2017 IL App (1st) 160786-U

SIXTH DIVISION
March 3, 2017

No. 1-16-0786

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL MOGAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 23101
	)	
JOHN GAYNOR and ROBERT GAYNOR, SR.,	)	Honorable
	)	Franklin U. Valderrama,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court's dismissal of plaintiff's third-amended complaint and its order denying reconsideration are affirmed in part and reversed in part, where all seven claims contained in that complaint against one defendant were barred by the applicable statute of limitations, while all but one of the claims against the second defendant were improperly dismissed.

¶ 2 Plaintiff-appellant, Michael Mogan, appeals from the circuit court's order dismissing with prejudice his third-amended complaint against defendants-appellants, John Gaynor (John) and Robert Gaynor, Sr. (Robert), and its order denying plaintiff's motion to reconsider that decision. Because we conclude that all seven claims against Robert were barred by the applicable statute of limitations, while all but one of the claims against John were improperly dismissed, we affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 On August 30, 2012, plaintiff filed a prior lawsuit in the circuit court of Cook County (case no. 12 CH 33065) in which plaintiff and his brother, John Mogan, were named as the plaintiffs, and their uncles, defendants John and Robert, were named as the defendants. The suit generally alleged that a dispute had arisen between plaintiffs and defendants with respect to the rights to two Personal Seat Licenses (PSLs) issued by the Chicago Park District (Park District), which allowed and required the owner of a PSL to purchase tickets to preseason, regular season, and any postseason Chicago Bears football games played at Soldier Field in Chicago. Plaintiffs generally contended that, while they had each paid the $765 initial purchase price for one PSL in 2002, defendants had improperly refused to transfer ownership of those two PSLs to plaintiffs and had ceased to provide plaintiffs the opportunity to purchase tickets to Bears games. The original three-count complaint sought to recover for defendants' refusal to do so, and included counts seeking a permanent injunction and imposition of a constructive trust, as well as recovery for defendants' unjust enrichment. The prior lawsuit was voluntarily dismissed on October 5, 2012.

¶ 5 More than one year later, on October, 10, 2013, plaintiff initiated the present lawsuit (case no. 13 CH 23101) by filing a complaint containing both similar and additional facts and legal claims, but which named only himself as a plaintiff and named only John as a defendant. In response to motions to dismiss filed by John, plaintiff filed two amended complaints against John. Finally, on February 26, 2015, plaintiff filed the operative seven-count, third-amended complaint (complaint) at issue in this appeal. That complaint was again brought solely on behalf of plaintiff; however, both John and Robert were once again named as defendants. In addition to counts alleging breach of an oral agreement, breach of a fiduciary duty, unjust enrichment,

promissory estoppel, conversion and breach of contract implied in fact, a final count alleging civil conspiracy was alleged for the first time.

¶ 6 In the complaint, plaintiff generally alleged that defendants had held four season tickets for Bears home games at Soldier Field since at least 1999. For the 1999-2001 seasons, defendants sold plaintiff the tickets for one seat to each Bears home preseason, regular season and any post season game. During 2000-2001, the Park District began remodeling Soldier Field. As a part of that process, the Park District began selling PSLs, which would both allow and require the owner of a PSL to purchase tickets to all preseason, regular season, and any postseason Bears games played at Soldier Field. Preference with respect to purchasing PSLs would be given to those who had previously held season tickets.

¶ 7 Plaintiff further alleged that, while the defendants would apply for four PSLs in their own names due to this preference, "[i]n or around 2002, the Defendants stated to Plaintiff that if Plaintiff purchased 1 of the 4 Bears PSLs for $765, Plaintiff would have the right to purchase the preseason, season and playoff tickets for each Bears season for 1 of the 4 Bears PSLs and Defendants would also formally transfer ownership of 1 of the 4 Bears PSLs to Plaintiff." Plaintiff alleged that he agreed, defendants were awarded 4 PSLs by the Park District, and plaintiff paid defendants $765 "[i]n or around 2002."

¶ 8 Thereafter, plaintiff allegedly also paid for "one-fourth of all the financial commitments for maintaining the 4 Bears PSLs" and sat in one of the four seats for the "majority" of Bears regular and postseason games for the 2003-2009 seasons. However, in July 2009, plaintiff moved to California and "[i]n or around October 2009, Defendant John Gaynor told Plaintiff that if Plaintiff moved back to the State of Illinois, Plaintiff would have the opportunity to purchase from Defendant all preseason, season and playoff tickets for 1 of the 4 Bears PSLs even if

Plaintiff did not pay for the preseason, regular season and playoff tickets for each Bears season while living outside of Illinois."

¶ 9 In July 2010, plaintiff offered to pay for all the tickets for one of the PSL seats for the 2010 Bears season, but this offer was refused. Plaintiff was only able to purchase tickets to two Bears games that season. Defendants allegedly refused to permit plaintiff to purchase any Bears tickets for the 2011-2014 seasons. Moreover, despite plaintiff explicit demand "[i]n or around August 2012," defendants have refused to transfer ownership of one of the four PSLs to plaintiff.

¶ 10 Contending that each PSL provides access to a seat providing a "unique vantage point in which to view the game" and that the value of the PSLs has "risen substantially above the original purchase price," and contending that he had been damaged by the failure of defendants to transfer ownership of the PSL, defendants' refusal to sell plaintiff tickets to all Bears games, and the fact that he paid the "maintenance" for one PSL for many years, plaintiff's complaint sought an order awarding him ownership of one of the PSLs and/or compensatory damages.

¶ 11 In response to the complaint, both John and Robert filed motions to dismiss pursuant to section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619 (West 2014). Attached to John's motion, was a copy of the PSL agreement between John and the Park District. Contending that the terms of that agreement did not even permit a transfer of a PSL to plaintiff until February 1, 2004, John's motion to dismiss asserted that plaintiff's claims were all barred by: (1) the five-year statute of limitations contained in section 13-205 of the Code (735 ILCS 5/13-205 (2014)), as they all accrued on February 1, 2004, well before the filing of this lawsuit; and (2) the statute of frauds (740 ILCS 80/1 (West 2014)), because any possible agreement to transfer the PSL to plaintiff, allegedly made in 2002, could not have been completed within one year.

¶ 12 Robert's motion to dismiss contained similar arguments with respect to plaintiff's complaint being barred by the statute of limitations and the statute of frauds. Those arguments were supported by Robert's affidavit and a copy of the PSL agreement between Robert and the Park District. In addition, Robert's motion contended that plaintiff's claims were barred by the doctrines of mootness, waiver and laches.

¶ 13 Plaintiff filed written responses to both motions, in which plaintiff asserted that: (1) defendants miscalculated when the various causes of action accrued for purposes of the statute of limitations, (2) the statute of frauds did not apply to all of plaintiff's claims, (3) the statute of frauds was inapplicable, due to plaintiff's full or partial performance under the parties' oral agreement, and (4) Robert's claims of mootness, waiver and laches were unfounded.

¶ 14 On November 5, 2015, the circuit court entered a written order granting the motions to dismiss filed by both defendants,"pursuant to Section 2-619(a)(5)." Plaintiff filed a motion to reconsider that order, and that motion was denied on February 29, 2016. Plaintiff now appeals from both orders.

¶ 15 II. ANALYSIS

¶ 16 On appeal, plaintiff contends that the circuit court improperly dismissed with prejudice his complaint against defendants and improperly denied his motion to reconsider that decision, on the basis that all seven claims asserted by plaintiff were barred by the applicable statute of limitations. For the following reasons, the circuit court's orders are affirmed in part and reversed in part.

¶ 17 A section 2–619 motion admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim. 735 ILCS 5/2–619(a) (2014); *Capeheart v. Terrell*, 2013 IL App (1st) 122517, ¶ 11. Section 2–619(a)(5) specifically

allows a cause of action to be dismissed if it was not commenced within the time limited by law. 735 ILCS 5/2–619(a)(5) (2014); *Fireman's Fund Insurance Co. v. Rockford Heating & Air Conditioning, Inc*., 2014 IL App (2d) 130566, ¶ 9. In addition, a statute of frauds defense is properly raised under section 2–619(a)(7). 735 ILCS 5/2–619(a)(7) (West 2014).

¶ 18 When deciding a section 2–619 motion, a court accepts all well-pleaded facts in the complaint as true and will grant the motion when it appears no set of facts can be proved which would allow the plaintiff to recover. *Wilson v. Quinn*, 2013 IL App (5th) 120337, ¶ 11. However, the court will not admit as true unsupported conclusions of law or conclusory allegations of fact. *Aliano v. Ferris*, 2013 IL App (1st) 120242, ¶ 20.

¶ 19 The question on appeal is whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law**.** *Rockford*, 2014 IL App (2d) 130566, ¶ 9. Our review of an order granting a section 2–619 motion is *de novo*. *Wilson*, 2013 IL App (5th) 120337, ¶ 11. Because our review is *de novo,* we need not defer to the circuit court's reasoning. *Platinum Partners Value Arbitrage Fund, Ltd. Partnership v. Chicago Board Options Exchange,* 2012 IL App (1st) 112903, ¶ 12. The circuit court's judgment may, therefore, be affirmed for any reason, and upon any ground warranted. *Riley Acquisitions, Inc. v. Drexler*, 408 Ill. App. 3d 397, 404 (2011).

¶ 20 As noted above, plaintiff's complaint included seven counts alleging breach of an oral agreement, breach of a fiduciary duty, unjust enrichment, promissory estoppel, conversion, breach of contract implied in fact and civil conspiracy. The parties agree that a five-year statute of limitations applies to each of these claims, pursuant to section 13-205 of the Code, which provides "actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of

personal property or damages for the detention or conversion thereof, 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 (2014).

¶ 21 "A cause of action 'accrues' when facts exist that authorize the bringing of a cause of action. Thus, a tort cause of action accrues when all its elements are present, *i.e.*, duty, breach, and resulting injury or damage." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20. "For contract actions and torts arising out of contractual relationships, though, the cause of action ordinarily accrues at the time of the breach of contract, not when a party sustains damages. [Citation.] The reason for this distinction is the concern that plaintiffs will delay bringing suit after a contract is breached in order to increase damages." *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77 (1995).

¶ 22 Nevertheless, it has been recognized that a "mechanical application of the statute of limitations, however, may result in the limitations period expiring before a plaintiff even knows of his or her cause of action. To ameliorate the potentially harsh results of such an application, [our supreme court] has adopted the 'discovery rule,' the effect of which is to postpone the start of the period of limitations until the injured party knows or reasonably should know of the injury and knows or reasonably should know that the injury was wrongfully caused. [Citations.] At that point, the burden is on the injured person to inquire further as to the possible existence of a cause of action." *Khan*, 2012 IL 112219, ¶ 20. "The question of when a party knew or should have known both of an injury and its probable wrongful cause is one of fact, unless the facts are undisputed and only one conclusion may be drawn from them." *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981).

¶ 23 Additionally, we note again that plaintiff voluntarily dismissed his initial suit (case no. 12 CH 33065) on October 5, 2012. Section 13–217 of the Code grants a plaintiff who voluntarily dismisses his or her complaint the right to refile within one year or within the remaining period of limitation, whichever is greater. *Case v. Galesburg Cottage Hospital*, 227 Ill. 2d 207, 215 (2007); 735 ILCS 5/13-217 (West 2014). Because plaintiff did not refile his suit against either defendant within one year of the voluntary dismissal, the 5-year statute of limitations provided in section 13-205 of the Code is therefore applicable to plaintiff's present suit.

¶ 24 A. Claims Against Robert

¶ 25 We first address the applicability of the statute of limitations to plaintiff's claims against Robert. The operative complaint adding claims against Robert was not filed until February 26, 2015.[1] To be timely, therefore, the various causes of action plaintiff asserted against Robert must have accrued on or after February 26, 2010.

¶ 26 However, as the complaint clearly asserts, plaintiff moved to California in July 2009 and "[i]n or around October 2009, Defendant John Gaynor told Plaintiff that if Plaintiff moved back to the State of Illinois, Plaintiff would have the opportunity to purchase from Defendant all preseason, season and playoff tickets for 1 of the 4 Bears PSLs even if Plaintiff did not pay for the preseason, regular season and playoff tickets for each Bears season while living outside of Illinois." The same factual assertions were made in each of the previous complaints filed by plaintiff. In addition, each of the prior complaints filed by plaintiff in this matter specifically asserted that "*until* in or around October 2009, the Plaintiff and [John] had discussions and it was

[1] Plaintiff has made no argument, either below or on appeal, that his claims against Robert relate back to the October 10, 2013 filing of the complaint against John, pursuant to section 2-616(d) of the Code. 735 ILCS 5/2-616(d) (West 2014). He has therefore forfeited any such argument. *Pagano v. Occidental Chemical Corp.*, 257 Ill. App. 3d 905, 911 (1994) (issues not raised before the circuit court are waived for purposes of appeal); Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued on appeal are forfeited).

always agreed between them that the Plaintiff would have the PSL for 1 of the [PSLs] and the Plaintiff would have the opportunity to purchase all of the preseason, season and playoff tickets for each Bears season for 1 of the [PSLs]." (Emphasis added.) All of the complaints filed by plaintiff in this matter were verified, pursuant to section 2-605 of the Code. 735 ILCS 5/2-605 (West 2014).

¶ 27 "As a general rule, a statement of fact that has been admitted in a pleading is a judicial admission and is binding on the party making it." *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 557, 836 N.E.2d 640, 658 (2005). Additionally, "original *verified* pleadings will remain binding as judicial admissions even after the filing of an amended pleading which supersedes the original unless the amended pleading discloses that the original pleading was made through mistake or inadvertence." (Emphasis in original.) *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 558 (2005). A court may consider judicial admissions in the record when ruling on a motion to dismiss. *Weiss v. Waterhouse Securities, Inc*., 335 Ill. App. 3d 875, 882 (2002).

¶ 28 Undergirding all of plaintiff's claims against defendants is the essential contention that under principles of law, equity, contract, and/or tort, defendants improperly refused to honor an actual or implied agreement, or improperly misled plaintiff into believing that an agreement existed such that, if plaintiff paid the $765 purchase price for one of the PSLs in 2002, "Plaintiff would have the right to purchase the preseason, season and playoff tickets for each Bears season for 1 of the 4 Bears PSLs and Defendants would also formally transfer ownership of 1 of the 4 Bears PSLs to Plaintiff." While plaintiff does not detail the specifics of the conversation, according to plaintiff's own pleadings it is evident that in October 2009 John made it clear to plaintiff that the PSL would not be transferred and that John believed he was in a position to dictate the conditions under which plaintiff would be allowed to purchase future Bears tickets.

¶ 29 At the very least, at that time plaintiff should reasonably have known of his injury and reasonably should have known that the injury was wrongfully caused. *Khan*, 2012 IL 112219, ¶ 20. The burden was then on plaintiff to inquire further as to the possible existence of a cause of action. *Id*.

¶ 30 In addition, it is immaterial that plaintiff only admitted to a 2009 conversation with John, and not to a similar conversation with Robert. Our supreme court has noted that "the term 'wrongfully caused' as used in the discovery rule does not connote knowledge of negligent conduct or knowledge of the existence of a cause of action. That term must be viewed as a general or generic term and not as a term of art." *Khan*, 2012 IL 112219, ¶ 22. Our supreme court has "never suggested that plaintiffs must know the full extent of their injuries before the statute of limitations is triggered." *Golla v. General Motors Corp*., 167 Ill. 2d 353, 364 (1995). Moreover, courts in Illinois have recognized that " '[t]he phrase "wrongfully caused" does not mean knowledge of a *specific* defendant's negligent conduct or knowledge of the existence of a cause of action." (Emphasis in original.) *Castello v. Kalis*, 352 Ill. App. 3d 736, 744 (2004) (quoting *Young v. McKiegue*, 303 Ill. App. 3d 380, 388 (1999), and collecting cases). As alleged in his complaint, plaintiff's actual or implied agreement was with both John and Robert, and the purported tortious conduct was committed by both defendants. It is clear to this court that John's 2009 statements to plaintiff placed a burden on plaintiff to inquire further as to a possible cause of action against both defendants.

¶ 31 Finally, we note that plaintiff also alternatively asserts that defendants led him to believe that he had an agreement with defendants regarding the PSL and the purchase of tickets until sometime in 2010. Plaintiff has never asserted that that this alternative factual pleading corrected

a mistake in his prior pleadings, such that the facts pled in his prior verified complaints should not be binding upon him. See *Nelson*, 361 Ill. App. 3d at 558.

¶ 32 Moreover, "[a]dmissions by a party in the pleadings which are deliberate, unequivocal, and relate to concrete facts are judicial admissions of fact which are conclusive against the party making them." *Partee v. Compton*, 273 Ill. App. 3d 721, 724 (1995). It is true that section 2–613(b) of the Code authorizes the pleading of facts in the alternative, providing that "[w]hen a party is in doubt as to which of two or more statements of fact is true, he or she may, regardless of consistency, state them in the alternative or hypothetically in the same or different counts or defenses." 735 ILCS 5/2–613(b) (West 2014). "However, when the nature of the statements are such that the plaintiff must know which statement is true, inconsistent pleading is improper." *Chicago Hospital Risk Pooling Program v. Illinois State Medical Inter-Insurance Exchange*, 397 Ill. App. 3d 512, 529–30 (2010). Here, plaintiff must have known which of the statements in the complaint was true; *i.e.*, whether the discussions with defendants leading plaintiff to believe that he had an agreement regarding the PSL and the purchase of tickets lasted until only October 2009, or whether they continued until sometime into 2010. As such, plaintiff is not permitted to plead this fact in the alternative, and his judicial admission that these conversations and this understanding ended in October 2009 will be conclusively held against him.

¶ 33 In sum, we conclude that the undisputed, admitted facts allow only one conclusion: plaintiff either knew or should have known both of an injury and its probable wrongful cause—at the latest—in or around October 2009. As such, the filing of plaintiff's claims against Robert more than five years later on February 26, 2015 was not timely, and the circuit court properly dismissed plaintiff's claims against Robert with prejudice on that basis. In light of this conclusion, we need not discuss Robert's alternative arguments, raised both below and again on

appeal, that plaintiff's claims against Robert were also barred by the doctrines of mootness, waiver and laches.

¶ 34 B. Claims Against John

¶ 35 We now turn to an examination of the propriety of the circuit court's dismissal of plaintiff's claims against John.

¶ 36 We begin by noting again that the final count of plaintiff's complaint, alleging civil conspiracy, was raised for the first time in the complaint plaintiff filed on February 26, 2015. For the same reasons as discussed above, the filing of this claim was therefore untimely.

¶ 37 In reaching that conclusion, we acknowledge that section 2-616(b) of the Code contains a provision whereby this new claim could potentially be considered to relate back to the October 10, 2013, filing of plaintiff's original complaint against John. 735 ILCS 5/2-616(b) (West 2014). However, plaintiff has never raised the possible applicability of section 2-616(b), either in the circuit court or on appeal.

¶ 38 It is well recognized that a defendant "has the initial burden of proving the affirmative defense relied upon in its motion to dismiss. [Citation.] Once the defendant, however, has met this burden, it becomes incumbent upon the plaintiff to set forth facts sufficient to avoid the statutory limitation." *PSI Resources, LLC v. MB Financial Bank, National Ass'n,* 2016 IL App (1st) 152204, ¶ 29. More specifically, this court has recognized that a plaintiff has the burden to demonstrate, in opposition to a defendant's motion to dismiss, that his or her cause of action related back under section 2-616. *Dever v. Simmons*, 292 Ill. App. 3d 70, 78 (1997). Plaintiff's failure to even attempt to seek the application of section 2-616(b) in this matter, either below or on appeal, has led to his forfeiture of any reliance upon that section. *Pagano,* 257 Ill. App. 3d

911 (issues not raised before the circuit court are waived for purposes of appeal); Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued on appeal are forfeited).

¶ 39 Thus, we conclude that the circuit court properly dismissed plaintiff's civil conspiracy claim against John on the basis that it was barred by the statute of limitations.

¶ 40 The same cannot be said of the circuit court's dismissal of the remaining six claims against John on that basis. As we discussed above, the undisputed, admitted facts establish that plaintiff either knew or should have known both of an injury and its probable wrongful cause, at the latest, in or around October 2009. Assuming that the discovery rule applied to toll the running of the five-year statute of limitations for each of these claims to this date, plaintiff had until October 2014 to file a complaint against John. The October 10, 2013, filing of plaintiff's original complaint against John would therefore have been timely under the discovery rule. Under this theory, the circuit court would have improperly dismissed plaintiff's remaining claims against Robert on the basis that they were barred by the statute of limitations.

