

DA 17-0050

IN THE SUPREME COURT OF THE STATE OF MONTANA

2017 MT 209N

---

BANK OF AMERICA, N.A.,

Plaintiff and Appellee,

v.

DAVID STEVEN BRAUN,

Defendant and Appellant.

---

APPEAL FROM: District Court of the Eighteenth Judicial District,  
In and For the County of Gallatin, Cause No. DV-15-576B  
Honorable Rienne McElyea, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David Steven Braun (Self-Represented), Gallatin Gateway, Montana

For Appellee:

Mark D. Etchart, Browning, Kaleczyc, Berry & Hoven, P.C.,  
Helena, Montana

---

Submitted on Briefs: July 19, 2017

Decided: August 22, 2017

Filed:



---

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 David S. Braun (Braun) appeals from a January 17, 2017 District Court order granting Bank of America's (Bank) motion for summary judgment. We affirm.

¶3 Braun applied for and received a Bank credit card in March 2004. Braun used the card and as of March 31, 2014, the balance due was \$36,042.56. Braun has tendered no payments to the Bank since July 17, 2013. In July 2015, the Bank filed the instant complaint against Braun seeking a judgment for the unpaid credit card debt. The Bank filed a motion for summary judgment in August 2016. Braun filed three motions for summary judgment in August and September 2016. On January 17, 2017, the District Court granted summary judgment to the Bank and denied Braun's motions. Braun appeals.

¶4 We review de novo a district court's denial of summary judgment, applying the same criteria of M. R. Civ. P. 56 as a district court. *Pilgeram v. GreenPoint Mortg. Funding, Inc.*, 2013 MT 354, ¶ 9, 373 Mont. 1, 313 P.3d 839. Under M. R. Civ. P. 56(c)(3), judgment "shall be rendered forthwith if 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.” *Roe v. City of Missoula*, 2009 MT 417, ¶ 14, 354 Mont. 1, 221 P.3d 1200.

¶5 The Bank argues Braun did not establish a genuine issue of material fact regarding the debt owed. A party is liable for an account stated where there is an established course of dealing, an antecedent debt, the obligated party is provided a statement showing the balance owed, and the obligated party does not reject or dispute the statement. *Thos. O’Hanlon Co. v. Jess*, 58 Mont. 415, 418, 193 P. 65, 66 (1920).

¶6 Braun has admitted to a course of dealing between the parties, to the debt and the balance due, and acknowledged receipt of statements showing the balance owed. Braun has not disputed any material fact. Braun failed to prove a genuine issue of material fact exists. M. R. Civ. P. 56(c). The District Court properly granted summary judgment.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶8 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA  
/S/ MICHAEL E WHEAT  
/S/ BETH BAKER  
/S/ DIRK M. SANDEFUR