

Baldwin, J.

{¶1} Defendant-appellant Blayne Herman appeals from the March 13, 2014 Judgment Entry of the Delaware County Court of Common Pleas.

STATEMENT OF THE FACTS AND CASE

{¶2} In 2005, appellant Blayne Herman and Shawn Herman signed a promissory note and agreed to secure that note with a mortgage on their real property.

{¶3} On June 3, 2013, HSBC Mortgage Services Inc. filed a complaint for foreclosure, declaratory judgment, and other equitable relief against appellant, Shawn Herman and the Delaware County Treasurer. The Delaware County Treasurer, on June 20, 2013, filed an answer and a cross-claim against appellant.

{¶4} Thereafter, appellant, on August 12, 2013, filed an answer and affirmative defenses. The Delaware County Treasurer, on August 27, 2013, filed a Notice of Voluntary Dismissal of its cross-claim without prejudice.

{¶5} HSBC Mortgage Services Inc., on October 11, 2013, filed a Motion to Substitute the Plaintiff, seeking to substitute appellee U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust as the plaintiff. HSBC, in its motion, stated that the note and the mortgage that are the subject of this case had been assigned to appellee. The motion was granted pursuant to an Order filed on October 15, 2013.

{¶6} Subsequently, appellee, on November 7, 2013, filed a Motion for Summary Judgment against appellant. Appellee, on December 13, 2013, filed a Motion for Default Judgment against Shawn Herman. On February 18, 2014, appellant filed a response to appellee's Motion for Summary Judgment.

{¶7} The trial court, via a Judgment Entry filed on March 13, 2014, granted appellee's Motion for Summary Judgment and its Motion for Default Judgment. A Declaratory Judgment Entry was filed on the same day.

{¶8} Appellant now appeals, raising the following assignment of error on appeal:

{¶9} THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING PLAINTIFF-APPELLEE'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE AFFIDAVIT AND DOCUMENTS ATTACHED TO PLAINTIFF-APPELLANT'S (SIC) MOTION WERE DEFECTIVE AND COULD NOT PROPERLY SUPPORT A MOTION FOR SUMMARY JUDGMENT.

STANDARD OF REVIEW

{¶10} Summary judgment motions are to be resolved in light of the dictates of Civ.R. 56, which was reaffirmed by the Ohio Supreme Court in *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St .3d 447, 448, 1996–Ohio–211, 663 N.E.2d 639.

{¶11} Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex rel. Parsons v. Fleming*, 68 Ohio St.3d 509, 511, 1994–Ohio–172, 628 N.E.2d 1377, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 472, 364 N.E.2d 267, 274 (1977).

{¶12} As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgment motions on the same standard and evidence as the trial court. *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 36, 56 N.E.2d 212 (1987).

I

{¶13} Appellant, in the sole assignment of error, argues that the trial court erred in granting summary judgment in favor of appellee because the affidavit and documents attached to appellee's motion were defective. Appellant specifically contends that the trial court erred in relying on the affidavit of Isabel Melendez, along with the documents authenticated and attested to by her, because the affidavit was not based on personal knowledge.

{¶14} Evidence Rule 803(6) provides that records of regularly conducted business activity are admissible, as an exception to the rules of hearsay, if shown to be such "by the testimony of the custodian or other qualified witness." The question of who may lay a foundation for the admissibility of business records as a custodian or other qualified witness must be answered broadly. *Citimortgage v. Cathcart*, 5th Dist. Stark No. 2013CA00179, 2014-Ohio-620. It is not a requirement that the witness have firsthand knowledge of the transaction giving rise to the business record. *Id.* "Rather, it must be demonstrated that: the witness is sufficiently familiar with the operation of the business and with the circumstances of the record's preparation, maintenance and retrieval, that he can reasonably testify on the basis of this knowledge that the record is what it purports to be, and that it was made in the ordinary course of business consistent with the elements of Rule 803(6)." *Id.*

{¶15} In *Wachovia Bank v. Jackson*, 5th Dist. Stark No. 2010–CA–00291, 2011–Ohio–3202, this Court, citing *Lasalle Bank Nat'l. Assoc. v. Street*, 5th Dist. Licking No. 08CA60, 2009–Ohio–1855, noted:

