STATE OF MICHIGAN

COURT OF APPEALS

STATE TREASURER, DEPARTMENT OF EDUCATION, Plaintiff-Appellee,	UNPUBLISHED October 29, 1999
v LAWRENCE J. JOHNSON, Defendant-Appellant.	No. 210280 Oakland Circuit Court LC No. 97-538998 CZ

Before: Sawyer, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

Following a bench trial, judgment was entered in favor of plaintiff in the amount of $19,909.70. Defendant appeals as of right. We affirm.

I

Defendant argues that the trial court erred in denying his motion to dismiss because of plaintiff's failure to comply with MCL 600.2145; MSA 27A.2145. A trial court's ruling on a motion for dismissal is reviewed for clear error. *Hoffman v Garden City Hosp-Osteopathetic*, 115 Mich App 773, 780; 321 NW2d 810 (1982). Clear error will be found if the reviewing court is left with a definite and firm conviction that a mistake has been made. See *Cimock v Conklin*, 233 Mich App 79, 84; 592 NW2d 401 (1998).

Defendant asserts that the complaint is based on an account stated or an open account. Defendant further argues his motion to dismiss should have been granted because the affidavit of the amount due was prepared more than ten days prior to the filing of the complaint, and therefore failed to satisfy the requirements of MCL 600.2145; MSA 27A.2145.

However, even assuming that defendant's characterization of the complaint is correct,[1] MCL 600.2145; MSA 27A.2145 provides only that "[a]ny affidavit in this section mentioned shall be deemed sufficient if the same is made within 10 days next preceding the issuing of the writ or filing of the complaint or answer." The statute is silent regarding the sufficiency of an affidavit prepared more than

ten days before the filing of the complaint. Accordingly, the trial court was not required to find plaintiff's affidavit defective. Moreover, as the trial court correctly concluded, defendant waived any defenses based on the sufficiency of the complaint when he consented to the entry of summary disposition on the issue of liability.

II

Defendant also argues that the trial court erred by allowing a witness to testify who was not identified by name on plaintiff's witness list. This Court will not disturb a trial court's decision regarding whether to permit a witness to testify, after a party has failed to comply with a deadline for submission of a witness list, absent an abuse of discretion. *Carmack v Macomb Co Community College*, 199 Mich App 544, 546; 502 NW2d 746 (1993).

The purpose of witness lists is to avoid "trial by surprise." *Grubor Enterprises, Inc v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993). In the present case, plaintiff did timely file a witness list, but identified only an "[e]mployee of plaintiff who is familiar with the accounts or transactions between the parties." We cannot agree with defendant that plaintiff's failure to provide the name of its employee mandated the exclusion of the witness at trial. Because defendant was informed that plaintiff would be calling one of its employees as a witness, defendant was not unfairly surprised. Moreover, defendant did not file a motion to compel a more specific description of the witness or attempt to ascertain the witness' identity in any other manner. Finally, defendant provided no evidence that plaintiff wilfully tried to withhold the information from defendant. Under the circumstances, the trial court did not abuse its discretion in permitting plaintiff's employee to testify. See *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).

III

Defendant next maintains that the trial court erred in admitting documents that were not disclosed on plaintiff's pretrial list of exhibits. We review a trial court's decision concerning the admission of evidence for an abuse of discretion. *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 200; 555 NW2d 733 (1996).

Defendant complains that the documents introduced by plaintiff were not generated until three days before trial. However, it is clear from the trial transcript that plaintiff uses a computer system that provides up-to-the-minute information on a given account, such as the current amount of principal and interest due. Thus, printouts generated at different times will not be identical, although the underlying information related to the amounts borrowed and the applicable interest rates will not change. Under the circumstances, defendant was not prejudiced when he received only a printout made four months before trial, and the trial court did not abuse its discretion in admitting the updated documents.

IV

Finally, defendant argues that the trial court abused its discretion by admitting hearsay testimony and documents that did not fall under the business records exception to the hearsay rule, MRE 803(6). We find no error requiring reversal.

