

FOURTH DIVISION
June 12, 2014

No. 1-13-2332

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS <i>ex. rel.</i>)	Appeal from the
ILLINOIS DEPARTMENT OF CENTRAL)	Circuit Court of
MANAGEMENT SERVICES,)	Cook County.
)	
Plaintiff and Counterdefendant-)	
Appellant and Cross-Appellee,)	
)	
v.)	No. 11 L 12727
)	
3500 W. GRAND (CHICAGO), LLC,)	
)	Honorable
Defendant and Counterplaintiff-)	Frank B. Castiglione,
Appellee and Cross-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment that barred plaintiff, a state agency, from recovering overpayments it made to defendant under the voluntary payment doctrine is affirmed; the trial court's judgment awarding damages on defendant's counterclaim is reversed because the counterclaim seeks monetary damages

against a state agency and the sovereign immunity statute requires that those claims be filed in the Court of Claims.

¶ 2 The Illinois Department of Central Management Services (CMS) filed a lawsuit against 3500 West Grand, LLC (Grand) seeking to recover overpayments in rent. Grand filed an answer and counterclaim in response to CMS's allegations. The counterclaim sought unpaid rent payments from CMS as well as real estate taxes and interest and damages due under the Prompt Payment Act. See 30 ILCS 540/1 (West 2010). CMS moved to dismiss the counterclaim based on the doctrine of sovereign immunity, but the circuit court denied the motion. Both parties filed motions for summary judgment, and the circuit court found that although CMS had overpaid rent, it was barred from recovering those payments under the voluntary payment doctrine. The circuit court further found that Grand was entitled to recover rent payments that CMS failed to make, but was not entitled to recover the additional interest recoverable under the Prompt Payment Act and real estate taxes also sought by Grand in its counterclaim. For the reasons that follow, we affirm that part of the trial court's judgment denying CMS's claim for overpaid rent under the voluntary payment doctrine; however, we reverse the trial court's judgment granting a money judgment against CMS on the counterclaim because recovery against a state agency is barred under the doctrine of sovereign immunity.

¶ 3 BACKGROUND

¶ 4 On October 19, 1993, CMS executed a lease with Al Ata to rent 13,200 square feet of office space at 3500 W. Grand Ave. in Chicago, Illinois (the property). The lease was a five-year lease and was to run through November 30, 1998. The base rent for the lease was \$9.40 per square foot, but there was an amortized cost of \$5.41 per square foot that was to be paid on top of the base rent for 120 months, amounting to \$16,291.00 per month in rent. "Additional" rent in the form of certain real estate taxes would also be paid, if the following conditions were

satisfied:

"Lessor shall submit to [CMS] a written request for additional rent[] due under this article within 60 days after receipt of the tax bill for reimbursement for the second installment of the taxes due on said property for each lease year. Said request for reimbursement must include copies of actual tax billings for both the base year and the current year supporting the amount requested."

¶ 5 Grand, as the lessor, signed a "Disclosure Statement" as required by the Public Officer Prohibited Activities Act, 50 ILCS 105/3.1, which was incorporated into the lease, listing the following PINs for the rental property: 16-02-400-017, 16-02-400-028, and 16-02-400-032. All of CMS's rent checks were signed by the State's Comptroller and Treasurer and stated: "Payment of interest may be available if the State fails to comply with the [Act]."

¶ 6 The initial lease ran through November 30, 1998, but it was later amended to run from April 1, 1994 to March 31, 1999. Pursuant to the lease, CMS had the option to renew the lease for another five years—from April 1, 1999 to March 31, 2004—pursuant to the same lease terms, except with an increase in rent payments. To exercise this option, CMS had to give 120 days of notice to the lessor of its decision to exercise the option. There was a "holdover" provision in the lease that was to apply in the event CMS did not opt to renew the lease. The "holdover" provision stated that if CMS remained on the property after the expiration of the lease, then the "lease shall continue in force and effect on a month-to-month basis until terminated" and "rent shall be paid in arrears on a prorated basis at the rate paid during the lease term." CMS did not exercise its option to renew the lease, and instead remained on the property as a holdover from

April 1, 1999 until June 30, 2010.

¶ 7 On or about September 2005, Grand purchased the property, and CMS began paying its rent checks as a holdover to Grand instead of A1 Ata. On June 30, 2010, the parties executed a new lease that ran through June 29, 2011. That lease stated that rent was to be paid "at a rate of \$9.89 per square foot, \$10,879.00 monthly."

¶ 8 In March 2009, Grand tendered a written request to CMS for additional rent in the form of real estate taxes relating to PINs 16-02-4000-011, 16-02-400-028, 16-02-400-032 and 16-02-400-035. In the request, Grand acknowledge that pin 16-02-400-035 was not explicitly listed in the "Disclosure Statement." Due to the failure to disclose the PIN, CMS declined to pay the \$65,857.54 in taxes sought by Grand.

¶ 9 Following Grand's request for real estate taxes, CMS discovered that the amortization period of ten years had ended on April 1, 2004, meaning it had been overpaying rent as of April 1, 2004. CMS determined that as of April 1, 2004 it should have been paying \$10,879.00 per month for rent instead of the \$16,291.00 per month it had continued to pay. Accordingly, from September 2005, when Grand took ownership of the property, through November 30, 2009, CMS calculated that it had overpaid Grand by \$303,501.00 in rent payments. CMS ceased paying rent between December 2009 and January 2011 and, during that time, calculated it had abated \$130,790.16 of the amount it believed it had overpaid Grand. CMS then demanded that Grand return \$172,710.84, the amount it calculated to be the remaining balance of the overpaid rent after its abatement. Grand refused to comply with CMS's demand.

¶ 10 In November 2011, CMS filed a complaint in the circuit court of Cook County against Grand. The amended complaint included two claims against Grand: breach of contract and, alternatively, unjust enrichment. The claims sought to recover the amount of rent CMS allegedly

overpaid, minus the amount of rent withheld as abatement, which totaled \$172,710.84.

Paragraph 14 of the amended complaint, which relates to the breach of contract claim, states:

"14. By refusing to return to [CMS] the amount of overpayments, Defendant 3500 W. Grand is in breach of the Lease." Paragraph 16 of the amended complaint, which relates to the unjust enrichment claim, states: "In the alternative, by refusing to refund [CMS] the amount accepted in overpayments for amortization, Defendant 3500 W. Grand has been unjustly enriched to the detriment of [CMS]."

¶ 11 In its answer to the amended complaint, Grand denied that CMS had overpaid any rent. Grand also filed a counterclaim for breach of contract. Grand's counterclaim alleged that CMS failed to pay rent from January 1, 2010 through January 1, 2011 and failed to pay real estate taxes and interest due under the lease pursuant to the Prompt Payment Act. In total, Grand sought a judgment against CMS for \$314,996.25.

¶ 12 CMS moved to dismiss Grand's counterclaim pursuant to section 2-619(a)(1) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619(a)(1) (West 2010)), on the ground that the circuit court lacked subject matter jurisdiction to hear the counterclaim under the doctrine of sovereign immunity. The circuit court denied the motion to dismiss as well as CMS's motion to reconsider its order on the motion to dismiss. The circuit court's order on the motion to reconsider states that "whether the agency's claim necessarily involves determination of an issue a defendant raises is the dispositive factor in determining whether the Counterclaim is defensive or affirmative and ultimately whether the Circuit court may retain jurisdiction of such counterclaim." The order then states that the circuit court retained jurisdiction over Grand's counterclaim because "the nature of the counterclaim requires interpretation of the same contractual provision as required by the Original Claim."

¶ 13 Grand moved for summary judgment pursuant to section 2-1005 of the Code, (735 ILCS 2-1005 (West 2010)), arguing that CMS never overpaid rent at any time based on the plain language of the lease. Alternatively, Grand argued that even if CMS did overpay rent, it was barred from recovering that overpayment under the voluntary payment doctrine. Grand concluded by seeking return of the rent payments that CMS withheld as abatement plus interest on that amount pursuant to the Prompt Payment Act and additional real estate taxes owed under the lease, totaling \$314,996.25.

¶ 14 CMS filed a cross motion for summary judgment. CMS argued that it overpaid rent under the plain language of the lease and was entitled to any overpayment amount that it had not already collected through abatement, which was \$303,501.00 (the amount overpaid) minus \$130,790.16 (the amount already abated) for a total of \$172,710.84. CMS further responded to Grand's motion for summary judgment by arguing that the voluntary payment doctrine was not applicable in this case, that it did not owe Grand additional property taxes because the PIN associated with the request was never disclosed to CMS in the "Disclosure Statement," and that it did not owe interest on the amount abated because the rent checks merely stated that interest "may" be available under the Act and that the Act only applies to payments by the State for "goods or services" and not rent payments under a lease.

