2026 IL App (1st) 250862-U

No. 1-25-0862

Second Division
September 8, 2026

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WILLIAM NEWSOM, KIMBERLY NEWSOM, and TIMOTHY J. EGAN, On Behalf of Plaintiffs and a Class,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 2024 CH 001048
v.	)	The Honorable Michael T. Mullen,
BMO BANK N.A.,	)	Judge Presiding.
Defendant-Appellee.	)	

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

ORDER

¶ 1 *Held:* The dismissal of plaintiffs' third amended complaint is reversed, where (1) plaintiffs stated causes of action with respect to each count of their complaint and (2) there is no affirmative matter barring any of their claims at this stage of the proceedings.

¶ 2 Plaintiffs William and Kimberly Newsom (collectively, the Newsoms) and Timothy J. Egan (Egan) entered into retail installment contracts with the predecessor of defendant BMO Bank N.A. (BMO) to finance the purchase of a recreational vehicle and a boat, respectively.

During the life of the loans, plaintiffs contended that BMO inappropriately applied excess payments that they made to future scheduled payments instead of toward the principal of their loans as they alleged was required under their contracts. Consequently, plaintiffs filed suit against BMO for breach of contract, common-law fraud, and consumer fraud. The circuit court dismissed plaintiffs' complaint, and they now appeal. For the reasons set forth below, we reverse.

¶ 3 BACKGROUND

¶ 4 *Contracts*

¶ 5 The Newsoms, who reside in Delaware, purchased a recreational vehicle in Lakewood, New Jersey, on January 22, 2020, which was financed with a $72,409.03 loan at an interest rate of 6%, resulting in monthly payments of $523.95 for 20 years. The contract contained a provision concerning prepayment of the loan, which provided, in full:

> "*Prepayment.* You may prepay this Contract in full or in part at any time without penalty. Any partial payment will not excuse any later scheduled payments. If we get a refund of any unearned insurance premiums that you paid, you agree that we may subtract the refund from the amount you owe, unless otherwise provided by law."

The contract provided that it would be "governed by the law of New Jersey and applicable federal law and regulations." At its execution, the loan was immediately assigned to Bank of the West, a predecessor to BMO.

¶ 6 Egan, who resides in South Carolina, purchased a boat in Charleston, South Carolina, on January 21, 2022, which was financed with a $210,499.46 loan at an interest rate of 4.74%, resulting in monthly payments of $1,359.15 for 20 years. As with the Newsoms' contract,

Egan's contract contained a provision concerning prepayment of the loan, which provided, in full:

> "*PREPAYMENT.* You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.
>
> A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance."

The contract provided that, "[e]ven if the South Carolina Consumer Protection Code (CPC) would not otherwise apply, you and we agree to make this Contract subject to it. For purposes of the CPC, this is a consumer credit sale, subject to the CPC's terms, including permissible rates and charges." Like the Newsoms' contract, at its execution, the loan was immediately assigned to Bank of the West.

¶ 7 *Complaint*

¶ 8 On February 20, 2024, the Newsoms filed a class-action complaint against BMO in the circuit court of Cook County; the complaint was amended several times, including to add Egan as a plaintiff, and it is the third amended complaint which is at issue on appeal.

¶ 9 The third amended complaint alleged that the contracts permitted prepayment, and that prepayments were required to be applied to the principal owed, not to future scheduled payments. In addition, BMO provided payment coupons which had a place for "Additional Principal" clearly marked. The third amended complaint, however, alleged that prepayments were in actuality not applied to the principal owed but were used toward the next month's payment obligation—*i.e.*, the payment would be divided between interest and principal instead of being applied purely toward the principal. The third amended complaint alleged that "[t]he effect of applying prepayments in this manner is to increase the total amount of interest paid

by the consumer, because the contract rate of interest is applied to a higher principal balance than if the prepayment was used to reduce the principal balance."

¶ 10 The third amended complaint further alleged that customers who made prepayments received "misleading" statements from BMO, which indicated that the " 'Current Monthly Installment Due,' " " 'Past Due Installments,' " and " 'Total Amount Due' " were $0; in some cases, the " 'Total Amount Due' " was not $0, but was less than the monthly amount due under the contract. The third amended complaint alleged that these statements were inconsistent with the contracts, which provided that prepayment would not affect the monthly amount due. According to the third amended complaint, "[c]onsumers who received such statements would often refrain from sending in the next monthly payment (if the statement said no payment was due) or send in the incorrect, lower amount listed on the statement rather than sending their contracted monthly payment amount."

¶ 11 With respect to the plaintiffs, the third amended complaint alleged that the Newsoms had attempted to make extra payments designated toward the principal, and used the payment coupons to make such a designation, but BMO instead applied the extra payments toward the next scheduled monthly payment. They received statements which indicated an amount due of $0, and, "[i]n reliance on the statements, Mr. and Mrs. Newsom occasionally did not send a payment, which resulted in additional interest being assessed." In November 2023, they called BMO to inquire as to why their statements reflected no payment being due, and a customer service representative informed them that their loan was " 'paid ahead' " and that no payments were due until February 2024. After receiving two more statements indicating no payments being due, they again contacted BMO, where a customer service representative informed them

that "the only way to make prepayments was to call and make special arrangements to do so with a separate payment."

¶ 12 Similarly, the third amended complaint alleged that Egan made extra payments which he designated to be applied to the principal balance, but BMO's monthly statements reflected either no payment due or a reduced payment due. "Acting in reliance on the amount shown as due in the statements, Plaintiff Egan sometimes paid the reduced 'amount due' rather than making the full monthly payment."

¶ 13 The third amended complaint contained four counts. Count I was for breach of contract, and alleged that BMO breached its contracts by applying partial prepayments to future payments rather than principal. Count I alleged that BMO's conduct damaged plaintiffs "in that they paid (and will be required to pay) interest in addition to that which they would have paid had their partial prepayments been properly applied and no misleading statements made."

