

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FOURTH DISTRICT

CASE NO.: 4D15-2809
L.T.NO: 2010-CA-008410
Palm Beach Circuit Court

OCWEN LOAN SERVICING, LLC

Plaintiff/Appellant,

vs.

ROBERT GUNDERSEN,

Defendant/Appellee.

Appellees, ROBERT and JOAN GUNDERSEN
RESPONSE BRIEF

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DATE FILED February 11, 2016

CERTIFICATE OF INTERESTED PERSONS

Counsel for the Appellee certifies that the following persons and entities have or may have an interest in the outcome of this case:

1. Ocwen Loan Servicing, LLC, Appellant
2. Robert Gundersen and Joan Gundersen, Appellees
3. Keith A. Fousek, Esquire, Trial and Appellate Counsel
4. Kyle Peters, Esquire, Trial Counsel
5. Patrick G. Broderick, Esquire, Appellate Counsel
6. Circuit Court Judge, Jaime Goodman, Trial Judge

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PREFACE

The parties to this appeal will be referred to in this Initial Brief by title in the lower Court. The Appellees, ROBERT GUNDERSEN, shall be referred to as the Appellee/Defendant, ROBERT GUNDERSEN, the Appellee, JOAN GUNDERSEN, shall be referred to as Appellee/Defendant, JOAN GUNDERSEN. The Appellant/Plaintiff, Ocwen Loan Servicing, LLC, shall be referred to as the Appellant/Plaintiff.

References to the record will be made by reference to the page number with the prefix “R” followed by a hyphen with the page number(s). References to the Trial Transcript will be designated by the prefix “TT” with the page number(s). References to the appendix to this Response Brief, if any, will be designated by the prefix “A” with the appendix letter.

STATEMENT OF THE CASE AND FACTS

This is a case involving a foreclosure trial and the Court's rulings on the admissibility of evidence, which the Plaintiff attempted to enter into evidence through its corporate witness, Harrison Whitaker.

Procedural History:

The Plaintiff filed its original complaint on or about March 19, 2010 (R0001 - 0042).

On April 15, 2010, the Defendants filed a Motion to Dismiss the complaint for foreclosure (R0047 - 0056).

On December 9, 2010, the Court entered an Order Dismissing the Plaintiff's Complaint (R0097)

On December 15, 2010, the Plaintiff filed an Amended Complaint (R0099 - 0143).

On January 28, 2011, The Defendants filed a Motion to Dismiss the Amended Complaint (R0149 - 00167)

On November 4, 2013, the Court entered an Order Dismissing the Amended Complaint (R00207)

On November 25, 2013, the Plaintiff filed a Second Amended Complaint (R0208 - 0252).

On January 2, 2014, the Defendants filed an answer and affirmative Defenses to the Amended Complaint.

On January 24, 2014, the Plaintiff filed a Motion to Strike the Defendant's Affirmative defenses (R0262 - 0272).

On March 10, 2014, the Court struck the Defendants' affirmative Defenses 2-11 and 13 (R0273 - 0274).

On or about November 25, 2014, Plaintiff moved for Summary Judgment of the Complaint by filing its Amended Motion for Summary Judgment (R0281 - 0287).

On January 27, 2015, the Defendants filed a Response to the Plaintiff's Motion for Summary Judgment (R0430 - 0443) and Affidavits in opposition to summary Judgment (R0522 - 0526). The Motion for Summary judgment was never heard by the Court .

On April 20, 2015, the trial in this matter took place in front of the Honorable Jaime Goodman, in West Palm Beach, Palm Beach County, Florida.

After the Plaintiff rested its case, the Defendants Moved for a Directed Verdict in their favor, which was granted as an involuntary Dismissal (R0541).

On May 5, 2015, the Plaintiff filed a Motion for Rehearing (R0542 - 0551).

On June 24, 2015, the Court entered an Order Denying the Plaintiff's Motion for Rehearing (R0617 - 0618).

