

No. 1-15-3397

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GREGORIE COX,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 15 CH 09207
JED CAPITAL, LLC, SARASTRO CAPITAL,	)	
LLC, AND JOHN HARADA	)	Honorable
	)	Franklin Valderama,
Defendants-Appellees.	)	Judge presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Presiding Justice Ellis and Justice McBride concurred in the judgment.

**ORDER**

*Held:* We affirm the circuit court's dismissal of plaintiff's cause of action pursuant to section 2-619 of the Code where plaintiff's claims were untimely filed and plaintiff failed to establish that the discovery rule applied to the toll the running of the limitations period, or plaintiff's claims were otherwise barred.

¶ 1 Plaintiff, Gregorie Cox, appeals from an order of the circuit court of Cook County dismissing his complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)). On June 11, 2015, plaintiff filed a five-count complaint against defendants, JED Capital, LLC (JED), Sarastro Capital, LLC (Sarastro), and John Harada

(collectively, "defendants"). In the complaint, plaintiff alleged counts of fraud in the inducement, breach of fiduciary duty, breach of contract, violations of the Illinois Limited Liability Company Act, and violations of the Illinois securities laws stemming from a settlement agreement the parties entered into on June 18, 2008. Defendants filed a motion pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2014)) contending that plaintiff's claims were barred by the respective statutes of limitations or were barred by the terms of the settlement agreement entered into between the parties in June 2008. On November 6, 2015, the circuit court granted defendants' motion and dismissed plaintiff's complaint. On appeal, plaintiff contends that the circuit court erred in dismissing his complaint pursuant to section 2-619(a)(5) of the Code because the discovery rule tolled the statute of limitations for his claims and his claims were not barred by the terms of the settlement agreement. For the following reasons, we affirm.

¶ 2

## I. BACKGROUND

¶ 3

### A. The Parties

¶ 4

The following facts are derived from plaintiff's complaint and the common law record filed on appeal. On January 1, 2006, plaintiff was hired as an employee of Need to Know News (NTKN), an Illinois limited liability company. NTKN publishes financial news on the internet. Sarastro, a Delaware limited liability company, was the sole owner and manager of NTKN. JED, an Illinois limited liability company, is the manager of Sarastro. Harada, an individual residing in Illinois, is the controlling party and majority owner of Sarastro.

¶ 5

### B. The Operating Agreement

¶ 6

When plaintiff was hired as an employee of NTKN in 2006, he entered into an agreement detailing his interest in Sarastro and other terms for his employment (Operating Agreement). The Operating Agreement granted plaintiff a 5% interest in Sarastro and granted JED an 85%

interest. The Operating Agreement further provided that that if plaintiff was terminated from NTKN, JED would have the right to purchase his interest. The Operating Agreement provided that if plaintiff was terminated for "cause," as that term was defined in the Operating Agreement, then JED would have the right to purchase plaintiff's interest at "Book Value," as that term was defined in the Operating Agreement. The Operating Agreement further provided that if plaintiff was terminated without "cause," then JED would have the option to purchase plaintiff's interest at Fair Market Value, as that term was defined in the Operating Agreement.

¶ 7 C. Plaintiff's Termination

¶ 8 On August 8, 2006, Harada terminated plaintiff, for "cause," and JED exercised its option to purchase plaintiff's interest in Sarastro at "Book Value." Plaintiff, however, maintained that he had been terminated without cause and refused to tender his interest in Sarastro to JED. Plaintiff maintained that he was terminated by Harada so that Harada could conceal the true value of NTKN and Sarastro and deprive plaintiff of the fair value of his interest.

¶ 9 D. The Original Litigation

¶ 10 On August 21, 2007, JED filed a complaint against plaintiff in the circuit court of Cook County seeking a declaratory judgment (Original Litigation). JED alleged that plaintiff had failed to tender his interest in Sarastro in accordance with the Operating Agreement. In response, plaintiff filed an answer, affirmative defenses, and counterclaims against JED, Sarastro, and NTKN asserting that he was fired without cause and that, accordingly, JED was required to purchase his interest at Fair Market Value in accordance with the Operating Agreement. Plaintiff also sought an accounting of Sarastro's and JED's financials.

¶ 11 In response to plaintiff's requests, defendants provided plaintiff with a balance sheet for NTKN as of September 30, 2006, that listed NTKN's total liabilities and equity and a profit and

showed a loss comparison between the month of September 2006 and the months of January through September 2006. Defendants also provided financial statements and supplementary information from Sarastro and NTKN for 2006 and 2007. The financial statements listed all of Sarastro's assets, liabilities, member deficits, expenses, and revenue for 2006 and 2007. Attached to the financial statements are notes, which are "an integral part" of the statements. In the notes, under the subsection titled "Work in Process and Deferred Revenue," the deferred revenue is listed as \$876,158 for 2006 and \$815,994 for 2007, and the "Work in progress [*sic*]" is listed as \$21,838 for 2007 and \$0 for 2006. Defendant subsequently tendered a second set of financial statements to plaintiff labeled "Revised Draft 5-29-08." The assets, liabilities, member deficits, expenses, and revenue in the revised financial statements are identical. The only differences between the two statements are in the notes accompanying the revised draft. As relevant here, in the notes, the deferred revenue is listed as \$2,795 for 2006 and \$178,095 for 2007, and no "Work in Process" or "Work in progress" amounts are identified. In his complaint, plaintiff contends that based on the revised financial statements, he believed that Sarastro's value was "greatly lessened."

¶ 12 1. The Settlement Agreement

¶ 13 On June 18, 2008, plaintiff and defendants entered into a settlement agreement (Settlement Agreement).<sup>1</sup> Pursuant to the terms of the Settlement Agreement, JED would pay plaintiff \$15,000 for his interest in Sarastro. In exchange, the parties agreed to drop all claims from the Original Litigation. Plaintiff further agreed to "fully and forever release JED, Sarastro,

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<sup>1</sup> Defendants contend that plaintiff attached an incorrect copy of the Settlement Agreement to his complaint and that a correct copy of the agreement can be found in the record attached to their motion to dismiss. The record shows that the circuit court relied on the version of the agreement attached to defendants' motion in rendering its decision. Plaintiff does not address defendants' contention, but in his brief cites to the circuit court's order when referring to the terms of the Settlement Agreement. Accordingly, we conclude that the Settlement Agreement attached to defendants' motion sets out the correct terms of the agreement.

[and] NTKN \*\*\* from any and all claims, liabilities, demands \*\*\* or causes of action of any kind whatsoever relating to any matters of any kind whether presently known or unknown." The Settlement Agreement further provided that the parties "further warrant that this Agreement is entered into with no Party relying upon any statement or representation made by any other person or entity not embodied in this Agreement."

¶ 14

#### E. The Federal Lawsuit

¶ 15

On December 9, 2013, plaintiff filed a seven-count complaint in the United States District Court for the Northern District of Illinois against defendants and NTKN "alleging a variety of fraud claims in connection with JED's purchase of [plaintiff's] stock in Sarastro."<sup>2</sup> The federal district court first addressed the only federal issue plaintiff raised in his complaint, which charged defendants and NTKN with violations of the Securities Exchange Act of 1934. The federal district court dismissed plaintiff's federal claim because it was untimely, and declined to exercise supplemental jurisdiction over plaintiff's remaining state law claims. The court found that plaintiff's federal claim was barred by the relevant statute of repose because the alleged violations occurred, at the latest, on May 28, 2008, when plaintiff received the revised financial statements that reflected Sarastro's substantially reduced deferred revenue. The court further found that the time frame to file a claim limited by a statute of repose may not be extended by the discovery rule, but that "Sarastro's unexplained and favorable revision to its financial statements in response to [plaintiff's] settlement demand should have raised a red flag in 2008."

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<sup>2</sup> *Gregorie Cox v. JED Capital, LLC, Sarastro Capital, LLC, Need to Know News, LLC, and John Harada*, No. 13-CV-07653, 2014 WL 3397216 (N.D. Ill. July 11, 2014).

¶ 16

## F. The Current Litigation

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On June 11, 2015, plaintiff filed the current complaint at bar. In his complaint, plaintiff contended that in August 2014, he read an article in the Wall Street Journal about NTKN.<sup>3</sup> On the basis of the information contained in that article, plaintiff contacted the manager of NTKN, who provided him with the financial information for NTKN for 2006 through 2008. Plaintiff contended that after receiving this "truthful" financial information, he discovered that both the original draft and the revised draft of the financial statements he received during the pendency of the Original Litigation were false. He contended that he therefore entered into the Settlement Agreement on the basis of this false information, and, consequently, sold his interest in Sarastro for less than it was worth. He contended that at the time of the sale, the defendants were in possession of information concerning Sarastro's true financial status, but deliberately and intentionally withheld such information to deprive him of the fair market value of his interest.

