STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed – June 20, 2012)

SONIA CAFUA	**:**	
MICHELLE FILPO	**:**	
	:	
v.	**:**	**C.A. No. PC 2009-7407**
	:	
MORTGAGE ELECTRONIC	**:**	
REGISTRATION SYSTEMS;	**:**	
FREMONT INVESTMENT &	**:**	
LOAN; HSBC BANK USA	**:**	
NATIONAL ASSO. AS TRUSTEE	**:**	
FOR HOME EQUITY LOAN	**:**	
TRUST SERIES ACE 2006-HE1	**:**	

DECISION

RUBINE, J. Before this Court is Defendants Mortgage Electronic Registration Systems ("MERS") and HSBC Bank USA National Asso. as Trustee for Home Equity Loan Trust Series ACE 2006-HE1's ("HSBC") (collectively, "Defendants") move for Summary Judgment pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure.[1] Plaintiffs Sonia Cafua and Michelle Filpo (collectively, "Plaintiffs") filed a complaint ("Complaint") seeking declaratory judgment to quiet title to certain real property located at 29 Lenox Avenue, Providence, Rhode Island ("the Property"). The Complaint alleges that due to alleged defects in the foreclosure process, the foreclosing party, HSBC, had no right to exercise the statutory power of sale under Rhode Island law, thus rendering the foreclosure sale a nullity.

[1] Defendant Fremont Investment & Loan is not a party to this Motion for Summary Judgment.

I

Facts & Travel

The facts as set forth below are established by the pleadings, the undisputed documents and the affidavit of Desiree Martin, a default litigation specialist for Wells Fargo Home Mortgage, which affidavit is unopposed by any affidavit or other discovery material sufficient under Rule 56 to establish a genuine issue of material fact for the purpose of defeating Defendants' Motion for Summary Judgment.

On November 30, 2005, Plaintiffs executed an adjustable rate note ("Note") in favor of Fremont Investment & Loan ("Fremont") for $297,000, having borrowed that amount to purchase the Property. See Defs.' Ex. B. The Note provides, "I [borrower] understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note-holder.'" (Defs.' Ex. B at 1.) Thereafter, the Note was endorsed in blank by Michael Koch ("Koch") on behalf of Fremont. (Martin Aff. ¶ 7.) See Defs.' Ex. B at 5. Subsequently, the Note, endorsed in blank, was transferred to HSBC.

Along with the execution of the Note, Plaintiffs executed a mortgage ("Mortgage") on the Property to secure the Note. See Defs.' Ex. A; see also Compl. Ex. 1. The Mortgage provides that "MERS is the mortgagee under this Security Instrument." (Defs.' Ex. A at 1; Compl. Ex. 1 at 1.) The Mortgage further provides:

> "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender." (Defs.' Ex. A at 3; Compl. Ex. 1 at 3.)

The Mortgage was recorded in the land evidence records of the City of Providence on December 5, 2005.

On December 24, 2007, MERS as nominee for the original lender Fremont and Fremont's successors and assigns, and mortgagee of the Mortgage, assigned its interest in the Mortgage to HSBC. See Defs.' Ex. C; see also Compl. Ex. 2. Thus, as of December 24, 2007, HSBC was the note-holder of the Note endorsed in blank and the mortgagee. The assignment of the Mortgage interest was recorded in the land evidence records of the City of Providence on January 2, 2008.

Plaintiffs failed to make timely payments as obligated under the Note and Mortgage. As a result, HSBC foreclosed on the Property on October 26, 2009. Subsequently, that foreclosure sale was rescinded to comply with new ordinances enacted in the City of Providence. (Martin Aff. ¶ 9.) On November 6, 2009, Plaintiffs filed a *lis pendens* in the land evidence records of the City of Providence, thereafter filing their Complaint on December 30, 2009. As a matter of law, one cannot legitimately record a *lis pendens* prior to filing a complaint challenging title to the property. The primary purpose of notice of *lis pendens* is to give notice to all potential buyers of a pending lawsuit concerning real property. Darr v. Muratore, 143 B.R. 973 (D.R.I. 1992) (emphasis added); see also Montecalvo v. Mandarelli, 682 A.2d 918 (R.I. 1996).

Currently, HSBC, as the note-holder and mortgagee, is seeking to foreclose on the Property. (Martin Aff. ¶¶ 11, 12.) Plaintiffs have been in default of the Note and Mortgage since September 1, 2007. (Martin Aff. ¶ 14.)

Defendants aver that there exists no genuine issue of material fact and accordingly movants are entitled to judgment as a matter of law. Plaintiffs filed an objection

supplemented with an affidavit from Attorney George Babcock. Subsequently, Defendants filed a motion to strike the affidavit of Attorney George Babcock which this Court took under advisement along with Defendants' Motion for Summary Judgment.

II

Standard of Review

This Court will only grant a motion for summary judgment if "after reviewing the admissible evidence in the light most favorable to the nonmoving party[,]" Liberty Mut. Ins. Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008) (quoting Roe v. Gelineau, 794 A.2d 476, 481 (R.I. 2002)), "the pleadings, depositions, answers to interrogatories, 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 judgment as matter of law." Super. R. Civ. P. 56(c).

The nonmoving party, in this case the Plaintiffs, "ha[ve] the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." Liberty Mut., 947 A.2d at 872 (quotation omitted). To meet this burden, "[a]lthough an opposing party is not required to disclose in its affidavit all its evidence, he [or she] must demonstrate that he [or she] has evidence of a substantial nature, as distinguished from legal conclusions, to dispute the moving party on material issues of fact." Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I. 1998) (quotation omitted).

III

Analysis

A

Assignment of the Mortgage Interest

Plaintiffs aver that MERS cannot assign that which it does not have, specifically Plaintiffs are referring to the Note and the language of G.L. 1956 § 34-11-24 whereby an assignment of the mortgage carries with it the debt and note secured. See Section 34-11-24. In addition, Plaintiffs argue that §§ 34-11-21, 22, and 24 require the note-holder and mortgagee to be the same party. Specifically, Plaintiffs argue that under Rhode Island law the mortgagee and note-holder must be one in the same.

The assertion by Plaintiffs, that §§ 34-11-21, 22, and 24 require the note-holder and mortgagee to be the same party is erroneous as a matter of law. This Court has not interpreted § 34-11-21 to "require the note and mortgage to be held by the same entity at the time of foreclosure or at the time MERS assigns the mortgage to another entity." Rutter v. Mortgage Electronic Registration Systems, Nos. PC-2010-4756, PD-2010-4418, 2012 WL 894012 at * 15 (R.I. Super. March 12, 2012) (Silverstein, J.). Justice Silverstein stated in so ruling, "[i]nterpreting § 34-11-21 to require the mortgagee and lender always be the same entity would reach an absurd result because named mortgagees and lenders would be precluded from employing servicers to service and collect obligations secured by real estate mortgagees," and "clearly, the General Assembly envisioned a role for mortgage servicers in the lending industry." Id. at * 14 (quoting Bucci v. Lehman Brothers Bank, FSB, No. PC-2009-3888, 2009 WL 3328373 (R.I. Super. August 25, 2009) (Silverstein, J.)). Moreover, the designation of MERS as

mortgagee and lender's nominee, does not as a matter of law, result in the invalidity of a foreclosure sale conducted by the assignee of MERS. Kriegel v. Mortgage Electronic Registration Systems, No. PC-2010-7099, 2011 WL 4947398 at * 9 (R.I. Super. October 13, 2011) (Rubine, J.).

Statutory language supports the Court's position. Section 34-11-24 provides that an assignment of the mortgage shall also be deemed an assignment of the debt secured thereby. Rutter, 2012 894012; see also Kriegel, 2011 WL 4947398. Once the lender designates MERS as its nominee, MERS, and thus any assignee of MERS, acts as holder of the debt secured by the mortgage and has the authority to assign the mortgage interest without the actual transfer of the Note. Kriegel, 2011 WL 4947398 at * 15. By the clear and unambiguous language of § 34-11-24, an assignment of the mortgage deed is assigned with "the note and debt thereby secured." Section 34-11-24. Therefore, by operation of law, the assignment of the Mortgage interest by MERS to HSBC transferred the Mortgage as well as "the [N]ote and debt thereby secured." Section 34-11-24. HSBC then became an assignee of MERS thereby possessing all the rights as mortgagee, including the statutory power of sale. See Kriegel, 2011 4947398 at * 13-14 (quoting Weybosset Hill Investments, LLC v. Rossi, 857 A.2d 231, 240 (R.I. 2004)) (an assignee steps into the shoes of the assignor and can avail itself of the assignor's rights). In addition, in this case, the Note and Mortgage were both held by HSBC at the time of the foreclosure sale.

Plaintiffs further challenge the validity of the Mortgage assignment from MERS to HSBC, contending that the assignment is invalid as it is unclear in what capacity MERS is assigning the Mortgage and there is no evidence that MERS was ever instructed

or authorized by Fremont to assign the Mortgage. Plaintiffs further allege that Francis Nolan ("Nolan") lacked the requisite authority to execute the assignment of the Mortgage interest on behalf of MERS. According to Plaintiffs, Nolan is not an actual officer of MERS and therefore had no authority to execute an assignment of the Mortgage interest.

"It is well established that [Plaintiffs] do[] not have standing to challenge the validity of the assignment or transfer of the Mortgage interest, to which [they] are a stranger." The Bank of New York Mellon v. Cuevas, Nos. PD-2010-0988, PC-2010-0553, 2012 WL 1388716 at * 12 (R.I. Super. April 19, 2012) (Rubine, J.); see also Payette v. Mortgage Electronic Registration Systems, No. PC-2009-5875, 2011 WL 3794701 (R.I. Super. August 22, 2011) (Rubine, J.); Kriegel, 2011 WL 4947398 (plaintiff was a stranger to that assignment and consequently lacks standing to contest the legal rights of an assignee under these documents); Brough v. Foley, 525 A.2d 919 (R.I. 1987) (holding that the plaintiff, whose property purchase was thwarted by an assignee's exercise of the assigned right of first refusal, had no standing to challenge the validity of the assignment); Peterson v. GMAC Mortg., LLC, No. 11-11115-RWZ, Slip Copy, 2011 WL 5075613 at * 4 (D. Mass. Oct. 25, 2011) (Zobel, J.) (court refused to read U.S. Bank Nat. Ass'n v. Ibanez, 458 Mass. 637, 941 N.E.2d 40 (2011) as an independent basis for mortgagors to collaterally contest previously executed mortgage assignments to which they are not a party and that do not grant them any interests or rights; finding mortgagors have no legally protected interests in the assignment of the mortgage and therefore lack standing to challenge it); In re Correia, 452 B.R. 319 (1st Cir. 2011) (affirming the bankruptcy appellate panel's finding that mortgagors lacked standing to challenge the validity of the mortgage assignment). Assuming arguendo this Court considered

Plaintiff's allegations of the invalidity of the Mortgage assignment, that allegation standing alone in the absence of other evidentiary support, and without an affidavit from a person with personal knowledge of the facts contained therein, is insufficient to defeat a motion for summary judgment. Plaintiffs have presented no evidence sufficient under Rule 56 to demonstrate that the signature of Nolan is unauthorized.[2] Thus, the allegation that the assignment of the Mortgage interest was executed by an unauthorized signatory is "a mere contention or legal opinion that is insufficient to create a genuine issue of material fact." Payette, 2011 WL 3794701 at *11. The nonmoving party "has the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." Liberty Mut., 947 A.2d at 872 (quotation omitted). Plaintiffs have failed to meet their Rule 56 burden to show that there exists a genuine issue of material fact as to whether the assignment of the Mortgage interest was executed by a person not authorized by the assignor to execute that document. Moreover, as a matter of law, the assignment is presumptively valid. See Dolan v. Hughes, 20 R.I. 513, 40 A. 344 (1898) (citing Johnson v. Thayer, 17 Me. 403 (1840)) (the presumption of law is in favor of the validity of the assignment and of the good faith of the transactions thereunder, and they must be proved to have been fraudulently made before the court can invalidate the assignment).

[2] As discussed infra, this Court will not rely upon affidavits that seek to set forth facts allegedly established by inadmissible evidence.

B

Transfer of the Note

In addition, Plaintiffs challenge the allonge of the Note whereby Fremont endorsed the Note in blank. Specifically, Plaintiffs allege that the endorsement of the Note is false and has been intentionally fabricated to work a fraud upon this Court. As evidence of the alleged fraud, Plaintiffs rely on the fact that the endorsement fails to reference a date or reference the loan itself. Moreover, Plaintiffs challenge the authority of Koch to execute the endorsement of the Note on behalf of Fremont.

Under current Rhode Island law it is well established that the identity of the note-holder does not raise a genuine issue of material fact in a case similar to the instant case to defeat a movant's motion for summary judgment. This is because under the standard MERS mortgage, MERS and MERS' assignees act as nominee for the current note-holder. See Porter v. First NLC Financial Services, 2011 WL 1251246 at * 8 (R.I. Super. March 31, 2011) (Rubine, J.) (whatever financial entity currently holds the beneficial interest of the note, MERS is designated the nominee for the current beneficial owner of the note based upon the broad language contained in the mortgage agreement).

Additionally, in Rutter, the Court found that the note-holder "need only produce the note, and then, if it is payable or endorsed to him, he may rest his case, unless the [borrower] shows evidence of bad faith or fraud." 2012 WL 894012 at * 21 (citing Hutchings v. Reinalter, 23 R.I. 518, 51 A. 429 (1902)). In the instant action, Plaintiffs have failed to submit any evidence permissible under Rule 56 to support the allegation of fraud with respect to the endorsement of the Note in blank. As set forth supra, the nonmoving party "has the burden of proving by competent evidence the existence of a

disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." Liberty Mut., 947 A.2d at 872 (quotations omitted). Plaintiffs' averments with respect to the fraudulent endorsement of the Note in blank are merely unsupported allegations and mere conclusions. It certainly falls short of the level of particularity which is required by Rule 9. See Super. R. Civ. P. 9(b).

Furthermore, "[u]nder the UCC, 'the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings.'" Rutter, 2012 894012 at * 21 (citing Section 6A-3-308). Hence, the signatures on an instrument, such as the Note at issue, are "presumed to be authentic and authorized." Id. Likewise, here, as in Rutter, Plaintiffs have failed to specifically deny the endorsement of the Note in blank in their Complaint, accordingly the endorsement is presumed valid. See Rutter, 2012 WL 894012 at * 21.

C

HSBC Has the Authority To Foreclose

According to Plaintiffs, HSBC lacks standing to foreclose on the Property. Specifically, Plaintiffs rely on the alleged invalidity of the assignment of the Mortgage interest to support the allegation that HSBC lacks authority to foreclose following Plaintiffs' default under the Note and Mortgage. Thus, Plaintiffs allege that there exist genuine issues of material fact as to whether HSBC is the mortgagee and current note-holder and therefore, this Court should not allow HSBC to exercise the statutory power of sale and foreclose upon the Property. Plaintiffs have simply failed to produce the type of

evidence permissible under Rule 56, to create a genuine issue of material fact to support this allegation.

As discussed supra, the assignment of the Mortgage interest by MERS to HSBC is valid. Accordingly, HSBC is the mortgagee possessing the statutory power of sale and is acting on behalf of the note-holder, and is thus authorized to foreclose. See Payette, 2011 WL 3794701; see also Rutter, 2012 WL 894012. Plaintiffs have failed since September of 2007 to make payments as obligated under the terms of the Note, an obligation Plaintiffs, as borrowers, incurred through the execution of the Note and Mortgage and acceptance of the loan proceeds. The borrowers knew or should have known that foreclosure was the ultimate consequence of default by Plaintiffs under the clear, unambiguous language of the Mortgage instrument. See Payette, 2011 WL 3794701 at * 17 (it strikes the court as unfair to allow the borrowers to have benefited from the loan to purchase the property and thereafter escape their repayment obligations, leaving the lender without the benefit of the security it bargained for when making the loan to the plaintiffs).[3]

[3] Although the Court is aware anecdotally of the financial hardships of homeowners, during a time of economic adversity, the financial circumstances of the Plaintiffs at the time of default is not a matter alleged by Plaintiffs in the Complaint and is not relevant to Defendants' foreclosure decision in the context of a quiet title action. Since the foreclosure has already occurred, the equitable considerations that would be relevant to the Court's consideration of injunctive relief are not part of the Court's consideration in a quiet title action. In addition, problems in the mortgage market and the mortgage servicing industry, including the creation and sale of mortgage backed securities, have received wide attention in the public media. These matters of public policy must be addressed by the legislative and executive branches of government. A judicial decision in an individual case is not the proper forum to address problems in the mortgage industry generally. In re Correia, 452 B.R. at 325.

D

Slander of Title

Plaintiffs allege that Defendants MERS and HSBC have slandered title to the Property as well as caused Plaintiffs compensable damages as a result of their improper recordings in the land evidence records of the City of Providence. (Compl. p. 4.)

Slander of title occurs when a party maliciously makes false statements about another party's ownership of real property, which then results in the owner suffering a pecuniary loss. Keystone Elevator Company, Inc. v. Johnson & Wales University, et al., 850 A.2d 912, 923 (R.I. 2004) (quoting DeLeo v. Anthony A. Nunes, Inc., 546 A.2d 1344, 1346 (R.I. 1988)). The mere fact that a person asserts a claim to the property, even if such claim is unfounded, does not warrant a presumption of malice. Hopkins v. Drowne, 21 R.I. 20, 41 A. 567, 568 (R.I. 1898). It must be proven that the defendant could not have honestly believed in the existence of the right he claimed, or, at least, that he had no reasonable or probable cause of believing so, to establish slander of title. Id. at 568-569. Therefore, it has been held that malice, for purposes of slander of title, may be inferred when a party files a notice of *lis pendens* absent a good-faith belief in his claim to title of the property. Keystone Elevator Company, Inc., 850 A.2d at 923 (quoting DeLeo, 546 A.2d at 1347-48). The essential elements of slander of title must be proved by a preponderance of the evidence. 50 Am. Jur. 2d Libel and Slander § 566 at 860 (1995).

This Court finds that there exists no genuine issue of material fact with respect to Plaintiffs' claim for slander of title. As discussed supra, this Court has found the assignment of the Mortgage interest, and thus the subsequent recording of it in the land

evidence records of the City of Providence, to be valid, thereby authorizing HSBC to exercise the statutory power of sale. Such a claim of slander of title is simply unfounded under the law and the facts of this case.

E

Motion to Strike

Defendants move to strike Attorney George Babcock's affidavit. Defendants aver that the affidavit is submitted to support Plaintiffs' challenges to the MERS' corporate resolution and the subsequent assignment of the Mortgage interest; a challenge which Plaintiffs lack standing to make. Defendants further aver that Attorney George Babcock is the attorney of record in this matter and therefore is not competent to testify as a witness under Rule 3.7[4] and that Attorney George Babcock fails to make his averments in the affidavit on the basis of personal knowledge, as required by Rule 56(e) specifically ¶¶ 9[5] and 11.[6] .

"Rule 56(e) requires that 'supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.'" Nichola v. Fiat Motor Co., Inc., 463 A.2d 511, 513 (R.I. 1983) (quoting Rule 56(e)). If a party's "affidavit fails to comply with these requirements, it is useless in establishing . . . a genuine issue of material fact." Id. Absence of corporate resolution alone may not be dispositive on the issue of authority, and is far less than what would be

[4] On October 25, 2011, Attorney George Babcock withdrew his appearance as counsel in this matter on behalf of Plaintiffs. Attorney Corey Allard of Attorney George Babcock's Law Offices thereafter entered his appearance on behalf of Plaintiffs. Accordingly, this issue is moot.

[5] Paragraph 9 provides "William Hultman has admitted under oath that there is no written corporate resolution regarding MERS officers and their alleged power to sign documents as officers of MERS." (Babcock Aff. ¶ 9.)

[6] Paragraph 11 provides "On December 24, 2007, there was no corporate resolution from MERS authorizing Nolan to execute any documents as an officer of MERS." (Babcock Aff. ¶ 11.)

necessary to defeat the presumptive validity of the recorded instruments. Attorney Babcock cannot by way of his investigative efforts and conclusive statements made in an affidavit establish the necessary personal knowledge and competence to testify as required by Rule 56 (e) with respect to facts necessary to defeat a motion for summary judgment. In other words, facts alleged to exist by reason of documents obtained through discovery in an unrelated case in a foreign jurisdiction, as well as information which appears on a website, simply by repeating such information in the form of an affidavit, does not rise to the level of personal knowledge of such underlying facts. "Personal knowledge . . . [is] knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said." 3 Litigating Tort Cases § 31:9 (2011). "Statements made only on information or belief are insufficient." Id.

Moreover, belief, no matter how sincere, is not equivalent to knowledge, and affidavits are insufficient to establish a genuine issue of material fact where they are based on information and belief of that affiant. 27A Fed. Proc., L. Ed. § 62:654. Likewise, an affidavit is insufficient where it is based on mere suspicion. Id. Allegations not made from an affiant's own knowledge are subject to being stricken. 10B Wright & Miller, Fed. Prac. & Proc. Civ. 3d § 2738 (2012). In addition, absent a demonstration of personal knowledge, an affiant's statements may be stricken. However, in the absence of a motion to strike or other objection, the lack of showing of personal knowledge is waived unless it is clear form the affidavit itself that it is not based on a personal knowledge of the facts. Id.

Here, Attorney Babcock fails to show how he has personal knowledge of the fact that William Hultman is not authorized to act on behalf of MERS with respect to the execution of assignment documents. See Babcock Aff. ¶ 9. Attorney Babcock further fails to evidence any personal knowledge that "there was no corporate resolution from MERS authorizing Nolan to execute any documents as an officer of MERS." (Babcock Aff. ¶ 11.) Belief of an affiant or mere suspicion is insufficient to establish a genuine issue of material fact. 27A Fed. Proc., L. Ed. § 62:654. Attorney Babcock's affidavit, specifically the portions pertaining to ¶¶ 9 and 11, are stricken. See DiCristofaro v. Beaudry, 110 R.I. 324, 293 A.2d 301 (1972) (failure of portion of an affidavit under this rule to conform to the prescribed limitations does not require the court to expunge the entire affidavit, but courts should disregard the incompetent portions and consider only that which has been properly included).

Although Plaintiffs did not file a motion to strike, they objected to the affidavits of Desiree Martin ("Martin") and Nolan through their memoranda. Specifically, Plaintiffs argue that the affidavit of Martin is not made upon personal knowledge and therefore Martin is not competent to testify with respect to the averments contained in her affidavit. Plaintiffs further make the general allegation that the affidavit of Nolan is not admissible under the rules of evidence.

In Rutter, Justice Silverstein found that an "affidavit by an employee of the mortgagee testifying regarding the documents in the mortgagee's file is not hearsay because of the business records exception; therefore, the affidavit and statements therein referring to the business records [were] admissible." 2012 WL 894012 at * 23; see also Rhode Island Rule of Evidence 803(6). Likewise here, the affidavit of Martin is based on

a review of the relevant business records which "are maintained in good faith, in the regular course of Wells Fargo's business, and that it is the usual course of Well Fargo's business to make the entries at the time of the event recorded, or within a reasonable time thereafter." (Martin Aff. ¶ 3.) "This meets the standard of competent evidence for purpose of summary judgment and is admissible under the business records exception to the hearsay rule." Rutter, 2012 WL 894012 at * 24. Thus, Martin's affidavit is a proper affidavit to support the Defendants' Motion for Summary Judgment.

Nolan's affidavit is admissible under Rule 56(e). It is "made on personal knowledge, . . . sets forth such facts as would be admissible in evidence, and . . . affirmatively [shows] that [Nolan] is competent to testify to the matters stated therein." Super. R. Civ. P. 56(e). Plaintiffs fail to specify the rule of evidence which prohibit the consideration of Nolan's affidavit by this Court. Accordingly, Nolan's affidavit is admissible as well, for purposes of supporting the Motion for Summary Judgment.

IV

Conclusion

For the reasons stated herein, Defendants' Motion for Summary Judgment pursuant to Rule 56 is granted. In addition, this Court grants Defendants' Motion to Strike paragraphs 9 and 11 of Attorney George Babcock's affidavit. There being no just reason for delay, Final Judgment shall enter in favor of Defendants MERS and HSBC under Rule 54(b).