

No. 1-10-2741

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 24313
	)	
MELODY DELGADO,	)	The Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE STEELE delivered the judgment of the court.  
Justices Murphy and Salone concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly admitted business records into evidence as exceptions to the hearsay rule at a bench trial where defendant was found guilty beyond a reasonable doubt of theft by deception; circuit court judgment affirmed.

¶ 2 Following a bench trial, defendant Melody Delgado was found guilty of theft by deception of between \$100,000 and \$500,000 from three real estate transactions. The trial judge sentenced Delgado to two years' probation and 32 days' incarceration with the Department of Corrections, with time considered served. Delgado appeals, contending: (1) the State failed to

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prove her guilty beyond a reasonable doubt; and (2) the trial court erred when it admitted evidence under the business record exception to the hearsay rule without a proper foundation.

For the following reasons, we affirm.

¶ 3

### BACKGROUND

¶ 4 Delgado is an educated individual who holds both associate and bachelor's degrees in accounting. She was pursuing a master's degree in business administration at the time the transactions in question occurred in May 2008. Notably, she earned a certificate in business fraud examination in June 2009. She worked for the Chicago Board of Trade as an accounts payable clerk and later worked for the Mercantile Exchange as an internal control's compliance analyst. In the latter capacity, she was responsible for ensuring the company complied with the Sarbanes Oxley Act (15 U.S.C. §7201 *et seq.* (2002)). Delgado was arrested along with her friend Michael Smith, on October 10, 2007, and charged with theft. A police investigation revealed that on June 30, 2006, Delgado made false statements on a mortgage application to obtain two residential loans involving real property located at 1717 South Prairie, Unit 1103 in Chicago, Illinois, in the amount of \$495,000. Additionally, on August 17, 2006, Delgado made false statements on a mortgage application to obtain two residential loans involving the property located at 1529 South State Street, Unit CT2 in Chicago, Illinois, in the amount of \$550,000. Further, on October 10, 2006, Delgado made false statements on a mortgage application to obtain two residential loans involving real property located at 1228 West 33rd Street in Chicago, Illinois, in the amount of \$685,000. In the paperwork to obtain the loans, Delgado fraudulently misrepresented her income, which was used to determine whether she would be able to repay the

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loans. She erroneously claimed she worked for either M.B. Dental Laboratory or Pizzeria Financial and inflated her reported income. As a result, Delgado obtained six mortgage loans, which she then allowed to be foreclosed upon. Delgado attended the three separate real estate closings where she signed and initialed all the documents that were admitted into evidence as business records. She received a \$10,000 portion of the commission after the closing, with the remainder split among the remaining codefendants.

¶ 5 Delgado's bench trial commenced on April 6, 2010, and ended on May 14, 2010. During the bench trial, the State called John Samuelson, Kelly Cullen, Juan Aguirre, and John Hennessey to testify as witnesses regarding the mortgage applications Delgado signed at the real estate closings. For the purposes of this appeal, we will not address the other testimony proffered by the State since Delgado's issue presented on appeal that we address and discuss herein only challenges the sufficiency of the above-referenced individuals' testimony.

¶ 6 Samuelson testified at trial that he worked as an assistant underwriting manager for Mortgage Investment Lending Associates Bank (MILA). He testified that he was the "keeper of the records" with access to loan documents maintained by MILA. He reviewed the loan documents for the property at issue (1529 South State Street, Unit CT2). He also testified that the loan documents for that property were made in the ordinary course of MILA's business, at or near the time of the loan application process. He explained Delgado was the borrower and sought a loan to purchase the property (priced at \$550,000) for use as a primary residence. He further testified the loan application listed Delgado's employer as M.B. Dental Laboratory and Delgado's monthly salary as \$11,700. The MILA loan document was marked as People's group

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exhibit 1, and the State moved to have the exhibit admitted into evidence. Delgado objected to admission of the document on the basis of foundation. The trial court overruled her objection.

¶ 7 The State also called Juan Aguirre to testify. Aguirre worked for GMAC Mortgage as a loan servicer and testified regarding its loan servicing procedures. He testified he was the "keeper of the records" for GMAC and reviewed mortgage documents and account history for 1529 South State Street, Unit CT2, Chicago Illinois, where Delgado was listed as the buyer. GMAC obtained the loan through a transfer on November 14, 2006. After several calls were made and several default letters were sent to Delgado, the loan was foreclosed upon and the payments were never brought current. He testified the mortgage documents were made and kept in the ordinary course of business for GMAC. Delgado's objection that the documents were prepared in anticipation of litigation was overruled and the documents were admitted into evidence.

¶ 8 Sean Hennessey testified he was a regional manager of American Brokers Conduit (ABC). He testified he had access to all loan and mortgage documents and was the "keeper of the records" for ABC. These records included the mortgage documents, which were made and kept in the ordinary course of ABC's business, that listed Delgado as the buyer for real property located at 1228 West 33rd Street, Chicago Illinois. Hennessey testified Delgado took two mortgages in order to purchase the property for use as her primary residence. One mortgage was for \$548,000 and the other for \$137,000.

¶ 9 Kelly Cullen testified she worked for City Mortgage in the default research and litigation department and in the foreclosure department as a specialist. Cullen also testified that she was familiar with the steps City Mortgage takes for delinquent loans. Further, she stated the

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mortgage documents and account history for Delgado's loan with City Mortgage were made and kept in the ordinary course of its business at or near the time of the transactions as stated in the documents.

¶ 10 Delgado testified on her own behalf. During her testimony, Delgado stated that she intended to rent units in each of the buildings for profit. This was her first home purchase. Delgado stated she did not have time to maintain the property but would rely on codefendant Michael Smith to find tenants and make sure the mortgages were paid. Further, she said she told Smith she wanted 30% of the profit for having the property in her name from the eventual sale of the properties. She testified that she knew Smith would receive money at the closing, but that she did not know how much. She thought the money would be used to rehabilitate the properties. Delgado stated she gave Michael Smith her social security number, name and date of birth over the phone for a credit check, attended the real estate closings, and signed "a stack of papers" "around 50 times" she assumes were the mortgage documents. She stated no one explained to her what she signed or initialed, and she never asked. No one explained that she signed an agreement to use the properties as her primary residence. Despite going to the closings, she stated she never signed any loan application documents before going to the closings, she never knew the sales price of the properties, and she was never asked what her income was at the time.

¶ 11 Delgado and codefendant Smith discussed purchasing these three properties, after which Delgado agreed to use her name as the buyer. She testified that she supplied codefendant Alexander Yates with her social security number and date of birth. She also testified she allowed

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codefendants to use her credit to obtain mortgages. She testified to earning between \$28,000 and \$31,000 per year, but took out loans in excess of \$1 million for three properties, thinking she could repay the loans by renting to tenants. Although Delgado's stated plan was to invest in the property and become a landlord, she never visited the properties. She did not know the amounts of the loans she took out, but she stated that she knew she had no way to repay the loans. She testified that she agreed with codefendant Smith that she would receive \$10,000 at each closing.

¶ 12 At the conclusion of trial, the trial court found Delgado guilty of theft by deception. The case was continued to June 10, 2010, for sentencing. Delgado was sentenced to two years of probation and 32 days in the Department of Corrections, with time considered served. Delgado's timely appeal to this court followed.

¶ 13

#### DISCUSSION

¶ 14 Delgado first alleges the State failed to establish beyond a reasonable doubt that she was guilty of theft by deception. Specifically, Delgado argues the evidence presented at trial only demonstrated she entered into the real estate transactions as an investor who intended to own the properties for a period of years to rent to tenants, and maintain and improve the properties to sell for profit.

