

second amended complaint, Koch admitted that he was in default for failure to pay monthly installments of principal and interest and "that attorney fees, foreclosure costs, and expenses incurred by Wells Fargo are owed." Koch denied that any taxes or insurance were in default. The central issue in this appeal concerns the dollar amount of the circuit court's judgment.

¶ 3 The mortgage and note were dated March 15, 2002. Koch began making payments on the note in April 2002, and made payments until May 2005. He has not made any payments on the note since 2005.

¶ 4 Wells Fargo filed several motions for a summary judgment. On April 17, 2007, the circuit court granted Wells Fargo's request for a summary judgment in part. The court found that Koch was in default but found that there was a genuine issue of material fact concerning the amount Koch owed. After the entry of the partial summary judgment, no additional activity took place in the case for nearly four years. Therefore, the circuit court dismissed the case for want of prosecution on March 11, 2011, but subsequently granted Wells Fargo's request to vacate the dismissal on May 12, 2011.

¶ 5 After the case was reinstated, Wells Fargo filed another motion for summary judgment on June 20, 2011. The motion for summary judgment included the affidavit of Chris Heinichen, who is a contract management coordinator for Ocwen Loan Servicing, LLC (Ocwen), which is a loan servicing company that serviced Wells Fargo's loans. Heinichen stated in his affidavit that he was familiar with Koch's note, mortgage, and delinquency. The affidavit included a print out of "Servicing Records" pertaining to Koch's account. These servicing records were never included with any of Wells Fargo's previous motions for summary judgment. Heinichen stated in his affidavit that the servicing records established that the total indebtedness due as a result of Koch's default was \$181,875.38, plus reasonable attorney fees. The \$181,875.38 amount included the principal balance on the note in the amount of \$109,789.34. The amount also included an escrow advance, late charges, unpaid

interest on the note, and other reimbursable advances, expenses, and costs of collection.

¶ 6 On March 27, 2012, the circuit court granted the motion for summary judgment. In its order, the court noted that the affidavit attached to the motion "sets forth the amount of unpaid principal, interest and other amounts recoverable under the terms of the underlying Promissory Note and Mortgage instruments." The court further noted that Koch, in his response, "does not contest, by way of affidavit or other evidence, that the amounts stated by the Plaintiff are, in fact, inaccurate, but simply concludes that there exists a genuine issue of fact because the Court in 2007 denied summary judgment with respect to the amount due under the loan instruments in 2007." The court further found as follows:

"The Court finds that the Defendant has not properly contested the affidavit of the Plaintiff filed with its [] Motion for Summary Judgment on June 20, 2011. Accordingly, the Plaintiff is entitled to a Judgment, as a matter of law, in this matter. The Court notes that the Plaintiff orally moved to withdraw its [] claim for the property taxes it paid on the real estate over the course of the last several years, and asks for judgment on the remaining amounts set forth in the affidavit."

¶ 7 The court entered a judgment in favor of Wells Fargo as follows: \$109,789.34 for unpaid principal; \$58,656.14 for unpaid interest; \$780.64 for late charges; \$2,327.52 for reimbursable expenses and costs; \$2,243 for attorney fees; and \$264.36 for credits. The circuit court's judgment totaled \$173,532.28.

¶ 8 Koch filed a motion to reconsider, which the circuit court denied. In denying the motion to reconsider, the court ruled as follows:

"Defendant concludes that Summary Judgment is not proper here because he disputes the Plaintiff's affidavit setting forth the amounts that are owed and necessary to redeem the Mortgage. The Defendant does not provide an affidavit or any documentary evidence stating the amounts that he believes are owed to the Plaintiff,

even though he admits that he stopped making payments of principal and interest on the underlying Promissory Note and Mortgage over seven (7) years ago. As the Plaintiff's affidavit is uncontroverted, there is no genuine issue of material fact and the Plaintiff is entitled to Summary Judgment."

¶9 The court subsequently entered a judgment of foreclosure and later an order approving the report of sale and distribution, confirming sale, and order for possession. Koch now appeals and argues that the circuit court incorrectly granted a summary judgment because the affidavit in support of the motion was inadequate to establish the amounts he owed Wells Fargo. For the following reasons, we affirm.

¶10 DISCUSSION

¶11 Pursuant to section 2-1005(c) of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005(c) (West 2012)), a summary judgment should be granted when the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. *Pielet v. Pielet*, 2012 IL 112064, ¶ 29. The standard of review of an order granting summary judgment is *de novo*. *Oliveira-Brooks v. Re/Max International, Inc.*, 372 Ill. App. 3d 127, 134 (2007).

¶12 In the present case, Koch admitted that he had not made a mortgage payment since 2005. In his answer to the complaint, he admitted that he was in default for failure to pay monthly installments of principal and interest and "that attorney fees, foreclosure costs, and expenses incurred by Wells Fargo are owed." Wells Fargo supported its motion for a summary judgment with an affidavit setting forth the amounts that Koch owed for each of these items. As the circuit court correctly observed, Koch did not establish "the amounts that he believes are owed to the Plaintiff, even though he admits that he stopped making payments of principal and interest on the underlying Promissory Note and Mortgage over seven (7)

years ago." Accordingly, Koch, the nonmoving party, failed to present a factual basis that would arguably entitle him to a judgment of a lesser amount. The circuit court, therefore, ruled correctly in granting the motion for summary judgment.