¶ 14 Count II was for common-law fraud, and alleged that BMO's practice of instructing customers that no payment was due when, in fact, a full payment was due constituted a misrepresentation of fact. Count II alleged that the contents of the monthly statements were false, they were intended to be relied upon by BMO's customers, and they were reasonably relied on by such customers submitting payments to BMO. In addition, count II alleged that "designating a space on a payment coupon for a consumer to indicate an additional amount to be paid toward the principal, and then failing, as a practice, to apply said amount to the principal, is intentionally misleading and fraudulent."

¶ 15 Count III was based on violation of the New Jersey Consumer Fraud Act (N.J. Stat. Ann. § 56:8-1 *et seq.* (West 2024)), and alleged that the misapplication of prepayments constituted an abusive practice and that the sending of monthly statements which did not accurately reflect

the contractual terms constituted a deceptive practice. Count III further alleged that sending a statement reflecting no amount due without informing customers that skipping the payment would result in additional interest charges constituted a knowing concealment and omission of a material fact which was performed with the purpose of inducing reliance by the customer. In addition, as with count II, count III alleged that designating a space on a payment coupon for the payment of additional principal and failing to apply the payment in such a manner was "intentionally misleading and fraudulent." Count III alleged that, as a result of BMO's conduct, plaintiffs paid interest in addition to that which they would have paid had their payments been properly applied and no misleading statements made.

¶ 16 Finally, count IV was based on the South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10 *et seq.* (2024)), and contained similar allegations as count III.

¶ 17 In support of their claims, plaintiffs attached several documents to the third amended complaint, including account statements and payment coupons. With respect to the Newsoms, monthly account statements dated January through August 2023 all reflected $0 for "Current Payment Due," "Amount Past Due," and "Total Amount Due." The statements reflected payments made by the Newsoms on January 12, 2023, February 27, 2023, July 17, 2023, and August 14, 2023; most of the payments were in the amount of the $523.95 monthly payment and were divided between interest and principal, except for a $1,000 July payment, which went entirely towards interest. In addition, two account summary statements dated October and November 2023 reflected $0 for "Current Monthly Installment Due," "Past Due Installments Including Late Charges Due," and "Total Amount Due" on the payment coupons attached to the statements. The payment coupons included a space which provided: "When sending more than the amount due, complete the following," followed by two lines reading "Additional

Principal" and "Additional Escrow." The November account summary statement indicated a payment made on October 31, 2023, which was divided between principal and interest.

¶ 18 With respect to Egan, a payment coupon dated December 29, 2023, reflected $0 for "Current Monthly Installment Due," "Past Due Installments Including Late Charges Due," and "Total Amount Due." Egan had written $1,500 on the "Additional Principal" line. Similarly, a payment coupon dated January 29, 2024, had $0 balances and Egan had written $1,500 on the "Additional Principal" line. He had also handwritten a notation to "Apply to Principal Only Total Amount," and included a check on which he had written, "Principal Payment Only." He also appears to have included a letter which provided: "Per Ronald West of the BMO Loan Resolution Team, I should send principal payments only to this address. Please apply this payment of $1500.00 to principal only." An account summary statement from February 2024 indicated a payment made on February 14, 2024, which went entirely towards principal.

¶ 19 *Motion to Dismiss*

¶ 20 BMO filed a combined motion to dismiss the third amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2024)). BMO argued that count I, for breach of contract, should be dismissed under section 2-615 of the Code (*id.* § 2-615) for failure to state a claim. It further contended that the remaining counts should be dismissed for failure to satisfy the heightened pleading requirements for fraud-based claims. In addition, BMO claimed that the third amended complaint should be dismissed under section 2-619 of the Code (*id.* § 2-619). BMO argued that it had fulfilled its contractual requirements, while plaintiffs had missed several payments, so plaintiffs could not pursue a breach of contract action. BMO also maintained that the Newsoms, who lived in Delaware, could not rely on New Jersey law for their tort claims. Finally, BMO claimed that it was exempt

from the South Carolina Unfair Trade Practices Act and that, even if it was not, class actions were barred under the statute.

¶ 21 Attached to BMO's motion to dismiss was the affidavit of Michael Montesano, a specialist in BMO's "US Lending & Deposits Operations" department, who provided BMO's corporate records related to plaintiffs' loans, as well as summaries of the payment histories of the accounts which he prepared. The payment histories indicated that, for both the Newsoms and Egan, (1) there were occasions on which they paid more than the monthly payment, (2) there were occasions on which they paid nothing or paid less than the monthly payment, (3) there were occasions on which their payments went entirely toward principal, (4) there were occasions on which their payments went entirely toward interest, and (5) there were occasions on which their payments were divided between principal and interest.

¶ 22 On April 28, 2025, the circuit court entered an order dismissing count I pursuant to section 2-619 of the Code and dismissing counts II through IV pursuant to section 2-615 of the Code, all with prejudice. Plaintiffs filed a timely notice of appeal, and this appeal follows.

¶ 23 ANALYSIS

¶ 24 On appeal, plaintiffs contend that the circuit court erred in dismissing their third amended complaint. BMO's motion to dismiss was based on both sections 2-615 and 2-619 of the Code. A motion to dismiss under section 2-615 of the Code challenges the legal sufficiency of the complaint by alleging defects on its face. *Young v. Bryco Arms*, 213 Ill. 2d 433, 440 (2004); *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003). The critical inquiry is whether the allegations in the complaint are sufficient to state a cause of action upon which relief may be granted. *Wakulich*, 203 Ill. 2d at 228. In making this determination, all well-pleaded facts in the complaint and all reasonable inferences that may be drawn from those facts are taken as true.

Young, 213 Ill. 2d at 441. In addition, we construe the allegations in the complaint in the light most favorable to the plaintiff. *Id.* We review *de novo* an order granting a section 2-615 motion to dismiss. *Id.* at 440; *Wakulich*, 203 Ill. 2d at 228. We may affirm on any basis appearing in the record, whether or not the circuit court relied on that basis or its reasoning was correct. *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill. App. 3d 40, 50 (1992).

¶ 25 A motion to dismiss under section 2-619 admits the legal sufficiency of all well-pleaded facts but allows for the dismissal of claims barred by an affirmative matter defeating those claims or avoiding their legal effect. *Janda v. United States Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 83 (citing *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006)). When reviewing a motion to dismiss under section 2-619, "a court must accept as true all well-pleaded facts in plaintiffs' complaint and all inferences that can reasonably be drawn in plaintiffs' favor." *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008). Additionally, a cause of action should not be dismissed under section 2-619 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 277-78 (2003). As with a section 2-615 motion, for a section 2-619 dismissal, our standard of review is *de novo*. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006); *Morr-Fitz, Inc.*, 231 Ill. 2d at 488. Additionally, as with a section 2-615 dismissal, even if the circuit court dismissed on an improper ground, a reviewing court may affirm the dismissal if the record supports a proper ground for dismissal. See *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 261 (2004) (when reviewing a section 2-619 dismissal, we can affirm "on any basis present in the record"); *In re Marriage of Gary*, 384 Ill. App. 3d 979, 987 (2008) ("we may affirm on any basis supported by the record, regardless of whether the trial court based its decision on the proper ground").

¶ 26 *Breach of Contract*

¶ 27 Plaintiffs first contend that the circuit court erred in dismissing count I of their third amended complaint, for breach of contract. The circuit court dismissed this count pursuant to section 2-619(a)(9) of the Code, which provides for dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2024). While the circuit court did not explain the basis for its finding, BMO had argued in its motion to dismiss that count I should be dismissed where (1) BMO fulfilled its contractual obligations and (2) plaintiffs failed to satisfy their own obligations. In its reply in support of its motion to dismiss, it expanded this argument to claim that the contracts did not impose a duty to apply overpayments in the way alleged by plaintiffs.

¶ 28 We observe, however, that in its brief on appeal, BMO contends for the first time that there was no contractual duty to issue periodic payment demands. As plaintiffs correctly point out, this inaccurately frames the allegations in the third amended complaint—in their own words, "[a] duty to send periodic statements is not now, and has never been, at issue in this matter." Instead, plaintiffs contended that BMO's statements were evidence of the way in which it was applying prepayments, which they alleged was improper. We accordingly decline to address this argument further and proceed to consider the arguments which are based on the actual allegations of the third amended complaint.

¶ 29 The Newsoms' contract provided that it would be governed by New Jersey law. Egan's contract did not have such express language, but provided that the South Carolina Consumer Protection Code would apply to the transaction, and Egan alleged that South Carolina law governed. We thus apply New Jersey and South Carolina law to the substantive issues where appropriate, but apply Illinois law to procedural issues, such as whether plaintiffs satisfied the

pleading requirements sufficient to withstand a motion to dismiss. See *Ledeaux v. Motorola, Inc.*, 2018 IL App (1st) 161345, ¶ 14.

¶ 30 Under both New Jersey and South Carolina law, a breach of contract claim requires (1) that the parties entered into a valid contract, (2) performance by the plaintiff, (3) breach of contract by the defendant, and (4) damages to the plaintiff. See *Goldfarb v. Solimine*, 245 A.3d 570, 577 (N.J. 2021); *Branche Builders, Inc. v. Coggins*, 686 S.E.2d 200, 202 (S.C. Ct. App. 2009). In this case, the parties disagree as to BMO's obligations under the contracts and, relatedly, whether BMO complied with such obligations.

¶ 31 As noted, both contracts at issue contained clauses which permitted prepayment of the loan amount. Specifically, the Newsoms' contract provided: "You may prepay this Contract in full or in part at any time without penalty. Any partial payment will not excuse any later scheduled payments." Egan's contract similarly provided: "You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full."

¶ 32 Plaintiffs contend that these prepayment clauses—specifically, the last sentence of each clause—obligated BMO to apply any prepayments to the outstanding principal. BMO, by contrast, contends that these provisions impose no duty on BMO and that its only obligation "is to apply payments [to] interest first, then principal, with any overpayment reducing principal." We observe that the contracts are silent as to the general allocation of payments between interest and principal, providing only a monthly total amount which plaintiffs are obligated to pay. After, however, reviewing the language of the prepayment clauses together with the other clauses of the contracts, and in light of the nature of the contracts, we find that

plaintiffs have sufficiently alleged that the prepayment clauses are applicable to both plaintiffs and BMO and that BMO's failure to fulfill its obligations constituted a breach of contract.

¶ 33 The purpose of a prepayment clause in a loan agreement is to permit the borrower to satisfy the debt at an earlier time than otherwise required by the contract. See, *e.g.*, *Latimer v. Grundy County National Bank*, 239 Ill. App. 3d 1000, 1003 (1993) (a prepayment provision in an installment contract "reserves to the purchaser an option or right to accelerate payment"); *First National Bank of Springfield v. Equitable Life Assurance Society of the United States*, 157 Ill. App. 3d 408, 414 (1987) (a prepayment clause in a promissory note gives the debtor the privilege of paying off the balance of the remaining debt by voluntarily maturing the debt prior to the completion of its contemplated term). This includes the principal, as well as any outstanding interest. The amount of interest owed by a borrower, however, is directly impacted by the size of the principal, as it represents a percentage of the principal obligation. Indeed, the loss of a favorable interest yield results in some lenders charging prepayment premiums to protect against potential losses if a loan is paid earlier than provided in the contract. See *Westmark Commercial Mortgage Fund IV v. Teenform Associates, L.P.*, 827 A.2d 1154, 1158 (N.J. Super. Ct. App. Div. 2003). As such, both contracts at issue here recognize that the total "Sale Price" (consisting of the principal plus interest) could vary based on the payments actually made—as the Newsoms' contract explains, "[t]he actual amount you will pay will be more [than disclosed] if you pay late and less if you pay early." Consequently, in order for a prepayment to impact the amount of the debt, it must be applied to the principal—payment of the interest will not reduce the size of the underlying obligation.

