

**American Express Travel Related Servs. Co., Inc. v  
Old Am. Inc.**

2026 NY Slip Op 31360(U)

April 6, 2026

Supreme Court, New York County

Docket Number: Index No. 151151/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NICHOLAS W. MOYNE** PART **41M**

*Justice*

-----X

AMERICAN EXPRESS TRAVEL RELATED SERVICES  
COMPANY, INC.

Plaintiff,

- v -

OLD AMERICAN INCORPORATED,

Defendant.

-----X

INDEX NO. 151151/2024

MOTION DATE 07/17/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is

Plaintiff, American Express Travel Related Services Company, Inc., commenced the underlying action against the defendant, Old American Incorporated, to recover for amounts allegedly owed under a commercial credit agreement and alleging a claim for breach of contract and/or an alternative claim for account stated. In Motion Sequence 001, plaintiff has moved for an order, pursuant to CPLR 3212, granting summary judgment in its favor and against the defendant in the amount of \$52,553.25. For the reasons set forth below, the motion is denied.

The facts as relevant to the motion are as follows. Plaintiff asserts that on or around August or September 2015, defendant executed a Corporate Services Commercial Account Agreement, opening an American Express Corporate Card account ending in 1008 with plaintiff (NYSCEF Doc. No. 16). Plaintiff alleges that under this Agreement, plaintiff extended credit to defendant and/or its' employees and defendant agreed to be bound by the terms therein, including making required payments on the account (*Id.*). Plaintiff alleges that defendant

defaulted in making the payments due on the account, resulting in plaintiff cancelling the account, and as of April 25, 2025, the balance that remains due and owing is \$52,553.25. Thereafter, on or around February 4, 2024, plaintiff commenced the present action by filing of the summons and complaint, asserting a claim for breach of contract and an alternative claim for account stated (NYSCEF Doc. No. 1). On or around April 30, 2024, defendant timely filed an answer in the action (NYSCEF Doc. No. 6).

In its' motion, plaintiff seeks summary judgment on the breach of contract claim, alleging it has "submitted sufficient detailed evidence to demonstrate entitlement to judgment as a matter of law for breach of a contract" (NYSCEF Doc. No. 13). On a CPLR 3212 motion, "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Once the movant makes the proper showing, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016] [internal quotations omitted]).

The plaintiff's motion for summary judgment must be denied as the plaintiff has failed to make the required prima facie showing of entitlement as a matter of law on the breach of contract claim. The elements of a cause of action for breach of contract are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" *Lebedev v Blavatnik*, 193 AD3d 175, 182 [1st Dept 2021], citing *Harris v Seward*

*Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Here, the plaintiff's claim for breach of contract is premised on a Corporate Services Commercial Account Agreement executed between the parties, which defendant allegedly breached by failing to make payment as required by the terms set forth in said-agreement.

In support of the motion, plaintiff has failed to include and/or offer any evidence of the subject Corporate Services Commercial Account Agreement between the parties or the provisions defendant breached. Instead, the affidavit of plaintiff's Assistant Custodian of Records includes, as an exhibit, a document outlining the "most recent version of the Membership Rewards® program Terms & Conditions" (NYSCEF Doc. No. 16). Notably, this document does not set forth the material terms of or obligations under the parties' agreement nor establishes the existence of a binding contract or agreement between the parties (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016] ["To form a binding contract there must be a meeting of the minds such that there is a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms"]). Similarly, the plaintiff's allegations are insufficient to establish the provisions of the parties' agreement which were breached by defendant (*see 34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]; *Marion Scott Real Estate, Inc. v Riverbay Corp.*, 173 AD3d 588, 589 [1st Dept 2019]). Therefore, notwithstanding that defendant failed to oppose the motion, as the plaintiff has failed at this juncture to meet its prima facie burden of offering evidence demonstrating the existence of an enforceable contract between the parties and the defendants' breach thereof, the motion for summary judgment must be denied.


Accordingly, it is hereby

ORDERED that the plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 327, 80 Centre Street, New York, New York on June 17, 2026, at 2:15 PM.

This constitutes the decision and order of the court.

4/6/2026  
DATE

  
NICHOLAS W. MOYNE, J.S.C.

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