NOTICE
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2026 IL App (5th) 250535-U

NO. 5-25-0535

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

BRENDA C. KLUG,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 24-LA-496
	)	
WILLIAM A. KLUG,	)	Honorable
	)	Heinz M. Rudolf,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices McHaney and Bollinger concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred by granting defendant's motion to dismiss plaintiff's second amended complaint based on the statute of frauds and because Illinois recognizes promissory fraud as a cause of action.

¶ 2 Plaintiff, Brenda Klug, appeals the June 10, 2025, order of the circuit court of St. Clair County granting defendant, William Klug's, motion to dismiss. On appeal, Brenda argues that the circuit court erred by dismissing counts I through V (breach of contract), counts VI through X (unjust enrichment), and counts XI through XV (*quantum meruit*) of her second amended complaint based on the statute of frauds. Brenda also argues the circuit court erred by dismissing counts XVI (fraud) and XVII (equitable estoppel). For the reasons that follow, we reverse the circuit court's June 10, 2025, order granting William's motion to dismiss with prejudice.

¶ 3 I. BACKGROUND

¶ 4 Because the parties share a last name, we will refer to them by their first names throughout this decision. On April 9, 2008, Brenda married William's father. On January 11, 2022, they divorced. While Brenda and William's father were married, William sought a loan for the purpose of paying for his college educational expenses. At the time, neither William nor his father had sufficient credit to obtain a loan. Brenda executed a Federal Direct PLUS Loan, otherwise known as a Parent Plus Loan, for William's educational expenses.

¶ 5 On April 4, 2024, Brenda filed a complaint against William. Brenda's initial complaint alleged that the parties entered into an oral agreement on or before April 29, 2016. Brenda alleged the purpose of the oral agreement was that she would obtain funding for William's educational expenses for a five-year chemical engineering degree at the University of Missouri Science and Technology. The initial complaint alleged that William represented that he was responsible for the loan, he would repay Brenda for any loan payments made, and after graduation, refinance the loan in his own name. The complaint stated that the loan amount was $125,776.84 with an interest rate of 6.875% and an initial monthly payment amount of $720.60. Brenda alleged that William completed his education and graduated with an engineering degree. Brenda alleged that she began repaying the loan in October 2023 and made the monthly loan payments each month thereafter. Count I of the initial complaint alleged breach of contract, count II alleged unjust enrichment, and count III alleged fraud.

¶ 6 On June 13, 2024, William filed a motion to dismiss pursuant to section 2-619(a)(7) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(7) (West 2022)). William argued Brenda's complaint alleged an oral agreement that was barred by the Frauds Act (statute of frauds) (740 ILCS 80/1 (West 2022)).

¶ 7 On August 23, 2024, Brenda filed her first amended complaint. Brenda's first amended complaint contained the same factual allegations as the initial complaint. In the first amended complaint, Brenda alleged "[t]he Agreement is capable of being performed within one year." Brenda also alleged that she "fully performed solely based upon [William]'s promise/agreement to repay the Loan." The first amended complaint contained four counts: breach of contract; unjust enrichment, fraud, and equitable estoppel.

¶ 8 On September 20, 2024, William filed a motion to dismiss the first amended complaint pursuant to section 2-619(a)(7) of the Code of Civil Procedure. In the motion to dismiss, William maintained that Brenda's claim was barred by the statute of frauds. William's motion to dismiss was heard on October 29, 2024.

¶ 9 On November 26, 2024, the circuit court granted William's motion to dismiss the first amended complaint. The court held, *inter alia*, "[t]he plain terms of the First Amended Complaint make it undisputable that the alleged agreement was entered into on or around April 29, 2016." The court continued "[b]y the plain terms the alleged oral agreement was not contemplated nor capable of being performed within a period of one-year and the Statute of Frauds applies." The court also dismissed Brenda's claim for fraud, "because the State of Illinois does not recognize a claim for promissory fraud."

¶ 10 On December 10, 2024, Brenda filed a motion for leave to file a second amended complaint. On March 26, 2025, Brenda's motion for leave to file a second amended complaint was granted over William's opposition. Brenda's second amended complaint was filed March 26, 2025.

¶ 11 Brenda's second amended complaint alleged the same factual background as the two prior complaints. Relevant to this appeal, the second amended complaint alleged five separate oral agreements, one for each year of college. Brenda asserted that "each loan of funds for a particular

school year constituted a separate Loan. Each separate school year resulted in a separate Agreement *** between [William] and [Brenda]." The second amended complaint alleged the same purpose of the agreement—for Brenda to obtain a loan to pay for William's college education expenses at the University of Missouri Science and Technology—and that William would assume the debt or reimburse Brenda upon his completion of college. The second amended complaint alleged that prior to the start of each academic year, Brenda made efforts to obtain additional financing, and William needed to successfully complete that school year.

¶ 12 In the second amended complaint, Brenda asserted five breach-of-contract counts, five unjust enrichment counts, five *quantum meruit* counts, one fraud count, and one equitable estoppel count. The second amended complaint also attached copies of text messages between Brenda and William from 2021 in which William arguably acknowledged his responsibility for the Parent Plus Loan.

¶ 13 On April 28, 2025, William filed a motion to dismiss the second amended complaint. In his motion to dismiss, William argued that the second amended complaint did not cure the deficiencies in the previous complaint and was barred by the statute of frauds. William argued "the alleged oral agreement was for Brenda to obtain a loan on April 29, 2016, and for William to either take over payment or reimburse Brenda for payments at some point in time five plus years into the future." William argued "[t]he Second Amended Complaint does nothing to cure the deficiencies of the First Amended Complaint, namely that the alleged oral agreement was not capable of being performed within the period of one year." William further argued "[Brenda]'s attempt to switch the reasons for litigation are prohibited by the Mend the Hold Doctrine."

¶ 14 On May 16, 2025, Brenda filed a memorandum of law in opposition to William's motion to dismiss the second amended complaint. In her memorandum, Brenda argued (1) that, in counts

I through V, the second amended complaint established each separate school year constituted a separate agreement and she performed her obligations under each agreement within a year; (2) that the statute of frauds does not bar claims for unjust enrichment; (3) that the statute of frauds does not bar claims for *quantum meruit*; (4) that she properly pleaded a claim for promissory fraud; (5) that the statute of frauds does not bar claims for equitable estoppel; and (6) that the mend-the-hold doctrine does not apply to the case at hand.

¶ 15 On May 21, 2025, the circuit court held a hearing on William's motion to dismiss the second amended complaint. The parties reiterated the arguments made in William's motion to dismiss the second amended complaint and Brenda's memorandum in opposition to the motion to dismiss. Following argument, the court took the matter under advisement.

¶ 16 On June 10, 2025, the circuit court issued its order dismissing the second amended complaint with prejudice. In its order, the court found that "despite [Brenda]'s efforts to convert the terms of performance of the alleged oral agreement, as stated in the initial complaint and the First Amended Complaint, into five separate agreements the Court finds that the allegations in the Second Amended Complaint allege one oral agreement." The court further stated "[t]his alleged oral agreement, by its plain terms, was incapable of being performed within the period of one year. The Court further finds that [Brenda] cannot plausibly state that she fully performed her part of the alleged oral agreement within a period of one-year." The court stated "[t]hus, the Illinois Frauds Act is applicable to the entirety of the claims premised upon the alleged oral agreement, whether under law or equity." Further, the court concluded that "there is no cause of action for promissory fraud as alleged in Count XVI."

¶ 17 On July 7, 2025, Brenda filed a timely notice of appeal.

¶ 18 II. ANALYSIS

¶ 19 On appeal, Brenda argues that the circuit court erred by granting William's motion to dismiss with prejudice. Specifically, Brenda argues that the circuit court erred by (1) dismissing counts I through V (breach of contract), counts VI through X (unjust enrichment), and counts XI through XV (*quantum meruit*) of her second amended complaint based on the statute of frauds; (2) dismissing count XVI (fraud) because that count states a claim upon which relief may be granted, promissory fraud is a viable cause of action, and fraud is not barred by the statute of frauds; and (3) dismissing count XVII (equitable estoppel) because that count states a claim upon which relief may be granted and is not barred by the statute of frauds. In response, William argues the court properly dismissed Brenda's second amended complaint based upon the statute of frauds. William also argues the court properly dismissed count XVI because Illinois does not recognize claims for promissory fraud. For the reasons that follow, we agree with Brenda and reverse the decision of the circuit court.

¶ 20 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint but argues that some defense or affirmative matter defeats the claim. *Boswell v. City of Chicago*, 2016 IL App (1st) 150871, ¶ 15. When reviewing a section 2-619 dismissal, we accept the complaint's well-pleaded facts as true, along with all reasonable inferences from those facts in favor of the nonmoving party. *Dopkeen v. Whitaker*, 399 Ill. App. 3d 682, 684 (2010). A section 2-619 motion should be granted if, after construing the documents in the light most favorable to the party opposing the motion, the trial court finds no disputed issues of fact. *Timberline, Inc. v. Towne*, 225 Ill. App. 3d 433, 438-39 (1992). The statute of frauds is a basis for dismissal. 735 ILCS 5/2-619(a)(7) (West 2022). We review a dismissal under section 2-619 *de novo*. *Mabry v. Village of Glenwood*, 2015 IL App (1st) 140356, ¶ 12. We consider each argument in turn.

¶ 21 A. Counts I through V (Breach of Contract)

¶ 22 Brenda argues the circuit court erred in dismissing counts I through V (breach of contract) of her second amended complaint.

¶ 23 We first consider Brenda's claim that the circuit court erred by dismissing counts I through V of her second amended complaint for breach of contract based on the statute of frauds. Specifically, Brenda argues the court erred by finding that "the alleged agreement in the Second Amended Complaint was one oral agreement not capable of being performed within the period of one year" and "that Plaintiff did not fully perform all her duties under the alleged oral agreement within one year." Brenda also argues that the performance exception to the statute of frauds applies, and alternatively, that each agreement was capable of performance within one year. William argues the second amended complaint was properly dismissed. We agree with Brenda that the circuit court erred by dismissing counts I through V.

¶ 24 The Frauds Act (740 ILCS 80/1 (West 2022)) requires that certain contracts be in writing and signed by the party to be charged. Section 1 of the Frauds Act provides:

> "No action shall be brought *** upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." *Id.*

Statutes such as the statute of frauds "are designed to prevent false claims by requiring a writing to evidence the parties' contractual intent." *Jakubik v. Rounis*, 175 Ill. App. 3d 551, 552 (1988). "A dismissal is appropriate under section 2-619(a)(7) of the Code of Civil Procedure when the claim asserted is unenforceable under the provisions of the statute of frauds. 735 ILCS 5/2-619(a)(7) (West 1996)." *Cain v. Cross*, 293 Ill. App. 3d 255, 257 (1997).

¶ 25 In her second amended complaint, Brenda alleged the existence of five separate loan agreements that she disbursed to William in full each academic year. In its June 10, 2025, order dismissing Brenda's second amended complaint, the circuit court stated, "The Second Amended Complaint's only deviation from the previous complaints is that the education loan was made [on a] 'semester-by-semester basis as needed.' " The court concluded, "This Court finds that Plaintiff has not truly alleged five separate oral agreements but is merely attempt[ing] to circumvent the Illinois Frauds Act by characterizing performance of one oral agreement as five separate agreements."

¶ 26 The circuit court incorrectly considered the allegations in the original and the first amended complaint. As noted above, when reviewing a section 2-619 dismissal, we accept the complaint's well-pleaded facts as true, along with all reasonable inferences from those facts in favor of the nonmoving party. *Dopkeen*, 399 Ill. App. 3d at 684. At this stage, the court was restricted to the well-pleaded allegations in the second amended complaint in ruling on the motion to dismiss. The court was also required to accept those allegations as true. By finding there was only one agreement, the court essentially rejected the well-pleaded allegations in Brenda's second amended complaint. As such, we find the court erred by finding that Brenda could not fully perform her duties under the alleged oral agreement within the period of one year because the well-pleaded facts of the second amended complaint establish otherwise.

¶ 27 We next consider Brenda's argument that the performance exception to the statute of frauds applies. Specifically, she argues the circuit court erred in dismissing the second amended complaint because she fully performed her obligations under the agreement.

¶ 28 Statutes such as the statute of frauds "are designed to prevent false claims by requiring a writing to evidence the parties' contractual intent." *Jakubik*, 175 Ill. App. 3d at 552. "It is well

settled, however, that complete performance on the part of one of the parties to the oral agreement bars application of the statute." *Noesges v. Servicemaster Co.*, 233 Ill. App. 3d 158, 163 (1992) (citing *David v. Schiltz*, 415 Ill. 545, 555 (1953); *Adams v. Lockformer Co.*, 167 Ill. App. 3d 93, 101 (1988); *Mapes v. Kalva Corp.*, 68 Ill. App. 3d 362, 368 (1979)). "The rationale of the full performance doctrine is that when one party, in reasonable reliance on the contract, performs all of its obligations, it would be unfair to allow the other party to accept the benefits under the contract but to avoid its reciprocal obligations by asserting the Statute of Frauds." *American College of Surgeons v. Lumbermens Mutual Casualty Co.*, 142 Ill. App. 3d 680, 700 (1986). Illinois courts have uniformly followed the rule " 'that when one party to a contract completes his performance, the one-year provision of the statute does not prevent enforcement of the promises of the other party.' " *Noesges*, 233 Ill. App. 3d at 163 (citing *American College of Surgeons*, 142 Ill. App. 3d at 700).

¶ 29 In its June 10, 2025, order, in addressing Brenda's full performance argument, the circuit court stated:

> "The Court acknowledges that there is a full performance within one-year exception to the Illinois Frauds Act; however, such is not applicable in this case. As stated above the loan was undertaken over a period of five plus years while Defendant attended college. These terms make full performance not possible within the period of one-year by either party. Since the alleged agreement was not capable of being performed by either party within the period of one year, the performance exception to the Statute of Frauds does not apply."

Brenda argues that the circuit court erred in reciting the full performance exception to the statute of frauds. We agree.

¶ 30 We find *Noesges* instructive. In that case, the parties entered into an oral contract for the plaintiff to develop a computer software package in exchange for a salary plus $200 for each software package the defendant sold. *Noesges*, 233 Ill. App. 3d at 159. After the plaintiff developed

the software, the defendant refused to pay the plaintiff the agreed sums. *Id.* at 160. The defendant argued that for the full performance doctrine to defeat a motion to dismiss based on the statute of frauds, a party's allegations must clearly show performance within one year. *Id.* at 164. The court criticized defendant's argument, stating, "First, the rule of law is that full performance on the part of one of the parties to an oral agreement bars application of the Frauds Act. There is no requirement that the full performance take place within one year." *Id.* Similar to *Noesges*, here, the court misapplied the full performance exception to the statute of frauds by inserting a requirement that the full performance take place within one year.

¶ 31 William argues that the "alleged performance by [Brenda] does not provide proof of an oral agreement for William to pay off the Loan." However, as noted above, when reviewing a section 2-619 dismissal, we accept the complaint's well-pleaded facts as true, along with all reasonable inferences from those facts in favor of the nonmoving party. *Dopkeen*, 399 Ill. App. 3d at 684. Therefore, at this stage, we must accept the well-pleaded facts in Brenda's second amended complaint, which establish the existence of an oral agreement and that Brenda fully performed under that agreement. For these reasons, we find the circuit court erred in dismissing counts I through V of Brenda's second amended complaint based on the statute of frauds.

¶ 32 We also address the circuit court and William's criticisms of Brenda's second amended complaint. In its June 10, 2025, order, the court stated, "This Court finds that Plaintiff has not truly alleged five separate oral agreements but is merely attempt[ing] to circumvent the Illinois Frauds Act by characterizing performance of one oral agreement as five separate agreements." On appeal, William argues that "Plaintiff's factual assertion that there was one oral agreement in her first two complaints constitute judicial admissions and cannot be changed."

¶ 33 Section 2-616 of the Code of Civil Procedure provides in pertinent part:

> "At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim." 735 ILCS 5/2-616(a) (West 2022).

¶ 34 "In Illinois, courts are encouraged to freely and liberally allow the amendment of pleadings." *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467 (1992). "Amendments should be liberally allowed to permit parties to fully present their cases and to further the interests of justice." *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 47.

¶ 35 In Illinois, amended pleadings ordinarily supersede prior pleadings. *Rynn v. Owens*, 181 Ill. App. 3d 232, 235 (1989). A well-recognized exception exists where the original pleading was verified. *Id.* "Verified pleadings remain part of the record, and any admissions not the product of mistake or inadvertence become binding judicial admissions." *Id.* (citing *American National Bank & Trust Co. v. Erickson*, 115 Ill. App. 3d 1026, 1028 (1983)).

¶ 36 In its June 10, 2025, order dismissing Brenda's second amended complaint, the circuit court noted "[t]he Second Amended Complaint's only deviation from the previous complaints is that the education loan was made [on a] '… semester-by-semester basis as needed.' In essence, each separate semester resulted in a separate oral agreement capable of being performed within the period of one-year." The court continued "[t]he Second Amended Complaint then alleges that Plaintiff fully performed each individual oral agreement by getting the loans in each school year." The court stated "[t]his Court finds that Plaintiff has not truly alleged five separate oral agreements but is merely attempt[ing] to circumvent the Illinois Frauds Act by characterizing performance of one oral agreement as five separate agreements." The court concluded

> "[t]he Court finds that the alleged agreement in the Second Amended Complaint was one oral agreement not capable of being performed within the period of one year. The

> Court further finds that Plaintiff did not fully perform all her duties under the alleged oral agreement within one year. The Court holds that the Illinois Frauds Act applies to, and bars Counts I-V."

¶ 37 William argues that "[Brenda's] factual assertion that there was one oral agreement in her first two complaints constitute judicial admissions and cannot be changed." William also argues that the mend-the-hold doctrine prevents Brenda from "fundamentally changing factual assertions mid-litigation."

¶ 38 The mend-the-hold doctrine has been explained as follows:

> " 'Where a party gives a reason for his conduct and decision touching anything involved in a controversy, he cannot, after litigation has begun, change his ground and put his conduct upon another and different consideration. He is not permitted thus to amend his hold. He is estopped from doing it by a settled principle of law.' " *Trossman v. Philipsborn*, 373 Ill. App. 3d 1020, 1042 (2007) (quoting *County of Schuyler v. Missouri Bridge & Iron Co.*, 256 Ill. 348, 353 (1912)).

The mend-the-hold doctrine is a common law doctrine that limits the right of a party in a contract suit to change its litigating position. *Delaney v. Marchon, Inc.*, 254 Ill. App. 3d 933, 940 (1993) (citing *Gibson v. Brown*, 214 Ill. 330, 341 (1905)).

¶ 39 Section 2-616 of the Code of Civil Procedure (735 ILCS 5/2-616 (West 2022)) authorized Brenda to seek leave to amend her complaint. Moreover, neither the initial complaint nor the first amended complaint were verified. As noted above, amended pleadings supersede prior pleadings, except where the original pleading was verified. *Rynn*, 181 Ill. App. 3d at 235. Therefore, Brenda cannot be bound by the allegations in her first two complaints. Accordingly, we find that the circuit court erred by considering the factual allegations in the first two complaints.

¶ 40 Contrary to William's assertions otherwise, we also fail to see how the mend-the-hold doctrine applies to the case at hand. The mend-the-hold doctrine " 'typically applies in contract cases to prevent a party from trying to evade performance of contractual duties for one reason and then, in the middle of litigation, switching to another reason.' " *First Bank of Highland Park v.*

Sklarov, 2019 IL App (2d) 190210, ¶ 14 (quoting *1002 E. 87th Street, LLC v. Midway Broadcasting Corp.*, 2018 IL App (1st) 171691, ¶ 20). The mend-the-hold doctrine "is an equitable doctrine developed to redress unfair and arbitrary conduct of the *repudiating* party." (Emphasis added and internal quotation marks omitted.) *Id.* The First District, in *Delaney*, addressed the mend-the-hold doctrine at the pleading stage:

> "Although the law on the mend the hold doctrine is unclear, it seems to apply only in summary judgment and trial proceedings. There is no case law that clearly holds that the doctrine applies at the pleading stage. In accordance, we decline to apply the mend the hold doctrine to the pleading stage." *Delaney*, 254 Ill. App. 3d at 941.

