

AMERICAN EXPRESS

v.

JACK CARMINE PISCOPO et al.

Submitted on Briefs October 27, 2011

Decided November 15, 2011

Panel: SAUFLEY, C.J., and LEVY, SILVER, MEAD, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

Jack Carmine Piscopo appeals from a judgment of the District Court (Portland, *Mulhern, J.*) finding him and his company, F.O. Bailey Company, Inc., jointly and severally liable for a debt incurred on an American Express credit account. Piscopo asserts that the court abused its discretion by admitting the credit agreement into evidence as a business record, pursuant to M.R. Evid. 803(6), because the copy of the agreement admitted was offered by American Express but was provided by Piscopo in response to American Express's discovery requests. Piscopo also argues that he is not bound to the terms of the agreement because American Express did not produce a signed writing as evidence of mutual assent to the terms. Piscopo further argues that he is not personally liable because the terms of the agreement are ambiguous regarding his personal liability.

Contrary to Piscopo's contention, the credit agreement was properly admitted into evidence as a business record pursuant to M.R. Evid. 803(6) because the required foundational elements were established through the testimony of a custodian of records for American Express. *See Ne. Bank & Trust Co. v. Soley*, 481 A.2d 1123, 1125-26 (Me. 1984).

Further, there was sufficient evidence in the record to establish that Piscopo is bound to the terms of the credit agreement because, in accordance with Utah law, which governs the agreement, Piscopo received the agreement and used the

account, and the agreement is unambiguous that use of the account constitutes acceptance of the terms. *See* Utah Code Ann. § 25-5-4(2)(e) (2011).

Finally, the court did not err in concluding that the terms of the agreement are not ambiguous regarding personal liability. It is clear from the plain language of the agreement that both the company and the individual authorized on the account are liable for charges incurred on the account. *See WebBank v. Am. Gen. Annuity Serv. Corp.*, 2002 UT 88, ¶¶ 18-19, 54 P.3d 1139 (noting that, in Utah, a party's intentions are determined from the plain meaning of the contract language if the language is unambiguous).

The remaining issues raised by Piscopo are without merit and require no further discussion.

The entry is:

Judgment affirmed.

On the briefs

N. Quinn Collins, Esq., Perkins Olson, PA, Portland, ME for the appellants,
Jack Piscopo and F.O. Bailey

Randall L. Pratt, Esq., Portsmouth, NH, for the appellee, American Express