

**American Express Travel Related Servs. Co., Inc. v
Tolstoy Found. Nursing Home Co., Inc.**

2025 NY Slip Op 35128(U)

December 29, 2025

Supreme Court, New York County

Docket Number: Index No. 653841/2025

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

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

-----X
AMERICAN EXPRESS TRAVEL RELATED SERVICES
COMPANY, INC.

INDEX NO. 653841/2025

Plaintiff,

MOTION DATE 11/20/2025

- v -

MOTION SEQ. NO. 001

TOLSTOY FOUNDATION NURSING HOME COMPANY,
INC.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X
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, NY (Gregory Eugene Galterio, Esq.,
of counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this action, plaintiff AMERICAN EXPRESS TRAVEL RELATED
SERVICES COMPANY, INC. moves, by notice of motion (sequence
number 01), pursuant to CPLR § 3215, for a default judgment
against defendant TOLSTOY FOUNDATION NURSING HOME COMPANY, INC.
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

Plaintiff AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. (plaintiff) provided defendant TOLSTOY FOUNDATION NURSING HOME COMPANY, 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. 01, complaint; see also NYSCEF Doc. No. 09, agreement, dated May 24, 2022). Defendant, and its employees, used the corporate credit card, and plaintiff sent monthly billing statements to defendant (see NYSCEF Doc. No. 01, complaint; see also NYSCEF Doc. No. 10, statements of account).

On June 25, 2025, plaintiff commenced this action sounding in breach of contract and account stated to recover \$57,498.01 in unpaid credit card charges incurred by defendant (see NYSCEF Doc. No. 01, complaint).

On July 01, 2025, plaintiff served the summons and complaint upon defendant pursuant to CPLR § 311 (a)(1)¹ by delivering the summons and complaint to "Ashley Lamis, Associate Nurse" who verbally confirmed she was authorized to accept

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, 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."

service on defendant's behalf (see NYSCEF Doc. No. 02, affirmation of service). The affirmation of service describes "Ashley Lamis" as a "black-haired black female [] 25-35 years of age, 5'6" - 5'8" tall and weighing 140-160 lbs" (id.). On July 08, 2025, plaintiff provided defendant with additional notice of this action pursuant to CPLR § 3215 (g) (see NYSCEF Doc. No. 07, affirmation of additional mailing).

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.

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 fails 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. No. 02); the affirmation of additional service (NYSCEF Doc. No. 07); defendant's cardmember agreement with plaintiff (NYSCEF Doc. No. 09) and defendant's statements of account, indicating the last payment defendant made on the account and the account balance (NYSCEF Doc. No. 10); affidavit of Richard Kier, Assistant Custodian of Records for plaintiff and designated authorized agent thereof (NYSCEF Doc. No. 08); and an attorney affirmation (NYSCEF Doc. No. 04) (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 \$57,498.01, together with statutory costs and disbursements.

Accordingly, it is hereby

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

NURSING HOME COMPANY, INC. in the amount of \$57,498.01, 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.

12/29/2025
DATE

EMM
HON. EMILY MORALES-MINERVA
J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE