2024 IL App (1st) 231289-U

No. 1-23-1289

Order filed March 29, 2024

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

GENTILE FAMILY, LLC; FRANK J. GENTILE, as co-trustee of the JUDY GENTILE FAMILY TRUST II, and as beneficiary of the CHARLES P. GENTILE LIVING TRUST, Plaintiffs-Appellants, v. JOAN COLLETTE, individually and as co-trustee of the JUDY GENTILE FAMILY TRUST II, and as trustee of the CHARLES P. GENTILE LIVING TRUST, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 2021 L 002744 Honorable Daniel J. Kubasiak, Judge, presiding.

JUSTICE R. VAN TINE delivered the judgment of the court.
Presiding Justice Reyes and Justice D.B. Walker concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's grant of summary judgment in favor of defendant because the applicable statute of limitations bars plaintiffs' claims.

¶ 2 Plaintiff Frank J. Gentile appeals the circuit court's grant of summary judgment in favor of defendant Joan Gentile-Dyer (formerly known as Joan Collette) and the denial of his cross-motion for summary judgment.[1] The court dismissed Frank's breach of contract claim as barred by the 10-year statute of limitations for actions on a promissory note, pursuant to section 13-206 of the Code of Civil Procedure (735 ILCS 5/13-206 (West 2022)), and dismissed his breach of fiduciary duty claims as barred by the general civil five-year statute of limitations, pursuant to section 13-205 of the Code (*id.* § 13-205).[2] On appeal, Frank essentially argues that the circuit court misapplied both the statute of limitations and the discovery rule. He further argues that the circuit court should have granted (1) his cross-motion for summary judgment and (2) the equitable relief he requested in his breach of fiduciary duty claims. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The pleadings, affidavits, depositions, and other evidence in the record establish the following undisputed facts that are relevant to this appeal.

¶ 5 On December 1, 2000, Frank and Joan's mother created four trusts, one for each of her children: (1) the Joan Collette Irrevocable Trust 2000, with Joan as the trustee, (2) the Frank J. Gentile Irrevocable Trust 2000, with Frank as the trustee, (3) the Judy Gentile Family Trust II (Judy Trust), with Frank and Joan as co-trustees, and (4) the Charles Gentile Irrevocable Trust 2000 (Charles 2000 Trust), with Charles as the trustee.

[1]As the parties involved are all members of the Gentile family, we refer to them by their first names herein to avoid confusion.

[2]Although the claim is titled "Breach of Contract," the relief requested is repayment of a promissory note. However, this distinction makes no difference because the ten-year limitations period applies to both promissory notes and written contracts. See 735 ILCS 5/13-206 (West 2022).

¶ 6 On the same day, the four trusts formed the Gentile Family LLC (LLC), with each trust holding an equal 25% membership interest. The LLC's Operating Agreement designated Frank and Joan as co-managers. The Operating Agreement specified that managers "shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the [LLC]." Managers are authorized to lend money on behalf of the LLC. Further, members do not "have any power or authority to bind the [LLC]." On April 26, 2006, Charles Gentile created a separate trust, the Charles P. Gentile Living Trust (Charles Living Trust), which was amended on November 21, 2011. Charles died in May 2017, and the assets of the Charles 2000 Trust merged into the Charles Living Trust.

¶ 7 Joan resigned as manager on January 15, 2004. On the same day, Frank issued a memorandum to the members of the LLC, in which he stated that, as a manager of the LLC, he would be "executing a loan agreement between the Company and Joan Collette." On January 28, 2004, Joan executed a $175,000 Promissory Note (Note) with the LLC. The Note required Joan to make annual interest payments and fully repay the loan by January 28, 2007. If Joan failed to make timely payments, interest would continue to accrue annually until full repayment. The Note allowed the LLC to "exercise any and all rights and remedies available at law or in equity to enforce the terms of this Note." Additionally, Joan agreed to waive "demand for payment, notice of nonpayment, presentment, notice of dishonor, protest, notice of protest, or any other notice or demand in connection with this Promissory Note." The only parties to the Note were Joan and the LLC.

¶ 8 Joan failed to repay the loan.[3] In early 2020, Joan and Frank started discussing Joan's outstanding loan. Frank told Joan that "the money is still owed." They continued to discuss the matter throughout the rest of the year. On January 13, 2021, Frank, on behalf of the LLC, formally demanded Joan repay the loan, plus interest, and she refused. Frank then filed suit on March 8, 2021.

¶ 9 Frank raised one claim for breach of contract, alleging that Joan failed to repay the Note executed with the LLC, and two claims for breach of fiduciary duty, alleging that Joan breached her fiduciary duties to the Judy Trust and the Charles Living Trust (collectively, "the Trusts"). Frank raised the breach of contract claim as sole manager of the LLC, the first breach of fiduciary duty claim as co-trustee of the Judy Trust, and the second breach of fiduciary duty claim as a contingent remainder beneficiary of the Charles Living Trust. Specifically, Frank alleged that Joan breached her fiduciary duties to the Trusts by refusing to repay the Note, with interest, and refusing to bring suit against herself to recover the money owed. Under the breach of contract claim, Frank requested monetary damages in the amount of $175,000. For the breach of fiduciary duty claims, Frank requested the same relief:

> "the amount of $43,750, plus equitable pre-judgment interest, or alternatively directing Joan to pay $175,000 plus equitable prejudgment interest to the Gentile LLC, to impose a constructive trust on the $175,000 had and received by Joan, to award the Trust forfeiture, disgorgement, and punitive damages, to award costs and attorneys' fees in favor of the Trust, to order that Joan be removed as trustee and to

[3]Although Joan claims she fully repaid the loan, she also asserts that the passage of time destroyed any evidence of her repayment. As such, we consider her failure to repay the Note as undisputed.

fully account for the assets, liabilities, income and expenses of the Trust, and to grant any other relief the Court deems just."

¶ 10 After the close of discovery, the parties filed cross motions for summary judgment. Frank argued that (1) the undisputed facts established that Joan breached the terms of the Note, (2) Joan breached her fiduciary duties to the Trusts, (3) Joan's statute of limitations defense fails, and (4) Joan failed to provide, and could not provide, any evidence to support her other affirmative defenses. Frank requested the court find in his favor on all counts, award him the monetary relief requested in his complaint, and bar Joan "from personally receiving any of the benefits" from the ruling, either "individually or through any of the trusts involved."

¶ 11 The circuit court granted summary judgment in Joan's favor on all claims. The court dismissed Frank's breach of contract claim as barred by the 10-year statute of limitations for actions on a promissory note, pursuant to section 13-206 of the Code of Civil Procedure (735 ILCS 5/13-206 (West 2022)), and dismissed his breach of fiduciary duty claims as barred by the general civil five-year statute of limitations, pursuant to section 13-205 of the Code (*id.* § 13-205). The court also held that the order is a final and appealable order under Illinois Supreme Court Rule 304(a) (eff. March 6, 2016).

¶ 12 Subsequently, Frank filed a motion to clarify. Frank claimed that although the order contained Rule 304(a) language, it was unclear whether the court entered judgment on all of Frank's claims or if there were any claims still pending. Specifically, Frank contended that the court failed to address his request for an accounting of the Charles 2000 Trust, which he asserted

in the complaint.[4] The circuit court reaffirmed its prior order granting summary judgment in Joan's favor and confirmed that the order disposed of all issues before the court. It also clarified that it found that Frank did not bring a claim for accounting in his complaint. Further, Frank failed to satisfy the requirements to bring such an equitable accounting claim: (1) allegations that make an accounting necessary, (2) that he asked for and was denied access to the trust records or the records were inadequate, (3) that he made a demand for accounting and was refused, and (4) allegations of wrongdoing or impropriety other than the trustee's failure to voluntarily provide an accounting. The circuit court found that Frank had a fiduciary duty to the LLC and the Trusts. Further, Frank had access to all the documents that would have been provided in an accounting and failed to allege he was kept from accessing those documents. Finally, the court reminded Frank that it previously found Frank had sufficient knowledge as to his current claims and failed to timely pursue them.

¶ 13 Frank timely appealed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, Frank argues that the circuit court erred in granting Joan's motion for summary judgment because (1) the circuit court erred in finding that the statute of limitations began to run on the breach of contract claim before Joan announced her refusal to repay the loan, (2) the circuit court misapplied the discovery rule as to the breach of contract claim, (3) rules of equity bar Joan

[4]Neither Frank's complaint nor his summary judgment motion requested an accounting of the Charles 2000 Trust. The complaint alleged a breach of fiduciary duty to the Charles Living Trust. His summary judgment motion states only that Joan failed to provide a required "accounting that included as part of its inventory an explanation of the Charles Trust's ownership interest in Gentile LLC, as acquired through the Charles Gentile Irrevocable Trust 2000."

from asserting a statute of limitations defense, and (4) the circuit court erred in denying Frank's claims for equitable relief in his breach of fiduciary duty claims.

¶ 16 Summary judgment is appropriate only when the pleadings, depositions, and affidavits, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022); *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 17. The movant has the burdens of initial production and ultimate proof. *800 S. Wells Commercial LLC v. Cadden*, 2018 IL App (1st) 162882, ¶ 26. When parties file cross-motions for summary judgment, they agree that there are only questions of law to decide, and they invite the court to decide the issues based upon the record. *Id.* ¶ 25.

