SIXTH DIVISION
June 28, 2013

No. 1-12-1374

NEIGHBORHOOD LENDING SERVICES, INC.,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellee,	)	
v.	)	
MICHAEL HENDERSON,	)	No. 10 CH 51361
Defendant-Appellant,	)	Honorable John C. Griffin, Judge Presiding.
v.	)	
(Bank of America as successor in interest to LaSalle Bank National Association, as trustee and trust number 10-34507-09; Unknown Owners),	)	
Defendants.	)	

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order granting summary judgment in favor of plaintiff is reversed as the affidavits provided in support of the motion failed to comply with Illinois Supreme Court Rule 191(a).

¶ 2 This appeal concerns the foreclosure of a construction loan obtained by defendant Michael Henderson (Henderson) to rehabilitate a property located at 2949 W. Washington, Chicago, Illinois. Henderson appeals an order of the circuit court of Cook County granting plaintiff Neighborhood Lending Services, Inc.'s (NLS) motion for summary judgment in the mortgage foreclosure action. Defendant contends on appeal: (1) NLS lacks standing to bring the foreclosure action; and (2) NLS's affidavits are insufficient to support the summary judgment. For the reasons which follow, we agree the affidavits in support of NLS's motion for summary judgment are insufficient and reverse the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 In January 2003, Henderson contacted Neighborhood Housing Services of Chicago (NHS) seeking to obtain funds to rehabilitate a property he owned located at 2949 W. Washington, Chicago, Illinois (the property). NHS is a nonprofit neighborhood revitalization organization. NLS is the nonprofit lending branch of NHS. Henderson then submitted a loan application to NLS, which was subsequently approved.

¶ 5 On May 30, 2003, Henderson and LaSalle Bank National Association, as trustee and trust number 10-34507-09 (LaSalle), a land trust, signed the adjustable rate, interest only note for $350,726.00, which included a maturity date of June 1, 2004. NLS required the note be secured with a mortgage on the property. The mortgage was signed only by LaSalle. To fund the construction at the property, Henderson executed a construction loan escrow trust and disbursing agreement on July 15, 2003, which provided NLS would distribute funds as necessary to Chicago Title & Trust Company (Chicago Title). Chicago Title then would distribute the funds to the

appropriate construction services via the escrow.

¶ 6 NLS utilized MB Financial Bank, N.A. (MB Financial Bank) as the servicer for the loan from the inception until January 25, 2008. Each month Henderson paid $185.83 towards the note held by NLS. On the maturity date of June 1, 2004, Henderson did not pay the remainder of the amount due under the note, but instead continued paying monthly $185.83.

¶ 7 On December 2, 2010, NLS filed a complaint[1] against Henderson, Bank of America as successor in interest to LaSalle[2], and unknown owners, alleging Henderson was in default under the terms of the mortgage and note. NLS further alleged it was due an unpaid principal balance of $322,983.41 under the construction loan note which had matured and was also due interest

---

[1]We note the complaint filed by NLS does not conform to the form complaint provided in section 15-1504 of the Mortgage Foreclosure Law. 735 ILCS 5/15-1504 (West 2010). As noted by this court, "A foreclosure complaint is deemed sufficient if it contains the statements and requests called for by the form set forth in section 15-504(a) of the Mortgage Foreclosure Law." *Standard Bank and Trust Co. v. Madonia*, 2011 IL App (1st) 103516 ¶ 20 (finding that by complying with the statutory form, pleading all necessary facts and attaching all required documents, the complaint was legally and factually sufficient). The sufficiency of the NLS complaint, however, is not at issue on appeal.

[2]Bank of America as successor in interest to LaSalle National Bank Association will be referred to as LaSalle throughout this opinion.

accruing at a *per diem* of $59.37.[3]

¶ 8 On December 20, 2010, Henderson filed his *pro se* answer. Henderson alleged in his response: (1) NHS is the mortgagee in this cause; (2) NLS has not proven what was paid toward the loan nor what was due and owing; and (3) NLS has failed to respond to his request for documents regarding his loan for the past seven years. Henderson attached numerous exhibits to his answer, with detailed explanations of how the documents relate to the underlying mortgage foreclosure action.

¶ 9 On August 2, 2011, NLS filed a motion for summary judgment against Henderson stating Henderson defaulted under the terms of the mortgage and note by failing to pay the note amount in full by the maturity date of June 1, 2004. Attached to the motion were four affidavits: two from James K. Wheaton (Wheaton), Deputy Director of NLS, dated April 27, 2011, and June 6, 2011; one from Cynthia Davis (Davis), Vice President/Loan Servicing Manager at MB Financial Bank; and another from Kevin Lail (Lail), Construction Escrow Officer at Chicago Title.

¶ 10 Wheaton's affidavit of April 27, 2011, stated he was the Deputy Director of NLS and had "personal knowledge of the facts contained in this [a]ffidavit, and if sworn as a witness, can testify competently thereto." He further averred NLS was the owner and holder of the mortgage and note and the total disbursements made under the loan agreement were $336,482.18 with the

---

[3]No exact maturity date or date of default was alleged in the complaint. The complaint contained within the record is also not signed by plaintiff's counsel. Additionally, the complaint fails to attach a copy of the note signed by Henderson.

total amount due and owing under the loan agreement, including property taxes, insurance, and interest being $447,392.07. Attached to Wheaton's affidavit were copies of the notes,[4] the "construction first mortgage," the construction loan escrow trust and disbursing agreement, a typed, untitled spreadsheet of the amounts disbursed, and a document entitled, "tax/insurance escrow account." Neither the untitled spreadsheet nor the document entitled, "tax/insurance escrow account" were sworn or certified.

¶ 11 Wheaton's affidavit of June 6, 2011, provided details regarding the business of NHS and NLS and how the companies were related to one another. Attached to the affidavit was a print out from NLS's website, which was neither sworn nor certified.

¶ 12 Davis averred in her affidavit she was the Vice President/Loan Servicing Manager at MB Financial Bank and had "personal knowledge of the facts contained in this [a]ffidavit, and, if sworn as a witness, can testify competently thereto."[5] She averred MB Financial Bank serviced the loan from "its origination on June 10, 2003, until January 25, 2008, when the Bank [MB Financial Bank] transferred all servicing responsibilities performed on behalf of NLS back to NLS." Davis concluded her affidavit by stating as of January 25, 2008, "the loan was in full

---

[4]Two notes were attached to the affidavit. One was signed by LaSalle as trustee, the other was signed by Henderson. No note exists in the record containing the signatures of both LaSalle and Henderson in one document.

[5]The Davis affidavit was presented to the circuit court in support of NLS's motion for summary judgment. The affidavit itself did not indicate on whose benefit it was made.

force and effect and there was a balance due to NLS with respect to the Loan." No documents were attached to the affidavit.

¶ 13 Lail's affidavit stated he was a Construction Escrow Officer of Chicago Title and had "personal knowledge of the facts contained in this [a]ffidavit, and, if sworn as a witness, can testify competently thereto." He averred he reviewed Chicago Title's records on Henderson's construction loan and had "personal knowledge thereof." He also stated a "true and accurate copy of the Escrow Ledger for the subject loan" was attached to the affidavit, along with "true and accurate copies of loan payout documents made with respect to this construction loan." Lail further stated these documents were made in the regular course of business and the records were maintained "contemporaneously with the transactions that were being recorded and were made by employees or personnel during the ordinary course of business."

¶ 14 Henderson filed a response to NLS's motion for summary judgment in which he argued NLS: (1) lacked standing; (2) failed to prove up the amount due and owing; and (3) failed to "enter into court" statements, ledgers, annual escrow analysis, mortgage interest statements, and the original note. Henderson also questioned Wheaton's ability to attest to MB Financial Bank's servicing of the loan. Attached to his response were numerous documents, many of which were previously filed with his answer.

¶ 15 Additionally, Henderson filed motions to strike each of NLS's affidavits. As to Wheaton's affidavit, Henderson argued NHS was "the lender and still is the owner of the loan and that NHS has the funds to the loan." He further asserted Wheaton failed to show any original documents to prove NLS is the owner of the loan. Lastly, Henderson argued Wheaton's affidavit

lacked personal knowledge.

¶ 16 As to Lail's affidavit, Henderson questioned whether the original documents evidencing the payments made to contractors by Chicago Title could be produced. Further, he argued Lail's affidavit was incomplete, as it did not attach any batch requests from Chicago Title. Henderson contested the authenticity of documents, as the back and front of the checks disbursed were not attached to the affidavit and did not include the draw number of each disbursement. Lastly, Henderson argued the affidavit lacked "validation to show who pay out when, how much, and to whom."

¶ 17 In response to the Davis affidavit, Henderson argued she lacked personal knowledge because the affidavit did not indicate whether she, or anyone at MB Financial Bank, "dealt directly with" his mortgage loan documents. Henderson further asserted the affidavit did not state Davis reviewed the file, what records she reviewed, how the records were stored, or whether they were kept in the customary manner of MB Financial. Additionally, no documentation was produced demonstrating the transfer of the servicing from MB Financial Bank.

¶ 18 In reply, NLS asserted Henderson had failed to attach an affidavit to his response or offer evidentiary facts in support of his argument and therefore summary judgment should be granted. NLS continued to argue it was the original lender under the mortgage and note. NLS also asserted it was attaching another affidavit from Wheaton to provide the current calculation of the amount due, address issues raised by Henderson in his response, include true and accurate copies of the payment history and records of disbursement, and provide true and correct copies of the original handwritten application and typewritten loan applications.

¶ 19 Wheaton's affidavit, dated September 1, 2011, stated he had "personal knowledge of the facts contained in this [a]ffidavit, and, if sworn as a witness, can testify competently thereto." It stated Wheaton was "familiar with the business record keeping practices of Neighborhood Lending Services, Inc. and it is it's regular course of business to maintain the records of the notes and mortgages for the loans that it owns." He averred, "I am familiar with the record keeping practices of Neighborhood Lending Services, Inc. and also with the record keeping practices of any servicers of the loan that is the subject of this proceeding." He went on to state, "With respect to the loan that is the subject of this affidavit, I have reviewed the payment history and records of disbursements that were kept by Neighborhood Lending Services, Inc. and its servicer, MB Financial. True and accurate copies of the payment history and records of disbursement are attached hereto as Group Exhibit '6'." Wheaton continued to aver Henderson was in default for failing to make the interest payments as required under the terms of the mortgage and note, failing to pay real estate taxes and insurance premiums, and for failure to obtain permanent financing or otherwise pay in full the amounts that were due. Wheaton stated a total of $336,482.16 was disbursed. This amount plus interest through the date of September 23, 2011, payments of real estate taxes and insurance came to a total judgment amount due of $453,154.85.[6]

¶ 20 On September 19, 2011, Henderson filed a motion seeking to amend his response to NLS's motion for summary judgment to include three counter-affidavits, all sworn to and signed

[6]This amount does not include attorney's fees and costs.

by Henderson, addressing each of NLS's affidavits from Wheaton, Davis, and Lail. Regarding Wheaton's affidavit, Henderson's counter-affidavit stated Wheaton did not indicate what documents he reviewed, where they were kept, or what servicers kept the documents. Henderson further denied the amounts owed pursuant to the construction loan documents and argued the exhibits were not true, accurate, or verified. As to the counter-affidavits regarding Davis and Lail, Henderson reaffirmed his original argument in opposition to the motion for summary judgment. Lastly, Henderson included a statement that all the exhibits he filed were true and accurate.

¶ 21 On September 23, 2011, the circuit court entered an order granting Henderson leave to file a sur-response. Henderson's sur-response adopted similar arguments from his response and motion to strike, including references to his counter-affidavits. Henderson also elaborated on his prior argument contesting the amount due and owing under the note.

¶ 22 There is no record of proceedings on October 14, 2011. The record contains only the orders entered by the circuit court: (1) an order of default against LaSalle and unknown owners; (2) an order granting summary judgment against Henderson in favor of NLS; (3) an order appointing the Judicial Sales Corporation as selling officer; and (4) a judgment of foreclosure and sale with the judgment amount consisting of an unpaid principal balance of $336,482.18, with the total including interest, taxes and insurance being $453,154.85.[7]

[7]The total judgment amount including attorney fees and costs of $6,814.00 was $459,968.85. Attorney fees were $4,955 of that amount. No attorney fee affidavit was included

¶ 23 Subsequently, Henderson filed a "motion to stay order of summary judgment," which was denied. On October 31, 2011, before the property went to judicial sale, Henderson filed a notice of appeal with the circuit court of Cook County. Henderson then filed a motion to stay pending appeal in the circuit court, which was denied on December 9, 2011. On December 15, 2011, the appeal was dismissed on NLS's motion. The property thereafter went to judicial sale with NLS being the highest bidder. On April 19, 2012, the sale was confirmed and an *in rem* deficiency was entered in the amount of $229,518.25. The order approving sale was entered by the circuit court granting Henderson 70 days of possession before NLS could direct the sheriff of Cook County to enforce the order.[8] This *pro se* appeal timely followed.

