2026 IL App (1st) 251480-U

THIRD DIVISION
June 30, 2026

No. 1-25-1480

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHANA GAFNER, on behalf of herself and all others similarly situated, Plaintiff-Appellant, v. OASIS LEGAL FINANCE, LLC d/b/a Oasis Financial; OFLC, LLC; OASIS LEGAL FINANCE HOLDING COMPANY, LLC d/b/a Oasis Financial Holding Company LLC; OASIS LEGAL FINANCE OPERATING COMPANY, LLC d/b/a Oasis Financial Operating Company, LLC and/or Oasis Structured Settlements; LIBRA SOLUTIONS INTERMEDIATE HOLDCO, LLC; and JOHN DOES 1 to 10, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 24 CH 3222 Honorable Sophia H. Hall, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the dismissal of a complaint with prejudice where the claims were time-barred and the doctrine of equitable tolling was inapplicable.

¶ 2 Shana Gafner (Gafner) entered a "Nonrecourse Purchase Agreement" (agreement) whereby Oasis Legal Finance, LLC, d/b/a Oasis Financial (Oasis Financial) provided funding to Gafner in exchange for a portion of Gafner's proceeds from an underlying personal injury claim.

More than seven years later, Gafner filed a putative class action lawsuit in the circuit court of Cook County against Oasis Financial and related entities. Gafner alleged that the agreement constituted a "disguised loan transaction" and that the defendants' business practices violated applicable law. The circuit court dismissed the operative complaint with prejudice, finding that the claims were time-barred and that the doctrine of equitable tolling did not apply. On appeal, Gafner primarily contends that the circuit court erred in its rulings regarding equitable tolling. For the reasons discussed below, we affirm.

¶ 3 BACKGROUND

¶ 4 Gafner, a New Jersey resident, entered into the agreement with Oasis Financial, a Delaware limited liability company with its principal place of business in Illinois, on January 4, 2017. The agreement indicated that Gafner was a party to a pending personal injury lawsuit. Pursuant to the agreement, Oasis Financial paid a "purchase price" to Gafner in exchange for an "ownership amount" in the ultimate proceeds of her personal injury lawsuit or any related settlement. The ownership amount increased over time as provided in a schedule set forth in the agreement; the later any recovery was received as to Gafner's claim, the larger the ownership amount owed to Oasis Financial. The agreement was non-recourse, *i.e.*, if Gafner complied with the agreement and failed to collect on her personal injury claim, then Oasis Financial would receive nothing. The agreement also required Gafner to pay various fees, including an "archiving and document management fee" and a periodic "case servicing fee."

¶ 5 The agreement provided that any disputes or litigation "shall be governed, construed and enforced in accordance with the laws of the State of New Jersey." The agreement further provided that "[t]he parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the circuit court of Cook County" for any claims or disputes, and the

parties agreed not to commence any lawsuit or other proceedings except in the circuit court of Cook County. The parties also waived their rights to "consolidate or to have handled as a class action any proceeding on any lawsuit." In a separate document, Gafner's attorney acknowledged his receipt of the agreement.

¶ 6 *Initiation of Illinois Litigation*

¶ 7 On April 15, 2024, Gafner filed a four-count putative class action complaint in the circuit court of Cook County against Oasis Financial and related entities. According to the complaint, the defendants regularly solicited New Jersey clients who had pending litigation claims. Gafner and the putative class members were New Jersey consumers who received what Gafner characterized as "consumer loans" from the defendants. The complaint alleged that the defendants unlawfully engaged in the consumer loan business without first obtaining a license as a consumer lender as required by the New Jersey Consumer Finance Licensing Act (N.J.S.A. 17:11C-3). As the defendants were not licensed or registered to conduct business under New Jersey law, the complaint alleged that the "loans" were void and unenforceable. The complaint further alleged that the amounts charged for fees and interest exceeded the legal maximums.

¶ 8 Count I of the complaint sought a declaratory judgment and injunctive relief. The complaint alleged that the defendants engaged in various "unconscionable commercial practices" which violated the New Jersey Consumer Fraud Act (CFA) (N.J.S.A. 56:8-2), including operating while unlicensed and lending on usurious terms and without adequate disclosures. The complaint sought, among other things, a declaratory judgment that the accounts created by defendants' lending actions were unlawful. Count II alleged that defendant engaged in "unconscionable commercial practices" under the CFA (*id.*) and sought damages thereunder. Count III asserted a claim for unjust enrichment, requesting that the defendants be required to

disgorge any profits or other benefits which they enjoyed from the funds received from the improper loans. Count IV alleged that the defendants violated the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA) (N.J.S.A. 56:12-14, *et seq.*), which prohibits creditors and other businesses from using contracts or notices in transactions containing provisions which violate the consumer's rights or the business's responsibilities under New Jersey or federal law. Gafner was subsequently granted leave to file an amended complaint, which added another affiliate of Oasis Financial as a defendant.[1]

¶ 9 *Motions to Dismiss*

¶ 10 The defendants other than Oasis Financial filed a motion to dismiss the amended complaint under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2024)), arguing that they were not parties to Gafner's agreement, and the amended complaint contained no facts indicating the corporate veil should be pierced. Gafner did not file a response.

¶ 11 The defendants also filed a combined motion under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2024)) to dismiss the amended complaint and to strike the class allegations. The defendants argued that Gafner's claims were time-barred under the applicable statutes of limitations and should thus be dismissed pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2024)). The defendants further maintained that, even if Gafner's claims were timely pled, the litigation could not proceed as a class action, as her agreement contained a valid and enforceable class action waiver. The defendants argued in the alternative that the circuit court should enforce the agreement as written and strike the class allegations in

[1] The defendants named in the amended complaint were: Oasis Legal Finance, LLC d/b/a Oasis Financial; OFLC, LLC; Oasis Legal Finance Holding Company, LLC d/b/a Oasis Financial Holding Company LLC; Oasis Legal Finance Operating Company, LLC d/b/a Oasis Financial Operating Company, LLC and/or Oasis Structured Settlements; Libra Solutions Intermediate Holdco, LLC; and John Does 1 to 10.

the complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2024)).

¶ 12 The defendants asserted that the plain language of the agreement demonstrated that the parties' transaction was not a loan; rather, Oasis Financial purchased a contingent right to share in any potential proceeds of Gafner's underlying lawsuit. If Gafner received nothing in her personal injury case, then she would have owed nothing to Oasis under the agreement. Citing *Perkins v. Advance Funding, LLC*, No. Civ. A. 20-15708, 2021 WL 4059861, at *3 (D.N.J. Sept. 7, 2021), the defendants maintained that such "non-recourse litigation funding agreements are not illegal under New Jersey law."

¶ 13 As to the statute of limitations argument, the defendants asserted that Gafner's four causes of action were time-barred since she entered into the agreement on January 4, 2017, more than seven years before she filed the complaint. The defendants argued that while Illinois law generally governs whether a cause of action was timely filed, an exception to this rule applies where a right of action is created by a statute in the jurisdiction where the cause of action arose; in such case, Illinois courts will apply the statute of limitations of that foreign jurisdiction. The defendants thus maintained that a New Jersey statute of limitations applied to Gafner's statutory CFA and TCCWNA claims, whereas an Illinois statute of limitations applied to her declaratory judgment and unjust enrichment claims. As the statute of limitations for CFA and TCCWNA claims is six years (N.J.S.A. 2A:14-1)—and such claims accrued when Gafner received the contract or loan[2]—the defendants asserted that such claims were untimely. The defendants further argued that a five-year statute of limitations applies to declaratory judgment and unjust enrichment claims under Illinois law (735 ILCS 5/13-205 (West 2024)).

[2] The affidavit of David Winkiel, an officer of Oasis Financial, was submitted in support of the motion. He attested that a check was mailed to Gafner on January 6, 2017, and Gafner made her final payment to Oasis Financial on April 5, 2018.

¶ 14 The defendants also asserted that the class action waiver was valid and enforceable under New Jersey or Illinois law. According to the defendants, the amended complaint was devoid of any facts which would suggest that the class action waiver was procedurally unconscionable, as (a) the waiver language was conspicuous, (b) Gafner affirmed that she read and understood the agreement, (c) she was represented by counsel when she signed the agreement, and (d) she had other options for obtaining funding. The defendants further contended that Gafner had not pled that the class action waiver was substantively unconscionable under New Jersey or Illinois law.

¶ 15 In her response to the motion under section 2-619.1 of the Code, Gafner stated that she initially filed a complaint against the defendants in the Superior Court of New Jersey on January 4, 2023—exactly six years after the date of the agreement. Based on the diversity of citizenship of the parties, the case was removed to the United States District Court for the District of New Jersey on February 2, 2023. The defendants subsequently moved to dismiss the federal action based on the forum selection provision in the parties' agreement. The federal district court granted the dismissal motion on March 19, 2024, and Gafner filed her complaint in the circuit court of Cook County the following month.

¶ 16 Gafner argued that her claims filed in Illinois were timely under the doctrine of equitable tolling, as she mistakenly filed the initial lawsuit in the incorrect forum. As to her claims for declaratory relief and unjust enrichment, Gafner contended that the six-year limitations period under New Jersey law applied, not the five-year period under Illinois law. She also maintained that the class action waiver could not be enforced as the agreement was void *ab initio* due to the defendants' lack of proper licensing to conduct consumer lending in New Jersey.

¶ 17 In their reply, the defendants argued that "[e]ven if there was any time left on her claims to toll—and there is not," Gafner did not deserve the "extraordinary relief" provided by the

equitable tolling doctrine, as she did not mistakenly file her case in the wrong forum. According to the defendants, Gafner "intentionally ignored" the forum selection clause in the parties' agreement and filed her claims in New Jersey rather than the contractually mandated forum of Cook County, Illinois. The defendants also asserted that the five-year statute of limitations under Illinois law applied to Gafner's declaratory judgment and unjust enrichment claims, as those claims are not based on rights created by a New Jersey statute.

¶ 18 *Circuit Court Ruling*

¶ 19 In a written order entered on June 26, 2025, the circuit court granted the section 2-615 motion to dismiss filed by the defendants (other than Oasis Financial) which were not parties to the agreement with Gafner. As to the section 2-619.1 motion, the circuit court initially found that counts II and IV of the amended complaint—alleging violations of the CFA and TCCWNA—were time-barred based on the six-year limitations period under New Jersey law. The circuit court rejected Gafner's contention that the equitable tolling doctrine applied to these claims, given the clear language of the parties' agreement that all disputes relating to the agreement were required to be filed in the circuit court of Cook County. As to the declaratory judgment and unjust enrichment counts (counts I and III), the circuit court found that the five-year Illinois statute of limitations applied. As the limitations period started to run on the date that the agreement was executed—January 4, 2017—the circuit court concluded that the limitations period had expired on January 4, 2022, and the claims were thus time-barred. Although the circuit court stated that it "need not address the class action argument" based on its determination that the Illinois case was untimely, it ultimately opined that the class action waiver was enforceable. The circuit court dismissed the amended complaint with prejudice, and Gafner filed this timely appeal.

¶ 20 ANALYSIS

¶ 21 Gafner contends on appeal that the circuit court incorrectly determined that the applicable limitations periods were not tolled. She argues that her claims were timely filed in New Jersey state court and that she "diligently filed" the instant action less than a month after the dismissal of her claims by the federal district court in New Jersey following removal. The defendants observe that Gafner does not dispute that her claims filed in the Illinois action were time-barred on their face unless the running of the applicable statutes of limitations was tolled. According to the defendants, Illinois's equitable tolling doctrine does not save Gafner's untimely claims, and she forfeited the argument that New Jersey's equitable tolling principles should apply.

¶ 22 As a threshold matter, we note that Gafner indicates in her opening brief that she is not challenging the dismissal of any defendants which were not signatories to the agreement. Therefore, for purposes of our analysis, the sole remaining defendant is Oasis Financial.

¶ 23 *Section 2-619(a)(5) Dismissal*

¶ 24 As discussed above, Gafner filed a combined motion under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2024)) to dismiss the amended complaint as untimely under section 2-619(a)(5) and to strike the class allegations under section 2-615. 735 ILCS 5/2-619(a)(5) (West 2024); 735 ILCS 5/2-615 (West 2024).

¶ 25 A motion to dismiss pursuant to section 2-619 of the Code admits the legal sufficiency of the complaint but asserts that some affirmative matter defeats the plaintiff's claim. *Stone Street Partners, LLC v. City of Chicago Department of Administrative Hearings*, 2017 IL 117720, ¶ 4. See *Wells v. State Farm Fire & Casualty Co.*, 2020 IL App (1st) 190631, ¶ 30 (noting that a "motion to dismiss under section 2-619 admits a claim's legal sufficiency while raising defenses, defects, or other affirmative matters that appear outside the face of the complaint"). When

considering a section 2-619 motion to dismiss, we must view the pleadings and supporting materials in the light most favorable to the non-moving party. *Id.*

¶ 26 Section 2-619(a)(5) provides that an action may be dismissed where it was "not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2024). As discussed below, Gafner appears to concede that her claims were not timely filed in Illinois unless the doctrine of equitable tolling is applied. We review *de novo* both the dismissal of a complaint under section 2-619(a)(5) and a determination of whether the equitable tolling doctrine applies. *Torrijos v. International Paper Co.*, 2021 IL App (2d) 191150, ¶ 77; *IPF Recovery Co. v. Illinois Insurance Guaranty Fund*, 356 Ill. App. 3d 658, 663 (2005). Under *de novo* review, we perform the same analysis as the circuit court would perform. *Khan v. Fur Keeps Animal Rescue, Inc.*, 2021 IL App (1st) 182694, ¶ 34.

¶ 27 *Applicable Statutes of Limitations*

¶ 28 A statute of limitations "governs the time within which lawsuits may be commenced after a cause of action has accrued." *DeLuna v. Burciaga*, 233 Ill. 2d 49, 61 (2006). "Statutes of limitations rest upon the premise that the right to be free of stale claims in time comes to prevail over the right to prosecute them." (Internal quotation marks and citation omitted.) *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 369-70 (1995). See *Arrizon v. TransUnion, LLC*, 2025 IL App (1st) 231911, ¶ 34 (observing that statutes of limitations promote finality and predictability). In this case, Oasis Financial maintains that the dismissal of the amended complaint was proper, as the applicable statutes of limitations had expired on all four causes of action asserted therein: the count seeking a declaratory judgment (count I); the count for damages under the CFA (count II); the unjust enrichment count (count III); and the count based on the TCCWNA (count IV).

¶ 29 The parties' agreement provides that it is governed by New Jersey law. As recognized by our supreme court, a choice of law provision in an agreement generally will be honored. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 351 (2002). Nevertheless, as to procedural matters, the law of the forum controls. *Id.* "Statutes of limitations are procedural, merely fixing the time in which the remedy for a wrong may be sought, and do not alter substantive rights." *Id.* Where, however, "the right a party seeks to vindicate is based on a statute and not the common law, then the statute defines that right, and any statutory time limitation for asserting that right is an inherent element of the right itself." *Mercury Sightseeing Boats, Inc. v. County of Cook*, 2019 IL App (1st) 180439, ¶ 65. See *Jackson v. Shuttleworth*, 42 Ill. App. 2d 257, 259 (1963) (noting that "[w]here the right of action depends upon statute and where no such right existed at common law, the time for bringing action is determined by the lex loci, because the lex loci establishes the substantive rights of the parties, and where a limitation is placed upon the assertion of that right, it has been correctly held to be a matter of substantive, as distinguished from procedural, law").

¶ 30 Based on these principles, we agree with the determination of the circuit court that the five-year "catch-all" statute of limitation under Illinois law—and not the six-year New Jersey period, as argued by Gafner—applies to the declaratory judgment and unjust enrichment claims (counts I and III). See 735 ILCS 5/13-205 (West 2024). The Illinois declaratory judgment statute (735 ILCS 5/2-701 (West 2024)) "does not create substantive rights or duties, but merely affords a new, additional, and cumulative procedural method for the judicial determination of the parties' rights." *Beahringer v. Page*, 204 Ill. 2d 363, 373 (2003). See *Mann v. Thomas Place, L.P.*, 2012 IL App (1st) 110625, ¶ 14 (noting that actions seeking recovery based on unjust enrichment are subject to the five-year statute of limitations set forth in section 13-205 of the

Code); *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 742 (1995) (same). The limitations period commenced running on January 4, 2017—the date of the agreement—as Gafner knew or should have known at that time that the agreement violated New Jersey laws, as alleged. See *Superior Bank FSB v. Golding*, 152 Ill. 2d 480, 488 (1992) (noting that the five-year limitations period in section 13-205 of the Code could not accrue until the plaintiff "knew or reasonably should have known that it was injured and that the injury was wrongfully caused"). See also *B. Braun Medical, Inc. v. Hospira, Inc.*, No. 11-cv-4246, 2013 WL 12618931, at *3 (N.D. Ill. Mar. 13, 2013) (observing that "[b]ecause the unjust enrichment claim has a basis in contract, the statute of limitations begins running at the time of the breach, not when damages accrue"); *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 42 (affirming the dismissal of an unjust enrichment claim as time-barred where "[a]ny cause of action for unjust enrichment was complete" at the time that an old mortgage was released and replaced with an allegedly void new mortgage, *i.e.*, the "relevant facts were all of record"). Since the five-year statute of limitations started to run on counts I (declaratory judgment) and III (unjust enrichment) on January 4, 2017, those claims were time-barred—even at the time that the New Jersey action was filed.

¶ 31 As to the New Jersey statutory claims for violation of the CFA (count II) and violation of the TCCWNA (count IV), the six-year statute of limitations under New Jersey law applies. See *Mirra v. Holland America Line*, 331 N.J. Super. 86, 90 (2000) (noting that "the statute of limitations that applies to consumer fraud claims is the same six-year general limitation contained in N.J.S.A. 2A:14-1"); *Bowen v. Hyundai Motor America*, No. 15-6942, 2016 WL 3466085, at *2 (D.N.J. June 22, 2016) (providing that "the statutory limitations period for claims under the TCCWNA is the New Jersey default limitations period of six years"). The limitations period for these claims began to run on the date of the agreement, January 4, 2017. *E.g.*,

D'Angelo v. Miller Yacht Sales, 261 N.J. Super. 683, 688 (1993) (stating that a CFA claim "may be brought within six years of accrual"); *Bowen*, 2016 WL 3466085, at * 2 (noting that "TCCWNA claims accrue when a consumer receives the contract that violates the TCCWNA"). Gafner maintains that counts II (CFA) and IV (TCCWNA) are not time-barred, since the running of the statute of limitations was equitably tolled by the filing of her claims in the New Jersey state court action on January 4, 2023—exactly six years after the execution of the agreement.

¶ 32 *Equitable Tolling*

¶ 33 Oasis Financial contends that Gafner did not argue in the circuit court proceedings that New Jersey's equitable tolling principles apply and has thus forfeited such argument. While we recognize that forfeiture may apply to choice-of-law issues (*e.g.*, *Zabaneh Franchises, LLC v. Walker*, 2012 IL App (4th) 110215, ¶ 14), we need not find forfeiture herein, particularly where Illinois and New Jersey law are substantially similar regarding the doctrine of equitable tolling.

¶ 34 "The equitable tolling doctrine may be applied to suspend the running of a statute of limitations period in certain limited circumstances." *Arrizon*, 2025 IL App (1st) 231911, ¶ 36. Although equitable tolling is recognized under both Illinois and New Jersey law, it is rarely applied. *Id.* ¶ 37; *Barron v. Gersten*, 472 N.J. Super. 572, 577 (2022) (noting that a "statute of limitations may be equitably tolled under very limited circumstances"). Courts have found that equitable tolling under Illinois law may be appropriate under three circumstances: "(1) where defendant has actively misled the plaintiff; (2) if the plaintiff has been prevented from asserting his or her rights in some extraordinary way, or (3) if the plaintiff has mistakenly asserted his or her rights in the wrong forum." *Arrizon*, 2025 IL App (1st) 231911, ¶ 38. Accord *Clay v. Kuhl*, 189 Ill. 2d 603, 614 (2000); *City of Rockford v. Gilles*, 2022 IL App (2d) 210521, ¶ 65. Similar factors have been applied by courts in evaluating the availability of equitable tolling under New

Jersey law. *Barron*, 472 N.J. Super. at 577; *F.H.U. v. A.C.U.*, 427 N.J. Super. 354, 379 (2012).

¶ 35 The "extraordinary barriers" which may warrant equitable tolling include an "irremediable" lack of information, legal disability, or circumstances where the plaintiff could not learn the identity of the proper defendants through the exercise of due diligence. *City of Rockford*, 2022 IL App (2d) 210521, ¶ 65. In the instant case, there is no indication that any such barriers precluded Gafner from timely commencing her litigation in Illinois. Furthermore, given the clear language of the forum-selection provision, her decision to initially file in New Jersey appears to have been deliberate—and not mistaken.

¶ 36 We are similarly unmoved by Gafner's contention that she "diligently" filed her Illinois complaint less than a month after the dismissal of the federal action in New Jersey. "Under the doctrine of equitable tolling, courts may 'pause' the statute of limitations clock from the time a plaintiff brought his initial action in an improper forum until it was dismissed based on such improper forum, at which point the plaintiff is aware that he filed in an incorrect forum." *Webb v. Diversegy, LLC*, No. 21-12088, 2025 WL 2418673, at *4 (D.N.J. Aug. 21, 2025). Gafner filed her New Jersey state court action on the final day of the six-year limitations period as to her CFA and TCCWNA claims. Even assuming that equitable tolling was available, there was effectively no time remaining on the "statute of limitations clock" once it "resumed running." *Id.* *See Sandoval v. Midland Funding, LLC*, No. A-0407-23, 2024 WL 3050737, at *9 (N.J. Super. Ct. App. Div. June 19, 2024) (noting that "we consider significant that plaintiffs filed their current complaint in state court on the same day the federal complaint was dismissed").

¶ 37 For the reasons discussed above, we conclude the equitable tolling doctrine is not applicable herein. We affirm the circuit court's dismissal of Gafner's claims with prejudice pursuant to section 2-619(a)(5) of the Code. Based on the foregoing, we need not consider the

validity and enforceability of the class action waiver in the agreement under section 2-615 of the Code.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court of Cook County is affirmed.

¶ 40 Affirmed.