

American Express Natl. Bank v Round

2025 NY Slip Op 35124(U)

December 19, 2025

Supreme Court, New York County

Docket Number: Index No. 153462/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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AMERICAN EXPRESS NATIONAL BANK

Plaintiff,

- v -

JAMES ROUND,

Defendant.

INDEX NO. 153462/2024

MOTION DATE 12/12/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

APPEARANCES:

Anthony J. Migliaccio, Jr., Esq., New York, NY (Anthony J. Migliaccio, Esq., of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff AMERICAN EXPRESS NATIONAL BANK moves, by notice of motion (sequence number 01), pursuant to CPLR § 3215, for a default judgment against defendant JAMES ROUND. Defendant does not appear or submit opposition to the motion.

Now, upon review of the application and supporting materials, the Court grants the motion (seq. no. 01).

BACKGROUND

On April 15, 2024, plaintiff AMERICAN EXPRESS NATIONAL BANK (plaintiff) commenced this action to recover from defendant JAMES ROUND (defendant) the sum of \$43,759.26 due by reason of an alleged default on credit card agreements between defendant and plaintiff (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 01, complaint). The complaint alleges causes of action sounding in breach of contract and account stated (see id.).

Plaintiff caused the summons and complaint to be served on defendant by way of personal service upon a person of suitable age and discretion at defendant's dwelling place/usual place of abode on April 27, 2024, and by mail on May 01, 2024, pursuant to CPLR § 308 (2) (see NYSCEF Doc. Nos. 05 [affidavit of service] and 06 [affirmation of mailing]). On May 10, 2024, plaintiff submitted to the Clerk of Court a stamped, unsealed envelope addressed to defendant, which contained an additional notice of mailing pursuant to CPLR § 306-d (see NYSCEF Doc. Nos. 08 and 10 [affidavit of mailing of notice of consumer credit action]). On July 11, 2024, plaintiff provided defendant with additional notice of this action pursuant to CPLR § 3215 (g) (see NYSCEF Doc. No. 23, affidavit of additional mailing).

Defendant has not appeared, answered, or otherwise moved against the complaint. Now, plaintiff timely moves, by notice of motion (seq. no. 01), pursuant to CPLR § 3215, for an order granting it a default judgment against defendant.

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 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 its entitlement to entry of a default judgment against defendant by submitting, among other things, the affirmation of service (NYSCEF Doc. Nos. 05 and 06); the affidavit of additional service (NYSCEF Doc. No. 23); the affidavit of mailing of notice of the instant consumer credit action (NYSCEF Doc. Nos. 08 and 10); proof that defendant was

not in military service at the time of the default (NYSCEF Doc. No. 24); defendant's cardmember agreements with plaintiff (NYSCEF Doc. Nos. 15 and 17) and defendant's statements of account, indicating the last payment defendant made on his account and the account balance (NYSCEF Doc. Nos. 16 and 18); affidavit of Medhi Touhidi, Custodian of Records for plaintiff and designated authorized agent thereof (NYSCEF Doc. No. 25); and an attorney affirmation (NYSCEF Doc. No. 11) (see CPLR § 3215 [f]; see also Licurgo-Villar v Samouha, 227 AD3d 619, 620 [1st Dept 2024]; Guzetti v City of New York, 32 AD3d 234 [1st Dept 2006])). Accordingly, plaintiff has demonstrated entitlement to judgment by default in the total amount of \$43,759.26, together with statutory costs and disbursements.

Accordingly, it is hereby

ORDERED that plaintiff's AMERICAN EXPRESS NATIONAL BANK motion (seq. no. 001) for a default judgment against defendant JAMES ROUND is granted; it is further


ORDERED that the Clerk of Court is directed to enter judgment in favor of plaintiff AMERICAN EXPRESS NATIONAL BANK and against defendant JAMES ROUND in the amount of \$43,759.26, 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, upon 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.

<u>12/19/2025</u> 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	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE