2017 IL App (1st) 161366-U

FOURTH DIVISION
August 3, 2017

No. 1-16-1366

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EBY-BROWN COMPANY, LLC,	)	
	)	Appeal from
Plaintiff-Appellee,	)	the Circuit Court
	)	of Cook County
v.	)	
	)	15-L-002613
FIRSTSECURE BANK AND TRUST f/k/a FAMILY BANK	)	
AND TRUST, an Illinois Bank, and COMMUNITY HOLDINGS	)	Honorable
CORPORATION, an Illinois Corporation,	)	Margaret Ann Brennan,
	)	Judge Presiding
Defendants-Appellants.	)	

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

O R D E R

Held: In crossmotions for summary judgment as to breach of a settlement contract, plaintiff's evidence was deficient, only specific portions of defendants' affidavit that were not based on affiant's personal knowledge should have been stricken or disregarded, and defendants' motion seeking reconsideration of the summary judgment ruling should have been granted.

¶ 1 Defendants FirstSecure Bank and Trust and Community Holdings Corporation, which are based in Palos Hills, Illinois, appeal from orders resolving crossmotions for summary judgment in favor of plaintiff EBY-Brown Company, LLC and denying a motion for reconsideration as to a claim that the bank and its holding company breached a $250,000 settlement contract. The

appellants contend the court relied on incompetent evidence that a contingency occurred which triggered the payment obligation, erroneously struck an entire affidavit, and further erred by refusing to reconsider the judgment despite a revised affidavit and corroborating affidavits which affirmatively established the contingency had not occurred.

¶ 2 EBY-Brown is a Naperville, Illinois wholesale distributor of convenience store products which sued one of its customers in 2001 for breach of contract, fraud, and conspiracy, and also sued the bank for providing a credit reference for the customer, and the bank's holding company. After 10 years of litigation, EBY-Brown, FirstSecure, and Community Holdings reached a settlement agreement in mid 2011 which entitled EBY-Brown to a lump sum of $130,000 within 10 days, monthly payments for three years totaling $120,000, and, if a certain event occurred, one additional payment of up to $250,000. At the time, FirstSecure was financially troubled. The additional payment was made contingent upon either an increase in "the Bank's total equity" or "The sale of 51% or more of the Bank's stock to a single buyer at any time within three (3) years of the date of the tender of the initial noncontingent settlement payment, resulting in the departure of at least three of the bank's five current Directors[.]" The exact amount of the contingent payment would be based on either the equity increase or the sale price. The first paragraph of the settlement contract indicated that the phrase "the Bank" was a collective reference to FirstSecure and Community Holdings.

¶ 3 EBY-Brown received the noncontingent payments without issue, but in 2015, filed the instant suit against FirstSecure and Community Holdings alleging breach of the contingent payment obligation. FirstSecure and Community Holdings denied the material allegations. More specifically, EBY-Brown alleged investor Jay Douglas Bergman bought 94.65% of the holding company's stock on May 6, 2014, and his "acquisition equated to the sale of more than 51% of

the Bank's stock to a single buyer [within three years of the first noncontingent payment]." Also, "Mr. Bergman consequently was required to file a notice with the Federal Reserve as required under the Change in Bank Control Act [12 USC § 1817(j) (West 2012)]" and had received the board's approval of the change. The defendants answered that Bergman purchased 7,000,300 of the 14,745,574 total available shares in the holding company and that the holding company owned "a controlling interest but not 100%, of the Bank." The defendants denied that Bergman purchased any shares in the bank itself, denied that Bergman's acquisition "equated" to the purchase of any of the bank's stock, and denied that the federal notice of change in bank control had any relevance. EBY-Brown further alleged, "Upon information and belief, Mr. Bergman's acquisition resulted in the departure of at least three of the Bank's five directors, who were directors [when the settlement was reached in 2011]." In their answer, FirstSecure and Community Holdings "den[ied] that [Bergman's] acquisition of shares in Community Holdings resulted in the departure of any Bank directors" and then further specified the status of the five directors after the 2011 settlement. Although Dan J. Karalis returned to private law practice and resigned as president and a director in September 2012, and Jerry A. Meyer died in November 2012, the other three directors, namely Spiro P. Argiris, Theodore P. Argiris, and John Sellis "remained Directors as of the Bergman acquisition."

¶ 4 Neither the complaint nor the answer was verified.

¶ 5 EBY-Brown used the discovery process to obtain documentation of the stock transfer and then filed a motion for summary judgment based on those documents. No one was deposed. In an attempt to show that 51% or more of "the Bank" stock was sold to a single buyer within three years of the first noncontingent settlement payment, EBY-Brown quoted the introductory Recitals section of the "Stock Purchase Agreement by and among Jay D. Bergman, Community

Holdings Corporation, and Certain Shareholders of Community Holdings Corporation," for its indication that as of May 20, 2013, Bergman had agreed to purchase "7,150,000 newly issued shares of Common Stock [in Community Holdings Corporation] (the 'Shares'), which will represent 94.65% of the outstanding shares of Common Stock as of Closing." EBY-Brown attached correspondence about the sale, such as a letter indicating funds held in escrow had been released upon the closing of the sale in 2014. EBY-Brown also relied on a list of FirstSecure's shareholders which indicated Community Holdings owned 55,961 shares out of 60,000 outstanding shares of FirstSecure. Then, in an attempt to show that the sale "resulted in the departure of at least three" of the five directors who were on the board when the settlement was reached, EBY-Brown argued the stock purchase agreement was the "best evidence of what happened as a result of the stock sale," section 8.02(k) of the agreement set out a condition precedent to closing the sale, and the sale had closed. Section 8.02(k) states, "Resignations. Investor shall have received the resignations, effective as of Closing, of each director of the Bank and the Company, other than those whom Investor will have specified in writing at least two Business Days prior to Closing." EBY-Brown contended that none of the documents produced during discovery indicated Bergman excluded any director from the Resignations clause, and argued, thus, "[a]s a result of the stock sale, all of the Bank's directors resigned and departed from the Board on May 5, 2014."

¶ 6 In a combined response and crossmotion for summary judgment, FirstSecure and Community Holdings contended that two of the conditions for the noncontingent payment were not satisfied. The defendants first pointed out that Bergman bought stock in the holding company instead of "the Bank", and, in the context of the settlement agreement, "the Bank" meant FirstSecure, not the holding company, or, alternatively, if "the Bank" meant both entities, then

there was no showing of a sale in both entities. In an attached affidavit, Bergman said, "I have knowledge of all matters set forth herein, from my own firsthand knowledge and/or from corporate records of the Defendants, and could competently testify to them if called upon to do so." Bergman swore that he owned a majority of stock in Community Holdings which owned a majority of stock in FirstSecure, but he owned no bank stock. The defendants' second argument was that regardless of the meaning of "the Bank," both entities shared the same five directors in 2011 but none of them had "depart[ed]" as a "result[]" of the Bergman transaction which closed in 2014. In his affidavit, Bergman described all the changes to the board membership between 2011 and 2015, stated that three of the directors who signed the settlement agreement were still on the boards, and that prior to closing on his stock purchase, Bergman "informed all the serving Directors (Ted Argiris, Spiro Argiris, John Sellis, and Mark Gasik) that I did not want their resignations, and intended for them to continue serving." Bergman addressed the significance of section 8.02(k) of the Stock Purchase Agreement, which he described as "a fairly standard term in an acquisition agreement, to give new ownership the freedom to replace Directors without controversy or expense," Bergman swore that he had not asked for the clause and he had not exercised the clause. Bergman also explained, "I am not a banker, and never had any intention of taking over the day-to-day management of the Bank or of Community Holdings, nor did I think it was prudent to replace the Directors with institutional knowledge pre-dating my acquisition of a controlling interest in Community Holdings."

¶ 7 EBY-Brown replied in part that the defendants were trying to create ambiguity about the unambiguous term "the Bank." EBY-Brown also criticized Bergman's sworn statement and filed a motion to strike the affidavit as noncompliant with Supreme Court Rule 191 (Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013)), in that he did not have personal knowledge of any corporate events

prior to his involvement with the bank in 2013 and he made a vague reference to "corporate records" but did not attach supporting documentation. EBY-Brown also contended it was inconsistent for Bergman to characterize section 8.02 as a standard term, but then claim to not be a banker and fail to otherwise explain the basis for his knowledge.

