2013 IL App (1st) 120403-U

FIRST DIVISION
APRIL 22, 2013

No. 1-12-0403

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BMO HARRIS BANK N.A., f/k/a HARRIS N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
VICTOR GARCIA, LUPE'S BODY SHOP, INC.,	)	
	)	No. 10 CH 35697
Defendants-Appellants,	)	
	)	
and	)	
	)	
BANCO POPULAR NORTH AMERICA, UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,	)	Honorable
	)	Margaret A. Brennan and
	)	Daniel Patrick Brennan,
Defendants.	)	Judges Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The rulings of the trial court are affirmed because the court did not err in granting summary judgment in favor of the plaintiff and denying the defendant's multiple motions to strike the plaintiff's affidavits.

¶ 2 This appeal arises from an August 24, 2011 order which granted the motion for summary

judgment filed by plaintiff-appellee Harris N.A. (Harris).[1] On appeal, defendants-appellants Victor Garcia (Garcia) and Lupe's Body Shop, Inc. (Lupe's Body Shop) (collectively, Garcia and Lupe) argue that: (1) the trial court erred in granting summary judgment in favor of Harris, and denying their motions to strike the affidavits in support of the motion for summary judgment; and (2) the trial court erred in denying their motions to strike the affidavits in support of Harris' fee petition. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 Garcia is the president and owner of Lupe's Body Shop. On November 10, 2003, Garcia executed a promissory note (the 2003 note) in the principal amount of $618,928, payable to Harris. Additionally, on November 10, 2003, Garcia executed a mortgage confirming a lien against real property located at 2440 South Kedzie Avenue, Chicago, Illinois (the property). The property is the principal place of business of Lupe's Body Shop. On that same day, Lupe's Body Shop executed a commercial guaranty through which it promised to pay Harris all debts that Garcia owed to Harris.

¶ 5 On April 15, 2004, Lupe's Body Shop executed an additional promissory note (the 2004 note) in the principal amount of $50,000, payable to Harris. The 2004 note was a demand note through which Lupe's Body Shop agreed to pay Harris all outstanding principal and interest upon Harris' demand. The 2004 note provided a line of credit which allowed Lupe's Body Shop to request advance sums of money up to the principal amount of $50,000. Also, on April 15, 2004, the mortgage was modified to include the amount due under the 2004 note. On that same day, Garcia

[1]After the complaint in this case was filed, plaintiff Harris N.A. changed its named to BMO Harris Bank N.A. For the purpose of clarity, we will refer to the plaintiff as "Harris."

executed a commercial guaranty through which he promised to pay Harris all debts that Lupe's Body Shop owed to Harris.

¶ 6 On April 3, 2009, Lupe's Body Shop executed a promissory note (the corporate note) which was issued "in substitution and replacement for, but not in novation or discharge of, [the 2004 note]." The corporate note was also a demand note that provided a line of credit which allowed Lupe's Body Shop to request advance sums of money up to the principal amount of $50,000. On November 10, 2009, Garcia executed a promissory note (the Garcia note) which was issued "in substitution and replacement for, but not in novation or discharge of, [the 2003 note]." Pursuant to the terms of the Garcia note, Garcia promised to pay Harris all outstanding principal and interest by the maturity date of February 10, 2010.

¶ 7 According to Harris, Garcia failed to make payment of all amounts due under the Garcia note by the maturity date of February 10, 2010. On August 12, 2010, Harris made a demand upon Lupe's Body Shop for all amounts due under the corporate note. Harris claims that Lupe's Body Shop failed to make payment for the amount due under the corporate note.

¶ 8 On August 18, 2010, Harris filed a complaint in the circuit court of Cook County against Garcia, Lupe's Body Shop, Banco Popular North America, and unknown owners and non-record claimants.[2] The complaint consisted of the following counts: count I for mortgage foreclosure against Garcia, Lupe's Body Shop, Banco Popular North America, unknown owners and non-record claimants; count II for breach of contract against Garcia; count III for breach of contract against

[2]Banco Popular North America and unknown owners and non-record claimants are not parties to this appeal.

Lupe's Body Shop; count IV for breach of guaranty against Lupe's Body Shop; and count V for breach of guaranty against Garcia. The complaint also sought attorneys' fees and court costs. On November 18, 2010, Harris filed a motion for entry of judgment of foreclosure and sale. Incorporated within that motion was a fee petition for reimbursement of attorneys' fees and court costs. Attached to the fee petition was an affidavit executed by Daniel Rubin (Rubin), counsel for Harris. In his affidavit, Rubin provided a summary of the expenses incurred by his law firm in connection with representing Harris in the instant case. On January 6, 2011, Garcia and Lupe filed an answer to Harris' complaint. On January 20, 2011, Harris filed an updated affidavit executed by Rubin in support of Harris' fee petition.

¶ 9 On March 8, 2011, Harris filed a second updated affidavit executed by Rubin in support of Harris' fee petition. On April 12, 2011, Harris filed a motion for summary judgment against Garcia and Lupe. Attached to the motion for summary judgment was an affidavit executed by Steven Kloberdanz (Kloberdanz), vice president of Harris. Also attached to the motion for summary judgment were copies of computer records detailing the payment summaries of the various promissory notes executed by Garcia and Lupe.

¶ 10 On May 26, 2011, Garcia and Lupe filed a response to the motion for summary judgment which included a motion to strike Kloberdanz's affidavit. Garcia and Lupe argued that Kloberdanz's affidavit should have been stricken because Kloberdanz failed to attach sworn or certified copies of all the papers upon which he relied; and Kloberdanz's affidavit consisted of conclusions instead of facts. Attached to the response was a counter affidavit executed by Garcia. In his affidavit, Garcia stated that he was unable to reconcile the figures stated in Kloberdanz's affidavit. He also requested

correct loan ledgers for the Garcia note and the corporate note. Also on May 26, 2011, Rubin executed a third updated affidavit in support of Harris' fee petition.

¶ 11 On June 1, 2011, the trial court granted Harris leave to file a supplemental affidavit. On June 14, 2011, Harris filed a supplemental affidavit executed by Kloberdanz. In his affidavit, Kloberdanz provided detailed descriptions of his personal knowledge of the Garcia account, Harris' routine business practices, Harris' methods of record keeping, and Harris' computer system. Attached to the affidavit were several records from Harris' computer system which, according to Kloberdanz, stated the payment history of the corporate note and Garcia note; and stated the amounts of principal, interest, and late fees due under the corporate note and Garcia note. On June 28, 2011, Garcia and Lupe filed a response to Harris' fee petition which included a motion to strike Rubin's third updated affidavit in support of Harris' fee petition. Subsequently, Rubin filed a fourth updated affidavit in support of Harris' fee petition.[3] In his affidavit, Rubin provided a summary of the expenses incurred by his law firm in connection with representing Harris in the instant case. On August 10, 2011, Kloberdanz executed an updated affidavit to provide the current amounts due under the corporate note and Garcia note as of that date. Kloberdanz stated that he had personal knowledge of the updated amounts.

¶ 12 On August 24, 2011, the trial court entered an order which, in pertinent part, granted summary judgment in favor of Harris, and denied Garcia and Lupe's motion to strike Kloberdanz's affidavit. Also, on August 24, 2011, the trial court entered a judgment of foreclosure and sale. On

[3]Despite careful review of the record, we are not able to determine the date on which this affidavit was filed.

September 23, 2011, Garcia and Lupe filed a motion to reconsider. Within the motion to reconsider, Garcia and Lupe argued that the trial court should strike Rubin's fourth updated affidavit in support of Harris' fee petition. They also argued that the trial court should strike Kloberdanz's supplemental affidavit. On December 6, 2011, the trial court denied Garcia and Lupe's motion to reconsider. On January 25, 2012, the trial court entered an order confirming the sale of the property. On February 2, 2012, Garcia and Lupe filed a timely notice of appeal. Therefore, this court has jurisdiction to consider Garcia and Lupe's arguments on appeal pursuant to Illinois Supreme Court Rule 303 (eff. June 4, 2008).

