

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

PNC BANK, N.A.

Plaintiff-Appellee

-VS-

NANCY L. BRADFORD, ET AL.

Defendant-Appellant

: JUDGES:  
:  
:  
: Hon. William B. Hoffman, P.J.  
: Hon. John W. Wise, J.  
: Hon. Patricia A. Delaney, J.

: Case No. 2014CA00029

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of  
Common Pleas, Case No.  
2013CV00612

**JUDGMENT:**

AFFIRMED

DATE OF JUDGMENT ENTRY:

September 28, 2015

APPEARANCES:

For Plaintiff-Appellee:

MATTHEW G. BERG  
Lakeside Place, Suite 200  
323 W. Lakeside Ave.  
Cleveland, OH 44113

For Defendant-Appellant:

MARK E. OWENS  
JOHN F. MCINTYRE  
3200 W. Market St., Suite 106  
Akron, OH 44333

*Delaney, J.*

{¶1} Defendant-Appellant Nancy L. Bradford appeals the January 29, 2014 judgment entry of the Stark County Court of Common Pleas.

### **FACTS AND PROCEDURAL HISTORY**

{¶2} On May 30, 2001, Defendant-Appellant Nancy L. Bradford opened an Equity Reserve Line of Credit with National City Bank. The initial amount of the Line of Credit was \$41,000.00. The relevant terms of the Line of Credit Agreement stated as follows:

Line of Credit. Your Line is an open-end line of credit which you may use to obtain cash advances (Advances) from time to time for a period of 10 years (Term). Your Line will mature on the last day of the billing cycle ending on May 2011 (Maturity Date). If you continue to meet Bank's then current standards for credit criteria and collateral value, at Bank's discretion, Bank will either extend the Maturity Date for one or more additional Terms or Bank will refinance your Line on the terms then being offered by Bank for Equity Reserve Line of Credit.

\* \* \*

Payments. Until the Maturity Date, your payments will be due monthly. You may pay the entire unpaid balance of your Line and/or your FRP(s) at any time. You are required to pay a minimum payment by the Due Date shown on your statement equal to the sum the Line Minimum Payment and the FRP Minimum Payment for each FRP in use.

\* \* \*

The Line Minimum Payment will not fully repay the principal that is outstanding on your Line by the Maturity Date. If you use an FRP after the first five years of your Agreement, then the FRP payment will not fully amortize your FRP by the Maturity Date. Bank will refinance the remaining unpaid balance of your Line and/or FRP on terms then offered by Bank, provided you continue to meet Bank's then current standards for credit criteria and collateral value. Otherwise, you will be required to pay the entire balance in a single payment. After the Maturity Date and prior to refinancing or payment of the entire outstanding balance, you will continue to be bound by this Agreement in that you will be liable for all finance charges and other amounts and you will be required to continue making monthly payments. Bank does not waive its right to receive payments in full by accepting partial payments after the Maturity Date.

\* \* \*

Termination of Line. Bank can terminate your Line and require you to pay the entire outstanding balance in one payment if:

- You engage in fraud or material misrepresentation with your Line.
- You do not meet the repayment terms of this Agreement.
- Your action or inaction adversely affects the collateral or Bank's rights in the collateral.

{¶3} Bradford secured the Equity Reserve Line of Credit by executing a mortgage with National City Bank on her real property. The mortgage was recorded on October 9, 2001.

{¶4} Effective December 31, 2008, National City Corporation merged with and into The PNC Financial Services Group, Inc. and National City Bank became a wholly owned subsidiary of The PNC Financial Services Group, Inc. On November 6, 2009, National City Bank was merged with and into Plaintiff-Appellee, PNC Bank, National Association.

{¶5} On February 27, 2013, PNC Bank filed a complaint for money and foreclosure against Bradford in the Stark County Court of Common Pleas. PNC Bank stated it was the holder of the Equity Line of Credit Agreement and mortgage executed by Bradford. The Equity Line of Credit Agreement and mortgage were attached to the complaint as exhibits. PNC Bank alleged that by reason of default in the terms of the Equity Reserve Line of Credit Agreement and the mortgage securing the same, Bradford owed the principal sum of \$40,322.36 plus interest at the rate of 3.25% (variable) per annum from July 5, 2011, plus late charges.

{¶6} Bradford filed an answer on April 30, 2013. In her answer, Bradford raised as affirmative defenses that PNC Bank was not the real party in interest and lacked standing. Bradford also alleged, "[PNC Bank] has failed to satisfy all conditions precedent and is barred by its failure to have a face-to-face meeting with [Bradford] and its failure to fulfill all statutory and contractual conditions precedent to foreclosure."

{¶7} On October 4, 2013, PNC Bank moved for summary judgment on its complaint against Bradford. In support of its motion for summary judgment, PNC Bank attached the affidavit of Brandy B. Baker, loan support analyst with PNC Bank. She averred that in the regular performance of her job functions, she was familiar with the business records maintained by PNC Bank. The affidavit stated that PNC Bank was in

the possession of, and was the holder of, the Line of Credit Agreement. Bradford failed to make the payment due for July 5, 2011 and did not satisfy the payments that came due thereafter.

{¶8} Bradford filed a response to the motion for summary judgment. In her response, she argued PNC Bank did not demonstrate it was the real party in interest with standing to file the complaint. She also argued that Baker lacked knowledge or capacity to testify and authenticate the records. Finally, she stated that PNC Bank failed to satisfy conditions precedent because it would not accept Bradford's payment on July 5, 2011 and failed to review Bradford for alternative financing options.

{¶9} On November 5, 2013, PNC Bank filed a motion for leave to submit affidavit concerning its merger with National City Bank. The trial court granted the motion on November 13, 2013.

{¶10} PNC Bank filed its reply brief to the motion for summary judgment on November 13, 2013.

{¶11} On January 29, 2014, the trial court granted the motion for summary judgment and decree in foreclosure.

{¶12} Bradford filed a notice of appeal on February 27, 2014.

{¶13} Bradford filed a notice of bankruptcy stay on July 2, 2014. The bankruptcy was discharged and the appeal was reinstated on June 3, 2015.

### **ASSIGNMENTS OF ERROR**

{¶14} Bradford raises three Assignments of Error:

{¶15} I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE PLAINTIFF/APPELLEE AS THERE WAS A GENUINE ISSUE OF MATERIAL

FACT AS TO WHETHER THE PLAINTIFF/APPELLEE PROVIDED THE PROPER EVIDENCE TO SHOW THEY WERE THE PROPER PARTY AND HAD STANDING TO BRING SUIT AGAINST DEFENDANT/APPELLANT.

{¶16} II. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO THE PLAINTIFF/APPELLEE PNC, AS PNC FAILED TO SATISFY ALL CONDITIONS PRECEDENT, INCLUDING FAILURE TO PROVIDE NOTICE AND THE REFUSAL TO REVIEW DEFENDANT/APPELLANT FOR EITHER AN EXTENSION OF THE MATURITY DATE OF THE LOAN OR TO REFINANCE.

{¶17} III. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO THE PLAINTIFF/APPELLEE PNC, AS THERE WERE GENUINE ISSUES OF MATERIAL FACT REMAINING.

## **ANALYSIS**

### ***Standard of Review***

{¶18} Bradford argues in her three Assignments of Error that the trial court erred in granting summary judgment in favor of PNC Bank. We refer to Civ.R. 56(C) in reviewing a motion for summary judgment which provides, in pertinent part:

Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.\* \* \* A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only from the evidence or

stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶19} The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court, which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). The nonmoving party then has a reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth “specific facts” by the means listed in Civ.R. 56(C) showing that a “trialable issue of fact” exists. *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798, 801 (1988).

{¶20} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 674 N.E.2d 1164 (1997), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

### ***I. Real Party in Interest***

{¶21} Bradford argues in her first Assignment of Error that there is a genuine issue of material fact whether PNC Bank is the real party in interest with standing to bring the complaint. We disagree.

