

Western Sales Trading Co. v. Asanuma Enterprises, 5 ROP Intrm. 27 (1994)

WESTERN SALES TRADING CO.

Appellant,

v.

ASANUMA ENTERPRISES,

Appellee.

CIVIL APPEAL NO. 10-93

Civil Action No. 6-92

Supreme Court, Appellate Division

Republic of Palau

Opinion

Decided: December 15, 1994

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: William L. Ridpath

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
PETER T. HOFFMAN, Associate Justice

MILLER, Justice:

Appellant Western Sales Trading Company brought this action to collect on an open account with appellee Asanuma Enterprises. The trial court dismissed appellant's claim after trial, finding that it had failed to satisfy its burden of proof. We affirm.

Ordinarily, an account is proved by proving the correctness of each item contained in the account. See 1 Am. Jur. 2d Accounts and Accounting § 17 (1994).¹ At trial, appellant submitted as evidence a statement of account running from February 8, 1986, to April 24, 1987, and invoices and associated documents relating to some, but not all, of the items charged in the account. This evidence was insufficient to sustain its burden of proof.

At trial and on this appeal, appellant purported to be interested in collecting only the invoices

dating from August 5 1986, to February 9, 1987, each of which was presented at trial.

While this approach appears reasonable at first glance, it turns out to be logically self-

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¹ By contrast, to prove an "account stated", a party must show that the other party agreed to the balance due and agreed to pay it, without proving each item from which that balance was arrived. See generally 1 Am. Jur. 2d Accounts and Accounting § 26. Appellant has not proceeded below or in this Court on an "account stated" theory.

² At trial, appellant sought to collect on five invoices. On appeal, it has pressed its claim to four of those five.

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destructive. The problem with this theory is that it ignores several thousand dollars worth of credits on appellee's behalf reflected on appellant's own account statement which post-date August 5, 1987, and which total more than the amount claimed to be unpaid. Appellant could justify disregarding these credits and not offsetting them against the post-August 5 charges only by showing that they went towards paying off the pre-August 5 charges listed on the account statement. But to make that showing appellant would have to meet his burden of proof as to the correctness of the earlier charges, something which on its own theory it chose not to do.³

We do not foreclose the possibility that appellant could have proven the items in the account by reference solely to the account statement itself, without resort to the invoices or other documents relating to the actual transactions. An account statement meeting all the requisites for admissibility of a business record, and found by the trial court to be reliable, may suffice to establish a prima facie right to payment of the balance due.⁴ Here, however, appellant has never advanced such an L29 argument,⁵ and we are faced in any event with the trial court's finding, which is not clearly erroneous on the record before us, that the account statement was not sufficiently reliable.

The judgment of the trial court is AFFIRMED.

³ A curiosity of appellant's proof is that a summary statement prepared for trial totals the principal amounts of the five invoices sought to be collected, ignores all of the contemporaneous credits listed on the full account statement, and yet arrives at the same amount, \$4,932.03, as the balance due on the account statement. Taken on its face, this coincidence would appear to support appellant's theory that the invoices were wholly unpaid, and that all of the credits were properly applied to earlier charges. In fact, the coincidence is the result of arithmetic sleight-of-hand. That the principal owed on the summary statement totals \$4932.03 appears to be the result of appellant having arbitrarily (so far as the Court can tell) changed the amount of one of the invoices from \$3159.60--the amount shown on the account statement and on the invoice itself--to \$1561.13. Although appellant's accountant testified that the amount had been reduced in light of subsequent payments and credit memos, there is no credit or combination of credits reflected on appellant's account statement that would explain the amount (\$1598.47) of the reduction.

⁴ This of course would not end the matter: "Once a prima facie case has been established, the burden of proof shifts to the defendant to disprove the inaccuracy of the account, and to prove entitlement to credits. The defendant also has the burden of proving affirmative defenses, such as payment." Accounts and Accounting, *supra*, § 17 (footnote omitted).

⁵ It is noteworthy that the account statement introduced into evidence is apparently incomplete, since it begins with a balance due on February 8, 1986, of \$2102.93 which, whatever the reliability of the charges that follow, is itself entirely unexplained.