

TRAYNOR, Justice:

This appeal involves a lawsuit brought by investors who claim to have been defrauded by an e-commerce company’s founder and former CEO. The plaintiffs’ investments, allegedly induced by fraud, were memorialized in two separate stock purchase agreements, one executed in February 2021 and the other in March 2021. But the investors did not file suit until August 13, 2024, which is more than three years after the investors made their investments and signed the stock purchase agreements. The Superior Court dismissed the investors’ lawsuit as untimely under 10 *Del. C.* § 8106’s three-year statute of limitations.

The investors have appealed. They contend—as they did in the Superior Court—that the statute of limitations was tolled under the doctrines of “fraudulent concealment” and “inherently unknowable injury.” But if either of those doctrines has any purchase in this case, tolling only lasts until the investors were on inquiry notice of the facts sufficient to prompt a person of ordinary intelligence and prudence to inquire further, which inquiry, if pursued, would lead to the discovery of facts forming the basis for the cause of action. That threshold was crossed in April 2021—if not sooner—when the company breached its contractual obligation to provide audited financial statements to the investors. Thus, the investors’ lawsuit, having been filed more than three years after that event, was time-barred. We therefore affirm the Superior Court’s dismissal of the investors’ complaint.

I

A¹

Joshua Silberstein and Carlos Cashman co-founded Thrasio Holdings, Inc. in July 2018. Thrasio is an e-commerce “aggregator” of retail brands that sell their products online. By consolidating those brands into its platform, Thrasio aims “to generate cost-saving and revenue-enhancing synergies with other businesses in [its] portfolio.”² Silberstein served as CEO of Thrasio until his termination in September 2021. To finance its growth, Thrasio engaged in several rounds of financing, issuing preferred shares to investors.

In November 2020, Silberstein solicited technology investors Bo Peabody and Ari Horowitz, hoping they could leverage their connections in the technology sector to secure investors in an anticipated equity financing (the “C-2” financing.) One such investor group included Cornice Ventures I LLC and Cornice Ventures II LLC (together, “Cornice”), both Delaware limited liability companies of which Peabody served as a managing member.

¹ We have drawn the facts from the well-pleaded allegations in Cornice’s April 21, 2025 “Complaint for Damages” as well as documents integral to the complaint or incorporated in it by reference.

² App. to Opening Br. at A10 (Compl. ¶ 2).

B

The complaint alleges that, during the lead-up to Cornice’s eventual investment in Thrasio, Silberstein made a host of false and misleading representations to Peabody to secure Cornice’s investments. These include various statements made by Silberstein in connection with earlier financing rounds regarding Thrasio’s profitability as well as exchanges between Silberstein and Peabody relevant to Cornice’s investment.

Among other representations, Silberstein stated that Thrasio was profitable and had reached profitability faster than other notable start-ups. Silberstein also stated that Thrasio had been profitable since its inception.³ On numerous occasions, Peabody requested, on behalf of Cornice, more detailed financial information from Silberstein, who repeatedly rebuffed these requests, asserting his preference for a rapid closing with investors who were familiar with Thrasio and thus “amenable to closing quickly[.]”⁴ Silberstein also intimated that Cornice’s allocation would be given to other investors if Cornice insisted on a protracted diligence process.

Peabody was persistent in pressing for financial statements and, on December 23, 2020, Silberstein e-mailed Peabody unaudited financial statements purporting to

³ *Id.* at A22 (Compl. ¶ 44). The parties dispute the provenance of this statement. Silberstein contends that this phrase can be found in an April 2020 Thrasio press release, while Cornice maintains that Silberstein repeated the statement directly to Cornice on phone calls and by text message and e-mail in November 2020. *Id.* at A17 (Compl. ¶ 27), A21–22 (Compl. ¶ 44).

⁴ *Id.* at A22–23 (Compl. ¶ 47).

reflect Thrasio’s financial status as of November 2020 (the “Unaudited Financial Statements”). The Unaudited Financial Statements represented that Thrasio had been profitable through 2019 and 2020, showing approximately \$74 million of EBITDA for 2020.

On December 28, 2020, in response to a request for updated brand-level data, Silberstein told Peabody by e-mail that he could “[n]ot quickly” provide such information because he had “prioritized closing the [previous financing] round . . . over [preparing] closing financials” for the round in which Cornice would participate.⁵ Silberstein reassured Peabody that “October, November, and December [2020] were all record setting months,” such that updated financial data would not “tell a different story” about Thrasio’s financial condition.⁶ In the same e-mail, Silberstein reiterated that Cornice’s participation in the deal was contingent on a truncated diligence period and on Cornice “pulling the trigger . . . pretty quick.”⁷ Silberstein repeatedly and consistently pointed to “the fact that certain top tier investment firms, aided by reputable financial professionals, had led the recent Series C-1 financing and were eager to participate in the C-2 financing.”⁸ He urged

⁵ *Id.* at A23–24 (Compl. ¶ 52).

⁶ *Id.* at A24 (Compl. ¶ 53).

⁷ *Id.* (Compl. ¶ 55).

⁸ *Id.* at A26 (Compl. ¶ 62).

Peabody to view “those firms’ participation as a signal that Thrasio’s finances were in order.”⁹

C

In reliance on Silberstein’s representations, Cornice agreed to invest \$15 million in Thrasio’s C-2 financing. In the event, however, Silberstein informed Peabody that Cornice would not be able to participate in the C-2 financing for the full \$15 million initially allocated. Cornice would only be allowed to purchase \$8 million of Thrasio stock, but could, if it so chose, purchase \$7 million of stock, albeit at a higher price, in a later C-3 financing. Ultimately, Silberstein offered no new financial information to justify the higher price. Instead, according to the complaint, “Silberstein continued to refrain that, if Cornice was going to require more information, then it should just back out and other (apparently less inquisitive) investors were lined up to take Cornice’s allocation.”¹⁰

Despite its inability to secure audited financials, Cornice I entered into a stock purchase agreement with Thrasio on February 3, 2021 (the “C-2 SPA”), agreeing to purchase 981,976 shares of Thrasio’s series C-2 preferred stock for approximately \$8 million. Cornice II entered into a similar agreement with Thrasio on March 17, 2021 (the “C-3 SPA”), agreeing to purchase 572,819 shares of Thrasio’s series C-3

⁹ *Id.* at A26–27 (Compl. ¶ 62).

¹⁰ *Id.* at A28 (Compl. ¶ 68).

preferred stock for approximately \$7 million. Fifty-two participants in the C-2 financing executed the C-2 SPA, investing a total of approximately \$250 million, and 23 investors executed the C-3 SPA, through which Thrasio raised approximately \$100 million.

The complaint alleges that, in addition to Silberstein’s misrepresentations before closing on the C-2 and C-3 transactions, certain key representations in the SPAs were false. Specifically, in § 2.14 of both SPAs, the Company represented that “[t]he Financial Statements have been prepared in accordance with generally accepted accounting principles (‘GAAP’)” and that they “fairly present in all material respects the financial condition and operating results of the Company[.]”¹¹ Section 2.14 further disclaimed knowledge of “(A) any significant deficiency or material weakness in the internal accounting controls utilized by the Company, or (B) any fraud, whether or not material, that involves the Company’s management.”¹² Both SPAs also represented that Thrasio had made available to each purchaser its audited financial statements for the fiscal year of 2019, and the C-3 SPA represented that the Company had made available its unaudited financial statements as of December 31, 2020.

¹¹ *Id.* at A100, A181.

¹² *Id.*

According to Cornice, these representations were false. More particularly, the complaint alleges that the most recent financial statements that it received before closing were the Unaudited Financial Statements reflecting Thrasio's results through November 2020. The complaint alleges further that the SPAs' representations were false because the Unaudited Financial Statements were not prepared in accordance with GAAP and did not fairly present Thrasio's financial condition.

D

If Silberstein's reluctance to provide audited financial statements before closing was insufficient to cause Cornice to question his trustworthiness, post-closing events raised even more conspicuous red flags. Prominent among them was Thrasio's failure to honor Cornice's information rights under an investors' rights agreement ("IRA") executed simultaneously with the C-3 SPA. Under Section 3 of the IRA, Thrasio was required to provide Cornice II with updated financial statements and data, including:

[A]s soon as practicable, but in any event within 120 days after the end of each fiscal year of the Company (i) an audited balance sheet as of the end of such year, (ii) audited statements of income and of cash flows for such year, and (iii) an audited statement of stockholders' equity as of the end of such year.¹³

¹³ *Id.* at A238 (IRA ¶ 3.1(a)).

The 120-day deadline expired on April 20, 2021. Thrasio did not provide audited statements by that deadline, a claim that Silberstein does not contest.

In the months following its investment, Cornice learned that Silberstein was using updated financial statements to sell his own Thrasio stock on the secondary market; Cornice made multiple requests for those statements and for the audited financial information to which it was entitled under the SPAs. The requests were denied. Until June 2022, neither Silberstein nor Thrasio provided Cornice with updated financial statements or the audited financial information required by the C-3 SPA. Other investors were also unable to view additional financial information following the C-2 and C-3 financings.

In April 2021, Thrasio hired a new chief financial officer, Bill Wafford, amid questions about Thrasio's financials and to ensure that there was an "adult in the room" with Silberstein to manage Thrasio's finances.¹⁴ Wafford unexpectedly resigned in July 2021. In July and August 2021, Silberstein sold hundreds of millions of dollars of his Thrasio stock. His stock sales prompted the Thrasio board to engage outside counsel to investigate Silberstein. Silberstein separated from Thrasio through a negotiated termination on September 25, 2021.

¹⁴ *Id.* at A33–34 (Compl. ¶ 85).

Finally, in June 2022, Thrasio delivered to Cornice audited financial statements covering the same time periods as the Unaudited Financial Statements (the “Audited Financial Statements”). The Audited Financial Statements revealed that the Unaudited Financial Statements had not been prepared in accordance with GAAP and did not accurately reflect Thrasio’s financial condition. Instead of the approximately \$74 million of EBITDA for 2020 reported in the Unaudited Financial Statements, the Audited Financial Statements revealed that Thrasio incurred substantial losses in 2020.

E

On February 28, 2024, Thrasio filed for chapter 11 protection in the United States Bankruptcy Court for the District of New Jersey. Two of Thrasio’s disinterested directors investigated potential claims and causes of action against Thrasio’s current and former directors, managers, officers, and equity holders and issued a report on May 23, 2024 (the “Disinterested Directors’ Report”).

The Disinterested Directors’ Report stated that, “[f]rom its inception in 2018 through January 2022, Thrasio had persistent issues with its internal accounting and the preparation of financial statements” and this “resulted in material discrepancies between Thrasio’s unaudited financial statements, which were provided to investors,

and subsequently-prepared audited financial statements.”¹⁵ The report further stated that “contemporaneous written documents” show that Silberstein had been “aware of financial and accounting issues since 2019,” and that the “evidence demonstrates that Silberstein . . . made a conscious decision to invest resources to grow the business rather than focusing on adequate controls and accuracy in financial reporting.”¹⁶

On June 13, 2024, the bankruptcy court approved a plan of reorganization that included cancellation of all Thrasio’s series C-2 and C-3 preferred stock. The plan also created the Thrasio Legacy Trust as successor-in-interest to Thrasio’s claims, and the trustee filed an adversary proceeding against Silberstein, former Thrasio directors and officers, and certain transferees of Thrasio’s property.

F

On August 13, 2024, Cornice filed a complaint against Silberstein in the Superior Court of New Jersey. After Silberstein sought enforcement of the SPAs’ Delaware forum-selection provisions, the parties agreed to dismiss the New Jersey action and litigate the claims in Delaware.

On April 21, 2025, Cornice filed the operative complaint in our Superior Court, asserting claims for fraud, negligent misrepresentation, and unjust

¹⁵ *Id.* at A75 (Disinterested Directors’ Report ¶ 30).

¹⁶ *Id.* at A76 (Disinterested Directors’ Report ¶ 32).

enrichment, as well as a claim under New Jersey’s civil anti-racketeering statute. Silberstein moved to dismiss the complaint, challenging Cornice’s standing to assert what he characterized as derivative claims, the sufficiency of the pleadings, and the timeliness of the claims. Relevant here, Cornice argued that its claims were timely because the three-year limitations period “did not begin to run until June 2022, when Silberstein’s scheme was exposed by Thrasio’s Audited Financial Statement.”¹⁷ As Cornice put it, before June 2022, “the limitations period was tolled by operation of both the ‘fraudulent concealment doctrine’ and the ‘discovery rule.’”¹⁸

In a bench ruling, the Superior Court granted Silberstein’s motion to dismiss. The court first held that Delaware law governs the dispute and dismissed the New Jersey statutory claim without reaching that claim’s merits. As to timeliness, the court held that Cornice’s claims had accrued no later than March 17, 2021, when the C-3 SPA was executed, and that Delaware’s three-year statute of limitations bars Cornice’s claims.

Addressing tolling, the court concluded that no fraudulent concealment occurred because the Complaint’s allegations that Silberstein refused post-investment requests for financial information are “far from an affirmative act of concealment or actual artifice by Defendant that prevented Plaintiff from learning

¹⁷ App. to Answering Br. at B85.

¹⁸ *Id.* at B85–86.

the facts.”¹⁹ The court likewise declined to apply the “inherently unknowable injury” doctrine, reasoning that the fraud was not “practically impossible” for Cornice to discover.²⁰ The court concluded that Cornice “had inquiry notice when [it] executed the SPAs, having not received the information it requested and allegedly knew it was lacking” and that Cornice “entered into the SPAs despite the existence of observable and objective factors that put it on notice.”²¹ The court held that the three-year limitations period had passed without tolling and dismissed Cornice’s Complaint in its entirety.

The court entered a final order implementing its bench ruling on December 18, 2025. Cornice appeals only the court’s holding that its claims are untimely. It does not challenge the dismissal of the statutory claim or the court’s choice-of-law analysis.

II

“Whether a complaint is barred by a statute of limitations is a question of law that we review *de novo*.”²² We “accept[] as true all of the well-pleaded factual

¹⁹ Bench Ruling at 56:9–12.

²⁰ *Id.* at 56–58.

²¹ *Id.* at 58:13–15.

²² *Lehman Bros. Holdings v. Kee*, 268 A.3d 178, 185 (Del. 2021) (quoting *Connelly v. State Farm Mut. Auto. Ins. Co.*, 135 A.3d 1271, 1274 (Del. 2016)).

allegations contained in the complaint and draw[] all reasonable inferences in favor of the non-moving party.”²³

III

A

A statute of limitations “begins to run at the time of the wrongful act.”²⁴ A cause of action arising in tort generally “‘accrues’ at the time the tort is committed.”²⁵ “Fraud claims . . . accrue when the elements of those claims have been met”;²⁶ that is, “at the time of the wrongful act.”²⁷ For fraudulent inducement claims, the claim accrues, at the latest, when “the plaintiff enter[s] into the agreement.”²⁸ Here, the Superior Court held, and neither side disputes, that Cornice’s claims for fraud, negligent misrepresentation, and unjust enrichment accrued, at the latest, as of the execution of the C-3 SPA on March 17, 2021, when Cornice entered into the C-3 SPA in reliance upon Silberstein’s representations.

The parties also agree that Cornice’s claims are governed by the three-year statute of limitations set forth under 10 *Del. C.* § 8106. The parties also stipulated

²³ *Id.*

²⁴ *Id.*

²⁵ *Coleman v. PricewaterhouseCoopers, LLC*, 854 A.2d 838, 842 (Del. 2004).

²⁶ *Lehman Bros.*, 268 A.3d at 186.

²⁷ *Id.* (quoting *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004)).

²⁸ *Silverstein v. Fischer*, 2016 WL 3020858, at *4 n.43 (Del. Super. Ct. May 18, 2016) (citing *Puig v. Seminole Night Club, LLC*, 2011 WL 3275948, at *4 (Del. Ch. July 29, 2011)).

that the date on which Cornice filed its New Jersey complaint—August 13, 2024—is the operative filing date for statute-of-limitations purposes. Because the agreed-upon filing date postdates the accrual date of Cornice’s claims by more than three years, Cornice’s claims survive only if Cornice can successfully demonstrate that the statute of limitations was tolled—that is, that the limitations period was suspended or paused. Cornice bears the burden of proving that a tolling exception applies.²⁹

B

Cornice contends that two tolling doctrines, the “fraudulent concealment” doctrine and the “inherently unknowable injury” doctrine, provide independent bases upon which we may conclude that the statute of limitations has been tolled. Here, we need not determine whether the plaintiff has properly invoked either of those doctrines. That is because, under both doctrines, the limitations period is tolled only until the plaintiff has been placed “on inquiry notice of the claim.”³⁰ The “fraudulent concealment” and “inherently unknowable injury” doctrines rest on the same premise: that tolling is warranted only if “the facts underlying a claim were so hidden that a reasonable plaintiff could not timely discover them[.]”³¹

²⁹ See *In re Dean Witter P’ship Litig.*, 1998 WL 442456, at *6 (Del. Ch. July 17, 1998), *aff’d*, 725 A.2d 441 (Del. 1999).

³⁰ *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1148 (Del. 2025).

³¹ *In re Dean Witter*, 1998 WL 442456, at *5 (citation omitted).

Tolling does not extend “beyond the point where the plaintiff was objectively aware, or should have been aware, of facts giving rise to the wrong.”³² More specifically, a plaintiff is on inquiry notice and the statute begins to run upon the discovery of facts “constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery[.]” of such facts.³³

Inquiry notice cannot be proven merely on the basis that suspicion was conceivable. If “[a] person of ordinary intelligence and prudence could draw competing inferences” from the facts presented, and no “red flag” exists “that clearly and unmistakably would have led a prudent person of ordinary intelligence to inquire” into the suspected wrongdoing, the question of inquiry notice is one of disputed fact and is improper for resolution through a motion to dismiss or on summary judgment.³⁴ On the other hand, when a trial court can determine from a complaint’s well-pleaded allegations with all reasonable inferences drawn in the plaintiff’s favor that the plaintiff was on inquiry notice of its claims on a given date

³² *LGM Holdings*, 340 A.3d at 1147 (citation omitted).

³³ *Becker v. Hamada, Inc.*, 455 A.2d 353, 356 (Del. 1982) (emphasis in original) (quoting *Omaha Paper Stock Co. v. Martin K. Eby Constr. Co.*, 230 N.W.2d 87, 89–90 (Neb. 1975)).

³⁴ *Coleman*, 854 A.2d at 843.

and thus that those claims are time-barred, dismissal at the pleading stage is appropriate.³⁵

C

Cornice argues that it was not on inquiry notice of Silberstein's alleged wrongdoing until June 2022, when it received audited financial statements revealing that his earlier representations had been false. Silberstein contends that neither tolling doctrine applies and argues that Cornice was on inquiry notice, at the latest, as of the execution of the C-3 SPA, if not earlier, given the post-closing red flags alleged in Cornice's complaint.

The trial court, as mentioned above, ruled that Cornice was on inquiry notice "when they executed the SPAs, having not received the information requested and allegedly knew it was lacking."³⁶ Under this view in which Cornice was on inquiry notice of its claims simultaneously with the accrual of those claims, tolling doctrines are inoperative. There is a credible case to be made for the trial court's approach. It holds Cornice accountable for its decision to invest in Thrasio despite Silberstein's persistent reticence and unwillingness to provide audited financial statements. But

³⁵ See, e.g., *Bredberg v. Boston Scientific Corp.*, 2021 WL 2816897, at *5 (Del. Super. Ct. July 2, 2021); *Boeing Co. v. Shrontz*, 1992 WL 81228, at *2 (Del. Ch. Apr. 20, 1992) (noting that, when the court can ascertain from the facts alleged in a complaint that no exceptions to the statute of limitations apply, relief on a motion to dismiss is proper).

³⁶ Bench Ruling at 58:9–12.

we see a clearer path to resolving this dispute, one that does not require extended discussion.

D

Cornice's complaint is replete with allegations that paint Silberstein as pressuring Cornice—through Peabody—to commit to an investment while evading persistent requests for more reliable financial information. The following allegations all refer to Silberstein and Peabody's interactions before Cornice executed the SPA and invested in Thrasio.

- On numerous occasions, when Mr. Peabody requested more detailed financial information on behalf of Cornice's prospective members, Silberstein said that, if Mr. Peabody and his prospective investor group needed more time, then other investors would quickly snap up Cornice's participation allocation.³⁷
- In response to Silberstein's continued solicitations, Mr. Peabody, on behalf of Cornice's prospective members, again requested current financial statements reflecting Thrasio's revenues, profits, and losses.³⁸
- On December 27, 2020, Mr. Peabody requested that Silberstein provide updated brand-level quantitative data through November 2020.³⁹

³⁷ App. to Opening Br. at A22 (Compl. ¶46).

³⁸ *Id.* at A23 (Compl. ¶ 48).

³⁹ *Id.* (Compl. ¶ 51).

None of these pre-closing requests was honored; in Cornice’s words, Silberstein “sidestep[ped]”⁴⁰ them all.

Even so, Cornice plowed ahead with its investment. It did, however, gain a commitment from Thrasio in an investors’ rights agreement, which was identified as one of the C-3 SPA “Transaction Agreements”⁴¹ and attached to the C-3 SPA as an exhibit, to provide Cornice with audited 2020 financial statements on or before April 21, 2021. When Thrasio ignored that deadline following months of preclosing evasions by Silberstein, the tocsin should finally have rung out for Cornice that something was amiss. This red flag was so clear and unmistakable that a reasonably prudent investor would have responded to Thrasio’s clear breach of the investors’ rights agreement with an inquiry—perhaps even a lawsuit—that would have uncovered Silberstein’s deceptions.⁴² Cornice must live with its decision to forgo such an inquiry and to delay the filing of its fraud action against Silberstein for three years and nearly four months. The consequence of that decision is that its claims are time-barred under 10 *Del. C.* § 8106.

⁴⁰ *Id.* at A24 (Compl. ¶ 53).

⁴¹ *Id.* at A173.

⁴² See *supra* note 34.

IV

We affirm the Superior Court's December 18, 2025 final order dismissing Cornice's complaint.