COURT OF APPEALS
DECISION
DATED AND FILED

October 2, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2394 **Cir. Ct. No. 2008CV5138**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, L.P.,

PLAINTIFF-RESPONDENT,

V.

GARY L. FINEOUT AND SUSAN G. FINEOUT,

DEFENDANTS-APPELLANTS,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AND DANE COUNTY CLERK OF CIRCUIT COURT,

DEFENDANTS,

GARY L. FINEOUT AND SUSAN G. FINEOUT,

THIRD-PARTY PLAINTIFFS,

V.

BADGER FUNDING CORP.,

THIRD-PARTY DEFENDANT.

APPEAL from a judgment of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed*.

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 HIGGINBOTHAM, J. Gary and Susan Fineout appeal a judgment of foreclosure entered in favor of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, L.P. following a trial to the circuit court. The Fineouts contend that the circuit court erroneously exercised its discretion by admitting testimony from a Bank of America employee that the Fineouts argue constituted inadmissible hearsay and by admitting two loan documents under the exception to the hearsay rule for records of a regularly conducted activity, set forth in WIS. STAT. § 908.03(6) (2011-12).[1] With respect to these issues, the Fineouts fail to persuade us that the circuit court erred.

¶2 The Fineouts also argue on appeal that the circuit court erred by granting Bank of America's motion for partial summary judgment and dismissing the Fineouts' two counterclaims to the foreclosure action. The Fineouts filed counterclaims against Countrywide Home Loans, Inc., the predecessor to Bank of America, alleging that Countrywide's refinancing of the Fineouts' mortgage loan

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

was unconscionable and that Countrywide violated Wisconsin's mortgage banker laws. We conclude that the court properly dismissed the Fineouts' unconscionability counterclaim because, even assuming that the refinancing loan agreement was procedurally unconscionable, the Fineouts have failed to establish that it was commercially unreasonable and therefore substantively unconscionable. We further conclude that the court properly dismissed the counterclaim alleging violations of Wisconsin mortgage banker laws because the Fineouts failed to allege any facts in support of that counterclaim. Accordingly, we affirm.

BACKGROUND

¶3 In 1999, the Fineouts purchased a house in Mount Horeb, with cash. However, in 2000, allegedly on the advice of a mortgage specialist employed by TCF Bank, the Fineouts obtained a loan from Countrywide, using their home in Mount Horeb as security for the loan. Also allegedly acting on the advice of the mortgage specialist, the Fineouts refinanced the mortgage loan numerous times over the course of several years. By 2007, the amount of the mortgage loan the Fineouts had with Countrywide had risen to approximately $341,000.

¶4 The Fineouts stopped working with the mortgage specialist and contacted Countrywide directly to determine how they could reduce their debt. Countrywide refinanced the Fineouts' loan by splitting it into two separate loans: a $304,000 loan secured by a first mortgage lien, and a $50,000 loan secured by a second mortgage lien. As to the $304,000 loan, Susan Fineout signed a note promising to repay the principal amount of the loan, plus interest, and both Fineouts signed the mortgage. As a result of Countrywide's refinancing of the loan, the Fineouts had lower monthly payments and did not have to pay private mortgage insurance, although the combined principal amount of the two loans was

approximately $13,000 greater than the single prior loan. In 2008, the Fineouts defaulted on the $304,000 loan and failed to cure the default.

¶5 Countrywide filed a complaint against the Fineouts, seeking a judgment of foreclosure. In addition to answering the complaint, the Fineouts filed counterclaims, including a counterclaim that Countrywide's refinancing of the Fineouts' loan was unconscionable and a counterclaim that Countrywide violated mortgage banker laws. Countrywide moved for partial summary judgment, seeking dismissal of the counterclaims. Following a hearing on the motion, the circuit court granted the motion and dismissed the counterclaims.

¶6 In 2009, Countrywide was renamed BAC Home Loans Servicing, LP. In 2011, BAC Home Loans was merged into Bank of America. As a result of these developments, Countrywide moved, and the court ordered, that the name of the plaintiff in this foreclosure action be changed from Countrywide to Bank of America.

¶7 Bank of America moved for summary judgment on the foreclosure complaint. In response, the Fineouts moved to dismiss Bank of America's complaint and amend their counterclaims. Following a hearing, the circuit court denied both parties' motions.

¶8 A trial was held to the court on whether Bank of America was entitled to a judgment of foreclosure. The witnesses at trial were Susan Fineout, Gary Fineout, and Lori Hosni, a mortgage resolution associate employed by Bank of America. Susan Fineout admitted at trial that she and Gary had defaulted on their $304,000 loan with Countrywide.

¶9 At trial, during direct examination, Bank of America's counsel questioned Lori Hosni regarding her personal knowledge of Bank of America's computer system. Specifically, Bank of America's counsel asked Hosni whether she had been trained on Bank of America's computer system, to which she answered "yes." When asked what specific computer system Bank of America used to track payments, Hosni responded that Bank of America used a system known as "AS/400." Counsel also asked Hosni if she knew whether Bank of America used the same system as BAC Home Loans. She responded "yes," and the Fineouts' counsel did not object. Similarly, Bank of America's counsel asked Hosni whether Bank of America used the same computer system as Countrywide, to which she responded "yes," again without objection from the Fineouts' counsel. When questioned about how she knew this information, Hosni responded, again with no objection, "[t]hat's what we were trained upon."

¶10 Bank of America's counsel then asked Hosni what company and which of its employees entered information into the AS/400 system before Bank of America took over the Fineouts' loan. The Fineouts' counsel objected to this question on foundation grounds. Following the objection, the court asked Bank of America's counsel to lay additional foundation for the question. In response, Bank of America's counsel asked Hosni, "[y]ou've been trained, correct, on the fact that this is the same system used by Countrywide and BAC, correct?" The Fineouts' counsel then objected on hearsay grounds. In response, Bank of America's counsel argued that Hosni had already been asked that question and testified to it without objection, and the court agreed and overruled the hearsay objection on that ground. Hosni then testified she knew from her training that Countrywide and BAC Home Loan employees from each company's respective

payment processing group entered mortgage payments into the AS/400 computer system.

¶11 Bank of America subsequently sought to admit an Account Information Statement and a Loan Payment History which reflected the Fineouts' mortgage account with Bank of America through Hosni, to show that the Fineouts were in default and the amount owed to Bank of America as a result of the default. Bank of America argued that the documents were admissible under WIS. STAT. § 908.03(6), as records of a regularly conducted activity. The Fineouts objected to the admission of those records on the ground that Hosni's testimony did not establish that those records were made "at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity," as required to fall under the hearsay exception. § 908.03(6). The court determined that Hosni's previous testimony demonstrated that she had personal knowledge of how the loan documents were made at Bank of America and that they were records of a regularly conducted activity, and thus, she was qualified to testify to the admissibility of the records. At trial, the Fineouts' only objection to Hosni's testimony was that it was hearsay, and while the Fineouts did suggest to the court that someone with "first-hand knowledge" from Countrywide should testify to that company's procedures for creating documents, the Fineouts did not argue that Hosni lacked personal knowledge under the hearsay exception. Accordingly, the circuit court admitted the documents under § 908.03(6).

¶12 At the close of the trial, the circuit court granted a judgment of foreclosure in favor of Bank of America. The court subsequently entered the judgment. The Fineouts appeal.

