

No. 1-13-2231

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMERICAN CHARTERED BANK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 07 L 50454
)	
CHARLES CAMERON,)	Honorable
)	Thomas R. Mulroy,
Defendant-Appellant,)	Judge Presiding.
)	
and)	
)	
ITALIAN GOURMET RESTAURANT, INC., and)	
NICK A. SERVEDIO,)	
)	
Defendants.)	

JUSTICE MASON delivered the judgment of the court with opinion.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment and opinion.

ORDER

¶ 1 *Held:* Summary judgment in favor of bank was proper where guarantor failed to raise a genuine issue of material fact as to the viability of his defenses. Defenses based on alleged oral misrepresentations were waived by the language of the guaranty and precluded by the Illinois Credit Agreements Act (815 ILCs 160/1, *et seq.* (West 2010)).

¶ 2 Defendant-appellant, Charles Cameron, guaranteed a loan made by plaintiff-appellee, American Chartered Bank, to Italian Gourmet Restaurant, Inc. Nick Servedio, the president of Italian Gourmet, also guaranteed the same loan. Italian Gourmet defaulted on the loan and American Chartered brought suit against Italian Gourmet, Cameron, and Servedio to recover amounts due under the note. The trial court granted summary judgment to American Chartered against Cameron on the guaranty in the amount of \$145,636.45, plus costs and attorney fees. Cameron appeals and contends that several affirmative defenses, all of which concern pre-contractual oral misrepresentations allegedly made by a loan officer of American Chartered to Cameron, should have precluded summary judgment for American Chartered. American Chartered argues that Cameron's affirmative defenses have all been waived under the language of the guaranty, and that they are also barred under the Illinois Credit Agreements Act (the Act), 815 ILCS 160/1, *et seq.* (West 2010). We agree with American Chartered and affirm the judgment of the trial court.

¶ 3 **BACKGROUND**

¶ 4 On August 16, 2004, American Chartered made a commercial loan in the principal amount of \$150,000 to Italian Gourmet, evidenced by a promissory note. Servedio was the president of Italian Gourmet and Cameron was an investor in the restaurant. On the same day the note was executed, Cameron executed and delivered to American Chartered a personal guaranty, whereby Cameron guaranteed the full payment and performance of all obligations owed by Italian Gourmet to American Chartered under the note. Servedio, who has not joined in this appeal, executed an identical guaranty on the same date.

¶ 5 Italian Gourmet defaulted under the note by failing to make payment when due beginning in January of 2007. On May 16, 2007, American Chartered filed its complaint and confession of judgment on the note and commercial guaranty against Italian Gourmet, Cameron and Servedio.

Judgment was entered in favor of American Chartered against all defendants on June 5, 2007, and supplementary proceedings were initiated.

¶ 6 Following entry of judgment, this case veered off on a decidedly convoluted path.

¶ 7 On July 3, 2007, Cameron petitioned to vacate the judgment, but his petition was stricken on July 11, 2007. Cameron then filed a motion to open the judgment by confession on August 10, 2007, supported by his affidavit averring that American Chartered's Senior Vice President, Garrick Nielsen, had in the past acted as a financial, banking and business advisor to Cameron and that Nielsen made material misrepresentations to Cameron prior to Cameron's execution of the guaranty. Specifically, Cameron alleged Nielsen told him that Servidio had given American Chartered a security interest in property owned by Servidio, which had sufficient equity to cover the amount of the note. On September 26, 2007, the trial court denied Cameron's motion. Cameron filed an amended motion to open the judgment by confession in which he attached a revised affidavit which, like the first affidavit, also averred that (i) Nielsen was Cameron's financial, banking and business advisor, (ii) Nielsen made material misrepresentations to Cameron prior to execution of the guaranty, and (iii) in December, 2006, Servidio's property was sold for an amount less than the amount Nielsen had told Cameron the property was worth when the guaranty was executed in 2004.

¶ 8 Also attached to Cameron's first and amended motions to open the judgment by confession were Cameron's answer, affirmative defenses and counterclaims. In the affirmative defenses, Cameron alleged American Chartered, through Nielsen, made fraudulent misrepresentations to Cameron that it held a security interest in Servedio's property, that American Chartered would proceed against the property as collateral before enforcing the guaranty executed by Cameron, and that American Chartered failed to apply amounts received from the sale of the property to satisfy Italian Gourmet's outstanding debt. Cameron alleged

these misrepresentations gave rise to a claim for fraud in the inducement. Cameron raised a variety of other defenses, including: (i) unclean hands based on allegations that American Chartered misrepresented that there was sufficient equity in Servidio's property to cover the note; (ii) breach of fiduciary duties American Chartered owed to Cameron; (iii) American Chartered's failure to mitigate its damages by refusing to consider offers to sell Italian Gourmet once the business defaulted under the loan; and (iv) lack of consideration for Cameron's execution of the guaranty.

¶ 9 On January 23, 2008, the trial court granted Cameron's amended motion to open the judgment by confession. In its written ruling and order granting the motion, the trial court found Cameron had alleged a *prima facie* defense of fraud. The court noted that Cameron had raised a colorable claim of fraud based on "the facts alleged in Cameron's affidavit," such as an ongoing business relationship between American Chartered and Cameron through Nielsen, Nielsen's advice and recommendations in regards to signing the guaranty, Nielsen's representations to Cameron that Servidio gave a security interest in his property, which was valued in excess of \$150,000, that Cameron signed the guaranty in reliance on Nielsen's representations, that Nielsen arranged for a group of investors to purchase the Servidio property for less than its fair market value, that American Chartered financed the purchase of the Servidio property, that American Chartered loaned the investors \$60,000 after the purchase of the Servidio property, and that American Chartered did not apply any of the proceeds of the sale of the Servidio property to the amount due under the note.

¶ 10 On September 30, 2008, American Chartered filed a motion to dismiss Cameron's affirmative defenses and counterclaim. On July 24, 2009, the motion to dismiss was granted. Cameron filed a motion to reconsider, which was granted on July 22, 2010. In its written ruling, the trial court noted that in its prior order granting Cameron's motion to open the judgment by

confession, the court had determined that Cameron had alleged a meritorious defense. But in granting American Chartered's motion to dismiss, the trial court had determined, in contrast to its prior ruling, that Cameron did *not* allege a meritorious defense. Therefore, the trial court concluded it had erred in entertaining and granting American Chartered's motion to dismiss and vacated the dismissal of Cameron's answer, affirmative defenses, and counterclaim.

¶ 11 On March 24, 2011, American Chartered moved to transfer the case from the tax and miscellaneous remedies section of the law division to an individual commercial calendar. A few months later, on July 12, 2011, additional counsel for Cameron filed an appearance.

¶ 12 On October 31, 2011, after the parties had engaged in discovery, American Chartered filed its motion for summary judgment. Cameron failed to appear for presentment of the motion on November 8, and failed to respond to the motion within the time allowed. After a hearing on American Chartered's motion on January 31, 2012, at which Cameron also failed to appear, the trial court granted the motion and entered judgment in favor of American Chartered and against Cameron in the amount of \$145,636.45, plus costs and attorney fees.

¶ 13 On April 27, 2012, after supplementary proceedings were initiated, Cameron again petitioned the court to vacate the judgment, this time pursuant to section 2-1401 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2010). After a hearing on October 24, 2012, the trial court granted the petition to vacate and allowed Cameron to respond to American Chartered's motion for summary judgment.

¶ 14 Cameron's response to American Chartered's motion referenced the earlier rulings regarding the sufficiency of his pleadings to state a claim, but did not attach an affidavit or other material refuting the facts on which American Chartered relied upon in seeking summary judgment.

¶ 15 After a hearing on January 17, 2013, the trial court granted American Chartered's motion for summary judgment, and continued the matter for prove-up of damages. On April 18, 2013, judgment was entered in favor of American Chartered and against Cameron in the total amount of \$172,712.67. American Chartered later sought attorney fees, which, after briefing and argument, were granted in the amount of \$15,938.50. Cameron timely filed this appeal.

¶ 16 ANALYSIS

¶ 17 Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005 (West 2010). If the party moving for summary judgment supplies facts which, if not contradicted, would entitle such party to a judgment as a matter of law, the opposing party cannot rely on his pleadings alone to raise issues of material fact. *Harrison v. Hardin County Community Unit School District No.# 1*, 197 Ill. 2d 466, 470 (2001). Thus, facts contained in an affidavit in support of a motion for summary judgment that are not contradicted by a counteraffidavit must be taken as true for purposes of the motion. *Purtill v. Hess*, 111 Ill. 2d 229, 241 (1986). We review an order granting summary judgment *de novo*. *Pielet v. Pielet*, 2012 IL 112064, ¶ 30.

¶ 18 On appeal, Cameron contends that the entry of summary judgment in favor of American Chartered was improper because (i) the allegations that Nielsen made fraudulent misrepresentations to induce Cameron to execute the guaranty raise material issues of fact as to whether American Chartered committed fraud in the inducement; (ii) the allegations that Nielsen served as Cameron's business advisor and thus owed him fiduciary duties raise material issues of fact as to whether there was a breach of fiduciary duty; (iii) an issue of fact as to American Chartered's unjust enrichment precludes summary judgment; (iv) the terms of the guaranty are

vague and ambiguous; and (v) an issue of material fact remains as to whether American Chartered is guilty of “unclean hands.”

¶ 19 Cameron does not dispute the lack of any genuine issue of material fact as to the execution of the note and guaranty, the existence of a default under the note since January 16, 2007, or his failure to pay the amounts due under the note and guaranty. Thus, he concedes, as he must, that American Chartered established its claim against Cameron for breach of his guaranty as a matter of law. But Cameron argues that the trial court erred in granting summary judgment because his verified answer raises genuine issues of material fact as to the viability of his defenses. We disagree.

¶ 20 Initially, we note that Cameron relies on his answer, which was attached to the response to the motion for summary judgment, to raise issues of material fact and contends that the attached answer "clearly served as a counter-affidavit." Cameron did not file an affidavit in response to the motion for summary judgment, but argues that his answer, "along with the previously filed affidavits[,] established these fact issues." Notably, the copy of the answer attached to the response to the motion for summary judgment does not include the "previously filed affidavit." Additionally, Cameron's arguments that there are issues of fact which preclude summary judgment rest on the trial court's early ruling in granting the motion to open the confession of judgment under Illinois Supreme Court Rule 276 (eff. July 1, 1982). In the written order, the trial court held that Cameron had alleged a *prima facie* defense on the merits to American Chartered's judgment by confession claim. Cameron also attached the written order to his response to the motion for summary judgment.

¶ 21 We must reject Cameron's attempt to rely on an affidavit attached to his answer or his prior pleadings to raise genuine issues of material fact. The rule that an opponent cannot rely upon the allegations contained in the pleadings to defeat a motion for summary judgment is well-

settled. *Parents United for Responsible Education v. Board of Education of City of Chicago*, 2011 IL App (1st) 1029001, ¶ 39; *Carruthers v. B.C. Christopher & Co.*, 57 Ill. 2d 376, 380 (1974). If the party moving for summary judgment supplies facts that, if not contradicted, would warrant judgment in its favor as a matter of law, it "becomes incumbent upon the respondent to allege 'evidentiary facts through affidavits or such.'" *Ohio Oil Co. v. Yacktman*, 36 Ill. App. 3d 255, 261 (1976), citing *Carruthers*, 57 Ill. 2d 380.

¶ 22 Here, American Chartered's motion for summary judgment and affidavit contained well-pleaded, uncontradicted facts that were properly accepted by the trial court as true for the purpose of ruling on the motion. Cameron simply rested on the allegations raised in his pleadings and failed to submit an affidavit or refer to depositions or admissions on file that would present a contrary version of the facts. Therefore, Cameron failed to identify triable issues of fact sufficient to defeat American Chartered's motion for summary judgment.

¶ 23 Moreover, Cameron's reliance on the trial court's prior written order finding that his allegations were sufficient to warrant vacating the judgment by confession does not create a genuine issue of material fact. In ruling on a motion to open judgment by confession, the court accepts as true the facts asserted by the defendant and his affidavits. *Kim v. Kim*, 247 Ill. App. 3d 910, 913 (1993). Cameron asserted facts in his motion to open judgment, his answer, and his affidavit, which were accepted as true for the purposes of the motion. That Cameron alleged a *prima facie* defense sufficient to open judgment does not mean that genuine issues of material fact exist particularly where, as here, Cameron bore the burden of proving any affirmative defenses and counterclaims and had the opportunity to conduct discovery. Thus, the trial court's initial assessment of the facial validity of Cameron's claims and defenses is an insufficient basis upon which to deny summary judgment.

¶ 24 Further, none of the issues Cameron attempted to raise would have precluded summary judgment for American Chartered in any event.

¶ 25 American Chartered points out that each of Cameron's affirmative defenses was waived under the terms of the guaranty. The guaranty states:

“GUARANTOR’S WAIVERS. Except as prohibited by applicable law, [Cameron] waives any right to require [American Chartered] ***; (C) to resort for payment or to proceed directly or at once against any person, including [Italian Gourmet] or [Servedio]; [and] (D) to proceed directly against or exhaust any collateral held by [American Chartered] from [Italian Gourmet], [Servedio], or any other person; ***.”

The guaranty also provides:

“Guarantor also waives any and all rights or defenses arising by reason of ***; (D) any right to claim discharge of the Indebtedness on the basis of unjustified impairment of any collateral for the Indebtedness; (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness.”

¶ 26 Under Illinois law, general rules of contract construction apply in interpreting the terms and conditions of a guaranty, and thus, where the terms of a guaranty are clear and unambiguous, they must be given effect as written. *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605, 620 (2007). That principle applies even where a guaranty contains broad statements of guarantor liability, including waivers of all defenses. *Chemical Bank v. Paul*, 244 Ill. App. 3d 772, 781 (1993). Moreover, a guaranty agreement that is "unequivocal in its terms must be interpreted according to the language used, for it is presumed that the parties meant what

their language clearly imports." *Bank of Benton v. LaBuwi*, 194 Ill. App. 3d 489, 495 (1990), citing *Bank of Homewood v. Sjo*, 113 Ill. App. 3d 179, 182 (1983); see also *Roth v. Dillavou*, 359 Ill. App. 3d 1023, 1028 (2005).

¶ 27 Cameron argues on appeal that the language of the guaranty is "vague and unambiguous." This argument was addressed in a single sentence in Cameron's response to American Chartered's motion for summary judgment: "Furthermore, the waiver language is woefully vague, overly broad, and unclear." Cameron cited no authority to support this statement nor did he further explain the alleged ambiguity. Although he attempts to support this argument on appeal by arguing that the "Indebtedness Guaranteed" language is ambiguous, he did not advance the argument in the trial court so that the trial court could address any claimed ambiguity and thus, this argument is forfeited. *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 306 (2000) ("Issues raised for the first time on appeal are waived.").

¶ 28 In any event, the language we have quoted above is clear and unambiguous. We thus accord the guaranty its plain meaning, which leads to the conclusion that Cameron's claims and defenses fail as a matter of law.

¶ 29 Cameron's first alleged defense is based on the allegations that American Chartered's agent, Nielsen, prior to the execution of the guaranty, made material misrepresentations regarding the value of Servidio's property and American Chartered's intention to proceed against the collateral before enforcing Cameron's guaranty. Cameron claimed this constituted fraud in the inducement.

¶ 30 But the plain and unambiguous terms of the guaranty expressly provide that Cameron waived any right to require American Chartered to resort for payment against any person, including Italian Gourmet or Servedio, or to proceed against any collateral prior to enforcing the

guaranty against Cameron. Additionally, the language of the guaranty waives all rights or defenses arising by reason of any right to claim discharge of the debt on the basis of unjustified impairment of any collateral as well as any other defenses "at law or in equity." Cameron has thus waived any defense based on allegations that Nielsen made misrepresentations about holding collateral and seeking to collect the indebtedness first from the collateral, or that American Chartered acted unreasonably in selling the property at less than its claimed fair market value, given that Cameron expressly authorized American Chartered to "enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral."

¶ 31 Essentially, Cameron argues that despite the language of the guaranty, the bank orally agreed not to enforce it according to its terms. However, "[a] party cannot close his eyes to the contents of a document and then claim that the other party committed fraud merely because it followed the contract." *Northern Trust Co. v. VIII South Michigan Associates*, 276 Ill. App. 3d 355, 365-66 (1995).

¶ 32 The cases relied upon by the trial court in ruling on the motion to open judgment and now cited by Cameron here are inapposite. *Colonial Bank and Trust Company v. Kozlowski*, 106 Ill. App. 3d 639 (1982), was decided prior to the 1989 enactment of the Illinois Credit Agreements Act. 815 ILCS 5/160, *et seq.* (West 2010). As discussed more fully below, the Act severely curtails defenses available to obligors under credit agreements with lenders. Further, the alleged misrepresentation by the bank officer in *Kozlowski* did not alter or vary the terms of the obligor's guaranties, but rather related to the banks' confidence in the obligor's investment based on the bank's own investment in the business the obligors were purchasing. In contrast, Cameron's claims based on alleged oral misrepresentations would, if sustained, fundamentally re-write the terms of the guaranty. *Shanahan v. Schindler*, 63 Ill. App. 3d 82 (1978), also cited by

Cameron, concerned a loan between two private individuals and thus is not analogous to the circumstances presented here.

¶ 33 As American Chartered correctly points out, the defense of fraud based on the misrepresentations allegedly made by Nielsen to induce Cameron to execute the guaranty is also barred by the Illinois Credit Agreements Act (815 ILCS 160/1, *et seq.* (West 2010)). As set forth in section 2 of the Act, “[a] debtor may not maintain an action on or in any way related to a credit agreement unless the credit agreement is in writing *** and is signed by the creditor and debtor.” 815 ILCS 160/2 (West 2010). A “credit agreement” is defined as “an agreement or commitment by a creditor to lend money or extend credit or delay or forbear repayment of money not primarily for personal, family or household purposes, and not in connection with the issuance of credit cards.” 815 ILCS 160/1(1) (West 2010). Furthermore, section 3(3) of the Act states:

“The following actions do not give rise to a claim, counter-claim, or defense by a debtor that a new credit agreement is created, unless the agreement satisfies the requirements of Section 2:

(3) the agreement by the creditor to modify or amend an existing credit agreement or to otherwise take certain actions, such as entering into a new credit agreement, forbearing from existing remedies in connection with an existing credit agreement, or rescheduling or extending installments due under an existing credit agreement.” 815 ILCS 160/3 (West 2010).

¶ 34 Illinois courts have uniformly held that “the language of [the Act] is broad and was intended to extend beyond the existing Frauds Act (740 ILCS 80/0.01 *et seq.*) to bar traditional

defenses or exceptions to the Frauds Act such as equitable estoppel.” *Teachers Insurance & Annuity Ass’n of America v. LaSalle Nat. Bank*, 295 Ill. App. 3d 61, 68 (1998). The Act “imposes a stringent version of the Statute of Frauds – since it requires the signatures of both creditor and debtor on the agreement – on loans and credit advanced by financial institutions.” *Whirlpool Financial Corp. v. Sevaux*, 874 F. Supp. 181, 185 (N.D. Ill. 1994) (citing *Resolution Trust Corp. v. Thompson*, 989 F.2d 942, 944 (7th Cir. 1993)). This court has interpreted these provisions to proscribe “ ‘all actions which depend for their existence upon an oral credit agreement.’ ” *Klem v. First National Bank of Chicago*, 275 Ill. App. 3d 64, 67 (1995) (quoting *First National Bank in Staunton v. McBride Chevrolet, Inc.*, 267 Ill. App. 3d 367, 372 (1994)). “There is no limitation as to the type of actions by a debtor which are barred by the Act so long as the action is in any way related to a credit agreement.” *McBride Chevrolet, Inc.*, 267 Ill. App. 3d at 372. The *McBride Chevrolet* court further found that “[t]here is no justifiable reliance on an oral credit agreement as a matter of law in Illinois.” *Id.* at 373.

¶ 35 In this case, Cameron’s affirmative defense that Nielsen made misrepresentations to induce him to execute the guaranty is undeniably related to a credit agreement and barred by the Act’s terms. Cameron alleges Nielsen made promises and misrepresentations before the guaranty was executed and that those oral statements modified the terms of Cameron’s guaranty. The alleged oral promises that American Chartered would perfect a security interest in the Servidio property, that there was sufficient equity in the property to satisfy the indebtedness under the note and that American Chartered would look first to the property in the case of a default clearly constitute claims related to a credit agreement under section 3 of the Act. Accordingly, whether Nielsen’s oral misrepresentations are characterized as a modification of the existing credit agreement or as an oral side agreement, Cameron’s defenses based on these alleged misrepresentations are barred by the Act.

¶ 36 Cameron contends that recent authority recognizes that the Act does not apply to the circumstances presented here. We disagree. *Schafer v. UnionBank/Central*, 2012 IL App (3d) 110008, does not compel a different result and is readily distinguishable. *Schafer* involved a conversion action by debtor against a bank. *Id.* The Schafers contended that a bank officer had mistakenly checked a box on their commercial security agreement indicating that it secured all outstanding debts the Schafers owed the bank, rather than the particular loan that gave rise to the execution of the security agreement. *Id.* at ¶ 7. The Schafers claimed the bank's interest in the equipment pledged as collateral for the loan was extinguished when the loan was paid off and the equipment should not have been sold to satisfy other indebtedness to the bank that was in default. *Id.* at ¶ 5. The Schafers' claim of mutual mistake of fact was supported by the affidavit of the bank's loan officer admitting his mistake. *Id.* at ¶ 7, 8.

¶ 37 Cameron's citation to *Schafer* overlooks the distinction between the argument in that case—that the bank officer's mistake resulted in an agreement whose terms did not reflect the terms the parties had intended to memorialize in writing, and the argument Cameron advances here—that despite the terms of the agreement he signed, he orally agreed with the bank to alter the terms, terms that were never intended to be included in the writing. It is the latter type of claim that the Act was designed to prohibit. Thus, *Shafer* does not support Cameron's position.

¶ 38 Cameron also asserted the affirmative defense of "unclean hands" based on his allegation that Nielsen had served as his business and financial advisor, and was thus a fiduciary who owed a duty to fully inform Cameron of the value of Servidio's property and American Chartered's intention to actually enforce Cameron's guaranty as written in the event of a default on the loan. Cameron claimed that Nielsen, as American Chartered's agent, breached fiduciary duties owed to Cameron when he made the misrepresentations described above to induce Cameron to sign the guaranty.

¶ 39 But the lender-borrower relationship does not give rise to a fiduciary relationship as a matter of law. See *Northern Trust Co. v. Halas*, 257 Ill. App. 3d 565, 572 (1993) (relationship between bank and borrower not a fiduciary relationship as a matter of law); *Santa Claus Industries v. First National Bank*, 216 Ill. App. 3d 231, 238 (1991) ("As a general rule, a fiduciary relationship does not exist between a *** debtor-creditor as a matter of law."); *McErlean v. Union National Bank of Chicago*, 90 Ill. App. 3d 1141, 1148 (1980) ("We find nothing inherent in business dealings between lender and borrower from which springs a cognizable fiduciary relationship in the absence of facts or circumstances pleaded from which such a connection may be inferred.") Cameron's allegation that Nielsen acted as his "financial, banking and business advisor" is conclusory and insufficient to raise any genuine issues of material fact regarding the nature of the relationship between American Chartered and Cameron.

¶ 40 Further, the doctrine of unclean hands only operates to bar equitable remedies and does not affect legal rights. *American National Bank & Trust Co. of Chicago v. Levy*, 83 Ill. App. 3d 933, 936 (1980); *Zahl v. Krupa*, 365 Ill. App. 3d 653, 658 (2006). Thus, the defense of unclean hands has no applicability to an action at law. *Id.* As American Chartered's complaint against Cameron is an action at law, the defense of unclean hands is not available.

¶ 41 On appeal, Cameron asserts the trial court erred in granting American Chartered's motion for summary judgment because there is a material issue of fact regarding "how much the bank has actually collected on this loan," which would reveal that American Chartered is "being unjustly and improperly enriched" and is "not entitled to a windfall." This unjust enrichment claim is based on allegations that American Chartered is "being enriched by being able to continue to hold and make new loans upon the Servidio property, and at the same time, recovering the entire mortgage under the [guaranty]." But our review of the record reveals that

Cameron did not raise this claim in the trial court. This argument is therefore waived. *Jones*, 191 Ill. 2d at 306.

¶ 42

CONCLUSION

¶ 43 The trial court properly entered summary judgment in American Chartered's favor. Cameron failed to identify any genuine issues of material fact that would preclude entry of summary judgment in favor of American Chartered on its claim to enforce Cameron's guaranty. Therefore, we affirm the trial court's entry of summary judgment in favor of American Chartered and against Cameron in the total amount of \$172,712.67

¶ 44 Affirmed.