SIXTH DIVISION
March 27, 2015

No. 1-14-2067

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RITCHIE CAPITAL MANAGEMENT, L.L.C.; RITCHIE CAPITAL MANAGEMENT, LTD.; and RITCHIE SPECIAL CREDIT INVESTMENTS, INC.,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 13 L 10488
FREDRICKSON & BYRON, P.A., a Minnesota Professional Association; SIMON ROOT, an Individual; and JOHN KONECK, an Individual,	)	
Defendants-Appellees	)	
(Timothy E. Takesue, an Individual; and Miguel A. Martinez, Jr., an Individual	)	Honorable Sanjay T. Tailor,
Defendants).	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Orders granting defendants-appellees' motion to dismiss with prejudice and denying leave to file an amended complaint are affirmed, where instant suit was not filed within time permitted by applicable statute of limitations and proposed amendment to complaint would not have cured this defect.

¶ 2 Plaintiffs-appellants, Ritchie Capital Management, L.L.C., Ritchie Capital Management, LTD., and Ritchie Special Credit Investments, Inc. (collectively, Ritchie), filed the instant suit in 2013 against defendants-appellees, Fredrickson & Byron P.A., a Minnesota Professional

Association, Simon Root, and John Koneck (collectively, F&B), and defendants, Miguel A. Martinez, Jr. and Timothy E. Takesue. Ritchie alleged that it had been defrauded by one of F&B's former clients in 2008, and sought—*inter alia*—to recover from F&B for its alleged aiding and abetting a breach of fiduciary duty, conspiracy to commit fraud, and aiding and abetting fraud. F&B filed a motion to dismiss and the circuit court ultimately granted that motion, dismissing Ritchie's claims against F&B with prejudice after concluding they were untimely in light of the two-year statute of limitations contained in section 13-214.3(b) of the Code of Civil Procedure (Code). 735 ILCS 13-214.3(a), (b), (c) (West 2012). The circuit court also denied Ritchie leave to file an amended complaint. Ritchie appeals from both of these orders, and for the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 19, 2013, Ritchie filed the instant lawsuit in the circuit court. The complaint contains a host of allegations regarding the parties, the historical background of their relationships and activities, and other matters. We need not restate all of those allegations for purposes of this appeal.

¶ 5 It is sufficient to note that Ritchie's complaint generally alleged that Fredrickson & Byron P.A. was a law firm, of which both Mr. Root and Mr. Koneck were members. Beginning in 1994, Fredrickson & Byron P.A., including Mr. Root and Mr. Koneck, had provided legal services for one of its former clients, Thomas Petters (Petters), and for various entities controlled by Petters, including Petters Company, Inc. (PCI). During the time F&B represented Petters—who was identified in the complaint as a convicted felon serving a 50-year prison sentence—and his related entities, "Petters and his criminal associates *** operated one of the largest Ponzi schemes in history, spanning more than a decade and costing lenders and investors over $3

billion." Ritchie further alleged that, without F&B's "substantial knowing assistance, Petters and his cohorts would not have been able to continue to execute their fraudulent scheme." Indeed, the complaint alleged that it was only due to the actions of F&B that Ritchie was defrauded by Petters and his associates.

¶ 6 Specifically, Ritchie alleged that in 2008, it had been defrauded out of more than $31 million by Petters and PCI in connection with a deal to purportedly purchase and resell 232,350 Sony PlayStations. The complaint alleged that on or about March 21, 2008, Ritchie had agreed to provide $31 million in financing to Petters and PCI. These funds, along with an additional $21 million to be provided by Petters and/or PCI, would be used to purchase the PlayStations for $52 million. As it was allegedly explained to Ritchie, those PlayStations were already presold for $79 million to uBid Holdings, Inc. (UBID), who would in turn resell them to a nationwide retailer, Costco. Ritchie was to be repaid the $31 million within 90 days, with interest, and was also to share in the profits from the sale to UBID.

¶ 7 Ritchie alleged, however, that this entire purported transaction was fraudulent and that it was never repaid. This fraud was purportedly orchestrated and supported by fraudulent purchase orders prepared by PCI and UBID.[1] Ritchie further contended that this fraud was also supported by the actions and inactions of F&B, which—*inter alia*—"knew and/or recklessly disregarded the truth" about this transaction.

