

balance on the note was approximately \$38,818.78, which included accrued interest on the note and which took into consideration a number of \$100 monthly payments that the plaintiff's brother, who was a party to the note, had made on the note. The plaintiff then executed a promissory note with the defendant in the amount of \$34,897.87, and added personal funds in the amount of \$4,000, to pay off the original promissory note. The plaintiff subsequently filed suit against the defendant, alleging that the defendant "concealed the information from the [p]laintiff related to the [s]tatute of [l]imitations being fraudulently extended on the collection of [the original note] and the ability of the [defendant] to foreclose on the mortgage" that secured the original note. The plaintiff also alleged that the defendant concealed from him "a material fact related to the issue of the monies allegedly due and owing" pursuant to the original note, that the defendant "had a duty to provide" him with the above information, and that he reasonably could not have discovered this information on his own because "all documentation pertaining to the [original note] and payments thereon remained in the full and absolute control of the [d]efendant."

¶ 5 The defendant filed a motion, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)), to dismiss the plaintiff's second amended complaint for failure to state a cause of action. Following a hearing on the motion, the trial judge ruled in a written order that after considering the pleading in a light most favorable to the plaintiff, the defendant did not conceal a material fact, but, at the most, concealed a legal conclusion from the plaintiff about the possible legal consequences of the defendant accepting the \$100 monthly payments from the plaintiff's brother. Accordingly, the trial judge granted the defendant's motion to dismiss. A final order was subsequently issued in this case, and this timely appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 6

ANALYSIS

¶ 7 "To sufficiently state a cause of action, a complaint must set forth a legally recognized claim and plead facts which bring the claim within the cause of action alleged." *Betts v. Crawshaw*, 248 Ill. App. 3d 735, 737 (1993). To determine whether a complaint can withstand a motion to dismiss for failure to state a cause of action, a court must take as true "all well-pleaded factual allegations" and must construe in the plaintiff's favor "all reasonable inferences." *Id.* The trial court should not dismiss a complaint "unless it clearly appears that no set of facts can be proved which will entitle plaintiff to recover." *Id.*

¶ 8 The complaint in the case at bar alleges a cause of action for fraudulent misrepresentation by concealment of a material fact. The elements of such a cause of action in Illinois are as follows:

"(1) the concealment of a material fact; (2) the concealment was intended to induce a false belief, under circumstances creating a duty to speak [citation]; (3) the innocent party could not have discovered the truth through a reasonable inquiry or inspection, or was prevented from making a reasonable inquiry or inspection, and relied upon the silence as a representation that the fact did not exist; (4) the concealed information was such that the injured party would have acted differently had he been aware of it; and (5) that reliance by the person from whom the fact was concealed led to his injury." *Stewart v. Thrasher*, 242 Ill. App. 3d 10, 16 (1993).

¶ 9 The plaintiff's argument in the trial court, and on appeal, is essentially that (1) the defendant's collection of payments in the amount of \$100 from the plaintiff's brother was impermissible under existing state statutes governing the conduct of the defendant because the payments were too low to have ever amortized the accrual of interest on the outstanding balance of the loan, (2) but for the impermissible collection of those payments, the original note would not have been collectible because the statute of limitations would have run on the

collection of the note, (3) therefore, a reasonable inference to be drawn from the defendant's conduct is that the defendant only accepted the impermissible payments to prevent the statute of limitations from running, and finally (4) the failure to inform the plaintiff of the foregoing when he inquired into what was necessary to release his mother's home from the mortgage encumbering it amounted to a fraudulent misrepresentation by concealment of a material fact. Throughout the plaintiff's briefs, the "material fact" that was allegedly concealed was that "but for" the purportedly impermissible and ill-motivated collection of the \$100 payments from the plaintiff's brother, the original note would have been uncollectible because the statute of limitations on its collection would have run.

¶ 10 There are a number of problems with the plaintiff's theory, each of which provides grounds to affirm the ruling of the trial court. First, we agree with the trial court that what was purportedly concealed from the plaintiff was not a fact, but rather a legal conclusion. Although the plaintiff correctly posits that the trial court was required to draw in the plaintiff's favor the reasonable inference that the defendant set up the allegedly impermissible payment arrangement with the plaintiff's brother solely to prevent the statute of limitations from running on the collection of the original note, even when such an inference is drawn, it does not convert the tenuous legal theory suggested by the plaintiff into a fact. Tellingly, the plaintiff never alleges that the original note had in fact been deemed uncollectible by a court of law and that the defendant concealed this from the plaintiff. Instead, the plaintiff alleges that the defendant should have been aware of, and should have divulged to the plaintiff, the plaintiff's novel legal theory that if the statute of limitations has been extended by the acceptance of payments that are impermissibly low under state law, the statute of limitations will be deemed to have run, and the underlying note will be found to be uncollectible. Accordingly, the concealed "fact" was actually an untested legal theory based upon a complex analysis of the possible, although not certain, legal consequences of the

actions taken by the plaintiff's brother and by the defendant. As the defendant points out, the plaintiff has cited no cases, and we have found no cases, that allow a cause of action for fraudulent misrepresentation by concealment of a material fact to move forward on the basis of the concealment of a legal conclusion, legal theory, or speculative legal analysis, rather than a fact. Accordingly, the trial court did not err by dismissing the plaintiff's complaint for failure to state a cause of action, and we affirm the ruling of the trial court.

¶ 11 We note as well that regardless of the defendant's motivation for putting forth the payment arrangement, the plaintiff's brother was not required to accept that arrangement, and had he not acceded to it, the defendant could have pursued other legal and appropriate remedies to prevent the statute of limitations from running, such as suggesting other payment arrangements or foreclosing on the property. Thus, the "but for" analysis suggested by the plaintiff as support for the proposition that the original note would have been found uncollectible as a matter of law is less than persuasive, even when all reasonable inferences are drawn in the plaintiff's favor.

¶ 12 Second, there is no factual or legal support for the plaintiff's contention, in his complaint, that the defendant "had a duty to provide" the plaintiff with the aforementioned legal theory (see, e.g., *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 500 (1996) (duty to disclose allegedly concealed facts must be adequately alleged in plaintiff's complaint)), nor is it alleged that at the time of the plaintiff's inquiry the defendant was even aware of the existence of the plaintiff's novel legal theory, or that theory's possible impact on the original note.

¶ 13 Third, although the plaintiff alleges, in paragraph 30 of his complaint, that he reasonably could not have discovered the "fact" that the note may have been uncollectible on his own because "all documentation pertaining to the [original note] and payments thereon remained in the full and absolute control of the [d]efendant," the plaintiff admits in paragraph

25 of his complaint that an agent of the defendant told him, during the process of "negotiation" the plaintiff alleges took place, that the plaintiff's brother had made several payments in the amount of \$100 during the time in question. Accordingly, the plaintiff had just as much factual information as did the bank to discover and/or formulate the novel legal theory the plaintiff now claims should have been disclosed to him.

¶ 14

CONCLUSION

¶ 15 For the foregoing reasons, we affirm the order of the circuit court of Montgomery County.

¶ 16 Affirmed.