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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN THE MATTER OF: NEIGHBORHOOD LENDING ) Appeal from the Circuit Court of  
SERVICES, INC., ) Cook County, Chancery Division  
)  
Plaintiff-Appellee, )  
)  
v. ) No. 11 CH 32430  
)  
PAMELA NAPIER, ) Honorable Daniel Patrick Brennan,  
) Judge Presiding  
Defendant-Appellant. )

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Pierce and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err in granting a judgment of foreclosure in favor of the bank. The bank employee's summary judgment affidavit contained sufficient factual details to satisfy Illinois Supreme Court Rule 191(a). The documents attached to the affidavit for summary judgment were properly admitted as business records.

¶ 2 This case involves a residential mortgage foreclosure action instituted by appellee Neighborhood Lending Services (“Bank”) against appellant Pamela Napier. On appeal, Napier argues that several issues of material fact precluded the circuit court from granting summary

judgment and a judgment of foreclosure in favor of the Bank. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On November 21, 2008, Napier obtained a mortgage loan for the property located at 7930 South Maplewood, Chicago, Illinois 60622. Napier failed to make payments on the mortgage on, and after June 1, 2011. On September 15, 2011, the Bank filed a complaint to foreclose the mortgage. Napier filed her answer to the complaint, and the case was referred to mediation by the circuit court. Both parties participated in several mediation sessions between November 13, 2011, and March 13, 2013, without an agreement being reached.

¶ 5 On April 25, 2013, the Bank moved for a judgment of foreclosure. The Bank submitted the affidavit of Paula Borshell as support, and subsequently, the affidavit of Bettina Honold as a "Loss Mitigation Affidavit." After retaining counsel, Napier filed her response to the motion arguing that Borshell's affidavit attesting the amounts due and owing under the loan did not meet the threshold established by the Illinois Supreme Court Rule 191(a). Napier argued that the affiant lacked the requisite personal knowledge and failed to attach any sworn or certified copies of the documents that the affiant relied on when constructing the document. Napier also argued that no proper foundation was made for any business records and that the records attached to the affidavit constituted inadmissible hearsay. In addition, Napier argued that because the Bank filed its loss mitigation affidavit subsequent to filing its motion for summary judgment, it violated Supreme Court Rule 114.

¶ 6 The court denied the Bank's motion for summary judgment without prejudice. On December 10, 2013, the Bank again filed its motions for summary judgment and judgment of foreclosure. In support of its motion for summary judgment, the Bank attached a different

affidavit of amounts due and owing from Paula Borshell and several documents including copies of the mortgage, promissory note, payoff calculations tools and ledgers for the amount that Napier owed. On May 21, 2014, the court entered summary judgment and judgment of foreclosure and sale in favor of the Bank and against Napier. Napier filed an emergency motion to stay the sale based on continuing loss mitigation efforts. The motion was granted and the sale was stayed through September 19, 2015. The property was sold on December 15, 2015. The Bank's motion for an order approving the sale, confirming the sale, and for possession was granted on June 20, 2016. This appeal follows.

¶ 7

#### ANALYSIS

¶ 8 On appeal, Napier argues that the court erred when it granted the Bank's motion for summary judgment because the record raised several issues of material fact. Specifically, Napier contends that the affidavit submitted by the Bank in support of its motion for summary judgment violated Illinois Supreme Court Rules 191(a), and 113. In addition, Napier argues that no proper foundation was made for any business records and that the documents attached to the affidavit constituted inadmissible hearsay.

¶ 9 Summary judgment is proper when “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 judgment as a matter of law.” 735 ILCS 5/2-1005 (c) (West 2012). To survive a motion for summary judgment, the nonmoving party must present some evidentiary facts that would arguably entitle him to judgment. *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 8 (2004). Furthermore, “[d]enials in a defendant's answer do not create a material issue of genuine fact to prevent summary judgment.” *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 49.

¶ 10 We review *de novo* the order granting the motion for summary judgment, and “judgment may be affirmed based on any basis found in the record.” *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 11 Napier first argues that the affidavit submitted by the Bank in support of its motion for summary judgment violated Illinois Supreme Court Rule 191(a). Napier complains that it is “unclear” whether the affiant attached the complete specific documents that she relied upon when making the affidavit. Napier also contends that the affidavit fails to show how the affiant in her capacity as an “authorized user” developed the required personal knowledge and was otherwise competent to testify regarding any of the documents to which she referred to.

¶ 12 Illinois Supreme Court Rule 191(a) provides:

“Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure [735 ILCS 5/2-1005], . . . 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. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used.”

Ill. Sup. Ct. R. 191(a) (eff. Jan. 4, 2013).

¶ 13 In short, the rule requires the affiant to have personal knowledge of the asserted matters and be competent to testify as to those matters. Additionally, the affidavit must set forth admissible facts with particularity in a nonconclusory matter. Finally, the affidavit must attach

“sworn or certified copies of all documents upon which the affiant relies.” *US Bank, National Ass’n. v. Advic*, 2014 IL App (1st) 121759, ¶ 21.

¶ 14 We find that the affidavit of Paula Borshell complied with the requirements of Rule 191 and properly laid the foundation for the pertinent business records. In her affidavit, Paula Borshell stated that, as an authorized signer, an employee of the Bank, she was familiar with the business and its mode of operation. She stated that she had personal knowledge of the truth of the allegations in the foreclosure complaint, mortgage, note, and business records related to these transactions. She stated that she was familiar with the account of Napier, and that the Bank was the holder of the note and mortgage. She further averred that she was familiar with the maintenance of the Bank’s business records, including how a loan’s history was kept, updated, and maintained, and that the computer system was reliable and recognized as standard. The mortgage, note and the payment history upon which she relied were attached to the affidavit. Also, contrary to Napier's argument, Borshell affirmatively attested that “a true and accurate copy of the payment history and any other document I reviewed when making this calculation, it's attached to this affidavit.”

¶ 15 After establishing this basis for her knowledge of the loan at issue, Borshell described the specific amounts owed by Napier under the note, including principal balance, accrued interest, late charges, and other expenses incurred by the Bank such as taxes and insurance costs, which totaled \$160,853.88 as of as October 11, 2013. These statements clearly constituted facts based on Borshell personal knowledge, and not mere conclusions. Moreover, Borshell swore in her affidavit that the attached documents were "true and accurate copies." The affidavit was also notarized. Therefore, since the affidavit was made on the personal knowledge of the Borshell, provided attached certified copies of the documents she relied upon, consisted of admissible

facts, and affirmatively showed that Borshell would be able to testify competently as to their contents if called as a witness, we find no evidence that the affidavit failed to conform to the standards set forth by Rule 191(a).

¶ 16 Napier's challenge to the foundation and admission of the documents attached to the affidavit fails no better. Business records may be admitted into evidence as an exception to the hearsay rule. Ill. S. Ct. R. 236 (eff. Aug.1, 1992). “Illinois Rules of Evidence 803(6) (eff. Jan.1, 2011) provides for the admission of ‘records of regularly conducted activity’ where the records consist of: ‘A memorandum, report, record, or data compilation, in any form, of acts [or] events \* \* \* made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness \* \* \*.’ ” *Advic*, 2014 IL App (1st) 121759, ¶ 23 (quoting Illinois Rules of Evidence 803(6) (eff. Jan. 1, 2011)). “Where computer-generated records are involved, the proponent must show 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.’ ” *Id.* ¶ 25 (quoting *Riley v. Jones Brothers Construction Co.*, 198 Ill. App. 3d 822, 829 (1990)).

¶ 17 The foundation necessary to admit a record into evidence is only that the proponent establish that the record was (1) made in the regular course of business and (2) made at or near the time of the transaction, event, or occurrence. *Mulry v. Berrios*, 2017 IL App (1st) 152563, ¶ 21; *Bayview Loan Servicing, LLC v. Szpara*, 2015 IL App (2d) 140331, ¶ 42 (indicating there is a

hearsay exception for “ ‘Records of Regularly Conducted Activity’ ”); See also *Eastman v. Department of Public Aid*, 178 Ill. App. 3d 993, 998 (1989) (acknowledging the admissibility of computer-generated records).

¶ 18 In *Avdic*, 2014 IL App (1st) 121759, ¶ 26, the affidavit of a bank employee was sufficient to support summary judgment where she averred that: she had duties reviewing and analyzing loan records for the bank; she maintained records for each loan serviced; she was familiar with the defendant's loan; she had personal knowledge that it was within the regular course of business to record the information at issue at or near the time of the occurrence; and she identified the specific amounts owing on the loan. The foundational requirements for the records were twofold: (1) that the records were made in the regular course of business, and (2) that the records were made at or near the time of the event or occurrence. *Id.* ¶ 23. These averments were sufficient to satisfy these foundational requirements, and the records were thus properly considered by the trial court in the entry of summary judgment in favor of the bank. *Id.* ¶ 30.

¶ 19 Similarly, here, Borshell's affidavit satisfied these requirements. Borshell stated that through her job duties, she was familiar with how the Bank's business records were created and retained; that the records she reviewed were made in the ordinary course of business; that the records were made at, or, near the time each payment was received; and that the amount claimed in the affidavit was based upon her review of the business records. Borshell also described in detail the specific manner and methods used by the Bank to create the records through the Banks' automatic tracking and accounting program, MSP, specifically attesting that the records are generated when authorized persons input and record account activity that takes place contemporaneously with each event or occurrence. Her averments clearly satisfied the two foundational requirements under Rule 236. See, e.g., *Gulino v. Economy Fire & Casualty*

*Co.*, 2012 IL App (1st) 102429, ¶ 27 (Rule 236 requires the proponent of a business record to establish that the record was: (1) made in the regular course of business, and (2) made at or near the time of the event or occurrence.). Therefore, Borshell properly authenticated and laid the foundation for the admission of the mortgage, note, and defendant's payment history on the note as business records. The circuit court properly considered the affidavit and the attached loan documents and, thus, did not face an issue of material fact regarding the amounts owing on the loan.

¶ 20 Lastly, Napier's argument that the Bank failed to comply with Supreme Court Rule 113 (Practice and Procedure in Mortgage Foreclosure Cases) (eff. May 1, 2013) fails as well. Rule 23 states that the rule applies "only to those foreclosure actions filed on or after the effective date of May 1, 2013." Ill. S. Ct. R. 113(a) (eff. May 1, 2013). This action was filed on September 15, 2011. Thus, Rule 113 is inapplicable, and we need not further address Napier's arguments to the extent that they are premised on purported violations of this rule.

¶ 21 Moreover, Napier did not submit a counteraffidavit, or any other evidence, contradicting Borshell's sworn statements. Where an affidavit is filed in support of a motion for summary judgment, and the party opposing the motion has not challenged or contradicted the affidavit by filing a counteraffidavit or presenting any other evidence, the facts stated in the affidavit are deemed admitted. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004); *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995); *Advic*, 2014 IL App (1st) 121759, ¶ 31. Therefore, the circuit court did not err in granting summary judgment and a judgment of foreclosure in favor of the Bank.

¶ 22 CONCLUSION

¶ 23 Based on the foregoing, we affirm the circuit court's order granting the Bank's motion



No. 1-16-1960

for summary judgment and judgment of foreclosure.

¶ 24 Affirmed.