¶ 15 On June 20, 2013, the circuit court entered a written order granting in part and denying in part the parties' cross-motions for summary judgment. The trial court found that the language of the lease was plain and clear in that the amortization rate of rent was only to be paid for 120 months, which meant that CMS overpaid its rent from September 2005 (when Grand took over ownership) to November 2009 since it continued to pay the amortization rate. However, the court held that CMS was barred from recovering the overpaid amount under the voluntary

payment doctrine. The circuit court also found that CMS was not required to pay interest on the money it abated and was not required to pay the additional real estate taxes associated with the undisclosed PIN. The circuit court then awarded Grand the rent payments it sought in its counterclaim that CMS failed to make (the amounts that CMS claimed it abated after learning it was overpaying in rent), which included real estate taxes and interest. CMS appeals the following trial court rulings: (1) the denial of its motion to dismiss Grand's counterclaim on the grounds of sovereign immunity; (2) the denial of its motion for summary judgment; and (3) the judgment in favor of Grand on its counterclaim. Grand cross-appeals the trial court's refusal to order CMS to pay real estate taxes on the undisclosed PIN and interest on the amount of rent that CMS withheld on the judgment in its favor on the counterclaim.

¶ 16 ANALYSIS

¶ 17 Motion to Dismiss

¶ 18 CMS argued in the trial court that Grand's counterclaim should be dismissed based upon the doctrine of sovereign immunity because the counterclaim sought an affirmative judgment against the State. The trial court disagreed and found that CMS's claims necessarily involved determination of an issue raised in Grand's counterclaim since "the counterclaim requires interpretation of the same contractual provision as is required by the Original Claim," and denied CMS's motion to dismiss and motion to reconsider.

¶ 19 On appeal, CMS maintains that Grand's counterclaim should have been dismissed as being barred by the doctrine of sovereign immunity. In turn, Grand argues that the trial court made the correct ruling because the counterclaim was filed in defense of CMS's claims and those claims necessarily involved the determination of an issue in Grand's counterclaim. Grand also notes that it would be a waste of judicial resources for it to bring its claims in a separate action

before the Court of Claims. For the reasons that follow, we find that the trial court erred when it did not dismiss Grand's counterclaim on the grounds of sovereign immunity.

¶ 20 A section 2-619 motion admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that avoids or defeats that claim. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10. We review *de novo* the court's decision to grant or deny a section 2-619(a)(1) motion to dismiss. *Country Mutual Insurance Co. v. D & M Tile, Inc.*, 394 Ill. App. 3d 729, 735 (2009).

¶ 21 The Illinois Constitution of 1970 abolished the doctrine of sovereign immunity “[e]xcept as the General Assembly may provide by law.” Ill. Const. 1970, art. XIII, § 4. The State Lawsuit Immunity Act provides that “the State of Illinois shall not be made a defendant or party in any court,” except as provided in the Court of Claims Act. 745 ILCS 5/1 (West 2010).

¶ 22 Both parties cite *People ex. rel. Manning v. Nickerson*, 184 Ill. 2d 245 (1998) and *Alden Nursing Center—Lakeland, Inc. v. Patla*, 317 Ill. App. 3d 1 (2000), in support of their arguments. Although Grand argues that *Nickerson* supports its position that the counterclaim should not be dismissed, and CMS argues that *Alden Nursing Center* supports its position that the counterclaim should be dismissed, we find that both cases support the dismissal of the counterclaim based on the doctrine of sovereign immunity.

¶ 23 In *Nickerson*, our supreme court held that where the state files complaint in a circuit court and the defendant files a counterclaim that requires a resolution of some of the same factual questions raised in the original complaint, the counterclaim must be dismissed if it seeks affirmative relief against the state. See *People ex. rel. Manning v. Nickerson*, 184 Ill. 2d 245 (1998). In *Nickerson*, the Director of the Illinois Department of Conservation filed a lawsuit in the circuit court against Nickerson seeking: (1) an injunction to have Nickerson remove property

that he built on alleged state property, and (2) damages based on Nickerson's use of that property. Nickerson in turn filed a counterclaim requesting: (1) a judicial determination of the boundary line between his property and the state's property, (2) ejectment of the state from his land, and (3) monetary damages for the common law torts of trespass, emotional distress and slander of title. Our Illinois supreme court ultimately determined that Nickerson's request for a judicial determination of the boundary line was properly before the circuit court and did not have to be dismissed, but that his common law claims had to be dismissed.

¶ 24 As for the request for a judicial determination of land boundaries, the court found that because "the central issue in the case is who owns the land in question" (*Nickerson*, 184 Ill. 2d at 250), "the property claims raised by the defendant are defensive in nature and are asserted for the purpose of defeating the state's action, and not for the purpose of obtaining an affirmative judgment against the state." *Id.* at 249-50. The court concluded, "[b]ecause the circuit court has jurisdiction to decide the state's request for an injunction and money damages, which necessarily involves a determination of the defendant's claimed ownership interest, sovereign immunity does not bar the circuit court from exercising jurisdiction over the defensive, property claims raised in the counterclaim." *Id.* at 250.

¶ 25 In regard to the common law claims, the court noted that the counterclaim seeks affirmative relief against the state and, since the counterclaim seeks affirmative relief, those claims must be brought in the Court of Claims. The court held that "[t]he doctrine of sovereign immunity [] is not about fairness,"¹ and although the state filed the original case in the circuit

¹ Further on the issue of fairness, the court commented: "Does it matter then that the defendant has raised these tort claims by way of counterclaim in litigation initiated by the state in the circuit court? On one level, as the appellate court concluded, fairness seems to dictate that the defendant should be allowed to raise *any* counterclaim in the circuit court: the state started this fight in the circuit court and must live with the consequences. The doctrine of sovereign

court, the claims were essentially tort claims that had to be brought before the Court of Claims pursuant to 705 ILCS 505/8(d) (West 1996). *Nickerson*, 184 Ill. 2d at 249.

¶ 26 In *Alden Nursing Center*, the Illinois Department of Public Aid sought to recover overpayments it made to ten nursing homes. In response, the nursing homes requested that any amounts overpaid by the Department of Public Aid be set off against the Department of Public Aid's alleged underpayments to the nursing homes. The trial court allowed the nursing homes to present evidence of the alleged underpayments and the Department of Public Aid appealed. On appeal, the appeals court reversed finding that the claims for underpaid amounts were barred from being heard in the circuit court pursuant to the doctrine of sovereign immunity and had to be brought before the Court of Claims. The court found that "[t]he nursing homes' claims are contractual in nature and therefore the Court of Claims Act gives the Court of Claims exclusive jurisdiction to consider them." *Alden Nursing Center*, 317 Ill. App. 3d at 10 (quoting 705 ILCS 505/8(b) (West 1996)). Further, the court noted that the "[d]etermination of whether the Department made the alleged overpayments did not in any manner involve determination of whether the Department also at other times underpaid for other services for other patients." *Id.* The court held that the Court of Claims Act creates the Court of Claims as the "exclusive" forum for resolving lawsuits against the state. 705 ILCS 505/8 (West 1996). Specifically, the Court of Claims has "exclusive jurisdiction to hear and determine * * * [a]ll claims against the State founded upon any contract entered into with the State of Illinois." 705 ILCS 505/8(b) (West 1996). Further, "[t]he Court of Claims has exclusive jurisdiction over the claims assigned to it

immunity, however, is not about fairness. The legislature has conferred immunity upon the state, and the legislature—only the legislature—can determine when and where claims against the state will be allowed. With regard to tort claims, the legislature's directive could not be more clear: tort claims against the state must be brought in the Court of Claims. See 705 ILCS 505/8(d) (West 1996)." *Nickerson*, 184 Ill. 2d at 248-50.

by the Court of Claims Act, even if the claims appear in a counterclaim." *Alden Nursing Center*, 317 Ill. App. 3d at 10.

