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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEUTSCHE BANK NATIONAL TRUST)	Appeal from the Circuit Court
COMPANY, as Trustee of the Home Equity)	of Cook County.
Mortgage Loan Asset-Backed Trust Series INABS)	
2006-D under the Pooling and Servicing)	
Agreement dated September 1, 2006,)	No. 12 CH 2559
)	
Plaintiff-Appellee,)	
)	The Honorable
v.)	Daniel Patrick Brennan,
)	Judge Presiding.
MA SHEILA L. THOMSON,)	
)	
Defendant-Appellant.)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying defendant's motion to continue the hearing on Deutsche Bank's motion for summary judgment and for a hearing on Deutsche Bank's objections to her discovery requests, and the circuit court properly entered summary judgment in favor of Deutsche Bank where the supporting affidavits satisfied the requirements of Supreme Court Rule 191(a) (eff. Jan. 4, 2013), and defendant failed to file any counter-affidavits or present any contradictory evidence.

¶ 2 Defendant, Ma Sheila L. Thomson, appeals from the August 26, 2013, orders of the circuit court of Cook County entering summary judgment for plaintiff, Deutsche Bank National Trust Company, denying her motion to continue the hearing on Deutsche Bank's motion for summary judgment and for a hearing on Deutsche Bank's objections to her discovery requests, and the January 27, 2014, order confirming the sale of her condominium unit in the underlying mortgage foreclosure action.

¶ 3 BACKGROUND

¶ 4 On January 25, 2012, Deutsche Bank filed a mortgage foreclosure complaint against defendant concerning the mortgage and note executed in connection with defendant's condominium unit located at 3436 W. Leland Avenue in Chicago, Illinois. Deutsche Bank alleged that defendant had failed to pay the monthly installments of principal and interest due on September 1, 2011, and that the principal balance due and owing as of January 9, 2012, was \$119,640.30.

¶ 5 Among the exhibits attached to the complaint were the mortgage agreement, the promissory note indorsed in blank that defendant executed and delivered to IndyMac Bank, FSB, in the principal amount of \$126,400 on July 12, 2006, and the assignment of the mortgage from Mortgage Electronic Registration Systems, Inc., (MERS) as nominee for IndyMac Bank, to Deutsche Bank as trustee on January 12, 2012. The mortgage contains an acceleration clause in bold print stating:

"22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to

cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence."

The mortgage also contains a notice clause stating:

"15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. *** There may be only one designated notice address under this Security Instrument at any one time."

Likewise, the promissory note contains a notice clause stating:

"Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address."

¶ 6 The sworn affidavit of process server Terry Ryan was filed on February 22, 2012. Ryan averred that on January 26, 2012, at 5 p.m., he served a copy of the mortgage foreclosure summons and complaint with exhibits on defendant's son, Ephrim Natano, at defendant's "usual place of abode," 5025 W. Roscoe Avenue in Chicago, Illinois. Ryan described the person that process was left with as a male, Pacific Islander with black hair, approximately 16 years of age, 5 feet 7 inches tall, and 160 pounds. Ryan further averred that on January 27, 2012, a copy of the mortgage foreclosure summons and complaint with exhibits was mailed to defendant at her usual place of abode. However, Ryan commented that he was "uncertain of primary occupancy status."

¶ 7 A sworn affidavit of *attempted* service by Terry Ryan was also filed on February 22, 2012. Ryan averred that he was unable to effect service of the mortgage foreclosure summons and complaint with exhibits on defendant at 9:48 a.m., on January 27, 2012, at the subject property, 3436 W. Leland Avenue, Unit 1. Ryan remarked that "defendant was served at the alt [*sic*] address. The unit is vacant per [neighbors] who live directly across the hall from primary. Unable to serve, vacant."

¶ 8 Forty-three days after substitute service was obtained, on March 8, 2012, defendant, through Mark Moreno of the Law Office of Mark Moreno, filed an appearance and an answer raising two affirmative defenses: (1) that Deutsche Bank violated section 15-1502.5 of the Illinois Mortgage Foreclosure Law (IMFL) (735 ILCS 5/15-1502.5 (West 2012)) by failing to

send a grace period notice prior to filing its foreclosure complaint, and (2) that Deutsche Bank failed to send defendant an acceleration notice prior to filing its foreclosure complaint.

¶ 9 Regarding her affirmative defenses, defendant alleged that she did not receive either notice via U.S. mail, before January 25, 2012, when Deutsche Bank filed the underlying foreclosure complaint. As support, defendant attached her "want of knowledge" affidavit, as required by section 1-109 of the Code of Civil Procedure (Code) (735 ILCS 5/1-109 (West 2012)), regarding the authenticity of the mortgage and note attached to the foreclosure complaint and the September 1, 2011, default thereon.

¶ 10 On August 1, 2012, Deutsche Bank filed its reply to defendant's affirmative defenses, denying that it failed to send defendant grace period and acceleration notices prior to filing its foreclosure complaint.

¶ 11 On August 9, 2012, Deutsche Bank filed the Supreme Court Rule 191(a) (eff. Jan. 4, 2013) affidavit of Bessie Mensah, an assistant secretary for One West Bank, FSB, servicer of the mortgage loan. Mensah stated that she was familiar with the business practices and business records of her employer. She explained that One West Bank prepared and mailed written acceleration notices on mortgage loan accounts in Illinois, including defendant's loan account. Mensah averred that a copy was attached of the acceleration notice, dated November 3, 2011, that was sent via certified First Class U.S. mail to defendant at 5025 W. Roscoe Street in Chicago, Illinois, the address where defendant was served by substitute service and which, according to records authenticated in Deutsche Bank's prove-up affidavit, was defendant's billing address. She further averred that she had personal knowledge of her employer's regular business practice of storing such documents.

¶ 12 On October 25, 2012, Deutsche Bank filed another Rule 191(a) affidavit of Bessie Mensah, this time averring that a copy was attached of the grace period notice, dated October 14, 2011, that was sent via certified First Class U.S. mail to defendant at 3436 W. Leland Avenue in Chicago, Illinois, the property address. She then averred that she had personal knowledge of her employer's regular business practice of storing such documents.

¶ 13 Four and a half months later, on March 14, 2013, Deutsche Bank filed a motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2012)), seeking a judgment of foreclosure and sale of defendant's condominium unit, and contending that defendant's affirmative defenses failed to raise a genuine issue of fact to preclude summary judgment as a matter of law. Deutsche Bank argued that defendant did not deny any of the specific allegations in the foreclosure complaint, and that her denial of three "deemed allegations"¹ (735 ILCS 5/15-1504(c) (West 2012)) did not withstand the affidavits submitted by Deutsche Bank. Deutsche Bank explained that defendant denied the deemed allegation that the attached copies of the note and mortgage were true and correct copies of the originals but failed to support that denial with any facts or evidence. As to defendant's affirmative defenses concerning the grace period and acceleration notices, Deutsche Bank argued that actual receipt of the notices was not statutorily required and that defendant failed to offer any evidence to contradict Mensah's Rule 191(a) affidavits averring that the subject notices were sent to defendant via certified First Class U.S. mail.

¶ 14 Along with the motion for summary judgment, Deutsche Bank contemporaneously filed motions for the entry of an order of default against other defendants based on their failure to appear or plead, a judgment of foreclosure and sale, and to appoint a selling officer. Attached to,

¹ See *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶¶ 44-46 (discussing the "deemed allegations" in every standard mortgage foreclosure complaint).

and incorporated by reference into Deutsche Bank's motion for the entry of an order of default against other defendants were the prove-up affidavit of amounts due and owing under the terms of the mortgage and note and the business records based thereon, which identified defendant's billing address as 5025 W. Roscoe Avenue and the subject property address as 3436 W. Leland Avenue. Deutsche Bank did not attach or incorporate by reference any supporting documents to its motion for judgment of foreclosure and sale until July 18, 2013, when it filed an amended motion and attached a loss mitigation affidavit pursuant to Supreme Court Rule 114 (eff. May 1, 2013), averring that defendant did not submit an application for loss mitigation alternatives or respond to invitations to do so.

¶ 15 Deutsche Bank's accompanying notice of motion stated that on June 6, 2013, Deutsche Bank's counsel would appear before the judge in courtroom 2808 at the Daley Center and move for entry of an order of summary judgment, default, judgment of foreclosure and sale, and to appoint a selling officer. The certificate of service attached to the notice of motion reflects that the notice and motions were mailed, with proper postage prepaid, to all defendants on March 18, 2013, or three days after the motions were filed. On June 6, 2013, the circuit court allowed Deutsche Bank's motion to continue the matter to August 26, 2013.

¶ 16 On July 15, 2013, defendant, through Mark Moreno of the Law Office of Mark Moreno, electronically filed a response to Deutsche Bank's motion for summary judgment and did not file counter-affidavits to rebut the facts in Deutsche Bank's supporting affidavits for summary judgment. Rather, defendant contended that the motion should be stricken because Deutsche Bank failed to comply with the Mortgage Foreclosure Courtroom Procedures, that her affirmative defenses raised genuine issues of material fact and Deutsche Bank refused to respond to discovery requests, and that Deutsche Bank's supporting affidavits for summary judgment

violated Supreme Court Rule 191. In addition to a copy of the Mortgage Foreclosure Courtroom Procedures, defendant attached three letters to Deutsche Bank's counsel, dated March 28, April 4, and April 8, 2013, requesting a copy of the motions contemporaneously filed on March 14, 2013, and a letter from Deutsche Bank's counsel, dated April 8, 2013, fulfilling defendant's request.

¶ 17 On July 17, 2013, defendant electronically filed a motion to compel Deutsche Bank to answer her first set of interrogatories and her first request for production of documents before pursuing any motion for summary judgment. The motion was stricken when counsel for defendant failed to appear on October 2, the scheduled hearing date.

¶ 18 Meanwhile, on August 2, 2013, Deutsche Bank filed a reply in support of its motion for summary judgment, stating that defendant was not prejudiced by a three-day delay in serving notice of the various motions filed on March 14, 2013, and that defendant failed to file counter-affidavits or any other evidence to contradict the facts alleged in its supporting affidavits for summary judgment, which were legally sufficient under the affidavit requirements of Supreme Court Rule 191 (eff. Jan. 4, 2013) and the business record requirements of Supreme Court rule 236 (eff. Aug. 1, 1992).

¶ 19 On August 15, 2013, defendant filed a motion to continue the hearing on Deutsche Bank's motion for summary judgment and for a hearing on Deutsche Bank's objection to defendant's discovery requests, stating, *inter alia*, that she had unsuccessfully sought discovery of "the material allegedly relied upon" by Deutsche Bank's affiants, which "necessarily hampered" her response to Deutsche Bank's motion for summary judgment. Defendant sought the entry of "an order continuing the hearing on [Deutsche Bank's] motion for summary judgment until such time as certain issues regarding discovery have been resolved and for a

hearing on [Deutsche Bank's] objections to [her] discovery requests." Defendant attached her certified affidavit stating that material facts necessary to her defense against summary judgment were known only to Deutsche Bank's affiants, *i.e.*, the specific record information relied upon, whether sworn or certified copies of that information were attached to the affidavits, personal knowledge of the matters contained in the affidavits, whether the assertions were summaries of documents, who authorized the affiants to make their affidavits and when, who personally mailed the "letter in question," the identity of the software program that produced the records referenced in the affidavits, and the facts supporting the request for reasonable attorney fees, costs, and expenses. Defendant also stated that her reason for believing that Deutsche Bank's affiants would testify as described was "based upon my consultation with my attorney, review of [Deutsche Bank's] motions, their affidavits, and supporting documentation."

¶ 20 On August 26, 2013, the circuit court denied defendant's motion to continue the hearing on Deutsche Bank's motion for summary judgment and for a hearing on Deutsche Bank's objection's to defendant's discovery requests, and entered summary judgment against defendant "pursuant to the Judgment of Foreclosure and Order of Sale entered simultaneously herewith." The judgment of foreclosure and order of sale stated, in pertinent part, as follows:

"THE COURT HAVING examined the files and records in this cause, the Court having received an Affidavit of Prove Up and being fully advised in the premises, finds that each of the Defendants in this cause has been duly and properly brought before the Court, either through service of summons or by publication, all in the manner provided by law; that due and proper notice has been given to each of the Defendants during the progress of this case as required by law.

IT FURTHER APPEARING to the Court that all Defendants failed to plead to the Plaintiff's Complaint within the time required by law, except: MA SHEILA L. THOMSON but therein defaulted and that an Order of Default has been heretofore entered against the above mentioned Defendants so failing to plead, and that the Plaintiff's Complaint has been taken as confessed by and against all such Defendants herein; or, if the Defendants have plead, a Summary Judgment has been entered by separate Order; and the Court being fully advised in the premises,

FINDS AS FOLLOWS:

* * *

3. That the material allegations of the Complaint filed herein are true and proven; that the equities of this cause are with the Plaintiff who is entitled to a Decree of Foreclosure in accordance with the prayer of the Complaint; and that there is, at this time, due to said Plaintiff upon the Note and Mortgage security, each of which has been in said Complaint described, the following amounts:

* * *

6. That in said Mortgage it is provided that the Attorneys for the Plaintiff are entitled to reasonable attorney's fees; that the sum of \$2,250.00 has been included in the above indebtedness as aforesaid attorney's fees as provided in the Mortgage, that said sum is the usual, customary and reasonable charge made by attorneys in like cases; that said sum shall be retained by the Attorney for the Plaintiff and that said sum is hereby allowed."

On the same date, the circuit court also entered an order of default against other defendants, *i.e.*, the condominium association and unknown owners and non-record claimants, for their failure to answer Deutsche Bank's foreclosure complaint or otherwise plead.

¶ 21 Subsequently, the circuit court entered an order approving sale on January 27, 2014, and defendant, represented by the same counsel, filed a notice of appeal on February 21, 2014.

¶ 22 ANALYSIS

¶ 23 Defendant first contends that the circuit court should have stricken Deutsche Bank's motion for summary judgment for violating the Mortgage Foreclosure Courtroom Procedures. Defendant argues that Deutsche Bank violated the Mortgage Foreclosure Courtroom Procedures "by failing to incorporate the affidavits in support of its motions by express reference, and by failing to provide a time and task affidavit as to the attorney's fees being sought." Defendant asserts that "[Deutsche Bank's] Motion for Entry of Judgment (which explicitly asked for an order granting summary judgment) did not incorporate any affidavits by express reference nor were any supporting affidavits attached. Nor did [Deutsche Bank] incorporate by express reference any affidavits in its Motion for Summary Judgment." Defendant acknowledges that Deutsche Bank attached the affidavits of Bessie Mensah to its motion for summary judgment but complains that those affidavits only concerned her affirmative defenses concerning the grace period and acceleration notices that Deutsche Bank was required to send before filing its foreclosure complaint and did not address her alleged default or attach copies of the note, mortgage, or payment history.

¶ 24 Deutsche Bank responds that the Mortgage Foreclosure Courtroom Procedures do not govern summary judgment affidavits, which are governed by Supreme Court Rule 191, and that defendant's opposition to its motion for summary judgment hinged solely on whether it had properly served grace period and acceleration notices, and not on the amounts due and owing. Nevertheless, Deutsche Bank responds that the portions of the Mortgage Foreclosure Courtroom

Procedures relied upon by defendant are expressly limited to motions for the entry of an order of default or a judgment of foreclosure.

¶ 25 Supreme Court Rule 21(a) (eff. Dec. 1, 2008) vests the circuit court and its judges with "the power to adopt local rules governing civil and criminal cases (1) so long as they do not conflict with supreme court rules or statutes, and (2) so far as practicable they are uniform throughout the state." *VC & M, Ltd. v. Andrews*, 2013 IL 114445, ¶ 15. Foreclosure cases in Cook County are governed by a comprehensive set of rules and standing orders to "ensure that judges have sufficient information before them when entering foreclosure judgments, and help protect the interests of disadvantaged homeowners, who usually represent themselves." *Crown Mortgage Co. v. Young*, 2013 IL App (1st) 122363, ¶ 16.

¶ 26 As grounds for her contention that the circuit court should have stricken Deutsche Bank's motion for summary judgment, defendant cites the following italicized portions of the Mortgage Foreclosure Courtroom Procedures:

"The provisions of this Standing Order are in addition to requirements imposed generally under Illinois Law as well as to standing orders issued by individual judges of the Section.

* * *

Calls and Motions Generally

All motions, notices of motions, and pleadings must comply with General Administrative Order 2011-04 (affidavits of military service and orders are exempt). All prove-up affidavits must be attached to and incorporated by express reference within the motion for default, summary judgment, and/or foreclosure.

* * *

Particular Motions

* * *

II. Motions for Judgment of Foreclosure.

A. Scheduling for Presentment.

To obtain a date for presentment, movants must file, at the time of scheduling the motion, the following documents with the Clerk of the Circuit Court in Room 802:

* * *

4. *Signed affidavit of prove-up attached to and incorporated by express reference within the motion for default and/or foreclosure; and*

5. *Affidavit of attorney's fees and costs (fees sought in excess of \$2,000 must be supported by a time and task affidavit).*

* * *

The documents described in A and B must bear the clerk's file stamp. Copies may be dropped off at the reception area on the 28th floor of the Daley Center between 8:30 a.m. and 4:00 p.m. *Failure to comply with the requirements above will result in the motion(s) being stricken.*" (Emphasis added.)

¶ 27 We acknowledge that a local rule has the force of a statute and is binding on both the court and the parties, that the party moving for summary judgment must comply with the applicable statutes and local court rules, and that failure to follow the local court rules will preclude the entry of summary judgment. *Premier Electrical Construction Co. v. American National Bank of Chicago*, 276 Ill. App. 3d 818, 834 (1995). However, whether or not the Mortgage Foreclosure Courtroom Procedures have the force of a statute, we observe that "unswerving obedience" is not required in the absence of material harm to any litigant. *Levine v.*

Pascal, 94 Ill. App. 2d 43, 59 (1968). "Even Illinois Supreme Court rules are to be construed liberally and not *literally*." (Emphasis added.) *OneWest Bank, FSB v. Markowicz*, 2012 IL App (1st) 111187, ¶ 39 (citing *Levine*, 94 Ill. App. 2d at 58-59).

¶ 28 Here, defendant's literal reading of portions of the Mortgage Foreclosure Courtroom Procedures to require Deutsche Bank's motion for summary judgment to attach and incorporate by express reference a signed prove-up affidavit and to submit an affidavit of attorney fees and costs, conflicts with the statute governing summary judgments, which does not require the attachment of any supporting affidavits. See 735 ILCS 5/2-1005(a) (West 2012) (plaintiff may move for summary judgment "with or without supporting affidavits"). We also observe that a circuit court has "the discretion to impose sanctions on a party for an abuse of procedural rules," or "to consider plaintiff's motion on its merits," as occurred here. *VC & M, Ltd.*, 2013 IL 114445, ¶¶ 26-27. Specifically, Deutsche Bank's alleged violation of the Mortgage Foreclosure Courtroom Procedures was fully brought to the circuit court's attention by defendant's response to Deutsche Bank's motion for summary judgment and the circuit court exercised its discretion in considering Deutsche Bank's motion for summary judgment. *VC & M, Ltd.*, 2013 IL 114445, ¶ 27. Based on the facts presented, we conclude that the circuit court did not abuse its discretion in considering Deutsche Bank's motion for summary judgment on the merits. *VC & M, Ltd.*, 2013 IL 114445, ¶ 27).

¶ 29 In reaching that conclusion, we disagree with defendant's assertion of prejudice in her reply brief, that had Deutsche Bank followed the Mortgage Foreclosure Courtroom Procedures, she would have been served with Deutsche Bank's motions "within days of their filing as opposed to weeks later" and had no doubt as to what she was called upon to answer because Deutsche Bank would have had "to attach and incorporate by express reference every affidavit it

was using to support its motions." Rather, the facts show that there was a three-day delay in serving notice of the various motions filed on March 14, 2013, that Deutsche Bank's counsel fulfilled defendant's request for another copy of the motions on April 8, 2013, that on June 6, 2013, the date scheduled for the presentment of the motions, Deutsche Bank's counsel obtained an 81-day continuance to August 26, 2013, and that defendant filed her response to Deutsche Bank's motion for summary judgment on July 15, 2013. We are likewise unpersuaded by defendant's conclusory assertions in her reply brief, that "[t]here is no meaningful distinction between a 'Motion for Foreclosure' and a 'Motion for Summary Judgment,' which prays for a judgment of foreclosure," that "a motion for summary judgment which seeks a judgment of foreclosure is a 'Motion for Judgment,' " and that the Mortgage Foreclosure Courtroom Procedures "clearly show that the judges of that section of Chancery have elected to 'require proof of the allegations of the pleadings' before granting a default judgment." Whatever may be the impact of the Mortgage Foreclosure Courtroom Procedures, the claimed infractions relied on by defendant here are an insufficient basis to attack the entry of summary judgment. Given the fact that defendant was served with Deutsche Bank's prove-up affidavit and, in any event, did not dispute the amounts claimed due, her attempt to set aside summary judgment on this basis must fail.

