
**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MORTGAGE FORECLOSURE/MECHANICS LIEN SECTION**

MCLP ASSET COMPANY, INC.,

Plaintiff,

v.

MARK GEOGHEGAN; UNKNOWN
OWNERS AND NON-RECORD
CLAIMANTS,

Defendants.

Case Number: 2019 CH 13307

Calendar 60

Honorable William B. Sullivan
Judge Presiding

Property Address:
5928 North Rockwell Street
Chicago, Illinois 60659

MEMORANDUM OPINION AND ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

Before the Court is Defendant MARK GEOGHEGAN's ("Geoghegan") Motion to Strike Affidavit of Tonya Tillman ("Tillman") ("Tillman Affidavit") and For Other Relief ("Motion"). Additionally before the Court are Plaintiff MCLP ASSET COMPANY, INC.'s ("MCLP") judgment motions. For the following reasons, Defendant's Motion is hereby DENIED; however, the Tillman Affidavit is hereby *sua sponte* STRICKEN from the record, and Plaintiff's judgment motions are all hereby DENIED without prejudice.

I. BACKGROUND

On July 14, 2016, Beth Marie Janiak ("Janiak"), wife of Defendant Geoghegan, solely executed a promissory note in the amount of \$323,000.00, secured by a mortgage on the property located at 5928 North Rockwell Street in

Chicago, Illinois. After Janiak's passing, Geoghegan became the alleged successor in interest to the property. Plaintiff initiated this foreclosure proceeding on November 15, 2019, alleging a default on the mortgage. On March 19, 2020, Geoghegan filed an Answer and Affirmative Defenses, arguing that the Plaintiff had not complied with the conditions precedent to filing this foreclosure action, including the requirement to provide proper notice of default.

On June 19, 2024, Defendant deposed Tonya Tillman, a foreclosure specialist for NewRez LLC, the servicer of the loan on behalf of Plaintiff. In her deposition, Tillman provided testimony regarding the documents related to the loan and the procedures followed in servicing the Mortgage.

Following this deposition, on July 31, 2024, Plaintiff filed a Motion for Summary Judgment and other related judgment motions that included an Affidavit executed by Tillman. In the Affidavit, Tillman affirmed that Plaintiff had complied with all necessary conditions precedent for initiating foreclosure, including the sending of the Notice of Default.

On August 9, 2024, Defendant filed a Motion to Strike the Tillman Affidavit. On the presentment date of Plaintiff's judgment motions, August 14, 2024, the Court entered an Order advancing Defendant's instant Motion, striking the then scheduled presentment date for the Motion, set a briefing schedule on the Motion, and entered and continued Plaintiff's judgment motions to the hearing date on Defendant's Motion *sub judice*. On September 11, 2024, Plaintiff timely filed its response brief to the Motion to Strike, and on October 1, 2024, Defendant timely

filed his reply brief in support of his Motion. On October 17, 2024, the Court heard oral argument on the Motion.

After reviewing the Motion, the Response, and the Reply, and after hearing oral argument from the parties, the Court orally ruled on the Motions and entered an Order on October 17, 2024, ordering itself to issue a written opinion memorializing its oral ruling made in open court. The Court's ruling as orally given and the reasoning behind it are as follows.

II. LEGAL STANDARD

Geoghegan moves this Court to strike the Tillman Affidavit for non-compliance with Illinois Supreme Court Rule 191(a). When a court rules on a motion to strike, "only the tainted portions" of an affidavit should be stricken and any portions that comply with Rule 191(a) should be saved. *Murphy v. Urso*, 88 Ill. 2d 444, 463 (1981). Strict compliance with Rule 191(a) is necessary to ensure that the Court is presented with valid evidentiary facts upon which to make a decision. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 338-39 (2002). It follows that "unsupported assertions, opinions, and self-serving or conclusory statements do not comply with Rule 191(a)." *Jones v. Dettro*, 308 Ill. App. 3d 494, 499 (4th Dist. 1999). The plain language of Rule 191(a) requires that all documents supporting an affidavit must be attached and the failure to attach the documents is fatal. *Preze v. Borden Chem., Inc.*, 336 Ill. App. 3d 52, 57 (1st Dist. 2002). Ultimately, "[a]ffidavits in support of (***) a motion for summary judgment (***) shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a).