¶ 24 ANALYSIS

¶ 25 We first note Henderson's *pro se* brief fails to contain a points and authorities statement, a statement of the issues presented, a statement regarding the standard of review, a jurisdictional statement, a statement of facts, and a section entitled "argument." Ill. S. Ct. R. 341(h)(1), (3), (4), (6) (eff. July 1, 2008). Further, Henderson's brief fails to contain any citation to case authority. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). "[*P*]*ro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules

---

in the record.

[8]Typically, defendants have 30 days from the date of entry of the order confirming sale before the purchaser can obtain possession in accordance with section 15-1508(g) of the Mortgage Foreclosure Law. 735 ILCS 5/15-1508(g) (West 2010).

and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). Illinois Supreme Court Rule 341(h)(7) (eff. Sept.1, 2006) states arguments raised on appeal shall be supported by citation to authority and the pages in the record relied upon by the appellant. "An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is, therefore, waived." *In re Lieberman*, 379 Ill. App. 3d 585, 610 (2007). Thus, to the extent they are unsupported or undeveloped, defendant's arguments are forfeited.

¶ 26 Moreover, Henderson has not provided this court with a record of proceedings, or acceptable substitute report of proceedings, pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). It is the duty of the appellant to present this court with a sufficiently complete record of the trial court proceedings to support his claims of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). Therefore, when the issue on appeal relates to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means this court must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Id.*

¶ 27 Henderson's violation of these rules, however, does not hinder our review of the matter, since we have the benefit of the motions, the circuit court orders, the briefs, as well as NLS's proper citations to the record on appeal. Accordingly, we will consider the merits of this appeal. See *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 440-41 (2009). Though Henderson fails to separate his issues on appeal according to Illinois Supreme Court Rule 341(h)(3) (eff. July 1, 2008), we are able to discern that Henderson argues: (1) NLS lacks

standing to bring the foreclosure action; and (2) NLS's affidavits are insufficient to support the summary judgment. To the extent Henderson's brief purports to raise other issues, we find they are forfeited by his failure to clearly define them according to Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008).

¶ 28 I. Standing

¶ 29 We will first address Henderson's contention NLS lacks standing to bring this foreclosure action. What can be gleaned from Henderson's brief is he believes the lender on the note and mortgage is NHS. He supports this argument by attaching numerous unauthenticated letters from MB Financial Bank and NLS, which state, for example, "NHS made and closed this loan" or "you must contact your lender (NHS of Chicago) to gain access to your construction loan file."

¶ 30 We review the issue of standing *de novo*. *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23 (2004); *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 19. *De novo* consideration means this court performs the same analysis as the trial court. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit," and "assures that issues are raised only by those parties with a real interest in the outcome of the controversy." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). "[S]tanding requires some injury in fact to a legally cognizable interest ***." *Id.* at 221. Lack of standing to bring an action is an affirmative defense, and the burden of proving the defense is on the party asserting it. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010). "An action to foreclose upon a mortgage may be filed by a mortgagee, *i.e.*, the holder of an indebtedness secured by a mortgage,

or by an agent or successor of a mortgagee." *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, ¶ 15. Therefore, it is defendant's burden in a mortgage foreclosure action to plead and prove lack of standing. *Ortiz*, 2012 IL App (1st) 112755, ¶ 24.

¶ 31 Here, the complaint alleges NLS is "the holder and owner of said note and mortgage." Copies of the mortgage and note are required to be attached to the complaint pursuant to section 15-1504 of the Mortgage Foreclosure Law. 735 ILCS 5/15-1504(a)(2) (West 2010). NLS has attached copies of the mortgage and note to the complaint in compliance with the Code. The mortgage states, "This Security Instrument is given to Neighborhood Lending Services, Inc., which is organized and existing under the laws of Illinois, and whose address is 1279 N. Milwaukee Ave. Chicago, IL 60622 ("Lender")." The note states, "[t]he Lender is Neighborhood Lending Services, Inc." These documents plainly demonstrate NLS is the holder and owner of the mortgage and note.

¶ 32 It is Henderson's burden to plead and prove NLS lacks standing in this mortgage foreclosure action. *Ortiz*, 2012 IL App (1st) 112755, ¶ 24. Though Henderson alleges in his answer NLS is not the holder of the mortgage and note, he fails to sufficiently contradict the mortgage and notes attached to the NLS complaint. These documents demonstrate NLS is the original lender. Henderson's unauthenticated letters are insufficient evidence to prove NLS is not the holder of the note and mortgage, especially where Henderson fails to produce any evidence indicating the note was transferred, sold, or assigned to another entity. See *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 7 (2010) (The mortgage signed by the parties indicated the plaintiff was the mortgagee and thus had standing to file the foreclosure

action.). Accordingly, we conclude the mortgage and note contained in the record set forth the lender is NLS and, therefore, NLS has standing to pursue this foreclosure action.

¶ 33 II. Summary Judgment

¶ 34 We will now turn to Henderson's contention the circuit court improperly granted summary judgment in favor of NLS. A trial court is permitted to grant summary judgment only "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." 735 ILCS 5/2–1005(c) (West 2008). A trial court's decision to grant a motion for summary judgment is reviewed *de novo*. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 28. *De novo* consideration means this court performs the same analysis as the trial court in deciding a motion for summary judgment. *Khan*, 408 Ill. App. 3d at 578. Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt. *In re Estate of Harn*, 2012 IL App (3d) 110826, ¶ 25. A party moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007).

¶ 35 A party may move for summary judgment with or without supporting affidavits. 735 ILCS 5/2-1005(a), (b) (West 2010). In summary judgment proceedings, the purpose of affidavits is to show whether the issues raised are genuine and whether each party has competent evidence to support its position. *Harris Bank Hinsdale, N.A. v. Caliendo*, 235 Ill. App. 3d 1013, 1025 (1992). An affidavit substitutes for trial testimony and therefore must meet the same requirements as competent testimony. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 338 (2002). Any

evidence that would be inadmissible at trial cannot be considered in a summary judgment proceeding. *Harris Bank*, 235 Ill. App. 3d at 1025.

¶ 36 A. Requirements of Supreme Court Rule 191(a)

¶ 37 If an affidavit is filed in support of a motion for summary judgment, it must strictly comply with Illinois Supreme Court Rule 191(a) (eff. July 1, 2002). *Robidoux,* 201 Ill. 2d at 336. In pertinent part, this rule requires:

> "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). Rule 191(a) affidavits must assert sufficient facts. Furthermore, the contents of an affidavit should be statements of fact. See *Jaffe v. Fogelson*, 137 Ill. App. 3d 961, 964 (1985). Thus, it follows that affidavits which do not strictly comply with Rule 191(a) must be stricken. *Robidoux*, 201 Ill. 2d at 335; *Steiner Electric Co. v. NuLine Technologies, Inc.*, 364 Ill. App. 3d 876, 881 (2006). Accordingly, affidavits which fail to meet the requirements of Rule 191(a) will not support a movant's motion for summary judgment. *Cole Taylor Bank v. Corrigan*, 230 Ill. App. 3d 122, 130 (1992). It follows, when an affidavit contains unsupported assertions, opinions or conclusory statements which do not comply with

Rule 191(a) the affidavit will not be considered by the court. *Geary v. Telular Corp*., 341 Ill. App. 3d 694, 699 (2003).

¶ 38 On appeal, Henderson attacks the sufficiency of the affidavits of Wheaton, Davis, and Lail. NLS contends the affidavits attached in support of its motion for summary judgment adequately support the circuit court's determination to grant summary judgment. Consequently, we will begin our consideration of the affidavits by addressing whether each affiant has the requisite personal knowledge.

¶ 39 1. Affiant Shall Have Personal Knowledge

¶ 40 The court will only consider facts contained in the affidavit if they are based on the personal knowledge of the affiant. *Wiszowaty v. Baumgard*, 257 Ill. App. 3d 812, 820 (1994); Ill. S. Ct. R. 191(a) (eff. July 1, 2002). Therefore, we determine whether the affiant has the requisite personal knowledge by examining the affidavit as a whole and determining whether there is a reasonable inference the affiant could competently testify to its contents at trial. *Doria*, 397 Ill. App. 3d 752, 756 (2009).

¶ 41 For example, in *U.S. Bank National Association v. Sauer*, 392 Ill. App. 3d 942, 947 (2009), we determined an affidavit stated the requisite personal knowledge according to Rule 191(a) when the affiant stated she had first hand knowledge of the matters set forth in the affidavit, as she was the servicing agent for the plaintiff and was assigned to manage the loan at issue. Conversely, in *Corrigan*, we determined an affidavit was not made with personal knowledge where the affiant stated generally he was the vice president of the bank, he had "personal knowledge of the events he described" and then summarized the bank records. *Id.* at

128-29. We ultimately determined the affidavit in *Corrigan* "did not show his familiarity with the amounts disbursed or the amounts collected." *Id.* at 129. Similarly, in *Illinois State Bar Ass'n Mut. Ins. Co. v. Cavenagh*, 2012 IL App (1st) 111810, ¶ 54, the reviewing court determined the circuit court properly struck defendant's Rule 191(a) affidavit as it "set forth unsupported assertions and conclusions, and the affidavit set forth allegations clearly beyond Cavenagh's personal knowledge." *Id.* Thus, it follows, an affidavit not in compliance with Rule 191(a) will not support the entry of summary judgment.

¶ 42 In this case, Wheaton generally averred in each of his affidavits: (1) he was "an employee and an officer, the Deputy Director, of Plaintiff, Neighborhood Lending Services, Inc, and am a duly authorized agent of Plaintiff herein, and have authority to make this Affidavit on its behalf"; (2) "I have personal knowledge of the facts contained in this Affidavit"; and (3) he was "familiar with the business record keeping of Neighborhood Lending Services, Inc. and also with the record keeping practices of any servicers of the loan that is the subject of this proceeding."

¶ 43 Similar to the affidavit in *Corrigan*, Wheaton's affidavits generically stated his title, "Deputy Director." Further, the affidavit fails to state what his duties and responsibilities entailed as Deputy Director. Additionally, Wheaton's affidavits stated generally he had "personal knowledge of the facts contained in this affidavit," but failed to state specifically how he obtained the knowledge to attest to final calculations of amounts due and owing in regards to Henderson's loan. Without this information the affidavits are conclusory and fail to sufficiently demonstrate Wheaton's personal knowledge as to the amounts disbursed or collected. See *Steiner Electric Co.*, 364 Ill. App. 3d at 881 (defendant's Rule 191(a) affidavit was conclusory

where merely stated, "NuLine is owed $71,484.12 in credit for over billings on invoices" and therefore the movant "failed to provide any facts or admissible evidence to support these conclusory statements."). Merely stating one has "personal knowledge," as Wheaton does here, without any supporting facts as to how that knowledge was obtained, is insufficient under Rule 191(a) to support an entry of summary judgment. *Corrigan*, 230 Ill. App. 3d at 130. Unlike the affiant in *Sauer*, Wheaton did not state he personally managed Henderson's loan, only that he "reviewed the loan documents." See *Sauer*, 392 Ill. App. 3d at 947. An affiant simply stating he "reviewed" the documents does not establish the requisite personal knowledge required under Rule 191(a). A Rule 191(a) affidavit must state sufficient facts as to how personal knowledge was obtained. An affidavit which states only that the affiant is "familiar" with and "reviewed" documents does not set forth specific facts as required under Rule 191(a). Therefore, considering the affidavit as a whole, we conclude Wheaton's affidavits do not set forth the requisite personal knowledge, are not in compliance with Rule 191(a) and therefore cannot support the entry of summary judgment.

¶ 44 Likewise, Lail's affidavit contains no specific facts regarding how he obtained the personal knowledge as to the disbursements made by Chicago Title. For example, Lail averred he was a "Construction Escrow Officer" and a "duly authorized agent" of Chicago Title, with "personal knowledge of the facts contained in the affidavit ***." Lail goes on to state he was "familiar with the business record keeping" of Chicago Title and he "reviewed" the records of Chicago Title for Henderson's construction loan. Additionally, he stated he "reviewed loan payout documents for the subject loan and I have personal knowledge thereof." Like Wheaton's

affidavit, Lail's affidavit contained general statements unsupported by facts as to how he specifically obtained personal knowledge regarding Henderson's loan. We do not know what Lail's duties and responsibilities were or how long he had held the position. Moreover, the affidavit does not disclose whether his position at Chicago Title provided him with access to this information, either directly or indirectly. Consequently, Lail's affidavit failed to contain sufficient facts as to the affiant's personal knowledge and will not be considered.

