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IN THE
COURT OF APPEALS OF INDIANA

Grace O. Akinlemibola,

Appellant-Defendant,

v.

National Collegiate Student
Loan Trust 2007-1,

Appellee-Plaintiff.

February 28, 2023

Court of Appeals Case No.
21A-CC-2928

Appeal from the
Hendricks Superior Court

The Honorable
Peter R. Foley, Special Judge

Trial Court Case No.
32D01-2001-CC-72

Opinion by Senior Judge Shepard
Judges Vaidik and Tavitas concur.

¹ We note that although Akinlemibola included an Illinois bar number on her brief to this Court, she is not in fact an attorney. See *Unauthorized Practice of Law*, The Bar News, <https://www.isba.org/barnews/unauthorizedpracticeoflaw> [<https://perma.cc/RAZ3-WR5A>] (last visited February 21, 2023).

Shepard, Senior Judge.

- [1] Grace Akinlemibola appeals the entry of summary judgment in favor of National Collegiate Student Loan Trust 2007-1 (“NCSLT”) on its breach of contract claim resulting from Akinlemibola’s failure to repay the principal and interest she owes on an educational loan. Concluding there exists no genuine issue of material fact to preclude summary judgment, we affirm.

Facts and Procedural History

- [2] In December 2006, Akinlemibola applied with JP Morgan Chase Bank for student loan funds. The funds were disbursed to Akinlemibola in January 2007. Thereafter, the loan was sold and transferred to National Collegiate Funding, LLC, who, in turn, sold and transferred the loan to NCSLT.
- [3] Prior to the institution of the present action, Akinlemibola filed an action in federal court against Pennsylvania Higher Education Assistance d/b/a American Education Services regarding the same educational loan at issue here. The U.S. District Court for the Northern District of Illinois dismissed Akinlemibola’s complaint for failure to state a claim, and, on appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed that decision. *See Appellee’s App. Vol. II, pp. 126-30, 131-34 (Exs. L, M).*
- [4] In January 2020, NCSLT initiated this action by filing a breach of contract action against Akinlemibola for the principal sum of \$11,358.01 and interest of \$1,344.13. In response, Akinlemibola filed a counterclaim asserting violations

of the Fair Debt Collection Practices Act and the Fair Credit Reporting Act, fraudulent misrepresentation, and defamation. She requested damages of \$140,000. NCSLT moved for summary judgment on its breach of contract claim, which the court granted after a hearing. Later, the court granted summary judgment for NCSLT on all of Akinlemibola’s counterclaims as well. Akinlemibola now appeals.

Issues

[5] Akinlemibola presents three issues, which we restate as two:

- I. Whether the trial court abused its discretion in the admission and exclusion of evidence; and
- II. Whether the trial court erred by granting summary judgment for NCSLT.

Discussion and Decision

I. Admission and Exclusion of Evidence

[6] First, Akinlemibola contends the court erred by admitting an affidavit of one Anna Kimbrough. From what we can glean from her appellate brief, she alleges the affidavit is inadmissible hearsay because the source of the information indicates a lack of trustworthiness and a lack of personal knowledge and understanding of record-keeping practices and business practices.

[7] “[I]n ruling on a motion for summary judgment, the trial court will consider only properly designated evidence which would be admissible at trial.” *Zelman*

v. Capital One Bank (USA) N.A., 133 N.E.3d 244, 248 (Ind. Ct. App. 2019).

“Such evidence does not include inadmissible hearsay contained in an affidavit.” *Id.* Although hearsay evidence is generally inadmissible, Indiana Evidence Rule 803(6) provides that records of a regularly conducted business activity are not excluded by the rule against hearsay if: (1) the record was made at or near the time by—or from information transmitted by—a person with knowledge; (2) the record was kept in the course of a regularly conducted activity of a business; (3) making the record was a regular practice of that activity; (4) all these conditions are shown by the testimony of the custodian or another qualified witness; and (5) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

[8] In support of its motion for summary judgment, NCSLT designated a sworn statement from Kimbrough, who was employed by Transworld Systems Inc., a subservicer of loans for NCSLT. *See* Appellee’s App. Vol. II, pp. 14-19 (Affidavit of Anna Kimbrough). In its Summary Judgment Order and Related Orders, the trial court denied Akinlemibola’s motion to exclude Kimbrough’s affidavit. It held that the affidavit and other materials designated by NCSLT were admissible evidence and are not inadmissible hearsay, citing this Court’s recent decision *Smith v. National Collegiate Student Loan Trust*, 153 N.E.3d 222 (Ind. Ct. App. 2020). Appellant’s App. Vol. II, p. 34.

