

“simply a ploy to delay this case further.”<sup>18</sup> The court (Judge Hubbard) denied the motion.<sup>19</sup>

The Homeowner then argued the motion in limine. The court denied the part of the motion regarding the Bank depriving the Homeowner of a deposition of the Bank’s witness based on Judge Hogan Scola’s refusal to continue the case—even though the deposition did not take place as she had ordered.<sup>20</sup> The court also denied the part of the motion based upon § 90.956, Fla. Stat (Summaries), but left the door open to an objection whenever the Bank sought to introduce the compilation evidence.<sup>21</sup>

#### **D. The Bank’s document reader.**

The Bank’s only witness at trial was Peter Knapp. Mr. Knapp did not work for the Plaintiff Bank, but for its servicer, Ocwen Loan Servicing.<sup>22</sup> His job in Ocwen’s “Legal Operations” department involves the “review [of] loan files in anticipation of testifying at trials, hearings and depositions.”<sup>23</sup> In the past, he had

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> T. 8-9.

<sup>21</sup> T. 5-8.

<sup>22</sup> T. 13.

<sup>23</sup> T. 13.

been employed in some unidentified capacity by the other two servicers who had handled the loan, Homecomings Financial and GMAC Mortgage.<sup>24</sup> Knapp testified, without elaboration, that he knew how information was entered into, and retrieved from, the Bank's computer system.<sup>25</sup> Over objection, Knapp answered a series of leading questions designed to establish a business records exception to hearsay—regarding all the records he had reviewed in the case even though the specific documents had not yet been identified:

**Q. Okay. The records that you referred to, are they kept in the ordinary course of business?**

MR. BROTMAN: Objection. Hearsay. Lack of foundation, lack of knowledge of the procedures of the plaintiff or servicer.

THE COURT: Overruled.

A. They are.

**Q. I'll just repeat the question. So they are kept in the ordinary course of business, the records we were just referring to?**

A. They are.

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<sup>24</sup> T. 14-15.

<sup>25</sup> T. 15.

**Q. They're kept by a person who is authorized to keep them?**

A. Yes.

MR. BROTMAN: Objection. Lack of foundation.

THE COURT: Overruled.

**Q. Are the records kept by a person who is authorized to keep those records?**

MR. BROTMAN: Objection. Hearsay. Lack of foundation.

MR. PETERS: You just overruled that.

MR. BROTMAN: I have to preserve every objection, Your Honor.

THE COURT: Overruled.

**Q. I'll just repeat the same question.**

MR. BROTMAN: Same objection.

THE COURT: Overruled.

**Q. Are the records kept by a person who is authorized to keep them?**

A. Yes.

**Q. Are they kept and entered by a person who has knowledge of those records?**

MR. BROTMAN: Objection. Hearsay. He's testifying to what other people have done.

THE COURT: Overruled.

A. They are.

**Q. So you answered the affirmative. Okay. Are the records made at the time the information is transmitted and recorded by a person with knowledge?**

MR. BROTMAN: Objection, Your Honor. Hearsay. Lack of foundation.

THE COURT: Overruled.

A. They are.

**Q. Is it the regular practice of Ocwen Loan Servicing to keep those records that we're referring to?**

A. It is.<sup>26</sup>

The Bank then handed Knapp a myriad of documents which were shuttled into evidence without further foundational testimony for a business records hearsay exception (or any other exception):

1. a note (endorsed differently than that attached to the complaint);<sup>27</sup>
2. a mortgage;<sup>28</sup>
3. a screen printout labeled "Asset Detail;"<sup>29</sup>

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<sup>26</sup> T. 15-17.

<sup>27</sup> Volume IV Record on Appeal ("Exhibits"), p. 2, *compare* R. 29.

<sup>28</sup> Exhibits, p. 6.

<sup>29</sup> Exhibits, p. 25.

4. a screen printout labeled “Loan Summary;”<sup>30</sup>
5. a screen printout labeled Affidavit Checklist;”<sup>31</sup>
6. a screen printout labeled “Display/History;”<sup>32</sup>
7. a document containing text that was purportedly in a default letter that was said to have been sent to the Homeowner;”<sup>33</sup>

On cross-examination, a different story emerged. Knapp testified that he had never worked in any of the departments where the digital records were created.

For example, as to the Asset Detail (Exhibit 3), Knapp testified:

Q. Who inputted the information that's in this record?

A. An employee in the records department.

Q. In the records department? Is that a separate department from the imaging department?

A. Yes.

Q. Do you work in the records department?

A. I do not.

Q. What department do you work in?

A. I work in legal operations.

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<sup>30</sup> Exhibits, p. 26 (more legible copy at R. 395).

<sup>31</sup> Exhibits p. 27.

<sup>32</sup> Exhibits, p. 29.

<sup>33</sup> Exhibits, p. 45.

Q. Have you ever worked in the records department?

A. I have not.

Q. Have you ever been in a management level in the records department?

A. No, sir.<sup>34</sup>

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Q. Were you able to find out in your research of this file who input these records in the loan detail?

A. I don't know the specific person that inputted these records.<sup>35</sup>

*See also*, as to Exhibit 5: T. 53-54 (witness did not work in, or have managerial responsibility for, default department where record was created); as to Exhibit 6: T. 56-57 (witness did not work in, or have supervisory capacity for, payment processing department of Homecomings Financial or GMAC Mortgage department where records were created); as to Exhibit 4: T. 41, 50 (witness did not work in the GMAC Mortgage imaging department that created the record). Nevertheless, the court denied the Homeowner's motions to strike these exhibits based on hearsay

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<sup>34</sup> T. 47-48.

<sup>35</sup> T. 48-49.

and the failure to show that the witness was qualified to lay the foundation for a business records exception to hearsay.<sup>36</sup>

**E. The court admits data compilations into evidence over objection.**

Exhibit 4 was entitled “Loan Summary.” The court, nevertheless, admitted the document into evidence over the objection that it was a summary.<sup>37</sup> Knapp himself identified the “Affidavit Checklist” (Exhibit 5) as “a compilation of the amounts due and owing for this loan pulled from our computer system.”<sup>38</sup> Yet, the court summarily overruled an objection to both Exhibit 5 and the payment history (Exhibit 6) expressly based on § 90.956, Fla. Stat.<sup>39</sup>

On cross-examination, Knapp admitted that the Loan Summary (Exhibit 4) references the existence of document images, such as the “name affidavit,” the “hazard insurance,” the “HUD-1 statement,” the “flood certificate,” and the “servicing transmittal,” among others.<sup>40</sup> Knapp did not know what kind of document the “hazard insurance” would be, nor did he know what one of the

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<sup>36</sup> T. 81-87.

<sup>37</sup> T. 23.

<sup>38</sup> T. 25 (emphasis added).

<sup>39</sup> T. 25-26.

<sup>40</sup> T. 51-52.