

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT, STATE OF FLORIDA

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK
AS TRUSTEE, ETC.,

DCA Case No. 4D23-2793
L.T. Case No.
CACE-07001053

Appellant,

vs.

PAULA E. COHEN A/K/A PAULA
LAWLER, et al.,

Appellees.

**REPLY/CROSS-ANSWER BRIEF OF APPELLANT,
THE BANK OF NEW YORK MELLON**
Appeal From a Final Order of the Circuit Court

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REPLY BRIEF ON DIRECT APPEAL

ARGUMENT

BoNYM ALLEGED AND PROVED STANDING.

This Court permits a foreclosure plaintiff to establish standing through evidence of loan ownership or note holdership. BoNYM alleged standing as both the loan owner and noteholder in the complaint. It then proved standing through the PSA, MLS, and witness testimony—the exact evidence this Court accepts as proof of standing. The MLS and witness testimony connected Ms. Galluccio's loan to the PSA, which pre-dates the complaint. The trial court erred in granting involuntary dismissal. Ms. Galluccio's answer brief does not support a different conclusion.

A. PSA And Blank Indorsed Note Established Ownership.

A foreclosure plaintiff may establish standing at case inception through proof of loan ownership. *Bolous v. U.S. Bank, N.A.*, 210 So. 3d 691, 695 (Fla. 4th DCA 2016) ("[E]vidence ... was sufficient to demonstrate that the bank was the owner or holder of the note at the time it filed the original complaint."); *Tilus v. AS Michai LLC*, 161 So. 3d 1284, 1286 (Fla. 4th DCA 2015) ("[U]nder the Uniform Commercial

Code, a plaintiff is not required to be *both* the owner and holder of the note in order to have standing to foreclose.").

Evidence of a PSA that predates foreclosure and corresponding MLS is legally sufficient to prove standing at case inception in instances where the *Ortiz*¹ presumption is unavailable—*i.e.*, an original note with an undated indorsement is introduced at trial, but a copy of the indorsed note was not attached to the original complaint. *See Bolous*, 210 So. 3d at 693 (PSA and corresponding mortgage loan schedule was sufficient to prove foreclosure plaintiff was the owner or holder at case inception); *HSBC Bank USA, N.A. v. Alejandre*, 219 So. 3d 831, 832 (Fla. 4th DCA 2017) (PSA and testimony showing subject loan was transferred to the plaintiff trust was sufficient to prove standing); *Bank of N.Y. v. Calloway*, 300 So. 3d 220, 223 (Fla. 4th DCA 2020) ("[R]eliance on a pooling and servicing agreement is yet another method of proving standing.").

Ms. Galluccio admits a PSA, corresponding MLS identifying the borrower's loan, and witness testimony may establish standing at case inception. [Ans. 3-4, 14.] Ms. Galluccio also admits BoNYM

¹ *Ortiz v. PNC Bank, Nat'l Ass'n*, 188 So. 3d 923 (Fla. 4th DCA 2016).

introduced a PSA that predates the foreclosure and corresponding MLS and provided witness testimony as to both. [Ans. 13-14.] Ms. Galluccio's only argument is BoNYM's MLS and witness testimony did not connect her loan to the PSA. [Ans. 14-15.] She is wrong.

To survive a motion for involuntary dismissal, the court "must view the evidence and all inferences of fact in a light most favorable to the nonmoving party" *Deutsche Bank Nat'l Tr. Co. v. Clarke*, 87 So. 3d 58, 60 (Fla. 4th DCA 2014).

BoNYM unquestionably presented sufficient evidence to connect Ms. Galluccio's loan to the PSA to survive a motion to dismiss. *First*, the MLS clearly identifies a loan with the same city, zip code, origination date, loan amount, and interest rate as Ms. Galluccio's loan. [R2831-2836.] *Second*, BoNYM's witness testified: **(1)** the MLS was part of the business records maintained by Shellpoint for BoNYM; **(2)** the MLS was attached to the PSA at issue; and **(3)** per the business records she had reviewed, Ms. Galluccio's note and mortgage had been transferred into the subject trust pursuant to the PSA prior to the action being filed. [R2144-2146.] Viewing this evidence, testimony, and inferences in light most favorable to BoNYM, BoNYM presented sufficient evidence of

standing to survive a motion to dismiss, and the lower court erred in granting that relief.