¶ 13 Koch argues that the affidavit in support of the motion for summary judgment was improper because it consisted of conclusions instead of facts. We disagree.

¶ 14 Illinois Supreme Court Rule 191 (eff. July 1, 2002) sets out the requirements of an affidavit used in support of a motion for summary judgment. Rule 191 states, in part:

"Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure *** shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. July 1, 2002).

¶ 15 A Rule 191 affidavit is a substitute for testimony given in court and has to meet the same requirements as competent testimony. *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1025 (1992). An affidavit meets the requirements of Rule 191 if it appears from the document as a whole that the affidavit is based upon the personal knowledge of the affiant and there is a reasonable inference that the affiant could competently testify to its contents at trial. *Kugler v. Southmark Realty Partners III*, 309 Ill. App. 3d 790, 795 (1999). An affidavit may provide the authentication needed to make a document admissible. *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 349 (2010). "Further, courts must accept an affidavit as true if it is uncontradicted by counteraffidavit or other evidentiary materials." *Kugler*, 309 Ill. App. 3d at 795.

¶ 16 In the present case, we believe that Heinichen's affidavit contained detailed factual

averments which satisfied the requirements of Rule 191. In his affidavit, Heinichen stated that in the regular performance of his job functions, he is familiar with the business records, including service records, "pertaining to the Defendant's account" and that the servicing records include electronic data compilations. Heinichen's affidavit further establishes that the records were "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 ordinary course of the business activity" of servicing of the loan on behalf of Wells Fargo. The affidavit indicates that Heinichen's statements in his affidavit were made based on his personal knowledge and were not mere conclusions.

¶ 17 Heinichen's affidavit establishes the amount Koch owes to Wells Fargo for principal, interest, attorney fees, foreclosure costs, and expenses incurred by Wells Fargo. Koch admitted in his answer that he owes Wells Fargo for these items, but he did not offer alternative totals for any category. The affidavit does not violate Rule 191's requirement that affidavits "shall not consist of conclusions but of facts admissible in evidence," and the circuit court properly considered the affidavit in entering its judgment.

¶ 18 Koch also argues that the affidavit does not establish a sufficient foundation for the admission of the computer-generated documents attached to it. However, Koch's response to Wells Fargo's motion for summary judgment did not specifically raise this objection with respect to Heinichen's affidavit. Instead, Koch's response to Wells Fargo's motion for summary judgment incorporated by reference a different response that he filed with respect to a previous motion for summary judgment. He argued that the previous response "pointed out that *** the proper foundation had not be [*sic*] laid to admit the affidavit." However, the affidavit in the previous motion for summary judgment as well as the computer-generated documents attached to the affidavit are entirely different from the affidavit and documents that the circuit court relied on to enter the summary judgment.

¶ 19 "In a motion for summary judgment, it is the nonmoving party's duty to bring any objections to the sufficiency of an affidavit to the trial court's attention for a ruling thereon," and the "[f]ailure to do so results in waiver of the objection." *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 15. "Theories not raised during summary judgment proceedings are waived on review." *Id.*

¶ 20 Although Koch challenged a previous affidavit on the basis that it relied on records generated by a computer without laying the proper foundation for their admission, he did not raise that specific objection with respect to Heinichen's affidavit. Koch's vague reference to his previous objection to a different affidavit was insufficient to raise the issue with respect to the specific affidavit that was considered by the trial court. It is unclear from Koch's response to the motion for summary judgment that he was raising an objection specifically concerning foundation requirements for computer-generated documents.

¶ 21 "To preserve an issue for review," a "party must state specific grounds for any objections, and other grounds not stated are waived on review." *Ficken v. Alton & Southern Ry. Co.*, 291 Ill. App. 3d 635, 644-45 (1996). The purpose of the specificity requirement is to allow the trial court an opportunity to properly consider the objection and rule on it and to give the reviewing courts the benefit of the trial court's observations concerning the alleged error. *Id.* at 645; *People v. Travis*, 170 Ill. App. 3d 873, 889 (1988).

¶ 22 Koch's previous response raised multiple issues with respect to the sufficiency of a completely different affidavit and documents. A general reference to the previous response, therefore, would not be sufficient to apprise the trial judge of which specific arguments Koch was raising with respect to a completely new affidavit and documents. Because Koch's reference would not be sufficient to alert the trial court to the specific foundation requirements he was contesting, the issue is waived. See, e.g., *Balsley v. Raymond Corp.*, 232 Ill. App. 3d 1028, 1029-30 (1992) (Illinois case law requires specificity in posttrial

motions to allow the trial judge to review his own decision; therefore, a memorandum in support of a posttrial motion "which incorporates by reference" a motion *in limine* was insufficient to preserve any objection because the "general reference to the motion would not be sufficient to apprise the trial judge of the arguments relied upon.").

¶ 23 The affidavit in support of the motion for summary judgment met the requirements of Rule 191 and supported a judgment in favor of Wells Fargo as a matter of law. Accordingly, the circuit court properly granted Wells Fargo's motion for summary judgment.

¶ 24 **CONCLUSION**

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 26 Affirmed.