

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

PETER SOLA AND GEORGE
SOLA, INDIVIDUALLY AND
AS CO-TRUSTEE OF THE
VALERIE J. TOURTELOT 2005
IRREVOCABLE TRUST,

Appellants,

v.

Case No. 5D20-167
5D20-423

SUZANNE MARKEL, INDIVIDUALLY
AND AS CO-TRUSTEE OF VALERIE
J. TOURTELOT 2005 IRREVOCABLE
TRUST, TRUSTEE OF JOSEPH R.
SOLA 2006 GST TRUST, TRUSTEE
OF THE PIA EMILY SOLA 2006 GST
TRUST, ETC., ET AL.,

Appellees.

Opinion filed May 14, 2021

Appeal from the Circuit Court for
Sumter County,
William H. Hallman, III, Judge.

J. Timothy Schulte, and Laura K. Sundberg,
of Zimmerman Kiser & Sutcliffe, Orlando, and
Robert V. Williams, of Burr & Forman, LLP,
Tampa, for Appellant, Peter Sola.

Robert C. Wilkins, Jr., B.C.S., of Robert C. Wilkins, Jr., PL, Orlando, for Appellant, George Sola.

Rachael M. Crews, and T. Todd Pittenger, and Brock Magruder, of Grayrobinson, PA, Orlando, for Appellee, Suzanne Markel.

Thomas A. Zehnder, and Robyn M. Kramer, of King, Blackwell, Zehnder & Wermuth, P.A., Orlando, for Appellees, Anne M. Link and James R. Markel.

Alexander S. Douglas, II, and Lane Begy Roesch, of Shuffield, Lowman & Wilson, P.A., Orlando, for Appellee, The Northern Trust Company.

No appearance for remaining Appellees.

HARRIS, J.

In this consolidated appeal, Appellants, Peter Sola in his individual capacity, and George Sola, Individually and as one of two Co-trustees of the Valeria J. Tourtelot 2005 Irrevocable Trust (the "Tourtelot Trust"), appeal the trial court's dismissal with prejudice of their third amended complaint and second amended crossclaim respectively. The dismissed pleadings alleged breaches of fiduciary duties against Suzanne Markel, Individually and as another Co-trustee of the Tourtelot Trust, and various other related trusts, and sought declaratory judgment. We agree with Appellants that the third

amended complaint and the crossclaim to the third amended complaint each stated valid causes of action in counts I–V and reverse the order dismissing those counts. However, we find no error in the trial court’s conclusion that the complaint and crossclaim continue to fail to state a cause of action for declaratory relief and affirm the dismissal with prejudice as to those counts without further discussion.

The facts underlying this case are summarized as follows: The trusts at issue in this case own a very valuable 3,400-acre parcel of real property known as the Monarch Ranch. This property lies along Interstate 75 in Sumter County, Florida, and became much more valuable when it was designated a potential mega-site for future development and when the Florida Department of Transportation approved a new interchange at the intersection of I-75 and CR 514, on the Monarch Ranch property. In order to take advantage of these designations and to maximize the value of the property, certain “entitlements” would have to be obtained by the property owners, an expensive and time-consuming process. At some point, Peter obtained an interest in another very valuable parcel contiguous to the Monarch Ranch known as the Livi Ranch.

Initially Suzanne and George, as co-trustees of the Tourlelot Trust, agreed to spend \$500,000 of trust assets to obtain the required entitlements on the Monarch Ranch and to maximize its value. A dispute arose between Suzanne and Peter when, according to Peter, Suzanne attempted to financially coerce him into sharing his interest in the Livi Ranch with her. When he refused, Suzanne in turn refused to spend any further trust assets on entitling the Monarch Ranch. Contending that Suzanne's actions and inactions constituted a breach of her duties as trustee, Peter sued Suzanne, alleging a breach of duty to invest prudently (count I), breach of duty of loyalty (count II), breach of duty of impartiality (count III), breach of duty to administer trust (count IV), and breach of trust and surcharge (count V).¹ Suzanne moved to dismiss the claims against her, arguing that no statute, law, or trust provision required her to take any specific steps to spend trust money on the entitlement process. The court granted Suzanne's motions, finding that Peter and George merely alleged a disagreement with Suzanne's handling of the trust and that Suzanne had not exceeded the broad discretion afforded her as trustee.

¹ George responded to the complaint by filing a crossclaim against Suzanne in which he simply adopted the allegations from Peter's pleading.

This Court reviews the trial court's order dismissing a complaint for failure to state a claim de novo. KC Leisure, Inc. v. Haber, 972 So. 2d 1069, 1075 (Fla. 5th DCA 2008). A motion to dismiss requests "the trial court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal." Huet v. Mike Shad Ford, Inc., 915 So. 2d 723, 725 (Fla. 5th DCA 2005). In making its decision, the trial court may not look beyond the four corners of the complaint, and should make all reasonable inferences in favor of the pleader and accept as true all well-pleaded allegations. Id.

Here, Peter and George sufficiently alleged in counts I–V all of the elements necessary to state a cause of action for breach of fiduciary duty—the existence of a duty, a breach of that duty, and damage proximately caused by that breach. See Gracey v. Eaker, 837 So. 2d 348 (Fla. 2002). The complaint specifically identifies acts that Suzanne did, and those that she failed or refused to do, that would constitute a breach of her duties, and the complaint alleges a causal connection between the alleged breaches and the damages claimed. To survive a motion to dismiss, nothing more should have been required.

When the trial court dismissed the complaint and crossclaim based on an inherent finding that Suzanne had acted within her broad discretion, and

that Peter and George were merely in disagreement with how Suzanne was managing the trusts, it impermissibly looked beyond the four corners of the complaint. See Huet, 915 So. 2d at 725. We therefore reverse the dismissal of counts I–V and remand this matter back to the trial court for further proceedings.

REVERSED and REMANDED for further proceedings as to I–V.

AFFIRMED as to count VI.

EVANDER, C.J. and SASSO, J., concur.