2020 IL App (1st) 191996-U

FOURTH DIVISION
December 24, 2020

No. 1-19-1996

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEE ABRAMS, an individual, derivatively on behalf of Sweports Ltd. and UMF Corp., and TINA WHITE, an individual, derivatively on behalf of Sweports Ltd. and UMF Corp.,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellants,	)	
v.	)	No. 15 CH 16252
GEORGE CLARKE and CHRISTOPHER LEISNER, both individuals,	)	
Defendants-Appellees,	)	Honorable Anna M. Loftus, Judge Presiding.
and	)	
SWEPORTS LTD. and UMF CORP.,	)	
Nominal Defendants-Appellees.	)	

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming an order of the circuit court of Cook County dismissing claims as time-barred pursuant to section 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2016)).

¶ 2 On November 4, 2015, plaintiffs Lee Abrams (Abrams) and Tina White (White) – as individuals derivatively on behalf of Sweports, Ltd. (Sweports) and UMF Corporation (UMF) (the companies) – filed a verified complaint for breach of fiduciary duty and other relief in the circuit court of Cook County against defendants George Clarke (Clarke) and Christopher Leisner (Leisner) and against the companies as nominal defendants. The defendants filed motions to dismiss the complaint as time-barred under the five-year statute of limitations[1] pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2016)). After the initial motions to dismiss were denied and the parties conducted discovery, the circuit court ultimately granted an amended renewed motion to dismiss filed by Clarke and the companies, which resulted in the dismissal of all claims against the defendants as time-barred.

¶ 3 The plaintiffs contend on appeal that the circuit court erred in finding that (a) there was sufficient information to trigger the running of the statute of limitations in 2010, (b) no factual issue existed regarding the plaintiffs' knowledge with respect to the statute of limitations, and (c) the defendants' fraudulent concealment did not affect the commencement of the limitations period. For the reasons discussed below, we affirm.

¶ 4 BACKGROUND

¶ 5 The Allegations in the Complaint

¶ 6 The complaint alleged, in part, as follows. Clarke was the president, sole director, and majority shareholder of Sweports. He was also the president and chief executive officer of UMF, a subsidiary of Sweports. Sweports had no employees (other than Clarke) and minimal operating expenses; the company's sole assets were intellectual property rights and its 76%

[1] As discussed below, the 10-count complaint alleged breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraud, and civil conspiracy. The applicable statute of limitations for each of the claims is five years. 735 ILCS 5/13-205 (West 2014). See also *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 19.

controlling stock ownership interest in UMF. Sweports owned the intellectual property rights to a disinfecting technology – PerfectClean – which UMF manufactured, marketed, and sold.

¶ 7 Through his stock and management positions, Clarke controlled Sweports and UMF. White[2] and Abrams, an attorney, were minority shareholders of Sweports. Leisner was originally retained by Clarke to assess and maximize the value of Sweports' intellectual property rights; Leisner subsequently became a director and the chief financial officer of UMF.

¶ 8 In approximately 2005, Clarke wanted to raise capital for UMF so it could improve its marketing and sales efforts. After Clarke's relationship with an initial group of investors deteriorated in late 2005 or early 2006, Clarke reached out to second group of investors which included Michael J. O'Rourke (the O'Rourke investors) and Abrams. The O'Rourke investors agreed to lend funds to Sweports, which Clarke could use to repay certain amounts owed to the first investors; Abrams executed a loan guaranty. Pursuant to a stock purchase agreement signed in October 2006, the O'Rourke investors and Abrams each received 2% of Sweports' stock. As Clarke's relationship with the O'Rourke investors also soured, Sweports stopped payment on the loan and executed an informal corporate resolution rescinding the Sweports stock issued to the O'Rourke investors (but not Abrams). The investors filed several lawsuits against Clarke, Sweports, and others for breach of their loan and stock purchase agreement; the cases were consolidated in February 2008. The O'Rourke litigation proved to be lengthy and complex.

¶ 9 In the meantime, Clarke was working on the development of a new technology which was similar to PerfectClean but had characteristics that made it a potential substitute for PerfectClean products in many applications. Clarke believed this new technology had significantly greater market potential than PerfectClean.

