2026 IL App (1st) 250379

No. 1-25-0379

First Division
September 8, 2026

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SANDBOX MUTUAL INSURANCE CO., f/k/a Saskatchewan Mutual Insurance Co.,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 24 CH 02936
CE DESIGN, LTD., on behalf of a certified class, and HOMEGROWN ADVERTISING, INC.,	)	Honorable Thaddeus L. Wilson, Judge, Presiding.
Defendants-Appellees.	)	

JUSTICE COBBS delivered the judgment of the court, with opinion.
Justices Smith and Howse concurred in the judgment and opinion.

OPINION

¶ 1 On April 8, 2024, Sandbox Mutual Insurance Company filed a complaint in the circuit court of Cook County seeking a declaration, pursuant to section 2-701 of the Code of Civil Procedure (Code) (735 ILCS 5/2-701 (West 2024)), as to which of two competing judgments has priority, one entered in its favor in Saskatchewan, Canada, and the other entered in CE Design, Ltd.'s favor in the circuit court of Lake County, Illinois. The Cook County circuit court, finding that the controversy was not yet ripe for decision, dismissed the complaint for lack of subject-matter jurisdiction, pursuant to section 2-619(a)(1) of the Code (*id.* § 2-619(a)(1)). Plaintiff timely filed this appeal.

¶ 2 I. BACKGROUND

¶ 3 The historical facts leading up to this appeal have been taken from the various pleadings and the exhibits contained in the record. Over the course of this litigation, court proceedings have toggled between, and sometimes overlapped, in the courts in Illinois and in Canada. Every effort has been made to identify clearly in which court, and on which dates various proceedings occurred.

¶ 4 Relevant here, Sandbox Mutual Insurance Co. (SMI), is an insurance company based in Saskatoon, Saskatchewan, Canada. Defendant, CE Design, Ltd. (CE Design), is an Illinois-based corporation, engaged in the business of litigating violations of the Telephone Consumer Protection Act of 1991 (TCPA) (47 U.S.C. § 227 (2024)). Homegrown Advertising (Homegrown) is a "defunct" Canadian marketing company based in Regina, Saskatchewan, Canada. Effective from September 15, 2004, to January 21, 2005, SMI issued a commercial liability insurance policy to Homegrown. The policy provided coverage for bodily injury and property damage, with a $500 deductible per occurrence, excluding liability arising from advertising, and policy limits of $2 million.

¶ 5 In 2005, CE Design filed a class action complaint in the circuit court of Lake County, Illinois, against Franklin Edison Corp., Homegrown Advertising, Inc., Monty Loree, and Lisa Loree (collectively, Homegrown) (No. 04 L 1048), alleging violations of the TCPA. Specifically, the complaint alleged claims for (1) sending or having an agent send unsolicited faxed advertisements into the United States, (2) common-law conversion, and (3) statutory unfair practice.

¶ 6 According to SMI's 2024 complaint for declaratory relief, Homegrown failed to notify SMI of the case and retained its own counsel in Illinois. SMI was not notified about the litigation until May 2006, at which time it appointed an adjuster for the claim who determined that there was no coverage under the policy for CE Design's claims. On June 23, 2006, SMI notified Homegrown that there was no coverage.

¶ 7 Ultimately, CE Design and Homegrown entered into a settlement agreement. Pursuant to the agreement, Homegrown assigned all of its rights under the policy to CE Design; Homegrown agreed to a consent judgment in the amount of $5 million, enforceable only against SMI; each member of the class, including CE Design, would receive not more than $500; a third of the recovery was to be paid to class counsel; and an incentive award of $4,000 was to be paid to CE Design. On February 15, 2007, the circuit court of Lake County entered judgment in CE Design's favor, and against Homegrown, in the amount of $5 million, to be satisfied solely from the SMI policy.

¶ 8 Subsequently, on March 2007, CE Design mailed a citation to discover assets to SMI. In April 2007, outside counsel for SMI sent a letter to the clerk of the court in Lake County advising that SMI denied coverage on the claim. On April 26, 2007, CE Design filed a motion for turnover of the policy proceeds and noticed the motion for presentment on May 3, 2007. On May 3, 2007, the Lake County circuit court granted CE Design's motion and entered a default judgment against SMI in the amount of $5,095,031. SMI's 2024 complaint for declaratory relief alleges that neither SMI nor its counsel received notice of the policy proceeds turnover motion.

¶ 9 Meanwhile, on October 1, 2007, CE Design filed a petition in Saskatchewan, Canada ("Queen's Bench Action 1195 of 2007"), seeking to register the Illinois judgment against SMI pursuant to the Foreign Judgments Enforcement Act of Saskatchewan. SMI was served with and opposed the petition. Subsequently, in December 2007, CE Design was granted leave by the Lake County circuit court to issue a second citation to discover assets.

¶ 10 On January 8, 2008, following a hearing on CE Design's petition, the Queen's Bench for Saskatchewan entered an order in favor of SMI finding that "[t]he notice of commencement of action (the May 3, 2007 motion) was never received by SMI and on that basis the application to register the judgment must fail." *CE Design Ltd. v. Saskatchewan Mutual Insurance Co.*, 2008 SKQB 12, ¶ 19, 315 Sask. R. 91 (Can. Sask. Q.B.). The Queen's Bench also awarded $1,000 in costs to SMI. CE Design did not appeal the judgment, neither did it pay to SMI the ordered costs.

¶ 11 Thereafter, on January 25, 2008, counsel for SMI filed a motion in the circuit court of Lake County to dismiss CE Design's second citation to discover assets. In the motion, counsel alleged that SMI was not subject to personal jurisdiction in Illinois and that Canada, not Illinois, was the appropriate forum for resolution of the dispute.

¶ 12 Subsequently, on February 13, 2008, SMI filed a separate proceeding in the Queen's Bench court against CE Design and Homegrown, seeking a declaration that there "is no coverage under the Policy for CE Design's claims." SMI's 2024 complaint for declaratory relief alleges that CE Design and Homegrown were timely served with notice of the proceeding however, Homegrown did not appear and a default against it was entered in the Queen's Bench court on March 8, 2008. On September 15, 2008, CE Design filed a motion to dismiss SMI's declaratory complaint in the Queen's Bench court, arguing a lack of personal jurisdiction and asserting that the Illinois court had exclusive jurisdiction. CE Design's motion to dismiss was denied.

¶ 13 On April 8, 2010, the circuit court of Lake County granted SMI's motion to dismiss CE Designs' second citation proceeding, finding a lack of personal jurisdiction. CE Design appealed. In reversing, the Second District of the Appellate Court held that counsel's April 2007 letter to the

Lake County clerk of the circuit court constituted a responsive pleading, which in turn waived SMI's objection to personal jurisdiction. See *CE Design Ltd. v. Saskatchewan Mutual Insurance Co.*, 409 Ill. App. 3d 1164 (2011) (table) (unpublished order under Illinois Supreme Court Rule 23), *pet. for leave to appeal denied*, No. 112982 (Ill. Jan. 30, 2013).

¶ 14 On remand from the Second District, on July 18, 2013, the Lake County circuit court granted CE Design's motion to reinstate the SMI Illinois judgment and also granted leave to SMI to file a petition to vacate the reinstated judgment, pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). Following the disposition of the parties' cross-motions, the Lake County circuit court granted "summary disposition" in favor of CE Design, and SMI appealed.

¶ 15 Subsequently, on November 21, 2013, CE Design served a citation to discover assets, naming TD Ameritrade as the party receiving the citation. The certificate of judgment attached to the citation indicated that "$8,073,852.96," which included the judgment, costs and interest, remained unsatisfied on that judgment.

¶ 16 Following additional motion practice, on April 18, 2019, CE Design filed an appeal of the Queen's Bench court's ruling in the Court of Appeal for Saskatchewan (Saskatchewan Court). The Saskatchewan Court ruled in favor of SMI and dismissed CE Design's appeal, with costs. See *CE Design Ltd. v. Saskatchewan Mutual Insurance Co.*, 2021 SKCA 14, 455 D.L.R. (4th) 417 (Can. Sask. C.A.). In its ruling, the Saskatchewan Court stated that SMI has no responsibility to defend or to pay monies on the terms of the policy. Further, the Saskatchewan Court held that the insureds had not defended the action and are "deemed to have admitted the allegations in SMI's claim[,] including the allegation that 'SMI had no duty to defend.' " *Id.* ¶ 45. CE Design did not appeal the Saskatchewan Court's ruling.

¶ 17 On February 22, 2019, SMI registered the Saskatchewan judgments "in this Court, Case No. 19 L 050071." Also on February 22, 2022, the Second District affirmed the circuit court's denial of SMI's July 2013 petition, filed pursuant to section 2-1401. *CE Design Ltd. v. Franklin Edison Corp.*, 2022 IL App (2d) 190130-U. SMI's subsequent petition for leave to appeal to the supreme court was denied. *CE Design Ltd. v. Franklin Edison Corp.*, No. 128400 (Ill. Sept. 28, 2022) (supervisory order).

¶ 18 In the complaint which underlies this appeal, SMI alleged that there are now competing judgments over the same claim, involving the same insurance policy. Additionally, the complaint alleged that the Saskatchewan judgments have priority over the Illinois judgment, as the policy was issued in Saskatchewan and the claim arose in Saskatchewan. The complaint prayed for a declaration that the Saskatchewan judgments be enforceable in Illinois and that they have priority over the Illinois judgments, and further, that CE Design be enjoined from taking any action to enforce the Illinois judgment against SMI. Significantly, the complaint alleges that venue is proper in Cook County pursuant to section 2-101 of the Code (735 ILCS 5/2-101 (West 2024)) as "CE DESIGN is based in and did business in Cook County."

¶ 19 In answer to the complaint, on September 20, 2024, CE Design filed a motion to dismiss or transfer the action to Lake County because (1) there is a lack of subject-matter jurisdiction (*id.* § 2-619(a)(1)), (2) there is another action between the same parties for the same cause of action out of which this action arises (*id.* § 2-619(a)(3)), (3) the action is barred by a prior judgment (*id.* § 2-619(a)(4)) and (4) "any effort to obtain relief under Section 2-1401 was not commenced within the time limited by law" (see *id.*). In the alternative, CE Design motioned to transfer the case to Lake County pursuant to the doctrine of *forum non conveniens*, for imposition of sanctions and for a rule to show cause as to why SMI should not be held in indirect civil contempt for its "willful and contumacious failure" to comply with and "satisfy the existing judgment against it, which constitutes *prima facie* evidence of contempt, but also in light of its continuing effort to avail itself of the courts of the State of Illinois in a frivolous effort to escape the judgment."

¶ 20 In support of its motion, CE Design filed a memorandum of law. In the memorandum, CE Design first sets out the chronology of this litigation and then notes the absence of any assertion in SMI's complaint that, since the supreme court's denial of SMI's petition for leave to appeal, CE Design has not initiated any post judgment collection proceedings or otherwise sought to enforce the judgment against SMI. The memorandum then proceeds with a legal analysis of each of CE Design's bases for dismissal of the complaint. SMI first argues that the complaint is, in effect, an improper collateral attack on the Lake County judgment; that SMI can only seek relief from the Lake County judgment by filing a petition under section 2-1401 in Lake County, but that such a petition would be barred either as untimely or by *res judicata*. Additionally, the memorandum argues that the complaint should be dismissed for improper venue or, in the alternative, based upon the doctrine of *forum non conveniens*. The memorandum then proceeds with argument in support of Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) sanctions because "SMI's pleading in this case is wholly meritless."

¶ 21 Finally, the memorandum argues that the court should issue a rule to show cause as to why SMI should not be held in civil contempt based on its "frivolous invocation of the Court's jurisdiction while at the same time baselessly disregarding and refusing to comply with the Lake County Judgment." They argue that SMI has failed to comply with the Lake County judgment and that its conduct has "gone beyond merely failing to pay as evidenced by the instant frivolous collateral attack on the judgment." CE Design maintained that SMI's failure to pay the Lake County judgment is "*prima facie* evidence of contempt." In its prayer for relief, CE Design prayed that the court require SMI cease and desist from any further court proceedings in Illinois, with the "ability to purge its contempt by discharging the judgment, either through voluntary payment, or through a negotiated and agreed upon accord and satisfaction with CE DESIGN and the class."

¶ 22 In conclusion, CE Design requested that the court dismiss or transfer the action to Lake County pursuant to section 2-619(a)(1) of the Code, stating simply as it relates to jurisdiction "because the court does not have jurisdiction of the subject matter of the action."

¶ 23 On November 8, 2024, SMI filed its response to CE Design's motion to dismiss, generally refuting CE Design's several arguments. Relevant here, SMI characterized CE Design's argument regarding the absence of subject-matter jurisdiction as a "[o]ne sentence, undeveloped, and perfunctory" argument which should be deemed forfeited. Beyond characterizing the argument as being underdeveloped, SMI argued that the court has jurisdiction because the case presents a "justiciable matter, is ripe for adjudication and none of the exceptions apply. Thus, SMI argued, CE Design's subject-matter jurisdiction argument is baseless.

¶ 24 On January 30, 2025, the circuit court of Cook County entered a written order on CE Design's motion to dismiss. In the order, the court stated that there are no current or ongoing efforts by CE Design to enforce the Lake County judgments and that the judgment is currently dormant but remains subject to possible revival. The order further noted that the

> "mere possibility that CE Design could, at some point in the future, seek to revive the Lake County Judgment under 735 ILCS 5/2-1602 and thereafter, seek to enforce or collect the Lake County Judgment, is not sufficient to establish a ripe, justiciable case or controversy to issue a declaration as sought in the Complaint in this matter."

Further, the order stated that unless and until CE Design seeks to revive and enforce the Lake County Judgment, there was no immediate need for any determination of its "priority," and "the question remained premature, hypothetical and abstract." As such, the court ruled that it lacked subject-matter jurisdiction and granted CE Design's motion to dismiss. The court denied CE Design's additional requests for sanctions and issuance of a rule to show cause and denied "the remaining aspects of CE Design's Motion" as moot. The matter was "dismissed with prejudice."

¶ 25 On February 28, 2025, SMI timely filed its notice of appeal.

¶ 26 For the reasons that follow, we reverse and remand to the Cook County circuit court with instructions.

¶ 27 II. ANALYSIS

¶ 28 The narrow question before us is whether the circuit court of Cook County had subject-matter jurisdiction over this declaratory judgment action to decide which of two conflicting judgments has priority. SMI contends that the court erred in granting dismissal because the underlying controversy is ripe for determination and, therefore, presents a justiciable matter. CE Design responds that dismissal was proper as this action is an

> "improper collateral attack on the Lake County Judgment, filed in the wrong court, barred by *res judicata*, and otherwise constituted a baseless effort to seek post-judgment relief under Section 2-1401, which also would be barred by the applicable 2-year statute of repose, using the subterfuge label of 'declaratory judgment action.' "

¶ 29 The court's dismissal of SMI's complaint for declaratory judgment was pursuant to section 2-619(a)(1) of the Code. Section 2-619(a)(1) permits involuntary dismissal of an action based on a lack of subject-matter jurisdiction. 735 ILCS 5/2-619(a)(1) (West 2024). We review *de novo* the trial court's decision to grant or deny a motion under this section. *R.L. Vollintine Construction, Inc. v. Illinois Capitol Development Board*, 2014 IL App (4th) 130824, ¶ 23. In so doing, we interpret the pleadings and any supporting documents in the light most favorable to the nonmoving party. *Id.* We note additionally that the appropriate standard of review to be applied to actions seeking declaratory judgment depend on the underlying questions at issue and the "nature of the proceedings in the trial court." *Pekin Insurance Co. v. Hallmark Homes, L.L.C.*, 392 Ill. App. 3d 589, 593 (2009). Here the issue presented for declaratory judgment was which of two competing judgments takes priority. The trial court, having determined that subject-matter jurisdiction was lacking, never reached that issue. Thus, we review for error the court's dismissal of the declaratory judgment action based on a lack of subject-matter jurisdiction, a question of law. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 26. Accordingly, our review is *de novo*. *Id.*

¶ 30 Subject-matter jurisdiction is defined as the court's power to hear and determine cases of the general class to which the proceeding in question belongs. *In re Luis R.*, 239 Ill. 2d 295, 300 (2010). To invoke the circuit court's subject-matter jurisdiction, the complaint or petition must allege the existence of a justiciable matter. *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 13; Ill. Const. 1970, art. VI, § 9 (circuit courts have original jurisdiction over all justiciable matters). "Generally speaking, a 'justiciable matter' is 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' " *Luis R.*, 239 Ill. 2d at 301 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002)). The only consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine. *Id.*; *McCormick v. Robertson*, 2015 IL 118230, ¶ 20 (as long as the matter is justiciable and is not within the sole confines of the Illinois Supreme Court, a circuit court has subject-matter jurisdiction to consider the issue).

¶ 31 We note at the outset SMI's citation of *Valley National Bank of Arizona v. A.E. Rouse & Co.*, 121 F.3d 1332 (9th Cir. 1997), *Balbirer v. Austin*, 790 F.2d 1524 (11th Cir. 1986), *Perkins v. De Witt*, 111 N.Y.S.2d 752 (App. Div. 1952), and *Rice v. Hill City Stock Yards Co.*, 826 P.2d 1288 (Idaho 1992), for the proposition that courts confronted with the issue before this court "have decided that they have subject matter jurisdiction to determine the priority of conflicting judgments." It is apparent from our review of these four cases that none of them were subject to dismissal for a lack of subject-matter jurisdiction. It is also apparent from our review of these four cases that no question of the court's jurisdiction was ever raised or discussed in any of them. Thus, SMI's reliance on these cases is unavailing.

¶ 32 SMI argues that the trial court's finding that the controversy was not ripe for determination, because CE Design was not currently seeking to revive or enforce its judgment, was in error. SMI points out that the Lake County judgment is still in effect, that CE Design has sought to enforce the judgment in the past, and that SMI is harmed by the existence of the Lake County judgment. With respect to harm, SMI asserts that the judgment must be reported to its regulatory authorities and reinsurers. Additionally, the existence of the judgment affects SMI's ability to invest into the United States, or to place any assets into the United States, out of concerns that CE Design might place a judgment lien on, and/or seek to recover, such assets based on the Lake County judgment.

¶ 33 CE Design responds that a determination regarding the priority of judgments presents a hypothetical controversy, because CE Design has not sought to enforce its Lake County judgment and that the judgment is now stale. CE Design maintains that "[u]nless and until CE Design seeks to enforce the Lake County Judgment, and recover thereon from SMI, there is no immediate need for any determination of its priority, or lack thereof, and the question remains premature, hypothetical and abstract." Thus, CE Design argues that dismissal of SMI's complaint was proper as the trial court lacked subject-matter jurisdiction.

¶ 34 SMI filed its complaint for declaratory relief under section 2-701 of the Code. Section 2-701(a) of the Code states, in relevant part, that:

> "The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any *** contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some part thereof, giving rise to the proceeding." 735 ILCS 5/2-701(a) (West 2024).

¶ 35 A declaratory judgment action is purely statutory and is to be liberally construed, but also strictly complied with. *Roland Machinery Co. v. Reed*, 339 Ill. App. 3d 1093, 1098 (2003). The essential requirements of a declaratory judgment are (1) a plaintiff with a legal tangible interest, (2) a defendant having an opposing interest, and (3) an actual controversy between the parties. *Alicea v. Snyder*, 321 Ill. App. 3d 248, 253 (2001). A declaratory judgment "may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking relief as well." 735 ILCS 5/2-701(b) (West 2024).

¶ 36 In *Beahringer v. Page*, 204 Ill. 2d 363 (2003), our supreme court provided the general principles on declaratory judgment actions. The declaratory judgment procedure act permits

> " 'the court to take hold of a controversy one step sooner than normally—that is, after the dispute has arisen, but before steps are taken which give rise to claims for damages or other relief. The parties to the dispute can then learn the consequences of their action before acting.' " (Internal quotation marks omitted.) *Id.* at 372-73 (quoting *Kaske v. City of Rockford*, 96 Ill. 2d 298, 306 (1983)).

The procedure was devised to settle and fix rights prior to there being an irrevocable change in the position of the parties that will jeopardize their respective claims of right. *Id.* at 373. "The remedy is used to afford security and relief against uncertainty so as to avoid potential litigation." *First of America Bank, Rockford, N.A. v. Netsch*, 166 Ill. 2d 165, 174 (1995); see *City of Chicago v. Department of Human Rights*, 141 Ill. App. 3d 165, 169-70 (1986).

¶ 37 The ripeness doctrine precludes courts from entering a declaratory judgment unless an actual controversy is presented. 735 ILCS 5/2-701(a) (West 2024); *Big River Zinc Corp. v. Illinois Commerce Comm'n*, 232 Ill. App. 3d 34, 38 (1992). An actual controversy exists if there is a legitimate dispute requiring an immediate and definite determination of the parties' rights, the resolution of which would help terminate all or part of the dispute. *First of America Bank,* 166 Ill. 2d at 173. In other words, a plaintiff must have a personal claim or right that is capable of being affected. *Id.* at 174.

¶ 38 The "actual controversy" requirement in the declaratory judgment act is meant to "distinguish justiciable issues from abstract or hypothetical disputes and is not intended to prevent the resolution of concrete disputes that lend themselves to a definite and immediate determination of the rights of the parties." (Internal quotation marks omitted.) *Roland Machinery Co.*, 339 Ill. App. 3d at 1098. In this context, an actual controversy is one in which the underlying facts and issues of the case are neither moot nor premature "so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events." *Underground Contractors Ass'n v. City of Chicago*, 66 Ill. 2d 371, 375 (1977). As our supreme court explained in *Beahringer*, the existence of an actual controversy does not require that a wrong be committed and an injury inflicted. 204 Ill. 2d at 374-75. " 'The mere existence of a cloud, the denial of a right, the assertion of an unfounded claim, the existence of conflicting claims, or the uncertainty or insecurity occasioned by new events may constitute the operative facts entitling a party to declaratory relief.' " *Trossman v. Trossman*, 24 Ill. App. 2d 521, 531-32 (1960) (quoting 26 C.J.S. *Declaratory Judgments* § 28 (1956)).

¶ 39 To be sure, the case must present a concrete dispute, the resolution of which will aid in the termination of the controversy or some part of it. *Miller v. County of Lake*, 79 Ill. 2d 481, 487 (1980). Significantly, as the declaratory judgment procedure does not replace, but merely adds to existing remedies a form of judgment to declare the rights of the parties, the existence of other remedies does not preclude judgment for declaratory relief, even though such other remedies may be equally effective.

¶ 40 There is no dispute among the parties that there are conflicting judgments on the issue of SMI's liability. Neither does either party argue that the foreign judgment entered by the Queen's Bench for Saskatchewan has not been properly registered. Additionally, we find nothing in the record to suggest that CE Design raised any objection to registration of the Saskatchewan judgment.[1] Further, it cannot be seriously argued that CE Design would not enjoy recovery of the

---

[1]The enforcement of a judgment rendered by courts outside the State of Illinois is governed under the Uniform Foreign Money-Judgments Recognition Act (Recognition Act) (735 ILCS 5/12-618 to 12-626 (West 2010)) and the Uniform Enforcement of Foreign Judgments Act (Enforcement Act) (735 ILCS 5/12-650 to 12-657 (West 2024)). The Recognition Act provides that once a foreign judgment is recognized, it is to be enforced in the same manner as the judgment of a sister state. 735 ILCS 5/12-620 (West 2010). Similarly, under the Enforcement Act, the proper filing of a foreign judgment has the effect of instantly

judgment entered on its behalf in the circuit court of Lake County. In fact, throughout this litigation, CE Design has sought a rule to show cause for SMI's failure to "voluntarily" satisfy the judgment. Moreover, regardless of whether CE Design is currently engaged in enforcement proceedings, we know of nothing that precludes it from doing so. And, considering the past proceedings, we can safely assume that there will be. Thus, CE Design's argument that resolution of the conflict between judgments is not ripe because no enforcement proceedings are currently occurring rings hollow.

¶ 41 We find it untenable that SMI must be subject to the whims of CE Design in engaging in enforcement proceedings before pursuing a definitive ruling on the priority of what are undisputably conflicting judgments. Depending on the outcome of these current proceedings, a future attempt by CE Design to enforce the Lake County judgment could result either in satisfaction of that judgment or render further enforcement proceedings moot. The circuit court's ruling on SMI's complaint for declaratory judgment would not require the court to pass on an abstract proposition of law, render an advisory opinion, or give legal advice as to future events.

¶ 42 In *St. Joseph Hospital v. Corbetta Construction Co.*, 21 Ill. App. 3d 925, 928-29 (1974), the defendant construction company performed construction work for the plaintiff hospital. The construction work was deemed to be in violation of the city's building code, requiring corrective action by the construction company. *Id.* at 929. In the interim, the hospital withheld final payment for the construction work, and the construction company advised the hospital of its intent to sue. *Id.* Faced with the possibility of the lawsuit and the shutdown of the hospital, the plaintiff filed a declaratory judgment action. *Id.* In affirming the trial court's refusal to dismiss the action, the

---

creating an enforceable Illinois judgment from the date it is filed with the clerk of the circuit court. 735 ILCS 5/12-652(a) (West 2024).

reviewing court stated that "[t]he Hospital's filing [of the] declaratory action when it did, without waiting for an even more complete disaster, certainly was proper." *Id.* at 931; see *Roland Machinery Co.*, 339 Ill. App. 3d at 1099 (where the defendant's expressed intent was to revoke acceptance of the return of a piece of equipment from the plaintiff and the plaintiff's position was that the defendant had no right to take such action, there was no need for the plaintiff to actually physically deliver the equipment before seeking a declaration of the parties' rights under the purchase agreement; "[a]n expression of intent by one party to take legal action against another can be the basis of an actual controversy ripe for declaratory relief").

¶ 43 We are mindful of SMI's assertions of the harm caused as a result of the Lake County judgment. They assert that the judgment must be reported to its regulatory authorities and reinsurers. Additionally, they maintain that the judgment affects its ability to invest into the United States, or to place assets into the United States, with the concern that CE Design may place a judgment lien or seek to recover such assets based on the judgment. As a result, SMI argues that it has been and remains harmed by the Lake County judgment. Even absent the harm expressed by SMI, we believe that an actual controversy exists, which renders this matter ripe for adjudication.

¶ 44 It is worth noting that an action to revive a judgment (see 735 ILCS 5/2-1602 (West 2024)) is not a new proceeding, but a continuation of the suit in which the judgment was originally entered. *Dec v. Manning*, 248 Ill. App. 3d 341, 349 (1993); *Revolution Portfolio, LLC v. Beale*, 332 Ill. App. 3d 595, 603 (2002). Our supreme court has held that the only defense to such an action is either a denial of the existence of the judgment or proof of a subsequent satisfaction or discharge of the judgment. *Dec*, 248 Ill. App. 3d at 349. "These defenses must appear on the face of the record without reference to any matters *aliunde* the record." *Id.* The practical effect of a revived judgment is to "revive the judgment as it formerly existed and to reinvest it with the same attributes and conditions which originally belonged to it." *Bank of Eau Claire v. Reed*, 232 Ill. 238, 241 (1908). Significantly, the revival of a prior judgment cannot cure fatal defects that were present at the time the judgment was originally entered. *Dec*, 248 Ill. App. 3d at 349. Thus, should CE Design decide to pursue a revival action, because the priority of judgments issue may not be raised in such a proceeding, if not resolved now, it is likely that SMI would again seek a declaration of the priority of judgments, further delaying final disposition of this litigation.

¶ 45 CE Design additionally notes to us that we may affirm the trial court's dismissal on any basis supported by the record. As one such basis, CE Design first argues that SMI's complaint, cloaked as one for declaratory judgment, is actually an "improper collateral attack" on the Lake County judgment. Citing *Board of Trustees of Community College District No. 508 v. Rosewell*, 262 Ill. App. 3d 938, 961 (1992), CE Design asserts that, under the collateral attack doctrine, a final judgment rendered by a court of competent jurisdiction may only be challenged through direct appeal or procedure allowed by statute, and it remains binding on the parties until it is reversed through such a proceeding.

¶ 46 Although we agree with CE Design's definition of the collateral attack doctrine, we disagree that the doctrine is at play here. As our supreme court explained in *Malone v. Cosentino*, 99 Ill. 2d 29, 32 (1983), "[o]nce a court with proper jurisdiction has entered a final judgment, *that* judgment can only be attacked on direct appeal, or in one of the traditional collateral proceedings now defined by statute." (Emphasis added.) Significant is the *Malone* court's reference to "that" judgment, meaning the particular judgment that is the subject of the attack. Here, as opposed to attacking the propriety of either judgment, SMI seeks a declaration as to which of the two separate, but conflicting, judgments have priority.

¶ 47 We note merely in passing that not all judgments are immune from collateral attack. A void judgment is subject to collateral attack at any time. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38. And, in fact, Illinois recognizes two classifications of void judgments subject to collateral attack: those that are void for lack of either personal or subject-matter jurisdiction and those that were procured through fraud. *City of Chicago v. Central National Bank*, 134 Ill. App. 3d 22, 26 (1985). Notably, in the operative complaint, SMI identifies no infirmity that would support a collateral attack on either the Lake County judgment or the judgment entered by the Canadian courts. By its action, SMI merely seeks to have the courts here declare which of the two judgments has priority.

¶ 48 Finally, CE Design argues that section 2-1401 is the only mechanism available by which SMI may attack the Lake County judgment and notes further that, based on the statute of repose and *res judicata*, such an action would be barred. There is nothing in the case now before us to indicate that SMI has brought a 2-1401 petition. Whether SMI may do so in the future is not an issue before us, and any discussion either on the availability or the merits of such petition would be merely speculative. Thus, we decline to consider the matter further.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we hold that SMI's complaint for declaratory judgment presents a justiciable matter. We therefore reverse the Cook County circuit court's dismissal of the complaint for declaratory judgment and remand for further proceedings. In so doing, we are mindful of CE Designs' argument that Cook County is not the proper venue for resolution of this dispute. Although we express no opinion on the matter, we believe that the argument raises a fair question. Thus, on remand, we direct the circuit court to first determine whether venue in Cook County is proper and, if not, to transfer the case to the appropriate venue. *Hardee's Food*

Systems, Inc. v. Human Rights Comm'n, 155 Ill. App. 3d 173, 178 (1987) ("where improper venue occurs, the only remedy is to transfer the cause to a court of proper venue rather than dismissal").

¶ 51 Reversed and remanded with directions.

***Sandbox Mutual Insurance Co. v. CE Design, Ltd.*, 2026 IL App (1st) 250379**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 24-CH-02936; the Hon. Thaddeus Wilson, Judge, presiding.
Attorneys for Appellant:	James K. Borcia, of Tressler LLP, of Chicago, for appellant.
Attorneys for Appellee:	Phillip A. Bock, David M. Oppenheim, and Jeffrey A. Berman, of Bock Hatch & Oppenheim, LLC, of Chicago, and Brian J. Wanca and Wallace C. Solberg, of Anderson + Wanca, of Rolling Meadows, for appellee CE Design, Ltd. No brief filed for other appellee.