THIRD DIVISION
March 28, 2018

No. 1-17-0734

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HARRIET NUZZO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
Cross-Appellee,	)	
	)	
v.	)	No. 16 L 7211
	)	
J & J EXHIBITORS SERVICE, INC.; EDLEN ELECTRICAL EXHIBITION SERVICES OF ILLINOIS, LLC; and KELSO-BURNETT CO.,	)	
	)	Honorable
Defendants-Appellees,	)	William E. Gomolinski,
Cross-Appellants.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County granting summary judgment in favor of defendants is affirmed. The evidence failed to raise a genuine issue of material fact as to whether any defendant had a duty to plaintiff with regard to item that caused plaintiff's injury or whether any defendant breached a duty to plaintiff by failing to inspect the area in which defendants worked. The trial court failed to state its reasons for denying a motion for Rule 137 sanctions and the record is insufficient for this court to determine whether the trial court's order is an abuse of discretion; therefore, the trial

court's judgment denying defendants' motions for sanctions is vacated and remanded for further proceedings.

¶ 2 Plaintiff, Harriet Nuzzo, filed a complaint in negligence against defendants, J & J Exhibitors Service, Inc. (J&J), Edlen Electrical Exhibition Services of Illinois, LLC (Edlen), and Kelso-Burnett Co. (Kelso) to recover for damages she sustained while working in an exhibition space following an exhibition for which defendants were the general service contractor (J&J) and electrical contractor (Edlen and Kelso as subcontractor of Edlen). Defendants moved for summary judgment on plaintiff's complaint, and defendants Edlen and Kelso filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013) on the grounds plaintiff's complaint was not well-grounded in fact or warranted by law because plaintiff previously filed the same complaint against defendants but voluntarily dismissed it after discovery revealed no evidence defendants owed a duty to plaintiff, breached a duty to plaintiff, or proximately caused plaintiff's injuries. Following a hearing the trial court granted summary judgment in favor of defendants and denied defendants' motions for sanctions. For the following reasons, we affirm in part and vacate in part and remand for further proceedings consistent with this order.

¶ 3 BACKGROUND

¶ 4 On September 15, 2011, plaintiff, Harriet Nuzzo was employed by the Metropolitan Pier & Exposition Authority (MPEA) as a carpenter at McCormick Place convention center in Chicago. McCormick Place is comprised of multiple buildings containing several convention spaces, including the "Skyline Ballroom." The Skyline Ballroom is divisible into five separate rooms, labeled A through E, using "air walls." Air walls are assembled using large panels that move along tracks in the ceiling of the Skyline Ballroom. A catwalk is suspended from the ceiling of the Skyline Ballroom, and there are electrical junction boxes installed along the

catwalk for the purpose of supplying electrical power to the exhibition space below. The Skyline Ballroom is also equipped with electrical service on the floor of the ballroom. A "cloud ceiling" is suspended above the exhibition floor below the level of the air wall track and catwalk.

¶ 5 The Skyline Ballroom hosted a conference between September 13 and September 14, 2011 (hereinafter "the conference," "the 2011 conference," or "the Women's Conference"). For this conference, the space was divided into two sections: sections A, B, and C of the Skyline Ballroom held the general sessions for the conference, and sections D and E held exhibitors' booths. An air wall separated sections A, B, and C from sections D and E (the C/D air wall). No other air walls were used for the September 13-14 conference. The conference host hired defendant J&J as the general show contractor. As the general show contractor, J&J developed the floor plan for the conference. The conference host hired defendant Edlen to perform electrical services for the conference, and Edlen hired defendant Kelso to perform the actual electrical work. On September 15, after the conference, plaintiff and a co-worker, Michael Orozco, were putting air wall panels in place between sections D and E in the Skyline Ballroom. Plaintiff's panel abruptly stopped, and then something hit her in the head. Orozco saw a sprinkler head cover on the ground near plaintiff. He then looked up and saw a cable lying across the air wall track. Plaintiff's complaint alleges that while she was moving the air wall panel, "the cable caught on the top of the panel, and caused an adjacent fixture located in the ceiling to become dislodged and fall."

¶ 6 Plaintiff's complaint separately alleges that J&J's subcontractors, Edlen and Kelso, were required to "work in the ceiling area or area above the height of the certain portable Air Wall panels located in the Skyline Ballroom at McCormick Place." The complaint alleges J&J, Edlen, or Kelso, by their employees or agents, "left a cable suspended from the ceiling which lay atop or alongside the portable wall track on which the Airwall panels were moved, creating a hazard

in the event the panels were moved." The complaint alleges the following specific negligent acts by all defendants:

> "a. Left cable(s) in the area of the portable wall tracks on the ceiling;
>
> b. Failed to remove all cable(s) from the ceiling in the area of the wall tracks;
>
> c. Failed to properly secure the cable(s) so as to prevent the cables from being caught while walls were being removed;
>
> d. Failed to inspect its work area before finishing its tasks in removing equipment, to make sure it had not allowed any cables or other equipment to remain and potentially create an unnecessary hazard for workers in the Skyline Ballroom."

The complaint also alleged defendants failed to follow McCormick place rules with respect to housekeeping and/or allowing equipment to remain on the worksite and failed to warn plaintiff of the hazard. Plaintiff specifically alleged J&J failed to enforce housekeeping rules and safety measures on the job site and failed to properly supervise the work of its subcontractors, including allowing a cable to remain in the area of the air wall panel tracks, creating an unnecessary safety hazard. Finally, plaintiff alleged Edlen and Kelso failed to employ safety measures on the job site.

¶ 7 On September 14, 2016, the trial court entered a case management order setting the case for status on the filing of summary judgment motions. Defendants filed motions for summary judgment supported by several depositions. Edlen and Kelso also filed motions for sanctions against plaintiff pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 8 Cathleen Murphy testified, in pertinent part, that she has been an account executive for J&J for approximately 20 years and is a one-fourth owner of the company. Murphy referred to a document called an Exhibitor Appointed Contractor Form or EAC agreement. The EAC agreement is a request from J&J to McCormick Place for permission to work in the facility. J&J

had one EAC agreement that covered all of its events at McCormick Place. Murphy did not know whether J&J had planned any events in the Skyline Ballroom prior to the conference at issue in this case. J&J was the general show contractor for the September 2011 event. As the general show contractor, J&J provides the equipment and labor for the event, drafts a floor plan, helps the exhibitors as needed, and removes everything after the event. Murphy testified in her deposition that J&J had staff on site during the conference to assist exhibitors with things they may need for their booth or set up, but any electrical issues would be directed to Edlen personnel, who worked completely independently of J&J personnel. Murphy testified regarding the final invoice for its services to the conference coordinator. The invoice included a line for electrical service. Murphy agreed the item on the invoice stated there was no charge for J&J personnel to assist planning, coordination, and control of Edlen Electrical Exhibition Service. Murphy explained she acted as a liaison between the event coordinator and Edlen for the conference. J&J billed the coordinator for Edlen's service because J&J paid Edlen and the coordinator paid J&J back. The coordinator decided to hire Edlen, not J&J. J&J discussed what was required for the conference with Edlen prior to the conference—Murphy agreed this was the reason Edlen's charges were part of J&J's invoice to the event coordinator: because J&J was working with Edlen to plan the electrical needs for the conference. But during the conference, the conference coordinator would approach Edlen directly if an issue arose. Murphy communicated with Edlen before the conference about electrical needs for the exhibit hall and registration area, and exhibitors made requests for electrical service directly to Edlen. Exhibitors made those requests using an order form. The order forms were provided in an exhibitor service manual compiled and provided to exhibitors by J&J. The invoice included a line for cleaning that read "to clean and clear the area and leave it upon completion of move out, leaving it in a show ready condition." Murphy testified that meant any debris left on the show floor at the

conclusion of the event would be picked up and disposed of but not in places other than the floor. The cleaning referred specifically to the show floor. She later testified the general rule is that after a show, contractors are supposed to remove only whatever equipment and materials they put into the area. Murphy did not know whether anything Edlen did or set up involved the catwalk area or the ceiling area. A separate audio/visual contractor suspended a truss from the ceiling in the general session area in rooms A, B, and C. Murphy testified there were no hanging structures in rooms D and E. J&J employees did not assist in dismantling anything related to the suspended truss in rooms A, B, and C.

¶ 9 Murphy testified regarding an email requesting power at two exhibitor booths. Murphy testified "it was just one electrical drop." The email said to "drop power in the back of the booth." Plaintiff's counsel asked Murphy "Where are we talking about dropping it from?" and Murphy responded "From a floor port." Murphy testified the electrical cable was being plugged into the floor; it did not mean dropping it from the ceiling. After that testimony, Murphy was asked the following questions, and gave the following answers:

> "Q. So do you know if any of the exhibitors or the [conference coordinator] or anyone else that would have been in D and E *** would have required any kind of electrical drop from the ceiling?
>
> A. None.
>
> Q. You know that none did need that or you don't know?
>
> A. I don't believe—I don't know.
>
> Q. So I just want to make sure I'm clear on that and make sure my question was clear.

> You don't know whether or not any exhibitor or the [conference coordinator] or anyone else in D and E needed some sort of electrical wire or something dropped from the ceiling down to the booth, right?
>
> A. No, there were no—it was all ground supported electrical services.
>
> Q. So everyone in D and E had ground?
>
> A. Correct."

¶ 10 Murphy was on site at the conference and is certain she never saw any kind of electrical cable or rigging cable or truss that was suspended in the air in the D and E sections. Murphy did not know where the lights on the truss in A, B, and C were plugged in or whether there were any cables for the truss to the ceiling. Murphy testified about different requirements for electrical service in rooms D and E. Those requirements included power for computers, monitors, a coffee station, and speakers. Murphy testified all of those electrical requirements would have been provided by plugging into the floor. Murphy did not see anything in the electrical requirements in rooms D and E that required any overhead work. Murphy confirmed there was no overhead electrical work done in rooms D and E for the conference at issue, and there were no rigging cables or trusses used in rooms D and E for the conference. J&J did not supervise or direct how the take down or set up of electrical equipment was to be done. Prior to setting up the conference J&J performed a visual inspection of the floor for prior damage. Murphy did not go up into the catwalk and did not particularly look for electric or rigging cables that might have been left behind. J&J employees only break down their own equipment and load trucks. Murphy testified Edlen could not have run wires from rooms A, B, and C into D and E to access electric points because the air wall was in place between them.

¶ 11 Michael Wickens is a regional vice president for Edlen. He believed that the conference at issue in this case was the first show Edlen worked at McCormick Place. Wickens testified he

worked with Murphy to set up the services for the conference. He did not remember if his agreement to provide services for the conference was with J&J or with the conference coordinator. Kelso was Edlen's labor source for this conference to perform any work on-site that required an electrician. Wickens did not remember using Kelso before this conference. He oversaw their work at the conference. Edlen's contract with Kelso stated Edlen would provide management and supervisors who will direct and control the installation of electrical distribution services and any other electrical work. The contract also stated Edlen would train Kelso personnel on how to install and remove power equipment. If a Kelso employee was doing something that was not safe, Wickens could direct them to do it in a safe manner. Wickens testified the type of work Edlen was hired to do and did for the conference was to install temporary electrical lines to bus ports in the overhead structure of the facility, but that description does not cover "everything and everywhere that we would get the power from." Those bus ports are located in a duct system in the catwalk area above the air wall track.

¶ 12 Wickens also testified Edlen assisted in raising a truss in the general session area in rooms A, B, and C, but there were no trusses or anything in the air at all in rooms D and E. Wickens testified that to raise the truss above the stage, chain motors are secured to eye bolts permanently affixed in the ceiling of the Skyline Ballroom. The chains run straight to the eye bolt. Those motors are then attached to the truss with cables or straps. The motor includes chains, and when the motor is activated, the truss is raised. Power is connected to the truss while it is still lowered. The audio/visual contractor supplied the truss and chain motor. The management company for McCormick Place supplied a lift for a Kelso/Edlen employee to get up to the eye bolt to secure the chain motor. Wickens testified that for this event, the power was brought from the backstage area and fed up into the truss system from the ground. There were no wires or anything on the truss that ran into the ceiling where the bus ports were for this

installation. All the power for the lights and the equipment on the truss was being provided through a distribution system which was sitting on the ground. Wickens testified regarding two booths in the exhibit area in rooms D and E that needed power and stated that power would have come from the floor. There were no electrical services that were requested for any of the booths in rooms D and E that required running electrical cables into the ceiling.

¶ 13 Wickens testified there were no other trusses or any other cables, chains, or any other material that was run up into the ceiling. All of the power that was being set up or supplied by Edlen in D and E was all floor. Wickens testified it was possible to run cables over the top of an air wall that is closed as was the air wall between rooms C and D, but he stated he "would never do that" because it is not safe. He later testified you would not run a line from the A, B, C area over to the D, E area because "you want to have *** the point where you can energize and de-energize right there by your power, so no, you wouldn't do that." Wickens inspected the floor for potential hazards but did not go into the catwalk area. Wickens also testified the breakdown procedure was that "Everything that we brought in we take out." His breakdown inspection was also limited to the floor area.

¶ 14 Bill Ahlgren was the general foreman for Kelso at the conference. Ahlgren's recollection was that the conference was the first time Kelso worked in the Skyline Ballroom. Ahlgren looked at a diagram of the conference floor and testified

> "in the conference area—in the booth areas, all the power there is either on the walls or in the floor. So everything is brought out from the floor or from the walls to power these booths. And over in the stage area, on the back wall here, they have boxes where they have 100-, 200-amp services that are near the floor. You bring cables out of there. And then behind the stage is where they had all their control boxes, and we just power into them."

He stated that if a booth was in the middle of the floor the power came from the floor and Kelso taped down the carpet so attendees would not trip. When asked if he was familiar with the term "dropping power in the context of working in the Skyline Ballroom" Ahlgren replied "Well, dropping power would be coming from the ceiling then." He was then asked the following question and gave the following answer:

> "Q. Okay. Is that anything you did in preparing for doing work for this project?
>
> A. No. No. We had no overhead power."

¶ 15 Ahlgren testified Kelso used a lift for the truss over the stage. Kelso employees put the truss together and hooked the chains to the existing connection point (which he called chokers or anchor points) which hang straight down through the cloud ceiling. He stated nothing is installed, everything "is existing that we hook to." Ahlgren described the connection points as permanent steel cables that hang from the ceiling and are approximately six-feet long. Kelso only used the chains on the chain motor during the conference—they did not use any cables for the truss. No overhead electrical work was performed for the conference. Ahlgren testified overhead power would be used if there was not enough power on the floor, for example if a higher voltage was needed. Ahlgren testified no electrical service was run over the air wall between rooms C and D. There would be no reason for anyone from Edlen or Kelso to be up in the ceiling in rooms D and E because they did no overhead work and they did not use any rigging cable for this conference.

¶ 16 Ahlgren testified Kelso did all of the manual labor associated with the truss. When Kelso tore down after the conference, the steel chains on the motors were clipped off of the points and taken away. Ahlgren testified Kelso took all of its guidance on work from Edlen. At no time during the conference did anyone from Kelso have occasion to use the catwalks in the Skyline Ballroom and Ahlgren was not aware that any employee of any entity did. Ahlgren was asked if

he saw sprinkler heads above or below the cloud ceiling. He stated he though the sprinkler heads were level with the cloud ceiling and continued:

> "It's hard to visualize. I remember there were a couple of rings on the floor. So these things fall all the time. In any commercial building, you'll find these on the floor. They're not the screw-in type. If they are pressure fit, they come loose because the ceiling tiles flex and over a period of time they just fall out."

¶ 17 Arthur Hill gave a deposition in which he testified he had just begun employment as a general manager for Edlen in September 2011. Hill worked at the same conference for Edlen the following year after the 2011 conference at issue in this case. He did not have a recollection of the 2011 conference at issue here. Hill testified regarding a work order for what was to be installed for the 2011 conference. A portion of the work order refers to "overhead distribution and special equipment." That portion of the work order contains notations that Hill testified represent 1500 feet of cable (five 300-foot cables) used to carry 200 amps of electricity. Hill testified that "overhead distribution" means "if it came from the ceiling, from the bus work in the ceiling" but not specifically the Skyline Ballroom's capabilities with overhead power. Rather, the notation "could be any exhibit floor in a major ballroom at McCormick Place" or Navy Pier. Hill then stated:

> "In this case, nothing is coming from the ceiling, due to the fact the only type of power in the ceiling is 480 volts. And if that was the case, they would have a transformer marked on here. So what they--I would--since then, I know the ballroom inside and out with electrical, that would have come from the floor paneling—from a wall panel, actually."

There was no transformer marked on the work order. Based on what was not listed on the work order, Hill testified:

> "it would be listed, because it's a special piece of equipment that changes the voltage. It's a step-down transformer. Changes it from 480 volts to 208 volts. And if--and to do that, there would be multiple pieces of equipment that would have to be added to--if they were to utilize ceiling power. So this tells me that this was all from the floor power."

Hill also testified that if ceiling power were used the cable usage would be much less.

¶ 18 Hill was employed by Edlen for shortly over one year. In that time, he testified Edlen did have occasion to use the overhead power supply in the Skyline Ballroom, but he could not recall for which shows Edlen used overhead power. Hill also testified about an email requested to "drop power in the back of the booth" for two booths in the exhibition room of the conference. Hill was asked what the terminology "drop power" means. The following colloquy ensued:

> "A. It's where they want the power placed in their booth, or in this case, the back of the booth.
>
> Q. And drop; what does drop mean?
>
> A. They refer to drops as the electrical cord, so in this case, they would want the power drop at the back of the booth so they would put the electrical cord at the back of the booth.
>
> Q. Is there any significance to using the verb drop in terms of dropping power from ceilings, or would that also be used if you were going to get it from the floor or the wall?
>
> A. Yeah, you could use that for--it's a slang, basically.
>
> Q. And its slang--is it slang just for dropping power from the ceiling, or is it power--
>
> A. Just anywhere.

* * *

> Q. Where would it come from though? Can you tell just by looking at this line where it would come from?
>
> A. Yes. In this case, it would be the floor port, because that room's equipped with floor ports."

Hill disagreed with Ahlgren's statement that it was common to see sprinkler head caps on the floor of the Skyline Ballroom. Hill also testified that the bus ports in the ceiling were "for much higher power." Hill testified that in his time at Edlen, to get power to items affixed to a truss, the power Edlen put in would be "down on the floor." When Edlen would utilize overhead power the cables would "come down to the floor and then go into a transformer, and then it would be to the distro. That goes out to the speakers and lights, *et cetera*." He stated he did not know of any dropped cables in this case (although he stated he did not recall anything from the 2011 conference), but when cables are dropped, "sometimes it's straight down off the catwalk; you go straight down. Some cases, you pin it back. It all depends on the room setup." If the cables did have to be pinned back, it would not be uncommon from them to run across air wall tracks. Hill had worked on shows where he had to take power across the ceiling and in some of those cases it crossed the air wall tracks.

¶ 19 Michael Orozco testified in his deposition that on the day of plaintiff's accident he, plaintiff, and another employee were tasked with setting up an air wall in the Skyline Ballroom. Orozco assigned the other employee to remove the air wall panels from their storage pocket and push them out to Orozco and plaintiff. Plaintiff took the first panel out of the storage pocket and started across the ballroom and Orozco followed with the second panel. As Orozco was pushing his panel plaintiff "abruptly stopped." Orozco estimated that plaintiff had gotten approximately 20 feet across the ballroom before she "stopped dead." Orozco later said "Panels just don't stop

like that." He stopped his panel. Orozco testified his panel did not strike plaintiff. He asked her what was wrong. Plaintiff told Orozco something hit her in the head. He did not see it happen. He saw a sprinkler head cover on the floor next to plaintiff. Orozco got a flashlight and looked up and he saw "the cable crossing the track." He testified he believed it was a rigging cable and stated the cable was right underneath the track with no slack. He later described the cable as wrapped around the track and stated he did not know to what or where the ends of the cable were connected on either end. Orozco later testified he knew it was a rigging cable because "that's what they use in the ceiling" to secure trusses.

¶ 20 Orozco called the MPEA house electricians to remove the cable so he could set the wall. Orozco and his team had walls to set in other rooms, so they left the Skyline Ballroom to set air walls in other rooms. Approximately 20 to 30 minutes after plaintiff told Orozco something hit her on the head, she told him she felt nauseous and he took her to a first aid station in the building. He filled out an accident report. Orozco's accident report states the accident occurred in the D/E area of the Skyline Ballroom and that plaintiff was moving an air wall, the air wall caught onto a cable in the ceiling hitting a decorative sprinkler head cover. Orozco testified he never saw any cable come into contact with a sprinkler cap to cause the cap to come off the ceiling, nor did he see the cable come into contact with the air wall panel. Orozco never had any problems with the air wall panel ceiling tracks before plaintiff's accident and never heard of anyone else having such problems.

¶ 21 Plaintiff testified Orozco was pushing the first panel and she was behind him pushing her panel. Plaintiff testified they were each pushing their panels when Orozco's panel "jarred and made a big noise and went into my panel ***. Plaintiff testified she believes her panel and a tool she was carrying hit her because she was bruised, and then the sprinkler head fell on her. Later plaintiff testified the panel she was pushing did not stick on something in the track or get stuck

but the panel Orozco was pushing did. Regarding how she was actually injured from Orozco's wall panel becoming jammed, plaintiff testified Orozco's panel must have bounced back into her panel, but plaintiff did not know for sure that happened. She stated: "I don't know if it did. It had to have for me to get jammed the way I did. I don't know." Later, she said: "All I know is that he was moving the panel, we heard a big noise, and I was in back of him and the panel jammed. And it was real effective because it jammed—it had to hit my panel. That's all I know. I'm not sure."

¶ 22 Following a hearing, the trial court granted summary judgment in favor of all defendants and denied defendants' motions for Rule 137 sanctions. This appeal followed.

¶ 23 ANALYSIS

¶ 24 Plaintiff raises two arguments on appeal. First, plaintiff argues a genuine issue of material fact exists as to whether electrical workers (a) left their own cable in the ceiling area or (b) failed to perform an adequate pre-event or post-event inspection and clean-up thereby allowing a cable to remain in the ceiling area. (Edlen does not dispute that it would be responsible for the acts of Kelso employees.) Second, plaintiff argues a genuine issue of material fact exists as to whether J&J failed to perform an adequate post-event inspection and clean-up, thereby allowing a cable to remain in the ceiling area. "To recover in a negligence action, plaintiff must prove sufficient facts to establish a duty on the part of the defendant, a breach thereof and that plaintiff's damages were proximately caused by that breach." *McKenna v. AlliedBarton Security Services, LLC*, 2015 IL App (1st) 133414, ¶ 22. "Whether a duty exists in a particular case is a question of law for the court to decide. [Citation.] On the contrary, whether a defendant breached the duty and whether the breach was the proximate cause of the plaintiff's injuries are factual matters for the jury to decide, provided there is a genuine issue of

material fact regarding those issues. [Citation.]" *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006).

> "[T]his court has long recognized that 'every person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act, and such a duty does not depend upon contract, privity of interest or the proximity of relationship, but extends to remote and unknown persons.' [Citations.] Thus, if a course of action creates a foreseeable risk of injury, the individual engaged in that course of action has a duty to protect others from such injury. This does not establish a 'duty to the world at large,' but rather this duty is limited by the considerations discussed above. [(That is, whether a plaintiff and a defendant stand in such a relationship to one another that the law imposes upon the defendant an obligation of reasonable conduct for the benefit of the plaintiff; which is itself a "shorthand description" of the four factors the court considers when determining whether a duty exists.)] An independent 'direct relationship' between parties may help to establish the foreseeability of the injury to that plaintiff *** but is not an additional requirement to establishing a duty in this context." *Simpkins v. CSX Transportation., Inc.*, 2012 IL 110662, ¶ 19.

¶ 25 Defendants argue on appeal the trial court properly granted summary judgment in their favor because the evidence of record leaves no genuine issue of material fact that defendants did not owe plaintiff a duty and/or did not breach a duty to plaintiff. In this case, plaintiff specifically alleges defendants performed overhead work for the 2011 conference in the Skyline Ballroom and that "course of conduct" created a foreseeable risk of injury to plaintiff. Defendants, in effect, dispute engaging in any act or course of conduct that would give rise to a

duty to plaintiff; specifically defendants deny performing overhead electrical or rigging work in rooms D and E in the Skyline Ballroom or leaving a cable in the ceiling area.

> "We review the entry of summary judgment on a *de novo* basis, giving no deference to the trial court. [Citation.] Summary judgment is considered a drastic remedy and should only be granted when the pleadings, depositions, and affidavits on file demonstrate that there is no genuine issue as to any material fact as a matter of law. While plaintiff certainly bears a burden on summary judgment to provide real issues of fact, she is not required to prove her case on summary judgment, and only needs to present facts that arguably entitle her to proceed to a trial on the merits. [Citation.]" *McKenna*, 2015 IL App (1st) 133414, ¶ 20.

¶ 26 A. Whether defendants had a duty to plaintiff.

¶ 27 Plaintiff argues there is sufficient circumstantial evidence to raise a genuine issue of material fact as to whether Edlen or its subcontractor Kelso physically left one of its cables in the ceiling area. The circumstantial evidence on which plaintiff relies is: (1) Edlen/Kelso was the only electrical contractor for the conference; (2) defendants "utilized at least 1,500 feet of electrical cable for overhead connections to equipment near the ceiling area, and installed these cables [in the ceiling area of the Ballroom] around the tracks of the air walls;" (3) electrical cables used in overhead connections often cross air wall tracks. It is undisputed that Edlen was the electrical contractor hired by the event coordinator for the conference and that it hired Kelso to provide labor for the electrical work. In support of its assertion that defendants "utilized at least 1,500 feet of electrical cable *for overhead connections* to equipment near the ceiling area, and *installed these cables around the tracks of the air wall*" (emphases added), plaintiff cites the deposition testimony of Michael Wickens. Specifically, plaintiff quotes in her opening brief portions of Wickens' testimony regarding a "Utility Services Agreement" between Edlen and the

McCormick Place building management company. The Utility Services Agreement permitted Edlen to install temporary lines to the bus ports in the overhead structure, and Wickens testified that installing temporary electrical lines to the bus ports in the overhead structure was the type of work Edlen would need to do for the 2011 conference. Wickens also testified installing electrical lines in the bus ports in the overhead structure was the type of work Edlen does at McCormick Place when it has a show or special event or convention there and that was the type of work that occurred at the 2011 conference and the type of work Edlen was hired to do. From that testimony, plaintiff stated "there is clear evidence that Edlen/Kelso worked in the ceiling area of the Ballroom in order to install electrical connections for the Women's Conference."

¶ 28 Wickens' testimony does not provide circumstantial evidence giving rise to a genuine question of fact as to whether any electrical workers performed overhead work for the 2011 conference and left a cable in the ceiling area of the Skyline Ballroom after the 2011 conference. Initially we note Wickens testified the 1500 feet of cable was used to power the truss in the general session area in rooms A, B, and C. "Circumstantial evidence 'is the proof of certain facts and circumstances from which the jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind.' [Citation.]" (Emphasis omitted.) *Private Bank v. Silver Cross Hospital & Medical Centers*, 2017 IL App (1st) 161863, ¶ 49.

> "To be sufficient to support an inference, circumstantial evidence must show a probability of the existence of the fact to be inferred. [Citation.] Although the circumstantial evidence need not exclude all other possible inferences, it must be of such a nature and so related as to make the conclusion reached the more probable. [Citation.] Where from the proven facts the non-existence of the fact to be inferred appears to be just as probable as its existence, then the conclusion that

> it exists is a matter of speculation, surmise, and conjecture. [Citation.]" *Romano v. Municipal Employees Annuity & Benefit Fund of Chicago*, 402 Ill. App. 3d 857, 864-65 (2010).

The statements plaintiff quoted from Wickens' testimony do not support the inference electrical workers left a cable in the ceiling area after the 2011 conference because his testimony as a whole does not show that fact to be probable. See *Wrobel v. City of Chicago*, 318 Ill. App. 3d 390, 398 (2000) ("the record likewise is insufficient to show the probability of the proffered inference ***. These inferences may be possible, but they are not probable and thus are insufficient as a matter of law."). Wickens made the statements at issue when testifying regarding a general agreement permitting Edlen to provide the electrical service plaintiff states—but plaintiff presented no evidence this service agreement was specific to the 2011 conference.

¶ 29 Nonetheless, Wickens did testify that the type of work Edlen was hired to do and did for the conference was to install temporary electrical lines to bus ports in the overhead structure of the facility; but he also testified that description of the work does not cover "everything and everywhere that we would get the power from." In determining the propriety of an order granting summary judgment, we will not look at the evidence in isolation, but will consider all of the evidence. *Id.* See also, *Morris v. Milby*, 301 Ill. App. 3d 224, 228 (1998) (the defendant's argument summary judgment was proper failed where the defendant isolated one piece of evidence and contested its admissibility but failed to address the remaining evidence supporting the plaintiff's claim). Wickens testified that for this event, the power for the truss that was hung over the stage was brought from the backstage area and fed up into the truss system from the ground. There were no wires or anything on the truss that ran into the ceiling where the bus ports were located. All the power for the lights and the equipment on the truss was being provided through a distribution system which was sitting on the ground. Wickens also testified

regarding two booths in the exhibit area in rooms D and E that needed power and he stated that power would have come from the floor. Wickens testified there were no electrical services that were requested for any of the booths in rooms D and E that required running electrical cables into the ceiling. All of the power that was being set up or supplied by Edlen in D and E was all "floor."

¶ 30 The only reasonable interpretation of Wickens' testimony about the "type" of work Edlen was hired to perform, when read in context of his entire deposition testimony, is that Wickens was referring generally to installing temporary electrical lines from the various sources of power available in McCormick Place, and not stating that Edlen was hired for the 2011 conference specifically to run temporary electrical lines from the bus ports in the overhead structure of the building. From the record evidence as a whole, including Wickens' testimony, the non-existence of the fact to be inferred, *i.e.* that electrical workers performed overhead work for the 2011 conference and left a wire in the ceiling area, is just as probable as its existence. Therefore, the conclusion that electrical workers left a cable in the ceiling area is nothing more than speculation, surmise, and conjecture. *Romano,* 402 Ill. App. 3d at 864-65. "Mere speculation and conjecture is insufficient to defeat a motion for summary judgment. [Citation.]" *Destiny Health, Inc. v. Connecticut General Life Insurance Co.*, 2015 IL App (1st) 142530, ¶ 20.

¶ 31 Plaintiff, relying on the deposition testimony of Arthur Hill, also argues "the electrical cables they used in overhead connections still often cross the air wall tracks, which is exactly what happened here per the MPEA Incident Report." Plaintiff also argues the incident report is evidence that the cable at issue was an electrical cable as opposed to a rigging cable. First, with regard to the incident report, the report states, in part, "Carpenters were moving Mobile Wall between 375 D and 375 E when wall snagged electrical cable dangling from ceiling." The parties dispute the admissibility of the report. Plaintiff claims it is admissible as a business

record. James Nelson, a loss control manager for the McCormick Place management company, testified the report was prepared by Mary Sheridan, a McCormick Place emergency medical services contract employee. Nelson did not know if Sheridan spoke to anyone to get the information in the report. Assuming, *arguendo*, the report is admissible and is evidence an electrical cable was wrapped around the air wall track, it is not evidence that defendants were working in the area and placed it there.

¶ 32 Second, with regard to Hill's testimony, he only testified that in some installations other than the one at issue, electrical cables had crossed air wall tracks. Hill stated he did not know of any dropped cables in this case (although he also stated he did not recall anything from the 2011 conference), but when cables are dropped, "sometimes it's straight down off the catwalk; you go straight down. Some cases, you pin it back. It all depends on the room setup." There is nothing in Hill's testimony that provides evidence an electrical worker placed a cable over the air wall track before or during the 2011 conference.

¶ 33 Plaintiff's statement in her brief, "the electrical cables they used in overhead connections still often cross the air wall tracks," is vague in that it is unclear whether plaintiff means the electrical cables used in overhead connections for the 2011 conference or at other times, especially given Hill's unequivocal testimony, quoted in plaintiff's brief, that "in this particular case, I don't know of any dropped cables." Although Hill did not have a recollection of the 2011 conference, he knew the overhead power connections are used for higher levels of power, and he knew from the records he was shown during his deposition that the level of power supplied by the overhead connections was not needed for the 2011 conference. Hill testified:

> "In this case, nothing is coming from the ceiling, due to the fact the only type of power in the ceiling is 480 volts. And if that was the case, they would have a transformer marked on here. So what they--I would--since then, I know

> the ballroom inside and out with electrical, that would have come from the floor paneling—from a wall panel, actually."

There was no transformer marked on the work order. Based on what was not listed on the work order, Hill testified

> "it would be listed, because it's a special piece of equipment that changes the voltage. It's a step-down transformer. Changes it form 480 volts to 208 volts. And if--and to do that, there would be multiple pieces of equipment that would have to be added to--if they were to utilize ceiling power. So this tells me that this was all from the floor power."

¶ 34 Later in her brief, however, plaintiff writes: "Cables crossing air wall tracks was especially foreseeable for this Women's Conference since more than 1500 feet of electrical cable were used for overhead connections, some of which were run in the vicinity of the ceiling area in Sections D&E." That statement is not supported by the record where Hill testified that if ceiling power was used the cable usage would be much less. Plaintiff has cited to no record evidence that any electrical worker actually did run electrical cables in the vicinity of the ceiling area in rooms D and E for overhead connections to electricity or for any other reason, although there is evidence they could have, if the needs of the conference required it. Plaintiff further argues defendants' assertion they did not use the bus ports in rooms D and E "is contradicted by their own records." Specifically, plaintiff relies on a line (a vertical line not a line of text) on an exhibit which allegedly "indicates 'dropping power' from the ceiling bus ports in Sections D & E for the Women's Conference." The exhibit is a floor plan for the conference prepared by defendant J&J. Plaintiff notes a general floor plan for the Skyline Ballroom does not include this straight line, and that one of the exhibitor booths that requested to "drop power in the back of the booth" is in the vicinity of this straight line. The exhibit to which plaintiff refers for this

argument, plaintiff's exhibit 10, follows the exhibits to the deposition of Wickens in the record; however the exhibit plaintiff relies on for her argument is not the "Wickens Exhibit 10" Wickens was questioned about during his deposition. We can discern no deponent or testimony associated with the "plaintiff's exhibit 10" on which plaintiff relies for this argument. Plaintiff cites only to the exhibit, and cites no testimony or other evidence to support her conjecture that this line "most likely indicates 'dropping power' from the ceiling bus ports." Defendant Kelso argues this line represents "a structure in the service corridor behind the Skyline Ballroom, but Kelso also cites only to the exhibit and to no other record evidence to support its characterization of the line on a diagram. (A different exhibit showing the same floor diagram but to a larger scale does state clearly that the "line" is in a service corridor.) Without evidence, we can treat plaintiff's argument as no more than plaintiff's surmising a meaning that supports her position, which we must reject.

¶ 35 Plaintiff also relies on a purported work order for Edlen to use a forklift to hang lights "somewhere on top of, or above, [a] particular exhibit booth." Plaintiff argues: "These lights were hung well above ground level, most likely near the ceiling area, given that a forklift was required instead of a ladder. In order to run power to these lights, Defendants would have either had to utilize the ceiling bus ports or run cables from a floor panel upward toward the ceiling. Under either scenario, there would have been cables in the vicinity of the air wall track where Plaintiff was injured." Plaintiff calls this assertion a reasonable inference. It is not. "An inference is a conclusion as to the existence of a particular fact reached by considering other facts in the usual course of human reasoning. [Citations.] *** [T] here is a line between reasonable inference and mere speculation." *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 28. "For a party opposing summary judgment to rely on an inference to create the necessary question of fact, the inference sought to be drawn must itself be reasonable based on the evidence

presented." *Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 219 (2001). The inference plaintiff seeks to draw is not reasonable and, therefore, must be rejected. Not only would plaintiff's argument fail for the reason stated above, but as pointed out by defendant J&J, the form plaintiff is relying on is not a work order to hang lights. The form states it is an Edlen services order form. The request was for electricity to be delivered to the booth. A section required to be completed for requests for electric distribution under carpet or flooring is completed and the number of electrical outlets requested is also completed. The form includes a diagram of the booth and where the outlets are to be placed. Finally, the section plaintiff stated proves Edlen hung lights above the booth is not completed. The section of the form plaintiff relied on is for "additional electrical work" and lists as an *example* a "forklift to hang lights." However, the area the exhibitor is supposed to use to actually request additional electric service are all blank. We find the evidence is contrary to plaintiff's claims. There is no reasonable inference defendants utilized the bus ports in the ceiling area from the Edlen order form.

¶ 36 Plaintiff argues she does not have to disprove defendants' speculation that the cable that was allegedly on the air wall track at the time of plaintiff's injury may have been there prior to the 2011 conference, but, nonetheless, "there is ample evidence that essentially negates Defendants' theory." We have no need to address plaintiff's argument on this point, however, because we find plaintiff has failed to demonstrate a genuine issue of material fact as to whether defendants had a duty to plaintiff or breached a duty by causing an electrical cable to be across the air wall track. The record evidence is overwhelming that defendants did not use any cables or perform any work in the ceiling area of rooms D and E; and, therefore, defendants could not have placed the cable there.

¶ 37 B. Whether a genuine issue of fact exists as to whether defendants breached a duty by failing to perform an adequate pre-event or post-event inspection and clean-up.

¶ 38 Next, plaintiff argues Edlen and Kelso were negligent in failing to remove the electrical cable "during their own installation for the Women's Conference." Plaintiff also argues that Edlen and Kelso had a duty to inspect their work areas and should have observed an electrical cable in the area, even if it was not their cable." Finally, plaintiff argues there is a genuine factual dispute over whether J&J "negligently failed to remove the cable during the post-event clean-up and inspection."

> "The elements of a cause of action for negligence are: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty; and (3) an injury proximately caused by the breach. [Citation.] *** Whether a duty exists is a question of law to be determined by the court. [Citation.] The four factors courts typically consider in determining whether a duty exists are: (1) the reasonable foreseeability of injury; (2) the likelihood of injury; (3) the magnitude of the burden of guarding against injury; and (4) the consequences of placing that burden on the defendant. [Citation.]" *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1051-52 (2010).

¶ 39 Edlen argues, in part, there is no evidence to support finding it had a duty to inspect the entire facility upon completion of its work, and it "was certainly under no obligation to inspect the entire ceiling and air wall tracks in the Skyline Ballroom." Edlen argues it could not have foreseen that a cable would interfere with the movement of an air wall because MPEA inspects and maintains the air wall panels and tracks and sprinkler system. Edlen states the burden of imposing a duty on it to inspect the entire Skyline Ballroom "would be impractical and unfeasible." Kelso similarly argues "nothing in the record suggests that Kelso owed a duty" to plaintiff to inspect "an area in which it performed no overhead work for any errant cable, even if that cable did not belong to Kelso or Edlen." Kelso states that while it "was obligated to perform

its work in a safe manner, it was not responsible for inspecting all aspects of the Skyline Ballroom, specifically areas in which it performed no work." Kelso states it had no notice of any potentially dangerous condition because it did no overhead work anywhere in the area of plaintiff's accident. In reply, plaintiff points to Edlen's manual requiring daily jobsite inspections.

¶ 40 The legal basis plaintiff suggests for imposing a duty on Edlen or Kelso to inspect the air wall tracks is Edlen's safety manual. Edlen's safety manual states that inspections are performed "[d]aily at job sites." Plaintiff's argument against Edlen and Kelso is primarily factually premised upon plaintiff's assertion they worked in the ceiling area. Illustrative of plaintiff's position is her argument: "Looking at the record as a whole, Edlen/Kelso was the only contractor working in the ceiling area in the Skyline Ballroom for the Conference. Despite the strong inference that the cable in question was Edlen/Kelso equipment, Edlen/Kelso would still be obligated to inspect its general work area (overhead in the ceiling) during the post-event inspection and clean-up, and should have observed or reported the electric cable laying atop an air wall track. Edlen's own manual required daily jobsite inspections."