[2] White's husband was Abrams' law partner and a close friend of Clarke. Since her husband's passing in 2006, White has owned his minority interest in Sweports.

¶ 10 Instead of bringing this new technology to Sweports, Clarke and Leisner established – and owned a controlling interest in – a new company called C2C Innovations, LLC (C2C). Clarke was C2C's manager. On August 25, 2008, C2C entered into a license agreement with the University of Texas (the university) to obtain the intellectual property rights to the new technology. Clarke did not disclose to Sweports or its minority shareholders that he created C2C or that he and Leisner had negotiated the agreement with the university.

¶ 11 Under the license agreement, C2C was obligated to regularly make substantial royalty payments to the university. As C2C was essentially a shell company without employees, meaningful assets, or marketing capability, Clarke and Leisner used their control over Sweports and UMF to divert funds from UMF to C2C. In the fall of 2009, Clarke had UMF loan $600,000 to C2C pursuant to three unsecured promissory notes; the loans were extended in December 2010. Clarke did not notify Sweports or its minority shareholders regarding the UMF loans before or after their execution, and C2C did not repay the loans. In the aggregate, Clarke and Leisner caused UMF to expend more than $1 million in loans and resources to assist in development efforts for C2C, which limited UMF's ability to pay dividends to Sweports and to aggressively market and sell products using the PerfectClean technology.

¶ 12 UMF also incurred significant attorney fees in connection with the O'Rourke litigation. Instead of having UMF pay its share of the attorney fees directly, Sweports paid UMF's fees and characterized the payments as a loan from Sweports to UMF. By late 2008, UMF owed Sweports approximately $1.6 million stemming from these attorney fees. Although UMF had the ability to repay this amount with cash, Clarke instead had UMF issue 550 shares of UMF stock to Sweports in 2008. According to the plaintiffs, no independent valuation was conducted, and the value of the 550 shares was substantially less than $1.6 million. The plaintiffs believed

that Clarke's actions materially contributed to Sweports being placed in bankruptcy in 2012.

¶ 13 After alleging the futility of any demand upon Clarke and Leisner – *i.e.*, that they could not and would not impartially determine whether to pursue a derivative action on behalf of Sweports or UMF against themselves – the plaintiffs asserted ten counts against Clarke and Leisner. The plaintiffs alleged various breaches of fiduciary (or aiding and abetting thereof) against Clarke and/or Leisner relating to the new technology, the unsecured and unpaid loans from UMF to C2C, and the debt/equity swap between UMF and Sweports. Among other things, the plaintiffs asserted that Clarke engaged in self-dealing, stole corporate opportunities, and schemed to (a) conserve UMF's cash and assets so UMF could help C2C make the royalty payments to the university and develop the new technology and (b) prevent Sweports from having cash and assets that Sweports might have to pay to the O'Rourke investors if they obtained a judgment. The complaint also included fraud and civil conspiracy counts.

¶ 14 The Circuit Court Proceedings

¶ 15 In June 2016, Leisner filed a motion to dismiss pursuant to section 2-619.1 of the Code. He argued, in part, that the counts against him were barred by the statute of limitations and should be dismissed with prejudice under section 2-619(a)(5). Leisner observed that Abrams filed an appearance in August 2008 in the O'Rourke litigation. In a July 2010 filing relating to a motion to compel filed against Leisner in the O'Rourke cases, the plaintiffs therein argued that certain documents allegedly held by Leisner were relevant to the valuation of Sweports since they would illustrate that C2C was conducting business that "rightfully belongs to Sweports" and/or that assets properly belonging to Sweports were diverted to C2C, which was owned by Clarke and Leisner. Leisner further contended that an affidavit he filed in the O'Rourke cases in July 2010 disclosed UMF's financial support of C2C. During a hearing in October 2010,

attorney Michael O'Rourke argued that C2C was established to develop and capitalize upon technology which was "an outgrowth" of the technology owned by Sweports. Clarke, Sweports, and UMF (the Sweports defendants) also filed a motion to dismiss.

¶ 16 In response to the motions to dismiss, the plaintiffs asserted that knowledge of the O'Rourke litigation could not be imputed to White because she was not involved therein. Since Abrams had obtained a judgment in the O'Rourke litigation in early 2010, the plaintiffs claimed that his involvement in the litigation had effectively ended before the motion to compel was litigated and, in any event, Leisner's affidavit contained misrepresentations. The plaintiffs noted that they had expressly alleged that they did not learn about the defendants' misconduct, and could not have learned about the misconduct, until 2012. The plaintiffs further contended that the question of whether a party possessed enough information to trigger a duty to inquire is a question for the trier of fact.

¶ 17 The Sweports defendants noted in their reply that on April 15, 2010, without notice to Sweports, attorneys O'Rourke and Abrams had taken a court-reported statement of Robert Block (Block), who was previously a consultant to Sweports and UMF on insurance issues. During that questioning, Block confirmed that the idea was to "set up this new company" (*i.e.*, C2C), place the new patents in the new company "which were essentially opportunities of the existing company" (*i.e.*, Sweports) and then use their insurance policy to fund a defense which would "wear out" the shareholders and compel them to "back off or to settle."

¶ 18 In an order entered on February 3, 2017, by the circuit court,[3] the motions to dismiss were denied. The circuit court noted that Leisner did not claim that White was part of the O'Rourke litigation. The court further found that nothing in Leisner's motion and related

[3] Although Judge Kathleen Pantle issued this ruling, the final order which is the subject of the instant appeal was issued by Judge Anna Loftus.

materials affirmatively established that Abrams knew or should have known about Leisner's affidavit or the discovery dispute in the O'Rourke litigation. The defendants subsequently filed answers and affirmative defenses, including a statute of limitations defense. They argued that Abrams knew or reasonably should have known of the creation and operation of C2C – and that the resulting injuries were wrongfully caused – no later than April 15, 2010, when Abrams questioned Block.

¶ 19 In a renewed motion to dismiss the complaint filed on June 1, 2018, the Sweports defendants asserted that newly-discovered evidence produced in discovery demonstrated that from at least April 2010 to July 2010, Abrams and White "actively sought to prosecute a shareholders' complaint" against Clarke and Leisner which was a "virtual mirror" of the verified complaint filed in the instant action.

¶ 20 The Amended Renewed Motion to Dismiss

¶ 21 After the plaintiffs unsuccessfully attempted to bar the use of the unfiled complaint and other documents under attorney-client privilege, the defendants filed an amended renewed motion to dismiss the complaint based on the statute of limitations. In a supporting memorandum, the defendants argued that the original motions to dismiss were denied based, in part, on the plaintiffs' 2016 affidavits, wherein they denied any knowledge or ability to discover their claims prior to 2012. Claiming that such representations were inaccurate, the defendants asserted that attorney O'Rourke's firm circulated a copy of a draft complaint to Abrams and others on May 2, 2010.[4] The draft complaint named Clarke and Leisner (among others) as defendants and alleged misappropriation of a corporate opportunity. According to the defendants, the drafting and circulation of the proposed complaint demonstrated that the

[4] The defendants suggested that the complaint was not filed at that time due to conflicts of interest involving the various constituencies' respective attorneys and/or some other "tactical decision."

plaintiffs "knew and appreciated their late 2015 claims in early-mid 2010." The defendants further argued that plaintiffs' claim that Clarke fraudulently concealed their potential cause of action lacked merit because (a) the plaintiffs did not plead any facts attributing their failure to discover their causes of action to any "trust and confidence" they had placed in Clarke, and (b) even assuming the claims could not have been uncovered until 2012, "[t]hat left three years from the alleged wrongful acts, which took place in 2007 and 2008, for Plaintiffs to have initiated a lawsuit."

¶ 22 In their response, the plaintiffs acknowledged that Abrams and O'Rourke took Block's statement in April 2010. The plaintiffs, however, characterized Block as a deceptive "con man" and asserted that "[n]o one would base a lawsuit on the words of such a witness." According to the plaintiffs, Clarke and Leisner waged "a campaign of lies" which effectively shut down O'Rourke's attempts to learn more information. The plaintiffs argued that it was not until discovery was received in the 2012 bankruptcy that they could understand the defendants' wrongful conduct and the injury to Sweports and its shareholders.

¶ 23 In their reply, the defendants argued, in part, that based on a February 2010 deposition of Clarke, as well as the Leisner affidavit, the plaintiffs were required to inquire further into their potential claims. The defendants further contended that even if their alleged fraudulent concealment was considered, because the plaintiffs uncovered that concealment by the end of the Sweports' bankruptcy on April 30, 2014, the fraudulent concealment did not extend the time for filing beyond May 2, 2015, *i.e.*, five years after the circulation of the draft complaint. In a sur-reply, the plaintiffs asserted that Clarke's untruthful deposition answers concerning C2C's dealings with Sweports and UMF demonstrated his fraudulent concealment of his misconduct.

¶ 24 Following oral argument, the circuit court entered an order on September 5, 2019,

dismissing all counts of the complaint as to all defendants with prejudice as barred by the statute of limitations. The plaintiffs timely filed this instant appeal.

¶ 25 ANALYSIS

¶ 26 The plaintiffs contend on appeal that the circuit court erred in dismissing the complaint because the discovery rule postponed the commencement of the statute of limitations until after 2012. The plaintiffs further assert that the circuit court erred in rejecting their claim that the defendants fraudulently concealed their causes of action. According to the plaintiffs, factual questions exist regarding the defendants' statute of limitations defense which preclude the dismissal of the claims.

¶ 27 The amended renewed motion to dismiss the plaintiffs' complaint as time-barred was based on section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2016)). Section 2-619(a)(5) allows dismissal when "the action was not commenced within the time limited by law." *Id.* As noted above, the applicable statute of limitations for each of the claims was five years. See, *e.g.*, 735 ILCS 5/13-205 (West 2014) (providing that a default five-year statute of limitations applies to "all civil actions not otherwise provided for").

¶ 28 A motion to dismiss under section 2-619 admits as true all well-pleaded facts, along with all reasonable inferences which can be gleaned from those facts. *Wackrow v. Niemi*, 231 Ill. 2d 418, 422 (2008). When ruling on a section 2-619 motion to dismiss, the court must interpret all pleadings and supporting documents in the light most favorable to the nonmovant. *Id.*; *DeSmet ex rel. Estate of Hays v. County of Rock Island*, 219 Ill. 2d 497, 504 (2006). "Conclusions of law or conclusions of fact unsupported by allegations of specific facts upon which such conclusions rest may not be admitted." *Kirby v. Jarrett*, 190 Ill. App. 3d 8, 13 (1989). We review a section 2-619 dismissal *de novo*. *Wackrow*, 231 Ill. 2d at 422; *Carlton v. Fish*, 2015 IL App (1st)

140526, ¶ 22. Under the *de novo* standard, we perform the same analysis that a circuit court judge would perform. *PSI Resources, LLC v. MB Financial Bank, National Ass'n*, 2016 IL App (1st) 152204, ¶ 29.

¶ 29 A defendant has the initial burden of proving the affirmative defense relied upon in their motion to dismiss. *Id*; *Kirby*, 190 Ill. App. 3d at 12. A statute of limitations is an affirmative defense. *In re Marriage of Ostrander*, 2015 IL App (3d) 130755, ¶ 17. Once the defendant, however, has met this burden, the plaintiff must set forth facts sufficient to avoid the statutory limitation. *PSI Resources, LLC*, 2016 IL App (1st) 152204, ¶ 29; *Kirby*, 190 Ill. App. 3d at 12.

¶ 30 The complaint in the instant case – which was filed on November 4, 2015 – is based on alleged acts which occurred between 2007 and 2009. Given the applicable five-year statute of limitations, the complaint appears to be untimely. Our supreme court, however, has adopted the discovery rule to "ameliorate the potentially harsh effect of a mechanical application of the statute of limitations that would result in it expiring before a plaintiff even knows of his cause of action." *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 52. Accord *Mitsias v. I-Flow Corp.*, 2011 IL App (1st) 101126, ¶ 21 (noting "[o]ur supreme court has explained that this rule is intended to encourage diligent investigation on the part of potential plaintiffs without foreclosing claims of which plaintiffs could not have been aware").

¶ 31 Under the discovery rule, the "statutory limitations period starts to run when a person knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused." *Nakamura v. BRG Sports, LLC*, 2019 IL App (1st) 180397, ¶ 17. At the point when the party knows or reasonably should know that the injury was wrongfully caused, the party is obligated to inquire further to determine whether an actionable wrong has been committed. *Henderson Square Condominium Ass'n*, 2015 IL 118139, ¶ 52. Accord *Knox*

College v. Celotex Corp., 88 Ill. 2d 407, 416 (1981); *Costello v. Kalis*, 352 Ill. App. 3d 736, 745 (2004); *Young v. McKiegue*, 303 Ill. App. 3d 380, 390 (1999). In other words, "[a]t this point, the burden is on the injured plaintiff to investigate whether she has a viable cause of action." *Mitsias*, 2011 IL App (1st) 101126, ¶ 23. Where "the plaintiff is seeking to come within the 'discovery' exception to the statute of limitations, plaintiff has the burden of proving the date of discovery." *Kirby*, 190 Ill. App. 3d at 12. See also *Cundiff v. Unsicker*, 118 Ill. App. 3d 268, 272 (1983) (noting that "[w]hen a defendant raises the statute of limitation in a motion to dismiss it becomes incumbent upon a plaintiff to set forth facts sufficient to avoid the statutory limitation"). "In reaching its decision on a motion to dismiss for untimely filing, the trial court looks to pleadings, affidavits, and other proofs presented by the parties." *Id.*

¶ 32 The question of when a party knew or reasonably should have known of an injury and its wrongful cause is one of fact unless the facts are undisputed and only one conclusion may be drawn from them. *Henderson Square Condominium Ass'n*, 2015 IL 118139, ¶ 52. When it is apparent from the undisputed facts that only one conclusion can be drawn, the question becomes one for the court. *Pruitt v. Schultz*, 235 Ill. App. 3d 934, 943 (1992).

¶ 33 As noted above, the alleged acts occurred between 2007 and 2009, and the complaint was filed on November 4, 2015. Therefore, if it can be said that before November 4, 2010, the plaintiffs did not know nor should have reasonably known that their injury was wrongfully caused, then the lawsuit would be considered timely. *Henderson Square Condominium Ass'n*, 2015 IL 118139, ¶ 52. See also *Dancor International Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 673 (1997).

¶ 34 The plaintiffs have challenged the accuracy, truthfulness, and/or availability of various events and documents which preceded November 4, 2010, *e.g.*, the court-reported questioning of

Block in which Abrams participated. The standard in applying the discovery rule, however, is not "absolute clarity." *PSI Resources, LLC*, 2016 IL App (1st) 152204, ¶ 47. By the time the draft complaint circulated in May 2010, we find that a reasonable person should have known of their injury and its wrongful causation. See *id.* ¶ 47 (noting that unexplained differences in the balances on a bank account "should have raised a red flag for the plaintiff to inquire further"). At that point, the burden was on the plaintiffs to inquire further as to the existence of a cause of action.

¶ 35 We further note that the draft complaint circulated on May 2, 2010, was emailed to Abrams but not to White. The record is clear, however, that White had agreed to the preparation and/or filing of the complaint. Not only is White listed as a named plaintiff, but also correspondence from O'Rourke's firm to Abrams and others regarding the potential litigation in June 2010 provided in part: "It appears we have 5 individual parties willing to file suit[:] Lee, Tina White, and 3 in the Murray Group. Attached I have tried to meld *everyone's* input on the fee arrangement to achieve a workable document." (Emphasis added.). The proposed fee arrangement – which apparently included White's input – provided that she would pay a specified percentage of the fees. The record indicates that both Abrams and White were well aware of the existence of a cause of action in the summer of 2010.

¶ 36 The plaintiffs assert that they did not learn of the wrongdoing until the Sweports bankruptcy in 2012. Under the discovery rule, however, a statute of limitations may run despite the lack of actual knowledge of wrongful conduct. *Chadha v. North Park Elementary School Ass'n*, 2018 IL App (1st) 171958, ¶ 47; *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989, ¶ 13. Even if certain documents provided during the Sweports bankruptcy solidified their determination that they had claims against the defendants, the plaintiffs knew of

the injuries and their wrongful causation well before then, as evidenced by the May 2010 draft complaint. See *id.* ¶ 28. "Once a plaintiff is aware of his or her wrongful injury, diligent inquiry will not provide a basis for tolling the statute of limitations." *Id.* ¶ 24. For the foregoing reasons, we conclude that, even with application of the discovery rule, the complaint filed herein on November 4, 2015 was untimely.

¶ 37 The plaintiffs also invoke the fraudulent concealment doctrine, whereby the statute of limitations will be tolled if the plaintiff pleads and proves that fraud prevented discovery of the cause of action. *Henderson Square Condominium Ass'n*, 2015 IL 118139, ¶ 36. If the defendant has fraudulently concealed the cause of action from the plaintiff, the action may be brought within five years from the date the plaintiff discovers that he has a cause of action. 735 ILCS 5/13-215 (West 2016).

¶ 38 In general, the concealment necessary to toll the statute of limitations "must consist of affirmative acts or representations calculated to lull or induce a plaintiff into delaying the filing of his claim or preventing him from discovering his claim." *Henderson Square Condominium Ass'n*, 2015 IL 118139, ¶ 38. Accord *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 18 (2007). The fraudulent concealment statute does not apply to a party who by ordinary care would have discovered the concealed information. *Dancor International Ltd.*, 288 Ill. App. 3d at 676. As noted by the defendants in their memorandum in support of their amended renewed motion to dismiss, the plaintiffs have not alleged any affirmative acts of concealment by Clarke.

¶ 39 Although it has been held that mere silence on the part of the defendant is insufficient to constitute fraudulent concealment, a different rule applies when a fiduciary duty is involved. *Henderson Square Condominium Ass'n*, 2015 IL 118139, ¶ 40. The prevailing rule is that, when a fiduciary relationship exists between the parties, the fiduciary is under a duty to reveal the facts

to the other party, and his silence or failure to disclose is as fraudulent as an actual affirmative misrepresentation or act. *Id.* Accord *Carlton*, 2015 IL App (1st) 140256, ¶ 44 (discussing the "widely recognized exception" to the rule that affirmative acts are required "in cases where the existence of a fiduciary relationship is plainly established").

¶ 40 In the instant case, even if we assume that Clarke and Leisner owed fiduciary duties and that their silence or affirmative acts constituted fraudulent concealment, the plaintiffs' claims are nevertheless time-barred. The plaintiffs apparently discovered the alleged concealment by 2012 – and certainly no later than the conclusion of the Sweports' bankruptcy on April 30, 2014. "[I]f the plaintiff discovers the fraudulent concealment, or should have discovered it through ordinary diligence, and reasonable time remains within which the plaintiff could file suit, section 13-215 will not be applied to toll the running of the limitations period." *Foster v. Plaut*, 252 Ill. App. 3d 692, 700 (1993). Accord *J.S. Reimer v. Village of Orland Hills*, 2013 IL App (1st) 120106, ¶ 51. As the plaintiffs still had at least a year to file their action, their claims remain time barred. *See e.g.*, *Anderson v. Wagner*, 79 Ill. 2d 295, 322 (1979) (noting that seven months remaining in the underlying limitations period was a reasonable length of time); *Sabath v. Mansfield*, 60 Ill App. 3d 1008, 1015 (1978) (concluding that "eight months in which to file suit after any inducement for delay had passed *** as a matter of law, was ample time").

¶ 41 In sum, even assuming *arguendo* that the defendants engaged in fraudulent concealment, the plaintiffs would still not be able to avail themselves of the tolling provision in section 13-215 under the circumstances herein. *E.g.*, *J.S. Reimer*, 2013 IL App (1st) 120106, ¶ 51.

¶ 42 CONCLUSION

¶ 43 For the reasons discussed above, we affirm the judgment of the circuit court of Cook County dismissing all of the claims against the defendants with prejudice as time-barred pursuant

to section 2-619(a)(5) of the Code.

¶ 44 Affirmed.