2026 IL App (1st) 250998-U

FOURTH DIVISION
Order filed: August 20, 2026

No. 1-25-0998

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TIMOTHY TYLER and STEPHANIE TYLER,	)	Appeal from the
	)	Circuit Court of Cook
Plaintiffs-Appellants,	)	County.
	)	
v.	)	No. 2024 L 6066
	)	
ALLSTATE INSURANCE COMPANY,	)	Honorable
	)	Catherine A. Schneider,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE QUISH delivered the judgment of the court.
Justice Lyle and Justice Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: The dismissal of a refiled action alleging claims of breach of contract and bad faith under section 155 of the Illinois Insurance Code (215 ILCS 5/155 (West 2022)) was improper when a conflict between allegations in the plaintiffs' amended complaint and evidentiary admissions in the plaintiffs' prior complaints created a genuine issue of material fact regarding when plaintiffs' causes of action accrued and whether they were time-barred.

¶ 2 Plaintiffs Timothy Tyler and Stephanie Tyler filed an action against their homeowners' insurer, defendant Allstate Insurance Company ("Allstate"), claiming that Allstate underpaid and acted in bad faith in its handling of a 2021 insurance claim. The circuit court dismissed the Tylers' amended complaint on the grounds that the Tylers' allegations demonstrated that they had not brought their suit within the time limits prescribed by their insurance policy. The Tylers now appeal that dismissal, contending that there is a genuine issue of material fact regarding the accrual date of their causes of action. For the following reasons, we reverse the circuit court's order and remand for further proceedings.

¶ 3 On May 31, 2022, the Tylers filed an unverified complaint against Allstate (case no. 2022 M1 110552) asserting causes of action for breach of contract and bad faith in violation of section 155 of the Illinois Insurance Code ("Insurance Code") (215 ILCS 5/155 (West 2022)). In their claim for breach of contract, the Tylers alleged that, on or about August 26, 2021, while insured under Allstate homeowners' insurance policy number 911 408 032, "Plaintiff's home in particular plaintiffs [*sic*] roof sustained additional damage (plaintiff had presented storm damage roof claims to Allstate before this date and all of the claim[s] were denied or substantially understated by Allstate." The Tylers did not attach a copy of the insurance policy or provide the address of the damaged property or any other details regarding the nature of the damage, but stated that the associated claim numbers were 0639229251, 0600021596, and 0498210137. The Tylers alleged that "[i]mmediately after each of the incidents involving storm damage" they gave Allstate notice and proof of loss and that Allstate breached their policy "by not paying to Plaintiff the value of the damages to plaintiff['s] home by denying Plaintiff's claim without good cause or proper investigation."

¶ 4 In their bad faith claim, the Tylers alleged that Allstate had vexatiously and unreasonably delayed or denied fair and reasonable compensation for their "claims" and "for the loss they sustained due to the storm damage to their home since 2017." They also stated, "[d]espite knowing that the Plaintiffs [*sic*] roof has continued to leak since 2017 when it rains and other necessary and emergent repairs are needed, Defendant Allstate has each time denied the claims making the damages and plaintiffs [*sic*] living conditions in their home worse." They alleged that Allstate failed to cover the "full and obvious cost for a long period of time and therefore has denied coverage for each claim for other two years." The Tylers voluntarily dismissed their suit on June 22, 2023.

¶ 5 On June 3, 2024, within the one-year refiling window provided by section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217 (West 1994)), the Tylers refiled their action as this 2024 L case, again alleging claims for breach of contract and bad faith. The Tylers alleged that their two homes were covered by homeowners' insurance policies with Allstate: one at 4613 Ashford Drive and one at 650 Bradley Avenue, both in Matteson, Illinois. They further alleged that, "[o]n or about August 26, 2021, Plaintiffs' homes sustained damage, in particular damage to plaintiffs' roof at 4613 Ashford Drive and interior damage due to the home being vandalized at 650 Bradley Avenue." The Tylers also added, "[t]he plaintiff [*sic*] had presented the storm damaged roof and the vandalism interior damage claims to Allstate prior to August 26, 2021, and all the claims were denied or substantially understated by Allstate." The associated claim numbers were 0639229251, 0600021596, and 0498210137 for the Ashford property and 0551950603 for the Bradley property. According to the Tylers, Allstate refused to pay the full sum the Tylers expended to repair both homes and thus, breached the policies.

¶ 6 Within their claim alleging bad faith under section 155 of the Insurance Code, the Tylers alleged that Allstate improperly denied their claims and "failed to cover the full and obvious costs for a long period of time and therefore has denied coverage for each claim for over two years." They also again alleged that, "[d]espite knowing that the Plaintiffs' roof has continued to leak since 2017 when it rains and that other necessary and emergent repairs are needed, Defendant Allstate has each time denied the claims making the damages and plaintiffs['] living condition in their home worse." The Tylers further alleged that Allstate's actions "constitute vexatious and unreasonable delay in failing to tender fair and reasonable compensation to Plaintiffs for the loss they sustained due to vandalism and the storm damage to the homes since 2017 and 2019." The Tylers sought compensatory and punitive damages, plus attorney's fees.

¶ 7 Allstate filed a combined motion to dismiss the Tylers' complaint under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2024)). In relevant part, Allstate argued that the Tylers' insurance policy contained a "Suit Against Us" provision requiring that "[a]ny suit or action must be brought within one year after the inception of loss or damage." Allstate further argued that the Tylers' allegations demonstrated that their roof had been leaking since 2017 and the vandalism occurred in 2019, each more than one year prior to the filing of their 2024 complaint. In lieu of a response to Allstate's motion, the Tylers requested leave to file an amended complaint. The court granted their motion and denied Allstate's motion to dismiss as moot.

¶ 8 On September 11, 2024, the Tylers filed an unverified first amended complaint, alleging a breach of contract claim related to the Ashford Drive property and a section 155 claim. In their claim for breach of contract, the Tylers alleged that "[o]n or about August 26, 2021, Plaintiffs' home at 4613 Ashford Drive sustained damage, in particular, damage to Plaintiffs' roof and interior ceiling." The Tylers further alleged that they "filed a homeowners insurance claim with

Allstate related to storm damage to the roof and interior of the home on or about August 26, 2021." The Tylers claimed that Allstate valued the damage at $1,900.86 and issued a check solely to them for $1,400.86. The Tylers alleged that Allstate failed to pay any additional amount, causing the Tylers to file a lawsuit, No. 2022 M1 110552, on May 31, 2022, which was voluntarily dismissed and refiled as this case. The Tylers retained an adjuster, who estimated the damages to be $56,305.52. The adjuster later agreed to reduce the damage estimate to $36,941.28, an amount that Allstate eventually agreed to pay, and on July 21, 2023, Allstate issued a check for that amount to the Tylers and their mortgagees. The Tylers alleged that the lowered damage figure did not account for additional damage that had occurred since the initial loss. The amended complaint omitted the previous allegations regarding any damage that occurred in 2017 or 2019 or to the Bradley property.

¶ 9 Allstate filed another combined motion to dismiss under section 2-619.1. Allstate first argued that the amended complaint should be dismissed under section 2-619(a)(5) (735 ILCS 5/2619(a)(5) (West 2024)) because, although the Tylers' allegations of damages sustained in 2017 and 2019 were not included in the amended complaint, their prior allegations regarding those damages constituted binding judicial admissions and demonstrated that the Tylers had not brought the action within the policy's one-year time limit. Allstate also asserted that the amended complaint should be dismissed under section 2-619(a)(9) because the Tylers were bound by the appraisal award agreed to by their appraiser and Allstate. Allstate further argued that the amended complaint should be dismissed under section 2-615 (735 ILCS 5/2-615 (West 2024)) because the Tylers' bad faith allegations were conclusory and insufficient. Attached to Allstate's motion was a copy of home insurance policy number 911 408 032 and a declarations page for that policy, which was supported by an affidavit from Allstate employee Shubhankar Halkare certifying the authenticity of those documents. The policy insured the 4613 Ashford Drive property only. Also attached was a sworn declaration from Allstate property litigation specialist Jenni Newcomer, who averred that the Tylers first submitted the claim referenced in the complaint for the Ashford property on August 26, 2021, the Tylers demanded an appraisal under the policy to resolve the dispute over the damages, the appraiser issued an award for $36,942.28, and Allstate issued a check to the Tylers for that amount.

¶ 10 In response, the Tylers argued, in relevant part, that their suit was timely because it related only to damages to the Ashford property that occurred in August 2021 and did not concern any prior damage. In its reply, Allstate maintained that the Tylers' 2024 initial complaint alleged that the roof of the Ashford property had been leaking since 2017, thereby making the suit untimely.

¶ 11 On January 6, 2025, the circuit court held a hearing on the motion, but the record on appeal does not contain a transcript of that hearing. The court granted Allstate's motion to dismiss under section 2-619(a)(5), finding that there was no dispute that the policy required the suit to be brought within one year of the inception of the loss, the Tylers previously filed suit for the same damages in 2022, and the 2022 complaint "clearly alleges ongoing water damage to the relevant property from 2017." In particular, the court cited the Tylers' allegations in their 2022 complaint that Allstate knew that their roof "has continued to leak since 2017" and their roof sustained "additional damage" on August 26, 2021. The court held that the Tylers "simply cannot avoid their prior pleadings whereby they allege ongoing/recurring water damage since 2017. Simply removing those allegations from the amended complaint cannot bring the cause of action within the agreed upon time limitation." The court dismissed the amended complaint with prejudice under section 2-619(a)(5) and denied the remaining portions of Allstate's motion.

¶ 12 The Tylers filed a motion for reconsideration, arguing that the court erred in considering the 2022 complaint and any allegations regarding damage that occurred in 2017 or 2019 because the most recent action only concerned a claim for damages for the underpayment of a loss that occurred in 2021. The Tylers added that their refiled action "is considered a new and separate action, not a continuation of the original." The court denied the Tylers' motion and the Tylers' appealed.

¶ 13 The Tylers argue that the circuit court erred in dismissing their amended complaint under section 2-619(a)(5) because there is a genuine issue of material fact regarding the date the causes of action accrued.

¶ 14 A motion to dismiss under section 2-619 accepts the legal sufficiency of the complaint's well-pleaded factual allegations but permits dismissal when an affirmative matter defeats the claim or otherwise negates its legal effect. *Brummel v. Grossman*, 2018 IL App (1st) 162540, ¶ 22 (citing *Janda v. United States Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 83). Failing to act within the time period prescribed by law is an affirmative matter supporting dismissal of an action. *Id.*; see also 735 ILCS 5/2-619(a)(5) (providing that a defendant may move for a dismissal of an action on the grounds that "the action was not commenced within the time limited by law"). In deciding a section 2-619 motion, the trial court must construe the pleadings and any supporting materials in the light most favorable to the nonmoving party. *Brummel*, 2018 IL App (1st) 162540, ¶ 23 (citing *Caywood v. Gossett*, 382 Ill. App. 3d 124, 128 (2008)).

¶ 15 On a section 2-619 motion, the defendant bears the initial burden to establish the affirmative defense or other affirmative matter on which it relies. *Id.* (citing *Kirby v. Jarrett*, 190 Ill. App. 3d 8, 12 (1989). If the basis for dismissal is not apparent from the face of the motion, the defendant may support it with an affidavit, so long as the affidavit does not controvert the complaint's factual allegations. *Wells v. State Farm Fire & Casualty Co.*, 2020 IL App (1st) 190631, ¶ 30 (citing *King v. City of Chicago*, 324 Ill. App. 3d 856, 859 (2001)). Once the defendant satisfies its initial burden, the burden shifts to the plaintiff to allege or present facts sufficient to avoid the limitation. *Brummel*, 2018 IL App (1st) 162540, ¶ 23 (citing *Cundiff v. Unsicker*, 118 Ill. App. 3d 268, 272 (1983), and *Blair v. Blondis*, 160 Ill. App. 3d 184, 188 (1987)).

¶ 16 On appeal from a section 2-619 dismissal, "'the reviewing court must ascertain whether the existence of a genuine issue of material fact should have precluded the dismissal, or absent such an issue of fact, whether dismissal is proper as a matter of law.'" *Id.* ¶ 24 (quoting *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 178 (2007)). Our review is *de novo*. *Id.* (citing *O'Toole v. Chicago Zoological Society*, 2015 IL 118254, ¶ 16).

¶ 17 Before we consider the merits of the Tylers' appeal, we must comment on the insufficiency of their brief. In particular, the Tylers failed to include a statement of facts, which is required by Illinois Supreme Court Rule 341(h)(6) (eff. Oct. 1, 2020) ("The appellant's brief shall contain *** [a] Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal."). Because this omission does not hinder our review of their appeal, given the limited factual history and the sufficiency of Allstate's Statement of Facts, we will not strike the Tylers' brief. However, "we admonish counsel to carefully adhere to the requirements of the supreme court rules in future appeals," or risk the striking of their brief or the potential dismissal of their appeal. *MIFAB, Inc. v. Illinois Human Rights Commission*, 2020 IL App (1st) 181098, ¶ 33.

¶ 18 Turning to the merits, the Tylers contend that the circuit court erred in finding that the allegations in their 2022 complaint and their initial complaint in this case demonstrated that their loss occurred in 2017 and their breach of contract claim was therefore time-barred. They argue that the allegations in their first amended complaint that the loss occurred on August 26, 2021 created a factual dispute that should have precluded dismissal of their complaint. Allstate counters that the

Tylers' prior allegations suggesting an earlier date of loss constituted judicial admissions definitively establishing that the loss occurred in 2017 and thus, the suit was untimely under the policy which requires that "[a]ny suit or action must be brought within one year after the inception of loss or damage." We agree with the Tylers.

¶ 19 Contrary to Allstate's contention, the Tylers' allegations of prior roof damage in their earlier unverified complaints were not judicial admissions. "[J]udicial admissions 'are formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.'" *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 557-58 (2005) (quoting J. Strong, McCormick on Evidence § 254, at 142 (4th ed. 1992)). "A fact admitted in a verified pleading is considered a judicial admission, conclusive against the pleader, and dispenses with proof on that fact." *Gaines v. Ciox Health, LLC*, 2024 IL App (5th) 230565, ¶ 35 (citing *Chavez v. Watts*, 161 Ill. App. 3d 664, 672-73 (1987)). "In contrast, an admission in an unverified pleading is considered as an admission against interest that is not conclusive against the pleader." *Id.* (citing *Chavez,* 161 Ill. App. 3d at 673. Unlike judicial admissions, such evidentiary admissions may be controverted or explained. *Id.*; *Green by Fritz v. Jackson*, 289 Ill. App. 3d 1001, 1008 (1997).

¶ 20 Further, "[t]he admissions of a party contained in an unverified original pleading that has been superseded by an amended pleading" are considered evidentiary admissions, rather than binding judicial admissions. *Pettigrew v. Putterman*, 331 Ill. App. 3d 633, 641 (2002) (citing *Snitowsky v. NBC Subsidiary (WMAQ–TV), Inc.*, 297 Ill. App. 3d 304, 315 (1998)). Statements made during the course of other court proceedings are also evidentiary, not judicial, admissions.
Green by Fritz, 289 Ill. App. 3d at 1008; see also *People v. Runge*, 234 Ill. 2d 68, 134 (2009).

¶ 21 The Tylers' prior complaints in this case and in the 2022 case were unverified, and the allegations in the 2022 complaint were from a different court proceeding. See *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 504 (1997) (noting that a "refiled action is an entirely new and separate action, not a reinstatement of the old action"). Further, the Tylers' original complaint in this case was superseded by their first amended complaint. Consequently, the allegations in their 2022 complaint and initial complaint in this case alleging prior damage to the roof of the Ashford property were not judicial admissions. Rather, they were evidentiary admissions that could be contradicted or explained.

¶ 22 The Tylers' allegations in their first amended complaint at issue that their house first sustained storm damage to the roof and interior on August 26, 2021, contradicted their evidentiary admissions in prior complaints as to the date of loss at the Ashford property. Thus, there is a genuine issue of material fact as to when the "inception of loss or damage" occurred.

¶ 23 While it is true that the Tylers alleged that they had filed previous claims related to roof damage and water leaks and that Allstate had denied coverage for over two years, those allegations do not clearly demonstrate that they are seeking damages for old losses that occurred outside of the limitations period in the policy. Indeed, the implication that the loss at issue occurred in 2017 is contradicted by the allegations in all three of the Tylers' complaints that the Ashford property sustained storm damage on or about August 26, 2021. Those allegations were corroborated by the sworn declaration of Allstate property litigation specialist Jenni Newcomer, in which Newcomer confirmed that the Tylers submitted a claim on August 26, 2021, and that Allstate issued a check for that damage. Furthermore, the Tylers' allegation that Allstate had denied coverage for over two years was not part of their breach of contract claim seeking damages related to the alleged 2021 loss. Rather, it was located within the bad faith claim.

¶ 24 Accordingly, the evidence and pleadings, when viewed in the light most favorable to the Tylers, establishes that there exists a genuine issue of material fact as to when the Tylers' loss occurred. Therefore, the circuit court erred in granting Allstate's motion to dismiss the Tylers' amended complaint under section 2-619(a)(5).

¶ 25 The Tylers also raise additional arguments defending the sufficiency of their bad faith claim and noting that the circuit court denied the portions of Allstate's combined motion to dismiss seeking dismissal of that claim. While they do not clearly state what relief they are seeking, we presume that the Tylers are arguing that their bad faith claim should be revived along with their breach of contract claim, given that the bad faith claim was dismissed on the same timeliness grounds as the breach of contract claim. We note that the court was correct to dismiss the bad faith claim based on its dismissal of the breach of contract claim, as a bad faith claim under section 155 of the Insurance Code depends on the success of a related breach of contract claim. See *Hoover v. Country Mutual Insurance Co.*, 2012 IL App (1st) 110939, ¶ 40 (noting that section 155 "presupposes an action on the policy, and therefore, in order for a plaintiff to recover under section 155, he must also succeed in the action on the policy," and holding that the dismissal of a breach of contract claim on timeliness grounds likewise required dismissal of a related bad faith claim). However, in light of our reversal of the court's dismissal of the breach of contract claim, we likewise reverse the court's dismissal of the bad faith claim, and we remand for further proceedings.

¶ 26 Reversed and remanded.