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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WELLS FARGO BANK, N.A.,)	
)	
Plaintiff-Appellant,)	
)	
v.)	
)	
THOMAS R. HUTCHINSON, as trustee of the)	Appeal from the Circuit Court
ELLEN C. HUTCHINSON LIVING TRUST,)	of Cook County.
dated August 8, 2007; FOX RIVER)	
RETIREMENT CENTER, INC., GUY R.)	No. 14 CH 14551
YOUMAN; REGENT PARK PROPERTY)	
OWNERS AND NON RECORD CLAIMANTS;)	
THOMAS R. HUTCHINSON, AS)	The Honorable
BENEFICIARY OF THE ELLEN C.)	Pamela Myerson,
HUTCHINSON LIVING TRUST, DATED)	Judge, presiding.
AUGUST 8, 2007; UNKNOWN)	
BENEFICIARIES OF THE ELLEN C.)	
HUTCHINSON LIVING TRUST, DATED)	
AUGUST 8, 2007, IF ANY,)	
)	
Defendants-Appellees.)	

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Pierce and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in dismissing the bank's complaint to foreclose on a reverse mortgage and in holding that mortgage contract unambiguously identified trustee of living trust as additional borrower.

¶ 2 Ellen C. Hutchinson put the real property she owned into a living trust to benefit herself, with her son Thomas Hutchinson as an additional trustee. Ellen then entered into a reverse mortgage on the property with Wells Fargo. When Wells Fargo tried to foreclose on the property after Ellen's death, Thomas objected, stating that he was also a "borrower" on the mortgage and Wells Fargo could not foreclose as long as he used the property as his principal residence. The trial court dismissed the foreclosure complaint. But it is unclear whether Thomas signed the mortgage contract as a "borrower" or merely as a representative of Ellen's trust. The trial court should not have dismissed the complaint, and we remand for further proceedings.

¶ 3 **BACKGROUND**

¶ 4 In August 2007, Ellen C. Hutchinson created a living trust for herself, and named her son, Thomas Hutchinson, as trustee. Ellen owned a home in Arlington Heights, and she quitclaimed that property to the trust.

¶ 5 In 2008, Ellen's trust entered into a "reverse mortgage" with Wells Fargo, for the Arlington Heights property. The mortgage specified that the lender could require payment if "a borrower dies and the property is not the principal residence of at least one surviving borrower." A contemporaneous amendment to Ellen's trust stated that Ellen had applied for the reverse mortgage and required the trustee to notify the lender when the trust's beneficiary died.

¶ 6 The first page of the mortgage identified the "mortgagor" as "Thomas R. Hutchinson, Trustees [sic] of Ellen C. Hutchinson Living Trust." The signature page of the mortgage contained the signatures of both Ellen and Thomas, both identified as "borrower." That signature page also contained the notation "see attached signatory exhibit incorporated herein by this reference," and that signatory exhibit contained only Thomas's signature, identified as "trustee." The "certificate of exemption" for the mortgage identified Ellen as the borrower. The "planned

unit development rider” contained Ellen and Thomas’s signatures, both identified as borrowers. The “*inter vivos* revocable trust rider,” incorporated into the instrument, identified Thomas as trustee and stated that the trustee was executing the instrument on behalf of the trust. Thomas signed that rider as “trustee.” The accompanying note stated that “‘borrower’ means each person signing at the end of this note,” and both Thomas and Ellen signed as “borrower.” A “uniform settlement statement” listed Ellen as the only borrower, and contained only her signature.

¶ 7 According to Thomas, he moved into the Arlington Heights property in 2009. Ellen died in September 2011. In 2014, Wells Fargo filed a complaint to foreclose on the reverse mortgage. Thomas moved to dismiss the complaint under 735 ILCS 5/2-619 (West 2014), arguing that Wells Fargo could not foreclose because he was a “borrower” on the reverse mortgage, and was using the property as his principal residence.

¶ 8 The trial court issued an order finding that Thomas “is a Borrower for purposes of the Mortgage and Note,” and that Wells Fargo “cannot accelerate the Note based solely on the death of Ellen C. Hutchinson.” Wells Fargo moved to reconsider, and the trial court denied that motion and granted Thomas’s motion to dismiss. The trial court based its reasoning on the “plain language” of the note and mortgage. The note defined “borrower” as “each person signing at the end of this Note,” and Thomas had signed the note as a borrower. The mortgage also was signed by Thomas, and the signature page did not state that he was signing in his capacity as trustee. Since Thomas was a borrower using the home as his principal residence, the loan could not be accelerated based on Ellen’s death.

¶ 9 STANDARD OF REVIEW

¶ 10 We review the trial court’s dismissal of a complaint under section 2-619 *de novo*. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 13. A section 2-619 motion admits

the legal sufficiency of the complaint but argues that some defense or affirmative matter defeats the claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (2008).

¶ 11 ANALYSIS

¶ 12 When interpreting a contract, the court must try to give effect to the parties' intentions, and interpret language in light of the contract as a whole. *Gomez v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 130568, ¶ 13. The plain meaning of the contract's language is usually the best indicator of the parties' intent. *Id.* Where the language is subject to more than one reasonable meaning, the court may consider extrinsic evidence outside the four corners of the contract. *Cox v. U.S. Fitness, LLC*, 2013 IL App (1st) 122442, ¶ 13.

¶ 13 The trial court thought the mortgage and note unambiguously identified Thomas as a "borrower." Review of that paperwork shows otherwise. At times, Thomas signed as a "borrower," but he also signed as "trustee" of Ellen's living trust (sometimes within the same document, as the mortgage where he signed as "borrower" on one page but as "trustee" on the "signatory exhibit" immediately following). The *inter vivos* trust rider, incorporated into the mortgage, identifies Thomas as the "trustee," and states that Thomas is executing the instrument on behalf of the trust. We must interpret the contract as a whole, and the whole shows uncertainty as to Thomas's status. *Gomez*, 2013 IL App (1st) 130568, ¶ 13.

¶ 14 The contract's language was ambiguous, and extrinsic evidence in the record further argues against the trial court's conclusion. An amendment to Ellen's living trust, executed around the time of the reverse mortgage, shows that Ellen contemplated that Wells Fargo would be able to foreclose after she died—and instructs the trustee to inform the lender of her death. (It is unclear when Wells Fargo was informed of Ellen's death.) Further, as Wells Fargo points out,

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the federal government will only insure “reverse mortgages” if the borrower is at least 62 years old (which Ellen was, and Thomas will not be until the year 2020).

¶ 15 On this record, we make no ruling as to whether Wells Fargo may foreclose on the property. But the trial court erred in granting Thomas’s motion to dismiss. Further proceedings are needed to interpret the contract and determine Thomas’s status.

¶ 16 Reversed and remanded.