¶ 41 Illinois has adopted[1] section 324 of the Restatement (Second) of Torts, which reads as follows:

> "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if

[1] See *Pippin v. Chicago Housing Authority*, 78 Ill. 2d 204, 210-11 (1979).

(a) his failure to exercise reasonable care increases the risk of such harm, or

(b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance of the other or the third person upon the undertaking." Restatement (Second) of Torts § 324A (1965).

The scope of the alleged duty in this case is limited by the extent of the undertaking. See *B.C. v. J.C. Penney Co., Inc.*, 205 Ill. App. 3d 5, 14 (1990). We construe "job site" to be the areas in which Edlen is working. Plaintiff's assertion Edlen and Kelso were working in the ceiling area of rooms D and E is belied by the record. The evidence leaves no genuine question of fact that the only work done in the vicinity of the ceiling was in rooms A, B, and C when Kelso hung the truss from the permanent rigging points affixed to the structure of the Skyline Ballroom and that Edlen and Kelso did not use any electrical or rigging cables in the ceiling area in performing their work. All of plaintiff's arguments Edlen/Kelso did wiring work or work involving cables in the vicinity of the ceiling are based on interpretations of the evidence that are unreasonable, surmise, or speculation. Plaintiff repeatedly states "more than 1500 feet of electrical cable were used for overhead connections." But the testimony concerning the 1500 feet of cable clearly established that cable was used to power the truss, and that the truss was wired on the ground from ground-based power sources, then it was raised. Plaintiff misinterpreted an example on an order form of the type of work Edlen could perform for exhibitors as an actual request for that work, then surmised from that false premise that work was "likely near the ceiling area" and "there would have been cables in the vicinity of the air wall track." Additionally, plaintiff speculates that the air wall tracks in rooms D and E were visible from the rigging points used for

the truss in rooms A, B, and C (even though the air wall track is above the cloud ceiling panels)—and that J&J erected overhead signage for the conference in rooms D and E.

¶ 42 "Although a plaintiff is not required to prove his case at the summary judgment stage, in order to survive a motion for summary judgment, the nonmoving party must present a factual basis that would arguably entitle the party to a judgment." *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). Any undertaking by Edlen and Kelso to inspect their "jobsite" did not include inspection of the ceiling area except, possibly, the permanent rigging points used to suspend the truss in rooms A, B, and C. Therefore, the safety manual is of no help to plaintiff. Plaintiff has failed to present a factual basis that would arguably entitle her to a judgment Edlen or Kelso breached a duty to inspect the air wall track in rooms D and E. Therefore, plaintiff's claim Edlen and Kelso breached their duty because they should have discovered the offending cable fails.

¶ 43 C. Whether a genuine issue of fact exists as to whether J&J breached a duty to perform an adequate post-event inspection and clean-up.

¶ 44 Plaintiff argues separately that there is a factual question as to whether J&J failed to perform an adequate post-event inspection and clean up. Plaintiff cites Murphy's testimony as evidence J&J had a duty to inspect the air wall tracks. Murphy testified J&J's responsibility included removing all equipment and material at the conclusion of the conference and performing an inspection to ensure that all equipment and materials were removed. Plaintiff argued "[e]vidence of breach is elicited via Cathy Murphy's admissions that J&J's post-Event inspection was done only on the ground." Specifically, J&J did not go into the ceiling area and did not inspect the air wall track. Plaintiff argues defendant's duties "arise from ordinary negligence and per its agreement with" the conference coordinator. J&J argues Murphy's testimony pertained to an informal inspection performed by J&J prior to beginning work in the Skyline Ballroom to check for prior damage to the facilities. J&J also notes that the only

document plaintiff cites in support of her argument against it, an invoice from J&J for post-event clean up to return the ballroom to "show ready" condition, "pertains to clean-up that is janitorial in nature, not an inspection."

¶ 45 Assuming for the sake of plaintiff's argument that the invoice represents a contractual obligation, we note "[a] n allegation of negligence based upon a contractual obligation, although sounding in tort rather than contract, is nonetheless defined by the contract. [Citations.] Thus, the scope of duty is determined by the terms of the contract. [Citation.] A defendant's duties will not be expanded beyond the scope of duties required by the contract." *Eichengreen v. Rollins, Inc.*, 325 Ill. App. 3d 517, 525 (2001). "Whether a duty exists in a particular case is a question of law for the court to determine. [Citation.] Thus, defendant's duties, determined as a matter of law, were established by the contract's terms. A defendant is not liable under a negligence theory for failure to perform acts outside the scope of the contract." *Id.* at 525-26.

¶ 46 The pertinent portion of the invoice reads as follows: "Cleaning. Pre-show cleaning before show opening. Removal and disposal of all excess shipping cartons, papers, etc… Daily vacuuming of aisle, removal of trash and maintenance of entire area. Final clearance and cleaning of the entire area upon completion of move out leaving the exhibit hall in show ready condition." At her deposition, Murphy was asked to describe what "clean and clear the area" and "leaving it in a show ready condition" means. She stated: "Any debris left on the show floor at the conclusion of the event would be picked up and disposed of." She was specifically asked if that included places other than the floor as well and Murphy responded "No." Both by the terms of the "contract" and Murphy's testimony, we agree with J&J that its duty, if any, was janitorial in nature, not to conduct a "safety inspection" of the entire facility.

¶ 47 Plaintiff offers no circumstantial evidence to support expanding J&J's duty in the way she suggests. Plaintiff offers strained interpretations of the evidence and her own speculations to

suggest J&J should have seen the cable on the air wall track. None of plaintiff's arguments are persuasive. She states had J&J "just looked for cables, it would have likely seen and removed them." Not only is this speculation that is not based on a fact of record, Orozco testified he needed to use a flashlight to see the cable that allegedly caused the air wall panel to abruptly stop. J&J's duty, if any, was to clean and inspect the show floor and the equipment it brought in. The evidence is overwhelming that no equipment any defendant brought in would be found in the ceiling area (the chains for the chain motors were affixed to the motors themselves, which were removed). Plaintiff argues that because there was work done in the ceiling area to lift the truss, had J&J inspected the ceiling area "they likely would have seen the cable in the air wall track in Section D&E." Again, that assertion is not only speculative, it ignores the fact there is no evidence workers had to go above the cloud ceiling to connect the chain motor to the rigging point and even if they did, there is no evidence as to what would be visible. The Skyline Ballroom is, by all accounts, quite large. Plaintiff states that as the general show contractor, J&J "should have known that wires are often run at angles" as Hill testified, "[e]specially when more than 1500 feet of cable are used for overhead connections." Plaintiff's argument disregards the fact the 1500 cable on which she leans so heavily was, per the testimony, used to power the truss from the ground, and the testimony that wires can be run at angles did not pertain to this conference. Contrary to plaintiff's assertion, there is not "ample evidence" that overhead connections were used in rooms D and E and nothing to suggest overhead signage was used.

¶ 48 We find plaintiff has failed to establish a genuine issue of material fact that J&J breached a duty by failing to inspect the air wall track or any part of the ceiling area of the Skyline Ballroom. Therefore, there is no question for the jury as to whether J&J's inspection was adequate.

¶ 49 The trial court's judgment granting summary judgment in favor of defendants is affirmed.

¶ 50 D. Whether the trial court should have granted defendants' motion for Rule 137 Sanctions.

¶ 51 Next, we turn to the cross-appeals of Edlen and Kelso (collectively, defendants) arguing the trial court's order denying their motions for sanctions should be reversed. "Rule 137 is intended to prevent the filing of false and frivolous lawsuits. [Citation.] The rule is designed to prohibit the abuse of the judicial process by claimants who make vexatious and harassing claims based upon unsupported allegations of fact or law but not to penalize attorneys or litigants who were zealous but unsuccessful. [Citation.]" *Stiffle v. Baker Epstein Marz*, 2016 IL App (1st) 150180, ¶ 32. "Implicit in [Rule 137] is a requirement that an attorney promptly dismiss a lawsuit once it becomes evident that it is unfounded. [Citations.]" (Internal quotation marks omitted.) *Id.* ¶ 37. "The party seeking sanctions for a violation of Rule 137 bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause. [Citation.]" *Id.* ¶ 32. "[A]n objective determination of reasonableness applies to whether a filed paper was grounded in fact or warranted by existing law. [Citation.] When that portion of Rule 137 is at issue, it is not sufficient that the party honestly believed that the allegations raised were grounded in fact and law. [Citations]" *Id.* ¶ 50. "Since Rule 137 is penal in nature, it must be strictly construed. [Citation.]" *Id.* ¶ 32. "An order granting or denying Rule 137 sanctions is reviewed for an abuse of discretion." *Id.* ¶ 44. "An appellate court should base its review of the trial court's decision on three factors: (1) whether the court's ruling was an informed one; (2) whether the ruling was based on valid reasons [that] fit the case; and (3) whether the ruling followed logically from the stated reasons to the particular circumstances of the case. [Citation.]" (Internal quotation marks omitted.) *Id.* ¶ 32. See also *Wagener v. Papie*, 242 Ill. App. 3d 354, 363-64 (1993).

¶ 52 Defendants argue plaintiff knowingly re-filed her complaint against them with knowledge the allegations in the complaint are not accurate. Plaintiff's complaint alleges, in pertinent part, as follows (with paragraphs renumbered):

> "1. Prior to September 15, 2011, [defendants] performed electrical work in connection with setting up and dismantling electrical and other equipment for certain trade shows at McCormick Place, which required it to work in the ceiling area or area above the height of the certain portable Air Wall Panels located in the Skyline Ballroom at McCormick Place.
>
> 2. Prior to September 15, 2011, [defendants] by its employees or agents, left a cable suspended from the ceiling which lay atop or alongside the portable wall track on which the Airwall panels were moved, creating a hazard in the event the panels were moved.
>
> 3. [Defendants] *** committed one or more of the following negligent acts or omissions:
>
> a. Left cable(s) in the area of the portable wall tracks on the ceiling;
>
> b. Failed to remove all cable(s) from the ceiling in the area of the wall tracks;
>
> c. Failed to properly secure the cable(s) so as to prevent the cables from being caught while walls were being moved;
>
> d. Failed to inspect its work area before finishing its tasks in removing equipment, to make sure it had not allowed any cables or other equipment to remain and potentially create an unnecessary hazard for workers in the Skyline Ballroom;
>
> e. Failed to employ safety measures on the job site;

f. Failed to follow McCormick Place safety rules with respect to housekeeping and/or allowing equipment to remain on the worksite; and

g. Failed to warn Plaintiff of the hazard."

Defendants state plaintiff re-filed the instant complaint after all of the depositions cited in her brief to this court had been completed, at which point plaintiff knew this conference was the first time defendants performed any work in the Skyline Ballroom and that defendants performed no overhead work and used no cables in the area of her accident, therefore plaintiff should be sanctioned for filing a complaint not well-grounded in fact.

¶ 53 We have reviewed the transcript of the hearing on defendants' motions for summary judgment and the trial court's written order granting summary judgment in favor of defendants and denying the motions for sanctions. The parties did not present evidence on the motions for sanctions and the trial court made no findings with regard to defendants' motions. The court merely announced that the motions for sanctions were denied. "When a court is required by law to exercise its discretion, the failure to do so may itself constitute an abuse of discretion, precluding deferential consideration on appeal." *Seymour v. Collins*, 2015 IL 118432, ¶ 50. "Fulfillment of this duty may require a remand for the development of a more enlightening record, which may or may not include express findings of fact." *Turner Investors v. Pirkl*, 338 Ill. App. 3d 676, 683 (2003). In *Pirkl*, the court had the benefit of an evidentiary hearing on a motion for sanctions. *Id.* at 684. In this case, by contrast, there is no record of how plaintiff felt she "had a good faith basis to proceed with the lawsuit." See *id.*

¶ 54 Our supreme court has directed that "the appellate court ought to focus on whether the record provides an adequate basis for upholding the circuit court's decision to deny sanctions, not on the circuit court's specific reasons for doing so." *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16. "[A] record is not inherently insufficient when the circuit court does not

provide its reasons for denying the motion." *Id.* ¶ 19. Nonetheless, "[t]o determine whether such an abuse of discretion has occurred, we "look to the criteria upon which the trial court relied in making its determination of an appropriate sanction. [Citation.]" *American Service Insurance v. Miller*, 2014 IL App (5th) 130582, ¶ 20. In this case, however, we have no record of the criteria upon which the trial court relied. Although the discretion afforded the trial court to determine whether a sanction is appropriate does not preclude this court from independently reviewing the record and finding an abuse of discretion if the facts warrant (*Deutsche Bank National Trust Co. v. Ivicic*, 2015 IL App (2d) 140970, ¶ 25), in this case were we to decide whether the denial of the motions for sanctions was appropriate, we would not be determining whether the trial court abused its discretion but exercising our own. We have no basis from which to determine whether the trial court's ruling was an informed one, whether the ruling was based on valid reasons that fit the case, or whether the ruling followed logically from the stated reasons (there are none) to the particular facts of the case. See *Stiffle*, 2016 IL App (1st) 150180, ¶ 32. While the burden is on the appellant to affirmatively show an abuse of discretion, where "the record contains no support for the discretion exercised, that burden is met." *Clay v. McCarthy*, 73 Ill. App. 3d 462, 465 (1979).

¶ 55 Accordingly, the trial court's order denying defendants' motions for sanctions is vacated. The cause is remanded for either the creation of a record from which this court can determine if the order denying sanctions is an abuse of discretion or for the trial court to state its reasons for denying the motions, or both.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in part, vacated in part, and remanded for further proceedings.

¶ 58 Affirmed in part, vacated in part, and remanded.