

Westlaw

678 P.2d 3
 678 P.2d 3
 (Cite as: 678 P.2d 3)

Page 1

C

Colorado Court of Appeals, Div. IV.
 TEAC CORPORATION OF AMERICA, Plaintiff-
 Appellee,
 v.
 Martin A. BAUER, Defendant-Appellant.
 No. 82CA1215.

Feb. 16, 1984.

Action was brought on personal guaranty for corporate debt. The District Court, City and County of Denver, Harold D. Reed, J., entered judgment for plaintiff, and defendant appealed. The Court of Appeals, Hodges, J., held that: (1) computer-generated statement of account was admissible as business record, and (2) evidence was sufficient to support finding that the debt had been assigned.

Affirmed.

West Headnotes

[1] Evidence 157 ↪351

157 Evidence
 157X Documentary Evidence
 157X(C) Private Writings and Publications
 157k351 k. Unofficial or Business Records in General. Most Cited Cases
 Reliability of business record is demonstrated by evidence of its having been made pursuant to established and routine company procedures for systematic conduct of its business. Rules of Evid., Rule 803(6).

[2] Evidence 157 ↪351

157 Evidence
 157X Documentary Evidence
 157X(C) Private Writings and Publications
 157k351 k. Unofficial or Business Records in General. Most Cited Cases
 If business records prepared by another source are

adopted and integrated in regular course of established business procedures into records sought to be introduced, such records are admissible. Rules of Evid., Rule 803(6).

[3] Evidence 157 ↪351

157 Evidence
 157X Documentary Evidence
 157X(C) Private Writings and Publications
 157k351 k. Unofficial or Business Records in General. Most Cited Cases
 Even if identity of person whose firsthand knowledge is basis of particular entry in business record is not established, such records are admissible. Rules of Evid., Rule 803(6).

[4] Evidence 157 ↪354(2)

157 Evidence
 157X Documentary Evidence
 157X(C) Private Writings and Publications
 157k354 Books of Account
 157k354(2) k. Character of Books in General. Most Cited Cases
 In action on personal guaranty for corporate debt, computer-generated statement of account was admissible as business record where it was based in relevant part upon records supplied by original creditor. Rules of Evid., Rule 803(6).

[5] Appeal and Error 30 ↪1008.1(5)

30 Appeal and Error
 30XVI Review
 30XVI(I) Questions of Fact, Verdicts, and Findings
 30XVI(I)3 Findings of Court
 30k1008 Conclusiveness in General
 30k1008.1 In General
 30k1008.1(5) k. Clearly Erroneous Findings. Most Cited Cases

Trial 388 ↪382

© 2009 Thomson Reuters/West. No Claim to Orig. US Gov. Works.

678 P.2d 3
 678 P.2d 3
 (Cite as: 678 P.2d 3)

Page 2

388 Trial

388X Trial by Court

388X(A) Hearing and Determination of Cause

388k381 Rulings on Weight and Sufficiency of Evidence

388k382 k. In General. Most Cited In trial to the court, weight, sufficiency, and probative effect of evidence is matter for trial court and its treatment thereof will not be disturbed on review unless clearly erroneous.

[6] Assignments 38 ↪ 137

38 Assignments

38VI Actions

38k133 Evidence

38k137 k. Weight and Sufficiency. Most Cited Cases

In action on personal guaranty of corporate debt, evidence was sufficient to support trial court's finding that the corporate debt had been assigned to the plaintiff.

*3 Sobol & Sobol, P.C., William H. Short, Larry J. Ziegler, Denver, for plaintiff-appellee.

David A. Senseney, Englewood, for defendant-appellant.

HODGES, Justice.^{FN*}

FN* Sitting by assignment of the Chief Justice under provisions of the *Colo. Const.*, Art. VI, Sec. 5(3) and § 24-51-607(5), C.R.S. (1982 Repl. Vol. 10).

Defendant (Bauer) appeals a judgment entered after a trial to the court holding him liable under a personal guarantee for a corporate debt. We affirm.

Plaintiff (Teac) is a manufacturer of audio equipment. Bauer was an officer of A.M.I. Audio Brokers, Inc., (AMI) a retailer of audio equipment whose purchases from Teac were financed by Finance America Private Brands, Inc., (Finance America) under a "commercial floor plan" security

agreement. Teac presented evidence that when AMI fell into arrears to Finance America, Teac paid AMI's debt to Finance America in return for assignment of Finance America's rights against AMI. Teac then brought suit against Bauer and others.

*4 Teac offered into evidence a "Guaranty" signed by Bauer and another AMI officer, personally guaranteeing "all sums presently or hereafter owing by [AMI] to [Finance]" and a computer generated statement of account setting forth the balance assigned by Finance America. At the conclusion of the trial, the court determined that Teac had established the assignment by Finance America of its rights against AMI and the guarantors, and entered judgment for Teac.

I.

On appeal, Bauer first contends that the trial court erred in admitting the computer generated statement of account, because the elements of admissibility for such a hearsay business record were not established in accordance with Colorado Rules of Evidence 803(6). We reject this contention.

[1][2][3] Under Colorado Rules of Evidence 803(6), a business record may be admissible even though hearsay if made "at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity..." See *Great West Food Packers, Inc. v. Longmont Foods Co.*, 636 P.2d 1331 (Colo.App.1981). The reliability of such a record is demonstrated by evidence of its having been made pursuant to established and routine company procedures for the systematic conduct of its business. *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 505 F.Supp. 1190 (E.D.Pa.1980). Thus, if records prepared by another source are adopted and integrated in the regular course of established business procedures into the records sought to be introduced, such records are admissible. *United States v. Carranco*, 551 F.2d 1197 (10th Cir.1977). Further even if the identity of the person

678 P.2d 3
 678 P.2d 3
 (Cite as: 678 P.2d 3)

Page 3

whose first hand knowledge was the basis of a particular entry is not established, such records are admissible. *United States v. Ullrich*, 580 F.2d 765 (5th Cir.1978); 4 *J. Weinstein & M. Berger, Weinstein's Evidence* ¶ 803(6)[04] (1982).

[4] The only evidence of the amount of defendant's indebtedness was the statement of the accountant, which was based in relevant part upon computer generated records supplied by Finance America. However, there was evidence that Teac and Finance America had engaged in approximately 500 similar financing arrangements, that Teac was familiar with and customarily relied upon Finance America's records, that Teac paid Finance America over \$88,000 in reliance upon the accuracy of Finance America's data, and that Bauer and the other guarantors did not dispute the amount set forth in the statement of the accountant. There was thus sufficient evidence to support the trial court's admission of that document. It was prepared in the regular course of business under circumstances having ample indicia of trustworthiness. See *Great West Food Packers, Inc. v. Longmont Foods Co.*, *supra*, and *Chateau Chaumont Condominium Ass'n v. Aspen Title Company*, 676 P.2d 1246 (Colo.App.1983).

II.

Bauer contends in addition that there was insufficient evidence to support the trial court's finding of an assignment to Teac of Finance America's cause of action against Bauer and the other defendants in the trial court. We disagree.

[5][6] In a trial to the court, the weight, sufficiency, and probative effect of the evidence is a matter for the trial court, and its treatment thereof will not be disturbed on review unless clearly erroneous. *Adler v. Adler*, 167 Colo. 145, 445 P.2d 906 (1968). Here, there was sufficient testimony and documentary evidence of the assignment.

Judgment affirmed.

ENOCH, C.J., and SILVERSTEIN, J.,* concur.
 Colo.App.,1984.
Teac Corp. of America v. Bauer
 678 P.2d 3

END OF DOCUMENT