Illinois Official Reports

Appellate Court

Duba v. Keepsafe Public Storage, LLC, 2025 IL App (3d) 230408

Appellate Court Caption	ROGER DUBA, Derivative on Behalf of Crest Hill Land Development, LLC, Plaintiff-Appellant, v. KEEPSAFE PUBLIC STORAGE, LLC, d/b/a United Self Storage; CHARTER PROPERTY MANAGEMENT, LLC; U.S. BANK N.A.; REPUBLIC BANK OF CHICAGO; ESTATE OF PETER J. KONOPKA, Deceased; and UNKNOWN OWNERS AND NONRECORD CLAIMANTS, Defendants (Keepsafe Public Storage, LLC, d/b/a United Self Storage, Charter Property Management, LLC, and Estate of Peter J. Konopka, Deceased, Defendants-Appellees).
District & No.	Third District No. 3-23-0408
Filed	June 18, 2025
Decision Under Review	Appeal from the Circuit Court of Will County, No. 17-CH-1483; the Hon. Theodore J. Jarz, Judge, presiding.
Judgment	Affirmed in part and reversed in part; cause remanded.
Counsel on Appeal	John W. Moynihan, of Cooney Corso & Moynihan LLC, of Downers Grove, for appellant. Ariel Weissberg and Rakesh Khanna, of Weissberg and Associates, Ltd., of Chicago, for appellees Keepsafe Public Storage, LLC, and Charter Property Management, LLC.

No brief filed for other appellee.

Panel

JUSTICE BERTANI delivered the judgment of the court, with opinion.
Presiding Justice Brennan and Justice Peterson concurred in the judgment and opinion.

OPINION

¶ 1 Derivative plaintiff, Roger Duba, a member of Crest Hill Land Development, LLC (Crest Hill), brought a foreclosure and breach of contract action to recover on an alleged note and mortgage against fellow member, Peter J. Konopka (Konopka), for the concealed sale of a Crest Hill-owned industrial park property to Keepsafe Public Storage, LLC (Keepsafe), an entity owned in part and managed by Konopka. The lawsuit alleges that Keepsafe later fraudulently transferred the property to Charter Property Management, LLC (Charter), an entity managed by his son, Peter A. Konopka. On reconsideration of Keepsafe and Charter's motion for summary judgment, the circuit court held Duba's suit was time-barred. Specifically, it found the 5-year statute of limitations for actions on unwritten contracts (735 ILCS 5/13-205 (West 2022)) applied to the claim rather than the 10-year statute of limitations for actions on written contracts (*id.* § 13-206). It also held that the fraudulent concealment doctrine (*id.* § 13-215) did not toll the applicable limitations period. On appeal, Duba argues the court erred in each of these determinations. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 Duba and Konopka have long been mired in litigation involving the real estate dealings of the entity of which they were both members. Antecedent to the lawsuit on appeal, Konopka filed a complaint against Duba in 2010 alleging breach of fiduciary duty and breach of contract after both were sued as guarantors when Crest Hill's bank loan securing the property defaulted. See *Konopka v. Duba*, 2018 IL App (1st) 163150-U, ¶¶ 6-8. Duba filed a counterclaim against Konopka asserting fraud, breach of fiduciary duty, and conversion. *Id.* ¶ 8. Later, in the mid-2010s, the Federal Bureau of Investigation (FBI) investigated Konopka, who later entered a guilty plea for tax and bankruptcy fraud. Each of those proceedings are germane here in that Keepsafe and Charter assert Duba became aware of the debt during the 2010 proceedings while Duba maintains he was unaware until 2015 during the FBI investigation.

¶ 4 Duba and Konopka were engaged in commercial real estate development with Duba serving as the primary financier and Konopka as the manager. While developing a large industrial plot, Duba and his family exercised an option over adjacent land which they then sold to Crest Hill. Thereafter, in March 2005, Konopka began taking unilateral, clandestine actions to transfer a portion of that land known as Lot No. 4 from Crest Hill to Keepsafe.

Konopka drafted a written instrument described in the complaint as a "note and mortgage"[1] (note), which was purportedly secured by Lot No. 4, that he is alleged to have intentionally not recorded. Konopka, as manager of Crest Hill, conveyed Lot No. 4 to Keepsafe by warranty deed dated November 2, 2005, and recorded on December 29, 2005. Keepsafe erected and operated a self-storage building on the property. In 2015, Keepsafe sold Lot No. 4 to Charter.

¶ 5 Duba initiated suit against Keepsafe and Konopka on August 7, 2017. On January 24, 2018, defendants filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) alleging certain affirmative matters, including statute of limitations, defeated Duba's claim. 735 ILCS 5/2-619(a)(5) (West 2016). The circuit court heard arguments and dismissed Duba's complaint without prejudice.

¶ 6 Duba filed a first amended complaint on July 5, 2018, that named Charter and other additional defendants to the lawsuit. Keepsafe, Charter, and Konopka moved to dismiss the first amended complaint. However, defendants' counsel filed concurrent motions to withdraw as counsel for Konopka and to withdraw the motion to dismiss, which the circuit court granted.

¶ 7 Duba filed a second amended complaint on November 7, 2018, against Keepsafe; Charter; U.S. Bank, N.A.; Republic Bank of Chicago; and Konopka. Count I sought to foreclose on the alleged mortgage, count II asserted breach of contract against Keepsafe and Konopka for their failure to make payments on the note, count III alleged Keepsafe fraudulently transferred Lot No. 4 to Charter, and count IV asserted an alternative fraud claim against Keepsafe and Charter.

¶ 8 The document evidencing the indebtedness is a simple fill-in-the-blank note form. The face of the note identifies the date on which the note was allegedly prepared (March 4, 2005),[2] the parties to the agreement (Keepsafe as obligor and Crest Hill as obligee), the promise of Keepsafe "to pay to the order of" Crest Hill "after date for value received" the sum of $330,500, and the structure of payment ("with interest of 9 percent per annum after Land Closing March 31, 2005"). The note featured a blank due date line. However, Konopka included the following additional handwritten terms in the note's body:

> "Balloon payment in 24 months due *** [for $389,990].
>
> Note to be paid upon closing of sale of property or transfer to a third party.
>
> Note may be extended on a month to month basis after the initial 24 months up to 12 more month [*sic*] with an additional interest due of 1% of the total owed per month.
>
> Note is secured on property at Lot #4 Crest Hill Business Park and will not be recorded at least to the end of the three year term above.
>
> This note is to be guaranted [*sic*] both by the Corporation, LLC and personally."

---

[1]There is no formal "mortgage." Rather, the note at issue includes language that Duba asserts is a "note with mortgage terms."

[2]The parties have consistently posited that the note was prepared on March 4, 2005, and was signed by Konopka on March 5, 2005. It appears to this court, however, that the signatures of Konopka, individually, and on behalf of Keepsafe, may be dated August 5, 2005, which coincides with the date on which Keepsafe's operating agreement was amended to require a vote or approval of all three members to bind the corporation, the same three members who executed the note attached to the third amended complaint. We leave that factual determination to the circuit court and will confine the analysis to the March 5, 2005, date posited by the parties.

Konopka did not record the note, and no payments were made to Crest Hill.

¶ 9 Duba asserts he was unaware of the note's creation and Konopka's self-dealing until the FBI tendered it to him as part of its 2015 investigation of Konopka. Defendants contend he knew of the obligation as early as 2011. Duba recorded the note in January 2016. His lawsuit followed 19 months later on August 7, 2017. Konopka died on September 23, 2020.

¶ 10 On March 9, 2022, Keepsafe and Charter filed a motion for summary judgment directed to the second amended complaint, which concentrated on their statute of limitations arguments. They contended that the note's term expired on March 5, 2007, and that Duba failed to prove it was extended a third year. To support that the obligation was not extended, Keepsafe and Charter attached an affidavit signed by Konopka[3] and the depositions of Duba and former Keepsafe member, Robert Parsons. Konopka averred that neither Crest Hill "nor Keepsafe ever sought or approved a third year extension to the payment deadline." Parsons testified that he would have known whether the note was extended and, to his knowledge, it was not. Duba testified that he never consented to an extension. The motion concluded that Duba's claims were barred under both the 5-year limitations period applicable to oral contracts and the 10-year period applicable to "bonds, promissory notes, *** written contracts, or other evidences of indebtedness in writing." 735 ILCS 5/13-205, 13-206 (West 2022). Supplementally, defendants argued the limitations period should not be tolled based on fraudulent concealment (*id.* § 13-215) because Duba had knowledge of the obligation in "ample time" to file suit prior to its expiration.

¶ 11 The parties' subsequent pleadings sharpened their respective statute of limitations positions. Duba moved for leave to file a third amended complaint and later filed a response to Keepsafe and Charter's motion for summary judgment, the thrust of which identified a newly discovered version of the note that had been fully executed by all three of Keepsafe's members: Konopka, Parsons, and John Conrad. Because the last signature on the fully executed version was dated August 22, 2005, he argued it did not become due and collectible until at least August 22, 2007.

¶ 12 Keepsafe and Charter filed a motion to strike[4] portions of those pleadings, stating they relied upon certain documents that were inadmissible under the Dead-Man's Act. See *id.* § 8-201. This included a February 19, 2008, letter sent by Konopka to the other Keepsafe members that Duba asserted indicated Konopka believed the note remained in effect. The court ultimately granted Duba's motion for leave to file a third amended complaint over Keepsafe's and Charter's objection. On August 30, 2022, Keepsafe and Charter filed a motion to dismiss Duba's third amended complaint, arguing the note bearing three signatures represented a different transaction than that at issue in the prior complaints, but was nonetheless also time-barred by the statute of limitations.

¶ 13 On October 24, 2022, the court entered a written order granting in part and denying in part defendants' motion to strike portions of Duba's third amended complaint and response to defendants' motion for summary judgment. It referred to the note as a promissory note and opined that the "note in question is not a demand note," clarifying that "by its terms," the note

[3]The affidavit entitled "Certification" was filed in support of the motion for summary judgment well after Konopka's death. It is undated. However, its contents indicate it was prepared in support of one of defendants' prior section 2-619 motions to dismiss.

[4]The circuit court granted Konopka's estate's motion to join the motion to strike.

"was not due for a period of 24 months, or if a single extension was granted, then 36 months." On December 9, 2022, the court issued a written order denying defendants' motion to dismiss Duba's third amended complaint. It ruled defendants' argument that the note with the additional Keepsafe members' signatures represented an entirely new note remained in dispute and therefore, dismissal was improper. Regardless, concerning the purported newly discovered signatures, the court added

> "the distinction between the [signature] dates *** does not resolve the issues as to when the note was due which is critical to determining the issue of expiration of the statute [of] limitations which as previously held in this case is a 10 year statute of limitations th[at] commences on the date of making the note only if it is a demand note."

It concluded, "[i]f a reasonable determination can be made as to when the 'note-mortgage' became due a calculation can then be made as to [the] expiration of the *** limitations" period.

¶ 14 Duba filed his third amended complaint on January 12, 2023, which parallelled his second amended complaint but for the pleading of the newly discovered note and with the addition of a count against Konopka's widow, Kathleen Konopka, as executor of his estate based upon Konopka's personal guarantee.

¶ 15 The court heard arguments on defendants' motion for summary judgment and denied it on January 18, 2023. It found that defendants' argument that the statute of limitations began to run when the note was created remained unresolved.

¶ 16 On February 15, 2023, Keepsafe and Charter answered Duba's third amended complaint, reiterating, among other affirmative defenses, their statute of limitations defense. During the next status hearing on February 28, 2023, the court invited further pleading, stating that after reviewing the pleadings, an unresolved issue was "whether or not it is a ten-year statute that applies to [the note] as opposed to a five-year statute" and sought clarity on whether defendants had waived the argument that a five-year limitations period applied. It stated these issues should be addressed "as fairly as possible" through supplemental motion practice or briefing.

¶ 17 On March 14, 2023, Keepsafe and Charter filed a combined motion to reconsider the denial of their motion for summary judgment, arguing the five-year limitations period applied to the note due to its ambiguity in the payment deadline. Duba's response maintained the note is a promissory note subject to the 10-year limitations period in section 13-206 of the Code. See *id.* § 13-206. In reply, defendants reiterated the court's prior finding that the note was not a demand note and its indefinite due date precluded its characterization as a promissory note. In the alternative, should the court reconsider it a demand note, the note would have become due "at some point in 2015" and the applicable 10-year limitations period would bar Duba's suit.

¶ 18 The court heard arguments on May 11, 2023, and granted defendants' motion to reconsider finding the five-year limitations period applied under section 13-205 of the Code. See *id.* § 13-205. It summarized its prior holdings, stating it already held the note was not a demand note and did not meet the requirements of a promissory note for its failure to have a fixed or determinate due date. It stated that while the note provided certain due dates, the dates were contingent upon "an event of a land closing" or other conflicting dates, which were not readily discernible from the face of the document. Upon a request to clarify its ruling, the court provided

> "this is a promissory note within the meaning of *Kranzler* [*v. Saltzman*, 407 Ill. App. 3d 24 (2011),] and, item two, the nature of the transaction, that has to be present, as

some evidence of indebtedness that exists upon the point of closing whenever that was going to be. But that means you've still got to go out there to find some parol[ ] evidence to show that a closing occurred."

¶ 19 Duba filed a motion to reconsider the court's decision arguing Konopka concealed the note and, based on the court's ruling that the five-year limitations period applied, the five-year tolling period in the fraudulent concealment statute made his claim timely. See *id.* § 13-215. In support of his motion, Duba referenced his deposition testimony, asserting that the first time he learned of the note's existence was when the FBI tendered it to him in 2015. He identified several documents to support his position that Konopka affirmatively acted to conceal the obligation. His reply brief referenced an exhibit attached to his second amended complaint, a document indicating Crest Hill-owned buildings as of July 2008, which listed the storage building on Lot No. 4 with a loan balance of $3.675 million. He argued this suggested that Crest Hill had not sold the property at that point. His motion also attached a 2012 document concerning land owned by Crest Hill indicating that Lot No. 4 had closed on March 4, 2005, to Keepsafe with payment of "([$]154,000 to Duba)." Duba argued that document misrepresented that payment for the sale was satisfied.

¶ 20 Keepsafe and Charter's July 13, 2023, response argued Duba had actual knowledge of the note years prior to him filing suit. Defendants asserted that in early 2011, during the exchange of written discovery in a prior lawsuit between the parties, Duba produced a document listing Crest Hill's pending loans payable and loans receivable. This included "$389,990" from the "KEEPSAFE LOAN & INTEREST," the same indebtedness contemplated in the note. Duba also disclosed a July 26, 2005, letter signed by Konopka and addressed to a law firm detailing some of the terms of the land transfer between Crest Hill and Keepsafe. In 2012, Konopka filed a response to Duba's petition to have a manager appointed for Crest Hill in that lawsuit, claiming that the "self storage building belongs to Keepsafe" and that Keepsafe purchased the property in 2005. He attached the warranty deed as an exhibit to the response. Defendants' response to Duba's motion to reconsider also cited Duba's deposition testimony taken on December 30, 2015, from another lawsuit, wherein he testified that he first found out that Konopka "fraudulently transferred *** the self storage from the LLC to Keepsafe" "[a] couple years ago." Furthermore, Keepsafe obtained a loan secured by a mortgage on Lot No. 4 and the deed from Crest Hill to Keepsafe, which were both recorded in December 2005. At the very least, defendants argued Duba had constructive knowledge of the debt obligation in 2005, and the discovery rule barred his claim by the end of 2010.

¶ 21 Following a hearing on August 15, 2023, the court denied Duba's motion to reconsider, ruling that there was ample information "that reasonably should have put Mr. Duba on notice that the statute began running well before 2015."

¶ 22 Duba now appeals.

¶ 23 II. ANALYSIS

¶ 24 This case can be characterized as one of shifting sands. Each of the parties has altered their position regarding limitations in the over five years this matter was pending in the circuit court. Moreover, the circuit court seemed to consider that the 10-year limitation applied, and that the principal issue was when it began to run, until it invited briefing on the issue in February 2023.

¶ 25 On appeal, Duba asserts that the court improperly granted summary judgment against him. He frames his appeal through three arguments. First, he argues that the court's conclusion that

the note was lacking in certain particulars such that it must be considered an oral contract was incorrect. While asserting the note "may" in fact be a promissory note subject to a 10-year limitation, he concedes that certain terms therein may preclude that finding and posits that the note nevertheless conforms with "other evidences of indebtedness in writing" so that the 10-year statute of limitations applies under section 13-206 (*id.* § 13-206). Second, when weighed in his favor, the disputed factual evidence pertaining to the note's extension and the pertinent starting date of the limitations period indicate that his lawsuit was timely filed. Third, if the five-year limitations period applies, the fraudulent concealment doctrine (*id.* § 13-215) would toll the limitations period and make his claim timely.

¶ 26 An illustration of the consequence of the parties' arguments will help order our analysis on the timeliness of Duba's claim. Duba is correct in stating that the commencement of a limitations period "is ordinarily a question of fact unless only one conclusion may be drawn from undisputed facts." *Melko v. Dionisio*, 219 Ill. App. 3d 1048, 1058 (1991). The record does not reveal an undisputed date upon which the note began to run. Both parties have taken the position that the note was executed by Konopka on March 5, 2005. The note provides for a few potential time frames of maturity. Payment was due (1) in 24 months, subject to periodic extension for no more than a total term of 3 years, (2) "upon the closing of sale of property or transfer to third party," or under Duba's interpretation, (3) in 24 months from the property's closing or transfer, subject to periodic extension. Duba filed suit on August 7, 2017.

¶ 27 Duba equivocates in his appellate brief on whether the note is a promissory note because of the several potential due dates. See 810 ILCS 5/3-108(b) (West 2022). Nonetheless, he argues it satisfies each essential element of a promise to pay to conform with "other evidences of indebtedness in writing" in section 13-206. 735 ILCS 5/13-206 (West 2022). Therefore, the 10-year limitations period applies to his claim. See *id.* Applying this limitations period would make his lawsuit timely in the following ways. First, consistent with the first construction for a maturity date above (*supra* ¶ 26), if the 24-month period commenced at the date of execution, the note would have matured on March 5, 2007, and the limitations period would have ended on March 5, 2017. In this instance, the timeliness of Duba's claim depends upon (1) whether the note was periodically extended beyond August 7, 2007, or (2) whether the fraudulent concealment doctrine further tolled Duba's claim. Second, Duba aligns himself with the third construction for a maturity date above, stating the 24-month period commenced upon land closing. While land closing did not occur at the time contemplated in the note (March 31, 2005), he contends the November 2, 2005, warranty deed between Crest Hill and Keepsafe establishes the closing date.[5] Therefore, the 24-month period began and the 10-year limitations period did not commence until November 2, 2007, and ended November 2, 2017.

¶ 28 Keepsafe and Charter maintain the note must be functionally treated as an oral contract, governed by a five-year limitations period, because it does not satisfy the requisites of a promissory note, writing, or "other evidences of indebtedness" recognized within section 13-206. See 735 ILCS 5/13-205, 13-206 (West 2022). Applying this period, the statute of limitations would have expired sometime in 2012. However, applying this limitations period to the time frames contemplated above does not outright make Duba's claim untimely. If the note matured on March 5, 2007, the claim was tolled until March 5, 2012. Duba's claim could

[5]The closing date is uncontested. Konopka and Keepsafe's initial motion to dismiss stated that the note "became due and payable at 'closing,' which, in turn, happened on November 2, 2005."

conceivably be timely if (1) the fraudulent concealment doctrine tolled his claim, and (2) a periodic extension on the note was granted. Of course, a similar conclusion may be reached if the note matured on November 2, 2007.

¶ 29 Supplementally, defendants argue that should the 10-year limitations period apply, the note should be considered a demand note. The cause of action against the maker of a demand note accrues upon its date of issue unless otherwise stated. See *In re Estate of Heck*, 2019 IL App (1st) 182414, ¶ 9. Defendants argue that the note was dated March 5, 2005,[6] and the 10-year limitations period would have lapsed in 2015. Still, if it is a demand note, the fraudulent concealment doctrine may toll Duba's claim.

¶ 30 This labyrinth of possibilities presents certain unresolved questions of law and fact. The applicable limitations period over Duba's claim, for instance, is a question of law (*Michels v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4th) 110612, ¶ 37), as is the construction of the note to determine its nature (*FTI International, Inc. v. Cincinnati Insurance Co.*, 339 Ill. App. 3d 258, 259 (2003)) and legal effect (*Northern Illinois Medical Center v. Home State Bank of Crystal Lake*, 136 Ill. App. 3d 129, 142 (1985)).

¶ 31 Questions of fact bearing on the timeliness of Duba's claim include (1) whether the note was extended, (2) whether Duba had inadequate notice of a potential claim such that he might avail himself of the fraudulent concealment doctrine (see *Prospect Development, LLC v. Kreger*, 2016 IL App (1st) 150433, ¶¶ 29-31), and (3) on what date did the limitations period begin to run (*Jones v. Dettro*, 308 Ill. App. 3d 494, 498 (1999)). These questions of fact transform into questions of law and are therefore suitable for summary judgment only "when there can be no difference in the judgment of reasonable men on inferences to be drawn from undisputed facts." *Carlson v. Chicago Transit Authority*, 2014 IL App (1st) 122463, ¶ 26. Accordingly, if we determine as a matter of law that the 10-year limitations period applies and if the record is undisputed that the note was extended to August 7, 2007, or the fraudulent concealment doctrine applied, Duba's lawsuit would be timely. Alternatively, if we determine as a matter of law that the five-year limitations period applies or that the note is a demand note, and the fraudulent concealment doctrine does not apply to Duba's claim, his action is untimely.

¶ 32 Our preeminent consideration at this stage is not to try issues of material fact but only determine whether they exist. *Urban v. Village of Lincolnshire*, 272 Ill. App. 3d 1087, 1094 (1995); *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 517 (1993). If issues of material fact remain over dispositive matters bearing on the timeliness of Duba's claim, we must hold summary judgment was improperly granted.

¶ 33 Although an expeditious mechanism for a lawsuit's disposition, summary judgment is a drastic measure reserved for "when the right of the moving party is clear and free from doubt." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). Summary judgment is appropriate only where the pleadings, depositions, admissions, and affidavits on file show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022); *Gilbert*, 156 Ill. 2d at 517-18. When ruling on a motion for summary judgment, we construe pleadings, depositions, admissions, and affidavits "liberally in favor of the" nonmovant and "strictly against the movant." *Beaman v.*

[6]We reiterate that the record does not indicate an undisputed date on when the note began to run. A correlative dispute surrounds its date of issuance. Duba takes the position that the issue date is November 2, 2005, the date Lot No. 4 was transferred to Keepsafe.

Freesmeyer, 2019 IL 122654, ¶ 22. Summary judgment should not be granted "where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adams*, 211 Ill. 2d at 43. The standard of review for a case decided through summary judgment is *de novo*. *Pielet v. Pielet*, 2012 IL 112064, ¶ 30. A *de novo* review also applies to questions of statutory interpretation, which are present here in the parties' competing viewpoints on which statute of limitations applies to the note. *Fifth Third Bank v. Brazier*, 2019 IL App (1st) 190078, ¶ 14. Likewise, the applicability of statute of limitations to a cause of action presents a legal question, which is subject to *de novo* review. *Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 466 (2008). Under this standard, we assume the role of the trial court and "perform[ ] the same analysis that the trial court would perform." *Wells Fargo Bank, N.A. v. Norris*, 2017 IL App (3d) 150764, ¶ 19. We may affirm a grant of summary judgment on any basis supported by the record. *Id.*

¶ 34 A. Nature of the Debt Instrument

¶ 35 The applicable limitations period depends on the nature of the note. Duba advocates for the application of section 13-206 of the Code in that the note qualifies as a writing identified within that section. Section 13-206 provides in relevant part that "actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing *** shall be commenced within 10 years next after the cause of action accrued." 735 ILCS 5/13-206 (West 2022). Keepsafe and Charter assert the note does not qualify as a writing recognized under section 13-206; rather, section 13-205 is the applicable provision, and the circuit court was correct to deem Duba's suit untimely on that basis. See *id.* § 13-205. Section 13-205 accounts for "actions on unwritten contracts" as well as "all civil actions not otherwise provided for," which "shall be commenced within 5 years next after the cause of action accrued." *Id.* Illinois courts strictly interpret the meaning of a written agreement for statute of limitations purposes. *Portfolio Acquisitions, L.L.C. v. Feltman*, 391 Ill. App. 3d 642, 647 (2009); *Toth v. Mansell*, 207 Ill. App. 3d 665, 669 (1990). If all essential terms of a writing may be ascertained from the instrument, without resort to parol evidence, then the writing is interpreted under section 13-206 and its 10-year statute of limitations attaches. See *Toth*, 207 Ill. App. 3d at 669. Otherwise, the writing defaults to section 13-205 and "must be treated as oral for purposes of the statute of limitations." *Id.*

¶ 36 The parties' dispute centers on two ways in which the note may fall within section 13-206's purview. First, Duba asserts that it may qualify as a promissory note but concedes the several potential maturity dates might preclude this categorization. Keepsafe and Charter insist that it is decidedly not a promissory note based on the alleged due-date ambiguity. Second, regardless of its status as a promissory note, Duba claims that the note qualifies as other evidences of indebtedness for purposes of section 13-206. In response, Keepsafe and Charter again focus on the ambiguous due date to argue that it is missing an essential term and therefore cannot be considered other evidences of indebtedness.

¶ 37 The parties also disagree on whether the note qualifies as a demand note. If it falls within section 13-206's purview, Keepsafe and Charter urge that it be treated as a demand note that commences the statute of limitations on the issue date. *Heck*, 2019 IL App (1st) 182414, ¶ 9. Duba responds that the due dates contemplated within the note prevent this designation. To the extent necessary, we examine the parties' contentions in turn.

¶ 38 1. *Promissory Note*

¶ 39 Our supreme court previously defined a promissory note as "a written promise by one person to pay another person therein named, or order, a fixed sum of money at all events and at a time specified therein or at a time which must certainly arrive." *Lanum v. Harrington*, 267 Ill. 57, 62 (1915). The Uniform Commercial Code (UCC) provides that "[a]n instrument is a 'note' if it is a promise." 810 ILCS 5/3-104(e) (West 2022). If drafted to meet certain criteria, a promissory note may fit within the definition of a negotiable instrument under section 3-104(a) of the UCC. See *Sadler v. Service*, 406 Ill. App. 3d 1063, 1067 (2011). The importance of this designation for our purposes is that negotiable promissory notes dated on or after the legislature's 1997 amendment to section 13-206 of the Code are governed by that section and its 10-year limitations period will apply to the instrument. See *id.* at 1065-66; see also *Krajcir v. Egidi*, 305 Ill. App. 3d 613, 620 (1999) (explaining the six-year limitations period under section 3-118(a) of the UCC (810 ILCS 5/3-118(a) (West 1994)) that previously governed negotiable promissory notes). According to the UCC, a negotiable instrument is

> "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
>
> (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
>
> (2) is payable on demand or at a definite time; and
>
> (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of any obligor." 810 ILCS 5/3-104(a) (West 2022).

¶ 40 Section 3-108 of the UCC offers further guidance on what constitutes a "definite time" for purposes of defining an instrument as negotiable. See *id.* § 3-108(b). In relevant part, it states that

> "[a] promise or order is 'payable at a definite time' if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of *** extension to a further definite time at the option of the maker or acceptor." *Id.*

The requirement that an instrument state a "definite time" of payment is a long-standing principle that has served as a prerequisite to designating an instrument as a promissory note and in determining an instrument's negotiability. See *Lanum*, 267 Ill. at 62; see also *Illinois Midland Ry. Co. v. Farmers State Bank of Newark*, 200 Ill. App. 591, 593 (1916) (explaining that a negotiable instrument must be payable "either at a time stated or at a time capable of being ascertained and sure to occur"). Conversely, if the instrument's payment "depends upon a contingency which may never happen[,] it is not a promissory note" (*Lanum*, 267 Ill. at 62-63) and premising payment on an uncertain event destroys a note's negotiability (see *Krajcir*, 305 Ill. App. 3d at 621). Compare *Illinois Midland Ry. Co.*, 200 Ill. App. at 593 (stating that under the Negotiable Instruments Law (1907 Ill. Laws 403) payment premised upon a contingency, even one that eventually occurs, disqualifies an instrument's negotiability), with

McClenathan v. Davis, 243 Ill. 87, 89-91 (1909) (explaining conjectural defects in title were not contingencies affecting promise to pay sum conditioned on the ownership of land that reverted to promisor after his father's death).

¶ 41 Here, the parties are at odds on whether the note qualifies as a promissory note but direct their focus to two statements in the note's body: "balloon payment in 24 months due" and "note to be paid upon closing of sale of property or transfer to a third party." Duba interprets these provisions as complementary. In his view, there is an interplay between the closing of the property and the 24-month period's commencement. While the closing did not take place on the date the note contemplates (March 31, 2005), Duba argues that the 24-month interest period nonetheless began on the date of the property's closing. Because Crest Hill's warranty deed conveying the land to Keepsafe was dated November 2, 2005, Duba argues the 24-month interest period began thereafter. According to Keepsafe and Charter, resorting to the deed to establish a definite payment time goes beyond the four corners of the instrument and negates the note's classification as a promissory note cognizable under section 13-206. See *Toth*, 207 Ill. App. 3d at 669 ("If parol evidence is necessary to make the contract complete, then the contract must be treated as oral for purposes of the statute of limitations.").

¶ 42 We disagree with the parties' construction as to the time of payment the note expresses. Should Duba's viewpoint prevail, it all but precludes the note's designation as a negotiable promissory note because its promise to pay would be conditioned upon two uncertain events. The direction to pay upon closing or transfer to a third party with the note's separate citation to a land closing on March 31, 2005, conditions payment on future uncertainties, *i.e.*, whether the property would be transferred to a third party or when the land would be closed upon. These occurrences were unknowable at the time Konopka executed the note. See *Krajcir*, 305 Ill. App. 3d at 621. The warranty deed exemplifies the uncertainty of these events. Duba uses the deed as contextual extrinsic evidence to establish that a closing took place, but neither party disputes that a closing did not occur on the date contemplated on the instrument's face. In sum, if read as complementary provisions, the 24-month period commencing upon the property's closing or transfer prevent the note's classification as a negotiable promissory note. See, *e.g.*, *Reid v. Pyle*, 51 P.3d 1064, 1067 (Colo. App. 2002) (explaining the conditioning of payment on the sale or transference of property prevented treatment as a negotiable instrument under Colorado's UCC state analogue).

¶ 43 The note in this case provides three potential circumstances of maturity. As mentioned, two of these circumstances—the "closing of sale of property" and the property's transfer to a third party—are events uncertain to happen. However, the express language of the note's third potential maturity date provides a standalone due date independent from the listed contingencies. At the conclusion of the 24-month period, the balloon payment matured. Read in its entirety, the note delineates a period in which the principal balance and interest were due, subject to discretionary month-to-month extensions up to a three-year maximum term. These clauses establish that the note was "payable on elapse of a definite period" that was "readily ascertainable at the time" Konopka executed the note, subject to his or Keepsafe's right to periodically extend the note to a "further definite time." 810 ILCS 5/3-108(b) (West 2022). This definite period is discernible from the face of the instrument and does not depend on resorting to parol evidence, as Keepsafe and Charter suggest. The elapse of 36 months is "a time which must certainly arrive." *Lanum*, 267 Ill. at 62.

¶ 44 This is not the first time an Illinois reviewing court has construed an inartfully crafted promissory note that bears ostensibly inconsistent due dates. See, *e.g.*, *In re Estate of Feldman*, 387 Ill. 568, 569-71, 573-77 (1944) (resolving a due date ambiguity in an "ineptly drawn promissory note" by citing cases reconciling inconsistent terms in a note's body and in its margin). The novelty of the note before us, however, is its inclusion of a definite payment period and other payment dates premised on indefinite contingencies. The issue of whether such an irregularity may nonetheless satisfy section 3-104(a)'s "definite time" requirement or *Lanum*'s "time which must certainly arrive" is a matter of first impression in Illinois. See *Lanum*, 267 Ill. at 62. Where a point of law has not yet been determined, "the courts of this state will look to other jurisdictions as persuasive authority." *Hawthorne v. Village of Olympia Fields*, 328 Ill. App. 3d 301, 316 (2002) (Quinn, J., specially concurring in part and dissenting in part).

¶ 45 In *In re Bedrock Marketing, LLC*, a Utah federal district bankruptcy court confronted the issue of certain independent unconditional and conditional due dates within promissory notes. 404 B.R. 929, 933 (Bankr. D. Utah 2009). There, a bankruptcy trustee brought suit and moved for summary judgment to recover the balance of two notes. *Id.* at 932-33. As is the circumstance presented here, payment on the notes was contingent upon an uncertain event, or alternatively, at the lapse of a certain period. The pertinent language included in both notes provided,

> " 'The entire unpaid principal balance and accrued, but unpaid, interest and other charges evidenced by this note shall be *due and payable in full upon completion of the project* being financed by the funds secured by this note; or at any time either evidenced in writing by both parties, or *within three (3) years of the execution of this note*.' " (Emphases added.) *Id.* at 933.

The *Bedrock* court made two related findings to hold that the notes stated a sufficiently definite time of payment to qualify as a negotiable instrument. *Id.* at 938-39. First, it found that the amount payable was not contingent upon the uncertain event. *Id.* at 938. Rather, it stated that the three-year period served as a "backstop" where the amount would be due in full, regardless of the uncertain condition. *Id.* at 938-39. Therefore, the notes were unconditional on their face and the completion of the project was merely one of "two independent events that trigger the payment of the funds." *Id.* at 938. Second, it found that because the notes were due within three years, such a time frame constituted an "elapse of [a] specified period of time after acceptance," which was "readily ascertainable at the time the instrument [was] issued." *Id.* at 939 (referring to statutory provision section 70A-3-108(2) of the Utah Code Annotated (Utah Code Ann. § 70A-3-108(2) (West 2008)), which is identical to section 3-108(b) of the UCC (810 ILCS 5/3-108(b) (West 2022))).

¶ 46 We find the *Bedrock* analysis apposite. The note's provisions that payment was due in 24 months or, if extended, up to 12 months thereafter describes a payment structure standing separate and apart from the property's closing or transfer. See *id.* at 938. Again, this differs from an instrument that conditions payment on the lapse of a period that commences after an uncertain event. See, *e.g.*, *Northern Bank v. Pefferoni Pizza Co.*, 562 N.W.2d 374, 376-77 (Neb. 1997) (holding a note conditioning payment " 'for a term extending up to 84 months from and after the closing on the purchase' " did not state a definite time of payment). Furthermore, the discretionary periodic extension is limited by a temporal "backstop" where the balance of the note, with additional interest, would be due no more than three years after

the note was executed and therefore states a "further definite time" concerning Konopka's and Keepsafe's right to extend. See *Bedrock*, 404 B.R. at 938-39; 810 ILCS 5/3-108(b) (West 2022).

¶ 47 By resolving the question of whether the note contains a sufficiently definite time in the affirmative, we hold that the note constitutes a negotiable promissory note. It conveys Keepsafe's and Konopka's unconditional promise to pay a fixed amount of money, with interest, to the order of Crest Hill and it does not impose any other undertaking or instruction on Keepsafe or Konopka to do any act in addition to the payment of money. See *Brazier*, 2019 IL App (1st) 190078, ¶ 17 (citing 810 ILCS 5/3-104 (West 2018)). Accordingly, the 10-year limitations period applies to the note. See *Sadler*, 406 Ill. App. 3d at 1065-66. Our holding that the note satisfies the requirements of a negotiable promissory note and therefore falls within section 13-206's ambit makes moot any discussion as to whether the note separately qualifies as another writing recognized under section 13-206, such as "other evidence[ ] of indebtedness." 735 ILCS 5/13-206 (West 2022).

¶ 48 2. *Demand Note*

¶ 49 Keepsafe and Charter advance that should the note meet the definition of a promissory note, it should nevertheless be considered a demand note because of the alleged due date uncertainty. We disagree. Section 3-108(a) of the UCC identifies a promise is payable on demand when it either "(i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment." 810 ILCS 5/3-108(a) (West 2022). "A demand note is due and payable immediately upon execution," which may be paid by the maker of the note at any time. *Theodosakis v. Austin Bank of Chicago*, 93 Ill. App. 3d 634, 637 (1981). Further, an indefinite due date renders a promissory note a demand note. *Heck*, 2019 IL App (1st) 182414, ¶ 7.

¶ 50 The note before this court is not one payable on demand as a matter of law. Nothing in the plain language of the note supports that it is payable on demand. If a circuit court can determine that a note is or is not a demand note based on an examination of its plain language, "it may make an appropriate ruling as a matter of law without resort to extrinsic evidence." *NWI International, Inc. v. Edgewood Bank*, 291 Ill. App. 3d 247, 255 (1997). The face of the note is devoid of the term "demand" or phrase "on demand." Rather, payment is predicated upon the conditions of sale or transfer to a third party, or the lapse of a 24-month period, subject to extension. Accordingly, Crest Hill could not have demanded payment before these conditions were met or before the expiration of the period stated.

¶ 51 B. Fraudulent Concealment

¶ 52 The parties next disagree on whether the fraudulent concealment statute should apply to toll Duba's claim. See 735 ILCS 5/13-215 (West 2022). Duba argues that Konopka fraudulently concealed the note preventing its discovery, which delayed the filing of his lawsuit. Although he advances that the note's fraudulent concealment should toll if the 5-year limitations period applies, the timeliness of his derivative suit may nonetheless depend on his ability to invoke the fraudulent concealment doctrine when applying the applicable 10-year limitations period. See *supra* ¶ 27. Duba asserts that as Crest Hill's fiduciary, Konopka's failure to record the note and his withholding of its existence from Duba constituted fraudulent concealment. Addressing the evidence that suggests he knew of the debt obligation before

2015, Duba claims the court failed to draw inferences in his favor. Keepsafe and Charter argue that Duba cannot toll the limitations period because he had knowledge of his injury well before filing the lawsuit.[7]

¶ 53 The doctrine of fraudulent concealment is codified in section 13-215 of the Code and provides that,

> "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 735 ILCS 5/13-215 (West 2022).

If a plaintiff pleads and proves that fraud prevented discovery of the cause of action, the doctrine tolls the statute of limitations governing the claim. See *Clay v. Kuhl*, 189 Ill. 2d 603, 613 (2000). The doctrine is not in and of itself a cause of action, but "acts as an exception to the time limitations imposed on other, underlying causes of action." *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 459 (2006).

¶ 54 For a limitations period to toll under the fraudulent concealment doctrine, a plaintiff must show that "(1) the defendant engaged in affirmative acts or representations intended to 'lull or induce' the plaintiff to fail to discover his claim, (2) knowing them to be false, (3) intending to deceive and (4) actually deceiving the plaintiff, and (5) upon which the plaintiff detrimentally relied." *Horn v. Goodman*, 2016 IL App (3d) 150339, ¶ 13 (quoting *Wisniewski v. Diocese of Belleville*, 406 Ill. App. 3d 1119, 1154 (2011)). Mere silence without additional affirmative actions is generally insufficient to establish a defendant has fraudulently concealed a cause of action. *Wisniewski*, 406 Ill. App. 3d at 1154. However, a widely recognized exception applies to fiduciaries or other persons occupying positions of trust and confidence (*i.e.*, those in a special relationship with a plaintiff) who are "under a duty to reveal *** facts to the plaintiff." *Id.* at 1154, 1156. Where a fiduciary relationship is clearly established and a fiduciary fails to disclose material facts, his or her silence gives rise to fraudulent concealment. See *DeLuna v. Burciaga*, 223 Ill. 2d 49, 76-77 (2006) (reaffirming that a fiduciary who fails to fulfill his duty to disclose material facts concerning the existence of a cause of action has fraudulently concealed that action); see also *Crowell v. Bilandic*, 81 Ill. 2d 422, 428 (1980).

¶ 55 In circumstances where a plaintiff alleges a special relationship, our sister districts have adopted a three-part inquiry in resolving the issue of fraudulent concealment: "(1) was there a special relationship between the parties; (2) did the defendant's acts or omissions amount to fraudulent concealment; and (3) did this fraudulent concealment prevent the plaintiff from discovering his claim." *Doe No. 2 v. Boy Scouts of America*, 2016 IL App (1st) 152406, ¶ 85 (citing *Wisniewski*, 406 Ill. App. 3d at 1160-62). Here, there is little disagreement concerning the first two prongs of the inquiry. As for a special relationship, neither party disputes that Konopka, acting as sole manager of Crest Hill at the time he created the note, owed fiduciary

---

[7]Defendants refer to Duba's fraudulent concealment claim as an attempt to invoke the discovery rule. While the thrust of the common-law discovery rule and the statutorily codified fraudulent concealment doctrine is the same, Duba has only invoked the latter. A plaintiff is under a distinct burden to satisfy either of these tolling doctrines. See *Doe No. 2 v. Boy Scouts of America*, 2016 IL App (1st) 152406, ¶ 106. But see *Hagney v. Lopeman*, 147 Ill. 2d 458, 462 (1992) (comingling its discussion of statutory fraudulent concealment with the discovery rule). Therefore, cases solely addressing the discovery rule, the bulk of which defendants cite on appeal, are inapposite.

duties to the company. See 805 ILCS 180/15-1(c), 15-3(g) (West 2022); *800 South Wells Commercial LLC v. Cadden*, 2018 IL App (1st) 162882, ¶ 32 (clarifying that manager owes fiduciary duties to manager-managed limited liability company). It is also undisputed that Konopka failed to record it and did not notify Duba of its existence at its inception—acts that rise to the level of fraudulent concealment.

¶ 56 The parties' focus concerns the third prong of the fraudulent concealment inquiry: whether Konopka's acts or omissions prevented Duba from discovering his claim. To satisfy this part of the inquiry, "a plaintiff must show either (1) that he or she could not have discovered the fraud sooner through the exercise of ordinary diligence or (2) that the trust or confidence that the plaintiff reposed in the defendant prevented the plaintiff from discovering the fraud any sooner." *Boy Scouts of America*, 2016 IL App (1st) 152406, ¶ 100. The doctrine will not apply where a plaintiff discovers the fraudulent concealment, or should have through the exercise of ordinary diligence, and a reasonable time remains to initiate suit. *Foster v. Plaut*, 252 Ill. App. 3d 692, 699 (1993).

¶ 57 Keepsafe and Charter maintain that Duba was apprised of facts adequate to inform him of the alleged fraud and the underlying circumstance giving rise to his lawsuit. In support, they cite *Melko*, which stands for the proposition that a plaintiff may not benefit from the fraudulent concealment doctrine where he or she possesses sufficient information that provides actual or constructive notice to the cause of action, regardless of a fiduciary's silence. 219 Ill. App. 3d at 1062. While a fiduciary relationship "may excuse a plaintiff's failure to investigate diligently to ascertain facts," the Second District explained that there is a distinction "between the failure to *ascertain* facts through diligent inquiry and the failure to *act upon* facts which the plaintiff *already* has actual knowledge." (Emphases in original.) *Id.* Therefore, in reviewing the evidence in the light most favorable to Duba, we must determine whether he possessed information that "actually or constructively" provided notice of Konopka's misconduct to thereby "trigger[ ] [his] duty of inquiry." *Id.*

¶ 58 We are not persuaded by Keepsafe and Charter's position that Duba possessed constructive knowledge of the note based alone on filings that became matters of public record. Specifically, they state that the deed from Crest Hill to Keepsafe, and Keepsafe's subsequent mortgage, which were both recorded in December 2005, provided record notice, thereby triggering Duba's duty to inquire, which would have led to his discovery of the note. This argument fails to consider that at the time Keepsafe recorded its deed and mortgage there was no reason for Duba to suspect that Konopka, as Crest Hill's fiduciary, had conveyed Lot No. 4 to Keepsafe or that he had fraudulently concealed this transfer. See *Chicago Park District v. Kenroy, Inc.*, 78 Ill. 2d 555, 562 (1980). To hold that these recordings adequately notified Duba of a potential cause of action would require him to "presume unfaithfulness on the part of [Crest Hill's] fiduciary" and impose upon him a duty not contemplated in section 13-215. *Id.* at 563; see 735 ILCS 5/13-215 (West 2022). We find such an imposition would undermine the purpose of the fraudulent concealment doctrine. While the record demonstrates that Duba later sought to litigate Konopka's purported misdeeds (see *Crest Hill Land Development, LLC v. Conrad*, 2019 IL App (3d) 180213, ¶ 29; see also *Duba*, 2018 IL App (1st) 163150-U, ¶ 8), there is no indication that he knew any of Konopka's wrongdoings in 2005. See *Kenroy*, 78 Ill. 2d at 563. As such, the recording of Keepsafe's deed and mortgage were inadequate to trigger any duty of inquiry. *Cf. Melko*, 219 Ill. App. 3d at 1060.

¶ 59 Following our extensive review of the record, we find a more convincing position is that certain evidence affirmatively establishes Duba had actual or constructive knowledge of his injury prior to 2015. The record clearly indicates Duba had actual knowledge of the debt obligation prior to late 2015—the date he testified to learning of the note. During the discovery stage in Duba and Konopka's 2010 lawsuit, Duba disclosed certain Crest Hill financial documents in early February 2011. The disclosure included an inventory of Crest Hill's payable and receivable loans with one receivable entitled "KEEPSAFE LOAN & INTEREST" in the amount of "$389,990." In late 2012, Duba also disclosed a letter, dated July 26, 2005, from Konopka addressed to a law firm that described the finances and some of the terms of the land transfer between Keepsafe and Crest Hill. In that same litigation, Konopka filed a response to Duba's petition to have a manager appointed for Crest Hill on September 27, 2012. The response claimed that the self-storage building on the property "belongs to Keepsafe" and that Keepsafe purchased the property in 2005. Konopka attached the warranty deed as an exhibit to the response. Finally, Duba's December 2015 deposition testimony stating he learned of the transfer from Crest Hill to Keepsafe "[a] couple years" prior stands at odds with the time frame he previously testified to establishing his ascertainment of the date of discovery and loss.

¶ 60 We cannot say each piece of evidence identified by Keepsafe and Charter unequivocally reveals Duba possessed sufficient knowledge to inform him of his cause of action prior to 2015 as a matter of law. We do find that one document, however, is uncontroverted and dispositive to preclude Duba's invocation of the fraudulent concealment doctrine. It is well settled that " '[w]hether the injured person has become possessed of sufficient information concerning his or her injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved is usually a question of fact.' " *Wisniewski*, 406 Ill. App. 3d at 1165 (quoting *Pruitt v. Schultz*, 235 Ill. App. 3d 934, 936 (1992)). Such issues are best left for the "finder of fact, *unless* only one conclusion may be drawn from the undisputed facts." (Emphasis in original.) *Pruitt*, 235 Ill. App. 3d at 936.

¶ 61 Duba's conflicting deposition testimony as to his discovery of the land transfer—be it in late 2015 or a "couple years" before 2015—is ill-suited to support an award of summary judgment. See *Fennerty v. City of Chicago*, 2015 IL App (1st) 140679, ¶ 16; see also *Allstate Insurance Co. v. Tucker*, 178 Ill. App. 3d 809, 813 (1989) ("[A]pparent inconsistent statement[s] of [a party] *** [are] not sufficient to justify summary judgment."). The same can be said of the document disclosures that Keepsafe and Charter purport establishes Duba's actual knowledge in 2011 of the debt obligation and actual or constructive knowledge in 2012 of the land transfer. When asked whether he had seen his 2011 disclosure containing the $389,990 loan, Duba testified "[n]o, no, absolutely not." Similarly, during his deposition, Duba denied receiving Konopka's 2005 letter detailing the terms of the land transfer. Yet, in his reply in support of his motion for reconsideration and in his appellate briefs, Duba fails to account for Konopka's 2012 response to his petition to have a Crest Hill manager appointed to manage, presumably, Crest Hill properties. The response claimed Keepsafe owned the self-storage building and the property it occupied. Konopka attached the warranty deed and a parcel description of Lot No. 4.

¶ 62 Duba peripherally addresses the warranty deed in his reply brief, stating it bears no relation to the underlying harm of the transaction, which is Konopka's concealment and failure to pay off the note. The same logic applies to Konopka's 2012 response; it does not disclose that

Konopka created the note and was actively concealing it from Duba. Such a position ignores the duty of inquiry that commenced when he became constructively aware that Crest Hill was no longer the rightful owner of the property at issue. Duba does not refute receipt of Konopka's 2012 response, the effect of which leaves this court with only one conclusion: the information "actually available and disclosed" to Duba placed him on inquiry notice of Konopka's alleged fraud. See *Melko*, 219 Ill. App. 3d at 1062. Because this undisputed evidence establishes that Duba "should have discovered" the withheld note "through ordinary diligence" (internal quotation marks omitted) (*Turner v. Nama*, 294 Ill. App. 3d 19, 27 (1997)), while a reasonable amount of time remained within the applicable statute of limitations, he cannot invoke the fraudulent concealment doctrine to toll the limitations period (*Anderson v. Wagner*, 79 Ill. 2d 295, 322 (1979)).

¶ 63 Notwithstanding our liberal construction of the evidence viewed most favorable to Duba, we hold that as a matter of law, the fraudulent concealment doctrine is inapplicable to his claim.

¶ 64 C. Material Questions of Fact Remain Unresolved

¶ 65 Considering these holdings, we find that the circuit court erred in disposing of Duba's suit through summary judgment. When the smoke has cleared, the record reveals several outstanding issues of material fact, which bear on the timeliness of Duba's suit. As previously discussed, questions of material fact remain on which due date contemplated in the note controls. *Supra* ¶ 26. These include the date on which it was executed, March or August, and whether the note bearing all three Keepsafe members' signatures, the last dated August 22, 2005, represents the same obligation and relates back to the prior complaints. Resolution of these disputed questions of fact, or mixed questions of fact and law, will determine when the limitations period commenced. See *Jones*, 308 Ill. App. 3d at 498.

¶ 66 We also find that questions of material fact remain as to whether the note was extended and disagree with Keepsafe and Charter's position that the record is unequivocal as to the extension or lack thereof. Konopka averred that neither Crest Hill nor Keepsafe sought or approved an extension of the original term of 24 months. On January 7, 2022, during Parsons's deposition, he was asked whether the obligation had been extended beyond the initial 24 months to which he replied "[n]o, not to my knowledge." While that is hardly unequivocal or conclusive, we note that in a February 19, 2008, letter addressed to his fellow Keepsafe members, Konopka described an ongoing obligation: "We have a note with Crest Hill *** for $389,990 which is the balance for the lot." Such a representation, when read in light most favorable to Duba, raises material questions of fact on whether the note was extended, and if so, for how long. A trier of fact could consider the failure of Konopka, as a fiduciary, to sue or demand payment after two years elapsed as some evidence that it was extended. Moreover, under this favorable standard to the nonmovant, we find the note's internal directive that it would not be recorded "at least to the end of the three year term" bolsters Duba's claim that extension was contemplated from the outset. Lastly, given Konopka's testimony at the August 28, 2018, hearing on his motion for sanctions that the note bearing only his signature was not intended to be the final document, there may be a question whether the statute did not begin to run until the last Keepsafe member signed the note on August 22, 2005. This recitation of material issues of fact is not intended to be exclusive. There may be others that will become evident to the circuit court on remand.

¶ 67 III. CONCLUSION

¶ 68 We affirm the circuit court's holding that the fraudulent concealment doctrine does not apply to Duba's claim. We reverse the circuit court's grant of summary judgment in Keepsafe's and Charter's favor and its finding that the 5-year limitations period applies to the obligation, concluding that the 10-year limitations period applies in that the note constitutes a negotiable promissory note and several issues of material fact exist to preclude a holding that Duba's action was not commenced within that period. The judgment of the circuit court of Will County is affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion.

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