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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LESLIE LARAINÉ VILLELLI,

Plaintiff and Appellant,

v.

R.A.V., INC., et al.,

Defendants and Respondents.

G046045

(Super. Ct. No. 30-2011-00439586)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Di Cesare, Judge. Affirmed.

Ross Law Group and Mark A. Ross for Plaintiff and Appellant.

Corbett, Steelman & Specter, Susan J. Ormsby and Ken E. Steelman for Defendants and Respondents R.A.V., Inc., Villelli Enterprises, Inc., Richard A. Villelli, Lee M. Deierling and Judith A. Deierling.

Stephen R. Rykoff for Defendant and Respondent Joanne Rocks.

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Plaintiff and appellant Leslie Laraine Vilelli appeals from a judgment entered after the trial court sustained demurrers by defendants and respondents R.A.V., Inc. (RAV), Vilelli Enterprises, Inc. (Vilelli Enterprises), Richard A. Vilelli (Dick), Lee M. Deierling, Judith A. Deierling, and Joanne Rocks (collectively, Defendants). As a beneficiary of her husband Thomas R. Vilelli's revocable trust (Trust), Leslie sued Defendants claiming Dick and Rocks coerced and fraudulently induced her to sign documents transferring Vilelli Enterprises and RAV shares from the Trust to Dick and the Deierlings during a period when she served as one of the Trust's cotrustees.<sup>1</sup>

The trial court found Leslie lacked standing to bring this action as a Trust beneficiary because the current trustee is the only real party in interest with standing to sue for damage to property the Trust holds. Leslie primarily contends she has standing to sue as a Trust beneficiary under the third-party participant doctrine, which allows trust beneficiaries to sue in their own name to recover damages or trust property from third parties who participate in or knowingly benefit from a trustee's breach of trust. Leslie argues she breached her duties as a cotrustee when she transferred the Vilelli Enterprises and RAV shares without adequate consideration, and Dick and Rocks participated in that breach by coercing and fraudulently inducing her to make the transfers.

Although Leslie alleges she breached her duties as a cotrustee by transferring the shares, we affirm the trial court's judgment because she also alleges she acted as Tom's attorney in fact rather than as a cotrustee when she made the transfers. Because she did not act as a cotrustee when she transferred the shares, Leslie did not breach her duties as a cotrustee and the third-party participant doctrine does not apply to give her standing. We also reject Leslie's secondary contentions that she has standing because (1) Idaho law applies and allows trust beneficiaries to sue for damage to trust

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<sup>1</sup> We refer to all members of the extended Vilelli family by their first names to avoid any confusion. No disrespect is intended. (*Fazzi v. Klein* (2010) 190 Cal.App.4th 1280, 1282, fn. 1.)

property; (2) the current trustee authorized her to bring this action as a Trust beneficiary; and (3) trust beneficiaries may sue third parties for damage to trust property when the trustee wrongfully refuses to do so.

## I

### FACTS AND PROCEDURAL HISTORY<sup>2</sup>

Tony Vilelli formed Vilelli Enterprises in 1957 and RAV in 1973. He retired in 2000, leaving his sons, Tom and Dick, as the sole shareholders for both corporations. Leslie is Tom's widow.

Tom established the Trust in 1997 and later amended and restated it three times. He also executed a pour-over will to transfer to the Trust all property held in his individual name when he died. The Trust names Leslie as a beneficiary entitled to one-half of the Trust's residual corpus. Leslie's pleadings do not identify the other Trust beneficiaries and, as explained below, are inconsistent on whether the Trust held Tom's Vilelli Enterprises and RAV shares before his death or only after he died. The Trust is registered and its principal place of administration is in Idaho, where Tom and Leslie lived.

By January 2007, Tom became seriously ill with terminal cancer and no longer possessed the mental capacity to conduct his own financial affairs. Before his illness, Tom signed a durable power of attorney appointing Leslie as his attorney in fact if he lost the capacity to act on his own behalf.

On January 21, 2007, Dick and Rocks, the longtime attorney and business associate of Tom, Dick, Vilelli Enterprises, and RAV, came to Leslie and Tom's home in Sandpoint, Idaho. At the time, Tom was in a coma with Leslie and his son, Richard T.

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<sup>2</sup> Because this appeal follows a sustained demurrer, we summarize the underlying facts as alleged in the complaint. (*Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 240.)