¶ 17 We review the grant of summary judgment *de novo* (*Cohen*, 2017 IL 121800, ¶ 17), meaning that we perform the same analysis as the trial court (*Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011)); see also *Fifth Third Bank v. Brazier*, 2019 IL App (1st) 190078, ¶ 14 (applicability of statute of limitations and questions of statutory interpretation reviewed *de novo*); *Salce v. Saracco*, 409 Ill. App. 3d 977, 981 (2011) (contract interpretation reviewed *de novo*).

¶ 18 A. Breach of Contract Claim

¶ 19 In support of his breach of contract claim, Frank argues that, when a fiduciary relationship exists, the statute of limitations begins to run when the fiduciary repudiates her fiduciary obligations.[5] Further, he claims that, as a fiduciary, Joan is barred by the rules of equity from raising a statute of limitations defense. Frank then argues that both Joan and the LLC intended for

[5]In our review of Frank's arguments regarding the breach of contract claim, we use "Frank" and "LLC" interchangeably, as Frank is the sole manager of the LLC.

equitable principles to govern the Note because it allows the LLC to "exercise any and all rights and remedies available at law or in equity to enforce the terms of this Note." Frank also contends that the discovery rule tolled the statute of limitations on his claims. Because Frank's arguments are based on the premise that a fiduciary relationship exists between Joan and the LLC, we must first determine whether this is accurate.

¶ 20 1. Fiduciary Relationship with the LLC

¶ 21 Frank claims Joan is a fiduciary to the LLC based on "the totality of the circumstances that existed between siblings, who also were joint owners of a family LLC." Specifically, Frank claims Joan has a fiduciary relationship with the LLC because (1) she was formerly a manager of the LLC, (2) she held "significant amounts of trust and influence" over her siblings, and (3) she is the trustee of the Judy Trust and the Charles Living Trust. Frank asserts that because Joan is a fiduciary, she must first refuse to pay back the loan before the statute of limitations begins to run. He further contends that equitable principles preclude Joan, as a fiduciary, from asserting the statute of limitations as a defense. Frank's arguments are without merit and unsupported by any authority.

¶ 22 Limited liability companies formed after January 1, 2000, are governed by the Limited Liability Company Act (the Act). See 805 ILCS 180/55-15(b) (West 2022) ("On and after January 1, 2000, this amendatory Act of 1997 governs all limited liability companies."); see also *800 S. Wells*, 2018 IL App (1st) 162882, ¶ 31 (we look "primarily" to the Act when reviewing "limited liability companies and the fiduciary duties owed to them"). Our duty is to ascertain and give effect to the intent of the legislature via statutory language. *Katris v. Carroll*, 362 Ill. App. 3d 1140, 1145 (2005). When the plain meaning of the statutory language is clear, we may "not look to extrinsic

aids for construction." *Id.* Under the Act, a member who is not a manager in a manager-managed limited liability corporation "owes no duties to the company or to the other members solely by reason of being a member" (805 ILCS 180/15–3(g)(1) (West 2022)) unless that member also "exercises some or all of the authority of a manager" (*id.* § 15-3(g)(3)). The LLC was formed on December 1, 2000. We start our analysis by looking at the Act.

¶ 23 Frank's claim that Joan owed the LLC and its members a fiduciary duty is unsupported by law. We find, pursuant to the Act, that a fiduciary relationship does not exist between Joan and the LLC.[6] See *id.* § 15-3(g). Joan resigned from her role as co-manager before she executed the Note, leaving Frank as the sole manager of the LLC. It is undisputed that the LLC is a manager-managed limited liability corporation, with Frank as its sole manager. There are no allegations that Joan had any further interactions with the LLC, until Frank demanded Joan repay the loan. Because Joan was no longer a manager of the LLC nor did she exert any authority over the LLC after her resignation, she did not owe any duties to the LLC or its members. See *id.* § 15-3(g). To find otherwise would "depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent" where the statute's language is clear and unambiguous. *Accettura v. Vacationland, Inc.*, 2019 IL 124285, ¶ 11.

¶ 24 Frank argues there are two independent bases to establish Joan had a fiduciary relationship to the LLC. First, Joan's elevated position of trust and influence over her siblings establishes that she owed a fiduciary duty to the company. Second, Joan, as a member of the LLC, owed a duty to the corporation and to other shareholders. As explained above, these arguments are unsupported

[6]Although the circuit court did not determine whether Joan was a fiduciary of the LLC, we may affirm the circuit court's ruling on any basis in the record. See *Father & Sons Home Improvement II, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 27.

by the Act, which makes clear that the manager of a manager-managed limited liability company, not its members, are responsible for any fiduciary duties. See 805 ILCS 180/15–3(g) (West 2022). Moreover, Frank conflates the legal status of the LLC with that of its members. It is well-settled that a corporation, along with its debts and obligations, is a legal entity separate and distinct from its shareholders, directors, and officers. See, *e.g.*, *Dregne v. Five Cent Cab Co.*, 381 Ill. 594, 602-03 (1943); *Steiner Electric Co. v. Maniscalco*, 2016 IL App (1st) 132023, ¶ 44; *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 99. Contrary to Frank's insistence that Joan's fiduciary status with the LLC must be determined by the "totality of the circumstances," third parties are irrelevant to our consideration. "This is especially true where, as here, the Act speaks precisely to the instant issue—duties owed to the company." *800 S. Wells*, 2018 IL App (1st) 162882, ¶ 31.

¶ 25 In support, Frank relies on *Anest v. Audino*, 332 Ill. App. 3d 468, 476 (2002), and *Hagshenas v. Gaylord*, 199 Ill. App. 3d 60 (1990). However, his reliance is misplaced. *Anest* is inapplicable because it "address[ed] the fiduciary duty issue by reference to the Act as it existed prior to amendment." *Anest*, 332 Ill. App. 3d at 476. *Hagshenas* was decided before the Act was amended, so it is also inapplicable here. See 805 ILCS 180/55-15(b) (West 2022) ("On and after January 1, 2000, this amendatory Act of 1997 governs all limited liability companies."). As such, neither case offers Frank any support.

¶ 26 Further, we note that Frank does not reference the Act in his brief, much less make any attempt to argue why or how it does not apply. The LLC's Operating Agreement, dated December 1, 2000, provides that it is governed by the Act. Joan argues the Act controls and Frank repeatedly cites *Anest*, 332 Ill. App. 3d at 476, which clarified that the Act "applies to all limited liability

companies as of January 1, 2000." Indeed, Frank does not cite any relevant authority involving courts disregarding the Act to find that a non-managing member of a manager-managed LLC owed fiduciary duties to the company. See *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 54 ("Citations to authority that set forth only general propositions of law and do not address the issues presented do not constitute relevant authority").

¶ 27 Most of the cases Frank cites involve equitable actions where the statute of limitations did not strictly apply to suits seeking equitable relief when fraud was alleged. See *e.g.*, *Meyers v. Kissner*, 149 Ill. 2d 1, 12 (1992) (claim for injunctive relief from flooding of one's property is not barred by *laches* before expiration of twenty year requirement to create a prescriptive easement); *Bremer v. Bremer*, 411 Ill. 454, 468 (1952) (equitable claim to determine existence of constructive trust and for the recovery of real property); *Stenwall v. Bergstrom*, 398 Ill. 377, 378 (1947) (equitable claim between heirs seeking partition and an accounting of inherited land); *Duncan v. Dazey*, 318 Ill. 500, 525 (1925) (equitable claim for accounting and recovery of fraudulently conveyed real property); *Evans v. Moore*, 247 Ill. 60, 71-75 (1910) (equitable claim concerning will dispute and the conveyance of real property); *Backs v. Nelson Const. Co.*, 271 Ill. App. 137, 153 (1933) (equitable claim seeking enforcement of mechanic's liens).

¶ 28 In the case at bar, Frank does not seek equitable relief for the breach of contract claim. He seeks only monetary damages. Further, the only fraud Frank alleges is that Joan's fiduciary relationship put her in a place of trust, so her silence concealed her true intentions, preventing Frank from inquiring further. In the absence of a fiduciary relationship, a claim of fraudulent concealment requires affirmative acts or representations and silence alone is insufficient. See *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 38. The other

cases Frank cites are procedurally inapposite and factually dissimilar. See, *e.g.*, *Anest*, 332 Ill. App. 3d at 476 (appeal of trial court's directed findings on claims for breach of fiduciary duty and tortious interference with business expectancy); *Ransom v. A.B. Dick Co.*, 289 Ill. App. 3d 663, 673 (1997) (appeal of jury verdict and denial of post-trial motions); *Hagshenas*, 199 Ill. App. 3d 60, 71 (1990) (post-trial appeal concerning the breach of fiduciary duty by ex-corporate officers in a closely held corporation). None of these cases support Frank's contention that there is a fiduciary relationship between Joan and the LLC.

¶ 29 Accordingly, all of Frank's arguments based upon that contention fail.

¶ 30 2. Discovery Rule

¶ 31 We must next decide if the 10-year limitations period had expired when Frank filed suit. A plaintiff must file a civil claim for breach of promissory note within 10 years from the repayment due date. 735 ILCS 5/13–206 (West 2022); see also *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77 (1995) (contract actions "accrue[] at the time of the breach of contract"). The Note required Joan to repay the loan in full by January 28, 2007, and she did not. Frank filed suit for breach of contract and repayment of the loan on March 8, 2021, over four years after the limitations period expired. Therefore, Frank's breach of contract claim was untimely.

¶ 32 However, Frank contends that the discovery rule tolls the start of the limitations period because he did not know Joan wrongfully caused his injury until she refused his payment demand in February 2020.

¶ 33 The discovery rule provides that the statute of limitations does not begin running until a plaintiff knows or reasonably should know that she has suffered a loss and that her loss was wrongfully caused. *Hermitage Corp.*, 166 Ill. 2d at 77. A plaintiff asserting the discovery rule has

the burden of proving the date of discovery and "must provide enough facts to avoid application of the statute of limitations." *Id.* at 84-85. Although the determination of when the statute of limitations begins to run is usually a question of fact, the court may rule on it as a question of law if the facts are undisputed. *Id.* at 85. The dates listed above are undisputed. In the context of the discovery rule, "wrongfully caused" is not a term of art. *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 416 (1981). Rather, it denotes the point in time that the injured party has "sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved." *Id.*

¶ 34 The discovery rule does not toll the 10-year limitations period on Frank's breach of contract claim. There is a clear difference between the inability to discover facts through diligent inquiry and the failure to act upon facts the plaintiff already possesses. The purpose of the discovery rule is to ensure the statute of limitations does not unjustly bar a claim before a plaintiff even knows he has a claim. See, *e.g.*, *Moon v. Rhode*, 2016 IL 119572, ¶ 20; *Henderson Square*, 2015 IL 118139, ¶ 52; *Hermitage Corp.*, 166 Ill. 2d at 77; *Knox*, 88 Ill. 2d at 414. The discovery rule is not implicated here. Frank did not suffer injury, nor did Joan cause injury when she refused to repay the loan. He was injured when Joan defaulted on the loan, which is when he should have inquired further to determine whether actionable conduct was involved. *Knox*, 88 Ill. 2d at 414.

¶ 35 Frank essentially argues that although he knew he suffered an injury and knew it was caused by Joan's breach, he did not know the injury was wrongfully caused. Frank claims that because Joan "had significant amounts of trust and influence" over her siblings, the LLC had no reason to investigate whether Joan's breach of defaulting on the loan was actionable. This argument has no merit. The Note specified a deadline for full repayment. Joan's failure to timely

repay the loan was a wrongful act, and nothing in the plain language of the Note indicates otherwise. See *Thompson v. Gordon*, 241 Ill. 2d 428, 442 (2011) (clear and unambiguous contractual language is "given [its] plain, ordinary and popular meaning"). As such, Frank may not delay the running of the statute of limitations by postponing the time of demanding repayment. See *Indiana Insurance Co. v. Machon & Machon, Inc.*, 324 Ill. App. 3d 300, 303 (2001) (limitations period for breach of contract actions "accrues at the time of the breach of contract"). This conclusion is also consistent with public policy. To accept Frank's position would mean that he could delay filing suit in order to increase damages, as the Note provides that interest will accrue from the due date until the loan is repaid. See *id.* We find that the discovery rule does not extend the limitations period in the instant case. Once the 10-year statute of limitations expired, Frank was barred from seeking repayment.

¶ 36 Frank contends that "the Gentile siblings never intended for the due date contained in the Promissory Note to strictly govern Joan's obligations." Frank then claims that the Note's waiver clause confirms his contention that it does not have a strict deadline. This argument conflates the LLC with its members and goes against the basic rules of contract interpretation. When contractual terms are clear and unambiguous, we determine the intent of the parties solely from that language and enforce the contract as written. See *Associates Asset Management, LLC v. Cruz*, 2019 IL App (1st) 182678, ¶ 20; *cf. Thompson*, 241 Ill. 2d at 442 (extrinsic evidence of intent only considered if contract is ambiguous). The Note unambiguously provides that any outstanding balance on the note "shall" be payable on January 28, 2007, and that the LLC will use "any and all rights and remedies available at law or in equity to enforce the terms of this Note."

¶ 37 Further, the Note reflects that Joan "waives demand for payment, notice of nonpayment, presentment, notice of dishonor, protest, notice of protest, or any other notice or demand in connection with" the Note. While it is true that this means Joan acknowledges the debt would remain outstanding, even if no demand was made, the waiver has no bearing on either the statute of limitations or the discovery rule. The purpose of a statute of limitations "is to discourage the presentation of stale claims and to encourage diligence in the bringing of actions." *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill. 2d 129, 137 (1975). The limitations period is a restriction placed on Frank, regardless of whether Joan is notified of her breach or not. Frank knowingly waited more than 10 years from when the Note came due. He cannot enforce the Note 14 years after the breach. Frank clearly knew or at least should have known enough to be reasonably apprised of the need for further inquiry. He cannot now invoke the discovery rule to justify the fourteen year delay in filing his complaint.

¶ 38 Frank cites several non-applicable cases where the time for filing suits has been extended. In particular, he relies on *Kay v. Village of Mundelein*, 26 Ill. App. 3d 433 (1975), in support of his argument that a fiduciary must first repudiate the contract before the statute of limitation accrues. In *Kay*, the defendant was a municipality that issued local improvement bonds and the plaintiffs were the owners of those bonds. *Id.* at 435. The "municipality is by statute a trustee with respect to the levy, collection and disbursement of special assessment funds." *Id.* at 436. As trustee, "the statute places the duty on the municipality to hold the money for a specified purpose." *Id.* After the municipality twice refused the bondholders' demands for payment of the distributive shares when due, the bondholders filed suit for accounting and damages. *Id.* at 435-36. The *Kay* court explained that, generally, a cause of action for breach of trust does not exist during the

lifetime of an express trust, "so the statute of limitations has no bearing on the rights of the beneficiary." *Id.* at 437-38. However, a cause of action may arise if there is "some act of repudiation of the trust by the trustee" that would "notify the beneficiary of his treachery." *Id.* at 438. It is at that time the statute of limitations begins running on a beneficiary's claim to enforce the trust. *Id.* The *Kay* court then added that "the trustee's continued or subsequent recognition or acknowledgement of the trust is regarded as strongly indicating that he had not repudiated it." *Id.*

¶ 39 We are unpersuaded that *Kay* is applicable here. In this case, the claim is for the breach of a promissory note between two parties who are not in a fiduciary relationship with each other. Joan's failure to repay a loan note is not the same as a trustee repudiating the trust. Moreover, in *Kay*, the trustee refused the beneficiaries' demands during the life of the trust, but acted as if there was no repudiation. *Id.* Whereas here, Joan refused to repay the loan, as shown by her default, and she did not take any action to indicate otherwise. Also, Frank did not seek to enforce the Note at the time Joan defaulted on it and took no action to enforce the Note until 14 years later. As such, *Kay* offers no support for Frank's contention.

¶ 40 Frank offers no applicable authority involving any breach of promissory note claims seeking monetary damages in which the court disregarded the applicable statute of limitations. See *Robinson*, 2012 IL App (1st) 111889, ¶ 54. His cases set forth only general propositions of law, without addressing the issues on appeal. See, *e.g.*, *Hermitage Corp*, 166 Ill. 2d at 77; *Knox Coll.*, 88 Ill. 2d at 416; *Young v. McKiegue*, 303 Ill. App. 3d 380, 388 (1999).[7] These cases offer no support for Frank's contention that, although a lender knows the borrower defaulted on a loan, the

[7]Frank also cites *Segovia v. Spellmire*, 2023 IL App (1st) 211567-U, which is an unpublished order under Illinois Supreme Court Rule 23(e)(1) (eff. Feb. 1, 2023), which is not precedential unless cited to support contentions of double jeopardy, *res judicata*, collateral estoppel, or law of the case or cited as persuasive authority if the order was entered after January 1, 2021.

discovery rule tolls the statute of limitations until the borrower expressly notifies the lender and she refuses to repay the loan.

¶ 41 Frank also relies upon *Crowell v. Bilandic*, 81 Ill. 2d 422, 428 (1980), and *Cook County v. Barrett*, 36 Ill. App. 3d 623, 635 (1975). However, those cases address tolling of the statute of limitation when a fiduciary relationship exists between the parties. As we explained above, a fiduciary relationship does not exist between Joan and LLC, so these cases are also distinguishable and inapplicable.

¶ 42 Accordingly, we find the discovery rule does not toll the statute of limitations on Frank's breach of contract claim.

¶ 43 3. Equitable Rights and Remedies

¶ 44 Frank argues that the rules of equity bar application of the statute of limitations to his breach of contract claim. Specifically, he argues that he has an "equitable right to maintain a claim under the Note even if the limitations period had lapsed" because the Note allows him to seek "all rights and remedies available at law or in equity to enforce the terms of this Note." Further, he contends that this language shows that "the parties intended for equitable principles, as opposed to mechanical legal principles, to govern this loan." We disagree. The right to seek equitable relief does not prevent the application of the statute of limitations in barring stale legal actions seeking monetary damages.