Ohio courts have defined ‘personal knowledge’ as ‘knowledge gained through firsthand observation or experience, as distinguished from a belief based upon what someone else has said.’ *Zeedyk v. Agricultural Soc. of Defiance County*, Defiance App. No. 4–04–08, 2004–Ohio–6187, at paragraph 16, quoting *Bonacorsi v. Wheeling & Lake Erie Railway Co.* (2002), 95 Ohio St.3d 314, 320, 767 N.E.2d; Black's Law Dictionary (7th Ed. Rev.1999) 875. Affidavits, which merely set forth legal conclusions or opinions without stating supporting facts, are insufficient to meet the requirements of Civ.R. 56(E). *Tolson v. Triangle Real Estate*, Franklin App. No. 03AP–715, 2004–Ohio–2640, paragraph 12. However, self-serving affidavits may be offered relative to a disputed fact, rather than a conclusion of law. *CitiMortgage, Inc. v. Ferguson*, Fairfield App. No.2006CA00051, 2008–Ohio–556, paragraph 29. Ohio law recognizes that personal knowledge may be inferred from the contents of an affidavit. See *Bush v. Dictaphone Corp.*, Franklin App. No. 00AP1117, 2003–Ohio–883, paragraph

73, citing *Beneficial Mortgage Co. v. Grover* (June 2, 1983), Seneca App. No. 13–82–41. *Lasalle* at paragraphs 21–22.

‘Personal knowledge’ has been defined as knowledge of factual truth which does not depend on outside information or hearsay.” * * * Further, “An affiant's mere assertion that he has personal knowledge of the facts asserted in an affidavit can satisfy the personal knowledge requirement of Civ.R. 56(E). See *Bank One, N.A. v. Swartz*, 9th Dist. No. 03CA008308, 2004–Ohio–1986, paragraph 14. A mere assertion of personal knowledge satisfies Civ.R. 56(E) if the nature of the facts in the affidavit combined with the identity of the affiant creates a reasonable inference that the affiant has personal knowledge of the facts in the affidavit. *Id.*” *Id.* at para 26 and 27 (Citations omitted).

{¶16} See also *Wells Fargo Bank, N.A. v. Dawson*, 5th Dist. Stark No. 2013CA00095, 2014-Ohio-269.

{¶17} In her affidavit, Melendez stated, in relevant part, as follows:

{¶18} 1. That affiant is an employee of Caliber Home Loans, Inc., loan servicing agent for Substitute-Plaintiff, and is duly authorized to make this Affidavit;

{¶19} 2. That Substitute-Plaintiff is entitled to enforce the promissory note and mortgage, copies of which as executed at origination are referenced in Substitute-Plaintiff Complaint and attached hereto as Exhibits “A” and “B” respectively;

{¶20} 3. Substitute-Plaintiff further states that it has exercised the option contained in said mortgage note and has accelerated and called due the entire principal balance due thereon;

{¶21} 4. That Affiant has examined and has knowledge of the loan account of Defendants, Shawn M. Herman and Blayne A. Herman hhta Blayne Herman; that there is presently due on said loan the unpaid principal balance of \$164,217.25 with interest accruing thereon at the rate of 7.25% per annum from July 5, 2012; and at such interest rate as may change from time to time pursuant to the terms of the note; and that said account has been and remains in default;

{¶22} 5. That in the regular performance of my job functions; Affiant is familiar with business records maintained by Caliber Home Loans, Inc. for the purpose of servicing mortgage loans. These records (which include data compilations, electronically imaged documents, and others) are made at or near the time by, or from information provided by, persons with knowledge of the activity and transactions reflected in such records, and are kept in the course of business activity conducted regularly by Caliber Home Loans, Inc. It is the regular practice of the mortgage servicing business of Caliber Home Loans, Inc. to make these records. In connection with making this Affidavit, I have examined these business records reflecting data and information as of the date of the signing of this affidavit.

{¶23} She further stated that appellee was the assignee of the mortgage.

{¶24} We find that Melendez's affidavit meets the standards set forth in *Wachovia Bank v. Jackson*. From her position as business records custodian and her statement that she examined the records in this case, it may be reasonably inferred that

she had personal knowledge to qualify the documents as an exception to the hearsay rule as business documents. See *Nationstar Mortgage LLC v. Williams*, 5th Dist. Delaware No. 14 CAE 0029, 2014-Ohio-4553. The affidavit is properly admissible Civil Rule 56 evidence and we find that the trial court did not err in granting summary judgment based on such affidavit and the documents attached to the same.

{¶25} Appellant's sole assignment of error is, therefore, overruled.

{¶26} Accordingly, the judgment of the Delaware County Court of Common Pleas is affirmed.

By: Baldwin, J.

Wise, P.J. and

Delaney, J. concur.