

**American Express Natl. Bank v Mullaly**

2024 NY Slip Op 32742(U)

August 6, 2024

Supreme Court, New York County

Docket Number: Index No. 157800/2019

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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AMERICAN EXPRESS NATIONAL BANK

Plaintiff,

- v -

CHRIS MULLALY, AKA  
CHRIS P. MULLALY,

Defendant.

-----X

**INDEX NO.** 157800/2019

**MOTION DATE** 08/05/2024

**MOTION SEQ. NO.** 005

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff’s motion for summary judgment is granted and the cross-motion by defendant for summary judgment dismissing the complaint is denied.

**Background**

Plaintiff contends this is a routine credit card collection action in which defendant owes \$55,501.55 in charges accrued from two American Express credit cards. Plaintiff insists that defendant was provided monthly statements and that he refuses to pay the amounts owed. In support of the motion, plaintiff attaches an affidavit from Richard Kier, an assistant custodian of records for plaintiff (NYSCEF Doc. No. 72). Mr. Kier observes that prior to April 1, 2018, he was the assistant custodian of records for American Express Centurion Bank (he contends that plaintiff used to be known as American Express Centurion Bank but changed its name to plaintiff in connection with a merger in April 2018). Mr. Kier argues that he personally reviewed the relevant credit card statements sent to defendant and attaches them to his affidavit.

In opposition and in support of his cross-motion, defendant claims that plaintiff did not issue the subject credit cards and so dismissal is required. He argues that the entity that issued the credit cards was American Express Centurion Bank and that plaintiff, a different company, is not permitted to recover against him. Defendant maintains that plaintiff did not meet its prima facie burden to show that it is entitled to summary judgment. He argues that the card member agreements were with American Express Centurion Bank, not plaintiff, and so there is no contractual agreement between plaintiff and defendant.

Defendant insists that plaintiff did not show a proper assignment, standing or chain of title with respect to defendant's credit card account. He also complains that plaintiff did not establish a proper foundation for the submission of its business records.

In reply, plaintiff insists that it and American Express Centurion Bank are the same entity and so it is entitled to pursue this case. Plaintiff contends it established a proper foundation for the admissibility of its business records through the Kier affidavit.

## **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]).

The Court grants the motion. Defendant's primary argument—essentially, that plaintiff has no standing—is without merit. “A merged corporation does not by merger lose a cause of action which it had prior to the merger” (*Albert v Salzman*, 41 AD2d 501, 505, 344 NYS2d 457 [1st Dept 1973]). Here, defendant admits he had two credit cards with a previous entity (American Express Centurion Bank) and attaches cardmember agreements for both cards (NYSCEF Doc. Nos. 91, 92). Therefore, plaintiff (as the subsequent merged corporation) is entitled to pursue the instant claim.

Defendant did not sufficiently rebut the Kier affidavit's contention that there was a merger. In fact, the account statements sent to defendant contained a notice for both credit cards that “American Express Centurion Bank ("AECB") will undergo a legal entity change and be known as ("AENB") as of April 1, 2018. Following that date, AENB will become the issuer of your Account” (NYSCEF Doc. No. 75 at 289 of 527, NYSCEF Doc. No. 76 at 669 of 849). Defendant continued to incur charges to both accounts following this clear and unambiguous notice that plaintiff was now the issuer of these accounts. Accordingly, any claim by defendant

that he never had any financial relationship with plaintiff is unavailing. Moreover, defendant did not contend that he paid his bills to American Express Centurion Bank or that another entity has sought to recover these unpaid credit card charges. Rather, defendant appears to suggest that he need not pay anyone (defendant does not deny incurring the charges in the submitted statements).

Defendant’s other arguments do not compel the Court to deny plaintiff’s motion or grant his cross-motion to dismiss the complaint. The Kier affidavit satisfied plaintiff’s prima facie burden and Mr. Kier established a proper foundation for the admission of the credit card statements (*see Bank of New York Mellon v Gordon*, 171 AD3d 197, 205, 97 NYS3d 286 [2d Dept 2019]).

Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment is granted and defendant’s cross-motion is denied in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$55,501.55 plus statutory interest at two percent [CPLR 5004(a)] from January 1, 2017 (a reasonable midpoint) along with costs and disbursements upon presentation of proper papers therefor.

8/6/2024  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE