

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DAVID GOODMAN, JOSHUA GOODMAN, and  
CHIARA GOODMAN,

Plaintiffs/Appellants,

vs.

ADAM ZIEFER and NRT NEW YORK LLC  
d/b/a THE CORCORAN GROUP,

Defendants/Appellees.

Case No. 2023-005747-CP-02

Judicial Section: PMH 03

**PLAINTIFFS' NOTICE OF APPEAL**

NOTICE IS GIVEN that Plaintiffs/Appellants, David Goodman, Joshua Goodman, and Chiara Goodman, appeal to the Third District Court of Appeal the Order on Defendants Adam Ziefer's and NRT New York LLC's Motion to Dismiss Count V of Plaintiff's Second Amended Complaint [DIN 115], rendered on September 26, 2024, and is attached to this Notice. This Order is final in nature and appealable pursuant to Florida Rule of Appellate Procedure 9.110(k) because it disposed of the entire case as to Defendants Adam Ziefer and NRT New York LLC. The Order is subject to the following motion tolling rendition that remains pending as of the filing of this notice of appeal: Plaintiffs/Appellants' Motion for Reconsideration of Court's September 26, 2024 Order on Defendants Adam Ziefer and NRT New York LLC's Motion to Dismiss Count V of Plaintiffs' Second Amended Complaint and/or Motion for Rehearing on Defendants' Motion filed on October 11, 2024. [DIN 129].

WEISSMAN & DERVISHI, P.A.

By:           /s/ Luke T. Jacobs          

Brian S. Dervishi

Luke T. Jacobs

Fla. Bar Nos. 350303 & 1024787

One Southeast Third Avenue, Suite 1700

Miami, Florida 33131

305-347-4070 (Telephone)

[bdervishi@wdpalaw.com](mailto:bdervishi@wdpalaw.com)

[ljacobs@wdpalaw.com](mailto:ljacobs@wdpalaw.com)

[service@wdpalaw.com](mailto:service@wdpalaw.com)

Counsel for David Goodman, Joshua Goodman,  
and Chiara Goodman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 25, 2024, the foregoing was served via the Florida Courts E-Filing Portal on the persons listed below and all persons registered to receive service of court documents in this case.

          /s/ Luke T. Jacobs          

Luke T. Jacobs

Robert C. Gilbert, Esq.  
Kopelowitz Ostrow Feguson Weiselberg Gilbert  
2800 Ponce de Leon Boulevard, Suite 1100  
Coral Gables, FL 33134  
[gilbert@kolawyers.com](mailto:gilbert@kolawyers.com)

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2023-005747-CP-02

SECTION: PMH03

JUDGE: Bertila Soto

**IN RE: Goodman, Cynthia**

Decedent

\_\_\_\_\_ /

**ORDER ON DEFENDANTS' ADAM ZIEFER'S AND NRT NEW YORK LLC'S MOTION  
TO DISMISS COUNT V OF PLAINTIFF'S SECOND AMENDED COMPLAINT**

Docket # 94

E-Filing No. 203769112

**THIS CAUSE** came before the Court on September 3, 2024, for argument on Defendants' Adam Ziefer's and NRT New York LLC's d/b/a The Corcoran Group's Motion to Dismiss Count V of Plaintiffs' Second Amended Complaint (Docket # 94) ("the Ziefer/Corcoran Motion").<sup>[1]</sup> Plaintiffs filed a Response to the Ziefer/Corcoran Motion (Docket # 99). For the reasons discussed herein, it is **ORDERED AND ADJUDGED** that the Ziefer/Corcoran Motion is **GRANTED** and Count V of Plaintiffs' Second Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

This dispute arises from a 2018 First Amendment to the First Amended and Restated Revocable Trust of Cynthia Goodman (the "2018 Amendment"), under which Melissa Goodman became Sole Successor Trustee of the 2013 First Amended and Restated Revocable Trust of Cynthia Goodman Trust (the "2013 Trust"), which amended and restated the 1992 Cynthia Goodman Revocable Trust (the "Trust").

On December 1, 2023, Plaintiff David Goodman ("David Goodman"), Individually and as Beneficiary and Co-Successor Trustee of the 2013 Trust, filed a Complaint for Breach of Fiduciary

Duty, Invalidation of Trust Amendment, Interference with Testamentary Expectancy and Other Relief against Defendants, Dr. Melissa Goodman, Jack Fugett and Adam Ziefer. On March 5, 2024, David Goodman, Individually and as Beneficiary and Co-Successor Trustee of the 2013 Trust filed the First Amended Complaint (Docket # 37), which added additional claims and two new Plaintiffs, Joshua Goodman and Chiara Goodman, as Beneficiaries of the 2013 Trust.

The First Amended Complaint asserted multiple claims against Dr. Goodman and Mr. Fugett (Counts I – IX, XIII). The First Amended Complaint also asserted three claims against Mr. Ziefer (Counts X, XI and XII). The three claims against Mr. Ziefer all arose from and related to Dr. Goodman’s engagement of Mr. Ziefer as a realtor to market and sell the Trust property located in Miami Beach, Florida.

On May 28, 2024, this Court entered an Order granting Adam Ziefer’s motion to dismiss Counts X, XI and XII of Plaintiffs’ First Amended Complaint (Docket # 68). The Order concluded, *inter alia*, that David Goodman lacked standing to sue Mr. Ziefer and, even if the Court were to conclude that he had standing, Counts X, XI and XII failed to state viable causes of action. Pursuant to the May 28 Order, David Goodman was afforded 10 days to file an amended complaint against Adam Ziefer “*should he and his counsel believe they can make such allegations consistent with the obligations imposed under Fla. Stat. § 57.105.*” See May 28 Order at 13 (emphasis added).

On June 28, 2024, after substituting new counsel and securing additional time, David Goodman and his children, Joshua Goodman and Chiara Goodman (collectively "Plaintiffs"), filed their Second Amended Complaint for Invalidation of Trust Amendment, Breach of Fiduciary Duty, and Other Relief (Docket # 81). The Second Amended Complaint again asserts a claim against Adam Ziefer and adds NRT New York LLC’s d/b/a The Corcoran Group (“Corcoran”) as a Defendant, alleging that Corcoran is vicariously liable for any negligence of its affiliated broker and/or agent Mr. Ziefer.<sup>[2]</sup> On July 31, 2024, Mr. Ziefer and Corcoran filed the Ziefer/Corcoran

Motion (Docket # 94). On August 6, 2024, Plaintiffs filed their Response to the Ziefer/Corcoran Motion (Docket # 99).

The Second Amended Complaint makes substantially similar factual allegations against Mr. Ziefer (and now Corcoran) to those raised in the First Amended Complaint. Plaintiffs' allegations and claim against Mr. Ziefer and Corcoran arise from and relate to Dr. Goodman's engagement, in her capacity as Sole Successor Trustee under the 2018 Amendment, of Corcoran and Mr. Ziefer to market and sell Trust property consisting of a home located in Miami Beach, Florida. Plaintiffs were not in privity with Corcoran or Mr. Ziefer in connection with their engagement to market and sell the Miami Beach home, and they had no direct contact or dealings with Mr. Ziefer or Corcoran in connection with the sale of the property. Notwithstanding their lack of privity or direct dealings, the Second Amended Complaint alleges that Mr. Ziefer breached statutory duties under Fla. Stat. § 475.278 arising from the marketing and sale of the Trust property.

As discussed below, the Court concludes, based on its analysis of the Second Amended Complaint (including exhibits attached thereto) and applicable law, that as beneficiaries of the Trust, Plaintiffs lack standing to bring claims against Mr. Ziefer and Corcoran arising from their engagement by Dr. Goodman, the Sole Successor Trustee, to market and sell the Trust property. The Court further concludes that the statutory claim brought against Mr. Ziefer, and Corcoran based on vicarious liability, fails to state a cause of action and must be dismissed. Since Plaintiffs were previously afforded an opportunity to amend and have been unable to establish standing in the Second Amended Complaint, the Court concludes that permitting further amendment would be futile. Therefore, dismissal with prejudice is appropriate.

## **II. APPLICABLE LEGAL STANDARDS**

In determining whether to dismiss a complaint for lack of standing, a court must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept all well-pled allegations in the complaint as true. *Payne v. City of Miami*, 927 So. 2d 904, 906 (Fla.

3d DCA 2005).

Pursuant to Rule 1.140(b) of the Florida Rules of Civil Procedure, a complaint is subject to dismissal if it fails to state a cause of action. In determining the merits of a motion to dismiss, the trial court must limit itself to the four corners of the complaint. *Nationstar Mortg., LLC v. Sunderman*, 201 So. 3d 139 (Fla. 3d DCA 2015). To properly state a cause of action, Rule 1.110(b) of the Florida Rules of Civil Procedure requires a pleading to contain “a short and plain statement of the ultimate facts showing that the pleader is entitled to relief.” Fla. R. Civ. P. 1.110(b). A complaint must allege sufficient “ultimate facts” to show that the pleader is entitled to relief. *Rios v. McDermott, Will & Emery*, 613 So. 2d 544 (Fla. 3d DCA 1993).

A pleader fails to state a cause of action where only general and conclusory allegations are set forth without any specific facts in support of the alleged cause of action. *American Seafood, Inc. v. Clawson*, 598 So. 2d 273, 274 (Fla. 3d DCA 1992); *Barrett v. City of Margate*, 743 So. 2d 1160, 1163 (Fla. 4th DCA 1999) (alleging merely opinions, theories, legal conclusions or arguments is insufficient); *see also Bliss v. Carmona*, 418 So. 2d 1017, 1019 (Fla. 3d DCA 1982) (“Certainty is required when pleading defenses and claims alike, and pleading conclusions of law unsupported by allegations of ultimate facts is legally insufficient”). Unsupported legal conclusions inserted in a complaint are insufficient to state a cause of action. *K.R. Exch. Services, Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So. 3d 889 (Fla. 3d DCA 2010).

Moreover, even taking the facts as true, a court may grant a motion to dismiss when, “on the basis of a dispositive issue of law, no construction of the factual allegations will support the causes of action.” *Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993); *see also Metropolitan Cas. Ins. Co. v. Tepper*, 969 So. 2d 403 (Fla. 5th DCA 2007) (“[a] trial court is not bound by the four corners of the complaint where the facts are undisputed and the motion to dismiss raises only pure question of law.”).

“Where a party attaches exhibits to the complaint those exhibits become part of the pleading and the court will review those exhibits accordingly.” *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994). And where the attached exhibits contradict the allegations in the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss. *Age of Empire, Inc. v. Ocean Two Condominium Assoc., Inc.*, 367 So. 3d 1278, 1280 (Fla. 3d DCA 2023).

Dismissal with prejudice, with denial of the right to amend the complaint again, should be granted when the privilege of amendment has been abused, there is prejudice to the opposing party, or further amendment would be futile. *514 Gerber Trade Fin., Inc. v. Bayou Dock Seafood Co.*, 917 So.2d 964, 968 (Fla. 3d DCA 2005); *World Class Yachts, Inc. v. Murphy*, 731 So. 2d 798, 800 (Fla. 4th DCA 1999).

### **III. THE FACTUAL ALLEGATIONS RELATING TO MR. ZIEFER AND CORCORAN**

The Second Amended Complaint contains limited factual allegations relating to Mr. Ziefer and Corcoran. *See* Second Am. Compl., ¶¶ 12 - 15, 39 – 44, 47 – 70 (Docket # 81). The Court has carefully reviewed the entire Second Amended Complaint, including all exhibits, and summarizes the factual allegations relating to Mr. Ziefer and Corcoran below.

On December 16, 2021, Dr. Goodman, as Sole Successor Trustee, entered into a listing agreement with Mr. Ziefer, as an affiliated agent or representative of Corcoran, to market and sell the Miami Beach home for a listing price of \$2.75 million.<sup>3]</sup> Second Am. Compl. ¶ 39, Ex. 3. According to Plaintiffs, just two weeks after Dr. Goodman orchestrated the kidnapping of her mother to Philadelphia, she listed the Miami Beach home for sale at \$2.75 million which, Plaintiffs allege, was \$1.15 million under fair market value. *Id.* at ¶ 41. According to Plaintiffs, the timing of Dr. Goodman’s actions demonstrate that she listed the Miami Beach home for well under fair market value to quickly sell it and foreclose the possibility of her mother returning to Florida. *Id.* at ¶ 42.

According to Plaintiffs, Mr. Ziefer, the realtor hired by Dr. Goodman, provided her with an egregiously inaccurate recommendation to list the Miami Beach home between \$2.5 million and \$2.75 million, without being qualified to provide a professional price opinion. *Id.* at ¶¶ 47 - 48. Plaintiffs allege that Mr. Ziefer had a professional obligation to market the Miami Beach home for its best and highest use, and that he incorrectly marketed the property as one lot when the property was zoned as two lots with two separate folio numbers. *Id.* at ¶ 49.

Plaintiffs allege that Dr. Goodman and Mr. Ziefer “colluded” in selling the Miami Beach home as quickly as possible. *Id.* at ¶¶ 67 – 70.

Plaintiffs allege that when David Goodman became aware that the Trust property was being sold for \$2.75 million, he advised Dr. Goodman she was selling the Trust property for well under fair market value and that the market price should be \$3,500,000. *Id.* at ¶¶ 45 - 46. According to Plaintiffs, Dr. Goodman rejected her brother’s advice “because performing reasonable due diligence to ascertain Ziefer’s qualifications to make professional price opinion or obtaining an appraisal to confirm the market value and attempting to negotiate a reasonable sales price would have delayed the sale and jeopardized Melissa’s scheme to control and manipulate her mother.” *Id.* at ¶ 51.

According to Plaintiffs, Mr. Ziefer owed and breached his statutory duties to Dr. Goodman by providing her with an “egregiously inaccurate professional price opinion” for the Miami Beach home without being qualified to provide a professional price opinion. *Id.* at ¶¶ 47 - 50. Plaintiffs allege that the Trust property was resold for \$3.8 million three months later, demonstrating the “inadequacy” of the \$2.75 million sales price that Mr. Ziefer recommended. *Id.* at ¶ 64.

Based on these allegations, Plaintiffs assert a single claim against Mr. Ziefer and Corcoran (based on vicarious liability) for Breach of Statutory Duties (Count V).

#### **IV. PLAINTIFFS LACK STANDING TO BRING A CLAIM ON BEHALF OF THE TRUST AGAINST MR. ZIEFER AND CORCORAN**

The Ziefer/Corcoran Motion argues that Plaintiffs lack standing to bring a claim against Mr. Ziefer and Corcoran. *See* Ziefer/Corcoran Motion at 6 – 9 (Docket # 94). In response, Plaintiffs argue that they have standing to bring claims against Mr. Ziefer and Corcoran based on their status as qualified beneficiaries under the 2018 Amendment. *See* Plaintiffs’ Opposition to the Ziefer/Corcoran Motion at 3 – 7 (Docket # 99). As discussed below, the Court concludes that Plaintiffs lack standing as qualified beneficiaries under the 2018 Amendment to sue Mr. Ziefer and Corcoran.

A review of this Court’s May 28 Order (Docket # 68) is helpful to understand the basis for the Court’s ruling today. In the prior May 28 Order of Dismissal, the Court concluded that David Goodman lacked standing as Co-Trustee of the 2013 Trust, and as a qualified beneficiary under the 2018 Amendment, to sue Mr. Ziefer for services he rendered as a realtor in connection with the marketing and sale of the Trust property. *See* May 28 Order at 6 – 9.

First, in the May 28 Order of Dismissal, the Court concluded that David Goodman lacked standing to sue as Co-Trustee since he is not a Co-Trustee under the 2018 Amendment, under which Dr. Goodman is the Sole Successor Trustee and which is presumed valid notwithstanding David Goodman’s claims to invalidate it. *See* May 28 Order at 7. The Court relied on Florida Rule of Civil Procedure 1.210, which provides that “[e]very action may be prosecuted in the name of the real party in interest.” The Court analyzed controlling Florida law, which holds that the only “real party of interest” in a claim on behalf of a trust is the trustee. *See Roller v. Collins*, 373 So. 3d 35, 42 (Fla. 5th DCA 2023) (“Appellants argue that a beneficiary is actually the real party in interest to sue a third party on behalf of the trust. We disagree.”). As the Fifth District Court of Appeal recognized in *Roller*, any claim against a third party brought on behalf of the trust must be brought by the trustee, not by a former trustee and beneficiaries. *Id.* at 40 – 41 (“Florida law has long recognized that it is generally the trustee, and not a beneficiary, who is the real party in interest

with authority to bring an action on behalf of the trust”); *see also Buerki v. Lochner*, 570 So. 2d 1061 (Fla. 2d DCA 1990) (holding that the trustee, the legal title holder to the trust property, would be the real party in interest to a suit brought to determine the trust’s assets).

Second, in the May 28 Order of Dismissal, the Court further concluded that David Goodman lacked standing as a qualified beneficiary under the 2018 Amendment to sue Mr. Ziefer for services he rendered as a realtor in connection with the marketing and sale of the Trust property. *See* May 28 Order at 7 – 9. This Court cited *Roller*, the most recent Florida opinion addressing claims brought against third parties, where the court relied on the leading treatise to point out that, “although the beneficiary is adversely affected by such acts of a third person, no cause of action inures to him on that account,” and the “right to sue in the ordinary case vests in the trustee as a representative.” *Roller*, 373 So. 3d at 41-42 (citing Bogert & Bogert, *The Law of Trusts and Trustees*, section 869). *Roller* held that “the beneficiary generally is not eligible, *in the absence of special circumstances*, to bring or enforce a cause of action that runs to the trustee.” *Id.* at 42 (emphasis added). *Roller* continued, that “if a conflict of interest arises between the trustee and the beneficiary, that *may* confer standing on the beneficiary to sue a third party in a proceeding related to the trust or trust property.” *Id.*

In the First Amended Complaint, David Goodman alleged that Dr. Goodman’s conflict of interest relating to Mr. Ziefer constituted “special circumstances” that gave him standing as a beneficiary to sue Mr. Ziefer, relying on *Roller*. *See* First Am. Compl., ¶ 80 (Docket # 37) (“Melissa’s failure to take any action against Ziefer is the product of a conflict of interest, whereby suing Ziefer would evidence, and effectively be an admission of, her breaches of fiduciary duty in connection with the sale of the Miami Beach Home.”).

In assessing the sufficiency of David Goodman’s allegation of conflict in the First Amended Complaint, this Court compared Mr. Goodman’s allegation to a conflict alleged in another case that was deemed legally sufficient to create standing on the part of a trust beneficiary to sue a third

party. In *St. Martin's Episcopal Church v. Prudential-Bache Sec., Inc.*, 613 So. 2d 108 (Fla. 4th DCA 1993), a trust beneficiary brought an independent claim against a trustee and a third-party securities dealer. The trustee was employed as a broker by the third-party securities dealer. *Id.* at 110. The beneficiary alleged that the trustee/broker colluded with his employer, the securities dealer, to churn an investment account to make unnecessary trades and earn unwarranted commissions that dissipated trust assets. *Id.* The Fourth District Court of Appeal held that the beneficiary had standing to bring an independent action against the third-party securities dealer in regard to trust assets under the “particular facts” of that case. *Id.* at 109. As *St. Martin's* points out – and as *Roller* emphasizes as an example of a valid conflict of interest – the finding that the beneficiary had standing to sue the trustee/broker and his employer, the securities dealer, was based on the “specific facts” of that case.

In the May 28 Order, the Court concluded that, unlike *St. Martin's*, the First Amended Complaint did not allege that Dr. Goodman was employed by or affiliated with Mr. Ziefer, the third-party realtor, and there was no allegation that Dr. Goodman conspired or colluded with Mr. Ziefer. *See* May 28 Order at 9 (Docket # 68). Based on its analysis of *Roller* and *St. Martin's*, this Court concluded that David Goodman's allegation in the First Amended Complaint regarding a conflict of interest was legally insufficient to give rise to the “special circumstances” that overcomes the longstanding principle that “the beneficiary generally is not eligible, in the absence of special circumstances, to bring or enforce a cause of action that runs to the trustee.” *Roller*, 373 So. 3d at 42.

In light of the Court's ruling in the May 28 Order of Dismissal, Plaintiffs' Second Amended Complaint (Docket # 81) includes slightly modified allegations in an attempt to avoid dismissal again based on lack of standing. Plaintiffs now allege, for the first time, that they have standing as beneficiaries to sue Mr. Ziefer and Corcoran because Dr. Goodman “colluded” with Mr. Ziefer to sell the Miami Beach home as quickly as possible so that Mr. Ziefer, the affiliated

sales agent of Corcoran, could earn a commission he would not otherwise have earned, and so Dr. Goodman could prevent her mother from returning to her home.<sup>[4]</sup> See Second Am. Compl., ¶¶ 132 – 133. Plaintiffs further allege that the facts of this case meet the standard for triggering standing for a beneficiary to sue a third party, as there is a conflict of interest between Plaintiffs (the Trust beneficiaries) and Dr. Goodman (the Sole Successor Trustee) that make the trustee unsuitable or unable to protect the beneficiaries. See Second Am. Compl., ¶ 134.

Plaintiffs argue the so-called facts involving “collusion” and “conflict of interest” they allege against Dr. Goodman and Mr. Ziefer in the Second Amended Complaint are analogous to the facts in *St. Martin’s*, thereby demonstrating that they have standing as trust beneficiaries to sue third parties Mr. Ziefer and Corcoran.

This Court disagrees with Plaintiffs. Plaintiffs’ attempt to create standing by analogizing the facts in *St. Martin’s* to those they allege in the Second Amended Complaint fails for several reasons. As discussed in the Court’s May 28 Order of Dismissal (Docket # 68), in *St. Martin’s*, the trustee was employed as a broker by the third-party securities dealer. 613 So. 2d at 110. The beneficiary alleged that the trustee/broker colluded with his employer, the securities dealer, to unlawfully churn an investment account by making unnecessary trades and earning unwarranted commissions that dissipated trust assets. *Id.* The Fourth District held that the beneficiary had standing to bring an independent action against the securities dealer in regard to trust assets under the “*particular facts*” of that case. *Id.* at 109 (emphasis added).

Here, unlike in *St. Martin’s*, Dr. Goodman, the Sole Successor Trustee, was ***not employed by nor affiliated*** with Mr. Ziefer and Corcoran, the third-party realtor. This significant distinction undermines Plaintiffs’ attempt to compare the facts pleaded in the Second Amended Complaint to the “*particular facts*” described in *St. Martin’s*.

Next, the express terms of the Listing Agreement attached as Exhibit 3 to the Second

Amended Complaint contradict and control over Plaintiffs' unverified allegations that Mr. Ziefer "colluded" with Dr. Goodman to sell the Miami Beach home as quickly as possible to earn an unwarranted commission. Unlike the situation in *St. Martin's*, which involved the unlawful churning of the investment account to make unnecessary trades, the Listing Agreement that Dr. Goodman (as Sole successor Trustee) entered into with Corcoran expressly provided that the Miami Beach home would be offered for sale for \$2,750,000 and that Corcoran would be paid a brokerage commission equal to six percent (6%) of the total purchase price. *See* Ex. 3 at §§ 2, 8. The express terms of the Listing Agreement attached to the Second Amended Complaint contradict and control over the unverified allegations of collusion in the Second Amended Complaint. *See Age of Empire, Inc. v. Ocean Two Condominium Assoc., Inc.*, 367 So. 3d 1278, 1280 (Fla. 3d DCA 2023) (where allegations in the complaint are contradicted by the attached exhibits, the plain meaning of the exhibits control and may be the basis for dismissal); *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994) ("When a party attaches exhibits to the complaint those exhibits become part of the pleading and the court will review those exhibits accordingly.").

Based on this Court's careful review and analysis of the Second Amended Complaint and the exhibits attached thereto, the two leading decisions cited by both sides (*Roller* and *St. Martin's*), this Court concludes that Plaintiffs' allegations in the Second Amended Complaint are legally insufficient to overcome the longstanding principle that "the beneficiary generally is not eligible, in the absence of special circumstances, to bring or enforce a cause of action that runs to the trustee." *Roller*, 373 So. 3d at 42. Since Plaintiffs' allegations fail to rise within the very limited set of exceptions enunciated under *Roller* and *St. Martin's*, this Court concludes that Plaintiffs lack standing and their claim against Mr. Ziefer and Corcoran must be dismissed. Accordingly, Count V is dismissed based on Plaintiffs lack of standing to sue Mr. Ziefer and Corcoran.

**V. COUNT V FAILS TO STATE A CAUSE OF ACTION AGAINST MR. ZIEFER AND CORCORAN**

In addition, the Court concludes that Plaintiffs' attempt to plead a statutory claim against Mr. Ziefer under Fla. Stat. § 475.278 fails to state a cause of action.

Count V alleges that Mr. Ziefer breached statutory duties under Fla. Stat. § 475.278, which, among other things, requires *licensed real estate brokers*, whether acting as “transaction brokers” or “single agents,” to use “skill, care, and diligence” in the transaction. *See* Second Amended Complaint ¶¶ 138 - 144.

The statutory provision under which Plaintiffs seek relief against Mr. Ziefer applies to licensed real estate *brokers* – *not* real estate *sales associates* – distinct professional licensing designations specifically defined under Chapter 475. *Compare* § 475.01(1)(a), which defines real estate “brokers,” *with* § 475.01(1)(j), which defines “Sales associate” as “a person who performs any acts specified in the definition of “broker” but who performs such act under the direction, control, or management of another person.”

The Second Amended Complaint's unverified allegation that Mr. Ziefer was a “licensed broker” (*Id.* at ¶ 129) is contradicted by the express terms of the Listing Agreement attached as Exhibit 3 to the Second Amended Complaint, which identifies Corcoran as the “Broker.” *See* Ex. 3 (“This Exclusive Brokerage Listing Agreement (“Agreement” is between CYNTHIA GOODMAN TR (“Seller”) and CORCORAN (“Broker”). As noted above, the express terms of the Listing Agreement attached to the Second Amended Complaint contradict and control over the unverified allegations in paragraphs 129 - 130 of the Second Amended Complaint that Mr. Ziefer was a licensed broker. *See Age of Empire, Inc., supra.*, 367 So. 3d at 1280; *Ginsberg, supra.*, 645 So. 2d at 494. Likewise, Plaintiffs' allegation that Mr. Ziefer was a “transaction broker” (*Id.* at ¶ 130), as defined by Fla. Stat. Section § 475.01(1)(l), fails as a matter of law because this statutory provision exclusively applies to “brokers,” *not* “associates.”

Furthermore, the official records of the State of Florida Department of Business & Professional Regulation clearly show that Mr. Ziefer is a “*sales associate*,” *not* a *licensed broker*. See <https://www.myfloridalicense.com/w111.asp?mode=2&search=Name&SID=&brd=&typ=> (last accessed July 31, 2024).

Since the Listing Agreement attached to the Second Amended Complaint clearly identifies Corcoran as the Broker, and the official records of the State of Florida demonstrate that Mr. Ziefer is *not* a licensed “broker,” Plaintiffs cannot state a cause of action for breach of statutory duties under § 475.278 against Mr. Ziefer. Therefore, Count V fails to state a cause of action against Mr. Ziefer and must be dismissed.

