

**Sky Virtue Ltd. v Trend Direct Global LLC**

2023 NY Slip Op 30527(U)

February 21, 2023

Supreme Court, New York County

Docket Number: Index No. 653731/2022

Judge: Arlene P. Bluth

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

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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SKY VIRTUE LIMITED

Plaintiff,

- v -

TREND DIRECT GLOBAL LLC,

Defendant.

-----X

INDEX NO. 653731/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff’s motion for summary judgment is denied.

**Background**

Plaintiff brings this action to recover under an account stated theory for goods sold and delivered to defendant. It claims that defendant admitted it placed orders, received the invoices and did not object and so defendant is liable for the amount charged. Plaintiff attaches emails in which its president, Dennis Jiang, informed defendant about the outstanding invoices (NYSCEF Doc. No. 21). In this email chain, Mr. Jiang includes charts that reference the goods purportedly delivered and the amount owed to plaintiff (*id.*). A representative from defendant replied that defendant has had a “bad half year of 2022,” its “cash flow is real tight,” and that he would “update you [about] the payment schedule this week definitely” (*id.*).

Mr. Jiang responded the next day and emphasized that many of the invoices were way past due and requested that defendant send along its payment schedule (*id.*). After more back and

forth, Mr. Jiang rejected defendant's apparent effort to delay payment based upon defendant's inability to sell the goods to stores (*id.*).

In opposition, defendant asserts that the goods its purchased were sent to several customers. It argues that there are a few issues related to the amount plaintiff seeks. Defendant maintains that certain of the shipments were delayed, which led to the customers cancelling their orders. It also argues that the quality of the goods was substandard and led to two customers raising issues about having to pay for inferior goods.

Defendant claims that the amount sought by plaintiff is not readily apparent from the moving papers; it points out that the amounts included in the email chain from plaintiff's president totals \$418,641 which is less than the amount sought in the amended complaint. Defendant emphasizes that at least two of the invoices included goods that were never delivered to defendant.

In reply, plaintiff observes that defendant did not timely object to the invoices and that, in fact, defendant made partial payments on some of the invoices. Plaintiff maintains that defendant's assertions about delay are vague and unsupported as are the allegations concerning the quality of the goods.

## **Discussion**

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light

most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

“An account stated is an agreement between parties to an account based upon prior transactions between them with respect to the correctness of the account items and balance due. An agreement may be implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account” (*Citibank (S. Dakota), N.A. v Brown-Serulovic*, 97 AD3d 522, 523, 948 NYS2d 331 [2d Dept 2012]).

The Court denies the motion. The fact is that plaintiff failed to meet its prima facie burden for summary judgment. It did not prove as a matter of law that it sent bills to defendant and that defendant failed to timely object. In fact, plaintiff did not include the underlying invoices upon which this case is based. Instead, plaintiff attached an email chain that purportedly contains charts citing the invoices (NYSCEF Doc. No. 21). But some of these charts are cut off and some contain columns written in Chinese characters (*id.*). Plaintiff must submit documents that are complete if it wants summary judgment as a matter of law.

In other words, although the email chain upon which plaintiff relies suggests that there were outstanding invoices, the Court is unable make any determinations about when these invoices were sent, how much plaintiff seeks, or how defendant responded. For instance, the Court is unable to reconcile the amount plaintiff seeks where plaintiff failed to upload supporting documentation. Moreover, it appears that defendant uploaded certain invoices (although these do not appear to encompass all the invoices for which plaintiff seeks to recover). Unfortunately, a cause of action for account stated requires the moving party to clearly establish, with the requisite specificity, the invoices it claims it sent to the defendant. Plaintiff did not do that in this motion and so the motion is denied.

Another reason the motion is denied is the lack of an English translation. While the Court appreciates that the parties understand Chinese, this Court must be able to understand an entire document, not only the parts in English, in order to make a determination. CPLR 2101(b) requires that supporting documentation written in another language must be accompanied by a certified translation into English. Plaintiff failed to have the Chinese characters included in key evidence (the email chain) translated and therefore failed to meet its burden.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied.

Conference: March 28, 2023 at 11:30 a.m. Please refer to NYSCEF Doc. No. 13 for directives about uploading discovery documents prior to the scheduled conference.

<u>2/21/2023</u> DATE					<hr/> ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE