FOURTH DIVISION
August 11, 2016

No. 1-15-1637

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALLA LIAKHOVITSKAIA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 10 L 4219
	)	
REPUBLIC BANK OF CHICAGO, and	)	
IFTIKHAR HASNAT,	)	Honorable
	)	Margaret A. Brennan
Defendants-Appellees.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justice Howse and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's grant of summary judgment in favor of defendant bank affirmed. Defendant did not have contractual duty to inspect room in which plaintiff alleged she had mistakenly left behind contents of safe-deposit box.

¶ 2 In March 2009, plaintiff, Alla Liakhovitskaia, discovered that approximately $35,000 was missing from her safe-deposit box that she had been renting from defendant, Republic Bank of Chicago. She filed suit against the bank and its manager, defendant Iftikhar Hasnat, for breach of contract and negligence based on the doctrine of *res ipsa loquitur*. The circuit court granted summary judgment on both counts for both defendants.

¶ 3 Plaintiff appeals only the circuit court's grant of summary judgment in favor of defendant, Republic Bank of Chicago, and only as to count I (breach of contract). We hold that defendant did not have a contractual duty to inspect the viewing room in which plaintiff alleged she had mistakenly left behind the contents of her safe-deposit box. Thus, the trial court properly granted summary judgment in favor of defendants on plaintiff's breach of contract claim. We affirm the circuit court's judgment.

¶ 4 II. BACKGROUND

¶ 5 In 1997, plaintiff rented a safe-deposit box from defendant. Since then she has regularly made trips to the safe-deposit box. On March 3, 2009, plaintiff made a trip to the safe-deposit box planning to take out $1,000. When she opened the box, she discovered that a bag holding several envelopes of money in the amount of $35,000 was gone. Besides plaintiff and employees of the bank, only plaintiff's daughter, Anna Fourman, had a key to the safe-deposit box, but her daughter had not visited the safe-deposit box prior to that day.

¶ 6 The last time plaintiff had been to the safe-deposit box was on July 16, 2008, when she went to deposit funds in the safe-deposit box. Plaintiff alleged that she had followed her usual procedure on that day. She had put the money she planned to deposit in a plain envelope and had written "one thousand" on the top. When she arrived at the defendant bank, plaintiff gave her key to one of defendant's employees. Two keys are required to open the box, the customer's and the bank's. The employee opened the box and gave it to plaintiff. Plaintiff went into a viewing room with the box. She removed a bag containing 30 envelopes from the box. One of the envelopes contained $5,000 and the rest contained $1,000 each. Plaintiff put the new envelope in the bag. She took a paper note, which she also kept in the safe-deposit box as a record of what the box contained, and crossed out the number "34" on the note, replacing it with "35." These numbers

referred to the thousands of dollars. Plaintiff alleges in count I of the complaint (for breach of contract) that she put the bag back in the safe-deposit box. (In the count based on negligence/*res ipsa loquitur*, however, plaintiff claimed she could have left the envelope in the safe-deposit box *or* in the viewing room.) The bank employee returned the safe-deposit box to the wall and gave plaintiff her key. Plaintiff left the bank.

¶ 7 Plaintiff did not return to the bank for approximately eight months, when she discovered her money was missing on March 3, 2009. The police came to the bank and completed a report.

¶ 8 Plaintiff filed suit against defendants and amended her complaint four times. None of the prior versions of the complaint are in the record and are not relevant. The fourth amended complaint at issue was filed on May 9, 2013.

¶ 9 In count I of the fourth amended complaint, for breach of contract, plaintiff alleges that, under the safe-deposit box rental agreement, defendant had a duty of "ordinary care" to prevent unauthorized persons from gaining access to the safe-deposit box and/or vault. She further alleges that defendant breached its duty of care in preventing unauthorized persons from having access to the safe-deposit box.

¶ 10 Plaintiff does not speak English and her deposition was taken through a Russian interpreter. Discovery depositions were also taken of plaintiff's daughter, Anna Fourman, and two bank employees, Dona Muoshi and Sheila Pollack.

¶ 11 Plaintiff's deposition was taken on April 13, 2014. Plaintiff testified that when she rented the safe-deposit box, she received two keys. The second key was given to her daughter Anna Fourman, who is a co-renter of the box. Plaintiff keeps her own key at home and has never told anyone where it is kept. Plaintiff told Fourman that she was depositing Holocaust reparations payments in the safe-deposit box but did not tell Fourman the amount. Plaintiff testified that, on

the day she discovered her money missing, she asked her daughter if she had used her key to gain access to plaintiff's safe-deposit box, and Fourman answered, "Never." Plaintiff also testified that when the police arrived at the bank, they were able to look at the safe-deposit box and see that it had no defects.

¶ 12 As noted, in the breach of contract count of the complaint, plaintiff alleges that, on July 16, 2008, she put the bag (containing the envelopes) back in the safe-deposit box. But in her deposition, she testified differently—she testified that she had made a mistake on July 16, 2008, and left the contents of her safe-deposit box in the viewing room. She testified that she came out of the room and gave the safe-deposit box to the bank employee. Plaintiff testified that, at that time, "there was the Indian people coming at the door and [the employee] told them one second this is my first customer and then she put [the safe-deposit box] back in the vault." Plaintiff further testified that the money was not in the box when she returned it to [the employee] to put back in the vault in the wall. She also stated that she was holding the box and "noticed that it was rather light."

¶ 13 After plaintiff went home that day in July 2008, she did not think to contact the bank and tell them that she had left her money out in the open in the viewing room. She also stated that she had realized she had left the money in the viewing room (in July 2008) when she went to the bank on March 3, 2009. Apparently, plaintiff did not tell anyone that she had left the money in the viewing room until the date of her deposition. Plaintiff denied telling the police or the bank employees, in March 2009, that she did not remember whether she had left the money in the viewing room or had put it back into the safe-deposit box in July 2008. She further testified that the police did not ask her any questions and only asked her to show her identification.

¶ 14 Plaintiff's daughter, Anna Fourman, was deposed on May 6, 2014. She testified that she is a co-renter of the safe-deposit box and has had a key to the box since 1997. Contrary to plaintiff's contention, Fourman stated that her mother never asked her whether she had removed anything from the safe-deposit box, because her mother knew Fourman never went to the bank. Fourman also testified that she never gave her key to anyone. She kept her key in her jewelry box, and her husband did not know she had a key.

¶ 15 Fourman testified that, on March 3, 2009, she had knee surgery and was released from the hospital in the evening. Plaintiff and Evelina (Fourman's daughter, plaintiff's granddaughter) came to Fourman's house. Plaintiff told Fourman what had happened at the bank that day. Fourman testified that plaintiff stated that "they stole my money from the wall, the wall where the boxes are, because she remembered to put the box back when she was there last time."

¶ 16 Fourman testified that, after she recovered from her surgery, she visited the bank, on March 16, 2009, to see how the safe-deposit box process worked. After she saw how the process worked, she told her mother that nobody could have stolen her money from the safe-deposit box because two keys were required to open the box, the key from the bank employee and the key from the safe-deposit box renter. Fourman testified that her mother asked her, "[T]hen where is my money?" Fourman asked her mother where she put the money and suggested that she might have put it in the trash, but plaintiff told Fourman that the room did not have a trash can in the viewing room.

¶ 17 In 2008 and 2009, two bank employees were assigned to the safe-deposit vault area, Dona Muoshi and Sheila Pollack. Their depositions were taken on June 18, 2014.

¶ 18 Pollack was working in the vault area on both relevant dates—July 16, 2008, and March 3, 2009—and was the person who signed plaintiff in on both days. She testified that, on March 3,

2009, the day that plaintiff discovered her money was not in the safe-deposit box, she did not see any signs of damage to, or tampering with, plaintiff's safe-deposit box.

¶ 19 Pollack testified that, after a customer was finished looking at the safe-deposit box, the employee would tell the customer to check the viewing room. After the safe-deposit box was locked in the vault, in case the customer had forgotten to check, the bank employee would check the room with the customer including "behind the door" and "under the counter." She also testified that, before she let a new customer into the viewing room, she would always check the room to be sure that nothing fell on the floor or was behind the door. She testified that she would not let a customer leave the bank until the customer saw that nothing had been left behind in the viewing room.

¶ 20 Muoshi testified that, after a customer received her safe-deposit box, the bank employee would escort the customer to the viewing room. After the customer was finished, the bank employee would check the viewing room before the customer left. She also testified that they sometimes checked the room before they brought the customer into the room.

¶ 21 Defendants filed a motion for summary judgment on both counts of the complaint. Regarding the breach of contract claim, defendants argued that plaintiff had "failed to establish any factual evidence whatsoever as to *who* at the bank allegedly breached the safety deposit box agreement, *when* the agreement was allegedly breached, or *how* the agreement was allegedly breached." (Emphases in original.)

¶ 22 In response, plaintiff noted that she "no longer alleges that there was tampering with her safety deposit box." She noted that "[o]nce [counsel for both parties] examined [plaintiff's] safety deposit box in 2014, it became apparent that no one had broken into the box." She also stated that afterwards, she, "her attorney, and family members finally understood that there had

been no tampering with the safety deposit box." She conceded that she could not prove breach of contract, "by proving that someone illicitly removed something from her safety deposit box at the Bank."

¶ 23 But plaintiff argued that summary judgment on her breach of contract count was not warranted. Plaintiff noted that she had "conceded at her deposition that she left the package containing $35,000 in the safety deposit viewing room of the Bank on July 16, 2008." Plaintiff contended that her "evidence *will establish who* breached the contract's duty of care." (Emphasis added.) She also contended that there were disputed facts in this case, including: (1) whether plaintiff actually had $35,000 in cash in 31 envelopes; (2) whether plaintiff abandoned or left the cash in the viewing room; (3) whether Pollack or Muoshi took the cash; (4) whether Pollack or Muoshi failed to examine the viewing room after plaintiff left it on July 16, 2008; (5) and whether the bank manager was responsible for the bank employees' negligence.

¶ 24 In reply, defendants disputed plaintiff's claims regarding the issues of fact. As to plaintiff's reference to a factual dispute as to whether Pollack or Muoshi took the cash, defendants noted that plaintiff had never alleged, nor adduced any evidence, that Pollack or Muoshi had engaged in wrongdoing. As to plaintiff's claim that she would be able to establish at trial "who" breached the contract's duty of care, which she had been unable to establish to date, defendants argued that such an argument was insufficient to withstand defendants' motion for summary judgment.

¶ 25 The trial court granted defendant's motion for summary judgment. Plaintiff filed a motion to reconsider as to the breach of contract count only, which the court denied. Plaintiff now appeals.[1]

¶ 26 III. ANALYSIS

¶ 27 The sole issue in this case is whether the circuit court properly granted summary judgment to defendant, Republic Bank of Chicago, on count I of plaintiff's fourth amended complaint for breach of contract. The trial court decided that there was no genuine issue of material fact, and that plaintiff had not put forth sufficient evidence to defeat the motion for summary judgment. The trial court noted that, at the summary judgment stage, a plaintiff could not merely argue that she would "be able to prove" breach of contract.

¶ 28 Summary judgment is a drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free from doubt. *Adames v. Sheahan*, 233 Ill. 2d 276, 296 (2009). Summary judgment is proper where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Hall v. Henn*, 208 Ill. 2d 325, 328 (2003). In determining whether a genuine issue of material fact exists, the pleadings are liberally construed in favor of the nonmoving party. *St. Paul Mercury Insurance v. Aargus Security Systems, Inc.*, 2013 IL App (1st) 120784.

¶ 29 Although a party need not prove her case at the summary judgment stage, in order to survive a summary judgment motion, she must nevertheless present a factual basis that would arguably entitle her to a judgment. *Allegro Services, Ltd. v. Metropolitan Pier & Exposition*

[1] The trial court also granted summary judgment as to the bank manager, defendant Iftikhar Hasnat, a ruling that plaintiff did not challenge.

Authority, 172 Ill. 2d 243, 256 (1996). Our standard of review is *de novo*. *St. Paul Mercury Insurance*, 2013 IL App (1st) 120784, ¶ 57.

¶ 30 What happened to plaintiff's money is a mystery. But plaintiff claims she can prove that it disappeared as a result of defendant's breach of contract.

¶ 31 To prevail on a claim for breach of contract, a plaintiff must prove: (1) the existence of a contract; (2) that plaintiff performed all contractual obligations; (3) facts constituting a breach; and (4) damages from the breach. *Storino, Ramello & Durkin v. Rackow*, 2015 IL App (1st) 142961, ¶ 17; *St. Paul Mercury Insurance*, 2013 IL App (1st) 120784, ¶ 57. Defendant's motion for summary judgment was based on its argument that plaintiff could not establish any facts constituting a breach (*i.e.*, that plaintiff "failed to establish any factual evidence whatsoever as to *who* at the bank allegedly breached the safety deposit box agreement, *when* the agreement was allegedly breached, or *how* the agreement was allegedly breached"). No issue was raised as to the existence of the contract, whether plaintiff performed all contractual obligations, or whether plaintiff suffered damages.

¶ 32 Before determining whether there is a question of material fact as to whether defendant breached a duty, we must first decide whether defendant owed plaintiff any duty, and if so the scope of that duty.

¶ 33 Because this is a breach-of-contract claim, the existence and scope of a duty is based on the language of the contract. *Rojas Concrete, Inc. v. Flood Testing Laboratories, Inc.*, 406 Ill. App. 3d 477, 480 (2010). A defendant's duties will not be expanded beyond the scope of duties required by the contract. *Id*.; see also *Thompson v. Gordon*, 241 Ill. 2d 428, 449 (2011) (scope of duty limited to terms of contract, as "a court cannot alter, change or modify existing terms of a contract, or add new terms or conditions to which the parties do not appear to have assented").

The existence and scope of a contractual duty are questions of law subject to *de novo* review. *Rojas Concrete*, 406 Ill. App. 3d at 480.

¶ 34 As we have noted in the procedural background, and as plaintiff concedes, plaintiff's theory of defendant's duty "shifted" during the proceedings in the circuit court. Initially, and as pleaded in the fourth amended complaint, plaintiff alleged that defendant owed a duty of "ordinary care" under the safe-deposit box rental agreement to prevent unauthorized persons from gaining access to the safe-deposit box and/or vault. Plaintiff abandoned that theory in the circuit court and proceeded on a theory, instead, that conceded that nothing was ever stolen from the safe-deposit box itself. Instead, plaintiff claimed (as she does now before this court) that she left the contents of her safe-deposit box in the viewing room, an area under defendant's "exclusive control," and that defendant's breach was its failure to notice that she had left the contents in the viewing room after she replaced the box in the vault and left the bank.[2]

¶ 35 Thus, we address plaintiff's claim that defendant had a duty to inspect the viewing room to ensure that plaintiff had not left her property behind. We start with the relevant language from the parties' rental agreement:

> "It is understood that said bank has no possession or custody of, nor control over, the contents of said safe and that the lessee assumes all risks in connection with the depositing of said contents; that the sum above mentioned is

[2] In fairness to plaintiff, paragraph 16 of count I for breach of contract does contain a reference to this alternative theory. Plaintiff claims that defendant and its employees "were in sole control of the safety deposit box premises" and that "[t]hey, or other persons not authorized by Plaintiff, obtained access to the safe deposit box *or the safe deposit box examination rooms* between July 16, 2008 and March 3, 2009, removing Plaintiff's funds without authorization, since the box was empty and the funds [had been] removed by persons other than Plaintiff when she opened the box on March 3, 2009." (Emphasis added.)

> for the rental of said safe alone, and that there shall be no liability on the part of said bank, for loss of, or injury to, the contents of said box from any cause whatsoever unless lessee and said bank enter into a special arrangement in writing to that effect, in which case additional charges shall be made by said bank as the value of the contents of said safe, and the liability assumed on account thereof may justify. *The liability of said bank is limited to the exercise of ordinary care to prevent the opening of said safe by any person not authorized* and such opening shall not be inferable from loss of any of its contents." (Emphasis added.)

¶ 36 The Illinois Supreme Court interpreted this identical language in *Jewelers Mutual Insurance Company v. Firstar Bank Illinois*, 213 Ill. 2d 58 (2004). In that case, more than a million dollars' worth of jewelry was stolen from three safe-deposit boxes rented by plaintiffs at the defendant bank. *Id.* at 59. The bank tried to avoid liability by pointing to the general exculpatory language in the first sentence, while the plaintiffs, among other things, argued that the first sentence was qualified by the more specific second sentence, in which the bank assumed liability for allowing unauthorized access to the deposit boxes themselves—the very thing that happened in that case. Plaintiffs argued that the second sentence should thus control.

¶ 37 Our supreme court agreed with plaintiffs. It found that this language was "ambiguous and that its two sentences are conflicting. In the first sentence, defendant disclaims liability for any loss whatsoever. In the second sentence, defendant assumes one particular liability. It must exercise ordinary care to prevent unauthorized persons from accessing the box." *Id.* at 64.

¶ 38 The court continued to compare the first sentence to the second sentence as follows:

> "Whatever the meaning of the exculpatory clause, it clearly cannot be applied to a situation in which defendant is alleged to have breached its duty to exercise ordinary care

> to prevent unauthorized persons from opening the box. This is a specific duty that defendant assumed in the contract, and it formed the heart of the parties' agreement. A party cannot promise to act in a certain manner in one portion of a contract and then exculpate itself from liability for breach of that very promise in another part of the contract. [Citations.] Here, plaintiffs have received nothing in return for their rental fee if they cannot hold defendant to its contractual obligation to exercise ordinary care to prevent unauthorized persons from accessing their safety deposit boxes." *Id*. at 65.

¶ 39 The supreme court concluded by holding "that the exculpatory provision is not applicable to an allegation that defendant breached its duty to exercise ordinary care to prevent unauthorized access to the box." *Id*. at 68.

¶ 40 Based on *Jewelers Mutual*, plaintiff argues that we cannot apply the exculpatory language in the rental agreement in favor of defendant—that we must, at a minimum, construe it strictly against the drafter (the bank) and in favor of plaintiff, who had no hand in the drafting of the rental agreement. Thus, she argues, we must read the rental agreement as providing "a duty of care in the operation of its safety deposit area, not just the safety and security of the safe deposit box itself."

¶ 41 For several reasons, we do not agree with plaintiff's interpretation of the rental agreement. Instead, we hold that the contract imposed no duty on defendant to inspect the examination room.

¶ 42 First and foremost, the plain language of the rental agreement leads us to that conclusion. There is one and only one express duty imposed in the rental agreement—to prevent unauthorized access to the safe-deposit box. See *id*. at 64 (interpreting identical rental agreement and noting that "defendant assumes one particular liability" in that agreement, to "exercise

ordinary care to prevent unauthorized persons from accessing the box."). Nowhere in the language is there any mention of securing or inspecting the examination room, or any duty whatsoever beyond protecting the safe-deposit box from tampering. We cannot expand the scope of a contractual duty beyond the plain language of the document. See *Thompson*, 241 Ill. 2d at 449; *Rojas Concrete*, 406 Ill. App. 3d at 480. We simply cannot re-write this contract to say what plaintiff would like it to say.

¶ 43 *Jewelers Mutual* does not assist plaintiff's position. The holding in *Jewelers Mutual* was that the bank could not avoid a duty it *expressly* undertook in the contract—a duty to prevent unauthorized access to the safe-deposit box—by virtue of general exculpatory language elsewhere in the contract. *Jewelers Mutual*, 213 Ill. 2d at 65, 68. Nothing we have said is inconsistent with that decision. We would not hesitate in this case to find that the rental agreement imposed a duty on defendant to prevent tampering of the deposit box. But plaintiff is not seeking to impose that duty, because she now concedes that there was no tampering with the box. Nothing in *Jewelers Mutual* compels us to find a different, unexpressed duty to secure or inspect the viewing room.

¶ 44 And while plaintiff is correct that any ambiguity in a contract must be strictly construed against the drafter of the language (see *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 344-45 (2005)), we do not find the language of the rental agreement to be ambiguous on this question. We acknowledge that the supreme court in *Jewelers Mutual* found the *combination* of the exculpatory language in the first sentence and the express duty imposed in the second sentence to create an ambiguity, but that ambiguity was based on the obvious tension between two contractual provisions that were *both applicable* to the facts of that case. The bank in that case had violated the very duty it had expressly agreed to perform—it allowed

unauthorized individuals to access the deposit boxes. There was no way to reconcile a contractual provision absolving the bank of *all* liability with other language imposing a duty to prevent tampering of the box. See *Jewelers Mutual*, 213 Ill. 2d at 65 ("A party cannot promise to act in a certain manner in one portion of a contract and then exculpate itself from liability for breach of that very promise in another part of the contract.").

¶ 45 That ambiguity is not present in this case. There is no need to consider the first sentence—the general exculpatory language—at all. Our task is to review the contract for any indication that the bank had contractually agreed to secure or inspect the viewing room, and we have found no such indication.

¶ 46 The supreme court, in *Jewelers Mutual*, did not invalidate the exculpatory language in the first sentence. It did not find it unenforceable in every case. It simply held that the general exculpatory language was not applicable in that case, where the allegations of liability directly implicated the *express* duty imposed in the contract. See *id*. at 65 ("the exculpatory provision is not applicable to an allegation that defendant breached its duty to exercise ordinary care to prevent unauthorized access to the box"), 68 ("We hold that the exculpatory provision is not applicable to an allegation that defendant breached its duty to exercise ordinary care to prevent unauthorized access to the box.").

¶ 47 But even if we accepted plaintiff's invitation and voided that exculpatory language in the first sentence in its entirety, we still could not stretch our holding to the place plaintiff asks us to go. Even if that first sentence were judicially deleted, we still would find nothing in the rental agreement that imposes a duty on defendant to inspect the examination room. That language simply does not exist, no matter how many other provisions of the contract were erased from the contract.

¶ 48 Plaintiff also relies on *Pyle v. Springfield Marine*, 330 Ill. App. 1 (1946). In that case, plaintiffs found a $1000 United States Treasury bond on the floor of the room used by safe-deposit box customers to examine the contents of their box. *Id*. at 1-2. Plaintiffs gave the bond to a bank employee but filed a replevin action to recover possession of the bond, contending that it was lost in a public place and was "found property." *Id*. at 1-2. The issue in *Pyle* was which party had the superior right to custody of the bond, the plaintiffs or the bank. The "controlling question" there was whether the location where the bond had been found was a public place or a private place. *Id*. at 6. The court concluded that the bank's safety deposit department had the characteristics and attributes of a private place; thus, the bank had the superior right to possession and custody of the bond until the lawful owner could be ascertained. *Id*. at 6-7. The court reasoned as follows:

> "The bank maintained its safety deposit department for the accommodation of a limited number of persons who paid a rental fee, and in so doing, the bank incurred certain possible liabilities and had certain duties imposed upon it, in *providing a safe place for storage of the boxes*, and in *preventing unauthorized persons from gaining access to the contents*. In furtherance of its plan of protecting its lock box patrons and also in protecting itself from incurring liability, it located its safety deposit department entirely separate and apart from its public banking room, barred the entrance with a locked metal door, and placed an attendant in charge who required registration of all lock box patrons who desired entrance. Under these circumstances, can it be said that this was a public place? We believe not. The manner of operation and control was highly restrictive. A limited class of persons was licensed to enter under circumstances

> giving the deposit vault department the characteristics and attributes of a private place. As such, any property either lost or mislaid in the department properly was deliverable to the bank as agent or trustee for the true owner, whether known or unknown." *Id*. at 6.

¶ 49 The issue in *Pyle* was not whether the bank owed a particular duty, and the court's general reference to "certain duties" does not support plaintiff's argument regarding defendant's duty. There was no alleged breach of any duty in *Pyle*, whereas plaintiff's theory here is that defendant allowed someone to steal her money. But, more importantly, *Pyle* did not involve a breach of contract action, nor the interpretation of a contract. *Pyle* provides no support for plaintiff.

¶ 50 We therefore reject plaintiff's argument that defendant owed a contractual duty to inspect the examination room after plaintiff had completed her business with the safe-deposit box.[3]

¶ 51 As we find no duty in the first instance to inspect the viewing room, plaintiff obviously cannot establish that defendants breached that non-existent duty.

¶ 52 In its oral ruling, the trial court appeared to base its grant of summary judgment primarily on the lack of evidence that defendant breached any duty it owed to plaintiff, though the court did note, in denying plaintiff's motion to reconsider, that it had trouble understanding how the lost money would be "the bank's responsibility," at least suggesting that the duty question was part of its ruling. In any event, plaintiff fully briefed the duty question, and we may affirm a grant of summary judgment on any basis appearing in the record, regardless of whether it was

[3] In her motion to reconsider the entry of summary judgment in the circuit court, plaintiff alluded to, but did not develop, a theory of voluntary undertaking—that the bank voluntarily assumed a duty to inspect the examination room through its custom and practice. That argument was never fully developed below and is not raised on appeal, so we will not further consider it.

the trial court's basis for ruling and regardless of whether the trial court's reasoning was correct. *Siegel Development, LLC v. Peak Construction LLC*, 2013 IL App (1st) 111973, ¶ 110.

¶ 53 III. CONCLUSION

¶ 54 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 55 Affirmed.