As such, we find the mend-the-hold doctrine is not applicable to the case at hand and does not bar the allegations in Brenda's second amended complaint.

¶ 41 B. Counts VI through XV - Unjust Enrichment, *Quantum Meruit*, and Equitable Estoppel

¶ 42 Brenda also argues that the circuit court erred by dismissing counts VI through XV and count XVII of her second amended complaint based on the statute of frauds. Counts VI through X were based on unjust enrichment, counts XI through XV for *quantum meruit*, and count XVII for equitable estoppel. William argues that counts VI through XV and XVII were properly dismissed. We agree with Brenda.

¶ 43 "In an action for 'quasi-contract' (or, contract implied in law), a plaintiff asks the court to remedy the fact that the defendant was 'unjustly enriched' by imposing a contract." *Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 500 (2001). "A quasi-contract exists independent of any agreement or consent of the parties." *Id.* "Quasi-contract claims include unjust enrichment and *quantum meruit* actions. See 66 Am. Jur. 2d *Restitution and Implied Contracts* §§ 2, 8 (2001)." *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 9 (2004). "The two types of actions are similar, in that the plaintiff must show that valuable services or materials

were furnished by the plaintiff[ ] [and] received by the defendant, under circumstances which would make it unjust for the defendant to retain the benefit without paying." *Id.*

¶ 44 To state a cause of action based on a theory of unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience. *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989) (citing *Drury v. County of McLean*, 89 Ill. 2d 417, 425-26 (1982)).

¶ 45 To recover in a *quantum meruit* action, the plaintiff must prove that: (1) he performed a service to benefit the defendant, (2) he did not perform this service gratuitously, (3) the defendant accepted this service, and (4) no contract existed to prescribe payment for this service. *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010).

¶ 46 Our supreme court has articulated the doctrine of equitable estoppel as follows:

> "To establish equitable estoppel, the party claiming estoppel must demonstrate that: (1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he or she made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her detriment; and (6) the party claiming estoppel would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof." *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313-14 (2001).

¶ 47 Section 2-613(a) of the Code of Civil Procedure provides that parties may plead as many causes of action as they may have, with each separately designated and numbered. 735 ILCS 5/2-613(a) (West 2022). "Illinois is generous in its pleading rules." *Finn v. Project Resource Solutions, LLC*, 2024 IL App (1st) 221016, ¶ 49. "And we allow pleading in the alternative when a plaintiff has multiple claims that are contradictory. See 735 ILCS 5/2-613(b) (West 2020)." *Id.* "In fact, the alternative pleading of a breach-of-contract claim along with a quasi-contractual theory like

quantum meruit is all but routine, even though the claims are mutually exclusive." *Id.* (citing *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005); *Stephen L. Winternitz, Inc. v. National Bank of Monmouth*, 289 Ill. App. 3d 753, 759 (1997)).

¶ 48 In the case at hand, in dismissing counts VI through X for unjust enrichment, the circuit court stated, "While Counts VI-X state that they are brought as an alternative to the breach of contract claims, there are no new facts alleged, and Counts VI-X are *** entirely predicated upon the alleged oral agreement that this Court has determined [is] barred by the Statute of Frauds." The court continued, "The Court is convinced that if a party is permitted to avoid the application of the Statute of Frauds by simply calling the same facts an equitable rather than legal action, then the Illinois Frauds Act would become meaningless." The court concluded, "The claim for unjust enrichment is based solely upon the alleged oral agreement. Stated another way without the alleged oral agreement there is no unjust enrichment claim. The Court holds that the Illinois Frauds Act applies to Counts VI-X, and those counts are dismissed."

¶ 49 In dismissing counts XI through XV for *quantum meruit*, the circuit court found:

> "Just as with the unjust enrichment claims, the quantum meruit claims are predicated upon the alleged oral contract. Plaintiff again restates the same allegations as stated in the breach of contract in the quantum meruit claims. Plaintiff cannot plead around the Statute of Frauds by calling a breach of contract a quantum meruit claim."

¶ 50 In Brenda's second amended complaint, she expressly pleaded counts VI through XV "in the alternative to Plaintiff's allegations of a binding Contract." Illinois permits alternative pleading of contract and quasi-contract theories. 735 ILCS 5/2-613(a), (b) (West 2022); *Finn*, 2024 IL App (1st) 221016, ¶ 49. More importantly, the statute of frauds does not bar recovery under theories of unjust enrichment or *quantum meruit*. When an agreement is unenforceable under the statute of frauds, a party who has conferred a benefit may still recover the reasonable value of that benefit to prevent unjust enrichment. See *Roti v. Roti*, 364 Ill. App. 3d 191, 201 (2006); *McInerney v.*

Charter Golf, Inc., 176 Ill. 2d 482, 491 (1997). Accepting the well-pleaded allegations in Brenda's equitable claims as true, Brenda obtained Parent Plus Loans and thereby paid William's educational expenses for each academic year; William accepted the benefit by attending and graduating with an engineering degree; the services/funds were not conferred gratuitously; and, no written, enforceable contract exists. Those allegations state claims for unjust enrichment and *quantum meruit*, independent of the enforceability of any oral promise. The circuit court's conclusion that the statute of frauds bars the equitable counts because they are "predicated upon the alleged oral agreement" therefore misapprehends the nature of quasi-contract recovery.

¶ 51 The same reasoning applies to count XVII (equitable estoppel). Equitable estoppel, unlike promissory estoppel, can preclude assertion of the statute of frauds when the party to be estopped has made a misrepresentation or concealment of material fact. *Ozier v. Haines*, 411 Ill. 160, 165 (1952); *Cohn v. Checker Motors Corp.*, 233 Ill. App. 3d 839, 845 (1992). Brenda alleged that William represented he would ultimately be responsible for the loan and actively concealed his present intent not to repay or refinance. At the pleading stage those allegations are sufficient to state a claim for equitable estoppel.

¶ 52 Accordingly the circuit court erred in dismissing counts VI through XV and count XVII based on the statute of frauds.

¶ 53 C. Count XVI (Fraud)

¶ 54 Next, we address Brenda's arguments that the circuit court erred by dismissing count XVI (fraud) of her second amended complaint. William argues the court properly dismissed count XVI, because Illinois does not recognize a claim for promissory fraud. We agree with Brenda that the court improperly dismissed count XVI.

¶ 55 Although not expressly stated, the circuit court dismissed count XVI for failure to state a claim pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2022)). A motion to dismiss brought under section 2-615 of the Code of Civil Procedure attacks the sufficiency of the complaint, on the basis that, even assuming the allegations of the complaint to be true, the complaint does not state a cause of action that would entitle the plaintiff to relief. *Id.*; *Abazari v. Rosalind Franklin University of Medicine & Science*, 2015 IL App (2d) 140952, ¶ 12.

> "In ruling on a section 2-615 motion to dismiss, the court must accept as true all well-pleaded facts in the complaint and all reasonable inferences which can be drawn therefrom. [Citations.] In making this determination, the court is to interpret the allegations of the complaint in the light most favorable to the plaintiff. [Citation.] The question presented by a motion to dismiss a complaint for failure to state a cause of action is whether sufficient facts are contained in the pleadings which, if established, could entitle the plaintiff to relief. [Citation.] A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved under the pleadings which will entitle the plaintiff to recover." *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 86-87 (1996).

¶ 56 To prevail in an action for fraud, a plaintiff must establish by clear and convincing evidence: a false statement of material fact; knowledge by defendant that the statement is false; intent to induce the other party to act; reliance by plaintiff on that misrepresentation; and injury caused by that reliance. *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 343 (2011) (citing *Wright v. Richards*, 144 Ill. App. 3d 450, 457 (1986)). Fraud may be perpetrated by a misrepresentation or by concealment. *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803 (2005). However, " '[g]enerally, under Illinois law there is no action for promissory fraud, meaning that the alleged misrepresentations must be statements of present or preexisting facts, and

not statements of future intent or conduct.' " *Abazari*, 2015 IL App (2d) 140952, ¶ 15 (quoting *Ault v. C.C. Services, Inc.*, 232 Ill. App. 3d 269, 271 (1992)).

¶ 57 " 'Promissory fraud' is a form of fraud based upon a false representation of intent concerning future conduct, *e.g.*, a promise to perform a contract when there is actually no intent to perform the contract." *General Electric Credit Auto Lease, Inc. v. Jankuski*, 177 Ill. App. 3d 380, 384 (1988). As a general rule, promissory fraud, based on future acts, is not actionable in Illinois unless the promise is part of a "scheme" to defraud. *Id.* (citing *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320 (1977)).

> "The distinguishing features of a 'scheme,' however, are not clear in Illinois case law, and the exception, therefore, seems to engulf the general rule because, '[a]s fraud occurs when a misrepresentation is made with intent to induce a victim to rely thereon and a victim is deceived and relies thereon to his detriment, such misrepresentations are ordinarily the schemes by which the victim is defrauded regardless of whether the misrepresentation is as to the declarant's future intent or otherwise.' " *Id.* (quoting *Vance Pearson, Inc. v. Alexander*, 86 Ill. App. 3d 1105, 1112 (1980)).

¶ 58 In its June 10, 2025, order the circuit court dismissed count XVI stating:

> "Illinois does not recognize promissory fraud. Count XVI alleges that Defendant fraudulently misrepresented the material fact that he would pay for the loan when he had no intention of paying the loan. This is a claim for promissory fraud because it is a promise of some future action and not of an existing fact."

¶ 59 In count XVI of her second amended complaint, Brenda pleaded, *inter alia*:

> "2. Defendant made representations of material facts to Plaintiff and concealed material facts from Plaintiff leading Plaintiff to believe that she would not be responsible for repaying the Loan, that Defendant would make all Loan payments or would reimburse Plaintiff for all Loan payments she has made, and that Defendant would obtain alternate financing in his own name to pay off the Loan. Defendant also actively concealed from Plaintiff his intent not to repay the Loan, reimburse Plaintiff, or finance the loan in his own name.

> 3. More specifically, Defendant represented to Plaintiff that Defendant would be ultimately responsible for repaying the Loan and would pay the Loan and/or refinance the Loan when he was able to. At the time Defendant made such representations to Plaintiff, Defendant intended not to perform such promises.
>
> 4. Defendant's false promises were part of Defendant's scheme employed to accomplish a fraud upon Plaintiff."

¶ 60 As noted above, when reviewing a section 2-615 dismissal, the court must accept as true all well-pleaded facts in the complaint and all reasonable inferences which can be drawn therefrom. *Bryson*, 174 Ill. 2d at 86-87. Based on the above, Illinois recognizes claims for promissory fraud when a false promise of future conduct is alleged to be a part of a scheme to defraud. *Steinberg*, 69 Ill. 2d at 334. Count XVI alleges the requisite scheme. Brenda pleaded that William represented he would be ultimately responsible for the Parent Plus Loans, would make the payments or reimburse her, and would refinance the loan in his own name; that at the time he made those representations he intended not to perform them; that he actively concealed that present intent; and that the false promises "were part of Defendant's scheme employed to accomplish a fraud upon Plaintiff." Those allegations, taken as true, establish the requisite misrepresentation and concealment designed to induce Brenda to obtain and service the Parent Plus Loans for William's benefit. At the pleading stage, that is sufficient to invoke the scheme-to-defraud exception.

¶ 61 Therefore, the circuit court erred in dismissing count XVI on the grounds that "Illinois does not recognize promissory fraud."

¶ 62 Further, we find the circuit court erred by dismissing count XVI based on the statute of frauds. As noted above, the alternative pleading of a breach-of-contract claim along with an equitable claim is all but routine. *Finn*, 2024 IL App (1st) 221016, ¶ 49

¶ 63 For the reasons stated above, we find the circuit court erred in finding that Illinois does not recognize promissory fraud and that count XVI was barred by the statute of frauds.

¶ 64 III. CONCLUSION

¶ 65 For the foregoing reasons, we reverse the June 10, 2025, order of the circuit court of St. Clair County.

¶ 66 Reversed and remanded.