Illinois Official Reports

Appellate Court

Arora v. State Farm Fire & Casualty Co., 2025 IL App (2d) 240522

Appellate Court Caption	ANNE ARORA, Plaintiff-Appellant, v. STATE FARM FIRE AND CASUALTY COMPANY, Defendant-Appellee.
District & No.	Second District No. 2-24-0522
Filed	June 23, 2025
Decision Under Review	Appeal from the Circuit Court of Lake County, No. 23-LA-244; the Hon. Charles W. Smith, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	David A. Eisenberg and Alexander N. Loftus, of Loftus & Eisenberg, Ltd., of Chicago, for appellant. Brian J. Talcott, of Dinsmore & Shohl LLP, of Chicago, for appellee.
Panel	JUSTICE JORGENSEN delivered the judgment of the court, with opinion. Justices McLaren and Hutchinson concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Anne Arora, filed a complaint against defendant, State Farm Fire and Casualty Company (State Farm), for breach of contract. State Farm moved for judgment on the pleadings under section 2-615(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(e) (West 2022)), contending that the complaint was untimely where it was filed after the contract's one-year suit limitations period. The trial court agreed and dismissed the complaint. Arora timely appealed. We affirm.

¶ 2 I. BACKGROUND

¶ 3 It is undisputed that State Farm issued to Arora homeowner's insurance policy No. 13-J1-P033-9, covering certain property located in Long Grove. The policy was in effect on September 7, 2021, when the insured property sustained storm damage. The policy contained the following suit limitations provision:

> "Suit Against Us. No action will be brought against *us* unless there has been full compliance with all of the policy provisions. Any action by any party must be started within one year after the date of loss or damage. This one year period is extended by the number of days between the date that proof of loss was filed and the date the claim is denied in whole or in part." (Emphasis in original.)

¶ 4 On September 7, 2022, Arora, along with four other State Farm policy holders—Daniel Petersen, James Andrle, Michael Cooley, and Erik Wright—filed in Cook County a joint complaint against State Farm, related to coverage for storm damage that occurred to their respective properties on September 7, 2021. Each plaintiff had a separate claim under different policies that insured different properties. Only one plaintiff—Wright—had property located in Cook County. The same counsel represented all plaintiffs.

¶ 5 State Farm filed in the Cook County lawsuit a "Motion to Dismiss Misjoined Parties." Specifically, State Farm sought to dismiss all the plaintiffs except Wright. The motion was brought under sections 2-615(a), 2-404, and 2-407 of the Code (*id.* §§ 2-404, 2-407, 2-615(a)). State Farm argued that joinder was improper because the plaintiffs and their claims had no connection with each other.

¶ 6 In response, the plaintiffs' counsel argued that joinder was proper because the claims "all ar[o]se out of the same occurrence and out of a series of similar transactions." Alternatively, the plaintiffs' counsel requested "that the matters not be dismissed and instead be severed." The plaintiffs' counsel pointed out that "State Farm's insurance policies create[d] a one-year limitations period and dismissals could act to prevent [p]laintiffs from refiling separate lawsuits." The plaintiffs did not request that the matters be severed *and transferred* to the appropriate venue. The plaintiffs also did not seek a voluntary dismissal, which would have allowed them a year to refile their lawsuit. See 735 ILCS 5/13-217 (West 1994).[1]

[1]Public Act 89-7 (eff. Mar. 9, 1995), which amended section 13-217 of the Code, was held to be unconstitutional in its entirety by the Illinois Supreme Court in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 467 (1997). Thus, the version of section 13-217 of the Code that was in effect here is the version that was in effect prior to the March 1995 amendment. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 469 n.1 (2008).

¶ 7 On February 24, 2023, the Cook County circuit court dismissed with prejudice Arora, Petersen, Andrle, and Cooley from the Cook County lawsuit (the Cook County dismissal), leaving Wright as the sole plaintiff. The order stated:

> "Pursuant to 735 ILCS 5/2-615(a) [(West 2022)], the court will dismiss misjoined plaintiffs. See 735 ILCS 5/2-407 [(West 2022)] ('[P]arties misjoined may be dropped by order of the court, at any stage of the cause.'[).] Under 735 ILCS 5/2-404 [(West 2022)], plaintiffs are not properly joined unless their claims 'arise out of closely related transactions and *** there is in the case a significant question of law or fact that is common to the parties.' *Prime Leasing v. Kendig*, 332 Ill. App. 3d 300, 308 (*** 2002).
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> Here, none of the independent insurance claims by Wright, Arora, Petersen, Andrle, and Cooley involve 'closely related transactions' or 'significant' commonalties of law or fact, regardless of whether all claims involve State Farm or whether the parties have the same attorney. Rather, each [p]laintiff seeks to pursue a different claim that they each submitted under different insurance policies, that cover different properties, which suffered different damage, from storms that occurred in different counties."

¶ 8 The plaintiffs did not (1) seek reconsideration of the Cook County ruling, (2) request that the matters be transferred to the relevant counties, or (3) request that the trial court include language under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Instead, on March 2, 2023, Petersen, Andrle, and Cooley filed new lawsuits in McHenry County: respectively, case Nos. 23-LA-62, 23-LA-63, and 23-LA-64. On April 13, 2023, Arora filed suit in Lake County.

¶ 9 Arora's one-count complaint against State Farm, filed in Lake County, alleged breach of contract—specifically, State Farm's failure to honor its coverage obligations under the policy. Arora did not attach the policy to the complaint, stating that "[a] copy of the [p]olicy is not currently accessible to Arora." Arora alleged that the policy was in effect on September 7, 2021, when the insured property sustained storm damage. Shortly after September 7, 2021, Arora notified State Farm that the property had been damaged. State Farm inspected the damage, "acknowledged coverage for $28,173.97," but "denied liability for a full roof replacement," which Arora claimed was a covered loss under the policy. According to Arora, she "satisfied her contractual obligations by paying her premium and timely notifying State Farm of a covered loss," and "State Farm breached its contractual obligations under the *** [p]olicy by denying liability for a covered loss." Arora claimed that the total repair cost was estimated at $889,372.76. She sought $857,372.76 in damages.

¶ 10 On July 24, 2023, State Farm filed its answer and raised three affirmative defenses. State Farm admitted to issuing the policy but denied breaching its contractual obligations under the policy. As pertinent here, State Farm's third affirmative defense asserted that the policy's suit limitations provision, which State Farm quoted from the policy, barred Arora from filing suit after September 7, 2022. Thus, according to State Farm, because Arora's present complaint was filed on April 13, 2023, it was untimely. State Farm referenced the Cook County lawsuit and noted that Arora had been dismissed due to improper joinder.

¶ 11 On September 1, 2023, Arora filed a reply to State Farm's affirmative defenses. Concerning State Farm's quotation of the suit limitations provision, Arora stated: "The policy is a written document, the terms of which speak for themselves. To the extent [State Farm] misstates or misconstrues the policy, Arora denies the allegations." Arora admitted State Farm's factual assertions regarding the Cook County lawsuit.

¶ 12 On October 10, 2023, State Farm filed the motion for judgment on the pleadings (see 735 ILCS 5/2-615(e) (West 2022)) at issue here.

¶ 13 State Farm attached as an exhibit to the motion a copy of the policy. State Farm noted that, under the policy's suit limitations provision, "*[a]ny action by any party* must be started within one year after the date of loss or damage." (Emphasis added.) State Farm contended that, because Arora did not file the present action within the limitations period, judgment on the pleadings was warranted.

¶ 14 State Farm also attached as an exhibit a copy of the Cook County circuit court order that dismissed Arora from the Cook County lawsuit. State Farm argued that any " 'Relation Back' " claim or " 'Equitable Tolling' " claim that Arora might raise would fail as a matter of law.

