

<b>Bank of Am., N.A. v Schulman</b>
2026 NY Slip Op 31288(U)
March 30, 2026
Supreme Court, New York County
Docket Number: Index No. 160310/2021
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LORI S. SATTLER PART 02M

Justice

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BANK OF AMERICA, N.A.

Plaintiff,

- v -

STEPHANIE SCHULMAN,

Defendant.

-----X

INDEX NO. 160310/2021

MOTION DATE 08/25/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 were read on this motion to/for JUDGMENT - SUMMARY.

In this commercial action, Plaintiff Bank of America, N.A. ("Plaintiff") moves for summary judgment against Defendant Stephanie Schulman ("Defendant"). Defendant opposes the motion.

This dispute arises in connection with a credit card agreement, pursuant to which Plaintiff opened a credit card account and issued a credit card in Defendant's name (NYSCEF Doc. No. 56, "Agreement"). The application for opening of this account ("Account") was filed on September 18, 2015 (NYSCEF Doc. No. 55, Application; NYSCEF Doc. No. 51, Plaintiff's Affidavit ¶ 19). According to Plaintiff, when receiving the credit card, Defendant also received the Agreement which bore Defendant's name on the first page (Plaintiff's Affidavit ¶ 19; Agreement at 2). In case of default in payment of the minimum payment amount, Plaintiff had the right to require immediate repayment of the total outstanding balance (Agreement at 11).

Plaintiff submitted proof, which is undisputed by Defendant, that from October 2015 to May 2021, Defendant was receiving monthly statements for the Account sent to her addresses in New York City (NYSCEF Doc. No. 54, "Monthly Statements"; NYSCEF Doc. No. 68, Defendant's Affidavit). Plaintiff also submitted proof of Defendant's address as listed in her New York attorney registration,

which additionally confirms that all statements sent since June 2018 were sent to her (Monthly Statements at 160; NYSCEF Doc. No. 63, Printout of Defendant's address details).

On October 19, 2015, two direct deposits in the total amount of \$155,000 were made from the Account to Defendant's individual Merrill Lynch Bank of America Corp. account (Monthly Statements at 6, 8; NYSCEF Doc. No. 60, Merrill Lynch Account Statement at 8; NYSCEF Doc. No. 68, Defendant's Affidavit ¶¶ 12-13). On December 8, 2016 another direct deposit in the amount of \$21,000 was made from the Account to Defendant's individual Citibank account (Monthly Statements at 62; NYSCEF Doc. No. 62, Citibank Account Statement at 5; Defendant's Affidavit ¶ 15). Additionally, between July 2017 and October 2018, the Account was used for more than 140 transactions, including, inter alia, for spas, nail and acupuncture salons, restaurants, medical, and convenience stores, and Defendant's plane ticket (Monthly Statements at 106, 112, 124, 136, 140, 144, 148, 154, 158, 162, 166, 170, 176; Defendant's Affidavit ¶ 16).

Until March 2020, at least the minimum amount required was paid monthly or bi-monthly (Monthly Statements at 10-255), with the payments due from January through April 2019 being paid from the bank account of non-party Serena Advisory, LLC, for which Defendant was the only authorized person (NYSCEF Doc. No. 58, Serena Advisory Authorization; NYSCEF Doc. No. 59, Business Signature Card Form; NYSCEF Doc. No. 57, Serena Advisory Account Statement; Monthly Statements at 194-208; Defendant's Affidavit ¶ 15). From April 2020, payments were sporadic, resulting in the outstanding amount of \$159,953.30 as of May 7, 2021 (Monthly Statements at 316; NYSCEF Doc. No. Plaintiff's Affidavit ¶ 30).

Defendant alleges that she never applied for the Account (Defendant's Affidavit ¶ 3). While she admits she was aware of its existence and used the credit card, she contends that the card was issued in the name of Artisanal Fromagerie & Bistro, LLC ("Artisanal") and that she used it only to support this business, although she offers no proof to support this claim (Defendant's Affidavit ¶¶ 2,

4-7, 16). Defendant states that Artisanal was a restaurant purportedly owned by her then-fiancé, and that she was never its member, co-owner or manager (Defendant's Affidavit ¶¶ 2, 6-7). Defendant further relies on checks made from her Citibank account in December 2016 to non-parties ML Restaurant Solutions, Aerial Design & Build, and Beers Interiors in the total amount of \$36,000, to support her allegation that she used the Account only for the purpose of Artisanal (Defendant's Affidavit ¶ 15; NYSCEF Doc. No. 74, Defendant's checks). She offers no explanation for the numerous personal charges charged to the credit card.

Defendant provides an affidavit from an unrelated action (NYSCEF Doc. No. 71, Chang's Affidavit), which implies that she was purportedly a victim of identity theft, and an unsworn letter from an Israeli lawyer, presenting hearsay statements as to her personal details being allegedly in possession of a non-party (NYSCEF Doc. No. 72, Lawyer's Letter). Despite acknowledgement of the use of the credit card issued by Plaintiff, Defendant contends that she was a victim of identity theft here.

In November 2021, Plaintiff commenced this action for payment of the outstanding amount due under the Agreement, and moved for summary judgment prior to completing discovery, which was denied as the Court allowed Defendant to amend her answer to add the identity theft defense and found there were issues of fact at that stage (NYSCEF Doc. No. 37, Decision and Order, Adams, J.). Having completed discovery, Plaintiff now moves for summary judgment.

On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853). Should the movant make its prima facie showing, the burden shifts to the opposing

party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Under the applicable North Carolina law, a cause of action for breach of contract requires a plaintiff to demonstrate “(1) existence of a valid contract and (2) breach of the terms of that contract” (*Bank of Am., N.A. v McFarland*, 263 NC App 15, 17, 823 SE2d 143, 145 [2018] citing *Poor v Hill*, 138 NC App 19, 26, 530 SE2d 838, 843 [2000]). Offer and acceptance are essential elements to the formation of a contract (*see Snyder v Freeman*, 300 NC 204, 218, 266 SE2d 593, 602 [1980]). The extension of credit constitutes an offer, and use of the credit amounts to acceptance of that offer (*see FIA Card Servs., N.A. v Caviness*, 234 NC App 115, 761 SE2d 756 [2014]; *cf. MacEachern v Rockwell Intl. Corp.*, 41 NC App 73, 76, 254 SE2d 263, 265-266 [1979]).

Here, the Agreement on its first page explicitly names only Defendant as the party to whom it was issued (Agreement at 1), and it is undisputed that Defendant received the credit card, used it, and was receiving Monthly Statements for the card and the Account (Defendant’s Affidavit ¶ 6). Nor does Defendant dispute that she made three direct deposits in the total amount of \$176,000 to her individual bank accounts (NYSCEF Doc. No. 60, Merrill Lynch Account Statement; NYSCEF Doc. No. 62, Citibank Account Statement; Monthly Statements; Defendant’s Affidavit ¶¶ 12-13, 15). Since Defendant failed to make the minimum payments, under the terms of the Agreement she is in default resulting in Plaintiff having the right to demand the repayment of the total outstanding amount of \$159,953.30.

Defendant’s unsupported arguments as to identity theft are bald, conclusory assertions in light of her admission that she used the Account and the credit card (Defendant’s Affidavit ¶¶ 12, 17), and her failure to tender any evidence as to theft of her identity relating to the Account. Such “[b]ald, conclusory assertions or speculation and ‘[a] shadowy semblance of an issue’ are insufficient to defeat summary judgment” (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 448 [2016] quoting

S. J. Capelin Assoc., Inc. v Globe Mfg. Corp., 34 NY2d 338, 341 [1974]). Defendant’s liability is also unaffected by the purpose for which she used the funds from the Account. Furthermore, contrary to Defendant’s position, the Monthly Statements (NYSCEF Doc. No. 54) are self-authenticating and admissible (see Portfolio Recovery Assoc., LLC v Lall, 127 AD3d 576, 576 [1st Dept 2015] citing Merrill Lynch Bus. Fin. Servs. v Trataros Constr., Inc., 30 AD3d 336, 337 [1st Dept 2006]).

Finally, Defendant’s allegation of usury is unavailing. As Plaintiff is a national bank, 12 USCS § 85 regulates the interest rates that Plaintiff could apply to the Account (see Ben. Natl. Bank v Anderson, 539 US 1, 9 [2003]). Pursuant to 12 USCS § 85, Plaintiff could apply “the interest at the rate allowed by the laws of the State, Territory, or District where the bank is located.” Both parties agree that under North Carolina Law, where Plaintiff is located (NYSCEF Doc. No. 69), the rate applied to the Account was allowed.

Accordingly, it is hereby

ORDERED that Plaintiff’s motion is granted and the Clerk is directed to enter judgment in favor of Plaintiff Bank of America, N.A. and against Defendant Stephanie Schulman in the amount of \$159,953.30 with statutory interest from May 7, 2021.

This constitutes the Decision and Order of the Court.

3/30/2026

DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED  DENIED  
 GRANTED

NON-FINAL DISPOSITION  OTHER  
 GRANTED IN PART

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE