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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 1, 2022

REINHART FOODSERVICE, LLC v. NAVNEET PATEL

Appeal from the Chancery Court for Rutherford County
No. 18CV-960 J. Mark Rogers, Judge

No. M2021-00983-COA-R3-CV

A restaurant supplier brought suit for breach of a guaranty. The guarantor admitted liability. So the trial court entered partial summary judgment on that issue. The supplier then moved for summary judgment on damages. The guarantor challenged the admissibility of the evidence submitted in support of the motion. But the trial court ruled that the evidence was admissible under the business records exception. And, based on the undisputed facts, the court granted the motion for summary judgment. We conclude that some of the supplier's evidence should have been excluded. So we vacate the summary judgment on damages.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated
and Case Remanded**

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and THOMAS R. FRIERSON II, J., joined.

Benjamin Lewis, Murfreesboro, Tennessee, for the appellant, Navneet Patel.

Todd H. Hancock, Nashville, Tennessee, for the appellee, Reinhart FoodService, LLC.

OPINION

I.

New Jersey Restaurant Group, LLC requested a line of credit from Reinhart FoodService, LLC for the purchase and delivery of supplies. Navneet Patel, Vice President of New Jersey Restaurant Group, signed a credit application on the LLC's behalf. The application included an individual personal guaranty in which Ms. Patel also "personally

guarantee[d] the prompt payment of any obligation of [New Jersey Restaurant Group] to Reinhart.”

Three years later, New Jersey Restaurant Group filed for bankruptcy relief. Bankruptcy was an event of default under the terms of the credit application. So Reinhart accelerated the balance due. And it notified Ms. Patel of the default and acceleration. But Ms. Patel did not pay.

Reinhart filed an action on a sworn account. *See* Tenn. Code Ann. § 24-5-107 (2017). It sought a money judgment against Ms. Patel in the principal amount of \$28,581.65 plus interest, costs, and attorney’s fees. Ms. Patel denied Reinhart’s claims under oath. *See id.* § 24-5-107(b); *Clark Power Servs., Inc. v. Mitchell*, No. E2007-01489-COA-R3-CV, 2008 WL 2200047, at *3 (Tenn. Ct. App. May 27, 2008) (explaining that a denial under oath means the plaintiff “must prove his or her case”).

Reinhart moved for summary judgment. As support, it relied on the affidavit and exhibits filed with the verified complaint. Ms. Patel questioned whether the affidavit laid an adequate foundation for admission of Reinhart’s business records. Reinhart then filed a supplemental affidavit from the same individual, Jeff Peters. Ms. Patel objected to the supplemental affidavit and requested an opportunity to depose Mr. Peters.

At the hearing on Reinhart’s motion, Ms. Patel admitted liability under the terms of the credit application and guaranty. So the court granted Reinhart a partial summary judgment on that issue. And it allowed Ms. Patel to conduct discovery on the balance due.

After discovery, Reinhart moved for summary judgment on damages. In support, it filed another affidavit from Mr. Peters and a statement of undisputed material facts. It also relied on the verified complaint and attached exhibits. Ms. Patel did not come forward with any countervailing evidence. Instead, she challenged the sufficiency of the latest affidavit. And she complained that Reinhart did not fully comply with Tennessee Rule of Civil Procedure 56.03.

The trial court rejected Ms. Patel’s objections to Reinhart’s proof. It ruled that Mr. Peters’s affidavit satisfied the rules of evidence and the referenced documents were admissible. Ms. Patel failed to cite to any evidence in the record demonstrating a genuine fact dispute. So the court granted Reinhart a judgment against Ms. Patel for the full amount sought plus interest and attorney’s fees.

II.

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment

as a matter of law.” TENN. R. CIV. P. 56.04. A trial court decision on summary judgment presents a question of law, which we review de novo, with no presumption of correctness. *Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). Thus, we must “make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.” *Id.*

The moving party has the burden of persuading the court that no genuine issues of material fact exist and that it is entitled to a judgment as a matter of law. *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993). If the moving party fails to satisfy that burden, the motion for summary judgment should be denied. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). But if the moving party satisfies its burden, then the nonmoving party must demonstrate that there is a genuine, material factual dispute to avoid entry of summary judgment. *Byrd*, 847 S.W.2d at 215.

