OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

GATEWAY METRO FEDERAL CREDIT UNION,	)	No. ED108286
Respondent,	)	Appeal from the Circuit Court of St. Louis County
v.	)	Cause No. 18SL-CC01239
DOMINIC JONES,	)	Honorable Joseph S. Dueker
Appellant.	)	Filed: June 9, 2020

Dominic Jones (Jones) appeals the trial court's summary judgment in favor of Gateway Metro Federal Credit Union (Gateway) on Gateway's suit on a promissory note and Jones' counterclaim for unjust enrichment. Jones argues the trial court should not have considered the affidavit Gateway submitted to establish the balance due because it was not made with personal knowledge.

REVERSED AND REMANDED.

Division Four Holds: The Ellison affidavit does not establish that Ellison had personal knowledge of the matters discussed in her affidavit, but rather contains hearsay in that Ellison stated she gained her knowledge of the facts solely through Gateway's business records. The affidavit alone, therefore, does not satisfy the requirements of Rule 74.04(e) and should not have been considered by the trial court. Without the affidavit, Gateway failed to establish an element of its claim, and thus failed to make the prima facie showing of entitlement to judgment as a matter of law under Rule 74.04. As such, we must reverse the summary judgment in favor of Gateway on the promissory note. Accordingly, because the trial court lacked evidence regarding what balance, if any, Jones owes to Gateway, summary judgment on Jones' claim of unjust enrichment was premature.

Opinion by: Gary M. Gaertner, Jr., J.
James M. Dowd, P.J., and Robin Ransom, J., concur.

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Attorneys for Respondent: Clayton G. Kuhn, Nicholas G. Klumb