforceable contract with either the plaintiff or a party who assigned its cause of action to the plaintiff. *Holiday Inn Club Vacations Inc. v. CBRE, Inc.*, No. 14-23-00976-CV, 2025 WL 383161, at *4 (Tex. App.—Houston [14th Dist.] Feb. 4, 2025, pet. denied) (mem. op.) (citing *Brown v. Mesa Distribs., Inc.*, 414 S.W.3d 279, 285 (Tex. App.—Houston [1st Dist.] 2013, no pet.)). Here, it is undisputed that the Rincons are not a party to the insurance contracts. The parties to the contracts are the Howard Hughes Corporation, its affiliates and subsidiaries, and Lexington. It is equally undisputed that the Rincons are not assignees of Carlton Woods.

The Rincons have not pleaded privity of contract, but contend they have standing to sue under the contracts because they are judgment creditors of Carlton Woods. As such, the Rincons assert they are third-party beneficiaries of the insurance contracts. Lexington responds that the policies are first-party property insurance policies, not third-party liability policies; therefore, the Rincons cannot

recover directly from Lexington even after obtaining a judgment against Carlton Woods.

Whether the Lexington policies are property policies, liability policies, or both, is to be determined from a reading of the policies in their entirety. In construing the insurance policies, we look to the plain language of the contracts, and such language will be given effect when the parties' intent may be discerned from that language. *U.S. Metals, Inc. v. Liberty Mut. Grp., Inc.*, 490 S.W.3d 20, 23 (Tex. 2015).

A policy of property insurance is a personal contract for indemnity for the insurable interest possessed by the insured at the time of the issuance of the policy, and also at the time of the loss. *Highlands Ins. Co. v. City of Galveston*, 721 S.W.2d 469, 471 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.) (citing *Maryland Cas. Co. v. Palestine Fashions, Inc.*, 402 S.W.2d 883, 888 (Tex. 1966)). Property insurance policies are "intended solely to indemnify the insured for his actual monetary loss by the occurrence of the disaster; unless the insured has sustained an actual loss, the insurer has no liability." *Id*. Liability policies, on the other hand, insure against loss arising out of legal liability, usually based on the insured's negligence. *Mid-Continent Ins. Co. v. Liberty Mut. Ins. Co.*, 236 S.W.3d 765, 775 (Tex. 2007).

In determining whether a third party can enforce a contract, the intention of the contracting parties is controlling. *Basic Capital Mgmt, Inc. v. Dynex Com., Inc.*, 348 S.W.3d 894, 900 (Tex. 2011). A court will not create a third-party beneficiary contract by implication. *Id*. The intention to contract for or confer a direct benefit to a third party must be clearly and fully spelled out in the agreement itself, or enforcement by the third party must be denied. *Id*.

As relevant here, the 2013 policy covers "[t]he interest of the Insured in all

real and personal property, . . . in real and personal property of others in the Insured's care, custody, or control," and "[r]eal and [p]ersonal [p]roperty which the Insured is responsible for or has agreed to insure." The 2014 and 2015 policies cover:

> All Real and Personal Property owned, used, or intended for use by the Insured, acquired by the Insured, property of others in the Insured's care, custody or control including the Insured's liability for such property and including the costs to defend any allegations of liability for loss or damage to such property.

None of the policies contain language that reflects an intent to provide a third party who has secured a judgment against an insured for a covered loss with a right to enforce the policy directly against the insurer to recover the amount of the judgment. The plain language of the contracts provides that they are property insurance policies and there is no intent to confer a direct benefit to a third party that is clearly and fully spelled out in the agreements.

Such language was central to the court's holdings in cases on which the Rincons rely. *See, e.g., P.G. Bell Co. v. U.S. Fid. & Guar. Co.*, 853 S.W.2d 187, 190 (Tex. App.—Corpus Christi-Edinburg 1993, no writ) (policy provided that "any person . . . who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy."); *Highlands Ins.*, 721 S.W.2d at 471 (policy indemnified the assured for loss, damage, or expense "for which the Assured may be liable or may assume liability.").

Liability insurance covers "damage the insured does to others." *In re Illinois Nat'l Ins. Co.*, 685 S.W.3d 826, 831 (Tex. 2024) (orig. proceeding) (quoting *Members Mut. Ins. Co. v. Hermann Hosp.*, 664 S.W.2d 325, 327 (Tex. 1984)). By contrast, the Lexington policies are first-party property coverage policies whose stated coverage is for the interest of the insured. While a judgment creditor may be

a creditor beneficiary, and thus a third-party beneficiary, under a liability policy, it is not under the first-party property policies at issue in this case. *See Farmers Ins. Exch. v. Rodriguez*, 366 S.W.3d 216, 223 (Tex. App.—Houston [14th Dist.] 2012, pet. denied).

The Rincons rely on certain language in the policies in asserting third-party beneficiary status. First, the Rincons argue that the policies cover bailment arrangements, referencing language that provides coverage for "[t]he interest of the Insured in real and personal property of others in the Insured's care and control." Citing a Fifth Court of Appeals case, the Rincons argue that their wine was personal property in the care and control of the Club, which created a bailment arrangement for which the policy provides a direct action by a third party. *See Cumis Ins. Soc., Inc. v. Republic Nat. Bank of Dallas*, 480 S.W.2d 762, 766–69 (Tex. App.—Dallas 1972, writ ref'd n.r.e.). In that regard, the Rincons assert they may enforce the insurance contracts as bailors.

Although we are not bound by the Fifth Court's decision, we conclude that the *Cumis* case is distinguishable on its facts. In *Cumis*, a bank had provided blank travelers checks to two credit unions and the checks were stolen, completed, and negotiated by unknown persons. *Id*. at 763. Based on the language in the insurance policies, the Fifth Court held that the bank could sue the insurance company directly. *Id*. at 765. The court emphasized the insurance policies provided for "indemnity to the insured for loss of any property on its premises by burglary, fire, or any other occurrences specified, to the extent of the credit union's insurable interest as owner, bailee or otherwise." *Id*. at 764. The court reasoned, relying on the language of the policy in that case, that the contract benefited the third-party owner whose property was stolen or destroyed on the insured's premises because the language of the contract provided the insured was entitled to indemnity for the benefit of both itself

and the owner. *Id*. at 768–69.

The *Cumis* court acknowledged that alleged bailees may contractually limit their interest in bailed property to insure only the bailee's interest. *Id*. at 764. In this case, unlike the contract in *Cumis*, Lexington and its insured expressly limited coverage to the interest of the insured, the alleged bailee in this instance. The parties to the contracts therefore limited any interest Carlton Woods had as bailee solely to its interest, and not that of third parties.

The Rincons further rely on language referring to the insured's liability in each of the policies. The 2013 policy provides coverage for "[c]ontractors' and vendors' interest in property covered to the extent of the Insured's liability imposed by law or assumed by contract." Although the Rincons focus on the phrase, "Insured's liability," their pleadings do not support a cause of action for coverage under this clause. Nowhere in the Rincons' pleadings do they assert a contractors' or vendors' interest in covered property.

The 2014 and 2015 policies provide coverage for "property of others in the Insured's care, custody or control including the Insured's liability for such property." This language, while referring to the "Insured's liability," does not indicate that, by entering into the insurance contracts, Lexington and Carlton Woods intended to secure a direct benefit for the owners of covered property. The Lexington policies do not contain third party liability language. Unlike the policy in *P.G. Bell*, the Lexington policies do not contain language permitting an injured third party to recover under the policy. *See P.G. Bell*, 853 S.W.2d at 190. We further note that the duty to defend, referenced in the 2014 and 2015 policies, is a creature of contract owed by the insurer to the insured, not to an injured third party. *Pharr-San Juan-Alamo Indep. Sch. Dist. v. Tex. Pol. Subdivisions Prop./Cas. Joint Self Ins. Fund*, 642 S.W.3d 466, 471 (Tex. 2022).

The policies in this case do not contain language that provides a third party who has secured a judgment against an insured for a covered loss with a right to enforce the policy against the insurer. We conclude that under the facts alleged in the Rincons' live pleading they have failed to assert standing to assert a claim for breach of contract. The trial court therefore did not err in dismissing that claim. *See Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012) ("if a plaintiff lacks standing to assert one of his claims, the court lacks jurisdiction over that claim and must dismiss it.").

B. Breach of the Duty of Good Faith and Fair Dealing

The Rincons also asserted a cause of action for breach of the duty of good faith and fair dealing. The Rincons' pleading for this cause of action alleges that there is a valid contract between Lexington and Carlton Woods, which gave rise to a duty of good faith and fair dealing. They further allege Lexington breached its duty when it denied payment of policy benefits. The Rincons allege that Lexington's breach "proximately caused [their] damages because their judgment against [Carlton Woods] remains unpaid."

An insurer has a duty to deal fairly and in good faith with its insured in the processing and payment of claims. *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338, 340 (Tex. 1995). Texas law recognizes a common law duty of good faith and fair dealing in this first-party insurance context. *May v. Ticor Title Ins.*, 422 S.W.3d 93, 101 (Tex. App.—Houston [14th Dist.] 2014, no pet.). The threshold of bad faith is reached only when the breach of contract is accompanied by an independent tort. *Id*. To prevail, the insured must prove that the insurer had no reasonable basis for the denial or delay in payment of a claim and that the insurer knew or should have known of that fact. *Id*.