¶ 13 ANALYSIS

¶ 14 We determine the following issues on appeal: (1) whether the trial court erred in granting summary judgment in favor of Harris, and denying Garcia and Lupe's motions to strike Kloberdanz's affidavits; and (2) whether the trial court erred in denying Garcia and Lupe's motions to strike Rubin's affidavits in support of Harris' fee petition.

¶ 15 As a preliminary matter, we note that the parties disagree as to the standard of review that this court should apply. Harris argues that when reviewing the trial court's decision regarding a motion to strike an affidavit, this court applies the abuse of discretion standard of review. *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 349-50 (2010). Harris also points out that when reviewing an award of attorneys' fees, this court applies the abuse of discretion standard of review. *Shoreline Towers Condominium v. Gassman*, 404 Ill. App. 3d 1013, 1024 (2010). Garcia and Lupe argue that when reviewing the trial court's grant of a motion for summary judgment, this court applies the *de novo* standard of review. *Williams v. Manchester*, 228 Ill. 2d 404,

417 (2008).

¶ 16 Generally, this court applies the abuse of discretion standard of review to a trial court's decision to strike an affidavit. *Jackson v. Graham*, 323 Ill. App. 3d 766, 773 (2001). However, when this court reviews the trial court's ruling on a motion to strike an affidavit, which motion was made in conjunction with the court's ruling on a motion for summary judgment, the appropriate standard of review is *de novo*. *Id*. Therefore, we apply the *de novo* standard of review in considering whether the trial court erred in granting summary judgment, and denying Garcia and Lupe's motions to strike Kloberdanz's affidavits.

¶ 17 Regarding the trial court's ruling on Harris' fee petition, we note that *Shoreline*, the case that Harris cites in support of its argument that the abuse of discretion standard should be applied, actually supports the application of the *de novo* standard of review. In *Shoreline*, this court distinguished between the standard of review that is applied to the trial court's ruling that an award of attorneys' fees was proper, and the standard applied to the *amount* of attorneys' fees awarded. *Shoreline*, 404 Ill. App. 3d at 1024. This court stated that the trial court's decision determining whether an award of attorneys' fees was proper is reviewed *de novo*. *Id*. Moreover, our supreme court has held that although the abuse of discretion standard is generally applied to a trial court's decision to award attorneys' fees, the *de novo* standard is appropriate when the award of attorneys' fees is granted in conjunction with a ruling on a motion for summary judgment. *Employers Insurance of Wasau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 160 (1999). Thus, we apply the *de novo* standard of review in considering whether the trial court erred in denying Garcia and Lupe's motions to strike Rubin's affidavits. We note that regardless of whether we applied the abuse of

discretion standard or the *de novo* standard to the issues in this case, the disposition of this case would be the same.

¶ 18 We first determine whether the trial court erred in granting summary judgment in favor of Harris, and denying Garcia and Lupe's motions to strike Kloberdanz's affidavit.

¶ 19 Garcia and Lupe present several arguments in support of their position that the trial court erred in granting summary judgment in favor of Harris, and denying their motions to strike Kloberdanz's affidavits. Specifically, Garcia and Lupe argue that both Kloberdanz's initial affidavit and supplemental affidavit violated Illinois Supreme Court Rule 191 (eff. Jan. 4, 2013) because they consisted of conclusions instead of facts. Also, Garcia and Lupe argue that Kloberdanz's affidavits violated Rule 191 because he failed to attach sworn or certified copies of the correct loan balance ledgers. Garcia and Lupe point out discrepancies within Kloberdanz's affidavits and contend that the discrepancies show that the affidavits were in violation of Rule 191. Additionally, Garcia and Lupe assert that Kloberdanz's affidavits violated Rule 191 because they failed to lay the proper foundation for the admission of the computer records attached to the affidavits. Garcia and Lupe argue that because of the Rule 191 violations, Kloberdanz's affidavits should have been stricken by the trial court. Thus, Garcia and Lupe contend that they raised genuine issues of material fact, and summary judgment was improper in this case.

¶ 20 In response, Harris argues that the trial court did not err in granting summary judgment and denying Garcia and Lupe's motions to strike Kloberdanz's affidavits. Harris argues that it is well settled that Rule 191 is satisfied if it appears as a whole that an affidavit is based upon the personal knowledge of the affiant, and there is a reasonable inference that the affiant could competently testify

to its contents at trial. *Kugler v. Southmark Realty Partners III*, 309 Ill. App. 3d 790, 795 (1999). Harris contends that Kloberdanz's detailed factual assertions within his affidavits show that he is competent to testify at trial as to the contents of the affidavits. Harris also argues that summary judgment was proper because Garcia and Lupe failed to dispute any evidence introduced by Harris. Specifically, Harris points out that Garcia and Lupe argued that there were discrepancies in Kloberdanz's affidavits, however, they never presented any evidence to contradict Kloberdanz's records. Harris argues that when deciding whether a genuine issue of material fact exists, the trial court "must accept an affidavit as true if it is uncontradicted by counteraffidavit or other evidentiary materials." *Id*. Harris asserts that Garcia and Lupe only claimed that they were unable to reconcile the figures stated in Kloberdanz's records, but they did not present any evidence that contradicted Kloberdanz's records. Harris also contends that in making their argument, Garcia and Lupe only focused on a few of the many computer records that were attached to Kloberdanz's affidavits, and did not dispute the records which contained the updated amounts due under the Garcia note and corporate note.

¶ 21 Further, Harris argues that Kloberdanz's affidavits sufficiently laid the proper foundation for the admissibility of computer records. Harris argues that Kloberdanz stated that the computerized payment system that generated the records attached to his affidavits was routinely used; that the records were reliable; that he had authority to access the computerized system; and that he obtained the loan ledgers from the computerized system. Thus, Harris argues that Kloberdanz's affidavits did not violate Rule 191 and the trial court was correct in granting summary judgment and denying Garcia and Lupe's motions to strike Kloberdanz's affidavits.

¶ 22 "Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the nonmoving party is entitled to judgment as a matter of law." *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741, 744 (2010). Rule 191 governs the requirements of affidavits used in support of a motion for summary judgment. Rule 191 states, in pertinent part:

> "Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure *** shall be made on the personal knowledge of the affiants; shall set forth with particularity facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013).

¶ 23 A Rule 191 affidavit "is actually a substitute for testimony taken in open court and should meet the same requisites as competent testimony." *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1025 (1992). An affidavit that is conclusory and does not include facts upon which the affiant relies is in violation of Rule 191. *Landeros v. Equity Property and Development*, 321 Ill. App. 3d 57, 63 (2001). However, Rule 191 is satisfied if it appears, from the document as a whole, that the affidavit is based upon the personal knowledge of the affiant and there is a reasonable

inference that the affiant could competently testify to its contents at trial. *Piser*, 405 Ill. App. 3d at 349. "Generally, when only portions of an affidavit are improper under Rule 191(a), a trial court should only strike the improper portions of the affidavit." *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 129 (2003).

¶ 24 When seeking to admit a business record into evidence, the proponent of the record must lay the proper foundation for admission, which includes: (1) a showing that the record was made in the regular course of business; and (2) a showing that the record was made at or near the time of the event or occurrence. *Gullino v. Economy Fire and Casualty Co.*, 2011 IL App (1st) 102429, ¶ 27; Ill. S. Ct. R. 236(a) (eff. Aug. 1, 1992). Additionally, proper foundation for computer-generated records "is established when it is shown that the equipment which produced the record is recognized as standard, the entries were made in the regular course of business at or reasonably near the happening of the event recorded and the sources of information, method and time of preparation were such as to indicate their trustworthiness and to justify their admission." *Riley v. Jones Brothers Construction Co.*, 198 Ill. App. 3d 822, 829 (1990).