¶ 8 FirstSecure and Community Holdings did not file a written response to the motion to strike Bergman's affidavit, but, at oral arguments, gave reasons for its denial. Defense counsel acknowledged that the affidavit did contain some historical facts about the previous directors' departures which were not within Bergman's personal knowledge. Nevertheless:

> "It is clearly within his personal knowledge that he, Jay Bergman, who is a party to the stock purchase agreement did not request and did not receive any resignations from the directors and that they are still serving at his bank. There is no way you can make that hearsay or a legal conclusion. It is a fact that's within his personal knowledge, and they have no basis whatsoever to strike at least that portion of the affidavit.
>
> The rest of the account of who left, when and how doesn't matter because it's undisputed that three directors of the five are still there. It's just a simple fact. They have no evidence to the contrary. "

Counsel also pointed out that EBY-Brown was relying in part on correspondence between Bergman and federal regulators seeking and approving his acquisition, but none of the correspondence indicated any of the directors were required to resign or were resigning in order to gain approval.

¶ 9 At the conclusion of the hearing, the circuit court struck the Bergman affidavit, denied FirstSecure and Community Holding's motion for summary judgment, and granted EBY-Brown's motion for summary judgment. The court rejected FirstSecure and Community

Holding's subsequent motion for reconsideration, in which they argued the court had misapplied the law, given that EBY-Brown relied on unsworn, unauthenticated exhibits rather than admissible evidence to prove the facts of its claim, even the hearsay documents did not prove the claim, and there was no reason to strike the parts of the Bergman affidavit that were based on his personal knowledge and completely refuted EBY-Brown's allegations. The defendants attached a revised affidavit that omitted historical information about the bank that occurred prior to Bergman's personal involvement and also submitted three directors' affidavits which substantiated Bergman's unequivocal statements that he never asked for or accepted any director resignations due to the sale. Each of the three directors swore: "5. When Jay Bergman purchased a controlling interest in Community Holdings, I was not asked by anyone to resign as a Director of either the Bank or of Community Holdings. I did not resign and have not resigned, or ever tendered a written resignation, as a Director of either the Bank or of Community Holdings." Each of the three directors also swore: "6. I have served continuously as a Director of both the Bank and Community Holdings from May 1, 2011 to the present. I am still serving as a Director of both the Bank and Community Holdings." EBY-Brown countered that the defendants failed to timely present evidence prior to the summary judgment hearing. After the court declined to reconsider its ruling, the defendants filed this appeal.

¶ 10 On appeal, the defendants seek both a reversal of the summary judgment entered in favor of EBY-Brown and a reversal of the denial of the crossmotion for summary judgment. Our review is *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204, 1209 (1992). The ruling and not the court's specific reasoning is the issue on appeal. *Material Service Corp. v. Dept. of Revenue*, 98 Ill. 2d 382, 387, 457 N.E.2d 9, 12 (1983). Summary judgment is properly entered where the pleadings, depositions, admissions, and

affidavits on file demonstrate that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014); *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305, 837 N.E.2d 99, 106 (2005). Our role is to determine whether the circuit court correctly found that no genuine issue of material fact existed and whether it correctly entered summary judgment in favor of the plaintiff and denied the defendants' crossmotion for summary judgment. *Fitzwilliam v. 1220 Iroquois Venture*, 233 Ill. App. 3d 221, 237, 598 N.E.2d 1003, 1013 (1992). When, as in this case, the parties file crossmotions for summary judgment, they are in agreement that only questions of law are involved and that the court may decide the issues based on the record. *Allen v. Meyer*, 14 Ill. 2d 284, 292, 152 N.E.2d 576, 580 (1958). However, the filing of crossmotions for summary judgment does not establish that there is no genuine issue of material fact, or obligate a court to grant summary judgment. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28, 978 N.E.2d 1000. The purpose of a summary judgment proceeding is to determine the presence or absence of triable issues of fact. *Amin v. Knape & Vogt Co.*, 148 Ill. App. 3d 1075, 1077, 500 N.E.2d 454, 455 (1986). In determining whether the moving party is entitled to summary judgment, the pleadings, depositions, admissions, and affidavits should be construed strictly against the movant and liberally in favor of the opponent. *Kolakowski v. Voris*, 83 Ill. 2d 388, 398, 415 N.E.2d 397, 402 (1980). If the presentation allows for more than one conclusion or inference, including one unfavorable to the movant, the motion should be denied. *Amin*, 148 Ill. App. 3d at 1077, 500 N.E.2d at 456. In short, the right of the moving party must be clear and free from doubt. *Amin*, 148 Ill. App. 3d at 1077, 500 N.E.2d at 456; *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263, 271, 586 N.E.2d 1211, 1215 (1992) (summary judgment is a drastic means of

disposing of litigation and should be used only when the right of the moving part is clear and free from doubt).

¶ 11 EBY-Brown's motion for summary judgment on the settlement contract relied on the Resignations clause set out in section 8.02(k) of Bergman's stock purchase agreement executed in 2013, combined with the closure of his stock purchase in 2014. However, the fact that the Resignations clause was included in Bergman's stock purchase agreement, combined with the undisputed fact that the stock purchase closed, does not prove that any clause in the stock purchase contract was performed. At most, the inclusion of the Resignations clause and the closing of the transaction show that there was a potential for director resignations as a result of the sale. The potential that something occurred is not proof that it actually happened.

¶ 12 Moreover, EBY-Brown's purpose for attaching the Resignations clause to its motion for summary judgment was to prove the truth of its performance, and for this purpose, the Resignations clause was hearsay. Hearsay is an out of court statement offered to prove the truth of the matter asserted and is inadmissible unless it falls within one of the recognized exceptions to the hearsay principle. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1064, 753 N.E.2d 1007, 1011 (2001). See *e.g.*, *Erickson v. Ottawa Travel Center, Inc.*, 69 Ill. App. 3d 108, 111, 387 N.E.2d 49, 52 (1979) (airline's letter stating departure and arrival times of a particular flight was inadmissible hearsay evidence that travel agency fulfilled its contractual obligation to arrange Carribean cruise vacation for Chicago plaintiff and companions); *Plepel v. Nied*, 106 Ill. App. 3d 282, 289, 435 N.E.2d 1169, 1175 (1982) (time sheets and component expense sheets attached to the firm's invoice were improperly admitted hearsay evidence that firm in fact incurred $6262 in drafting expenses); *People ex rel. Madigan v. Kole*, 2012 IL App (2d) 110245, ¶ 51, 968 N.E.2d 1108 (*quoting* Christopher B. Mueller & Laird C. Kirkpatrick, 5 Federal

Evidence § 9:30 (3d ed. 2011) ("If a document is introduced to prove what it asserts *** no combination of signature, certificate, or seal can make it admissible if it does not satisfy the requirements of one of the hearsay exceptions.")).

¶ 13 Although the court at the summary judgment stage does not try the issues, evidence that would be inadmissible at trial may not be considered in support of or in opposition to a motion for summary judgment. *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1025, 601 N.E.2d 1330, 1338 (1992). See also *Kole*, 2012 IL App (2d) 110245, ¶ 47, 968 N.E.2d 1108 ("Evidence such as hearsay, which is inadmissible at trial, is not admissible in support of or in opposition to a summary judgment motion.").

¶ 14 Therefore, in order to prove the truth of the document's contents—that the Resignations clause was performed—and to be entitled to summary judgment, EBY-Brown would have to produce further evidence. EBY-Brown bore the burden of proof as to the facts forming its claim for relief and the defendants did not bear the burden of creating an evidentiary record where EBY-Brown failed to do so. See *Haas v. Cohen*, 10 Ill. App. 3d 896, 899, 295 N.E.2d 28, 31 (1973) (indicating it is well settled that a party asserting a fact or issue has the burden of proof as to that fact or issue). EBY-Brown failed to create an evidentiary record that supported its claim and it was not entitled to summary judgment on its claim.

