

2016 IL App (1st) 152786-U

No. 1-15-2786

THIRD DIVISION  
December 21, 2016

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MARK A. SWIFT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
MEDICATE PHARMACY DELIVERMED	)	No. 2013 CH 28206
MAIL ORDER, MICHAEL	)	
SCHALTENBRAND, JOEY SIDDLE, and	)	
MEDICATE PHARMACY, INC.,	)	Honorable
	)	David B. Atkins,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE COBBS delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's dismissal of plaintiff's action with prejudice is affirmed, where plaintiff's claim for buyout of his interest in general partnership under Illinois Uniform Partnership Act is barred by the statute of limitations and where plaintiff's remaining claims are dependent on the viability of the buyout claim.

¶ 2 Plaintiff, Mark Swift, brought this action against defendants, Medicate Pharmacy

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DeliverMed Mail Order (the partnership), Michael Schaltenbrand, Joey Siddle, and Medicate Pharmacy, Inc., (Medicate) pursuant to section 701 of the Illinois Uniform Partnership Act (805 ILCS 206/701 (West 2012)) (Partnership Act), seeking a buyout of his interest in a general partnership established pursuant to an oral agreement with Schaltenbrand and Siddle. On defendants' motion, the circuit court dismissed plaintiff's complaint in its entirety, and plaintiff has appealed. For the reasons that follow, we affirm the judgment of the circuit court.

### ¶ 3 BACKGROUND

¶ 4 The record reflects the following relevant facts. In 2005, plaintiff and defendants Schaltenbrand and Siddle (collectively, the "partners") entered into an oral general partnership. The purpose of the partnership was to build a book of mail-order pharmacy customers, to serve those customers, to divide the profits from that endeavor, and ultimately to sell the business. The pharmaceutical products were provided by Medicate, an Illinois corporation owned by Schaltenbrand, which operates two retail pharmacies and conducts a mail-order pharmacy business in Illinois. Under the oral partnership agreement, Medicate provided mail-order pharmacy services to customers enlisted through the marketing efforts of DeliverMed Holdings, LLC, (DeliverMed), a company owned by plaintiff. Initially, Medicate received and accounted for all of the income from the partnership separately from its retail pharmacy business and made distributions to the partners according to the following allocation: 50% to Schaltenbrand, 40% to Swift, and 10% to Siddle.

¶ 5 In 2008, the partners modified their agreement to simplify the separate accounting of income received by Medicate. The partners agreed to consolidate the income received from the

mail-order business with the income from the retail pharmacies and to divide Medicate's total profits under a revised allocation: 51.1% to Schaltenbrand, 35.9% to Swift, and 13% to Siddle.

¶ 6 In 2009, the partners discussed the possibility of dissolving the partnership. However, those discussions ultimately were unsuccessful and resulted in several lawsuits among the partners based on various claims, including fraud, breach of contract, copyright infringement, and tortious interference with contractual relations.

¶ 7 The first lawsuit was filed in November 2009 in St. Clair County, Illinois, by Medicate against Swift and DeliverMed. In that action, Medicate claimed that Swift, as a former employee of Medicate, tortuously interfered with Medicate's contract and business expectancies by referring customers away from Medicate and disseminating false information that interfered with Medicate's business relationships. The complaint filed in the St. Clair County action requested a declaration that Swift and DeliverMed were not and never had been partners with Medicate and, therefore, had no claim or other interest in Medicate's business or assets. In 2011, Swift and DeliverMed filed a counterclaim alleging that Medicate, Schaltenbrand, and Siddle had tortuously interfered with one of DeliverMed's customer relationships. The St. Clair County action remained pending when the instant case was filed.

¶ 8 In February 2010, plaintiff and DeliverMed filed suit in the United States District Court for the Northern District of Illinois against defendants Schaltenbrand, Siddle, and Medicate. The complaint alleged claims for common law fraud, breach of contract, promissory estoppel, violation of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*), and violation of the Illinois Wage Payment and Collection Act (820 ILCS 115/1 *et seq.* (West 2008)). In addition, a separate

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but related federal suit was filed by Linda Deeter, William H. Deeter Associates, and DeliverMed against Medicate. That suit asserted claims for copyright and service mark infringement and for violations of the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/2 (West 2008)) and the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2008)). The two federal actions were consolidated and transferred to the Southern District of Illinois. Thereafter, the district court conducted a 14-day bench trial of the consolidated actions.

¶ 9 After trial, plaintiff requested leave to amend the pleadings in order to assert a claim for a judicial sale of the partnership and for appointment of a receiver to facilitate the winding-up of the partnership business. The district court denied this request because defendants had not consented to try the issue of liquidation and did not have a fair opportunity to defend against this additional request for relief.

¶ 10 In October 2012, the district court issued its judgment, which found in favor of Medicate, Schaltenbrand, and Siddle on virtually all of the claims asserted by plaintiff and DeliverMed. Relevant to the issues raised in this appeal, the district court specifically found that plaintiff had held an ownership interest in the oral general partnership formed in 2005 and that plaintiff wrongfully dissociated himself from the partnership on September 1, 2009.

¶ 11 The United States Court of Appeals for the Seventh Circuit affirmed the district court's judgment that plaintiff failed to prove a deficiency between the amount of distributions he was entitled to receive and what he actually received prior to his dissociation from the partnership on

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September 1, 2009. *DeliverMed Holdings, LLC v. Schaltenbrand*, 734 F. 3d 616, 626-28 (7th Cir. 2013).

¶ 12 Plaintiff commenced the instant action by filing a four-count complaint against defendants in the circuit court of Cook County in December 2013. All of the claims asserted in the complaint were predicated on plaintiff's alleged entitlement to compensation for his interest in the partnership. Count I alleged a statutory claim for a buyout of plaintiff's partnership interest pursuant to section 701 of the Partnership Act (805 ILCS 206/701 (West 2012)). Count II requested a declaratory judgment that plaintiff was entitled to a buyout under section 701(g). Count III sought an accounting of the partnership's financial and business information, alleging that section 701 authorized an accounting and that plaintiff required access to the information "to prosecute his right to receive payment for his interest in [the partnership]." Finally, count IV sought imposition of a constructive trust to preserve the assets and profits of the partnership until plaintiff's partnership interest has been paid.

¶ 13 Defendants filed a motion seeking dismissal or transfer of the action under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012) (Code)). In particular, defendants requested that plaintiff's suit be dismissed because it was barred by the prior judgment rendered in the federal court litigation and also was barred under the applicable statute of limitations (735 ILCS 5/2-619(a)(4), (a)(5) (West 2012)). Defendants further requested that the suit be dismissed or transferred to St. Clair County, Illinois, for consolidation with the other litigation pending between the parties for the same cause (735 ILCS 5/2-619(a)(3) (West 2012)). Lastly, defendants

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requested that the action be transferred to St. Clair County under the doctrine of *forum non conveniens*.

¶ 14 The circuit court granted defendants' motion and dismissed the complaint with prejudice, finding that the action was barred by the statute of limitations and that there was another action pending between the parties for the same cause. Plaintiff filed a post-judgment motion seeking vacatur of the order dismissing his action with prejudice.<sup>1</sup> As grounds, plaintiff argued that his buyout claim was timely filed because it did not accrue until 2013 and because section 701(h) of the Partnership Act permits tolling of the one-year limitations period for such claims. Plaintiff also argued that his request for an accounting was improper and that he should be granted leave to amend his complaint to assert a claim for an accounting under sections 403 and 405 of the Partnership Act (805 ILCS 206/403, 405 (West 2012)). Finally, plaintiff contended that the court erred in finding that the action was subject to dismissal under section 2-619(a)(3) (735 ILCS 5/2-619(a)(3) (West 2012)) because his complaint and the litigation pending in St. Clair County were based on different legal theories.

¶ 15 The circuit court rejected all of these arguments and denied the post-judgment motion. In doing so, the court particularly noted that the request for an accounting was premised on section 701(g) of the Partnership Act and alleged that plaintiff required access to the partnership's

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<sup>1</sup> Plaintiff's post-judgment motion to vacate did not specify under which section of the Code it was brought. In determining whether a motion is to be treated as a motion under section 2-1203 or section 2-1301(e) (725 ILCS 5/2-1203, 2-1301(e) (West 2012), courts must evaluate the request of the movant according to its substantive content. See *In re Haley D.*, 2011 IL 110886, ¶ 67 (holding that "the character of the pleading should be determined from its content"). In this case, plaintiff's motion asserted that the circuit court erred in its application of the law. Consequently, the circuit court correctly treated the motion as being brought pursuant to section 2-1203 of the Code. See *Nissan Motor Acceptance Corp. v. Abbas Holding I, Inc.*, 2012 IL App (1st) 111296, ¶ 16 (holding that "the purpose of a motion to reconsider is to alert the court to newly discovered evidence, changes in law, or error in the court's application of previously existing law."

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financial information and records in order to pursue the claim for a buyout of his partnership interest. The court concluded, therefore, that the accounting claim in count III was dependant on the viability of count I, which had been dismissed as untimely under section 701. In reaching this conclusion, the court observed that plaintiff's complaint did not cite sections 403 and 405 of the Partnership Act as statutory authority for that claim, and no judgment had been rendered as to plaintiff's entitlement to an accounting pursuant to those provisions.

¶ 16 Plaintiff appeals from the circuit court's order dismissing his complaint with prejudice and from the order denying his post-judgment motion to vacate the dismissal. For the reasons that follow, we affirm.

#### ¶ 17 ANALYSIS

¶ 18 On appeal, plaintiff challenges the dismissal of his action with prejudice. A motion brought pursuant to section 2-619 admits the sufficiency of the complaint, but asserts affirmative matter that defeats the claim. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. A motion to dismiss under section 2-619 admits as true all well-pleaded facts, as well as all reasonable inferences arising therefrom. *Id.* In ruling on a section 2-619 motion, a court must interpret all pleadings and supporting documents in favor of the nonmoving party. *Id.* Our review of a dismissal under section 2-619 is *de novo*. *Id.* Also, to the extent that plaintiff challenges the denial of his post-judgment motion, our review is *de novo*. See *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20 (recognizing that where a motion to reconsider merely asks the court to reevaluate its application of the law existing at the time of the judgment, the standard of review is *de novo*).

¶ 19 I. Dismissal of the Buyout Claim

¶ 20 We initially address plaintiff’s argument that the circuit court erred in ruling that his claim for a buyout is time-barred under the statute of limitations set forth in section 701(i) of the Partnership Act. Resolution of this issue presents a question of statutory interpretation. When interpreting a statute, the court's primary objective is to ascertain and give effect to the intent of the legislature. *Chicago Teachers Union, Local No. 1 v. Board of Education of City of Chicago*, 2012 IL 112566, ¶ 15. The most reliable indicator of legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning. *Id.* All provisions of a statute must be viewed as a whole, with the relevant statutory provisions construed together and not in isolation. *Id.* In addition, the court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute in one way or another. *Id.* The interpretation of a statute presents an issue of law, which we review *de novo*. *Id.*

¶ 21 Section 701 of the Partnership Act provides, in relevant part, as follows:

“(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 801 of this Act, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this Section.

\* \* \*

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 405(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets



under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered.” 805 ILCS 206/701 (a), (i) (West 2012).

¶ 22 The clear and unambiguous language of section 701(i) requires that, if no payment or offer to pay is tendered by the partnership, an action to enforce a buyout must be filed within one year after the dissociated partner’s written demand for payment. Here, the record affirmatively establishes that plaintiff’s counsel made a written demand for payment on September 1, 2009. Accordingly, the one-year limitations period commenced as of that date and expired on September 1, 2010. However, plaintiff’s action was not filed until December 24, 2013. Accordingly, the circuit court correctly found that plaintiff’s claim for a buyout under the Partnership Act was untimely and barred by the statute of limitations.

¶ 23 In seeking to avoid the consequence of his untimely filing, plaintiff argues that his claim for a buyout under section 701(i) was “premature” until it was judicially determined that he had an interest in the partnership. Initially, we observe that plaintiff offers no legal authority to support this argument. Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) provides that arguments “shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” Failure to comply with the rule’s requirements justifies a finding that the issue is forfeited. *People ex rel. Illinois Dep’t of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. However, waiver and forfeiture rules serve as an admonition to litigants rather than a limitation upon the jurisdiction of the reviewing court, and

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courts of review may sometimes override considerations of waiver and forfeiture in order to achieve a just result and maintain a sound and uniform body of precedent. *Pinske v. Allstate Property & Casualty Insurance Co.*, 2015 IL App (1st) 150537, ¶ 19.

Upon review of the briefs of the parties, we elect to overlook plaintiff's forfeiture where his failure to cite relevant legal authority does not hinder or preclude effective review of the issue on appeal. See *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 601 (2009).

¶ 24 Plaintiff maintains that he was prevented from bringing a claim to enforce a buyout until after he had successfully litigated the issue of his status as a partner in the federal court litigation. This argument fails because it is based on inherently flawed logic. A claim cannot be characterized as "premature" merely because it is contested by the defendant. As this court has recognized, the essential point of filing a claim within the limitations period is to preserve it and save it from being time-barred. *Block v. Pepper Construction Co.*, 304 Ill. App. 3d 809, 816 (1999). The mere fact that defendants disputed plaintiff's right to a buyout did not preclude him from asserting that claim within the limitations period. Indeed, he could have done so as part of the federal court litigation or in the state court action pending in St. Clair County.

¶ 25 We similarly reject plaintiff's related contention that the one-year limitations period began to run on November 13, 2013, when he allegedly sent a letter demanding a buyout of his partnership interest after the federal court of appeals for the Seventh Circuit issued its decision. This contention lacks merit because it is based on the erroneous premise that plaintiff was precluded from filing his buyout claim before the federal litigation was decided. Moreover, this contention suffers from another elemental defect. The alleged letter of November 13, 2013, is not

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included in the record on appeal. Plaintiff, as appellant, bears the burden of presenting a sufficiently complete record to support a claim of error. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984)). Any doubts arising from the incompleteness of the record must be resolved against him. *Corral*, 217 Ill. 2d at 157; *Foutch*, 99 Ill. 2d at 392. Given that plaintiff has failed to sustain his burden to include the letter of November 13, 2013, in the record before this court, he cannot prevail on an argument predicated on that letter.

¶ 26 Next, we consider plaintiff's assertion that section 701(h) of the Partnership Act permits tolling of the limitations period applicable to buyout claims. Again, we observe that plaintiff has failed to cite any relevant legal authority to support this claim. As such, it fails to comply with Rule 341(h)((7) and is subject to forfeiture. See *E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. We will, however, address the argument under the well-established principles that govern statutes of limitations.

¶ 27 As a general rule, a statute of limitations continues to run unless tolling is authorized by a statute. See *Illinois Bell Telephone Co. v. Alphin*, 60 Ill. 2d 350, 356 (1975); *IPF Recovery Co. v. Illinois Insurance Guaranty Fund*, 356 Ill. App. 3d 658, 665 (2005). No exceptions that toll a statute of limitations or enlarge its scope will be implied. *Severe v. Miller*, 120 Ill. App. 3d 550, 555 (1983); *Fess v. Parke, Davis & Co.*, 113 Ill. App. 3d 133, 135 (1983); *Fisher v. Rhodes*, 22 Ill. App. 3d 978, 981 (1974). As this court has recognized, "if the legislature had intended to except any class of persons from the effect of the statute, it would have done so and courts will not assume such authority or dominion." *Fisher*, 22 Ill. App. 3d at 981. Thus, "the court may

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construe only the clear words of the statute, and if its scope is to be enlarged, the remedy should be legislative rather than judicial.” *Id.* at 982. Accordingly, we look to the plain language of section 701(h) to determine whether the legislature intended it to operate as a tolling provision. *Id.*; see also *Chicago Teachers Union, Local No. 1*, 2012 IL 112566, ¶ 15. We will not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that were not expressed by the legislature. *Brunton v. Kruger*, 2015 IL 117663, ¶ 24.

¶ 28 Section 701(h) of the Partnership Act states:

“(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.” 805 ILCS 206/701(h) (West 2012).

¶ 29 By its express terms, section 701(h) requires deferred payment of a partnership interest except where the dissociated partner has established “to the satisfaction of the court” that payment will not cause hardship. The plain language of this provision prescribes the timing and procedure governing a dissociated partner’s ability to obtain payment after his entitlement to a buyout amount has been established in a timely manner. Nothing in the language of section 701(h) reflects the legislature’s intent to toll the statute of limitations for buyout actions. While this provision operates to delay a dissociated partner’s right to collect on his partnership interest, it does not affect the limitations period for commencement of buyout actions. This court will not

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read into section 701(h) conditions that the legislature did not include. See *Brunton*, 2015 IL 117663, ¶ 24. The authority to establish exceptions to a statute of limitations falls within the purview of the legislature, and a court of review cannot create such an exception by judicial fiat. See *Fisher*, 22 Ill. App. 3d at 981-82.

¶ 30 We conclude that the limitations period set forth in section 701(i) commenced on September 1, 2009, when plaintiff demanded payment for his interest in the partnership. Because the one-year limitations period expired in September 2010, the filing of plaintiff's action in December 2013 was untimely. Plaintiff's arguments to the contrary are unpersuasive. Consequently, we affirm the circuit court's dismissal of plaintiff's claim for a buyout of his partnership interest because it was not commenced within the time limited by law. See 735 ILCS 5/2-619(a)(5) (West 2012).

#### ¶ 31 II. Dismissal of Plaintiff's Remaining Claims

¶ 32 Plaintiff further argues that the circuit court erred in dismissing his request for an accounting (count III) with prejudice. According to plaintiff, he was entitled to bring a claim for an accounting under section 701(g), as alleged in the complaint, or pursuant to common law principles of equity. Defendants respond that plaintiff has forfeited the argument that he is entitled to an equitable accounting because he failed to raise it in the circuit court. It is established that issues not raised in the circuit court are forfeited and cannot be raised for the first time on appeal. *In re Estate of Chaney*, 2013 IL App (3d) 120565, ¶ 8. Forfeiture rules are intended to encourage parties to raise issues in the circuit court, which will ensure that the trial court is given an opportunity to correct any errors prior to appeal and that a litigant does not

obtain a reversal through his or her own inaction. *1010 Lake Shore Ass'n v. Deutsche Bank Nat.*

*Trust Co.*, 2015 IL 118372, ¶ 14.

¶ 33 In this case, plaintiff's complaint did not allege that he was entitled to an equitable accounting, and he never raised that issue before the circuit court. Accordingly, plaintiff has forfeited the issue, and we decline to address it.

¶ 34 We next address plaintiff's contention that the circuit court erred in dismissing his claim for an accounting as pleaded in the complaint. In count III, plaintiff asserted that he had a right to the partnership's financial information pursuant to section 701(g), which requires that certain specific financial information must accompany the payment or tender of a dissociated partner's interest. See 805 ILCS 206/701(g) (West 2012). In addition, count III specifically alleged that plaintiff required access to the partnership's financial information "to prosecute his right to receive payment for his interest in [the partnership]." Thus, the underlying basis of plaintiff's request for an accounting was to obtain sufficient information to enable him to pursue the buyout claim. As alleged in plaintiff's complaint, the accounting claim was entirely dependent on the viability of the partnership buyout claim. The legal premise for the accounting claim was nullified when the buyout claim was dismissed with prejudice as untimely under section 701(i). Accordingly, we find no error in the circuit court's dismissal of count III of the complaint requesting an accounting.

¶ 35 As a final matter, we note that plaintiff acknowledges that his requests for a declaratory judgment (count II) and for imposition of a constructive trust (count IV) are dependent on the buyout claim, and he asks that they be reinstated if the dismissal of that claim is reversed. In light

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of our holding that the buyout claim was properly dismissed as untimely, we necessarily conclude that dismissal of the declaratory judgment and constructive trust counts was proper.

¶ 36 Accordingly, the circuit court correctly dismissed plaintiff's complaint in its entirety and properly denied plaintiff's post-judgment motion. Our resolution of these issues makes it unnecessary to address the other asserted grounds for dismissal and the parties' arguments relating to those grounds.

¶ 37 For all of the foregoing reasons, the judgment of the circuit court dismissing plaintiff's action with prejudice is affirmed.

¶ 38 Affirmed.