Villelli (Rick), at his bedside. Dick and Rocks told Leslie she must sign several documents as Tom's attorney in fact to prevent estate taxes from consuming Tom's entire estate. Distraught over her husband's impending death, Leslie initially declined to sign the documents. Dick and Rocks nonetheless continued to "pressure and persuade" Leslie to sign the documents Rocks had prepared. Rick also encouraged Leslie to sign the documents.

Leslie eventually succumbed to Dick's and Rocks's pressure and signed the following documents as Tom's attorney in fact: (1) the Stock Purchase Agreement transferring some of Tom's shares in Villelli Enterprises to Dick and the Deierlings; (2) the Stock Purchase Agreement transferring some of Tom's shares in RAV to Dick; (3) the Shareholder's Agreement by and among Villelli Enterprises and its shareholders; and (4) the Shareholder's Agreement by and among RAV and its shareholders (collectively, Stock Documents).

Because of her emotional distress over her husband's condition, Leslie signed the Stock Documents without reading them or understanding Dick's and Rocks's representations about their content. She did not realize the Stock Documents reduced Tom's ownership interest in Villelli Enterprises from 51 percent to 33 percent and his ownership interest in RAV from 51 percent to 49 percent. After Leslie signed the Stock Documents, Rocks took the originals with her and did not provide Leslie with copies. Leslie did not see the Stock Documents again or understand their effect until approximately February 2010.

Tom died on January 23, 2007, less than 48 hours after Leslie signed the Stock Documents. Leslie and Rick succeeded Tom as cotrustees pursuant to the Trust's terms. As part of her efforts to complete the Trust's administration and distribute its assets to the beneficiaries, Leslie sought to negotiate an agreement with Villelli Enterprises and RAV to redeem all shares the Trust held in the two corporations. Despite lengthy discussions with Dick and other corporate representatives, Leslie could not reach

an agreement to redeem the shares. It was during these negotiations that Leslie first learned the Stock Documents had reduced the number of shares held in the Trust.

In January 2010, Rick resigned as cotrustee and Dick succeeded to the position under the Trust's terms. Numerous disagreements quickly arose between Leslie and Dick regarding the Trust's administration and the two corporations. In December 2010, an Idaho court heard Dick's petition to remove Leslie as a cotrustee and Leslie's petition to file a lawsuit on the Trust's behalf to invalidate the Stock Documents and recover damages from Dick and Rocks. On its own motion, the Idaho court removed both Leslie and Dick as cotrustees and appointed a professional fiduciary as the Trust's trustee. The court also refused to authorize Leslie to pursue any claims on the Trust's behalf.

Leslie next asked the court-appointed trustee to pursue the claims she contends the Trust has against Defendants. When the trustee refused, Leslie filed this action on the Trust's behalf to dissolve Vilelli Enterprises and RAV, unwind the stock transfers made when she signed the Stock Documents, and recover monetary damages from Dick and Rocks for fraudulently inducing her to sign the Stock Documents. Leslie's verified first amended complaint alleged both the Idaho court overseeing the Trust's administration and the court-appointed trustee authorized her to bring this action on the Trust's behalf. The pleading further alleged Tom held his Vilelli Enterprises and RAV shares in his own name until his death, and Leslie and Rick did not succeed Tom as the Trust's cotrustees until Tom's death.

Defendants demurred to Leslie's first amended complaint on the ground she lacked standing to pursue any claims on the Trust's behalf because she no longer was a trustee. The trial court sustained the demurrers with leave to amend, finding only the trustee had standing to sue on the Trust's behalf and Leslie's conclusory allegations that the trustee and Idaho court authorized her to bring this action did not establish standing.

Contrary to her prior pleadings, Leslie's verified second amended complaint alleged (1) the Trust held Tom's Villelli Enterprises and RAV shares *before* he died and (2) Leslie and Rick succeeded Tom and began serving as cotrustees *before* Tom died because his illness rendered him "incapacitated as it is defined in the Trust." The second amended complaint alleged the same claims as the first amended complaint, but Leslie asserted those claims as a Trust beneficiary rather than on the Trust's behalf.

Leslie alleged three independent grounds to support her argument she had standing to maintain this action as a Trust beneficiary. First, she relied on the third-party participant doctrine, which allows trust beneficiaries to sue in their own name to recover damages or trust property from third parties who participated in or knowingly benefited from a trustee's breach of trust. To support that theory, Leslie alleged she breached her duties as cotrustee when she signed the Stock Documents and transferred some of the Villelli Enterprises and RAV shares the Trust held without adequate consideration. She also alleged Dick and Rocks participated in that breach of trust by inducing her to sign the Stock Documents through their coercion and misrepresentations. Second, Leslie alleged Idaho law authorizes trust beneficiaries to sue in their own names and the Trust specifically states Idaho law governs "[a]ll questions concerning the validity, interpretation, and administration of the [Trust]." Finally, Leslie claimed the court-appointed trustee authorized her or any other beneficiary to bring this action in their own name.

Defendants demurred to the second amended complaint, challenging Leslie's standing to bring this action as a Trust beneficiary. The trial court agreed Leslie lacked standing and sustained the demurrers without leave to amend. After the trial court entered judgment dismissing Leslie's claims, she timely appealed.

## II

### DISCUSSION

#### A. *Standard of Review*

When the trial court sustains a demurrer, we review the complaint de novo to determine whether it alleges facts stating a cause of action on any legal theory.

(*Koszdin v. State Comp. Ins. Fund* (2010) 186 Cal.App.4th 480, 487 (*Koszdin*).

“Reading the complaint as a whole and giving it a reasonable interpretation, we treat all material facts properly pleaded as true. [Citation.] The plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of the cause of action and overcoming all of the legal grounds on which the trial court sustained the demurrer, and if the defendant negates any essential element, we will affirm the order sustaining the demurrer as to the cause of action. [Citation.] We will affirm if there is any ground on which the demurrer can properly be sustained, whether or not the trial court relied on proper grounds or the defendant asserted a proper ground in the trial court proceedings. [Citation.]” (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031 (*Martin*).

“When a demurrer is sustained without leave to amend, we also must decide whether there is a reasonable possibility that the defect can be cured by amendment.” (*Koszdin, supra*, 186 Cal.App.4th at p. 487.) “The plaintiff bears the burden of proving there is a reasonable possibility of amendment. [Citation.] . . . [¶] To satisfy that burden on appeal, a plaintiff ‘must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.’ [Citation.]” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43.)

B. *Trust Beneficiaries Generally Lack Standing to Pursue Claims Against Third Parties for Damage to Trust Property*

“Standing is the threshold element required to state a cause of action and, thus, lack of standing may be raised by demurrer.” (*Martin, supra*, 173 Cal.App.4th at p. 1031.) Code of Civil Procedure section 367 requires that “[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” “A party who is not the real party in interest lacks standing to sue because the claim belongs to someone else. [Citations.] . . . ‘A real party in interest ordinarily is defined as the person possessing the right sued upon by reason of the substantive law. [Citation.]’ [Citations.]” (*Estate of Bowles* (2008) 169 Cal.App.4th 684, 690.)

When a claim is prosecuted on a trust’s behalf, the trustee is the real party in interest because the trustee has legal title to the claim. (*Wolf v. Mitchell, Silberberg & Knupp* (1999) 76 Cal.App.4th 1030, 1036 (*Wolf*); *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743, 753 (*Pillsbury*)). “The corollary to this rule is that the beneficiary of a trust generally is not the real party in interest and may not sue in the name of the trust. . . .” (*Pillsbury*, at p. 753.)

“Generally, the beneficiary of a trust, having no legal title or ownership interest in the trust assets, is not the real party in interest and may not sue in the name of the trust. [Citations.] A trust beneficiary’s ‘right to sue is ordinarily limited to the enforcement of the trust, according to its terms.’ [Citations.]” (*Wolf, supra*, 76 Cal.App.4th at p. 1036; *Pillsbury, supra*, 22 Cal.App.4th at p. 753; *Saks v. Damon Raike & Co.* (1992) 7 Cal.App.4th 419, 427 (*Saks*)). “ “[B]ecause an ordinary express trust is not an entity separate from its trustees, action may not be maintained in the name of the trust. [Citation.] Thus, absent special circumstances, an action prosecuted for the benefit of a trust estate by a person other than the trustee is not brought in the name of a real party in interest and is demurrable.” [Citation.]’ [Citation.]” (*Pillsbury*, at pp. 753-754; *Wolf*, at p. 1036; *Saks*, at p. 427.)

As a Trust beneficiary, Leslie sued third parties for damage they allegedly caused to assets the Trust held. She claims Dick and Rocks wrongfully obtained Trust assets by coercing or defrauding her into transferring some of the Villelli Enterprises and RAV shares the Trust held when she was a cotrustee. Because the second amended complaint alleged the trustee held legal title to the shares, the trustee is the real party in interest with standing to pursue the claims. (*Wolf, supra*, 76 Cal.App.4th at p. 1036; *Pillsbury, supra*, 22 Cal.App.4th at p. 753; *Saks, supra*, 7 Cal.App.4th at p. 427.) Leslie does not challenge this analysis, but nonetheless argues the trial court erred in sustaining Defendants' demurrers because several exceptions to the foregoing rule allowed her to pursue this action as a Trust beneficiary. Accordingly, we must determine whether any exception to the foregoing standing rule applies in this case.

C. *Leslie Failed to Allege Facts Establishing an Exception to the Rule Vesting Standing in the Trustee Only*

1. The Third-Party Participant Doctrine Does Not Provide Leslie with Standing

An exception to the foregoing standing rule exists for claims against third parties who participated in or knowingly benefited from a trustee's breach of his or her duties: "[I]t is well established that where a trustee has committed a breach of trust, the trust beneficiaries may prosecute an action against third persons who, for their own financial gain or advantage, induced the trustee to commit the breach of trust; actively participated with, aided or abetted the trustee in that breach; or received and retained trust property from the trustee in knowing breach of trust." (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 462 (*Atascadero*); *King v. Johnston* (2009) 178 Cal.App.4th 1488, 1500 (*King*) ["a beneficiary may pursue claims against a third party on his or her own, without participation by the trustee, when that third party actively participated in, or knowingly benefited from, a trustee's breach of trust"].)

“Ordinarily, when a third party acts to further his or her own economic interests by participating with a trustee in such a breach of trust, the beneficiary will bring suit against *both* the trustee and the third party. However, it is not necessary to join the trustee in the suit, because “primarily it is the beneficiaries who are wronged and who are entitled to sue. . . .” [Citation.] The liability of the third party is to the beneficiaries, rather than to the trustee, “and the right of the beneficiaries against the [third party] is a *direct right* and not one that is derivative through the trustee.” [Citation.] [Citations.] Thus, “[w]hen the claim being asserted rests in whole or in part on alleged breaches of trust by the trustee, a beneficiary has standing to pursue such a claim against either (1) the trustee directly, (2) the trustee and third parties participating in or benefiting from his, her, or its breach of trust, or (3) such third parties alone.” [Citations.]” (*King, supra*, 178 Cal.App.4th at pp. 1500-1501, original italics.)

In her second amended complaint, Leslie changed her allegations to allege she served as one of the Trust’s cotrustees *before* she signed the Stock Documents, the Trust held title to Tom’s Vilelli Enterprises and RAV shares *before* Leslie signed the Stock Documents, Leslie breached her duties as a cotrustee by signing the Stock Documents without receiving adequate consideration for the shares those documents transferred, and Dick and Rocks participated in Leslie’s breach of trust by coercing and fraudulently inducing her to sign the Stock Documents. These allegations, however, are not sufficient to establish Leslie has standing under the third-party participant doctrine.

Although Leslie alleges she breached her duties as a cotrustee by signing the Stock Documents, she fails to allege she signed those documents in her capacity as a cotrustee. To the contrary, all of Leslie’s verified complaints allege she signed the Stock Documents as Tom’s attorney in fact. Moreover, the signed copy of the Vilelli Enterprises and RAV Shareholder Agreements Leslie attached to her complaints confirm she signed in her capacity as Tom’s attorney in fact. Leslie’s handwritten signatures on

those documents state, “Thomas R. Vilelli by Leslie Laraine McHenry *attorney in fact*.”<sup>3</sup> (Italics added.) Leslie’s conduct as Tom’s attorney in fact is separate from her conduct as one of the Trust’s cotrustees.

Leslie acted on Tom’s behalf concerning all subjects and purposes described in the power of attorney appointing her as Tom’s attorney in fact. (Prob. Code, § 4123, subd. (a); see also § 4014.)<sup>4</sup> Depending on the power of attorney’s terms, Leslie had authority to control Tom’s property, including all stocks he held. (§ 4123, subd. (a).) She owed Tom fiduciary duties that required her to act solely in his best interest (§ 4232, subd. (a)) and her acts on Tom’s behalf bound Tom as if he had acted himself (§§ 4125, 4301).

As one of the Trust’s cotrustees, Leslie held legal title to Tom’s Vilelli Enterprises and RAV shares for the benefit of all beneficiaries the Trust named. (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1133.) She owed the Trust’s beneficiaries fiduciary duties that required her to administer the Trust solely in their interest, take control of and preserve all Trust property, and make the Trust property productive. (*Id.* at p. 1134; §§ 16002, subd. (a), 16006.)

The duties Leslie owed as a cotrustee are separate from the duties she owed as Tom’s attorney in fact, and she owed these distinct responsibilities to the Trust beneficiaries and Tom, two separate parties. (Cf. *Arnolds Management Corp. v. Eischen* (1984) 158 Cal.App.3d 575, 581 [“[An] attorney in fact is not a trustee. One who is described in an instrument . . . as the attorney in fact of another, does not hold the character of trustee”].)

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<sup>3</sup> The record does not include signed copies of the Vilelli Enterprises and RAV Stock Purchase Agreements. Leslie alleges Rocks never provided her with signed copies of those documents.

<sup>4</sup> All further statutory references are to the Probate Code unless otherwise stated.

As explained above, the third-party participant doctrine allows a trust beneficiary to sue a third party *only* when the third party participates in a trustee's breach of trust. (*King, supra*, 178 Cal.App.4th at p. 1500; *Atascadero, supra*, 68 Cal.App.4th at p. 460.) If the trustee did not commit a breach of trust, the doctrine does not apply and a trust beneficiary may not sue a third party for damage to trust assets. (*Ibid.*) In that instance, the trustee is the only one with standing to pursue the claims against the third party. (*Pillsbury, supra*, 22 Cal.App.4th at pp. 753-754, 756.)

By conceding she acted as Tom's attorney in fact when she signed the Stock Documents and transferred the Villelli Enterprises and RAV shares, Leslie also implicitly concedes she did not breach any duty she owed as one of the Trust's cotrustees. Any duty Leslie breached by signing the Stock Documents was necessarily a duty she owed Tom as his attorney in fact because that is the capacity in which she signed the Stock Documents. Because she did not act as a cotrustee, Leslie did not breach any duty she owed as a cotrustee and therefore the third-party participant doctrine does not provide her with standing.

Leslie contends whether she signed the Stock Documents as Tom's attorney in fact or one of the Trust's cotrustees is irrelevant because her conduct in signing the Stock Documents while she was a cotrustee damaged the Trust and its beneficiaries. This argument fails because a beneficiary lacks standing to sue third parties unless it is shown the trustee breached her fiduciary duty in conjunction with the third party.

Despite Leslie's conclusory allegations that she breached her duties as a cotrustee, the facts alleged in the second amended complaint do not support this claim. Instead, the facts alleged point to a claim involving the two corporations transferring shares the Trust held without permission from the Trust's then-current trustees. Indeed, the second amended complaint alleges the Trust held Tom's Villelli Enterprises and RAV shares and Tom had been replaced by Rick and Leslie as the Trust's trustee, but the two corporations nonetheless relied on the Stock Documents signed by Tom's attorney in fact

to transfer some of Tom’s shares. Because that claim does not involve a breach of trust by a cotrustee, the third-party participant doctrine does not apply.<sup>5</sup>

Leslie offers several additional arguments to support application of the third-party participant doctrine. We need not discuss these other arguments because Leslie’s failure to allege facts establishing a breach of trust prevents her from using the third-party participant doctrine to establish standing under any circumstances.

2. Leslie Failed to Allege Facts Showing Idaho Law Applies to Provide Her with Standing

The second amended complaint alleges Leslie has standing to pursue this action as a Trust beneficiary because (1) the Trust provides, “All questions concerning the validity, interpretation, and administration of this instrument . . . shall be governed by the laws of the State of Idaho,” and (2) a trust beneficiary is the real party in interest on a claim against a third party under Idaho law. These allegations do not provide Leslie with standing.

As Leslie concedes, “this action is not one seeking relief concerning the validity, interpretation, and administration of [the] Trust.” Instead, this action seeks relief from third parties who allegedly coerced and fraudulently induced a cotrustee to transfer Trust property for inadequate consideration. The claims for relief turn on the propriety of the third parties’ conduct, not “the validity, interpretation, and administration” of the Trust. The Trust’s choice-of-law provision therefore does not apply under these circumstances to determine standing.<sup>6</sup>

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<sup>5</sup> We express no opinion about the viability of any claim the trustee may have against Vilelli Enterprises or RAV based on the facts Leslie alleges in the second amended complaint. We merely point out this possible claim to demonstrate it does not involve a breach of trust by a trustee.

<sup>6</sup> In support of her argument that Idaho law applies and provides her with standing to pursue this action, Leslie requests we judicially notice (1) *Taylor v. Maile* (2005) 142 Idaho 253, 127 P.3d 156; (2) Idaho Rules of Civil Procedure, rule 17(a);

A California court applies California law unless a party demonstrates a choice-of-law provision or public policy requires the court to apply another state's laws. (*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 919 (*Washington Mutual*)). Leslie fails to allege any facts establishing a basis for applying Idaho law on standing and therefore we apply California law denying trust beneficiaries standing to sue third parties.<sup>7</sup>

3. The Court-Appointed Trustee Did Not Confer Standing on Leslie

The second amended complaint also alleges Leslie has standing to bring this action as a Trust beneficiary because the court-appointed trustee expressly authorized her to do so. To support this allegation, the second amended complaint attaches a letter from the trustee refusing to pursue the claims alleged in this action, but stating he “authorize[s] any vested beneficiary of the Trust to pursue the allegations and claims made in the [action]” at the beneficiary’s own expense. This authorization, however, does not provide Leslie with standing to bring this action because a trustee may not delegate his or her duty to protect trust property.

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(3) the transcript of a December 28, 2010 hearing in Idaho state court regarding the Trust; and (4) the Idaho state court order removing Leslie and Dick as the Trust’s cotrustees. We grant the request regarding the *Taylor* decision and Idaho Rules of Civil Procedure. (Evid. Code, §§ 452, subd. (a), 459, subd. (a).) But we deny the request as to the transcript and order because they are irrelevant to Leslie’s argument Idaho law provides her with standing. Moreover, the order is already in the record on appeal. (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 (*Mangini*) [“Although a court may judicially notice a variety of matters [citation], only *relevant* material may be noticed” (original italics)], overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.)

<sup>7</sup> Leslie does not cite or argue Idaho law on any other point raised on this appeal. We therefore apply California law to all issues. (*Washington Mutual, supra*, 24 Cal.4th at p. 919.)

“[A] trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform . . . .” (§ 16012, subd. (a).) Pursuing claims against third parties for damaging trust property is a personal responsibility reasonably imposed on the trustee. Indeed, trustees have the power and the duty to sue to protect trust property (§§ 16006, 16249) and they are the real parties in interest with standing to pursue claims against third parties for damage to trust property (*King, supra*, 178 Cal.App.4th at p. 1500; *Pillsbury, supra*, 22 Cal.App.4th at p. 753). Accordingly, the court-appointed trustee could not delegate to Leslie the authority to pursue any claim for damage to Trust property caused by a third party.<sup>8</sup>

Leslie contends *Pillsbury* and *Powers v. Ashton* (1975) 45 Cal.App.3d 783, *implied* a trust beneficiary has standing to pursue claims against third parties if the trustee expressly authorizes the beneficiary to do so. She is mistaken. *Pillsbury* rejected a trust beneficiary’s argument that a trustee’s letter refusing to pursue claims against a third party impliedly authorized the beneficiary to pursue those claims. (*Pillsbury, supra*, 22 Cal.App.4th at pp. 756-757.) *Powers* held the trust document in that case did not authorize the trust beneficiary to sue a third party for damage to trust property. (*Powers*, at pp. 788-789.) Neither case addressed whether a trustee could delegate his or her duty to pursue claims against third parties for damage to trust property. “[A]n appellate court’s opinion is not authority for propositions the court did not consider or on questions it never decided.” (*People v. Braxton* (2004) 34 Cal.4th 798, 819.) Moreover, any decision allowing a trust beneficiary to bring an action against third parties based on a trustee’s authorization would violate section 16012’s prohibition against delegation.

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<sup>8</sup> Obviously, a trustee may hire an attorney and other professionals to help pursue claims against third parties or otherwise protect trust property. (§ 16247.) A trustee, however, may not abdicate his or her duty to pursue claims and protect trust property. (§ 16012, subd. (a).)

Leslie is bound by the court-appointed trustee's decision not to pursue the claims Leslie alleges unless she establishes the trustee's refusal to pursue the claims is "negligent, wrongful or otherwise improper." (*Pillsbury, supra*, 22 Cal.App.4th at p. 756; see also *Wolf, supra*, 76 Cal.App.4th at pp. 1037-1038.) As we explain below, the second amended complaint makes no such allegation.

4. The Trustee's Refusal to Pursue These Claims Does Not Provide Leslie with Standing

The final exception to the rule prohibiting trust beneficiaries from suing third parties for damaging trust property arises from the trustee's "negligent, wrongful or otherwise improper" refusal to file suit against such third parties. (*Pillsbury, supra*, 22 Cal.App.4th at p. 756; *Wolf, supra*, 76 Cal.App.4th at pp. 1037-1038; *Saks, supra*, 7 Cal.App.4th at pp. 427-428.) "[W]here a trustee cannot or will not enforce a valid cause of action that the trustee *ought* to bring against a third person, a trust beneficiary may seek judicial compulsion against the trustee. In order to prevent loss of or prejudice to a claim, the beneficiary may bring an action in equity joining the third person and the trustee. [Citations.]' [Citations.]" (*Pillsbury*, at p. 754, original italics.)

Unlike the third-party participant doctrine, this exception does not allow a beneficiary to proceed directly against the third party who allegedly damaged trust property. Instead, this exception allows a beneficiary to *compel the trustee* to pursue claims against the third party or have a new trustee appointed to pursue those claims. (*Saks, supra*, 7 Cal.App.4th at p. 430; *Pillsbury, supra*, 22 Cal.App.4th at p. 754.) The third party who allegedly damaged trust property may be joined in the beneficiary's action against the trustee to avoid any prejudice to the trust's claim while the beneficiary seeks to compel the trustee to pursue the claim. (*Pillsbury*, at p. 754.)

In *Pillsbury*, third parties unsuccessfully sued the trustee in an earlier action seeking specific performance on a contract to sell the trust's real property. The trustee declined a beneficiary's request to sue the third parties for malicious prosecution based

on that earlier action. The trustee considered the request, but determined a malicious prosecution action was not in the trust's best interests because of the costs required to pursue the claim and the uncertain chances of success. (*Pillsbury, supra*, 22 Cal.App.4th at p. 751.) The beneficiary therefore sued the third parties in his own name, but the trial court granted the third parties' nonsuit motion because the beneficiary lacked standing. (*Id.* at pp. 752-753.) The Court of Appeal affirmed, explaining the beneficiary was bound by the trustee's decision not to pursue the malicious prosecution action unless the beneficiary established the trustee's "failure to bring the lawsuit was negligent, wrongful or otherwise improper," and the beneficiary failed to make that showing. (*Id.* at p. 756; see also *Wolf, supra*, 76 Cal.App.4th at pp. 1037-1038 [“If the trustee does not commit a breach of trust in failing to bring an action against the third person, as for example where it is prudent under the circumstances to refrain from bringing an action . . . the beneficiary cannot maintain a suit against the trustee and the third person”].)

Here, after the Idaho court overseeing the Trust's administration removed Leslie and Dick as cotrustees and appointed a professional fiduciary as trustee, Leslie asked the court-appointed trustee to pursue the claims she alleges in this action. The trustee considered Leslie's request, but refused to file this lawsuit on the Trust's behalf because he believed doing so "would do more harm to the Trust's interests than good." In reaching this conclusion, the trustee relied in part on the Idaho court's earlier ruling denying Leslie's request for authorization to file this action when she was a cotrustee.

The second amended complaint does not name the court-appointed trustee as a party nor does it allege the trustee's refusal to bring this action was "negligent, wrongful, or otherwise improper." (*Pillsbury, supra*, 22 Cal.App.4th at p. 756.) Consequently, the trustee's refusal to bring this action does not provide Leslie with standing. (*Wolf, supra*, 76 Cal.App.4th at p. 1038 [to invoke the wrongful refusal standing exception a beneficiary must name the trustee as a party and allege the trustee

breached his or her duties by failing to pursue the claims]; see also *Pillsbury*, at p. 756; *Saks*, *supra*, 7 Cal.App.4th at pp. 427-428.)

D. *The Trial Court Properly Denied Leslie Leave to Amend*

Leslie contends she can amend her pleading to state additional facts to “[c]larify any [a]mbiguities” regarding her standing to pursue this action under the third-party participant doctrine. She argues she can allege facts regarding (1) Rick breaching his duties as a cotrustee; (2) the other Trust beneficiaries; (3) the Trust holding Tom’s Vilelli Enterprises and RAV shares before his death; (4) the damages the Trust suffered; and (5) Rocks’ misconduct. None of these proposed allegations, however, overcome the fact the third-party participant doctrine does not apply because Leslie concedes she signed the Stock Documents as Tom’s attorney in fact rather than as a cotrustee.

In her opening brief, Leslie also asserts she “can join the Successor Trustee as a party if necessary,” but she fails to explain how joining the trustee would provide her with standing to pursue this action as a Trust beneficiary. We invited Leslie to submit a proposed third amended complaint naming the trustee as a party and alleging all additional facts she could to establish her standing to pursue this action. Because the exception arising from a trustee’s wrongful refusal to pursue claims against a third party is the only exception requiring the trustee to be named as a party, we also invited Leslie and Defendants to submit supplemental briefing addressing whether Leslie’s proposed pleading alleged sufficient facts to establish standing under that exception.<sup>9</sup>

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<sup>9</sup> To support their supplemental briefs, Defendants asked this court to judicially notice various Idaho Code sections and a recent order from the Idaho court overseeing the Trust’s administration. We grant the request regarding the Idaho Code section (Evid. Code, §§ 452, subd. (a), 459, subd. (a)), but deny the request regarding the recent court order because it is irrelevant. (*Mangini*, *supra*, 7 Cal.4th at p. 1063.)

