

**PNC Merchant Servs. Co. v Kleenorama Janitorial &
Sanitation Goods, LLC**

2025 NY Slip Op 35641(U)

January 6, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 619337/2023

Judge: James Hudson

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Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision

PRESENT:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

MOTION DATE: 9/10/24
SUBMIT DATE: 11/13/2024
Mot. Seq. #: **002 - MD**

-----X
PNC MERCHANT SERVICES COMPANY,

Plaintiff,

-against-

KLEENORAMA JANITORIAL & SANITATION
GOODS, LLC; and ELYO SADACCA,

Defendants.
-----X

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PNC Merchant Services Company ("PNC") requests an order pursuant to **CPLR 3212**, granting it summary judgment against the defendants and striking the defendants' answer.

This is an action alleging breach of a merchant credit card processing agreement ("Agreement"). PNC alleges that Kleenorama Janitorial & Sanitation Goods, LLC ("Kleenorama") and its principal, Elyo Sadacca, in breach of the July 15th, 2008 agreement, failed to reimburse it for chargebacks of fraudulent or disputed credit card transactions which were filed between April 6th and 8th, 2021.

It is well-settled law that summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a material issue of fact or where

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the issue is arguable (*In re Estate of Beckford*, 280 AD2d 473, 473, 720 NYS2d 176 [2d Dept 2001]). It is the procedural equivalent of a trial (*Rivers v. Birnbaum*, 102 AD3d 26, 42, 953 NYS2d 233 [2d Dept 2012]).

The Agreement and other pertinent documents will be considered in the light most favorable to Kleenorama and Mr. Sadacca (*Gitlin v. Chrinkin*, 98 AD3d 561, 562, 949 NYS2d 712 [2d Dept 2012]; *Dykeman v. Hecht*, 52 AD3d 767, 769, 861 NYS3d 732 [2d Dept 2008]).

PNC must establish its entitlement to summary judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of a material issue of fact (*DeLourdes Torres v. Jones*, 26 NY3d 742, 763, 27 NYS3d 468, 47 NE3d 823 [2016]; *Voss v. Netherlands Insurance Co.*, 22 NY3d 728, 785 NYS2d 448, 8 NE3d 823 [2014]).

Conversely, summary judgment will be denied if Kleenorama and Mr. Sadacca assert an issue of fact requiring a trial (*JP Morgan Chase Bank, N.A. v. Galt Group, Inc.*, 84 AD3d 1028, 1029, 923 NYS2d 632 (2d Dept 2011)). Plaintiff's counsel has filed the agreement for consideration in support of the complaint, in opposition to defendants' previously decided dismissal motion, and in support of the instant motion (NYSCEF Doc Nos. 2, 32, 52). The text of each copy is largely illegible. The Court cannot read its terms or provisions. The agreement does not support the argument by PNC of the absence of any material issue of fact. Counsel has also filed a copy of a PNC Merchant Processing Agreement Program Guide, which contains a section for the client to sign acknowledgment of its receipt (NYSCEF Doc No. 33, "Guide"). That Guide bears neither date nor signature. It is not possible to establish that Kleenorama or Mr. Sadacca assented to its contents or

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are bound by its terms. PNC has also filed a printout which it terms a “chargeback summary” consisting of various chargeback dollar amounts, each bearing a chargeback description of “fraud” (NYSCEF Doc No. 51). PNC has filed a November 1st, 2021 Reserve and Collection Statement in further support of its claim (NYSCEF Doc No. 34, “Statement”).

In contrast to plaintiff’s assertions, Mr. Sadacca avers that he was never provided a copy of the statement. He disputes its contents. He notes that the PNC assessed overdraft of \$211,736.22, comprising the majority of the monies demanded, is not alleged in the complaint. Mr. Sadacca asserts that PNC has not provided any explanation. He argues that its legitimacy is an undetermined issue of fact.

Defendants’ counsel states that “dispute and confusion stemming from the ‘overdraft’ charge” constitutes an undetermined issue of fact (NYSCEF Doc No. 46, P.6). Counsel further argues that PNC has not established that it submitted invoices to the defendants which were retained without objection by his clients as evidence for plaintiff’s claim of an account stated, citing *Bank of Am., N.A. v. Ball*, 188 AD3d 974, 975, 137 NYS3d 85 (2d Dept 2020) in support. He notes that on July 27th, 2021, defendants’ former counsel sent unresolved correspondence to PNC denying that Kleenorama owes money and alleging that its PNC account was terminated in retaliation for reporting that it was “a victim of fraud” (NYSCEF Doc No. 45, “Letter”).

Plaintiff’s counsel does not substantively address the argument presented by the defendants in opposition to the second cause of action for an account stated. Instead, he asserts that the noted letter is “[an] attempt to befuddle this Court” (NYSCEF Doc No. 49,

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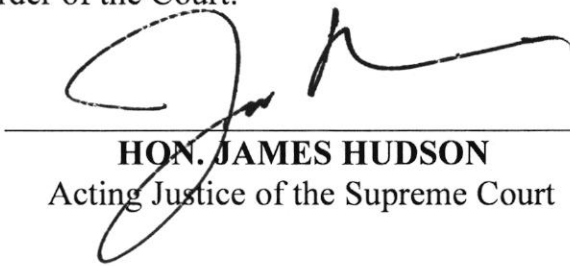
para 22). The Court finds that dismissive phrase to be unresponsive to a document dated two years before this action, the receipt of which is not in dispute. Although plaintiff's counsel has presented the remainder of his contentions with eloquence, based on the foregoing, there remain unresolved issues of material fact which preclude the Court granting summary judgment to PNC. Discovery must proceed.

Accordingly, it is

ORDERED, that the motion (seq. no. 002) by the plaintiff, PNC Merchant Services Company, which requests, pursuant to **CPLR 3212**, summary judgment against the defendants Kleenorama Janitorial & Sanitation Goods, LLC and Elyo Sadacca and striking the answer, is denied.

This memorandum also constitutes the Order of the Court.

Dated: January 6th, 2025
Riverhead, NY


HON. JAMES HUDSON
Acting Justice of the Supreme Court