¶ 15 Moreover, the Bergman affidavit which the defendants' attached to their combined response to the motion for summary judgment and crossmotion for summary judgment affirmatively showed that none of the directors resigned. The transcript of oral arguments indicates the circuit court struck Bergman's affidavit out of concern that it was not based on his personal knowledge and did not include supporting documentation. However, the court's treatment of Bergman's first affidavit was in error.

¶ 16 Affidavits submitted in summary judgment proceedings are substitutes for testimony and are subject to the same requirements as competent testimony at trial. *Wiszowaty v. Baumgard*, 257 Ill. App. 3d 812, 819, 629 N.E.2d 624, 630 (1994). The function of these affidavits is to show whether issues raised are genuine and whether each party has competent evidence to offer in support of his or her side of the issue. *Reynolds v. Heerey*, 88 Ill. App. 3d 101, 105, 410 N.E.2d 334, 337 (1980).

¶ 17 Illinois Supreme Court Rule 191 provides in relevant part: "Affidavits in support of *** 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 the 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). See also *US Bank, Nat. Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 22, 10 N.E.3d 339. The court's determination of whether an affidavit offered in connection with a motion for summary judgment complies with Rule 191 is a question of law subject to our *de novo* review. *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 128, 790 N.E.2d 882, 890 (2003). In addition, a court's construction of supreme court rules is comparable to the construction of statutes and is a question of law that it is reviewed *de novo. Roe*, 339 Ill. App. 3d 119, 128, 790 N.E.2d 882, 890 (2003) (citing *Robidoux v. Oliphant*, 201 Ill.2d 324, 332, 775 N.E.2d 987, 991 (2002)).

¶ 18 Plainly, no language in Rule 191 dictates that an affiant use any particular wording and an affiant is not required to use the phrase "personal knowledge." Rule 191 is satisfied where, viewed as a whole, the affidavit relies on personal knowledge and there is a reasonable inference

the affiant could competently testify to its contents at trial. *US Bank*, 2014 IL App (1st) 121759, ¶ 22, 10 N.E.3d 339. Bergman's first affidavit begins with the statement: "I have knowledge of all matters set forth herein, from my own firsthand knowledge and/or from the corporate records of the Defendants, and could competently testify to them if called upon to do so." The definition of firsthand is "obtained by, coming from, or being direct personal observation or experience." https://www.merriam-webster.com/dictionary/firsthand (last visited June 28, 2017). Bergman's initial statement could have been more specific as to which parts of the affidavit would be based on his personal experience or on his review of historical records, but it becomes apparent from the rest of the affidavit which details are based on his personal experience.

¶ 19 Almost all of the affidavit's contents are based on his firsthand knowledge. Bergman repeatedly uses the words "I" or "me" to describe his own actions. Bergman swore in paragraphs 2 and 8: "I purchased newly issued stock giving me a majority interest in Community Holdings Corporation ***," and "I became a Director of *** Community Holdings on May 16, 2014, and of the Bank on October 27, 2014." In paragraphs 9 through 12, Bergman described various changes to the board membership after he began serving on them. In paragraphs 13 and 14, Bergman addressed the significance of section 8.02 of his stock purchase contract: "The Stock Purchase Agreement included a provision [section 8.02(k)] that "Investor," meaning me, "shall have received the resignations, effective as of the Closing, of each Director ***." Also, "I did not specifically ask for [section 8.02(k)]." In paragraphs 16 through 19, Bergman factually described that section 8.02(k) was not put into effect, stating, "Irrespective of the language of the Stock Purchase Agreement, prior to the Closing, I informed all of the serving Directors *** that I did not want their resignations, and intended for them to continue serving." Bergman continued, "Therefore, notwithstanding what Section 8.02(k) says, none of the Directors ever submitted a

resignation, and none left either board [the separate boards of FirstSecure or Community Holdings] as a result of the Closing of the Stock Purchase Agreement. The same Directors continued to administer both entities after the Closing." Bergman also swore, "I am not a banker, and never had any intention of taking over the day-to-day management of the Bank or of Community Holdings, nor did I think it was prudent to replace the Directors with institutional knowledge pre-dating my acquisition***." Furthermore, "Ted Argiris, Spiros Argiris, and John Sellis *** are all still Directors***." We find that these statements conform with the Rule 191(a) requirement that an affiant's statements be on personal knowledge, and showed that Bergman could competently testify to this information. Moreover, these statements do not rely on any documents and do not need to be supported by any documents.