SUMMARY OF ARGUMENTS

- I. The Court was correct in its rulings on the evidence presented at trial, by the Plaintiff and correctly applied the latest relevant case law on the issue and should be affirmed by this Honorable Court. Although the Plaintiff's Witness, Harrison Wittaker said the "magic" words, that the records were verified when he first took the stand on direct, he could not give the most basic description of the process used to verify the records on voir dire by the Defendant or the Trial Court. He was given numerous opportunities by both the Defendant's counsel at trial and the Trial Judge to explain the process used to verify the records and failed to do so. The Trial Court made it very clear that he wanted more detail on the verification process. Plaintiff's Trial Counsel failed to ask questions which elicited testimony, which would have laid the proper foundation for the entry of the evidence, which the Plaintiff was attempting to enter. This is of course, assuming that there was an actual and proper foundation. When the Plaintiff's Trial Counsel failed to ask the right questions which would lay a proper foundation. The Trial Court attempted to ask the questions of the witness which might lead to the proper foundation. The witness, after being given numerous chances, failed to lay the proper foundation for the exhibits excluded by the Trial Court. The Appellant is trying to direct this Honorable

Court to look only at the issue of whether the Witness testified that he had personal knowledge of the person who did the boarding process in this matter, and the testimony related to the same. The Appellant argues that the Witnesses failure to have personal knowledge of the person(s) who did the boarding process is the reason the Court excluded the exhibits. However, the issue of whether the witness had personal knowledge of who did the boarding, is not the real issue for this Honorable Court nor was it for the Trial Court. The Plaintiff had the burden to ask questions on direct which would lay a proper foundation for the exhibits excluded by the Trial Court and did not do so. All the Witness had to do is testify as to the details of the process used to verify the records and failed to do so, even after being questioned by the Trial Court and the Defense. It is the Defense's job to point out the flaws in the chain of custody of evidence, to bring into question the foundational elements of an exhibit and the witness's ability to testify about a particular piece of evidence, along with trying to confuse the witness and muddle up the issues for the trier of fact. It was obvious that the Defense succeeded, but that does not alleviate the Plaintiff's burden to lay the proper foundation.

Although the first objection made by the Defense went to the personal knowledge of the witness to testify to the records of another company (R000570). It

was the following line of questioning by the Plaintiff's Trial Counsel which originally confused the witness and caused the succeeding lines of questioning. Instead of questioning the witness as to how Ocwen came into possession of the *records* of GMAC, the Plaintiff's attorney began asking questions related to the actual purchase of the assets of GMAC by Ocwen (R000570). The Questioning went as follows:

BY MR. PETERS:

Q. Can you explain to us how Ocwen came to acquire GMAC Mortgage, LLC?

A. Yes. Again, Ocwen had entered into or started to enter into an agreement with GMAC. Prior to entering into that agreement, they had worked with GMAC to make sure that their policies and procedures were okay with the standard that Ocwen has to keep -- that Ocwen keeps

And they felt that it was satisfactory for them to enter into an agreement to purchase all of those loans including –

The Defendant made another objection at this point (R000571):

MR. FOUSEK: Judge, we renew our objection. He's testifying the same way.

THE COURT: Same ruling.

In the next line of questioning (R000571) it looked like the Plaintiff/Appellant's trial counsel would finally ask questions which would lead to a proper foundation, but again asked a question which confused his own witness and did not ask any questions

related to the boarding or verification process.

BY MR. PETERS:

Q. Can you explain to us after the purchase and sale what happened with GMAC's records?

A. Sure. They had gone through our boarding process, meaning that when we enter into an agreement, we sit down with the prior servicer to make sure that their record keeping goes through a strict verification process.

And after that verification process has been completed officially, those GMAC records become a part of Ocwen's business records.

Q. So you're saying that GMAC Mortgage, LLC, the company, all of its records and property -- are you saying that became a part of Ocwen's property at that point?

A. That is correct, after it has gone through our boarding process.

At this point in the direct testimony of the witness, the Plaintiff/Appellant's Trial Counsel has asked questions about both the purchase of the assets of GMAC and the mortgage servicing records of GMAC, mixing the issues and it is no longer clear whether the "boarding process," is related to the asset purchase agreement of GMAC or the records related to the servicing of mortgages. The line of questioning turned to the ownership of property as a whole and more specifically, the ownership of the

computer system used by GMAC and not the records themselves. The line of questioning did not include what the boarding or verification process included or even a basic outline of the process (R000571-000572).

BY MR. PETERS:

Q. You have access to GMAC Mortgage, LLC's systems that were transferred to Ocwen?

A. Right. They would be Qcwen systems now, but they prior would have been with GMAC Mortgage systems.

Q. For this particular loan, it's your understanding that the systems that maintain this loan when the loan was with GMAC, that system is now under the control of Ocwen Loan Services?

A. That is correct

The Plaintiff/Appellant's questioning turned to the Original note and Mortgage and abandoned all lines of questioning which related to the process of verification of records. The Trial Court admitted over objection, the Original Note and Mortgage because they were in the Court file and allegedly had the Appellees' Signatures on them (R000572 - 000576).

The Plaintiff/Appellant then moved onto what was marked for identification #2. It was a screen shot of a GMAC computer system (R000580). The Plaintiff's Trial

Counsel asked a good question related to the checks and balances related to “records” but failed to ask what records he was asking about. The Witness then proceeded to testify about records *prior* to the boarding process and his testimony becomes a jumble of the purchase of asset records and business records. His testimony was so disjointed, he confused the judge (R000580 -000581).

BY MR. PETERS:

Q. You touched on this a little bit earlier, but can you tell us what checks and balances were made to make sure that these records were reliable before they were entered into Ocwen Loan Servicing records?

A. Yes. We have -- again, prior to actually entering into the agreement, we have teams in our office that speak and sit with the prior servicer *prior* (emphasis added by Appellee) to boarding that make sure that we go through all of the records that -
-prior to them being part of Ocwen's records, for validity, to make sure they were sent out at the correct time, that they were accurate.

Again, they go through the entire process with checks and balances, QC processes towards the end that make sure that the information that we are entering into our own systems has been backed up and has been verified prior to it going and entering it as a part of Ocwen's business records.

If there is any type of information that we cannot verify or we cant specifically

put the date on, it would not be entered into our system. It would get kicked back and also either find -- speak to the prior servicer about the issue or it wouldn't be a part of our business records.

THE COURT: Just a moment. You spoke with the prior servicer about these issues?
Me personally, no.

THE COURT: Thank you, Please continue.

At that time, Plaintiff's Trial Counsel tried to move the exhibit into evidence. The Defendant objected for lack of foundation and the Trial Court properly sustained, because the Plaintiff's Trial Counsel had not yet had his witness testify to the processes used during the boarding process (R000581 - 000583). The Court then tendered the witness for additional voir dire.

VOIR DIRE EXAMINATION

BY MR. FOUSEK:

Q. Sir, do you have any personal knowledge on what date this was put into the system?

A. What is this?

Q. This document you're looking at

THE COURT: Exhibit No. 2,

THE WITNESS: Yes. Again, this was entered into on March 11th, 2010.

BY MR. FOUSEK:

Q. Do you have any independent knowledge that that's the actual date it was done?

A. It has gone through our boarding process and has been verified through that process and is part of our business records currently. So yes.

Q. Who verified it?

A. I do not know the exact individual.

Q. Were you provided information on who actually put the information into the system?

A. I was not.

Q. Do you have any information that was provided to you that when they put the information in that it was accurate at the time it was put in?

A. Again, I don't know the specific individual. I did not work for GMAC at the time. Again, however, when we had entered into the agreement with the prior servicer, those things had been -- were cleared out and found acceptable by Ocwen in order for them to go ahead with the purchase and boarding process through our -- for their records, and it's become a part of Ocwen's business records.

Q. Do you have any idea what Ocwen looked at, specifically this document related to what made it trustworthy, what made the date correct?

A. I was not a part of the boarding process at the time. I do know that they, again,

work with the prior servicer to make sure that the information that is contained and entered into do match at Ocwen the standards that we keep for our servicing records

Q. The only thing you can testify to is that you're looking at the system and that's what it's telling you, but you have no personal knowledge who actually did it or who actually boarded it?

A. I don't know the individuals' names, no.

MR. FOUSEK: No further questions, Your Honor.

The Defendant's Counsel, asked questions during the above voir dire, that would have allowed the Witness to testify as to the actual process used in the boarding process, but again he did not. His testimony kept going around in a circle that the records went through a boarding process. However, he never distinguished or explained what the boarding process consisted of and again did not make any distinction between the records reviewed by Ocwen when they purchased GMAC's assets and the records which were reviewed during the boarding process for this or any other loan (Assuming, that when the witness talked about the "boarding process," he was talking about the servicing records on mortgage loans, because he never clarified that during his testimony). Additionally, the witness talked about the records being acceptable to Ocwen, but not whether they are accurate or correct. He testified that the records met Ocwen's standards for record keeping, but did not say what that

standard was or that the standard he was referring to was the standard in the industry. And again his testimony was confusing as to whether he was talking about the exhibits or the records for Ocwen's asset purchase of GMAC, other loans or what assets were being purchased.

After the Defendant's Trial Counsel finished voir dire, the Trial Court asked questions which opened the door for the witness to lay the proper foundation, but again, he failed to do so (R000584). The Trial Court specifically asked the Witness:
THE COURT: But do you know how the prior information was prepared, who prepared it, how it was prepared? Do you have any personal knowledge of that?

THE WITNESS: I was not working for GMAC at the time

THE COURT: Thank you very much, sir.

At this point the Court sustained the Objection unless the Plaintiff laid further foundation.

Even after the Plaintiff's Trial Counsel asked several leading and foundational questions, the witness failed to lay a foundation (R000585).

DIRECT EXAMINATION (Continued)

BY MR. PETERS:

Q. As far as the business processes go, can you explain how they were verified? I'm talking about GMAC Mortgage, LLC p[r]ossesses. Did Ocwen go through a

verification of GMAC Mortgage, LLC?

THE COURT: I would appreciate if you don't lead the witness. Just ask him the question to establish the predicate. Thank you.

MR. PETERS: Thank you.

BY MR. PETERS:

Q. Sir, can you tell us just about the GMAC Mortgage, LLC processes as they compare to Ocwen's?

A. Yes. Again, I have not worked for GMAC Mortgage. However, Ocwen has found it through their verification and through their record keeping system that it was acceptable for them to take on from GMAC Mortgage, again, through various our team of record keeping I'm sorry, of our boarding process team that went through and made sure their record keeping system was up to date and was acceptable from Ocwen.

And we found it necessary that we could keep them keep that -- their information-keeping system on at Ocwen.

Q. Does Ocwen also maintain the records in a similar way to GMAC Mortgage, LLC?

A. Yes. Again, we use similar record keeping systems online, computer systems, and that, again, are very similar to the process of GMAC Mortgage.

Q. And your processes, can you tell us how you are familiar that the information was entered by a person with personal knowledge?

A. Yes. I had worked for multiple departments in Ocwen and have seen firsthand data entry and things of that nature, also verification of documents information using online research tools that -- again, that the documents have been -- the information entered into are accurate, that they are entered around the same time that they're entered, that the information that's contained has gone through the necessary steps for that to be a part of our business records.

Again the Witness's testimony was confusing, incoherent and non responsive to the questions asked. When asked by his own attorney how he was sure the information was entered by a person with knowledge, all he states is that he has seen data entry (R,000586). He did not state what type of data entry he had seen. He testified that he had seen verification of documents online, but not what kind of documents. He did not testify that the documents in question were treated like the documents he partially described. He failed to describe the online tools mentioned, how the tools were related to the exhibits or how the tools were used to verify records. Again he failed to give any steps that were used to board the records.

After a failed attempt to lay the foundation for the Plaintiff's Exhibit 2, again for failing to lay the proper foundation, the Plaintiff's Trial Counsel basically gave up

trying to lay a foundation for his Exhibits 3-5 or 7. Six was admitted without objection.

Because there was never any testimony which said that the records were boarded through a process that consisted of 1., 2., 3., etc. And/or this process ensured that the records were accurate because they were the standard of record keeping in the banking and mortgage industry or that Ocwen maintained their records in accordance with banking and mortgage standards, the Trial Courts rulings were correct.

The Witness, Harrison Whitaker, although he worked for Ocwen, was not the best or a qualified witness to testify on behalf of the Appellant, as he had no knowledge of the process used by GMAC to enter or maintain their records, he had no knowledge of what the boarding process was that transferred records from GMAC to the Appellant. It is not enough, that the witness can assume that the records were correct because they were in Ocwen's system.

If the Witness, Harrison Whitaker's testimony as described in the Appellant's Brief is looked at as a whole and the substance of the testimony as a whole. All he testified to is that Ocwen, had a boarding process, and that "a prior servicer's" records "go through the entire process with checks and balances." He did not testify as to the process or that the records he was trying to enter into evidence or even the mortgage accounting records of GMAC, went through this boarding process. He only testified

that some of GMAC's records of some sort, went through some type of process, he never testified as to what specific records went through the process or what the process was. When he testified, he repeatedly mixed the issue of the asset sale of GMAC to Ocwen, with the sale of servicing rights and the accompanying records. He testified that (Appellant Brief Page 16) Ocwen ensures "that the information that [it is] entering into [its] systems has been backed up and has been verified" (R:580-81). Mr. Whittaker stated that if the accuracy of any records cannot be verified, they are not entered into Ocwen's system. (R:581).

However, he never testified specifically as to what records he was talking about. The Witness Harrison Whittaker, also testified that he has "worked for multiple departments in Ocwen and ha[s] seen firsthand data entry . . . [and] verification of document[] information using online research tools" (R:586). The Witness did not testify as to which departments he worked. He testified that he had witnessed data entry and document verification using online tools. But, he never testified as to what kind of data he witnessed being entered or what system it was being entered into. Ocwen has many different computer systems, such as word processing, human resources, accounting , etc. The Trial Court nor Defendant's Trial Counsel knew what the witness was talking about, because he never clarified what he was talking about. Mr. Whittaker never clarified in his testimony, what documents were verified

or how they were verified nor did he testify to what online tools were used or how they were used to verify anything. Even though the Witness testified that Ocwen continues to use GMAC's system, he did not testify with any particularity of knowledge of the system.

STANDARD OF REVIEW

The Appellees agree that the standard of review is abuse of discretion, when ruling on evidentiary matters. The Appellant's line of cases related to the standard of review, Peugnero v. Bank of Am., N.A., 169 So. 3d 1198 (Fla. 4th DCA 2015) and Bank of N.Y. v. Calloway, 157 So. 3d 1064, 1069 (Fla. 4th DCA 2015), are appropriate as they relate to the standard of review for evidentiary matters.

ARGUMENTS ON ISSUES

I. The Trial Court was correct when it ruled that the plaintiff failed to lay the proper foundation for the exhibits excluded from the trial by objection.

In Florida, a business record may be admitted into evidence under Section §90.803(6), Florida Statutes, as an exception to the hearsay rule. If, the proponent of the evidence can lay the foundation which demonstrates that the business record was, (1) made at or near the time of the event; (2) by or from information transmitted by a person with knowledge; (3) kept in the course of a regularly conducted business activity; and (4) that it was a regular practice of that business to make such a record, unless the sources of information or other circumstances show lack of trustworthiness.

In the context of a foreclosure action, a representative of a loan servicer testifying at trial is not required to have personal knowledge of the documents being authenticated, but must be familiar with and have knowledge of how the company's data is produced. In Cayea v. CitiMortgage, Inc., 138 So. 3d 1214, at 1217 (Fla. 4th DCA 2014), this Honorable Court held that "Printouts of data prepared for trial may be admitted under the business records exception even if the printouts themselves are not kept in the ordinary course of business so long as a qualified witness testifies as to the manner of preparation, reliability, and trustworthiness." If a representative of a servicing agent testifying at trial knows "how the data was produced," and is "familiar with the bank's record-keeping system and ha[s] knowledge of how the data was uploaded into the system," the business records exception is satisfied."

In the case at bar, the witness did not testify with sufficient clarity that he had personal knowledge of how Exhibit 2, was prepared, how the data was produced or how the data was uploaded into the Appellant's system, nor was he even asked any related questions specifically to this exhibit. In Sanchez v. Suntrust Bank, 179 So. 3d 538 (Fla. 4th DCA Nov. 25, 2015), this Honorable Court held, the trial court abused its discretion by admitting into evidence under the business records exception (§ 90.803(6), Fla. Stat.) a screen shot of a computerized record keeping system and other records, as the bank's counsel did not question the witness as to whether *each exhibit*

(emphasis added by Appellee) was made at or near the time of the event that it described; In the case at bar, the Appellant's counsel did not ask specific questions about any of the exhibits, except the Note and Mortgage, which were entered into evidence over the Defendant's objection as Exhibit 1. Whether the Appellant's Trial Counsel was sidetracked, confused, or unknowledgeable about laying the proper foundation for this type of document, the result is the same, he failed to ask foundational questions and failed to elicit foundational testimony about the exhibit he marked as #2, for identification purposes. Further, the witness was not qualified to lay the proper foundation for the introduction of the screen shot because, inter alia, he did not know anything about the process by which it was created. In Landmark Am. Ins. Co. v. Pin-Pon Corp., 2015 Fla. App. LEXIS 1238 (Jan. 7, 2015), which was an insurance coverage dispute, the Court held that the trial court erred by admitting the insured's Exhibit 98 as a business record because the insured failed to show that all the records in Exhibit 98 were made by or from information transmitted by a person with knowledge as the architect who testified could not testify as to when 25 of the 26 documents were made and he had no information as to whether the person who made the documents had knowledge or received information from a person with knowledge. In the case at bar, the Witness was given numerous opportunities to testify as to whether or not Exhibit #2, was entered by a person with knowledge or that he received

the documents from someone with knowledge.

In Cayea v. Citimortgage, Inc., 138 So. 3d 1214 (4th D.C.A. 2014), the Court held that the borrowers' payment history could be admitted into evidence under the business record exception of §90.803(6)(a), Fla. Stat. (2012), because the records custodian's testimony demonstrated his familiarity with the lender's record-keeping system and the process for uploading payment information. In the instant action, the Witness did not demonstrate his familiarity with the lender's record-keeping system and the process for uploading payment information. In the beginning of his testimony, he said he was familiar with the process, but under examination by the Defendant and the Trial Court, he could not testify in a manner which demonstrated familiarity with the record keeping system and procedures. The Plaintiff's Counsel gave up trying to lay the foundation for #2, through frustration, lack of understanding or confusion. Further, he did not even try to lay the foundation for exhibits marked for identification 3-5 or 7. At trial, exhibits cannot be moved into evidence, just because the witness should have known the facts demonstrating foundation or that the documents were allegedly accurate because the witness claims they are without being substantiated, or because the exhibit could have allegedly supported the Plaintiff's position without foundation or because of a witness who was unprepared for his testimony and the attorney gives up trying to lay the proper foundation. The Plaintiff

is also not entitled to another bite at the apple, because things did not go well or as planned at trial. The Appellant argues that the Court should grant a new trial because the Trial Court sustained objections made by the Defendant related to the knowledge of the person(s) who allegedly entered the data into GMAC's System. When asked for a response to the Defendants' objections from Trial Counsel for the Appellant, not once did the Appellant's Trial Counsel say that the knowledge of the person who actually entered the information was unnecessary to lay a foundation. Nor did he make any arguments which stated what the necessary foundation was for the entry of these particular exhibits to be entered into evidence.

Although the Witness is not required to know the person who entered the information into their computer system, they are required to at least be able to testify to the process. See Glarum v. LaSalle Bank Nat'l Ass'n, 83 So. 3d 780, 782 (Fla. 4th DCA 2011). Where the Court held "The law does not require an affiant who relies on computerized bank records to be the records custodian who entered or created the data, nor must the affiant identify who entered the data into the computer." Instead, the witness is required to demonstrate familiarity with the record-keeping system of the business that prepared the document and knowledge of how the data was uploaded into the system. This witness did not. The testimony of the witness at (R000589 - 000590) sums up the whole matter in this case. That the Witness had no working

knowledge of which department for GMAC entered the information, the procedures which GMAC used to verify the information being entered or what information was being entered into GMAC's records. The only thing that the Witness could testify to was that because he could access it on Ocwen's system, it must have passed the boarding process. The Court asked the witness about his personal knowledge of the procedures of GMAC (R000589 - 000590):

THE COURT: What personal knowledge do you have as to the procedures of the prior servicer, GMAC Bank?

What personal knowledge do you have in terms of this exhibit, in terms of how they put this stuff together based on your own personal knowledge?

THE WITNESS: Again, I believe I spoke about pretty much everything I had -- my personal knowledge would be that, again, it is part of Ocwen's business records, I have access to it, that they have gone through our boarding process as it pertains to becoming a part of Ocwen's business records.

I did not have any experience or not -- was not a part of the actual boarding process of that, but I was -- again, I do know that it has gone through that process as I can have access to it and has gone through our boarding process.

Basically, the witness testified that the records had to be correct because they were in the system, but had no idea of the process to get them into the system.

CONCLUSION

The trial court did not commit error in excluding the Appellate's Exhibits marked for Identification 2-5 and 7, from being entered into evidence. Because the Appellant's witness failed to give testimony with a sufficient degree of specificity of how GMAC or the Appellant entered or maintained their records to qualify as an exception to the hearsay rule under Florida Statute §90.803(6). Because the witness failed to lay a proper foundation for the aforementioned exhibits. The Appellant failed to present evidence as to the date or amount of default if any, and failed to present evidence that the Appellant satisfied all conditions precedent which entitled the Appellant to foreclosure. The Plaintiff chose to rest its case before it had established its entitlement to foreclosure or a deficiency judgment. The Court was correct in granting the Appellees' Motion for Involuntary Dismissal based upon the evidence which was entered into the record at trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by electronic service to Patrick G Broderick, Esquire, broderickp@gtlaw.com Greenberg Traurig, located at 777 S Flagler Drive, Suite 300, West Palm Beach, FL 33401-6167, this 11 Day of February, 2016.

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CERTIFICATE OF TYPEFACE COMPLIANCE

The Appellee hereby certifies that this Response Brief is submitted in Times New Roman 14 point font, pursuant to Fla.R.App.P. 9.210(a)(2).

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