

Check Tech., Inc. v Atlas Express Courier Inc.

2025 NY Slip Op 31131(U)

March 31, 2025

Supreme Court, New York County

Docket Number: Index No. 653093/2024

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JUDY H. KIM PART 04

Justice

-----X

CHECK TECHNOLOGIES, INC.,
Plaintiff,

- v -

ATLAS EXPRESS COURIER INC.,
Defendant.

-----X

INDEX NO. 653093/2024

MOTION DATE 01/27/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, plaintiff’s motion for a default judgment against defendant Atlas Express Courier Inc., is granted, on default, as to plaintiff’s breach of contract claim, for the reasons set forth below.

FACTUAL BACKGROUND

Plaintiff commenced this action on June 19, 2024, asserting claims for breach of contract and unjust enrichment against defendant Atlas Express Courier Inc. (“Atlas”) (NYSCEF Doc No. 1, complaint at 3). The complaint alleges that plaintiff entered into a contract with Atlas to provide “payroll processing services” (the “Payroll Services Agreement”) and that in connection with the Payroll Services Agreement on June 1, 2023, Atlas directed plaintiff to submit a debit entry to Atlas’s bank account for the sum of \$94,998.35, to be paid to Atlas’s employees (*id.* at 2). Plaintiff further alleges that on June 5, 2023, it paid Atlas’s employees using its own funds, but on June 6, 2023, Atlas’s debit entry returned with a code showing “insufficient funds” to cover the sum

requested by plaintiff (*id.*). Plaintiff now moves for a default judgment against Atlas on its breach of contract and unjust enrichment claims. Atlas has not appeared or opposed the motion.

DISCUSSION

In order to establish a default judgment pursuant to CPLR 3215, plaintiff must submit proof of: (1) service of the summons and complaint; (2) the facts constituting the claim; and (3) defendants' default in answering or appearing (*see Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). "CPLR 3215 does not contemplate that default judgments are to be rubberstamped once jurisdiction and a failure to appear has been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Feffer v Malpeso*, 210 AD2d 60 [1st Dept 1994]). The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*id.*).

Plaintiff has satisfied these requirements. Plaintiff submits an affidavit of service establishing that Atlas was served with the summons and complaint, per CPLR 311, by personal service on an individual authorized to accept at its business (*see* NYSCEF Doc No. 2). Plaintiff has also established Atlas's default through the affirmation of its counsel, Elliot D. Ostrove, attesting that "[Atlas] has not answered, appeared, or otherwise moved with respect to the within Complaint" (NYSCEF Doc No. 4, Ostrove Affirm. at 3). Finally, plaintiff has submitted proof of the facts constituting its breach of contract claim. Plaintiff submits the affirmation of its general counsel, Amanda Kauth, Esq., in which she attests that she has personal knowledge of the matter and adds that:

On or about January 23, 2023, the parties entered into a Payroll Service Agreement, pursuant to which Plaintiff agreed to provide Defendant with certain payroll processing services (the "Agreement")

In connection with the payroll processing services provided by Plaintiff, and at Defendant's direction, on June 1, 2023, Plaintiff submitted a debit entry to

Defendant's bank account for the sum of \$94,998.35, which represented the payroll amount (net of taxes) that Defendant pre-authorized for payment.

On June 5, 2023, Plaintiff paid Defendant's employees the sum of \$94,998.35 using its own funds.

On June 6, 2023, the debit entry from Defendant returned with code NSF, meaning Defendant's bank account held insufficient funds to cover the sum of \$94,998.35 that it had requested and specifically authorized Plaintiff to debit for the purposes of processing and paying its employees.

Plaintiff fully performed all obligations under the Agreement.

Despite demand, Defendant refuses to honor its duties and obligations under the Agreement and has not paid Plaintiff the \$94,998.35 that is due and owing.

...

Furthermore, pursuant to Section 5.1 of the Agreement, Defendant agreed to "any financial obligations or liabilities resulting from Your failure to make sufficient funds available to Check, including any legal or collection fees incurred in the course of collecting Amounts Due from You, You agree to reimburse Check for all such amounts..."

(NYSCEF Doc No. 9, Kauth affirmation at 4-9, 11).

Plaintiff also submits the Payroll Services Agreement (NYSCEF Doc No. 6, Agreement).

Taken together, the Payroll Services Agreement and Kauth's affirmation "establishes the necessary elements of its breach of contract claim" (*Cerida Inv. Corp v Hank Payments Corp*, 2023 WL 2759716 [Sup Ct, NY County 2023] [internal citations omitted]). Accordingly, plaintiff's motion for a default judgment is granted as to its breach of contract claim. The motion is denied as to plaintiff's unjust enrichment claim, however, as such a claim "may not be maintained where a contract exists between the parties covering the same subject matter" (*J&R Realty Group Ltd. v E. Fusion Food Corp.*, 2023 NY Slip Op 32806[U], *3 [Sup Ct, NY County 2023] [internal citations omitted]).

Finally, plaintiff is entitled to recover its reasonable attorneys' fees incurred in connection with this action, pursuant to section 5.1 of the Payroll Services Agreement (*see e.g. Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1, 5 [1986] ["attorneys' fees and disbursements are incidents of litigation and the prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties or by statute or court rule"]) and plaintiff has established that it incurred attorneys' fees in the amount of \$2,097.00 and expenses in the amount of \$560.47, totaling \$2,657.47, through the affirmation of counsel and detailed billing records (*see* NYSCEF Doc Nos. 3 [Ostrove aff at ¶¶15-21] and 8 [billing records]).

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is granted without opposition as to plaintiff's breach of contract claim and otherwise denied; and it is further

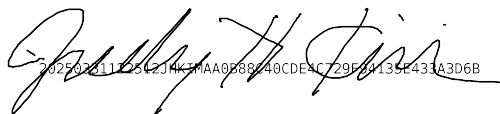
ORDERED that the Clerk of the Court shall enter judgment in favor of Check Technologies Inc. as against Atlas Express Courier Inc. in the amount of \$94,998.35, plus interest from June 6, 2023, costs and disbursements as taxed by the Clerk, and attorneys' fees and expenses in the amount of \$2,657.47; and it is further

ORDERED that plaintiff shall, within twenty from the date of this decision and order, serve a copy of this order, with notice of entry, upon defendant as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse*

and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision and order of this Court.



653093/2024 CHECK TECHNOLOGIES, INC. vs. ATLAS EXPRESS COURIER INC. Motion No. 001

3/31/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

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CASE DISPOSED DENIED
 GRANTED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION
 GRANTED IN PART OTHER
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: