

STATE OF MICHIGAN
COURT OF APPEALS

FIRST OF AMERICA BANK,

Plaintiff-Appellee,

v

WOODWARD MINI MALL, YOUNG KIM, and
YANG KIM,

Defendants-Appellants.

UNPUBLISHED

August 31, 1999

No. 207555

Wayne Circuit Court

LC No. 96-646615 CK

Before: Hoekstra, P.J., and O’Connell and R.J. Danhof,* JJ.

PER CURIAM.

Defendants appeal as of right from a jury verdict awarding judgment in the amount of \$45,319.59 to plaintiff on its breach of contract claim. We affirm.

Defendants argue on appeal that the trial court abused its discretion in admitting into evidence plaintiff’s exhibit, which was a spreadsheet created by plaintiff’s employee that listed the credit card charge backs that were electronically received by plaintiff from issuing banks. Over defendants’ hearsay objection, the trial court admitted the exhibit pursuant to the business records exception to the hearsay rule, MRE 803(6). Defendants assert that, because the initial source of the information in the spreadsheet came from credit card holders, whose veracity in initiating the charge backs was not subject to confirmation through cross-examination or otherwise, the information in the exhibit lacked trustworthiness, and, therefore, was not admissible under MRE 803(6). We disagree.

Plaintiff’s spreadsheet exhibit contained at least three levels of hearsay: (1) the spreadsheet itself, (2) the charge back amounts listed in the spreadsheet that were electronically transferred to plaintiff from issuing banks, and (3) the statements of credit card holders that initiated the charge backs. Under MRE 805, hearsay within hearsay is excluded where no foundation has been established to bring each independent hearsay statement within a hearsay exception. *Solomon v Shuell*, 435 Mich 104, 129; 457 NW2d 669 (1990). Defendants do not directly challenge the trustworthiness of plaintiff in preparing the spreadsheet or of the issuing banks in electronically transmitting the charge back amounts,

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

but only challenge whether plaintiff laid a proper foundation for admission of the third level of hearsay, i.e., the statements of credit card holders questioning the charges made to their respective accounts. While it is true that not every statement contained within a document is admissible merely because the document as a whole is one kept in the regular course of business, the veracity of the credit card holders' hearsay statements was not at issue in this breach of contract action between plaintiff-bank and defendant-merchants. *Merrow v Bofferding*, 458 Mich 617, 628-629; 581 NW2d 696 (1998). Paragraphs 6 and 11 of the parties' credit card merchant agreement provided that defendants shall reimburse plaintiff for any loss sustained due to charge backs of credit card purchases processed on behalf of defendants. Reimbursement under the agreement did not hinge on plaintiff establishing the validity of charge back claims made by card holders.

In this case, the spreadsheet exhibit was proffered by plaintiff to establish the amount of its financial losses as a result of charge backs of credit card purchases made at defendants' business. For that purpose, the exhibit was admissible under MRE 803(6), given that the spreadsheet itself and the information electronically transferred from issuing banks constituted records of regularly conducted business activity. *Id.* at 627 n 8; *Hewitt v Grand Trunk W R Co*, 123 Mich App 309, 324-325; 333 NW2d 264 (1983).

Defendants also argue that the spreadsheet exhibit was inadmissible under MRE 803(6) because it was prepared for use in this litigation. "In general, a record 'prepared for the purpose of litigation' lacks the trustworthiness that is the hallmark of a document properly admitted pursuant to MRE 803(6)." *People v Huyser*, 221 Mich App 293, 297; 561 NW2d 481 (1997). When a party offers documentary evidence under MRE 803(6) and establishes the requisite foundation for its admission, a rebuttable presumption of trustworthiness of the evidence is created. *Solomon, supra* at 125-126. Here, plaintiff's employee testified that she prepared the spreadsheet in the normal course of business, creating a presumption of trustworthiness. Defendants did not rebut this presumption. Accordingly, we find defendants' argument to be without merit.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Robert J. Danhof