¶ 25 We do not agree with Garcia and Lupe's argument that the trial court erred in granting summary judgment in favor of Harris, and denying their motions to strike Kloberdanz's affidavits. Garcia and Lupe first argue that Kloberdanz's affidavits violated Rule 191 because they consisted of conclusions instead of facts. However, it is clear that both Kloberdanz's initial affidavit and supplemental affidavit provided detailed factual averments regarding his familiarity with Harris' record keeping systems, and the promissory notes attributed to Garcia and Lupe. In both affidavits, Kloberdanz described the way Harris' records are made and kept. Kloberdanz stated that he was in

charge of the loan files related to the promissory notes executed by Garcia and Lupe. He then stated that he had personally reviewed all of Harris' business records, including its electronic records, which related to the promissory notes executed by Garcia and Lupe. After establishing the basis of his knowledge of the promissory notes at issue in this case, Kloberdanz described the amounts owed by Garcia and Lupe under the Garcia note and corporate note. These statements are clearly facts based on Kloberdanz's personal knowledge, and not mere conclusions. Therefore, Garcia and Lupe's argument that Kloberdanz's affidavits consisted of conclusions instead of facts is without merit.

¶ 26 Next, Garcia and Lupe argue that Kloberdanz's affidavits were in violation of Rule 191 because he did not attach sworn or certified copies of the correct loan balance ledgers on which he relied. Specifically, Garcia and Lupe attack two documents: exhibit 7 of Kloberdanz's initial and supplemental affidavits which was described by Kloberdanz as "the full payment history of the corporate note"; and exhibit 11 of Kloberdanz's initial and supplemental affidavits which was described by Kloberdanz as "the full payment history of the Garcia note." Garcia and Lupe argue that Kloberdanz relied on these documents in executing his affidavits, and because the documents were not sworn or certified, Kloberdanz's affidavits were in violation of Rule 191 and should have been stricken.

¶ 27 Although Garcia and Lupe are technically correct in that exhibit 7 and exhibit 11 were not sworn or certified as required under Rule 191, these were not the only documents upon which Kloberdanz relied. As previously discussed, when only portions of an affidavit are improper under Rule 191, the court should only strike the portions that are improper. *Roe*, 339 Ill. App. 3d at 129. Even without considering exhibit 7 or exhibit 11, the other parts of Kloberdanz's affidavits complied

with Rule 191. In his affidavits, Kloberdanz swore to his personal knowledge of the promissory notes executed by Garcia and Lupe. He stated that he was the Harris employee in charge of Garcia and Lupe's loans, and that he personally reviewed the related records. Kloberdanz's statements alone, without exhibit 7 or exhibit 11, are sufficient to support the order granting summary judgment. While exhibit 7 and exhibit 11 add support to Kloberdanz's statements, it is clear that he did not rely on these documents in making his statements. The sworn statements in Kloberdanz's affidavits are not a product of the un-sworn documents. These statements are the product of Kloberdanz's personal knowledge, and provide the depth and substance of the affidavits. Assuming that exhibit 7 and exhibit 11 should have been stricken, Kloberdanz's affidavits as a whole did not violate Rule 191. Notably, Garcia and Lupe do not attack the validity of any of the promissory notes, mortgages, or guaranties attached to Kloberdanz's affidavits. They also do not attack other exhibits, such as exhibit 14, which described the amount owed by Garcia and Lupe under the Garcia note and corporate note as of June 1, 2011. The figures in exhibit 14 were also included within the text of Kloberdanz's sworn supplemental affidavit. Moreover, Garcia and Lupe do not attack Kloberdanz's updated affidavit which provided the current amounts due under the corporate note and Garcia note as of August 10, 2011. Therefore, even if the trial court should not have considered exhibit 7 and exhibit 11, Kloberdanz's affidavits were in compliance with Rule 191 and the trial court did not err in denying Garcia and Lupe's motions to strike.