¶ 15 On November 15, 2023, Arora filed her response. At the outset, Arora stated that she "[did] not contest State Farm's presentation of the relevant facts." Arora argued that the Cook County judge erred in dismissing Arora's claim. First, according to Arora, the claim was "erroneously dismissed solely based upon the judge's belief that Cook County was the improper venue for these cases." She claimed that the proper remedy was to transfer the claim. Second, she argued that, although State Farm might claim that section 13-217 of the Code (735 ILCS 5/13-217 (West 1994)) (commonly referred to as the savings statute) was inapplicable because Arora's circumstances did not fall "precisely within the [text]," the trial court here should nevertheless apply the text "broad[ly]" to "correct the Cook County judge's error." Third, she claimed that the dismissal order was nonfinal and thus unenforceable. Alternatively, she requested that the court stay the proceedings so that she could seek reconsideration of the Cook County dismissal.

¶ 16 On November 29, 2023, State Farm filed a reply. First, State Farm emphasized that, contrary to Arora's assertion, she was dismissed from the Cook County lawsuit not for improper venue but for improper joinder as a plaintiff. State Farm then contended that (1) Arora's claim was untimely as a matter of law, (2) Arora failed to respond to State Farm's equitable tolling and relation back arguments, (3) Arora was improperly attempting to transform the Lake County circuit court into an appellate court to correct an alleged error committed by the Cook County circuit court, (4) the savings statute did not apply, and (5) Arora's request for a stay was baseless.

¶ 17 In the meantime, in the McHenry County cases, on December 7, 2023, the McHenry County circuit court denied State Farm's motion for judgment on the pleadings in Petersen's and Cooley's cases. On December 12, 2023, the court, with a different judge presiding, denied State Farm's motion for judgment on the pleadings in Andrle's case. According to State Farm, Andrle and Cooley have since settled and dismissed their lawsuits. In Petersen's case, State Farm filed a "Rule 308 Motion for Leave to Appeal." See Ill. S. Ct. R. 308 (eff. Oct. 1, 2019). The trial court granted the motion and stayed the case pending appeal. However, on October 15, 2024, we denied State Farm's application for an interlocutory appeal. According to State Farm, as of January 6, 2025 (the filing date of State Farm's brief in this case), Petersen's case remained pending in the trial court.

¶ 18 In this case, on December 21, 2023, the trial court ordered (1) Arora to file a supplemental response and (2) State Farm to file a supplemental reply. The parties filed their supplements on January 11, 2024, and January 25, 2024, respectively.

¶ 19 Arora argued that, because the McHenry County circuit court denied State Farm's motions for judgment on the pleadings, the trial court should do so in this case. She attached the McHenry County orders, each denying State Farm's motions "[f]or the reasons stated in

[c]ourt."[2] According to Arora, the McHenry County circuit court strictly construed the respective suit limitations provisions in the McHenry County cases and found that those cases were timely filed *because* the Cook County lawsuit (including Arora's case) had been timely filed, notwithstanding its later dismissal. Arora argued further that State Farm waived the suit limitations provision by "seeking dismissal, rather than the more judicious approach of having the case transferred to Lake County." Arora also argued that the trial court should follow the McHenry County decisions for "judicial consistency."

¶ 20 In reply, State Farm argued that, "[b]y its unambiguous terms," the suit limitations provision here required not that a plaintiff start "*an* action" within one year but, rather, that "*any action*" (emphasis in original) be filed within one year. According to State Farm, judgment on the pleadings was warranted because the present case could not be considered the same action as the Cook County lawsuit—which *was* filed within one year—because the proceedings "[had] different plaintiffs, different case numbers, different counties, different judges, and different complaints." State Farm argued further that Arora's theory would "nullif[y]" multiple Illinois statutes, such as the savings statute (see 735 ILCS 5/13-217 (West 1994)) and the "relation back statute" (see 735 ILCS 5/2-616(d) (West 2022)). State Farm argued that these statutes would be unnecessary if a timely filed lawsuit automatically saved a subsequent, untimely filed lawsuit. Lastly, State Farm argued that Arora's action of improperly joining a lawsuit could not waive State Farm's rights.

¶ 21 On February 16, 2024, the trial court placed the matter under advisement for a ruling on April 2, 2024. On April 2, 2024, the trial court stayed the case, "pending update from the Cook County case."

¶ 22 On May 16, 2024, State Farm filed a "Status to the Court," relating that (1) on April 3, 2024, Arora returned to the Cook County lawsuit and filed a motion to reconsider the Cook County dismissal; (2) on April 23, 2024, the Cook County lawsuit, with Wright as the sole remaining plaintiff, was dismissed as part of a settlement; and (3) on May 15, 2024, the Cook County circuit court denied Arora's motion for reconsideration. State Farm attached a copy of the May 15, 2024, order, which stated only that the motion was "denied."

¶ 23 On June 5, 2024, the Cook County plaintiffs filed in the First District an appeal from the Cook County dismissal and the order denying their motion for reconsideration. On September 24, 2024, the First District granted State Farm's motion to dismiss the appeal.

¶ 24 In this case, on June 7, 2024, the trial court allowed the parties to file additional briefs. Arora filed a supplemental response brief on July 2, 2024, State Farm filed a supplemental reply brief on July 22, 2024, and Arora filed a "sur-reply" on July 30, 2024.

¶ 25 In her supplemental response, Arora argued that (1) the Cook County dismissal did not have *res judicata* effect on the present action and (2) State Farm's interpretation of the policy would preclude refiling under any circumstances and should not be accepted. Arora also stated that it was "worth noting" that the suit limitations provision was ambiguous. State Farm replied that Arora's arguments were meritless. In surreply, Arora criticized State Farm for not addressing Arora's claim that the policy's language was ambiguous.

[2]State Farm's subsequent motions for reconsideration were denied.

¶ 26 On August 6, 2024, the trial court granted State Farm's motion for judgment on the pleadings, "[f]or the reasons stated by the [c]ourt," and dismissed the complaint with prejudice. The record does not contain a report of this proceeding.

¶ 27 This timely appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Arora argues that the trial court erred in granting State Farm's motion for judgment on the pleadings. We disagree.

¶ 30 Section 2-615(e) of the Code (735 ILCS 5/2-615(e) (West 2022)) provides that "[a]ny party may seasonably move for judgment on the pleadings." Ordinarily, a limitations defense would be raised under section 2-619(a)(5) of the Code, which expressly authorizes dismissal on the defendant's motion when "the action was not commenced within the time limited by law." *Id.* § 2-619(a)(5); see *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 456 (2006). However, "where it appears from the face of the complaint that the statute of limitations has run," a motion to dismiss on limitations grounds can be properly raised in a section 2-615 motion to dismiss a legally insufficient pleading. *Cangemi*, 364 Ill. App. 3d at 456; see *R&B Kapital Development, LLC v. North Shore Community Bank & Trust Co.*, 358 Ill. App. 3d 912, 921 (2005) ("An affirmative defense is properly asserted in a section 2-615 motion only if the defense is apparent from the face of the complaint.").

¶ 31 A motion for judgment on the pleadings is similar to a motion for summary judgment, but it is limited to the pleadings. *Intersport, Inc. v. National Collegiate Athletic Ass'n*, 381 Ill. App. 3d 312, 318 (2008). " 'In ruling on a motion for judgment on the pleadings, the court will consider only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record.' " *Id.* (quoting *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005)). The court "may not consider affidavits, the products of discovery, documentary evidence not incorporated into the pleadings as exhibits, testimonial evidence or other evidentiary materials." *Elson v. State Farm Fire & Casualty Co.*, 295 Ill. App. 3d 1, 6 (1998).

¶ 32 We review *de novo* an order granting judgment on the pleadings. *Gillen*, 215 Ill. 2d at 385. Our determination of whether the court's ruling was proper also requires us to construe the policy. Construction of an insurance policy is a question of law, which we also review *de novo*. *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 479-80 (1997).

¶ 33 First, we note that State Farm's motion for judgment on the pleadings was premised on the date of the alleged storm damage (as set forth in the complaint), the complaint's filing date, the policy's suit limitations provision, and the proceedings in Cook County. State Farm asserted in its motion that the trial court could properly consider the policy for purposes of the motion because Arora and State Farm had both "incorporated by reference" the policy into their respective pleadings. In support, State Farm cited *Thompson v. N.J.*, 2016 IL App (1st) 142918, ¶ 24, which states: "Written documents that are incorporated by reference into a plaintiff's complaint *** are treated as part of the pleading." Here, however, unlike in *Thompson*, the policy was not attached to the complaint because, according to Arora, it was "not currently accessible to [her]." Nevertheless, Arora did not dispute that the policy language relied on by State Farm was contained in the policy, which was specifically identified by number in her complaint, nor did Arora dispute that the policy State Farm attached to its motion was the policy that formed the basis of her breach of contract claim. Arora did not claim below,

or on appeal, that it was error for the court to rely on the policy in ruling on State Farm's motion. Accordingly, under the circumstances, we agree that Arora incorporated the policy into her complaint by specifically referencing the policy—later supplied by State Farm without Arora's objection—and, thus, it was part of the pleadings for purposes of State Farm's motion under section 2-615(e) of the Code. We also note that the Cook County orders are subject to judicial notice and may be properly considered. See *Hermesdorf v. Wu*, 372 Ill. App. 3d 842, 850 (2007) ("This court may take judicial notice of a written decision that is part of the record in another court *** because such documents fall within the category of readily verifiable facts which are capable of instant and unquestionable demonstration." (Internal quotation marks omitted.)).

¶ 34 We turn to the merits. "Illinois case law establishes that insurance policies may validly set forth contractual time limitations requiring suits to be brought within a specified period of time." *Hoover v. Country Mutual Insurance Co.*, 2012 IL App (1st) 110939, ¶ 36. "A limitation provision is but another provision of the standard policy, one of many that may effectively bar relief to the insured." *Id.* Compliance with a suit limitations provision is a condition precedent to recovery under the policy. *Cramer v. Insurance Exchange Agency*, 174 Ill. 2d 513, 530 (1996); *Hoover*, 2012 IL App (1st) 110939, ¶ 35.

¶ 35 The suit limitations provision at issue states:

> "Suit Against Us. No action will be brought against *us* unless there has been full compliance with all of the policy provisions. Any action by any party must be started within one year after the date of loss or damage. This one year period is extended by the number of days between the date that proof of loss was filed and the date the claim is denied in whole or in part." (Emphasis in original.)

Under this language, Arora's complaint filed on April 13, 2023—more than one year after the date of loss (September 7, 2021)—was not timely.[3]

¶ 36 Without contesting the validity of the suit limitations provision, Arora advances various theories as to why the provision should not be applied. For instance, she contends that, (1) like the McHenry County circuit court, we should find that State Farm, by its actions in the Cook County lawsuit, waived the provision; (2) the Cook County circuit court erred in dismissing Arora's cause of action rather than severing it; (3) the trial court here should have applied "the spirit" of the savings statute, which applies to dismissals by a United States district court for improper venue (see 735 ILCS 5/13-217 (West 1994)), and allowed Arora to refile; and (4) the Cook County dismissal does not preclude filing the present case. These arguments aside, Arora also comments in her brief, as she did below, that "it is worth noting that State Farm's policy is ambiguous" and thus should be interpreted in her favor. We address the ambiguity argument first.

¶ 37 "The primary function of the court in construing contracts for insurance is to ascertain and give effect to the parties' intent as expressed in the insurance contract's language." *West Bend Mutual Insurance Co. v. Krishna Schaumburg Tan, Inc.*, 2021 IL 125978, ¶ 32. Where policy terms are clear and unambiguous, the court will give them their plain and ordinary meaning.

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[3]Arora did not allege in her complaint the number of days that had passed between the date the proof of loss was filed and the date the claim was denied. She did not argue below, or on appeal, that this interval extended the limitations period under the policy and that, therefore, the complaint in this case was timely.

Id. However, if policy terms are susceptible to more than one meaning, they are considered ambiguous and will be construed against the party who drafted the contract. *Id.*

¶ 38 Arora acknowledges that the policy provides that "[a]ny action by any party must be started within one year after the date of loss or damage." However, she argues that it does not expressly require that every "suit" be filed within one year. Thus, according to Arora, she complied with the suit limitations provision because she took "action" within one year as required.

¶ 39 In support of her argument, Arora cites a different policy provision—one that governs appraisals. It provides that "[a] party may not demand appraisal after that party brings *suit or action* against the other party relating to the amount of loss." (Emphasis added.) Arora asserts that, because State Farm differentiated between "suit" and "action" in one section of the policy, we must assume that State Farm deliberately excluded "suit" from the limitations provision. She argues: "By the express terms of the policy—namely the exclusion of the term from the limitations clause—not every 'suit' needs to be filed within one year." She also cites Black's Law Dictionary's definition of "suit" as "[a]ny proceeding by a party or parties against another in a court of law." Black's Law Dictionary (12th ed. 2024). And she cites its definition of "action," which includes, "[t]he process of doing something; conduct or behavior," "[a] thing done," and "[a] civil or criminal judicial proceeding; esp., LAWSUIT." Black's Law Dictionary (12th ed. 2024).

¶ 40 Arora's argument is meritless. First, it overlooks that the title of the suit limitations provision is "*Suit* Against Us" and begins "No *action* will be brought against *us* unless ***." (Emphasis in original and added.) Thus, here, the contemplated "action" is, in fact, a "suit." This is consistent with the definitions cited by Arora, in which both "suit" and "action" refer to judicial proceedings. Indeed, Black's Law Dictionary notes that " '[t]he terms "action" and "suit" are nearly if not quite synonymous.' " *Id.* (quoting Edwin E. Bryant, The Law of Pleading Under the Codes of Civil Procedure 3 (Boston, Little, Brown 2d ed. 1899)). Arora does not indicate what "action" (other than filing suit) would be subject to a limitations period. Indeed, Arora herself argues that she "fulfilled this 'action' requirement" by filing suit in Cook County.

¶ 41 In any event, Arora's argument seems to be that, by filing the lawsuit in Cook County, she effectively "started" the lawsuit in Lake County for purposes of the suit limitations provision. We disagree. Arora's argument overlooks the fact that, once Arora was dismissed from the Cook County lawsuit, that action, as it related to Arora's specific claim, necessarily ended. The present complaint is an entirely new action that was "started" when Arora filed her new complaint against State Farm in Lake County. This conclusion finds support in the savings statute's term "a new action" and the case law interpreting it. The savings statute provides:

> "In the actions specified in Article XIII of this Act or any other act or contract where the time for commencing an action is limited, if judgment is entered for the plaintiff but reversed on appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, or the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators *may commence a new action* within one year or within the remaining period of limitation, whichever

is greater, after such judgment is reversed or entered against the plaintiff, or after the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue." (Emphasis added.) 735 ILCS 5/13-217 (West 1994).

¶ 42 In *Eighner v. Tiernan*, 2020 IL App (1st) 191369, ¶ 12, the First District held that reinstating a complaint under the original case number is not a "new action" for purposes of the savings statute. The court construed the statute and determined that the phrase " 'may commence a new action' " was unambiguous. *Id.* It further stated: " 'New' denotes a new case number, a new filing fee, and a new summons to issue." *Id.*; see *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 504 (1997) (under the savings statute, "[t]he original and refiled actions are completely distinct actions"). The supreme court affirmed. *Eighner v. Tiernan*, 2021 IL 126101.

¶ 43 Here, when Arora filed a new complaint in Lake County, she filed an entirely new action. Because the suit limitations provision requires that "[a]ny action by any party must be started within one year after the date of loss or damage," the present action—an entirely new action filed more than one year after the date of loss—was untimely. As State Farm argues, to conclude otherwise would negate the purpose of the savings statute. For instance, if the timely filing of a lawsuit, later voluntarily dismissed by a plaintiff, rendered any future filing timely based on the date of the filing of the dismissed lawsuit, there would be no need for the savings statute. Further, if we were to accept Arora's argument, there would be no limitation at all on the second lawsuit, since the first lawsuit established timeliness.

¶ 44 Arora asserts that this interpretation of the suit limitations provision "[w]ould [p]reclude [r]efiling [u]nder [a]ny [c]ircumstance." We disagree. Arora could have voluntarily dismissed herself from the Cook County lawsuit, and her filing deadline would have been extended by the savings statute, which applies when "the action is voluntarily dismissed by the plaintiff." See 735 ILCS 5/13-217 (West 1994). Arora cites no authority nor otherwise explains why the savings statute would not apply here.

¶ 45 Arora's remaining arguments do not warrant a different conclusion. We address each in turn. First, Arora contends that State Farm's motions for judgment on the pleadings were denied in the three McHenry County cases and should have been denied here, too. Arora is correct that State Farm's motions for judgment on the pleadings were denied in the McHenry County cases. But because the record contains only the courts' orders, indicating that each motion was denied "[f]or the reasons stated in [c]ourt," we do not know the bases of those rulings. Nevertheless, according to Arora, "[b]oth judges relied on *Romano v. Morrisroe*[, 326 Ill. App. 3d 26 (2001),] in making their rulings." More specifically, Arora claims that the McHenry County circuit court relied on the following language: "[I]n the area of insurance contracts, clauses imposing a period of limitation less than that required by the statute of limitations are strictly construed; they are allowed to be readily waived, and slight circumstances will be held sufficient to constitute waiver of such stipulations." *Romano v. Morrisroe*, 326 Ill. App. 3d 26, 30 (2001). In *Romano*, a legal malpractice case, we reversed the summary judgment in favor of the plaintiff on her claim that her attorney negligently failed to make a timely demand for arbitration under her underinsured motorist policy. *Id.* at 27. We noted that the insurer "could be found to have waived the limitations period or be estopped

from invoking it, based on its conduct during *** discussions" before the expiration of the limitations period. *Id.* at 31.

¶ 46 Relying on that general proposition, Arora contends that, here, we should strictly construe the suit limitations provision and find that State Farm waived it "[b]y seeking dismissal, rather than the more judicious approach of having the case transferred to Lake County." Arora argues that "the purportedly late filing [in the present case] is *solely* the result of State Farm's actions in seeking dismissal [in the Cook County lawsuit]." (Emphasis added.) We decline Arora's invitation to both strictly construe the suit limitations provision and find it waived based on State Farm's actions in the Cook County lawsuit. State Farm filed a proper motion under section 2-615(a) of the Code (735 ILCS 5/2-615(a) (West 2022)), which provides:

> "(a) All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: *** that designated misjoined parties be dismissed ***."

The Cook County circuit court found that Arora was improperly joined in the Cook County lawsuit and dismissed her. State Farm had no obligation to instead challenge venue or bring a motion for transfer to Lake County. Indeed, "[a] defendant may raise, waive, or forfeit an objection to improper venue." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005); see 735 ILCS 5/2-104(b) (West 2022). Arora's predicament is not the result of State Farm's actions and does not warrant a finding that State Farm "waived" the suit limitations provision.

¶ 47 This leads us to Arora's related argument that the Cook County circuit court erred when it dismissed the causes of action rather than severing them. She cites section 2-407 of the Code (735 ILCS 5/2-407 (West 2022)), which provides that "[n]o action shall be dismissed for misjoinder of parties." And she cites section 2-104(a) of the Code, which provides that "[n]o action shall abate or be dismissed because commenced in the wrong venue if there is a proper venue to which the cause may be transferred." *Id.* § 2-104(a). According to Arora, "[t]he more equitable and appropriate approach would have been to sever the claims of each plaintiff and direct that they be transferred to the more appropriate venue."