III. ANALYSIS

Before analyzing the arguments presented by the parties regarding Defendant's Motion to Strike, the Court must engage in a preliminary request made by Defendant during oral argument. Defendant requested that *Wells Fargo Bank v. Brown*, No. 2009-CH-13581 (Cir. Ct. Cook County, May 4, 2012), a trial court case cited by Plaintiff, be stricken from consideration. It is black letter law in Illinois that circuit court decisions have no precedential authority and are not binding on appellate or other courts. *People v. Harris*, 123 Ill. 2d 113 (1988). Accordingly, this case is given no consideration in the ruling on the instant Motion.

Additionally, during oral arguments, Defendant requested that all citations to and reliance upon *Community Loan Servicing, LLC v. Ezlakowska*, 2024 IL App (1st) 231037-U, an unpublished appellate court order, by Plaintiff also be removed from consideration. Illinois Supreme Court Rule 23(e) addresses the precedential value of certain court orders. Specifically, it governs how unpublished orders issued by the Illinois Appellate Court may be cited. The amendment to Rule 23(e), effective January 1, 2021, permits citation to unpublished orders from the Illinois appellate courts as *persuasive* authority only. These orders are therefore not precedential in nature. See *Sunnyside Elgin Apartments, LLC v. Miller*, 2021 IL App (2d) 200614, ¶ 35. Accordingly, the Court allows *Ezlakowska's* discussion to remain, but only for its persuasive effect and not as binding precedent.

Defendant argues that the Tillman Affidavit fails to comply with Illinois Supreme Court Rule 191(a) because it is based on hearsay and fails to reference

sufficient personal knowledge by the Affiant. Defendant also asserts that Tillman failed to properly authenticate the business records attached to the Affidavit.

Plaintiff contends that Geoghegan lacks standing to bring this Motion because he is not a party to the Mortgage or the Note that were solely executed by Janiak, the original borrower. As such, Geoghegan was not entitled to receive any Notice of Default under the terms of the Mortgage and cannot challenge the procedural compliance related to the affidavit. Plaintiff further argues that the Tillman Affidavit fully complies with Rule 191's requirements. The Court will analyze each issue in turn.

A. Geoghegan Lacks Standing to Bring This Motion

In Defendant's Answer, he asserts that he was not served with proper pre-suit notice in violation of the conditions precedent set forth in Section 22 of the Mortgage. Geoghegan argues that he is entitled to proper notice as a "successor in interest" and should be construed as the borrower for all purposes of the Mortgage and Note in this case.

Privity is defined as a "[m]utual or successive relationship to the same rights of property, or such an identification of interest of one person with another as to represent the same legal right; (***) [t]hus the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor," *etc.* Black's Law Dictionary, 1078 (5th Ed. 1979). *Privity of estate*, specifically, refers to the mutual or successive relationship to the same rights of property, typically arising

when one party transfers an interest in the property to another, such as through inheritance or sale. *Id.* at 1079.

However, there is also privity between a lender and borrower, known as *privity of contract*—a “connection or relationship which exists between two or more contracting parties.” *Id.* at 1080. It should be noted that there is no privity of contract between a lender and a third party, unless that third party promises to pay the debt. 735 ILCS 5/9-101.

Illinois has historically enforced strict compliance for conditions precedent in a mortgage with which a lender must comply in order for them to have grounds to file an action upon which the lender hopes to recover. *Cathay Bank v. Accetturo*, 2016 IL App (1st) 152783, ¶ 26 (citing *Kingdomware Techs., Inc. v. United States*, 579 U.S. __, __, (2016); *People v. Pomykala*, 203 Ill. 2d 205-206 (2003)). A “condition precedent” is an act that must be performed or an event that must occur before a contract becomes effective or before a party is required to perform. *Id.* “[S]trict compliance with the presuit notice is required,” and a plaintiff’s failure to strictly comply with such a condition precedent warrants dismissal of its complaint. *Scott v. City of Chicago*, 2015 IL App (1st) 140570, ¶¶ 30, 32.

Individuals who are in privity with one another likely have standing to sue if contractual obligations are not met. Standing to sue means that:

[a] party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of ‘standing’ is satisfied if it can be said that the [party]

has a legally protectable and tangible interest at stake in the litigation. Black's Law Dictionary, 1260 (5th Ed. 1979) (internal citations omitted).