¶ 28 Also, Garcia and Lupe argue that the discrepancies in Kloberdanz's affidavits showed that the affidavits were in violation of Rule 191. However, many of the "discrepancies" that Garcia and Lupe highlight can be reconciled with an examination of the record. For example, Garcia and Lupe

point out that Kloberdanz's affidavits state that exhibit 7 is the full payment history of the corporate note. The corporate note was executed on April 3, 2009, however, the transactions in exhibit 7 date back to May 3, 2004. Garcia and Lupe argue that Kloberdanz's affidavits do not explain why many of the transactions in exhibit 7 pre-date the corporate note. However, as Harris points out, the corporate note was issued "in substitution and replacement for, but not in novation or discharge of, [the 2004 note]." "[W]here a note is given in renewal of another note and not in payment, the renewal does not extinguish the original debt or change the debt except that it postpones the time for payment." *State Bank of Lake Zurich v. Winnetka Bank*, 245 Ill. App. 3d 984, 990-91 (1993). Thus, when Kloberdanz's affidavits stated that exhibit 7 is the full payment history of the corporate note, this included the history of the 2004 note because they are the same debt.[4]

¶ 29 Garcia and Lupe do present an actual discrepancy in that the principal amount of the 2003 note is $618,928, however, in exhibit 11 (which purports to be the full payment history of the Garcia note/2003 note) the first transaction that reflects a balance appears as "PRIN BALANCE" in the amount of $612,216.31. Thus, there is a $6,711.69 difference between the principal amount of the 2003 note and the first transaction that reflects a balance in exhibit 11. However, as previously discussed, "when only portions of an affidavit are improper under Rule 191(a), a trial court should only strike the improper portions of the affidavit." *Roe*, 339 Ill. App. 3d at 129. We do not find that this one discrepancy presented by Garcia and Lupe causes Kloberdanz's entire affidavits to be in violation of Rule 191. Garcia and Lupe continue to present other "discrepancies" in Kloberdanz's

[4]Garcia and Lupe make an identical argument regarding exhibit 11 and the dates of the Garcia note and 2003 note.

affidavits that are either reconciled by the record, or are uncontradicted by Garcia and Lupe.[5] As Harris points out, "courts must accept an affidavit as true if it is uncontradicted by counteraffidavit or other evidentiary materials." *Kugler*, 309 Ill. App. 3d at 795. Therefore, we do not need to address the other discrepancies alleged by Garcia and Lupe.

¶ 30 Garcia and Lupe next argue that Kloberdanz's affidavits did not lay the proper foundation for admission of the computer-generated business records attached to the affidavits. We disagree. As previously discussed, Kloberdanz's affidavits contained detailed factual averments describing his knowledge of Harris' record keeping process. Kloberdanz meticulously described the computer system used by Harris. He also explained step-by-step the process through which Harris' records are made. He stated that Harris' records are made as a memorandum and record of the act of payment, and that payments are credited no later than 24 hours after they are received. Kloberdanz stated that the computer system and record keeping process are used in the regular course of business, and that they are trustworthy and accurate. Therefore, Kloberdanz's affidavits clearly laid the proper foundation for the computer-generated business records, and Garcia and Lupe's argument on this issue is without merit.

¶ 31 We hold that Kloberdanz's affidavits were in compliance with Rule 191. Therefore, the trial court did not err in granting summary judgment in favor of Harris, and denying Garcia and Lupe's motions to strike Kloberdanz's affidavits.

---

[5]For example, Garcia and Lupe point out that the 2003 note prescribes that Garcia's first payment was to be made on December 10, 2003, however, the first payment reflected in exhibit 11 is in May of 2004. Garcia and Lupe do not allege that Garcia made a payment before May 2004 and do not present any evidence of payments before May 2004.

¶ 32 Finally, we determine whether the trial court erred in denying Garcia and Lupe's motions to strike Rubin's affidavits in support of Harris' fee petition.

¶ 33 Garcia and Lupe argue that the trial court erred in denying their motions to strike Rubin's affidavits in support of Harris' fee petition because the affidavits violated Rule 191. Specifically, Garcia and Lupe argue that Rubin's affidavits in support of Harris' fee petition violated Rule 191 because: Rubin attested to matters that were not within his personal knowledge; Rubin failed to lay the proper foundation to admit computer-generated business records; and Rubin falsely attested to a June 7, 2011 court appearance when the June 7, 2011 court date was stricken.

¶ 34 In response, Harris argues that the trial court did not err in denying Garcia and Lupe's motions to strike Rubin's affidavits in support of Harris' fee petition. Harris argues that Rubin's affidavits were not subject to the Rule 191 standard. Harris contends that affidavits in support of attorneys' fees must specify the services performed, the person who performed the services, the time expended for the services, and the hourly rate charged for the services. *Fitzgerald v. Lake Shore Animal Hospital, Inc.*, 183 Ill. App. 3d 655, 662 (1989). Harris asserts that even applying the Rule 191 standards, Rubin's affidavits should not have been stricken.

¶ 35 We agree with Harris' argument. In Rubin's affidavits, he stated that he was the attorney that represented Harris in this case. Also, he stated that he reviewed his law firm's accounting database including books and records prepared from expense vouchers, check records, accounting software, and other materials in determining the amount of attorneys' fees that was appropriate. Further, he provided the name and billing rate of each attorney that worked on the case. Included within the sworn affidavit is a detailed summary of the fees incurred in this case which also provides the

attorney's name, amount of time spent, amount billed, and a description of the work performed, for each item that was billed to Harris. Rubin stated that the services and costs incurred by his law firm were reasonable and necessary. The detail in Rubin's affidavits shows that the affidavits were sufficient under both the standard set forth in *Fitzgerald*, and the Rule 191 standard. Rubin clearly specified the services performed, the attorneys who performed the services, the time expended for the services, and the hourly rate charged for the services pursuant to *Fitzgerald*. Also, Rubin's statements set forth facts that were based on his personal knowledge such that he could competently testify to the contents of his affidavit at trial. Thus, Rubin's affidavits were sufficient under either the *Fitzgerald* standard, or the Rule 191 standard.

¶ 36 We do not agree with Garcia and Lupe's argument that Rubin's affidavits needed to lay the foundation necessary for admitting computer-generated business records into evidence. This was not a situation where Rubin made a statement in his affidavits and then supported the statement with a copy of a business record attached to the affidavit (such as the situation regarding Kloberdanz's affidavits). In this situation, Rubin stated that he personally reviewed his law firm's accounting records. He then constructed a detailed summary of the services performed *within his sworn affidavit*. This summary was not a business record itself, but a summary of services performed generated from Rubin's personal knowledge. Thus, it is not subject to the evidentiary standards of admitting business records into evidence. Rubin did not need to provide any more foundation to include the detailed summary of services within his sworn affidavit.

¶ 37 We note that in Rubin's third updated affidavit dated May 26, 2011, he included an item in the summary of services performed which billed Harris for a June 7, 2011 court appearance. As

Garcia and Lupe point out, the June 7, 2011 court date was stricken. However, in Rubin's fourth updated affidavit, the June 7, 2011 item is deleted from the summary. Thus, Rubin corrected and deleted the discrepancy from the last updated and most recent affidavit filed before the trial court made its ruling. We do not find that this one discrepancy which was later corrected, warranted the trial court striking both Rubin's third and fourth updated affidavits. Therefore, we hold that the trial court did not err in denying Garcia and Lupe's motions to strike Rubin's affidavits in support of Harris' fee petition.

¶ 38 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 39 Affirmed.