¶ 34 Plaintiffs have sufficiently alleged that the prepayment clauses in the contracts at issue here concern *prepayment* of the underlying loan obligation and not merely *early* payment of future

scheduled payments. Indeed, both contracts are explicit on the point that a prepayment would not serve as an early payment, excusing any later scheduled payments. As plaintiffs are not excused from future monthly payments if they make additional payments, and courts have interpreted prepayment clauses to provide for the reduction of the debt, the complaint sufficiently alleged that BMO was to apply prepayments to the principal. Accordingly, we find that plaintiffs have sufficiently alleged that BMO breached the contracts as to the prepayment clauses.

¶ 35 Our conclusion, however, does not entirely resolve whether plaintiffs' breach of contract count should be dismissed. BMO contends that dismissal was appropriate where it complied with its obligations and plaintiffs failed to comply with theirs. As noted, both New Jersey and South Carolina law require a plaintiff to demonstrate its own performance to maintain a cause of action for breach of contract. See *Goldfarb*, 245 A.3d at 577; *Branche Builders, Inc.*, 686 S.E.2d at 202. In this case, BMO claims that plaintiffs failed to perform their own obligations under the contracts, as there were several occasions on which they either made no payment or made a smaller payment than their monthly payment obligation, and that it properly applied later overpayments to satisfying the outstanding amounts. Plaintiffs, however, alleged in their third amended complaint—and argue on appeal—that any such payments (or nonpayments) were done in reliance on statements sent by BMO and conversations with BMO's customer service representatives which reflected that no payment (or a lesser payment) was due. As such, they claim that BMO is estopped from claiming that plaintiffs breached the contracts.

¶ 36 We find that, at this early stage of the proceedings, there remain numerous questions of fact as to all parties' obligations and performance which render dismissal inappropriate. The record as currently developed indicates that plaintiffs received account statements which

reflected a $0 payment due; that there were several occasions on which they did not make payments; and that on most occasions on which they paid more than the monthly payment amount, those payments were allocated to both principal and interest. Whether these facts rise to the level of a breach of contract or a failure to perform—on either side—is a matter which is not suitable for determination at this stage of the proceedings. Accepting as true all well-pleaded facts and taking all inferences in plaintiffs' favor (see *Morr-Fitz, Inc.*, 231 Ill. 2d at 488), we certainly cannot say that it is clearly apparent that plaintiffs can prove no set of facts which would entitle them to relief (*Feltmeier*, 207 Ill. 2d at 277-78). As such, we reverse the circuit court's dismissal of count I of plaintiffs' complaint.

¶ 37 We do not find persuasive BMO's contention that the dismissal may be affirmed for failure to state a claim under section 2-615 of the Code. For the same reasons expressed in our discussion above, we find that the allegations of the third amended complaint are sufficient to withstand dismissal under section 2-615, as well.

¶ 38 *Common-Law Fraud*

¶ 39 We next consider the circuit court's section 2-615 dismissal of count II of the third amended complaint, for common-law fraud. As in Illinois, to prevail on a claim for fraud under New Jersey law, a plaintiff must establish that the defendant "(1) made a representation or omission of a material fact; (2) with knowledge of its falsity; (3) intending that the representation or omission be relied upon; (4) which resulted in reasonable reliance; and that (5) [the] plaintiff suffered damages." *DepoLink Court Reporting & Litigation Support Services v. Rochman*, 64 A.3d 579, 586 (N.J. Super. Ct. App. Div. 2013). See *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15 (setting forth elements of fraud under Illinois law). Similarly, under South Carolina law, to establish a cause of action for fraud, a

plaintiff must demonstrate "(1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Schnellmann v. Roettger*, 645 S.E.2d 239, 241 (S.C. 2007). Fraud claims must be pleaded with a high standard of particularity. *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803 (2005). "Therefore, a plaintiff must at least plead with sufficient particularity facts which establish the elements of fraud, including what misrepresentations were made, when they were made, who made the misrepresentations, and to whom they were made." *Avon Hardware Co.*, 2013 IL App (1st) 130750, ¶ 15.

¶ 40 In seeking to dismiss plaintiffs' fraud claims, BMO argued that the third amended complaint failed to allege any of the facts required to state a cause of action for fraud, and the circuit court seemingly agreed, dismissing count II pursuant to section 2-615 of the Code. We, however, find that the third amended complaint contained sufficiently specific allegations to withstand dismissal at this early stage of the proceedings.

¶ 41 Plaintiffs' fraud claims were based on the monthly statements issued by BMO. Specifically, plaintiffs alleged that BMO's practice of informing customers that no payment (or a reduced payment) was due constituted a misrepresentation of fact which was intended to be relied on by customers. Plaintiffs further alleged that the contents of the monthly statements were, in fact, relied on by customers, and that such reliance was reasonable, "in that consumers expect creditors to send them bills which correctly apprise them of the amounts due." In addition, plaintiffs alleged that "designating a space on a payment coupon for a consumer to indicate an additional amount to be paid toward the principal, and then failing, as a practice, to

apply said amount to the principal, is intentionally misleading and fraudulent." With respect to both the Newsoms and Egan, the third amended complaint alleged that, as a result of BMO's conduct, plaintiffs were forced to incur additional amounts of interest which they would not have incurred had their prepayments been properly applied. We find these allegations sufficient to plead each element of fraud with particularity.

¶ 42 BMO suggests that the "Payment Due" amount reflected on statements issued by BMO to its customers is not a material fact or that BMO was unaware of its alleged falsity. BMO also argues that BMO did not intend to induce reliance on its statements or that such reliance was unjustifiable. BMO's arguments go to the provability of the claims, not their pleading. While BMO points to plaintiffs' actual practices in making payments to contend that they did not rely on the statements, this is a factual issue which is inappropriate for resolution at this stage of the proceedings. As noted, in determining whether a plaintiff has stated a cause of action for purposes of section 2-615, we take all of the plaintiff's well-pleaded facts as true and interpret the allegations in the light most favorable to the plaintiff. *Young*, 213 Ill. 2d at 441. Doing so in this case, we find the allegations sufficient to withstand dismissal. As such, we reverse the dismissal of count II of plaintiffs' third amended complaint.

¶ 43 BMO, however, also argues that dismissal with respect to the Newsoms was appropriate under section 2-619 of the Code. Specifically, BMO contends that count II and count III (based on the New Jersey Consumer Fraud Act) should be dismissed where the Newsoms sought to impose New Jersey law despite being Delaware residents. While we discuss the matter with respect to count III below, we find BMO's argument concerning count II to be unpersuasive. As BMO itself acknowledged in its motion to dismiss, plaintiffs did not indicate whether they were asserting their fraud claims under Illinois, New Jersey, or South Carolina law. While, of

course, this is an issue which must eventually be clarified, as set forth above, all three states have substantially similar elements for establishing common-law fraud. We observe that Delaware law, which is the law that BMO contends applies, also has nearly-identical pleading requirements as New Jersey and Illinois. See *Matrix Parent, Inc. v. Audax Management Co.*, 319 A.3d 909, 932 (Del. 2024). Indeed, at oral argument, BMO's counsel agreed that, with respect to common-law fraud, the choice of law "probably doesn't matter too significantly," as "they're all the same elements." Accordingly, even if BMO is correct about the applicability of New Jersey law, dismissal under section 2-619 is not warranted.

¶ 44 *New Jersey Consumer Fraud Act*

¶ 45 The Newsoms next challenge the section 2-615 dismissal of count III, based on the New Jersey Consumer Fraud Act (N.J. Stat. Ann. § 56:8-1 *et seq.* (West 2024)). The New Jersey Consumer Fraud Act "provides for relief to consumers who have been harmed by fraudulent practices in the marketplace by making the use of those practices unlawful." (Internal quotation marks omitted.) *Robey v. SPARC Group LLC*, 311 A.3d 463, 470-71 (N.J. 2024). To state a claim under the statute, a plaintiff must plead (1) an unlawful practice, (2) an ascertainable loss, and (3) a causal relationship between the two. *Id.* at 471. "Unlawful practices fall into three general categories: affirmative acts, knowing omissions, and regulation violations." (Internal quotation marks omitted.) *In re U.S. Vision Data Breach Litigation*, 732 F. Supp. 3d 369, 381 (D.N.J. 2024). For the same reasons explained above, we find that a section 2-615 dismissal of count III was inappropriate, as the Newsoms sufficiently alleged a violation of the statute.

¶ 46 As noted, however, BMO also claims that dismissal was appropriate under section 2-619 where New Jersey law did not apply to the Newsoms' claims. The Newsoms' contract provided:

> "*Governing Law and Interpretation.* This Contract is governed by the law of New Jersey and applicable federal law and regulations."

A choice-of-law provision in an agreement will generally be honored. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 351 (2002). BMO, however, contends that the choice-of-law provision does not apply to an extracontractual claim such as the Newsoms' consumer fraud claim.[1] See *Davis v. BMW of North America, LLC*, 810 F. Supp. 3d 528, 540 (D.N.J. 2025) (alleged violations of consumer fraud statutes are tort claims).

¶ 47 As the forum state, Illinois law governs the choice-of-law analysis. *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 155 (2007). While not often discussed, the existing authority suggests that a choice-of-law provision in a contract also applies to tort claims which require interpretation of the contract. See, *e.g.*, *Hall v. Sprint Spectrum L.P.*, 376 Ill. App. 3d 822, 827 (2007); *Boatwright v. Delott*, 267 Ill. App. 3d 916, 918 (1994). For instance, in *Boatwright*, a contractual provision providing that " '[t]his Contract shall be governed by and construed in accordance with the law of the state of Texas applicable to contracts' " was found to apply to the plaintiffs' fraud claim. *Id.* In reaching such a result, the *Boatwright* court found that "plaintiffs' fraud claim is intimately connected with the contract's terms; its resolution requires analysis of the employment relationship and the commission schedule, both of which are

[1] While we note that the Illinois consumer fraud statute has been interpreted to include a territorial limitation in that it applies only to transactions occurring primarily and substantially in Illinois (see *Avery v. State Farm Mutual Insurance Co.*, 216 Ill. 2d 100, 187 (2005)), BMO does not contend that the New Jersey statute contains such a limitation.

spelled out in the contract itself." *Id. Cf. Eckhardt v. Idea Factory, LLC*, 2021 IL App (1st) 210813, ¶¶ 6, 23 (a contract which contained a generic forum-selection clause but provided that " '[t]his Agreement shall be governed by the laws of the State of California' " encompassed all claims arising under the contract, including extracontractual tort claims).

¶ 48 We observe that this is consistent with the approach taken by the federal district court cases cited by BMO, in which the courts look to whether the resolution of the tort claim is intertwined with the interpretation of the contract. See *Portillo v. National Freight, Inc.*, 323 F. Supp. 3d 646, 652-53 (D.N.J. 2018) (finding that a clause providing that " '[t]his Agreement shall be interpreted in accordance with, and governed by, the laws of the United States and[ ] of the State of New Jersey' " did not encompass related claims which did not arise directly from the interpretation or performance of the agreement); *Precision Screen Machines Inc. v. Elexon, Inc.*, No. 95 C 1730, 1996 WL 495564, *3 (N.D. Ill. Aug. 28, 1996) (finding that a tort claim which was not dependent on the contract was not encompassed by the contract's choice-of-law provision).

¶ 49 To the extent that BMO contends that the choice-of-law provisions in the contracts at issue are narrow and therefore cannot encompass the tort claims here, we disagree. It is well settled that a contract should be construed by looking to its language, giving it its plain and ordinary meaning. *Gallagher v. Lenart*, 226 Ill. 2d 208, 233 (2007). Thus, in the cases cited by BMO in support of its argument, the courts examined the language of the provisions to determine whether they were broad enough to include the asserted tort claims. See *Portillo*, 323 F. Supp. 3d at 652-53; *Precision Screen Machines Inc.*, No. 95 C 1730, 1996 WL 495564, *2. In each case, they determined that language which is similar to that used here could encompass claims arising directly from the interpretation of or the performance of the contract at issue. See

Portillo, 323 F. Supp. 3d at 652-53; *Precision Screen Machines Inc.*, No. 95 C 1730, 1996 WL 495564, *3. At best, BMO's argument raises an ambiguity as to the meaning of "This Contract" being "governed" by New Jersey law. See *Gallagher*, 226 Ill. 2d at 233 ("If the language of the contract is susceptible to more than one meaning, it is ambiguous."). In that case, however, the terms of the contract would be construed against BMO as its drafter. See *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479 (1998) (any ambiguity in the terms of a contract must be resolved against the drafter of the disputed provision). Accordingly, we consider whether the resolution of the Newsoms' consumer fraud claim is intertwined with the interpretation of the contract.

¶ 50 In this case, we find that the contract between the Newsoms and BMO is integral to the consumer fraud claim. The Newsoms' claim is based on alleged misrepresentations made by BMO in servicing their loan—specifically, in the application of prepayments and in the representations BMO made to them concerning their outstanding payment amounts. These alleged misrepresentations stem directly from BMO's obligations under the contract. Indeed, a significant part of BMO's argument against the claim is its contention that it complied with its contractual obligations and applied the payments correctly. There is simply no way to consider the merits of the parties' arguments without also engaging in contractual interpretation—a matter which is expressly subject to New Jersey law. Consequently, New Jersey law also applies to the Newsoms' consumer fraud claim and we cannot find that dismissal under section 2-619 is an alternate basis for affirmance.

¶ 51 *South Carolina Unfair Trade Practices Act*

¶ 52 Finally, Egan challenges the section 2-615 dismissal of count IV, based on the South Carolina Unfair Trade Practices Act (SCUTPA) (S.C. Code Ann. § 39-5-10 *et seq.* (2024)). To

recover in an action under this statute, a plaintiff must establish (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce, (2) the unfair or deceptive act affected the public interest, and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive acts. *Health Promotion Specialists, LLC v. South Carolina Board of Dentistry*, 743 S.E.2d 808, 816 (S.C. 2013). Again, for the reasons stated in our prior analysis, we find that a section 2-615 dismissal of count IV was inappropriate, as Egan sufficiently alleged a violation of the statute.

¶ 53 BMO, however, contends that dismissal was nevertheless appropriate under section 2-619 where it is an exempt entity under the statute and where class actions are not permitted on SCUTPA claims. Section 39-5-40(a) of the SCUTPA provides that it does not apply to "[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States." S.C. Code Ann. § 39-5-40(a) (2024). This language has been interpreted to exclude "those actions or transactions which are allowed or authorized by a regulatory agency or other statutes." (Internal quotation marks omitted.) *RFT Management Co. v. Tinsley & Adams L.L.P.*, 732 S.E.2d 166, 174 (S.C. 2012). The Supreme Court of South Carolina, however, has made clear:

> "The purpose of the exemption is to insure that a business is not subjected to a lawsuit under the Act when it does something required by law, or does something that would otherwise be a violation of the Act, but which is allowed under other statutes or regulations. It is intended to avoid conflict between laws, not to exclude from the Act's coverage every activity that is authorized or regulated by another statute or agency. Virtually every activity is regulated to some degree. The defendant's interpretation of the exemption would deprive consumers of a meaningful remedy in many situations."

(Internal quotation marks omitted.) *Ward v. Dick Dyer & Associates*, 403 S.E.2d 310, 312 (S.C. 1991).

¶ 54 In this case, BMO argues that, since its lending and servicing practices are subject to oversight by multiple federal agencies, it is exempt from SCUTPA. The primary case BMO cites in support of its argument is *NCNB National Bank of North Carolina v. Tiller*, 814 F.2d 931, 937 (4th Cir. 1987), in which the Fourth Circuit Court of Appeals found that the federal regulation of the banking industry and its formal complaint and investigation procedure "is sufficient to come within the exception to the [SCUPTA]." The Fourth Circuit, however, relied on the Supreme Court of South Carolina's decision in *McCleod v. Rhoades*, 267 S.E.2d 539, 541 (S.C. 1980), which adopted a "general activity" test for application of the exemption. Under this test, a court looked to whether the general activity in question was regulated by a regulatory body; if it was, then the opposing party had the burden of showing that the specific acts in question were not exempt. *Id.* The *Rhoades* analysis, however, was expressly overruled by the Supreme Court of South Carolina in *Ward*. See *Ward*, 403 S.E.2d at 312 ("[W]e believe a 'general activity' test would not fulfill the intent of the Legislature in prohibiting unfair trade practices."). Accordingly, we cannot find that BMO's reliance on an abandoned approach supports its position here.

¶ 55 The burden of establishing an exemption to the SCUTPA is on the party claiming the exemption. *RFT Management Co.*, 732 S.E.2d at 174. Here, BMO has argued only that its status as a bank exempts it from SCUTPA. It has not explained how the specific actions alleged by Egan in count IV are permitted by laws administered by any regulatory agency. Consequently, BMO's exemption argument does not support dismissal under section 2-619. *Cf. Beattie v. Nations Credit Financial Services Corp.*, 65 Fed. Appx. 893, 896 (4th Cir. 2003)

(finding no exemption to bank subsidiary concerning its alleged collection and foreclosure activities).

¶ 56 With respect to BMO's argument concerning class certification, we observe that SCUTPA prohibits a plaintiff from bringing a suit in a representative capacity. See S.C. Code Ann. § 39-5-140(a) (2024); *Dema v. Tenet Physician Services-Hilton Head, Inc.*, 678 S.E.2d 430, 434 (S.C. 2009). Thus, if this lawsuit was filed in South Carolina, there would be no doubt that Egan would be precluded from pursuing a class action claim. Egan, however, contends that class action status is a procedural matter and that Illinois law should apply to the determination of whether he may maintain a class action here.

¶ 57 As noted, as the forum state, Illinois law governs the choice-of-law analysis. *Townsend*, 227 Ill. 2d at 155. Illinois has adopted the choice-of-law methodology set forth in the Second Restatement of Conflict of Laws (Restatement (Second) of Conflict of Laws (1971)) with respect to tort cases, including consumer fraud actions. See *Townsend*, 227 Ill. 2d at 155; *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 61 (2007) (applying Restatement in consumer fraud action). Under the Restatement, a forum state will generally apply its own local law to matters of procedure and will apply the other state's law to matters of substance. Restatement (Second) of Conflicts of Laws ch. 6, Introductory Note (1971). Specifically, the forum state typically applies its own law with respect to how litigation will be conducted (*id.* § 122), including the form of the action (*id.* § 124), the parties to the action (*id.* § 125), and the rules of pleadings and conduct of proceedings (*id.* § 127). This includes the determination of what persons may, or must, be joined as parties to an action. *Id.* § 125 cmt.a. The forum state's law, however, will not apply to the latter issue where "the substantial rights and duties of the parties would be affected by the determination of this issue." *Id.* § 125.

¶ 58 We observe that a class action has often been described by Illinois courts as a procedural device, as it governs the mechanics of bringing a lawsuit. See, *e.g.*, *Smith v. Illinois Central R.R. Co.*, 223 Ill. 2d 441, 451 (2006) (quoting with approval case describing a class action as "a procedural device intended to advance judicial economy by tying claims together that lend themselves to collective treatment" (internal quotation marks omitted)); *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 334 (1977) ("A class action is a potent procedural vehicle."); *Adams v. Jewel Cos.*, 63 Ill. 2d 336, 349 (1976) (discussing "the procedural device of a class action"). South Carolina appears to treat class actions as similarly procedural. See, *e.g.*, *Henson v. South Carolina Department of Corrections*, ___ S.E.2d ___, 2026 WL 2106838 (S.C. 2026) (a "principal purpose of the class action procedure was the efficiency and economy of litigation" (internal quotation marks omitted)); *Hensley v. South Carolina Department of Social Services*, 838 S.E.2d 510, 514 (S.C. 2020) (explaining that, for a class action to be appropriate, "[t]he class action must be a better procedural mechanism for resolving the litigation than named joinder or separate litigation" (internal quotation marks omitted)); *Grazia v. South Carolina State Plastering, LLC*, 703 S.E.2d 197, 204 (S.C. 2010) (quoting with approval United States Supreme Court case explaining that "[t]he class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion" and observing that class actions are favored in South Carolina). As our supreme court has explained, a class action permits claims by multiple plaintiffs to be decided without the necessity of the appearance of each, and "[a] vindication of the rights of numerous persons is possible in a single action when for many reasons individual actions would be impracticable." *Steinberg*, 69 Ill. 2d at 334-35. See also *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393, 408 (2010)

(plurality opinion) ("A class action, no less than traditional joinder (of which it is a species), merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits.").

¶ 59 Consequently, both Illinois and South Carolina have chosen to broadly permit class actions for civil actions. See 735 ILCS 5/2-801 (West 2024); S.C. R. Civ. Pro. 23(a). As relevant to the instant case, however, South Carolina has restricted this availability of class actions with respect to several statutes, including the SCUTPA, by including a prohibition against class actions within the applicable statutory scheme.[2] The question, then, is whether the restriction of class actions within such a statute transforms the otherwise procedural matter into one of substance—*i.e.*, whether the class-action bar affects the parties' rights and liabilities.

¶ 60 We observe that neither party cites any South Carolina law specifically addressing whether the class-action bar in the SCUTPA is procedural or substantive. Instead, the parties rely exclusively on federal cases discussing whether federal rules permitting class actions govern over state statutes, such as SCUTPA, prohibiting such class actions. There are several problems, however, with such a focus. First and foremost, these cases are primarily federal district court cases, a number of which are unreported, so they are entitled to no precedential weight. See *County of Du Page v. Lake Street Spa, Inc.*, 395 Ill. App. 3d 110, 122 (2009) ("Holdings of federal district courts are not precedential or binding on this court. [Citation.] This is especially true where the decision is unreported ***."). While they may provide guidance to state courts (*id.*), we are in no way bound to follow their reasoning or conclusions.

[2] We note that, in its brief on appeal, BMO claims that the South Carolina Consumer Protection Code similarly bars class actions and would further support dismissal. See S.C. Code Ann. § 37-10-105(A) (2024). Our analysis of the SCUTPA applies equally to any claims under the other statute.

¶ 61 In addition, the cases cited by the parties concern the interpretation of the federal Rules Enabling Act (28 U.S.C. § 2072 (2024)), which governs whether a federal procedural rule will apply over a conflicting state law. More specifically, the cases follow the reasoning of the partial concurrence in *Shady Grove*, 559 U.S. at 423 (Stevens, J., concurring in part), which suggested that federal courts could not apply a federal procedural law where "the rule would displace a state law that is procedural in the ordinary use of the term but is so intertwined with a state right or remedy that it functions to define the scope of the state-created right." During the pendency of briefing in the instant appeal, however, the United States Supreme Court has clarified that this is not the proper approach to take in considering such questions. See *Berk v. Choy*, 607 U.S. 187, 199 (2026) ("the substantive nature of [a state] law, or its substantive purpose, *makes no difference*" in determining whether a federal rule is valid under the Rules Enabling Act (emphasis in original, internal quotation marks omitted)). The continued viability of the cases applying such an approach is therefore in serious doubt.

¶ 62 We nevertheless find that, to the extent that these cases contain analysis concerning whether SCUTPA's class-action bar is substantive, such analysis is helpful in determining which state's law should apply in the instant case. BMO cites several federal court cases from South Carolina district courts finding that the bar is substantive based on its inclusion in the text of the statute. First, in *Stalvey v. American Bank Holdings, Inc.*, No. 4:13-CV-714, 2013 WL 6019320, *4 (D.S.C. Nov. 13, 2013), the district court determined that "the prohibitions against class actions ingrained in the very text of the SCUTPA and Consumer Protection code are substantive portions of South Carolina law and are not trumped by" the federal rules. Thus, the *Stalvey* court appears to have concluded that the presence of the class-action bar within the statutory scheme is itself sufficient to transform its nature from procedural to substantive.

¶ 63 A different federal district court judge reached the same conclusion several years later in *Fejzulai v. Sam's West, Inc.*, 205 F. Supp. 3d 723, 727 (D.S.C. 2016), reasoning that "the state legislature enmeshed SCUTPA's procedural vehicle with the claimant's right in a manner specifically designed to prohibit representative lawsuits. The legislature thereby functionally defined the scope of the right by way of the procedural limitation." The *Fejzulai* court explained that "the *location* of a class prohibition within a state code, *in and of itself*, does not control whether that class prohibition will survive a Rule 23 pleading scheme in federal court." (Emphases in original.) *Id.* at 728. The district court found it important, however, that SCUTPA's class-action bar was part of the same sentence which conveyed the substantive right and found that the class prohibition "shap[ed] the scope of the right conveyed." *Id.* at 729.

¶ 64 District courts outside of South Carolina, however, have reached more divergent results. For instance, the federal district court for the northern district of Illinois rejected the reasoning of *Fejzulai* in *Smith-Brown v. Ulta Beauty, Inc.*, No. 18 C 610, 2019 WL 932022, *13 (N.D. Ill. Feb. 26, 2019), finding that "the fact that a class action bar is included within a consumer protection statute does not make it any more substantive than if it were found instead among the state's rules of procedure." The *Smith-Brown* court reasoned that "[t]he class mechanism is merely a way of joining numerous plaintiffs' claims together in order to adjudicate them more efficiently; a law permitting it or prohibiting it is procedural, not substantive, because it does not alter the nature of the claim or the right that gives rise to it."

¶ 65 Similarly, the federal district court for the northern district of California found SCUTPA's class-action bar to be procedural in *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-MD-2420 YGR, 2014 WL 4955377, *21 (N.D. Cal. Oct. 2, 2014), reasoning that the statute, as well as an Illinois law at issue, "merely forbid procedural aggregation of individual claims;

they do not change how a court decides whether such claims prevail or, importantly, the nature of any one individual's right to relief." The district court found: "Nothing before the Court suggests that the class-action bans of Illinois and South Carolina alter the elements of their respective causes of action, the methods of proving those elements, or the relief available to them. Rather, *** Illinois and South Carolina's class-action bans merely determine *how* substantive rights may be asserted, that is, 'the process of enforcing litigants' rights and not the rights themselves.' [Citation.] Said another way, 'a rule barring class actions does not prevent individuals who would otherwise be members of the class from bringing their own separate suits or joining in a preexisting lawsuit.' [Citation.] 'The substantive rights of these individuals are not affected.' [Citation.] 'The prohibitions against class actions only affect "how the claims are processed." ' [Citation.]" (Emphasis in original.) *Id.*

¶ 66 After considering the matter fully, we find that the class-action bar remains a procedural limitation on the methods of pursuing a SCUTPA claim and is not a substantive provision affecting the parties' rights and responsibilities. We agree with the *Fejzulai* court's suggestion that the placement of the bar within the language of the statute—indeed, within the same sentence setting forth the substantive right—evidences its importance to the legislature. Importance, however, does not automatically transform a procedural provision into a substantive one. As the California court recognized, whether a SCUTPA claim is filed as an individual action or as a class action, the requirements for establishing the claim, the methods of proving the claim, and the relief available are the same. The class-action device merely governs the mechanics of how such claims may be maintained—as numerous individual claims or as one larger one. We simply cannot find that the otherwise procedural mechanism transforms into one which governs a party's substantive rights merely through its placement in

the body of the statute to which it applies. As such, where Illinois law would permit a class action, we cannot find at that dismissal of Egan's SCUTPA claim is warranted.

¶ 67 CONCLUSION

¶ 68 For the reasons set forth above, we reverse the circuit court's dismissal of plaintiffs' third amended complaint.

¶ 69 Reversed.