[9] In the *Smith* case, this Court concluded that an affidavit similar to Kimbrough’s affidavit here, demonstrated that the business records were made at, near the time, or from information transmitted by a person with knowledge; that the

business records were kept in the course of the regularly conducted business activity of the bank and/or NCSLT; the making of the records was a regular practice of the bank, NCSLT, and their loan servicers/subservicers; and all of the information came from a source and circumstances that did not indicate a lack of trustworthiness. Thus, Kimbrough’s affidavit and the attached business record exhibits that are before us in this case satisfy the requirements of Evidence Rule 803(6) and were properly admitted and considered by the trial court. *See id.* (finding similar affidavit and attached documentation satisfied requirements of Rule 803(6) and were properly admitted as business records).

[10] Akinlemibola next argues the trial court erred in excluding 100 exhibits she submitted as evidence. A trial court enjoys broad discretion in determining appropriate sanctions for discovery violations. *Kroger Co. v. WC Assocs., LLC*, 967 N.E.2d 29 (Ind. Ct. App. 2012), *trans. denied*. The court abuses this discretion when its decision is clearly against the logic and effect of the facts and circumstances of the case, or if it misinterprets the applicable law. *Id.* “Because of the fact-sensitive nature of discovery issues, a trial court’s ruling is given a strong presumption of correctness.” *Smith v. Smith*, 854 N.E.2d 1, 4 (Ind. Ct. App. 2006).

[11] Here, on August 4, 2021, the trial court ordered a discovery cut-off date of September 30, 2021 and set NCSLT’s motion for summary judgment for hearing on November 2. At approximately 11:52 p.m. on October 29, a month past the cut-off date and just days prior to the hearing, Akinlemibola submitted 100 exhibits. *See Appellant’s App. Vol. II, p. 35* (Summary Judgment Order

and Related Orders). In its Summary Judgment Order and Related Orders, the trial court stated it would not consider any of the materials found in Akinlemibola's October 29 submission as they were not timely designated under Trial Rule 56 or disclosed in compliance with the court's order.

[12] The court set a discovery deadline, and Akinlemibola failed to adhere to that deadline. Notably, she submitted the voluminous evidence a month after the deadline and mere days before the hearing. We find no error in the court's exclusion of the evidence as a sanction.

II. Summary Judgment

[13] When reviewing the entry of summary judgment, our standard of review is similar to that of the trial court: summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *City of Indianapolis v. Cox*, 20 N.E.3d 201 (Ind. Ct. App. 2014), *trans. denied*. We consider only those materials properly designated pursuant to Trial Rule 56, and we construe all factual inferences and resolve all doubts as to the existence of a material issue in favor of the non-moving party. *Young v. Hood's Gardens, Inc.*, 24 N.E.3d 421 (Ind. 2015). Further, the trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating that granting summary judgment was erroneous. *Auto-Owners Ins. Co. v. Benko*, 964 N.E.2d 886 (Ind. Ct. App. 2012) (quoting *Cox v. N. Ind. Pub. Serv. Co., Inc.*, 848 N.E.2d 690, 695-96 (Ind. Ct. App. 2006)), *trans. denied*.

- [14] We apply these principles in evaluating Akinlemibola's assertion that the existence of a genuine issue of material fact precludes the entry of summary judgment for NCSLT because ownership of the loan contract is disputed.
- [15] NCSLT's designated evidence definitively demonstrates that in March 2007, JP Morgan Chase Bank transferred, sold, and assigned Akinlemibola's loan to National Collegiate Funding, LLC. That same day, National Collegiate Funding, LLC transferred, sold, and assigned Akinlemibola's loan to NCSLT. Accordingly, the trial court properly found NCSLT established its ownership of Akinlemibola's educational loan and therefore granted summary judgment for NCSLT as a matter of law.

Conclusion

- [16] Based on the foregoing, we conclude the trial court properly admitted Kimbrough's affidavit and excluded Akinlemibola's untimely submissions. Further, as Akinlemibola failed to establish a genuine issue of material fact regarding NCSLT's ownership of Akinlemibola's educational loan, NCSLT was entitled to summary judgment as a matter of law, and the trial court properly entered judgment in its favor.
- [17] Affirmed.

Vaidik, J., and Tavitas, J., concur.