

**American Express Travel Related Servs. Co., Inc. v
Arctic Zero, Inc.**

2025 NY Slip Op 33421(U)

September 10, 2025

Supreme Court, New York County

Docket Number: Index No. 659284/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

Plaintiff,

- v -

ARCTIC ZERO, INC.,

Defendant.

-----X

INDEX NO. 659284/2024

MOTION DATE 06/23/2025

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 to/for JUDGMENT - DEFAULT.

APPEARANCES:

Jaffe and Asher, New York, New York (Gregory Eugene Galterio, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this breach of contract and account stated action, plaintiff AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., moves, by notice of motion (sequence number 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant ARCTIC ZERO, INC. Defendant does not appear or submit opposition to the motion.

For the reasons set forth below, the motion (seq. no. 001) is granted.

BACKGROUND

Plaintiff AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. (plaintiff) provided defendant ARCTIC ZERO, INC. (defendant) with an American Express corporate credit card pursuant to a Corporate Services Commercial Account Agreement (the Agreement) (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001, Complaint; see also NYSCEF Doc. No. 009, Agreement, dated February 05, 2014). Defendant, and its employees, used the corporate credit card, and plaintiff sent billing statements to defendant on a monthly basis (see NYSCEF Doc. No. 001, Complaint; see also NYSCEF Doc. No. 10, Statements of Account).

On November 26, 2024, plaintiff commenced this action to recover \$106,179.93 in unpaid credit card charges incurred by defendant (see NYSCEF Doc. No. 001, Complaint). The complaint alleges causes of action sounding in breach of contract, account stated, and unjust enrichment, and seeks damages in the amount of \$106,179.93 (id.). Plaintiff further seeks an award of attorneys' fees.

On December 06, 2024, plaintiff served the summons and complaint upon defendant pursuant to CPLR § 311 (a)(1)¹ by

¹ Section 311 of the CPLR provides, as relevant here, "(a) Personal service upon a corporation or governmental subdivision shall be made by delivering the summons as follows: 1. upon any domestic or foreign corporation, to an officer, director,

delivering the summons and complaint to "Richard Williams, [who] state[d] he was the quality assurance manager for [defendant] and is authorized to accept the papers" (see NYSCEF Doc. No. 002, Affidavit of Service). The affidavit of services describes "Richard Williams" as a "white male, 35-45 years of age, 6'2"-6'4" tall and weighing 200-240 lbs with glasses . . . "who identified [himself] as the person authorized to accept service" (id.).

To date, defendant has not appeared, answered, or otherwise moved against the complaint, and defendant's time to do so has expired. Now, plaintiff moves, by notice of motion (seq. no. 001), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant.²

ANALYSIS

When a defendant fails "to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). To establish entitlement to a default

managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service. A business corporation may also be served pursuant to section three hundred six or three hundred seven."

² In its motion, plaintiff waives its claim for attorneys' fees, as well as its third cause of action for unjust enrichment (see NYSCEF Doc. No. 004, Affirmation in Support of Motion).

judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

In matters of default, where "the defendant fail[s] to appear, and the plaintiff does not have the benefit of discovery, the supporting affidavit "need only allege enough facts to enable a court to determine that a viable cause of action exists" (Woodson, 100 NY2d at 70-71, citing 7 Weinstein-Korn Miller, NY Civ Prac ¶ 3215.24, at 32-326; see also B&H Flooring, LLC v Folger, 228 AD3d 809 [2d Dept 2024]). "Indeed, defaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them" (Woodson, 100 NY2d at 71, citing Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 [1984]; see also Petty v Law Off. of Robert P. Santoriella, P.C., 200 AD3d 621, 621 [1st Dept 2021] [holding: "[B]y defaulting, a defendant admits all

traversable allegations contained in the complaint, and thus concedes liability, although not damages”)).

However, “[s]ome proof of liability is . . . required to satisfy the court as to the prima facie validity of the uncontested cause of action,’ but the standard of proof is ‘minimal,’ and ‘not stringent’” (Petty, 200 AD3d at 621, quoting Joosten v Gale, 129 AD2d 531, 535 [1st Dept 1987])).

Here, plaintiff demonstrates sufficient proof of the facts supporting its claims for breach of contract and account stated. Specifically, plaintiff submits the affidavit of “Medhi Touhidi” (Touhidi), Custodian of Records for plaintiff, who attests to having “personal knowledge” of plaintiff’s business practice and procedures, “particularly with respect to its recordkeeping, computer systems, card agreements, and billing” and the “transmittal of [credit card] account agreements, notices, and billing statements” (NYSCEF Doc. No. 008). According to Touhidi, defendant opened a corporate credit card with plaintiff in 2014 pursuant to the Agreement, utilized the card to pay for goods and services, and, despite plaintiff sending monthly billing statements identifying the charges incurred on defendant’s account to defendant, defaulted in making the payments due, resulting in an outstanding balance of \$106,179.93 (see id.).

Plaintiff also provides the Corporate Services Commercial Account Agreement, signed by defendant on February 05, 2014 (NYSCEF Doc. No. 009), as well as defendant's credit card billing statements, reflecting an outstanding balance of \$106,179.93 (NYSCEF Doc. No. 10, Billing Statements).

In further support of plaintiff's instant motion, plaintiff submits the affidavit of service of the summons and complaint (NYSCEF Doc. No. 002); an affirmation of additional service of the summons and complaint in accordance with CPLR § 3215 (g)(4) (NYSCEF Doc. No. 007); and proof that despite proper service of the summons and complaint, defendant has not timely appeared or answered (see NYSCEF Doc. No. 002, Affidavit of Service; see also NYSCEF Doc. No. 004, Affirmation of Gregory E. Galterio, Esq., ¶ 5 and 8).

Accordingly, it is hereby

ORDERED that plaintiffs' motion (seq. no. 001) for a default judgment is granted; it is further

ORDERED that the attorneys' fees claim is waived by plaintiff and therefore dismissed; it is further

ORDERED that the Clerk of Court is directed to enter judgment in favor of plaintiff AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. and against defendant ARCTIC ZERO, INC. in the amount of \$106,179.93, with costs and disbursements as calculated by the Clerk of Court; it is further

ORDERED that, within twenty days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, on defendant, as well as on the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

9/10/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE