2025 IL App (1st) 241423-U

No. 1-24-1423

Order filed May 21, 2025

THIRD DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

BLACK DIAMOND SOLUTIONS, INC., d/b/a CHICAGO SIGNS AND SCREENS, LLC, an Illinois limited liability company,	)	Appeal from the Circuit Court of Cook County,
Plaintiff-Appellant,	)	
v.	)	No. 2023 CH 327
ASSURANCE AGENCY, LTD., an Illinois Corporation, and JOSE SUAREZ,	)	Honorable Anna H. Demacopoulos, Celia G. Gamrath,
Defendants-Appellees.	)	Judges, Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Justices Reyes and D.B. Walker concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's dismissal of plaintiff's complaint. We find no abuse of discretion in the trial court's decision denying leave to amend the complaint and denying the motion to reconsider.

¶ 2 The insured-plaintiff, Black Diamond Solutions Inc., d/b/a Chicago Signs & Screens, LLC, an Illinois limited liability company (Chicago Screens), filed a verified complaint against insurance brokerage firm, Assurance Agency Ltd. (Assurance) and its employee-insurance agent

Jose Suarez (Suarez) (collectively, defendants). According to the complaint, Chicago Screens relied on Suarez's oral and written promises to its detriment when it decided not to renew its existing insurance policy, which was set to expire, and instead purchased a new policy that provided less coverage than promised. Chicago Screens brought claims against defendants for fraudulent and negligent misrepresentation in the procurement of insurance coverage, breach of contract, and declaratory relief.

¶ 3 The trial court dismissed the complaint with prejudice, finding it barred by the two-year statute of limitations found in section 13-214.4 of the Code of Civil Procedure (Code) (735 ILCS 5/13-214.4 (West 2022)). For the reasons that follow, we affirm.[1]

¶ 4 I. BACKGROUND

¶ 5 Chicago Screens provides graphic printing and design services. Michael Kupfer, a principal, officer, and director of Chicago Screens, is responsible for obtaining insurance coverage for the company.

¶ 6 In May 2019, Kupfer met with Suarez to discuss the possible purchase of an insurance policy to replace Chicago Screens' then current policy with the Erie Insurance Group (Erie policy), which was set to expire on June 8, 2019. Suarez agreed to review the Erie policy and search for a new policy that would provide equal or better coverage, at a lower cost.

¶ 7 Suarez eventually recommended that Kupfer not renew the Erie policy and instead purchase a policy from the Hartford Insurance Company (Hartford). Suarez emailed Kupfer a quote from Hartford and expressed his opinion that Hartford would provide "better coverage across the board at $50 less annually than what you're currently paying." Based on Suarez's

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon entry of a separate written order.

representations, when the Erie policy expired, Kupfer purchased a policy from Hartford.

¶ 8 On June 8, 2019, Hartford issued a policy to Chicago Screens bearing number 83 SBA AD4432 (the Hartford policy). Chicago Screens subsequently renewed the Hartford policy in June 2020.

¶ 9 On May 21, 2021, a fire occurred at Chicago Screens' business premises, causing extensive damage to the building. This led to a six-month shutdown of business operations and an eventual relocation of the business. Chicago Screens estimated that it lost business revenue in excess of $200,000.

¶ 10 Chicago Screens filed a business interruption claim with Hartford, seeking to recover lost business income resulting from the fire. During the claims process, it was discovered that the business interruption coverage provided by the Hartford policy was limited to $10,000, whereas the Erie policy had allegedly provided such coverage up to a limit of $1,000,000.

¶ 11 After Chicago Screens and defendants failed to reach an agreement concerning the extent of coverage afforded under the policies, Chicago Screens filed its verified complaint on January 12, 2023. The complaint asserted claims against defendants for fraudulent and negligent misrepresentation in the procurement of insurance and breach of contract. The complaint also asked for declaratory relief on the question of "the coverage limits for business interruption under the Erie Policy, and the difference between the Erie Policy and the Hartford Policy."

¶ 12 In response, defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)). Relevant here, defendants argued that the counts predicated on allegations of fraudulent and negligent misrepresentation in the procurement of insurance and breach of contract, should be dismissed with prejudice pursuant to the two-year statute of limitations found in section 13-214.4 of the Code (735 ILCS 5/13-214.4 (West 2022)).

¶ 13 Following briefing and oral argument, the trial court dismissed Chicago Screens' complaint in its entirety, with prejudice, on July 10, 2023. The trial court concluded that the claims for fraudulent and negligent misrepresentation and for breach of contract, were barred by the two-year statute of limitations in section 13-214.4. In addition, the trial court rejected Chicago Screens' request for declaratory relief, concluding that granting such relief would serve no purpose, given the fact that the action was barred by the statute of limitations.

¶ 14 The trial court entered a final order on June 11, 2024, denying Chicago Screens' post-judgment motion for leave to amend, and its alternative request for reconsideration. This timely appeal followed.

¶ 15 II. ANALYSIS

¶ 16 A. Standard of Review

¶ 17 Chicago Screens challenges the dismissal of its complaint. The defendants filed a motion to dismiss pursuant to section 2-619.1, which combines sections 2-615 and 2-619 of the Code. 735 ILCS 5/2-619.1 (West 2022); *Kopf v. Kelly*, 2024 IL 127464, ¶ 63. Here, the trial court granted the motion solely on section 2-619 grounds. 735 ILCS 5/2-619 (West 2022).

¶ 18 "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). "When ruling on a section 2-619 motion to dismiss, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. A motion to dismiss under section 2-619 "admits the legal sufficiency of the complaint, but asserts an affirmative defense or other matter to defeat the plaintiff's claim." *Van Meter*, 207 Ill. 2d at 367.

¶ 19 The running of a statute of limitations is an affirmative matter permitting dismissal under

section 2-619(a)(5) of the Code. See 735 ILCS 5/2-619(a)(5) (West 2022) (allowing dismissal of an action if it was "not commenced within the time limited by law"). We review a dismissal under section 2-619 *de novo*. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31.

¶ 20 B. Statute of Limitations and the Discovery Rule

¶ 21 Chicago Screens contends the trial court erred in failing to apply the discovery rule to toll the running of the two-year statute of limitations until it could have reasonably discovered the differences in business interruption coverage between the Erie and Hartford policies.

¶ 22 Specifically, Chicago Screens argues that the trial court improperly presumed that it received a copy of the first Hartford policy on or around June 8, 2019, when the policy was issued. Chicago Screens, however, maintains that its copy of the Hartford policy was incorrectly addressed to 2537 North Western Avenue, rather than to its correct address of 2537 West North Avenue. As a result, Chicago Screens contends that it did not receive the Hartford policy in time to compare the policy to the Erie policy before the statute of limitations expired in June 2021. Accordingly, Chicago Screens asserts that the statute of limitations should have been tolled until such time that it actually received the Hartford policy.

¶ 23 The two-year statute of limitations in section 13.214.4 provides that:

> "All causes of action brought by any person or entity under any statute or any legal or equitable theory against an insurance producer, registered firm, or limited insurance representative concerning the sale, placement, procurement, renewal, cancellation of, or failure to procure any policy of insurance shall be brought within 2 years of the date the cause of action accrues." 735 ILCS 5/13-214.4 (West 2022).

¶ 24 The discovery rule was created to alleviate the harsh consequences that could result from a strict application of the limitations period. *Morietta v. Reese Construction Co.*, 347 Ill. App. 3d

1077, 1082 (2004) (citing *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 360 (1995)). The rule tolls "the start of the period of limitations until the injured party knows or reasonably should know of the injury and knows or reasonably should know that the injury was wrongfully caused." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20. "At that point, the injured party bears the burden of inquiring further as to the existence of a cause of action." *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989, ¶ 24.

¶ 25 "Ordinarily, the date when the plaintiff has or should have the requisite knowledge to trigger the limitations period is a question of fact." *Swann & Weiskopf, Ltd. v. Meed Associates, Inc.*, 304 Ill. App. 3d 970, 975 (1999). However, this determination may be resolved as a matter of law " 'where it is apparent from the undisputed facts that only one conclusion can be drawn.' " *M & S Industrial Co., Inc.*, 2018 IL App (1st) 172028, ¶ 38 (quoting *Freeport Memorial Hospital v. Lankton, Ziegele, Terry & Associates, Inc.*, 170 Ill. App. 3d 531, 535 (1988)).

¶ 26 Our supreme court has determined that in negligent procurement lawsuits against insurance producers, an insured is injured, the cause of action accrues, and the statute of limitations begins to run, when the insured receives an insurance policy that does not conform to the insured's request. *American Family Mutual Insurance Company v. Krop*, 2018 IL 122556, ¶ 35. The supreme court based this determination on several rationales.

¶ 27 It found that insurance customers have an obligation to read their policies and understand its terms. *Id.* ¶¶ 22, 29. According to the supreme court, "[e]xpecting customers to read their policies and understand the terms incentivizes them to act in good faith to purchase the policy they actually want, rather than to delay raising an issue until after the insurer has already denied coverage." *Id.* ¶ 29. The supreme court reasoned that insurance customers "generally know their own goals better than their insurance agent does, but determining if a policy achieves those goals

will be difficult when customers do not read the policy." *Id*.

¶ 28 The supreme court recognized exceptions to this rule where an insurance policy contains contradictory provisions or fails to define key terms such that the "policyholder reasonably could not be expected to learn the extent of coverage simply by reading the policy." *Id*. ¶ 36. Another exception is where "circumstances that give rise to the liability may be so unexpected that the typical customer should not be expected to anticipate how the policy applies." *Id*.

¶ 29 In the instant case, defendants raised the statute of limitations as an affirmative defense in their motion to dismiss the complaint and submitted evidence in support thereof. When a defendant presents sufficient evidence to support an affirmative defense, the defendant's initial burden of moving forward with the motion is satisfied, and the burden then shifts to the plaintiff to present evidence establishing that the asserted defense was unfounded or required the resolution of essential elements of material fact before it is proven. See *Van Meter*, 207 Ill. 2d at 377.

¶ 30 Here, when the defendants asserted that the two-year statute of limitations barred Chicago Screens' cause of action and presented evidence supporting that assertion, the burden shifted to Chicago Screens to present evidence establishing that the limitation period was tolled and had not expired. See *Ollins v. Karl*, 2022 IL App (1st) 220150, ¶ 54 (a "defendant bears the initial burden of demonstrating that the statute of limitations has expired before the burden is shifted to plaintiffs to prove that the limitations period had not expired on their claims."). In addition, "[w]hen a plaintiff uses the discovery rule to delay the commencement of the statute of limitations, the burden is on the plaintiff to prove the date of discovery." *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App (1st) 200798, ¶ 25. Chicago Screens failed to meet these burdens.

¶ 31 Our court has determined that if the record does not contain evidence of the exact date an insured received an insurance policy at issue, the court "can presume that it did so shortly after the

policy was issued." *Austin Highlands Development Company v. Midwest Insurance Agency, Inc.*, 2020 IL App (1st) 191125, ¶ 19; see also *Krop*, 2018 IL 122556, ¶ 38 n.3. Here, the record before the trial court did not contain information regarding the exact date Chicago Screens received the first Hartford policy. Therefore, the trial court was entitled to presume, in the absence of proof otherwise, that Chicago Screens received the first Hartford policy on or around June 8, 2019, and that, as a matter of law, the cause of action accrued at that time.

¶ 32 Chicago Screens next contends there is an issue of material fact concerning application of the discovery rule, where the Erie and Hartford policies each contained contradictory terms "that would frustrate the ability of the reasonable customer to be able to navigate and compare the various policies." Chicago Screens argues that it reasonably relied on Suarez's promises in light of the contradictory provisions in the respective polices.

¶ 33 In this case, the dispute centered around the respective amount of business interruption coverage provided by the policies, where the Hartford policy was limited to $10,000, and the Erie policy allegedly provided such coverage up to $1,000,000. In this regard, "[t]he difference between the two policies was apparent." *Krop*, 2018 IL 122556, ¶ 37. As the trial court noted, the terms in the respective policies "are not contradictory such that [Chicago Screens] reasonably could not be expected to learn the extent of coverage simply by reading the policy." Therefore, the *Krop* exception for contradictory insurance provisions does not apply.

¶ 34 Chicago Screens next contends that the fire was an unexpected circumstance "such that a typical customer should not expect to anticipate how the Policy would apply." In *Krop*, our supreme court stated that in order for a particular circumstance to give rise to a liability it must be so unexpected and unusual that "the typical customer should not be expected to anticipate how the policy applies." *Krop*, 2018 IL 122556, ¶ 36. The possibility that a fire could occur is not so

unexpected or unusual that an insured should not be expected to anticipate if it had sufficient insurance coverage.

¶ 35 Chicago Screens next argues that the trial court erred "when it dismissed all counts pursuant to section 2-615 without explanation." This argument is meritless.

¶ 36 The record demonstrates that the trial court did not dismiss "all counts" pursuant to section 2-615 but rather dismissed the complaint solely on statute of limitations grounds pursuant to section 2-619(a)(5) of the Code. Moreover, even if the claims in the complaint were sufficiently pled to survive a section 2-615 motion to dismiss, they are rendered moot by our determination that the action is barred by the statute of limitations. In sum, we find the trial court committed no error in dismissing Chicago Screens' complaint with prejudice pursuant to sections 2-619(a)(5).

¶ 37 C. Leave to Amend

¶ 38 Chicago Screens sought leave to amend its complaint to plead additional facts supporting its contention that it did not receive the first Hartford policy. The decision to grant leave to amend rests within the sound discretion of the trial court, whose decision will not be disturbed absent an abuse of that discretion. *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 219 (2010).

¶ 39 Section 2-616(c) of the Code provides that "[a] pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs." 735 ILCS 5/2-616(c) (West 2022). However, a complaint cannot be amended after a final judgment has been entered in order "to add new claims and theories or to correct other deficiencies." *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 14.

¶ 40 When a trial court grants a section 2-619(a)(5) motion to dismiss with prejudice, this operates as final judgment on the merits. See *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 335-36

(1996); see also *Folkers v. Drott Manufacturing Co.*, 152 Ill. App. 3d 58, 67 (1987) (noting that where a cause of action is dismissed with prejudice, a plaintiff's remedy rests in the appeal process).

¶ 41 Here, Chicago Screens filed its motion for leave to amend its complaint after the trial court entered a final judgment granting defendants' section 2-619 motion to dismiss with prejudice. As a result, Chicago Screens had no statutory right to amend its complaint. *Tomm's Redemption,* 2014 IL App (1st) 131005, ¶ 14; *Folkers*, 152 Ill. App. 3d at 68. The trial court did not err in denying Chicago Screens' motion to amend its complaint.

¶ 42 D. Motion to Reconsider

¶ 43 We review a trial court's ruling on a motion to reconsider for an abuse of discretion. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409 (2005). "The purpose of a motion for reconsideration is to apprise the trial court of newly discovered evidence, a change in the law, or errors in the court's earlier application of the law." *Farley Metals, Inc. v. Barber Coleman Co.*, 269 Ill. App. 3d 104, 116 (1994).

¶ 44 Chicago Screens' motion to reconsider was based on its contention that evidence indicating it did not receive the Hartford policy until June 4, 2021, constituted newly discovered evidence. "Newly discovered evidence is evidence that was not available prior to the first hearing." *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 331 (2008). Evidence that Chicago Screens allegedly did not receive the Hartford policies until June 4, 2021, is not newly discovered evidence.

¶ 45 In his affidavit, Kupfer averred that he received copies of the Hartford policies on June 4, 2021. Nowhere in its complaint or in its response to the motion to dismiss did Chicago Screens allege that it did not receive the Hartford policies until June 4, 2021. Obviously, as Chicago Screens was in possession of this information as early as June 4, 2021, it was not newly discovered.

As the trial court observed, Kupfer's affidavit could and should have been tendered in connection with Chicago Screens' response to the motion to dismiss. We find no abuse in the trial court's decision to deny the motion for reconsideration.

¶ 46 III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm the trial court's decision granting the defendants' motion to dismiss Chicago Screens' complaint with prejudice pursuant to section 2-619 of the Code, as being barred by the two-year statute of limitations period in section 13-214.4 of the Code. We also find the trial court did not abuse its discretion in denying Chicago Screens leave to amend its complaint and denying its motion to reconsider.

¶ 48 Affirmed.