

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-001054-MR

DANNY C. LIND

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE CHARLES R. HICKMAN, JUDGE  
ACTION NO. 10-CI-00820

DH CAPITAL MANAGEMENT, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, DIXON, AND JONES, JUDGES.

CLAYTON, JUDGE: This is an appeal from the granting of a summary judgment motion by the Shelby Circuit Court. Based upon the following, we affirm.

BACKGROUND INFORMATION

Appellee, DH Capital Management, Inc. (DH Capital), brought a collection action against Appellant, Danny C. Lind, for an outstanding balance due

on a credit card account. The original owner of the account was U.S. Bank National Association, N.D. DH Capital was the assignee of the account for which it sought payment.

Lind moved for summary judgment, before the trial court, arguing that DH Capital had not shown that it purchased his account and that the documents supporting the debt were inadmissible hearsay. The trial court found that DH Capital had provided the Bill of Sale and Assignment of Assets related to the assignment of Lind's account. It also found that the Asset Schedule provided by DH Capital specifically identified Lind's credit card account as an asset assigned to DH Capital. The trial court then denied Lind's motion, holding as follows:

Lind has not identified any specific matters involving the trustworthiness, accuracy, or reliability of the documents at issue. Lind disputes the amount of the debt as it relates to the alleged imposition of certain fees, however, this challenge does not impugn the accuracy or reliability of U.S. Bank's record-keeping. The record before the Court indicates that DH Capital would be able to establish the admissibility of the contested documents when this matter proceeds to trial. DH Capital has sufficient proof and documentation to proceed with their collection suit against Lind.

Opinion at p. 3. The trial court then denied Lind's Motion for Summary Judgment.

On April 11, 2013, the trial court entered a second Opinion and Order after DH Capital made a Motion for Summary Judgment. The trial court granted DH Capital's motion finding that:

...DH Capital laid a proper foundation for the consideration of the monthly account statements and other documents associated with Lind's credit card

account as business records pursuant to KRE 803(6).  
The Court has previously ruled on Lind's only objection  
to the current motion, and the Court relies on its previous  
order...

Opinion and Order of April 11, 2013 at p. 2.

The trial court then granted judgment to DH Capital in the amount of \$18,928.89 with interest at the rate of 10% per annum from October 27, 2006, plus reasonable attorney's fees in the amount of \$3,785.78. Lind then brought this appeal.

#### STANDARD OF REVIEW

In reviewing the granting of summary judgment by the trial court, an appellate court must determine whether the trial court correctly found "that there [were] no genuine issues as to any material fact and that the moving party [was] entitled to judgment as a matter of law." Kentucky Rules of Civil Procedure (CR) 56.03.

"[A] trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only [when] it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. [While] [t]he moving party bears the initial burden of [proving] that no genuine issue of material fact exists, . . . the burden shifts to the party opposing summary judgment to present 'at least some affirmative evidence showing that there is a genuine issue of material fact for

trial.”” *Community Trust Bancorp v. Mussetter*, 242 S.W.3d 690, 692 (Ky. App. 2007).

Since summary judgment deals only with legal questions as there are no genuine issues of material fact, we need not defer to the trial court’s decision and must review the issue *de novo*. *Lewis v. B&R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001). With this standard in mind, we will review the issues before us.

## DISCUSSION

Lind argues that the account statements are inadmissible hearsay. He contends that Donald Haunz, upon whose affidavit the summary judgment was based, was neither qualified nor capable of laying a foundation for the admissibility of business records originating with U.S. Bank, especially when provided by National Loan Exchange, an intervening assignee.

Kentucky Rules of Evidence (KRE) 801 provides that “[h]earsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” KRE 803(6) provides that records of regularly conducted activity are exceptions to the hearsay rule. The definition of such records is:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by or from information transmitted by, a person with knowledge, if kept in the regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the

method or circumstances of preparation indicate lack of trustworthiness...

Lind asserts that records created by one entity cannot become accurate or authentic when it is simply transmitted to another entity. He contends that Haunz did not assert that the records were necessarily made by someone with knowledge of the events and that the rule permits creation of the record by a person without knowledge of the events only if it is with information transmitted to the creator of the record by a person with knowledge of the events.

Pursuant to KRE 803(6), a custodian or other qualified witness must establish that the evidence falls within the hearsay exception. The Rule does not set forth that the document sought to be admitted be prepared by the business entity seeking its admission. Nevertheless, reliability is an important factor in determining whether the evidence should be admitted.

In *Thacker v. Commonwealth*, 115 S.W.3d 834, 839 (Ky. App. 2003), a panel of our court held as follows:

Under KRE 803(6), a business record is admissible where both the maker of the record and the person providing the information for the record were acting under a business duty to do so and it was the regular practice of the business in question to make the memorandum, report or record.

In this case, Haunz's affidavit sets forth with specificity where the information came from and how it was kept. We find this information reliable. Thus, we affirm the decision of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

David S. Sprawls  
Louisville, Kentucky

BRIEF FOR APPELLEE:

James P. Dady  
Louisville, Kentucky