The Supreme Court of Texas held that a third-party claimant cannot expect or

demand "extra-contractual obligations" from insurers. *Transport Ins. Co. v. Faircloth*, 898 S.W.2d 269, 279 (Tex. 1995) In *Faircloth*, the court held that to require an insurance company to owe such duties to a third party would "necessarily compromise the duties the insurer owes to its insured." *Id*. (quoting *Allstate Ins. Co. v. Watson*, 876 S.W.2d 145, 150 (Tex. 1994)).

The Rincons have not pleaded a special relationship between them and Carlton Woods to justify imposing a fiduciary duty on Lexington. A fiduciary or confidential relationship may arise from circumstances of the particular case, but it must exist prior to, and apart from, the agreement made the basis of the suit. *Willis v. Donnelly*, 199 S.W.3d 262, 277 (Tex. 2006). The Rincons cannot survive Lexington's 91a motion on this cause of action because they have not established that Lexington owed them a duty of good faith and fair dealing. Therefore, even accepting the factual allegations as true, the Rincons are not entitled to the relief sought. The trial court did not err in granting the motion to dismiss on the cause of action asserting breach of the duty of good faith and fair dealing.

C. Unfair or Deceptive Insurance Practices

The Rincons asserted a statutory cause of action for unfair or deceptive insurance practices under sections 541.060 and 541.003 of the Insurance Code. Specifically, the Rincons asserted Lexington violated the statute by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim, failing to promptly provide to a policyholder a reasonable explanation of the basis for denial of a claim, and refusing to pay a claim without conducting a reasonable investigation.

Section 541.003 prohibits engaging in unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. Tex. Ins. Code § 541.003. Section 541.060(a) prohibits the practices subsequently listed "with respect to a claim by an insured or beneficiary." Tex. Ins. Code § 541.060(a). Some

of the prohibited practices listed are failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement, failure to promptly provide to a policyholder a reasonable explanation of the basis for the insurer's denial of a claim, and refusing to pay a claim without conducting a reasonable investigation. Tex. Ins. Code § 541.060(a)(2), (3), (7).

The Supreme Court of Texas held that causes of action for violations of the Insurance Code may only be brought by an insured or beneficiary. *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 438 (Tex. 2023) ("failing to attempt a good-faith settlement is only unfair 'with respect to a claim by an insured or beneficiary.'") (quoting Tex. Ins. Code § 541.060(a)). Because the Rincons are neither an insured nor beneficiaries, they lack standing to assert a cause of action against Lexington for violations of the Insurance Code. *See Reule v. Colony Ins. Co.*, 407 S.W.3d 402, 411–14 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (third-party claimant lacked standing for violation of unfair settlement practice under Section 541.060 of the Insurance Code). As such, the trial court did not err in dismissing this cause of action.

D. Declaratory Judgment

In the Rincons' live pleading they sought a declaratory judgment that:

- Each of the policies provides coverage to Carlton Woods for the judgment entered against it in favor of the Rincons;
- None of the policy exclusions apply;
- The policies cover actual damages, interest, attorneys' fees, and costs awarded to the Rincons;
- Carlton Woods's failure to notify the insurance companies of the loss did not prejudice them and does not excuse their obligation to pay;
- The Rincons have standing and capacity to seek insurance

benefits; and

- Carlton Woods is entitled to recover insurance proceeds from the insurance companies for its own defense costs incurred in the arbitration and confirmation actions.

The Declaratory Judgments Act permits "[a] person interested under a deed, will, written contract, or other writings constituting a contract" to "have determined any question of construction or validity arising under the instrument, . . . and obtain a declaration of rights, status, or other legal relations thereunder." Tex. Civ. Prac. & Rem. Code § 37.004. A plaintiff bringing suit under the Declaratory Judgments Act, however, must still properly invoke the trial court's subject matter jurisdiction, of which standing is a component. *See Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683 (Tex. 2020).

The Declaratory Judgments Act is "merely a procedural device for deciding cases already within a court's jurisdiction rather than a legislative enlargement of a court's power, permitting the rendition of advisory opinions." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). A declaratory judgment is appropriate only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought. *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). The Act "does not confer jurisdiction on a trial court, but rather makes declaratory judgment available as a remedy for a cause of action already within the court's jurisdiction." *Williams v. Davis*, 628 S.W.3d 946, 958 (Tex. App.—Houston [14th Dist.] 2021, no pet.).

In arguing standing to maintain their declaratory judgment claim the Rincons repackage their arguments on standing to bring their remaining causes of action. Lacking standing to bring their causes of action the Rincons cannot expand the court's jurisdiction by asserting a claim for declaratory relief. *See id*. (when plaintiff has not established standing, that shortcoming is "fatal to any remaining claim for

declaratory relief.").

Because the Rincons lack standing to bring any of their causes of action, we conclude the trial court did not err in granting Lexington's Rule 91a motion to dismiss.

CONCLUSION

We overrule the Rincons' four issues and affirm the trial court's judgment.

/s/ Brad Hart
Justice

Panel consists of Chief Justice Christopher and Justices Hart and Antú.