

**American Express Travel Related Servs., Inc. v  
Stylex Design LLC**

2010 NY Slip Op 32581(U)

September 13, 2010

Sup Ct, NY County

Docket Number: 102120/10

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE  
J.S.C. Justice

PART 10

American Express Travel  
Related Services, Inc.,

INDEX NO. 102120/10

MOTION DATE \_\_\_\_\_

- v -

Stytex Design LLC

MOTION SEQ. NO. #CORRECTED# 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

Corrected decision/order.

**motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

**FILED**  
SEP 17 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: SEP 15 2010

HON. JUDITH J. GISCHE J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----x  
AMERICAN EXPRESS TRAVEL RELATED  
SERVICES, INC.,

Plaintiff,

-against-

STYLEX DESIGN LLC,

Defendant.  
-----x

**\*\*CORRECTED\*\***

**Decision/Order**

Index No.: 102120/10

Seq. No. : 001

Present:

Hon. Judith J. Chisone  
J.S.C.

**FILED**  
SEP 17 2010  
NEW YORK  
COUNTY CLERKS OFFICE

Recitation, as required by CPLR 2219 [a], of the papers considered in review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Pltf's n/m (3215) w/DE affid, DAF affirm, exhs . . . . .	1

-----x

*Upon the foregoing papers, the decision and order of the court is as follows:*

This is an action to recover "charge back" for unauthorized / disputed credit card charges. Plaintiff moves, pursuant to CPLR § 3215, for entry of a default judgment against the defendant. Although there is due proof of service of the underlying summons and verified complaint, as well as the instant motion, the defendant has not opposed or otherwise appeared in this action within the time provided for in the CPLR. Defendant's time to do so has not been extended by the court. Plaintiff has also filed proof of additional service in compliance with CPLR § 3215 [g]. Therefore, the defendant has defaulted in this action and the motion will be considered without opposition.

Plaintiff is entitled to a default judgment against the defendant, provided it otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany

Productions Ltd., 289 A.D.2d 844 (3d Dept. 2001). The defendant's default in answering the complaint constitutes an admission of the factual allegations therein and the reasonable inferences which may be made therefrom. Rokina Optical Co., Inc. v. Camera King, Inc., 63 N.Y.2d 728 (1st Dept. 1984).

Defendant is a vendor who had privileges with and accepted the American Express Card Agreement (the "Agreement"). Under the Agreement, plaintiff is entitled to full recourse for any charges that are the subject of a claim, complaint, or unresolved question.

The complaint contains three causes of action, to wit: [1] breach of contract; [2] unjust enrichment; and [3] account stated.

Plaintiff has provided the affidavit of David Elliott, an Operations Analyst for the plaintiff. Mr. Elliott states that between November 2007 and December 2007, certain charges totaling \$20,052.34 were disputed by other American Express card members. As a result of the disputed / fraudulent charges, plaintiff sent notices to defendant demanding that it respond to the disputes, as to avoid a charge back. Defendant failed to challenge the charge back and plaintiff now seeks its right to recover the full payments it made to the vendor pursuant to the Agreement.

The elements of a cause of action for breach of contract are: (1) formation of a contract between the parties; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage. Furia v. Furia, 166 A.D.2d 694 (2d Dept. 1990).

An account stated represents an agreement between the parties reflecting amounts due on prior transactions. Jim-Mar Corp. v. Aquatic Constr., 195 A.D.2d 868 (3d Dept. 1993), *lv. denied* 82 N.Y.2d 660 (1993). Where either no account has been

presented or there is any dispute regarding the correctness of the account, the cause of action fails. M & A Const. Corp. v. McTague, 21 A.D.3d 610 (3d Dept. 2005).

Based on the foregoing, plaintiff has established a *prima facie* cause of action for breach of contract and account stated against the defendant. Accordingly, plaintiff is entitled to entry of default judgment against the defendant on its first and third causes of action. However, plaintiff's second cause of action for unjust enrichment must fail in the face of a valid contract. Clark-Fitzpatrick v. L.I.R.R., 70 N.Y.2d 382 (2d Dept.1987). Plaintiff is entitled to a money judgment in the amount of \$20,052.34 with interest from March 15, 2008 (as a reasonable intermediate date [CPLR § 5001(b)]).

**Conclusion**

In accordance herewith, it is hereby:

**ORDERED** that plaintiff's motion for entry of a default judgment against defendant, Stylex Design LLC, is granted on the first and third causes of action; and it is further

**ORDERED** that the second cause of action for unjust enrichment is hereby severed and dismissed; and it is further

**ORDERED** that the clerk shall enter judgment in favor of plaintiff and against defendant, Stylex Design LLC, in the sum of twenty thousand fifty-two dollars and thirty-four cents \$20,052.34); and it is further

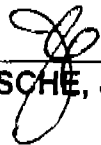
ORDERED that interest shall run from March 15, 2008, at the statutory rate; and it is further

ORDERED that any requested relief not expressly addressed herein has nonetheless been considered by the court and is denied; and it is further

ORDERED that this shall constitute the decision and order of the court.

Dated: New York, New York  
September 13, 2010

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**  
SEP 17 2010  
NEW YORK  
COUNTY CLERK'S OFFICE