¶ 41 Of course, we must also consider whether the six remaining claims against John either actually accrued before October 10, 2008, or whether plaintiff either know or should have known both of an injury and its probable wrongful cause before that date.[2] Accepting all of plaintiff's well-pleaded facts as true, however, genuine issues of material fact preclude making that determination as a matter of law**.**

¶ 42 For example, John contends on appeal, as he did below, that "plaintiff's claims all derive from an alleged unwritten contract made in 2002. Pursuant to the evidence presented to the [circuit] court, each of the causes of action in the plaintiff's Third Amended Complaint accrued on February 1, 2004[,] when the defendants were permitted by the Chicago Park District to

[2] October 10, 2008 being exactly five years before the complaint against John was actually filed.

transfer the PSL to plaintiff but failed to do so." However, even if we assumed that John is correct that "plaintiff's claims all derive from an alleged unwritten contract made in 2002" and that the evidence presented below conclusively established that the PSL could not be transferred until February 1, 2004, it does not necessarily follow that all of plaintiff's remaining claims therefore accrued on February 1, 2004. While that may well have been the first day that the PSL could have been transferred, the well-pleaded facts contained in plaintiff's complaint do not establish that performance of the unwritten contract to transfer the PSL was required on this date. John's contentions to the contrary, both below and on appeal, are no more than conclusory statements of fact and law that we are not bound to accept in reviewing a ruling on a section 2-619 motion to dismiss. *Aliano*, 2013 IL App (1st) 120242, ¶ 20.

¶ 43 Rather, we agree with plaintiff that, at least according to the well-pleaded facts contained in the complaint, no specific date for the transfer of the PSL was established. "It is well settled in Illinois that where a contract is silent as to when performance will be completed, a reasonable time for performance will be implied, and that what is a reasonable time is a matter of proof under the circumstances and conditions of each particular case. *Murphy v. Roppolo-Prendergast Builders, Inc.*, 117 Ill. App. 3d 415, 418 (1983); see also, *Kitsos v. Terry's Chrysler-Plymouth, Inc.*, 70 Ill. App. 3d 728, 732 (1979) ("it is clear that the question of what constitutes a reasonable time is ordinarily one of fact"). As such, exactly if or when plaintiff's claims seeking recovery for John's failure to transfer the PSL accrued prior to October 10, 2008 is an open question of fact that could not be answered in the context of ruling on John's motion to dismiss.

¶ 44 In addition John's statute of limitations argument does not even address plaintiff's allegation that defendants had also improperly refused to honor an actual or implied agreement, or improperly misled plaintiff into believing that an agreement existed, such that plaintiff "would

have the right to purchase the preseason, season and playoff tickets for each Bears season for 1 of the 4 Bears PSLs." Arguably, plaintiff was first put on notice that such an agreement would not be honored in October 2009, less than five years prior to the filing of the complaint.

¶ 45 Thus, we find that the circuit court improperly granted John's motion to dismiss plaintiff's remaining claims on the basis that they were barred by the statute of limitations, because issues of material fact preclude a finding that, as a matter of law, plaintiff's remaining claims against John were timely filed.

¶ 46 However, this does not end our inquiry as the circuit court's judgment may be affirmed for any reason, and upon any ground warranted. *Drexler*, 408 Ill. App. 3d at 404. We must therefore also consider John's alternative argument, raised both below and again on appeal, that all of plaintiff's claims were barred by the statute of frauds.

¶ 47 The Illinois statute of frauds is set forth in the Frauds Act (740 ILCS 80/0.01, *et seq*. (West 2012)) and provides:

> "No action shall be brought to charge any person upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, for a longer term than one year, unless such contract or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some person thereunto by him lawfully authorized in writing, signed by such party." 740 ILCS 80/2 (West 2014).

¶ 48 Illinois' statute of frauds seeks to prohibit fraudulent practices that are commonly upheld by perjury and subordination of perjury, and thus bars actions based upon "nothing more than loose verbal statements." *McInerney v. Charter Golf, Inc*., 176 Ill. 2d 482, 491 (1997). Thus, "the statute of frauds bars enforcement of an oral contract which cannot be performed within one year." *Dickens v. Quincy College Corp*., 245 Ill. App. 3d 1055, 1059 (1993). "The test for

determining whether the statute of frauds applies to a contract is whether the contract is capable of being performed within one year of its formation, not whether such occurrence is likely." *Robinson v. BDO Seidman, LLP*, 367 Ill. App. 3d 366, 370 (2006).

¶ 49 John contends that because the agreement was allegedly made in 2002, while the PSL agreement precluded transfer of the PSL until February 1, 2004, the statute of frauds bars all of plaintiff's claims because the agreement could not have been completed within one year. Notably, John makes no specific argument regarding how the statute of frauds would apply to plaintiff's additional allegation that defendants had also agreed that plaintiff "would have the right to purchase the preseason, season and playoff tickets for each Bears season for 1 of the 4 Bears PSLs." While plaintiff concedes that the statute of frauds is generally applicable to some of his claims, he rejects the contention that it applies to all of them. He also contends that his full performance renders the alleged agreement enforceable despite the statute of frauds.

