

**American Express Travel Related Services Inc. v
Citrin**

2006 NY Slip Op 30006(U)

November 15, 2006

Supreme Court, New York County

Docket Number: 0117694/2005

Judge: Marcy S. Friedman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN
Justice

PART 57

American Express

INDEX NO. 117694/05

- v -

MOTION DATE _____

Citrus, R

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for Sweeney Judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

1

Replying Affidavits _____

2

Memo

3

M1

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER**

FILED

NOV 21 2006

NEW YORK
CLERK'S OFFICE

Dated: 11-15-06



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - - PART 57

AMERICAN EXPRESS TRAVEL
RELATED SERVICES INC.,

Index No.: 117694/05

Plaintiff(s),

against

DECISION/ORDER

RITA CITRIN,

Defendant(s).

Present: HON. MARCY FRIEDMAN
Justice, Supreme Court

FILED
NOV 21 2006
NEW YORK
COUNTY CLERK'S OFFICE

In this action for breach of a credit card agreement, plaintiff moves for summary judgment for the amount sought in the complaint (\$28,175.56). Plaintiff also moves to dismiss defendant's counterclaim.

In support of the motion, plaintiff submits a copy of the credit card agreement, copies of monthly statements sent to defendant showing charges and payments, copies of checks signed by defendant, and an affidavit of Paul Carey, Supervisor of Customer Management Strategy, attesting to defendant's default under the agreement and plaintiff's cancellation of the account for non-payment. This proof is sufficient to establish that plaintiff has met its initial burden on the motion. (See Citibank [S.D.] N.A. v Roberts, 304 AD2d 901 [3d Dept 2003].) In opposition, defendant asserts that she did not apply for or open the account, did not incur any charges, and was not aware of the account until she was contacted by a debt-collecting agency. These conclusory assertions are insufficient to raise a triable issue of fact as to whether there was an agreement, especially in view of the evidence submitted by plaintiff that defendant communicated with plaintiff about the account in October 2003. Defendant also claims that the signatures on the checks submitted by plaintiff are not her signature. However, "[s]omething

more than a bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature.” (Banco Popular North America v Victory Taxi Mgt., 1 NY3d 381, 384 [2004].) Here, defendant’s affidavit, in which she speculates that a former business associate may be liable in this case, is insufficient to create a triable issue of fact as to the authenticity of the signature.

Plaintiff also moves to dismiss plaintiff’s counterclaim, which alleges that plaintiff violated the Fair Debt Collections Practices Act (“FDCPA”)(15 USC § 1692 et. seq.), on the ground that plaintiff is a creditor and not a debt collector under the statute and therefore is not subject to the requirements of the statute.

The FDCPA was enacted to protect consumers from abusive debt collectors’ practices. (15 USC § 1692[e].) The statute defines debt collectors as “any person who * * * regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another.” (15 USC § 1692a[6].) Generally, creditors are not subject to the FDCPA unless the creditor is seeking to collect its own debts under a name other than its own which would indicate that a third person is collecting or attempting to collect such debts. (Id.; Doherty v Citibank [South Dakota], 375 F.Supp.2d 158, 162 [ED NY 2005].)

Defendant does not dispute that plaintiff is a creditor. Nor does defendant dispute that defendant and her counsel were contacted by a law firm that identified itself as the debt collector for plaintiff. (See March 24, 2006 notice, Ex. 2 to Rodi Aff. in Opp.) Defendant also makes no claim that plaintiff made any attempt to collect its own debts or used any other name or alias in an attempt to collect its own debts. (See Doherty v Citibank [South Dakota], 375 F.Supp.2d at 162.) Defendant’s claim that discovery is necessary to ascertain whether plaintiff is

“significantly involved in the activities of their debt-collecting agencies, and [therefore] * * * is subject to the FDCPA” (Rodi Aff. in Opp., ¶ 24) is insufficient to avoid summary judgment.

A claimed need for discovery will not defeat a summary judgment motion unless at least some “evidentiary basis” is offered “to suggest” that discovery may lead to relevant evidence. (Harris v Alcan Aluminum Corp., 91 AD2d 830 [4th Dept 1982], affd 58 NY2d 1036 for reasons stated below.) Such a showing is lacking in the instant case. “A mere chance or hope that something will be uncovered which will add to the case is insufficient.” (Id. See Auerbach v Bennett, 47 NY2d 619 [1979].)

The motion for summary judgment is accordingly granted to the extent that it is

ORDERED that plaintiff is granted a judgment against defendant Rita Citrin in the amount of \$28,175.56, with interest at the rate of 6% per annum from April 30, 2003, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that entry of judgment shall be stayed pending the hearing on attorneys’ fees as directed below; and it is further

ORDERED that the branch of the motion which seeks attorneys’ fees is granted to the extent of awarding partial summary judgment as to liability and directing a hearing on fees; and it is further

ORDERED that that portion of the plaintiff’s action that seeks the recovery of attorneys’ fees is severed and an assessment thereof is directed; and it is further

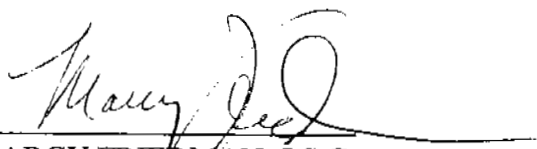
ORDERED that a copy of this order with notice of entry be served upon the Clerk of the Trial Support Office (Room 158), who is directed, upon the filing of a note of issue and a statement of readiness and the payment of proper fees, if any, to place this action on the

appropriate trial calendar for the assessment herein above directed; and it is further

ORDERED that the counterclaim is dismissed.

This constitutes the decision and order of the court.

Dated: New York, New York
November 15, 2006



MARCY FRIEDMAN, J.S.C.

FILED
NOV 21 2006
NEW YORK
COUNTY CLERK'S OFFICE