¶ 30 Defendant next contends that the circuit court erred in denying her motion to continue the hearing on Deutsche Bank's motion for summary judgment and for a hearing on Deutsche Bank's objections to her discovery requests, matters that rest within the sound discretion of the circuit court. See, e.g., *Continental Illinois National Bank & Trust Co. of Chicago v. Eastern Illinois Water Company, et al.*, 31 Ill. App. 3d 148, 157 (1975) (a motion for continuance rests in the sound discretion of the circuit court); *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912,

927 (2007) (a discovery order is reviewed for an abuse of discretion). Defendant points out, and we recognize, that the supreme court rules governing discovery are mandatory rules of procedure that both the courts and counsel must follow (*Klingelhoets v. Charlton-Perrin*, 2013 IL App (1st) 112412, ¶ 38), and that Supreme Court Rules 213 (eff. Jan. 1, 2007) and 214 (eff. July 1, 2014), which govern requests for interrogatories and documents respectively, "provide that objections to discovery requests under either provision *shall* be heard by the Court." However, we disagree with defendant's conclusion that there was thus "no basis for the Court to deny [her] a hearing on [Deutsche Bank's] objections."

¶ 31 On July 17, 2013, defendant electronically filed her motion to compel Deutsche Bank to answer her first set of interrogatories and her first request for documents before pursuing summary judgment, and set the motion for a hearing on October 2, 2013. Defendant then filed her motion to continue the hearing on Deutsche Bank's motion for summary judgment and for a hearing on Deutsche Bank's objections to her discovery requests, referencing her previously filed motion to compel. Considering that an abuse of discretion results only when no reasonable person would accept the view adopted by the circuit court, that the circuit court did not explain its reasoning for denying defendant's motion to continue in a memorandum order, and that no report of proceedings or bystander's report concerning the denial was included in the record on appeal, we cannot say that the circuit court abused its discretion in denying defendant's request. *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 81. In other words, where the facts disclose that defendant's objection to Deutsche Bank pursuing summary judgment before answering her first set of interrogatories and her first request for documents was fully brought to the circuit court's attention through her motion to continue, we conclude that the circuit court did not abuse its discretion in denying her motion. *VC & M, Ltd.*, 2013 IL 114445, ¶ 27.

¶ 32 Moreover, we note that the statute governing summary judgment motions (735 ILCS 5/2-1005(a) (West 2012)) provides that a plaintiff may move for summary judgment *any time* after the opposing party has appeared or after the time within which to appear has expired, and that Supreme Court Rule 191(a) (eff. Jan. 4, 2013) merely requires that summary judgment motions be filed before the last date, if any, set by the circuit court for the filing of dispositive motions. We also note that defendant's motion to compel was ultimately stricken when counsel for defendant failed to appear on the scheduled hearing date, which arguably presents this court with no actual denial of a right to discovery because the motion to compel was not ruled upon. *Fisher v. Hargrave*, 318 Ill. App. 510, 519 (1943).

¶ 33 Defendant next contends that the circuit court erred in granting summary judgment in favor of Deutsche Bank because there were material questions of fact regarding her affirmative defenses that Deutsche Bank failed to provide her with a grace period notice as required by statute (735 ILCS 5/15-1502.5(c) (West 2012)) and an acceleration notice as required by the acceleration clause in the mortgage. However, defendant complains for the first time on appeal that according to Bessie Mensah's affidavit, the acceleration notice was mailed to 5025 W. Roscoe Street rather than 3436 N. Leland Avenue, as required by the notice clause in the mortgage. We will not address the merits of this new argument because it was not raised in the circuit court (*Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 92 (2010)) and because we affirm the entry of summary judgment in favor of Deutsche Bank on the ground that Deutsche Bank's supporting affidavits for summary judgment comport with the requirements of Supreme Court Rule 191 (*Federal Insurance Co. v. Turner Construction Co.*, 277 Ill. App. 3d 262, 266 (1995)).

¶ 34 The purpose of summary judgment is to determine the existence of a triable issue of fact, not to try an issue of fact. *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871,

¶ 37. Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 15 (quoting 735 ILCS 5/2-1005(c) (West 2010)). Denials in a defendant's answer do not raise a material issue of genuine fact to preclude summary judgment. *Korzen*, 2013 IL App (1st) 130380, ¶ 49. When the party moving for summary judgment files supporting affidavits containing well-pleaded facts, and the opposing party files no counter-affidavits, the material facts set forth in the moving party's affidavit are deemed admitted. *Korzen*, 2013 IL App (1st) 130380, ¶ 49 (construing *Patrick Media Group, Inc. v. City of Chicago*, 255 Ill. App. 3d 1, 6-7 (1993)). We review the circuit court's entry of summary judgment for Deutsche Bank *de novo*. *Korzen*, 2013 IL App (1st) 130380, ¶ 14.

¶ 35 As relevant here, section 15-1502.5(c) of the IMFL requires that a grace-period notice inform the mortgagor of certain matters and that it be mailed in an envelope that is "addressed to the mortgagor at the common address of the residential real estate securing the mortgage." 735 ILCS 5/15-1502.5(c) (West 2012). A mortgagee is prohibited from filing a foreclosure complaint if this and other requirements are not met. 735 ILCS 5/15-1502.5(b) (West 2012). However, a technical defect in the notice sent to the mortgagor will not necessarily warrant the dismissal of a foreclosure action. *Aurora Loan Services, LLC v. Pajor*, 2012 IL App (2d) 110899, ¶ 25.

¶ 36 Affidavits submitted in support of summary judgment are governed by Supreme Court Rule 191 (eff. Jan. 4, 2013). *PNC Bank, N.A. v. Zubel*, 2014 IL App (1st) 130976, ¶ 20; *U.S. Bank, N.A. v. Avdic*, 2014 IL App (1st) 121759, ¶ 21. Rule 191 provides, in pertinent part:

"Affidavits in support of *** 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 documents 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. Jan. 4, 2013).

¶ 37 A Rule 191(a) affidavit serves as a substitute for testimony given in open court and should satisfy the same requisites for competent testimony. *Avdic*, 2014 IL App (1st) 121759, ¶ 22. "If, from the document as a whole, it appears 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, Rule 191 is satisfied." *Kugler v. Southmark Realty Partners III*, 309 Ill. App. 3d 790, 795 (1999).

¶ 38 The admission of business records into evidence as an exception to the general rule excluding hearsay is governed by Supreme Court Rule 236 (eff. Aug. 1, 1992). *Avdic*, 2014 IL App (1st) 121759, ¶ 23. The requisite foundation under Rule 236 is only a showing that the records were made in the regular course of business, at or near the time of the transaction. *Id.*; *Bayview Loan Servicing, LLC v. Szpara*, 2015 IL App (2d) 140331, ¶ 42. In the context of computer-generated records, a showing must be made that the equipment used is the industry standard, the entries were made in the regular course of business, at or near the time of the

transaction, and the sources of information, method and time of preparation indicate their trustworthiness and justify their admission. *Avdic*, 2014 IL App (1st) 121759, ¶ 25. Additionally, Illinois Rule of Evidence 803(6) (eff. Jan. 1, 2011) governs the admission of "records of regularly conducted activity," including a memorandum, report, record, or data compilation, made at or near the time by a person with knowledge, or from information transmitted by a person with knowledge, if kept in the course of regularly conducted business, and it was the regular practice of that business activity to make such record.

¶ 39 Notwithstanding defendant's contrary suggestions in her response to Deutsche Bank's motion for summary judgment, there is no requirement that the affiants be familiar with the business records pertaining to her mortgage loan before litigation arose or have personally made the entries, especially where the lack of personal knowledge goes to the weight of the evidence and not its admissibility. *Avdic*, 2014 IL App (1st) 121759, ¶¶ 27, 29; *PennyMac Corp. v. Colley*, 2015 IL App (3d) 140964, ¶ 17.

¶ 40 Our *de novo* review leads us to conclude that the affidavits that Deutsche Bank submitted in support of its motion for summary judgment satisfied the requirements of Rule 191 and the business records concerning the underlying mortgage and note were properly admissible. *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 19. Moreover, defendant admitted the facts contained in Deutsche Bank's affidavits where she failed to file any counter-affidavits or present any contradictory evidence so as to give rise to a material issue of fact that would preclude summary judgment in Deutsche Bank's favor. *CitiMortgage, Inc. v. Bukowski*, 2015 IL App (1st) 140780, ¶ 17; *Avdic*, 2014 IL App (1st) 121759, ¶ 31.

¶ 41

CONCLUSION

¶ 42 For the reasons stated, we affirm the orders of the circuit court of Cook County denying defendant's motion to continue the hearing on Deutsche Bank's motion for summary judgment and for a hearing on Deutsche Bank's objections to defendant's discovery requests, entering summary judgment for Deutsche Bank, and ultimately confirming the sale of defendant's condominium unit.

¶ 43 Affirmed.