

## Court Holds That Contingent Remainder Beneficiary Has Standing To Sue Trustee For Breach Of Fiduciary Duty

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In *In re Est.*, the court of appeals dealt with whether a contingent beneficiary can file claims against a trustee. No. 02-23-00104-CV, 2024 Tex. App. LEXIS 1878 (Tex. App.—Fort Worth March 14, 2024, no pet.). The court held that contingent beneficiaries do have standing:

We conclude that James is within the class of persons authorized to sue the Trustees. First, we reject the assertion that a trustee can never be sued by a contingent beneficiary... Texas also allows a contingent or vested beneficiary to sue a trustee for breach of fiduciary duty. See Tex. Prop. Code Ann. §§ 111.004 (defining “beneficiary” and “interested person”), 115.011(a) (authorizing any “interested person” to bring suit relating to trust administration); *Berry*, 646 S.W.3d at 527-28 (applying Texas Property Code Sections 111.004, 115.001, and 115.011 in analysis of whether contingent trust beneficiary was authorized by statute to bring her breach-of-fiduciary-duty claims and concluding that she was). Even at the time that Mary Sue transferred the money, James had a contingent interest in the Trust subject only to Claude’s power of appointment. See *Berry*, 646 S.W.3d at 529. Second, and more importantly, in this case regardless of whether the applicable laws or the terms of the Trust would have restricted James’s ability to sue the Trustees while Claude was alive, by the time that he did sue, his interest was no longer contingent. James now unquestionably has a right to at least a share of the Trust’s assets, and he contends that Mary Sue’s improper action reduced those assets. Accordingly, James was within the class of persons authorized to bring his claims. See Ala. Code §§ 19-3B-101, 19-3B-1001-02; Tex. Prop. Code Ann. §§ 111.004, 115.011(a); *Berry*, 646 S.W.3d at 527.

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In their reply brief, the Trustees argue that Section 115.011 does not authorize James to bring his suit because although that provision allows an “interested person” such as a beneficiary to bring claims under Section 115.001, a claim under Section 115.001 does not include tort claims, and thus Section 115.011 does not authorize James to sue for breach of fiduciary duty. The Trustees do not, however, discuss *Berry*, in which the Texas Supreme Court applied Sections 115.001 and 115.011 in its analysis of whether a contingent trust beneficiary was within the class of persons authorized to sue the trustee for breach of fiduciary duty. *Berry*, 646 S.W.3d at 527-30. We therefore disagree that those Property Code sections

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have no relevance to an analysis of who may sue a trustee for breach of fiduciary duty. Thus, even applying Texas law, we conclude that James was authorized to bring his breach-of-fiduciary-duty claims. We reject the Trustees' challenge to James's standing and capacity.

*Id.*

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