¶ 45 A party may seek equitable relief only when there is "no adequate remedy at law." *City of Rock Falls v. Aims Industrial Services, LLC*, 2024 IL 129164, ¶ 19; see also *Stevens v. Protectoseal Co.*, 27 Ill. App. 3d 724, 729 (1975). The absence of an adequate remedy at law is the condition precedent to seeking relief in equity. *Horwitz v. Sonnenschein Nath & Rosenthal*, 2018 IL App

(1st) 161909, ¶ 31. However, if an injured party can be made whole through money damages, then he has an adequate remedy at law. See, *e.g.*, *City of Rock Falls*, 2024 IL 129164, ¶ 19; *Lumbermen's Mutual Casualty Co. v. Sykes*, 384 Ill. App. 3d 207, 230 (2008); *Kaplan v. Kaplan*, 98 Ill. App. 3d 136, 141-42 (1981); *Stevens*, 27 Ill. App. 3d at 729-30.

¶ 46 Frank had an adequate legal remedy for his breach of contract claim. He could have timely filed an action at law demanding damages for Joan's failure to repay the loan. As we explained above, Frank purposefully elected not to pursue relief within a timely manner despite knowing of Joan's breach of the Note well within the statute of limitations.

¶ 47 Statutes of limitation are statutorily created restrictions which may bar an otherwise meritorious claim, with no bearing on the adequacy of the remedy sought. See, *e.g.*, *La Pine Scientific Co. v. Lenckos*, 95 Ill. App. 3d 955, 958 (1981) (statutes of limitation bar the right "by limiting the period within which legal action may be brought or remedies may be enforced"). Frank's own knowing inaction does not allow him to circumvent well-settled legal principles.

¶ 48 We also reject Frank's contention that "the parties intended for equitable principles, as opposed to mechanical legal principles, to govern" the loan. The language Frank quotes from the Note as a basis for his argument grants LLC "all rights and remedies available at law or in equity" without emphasis, favor, or intention as to either type of claim. When the contractual language is clear and unambiguous, we enforce the contract as written. See *Associates Asset Management*, 2019 IL App (1st) 182678, ¶ 20.

¶ 49 In sum, Frank, as sole manager of the LLC, knew as early as January 28, 2007, that Joan breached the Note, but did not file suit until March 8, 2021, which is more than four years past the 10–year statute of limitations period. 735 ILCS 5/13–206 (West 2022). Accordingly, we find the

trial court correctly granted summary judgment in favor of Joan on Frank's breach of contract claim.

¶ 50 B. Breach of Fiduciary Duty Claims

¶ 51 Frank argues that the circuit court erred in granting summary judgment in Joan's favor and holding that the five-year statute of limitations barred the breach of fiduciary duty claims for the Judy Trust and the Charles Living Trust. Frank argues that Joan has a duty to disclose to the Trusts that she took out a loan with the LLC and defaulted, and that her failure to disclose this information is a continuous breach that tolled the five-year statute of limitations.[8]

¶ 52 The statute of limitations for a breach of fiduciary duty claim is five years. 735 ILCS 5/13-205 (West 2022); see also *Luminall Paints, Inc. v. La Salle National Bank*, 220 Ill. App. 3d 796, 803 (1991) ("the statute of limitations for breach of fiduciary duty is five years"). The limitations period is extended if the defendant "fraudulently conceals the cause of such action from the knowledge of the person entitled to bring an action." 735 ILCS 5/13-215 (West 2022). Even if Joan had fraudulently concealed the existence of a cause of action, Frank, as the sole manager of the LLC, was nonetheless put on notice as to the existence of the action when Joan failed to timely repay the Note. Under the Illinois Trust Code, a person has knowledge of a fact only if they have either (1) actual knowledge of the fact, (2) received notice of the fact, or (3) reason to know of the

[8]In a footnote, Frank also argues that the circuit court erred in granting Joan's motion for protective order. However, substantive arguments may not be made in footnotes. *Illinois School District Agency v. St. Charles Community. Unit School District 303*, 2012 IL App (1st) 100088, ¶ 3. Frank's undeveloped contention consists of one sentence claiming the information sought was relevant to his claims and concludes the court's finding was an abuse of discretion. He presents no relevant authority, other than citing Illinois Supreme Court Rule 201(b)(1) (eff. March 17, 2023). Because of Frank's deficiencies in developing this argument, we disregard it. See *John Crane, Inc. v. Admiral Insurance Co.*, 2013 IL App (1st) 093240-B, ¶ 29 ("we will disregard *** any substantive arguments contained only in the footnotes.").

fact "from all the facts and circumstances known to the person at the time in question." 760 ILCS 3/104(a)(1-3) (West 2022).