¶ 45 The Davis affidavit, similar to the affidavits previously discussed, did not incorporate specific facts as to how the affiant gained personal knowledge of the contents therein. Davis averred she was the "Vice President/Loan Servicing Manager at MB Financial Bank N.A." and she was a "duly authorized agent." She goes on to state she had "personal knowledge of the facts contained in this Affidavit," she was "familiar with the business record keeping of the Bank," and she "reviewed the records of the Bank" as to Henderson's loan. These aspects of the Davis affidavit are similar to the affidavit found insufficient in *Corrigan*, particularly since the Davis affidavit also failed to attach any documents. *Corrigan*, 230 Ill. App. 3d at 129. As previously addressed, these general statements do not set forth specific facts as to how this personal knowledge was obtained. *Id.* Thus, the Davis affidavit will also not be considered in support of NLS's motion for summary judgment.

¶ 46 2. Sworn or Certified Copies of Documents Must Be Attached

¶ 47 Though we have already established all of the affidavits in support of NLS's motion for summary judgment lack personal knowledge, we note this was not NLS's sole failure to comply with Rule 191(a). Wheaton's affidavit of April 27, 2010, not only lacked the requisite personal

knowledge, but also failed to attach sworn or certified copies of the loan history. The Davis affidavit similarly failed to provide any documents upon which the affiant relied. As our supreme court determined in *Robidoux*, the plain language of Rule 191(a) "clearly requires papers be attached to the affidavit." *Robidoux*, 201 Ill. 2d at 339. Failure to attach sworn or certified documents to a Rule 191(a) affidavit is fatal. *Id.* at 340; *Preze v. Borden Chemical, Inc.*, 336 Ill. App. 3d 52, 57 (2002). This requirement is "inextricably linked to the provisions requiring specific factual support in the affidavit itself." *Robidoux*, 201 Ill. 2d at 344. Without attaching sworn or certified copies of the loan history upon which the amount due is based, the affidavits are defective and therefore cannot support summary judgment. *Id.* at 339; *Corrigan*, 230 Ill. App. 3d at 130.

¶ 48 In sum, when a party moves for summary judgment with the support of an affidavit, that affidavit must comply with Rule 191(a). 735 ILCS 5/2-1005 (West 2010); *Robidoux*, 201 Ill. 2d at 336. Sometimes described as a "two-edged weapon," summary judgment has the potential to be "dangerous if it deprives a defendant of the opportunity to have a trial of seriously contested questions of fact or law." *Gliwa v. Washington Polish Loan & Bldg. Ass'n*, 310 Ill. App. 465, 471 (1941) ("Even if defense papers are found insufficient, judgment should not be ordered unless plaintiff's affidavit (strictly construed) leaves no question of defendant's liability."). Therefore, affidavits submitted in support of summary judgment motions must be strictly construed, while affidavits in opposition must be liberally construed. *Schultz v. American National Bank*, 40 Ill. App. 3d 800, 807 (1976).

¶ 49 In the case before us, it would be a drastic measure to uphold summary judgment in favor

of NLS when the affidavits presented in support of the motion are not in compliance with Rule 191(a). See *Harn*, 2012 IL App (3d) 110826, ¶ 25. First, Wheaton's affidavit as a whole fails to set forth particular facts on which his personal knowledge of Henderson's loan is based. See *Jaffe*, 137 Ill. App. 3d at 964. Second, one of Wheaton's affidavits failed to attach all documents on which he relied to make his affidavit. See *Robidoux*, 201 Ill. 2d at 339. Similarly, the Davis affidavit and Lail's affidavit failed to establish the requisite personal knowledge required under Rule 191(a). See *Corrigan*, 230 Ill. App. 3d at 130. Additionally, the Davis affidavit failed to attach any documents whatsoever. See *Id.* Striking from the affidavits all conclusory statements and unsupported facts, we are left with practically no evidence in support of NLS's motion for summary judgment. See *Geary*, 341 Ill. App. 3d at 699. Therefore, reviewing all the documents remaining in the record strictly against the movant, we conclude summary judgment cannot be entered against Henderson as NLS's right thereto is not clear and free from doubt. *Dardeen v. Kuehling,* 213 Ill. 2d 329, 335 (2004).

¶ 50 CONCLUSION

¶ 51 For all of the aforementioned reasons, the summary judgment in favor of NLS is reversed and the order approving sale and the judicial sale are vacated. Additionally, the judgment of foreclosure and sale is vacated as to Henderson. The matter is remanded to the trial court in accordance with this order.

¶ 52 Reversed, vacated and remanded.