DISCUSSION

¶13 The Fineouts make three arguments on appeal: (1) the circuit court erroneously exercised its discretion when it admitted portions of Hosni's testimony which, they assert, constituted inadmissible hearsay and when it admitted the Account Information Statement and Loan Payment History under the exception to the hearsay rule for records of a regularly conducted activity; (2) the circuit court erred when it dismissed the Fineouts' counterclaim that Countrywide's 2007 refinancing of the Fineouts' mortgage loan was unconscionable; and (3) the circuit court erred when it dismissed the Fineouts' counterclaim that Countrywide violated Wisconsin's mortgage banker laws. We address and reject each argument in turn.

I. Evidentiary Rulings

¶14 The Fineouts argue that the circuit court erred in admitting into evidence the Account Information Statement and the Loan Payment History which reflect the transactions on the Fineouts' mortgage account with Bank of America. Specifically, the Fineouts argue that Hosni's testimony that Countrywide and BAC Home Loans used the same AS/400 computer system as Bank of America, information she learned through her training at Bank of America as an employee, and her testimony that individuals in the payment processing group at Bank of America contemporaneously enter information into the AS/400 computer system upon receiving payments, was hearsay, and therefore the Bank of America Account Information Statement and Loan Payment History records should not have been admitted into evidence under WIS. STAT. § 908.03(6). The Fineouts also argue that Hosni was not qualified to testify to the admissibility of these records under the criteria to admit records of a regularly conducted activity,

pursuant to § 908.03(6), and the standards set forth in ***Palisades Collection LLC v. Kalal***, 2010 WI App 38, ¶20, 324 Wis. 2d 180, 781 N.W.2d 503. We reject the Fineouts' arguments.

¶15 "A circuit court's decision regarding the admissibility of a hearsay statement is within the discretion of the circuit court." ***State v. Weed***, 2003 WI 85, ¶9, 263 Wis. 2d 434, 666 N.W.2d 485. "A discretionary decision by the circuit court will be sustained where the court 'examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" ***Donohoo v. Action Wis., Inc.***, 2008 WI 56, ¶34, 309 Wis. 2d 704, 750 N.W.2d 739 (quoting another source).

A. Hosni's Testimony Regarding her Training and the Entry of Information into the AS/400 System

¶16 We begin by addressing the Fineouts' challenge to the admissibility of Hosni's testimony regarding what she learned during her training as a Bank of America employee. More specifically, the Fineouts argue that Hosni's testimony that Countrywide and BAC Home Loans used the same AS/400 computer system as Bank of America and that individuals in the payment processing group contemporaneously enter information into the AS/400 system upon receiving payments are inadmissible hearsay because, as to both, Hosni was testifying as to what another Bank of America employee told her during her training sessions. We need not address whether Hosni's testimony on these topics was inadmissible hearsay because we conclude that the Fineouts forfeited their objections.

¶17 Regarding Hosni's testimony that Countrywide and BAC Home Loans used the same AS/400 computer system as Bank of America, the Fineouts' challenge focuses on the following exchange, where Hosni testified as follows:

Q. Have you been trained on Bank of America's computer systems?

A. Yes, I have.

Q. Can you provide a brief overview of what some of those topics were in that training?

A. Well, we trained on the computer systems that oversee the loan servicing, basically any payments that have been made, information on the location of the property, things of that nature.

….

Q. What is the name of the specific computer system that Bank of America uses to track these payments and service the loan?

A. AS/400

….

Q. And from your training at Bank of America, do you know whether Bank of America uses the same system that BAC Home Loans Servicing used?

A. Yes.

Q. Yes, it does?

A. Yes, it does.

Q. Do you know whether Bank of America uses the same system that was used by Countrywide?

A. Yes, it does. AS/400 is actually a Countrywide system that has been integrated and merged into the Bank of America system.

Q. So Bank of America is still using the same exact system that Countrywide used [and] that BAC used?

A. Yes.

Q. And you know this because why?

A. That's what we were trained upon.

¶18 The transcript of this exchange reveals that the Fineouts did not object to this line of questioning until later, when Bank of America's counsel again asked Hosni about her training. The circuit court overruled the hearsay objection at that later time, explaining that Hosni already testified that she had been trained that Bank of America used the same system as Countrywide and BAC Home Loans, and the Fineouts did not object when the testimony was first introduced. Essentially, the circuit court explained that the Fineouts were objecting to evidence that had already been admitted. The Fineouts did not then object to the circuit court's reasoning at trial as to why it rejected the Fineouts' hearsay objection and do not now explain why that reasoning is incorrect.