¶ 20 In parts of this first affidavit, mostly paragraphs 4 through 7, Bergman recited historical information about directors who served prior to his addition to the boards, which are facts outside his firsthand experience, and he does not attach documents attesting to the past composition of the boards. That historical information, however, is general information about the organization(s) and is not material to the summary judgment proceedings. All that really matters for summary judgment purposes is that three of the five directors who signed the settlement agreement in 2011 were still serving after Bergman's acquisition in 2014. If three of the original five directors were still serving, then it is impossible for three of the five to have departed as a result of the sale. The names of the five directors serving in 2011 are not in dispute because they appear on the signature page of the settlement agreement that was attached to EBY-Brown's complaint, and the names again appear in FirstSecure and Community Holding's answer. Thus, it was unnecessary for Bergman to reiterate the 2011 director names in his affidavit and unnecessary for him to detail the various changes to the board that occurred between 2011 and

2015 (such as the addition of Mark Gasik in 2012, the addition and resignation of Richard Post in 2012 and 2013, and the addition of Scott Hamer of 2015). If the circuit court considered the inclusion of the historical information to be improper, then the appropriate course of action was to strike (or simply disregard) that information, not the entire affidavit. *Roe,* 339 Ill. App. 3d at 128, 790 N.E.2d at 891 ("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."); *Cincinnati Companies v. West American Insurance Co.,* 287 Ill. App. 3d 505, 514, 679 N.E.2d 91, 97 (1997) (rather than striking an affidavit in its entirety, a trial court should strike only those matters that are improper). Accordingly, we find the circuit court's decision to strike the entire affidavit to be contrary to Rule 191(a) and the authority cited above.

¶ 21 We also conclude that Bergman's first affidavit included competent and definitive proof that three of the five directors who signed the settlement agreement in 2011 remained on the board even after Bergman's stock purchase in 2014. EBY-Brown could never prove the key allegation of its claim that three of the five directors who signed the settlement contract in 2011 departed as a result of the Bergman transaction in 2014. Given our conclusion that EBY-Brown could never prove the necessary change in the board's composition, we need not resolve the parties' disagreements as to whether the term "the Bank" in the settlement contract meant FirstSecure, Community Holdings, or both of those entities; or whether the federal change in control statute or correspondence had any bearing on the settlement agreement. Regardless of the meaning of "the Bank" or the federal authorities' approval of Bergman's "change in control," there was no "sale of 51% or more of the Bank's stock to a single buyer at any time within three (3) years of the date of the tender of the initial noncontingent settlement payment, resulting in the departure of at least three of the bank's five current Directors[.]" In short, defendants FirstSecure

and Community Holdings showed through competent evidence that there was no material question of fact as to plaintiff EBY-Brown's claim, EBY-Brown's claim could never succeed, and FirstSecure and Community Holdings were entitled to summary judgment on EBY-Brown's claim.

¶ 22 For these reasons, we also find that the circuit court's denial of the motion for reconsideration was an abuse of the court's discretion. In the motion, FirstSecure and Community Holdings brought to the court's attention its error in the summary judgment ruling, by pointing out the deficiencies in EBY-Brown's proof and the conclusive nature of Bergman's firsthand sworn statements of fact against EBY-Brown's complaint. *Landeros v. Equity Property and Development,* 321 Ill. App. 3d 57, 747 N.E.2d 391, (2001) (the purpose of a motion to reconsider is to bring to the court's attention errors in the court's previous application of the law, changes in the law, or newly discovered evidence). The motion had merit. Although it was unnecessary, FirstSecure and Community Holdings took the opportunity to edit Bergman's affidavit in order to remove the historical, nonfirsthand details, and to provide the affidavits of the three directors who corroborated Bergman's firsthand statements and established their accuracy.

¶ 23 Accordingly, we reverse the orders on appeal in favor of plaintiff EBY-Brown and resolve the crossmotions for summary judgment in favor of defendants FirstSecure and Community Holdings.

¶ 24 Reversed; judgment entered for appellants.