¶ 18

Plaintiff alleged five counts against defendants stemming from the falsified financial information and the Settlement Agreement. In Count I of the complaint, plaintiff alleged fraud in the inducement, contending that the falsified financial statements, which defendants knew to be false, were made for the purpose of inducing plaintiff to enter into the Settlement Agreement. Plaintiff asserted that defendants acted willfully and deliberately and that his knowledge of Sarastro's true financial status was necessary for him to properly evaluate the value of Sarastro before entering into the Settlement Agreement.

¶ 19

In Count II of the complaint, plaintiff alleged that the defendants breached their fiduciary duty by providing him with the falsified financial statements. In Count III of the complaint, plaintiff alleged a claim for breach of contract because the defendants failed to adhere to the

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<sup>3</sup> In his brief before this court, plaintiff asserts that based on the fact that he filed the federal lawsuit in December 2013, his contention in his complaint that he read the Wall Street Journal article in August 2014, "appears" to have been an error. He contends that he actually read the article in August 2013.

terms of the Operating Agreement. In Count IV of the complaint, plaintiff alleged violations of the Illinois Limited Liability Company Act. In Count V, plaintiff alleged violations of the Illinois Securities Laws. In each count, plaintiff requested relief in the form of rescission of the Settlement Agreement and damages stemming from the defendants' fraudulent representations.

¶ 20 1. Defendants' Motion to Dismiss

¶ 21 In response to plaintiff's complaint, defendants filed a motion pursuant to sections 2-615 (735 ILCS 5/2-615 (West 2014)) and 2-619 (735 ILCS 5/2-619 (West 2014)) of the Code. In their motion, defendants contended that the terms of the Settlement Agreement expressly released them from the claims plaintiff asserted in his complaint. In addition, defendants contended that all of plaintiff's claims, with the exception of his breach of contract claim, were time barred under the relevant statutes of limitations. In response, plaintiff asserted that the terms of the Settlement Agreement did not prevent him from bringing this cause of action because the defendants intentionally provided him with false financial information in order to induce him to enter into the Settlement Agreement. In addition, plaintiff contended that his claims were not barred by the statutes of limitations because the discovery rule tolled the running of the limitations period until the time when plaintiff became aware of, or should have become aware of, the injury. Plaintiff maintained that he was not aware of any injury until he read the Wall Street Journal article in August 2014,<sup>4</sup> and, accordingly, his claims were filed within the relevant statutes of limitations.

¶ 22 2. The Circuit Court's Decision

¶ 23 In ruling on defendant's motion, the circuit court found that the terms of the Settlement Agreement required plaintiff to agree that he did not rely on any statement or representation

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<sup>4</sup> As discussed in footnote three above, plaintiff contends that this date is inaccurate.

made by any other person not embodied in the Settlement Agreement. The court recognized that the Settlement Agreement also contained a non-reliance clause, which precluded plaintiff from relying on any information outside of the agreement or any information previously provided by a party to the agreement. The court rejected defendants' contention that this clause precluded plaintiff from relying on statements made to him by the defendants in entering into the Settlement Agreement. The court found that the terms of the Settlement Agreement did not preclude plaintiff from bringing his claims in Counts I and II of the complaint.

¶ 24 The court then addressed defendants' contention that plaintiff's claims were barred by the statutes of limitations. The court determined that the relevant limitations period for plaintiff's claims was five years and that it was undisputed that plaintiff filed his claim more than five years after his claims accrued. The court stated that plaintiff's claims were viable only if the discovery rule applied to toll the limitations period. The court concluded, however, that plaintiff failed to establish that the discovery rule applied in this case to toll the limitations period.

¶ 25 The court found that plaintiff reasonably should have known about any alleged fraud or breach of fiduciary duty when he received the revised set of financial statements in 2008. The court further determined that plaintiff's breach of contract claim was barred by the terms of the Settlement Agreement, and that plaintiff could not seek to invalidate the Settlement Agreement to save this claim because his claims of fraudulent inducement and breach of fiduciary duty had been dismissed. The court further found that plaintiff's claim that defendants violated the Illinois Limited Liability Company Act was barred by the statute of limitations for the same reasons it found in dismissing Counts I and II of his complaint. The court finally concluded that plaintiff's claim that defendants violated the Illinois Securities Laws was barred by the statute of repose.



Accordingly, the court granted defendant's motion pursuant to section 2-619 of the Code and dismissed plaintiff's complaint with prejudice. This appeal follows.

¶ 26

## II. ANALYSIS

¶ 27

On appeal, plaintiff contends that the circuit court erred in determining that he failed to establish that the discovery rule tolled the statutes of limitations for Counts I and II of his complaint for fraud in the inducement and breach of fiduciary duty. Plaintiff further maintains that court also erred in dismissing counts III and IV, breach of contract and breach of the Illinois Limited Liability Company Act, because those counts are based on counts I and II, which were timely filed. Defendants respond that the circuit court properly dismissed plaintiff's cause of action pursuant to section 2-619 of the Code because plaintiff failed to establish that the discovery rule should apply to toll the statutes of limitations, and plaintiff's complaint was untimely filed. Defendants further contend that the terms of the Settlement Agreement bar plaintiff's claims.

¶ 28

### A. Section 2-619 Standard of Review

¶ 29

Defendants brought their motion to dismiss plaintiff's cause of action pursuant to section 2-619 of the Code (735 ILCS 2-619 (West 2014)). Section 2-619(a)(5) (735 ILCS 2-619(a)(5) (West 2014)) provides for the dismissal of an action that was not commenced within the time limited by law. *Caywood v. Gossett*, 382 Ill. App. 3d 124, 128 (2008). A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the complaint, but asserts affirmative matters outside of the complaint. *Hoover v. Country Mut. Ins. Co.*, 2012 IL App (1st) 110939, ¶ 31. When ruling on a section 2-619 motion to dismiss, the court must view all pleadings in a light most favorable to the non-moving party (*Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8), and accept as true all well-pleaded facts (*Patrick Engineering, Inc. v. City of Naperville*, 2012 IL

113148, ¶ 31). The court should grant a section 2-619 motion if, "after construing the documents in support of and in opposition to the motion in the light most favorable to the nonmoving party, there are no disputed issues of material fact." *Hoover*, 2012 IL App (1st) 110939, ¶ 31 (citing *Whetstone v. Sooter*, 325 Ill. App. 3d 225, 229 (2001)). We review the dismissal of a cause of action pursuant to section 2-619 of the Code *de novo*. *Hoover*, 2012 IL App (1st) 110939, ¶ 31.

¶ 30

#### B. The Statute of Limitations

¶ 31

Section 13-205 of the Code provides that "actions on unwritten contracts, expressed or implied, \*\*\* and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (West 2012). Here, the parties agree that defendants provided plaintiff with the financial statements and entered into the Settlement Agreement in 2008, and plaintiff's complaint was filed in 2015, seven years after his cause of action would have accrued. Thus, the only way plaintiff could avoid dismissal under section 2-619(a)(5) is through application of the discovery rule.

¶ 32

#### C. The Discovery Rule

¶ 33

"Generally, the statute of limitations begins to run from, and not until, the time that the cause of action or right of action accrues, *i.e.*, when facts exist which authorize the bringing of an action." *Schreiber v. Hackett*, 173 Ill. App. 3d 129, 131 (1988). However, the common law "discovery rule" tolls the running of the limitations period even after the cause of action accrues until the injured party "knows or reasonably should know that he has been injured and that his injury was wrongfully caused." *Golla v. Gen. Motors Corp.*, 167 Ill. 2d 353, 360-61 (1995). At that point, the injured person has sufficient information concerning his injury and its cause to put a reasonable person on notice to determine whether to bring a cause of action. *Hoover*, 2012 IL App (1st) 110939, ¶ 55 (citing *Knox Coll. v. Celotex Corp.*, 88 Ill. 2d 407, 416 (1981)). A

plaintiff who knows that he has suffered from a “wrongfully caused” injury has the duty to investigate further concerning the existence of a cause of action. *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981). Even though plaintiff might not have knowledge that an actionable wrong was committed, the statute of limitations begins to run when the plaintiff is put on inquiry notice. *Pruitt v. Schultz*, 235 Ill. App. 3d 934, 936 (1992). Inquiry notice exists “when a party knows or reasonably should know both that an injury has occurred and that it was wrongfully caused.” *Nolan v. Johns–Manville Asbestos*, 85 Ill. 2d 161, 171 (1981). At that point, “the statute begins to run and the party is under an obligation to inquire further to determine whether an actionable wrong was committed. In that way, an injured person is not held to a standard of knowing the inherently unknowable [citation], yet once it reasonably appears that an injury was wrongfully caused, the party may not slumber on his rights.” *Id.*; *Knox Coll.*, 88 Ill. 2d at 416 (“At some point the injured person becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved.”). It is not necessary for the plaintiff to know the full extent of his injuries before the statute of limitations begins to run. *Golla*, 167 Ill. 2d at 364.