## VI. CONCLUSION

Based on the Court’s review and analysis of the allegations of the Second Amended Complaint (including exhibits) and applicable legal authorities, the Court concludes that Plaintiffs do not have standing to sue Mr. Ziefer and Corcoran and that Count V of the Second Amended Complaint fails to state a cause of action against Mr. Ziefer for breach of statutory duties under Fla. Stat. § 475.278.

The Court previously afforded Plaintiffs an opportunity to amend should they and their counsel believe they could make such allegations consistent with the obligations imposed under Fla. Stat. § 57.105. After two failed attempts to establish standing, the Court concludes that permitting further amendment would be futile. Accordingly, Count V of the Second Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

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[1] The Court also heard argument at the same hearing on Defendant Melissa Goodman’s Motion to Dismiss (Docket # 83). The Court will enter a separate Order with respect to that motion.

[2] The Second Amended Complaint erroneously named “Corcoran Group LLC” as the new

Defendant. NRT New York LLC d/b/a The Corcoran Group was substituted in place of “The Corcoran Group” pursuant to an Order entered on July 11, 2024 (Docket # 85).

[3] Plaintiffs’ allegation that Dr. Goodman entered into the listing agreement with **Mr. Ziefer** is contradicted by the plain language of the listing agreement attached as Exhibit 3 to the Second Amended Complaint, which states that the agreement is entered into between Cynthia Goodman Trustee and “**Corcoran**.”

[4] The word “colluded” or “collusion” appears in seven places in the Second Amended Complaint; in the title at the bottom of page 13, and in paragraphs 67, 132, 133 and 134.

**DONE and ORDERED** in Chambers at Miami-Dade County, Florida on this 26th day of September, 2024.

STATE OF FLORIDA, COUNTY OF MIAMI-DADE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE

ORIGINAL ON FILE IN THIS OFFICE October 28th, AD 20 24

JUAN FERNANDEZ BARQUIN, Clerk of the Court and Comptroller, Miami-Dade County

Deputy Clerk

*Susan Ann Gazich*  
Susan Ann Gazich



*Bertila Soto* 2023-005747-CP-02 09-26-2024 11:22 AM

2023-005747-CP-02 09-26-2024 11:22 AM

Hon. Bertila Soto

**CIRCUIT COURT JUDGE**

Electronically Signed

**No Further Judicial Action Required on THIS MOTION**

**CLERK TO RECLOSE CASE IF POST JUDGMENT**

**Electronically Served:**

Daniel Seigel, courtdocs@seigel-law.com

Daniel Seigel, kfiloramo@seigel-law.com

Daniel Seigel, dseigel@seigel-law.com

Emily J Chase, echase@gunster.com

Emily J Chase, jgavagni@gunster.com

Emily J Chase, eservice@gunster.com

Eric Virgil, eric@virgillaw.com

Eric Virgil, stacy@virgillaw.com

Eric Virgil, estephany@virgillaw.com

Michael A. Dribin, mdribin@harpermeyer.com

Michael A. Dribin, estategroup@harpermeyer.com

Nicklaus Curley, ncurley@gunster.com

Nicklaus Curley, jnegronmelendez@gunster.com

Nicklaus Curley, eservice@gunster.com

Robert C. Gilbert, robert@gilbertpa.com

Robert C. Gilbert, dalia@gilbertpa.com  
Robert Gilber, gilbert@kolawyers.com  
Rose M. Parish-Ramon, rramon@harpermeyer.com  
Rose M. Parish-Ramon, estategroup@harpermeyer.com  
Stacy Beth Rubel, stacy@virgillaw.com  
Stacy Beth Rubel, eric@virgillaw.com  
Stacy Beth Rubel, yesenia@virgillaw.com  
Thomas M Karr Esq., tkarr@gunster.com  
Thomas M Karr Esq., pholness@gunster.com

**Physically Served:**