

**Affirmed and Opinion Filed June 17, 2020**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-19-00461-CV**

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**GERARDO BOTELLO AND DOMITILA SAUCEDO, Appellants  
v.  
MIDFIRST BANK, Appellee**

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**On Appeal from the 134th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-18-10723**

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**MEMORANDUM OPINION**

Before Justices Partida-Kipness, Nowell, and Evans  
Opinion by Justice Nowell

This is an appeal from a summary judgment authorizing MidFirst Bank to foreclose on a deed of trust on appellants' property. Appellants contend the trial court erred because MidFirst's summary judgment evidence was insufficient. We conclude the summary judgment evidence was sufficient and affirm the trial court's judgment.

**Background**

MidFirst sued Gerardo Botello and Domitila Saucedo seeking an order allowing it to proceed with foreclosure under the deed of trust or for a judicial

foreclosure. MidFirst filed a traditional motion for summary judgment and attached the affidavit of Crystal Baker, Vice President of MidFirst, and declaration of Philip Danaher, an attorney for MidFirst. Appellants filed a response raising several objections to the affidavits, but did not submit any summary judgment evidence.

According to Baker's affidavit and the attached documents, appellants signed a note payable to AEGIS Wholesale Corporation for the purchase of their home. An allonge attached to the note shows it was indorsed by AEGIS Wholesale to the order of AEGIS Mortgage Corporation, by AEGIS Mortgage Corporation to CitiMortgage, Inc., and by CitiMortgage, Inc. to MidFirst.

The note was secured by a deed of trust on the property. Mortgage Electronic Registration Systems, Inc. (MERS), solely as nominee for AEGIS Wholesale, its successors and assigns, is the beneficiary of the deed of trust. On August 11, 2008, CitiMortgage, as servicer and on behalf of MERS, assigned the deed of trust to CitiMortgage by a written assignment recorded in Dallas County. On December 4, 2013, MERS, as nominee for AEGIS Wholesale, assigned the deed of trust to CitiMortgage by a written assignment later recorded in Dallas County. On August 4, 2014, CitiMortgage assigned the deed of trust to MidFirst by a written assignment that was also recorded in Dallas County.

Baker stated that appellants failed to make all their payments timely and MidFirst sent notices of default to appellants on July 24, 2018. Appellants were given thirty-five days to cure the default; otherwise, the loan balance would be

accelerated. Appellants failed to cure the default and the entire balance was accelerated and due. Baker also stated that the documents attached to her affidavit were true and correct copies of business records of MidFirst.

Danaher's declaration states he is an attorney for MidFirst. Based on his personal knowledge and the business records of his firm, on October 30, 2018, the firm sent written notices of acceleration of the loan maturity to appellants on behalf of MidFirst. Copies of the notices are attached to the declaration.

The trial court granted MidFirst's motion for summary judgment. The court's order provides that:

- an event of default has occurred
- the deed of trust provided MidFirst with a first lien security interest on the property
- MidFirst is the current holder and owner of the note and beneficiary under the deed of trust
- the outstanding balance on the note, prejudgment and post-judgment interest, and court costs are secured by the deed of trust
- MidFirst or its successors or assigns may proceed with foreclosure on the property as provided in the deed of trust and section 51.002 of the property code
- foreclosure notices may be mailed to the property address

The record does not show that the trial court expressly ruled on appellees' objections to the summary judgment affidavits.

### **Discussion**

We review the trial court's summary judgment de novo. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). A party moving for

traditional summary judgment has the burden to prove that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). “When reviewing a summary judgment, we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant’s favor.” *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). We review a trial court’s decision to admit or exclude summary judgment evidence under an abuse of discretion standard. *Holloway v. Dekkers*, 380 S.W.3d 315, 320 (Tex. App.—Dallas 2012, no pet.). We must uphold the trial court’s ruling if the record shows any legitimate basis supporting that ruling. *Id.*

Appellants complain that Baker’s affidavit was made without personal knowledge, based on a review of electronically stored data rather than original documents, and the indorsements and assignments attached do not establish the transfer of the note and deed of trust to MidFirst. They complain that Danaher’s declaration lacks a foundation for the issuance of the notices on behalf of MidFirst based on their objections to Baker’s affidavit.

MidFirst first contends appellants did not preserve error by obtaining an express ruling from the trial court on their objections. *See* TEX. R. APP. P. 33.1(a). In general, merely granting a motion for summary judgment does not indicate a ruling on objections to summary judgment evidence. *See Seim v. Allstate Tex.*

*4Lloyds*, 551 S.W.3d 161, 165 (Tex. 2018) (per curiam); *Hogan v. J. Higgins Trucking, Inc.*, 197 S.W.3d 879, 883 (Tex. App.—Dallas 2006, no pet.) (implicit ruling requires some indication in record that trial court ruled on objections “other than the mere granting of the summary judgment”). However, the summary judgment here was clearly based on the affidavits and the documents attached to them. Because the trial court could not have reached its rulings without considering the evidence in the affidavits and the documents, we will assume without deciding the record is sufficiently clear that the trial court implicitly ruled the affidavits were admissible. *See Seim*, 551 S.W.3d at 66 (noting implicit ruling may be sufficient to preserve error where implication is clear). Accordingly, we will evaluate the merits of the objections asserted.

Affidavits in support of a motion for summary judgment must be made on the affiant’s personal knowledge. TEX. R. CIV. P. 166a(f). The affidavit must show how the affiant became familiar with the facts set forth in the affidavit. *See Radio Station KSCS v. Jennings*, 750 S.W.2d 760, 762 (Tex. 1988). “An affiant’s position or job responsibilities can qualify him to have personal knowledge of facts and establish how he learned of the facts.” *Hydroscience Technologies, Inc. v. Hydroscience, Inc.*, 401 S.W.3d 783, 791 (Tex. App.—Dallas 2013, pet. denied); *see In re E.I. DuPont de Nemours & Co.*, 136 S.W.3d 218, 222 (Tex. 2004) (orig. proceeding) (per curiam) (review and comparison of documents can be sufficient basis for personal knowledge in some circumstances).

Baker's affidavit states that she is a vice president of MidFirst and explains her familiarity with the business records of MidFirst for servicing loans. In the regular performance of her job, she is familiar with the business records maintained by MidFirst for the purpose of servicing mortgage loans, collecting payments, and pursuing delinquencies. She states her personal knowledge is based on a review of MidFirst's those servicing records, which include electronic data compilations and imaged documents pertaining to the loans. She further states that MidFirst's business records are made at or near the time of the matters recorded by persons with personal knowledge of the information or from information transmitted by persons with personal knowledge, kept in the course of MidFirst's regularly conducted business activities, and made in the regular practice of MidFirst's business. Baker personally reviewed the business records relating to appellants' loan. She authenticated the records attached to her affidavit as the original or exact duplicates of the original business records.

These statements sufficiently describe Baker's position and responsibilities and the basis for her personal knowledge. *See Hydrosience Technologies*, 401 S.W.3d at 791–92 (references to true and correct copies of documents in support of an affidavit can establish personal knowledge); *Kyle v. Countrywide Home Loans, Inc.*, 232 S.W.3d 355, 359 (Tex. App.—Dallas 2007, pet. denied) (affiant's testimony that she was both a foreclosure specialist and custodian of records for mortgagee with respect to mortgagor's loan was sufficient to identify the

custodian's position and responsibilities, meeting personal knowledge requirement); *Stucki v. Noble*, 963 S.W.2d 776, 780 (Tex. App.—San Antonio 1998, pet. denied) (personal-knowledge requirement was satisfied where affidavit sufficiently described relationship between affiant and the case so that it may have been reasonably assumed that she had personal knowledge of facts stated in her affidavit).

Appellants cite no authority stating that personal knowledge can only be obtained by a review of original documents. To the contrary, personal knowledge may be based on a review of corporate business records, including electronically imaged documents. *See In re E.I. DuPont de Nemours & Co.*, 136 S.W.3d at 224 (personal knowledge based on review of human resources database); *Long v. Sw. Funding, L.P.*, No. 03-15-00020-CV, 2017 WL 672445, at \*5 (Tex. App.—Austin Feb. 16, 2017, no pet.) (mem. op.) (vice president's personal knowledge of loan documents based on review of business records including data compilations and electronically imaged documents); *Nat'l Health Res. Corp.*, 429 at 130–31 (personal knowledge of transfer of lease shown by review of business records, including records of other businesses). We conclude the affidavit is sufficient to show Baker's personal knowledge and that the trial court did not abuse its discretion by overruling appellants' objection.

Appellants next argue that the indorsements and assignments are insufficient. They question the validity or authenticity of the indorsements and

assignments, but they failed to file a verified denial of those documents. *See* TEX. R. CIV. P. 93(8) (requiring verified denial of genuineness of indorsement or assignment of written instrument upon which suit is brought). Thus, the indorsements and assignments “shall be held as fully proved.” *Id.*; *see Rockwall Commons Assocs., Ltd. v. MRC Mortg. Grantor Tr. I*, 331 S.W.3d 500, 506–07 (Tex. App.—El Paso 2010, no pet.). The trial court did not abuse its discretion by overruling this objection.

We conclude the trial court did not abuse its discretion by implicitly overruling appellants’ objections to Baker’s affidavit and exhibits. Because the objections to Danaher’s declaration are based on the objections to Baker’s affidavit, they also fail. We overrule appellants’ sole issue on appeal.

### **Conclusion**

We affirm the trial court’s judgment.

/Erin A. Nowell/

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ERIN A. NOWELL  
JUSTICE

190461F.P05



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

GERARDO BOTELLO AND  
DOMITILA SAUCEDO, Appellants

No. 05-19-00461-CV      V.

MIDFIRST BANK, Appellee

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District Court, Dallas County, Texas  
Trial Court Cause No. DC-18-10723.  
Opinion delivered by Justice Nowell.  
Justices Partida-Kipness and Evans  
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Midfirst Bank recover its costs of this appeal from appellants Gerardo Botello and Domitila Saucedo.

Judgment entered this 17th day of June, 2020.