In *Bolous* this Court relied on nearly identical evidence to determine there was sufficient evidence "to demonstrate that the bank was the owner or holder of the borrower's note at the time the bank filed the original complaint." *Bolous*, 210 So. 3d at 693. Like in this case, the bank introduced a PSA predating foreclosure and corresponding MLS that included the borrower's loan. *Id.* The witness testified the loan was transferred to the trust via the PSA. *Id.* at 693-94. This Court found this evidence "established that the bank was the owner or holder of the note before it filed the original complaint, and thus had standing to foreclose." *Id.* at 694.

Ms. Galluccio attempts to distinguish *Bolous* by arguing the loan number in the MLS is fully redacted. The loan number in the MLS is not the only way to connect Ms. Galluccio's loan to the PSA. This Court looks at the evidence in its entirety to determine standing through ownership or holdership. *See id.* (considering "the [PSA's] terms and corresponding [MLS] identifying the borrower's loan at issue, **along with the other evidence presented** through the [bank's witness]," to determine "that the bank was the owner or

holder of the borrower's note at the time the bank filed the original complaint." (emphasis added)).

Ms. Galluccio also tries to distinguish *Bolous* because there the plaintiff alleged it was the holder of the note, attached a copy of a note with no indorsements from the original lender, and did not allege a lost note count. [Ans. 16.] But those facts were not relevant to this Court's ruling the bank established standing. *Bolous*, 210 So. 3d at 693-94. The bank's PSA, MLS, and witness testimony were the sole basis for this Court's decision. *Id.*

Contrary to Ms. Galluccio's assertions, BoNYM's complaint alleges it is "the owner and holder of the subject note and mortgage" [R37], and BoNYM dropped the lost note count [R1100-1101]. And, failure to attach a note to a foreclosure complaint and attaching a note without endorsement from the original lender to the plaintiff or to blank affects standing in virtually the same way. BoNYM and the plaintiff in *Bolous* both filed the blank-endorsed note during the foreclosure. [R1867-1869]; *Bolous*, 210 So. 3d at 692.

This Court should follow its decision in *Bolous* and find the information identifying Ms. Galluccio's loan in the MLS together with Ms. Lattig's testimony is sufficient to tie Ms. Galluccio's loan to the

PSA, thus establishing BoNYM's standing as owner or holder of the note at case inception.

B. PSA And Blank Indorsed Note Established Holdership.

Alejandre establishes a PSA's terms requiring the assigned loans be indorsed in blank together with evidence of a blank indorsed note is sufficient to establish standing as a holder. 219 So. 3d at 832. Just as in this case, in *Alejandre* the plaintiff alleged it was the holder of the note. *Id.* A copy of the note was not attached to the complaint. *Id.* The plaintiff subsequently produced the original undated note that was indorsed in blank and the PSA. *Id.* The PSA identified the plaintiff as trustee and contained language explicitly requiring all loans transferred into the trust to be "endorsed . . . in blank in the following form: 'Pay to the order of _____ without recourse'". *Id.* The plaintiff's witness testified the closing date of the PSA was before the foreclosure complaint was filed, and that the trust contained the loan. *Id.* This Court found "the PSA coupled with the note indorsed in blank by the lender constituted sufficient evidence of the [plaintiff's] standing at the inception of the suit." *Id.*

Ms. Galluccio's sole basis for distinguishing *Alejandre* is that the loan number in the MLS is redacted, but the Court did not

discuss a mortgage loan schedule in *Alejandre*. The loan number in the MLS is not the only way to connect Ms. Galluccio's loan to the PSA. As in *Alejandre*, the PSA's terms together with the note indorsed in blank and the witness's testimony is sufficient evidence to establish BoNYM's standing at inception as a holder.

ANSWER BRIEF ON CROSS-APPEAL

STATEMENT OF FACTS²

Loan documents of a prior servicer are admissible under the business records exception to the hearsay rule. The testifying witness does not need personal knowledge of the prior servicer's records to lay the requisite foundation. The witness only needs personal knowledge of the current servicer's records and onboarding process to establish reliance on the prior servicer's records and trustworthiness of those records. That is exactly what BoNYM's witness's testimony established. The court did not abuse its discretion in admitting those documents.

A non-jury trial took place on October 10, 2023. [R2069.] Ms. Lattig, an employee of loan servicer NewRez LLC d/b/a Shellpoint

² These are additional facts related to specifically to the cross-appeal.

Mortgage Servicing ("**Shellpoint**"), testified on BoNYM's behalf. [R2093-2094.] Ms. Lattig has worked in the default loan servicing industry for 17 years. [R2094.] She has worked at Shellpoint for three years in their contested foreclosure department. [R2094.]

Shellpoint is the current servicer of Ms. Galluccio's loan. [R2094.] Shellpoint acquired servicing rights to the loan from Select Portfolio Services (SPS). [R2095.] Prior to that, Ms. Galluccio's loan was serviced by Countrywide Home Loans, Litton Loan Servicing, and Ocwen Loan Servicing. [R2095.]

Ms. Lattig confirmed she is familiar with how business records of a prior loan servicer are boarded into and become part of Shellpoint's business records. [R2095.] She explained that "every loan that is acquired by Shellpoint as its servicer . . . goes through a loan boarding process, where all the information is verified." [R2095-2096.] The prior servicer's business records initially go to Shellpoint in a "printed secure format." [R2095-2096.] Shellpoint tests each stage of the loan for accuracy by assigning "point[s] of contacts" to "each stage of the loan, whether it be escrow, insurance, payment history", etc. [R2096.] The point of contact independently verifies the information in the stage they are assigned. [R2096.] Once this

verification process is "deemed complete and accurate", the prior servicer's business records "become[] part of the production environment, ... goes into production, and the loan documents become adopted by Shellpoint." [R2096.]

Ms. Lattig further explained, if there are any "red flags" during the verification process, "the loan would be kicked back to the prior servicer, and resolved." [R2096.] If the prior servicer is not able to resolve the red flags, "then the loan would never be boarded into [Shellpoint's] system." [R2096.] Ms. Lattig was not aware of any red flags in Ms. Galluccio's loan because the loan would not have been boarded into Shellpoint's system if there had been. [R2096.]

Ms. Lattig identified the servicing platforms Shellpoint uses and testified she is familiar with and reviewed the records kept by Shellpoint for Ms. Galluccio's loan. [R2096-2097.]

BoNYM introduced 14 exhibits:

- Plf. Composite Ex. 1: Limited powers of attorney. [R2284-2302.]
- Plf. Ex. 2: Notice of servicing transfer. [R2303-2308.]
- Plf. Ex. 3: Notice of servicing transfer. [R2309-2311.]
- Plf. Ex. 4: SPS servicing transfer welcome letter. [R2312-2315.]
- Plf. Ex. 5: SPS goodbye letter. [R2316-2327.]
- Plf. Ex. 6: Shellpoint welcome letter. [R2328-2336.]
- Plf. Ex. 7: Original note. [R2337-2340.]

- Plf. Ex. 8: Mortgage. [R2341-2351.]
- Plf. Ex. 9: PSA. [A4-484.]
- Plf. Ex. 10: MLS. [R2831-2836.]
- Plf. Ex. 11: Notice of default letters. [R2837-2841.]
- Plf. Ex. 12: Countrywide and Litton payment histories. [R2842-2862.]
- Plf. Ex. 13: Shellpoint payment history. [R2863-2918.]
- Plf. Ex. 14: Judgment figures. [R2919-2940.]

For each, Ms. Lattig testified **(1)** the document was made at or the time of the event, **(2)** made by or from information transmitted by a person with knowledge, **(3)** it is Shellpoint's practice to make, maintain, and keep such records for loans it services, and **(4)** the document is kept in Shellpoint's system as part of its regularly conducted business activity. [R2100-2102, 2105-2116, 2123-2124, 2129-2130, 2133-2134, 2139, 2144-2145, 2147-2148, 2152-2153, 2156-2157, 2159-2160.]

Ms. Galluccio objected to the introduction of each document into evidence. [R2101.] She argued the documents were hearsay and did not qualify for the business records exception because Ms. Lattig lacked personal knowledge of the prior servicer's records and how the documents were created or acquired. [R2098-2101.] The court correctly followed this Court's precedent, overruled the objections, and admitted the 14 exhibits into evidence under the business

records exception to the hearsay rule. [R2103, 2108, 2111, 2113-2114, 2122, 2124, 2126, 2131, 2148, 2154, 2158, 2160-2161.]

ARGUMENT

Standard of Review.

"A trial court's ruling on the admissibility of evidence under the business records hearsay exception is reviewed for an abuse of discretion." *Peugnero v. Bank of America, N.A.*, 169 So. 3d 1198, 1202 (Fla. 4th DCA 2015). "In reviewing a true discretionary act, the appellate court must fully recognize the superior vantage point of the trial judge and should apply the 'reasonableness' test to determine whether the trial judge abused his discretion. If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion." *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980).

Argument.