¶ 34

#### D. Fraud in the Inducement

¶ 35

Plaintiff first contends that the trial court erred in finding that the discovery rule did not apply to toll the statute of limitations for his claim of fraud in the inducement. Fraud in the inducement occurs where a party makes a false statement of a material fact, with knowledge or belief of the statement's falsity, with the intent to induce the plaintiff to act or refrain from acting on the falsity of the statement, the plaintiff reasonably relied on the false statement, and the plaintiff suffered damage from such reliance. *Bayview Loan Servicing, LLC v. Szpara*, 2015 IL App (2d) 140331, ¶ 34. Section 13-205 of the Code provides that plaintiff had five years after his

cause of action accrued to file a cause of action for fraud in the inducement. 735 ILCS 5/13-205 (West 2012). In this case, it is undisputed that plaintiff filed his complaint more than five years after the claim accrued. The only question, therefore, is whether the discovery rule tolled the statute of limitations period until plaintiff knew or reasonably should have known about the injury.

¶ 36 Plaintiff contends that the discovery rule should apply to the toll the running of the limitations period in this case because he could not have sustained an injury prior to the execution of the Settlement Agreement because the Original Litigation was still pending. Plaintiff maintains that he did not have a cognizable cause of action for fraud in the inducement before the Settlement Agreement was signed, and that his cause of action could only have accrued in August 2014<sup>5</sup> when he read the Wall Street Journal article. Plaintiff asserts that his mere receipt of the revised financial statements could not have started the running of the limitations period because he was yet to suffer an actionable injury.

¶ 37 Defendants respond that at the time plaintiff received the conflicting sets of financial information, he should have been on inquiry notice that fraud had occurred. Defendants maintain that upon receiving the conflicting financial reports, plaintiff should have sought additional financial information or continued to litigate the dispute regarding the value of his interest. Defendants further contend that plaintiff's claim that he could not have discovered any injury before entering into the Settlement Agreement misunderstands the function of the discovery rule.

¶ 38 We agree with the circuit court that "[p]laintiff fail[ed] to meet his burden to prove that the discovery rule tolled the statute of limitations." In this case, plaintiff received conflicting financial statements while participating in the Original Litigation prior to entering into the

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<sup>5</sup> Although, as discussed, plaintiff contends that the contention in his complaint that he read the Wall Street Journal article in August 2014 was an error, he continually cites August 2014 throughout his briefs as the date of discovery.

Settlement Agreement. The revised financial statements reflected a substantial decrease in deferred revenue without explanation. At that point, plaintiff was on notice that a wrong had been committed and had a responsibility to inquire into the discrepancy. See *Nolan*, 85 Ill. 2d at 171. Even though plaintiff might not have knowledge that an actionable wrong was committed, the statute of limitations begins to run when the plaintiff is put on inquiry notice. *Pruitt*, 235 Ill. App. 3d at 936. Instead of inquiring into the revised financial statements, plaintiff voluntarily entered into the Settlement Agreement. Thus, the five-year limitations period began to run after plaintiff received the revised financial statements and subsequently entered into the Settlement Agreement on June 18, 2008. Accordingly, plaintiff's action, commenced seven years after the alleged injury, is barred by the statute of limitations.

¶ 39 Plaintiff, nonetheless, contends that the circuit court erred in finding that he failed to meet his burden of proof to establish that the discovery rule applied to toll the statute of limitations. Plaintiff asserts that by applying a burden of proof standard, the circuit court was required to hold an evidentiary hearing. Contrary to plaintiff's contention, no evidentiary hearing is required and the court can enter a judgment as a matter of law where "the undisputed facts allow for only one conclusion as to when the plaintiff had sufficient information." *Hoover*, 2012 IL App (1st) 110939, ¶ 55 (citing *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240, 250 (1994)). In this case, it was clear from the factual allegations in plaintiff's complaint that he had sufficient information to begin the running of the limitations period when he received the revised financial statements and entered into the Settlement Agreement. *Hoover*, 2012 IL App (1st) 110939, ¶ 55 (citing *Knox College*, 88 Ill. 2d at 416). Moreover, the cases plaintiff relies on in support of his contention that a hearing was required, *Knox College* and *Gredell v. Wyeth Labs, Inc.*, 346 Ill. App. 3d 51 (2004), do not stand for the proposition that he espouses. Neither case found that a

court is required to hold an evidentiary hearing in determining when plaintiff knew or should have known about an alleged injury for purposes of determining whether the discovery rule applies to toll the statute of limitations. Accordingly, we find that the circuit court did not err in dismissing plaintiff's cause of action without holding an evidentiary hearing.

¶ 40 E. Breach of Fiduciary Duty

¶ 41 Plaintiff next claims that the discovery rule should toll the statute of limitations for his claim of breach of fiduciary duty. Pursuant to section 13-205 of the Code (735 ILCS 5/13-205 (West 2012)) plaintiff's claim of breach of fiduciary duty is subject to a five year statute of limitations. *Travelers Cas. & Sur. Co. v. Bowman*, 229 Ill. 2d 461, 467 (2008) (citing *Armstrong v. Guigler*, 174 Ill. 2d 281, 296 (1996)). For the same reasons discussed above in regard to plaintiff's claim for fraud in the inducement, we find that the statute of limitations bars plaintiff's claim for breach of fiduciary duty.

¶ 42 F. Plaintiff's Remaining Claims

¶ 43 1. Breach of Contract

¶ 44 Plaintiff contends that because the circuit court erred in dismissing Counts I and II of the complaint, for fraud in the inducement and breach of fiduciary duty, it also erred in dismissing Count III for breach of contract for defendants' violation of the Operating Agreement. Plaintiff maintains that he could pursue this count only if the Settlement Agreement were rescinded pursuant to the relief requested in Counts I and II. This is because the Settlement Agreement provides that plaintiff agrees to "fully and forever release JED, Sarastro, [and] NTKN \*\*\* from any all claims, liabilities, demands \*\*\* or causes of action of any kind whatsoever relating to any matters of any kind whether presently known or unknown." In his complaint, plaintiff conceded that if Counts I and II were dismissed, then Count III must be also be dismissed because the

Settlement Agreement would bar his claim. Plaintiff contended, however, that if the court granted the relief requested in Counts I and II of his complaint, the Settlement Agreement would be invalidated and plaintiff would be permitted to assert a claim for breach of the Operating Agreement. Because we find that plaintiff cannot invalidate the Settlement Agreement through his claims for fraudulent concealment and breach of fiduciary duty because those claims are barred by the statutes of limitations, we find that the circuit court properly dismissed plaintiff's claim for breach of contract.

¶ 45 2. Breaches of the Illinois Limited Liability  
Company Act and Illinois Securities Laws

¶ 46 In Count IV of the complaint, plaintiff alleged violations of the Illinois Limited Liability Company Act that he contends "are based on the breach of fiduciary allegations contained in [Count II of] the complaint." Accordingly, for the reasons stated above in regard to Count II, breach of fiduciary duty, we find that the circuit court did not err in dismissing this count.

¶ 47 We further observe that plaintiff raised allegations of violations of the Illinois Securities Laws in Count V of his complaint. The circuit court found that these claims were barred by the statute of repose and dismissed the claim. On appeal, plaintiff raises no challenge to the circuit court's ruling on this count. Accordingly, we find that plaintiff has waived any challenge to this finding. Ill. S. Ct. R. 341(e)(7) (eff. Feb. 6, 2013); see also *In re Estate of Nicholson*, 268 Ill. App. 3d 689, 694 (1994).

¶ 48 3. Fraudulent Concealment

¶ 49 For the first time in his reply brief, plaintiff contends that the allegations in his complaint were sufficient to state a cause of action for fraudulent concealment. We observe that plaintiff did not raise such a contention in his opening brief or in his complaint before the circuit court. "The reply brief, if any, shall be confined strictly to replying to arguments presented in

the brief of the appellee \*\*\*.” Ill. S. Ct. R. 341(j) (eff. Feb. 6, 2013). “Points not argued [in the opening brief] are waived and shall not be raised in the reply brief \*\*\*.” Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 19 (“[A]rguments may not be raised for the first time in reply briefs.”). Accordingly, we find that plaintiff has waived this argument for review.

¶ 50

### III. CONCLUSION

¶ 51

For the reasons stated, we affirm the judgment of the circuit court of Cook County dismissing plaintiff's complaint with prejudice pursuant to section 2-619(a)(5) of the Code.

¶ 52

Affirmed.