¶ 15 When a court reviews the sufficiency of the evidence, the relevant question is "whether, when looking at the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Vaughn*, 2011 IL App (1st) 092834, ¶24. This standard of review does not allow the reviewing court to substitute its judgment for that of the factfinder on questions involving the weight of the

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evidence or the credibility of the witnesses. *People v. Hommerson*, 399 Ill. App. 3d 405, 409 (2010). We will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises reasonable doubt of the defendant's guilt. *Vaughn* at ¶ 24. As the trier of fact, the trial court is in the superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom. *Id.* Reviewing courts apply this standard to circumstantial evidence. *Hommerson*, 399 Ill. App. 3d at 409. Circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *Id.* The totality of the circumstances is sufficient to convict:

“The trier of fact need not, however, be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. It is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt.” *Id.*

¶ 16 To support a conviction for the crime of theft, the State must prove beyond a reasonable doubt that Delgado knowingly obtained or exerted unauthorized control over property of the owner and intended to deprive the owner permanently of the use or benefit of the property or obtained by deception control over the property of the owner. 720 ILCS 5/16-1(a)(1), (a)(2) (West 2010). A defendant's intent to deprive the owner of property permanently may be deduced by the trier of fact from the facts and circumstances surrounding the alleged criminal act. *People v. Veasey*, 251 Ill. App. 3d 589, 591 (1993). Intent is also deduced from the act itself:

"With respect to many criminal acts, the act clearly 'speaks for itself.' The act so clearly broadcasts the intent with which it was performed that the question of intent either becomes inconsequential or the proof of it is so directly related to proof of the act that the

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evidence is regarded as direct even though technically it might be 'circumstantial.' " *Id.* at 592.

It is generally recognized that intent to deprive the owner of his property permanently may ordinarily be inferred when a person takes the property of another. *Id.* at 592. "Intent is gathered primarily from the acts of a person." *Borchers v. Franciscan Tertiary Province of Sacred Heart, Inc.*, 2011 IL App (2d) 101257, ¶ 31. "In determining intent, a person's declarations of intent are entitled to less weight than his or her actions demonstrating intent." *Id.*

¶ 17 In this case, the record contains sufficient evidence showing Delgado knowingly obtained control over three properties, with intent to deprive the owners of their interests permanently. Contrary to Delgado, we agree with the trial court that the State proved theft by deception beyond a reasonable doubt.

¶ 18 Delgado also argues she was never charged with theft by accountability and that the State did not present evidence to prove that she was accountable. Specifically, Delgado asserts the State failed to prove she was a principal agent in the crime or that she knowingly participated in the mortgage fraud. The State need not prove she was a principal agent in the crime. See 720 ILCS 5/16-1(a)(1)-(a)(2)(West 2010). However, when reviewing the evidence in the light most favorable to the prosecution, we conclude the evidence was sufficient to find Delgado was guilty of theft by deception and not by accountability. Delgado contends the State failed to establish that her participation took place before or during the commission of the crime to obtain property. Yet, Delgado herself testified she attended the real estate closings and signed the mortgage documents. Even though Delgado claims merely signing the documents was not, by itself, proof



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of intent to deprive the owner of the property, we find the totality of the circumstances to demonstrate that she knew what she was doing, as she did so three times. The evidence in the record is not so unreasonable, improbable or unsatisfactory that it rises to the level of reasonable doubt. Therefore, we find the State met its burden and proved Delgado was guilty of theft by deception beyond a reasonable doubt.

¶ 19 Second, Delgado argues the trial court erred when it allowed witnesses called by the State as "keeper of the records" over her objections. Delgado contends State witnesses John Samuelson, Kelly Cullen, Juan Aguirre, and John Hennessy were not qualified as "keepers of the record" for the records testified to and admitted into evidence under the business records exception to the hearsay rule. Therefore, the trial court abused its discretion by admitting the records into evidence without proper foundation.

¶ 20 As a threshold matter, we recognize that basic rules of evidence require that a party must lay the proper foundation for the introduction of a document into evidence. *Piser v. State Farm Mut. Auto. Ins. Co.*, 405 Ill. App. 3d 341, 348 (2010). To authenticate a document properly, a party must present evidence which demonstrates that the document is what the party claims it to be. *Id.* Authentication can be made by either direct or circumstantial evidence. *Id.* Routinely, the proponent establishes the identity of the document "through the testimony of a witness who has sufficient personal knowledge to satisfy the trial court that a particular item is, in fact, what its proponent claims it to be." *Id.* Section 115-5(a) of the Code of Criminal Procedure (Code), commonly referred to as the business records exception to the hearsay rule, provides that "[a]ny writing or record \* \* \* made as a memorandum or record of any act, transaction, occurrence, or

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event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.” 725 ILCS 5/115-5(a) (West 2010). The party seeking to admit a purported business record into evidence must lay an adequate foundation for the business record, including “a showing that the record was made as a memorandum or record of the act; the record was made in the regular course of business; and that it was the regular course of the business to make such a record at the time of the act or within a reasonable time thereafter.” *People v. Universal Public Transp., Inc.*, 401 Ill. App. 3d 179, 197 (2010) (citing *People v. Morrow*, 256 Ill. App. 3d 392, 397 (1993)). “Anyone who is familiar with the business and its procedures may testify to business records, and the original entrant need not be a witness; the foundation requirement establishes the indicia of reliability necessary for admission of the records.” *Morrow*, 256 Ill. App. 3d at 397. The determination of whether or not business records are admissible is within the sound discretion of the trial judge, and such determinations will not be reversed absent an abuse of discretion. *Universal Public Transp.*, 401 Ill. App. 3d at 197.

¶ 21 Here, we find the trial court did not abuse its discretion in admitting the documents, properly deemed business records, as exceptions to the hearsay rule. Samuelson worked as an assistant underwriting manager and fraud and loss prevention manager at MILA. MILA provided mortgage loans on a wholesale basis. A mortgage broker provides loan packages or borrowers go to a broker who submits the loan package to a wholesale lender to provide financing. As an assistant underwriting manager, Samuelson reviewed loan documents to determine if the

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borrower qualified for a given loan. This review included assessing the borrower's income, ability to repay, and willingness to repay. As a fraud and loss prevention manager, Samuelson was in charge of the department that investigates possible cases of fraud. The State asked Samuelson all the essential questions necessary to establish a foundation. Samuelson testified that he was the "keeper of the records" and that the documents subsequently admitted were made in the ordinary course of business. He explained how the records were created prior to the foundation examination. He clearly testified the documents were made at or near the time of the application process. Samuelson explained that Fannie Mae 1003 loan applications are received online and completed by a loan officer at the mortgage broker's office. The application includes the borrower's employment information, income, assets, bank account information, and any properties the borrower may own. He testified Delgado's name was listed as the borrower on MILA's loan documents for the real property located at 1529 South State Street, Unit CT2. The loan amount was \$440,000, with a second mortgage of \$110,000. The loan application also stated Delgado was looking to purchase the property for use as a primary residence. Delgado testified she intended to rent units in each of the buildings for profit. Since all elements establishing foundation were present, the business record was properly admitted into evidence.

¶ 22 Similar to Samuelson, the testimony of Juan Aguirre, Sean Hennessy and Kelly Cullen met the requirements of establishing a foundation for the respective documents to be admitted into evidence under the business record exception to the hearsay rule. Their testimony similarly established that the records from their respective organizations were made in the ordinary course of business, contrary to Delgado's contention. However, none of the witnesses needed to be

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experts or the original creator of the records to authenticate them. See *Morrow*, 256 Ill. App. 3d at 397.

¶ 23 Juan Aguirre testified that he worked for GMAC as a senior litigation analyst. GMAC is a loan serving company which accepts payments on mortgage loans and applies them to the principal, interest and escrow. If borrowers are in default, GMAC sends notice, after which GMAC goes through the foreclosure process, taking the property into their Aerial Department. Aguirre testified that he was GMAC's keeper of the records, which include letters sent to borrowers, payment histories, copies of the promissory note, mortgages, and all origination documents. Aguirre testified records GMAC had Delgado listed as the borrower for the property located at 1529 South State Street, Unit CT-2. Aguirre testified several calls were made to Delgado's home every day, in attempt to collect the loan, but the company left messages on her answering machine. He stated the telephone number used is taken from the borrower's loan application. In addition to telephone calls, GMAC also mailed Delgado letters. GMAC assessed a late charge on the loan. At one point GMAC was able to reach codefendant Smith, who verified Delgado's contact information and requested to set up a \$900 payment over the phone. However, because Delgado was listed as the borrower, GMAC was not authorized to discuss details of the loan with Smith. Later, Delgado called GMAC and verbally authorized them to speak with Smith. GMAC informed Delgado she had to send a letter authorizing GMAC to speak with a third party. Smith authorized an over-the-phone payment of \$2,650. GMAC continued its attempts to contact Delgado through March 2007, when they were successful. GMAC also sent a letter notifying Delgado that she was in default for breach of contract. On

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March 28, 2007, GMAC sent another letter to Delgado and sent a representative to her home to attempt a face-to-face meeting. On April 23, 2007, the foreclosure proceedings started, according to Aguirre, because Delgado had not made any attempts to bring her account current. On May 19, 2007, a GMAC representative called Delgado and spoke to her. Delgado stated she did not know that she was behind on the mortgage payments. There were only two payments that were received (and cleared)- one payment in November 2006 and one in January 2007. The property was foreclosed on, at a loss to the lender.

¶ 24 State's witness Sean Hennessey worked for ABC for five years as a midwest regional manager for the wholesale division, notably in charge of the Chicagoland area. Hennessey first started in the mortgage business 27 years prior to testifying as a loan officer for Sierra Pacific Mortgage. As such, he solicited mortgage brokers in order to provide funding for borrowers. He testified Delgado signed the notarized loan application on May 9, 2006, for real property located at 1228 West 33rd Street to purchase for use as a primary residence. Hennessey also testified the loan application revealed Delgado listed her monthly income as \$15,700, and that she had \$35,110 in an account at TCF National Bank. Delgado also submitted an employment verification listing M.B. Dental Laboratory in Berwyn as her employer.

¶ 25 Kelly Cullen testified on behalf of the State as well. She worked at City Mortgage, a lending and servicing company in O'Fallon, Missouri, as a legal support specialist. She explained that a legal support specialist researched the circumstances surrounding defaulted loans to determine whether the loan should be in default and helps during litigation. Cullen testified that payment history documents listed Delgado as the borrower. The credit bureau report listed

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Delgado as being 90 days past due as of February 2007. In March 2007, City Mortgage requested a property inspection to ascertain the condition and occupy the property. The inspection revealed the property was occupied and in good condition, but did not reveal who was living there. City Mortgage sent Delgado a demand letter, which expired without payment. Codefendant Smith called City Mortgage representing himself as Delgado's fiancé to inquire about the status of the loan and indicated payments had been made to the prior servicer. City Mortgage looked into Smith's claims and found Delgado to be current through February 2007. In May 2007, Delgado called City Mortgage to change her mailing address and phone number. The new mailing address provided was 1228 West 33rd Street. Later that same month, Smith called in, referred to himself as Delgado's spouse, and cited military service as the reason for default. Delgado was placed on a forbearance payment plan to bring her current each month. However, she did not make the payments and City Mortgage sent a broken promise letter to Delgado. City Mortgage also placed phone calls to Delgado, but she never answered the phone.

¶ 26 Lastly, Delgado argues the business records were made in anticipation of litigation and therefore were inadmissible. We find this contention lacks merit. The records admitted were made in the ordinary course of business and not prepared for litigation. The documents were part of the business transactions Delgado used to obtain the properties and monies at issue in this case. Accordingly, we find that the trial court did not abuse its discretion when it admitted the exhibits Delgado raises as improper on appeal.

¶ 27 As we find the business records were properly admitted into evidence, we need not address Delgado's contention that the admission of said records violated her right to confront her

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accuser granted in *Crawford v. Washington*, 541 U.S. 36 (2004).

¶ 28

#### CONCLUSION

¶ 29 The documents admitted into evidence under the business records exception to the hearsay rule did not constitute an abuse of the trial court's discretion. The records were properly admitted in accordance with the business records exception to the hearsay rule as codified. See 725 ILCS 5/115-5 (West 2010). We rejects Delgado's argument that the documents were prepared in anticipation of litigation and thus inadmissible as business records. For the reasons stated herein, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.