NO ABUSE OF DISCRETION IN ADMISSION OF BUSINESS RECORDS

Ms. Galluccio does not dispute that Ms. Lattig was qualified to lay the foundation for the admission of Shellpoint's own records. She

instead argues Ms. Lattig's testimony concerning records of prior loan servicers was inadmissible hearsay. Ms. Galluccio claims the business records exception to the hearsay rule does not apply because Ms. Lattig lacked personal knowledge of the prior servicers' records and of how those servicers created their records and boarded them into their platforms. She is wrong.

A. *The Business Records Exception Applies.*

"A party seeking to introduce evidence under the business records exception must show that (1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly conducted business activity, and (4) that it was a regular practice of that business to make such a record." *Deutsche Bank Trust Co. Ams. v. Frias*, 178 So. 3d 505, 507 (Fla. 4th DCA 2015) (citing *Yisrael v. State*, 993 So. 2d 952, 956 (Fla. 2008)).

"The law is clear there is no per se rule precluding the admission of computerized business records acquired from a prior loan servicer." *Glarum v. LaSalle Bank N.A.*, 83 So. 3d 780, 782 n.2 (Fla. 4th DCA 2011). "[A] loan servicer . . . can lawfully rely on the records . . . of a prior loan servicer." *Deutsche Bank Trust Co. Ams. v. Frias*,

178 So. 3d 505, 508 (Fla. 4th DCA 2015) (quoting *In re Sagamore Partners, Ltd.*, 2012 Bankr. LEXIS 3800, 2012 WL 3564014 at *4 (Bankr. S.D. Fla. Aug. 17, 2012)). "Where a [loan servicer] takes custody of another [servicer's] records and integrates them within its own records, the acquired records are treated as having been made by the successor [servicer], such that both records constitute the successor [servicer's] singular business record." *Bank of N.Y. v. Calloway*, 157 So. 3d 1064, 1071 (Fla. 4th DCA 2015) (internal quotations omitted).

"A party can lay a foundation for the admission of documents pursuant to the business records exception . . . [by] offering testimony of a records custodian." *Jackson v. Household Fin. Corp.*, 298 So. 3d 531, 535 (Fla. 2020). The records custodian does not need personal knowledge of the prior servicer's business records to satisfy the business records exception. *Ocwen Loan Servicing, LLC v. Gundersen*, 204 So. 3d 530, 534 (Fla. 4th DCA 2016) (finding "it was not necessary for [the testifying witness] to have personal knowledge of [the prior servicer's] business practices or to have participated in the boarding process" to satisfy the business records exception).

The records custodian need only show that the current servicer "relies upon [the prior servicer's] records and 'the circumstances indicate the records are trustworthy.'" *Calloway*, 157 So. 3d at 1071 (quoting *United States v. Childs*, 5 F.3d 1328, 1333 (9th Cir. 1993)). Testimony the current servicer "had procedures in place to check the accuracy of the information it received from the previous [servicer]" is sufficient to establish trustworthiness. *Gundersen*, 204 So. 3d at 534 (quoting *Holt v. Calchas, LLC*, 155 So. 3d 499, 506 (Fla. 4th DCA 2015)). *See also Calloway*, 157 So. 3d at 1072 ("the [current servicer] itself may establish trustworthiness by independently confirming the accuracy of the [prior servicer's] business records upon receipt").

Importantly, the Florida Supreme Court in *Jackson* rejected any need for rigid foundational proof for business records. *Jackson*, 298 So. 3d at 540. In fact, the Court recognized "it is *extraordinarily* unlikely in any mortgage foreclosure case that records meeting the business records exception to the hearsay rule will not exist or that the proffered records are not exactly what they purport to be." *Id.* (emphasis in original).

In *Calloway* the plaintiff bank sought to introduce the payment history and transaction dates from the computer system of the

current servicer. *Calloway*, 157 So. 3d at 1067. The payment history was derived from documents transferred to the current servicer from the prior servicer. *Id.* at 1067-68. An employee of the current servicer testified that the current servicer reviewed the prior servicer's documents for accuracy before scanning them and inputting the payment information into its records system. *Id.* at 1074. During voir dire the witness admitted she never worked for the prior servicer and did not have personal knowledge of the prior servicer's records or how they were made. *Id.* at 1068. The borrower objected to the admission of the documents based on lack of foundation. *Id.* The court excluded the documents because the witness lacked familiarity with the prior servicer's business practices or procedures. *Id.*

This Court reversed, finding the witness's testimony established the trustworthiness of the documents because the witness testified that the current servicer reviewed the payment histories for accuracy before integrating them into its own records. *Id.* at 1074.

