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2014 IL App (3d) 130112-U

Order filed January 17, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

WORTH MANAGEMENT SERVICES, INC.,	) Appeal from the Circuit Court
	) of the 12th Judicial Circuit,
	) Will County, Illinois,
Plaintiff-Appellee,	)
	) Appeal No. 3-13-0112
v.	) Circuit No. 11-L-363
	)
ROBERT STRAMAGLIA,	) Honorable
	) Joseph C. Polito,
Defendant-Appellant.	) Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice Lytton and Justice Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion when it admitted, as a business record, a spreadsheet detailing defendant's obligations to plaintiff.

¶ 2 Defendant, Robert Stramaglia, entered into a guaranty of a commercial lease between plaintiff, Worth Management Services, Inc. (WMS), and Magilla's, Inc. (Magilla's). After Magilla's defaulted on its obligations under the lease, WMS sued Stramaglia on the guaranty. At trial, WMS introduced a spreadsheet detailing the extent of Stramaglia's liability. Stramaglia

objected to the evidence, arguing that the spreadsheet did not meet the business records exception to the hearsay rule because WMS did not lay a foundation that the spreadsheet was kept in the ordinary course of business. The trial court overruled Stramaglia's objection, admitted the spreadsheet, and entered a judgment against Stramaglia for \$243,496.13. Stramaglia appeals, and we affirm.

¶ 3 **FACTS**

¶ 4 WMS managed commercial property in Worth Plaza Shopping Center. Magilla's entered into a lease with WMS for space to operate a sports bar. Stramaglia was the president and sole shareholder of Magilla's. Stramaglia entered into a personal guaranty of Magilla's obligations under the lease. After the recession hit in 2008, Magilla's was unable to make its full rental payments. On November 9, 2010, WMS filed a complaint against Stramaglia, seeking to recover the unpaid rents under the lease.

¶ 5 The cause proceeded to a bench trial. Robert Stauber testified for WMS. Stauber was the president of WMS while Magilla's was its tenant. As president, Stauber was responsible for leasing the premises, collecting rents, and providing accounting of rents to the property owners. Through Stauber, WMS introduced a spreadsheet detailing the deficiencies in Magilla's rental payments. The spreadsheet provided a month-by-month accounting of the rent owed and the rent actually paid by Magilla's and a sum of the total amount still owed by Magilla's under the lease. Stauber testified that an independent contractor working for WMS had created the spreadsheet.

¶ 6 Stramaglia objected to the introduction of the spreadsheet. He argued that it did not meet the business records exception to the hearsay rule because WMS had not laid a foundation that the spreadsheet was kept in the ordinary course of WMS's business. The trial court overruled the

objection and admitted the spreadsheet into evidence. After the close of evidence, the court entered judgment against Stramaglia in the amount of \$243,496.13. Stramaglia filed a motion to reconsider, renewing his objection to the spreadsheet and arguing that without the spreadsheet, WMS could not prove damages. The court denied the motion. Stramaglia appeals.

¶ 7

#### ANALYSIS

¶ 8 Stramaglia argues that the trial court erred in admitting the spreadsheet under the business records exception to the hearsay rule (see Ill. R. Evid. 803(6) (eff. Jan. 1, 2011)) because WMS failed to provide a foundation that the spreadsheet was kept in the ordinary course of its business.

¶ 9 Illinois Rule of Evidence 803(6) (eff. Jan. 1, 2011) governs the introduction of business records. A writing is admissible under the business records exception if the writing was made: (1) in the regular course of business; and (2) at or near the time of the event or occurrence it describes. *Kimble v. Earle M. Jorgenson Co.*, 358 Ill. App. 3d 400 (2005). A sufficient foundation for admitting a business record may be established through any person familiar with the business and its mode of operation. *Id.* The author or creator of the record need not testify. *Lecroy v. Miller*, 272 Ill. App. 3d 925 (1995). We review a trial court's decision to admit evidence for an abuse of discretion. *Kimble*, 358 Ill. App. 3d 400.

¶ 10 On direct examination, Stauber testified, "This is a spreadsheet that was prepared at my direction based upon—based upon all of the records of rents and obligations of this tenant kept in the ordinary course of my business." Based on that testimony, it is unclear whether the spreadsheet itself was kept in the ordinary course of WMS's business or whether only the underlying records were kept in the ordinary course of business and then compiled into a spreadsheet for purposes of litigation.

¶ 11 However, on cross-examination, Stauber provided testimony sufficient to establish that the spreadsheet was kept in the ordinary course of business:

"Q. You prepared this in anticipation of litigation, is that correct?

A. I prepared this to determine how much is owed by this tenant.

Q. And it was requested by your lawyer that you prepare it for litigation, is that correct?

A. No, I requested it be prepared to determine how much is owed.

Q. But it's not a document that you would have prepared in any other condition other than litigation, isn't that correct?

A. I would prepare it in the event there is a large amount of a delinquency of a complicated matter like this in order to summarize—

Q. But it's not a typical record that you prepare, such as a typical accounting records that you keep in the ordinary course of your business?

A. A spreadsheet would be, yes.

\* \* \*

Q. All right. And other than when there is a dispute over rents, specifically litigation over rents, are you claiming that your company keeps these records in its ordinary course of business, this spreadsheet?

A. If there is a delinquency, yes. Yes, we would generate a document that shows what the delinquencies are.

Q. And you've relied—

A. In addition to the normal ledger we would keep, amounts owed and billed and

paid, we keep a ledger. And if there is deficiencies, we need to prepare a spreadsheet to know exactly how much—how far the tenant is behind. This is not a usual situation.

Q. Right.

A. It happens with every tenant.

Q. Exactly.

A. But with this tenant, when a tenant is in this situation, we would prepare a spreadsheet to know exactly where we stand."

¶ 12 The testimony by Stauber provided a foundation that the spreadsheet was kept in the ordinary course of WMS's business. Stauber was qualified to testify because he was familiar with WMS's business and its methods of record keeping. Therefore, the court did not abuse its discretion by admitting the spreadsheet under the business records exception to the hearsay rule.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Will County is affirmed.

¶ 15 Affirmed.