Standing serves to establish clear guidelines for determining who has the right to bring a lawsuit. "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit and assures that issues are raised only by those parties that have a real interest in the controversy." *Deutsche Bank National Trust Co. v. Payton*, 2017 IL App (1st) 160305, ¶ 24 (citing *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999)). Furthermore, an individual who lacks standing may not file motions or other court actions, as a lack of standing is sufficient to dismiss the pleading. *People v. Johnson*, 2021 IL 125738, ¶ 72. Needless to say, without a "contractual nexus," a party cannot have standing to plead defenses in a lawsuit related to the contract. See 735 ILCS 5/2-619(a)(2); see also *Payton*, 2017 IL App (1st) 160305, ¶ 26. States across the nation have reached the same conclusion. See generally *Clay County Land Trust #08-04-25-0078-014-27 v. JPMorgan Chase Bank*, 39 Fla. L. Weekly 4233 (Dist. Ct. App. 2014) ("A borrower is the only party who can plead nonperformance of notice of default and opportunity to cure conditions precedent of a mortgage").

Janiak is in privity of contract with Plaintiff, as they are the sole parties to the Mortgage. On the other hand, Janiak and Geoghegan are in privity of estate with one another, because Geoghegan succeeded to Janiak's interest in the property after her passing. This privity relates to the ownership or interest in the property itself, not the Mortgage contract. Janiak is in privity of contract with Plaintiff and

privity of estate with Defendant; however, Plaintiff and Defendant are not in privity, as no contractual relationship exists between them since Geoghegan did not sign the Mortgage or the Note nor is he defined as the “borrower” by the Mortgage’s very own terms.

Privity requires compliance with obligations set by the contract and “requires that the party suing has some contractual relationship with the one sued.” *1400 Museum Park Condominium Association v. Kenny Construction Company*, 2021 IL App (1st) 192167, ¶ 38. It is reasonable to assume that where there is privity, the parties are obligated to strictly comply with express conditions precedent; including, but not limited to, Plaintiff’s duty to provide notice and opportunity to cure the default before acceleration of the loan. *Accetturo*, 2016 IL App (1st) 152783, ¶ 32; *Associates Asset Management, LLC v. Cruz*, 2019 IL App (1st) 182678, ¶ 34. Moreover, where there is no privity, there may be no contractual obligations or rights, and as the record shows, there is no privity between Plaintiff and Defendant. Therefore, Plaintiff is not bound by any contractual obligation to provide Defendant with notice of the loan default.

Defendant posits that he was not served with proper notice pursuant to Section 22 of the Mortgage, as there was no letter addressed to him to notify him of the loan’s alleged default. (Def’s Resp., Ex. 1. Affidavit, ¶¶ 15, 16.) However, Section 22 of the Mortgage specifically gives reference to “Borrowers,” *not* “Successor(s) in Interest of Borrower”; therefore, there is no condition precedent obligating Plaintiff to include Defendant in its presuit notice. (Pl.’s Comp., Ex. A Mortgage, ¶ 22.)

Additionally, Defendant argues that he does fall within the definition of a "Borrower." Defendant is mistaken; he does not fit the definition, which is "the person obligated under the mortgage loan." 765 ILCS 910/2. The Mortgage and Note explicitly address the "Borrower(s)"—a title bestowed exclusively upon Janiak.

It is well established that there is no contractual relationship between Plaintiff and Defendant; therefore, Geoghegan lacks standing to bring the instant Motion to attack the Tillman Mailing Affidavit where he was never entitled to notice in the first place. Based on this information and thorough analysis, Geoghegan has failed to raise a justiciable pleading sufficient to stand before this Court. Accordingly, Geoghegan lacks standing to bring this Motion and his Motion to Strike is DENIED.

B. The Court May *Sua Sponte* Analyze and Strike the Tillman Affidavit for Strict Compliance with Relevant Illinois Supreme Court Rules

While Defendant lacks standing to bring the Motion, the Court retains the authority to evaluate the sufficiency of any and all affidavits submitted in support of summary judgment under Illinois Supreme Court Rule 191(a). Rule 191 requires strict compliance with its provisions, ensuring that affidavits are based on personal knowledge, contain specific facts admissible as evidence, and have authenticated documents attached when referenced therein. This Court's Standing Order expressly informs all litigants that dispositive motions "(***) brought pursuant to Illinois Code of Civil Procedure sections 2-1005, 2-619, and 2-301(b) or section 15-1506 of the Illinois Mortgage Foreclosure Law will be screened for strict compliance with Illinois Supreme Court Rules 113, 191, 236, and/or 803(6) as

required.” Amended and Restated Standing Order, Calendar 60, § XII(l) (Sept. 3, 2024).

This Court possesses the inherent authority and discretion to make rules regulating its own docket and ensure compliance with procedural rules, from which deviations may not be made by litigants, in order to prevent undue delay or disruption. *Id.* § I(a) (citing 735 ILCS 5/1-104(b); *Jones v. State Farm Mutual Automobile Insurance Co.*, 2018 IL App (1st) 170710, ¶ 21; *VC&M, Ltd. v. Andrews*, 2013 IL 114445, ¶ 26; and *In re L.S.*, 2022 IL App (1st) 210824, ¶ 111). This authority clearly includes the power to strike affidavits *sua sponte*, meaning the court can act on its own initiative when it observes non-compliance. In fact, a “trial court can—and should—*sua sponte* strike affidavits that are insufficient under Rule 191(a).” *Essig v. Advocate BroMenn Medical Center*, 2015 IL App (4th) 140546, ¶ 56. This inherent power of the Court is critical in summary judgment proceedings, as affidavits are often the key pieces of evidence relied upon by courts to resolve cases without trial. Therefore, if an affidavit does not comply with Rule 191’s requirements, such as failing to demonstrate an affiant’s personal knowledge or to properly authenticate business records, this Court can—and should—take corrective action to strike it without being prompted to do so by a party. *Id.*

In this case, the Tillman Affidavit is found to be deficient under Rule 191 due to multiple issues that became evident during her deposition on June 19, 2024. Tillman acknowledged that she has no personal knowledge regarding the creation or maintenance of key documents referenced in her Affidavit. For instance, in her

deposition, she conceded that she was not employed by prior loan servicers like Nationstar Mortgage, LLC; and, therefore, Tillman cannot speak to Nationstar's record-keeping practices. (Tillman Deposition, 59:3-5.) Furthermore, in paragraph six of her Affidavit, Tillman claims that the "business records are kept electronically" (Tillman Affidavit, ¶ 6), but she later admitted during her deposition that she has no personal knowledge of how these records were maintained. (Tillman Deposition, 59:10.) Tillman further admitted that she does not know who maintains the system that supposedly keeps the loan records. (Tillman Deposition, 59:13.) These admissions underscore the fact that Tillman's Affidavit is not based on personal knowledge, as required by Rule 191(a). *Robidoux v. Oliphant* affirms that affidavits lacking personal knowledge must be stricken to prevent trial judges from relying on unsupported conclusions. 201 Ill. 2d 324, 336 (2002). Tillman's reliance on documents produced by prior servicers, without knowing how they were created or handled, directly violates this principle and renders her Affidavit insufficient under Rule 191. If Tillman were called as a witness, she would not be able to competently testify to the contents of her Affidavit.

Tillman's Affidavit additionally references several business records, but she fails to properly authenticate and attach those records as explicitly required under Illinois law. Rule 191(a) mandates that all referenced documents in an affidavit be attached and authenticated. Ill. S. Ct. Rule 191(a).

As the court held in *Gulino v. Economy Fire & Casualty Co.*, the proponent of business records must demonstrate that the documents were created in the regular

course of business and at or near the time of the event. 2012 IL App (1st) 102429, ¶ 27. In addition to this requirement, *Riley v. Jones Bros. Construction Co.* outlines that 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 justify their admission.” 198 Ill. App. 3d 822, 829 (1st Dist. 1990).

Tillman’s Affidavit falls short of these standards. During her deposition, she admitted that the documents on pages 5-11 of her Affidavit were not generated by her employer, NewRez LLC, but by a prior servicer, Nationstar Mortgage, LLC. (Tillman Deposition, 59:3-5.) Tillman further admitted that she lacks any knowledge about the equipment or computer programs used to generate those documents. (Tillman Deposition, 59:16.) Tillman was unable to provide any information about who created the documents, when they were generated, what computer was used, how the computer was maintained, or how often it was checked for errors or malfunctions. (Tillman Deposition, 59:13-23.)

This lack of knowledge demonstrates that Tillman does not have the requisite personal knowledge to authenticate the business records. Without knowledge of the document creation process, the equipment used, or the reliability of the systems involved, Tillman cannot satisfy the foundational requirements outlined in *Riley* for

computer-generated records. As such, the documents referenced in her Affidavit are inadmissible, and the Affidavit itself is non-compliant with Rule 191.