Although Leslie's proposed pleading alleges facts to show the trustee wrongfully refused to pursue this action, those allegations do not provide Leslie with standing because the California courts lack jurisdiction to compel the Trust's trustee to pursue the claims alleged in this action. As explained above, the wrongful refusal standing exception does not allow a beneficiary to proceed directly against the third parties who allegedly damaged trust property. Instead, the exception allows a beneficiary to join the third parties in an action either to compel the trustee to pursue the claims against the third parties or to appoint a new trustee to pursue the claims. (*Saks, supra*, 7 Cal.App.4th at p. 430; see also *Pillsbury, supra*, 22 Cal.App.4th at p. 754.) An action to compel a trustee to pursue third party claims must be brought in the court with jurisdiction over the trust's internal affairs. (*Saks*, at pp. 429-430.)

In *Saks*, a trustee purchased real property based on advice from an attorney and real estate broker the trustee hired. Shortly after the purchase, defects and other problems with the property damaged the value of the trust, but the trustee refused to sue the attorney and broker to recover those damages. The trust's beneficiaries therefore sued the attorney and broker directly, alleging they failed to disclose defects in the property and breached various duties they owed the trust. The beneficiaries argued the trustee's refusal to bring suit gave them standing to sue on the trust's behalf. The attorney and broker demurred, arguing the beneficiaries lacked standing to sue them directly. The trial court sustained the demurrer without leave to amend and the Court of Appeal affirmed. (*Saks, supra*, 7 Cal.App.4th at pp. 422-425.)

Under the wrongful refusal standing exception, the *Saks* court explained, the beneficiaries' "only proper course was to proceed against the trustee . . . seeking either to compel [the trustee] to proceed against [the attorney and broker], or to remove [the trustee] and to appoint a trustee ad litem to sue [the attorney and broker]." (*Saks, supra*, 7 Cal.App.4th at p. 430.) The *Saks* court further explained the Probate Code vested exclusive jurisdiction over the internal affairs of the trust in the superior court

probate division. (*Id.* at pp. 428-429.) Accordingly, because the question whether the trustee negligently, wrongfully, or improperly refused to bring suit against the attorney and broker involved the trust's internal affairs and the trustee's proper performance of his duties, the beneficiaries were required to bring their petition to compel the trustee to file suit in the probate division, which is the only court with jurisdiction over those questions. (*Id.* at pp. 429-430.) The beneficiaries therefore lacked standing to bring the general civil action at issue in *Saks*. (*Ibid.*)

Here, Leslie filed a general civil action directly against Defendants without joining the trustee or seeking to compel the trustee to pursue the claims alleged in this action. Leslie's proposed third amended complaint joins the trustee and alleges he wrongfully refused to pursue these claims, but the pleading does not seek to compel the trustee to bring this action nor does it seek to have a trustee ad litem appointed for that purpose. More importantly, Leslie brings this action in a court that lacks jurisdiction to compel the trustee (or a trustee ad litem) to pursue the claims Leslie alleges.

The Trust is registered with the Idaho state court and that court has overseen the Trust's administration since Tom's death. The Idaho Probate Code grants the court where a trust is registered exclusive jurisdiction over proceedings concerning the trust's internal affairs. (Idaho Code, § 15-7-201.) Both Leslie and Dick have invoked the Idaho state court's jurisdiction over the Trust by filing various petitions for orders relating to the Trust's internal affairs. Accordingly, to invoke the wrongful refusal standing exception, Leslie must proceed in the Idaho state court that currently oversees the Trust's administration and petition it to compel the trustee to pursue these claims or to appoint a trustee ad litem for that purpose.<sup>10</sup>

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<sup>10</sup> We note Leslie previously sought permission from the Idaho state court to pursue the claims she alleges in this action while she was still a cotrustee. The Idaho state court denied Leslie's request and she fails to explain how circumstances have changed since that ruling.

Leslie's proposed third amended complaint fails to establish her standing under the wrongful refusal standing exception, or any other exception to the rule prohibiting a trust beneficiary from suing third parties for damage to trust property. Consequently, we affirm the trial court's decision denying Leslie leave to amend.

### III

#### DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.