¶19 WISCONSIN STAT. § 901.03(1)(a) requires a party to make a specific and timely objection to the admission of evidence in order to preserve the issue for appeal. "An objection must be made to the introduction of evidence as soon as the adversary party is aware of the objectionable nature of the testimony. Failure to object results in a [forfeiture] of any contest to that evidence." ***Caccitolo v. State***, 69 Wis. 2d 102, 113, 230 N.W.2d 139 (1975) (quoting another source). By failing to timely object to Hosni's testimony regarding the computer system Countrywide and BAC Home Loans used, the Fineouts forfeited their challenge to the admissibility of this part of Hosni's testimony.

¶20 We turn our attention to the Fineouts' challenge to Hosni's testimony where she stated that individuals in the payment processing group at Bank of America contemporaneously enter information into the AS/400 system upon receiving payments. The problem with the Fineouts' challenge to this testimony is that they complain about testimony their counsel introduced into evidence which was not previously introduced during direct examination. During direct, Hosni testified that because of her training she knew that employees at

Countrywide, and BAC Home Loan inputted data into the same AS/400 system that Bank of America used and that it was the regular practice of those employees to input this data into the system. It was not until the Fineouts' counsel cross-examined Hosni did she testify to what the Fineouts now challenge on appeal, specifically, that individuals within *Bank of America's* payment processing group *regularly and contemporaneously* enter payments into the computer system *upon receiving those payments*. The Fineouts cannot now complain about this portion of Hosni's testimony when their counsel caused this testimony to be introduced into evidence. *See* ***Caccitolo***, 69 Wis. 2d at 114-15 (admission of hearsay is "not reversible error when this evidence was brought to light by the [complaining party's] own counsel and had not been previously touched upon by [opposing counsel] in direct examination.").

¶21 Because the Fineouts failed to make a timely hearsay objections, they have forfeited the hearsay arguments they make on appeal.

B. Admissibility of the Loan Payment History and Account Information Statement

¶22 The Fineouts next challenge the admissibility of the Account Information Statement and Loan Payment History documents.[2] Whether to admit or exclude evidence is left to the court's proper exercise of discretion. *See* ***State v. Peters***, 166 Wis. 2d 168, 175, 479 N.W.2d 198 (Ct. App. 1991).

[2] Bank of America sought to admit these documents into evidence to establish the amount the Fineouts owed to the Bank as a result of being in default. We note that the Fineouts conceded at trial that they had not been making any payments and were in default on their loan. Thus, the only issue in dispute was the amount by which the Fineouts were in default.

¶23 A record is admissible under the exception to the hearsay rule for records of a regularly conducted activity when it can be shown that the record was "made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony of the custodian or other qualified witness." WIS. STAT. § 908.03(6). As we explained in ***Palisades***, the exception requires that "a testifying custodian … be *qualified* to testify that the records (1) were made at or near the time by, or from information transmitted by, a person with knowledge; and (2) that this was done in the course of a regularly conducted activity." ***Palisades***, 324 Wis. 2d 180, ¶20. To be qualified on these two points, the witness must have personal knowledge of how the account statements were prepared and that they were prepared during the course of a regularly conducted activity. *See* ***id.***, ¶21; ***Bank of America NA v. Neis***, 2013 WI App 89, ¶21, 349 Wis. 2d 461, 835 N.W.2d 527. A qualified witness does not need to be the original owner of the records, the author of the records, or have personal knowledge of the events recorded. ***Palisades***, 324 Wis. 2d 180, ¶¶20, 22. However, the witness must have personal knowledge of how the records were prepared or created. ***Id.***

¶24 The Fineouts argue that the circuit court erred in admitting the Account Information Statement and the Loan Payment History because Bank of America failed to present sufficient testimony to meet the requirements for admissibility of the records, under WIS. STAT. § 908.03(6). As discussed, the circuit court admitted these records into evidence, over the Fineouts' objections, based on Hosni's testimony. The Fineouts contend that Hosni was not qualified to testify under § 908.03(6) because her testimony failed to demonstrate that she had personal knowledge (1) that these records were generated contemporaneously, (2) about who transmitted the records or how the records were created, and (3) that

the records were created in the ordinary course of business by Bank of America, Countrywide, and BAC Home Loans. Bank of America responds that the records were properly admitted because the records were supported by sufficient testimony from Hosni, who, the Bank asserts, was a qualified witness under ***Palisades***. We conclude that the Fineouts have failed to present a developed argument showing that Bank of America failed to meet its initial burden to establish that Hosni was qualified to testify.

¶25 The Fineouts first argue that Hosni did "not demonstrate her knowledge of the Account Information Statement's or Loan Payment History's contemporaneousness." In support, the Fineouts point to facts taken from Hosni's testimony that, at the time of her testimony, she had been employed with Bank of America for only ten months, and that she had not been employed by Countrywide or BAC Home Loans. The Fineouts also argue that Hosni's testimony does not establish she had personal knowledge of the procedures Countrywide and BAC Home Loans used to create and process the Account Information Statement or Loan Payment History. In support, the Fineouts point to Hosni's testimony that she had not received any training or observed how Bank of America's payment processing group create these records and that she "did not know what a payment processor even looks at to enter the data it receives."

¶26 Assuming that the Fineouts' characterization of Hosni's testimony is supported by the record, the Fineouts fail to explain why these facts have any legal significance regarding the admissibility of these records under WIS. STAT. § 908.03(6). The Fineouts do not present a developed legal analysis and then apply that analysis to the facts here. For example, the Fineouts do not point to any settled law explaining what is necessary to show personal knowledge and why Hosni's testimony does not meet that standard. Rather, the Fineouts simply allege

that Hosni's testimony is insufficient. We do not weigh in on whether Hosni's testimony is or is not sufficient. Rather, we conclude that the Fineouts' argument is not sufficiently developed and therefore we do not consider it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (this court declines to address undeveloped arguments on appeal).

¶27 The Fineouts second argument is similarly undeveloped. The Fineouts contend that Hosni failed to establish that she had personal knowledge as to who transmitted the records or how the records were created. The Fineouts' analysis on this topic, however, consists mainly of the forfeited argument that the pertinent part of Hosni's testimony is hearsay. We acknowledge that the Fineouts also contend that "Hosni did not know which department entered the information, what information or documents were given to the person entering the information, or from where that person received the information." But this is just more of the same: factual assertions without a legal framework supporting the proposition that the facts are insufficient. Once again, we do not weigh in on whether the testimony is sufficient, but instead reject the argument as insufficiently developed.

¶28 The Fineouts' third argument is also undeveloped. The Fineouts argue generally that Hosni did not demonstrate that she had personal knowledge that the records were made in the ordinary course of Bank of America's business, without any legal analysis or support from legal authority. As with the Fineouts' two previous undeveloped arguments, we see no reason to address this argument here. Accordingly, we conclude that the circuit court properly admitted into evidence records of the Fineouts' Account Information Statements and Loan Payment History.

II. The Fineouts' Counterclaims

¶29 As we have indicated, the Fineouts brought two counterclaims against Bank of America, as the successor to Countrywide: (1) that Countrywide's refinancing of the Fineouts' loan was unconscionable; and (2) that Countrywide violated Wisconsin's mortgage banking laws. We address each topic in turn.

A. Unconscionability

¶30 The Fineouts contend that the circuit court erred in granting Bank of America's motion for partial summary judgment, dismissing the Fineouts' counterclaim that Countrywide's refinancing of the loan was unconscionable. We disagree.

¶31 We review a grant of summary judgment de novo, applying the same methodology as the circuit court. ***State v. Bobby G.***, 2007 WI 77, ¶36, 301 Wis. 2d 531, 734 N.W.2d 81. Summary judgment is appropriate when the affidavits and other submissions show that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶32 Our supreme court explained in ***Wisconsin Auto Title Loans, Inc. v. Jones***, 2006 WI 53, ¶¶29, 33-36, 290 Wis. 2d 514, 714 N.W.2d 155, the requirements a party must prove in order to prevail on a claim of unconscionability:

> For a contract or a contract provision to be declared invalid as unconscionable, the contract or contract provision must be determined to be both procedurally and substantively unconscionable.
>
> ....

> A determination of unconscionability requires a mixture of both procedural and substantive unconscionability that is analyzed on a case-by-case basis….
>
> Determining whether procedural unconscionability exists requires examining factors that bear upon the formation of the contract, that is, whether there was a "real and voluntary meeting of the minds" of the contracting parties. The factors to be considered include, but are not limited to, age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms would have been permitted by the drafting party, and whether there were alternative providers of the subject matter of the contract.
>
> Substantive unconscionability addresses the fairness and reasonableness of the contract provision subject to challenge. Wisconsin courts determine whether a contract provision is substantively unconscionable on a case-by-case basis.
>
> No single, precise definition of substantive unconscionability can be articulated. Substantive unconscionability refers to whether the terms of a contract are unreasonably favorable to the more powerful party. The analysis of substantive unconscionability requires looking at the contract terms and determining whether the terms are "commercially reasonable," that is, whether the terms lie outside the limits of what is reasonable or acceptable. The issue of unconscionability is considered "in the light of the general commercial background and the commercial needs."

(Quoting another source and footnotes omitted.) Applying this standard, we conclude that, even assuming that Countrywide's 2007 note refinancing the Fineouts' home loan was procedurally unconscionable, the Fineouts have failed to establish that it was substantively unconscionable.

¶33 The Fineouts contend that the 2007 note was substantively unconscionable on three grounds: (1) the refinancing resulted in a $13,000 increase in the principal amount of the loan; (2) "Countrywide's incentive [for

refinancing] was to increase the principal rather than work on a more reasonable modification"; and (3) Countrywide "falsified their documents and advised the Fineouts to enter into a loan based on nonexistent, fraudulent income," which the Fineouts had no opportunity to review until the date of the closing. According to the Fineouts, Countrywide did not take steps to verify that the Fineouts could afford the increase in principal, and therefore the refinancing was commercially unreasonable. There is no merit to the Fineouts' arguments.

¶34 The primary flaw in the Fineouts' arguments is that they fail to point to any terms of the loan refinancing note in support of their position that the note is substantively unconscionable. *See* ***id.***, ¶36 (substantive unconscionability is determined by looking at whether the *terms* of a contract are "commercially unreasonable"). This is true of all three arguments, but in particular to the Fineouts' second and third contentions. To the extent the Fineouts argue that the provision increasing the principal of the loan by $13,000 is unfair, they do not present a developed argument explaining how the relatively small increase in the loan's principal was problematic nor do they show that the refinanced interest rate fell outside the prevailing rates of the day or that the terms governing payment were otherwise commercially unreasonable.

¶35 The Fineouts also fail to explain how their ultimate inability to repay the refinanced loan affects the reasonableness of any provision of the note. If the Fineouts mean to suggest that Countrywide should not have agreed to refinance the Fineouts' loan because it should have been obvious to Countrywide that the Fineouts would be unable to make the monthly payments, they do not support that argument with a factual discussion showing that Bank of America should have known that the Fineouts could not afford the repayment schedule.

¶36 Finally, the Fineouts have failed to explain why it was unfair for Countrywide to increase the loan principal in the refinancing. Although the Fineouts complain about Countrywide's refinancing, they do not present developed argument with a discussion about the facts demonstrating that increasing the loan principal in the refinancing was unfair.

¶37 For all of the above reasons, we conclude that the Fineouts have failed to demonstrate that the terms of the 2007 note refinancing the Fineouts' home loan with Countryside was commercially unreasonable, and thus substantively unconscionable. Accordingly, we conclude that the circuit court properly granted partial summary judgment to Bank of America, dismissing the Fineouts' unconscionability counterclaim.

B. Wisconsin's Mortgage Banker Laws

¶38 The Fineouts contend that the circuit court erred in dismissing the Fineouts' counterclaim at the summary judgment stage, where they argued that Countrywide violated Wisconsin's mortgage banker laws. The circuit court dismissed the counterclaim on the ground that the Fineouts had not presented any facts to show that they were "aggrieved" by Countrywide's refinancing, and therefore, the Fineouts lacked standing to bring a private cause of action under the mortgage banker statute. The Fineouts argued in the circuit court that they were aggrieved because "Countrywide had prepared deceptive documents that led to a larger loan [that] they could not afford" and "led them to believe this new set of loans would resolve their complaints when in reality they achieved very little on the monthly payment."

¶39 In determining whether Bank of America was entitled to partial summary judgment dismissing the Fineouts' mortgage banker counterclaim, we

first examine the pleadings "to determine whether claims have been stated and material factual issues [are] presented." ***Tews v. NHI, LLC***, 2010 WI 137, ¶4, 330 Wis. 2d 389, 793 N.W.2d 860. "Whether a complaint is sufficient to entitle a party to relief on a particular claim presents a question of law, which we review de novo." ***Town of Brockway v. City of Black River Falls***, 2005 WI App 174, ¶12, 285 Wis. 2d 708, 702 N.W.2d 418.

¶40 We conclude that the circuit court properly granted Bank of America's motion for partial summary judgment on the Fineouts' mortgage banker counterclaim because the Fineouts' complaint fails to plead *any* facts to support that claim. The Fineouts alleged generally in their counterclaim that Countrywide "engaged in improper, fraudulent, or dishonest dealings," in violation of WIS. STAT. § 224.77(1)(m), and "demonstrated incompetency to act as a mortgage broker," in violation of § 224.77(1)(L), (i). However, the Fineouts did not plead *any* facts in support of this counterclaim. Although Wisconsin is a notice pleading state, *see* ***Wolnak v. Cardiovascular & Thoracic Surgeons of Cent. Wisconsin, S.C.***, 2005 WI App 217, ¶47, 287 Wis. 2d 560, 706 N.W.2d 667; WIS. STAT. § 802.02, even in a notice pleading state, a pleading "cannot be completely devoid of factual allegations." ***Doe v. Archdiocese of Milwaukee***, 2005 WI 123, ¶¶35, 36, 284 Wis. 2d 307, 700 N.W.2d 180. Rather, a pleading must contain a statement of the general facts supporting the claim presented. *See* ***Town of Brockway***, 285 Wis. 2d 708, ¶14. Here, the Fineouts' counterclaim alleging violations of certain mortgage banker laws is devoid of any supporting facts.

¶41 We conclude that, because the Fineouts do not allege sufficient facts in support of their counterclaim that Countrywide violated Wisconsin's mortgage banker laws, the circuit court properly granted partial summary judgment to Bank of America, dismissing that counterclaim.

CONCLUSION

¶42 In sum, we conclude that the circuit court reasonably exercised its discretion by admitting into evidence the challenged testimony from Hosni and the challenged documents. We also conclude that the court properly granted Bank of America partial summary judgment, dismissing the Fineouts' two counterclaims. Accordingly, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.