On appeal, Ms. Patel reiterates her objections to Reinhart’s evidence of damages. “[E]vidence used to support or to oppose a motion for summary judgment must be admissible.” *Shipley v. Williams*, 350 S.W.3d 527, 564 (Tenn. 2011) (Koch, J., concurring in part and dissenting in part). To be admissible, the evidence “must satisfy the requirements of the Tennessee Rules of Evidence, as well as any other requirements controlling the admissibility of particular types of evidence.” *Id.* at 565. We review evidentiary decisions for an abuse of discretion. *Id.* at 552 (majority opinion); *Arias v. Duro Standard Prods. Co.*, 303 S.W.3d 256, 262 (Tenn. 2010).

Under the terms of the credit application, the restaurant group owed Reinhart for any unpaid invoices and the attorney’s fees and expenses Reinhart incurred in the bankruptcy proceeding. To establish the total amount owed, Reinhart submitted an account history ledger and billing statements from a Wisconsin law firm. These records were hearsay and generally inadmissible. *See* TENN. R. EVID. 801(c), 802.

Reinhart claimed that its evidence satisfied the requirements of the business records exception to the hearsay rule. *See id.* 803(6). This exception has five requirements:

1. The document must be made at or near the time of the event recorded;
2. The person providing the information in the document must have firsthand knowledge of the recorded events or facts;
3. The person providing the information in the document must be under a business duty to record or transmit the information;
4. The business involved must have a regular practice of making such documents; and

5. The manner in which the information was provided or the document was prepared must not indicate that the document lacks trustworthiness.

Alexander v. Inman, 903 S.W.2d 686, 700 (Tenn. Ct. App. 1995). Satisfaction of this criteria must be shown through the testimony of “the custodian or other qualified witness or by certification that complies with Rule 902(11) or a statute permitting certification.” TENN. R. EVID. 803(6); *see* TENN. R. EVID. 902(11) (providing that business records are self-authenticating if the custodian or “[an]other qualified person” certifies the necessary foundational facts in an affidavit).

Mr. Peters certified in his affidavit that Reinhart’s evidence satisfied the requirements for the business records exception. Ms. Patel insists that Mr. Peters was not qualified to make this certification.¹ We interpret the term “qualified witness” broadly. *Alexander*, 903 S.W.2d at 700. A qualified witness must have enough familiarity with the business’s record-keeping systems to explain those procedures to the court. *Id.* There is no requirement that the witness be personally involved in creating the records at issue or be able to identify the employee who did. *Id.*

We cannot say that the court abused its discretion in ruling that Mr. Peters was qualified to introduce Reinhart’s business records. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010). Mr. Peters was the corporate asset recovery manager at Reinhart. He reviewed customer account records after default and supervised the company’s collection efforts. Ms. Patel points out that Mr. Peters did not collect or post payments to a customer’s account. He was employed in the credit department, not accounting. Even so, Mr. Peters was familiar with how a customer’s account history was documented in Reinhart’s computer system.

But Mr. Peters was not qualified to introduce the Wisconsin law firm’s billing records. *See Patty v. State*, 556 S.W.2d 776, 782 (Tenn. Crim. App. 1977) (reasoning that custodian of medical records could not properly authenticate medical records from another hospital). He lacked the requisite knowledge of the law firm’s billing practices and their procedures for preparing and maintaining time records. *See Alexander*, 903 S.W.2d at 700-01 (explaining the knowledge necessary to lay a foundation for the admission of a law firm’s time records). Because Reinhart failed to establish their admissibility, the billing statements should have been excluded as hearsay.

III.

The trial court properly admitted Reinhart’s business records. But Reinhart did not submit admissible evidence of some of its damages, specifically expenses it incurred with

¹ While Mr. Peters claimed to be “one of the custodians of business records at Reinhart,” neither party argues that he was qualified to lay a proper foundation on that basis.

a Wisconsin law firm. So we vacate the judgment and remand the case for such other proceedings as are necessary and consistent with this opinion.

s/ W. Neal McBrayer
W. NEAL MCBRAYER, JUDGE