¶ 53 In this case, the statutory period to bring a breach of fiduciary duty claim is not tolled. As we explained above, Frank had knowledge sufficient to put him on notice as to the existence of this action more than five years before he filed suit. See *id.* Based on the undisputed facts here, notwithstanding Frank's claim that Joan had a duty to disclose the facts concerning her loan from the LLC, Frank, as sole manager of the LLC, clearly knew about the loan and Joan's subsequent default well within the five year statutory period to bring a breach of fiduciary claim. See *id.* § 104(a)(1). Moreover, Frank, as co-trustee of the Judy Trust and beneficiary of the Charles Living Trust, knew or should have known of Joan's breach on January 28, 2007, when she failed to repay the loan. See *id.* § 104(a)(3). Yet, Frank did not allege or prove that Joan concealed a cause of action for breach of fiduciary duty. Because Frank knew of Joan's breach by 2007 and took no action until February 2020, he cannot now invoke concealment to extend the statute of limitations. See, *e.g.*, *Cahnman v. Timber Court LLC*, 2021 IL App (1st) 200338, ¶ 78 ("the statute of limitations is not tolled *** [where] the plaintiff could have discovered the concealed information through ordinary diligence"). Furthermore, Joan's silence does not amount to concealment and did not toll the five-year limitations period.

¶ 54 Frank further argues Joan's failure to disclose is a continuing violation, to toll the statute of limitations. "[C]ontinuing torts" or a "continuing or repeated injury" tolls the statute of limitations. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003). Under the continuing violation rule, the statute of limitations does not begin to run until the date of the last injury or when the tortious acts cease. *Id.* However, a "single overt act" causing "continual ill effects" is not a

continuing tort. *Id.* Further, the "continuing violation rule" has been applied only to torts. See, *e.g.*, *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 345 (2002). A claim for breach of fiduciary duty is not a tort. See *Kinzer on Behalf of City of Chicago v. City of Chicago*, 128 Ill. 2d 437, 445 (1989) (claim for breach of fiduciary duty is "controlled by the substantive laws of agency, contract"). As such, this rule does not toll the five-year limitations period.

¶ 55 Frank further contends that he does not seek to toll the limitations period via the tort-based continuing violation doctrine. Rather, he claims that Joan's supposed continuous breaches of duty created a new cause of action for each day that passed. We find no authority to suggest that some other non-tort based continuing violations rule tolls the five-year limitations period. Thus, we find this argument meritless.

¶ 56 Moreover, even if the "continuing violation rule" applied here, it would not save Frank's claims. Although Frank claims Joan continuously breached her duties to the Trusts in several different ways, he cites only one duty as defined by statute. He claims that under the Illinois Trust Code, Joan had an "ongoing duty to provide an accounting" to the Trust's beneficiaries. See 760 ILCS 3/813.2 (West 2022). Generally, the terms of the trust govern over the Code. See *id.* § 105(b). Under both the Judy Trust and the Charles Living Trust, the trustee need only provide an accounting "[u]pon written request" by the current income beneficiary. Frank does not claim a written request for accounting was ever made to Joan. Because no one ever made a written request to Joan for an accounting, she did not breach her duty to provide an accounting.

¶ 57 Further, Frank offers no relevant authority to support his contention that any continuing breaches of fiduciary duty toll the five-year statute of limitations. See *Robinson*, 2012 IL App (1st) 111889, ¶ 54. The cases Frank cites contain only general propositions of law. See, *e.g.*, 760 ILCS

3/813.2 (West 2022); *In re Estate of Muppavarapu*, 359 Ill. App. 3d 925, 929 (2005); *Giagnorio v. Emmett C. Torkelson Trust*, 292 Ill. App. 3d 318, 325 (1997); *In re Estate of Hawley*, 183 Ill. App. 3d 107, 110 (1989); *Obermaier v. Obermaier*, 128 Ill. App. 3d 602, 607 (1984); *Bullis v. DuPage Trust Co.*, 72 Ill. App. 3d 927, 932 (1979).

¶ 58 This string cite does not address how Frank believes each cited authority applies to his argument, and we do not see any relevant application. See *Robinson*, 2012 IL App (1st) 111889, ¶ 54. Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) requires the appellant to clearly set out the issues raised and the legal support therefore with relevant authority. Rule 341 governs the form and content of appellate briefs and compliance with the Rule is mandatory.[9] *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. A reviewing court is not "merely a repository into which the appellant may dump the burden of research and argument." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009).

¶ 59 Accordingly, the discovery rule does not toll the five-year statute of limitations, Frank's breach of fiduciary duty claims are untimely, and the circuit court properly granted summary judgment in favor of Joan. As such, we need not address Frank's remaining arguments.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we affirm.

¶ 62 Affirmed.

[9]We note that Frank also violates Rule 341(h)(9) because his opening brief fails to include an "appendix as required by Rule 342." Ill. S. Ct. R. 341(h)(9) (eff. Oct. 1, 2020).