Defendant claims that the testimony of Harold Hightower was inadmissible hearsay because Hightower was not employed by plaintiff until 1992 and therefore was not present during the underlying events in this case. However, Hightower's testimony established that plaintiff's exhibits are records that are compiled, kept, or received by plaintiff in the regular course of business. As such, the testimony did not constitute hearsay, and the trial court did not abuse its discretion in admitting it.

Defendant claims that the documentary exhibits were inadmissible because Hightower did not prepare them. However, contrary to defendant's argument, MRE 803(6) does not require that the witness who lays the foundation for business records be the person who created the records. Indeed, such a requirement would defeat the purpose of the business records exception, which is based on the assumption that the statements of a declarant acting in the regular course of his or her business are inherently trustworthy. See *Merrow v Bofferding*, 458 Mich 617, 628, n 8; 581 NW2d 696 (1998), quoting *Hewitt v Grand Trunk W R Co*, 123 Mich App 309, 325; 333 NW2d 264 (1983).

With regard to defendant's contention that plaintiff's exhibits should not have been admitted, we first note that defendant failed to preserve for appeal his allegation of error with respect to Exhibit 9 because at trial his only objection related to the relevance of the exhibit. An objection on one ground at trial is insufficient to preserve appellate attack on different grounds. See MRE 103(a)(1); *Meagher v Wayne State Univ*, 222 Mich App 700, 724; 565 NW2d 401 (1997).

As for the other exhibits, we conclude that plaintiff laid an adequate foundation for the admission of the exhibits under MRE 803(6) because there was testimony that the records were prepared in the course of a regularly conducted business activity.[2] Defendant has made no showing that either the source of the information or the accuracy with which it was recorded indicates a lack of trustworthiness. See *Solomon v Shuell*, 435 Mich 104, 116-117; 457 NW2d 669 (1990).

To the extent that defendant contends that certain exhibits did not constitute business records because they were generated three days before trial, we note that

> the trend among courts has been to treat computer records like other business records and not to require the proponent of the evidence initially to show trustworthiness beyond meeting the general requirements of the rule. The fact that the organization relies upon the record in the regular course of its business may itself provide sufficient indication of reliability, absent realistic challenge, to warrant admission. [2 McCormick on Evidence (4th ed), § 294, pp 283-285 (1992).]

Defendant has made no showing that the information contained in the computer-generated exhibits is unreliable.

Finally, defendant maintains that several of the exhibits should not have been admitted because they were not prepared by plaintiff, but rather by the original lenders. Defendant appears to be asserting that a business record can only be offered by the authoring entity. However, defendant has effectively abandoned this issue by failing to cite any supporting legal authority. See *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 116; 593 NW2d 595 (1999).

Affirmed.

/s/ David H. Sawyer
/s/ Harold Hood

Cavanagh, J., did not participate.

[1] An account stated means a balance struck between the parties on a settlement. *Kaunitz v Wheeler*, 344 Mich 181, 185; 73 NW2d 263 (1955). There has been no settlement here, as defendant contests the balance due on the loan account. An open account is an account with a balance which has not been ascertained, and which is kept open in anticipation of future transactions. 1 Am Jur 2d, Accounts and Accounting, § 4 (1994). The continuity of an account is broken where there has been a change in the relationship between the parties, or where the account has been allowed to become dormant. *Id*. Where a liability has been reduced to a promissory note, it is no longer an open account. 1 Am Jur 2d Accounts and Accounting, § 5 (1994). Since the debt was reduced to interim notes and pay out notes signed by defendant, this was not an open account. The last disbursement on defendant's student loans was made in 1983. There has been no activity on the account, other than the accrual of interest and attempts at collection, since that time. Thus, it does not appear that this case involves either an account stated or an open account.

[2] Exhibit 4 was admitted pursuant to MRE 803(8)(A). We agree with defendant that the exhibit did not constitute a report or data compilation of a public office or agency as contemplated by MRE 803(8)(A). However, because the exhibit was admissible as a business record pursuant to MRE 803(6), the error was harmless.