

IN THE UTAH COURT OF APPEALS

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Sysco Intermountain Food Services, Inc.,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	Case No. 20040773-CA
)	
v.)	F I L E D
)	(November 10, 2005)
<u>Vasilios Priskos</u> , individually)	
and dba Crowne Plaza-Ogden)	2005 UT App 487
Eccles Center; and Priskos)	
Investments, Inc. dba Crowne)	
Plaza-Ogden Eccles Center,)	
)	
Defendants and Appellee.)	

Third District, Salt Lake Department, 020913523
The Honorable William B. Bohling

Attorneys: Mark E. Medcalf and David W. Overholt, South Jordan, for Appellant
Scott O. Mercer and Ryan Hancey, Salt Lake City, for Appellee

Before Judges Billings, Bench, and Thorne.

BENCH, Associate Presiding Judge:

Appellant Sysco Intermountain Food Services, Inc. (Sysco) appeals the trial court's order granting Appellee Vasilios Priskos's motion for summary judgment. "Whether the trial court properly granted summary judgment is a question of law that we review for correctness, granting no deference to the lower court's legal conclusions." Hansen v. America Online, Inc., 2004 UT 62, ¶6, 96 P.3d 950. "If we conclude that a genuine issue of material fact exists, we must reverse the trial court's determination and remand for further proceedings." Beehive Brick Co. v. Robinson Brick Co., 780 P.2d 827, 831 (Utah Ct. App. 1989).

Sysco submitted an affidavit from Diane Baker, Sysco's Director of Credit, stating that Priskos "personally and individually contracted with Sysco for the delivery of food to a restaurant." Priskos submitted an affidavit contending that

"[a]t no time did [he] individually enter into a contract with [Sysco]." The conflicting affidavits create a question of fact that precludes summary judgment. See Holbrook Co. v. Adams, 542 P.2d 191, 193 (Utah 1975) ("[I]t only takes one sworn statement under oath to dispute the averments on the other side of the controversy and create an issue of fact.").

Priskos argues that he is not personally liable for the unpaid debt because the alleged written contract is between Sysco and Priskos Investments. The alleged contract is a credit application that Priskos Investments submitted to Sysco. Even if the credit application could constitute a written contract, neither party signed the application, and therefore, it is not binding. See Stangl v. Ernst Home Ctr., 948 P.2d 356, 363 (Utah Ct. App. 1997) (noting that because the parties never signed the agreement the written agreement was not valid).

Based on the conflicting affidavits, a question of fact remains as to whether Priskos orally contracted with Sysco, and thus, summary judgment was improper. See Beehive Brick Co., 780 P.2d at 831. We reverse the summary judgment order and remand for further proceedings.

Russell W. Bench,
Associate Presiding Judge

WE CONCUR:

Judith M. Billings,
Presiding Judge

William A. Thorne Jr., Judge