¶ 50 We find that, even if we accepted that the statute of frauds applied to all aspects of each of plaintiff's claims against John, plaintiff is correct that application of that provision may well not apply here due to plaintiff's full performance. "Illinois courts have held that a party who has fully performed an oral contract within the one-year provision may nonetheless have the contract enforced." *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 491 (1997). As it has been explained:

> "The doctrine of full performance provides that where one party completely performs a contract, the contract is enforceable and the statute of frauds may not be used as a defense. Statutes of Frauds are designed to prevent false claims by requiring a writing to evidence the parties' contractual intent. When one party fully performs his part of the alleged oral contract, however, the courts recognize that this very performance strongly

> indicates the existence of a contract. Such performance tends to minimize the dangers that the Statute of Frauds [was] designed to prevent." (Internal quotation marks and citations omitted.) *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009)

¶ 51 Here, according to the well-pleaded allegations of the complaint, plaintiff's sole obligation under the alleged agreement was to pay $765 to defendants for the purchase of a PSL. It is undisputed that plaintiff did so in 2002. Under the doctrine of full performance, this payment appears sufficient to remove this matter from the protections of the statute of frauds, such that the statue of frauds does not provide an independent basis to uphold that circuit court's order granting John's motion to dismiss.

¶ 52 Having said that, we also acknowledge John's contention that plaintiff unreasonably delayed making a demand for performance as to the transfer of the PSL until 2012, such that the doctrine of full performance should not apply because "such a delay in demanding performance is not the conduct of one who has relied on a definite promise, regardless of whether he has alleged to have fully performed himself or not." In support of this argument, John cites to *Anderson*, 397 Ill. App. 3d at 791, where the appellate court affirmed the trial court's ruling—after a bench trial—that plaintiff waited an unreasonable amount of time to demand performance such that an alleged oral contract would not be enforced.

¶ 53 However, the *Anderson* decision involved a trial court's factual findings following a full bench trial, it was not resolved as part of ruling on a section 2-619 motion to dismiss. As the *Anderson* decision and this order previously acknowledged, where a contract is silent as to when performance will be completed, as is the case here, a reasonable time for performance will be implied and the question of what constitutes a reasonable time for performance of a contract is ordinarily one of fact. *Murphy*, 117 Ill. App. 3d at 418; *Kitsos*, 70 Ill. App. 3d at 732. It is simply

impossible for us to determine upon the pleadings that plaintiff waited an unreasonable time to demand performance of the alleged agreement when the reasonable time for performance of the agreement is itself a factual matter that cannot be resolved upon the pleadings. Upon the record before us, the applicability of the statute of frauds to this matter is a question of fact that must be left to the circuit court to resolve in due course.

¶ 54 In sum, for the forgoing reasons, we affirm the circuit court's dismissal of plaintiff's civil conspiracy claim against John, but reverse its dismissal of plaintiff's remaining six claims against John.

¶ 55 C. Motion to Reconsider

¶ 56 We now turn to an examination of the circuit court's denial of plaintiff's motion seeking reconsideration of the order dismissing plaintiff's complaint with prejudice.

¶ 57 It is well recognized that the "purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of existing law." *Pence v. Northeast Illinois Regional Commuter R.R. Corp*., 398 Ill. App. 3d 13, 16 (2010). Because plaintiff argued in his motion to reconsider that the trial court erred in its application of existing law, we review *de novo* the order denying the motion to reconsider. *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 433 (2005).

¶ 58 Here, plaintiff's motion to reconsider essentially reiterated the arguments raised below and again on appeal regarding the applicability of the statute of limitations, the statute of frauds, and the doctrines of mootness, waiver and laches. As such, for the same reasons discussed above, we affirm in part and reverse in part the circuit court's denial of plaintiff's motion to reconsider.

¶ 59 III. CONCLUSION

¶ 60 For the foregoing reasons, we affirm the judgment of the circuit court in part and reserve in part. This cause—specifically, plaintiffs claims against John asserting breach of an oral agreement, breach of a fiduciary duty, unjust enrichment, promissory estoppel, conversion, and breach of contract implied in fact—is remanded for further proceedings consistent with this order.

¶ 61 Affirmed in part and reversed in part. Cause remanded.