¶ 48 Arora's argument leads us to consider whether we should *sua sponte* apply the principles of equitable tolling and excuse Arora's failure to comply with the suit limitations provision.[4]

¶ 49 Equitable tolling of a statute of limitations "may be appropriate if the defendant has actively misled the plaintiff, or if the plaintiff has been prevented from asserting his or her rights in some extraordinary way, or if the plaintiff has mistakenly asserted his or her rights in the wrong forum." *Clay v. Kuhl*, 189 Ill. 2d 603, 614 (2000). "Generally, the doctrine of equitable tolling permits a court to excuse a plaintiff's failure to comply with a statute of limitations where 'because of disability, irremediable lack of information, or other circumstances beyond his control,' the plaintiff cannot reasonably be expected to file suit on time." *Williams v. Board of Review*, 241 Ill. 2d 352, 360-61 (2011) (quoting *Miller v. Runyon*, 77 F.3d 189, 191 (7th Cir. 1996)). "Equitable tolling requires a showing of due diligence on the part of the plaintiff." *In re Estate of Mondfrans*, 2014 IL App (2d) 130205, ¶ 25. While the doctrine is recognized in Illinois, it is rarely applied. See *American Family Mutual Insurance Co. v. Plunkett*, 2014 IL App (1st) 131631, ¶ 33.

[4]Although Arora did not raise the issue of "equitable tolling" below or on appeal, we gave the parties the opportunity at oral argument to address whether it should apply here.

¶ 50 Thus, we must ask whether Arora's failure to comply with the suit limitations provision was due to "circumstances beyond [her] control" and whether Arora acted with "due diligence." To be sure, Arora acted with due diligence by timely filing suit in Cook County. When she did, she made two distinct errors—she misjoined a suit and filed in the wrong venue. When State Farm moved to dismiss Arora for misjoinder, Arora acted diligently in responding to the motion, arguing that she was properly joined and, alternatively, that the court should sever the misjoined parties rather than dismiss them. However, that was where Arora's diligence ended. As already noted, before the Cook County circuit court ruled on the motion to dismiss, Arora could have moved for a voluntary dismissal, which, if granted, would have extended Arora's filing deadline. See 735 ILCS 5/13-217 (West 1994). She did not. More importantly, however, Arora could have asked the court to transfer the matter to Lake County. She did not. Further, after the court entered the dismissal order, Arora did not challenge that ruling. If Arora had an issue with the Cook County circuit court's actions, she could have filed a motion for reconsideration or requested Rule 304(a) language and sought an appeal. She did neither of those things.[5] Instead, Arora filed the untimely present action in Lake County. Given Arora's failure to diligently avail herself of the many opportunities in the Cook County circuit court to prevent the later dismissal of her untimely complaint in Lake County, Arora's failure to comply with the suit limitations provision was certainly not because of circumstances beyond her control. Accordingly, after careful consideration, we find that the facts of this case do not warrant the application of the equitable tolling doctrine.

¶ 51 Arora's remaining two arguments fare no better. She argues that the savings statute further demonstrates that dismissals for improper venue are not appropriate. She asserts that, because the savings statute would apply to an "action *** dismissed by a United States District Court for improper venue" (see *id.*), we should apply the "spirit" of the savings statute and allow her claim to proceed. As noted, improper venue was not the basis of State Farm's section 2-615(a) motion in the Cook County lawsuit. Nor was it the basis of the Cook County circuit court's dismissal. And, as she recognizes, the savings statute does not otherwise apply here.

¶ 52 Last, Arora asserts that the Cook County circuit court's dismissal with prejudice does not "[p]reclude this [c]ase." Given that the Cook County dismissal was not the basis of the trial court's dismissal here, we need not consider this argument.

¶ 53 In sum, Arora waited until the last day of her limitations period to file suit against State Farm in Cook County. State Farm responded by filing a proper motion to dismiss Arora based on improper joinder. Once Arora realized that the policy's suit limitations provision would preclude her from refiling her lawsuit if she were dismissed from the Cook County lawsuit, Arora could have protected herself by filing a motion for a voluntary dismissal or by filing a motion to sever *and transfer* the case to Lake County. She chose not to do so. After the Cook County dismissal, she did not challenge it or even request that the court transfer her cause of action to Lake County; instead, she chose to file a new action in Lake County. Arora now asks us to disregard the agreed-upon terms of the policy's suit limitations provision because these choices have resulted in her lawsuit being barred. This we will not do.

[5]Arora did raise the issue in the motion for reconsideration she filed in Cook County, but that was filed almost one year after she had filed her complaint in Lake County.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 56 Affirmed.