

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2010 CA 0115**

**AURORA CASKET COMPANY**

**VERSUS**

**HALL DAVIS & SONS FUNERAL SERVICES, LTD.**

**Judgment Rendered: June 11, 2010**

**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number C549607**

**Honorable Todd W. Hernandez, Judge Presiding**

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**BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.**

*Handwritten initials: HDW, JHW, and a circled symbol.*

**WHIPPLE, J.**

Defendant appeals the trial court's judgment, which awarded plaintiff a sum due on an open account for the purchase of caskets. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

In July 2005, Hall Davis, a licensed mortician, embalmer, and funeral director, and his wife, Cecile Davis, began operating a funeral home business in Baton Rouge under the name Hall Davis & Sons Funeral Services, Ltd. ("Hall Davis"). In an effort to stock the showroom floor for the opening of the funeral home, Mr. Davis ordered caskets from plaintiff, Aurora Casket Company (Aurora), and spoke with Bob Cargo, an Aurora representative. According to Mr. Davis, the oral agreement between Hall Davis and Aurora was that the caskets for the showroom floor would be provided on a consignment basis, and new caskets would be purchased for customers as needed for funerals.

However, billing problems developed when Aurora charged Hall Davis for the showroom caskets on a 90-day payment plan. The parties attempted to resolve their dispute regarding the consigned caskets, and Aurora issued credits to the Hall Davis account. During that time, the parties continued to transact business with one another, but disputes about the billing persisted. Specifically, the Davises believed that there were ongoing billing discrepancies and excessive billing, and, in certain months, that Hall Davis was charged for more caskets than the number of funerals it handled in those particular months.

Because the parties were unable to resolve their disputes as to the account balance, Aurora filed a "Petition on Open Account" on November 17, 2006, contending that, despite amicable demand, Hall Davis had not paid the past-due amount of \$25,846.25 owed to Aurora. Thus, Aurora sought judgment in its favor for this amount, together with legal interest, attorney's fees equal to 25% of the

principal and interest, and costs. Hall Davis reconvened, contending that it had paid Aurora \$8,928.33 in excess of the amounts due and that it was entitled to judgment in its favor refunding the overpayment.

Following a bench trial, the trial court found that Aurora was owed \$24,864.00, but that Hall Davis was entitled to a credit of \$8,928.00. After adding 25% interest to these amounts, the trial court concluded that Aurora was owed \$32,330.00, and Hall Davis was entitled to a credit of \$11,160.00. In accordance with its findings, the trial court rendered judgment in favor of Aurora and against Hall Davis in the amount of \$21,170.00, with each party to bear its own costs. From this judgment, Hall Davis appeals.

### DISCUSSION

In its sole assignment of error, Hall Davis contends that the trial court erred in finding that Aurora was owed a total of \$32,220.00, where Aurora's records were erroneous, incorrect, unreliable, and did not satisfy Aurora's burden of proof. Thus, the primary question presented herein is the sufficiency of the evidence in support of Aurora's claim.

In proving an open account, the plaintiff must first prove the account by showing that the record of the account was kept in the course of business and by introducing supporting testimony regarding its accuracy. Deutsch, Kerrigan & Stiles v. Fagan, 95-0811, 95-0812 (La. App. 1<sup>st</sup> Cir. 12/15/95), 665 So. 2d 1316, 1320, writ denied, 96-0194 (La. 3/15/96), 669 So. 2d 418; Jacobs Chiropractic Clinic v. Holloway, 589 So. 2d 31, 34 (La. App. 1<sup>st</sup> Cir. 1991). Once a prima facie case has been established by a plaintiff-creditor, the burden shifts to the debtor to prove the inaccuracy of the account or to prove that the debtor is entitled to certain credits. The amount due on an account is a question of fact which may not be disturbed absent manifest error. Deutsch, Kerrigan & Stiles, 665 So. 2d at 1320; Jacobs Chiropractic Clinic, 589 So. 2d at 34.

At trial, Aurora introduced monthly statements from June 2005 through September 2006 for the Hall Davis account, as well as a spreadsheet detailing all activity on the Hall Davis account since its inception, including purchases and credits. Dennis Dreyer, Aurora's credit and risk manager, testified as to the billing on this account. Dreyer testified that pursuant to the business relationship between Aurora and Hall Davis, Aurora would ship caskets to Hall Davis and record the sale contemporaneously as the merchandise was shipped out. He further testified that Aurora sent Hall Davis monthly statements that were generated in the course of Aurora's business and listed the balance due on the account, based on the account activity that month and any credits for that month. The statements also were introduced into evidence. Dreyer further testified that based on Aurora's business records generated in the course of its business, Hall Davis owed Aurora \$25,846.25 on the open account.<sup>1</sup>

Based on this testimony and evidence, we agree that Aurora established a prima facie case and made the necessary showing that it was owed a balance on the Hall Davis account. Thus, the burden then shifted to Hall Davis to prove any inaccuracies in the account or its entitlement to any credits. See Deutsch, Kerrigan & Stiles, 665 So. 2d at 1320; Jacobs Chiropractic Clinic, 589 So. 2d at 34; Freiberg v. Rembert, 213 So. 2d 104, 106 (La. App. 1<sup>st</sup> Cir. 1968).

In support of its contention that Aurora's records should be rejected as inconsistent and inaccurate, Hall Davis notes that the amount Aurora represented as the account balance in its July 24, 2006 demand letter differed from the amount Aurora contended was due on the account in a subsequent August 22, 2006 demand letter. Additionally, Hall Davis contends that the Aurora records

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<sup>1</sup>Dreyer acknowledged that the balance due as shown on the spreadsheet was slightly more than the balance Aurora was seeking in this suit, but the difference was a mere 3 cents.

reflecting that Hall Davis was billed for 199 caskets conflicts with Hall Davis's own records, which indicate that it should have only been billed for 176 caskets.

As to Hall Davis's first argument regarding the difference in the amount demanded in the July 24, 2006 and August 22, 2006 demand letters, it is clear from a review of the monthly invoices that there were further business transactions between the parties following the July 24, 2006 date. Moreover, when questioned about the difference in the amounts demanded in the two letters, Dreyer testified that the July 24, 2006 letter would have been generated around July 15, 2006, and that there were other credits and bills applied to the account following that date. Thus, the fact that the amount demanded differed does not support Hall Davis's claim that Aurora's records were so inaccurate as to constitute insufficient proof of its claim.

Additionally, with regard to Hall Davis's assertion that, according to its record of funerals performed, Aurora billed it for more caskets than should have been billed, we note that Hall Davis did not offer any sort of inventory documents indicating the dates caskets were received from Aurora, the number of caskets received, or any type of comprehensive accounting for caskets received, used or returned to Aurora to support this assertion. Rather, Hall Davis submitted only a handwritten log of some of the funerals it performed during the time period in question with a type of casket listed next to the name of the decedent.<sup>2</sup> Only eight of the caskets listed in this log are cross-referenced by serial number. There is

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<sup>2</sup>In this log, funerals listed in the first seven months were assigned sequential numbers. A review of those numbers indicates that nineteen numbers are missing sequentially. When questioned about these missing numbers, Mrs. Davis stated that the missing numbers could have represented decedents who were cremated, decedents who were shipped to Hall Davis from other locations and were already in a casket, or clients who chose to buy caskets from other casket stores. Beginning January 6, 2006, the entries no longer bear any sequential numbering. Nonetheless, the log clearly does not represent all funerals or burials performed by Hall Davis.

simply no way to ascertain from this log which caskets purportedly were incorrectly charged to the Hall Davis account.<sup>3</sup>

In making its findings as to the amount owed on the account and any credits due, the trial court specifically noted that “neither party did a remarkable job of record keeping regarding the sale and purchase of the caskets from plaintiff and to defendant.” Nonetheless, considering the testimony and evidence, we find no manifest error in the trial court’s finding that Aurora carried its burden of proving that it was owed \$24,864.00 on the Hall Davis account.<sup>4</sup> Moreover, we agree that Hall Davis failed to present sufficient evidence to establish that it was entitled to a credit greater than the amount awarded by the trial court.<sup>5</sup>

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<sup>3</sup>Hall Davis also attempted to establish that the monthly statements sent to it were incomplete and, thus, inaccurate. However, Dreyer explained that the monthly statements only showed business transactions that were still open at the end of the month and that every credit was not necessarily itemized in the statement, but was included in the summation at the end of the statement. A spreadsheet prepared from its contemporaneous business records, which was also introduced into evidence at the trial, itemized all transactions on the Hall Davis account from its inception on June 21, 2005 through November 10, 2006.

<sup>4</sup>The amount to which the trial court found Aurora proved its entitlement is \$982.25 less than the amount sought by Aurora. Aurora has not appealed or answered the appeal to challenge this finding by the trial court.

<sup>5</sup>At trial, Hall Davis introduced an account reconciliation performed by the Jasper Group, a financial consulting firm, which purported to demonstrate inaccuracies in the Aurora billing and to support Hall Davis’s claim that it was entitled to a credit of \$8,928.33. However, our review of the evidence and testimony reveals apparent errors in the account reconciliation. Moreover, the report prepared by the Jasper Group admittedly was based solely on the records and information provided to it by Hall Davis.

Hall Davis also contended that it was not properly credited for every casket it returned to Aurora. However, in support of this claim, Hall Davis introduced only one log of caskets picked up for return, which Hall Davis had Aurora’s distributor sign. This document lists eleven caskets picked up on May 19, 2006 for return. While Hall Davis attempted to establish that it was not properly credited for the return of these caskets, a review of the invoices, credit invoices and spreadsheet of all activity on the account reveals that Hall Davis was credited, at one time or another, for most of the caskets on the list. One casket returned was admittedly not an Aurora casket. Another one was identified only as a “brush bronze” with no serial number, thus preventing this court from accurately reviewing the records to establish whether a credit was issued. Additionally, while Hall Davis contended at trial that it was never issued a credit for a teak casket it returned on that date, our review of the credit invoices, together with the spreadsheet of all account activity, demonstrates that a credit was indeed issued for a teak casket bearing that serial number. Thus, there was only one casket on the May 19, 2006 list that was adequately identified by serial number for which this court was unable to identify a credit. Notably, as set forth in footnote 4, the amount to which the trial court found Aurora proved its entitlement is \$982.25 less than the amount sought by Aurora, clearly indicating that some type of deduction was made by the trial court. Thus, we decline to make any further adjustments, given the paltry records introduced by Hall Davis herein in support of its claim.

Accordingly, we find no merit to its arguments on appeal.

### **CONCLUSION**

For the above and foregoing reasons, the August 24, 2009 judgment of the trial court is affirmed in its entirety. Costs of this appeal are assessed against appellant, Hall Davis & Sons Funeral Services, Ltd.

**AFFIRMED.**