¶ 27 Here, CMS filed its breach of contract and unjust enrichment claims against Grand seeking to recover amounts of rent it claimed it overpaid Grand. In response, Grand answered the complaints by asserting that CMS did not overpay any rent and, alternatively, Grand filed a breach of contract counterclaim seeking rent payments from CMS along with interest pursuant to the Prompt Payment Act for the failed rent payments and real estate taxes. While the claims and counterclaim in this case may both involve interpretation of the same contract, Grand's counterclaim seeks affirmative relief against the state based on a contract with the state, and such relief must be sought in the Illinois Court of Claims. 705 ILCS 505/8(b) (West 2010) ("The [Court of Claims] shall have exclusive jurisdiction to hear and determine the following matter: ***(b) All claims against the State founded upon any contract entered into with the State of Illinois"); see *Alden Nursing Center*, 317 Ill. App. 3d 1. Therefore, we find that the trial court erred when it did not dismiss Grand's counterclaim based on the doctrine of sovereign immunity. Accordingly, we must reverse the judgment of \$130,790.16 in Grand's favor on its counterclaim.

¶ 28 Cross Motions for Summary Judgment

¶ 29 In this case the parties filed cross-motions for summary judgment. In CMS's motion, it argued that it was entitled to recover all excess rent payments to Grand which were not abated. In Grand's motion, it argued that it was entitled to all past due rent that had been withheld by CMS as well as interest on the overdue amount and real estate taxes on the property. Summary judgment is proper where the "pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). "[I]t is

well settled that when the parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record."

Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill. 2d 281, 308-09 (2010). In reviewing a grant of summary judgment, we must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the nonmoving party. *Mills v. McDuffa*, 393 Ill. App. 3d 940, 948 (2009); *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). The reviewing court applies a *de novo* standard of review to summary judgment orders. *Hagen v. Distributed Solutions, Inc.*, 328 Ill. App. 3d 132, 137 (2002); *Kajima Construction Services, Inc. v. St. Paul Fire & Marine Insurance Co.*, 227 Ill. 2d 102, 106 (2007).

¶ 30 As an initial matter, we agree with the circuit court that CMS overpaid rent to Grand between September 2005 and November 2009. The lease unequivocally states that the amortization rate, which was an additional \$5.41 per square foot, was to remain in effect for 120 months (or 10 years). After those 120 months, CMS was no longer required to pay the amortization rate. If we were to adopt Grand's position, that no overpayments were made, it would render the 120-month clause in the lease meaningless. *Atwood v. St. Paul Fire & Marine Insurance Co.*, 363 Ill. App. 3d 861, 864 (2006); *Smith v. Burkitt*, 342 Ill. App. 3d 365, 370 (2003) (stating that "[a] court is not to interpret an agreement in a way that would nullify any of the provisions in the agreement or render them meaningless"). Because CMS continued to pay the amortization rate after the 120-month period, it overpaid its rent.

¶ 31 Whether the voluntary payment doctrine applies to bar recovery is a more complicated issue to resolve here given that CMS raises its current defense to the doctrine for the first time on appeal and that defense is unsupported by the record. Under the voluntary payment doctrine, absent fraud, duress or mistake of fact, money voluntarily paid on a claim of right to the payment

cannot be recovered on the ground that the claim was illegal." *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 801 (2007); *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1 (2005). The voluntary payment doctrine applies to any cause of action which seeks to recover payment of a claim of right, whether that claim is premised on a contractual relationship or a statutory obligation. *Ramirez*, 371 Ill. App. 3d at 801; *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843 (1995).

¶ 32 In the circuit court, CMS initially argued in its response to Grand's motion for summary judgment that the voluntary payment doctrine did not apply at all in this case because it "doesn't apply to money due under a contract." In its reply brief in the circuit court, CMS then argued that the payments were inadvertently made, thus falling under the mistake-of-fact exception to the voluntary payment doctrine. In its appellate brief, though, CMS argues for the first time an exception to the voluntary payment doctrine, which was that the voluntary payment doctrine does not apply when the government is seeking to recover payments of public funds. Specifically, in its appellate reply brief, CMS clarifies its argument on appeal by insisting that it is not invoking the mistake-of-fact exception, and that "[t]he actual exception invoked by CMS is that the [voluntary payment] doctrine does not apply in situations where a government employee makes an unauthorized payment of public funds." Appellant Reply Br., at 8. CMS never made this argument in the circuit court and, accordingly, the circuit court never ruled on this argument.² Generally, arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal. *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1109 (2006); *Mabry v. Boler*, 2012 IL App (1st) 111464 ("theories of defense not raised in the trial court cannot be raised for the first time on appeal."); *Eagan v. Chicago Transit*

² Noticeably absent from the circuit court's written order on summary judgment is any argument regarding the voluntary payment doctrine and government monies since that argument was never raised in the circuit court.