Rule 191's requirement that documents referenced in the affidavit be attached is not a mere technicality, but a substantive obligation. As held in *Preze v. Borden Chemical, Inc.*, failure to attach such documents is fatal to the affidavit. *Preze*, 336 Ill. App. 3d at 61. Tillman's affidavit repeatedly references "the loan," "records," and "business records" (Tillman Affidavit, ¶¶ 1-12), yet these documents are conspicuously absent from the affidavit. *Lucasey v. Plattner* firmly establishes that even if the documents are available elsewhere in the record, they must still be attached to the affidavit itself. 2015 IL App (4th) 140512, ¶ 23. Furthermore, Illinois Supreme Court Rule 236, providing a hearsay exception for business records, does not exempt parties from strictly complying with Rule 191 or any other Supreme Court Rule for that matter. All litigants must still adhere to Rule 191's requirements, including attaching supporting documents. Nothing in the law states that the application of a hearsay exception under Rule 236 relieves a party of the obligation to provide proper documentation in accordance with Rule 191(a) as such rules must be strictly followed. *Lucasey*, 2015 IL App (4th) 140512, ¶ 19. Therefore, Plaintiff cannot rely on Rule 236(e) as a justification for failing to attach the necessary documents. This failure to attach the documents necessarily relied upon in the Affidavit's creation is not only a procedural defect, but also completely undermines the reliability of Tillman's assertions. *Id.* ¶ 20 (citing *Robidoux*, 201 Ill.

2d at 334). For this reason alone, the Affidavit must be stricken in its entirety as the fatal flaw taints the entire document.

Moreover, Tillman's Affidavit contains hearsay statements that violate Rule 191's requirement that affidavits consist of facts admissible in evidence. In paragraph 8, Tillman references a "screen shot" purportedly showing that a letter was sent in response to an alleged default. However, during Tillman's deposition, she admitted that she has no knowledge of who took the screen shot, what system was used, or even whether the document was actually mailed. (Tillman Deposition, 59:16.) As such, Tillman's Affidavit relies heavily on hearsay and speculative assertions that are inadmissible under Rule 191(a). The Court in *Lajato v. AT & T* clearly stated that hearsay statements cannot be considered in summary judgment proceedings. 283 Ill. App. 2d 126, 139 (1st Dist. 1996). Thus, Tillman's reliance on third-party information without any direct involvement or verification renders her Affidavit facially invalid.

In light of these deficiencies, Tillman's Affidavit fails to meet the strict requirements of Rule 191(a). Tillman's lack of personal knowledge, failure to authenticate business records, unsupported statements, failure to attach relevant documents, and reliance on hearsay all demonstrate that the Affidavit is inadequate for consideration in support of Plaintiff's Motion for Summary Judgment. For these reasons, the Affidavit is hereby STRICKEN in its entirety, *sua sponte*.

IV. CONCLUSION

Accordingly, for the aforementioned reasons, Geoghegan's Motion is hereby DENIED for lack of standing. The Court finds that the Tillman Affidavit is not strictly compliant with Illinois Supreme Court Rule 191(a); and it is hereby STRICKEN from the record in its entirety, *sua sponte*. As such, Plaintiff's judgment motions are all hereby DENIED without prejudice.

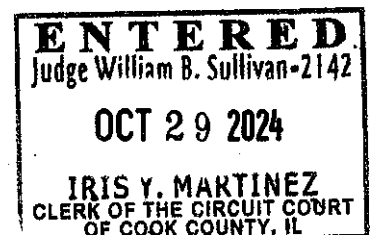
THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS AS FOLLOWS:

- (1) Defendant's Motion to Strike Affidavit of Tonya Tillman and For Other Relief is hereby DENIED for lack of standing;
- (2) The Court finds that the Affidavit of Tonya Tillman is not compliant with Illinois Supreme Court Rule 191(a);
- (3) The Affidavit of Tonya Tillman is hereby STRICKEN from the record in its entirety, *sua sponte*;
- (4) Plaintiff's judgment motions are all hereby DENIED without prejudice; and
- (5) All final dispositive motions brought by any party shall be filed within 90 days from the date of the hearing, on or before January 15, 2025.

IT IS SO ORDERED.

Date: October 29, 2024

ENTERED:



ORDER PREPARED BY THE COURT
ccc.mfmlcalendar60@cookcountyil.gov
(312) 603-3894

A handwritten signature in black ink, appearing to read "William B. Sullivan".

Honorable William B. Sullivan
Cook County Circuit Judge