This Court noted "the circumstances of the loan transfer itself would have been sufficient to establish trustworthiness given the business relationships and common practices inherent among

lending institutions acquiring and selling loans." *Id.* at 1072. This Court cited a Massachusetts Supreme Court case, which explained:

[T]he problem of proving a debt that has been assigned several times is of great importance to mortgage lenders and financial institutions." ... Given the common practice of banks buying and selling loans, we conclude that it is normal business practice to maintain accurate business records regarding such loans and to provide them to those acquiring the loan. ... Therefore, the bank need not provide testimony from a witness with personal knowledge regarding the maintenance of the predecessors' business records. The bank's reliance on this type of record keeping by others renders the records the equivalent of the bank's own records. To hold otherwise would severely impair the ability of assignees of debt to collect the debt due because the assignee's business records of the debt are necessarily premised on the payment records of its predecessors.

Id. at 1072-73 (quoting *Beal Bank, SSB v. Eurich*, 444 Mass. 813, 831 N.E.2d 909, 914 (Mass. 2005) (internal citations omitted)).

Similarly, in *Gundersen* the current servicer sought to introduce a note, mortgage, and screenshot showing the original note was entered into the current servicer's system before the complaint was filed. 204 So. 3d at 532. The current servicer's employee testified the current servicer verified the loan documents it received from the prior servicer through a boarding process. *Id.* The prior servicer's records went "through a strict verification process" with "checks and balances" to verify the accuracy of the records. *Id.* If the accuracy of

the records could not be verified, they would not be entered into the current servicer's system. *Id.*

During voir dire the employee admitted he did not know who verified the information or who entered the information into the system. *Id.* He also did not know who boarded the records. *Id.* The court then questioned the witness as to whether he was personally familiar with the prior servicer's recordkeeping system or whether he was relying on what other people told him. *Id.* The court also asked whether he had personal knowledge of how the prior information was prepared and who prepared it. *Id.* The employee responded that he had not worked for the prior servicer. The borrower objected to introduction of the documents due to lack of foundation and personal knowledge. *Id.* The trial court sustained the objection and excluded the screenshot. *Id.*

This Court reversed, finding the "testimony satisfied the requirements for admitting the mortgage documents under the business records exception to the hearsay rule and demonstrated knowledge of the accuracy of the records." *Id.* at 535. This Court reiterated "it was not necessary for [the employee] to have personal knowledge of [the prior servicer's] business practices or to have

participated in the boarding process." *Id.* at 534. The witness "demonstrated sufficient familiarity with the boarding process to testify about it, and his testimony established the trustworthiness of the documents from the prior servicer." *Id.*

Here, BoNYM introduced various documents from Shellpoint's computer system. Ms. Lattig established the requisite knowledge and foundation for the admission of Shellpoint's business records. Ms. Galluccio's loan records were transmitted from SPS to Shellpoint. [R2095.] Like in *Gundersen*, these documents were reviewed for accuracy and independently verified before Shellpoint adopted them into its records system. [R2095-2097.] Every loan Shellpoint acquires, including Ms. Galluccio's loan, goes through a strict boarding process where Shellpoint's employees independently verify each stage of the loan for accuracy. [R2095-2096.] If the accuracy of the records could not be verified, they would not be entered into Shellpoint's system. [R2096.] There were no red flags identified in the boarding of Ms. Galluccio's loan or it would not have been boarded into Shellpoint's system. [R2096.]

Ms. Lattig also laid a foundation to the business record exception—(1) the documents were a true and accurate

representation of loan file, **(2)** were kept in Shellpoint's system as part of its regularly conducted business activity, **(3)** were made at or near the time, or transmitted by a person with knowledge, and **(4)** it is Shellpoint's practice to maintain and keep such records for the loans that it servicers. [R2100-2102, 2105-2116, 2123-2124, 2129-2130, 2133-2134, 2139, 2144-2148, 2152-2153, 2156-2157, 2159-2160.]

As in *Calloway* and *Gundersen*, Ms. Lattig's testimony was sufficient to clear Ms. Galluccio's lack of foundation and hearsay objections. The court did not abuse its discretion in admitting the loan documents.

B. Knight is Distinguishable.

Relying on *Knight v. GTE Fed. Credit Union*, 310 So. 3d 959 (Fla. 2d DCA 2018), Ms. Galluccio argues personal knowledge of a prior servicer's records is required to lay the foundation for admission. *Knight* is easily distinguished and does not support this statement.