{¶22} Bradford entered into the Equity Reserve Line of Credit Agreement and related mortgage with National City Bank. In 2009, National City Bank merged with PNC Bank. PNC Bank filed its complaint for money and foreclosure in 2013. In the complaint,

PNC Bank stated it was the holder of the Equity Line of Credit Agreement and mortgage executed by Bradford. The Equity Line of Credit Agreement and mortgage were attached to the complaint as exhibits. Bradford raised as an affirmative defense that PNC Bank was not a real party in interest pursuant to Civ.R. 17(A) and lacked standing to sue.

{¶23} PNC Bank filed a motion for summary judgment and in support of its motion, it attached the affidavit of Brandy B. Baker, loan support analyst with PNC Bank. She averred that in the regular performance of her job functions, she was familiar with the business records maintained by PNC Bank. The affidavit stated that PNC Bank was in the possession of, and was the holder of, the Line of Credit Agreement. In response, Bradford alleged that PNC Bank failed to establish it had standing to bring the complaint because it did not produce an assignment of the Line of Credit Agreement or mortgage from National City Bank to PNC Bank.

{¶24} On November 5, 2013, PNC Bank filed a motion for leave to submit affidavit concerning its merger with National City Bank. The trial court granted the motion on November 13, 2013.

{¶25} Bradford renews her argument on appeal that PNC Bank did not demonstrate through Civ.R. 56 evidence that it was the real party in interest with standing to bring the complaint for money and foreclosure. Bradford relies upon the Ohio Supreme Court's decision in *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 14, 2012-Ohio-5017, 979 N.E.2d 1214, to support her argument. In *Schwartzwald*, the plaintiff mortgagee filed a complaint in foreclosure, but at the time it filed the foreclosure action, the plaintiff mortgagee did not have an interest in the note or



the mortgage. The issue before the Court was whether the plaintiff mortgagee could cure the lack of standing after the foreclosure complaint was filed. The Court held:

\* \* \* standing is required to invoke the jurisdiction of the common pleas court, and therefore it is determined as of the filing of the complaint. Thus, receiving an assignment of a promissory note and mortgage from the real party in interest subsequent to the filing of an action but prior to the entry of judgment does not cure a lack of standing to file a foreclosure action.

*Id.* at ¶ 3.

{¶26} In *Wells Fargo Bank, N.A. v. Horn*, 142 Ohio St.3d 416, 2015-Ohio-1484, 31 N.E.3d 637, the Ohio Supreme Court clarified its holding in *Schwartzwald* to state that the decision did not require the plaintiff to prove standing at the time the foreclosure action was filed. *Id.* at ¶ 1. "Rather, although the plaintiff in a foreclosure action must have standing at the time suit is commenced, proof of standing may be submitted subsequent to the filing of the complaint." *Id.*

{¶27} In the present case, we find there is no genuine issue of material fact that PNC Bank had standing at the time the suit was commenced and properly submitted proof of standing subsequent to the filing of the complaint. The affidavit submitted by PNC Bank demonstrated that National City Bank merged with PNC Bank in 2009.

[W]hen two banks merge, the absorbed bank becomes a part of the resulting bank, and the merged bank has the ability to enforce agreements as if the resulting bank had stepped in the shoes of the absorbed one. *Bank of Am., N.A. v. Laster*, 8th Dist. Cuyahoga No. 100606, 2014–Ohio–2536, ¶ 15, citing *Acordia of Ohio, L.L.C. v. Fishel*, 133 Ohio St.3d 356,

2012–Ohio–4648, 978 N.E.2d 823, ¶ 7. See also *Bank of Am., N.A. v. Harris*, 8th Dist. Cuyahoga No. 99272, 2013–Ohio–5749. Once “an existing bank takes the place of another bank after a merger, no further action is necessary” to become a real party in interest in regard to its property. *Huntington Natl. Bank v. Hoffer*, 2d Dist. Greene No.2010–CA–31, 2011–Ohio–242, ¶ 15.

*Wells Fargo Bank v. Rennert*, 8th Dist. Cuyahoga No. 101454, 2014-Ohio-5292, ¶ 30.

{¶28} Accordingly, reasonable minds can only conclude that PNC Bank is the real party in interest with standing to bring the foreclosure action against Bradford.

{¶29} Bradford's first Assignment of Error is overruled.

## ***II. Conditions Precedent***

{¶30} Bradford argues in her second Assignment of Error that PNC Bank was not entitled to judgment as a matter of law because PNC Bank failed to present evidence that it complied with conditions precedent to foreclosure. We disagree.

{¶31} In her answer to the complaint for money and foreclosure, Bradford raised an affirmative defense: “[PNC Bank] has failed to satisfy all conditions precedent and is barred by its failure to have a face-to-face meeting with [Bradford] and its failure to fulfill all statutory and contractual conditions precedent to foreclosure.” On appeal, Bradford argues PNC Bank improperly opted to foreclosure instead of reviewing Bradford for any other form of funding to pay the equity line of credit.

{¶32} PNC Bank first contends it is entitled to judgment as a matter of law because Bradford waived the right to argue the conditions precedent, if any, were not

met by PNC Bank when she failed to specifically deny performance of conditions precedent in her answer to the complaint. Civ.R. 9(C) provides:

In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

{¶33} PNC Bank stated in its complaint that the conditions of the mortgage were broken and it fulfilled all applicable conditions precedent. Bradford alleged in her answer that, "[PNC Bank] has failed to satisfy all conditions precedent and is barred by its failure to have a face-to-face meeting with [Bradford] and its failure to fulfill all statutory and contractual conditions precedent to foreclosure." We first note that Bradford has not alleged the Equity Line of Credit Agreement or mortgage were federally insured. The Equity Reserve Line of Credit Agreement and related mortgage in this case were not FHA loans subject to federal HUD regulations. Therefore, PNC Bank was not required to meet the federal regulations, such as a face-to-face meeting before taking action to accelerate the loan.

{¶34} After striking the incorrect statement regarding the condition precedent of the face-to-face meeting, Bradford alleged in her answer that PNC Bank failed to satisfy all conditions precedent and is barred by its failure to fulfill all statutory and contractual conditions precedent to foreclosure. We find this to be a general denial and does not comply with the requirement in Civ.R. 9(C) that the denial of a performance or occurrence shall be made specially and with particularity. See *Citimortgage, Inc. v.*

*Cathcart*, 5th Dist. Stark No. 2013CA00179, 2014-Ohio-620; *Bank of America, N.A. v. Wise*, 5th Dist. Fairfield No. 14 CA 11, 2014-Ohio-3091.

{¶35} Because Bradford generally alleged PNC Bank failed to comply with conditions precedent, Bradford could not raise the issue of failure of conditions precedent for the first time on summary judgment. The trial court did not err in granting summary judgment on this issue.

{¶36} Bradford's second Assignment of Error is overruled.

### ***III. Personal Knowledge***

{¶37} Bradford argues in her third Assignment of Error that genuine issues of material fact remain to prevent judgment in favor of PNC Bank. Bradford contends the trial court erred in relying on the affidavit of Brandy B. Baker because the affidavit was not based on personal knowledge.

{¶38} Evidence Rule 803(6) provides that records of regularly conducted business activity are admissible, as an exception to the rules of hearsay, if shown to be such "by the testimony of the custodian or other qualified witness." The question of who may lay a foundation for the admissibility of business records as a custodian or other qualified witness must be answered broadly. *U.S. Bank Trustee NA v. Herman*, 5th Dist. Delaware No. 14 CAE 04 0023, 2015-Ohio-586, ¶ 14 citing *Citimortgage, Inc. v. Cathcart*, 5th Dist. Stark No. 2013CA00179, 2014–Ohio–620. It is not a requirement that the witness have firsthand knowledge of the transaction giving rise to the business record. *Id.* "Rather, it must be demonstrated that: the witness is sufficiently familiar with the operation of the business and with the circumstances of the record's preparation, maintenance and retrieval, that he can reasonably testify on the basis of this knowledge

that the record is what it purports to be, and that it was made in the ordinary course of business consistent with the elements of Rule 803(6).” *Id.*

{¶39} In *Wachovia Bank v. Jackson*, 5th Dist. Stark No. 2010–CA–00291, 2011–Ohio–3202, this Court cited *Lasalle Bank Nat’l. Assoc. v. Street*, 5th Dist. Licking No. 08CA60, 2009–Ohio–1855:

Ohio courts have defined ‘personal knowledge’ as ‘knowledge gained through firsthand observation or experience, as distinguished from a belief based upon what someone else has said.’ *Zeedyk v. Agricultural Soc. of Defiance County*, Defiance App. No. 4–04–08, 2004–Ohio–6187, at paragraph 16, quoting *Bonacorsi v. Wheeling & Lake Erie Railway Co.* (2002), 95 Ohio St.3d 314, 320, 767 N.E.2d; Black’s Law Dictionary (7th Ed. Rev.1999) 875. Affidavits, which merely set forth legal conclusions or opinions without stating supporting facts, are insufficient to meet the requirements of Civ.R. 56(E). *Tolson v. Triangle Real Estate*, Franklin App. No. 03AP–715, 2004–Ohio–2640, paragraph 12. However, self-serving affidavits may be offered relative to a disputed fact, rather than a conclusion of law. *CitiMortgage, Inc. v. Ferguson*, Fairfield App. No.2006CA00051, 2008–Ohio–556, paragraph 29. Ohio law recognizes that personal knowledge may be inferred from the contents of an affidavit. See *Bush v. Dictaphone Corp.*, Franklin App. No. 00AP1117, 2003–Ohio–883, paragraph 73, citing *Beneficial Mortgage Co. v. Grover* (June 2, 1983), Seneca App. No. 13–82–41. *Lasalle* at paragraphs 21–22.

‘Personal knowledge’ has been defined as knowledge of factual truth which does not depend on outside information or hearsay.” \* \* \* Further, “An affiant's mere assertion that he has personal knowledge of the facts asserted in an affidavit can satisfy the personal knowledge requirement of Civ.R. 56(E). See *Bank One, N.A. v. Swartz*, 9th Dist. No. 03CA008308, 2004–Ohio–1986, paragraph 14. A mere assertion of personal knowledge satisfies Civ.R. 56(E) if the nature of the facts in the affidavit combined with the identity of the affiant creates a reasonable inference that the affiant has personal knowledge of the facts in the affidavit. *Id.*” *Id.* at para 26 and 27 (Citations omitted).

See also *Wells Fargo Bank, N.A. v. Dawson*, 5th Dist. Stark No.2013CA00095, 2014–Ohio–269.

{¶40} In her affidavit, Baker stated:

1. I am the Loan Support Analyst of PNC Bank, National Association, successor by merger to National City Bank, and in this position I have reviewed certain business files, documents and other business records of PNC Bank, National Association, successor by merger to National City Bank's account for Nancy L. Bradford. I am over the age of 18 and I make this affidavit based upon my personal knowledge obtained from my personal review of such business records, and I am competent to testify to its content.
2. In the regular performance of my job functions, I am familiar with business records maintained by PNC Bank, National Association,

successor by merger to National City Bank for the purpose of servicing mortgage loans. Based on my knowledge of PNC Bank, National Association, successor by merger to National City Bank business practices, the entries in these records (which include data compilations, electronic image documents, and others) are made at the time of the events and conditions they describe, either by people with first-hand knowledge of those events and conditions or from information provided by people with such first-hand knowledge.

{¶41} Baker's affidavit goes on to state the details of the Equity Reserve Line of Credit Agreement and the mortgage executed by Bradford on May 30, 2001. Baker averred that Bradford failed to make the payment due for July 5, 2011 and did not satisfy the payments that came due thereafter. On September 11, 2013, there was due and owing on the loan the amount of \$40,322.36.

{¶42} Baker's affidavit meets the standards set forth in *Wachovia Bank v. Jackson*. See *U.S. Bank v. Herman*, 2015-Ohio-586, ¶ 24. From her position as the loan support analyst and her statement that she examined the records in this case, it may be reasonably inferred that she had personal knowledge to qualify the documents as an exception to the hearsay rule as business documents. *Id.* Baker's affidavit was properly admissible pursuant to Civ.R. 56.

{¶43} Bradford argues that her affidavit attached to her response to the motion for summary judgment created genuine issues of material fact preventing judgment in favor of PNC Bank. In her affidavit, Bradford averred that PNC Bank failed to serve her with notice prior to accelerating the debt or notice of her default on the debt. As a first

matter, we determined Bradford waived her arguments as to PNC Bank's alleged failure to perform condition precedents pursuant to Civ.R. 9(C).

{¶44} PNC Bank states that the terms of the Equity Reserve Line of Credit Agreement did not require PNC Bank to provide Bradford with notice of default or acceleration. The terms of the Line of Credit Agreement state as follows:

Your Line will mature on the last day of the billing cycle ending on May 2011 (Maturity Date). If you continue to meet Bank's then current standards for credit criteria and collateral value, at Bank's discretion, Bank will either extend the Maturity Date for one or more additional Terms or Bank will refinance your Line on the terms then being offered by Bank for Equity Reserve Line of Credit.

\* \* \*

Payments. Until the Maturity Date, your payments will be due monthly. You may pay the entire unpaid balance of your Line and/or your FRP(s) at any time. You are required to pay a minimum payment by the Due Date shown on your statement equal to the sum the Line Minimum Payment and the FRP Minimum Payment for each FRP in use.

\* \* \*

The Line Minimum Payment will not fully repay the principal that is outstanding on your Line by the Maturity Date. If you use an FRP after the first five years of your Agreement, then the FRP payment will not fully amortize your FRP by the Maturity Date. Bank will refinance the remaining unpaid balance of your Line and/or FRP on terms then offered by Bank,



provided you continue to meet Bank's then current standards for credit criteria and collateral value. Otherwise, you will be required to pay the entire balance in a single payment. After the Maturity Date and prior to refinancing or payment of the entire outstanding balance, you will continue to be bound by this Agreement in that you will be liable for all finance charges and other amounts and you will be required to continue making monthly payments. Bank does not waive its right to receive payments in full by accepting partial payments after the Maturity Date.

\* \* \*

Termination of Line. Bank can terminate your Line and require you to pay the entire outstanding balance in one payment if:

- You engage in fraud or material misrepresentation with your Line.
- You do not meet the repayment terms of this Agreement.
- Your action or inaction adversely affects the collateral or Bank's rights in the collateral.

{¶45} Bradford has not identified for this Court the terms of the Line of Credit Agreement that requires PNC Bank to notify Bradford of acceleration or default prior to foreclosure. A reading of the clear and unambiguous language of the Equity Reserve Line of Credit Agreement shows that at PNC Bank's discretion, it could either extend the maturity date for one or more additional terms or refinance the line of credit. In this case, PNC Bank exercised its contractual discretion to call the loan upon the maturity date. The terms of the Line of Credit Agreement stated that the outstanding balance

was due in full on the maturity date of May 2011. There is no factual dispute that Bradford did not pay the outstanding balance in full in May 2011.

{¶46} Considering the facts in a light most favorable to Bradford, reasonable minds could only conclude that PNC Bank was entitled to judgment as a matter of law.

{¶47} Bradford's third Assignment of Error is overruled.

### **CONCLUSION**

{¶48} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.,

Hoffman, P.J. and

Wise, J., concur.