

2026 IL App (1st) 251046-U
No. 1-25-1046
Order filed October 30, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
FIFTH DIVISION

SPENCER ROMAN and ERIKA SCHWELNUS, Plaintiffs-Appellants,

v.

TAMERLANE HOMEOWNERS' ASSOCIATION, LEONARD ALTIMARI, DAVID KUO,
KEITH WILKEY, TIMOTHY BLUBAUGH, ANDREW PORTER, CONSTANCE BARKLEY,
ROBERT PASQUESI, FIRST COMMUNITY MANAGEMENT, LLC, and FULLETT
SWANSON, P.C., Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
Honorable Patrick Sherlock, Judge, Presiding.
No. 2023 L 003844

JUSTICE WILSON delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice C.A. Walker concurred in the judgment.

ORDER

- ¶ 1 *Held:* The judgment of the circuit court on defendants' combined motions to dismiss is affirmed in part and reversed in part. Defendants failed to establish that plaintiffs' conversion, trespass-to-chattels, and wrongful-eviction claims accrued more than five years before this action was filed, or that their abuse-of-process claim accrued more than two years before filing. Thus, defendants failed to establish that those claims were untimely under section 2-619(a)(5) of the Code. The judgment is otherwise affirmed, and the cause is remanded for further proceedings.
- ¶ 2 This appeal arises from a 2016 residential possession action brought by defendant Tamerlane Homeowners' Association (the Association) against Erika Schwelnus, in which the

Association obtained an order of possession for her property that was later vacated in 2021. In 2023, Schwelnus and her husband, Spencer Roman, filed the present damages action against the Association and others, asserting claims arising from the allegedly defective service used in the possession proceedings, their resulting eviction, and the Association's alleged interference with their personal property. The circuit court dismissed plaintiffs' second amended complaint under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2022)). Plaintiffs appeal, principally challenging the court's application of section 2-619 and its dismissal of several claims as untimely.

¶ 3

I. BACKGROUND

¶ 4

A. The 2016 Possession Action

¶ 5 In 2016, the Association filed an action against Schwelnus and unknown occupants concerning a townhouse unit at 2671 North Greenview Avenue in Chicago. The Association alleged that Schwelnus had failed to pay common expenses and sought possession of the unit and a money judgment. The Association initially attempted to serve Schwelnus through the Cook County sheriff. After the Cook County sheriff was unable to serve Schwelnus, the circuit court granted the Association leave to appoint a special process server and issue an alias summons.

¶ 6 On April 19, 2016, the Association sought leave to serve Schwelnus by posting and submitted an affidavit stating that she could not be found and that her residence could not be ascertained after diligent inquiry, with the Greenview unit identified as her last known address. The circuit court authorized service by posting and set a default prove-up hearing for May 3, 2016. The sheriff later reported that notice had been posted on April 21, 2016, at three public locations in Chicago and mailed to Schwelnus at the Greenview address.

¶ 7 Schwelnus did not appear at the prove-up hearing. The circuit court thereafter entered a default judgment and order of possession, awarding the Association possession of the unit and \$16,816.13 for unpaid common expenses, attorney fees, and costs. The court stayed enforcement of the possession order until July 2, 2016, after which the sheriff was authorized to evict Schwelnus and any unknown occupants.

¶ 8 On June 29, 2016, Spencer Roman, appearing *pro se*, filed a motion to vacate service, supported by a signed affidavit by Schwelnus. Schwelnus asserted, among other things, that she had not been personally served, that she resided on North Talman Avenue rather than at the Greenview unit, and that the Association had not exercised the diligence required for alternative service. On July 14, 2016, the circuit court entered an agreed order striking the motion, noting that Roman, who was not an attorney, had appeared on Schwelnus's behalf and that Schwelnus had not appeared.

¶ 9 On September 16, 2016, the sheriff executed the order of possession and delivered possession of the unit to the Association. On October 5, 2016, the Association sent Schwelnus and Roman a letter at the North Talman address advising that it had obtained possession of the unit, that they could arrange to retrieve their personal property, and that any property remaining in the unit on or after November 1, 2016, would be disposed of.

¶ 10 On November 21, 2016, appearing *pro se*, Schwelnus filed an emergency motion to quash service, again contending that the Association had not conducted a diligent inquiry into her whereabouts before resorting to service by posting.

¶ 11 B. Appeal from the Prior Proceedings and Remand

¶ 12 In August 2018, now represented by counsel, Schwelnus filed a petition under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2018)), seeking to vacate the May 3, 2016, judgment

and a later order extending possession. She again challenged the Association's use of service by posting. The circuit court denied the petition on March 6, 2019, and Schwelnus appealed.

¶ 13 In *Tamerlane Homeowners' Ass'n v. Schwelnus*, 2019 IL App (1st) 190708-U, this court vacated the order denying Schwelnus's petition and remanded for an evidentiary hearing on whether the Association had conducted the due and diligent inquiry required before resorting to service by posting. *Id.* ¶¶ 1, 48-49. We noted that the record raised "a significant question with respect to the truthfulness of the affidavit filed by [the Association's] attorney for service by publication," but made no finding that the affidavit was false. *Id.* ¶ 49.

¶ 14 On remand, the circuit court held an evidentiary hearing in April 2021. On April 19, 2021, it granted Schwelnus's section 2-1401 petition and vacated the default judgment and orders of possession, finding that Schwelnus had not been served as required by law and that the orders were therefore void for lack of personal jurisdiction.

¶ 15 On April 10, 2023, the circuit court denied Schwelnus's motion for sanctions under Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018). The court noted that neither this court nor the circuit court on remand had found the service affidavit "false" and concluded that the record did not establish that the Association's attorney acted in bad faith when he signed it.

¶ 16 C. The Present Action

¶ 17 On April 17, 2023, Roman and Schwelnus filed the present action against the Association, its individual board members, First Community Management, LLC (First Community) (the Association's property management company), and Fullett Swanson, P.C. (Fullett Swanson) (the law firm that had represented the Association in the possession action). After the circuit court dismissed portions of the complaint with leave to replead, plaintiffs filed the operative second amended complaint.

¶ 18 As relevant here, plaintiffs alleged that Schwelnus owned the unit and that Roman, who had quitclaimed his interest to her in 2017, resided there with her; that the Association imposed improper charges against the unit and used the resulting assessment balance as the basis for the 2016 possession action; and that the Association obtained possession through an allegedly false affidavit concerning the efforts made to locate Schwelnus. While the Association possessed the unit, plaintiffs alleged, personal property, including art and memorabilia, was removed and the unit was inadequately maintained, resulting in water damage, mold, and pest infestation. Plaintiffs further claimed that they did not discover the damage or loss of their property until they regained access following the April 19, 2021, order. They also asserted that the Association failed to provide requested records concerning the disputed charges and removed property.

¶ 19 The second amended complaint alleged ten counts: negligence against the Association, First Community, and the individual board members (count I); breach of fiduciary duty against the Association and the board members (count II); conversion against the Association (count III); trespass to chattels against the Association (count IV); violations of the Illinois Condominium Property Act against the Association and the board members (count V); breach of contract against the Association and the board members (count VI); unlawful eviction against the Association (count VII); abuse of process against the Association and Fullett Swanson (count VIII); and violations of the Chicago Municipal Code (Municipal Code) against the Association and the board members (count IX). Plaintiffs also repled an aiding-and-abetting claim against First Community and Fullett Swanson (count X), solely to preserve the claim for appeal.

¶ 20 On January 17, 2024, the Association, the individual board members, and First Community (collectively, the HOA defendants) filed a combined motion to dismiss under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)). The motion challenged the legal sufficiency of

several counts under section 2-615 and argued under section 2-619 that most of the claims were barred by the applicable statutes of limitations. Fullett Swanson separately moved under section 2-619.1 to dismiss the two counts pleaded against it—count VIII (abuse of process) and count X (aiding and abetting)—as untimely.

¶ 21 On April 18, 2024, the circuit court granted in part and denied in part the HOA defendants' combined section 2-619.1 motion to dismiss. In the same order, the court granted Fullett Swanson's combined motion to dismiss.

¶ 22 As to the HOA defendants' motion, the court first considered the claims under section 2-615. It dismissed all claims against the individual board members under the business-judgment rule. It also dismissed count I (negligence) as to First Community because plaintiffs had not alleged a duty owed to them and dismissed Roman's claim in count II (breach of fiduciary duty) because he lacked standing. The court found counts V (Condominium Property Act) and VI (breach of contract) sufficiently pleaded and noted that the Association had not sought section 2-615 dismissal of counts III, IV, or VII. It dismissed count VIII (abuse of process) as to the Association for failure to adequately allege an ulterior purpose and dismissed count IX (Municipal Code violations) with leave to amend because plaintiffs had not alleged that they made the required written request for records or when any such request was made.

¶ 23 The court then considered the HOA defendants' arguments under section 2-619. As to counts I and II, it found the allegations concerning improper assessments and denial of access to records untimely, but allowed both counts to proceed insofar as they alleged that the Association failed to preserve and maintain the unit while it was in possession. The court reasoned that plaintiffs could not have discovered the condition of the unit until they regained possession in April 2021. It also dismissed counts III (conversion), IV (trespass to chattels), V (Condominium Property

Act), and VII (unlawful eviction) as barred by the five-year limitations period in section 13-205 of the Code (*id.* § 13-205).

¶ 24 As to count VI, the court dismissed Roman's claim for lack of standing and directed Schwelnus to replead the remaining allegations with dates bearing on timeliness. The court also found count VIII (abuse of process) untimely under the two-year limitations period in section 13-202 of the Code (*id.* § 13-202), reasoning that plaintiffs had challenged the allegedly defective service as early as June 2016. As to count IX, the court observed that ordinance claims are subject to a two-year limitations period but concluded that the same pleading deficiency in its section 2-615 analysis prevented plaintiffs from showing that the claim was timely.

¶ 25 On Fullett Swanson's motion, the court likewise dismissed count VIII as untimely under section 13-202, reasoning that the last alleged wrongful act occurred when the affidavit was submitted in April 2016 and that plaintiffs were aware of the service issue by June 2016. Having dismissed count VIII under section 2-619, the court did not reach Fullett Swanson's section 2-615 arguments. It also declined to address count X on the merits because plaintiffs represented that they had repleaded the count solely to preserve it for appeal. The court granted Fullett Swanson's motion as to counts VIII and X and dismissed them from the action.

¶ 26 Thus, after the April 18 order, only the maintenance-related portions of counts I and II remained pending. The court directed Schwelnus to replead count VI with dates bearing on timeliness and permitted plaintiffs to replead count IX to allege the required written request for records and its timing. The individual board members had been dismissed, although the court permitted plaintiffs to seek leave to amend if discovery produced specific facts supporting claims against them.

¶ 27 On May 5, 2025, plaintiffs voluntarily dismissed their remaining claims, and the circuit court found that there was “no just reason for delaying either enforcement or appeal” under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Two days later, the Association voluntarily dismissed the consolidated possession action without prejudice. Plaintiffs timely filed their notice of appeal on June 2, 2025.

¶ 28 II. ANALYSIS

¶ 29 On appeal, plaintiffs principally challenge the circuit court’s application of section 2-619, including its statute-of-limitations rulings and the evidentiary support for those rulings. Their brief, however, does not adequately identify the particular counts to which each argument applies. Nonetheless, we are able to discern challenges to the dismissal of counts III (conversion), IV (trespass to chattels), VII (unlawful eviction), VIII (abuse of process), and IX (Municipal Code violations). We address those arguments below.

¶ 30 Plaintiffs develop no argument concerning the remaining dispositions. Those matters are therefore forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); see *Purevdori v. Mission Hills Condominium T-2 Ass’n*, 2024 IL App (1st) 231693, ¶ 29 (an issue is forfeited where a party fails to present a developed argument supported by citation to authority).

¶ 31 A. Combined Motions to Dismiss

¶ 32 Section 2-619.1 of the Code permits a party to combine motions brought under sections 2-615 and 2-619 in a single filing. 735 ILCS 5/2-619.1 (West 2022). A section 2-615 motion tests the legal sufficiency of the complaint, while a section 2-619 motion admits the complaint’s legal sufficiency but asserts an affirmative matter that defeats the claim. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. An “affirmative matter” is “any defense other than a negation of the essential allegations of the plaintiff’s cause of action.” *Kedzie & 103rd Currency*

Exchange, Inc. v. Hodge, 156 Ill. 2d 112, 115 (1993). The defendant bears the initial burden of establishing the affirmative matter asserted. *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 16. Once that burden is met, “the burden shifts to the plaintiff” to establish that “the defense is unfounded or requires the resolution of an essential element of material fact.” *Id.*

¶ 33 Relevant here, section 2-619(a)(5) permits dismissal where “the action was not commenced within the time limited by law.” 735 ILCS 5/2-619(a)(5) (West 2022). In ruling on such motions, the court accepts as true all well-pleaded facts and reasonable inferences therefrom, but not conclusions of law or conclusory factual allegations unsupported by specific facts. *Patrick Engineering*, 2012 IL 113148, ¶ 31.

¶ 34 We review dismissals under sections 2-615 and 2-619 *de novo*. *Cove Management v. AFLAC, Inc.*, 2013 IL App (1st) 120884, ¶ 18. *De novo* consideration means we perform the same analysis that a circuit court judge would perform. *Id.*

¶ 35 B. Whether the Circuit Court Conflated Sections 2-615 and 2-619

¶ 36 We first address plaintiffs’ broader contention that the circuit court conflated sections 2-615 and 2-619 by relying, in its section 2-619 analysis, on pleading deficiencies rather than an affirmative matter defeating otherwise sufficient claims. Plaintiffs therefore contend that the court applied the wrong standard in dismissing those claims. Read as a whole, however, the April 18, 2024, order does not support that characterization.

¶ 37 In its April 18, 2024 order, the circuit court clearly delineated the standard it was applying to each claim when addressing the parties’ separate combined motions, consistent with the preferred procedure for resolving a combined motion. See *Johannesen v. Eddins*, 2011 IL App (2d) 110108, ¶ 29 (“better practice is for a court to entertain the section 2-615 motion first, and then *** entertain the section 2-619 motion”). Here, the court first addressed the legal sufficiency of

the challenged counts under section 2-615 and then separately considered defendants' statute-of-limitations and other affirmative defenses under section 2-619. Structurally, then, the order leaves little uncertainty as to which standard the court was applying.

¶ 38 Plaintiffs nonetheless point to the court's statement that, "[h]aving dismissed pursuant to §2-619, [the] Court does not address the §2-615 arguments." They read that statement as proof that the court, when proceeding under section 2-619, relied on pleading deficiencies properly considered under section 2-615. As an example, they point to the court's treatment of count IX, where, in addressing the HOA defendants' motion under section 2-619, the court focused on what plaintiffs had failed to plead.

¶ 39 Plaintiffs' reliance on that statement is misplaced. The quoted language appears only at the end of the court's separate discussion of Fullett Swanson's motion as to count VIII and thus did not concern the HOA defendants' motion at all. Although the better practice is to address section 2-615 before section 2-619, a court need not reach an alternative section 2-615 ground once a section 2-619 ground independently disposes of the claim. See *Maglio v. Advocate Health & Hospitals Corp.*, 2015 IL App (2d) 140782, ¶ 32 (having affirmed dismissal under section 2-619(a)(9), declining to reach the defendant's alternative section 2-615 arguments). We therefore do not read that narrowly directed statement as evidence that the circuit court generally confused the two standards or improperly analyzed the motions as a whole.

¶ 40 We acknowledge, however, that the circuit court's disposition of count IX does raise some procedural issues. The court first dismissed the count under section 2-615, with leave to replead, because plaintiffs had not alleged the written request required by the ordinance or when it was made. In its section 2-619 analysis, the court noted that those same omissions left it unable to determine whether the claim was timely and therefore concluded that "the complaint is

insufficiently pled.” To that extent, the court’s reasoning blurred the two inquiries because section 2-619 assumes a legally sufficient claim and asks whether affirmative matter nevertheless defeats it. *Patrick Engineering*, 2012 IL 113148, ¶ 31. Nonetheless, the court did not separately find count IX time-barred or withdraw the leave to replead. We therefore treat count IX as dismissed under section 2-615 with leave to replead. That limited overlap does not show that the court generally conflated sections 2-615 and 2-619.

¶ 41 Plaintiffs separately argue that the section 2-619 dismissals lacked evidentiary support. Because the facts bearing on accrual and tolling did not appear on the face of the complaint, they contend that defendants were required to establish those facts through affidavits or other competent materials and failed to do so. Indeed, section 2-619 provides that, when the asserted ground for dismissal does not appear on the face of the pleading “the motion shall be supported by affidavit.” 735 ILCS 5/2-619(a) (West 2022). In resolving the motion, however, the court may consider “the pleadings, as well as any affidavits and deposition evidence,” and may “take judicial notice of facts contained in public records where such notice will aid in the efficient disposition of the case.” *Advocate Health & Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004).

¶ 42 Here, some relevant facts appeared on the face of the complaint, while others—including Schwelnus’s June 2016 challenge to service and the September 2016 execution of the possession order—were established by records from the consolidated possession proceedings that were before the circuit court. Thus, the court was not limited to the allegations of the complaint in considering defendants’ limitations defenses. Whether those materials were sufficient to establish when each particular claim accrued, however, is a separate question. We address that question as to each challenged claim below.

¶ 43 C. Dismissals Under Section 2-619 of the Code

¶ 44 1. *Conversion and Trespass to Chattels (Counts III and IV)*

¶ 45 The circuit court dismissed counts III (conversion) and IV (trespass to chattels), as barred by the five-year limitations period in section 13-205 of the Code (735 ILCS 5/13-205 (West 2022)). Section 13-205 applies, in relevant part, to actions “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.” *Id.* The parties do not dispute that section 13-205’s five-year limitations period applies. The question is whether defendants established that these claims accrued more than five years before plaintiffs commenced this action on April 17, 2023.

¶ 46 “Under the discovery rule, a cause of action accrues, *i.e.*, the statute of limitations begins to run, when ‘the plaintiff knows or reasonably should know of an injury and also knows or reasonably should know that the injury was caused by the wrongful acts of another.’ ” *One Fish Two Fish, LLC v. Struif*, 2021 IL App (1st) 191441, ¶ 45 (quoting *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 169 (1981)). The plaintiff need not know the full extent of the defendant’s wrongful conduct. *Id.* Rather, “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.” (Emphasis added.) *Id.* (quoting *Nolan*, 85 Ill. 2d at 171). Although that determination is ordinarily a question of fact, it may be resolved as a matter of law where the relevant facts are undisputed and permit only one conclusion. *Id.* (citing *Nolan*, 85 Ill. 2d at 171).

¶ 47 The nature of the alleged injury matters here. A judgment awarding possession of real property does not necessarily determine the parties’ rights to personal property located therein. *Bhutani v. Barrington Bank & Trust Co.*, 2015 IL App (2d) 140972, ¶¶ 15-19. In *Bhutani*, the court

explained that a party entitled to possession of real property may incidentally obtain possession of personal property left there, but that right is limited and does not create a permanent right to retain the personal property. *Id.* Thus, the Association's possession of plaintiffs' belongings following execution of the possession order on September 16, 2016, did not, by itself, establish that a conversion or trespass to chattels had occurred.

¶ 48 The October 5, 2016, letter does not establish that either. The letter informed plaintiffs that possession of the unit had been delivered to the Association, that they could arrange to retrieve their personal property, and that any property remaining after November 1, 2016, would be disposed of. Schwelnus later testified that she received the letter "on or about October 5, 2016." The letter and her testimony therefore establish that plaintiffs knew the Association possessed their belongings and intended to dispose of property remaining after November 1. But it does not establish whether the Association had already disposed of, sold, refused to return, or otherwise wrongfully exercised dominion over the property. The letter merely advised plaintiffs that they could retrieve their belongings before that date.

¶ 49 That distinction is significant because counts III and IV are not based merely on the Association's possession of the unit or its temporary custody of property left inside. Plaintiffs allege that, while the Association possessed the unit, it removed all or substantially all of their personal property, exercised unauthorized control over it, listed at least some of it for sale, permanently deprived them of it, and denied a written demand for its return. Those allegations identify the conduct plaintiffs claim constituted conversion and trespass to chattels. They do not, however, state when that conduct occurred during the nearly five years that the Association possessed the unit. The absence of those dates from the complaint does not itself establish a

limitations bar. As discussed above, defendants bore the burden under section 2-619 of establishing an affirmative matter showing that the claims accrued outside the limitations period.

¶ 50 Nor, contrary to defendants' assertion, does the record establish that date. The circuit court treated November 1, 2016, as the latest possible accrual date because the Association had announced that it intended to dispose of property remaining after that date. But an announced intention to act after a specified date does not establish that the act occurred on that date. Nothing identified in the section 2-619 materials establishes when plaintiffs' property was actually removed or disposed of, when any property was listed for sale, or when plaintiffs demanded its return and the Association refused.

¶ 51 We also reject defendants' broader contention that the limitations period necessarily began in 2016 because plaintiffs knew they had been evicted and dispossessed of their property. The May 3, 2016, judgment awarded the Association possession of the unit and entered an *in rem* judgment against the unit for the unpaid common expenses. Section 9-107 of the Code (735 ILCS 5/9-107 (West 2014)) provides that, where a unit owner has not been personally served and does not appear generally, the court "shall not *** enter personal judgment" for common expenses, although "an *in rem* judgment may be entered against the unit." 735 ILCS 5/9-107 (West 2014). Thus, the May 3 judgment established the Association's right to possess the unit and an *in rem* judgment against the unit, but it did not adjudicate ownership of the personal property located inside. Plaintiffs' knowledge that the Association had taken possession pursuant to that order does not, without more, establish when the separate interference with their personal property became actionable. See *Bhutani*, 2015 IL App (2d) 140972, ¶¶ 15-19.

¶ 52 This does not mean, as plaintiffs suggest, that the claims necessarily accrued in April 2021 when the possession order was vacated. If the Association wrongfully disposed of the property,

refused a demand for its return, or otherwise interfered with plaintiffs' possessory rights before then, the claims could have accrued earlier. The difficulty is that the present record does not establish when any such act occurred or when plaintiffs knew or reasonably should have known of it. The October 2016 letter establishes possession and an intention to dispose of property in the future; it does not establish the date of the injury alleged in counts III and IV.

¶ 53 Accordingly, defendants did not establish as affirmative matter that counts III and IV accrued before April 17, 2018, and thus outside section 13-205's five-year limitations period. The circuit court therefore erred in dismissing those counts under section 2-619(a)(5).

¶ 54 *2. Wrongful Eviction (Count VII)*¹

¶ 55 Count VII alleges that the Association, "[i]n an effort to evict Plaintiffs from their home," knowingly or recklessly filed a false affidavit stating that it lacked an address at which to serve plaintiffs. According to plaintiffs, the Association in fact had their North Talman address, had sent mail there, and knew it had been their permanent residence since 2000. Plaintiffs allege that the court relied on that affidavit in permitting service by posting and entering the possession order, which ultimately resulted in their dispossession "without authority of law." They further allege that they did not receive a "judicial determination" that the eviction was wrongful until it was vacated on April 19, 2021.

¶ 56 The parties do not dispute that count VII is governed by the five-year limitations period in section 13-205 of the Code (735 ILCS 5/13-205 (West 2022)). They dispute when the claim accrued. Defendants contend that count VII accrued no later than September 16, 2016, when the

¹ At the outset, we do not decide whether Illinois recognizes a freestanding common-law tort for wrongful eviction. See *Bozek v. Bank of America, N.A.*, 2021 IL App (1st) 191978, ¶¶ 90-100 (declining to resolve that question). The circuit court dismissed count VII as untimely under section 2-619(a)(5), and our analysis is confined to that ruling. We therefore assume, without deciding, that count VII states a cognizable damages claim and, as the parties frame the limitations issue, apply the five-year limitations period in section 13-205 of the Code (735 ILCS 5/13-205 (West 2022)).

sheriff executed the order of possession and dispossessed plaintiffs of the unit. They further contend that plaintiffs knew of the order and had been challenging the validity of service before the sheriff executed it. Thus, absent delayed accrual or tolling, the limitations period expired in September 2021, before plaintiffs commenced this action on April 17, 2023. Plaintiffs respond that the claim did not accrue until April 19, 2021, when, following remand from this court, the circuit court determined that Schwelnus had not been properly served and vacated the judgment and order of possession as void. In plaintiffs view, “[t]hat would have been the first time Plaintiffs could have known that the exercise of authority by the court and the Sheriff over their property was wrongful.”

¶ 57 Section 13-205 requires an action to be commenced within five years after the cause of action “accrued.” 735 ILCS 5/13-205 (West 2022). “A cause of action ‘accrues’ when facts exist that authorize the bringing of the cause of action.” *Henderson Square, LLC*, 2015 IL 118139, ¶ 52. Ordinarily, that occurs when the facts necessary to establish an actionable injury exist. See *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20 (“a tort cause of action accrues when all its elements are present, *i.e.*, duty, breach, and resulting injury or damage”).

¶ 58 When the right to maintain one action depends on success in another, however, accrual may be deferred. In *Kelly v. Chicago Park District*, 409 Ill. 91 (1951), for example, park district employees who had been removed from their civil-service positions first brought a mandamus action seeking reinstatement and, after prevailing, sued for the salaries they would have earned during their removal. *Id.* at 93-94. The park district argued that the salary claims accrued when the employees were removed because they could have sought reinstatement and salary in the same proceeding. *Id.* at 95. Our supreme court disagreed, explaining that the employees’ right to their positions was “a condition [precedent] to the right to salary.” *Id.* Thus, because their entitlement

to salary depended on first establishing their right to the positions, the salary claims did not accrue until that antecedent right was determined. *Id.* at 95-96. As the court stated, “[w]here a party’s success in one action is a prerequisite to his right to maintain a new action, the Statute of Limitations does not begin to run as to the new action until the determination of the pending suit, which decides whether the new right exists.” *Id.* at 95-96.

¶ 59 We recognize that this rule is an exception and that the pendency of a related proceeding does not, by itself, postpone accrual. *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257 (2001), helps illustrate the general rule. There, a developer paid road impact fees under protest and joined other homebuilders in an action challenging the statute and ordinances authorizing those fees and seeking their return. *Id.* at 259-61. That action, however, was voluntarily dismissed. *Id.* at 260. Other homebuilders later brought a separate action in which our supreme court held the statute and ordinances unconstitutional. *Id.* at 260-61. The developer then brought an action seeking a refund, arguing that its claim did not accrue until the later decision made its entitlement to a refund “recoverably certain.” (Internal quotation marks omitted.)” *Id.* at 262, 275. The supreme court rejected that contention because the developer already possessed the factual and legal basis for challenging the fees and, indeed, had previously brought such a challenge itself. *Id.* at 274-76. As the court explained, “a limitation period will not await commencement until a plaintiff has assurance of the success of an action.” *Id.* at 266.

¶ 60 Read together, these cases suggest that accrual may turn on whether the earlier litigation merely confirms the strength of an existing claim or instead resolves a right necessary to maintain the later action. Where the latter is true, accrual may be deferred until that antecedent right is resolved.

¶ 61 Count VII more closely resembles the second circumstance. Plaintiffs’ theory is not simply that the Association lacked a factual basis for seeking possession. They contend that the Association dispossessed them “without authority of law” because Schwelnus was never properly served. Under that theory, the circuit court never acquired personal jurisdiction over her, and the resulting judgment and order of possession were void. Whether those orders were void was therefore antecedent to plaintiffs’ claim that the Association’s possession was unauthorized. Thus, this case is more akin to *Kelly* because the April 2021 ruling did more than provide plaintiffs with greater assurance that their damages claim would succeed—it resolved a legal premise on which that claim depends. See *Kelly*, 409 Ill. at 95; see also *Suburban Real Estate Services, Inc. v. Carlson*, 2022 IL 126935, ¶ 37 (holding that a legal-malpractice claim did not accrue because the claimed injury remained contingent on the outcome of the underlying litigation and that a favorable outcome would have left no cause of action).

¶ 62 To the extent defendants contend that plaintiffs could and should have pursued damages in the section 2-1401 proceeding or in a separate action while that proceeding was pending, we disagree. A judgment entered without personal jurisdiction is void and may be challenged at any time. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103-04 (2002). Section 2-1401 provides a procedural mechanism for obtaining relief from a final judgment more than 30 days after its entry, including relief on the ground that the judgment is void. 735 ILCS 5/2-1401(a), (f) (West 2018); *PNC Bank, National Ass’n v. Kusmierz*, 2022 IL 126606, ¶ 15. A section 2-1401 petition “must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof.” 735 ILCS 5/2-1401(b) (West 2018); *Sarkissian*, 201 Ill. 2d at 102. Thus, nothing in section 2-1401 required Schwelnus to join a damages claim with her petition.

¶ 63 Nor would filing a separate damages action while the section 2-1401 petition remained pending have advanced plaintiffs' claim. As pleaded in count VII, plaintiffs' theory that the Association lacked lawful authority to possess the unit depended on establishing that the possession judgment was void for lack of personal jurisdiction. A separate damages action therefore would have required resolution of the same issue then being litigated in the section 2-1401 proceeding.

¶ 64 That issue was not resolved until April 19, 2021, when, following remand and an evidentiary hearing, the circuit court found that Schwelnus had not been properly served and vacated the judgment and order of possession as void. Under count VII as pleaded, the Association's alleged lack of lawful authority to possess the unit depended on that antecedent determination. Accordingly, count VII accrued on April 19, 2021. Plaintiffs commenced this action on April 17, 2023, within the five-year limitations period prescribed by section 13-205. The circuit court therefore erred in dismissing count VII as untimely under section 2-619(a)(5).

¶ 65 *3. Abuse of Process (Count VIII)*

¶ 66 Plaintiffs likewise challenge the dismissal of count VIII as untimely. An abuse-of-process claim is subject to the two-year limitations period in section 13-202 of the Code (735 ILCS 5/13-202 (West 2022)). *Withall v. Capitol Federal Savings of America*, 155 Ill. App. 3d 537, 544 (1987). That period "commences to run from the date that the last act giving rise to the cause of action has accrued." *Id.* Abuse of process requires "(1) the existence of an ulterior purpose or motive and (2) some act in the use of legal process not proper in the regular prosecution of the proceedings." *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165 (2004). Unlike malicious prosecution, abuse of process does not require termination of the underlying proceeding in the plaintiff's favor. *Holiday Magic, Inc. v. Scott*, 4 Ill. App. 3d 962, 966 (1972); see *Beaman v. Freesmeyer*, 2021 IL 125617, ¶

74 (identifying favorable termination as an element of malicious prosecution). Ordinarily, then, accrual does not wait for the outcome of that proceeding. The question here, however, is narrower and asks whether count VIII, as pleaded, could be maintained before the jurisdictional issue underlying the claim was resolved.

¶ 67 Count VIII alleged that defendants used a “false” April 19, 2016, affidavit to obtain alternative service, a default judgment, and possession of the unit, thereby furthering a “longstanding vendetta” against plaintiffs and depriving them of an opportunity to contest the action. Plaintiffs alleged this use of process was improper because it was “intended to accomplish a result that could not ordinarily be accomplished through the suit itself.” They further alleged that they did not discover the asserted abuse until April 19, 2021, when the circuit court found that Schwelnus had not been validly served and vacated the judgment and order of possession as void.

¶ 68 As pleaded, count VIII turns on the same jurisdictional premise discussed with respect to count VII. The alleged improper act was not merely the filing of a false affidavit in 2016, but defendants’ use of that affidavit to obtain, without valid service, a judgment against Schwelnus and possession of the unit. Plaintiffs’ theory, in other words, is that defendants used legal process to obtain a judgment the court lacked personal jurisdiction to enter. As explained above, whether the judgment and order of possession were void remained unresolved until April 19, 2021. Until then, the order authorizing possession remained in effect, and the jurisdictional premise underlying plaintiffs’ abuse-of-process theory had not yet been adjudicated. Thus, defendants did not establish that the limitations period necessarily began to run in 2016 merely because plaintiffs then knew of the eviction proceedings and disputed the validity of service.

¶ 69 Defendants therefore did not establish, from the face of the complaint or other affirmative matter, that count VIII was barred by the two-year limitations period in section 13-202. On the

theory pleaded, the claim accrued on April 19, 2021, when the circuit court vacated the judgment and order of possession as void. Because plaintiffs commenced this action on April 17, 2023, less than two years later, the circuit court erred insofar as it dismissed count VIII as untimely under section 2-619(a)(5).

¶ 70 Our conclusion that count VIII was timely does not, however, require reversal of the dismissal against the Association. The circuit court dismissed the count against the Association not only as untimely under section 2-619(a)(5), but also under section 2-615 for failure to state a claim for abuse of process. Plaintiffs challenge the limitations ruling but develop no argument against the independent section 2-615 dismissal and have therefore forfeited review of that ruling. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *Joiner v. SVM Management, LLC*, 2020 IL 124671, ¶¶ 18, 20; *Tuna v. Wisner*, 2023 IL App (1st) 211327, ¶ 54 (“Forfeiture applies with particular force to an appellant because, while we may affirm a judgment on any basis in the record, even if not argued on appeal, we may not *reverse* on any basis in the record; the issue must be raised and argued to us.”). Accordingly, although the circuit court erred in concluding that count VIII was time-barred, we affirm the dismissal of count VIII against the Association on the unchallenged section 2-615 ground.

¶ 71 The result is different for Fullett Swanson. Although it also sought dismissal under section 2-615, the circuit court expressly declined to address that argument after dismissing count VIII under section 2-619. Thus, unlike the Association, no independent section 2-615 ruling supports dismissal as to Fullett Swanson. Because the section 2-619 dismissal was erroneous, we reverse the dismissal of count VIII as to Fullett Swanson and remand for further proceedings. On remand, the circuit court may address Fullett Swanson’s unresolved section 2-615 challenge and, if necessary, whether plaintiffs should be afforded leave to amend.

¶ 72

III. CONCLUSION

¶ 73 For the foregoing reasons, we reverse circuit court's dismissal of counts III, IV, and VII under section 2-619(a)(5). As to count VIII, we affirm its dismissal against the Association under section 2-615 and reverse its dismissal against Fullett Swanson under section 2-619(a)(5). We affirm the judgment in all other respects, and remand for further proceedings consistent with this order.

¶ 74 Affirmed in part and reversed in part; cause remanded.