The Second DCA, like this Court, holds that a records custodian need not have personal knowledge of the prior servicer's business records and processes for the business records exception to apply. *See, e.g., Sas v. Fannie Mae*, 165 So. 3d 849, 851 (Fla. 2d DCA 2015) ("There is no requirement that the records custodian have personal

knowledge of the manner in which the prior servicer maintained and created its business records."); *WAMCO XXVIII, Ltd. v. Integrated Elec. Env'ts, Inc.*, 903 So. 2d 230, 233 (Fla. 2d DCA 2005) (noting that the records custodian lacked personal knowledge as to who at the successor servicer input the loan information, but that the business records were properly admitted into evidence).

The business records exception is established "by testimony that the successor servicer had independently confirmed the accuracy of the predecessor's records. Or, as in *Calloway*, . . . by offering evidence that the records were reviewed for accuracy prior to being integrated into the successor servicer's records system." *Channell v. Deutsche Bank Nat'l Trust Co.*, 173 So. 3d 1017, 1020 (Fla. 2d DCA 2015) (internal citations omitted).

Knight is factually distinguishable for two primary reasons. First, *Knight* did not concern admissibility of a prior servicer's business records. *Knight*, 310 So. 3d at 961. The plaintiff in *Knight* sought to introduce a letter log produced by its current loan servicer that contained the date a third party vendor mailed a default letter to the borrowers. *Id.* Second, unlike Ms. Lattig's testimony, the witness in *Knight* did not testify that the loan servicer independently

checked or verified the third party vendor's records to confirm it actually mailed the default letter before integrating the mailing date into its servicing system, which created the letter log. *Id.* Without such testimony, the witness in *Knight* could not authenticate the default letter was in fact mailed. *Id.* at 962.

In *Knight* the bank's witness testified as to the servicer's procedure for creating a letter log with information from a third party vendor. *Id.* at 961. The servicer creates a default letter, the default letter is then sent to a third party vendor to be mailed, that third party vendor drops off the default letter at the post office for mailing, then the third party vendor sends a report to the servicer indicating the default letter was mailed. *Id.* Once the servicer receives the report, an employee of the servicer inputs the information on the servicer's letter log at or near the time that the default letter was sent. *Id.* Testimony that the loan servicer independently confirmed or verified the third party vendor's report for accuracy before integrating the mailing date into the servicer's letter log was absent. *Id.* The witness instead testified the letter log is based on actions of the third party vendor and admitted there were no documents to support his

testimony that the third party vendor actually mailed the default letter to the borrowers. *Id.*

Over the borrowers' hearsay objections, the court admitted the letter log. *Id.* The Second DCA reversed, finding the letter log was inadmissible hearsay and the witness's testimony did not satisfy the business records exception as he did not show he was well enough acquainted with the third party vendor's business practices to authenticate his testimony that the entity mailed the letter in the regular course of its business. *Id.* at 962.

None of that is relevant here. BoNYM did not seek to introduce documents it created based on information from a third party vendor. More importantly, unlike the testimony in *Knight*, Ms. Lattig's testimony authenticates the prior servicer's business records are accurate, trustworthy, and reliable. Ms. Lattig explained how Shellpoint independently reviews records of prior servicers for accuracy before integrating them into its system. [R2095-2097.]

This case is more akin to *Calloway* and *Gundersen*, where this Court found similar testimony satisfied the business records exception. The court did not abuse its discretion in admitting BoNYM's exhibits.

CONCLUSION

A witness does not need personal knowledge of a prior servicer's business records or how those records were created to satisfy the business records exception to the hearsay rule. Ms. Lattig's testimony established the prior servicer's business records met the requirements of section 90.803(6) and were independently confirmed and verified for accuracy before being integrated into Shellpoint's system. This Court found similar testimony satisfied the business records exception in *Calloway* and *Gundersen*. As to the cross appeal, BoNYM respectfully asks this Court to do the same here. As to BoNYM's appeal, BoNYM respectfully asks this Court to reverse.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October 2024 a true and correct copy of the foregoing has been electronically uploaded to the Fourth District Court of Appeal's ePortal and was furnished by E-Mail/U.S. Mail to all parties listed below.

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I HEREBY CERTIFY that this brief complies with the type-volume limitation and font requirement set forth in Rules 9.045(b), Florida Rules of Appellate Procedure. This brief contains 4,511 words. It has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Bookman Old Style font.

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