Authority, 158 Ill. 2d 527, 534 (1994) ("A point not raised in the trial court cannot be raised for the first time on appeal."). As such, CMS's argument that the voluntary payment doctrine doesn't apply to unauthorized payments of public funds made by government agencies, is waived.

¶ 33 Waiver aside, CMS failed to provide evidence to support the argument that a government official made an unauthorized payment. Appellant Reply Br., 8 ("The actual exception invoked by CMS is that the [voluntary payment] doctrine does not apply in situations where a government employee makes an *unauthorized* payment of public funds." (Emphasis added.)). The affidavit of Susan Kim, the Deputy General Counsel, Property Management and Claims, which was attached to CMS's motion for summary judgment, states that: "CMS inadvertently made monthly payments to 3500 W. Grand between September, 2005 and December, 2009 at the level of \$15.30/sq. ft." However, there is nothing in the record supporting why or how these payments were made—just that they were "inadvertently" made over a period of more than four years. Although the payments are alleged to be inadvertent, there is no evidence the payments were unauthorized. Thus, even if we were ignore the fact that CMS waived this argument, there is no factual support in the record for CMS's contention that the overpayments were unauthorized. As such, CMS's argument that the unauthorized payment exception to the voluntary payment doctrine must fail because CMS provided no factual support for such a claim.

¶ 34 Last, CMS argues that the voluntary payment doctrine cannot be applied to its unjust enrichment claim. The theory of unjust enrichment is an equitable remedy based upon a contract implied in law." *Nesby v. Country Mutual Insurance Co.*, 346 Ill. App. 3d 564, 566 (2004). "Because it is an equitable remedy, unjust enrichment is only available when there is no adequate remedy at law." *Id.* at 567. In other words, "[w]here there is a specific contract that governs the

relationship of the parties, the doctrine of unjust enrichment has no application.” *Id.* at 567.

"[W]hile a plaintiff may plead breach of contract in one count and unjust enrichment and promissory estoppel in others, it may not include allegations of an express contract which governs the relationship of the parties, in the counts for unjust enrichment and promissory estoppel.” *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005) (dismissing the plaintiff's unjust enrichment count where it incorporated allegations of a valid and enforceable agreement into that count and also attached a copy of the relevant contracts to the complaint).

¶ 35 First, because CMS incorporated its breach of contract allegations into its unjust enrichment claim in its amended complaint at law, and because we may affirm the judgment of the trial court based on any reason as long as a factual basis was before the court, we find that the trial court properly dismissed CMS's unjust enrichment claim as it was not properly plead in the amended complaint. *Dunlap v. Alcuin Montessori School*, 298 Ill. App. 3d 329, 338 (1998) ("a reviewing court may affirm a correct decision for any reason in the record regardless of the trial court's basis for the decision."); see *Guinn*, 361 Ill. App. 3d at 604-05.

¶ 36 Second, as recognized by the circuit court, both parties acknowledge the existence of the contract at issue here and neither party challenges its validity. As such, there is a valid contract in place that "governs the relationship of the parties," thus barring any unjust enrichment claims. See *Nesby*, 346 Ill. App. 3d at 566-67. While CMS argues that the contract does not contain a provision that states exactly what is to occur when overpayments are made, CMS relies on the terms of the lease to determine that an overpayment was in fact made and uses those terms in support of its breach of contract claim, confirming that the lease contains provisions regarding the amount of rent due at any given time. Since there is an adequate remedy at law and a contract that governs the relationship of the parties, CMS's unjust enrichment claim was properly

dismissed. Accordingly, we affirm the circuit court's ruling that CMS is barred from recovering overpaid rent.

¶ 37 CONCLUSION

¶ 38 For the above reasons, we affirm the trial court's ruling entering judgment for Grand on CMS's amended complaint, but reverse the trial court's judgment for Grand on its counterclaim.

¶ 39 Affirmed in part; reversed in part and counterclaim dismissed on the basis of sovereign immunity.