¶ 8 As alleged in its complaint, all of Petters' fraudulent activities and various Ponzi schemes came to an end when, on or about September 24, 2008, "agents from the FBI, the IRS, and other federal agencies, along with local law enforcement agencies, executed search warrants on the headquarters of PCI and Petters' personal residence." An affidavit filed in support of those

[1] Defendants Timothy Takesue and Miguel A. Martinez, Jr., not parties to this appeal, allegedly knew about or created the fraudulent purchase order on behalf of UBID.

search warrants purportedly alleged that Petters and PCI had used these very tactics—*i.e.*, supplying fraudulent purchase orders and other documents in support of transactions that were "entirely fabricated"—in a number of instances in order to "induce investors to invest money." Ritchie further alleged that the government had secretly taped conversations in which "Petters disclosed Koneck's knowledge and direct involvement in the conspiracy to defraud Plaintiffs." Ritchie's complaint further asserted that these specifically quoted conversations "demonstrate that Koneck conspired to assist Petters and was regularly aware of his role as part of Petters' overall fraudulent activities at the time he provided legal counsel to Petters and PCI and, specifically, he knowingly and substantially assisted the fraudulent PlayStation transaction, through his role as Petters' counsel," and that "F&B (specifically, Koneck) had knowledge of and facilitated Petters' conspiracy by providing material advice to assist Petters in defrauding [p]laintiffs." Finally, Ritchie contended that these conversations were "admitted into evidence against Petters and others in their criminal trials."

¶ 9 On the basis of these allegations, Ritchie sought to recover from all of the named defendants for their alleged aiding and abetting a breach of fiduciary duty, conspiracy to commit fraud, and aiding and abetting fraud.

¶ 10 Following an unsuccessful attempt to remove this matter to federal court, on December 2, 2013, F&B filed a motion to dismiss the complaint pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2012). F&B first argued that, pursuant to section 2-619 and because the allegations against it were based upon its alleged acts or omissions in the performance of its role as Petters' attorney, this action was time-barred by the two-year statute of limitations contained in section 13-214.3(b) of the Code. 735 ILCS 5/13-214.3(b) (West 2012). In support of this argument, F&B relied upon *800 South Wells Commercial, LLC v. Horwood Marcus & Berk*

Chartered, 2013 IL App (1st) 123660, in which this court held that "the plain language of the statute directs that the two-year limitation applies to all claims against an attorney arising out of acts or omissions in the performance of professional services, and not just legal malpractice claims or claims brought against an attorney by a client." *Id*. ¶ 13. In the alternative, and pursuant to section 2-615, F&B also asserted that Ritchie's complaint failed to state any valid claims against F&B.

¶ 11 In response to F&B's motion, Ritchie asserted—*inter alia*—that section 13-214.3(b) of the Code did not apply to this matter, and that its allegations against F&B were actually covered by the five-year statute of limitations contained in section 13-205 of the Code. 735 ILCS 5/13-205 (West 2012). In support of this position, Ritchie relied upon *Ganci v. Blauvelt*, 294 Ill. App. 3d 508 (1998), in which an appellate court in the Fourth District held that the two-year statute of limitations in section 13-214.3(b) did not apply to third-party actions against an attorney, where the plaintiff did not allege that the defendant-attorney owed any professional duty to him and the action was not one for legal malpractice. *Id*. at 515. Ritchie further contended that *800 South Wells Commercial, LLC* should not be followed, as it was wrongly decided.

¶ 12 While parties were briefing F&B's motion to dismiss, our supreme court issued its decision in *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271. Therein, our supreme court overruled *Ganci*, came to the same conclusion as *800 South Wells Commercial, LLC*, and held that section 13-214.3 "unambiguously applies to all claims brought against an attorney arising out of actions or omissions in the performance of professional services," regardless of whether they were claims of legal malpractice brought by the attorney's client. *Id*. ¶ 23. F&B specifically cited the *Evanston* decision in its reply brief below.

¶ 13 In response, Ritchie took two actions. First, after being granted leave to file a surreply, it argued that *Evanston* did not actually apply here, and even if it did the *Evanston* decision should not be applied retroactively to this matter. Ritchie alternatively argued that, even if section 13-214.3(b) of the Code did apply to this matter, the two-year statute of limitations contained therein was tolled pursuant to the so-called "discovery rule." This argument was supported by reference to this court's decision in *Mitsias v. I-Flow Corp*., 2011 IL App (1st) 101126, which, Ritchie asserted, stood for the proposition that the statute of limitations for its claims against F&B did not begin to run until Ritchie was aware of *those specific claims*.

¶ 14 Ritchie further contended that it was not aware of any of the claims it asserted against F&B until May of 2012. In the surreply, and in an affidavit and supporting documentation filed in support thereof, Ritchie explained that: (1) Petters had filed for bankruptcy in 2008, (2) it was not until May of 2012 that the trustee in Petters' bankruptcy case filed a "motion to approve a settlement reached with Fredrickson & Byron P.A. ('F&B') in connection with its role in Petters' Ponzi scheme;" (3) the $13.5 million settlement that the trustee reached with F&B was based upon the results of the trustee's extensive and confidential investigation; (4) the results of that investigation, which remained confidential, nevertheless revealed "a number of red flags that should have alerted F&B to the possibility that the business allegedly conducted by Petters was fraudulent;" and (5) it was only as a result of this public filing by the trustee that "Ritchie, for the first time, became aware of certain factual information potentially supporting claims against F&B arising out of its role in facilitating Petters' Ponzi scheme and the PlayStation Transaction fraud, prompting Ritchie to conduct further due diligence into its potential claims, and leading Ritchie to file the Complaint in this matter on September 19, 2013." The supporting documentation also established that Petters was convicted by a jury on December 2, 2009.

¶ 15 Ritchie also asked for leave to file a proposed amended complaint that would incorporate the above assertions regarding its discovery of its potential claims against F&B in May of 2012.

¶ 16 F&B responded to these allegations by contending that the discovery rule did not generally require a plaintiff to know it was harmed by a specific defendant, just that a plaintiff was injured and the injury was wrongfully caused. F&B further contended that *Mitsias* was inapplicable here as it involved a very specific situation where a statute of limitations was tolled because a plaintiff was unaware that her injury might have been caused by a specific source "because the causal link was as yet unknown to science." *Id.* ¶ 19. F&B further contended that even if the statute of limitations for Ritchie's claims against it were tolled until Ritchie was specifically aware of those claims, the undisputed facts clearly established that those claims were still untimely. F&B, therefore, argued that its motion to dismiss should be granted and Ritchie's request for leave to file an amended complaint should be denied.

¶ 17 A hearing on this matter was held on April 23, 2014. After it heard oral argument, the circuit court granted F&B's motion to dismiss pursuant to section 2-619 and dismissed F&B with prejudice. The court specifically concluded: (1) the *Evanston* decision and, therefore, the two-year statute of limitations contained in section 13-214.3(b) of the Code, applied to this matter; (2) *Mitsias* was based upon specific facts and constituted a narrow ruling that did not apply here; (3) the discovery rule generally "does not wait for the plaintiff to ascertain the identity of the wrongdoer;" (4) Ritchie had conceded during oral argument that it knew that it was injured and that the injury was wrongfully caused by Petters in 2008; and (5) therefore, Ritchie's claims against F&B were untimely because Ritchie was "on inquiry notice no later than December 2008 to ascertain the identify of culpable parties."

¶ 18 Because it granted F&B's motion to dismiss under 2-619, the circuit court concluded that it did not need to rule upon the 2-615 motion. Finally, the circuit court denied Ritchie leave to file an amended complaint, after concluding that the new allegations contained in the proposed amended complaint did not "avoid[] the statute of limitations defense."

¶ 19 Written orders reflecting these rulings were entered on April 23, 2014, and May 22, 2014. On June 17, 2014, the circuit court entered an order finding that there was no just reason to delay appeal or enforcement of its orders granting F&B's motion to dismiss and denying Ritchie leave to file an amended complaint, pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)). The claims against defendants Timothy Takesue and Miguel A. Martinez, Jr. were stayed pending the outcome of an appeal. Ritchie filed a timely appeal on July 8, 2014.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Ritchie contends that the circuit court improperly granted F&B's motion to dismiss its complaint pursuant to section 2-619 of the Code. Alternatively, Ritchie asserts that the circuit court improperly denied it leave to file an amended complaint. F&B contends that the circuit court correctly granted its motion to dismiss Ritchie's complaint under section 2-619 and, alternatively, the dismissal of Ritchie's complaint was also proper under section 2-615 of the Code.

¶ 22 A. Standard of Review

¶ 23 A defendant may move to dismiss a complaint pursuant to section 2-619.1 of the Code, which permits the combination of motions presented under both sections 2-615 and 2-619. 735 ILCS 5/2-615, 2-619, 2-619.1 (West 2012).

¶ 24 A section 2-615 motion admits all well-pleaded facts and attacks the legal sufficiency of the complaint, whereas a section 2-619 motion admits the legal sufficiency of the complaint, but raises defects, defenses or other affirmative matter appearing on the face of the complaint or established by external submissions which defeat the action. 735 ILCS 5/2-615, 2-619 (2012); *Jenkins v. Concorde Acceptance Corp*., 345 Ill. App. 3d 669, 674 (2003). 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) (2012); *Fireman's Fund Insurance Co. v. Rockford Heating & Air Conditioning, Inc.*, 2014 IL App (2d) 130566, ¶ 9.

¶ 25 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.

¶ 26 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).

¶ 27 B. Section 13-214.3

¶ 28 We first address the parties' contentions as to whether the circuit court properly concluded that section 13-214.3 of the Code provides the applicable statute of limitations for this

matter. This issue presents a question of statutory interpretation, which we review *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010)

¶ 29 In relevant part, section 13-214.3 of the Code provides:

> "(a) In this Section: 'attorney' includes (i) an individual attorney, together with his or her employees who are attorneys, (ii) a professional partnership of attorneys, together with its employees, partners, and members who are attorneys, and (iii) a professional service corporation of attorneys, together with its employees, officers, and shareholders who are attorneys; and 'non-attorney employee' means a person who is not an attorney but is employed by an attorney.
>
> (b) An action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing professional services must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.
>
> (c) Except as provided in subsection (d), an action described in subsection (b) may not be commenced in any event more than 6 years after the date on which the act or omission occurred." 735 ILCS 5/13-214.3(a), (b), (c) (West 2012).

¶ 30 The proper scope of this section was clearly provided by our supreme court in *Evanston*, 2014 IL 114271. Therein, our supreme court specifically addressed the question of whether the statute of repose contained in section 13-214.3(c) "applies solely to claims brought by a client against an attorney who owes professional or fiduciary duties to the plaintiff." *Id.* ¶ 23. Our

supreme court found that, instead, *all* of the claims brought in that case by a *third-party, non-client* against a number of defendant attorneys—including a claim of fraudulent misrepresentation—were in fact time-barred by the plain language of section 13-214.3. *Id*. ¶¶ 1, 23. As our supreme court reasoned, any more narrow reading of the statute would:

> "[O]verlook[] the language in the statute that the repose period applies to claims *'arising out of* an act or omission in the performance of professional services.' (Emphasis added.) 735 ILCS 5/13-214.3(b), (c) (West 2008). The 'arising out of' language indicates an intent by the legislature that the statute apply to all claims against attorneys concerning their provision of professional services. There is no express limitation that the professional services must have been rendered to the plaintiff. Nor does the statute state or imply that it is restricted to claims for legal malpractice. Had the legislature wished to do so, it could have limited the statute to legal malpractice actions or to actions brought by a client of the attorney. Instead, the statute broadly applies to 'action[s] for damages based on tort, contract, or otherwise *** arising out of an act or omission in the performance of professional services,' which encompasses a number of potential causes of action in addition to legal malpractice. (Emphasis added.) 735 ILCS 5/13-214.3(b) (West 2008). *** The statute unambiguously applies to *all claims* brought against an attorney arising out of actions or omissions in the performance of professional services." (Emphasis added.) *Evanston*, 2014 IL 114271, ¶ 23.

¶ 31 Here, Ritchie brought claims against F&B for its alleged aiding and abetting a breach of fiduciary duty, conspiracy to commit fraud, and aiding and abetting fraud. In each of these claims, Ritchie relies upon the actions F&B purportedly took on behalf of Petters, in F&B's role as Petters' attorney. Despite Ritchie's claims to the contrary, all of these allegations of

wrongdoing, thus, arise out of acts or omissions in the performance of F&B's professional services. Pursuant to the *Evanston* decision, therefore, they are subject to the limitations period contained in section 13-214.3(b) of the Code.

¶ 32 In so ruling, we reject Ritchie's argument that the *Evanston* decision is not controlling because this matter involves the applicability of the statute of limitations contained in subsection 13-214.3(b) of the Code, while the *Evanston* decision involved the applicability of the statute of repose contained in subsection 13-214.3(c). It is well recognized that statutory provisions must be "read in concert and harmonized." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 50; see also *Chicago Title & Trust Co. v. Village of Inverness*, 315 Ill. App. 3d 1100, 1105, 735 (2000) (in order to interpret a statutory phrase, "we must read the entire section together and construe it so as to make it harmonious and consistent in all its parts"). The plain language of section 13-214.3 indicates that subsections (b) and (c) are to be construed together, where it is subsection (b) that defines the scope of the legal actions to which the section applies, while subsection (c) defines the length of the applicable statute of repose by specific reference to "an action described in subsection (b)." 735 ILCS 13-214.3(b), (c) (West 2012).

¶ 33 In fact, in the analysis of section 13-214.3 in *Evanston*, 2014 IL 114271, ¶¶ 19-24, our supreme court clearly discussed the statute as a whole, not simply subsection (c) alone. Again, the "arising out of language" the court found so indicative of the legislative intent behind subsection (c) is actually located in subsection (b). And it was this language in subsection (b) that led our supreme court to rule that "the statute" as a whole—not simply subsection (c)—applied "to all claims against attorneys concerning their provision of professional services." *Id.*

¶ 23. In light of the general rules of statutory construction and the language contained in the *Evanston* decision, we reject Ritchie's claim that section 13-214.3(b) does not provide the

applicable statute of limitations for the allegations against F&B contained in the instant complaint.

¶ 34 C. Retroactivity of *Evanston*

¶ 35 We next address Ritchie's contention that, even if section 13-214.3(b) generally does provide the applicable statute of limitations for the allegations against F&B, it should not be applied here because to do so would improperly apply the *Evanston* decision retroactively. We disagree.

¶ 36 As this court has recognized:

> "In the civil context, an opinion issued by a court is generally presumed to apply both retroactively and prospectively. [Citation.] That presumption can be overcome if either the issuing court expressly states that its decision will be applied prospectively only or a later court, under certain circumstances, declines to give the previous opinion retroactive effect to the parties appearing before the later court. [Citation.] A court conducts a three-prong analysis in deciding whether to give a previous decision prospective effect only. [Citation.] First, a court must determine whether the decision to be applied prospectively only established a new principle of law, either by overruling past precedent on which the parties have relied or by deciding an issue of first impression the resolution of which was not clearly foreshadowed. [Citations.] If this threshold requirement is satisfied, then a court considers (1) whether, given the purpose and prior history of the new rule, its operation will be hindered or promoted by prospective application, and (2) whether prospective application is mandated by the balance of the equities. [Citations.]" *Coleman v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 392 Ill. App. 3d 380, 387-88 (2009).

¶ 37 We perceive no impediment to the application of the clearly-binding *Evanston* decision under these principles. As noted above, that decision is presumed to apply both retroactively and prospectively. *Id.* Moreover, our supreme court's decision in *Evanston* contains absolutely no indication that it was to be applied only prospectively. Thus, the presumption of retroactive application can be overcome only if *we* declined to give *Evanston* retroactive effect to the parties appearing before this court. *Id.*

¶ 38 The threshold question we must answer in making this determination is "whether the decision to be applied prospectively only established a new principle of law, either by overruling past precedent on which the parties have relied or by deciding an issue of first impression the resolution of which was not clearly foreshadowed." *Id.* We need not address any issue beyond this threshold question.

¶ 39 First, it is evident that the *Evanston* decision did not decide an issue of first impression, the resolution of which was not clearly foreshadowed. As discussed above, this exact issue had been addressed in reported Illinois appellate decisions on two separate occasions prior to the decision in *Evanston*, with our supreme court specifically addressing those cases in its analysis. *Evanston*, 2014 IL 114271, ¶¶ 20-23. As such, this was not an issue of first impression for the Illinois courts. *Cf. Bogseth v. Emanuel*, 166 Ill. 2d 507, 516 (1995) (issue is one of first impression where "[n]o appellate court, prior to the appellate court opinions which formed the basis of the present appeal, had addressed the precise issue before the court").

¶ 40 Nor do we believe that the *Evanston* decision can be said to have overruled past precedent on which the parties—specifically, Ritchie—relied. At the time Ritchie filed the instant suit on September 19, 2013, there were two published Illinois decisions discussing the scope of the limitations period contained in section 13-213.4(b): (1) *Ganci*, filed in 1998, in

which the Fourth District of the appellate court ruled that section 13-214.3(b) does not apply to the type of allegations at issue here (*Ganci*, 294 Ill. App. at 515); and (2) *800 South Wells Commercial, LLC*, filed on August 22, 2013, where this court specifically rejected the *Ganci* decision and came to the opposite conclusion (*800 South Wells Commercial, LLC*, 2013 IL App (1st) 123660, ¶ 15). While the *Evanston* decision did in fact specifically overrule *Ganci*, it also upheld the interpretation of section 13-214.3(b) that this court provided in *800 South Wells Commercial, LLC*. We fail to see how Ritchie can claim that *Evanston* should be applied only prospectively on the basis it overruled the case upon which it relied—*Ganci*—when the *Ganci* decision was directly rejected by this court in *800 South Wells Commercial, LLC*, a more recent decision that was nevertheless issued prior to the filing of the instant suit.

¶ 41 Even if there was any possible basis for not applying the *Evanston* decision retroactively, we would still be left with this court's *800 South Wells Commercial, LLC* decision itself, one which came to the same conclusion and was issued prior to the filing of this suit. As it was the decision issued from the appellate district in which it sits, the circuit court was bound to abide by the reasoning contained in *800 South Wells Commercial, LLC* as opposed to *Ganci*. See *Aleckson v. Village of Round Lake Park*, 176 Ill. 2d 82, 92 (1997) ("[W]hen conflicts arise amongst the districts, the circuit court is bound by the decisions of the appellate court of the district in which it sits."). Moreover, because it was issued before Ritchie filed the instant suit, there is no possible question of applying *800 South Wells Commercial, LLC* retroactively to this suit; that decision can only be applied prospectively here.

¶ 42 The only argument Ritchie makes on appeal in opposition to this logic is that, because a petition for rehearing filed in response to the *800 South Wells Commercial, LLC* decision was not denied until September 25, 2013 (see *800 South Wells Commercial, LLC*, 2013 IL (1st) 123660),

that decision was not final until after this suit was filed and, therefore, "could not have provided Ritchie with any notice that *Ganci* *** was not sound law." We reject this contention.

¶ 43 While the petition for rehearing in *800 South Wells Commercial, LLC* may have been denied only after Ritchie filed this suit, that decision was issued as a published opinion prior thereto. It has long been recognized that "the filing of a petition for rehearing does not alter the effective date of the judgment of a reviewing court unless that court allows the petition for rehearing, in which event the effective date of the judgment is the date that the judgment is entered on rehearing." *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 305 (1981). *800 South Wells Commercial, LLC* was, therefore, published and effective prior to the filing of this case, thus, supporting the application of both its own holding and the retroactive application of the reasoning contained in *Evanston* to this matter. We, therefore, reject all of Ritchie's challenges to the application of the statute of limitations contained in section 13-214.3(b) to the allegations against F&B contained in its complaint.

¶ 44 D. Application of the Discovery Rule

¶ 45 Ritchie next contends that, even if section 13-214.3(b) applies here, its suit was still timely because the so-called "discovery rule" tolled the limitations period contained therein until it purportedly discovered F&B's wrongful actions in 2012. We disagree.

¶ 46 As noted above, section 13-214.3(b) provides:

> "An action for damages based on tort, contract, or otherwise [] against an attorney arising out of an act or omission in the performance of professional services *** must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 13-214.3(b) (West 2012).

As such, the statute of limitations contained in section 13-214.3(b) "incorporates the 'discovery rule,' which serves to toll the limitations period to the time when the plaintiff knows or reasonably should know of his or her injury." *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 10.

¶ 47 More specifically, the effect of the discovery rule 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." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20. Historically, 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). "Rather, the term refers to when an injured party '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.' " *Castello*, 352 Ill. App. 3d at 744-45 (quoting *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 416 (1981)).

¶ 48 In other words, "when a party knows or reasonably should know both that an injury has occurred and that it was wrongfully caused, 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.' " *Steinmetz v. Wolgamot*, 2013 IL App (1st) 121375, ¶ 30 (quoting *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981)). " '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.' " *Steinmetz*, 2013 IL App (1st) 121375, ¶ 30.

¶ 49 Before progressing further, we must briefly discuss the matter of the operative date for purposes of applying the statute of limitations contained in section 13-214.3(b) and the discovery rule. As noted above, Ritchie filed the instant suit on September 19, 2013. Ordinarily, therefore, in order for to Ritchie to take advantage of the discovery rule, it would have to show that it only knew or reasonably should have known that an injury had occurred and that it was wrongfully caused sometime within the two-year period prior to that date; *i.e.*, on or after September 19, 2011. See *Hermitage Corp. v. Contractors Adjustment Co*., 166 Ill. 2d 72, 85 (1995) ("When a plaintiff uses the discovery rule to delay commencement of the statute of limitations, the plaintiff has the burden of proving the date of discovery.").

¶ 50 However, Ritchie has contended that Ritchie and F&B (or, alternatively, Fredrickson & Byron P.A., but not Mr. Root or Mr. Koneck) "signed a tolling agreement on March 15, 2013, which tolled the running of the statute of limitations as of that date, but did not resurrect claims that already were time-barred." Such an agreement would make the operative date for purposes of this matter March 15, 2011 (for some or all of the F&B defendants). The record does not clearly reflect the nature or status of this tolling agreement, and Ritchie does nothing more than state that March of 2011 is "the operative cutoff date for the two year statute of limitations as admitted by the F&B Defendants." Because it proves immaterial to our analysis, we will assume that the earlier March 15, 2011, date applies.

¶ 51 Even applying this earlier date, it is clear that the traditional formulation of the discovery rule would not be of any aid to Ritchie in this matter. It is undisputed that Ritchie learned of its injury in 2008. Indeed, Ritchie conceded as much at the hearing on F&B's motion to dismiss. It

is also undisputed, and Ritchie also conceded below, that it knew by December of 2008 "that Petters had been raided, that him/and or his companies had filed bankruptcy, [and] that he was indicted[.]" Certainly, at that point Ritchie was also aware that its injury was "wrongfully caused," and at a minimum this knowledge provided Ritchie with " 'sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved.' " *Castello*, 352 Ill. App. 3d at 744-45 (quoting *Knox College*, 88 Ill. 2d at 416).

¶ 52 Thus, under the traditional formation of the discovery rule the statute of limitations began to run no later than December of 2008, when Ritchie knew both that an injury had occurred and that it was wrongfully caused, and expired two years later in December of 2010. Obviously, this date was well before March 15, 2011. Under this traditional formulation, Ritchie's suit was, therefore, untimely.

¶ 53 However, Ritchie contends that a "broad exception to the general discovery rule" was recognized by this court in *Mitsias*. The plaintiff in that case had originally brought a medical malpractice suit against the surgeon who performed a procedure on her left shoulder. *Mitsias*, 2011 IL App (1st) 101126, ¶ 2. During the course of discovery in that case, however, the plaintiff became aware that "recently published medical literature" had suggested a link between a "pain pump" used during the surgery and the plaintiff's injury. *Id*. The plaintiff, therefore, added product liability claims against the manufacturer of that pain pump, but those claims were dismissed by the circuit court as having been untimely filed. *Id*. ¶¶ 3-4.

¶ 54 On appeal, this court considered the possible effect of the discovery rule to such a situation. Specifically, this court stated:

> "The central issue in this case is how the discovery rule is applied when a plaintiff is aware that her injury might have been wrongfully caused by one source but is unaware that her injury might have been caused by another source and, in fact, could not be aware of that source because the causal link was as yet unknown to science." *Id.* ¶ 19.

¶ 19. This court ultimately concluded that the statute of limitations for the plaintiff's product liability claims did not begin to run until she could have discovered that her injury might have been caused by the pain pump, as the "plaintiff could not have known of any potential product liability cause of action against the pain pump manufacturers while the causal link between her injury and the pain pump used upon her was not scientifically discoverable." *Id.* ¶¶ 29, 31. More generally, this court held that "where a plaintiff knows or should reasonably know that her injury was caused by one source, but remains unaware of another source that could not be discovered through the exercise of diligent inquiry, the statute of limitations does not begin to run with regard to that second source until such time as that second source would become discoverable through diligent inquiry." *Id.* ¶ 31.

¶ 55 Focusing on the facts of the case and the narrow framing of the issue statement in *Mitsias—i.e.*, that the case involved a consideration of the proper application of the discovery rule where a plaintiff "is unaware that her injury might have been caused by another source *** because the causal link was as yet unknown to science" (*id.* ¶ 19)—F&B contends that *Mitsias* represented a very narrow exception to the general discovery rule that is simply inapplicable to this matter. In contrast, and focusing on the more general language contained in this court's ultimate holding, Ritchie contends that *Mitsias* is applicable here and "contains a broad exception to the general discovery rule for situations where a plaintiff *could not* have reasonably discovered a potential second cause of its injury from the same injury." (Emphasis in original.)

Thus, Ritchie contends that *Mitsias* supports its position that the statute of limitations for its claims against F&B did not being to run until May of 2012, when the Petter's bankruptcy trustee's motion to approve the settlement was filed and "certain underlying facts supporting that settlement" became public. In granting the motion to dismiss, the circuit court essentially agreed with F&B, concluding that "*Mitsias,* it's really talking about separate and independent causes that are not discoverable. In *Mitsias*[,] it was something that medical science had not yet discovered."

¶ 56 Ultimately, we need not determine which of these interpretations of *Mitsias* is correct. Obviously, if F&B and the circuit court are correct, *Mitsias* is inapplicable here and Ritchie's claims against F&B were properly dismissed as untimely for all the reasons discussed above. Even if Ritchie is correct, however, it is still evident from the undisputed facts that the possibility that F&B was a potential source of Ritchie's injury was "discoverable through diligent inquiry" (*id*. ¶ 31), no later than December of 2009.

¶ 57 It is undisputed that Petters was convicted following a jury trial in December of 2009. Plaintiffs own complaint identified Petters as a convicted felon, and the documents filed by Ritchie in response to F&B's motion to dismiss specifically indicated that Petters was convicted by a jury on December 2, 2009. See also *United States v. Petters*, Crim. No. 08-364, 2010 WL 1254353, at *1 (D. Minn. Mar. 24, 2010) (noting that Petters was convicted by a jury of 20 counts of wire fraud, mail fraud, conspiracy, and money laundering on December 2, 2009).

¶ 58 Moreover, the allegations against F&B contained in Ritchie's own complaint rely in significant part upon specifically quoted portions of "conversations, secretly taped by the government and admitted into evidence against Petters and others in their criminal trials." Ritchie's complaint further asserted that these specifically quoted conversations "demonstrate

that Koneck conspired to assist Petters and was regularly aware of his role as part of Petters' overall fraudulent activities at the time he provided legal counsel to Petters and PCI, and specifically, he knowingly and substantially assisted the fraudulent PlayStation transaction, through his role as Petters' counsel," and that "F&B (specifically, Koneck) had knowledge of and facilitated Petters' conspiracy by providing material advice to assist Petters in defrauding [p]laintiffs."

¶ 59 As we have already noted, it is undisputed that Ritchie learned of its injury in 2008 and knew by December of 2008 "that Petters had been raided, that him/and or his companies had filed bankruptcy, [and] that he was indicted." Ritchie also knew full well that F&B had represented Petters in the PlayStation transaction. In light of that knowledge, certainly any "diligent inquiry" by Ritchie either did or should have included monitoring the criminal proceedings against Petters. Furthermore, those criminal proceedings revealed—no later than December of 2009 and according to the allegations of Ritchie's *own complaint*—evidence allegedly demonstrating F&B's knowledge of and participation in Petters' fraudulent PlayStation transaction with Ritchie. Upon such undisputed facts, we reject Ritchie's contention that it could not reasonably have discovered that F&B was a second potential source of its injury until May of 2012. Indeed, it is apparent that this fact could and should have been reasonably discovered no later than December of 2009, well before the operative date of March 15, 2011. As such, even if the broader interpretation of *Mitsias* urged by Ritchie is correct and that decision applied to this matter, Ritchie's claims against F&B were still properly dismissed as untimely.

¶ 60 E. Remaining Issues

¶ 61 There remain only two additional issues raised by the parties on appeal: (1) F&B's alternative argument that the dismissal of Ritchie's complaint was proper under section 2-615 of

the Code; and (2) Ritchie's contention that the circuit court improperly denied it leave to file an amended complaint. Obviously, because we affirm the dismissal of Ritchie's complaint pursuant to section 2-619 of the Code, we need not reach F&B's alternative argument.

¶ 62 We also conclude that the circuit court properly denied Ritchie leave to file its amended complaint. "In determining whether to allow an amendment to the pleadings, the trial court considers the following factors: (1) whether the proposed amendment would cure a defect in the pleadings; (2) whether the proposed amendment would prejudice or surprise the other party; (3) whether the proposed amendment is timely; and (4) whether there were previous opportunities to amend the pleading." *Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶ 42. The standard of review is abuse of discretion. *Id.* ¶ 41.

¶ 63 Here, Ritchie's amended complaint contained nothing but additional allegations and factual support for its contention that it could not have discovered that F&B was a second potential source of its injury until after May of 2012, when the bankruptcy trustee filed the motion to approve the settlement with F&B. We have already rejected this argument in the context of affirming the circuit court's dismissal of the initial complaint, in light of the allegations regarding the evidence presented at Petters' criminal trial contained therein. Those same allegations are also contained in the proposed amended complaint. For the very same reasons discussed above, the proposed amendments to Ritchie's complaint would, therefore, not cure the fundamental defect here; Ritchie's claims against F&B were untimely.

¶ 64 III. CONCLUSION

¶ 65 For the foregoing reasons, the circuit court's order granting F&B's motion to dismiss and denying Ritchie leave to file its amended complaint are affirmed, and this case is remanded for further proceedings consistent with this order.

¶ 66 Affirmed and remanded.