

American Express Natl. Bank v Bykov

2026 NY Slip Op 31621(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 160311/2023

Judge: Ashlee Crawford

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ASHLEE CRAWFORD PART 38
Justice
INDEX NO. 160311/2023
MOTION DATE 11/13/2024
MOTION SEQ. NO. 001
AMERICAN EXPRESS NATIONAL BANK,
Plaintiff,
- v -
ILYA BYKOV and PROTAX SERVICES CORP.,
Defendants.
DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40 were read on this motion to/for DISMISS

Upon the foregoing documents, it is Plaintiff American Express National Bank ("Amex") moves, pursuant to CPLR § 3211(a)(7), to dismiss Defendants' breach of contract counterclaim for failure to state a cause of action. Defendants oppose.

BACKGROUND

Amex commenced this action against defendants Ilya Bykov ("Bykov") and Protax Services Corp. ("Protax") to recover \$51,234.55 due on two credit card accounts. Bykov was a holder of an American Express Platinum Card ("Platinum Card") with an account no. ending in 9006 (formerly 6002) ("Platinum Card Account"). Bykov, as an authorized officer of Protax, was also a holder of an American Express Plum Card ("Plum Card") with an account no. ending in 2006 (formerly 3004) ("Plum Card Account" and, collectively, the "Amex Cards").

The cardmember agreement for each Amex Card provides in relevant part that

- We may:
• cancel your Account,
• suspend the ability to make charges,

- cancel or suspend any feature on your Account, and
- notify merchants that your Account has been cancelled or suspended.

If we do any of these, you must still pay us for all charges under the terms of this Agreement. We may do any of these things at our discretion, even if you pay on time and your Account is not in default (Cardmember Agmts., “Cancelling or suspending your Account” [NYSCEF Docs. 24-25, 38-39]).

Defendants filed an answer asserting a single counterclaim for breach of contract. They allege that Amex cancelled the Amex Cards and related accounts, and voided about 800,000 unpaid airline miles accumulated from the use of the Amex Cards, without notice and in contravention of the relevant terms and conditions for the Amex Cards (see Answer at pp. 6-7 [NYSCEF Doc. 9]).

DISCUSSION

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction” Leon v Martinez, 84 NY2d 83, 87 [1994], citing CPLR 3026). “We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (id. at 87-88). Allegations consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (Godfrey v Spano, 13 NY3d 358, 373 [2009]). “In assessing a motion under CPLR 3211(a)(7), however, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (id. [internal citation omitted]). “Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (Leon v Martinez, supra at 88).¹

¹ While plaintiff expressly moves pursuant to CPLR 3211(a)(7), the Court, in an exercise of its discretion, additionally considers the motion under CPLR 3211(a)(1), given that the dispute turns on contracts in the record.

Amex denies having breached the terms and conditions of the Amex Cards because the applicable cardmember agreements authorize Amex to cancel the accounts and any feature (e.g., airline miles) for any reason at any time without notice (see Pl. Memo of Law at 6 [NYSCEF Doc. 20]; Luisi Aff. ¶ 7 [NYSCEF Doc. 21]; Cardmember Agmts., “Cancelling or suspending your Account” [NYSCEF Docs. 24-25, 38-39]).

In opposition, defendants argue that Amex’s motion is procedurally deficient because Amex relied solely on an attorney affirmation to introduce the cardmember agreements, which is insufficient to lay an evidentiary foundation. Defendants further contend, without citing to any provision of the cardmember agreements or any other contractual source, that they have sufficiently stated a cause of action for breach of contract on the grounds that they did not receive notice from Amex regarding the cancellation of the Amex Accounts. At best, defendants argue, plaintiff’s contention that it was not required to provide notice creates an issue of fact.

Amex replies that documents annexed to an attorney affirmation are routinely considered by courts. In any event, Amex submits a supplemental affidavit from an assistant custodian of records to formally authenticate the records and cure the deficiency without prejudice to defendants (see Fogelman Aff. [NYSEF Doc. 37]).

The terms of the cardmember agreements conclusively establish that plaintiff was not required to provide notice to defendants prior to cancelling the Amex Cards or related accounts. Defendants have not identified any contractual provision to the contrary.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to dismiss defendants’ breach of contract counterclaim is GRANTED; and it is further

ORDERED that plaintiff's claims for breach of contract, account stated, and unjust enrichment are severed and continued; and it is further

ORDERED that the parties shall appear for a preliminary conference on May 13, 2026, at 10:00 AM, in room 1166 at 111 Centre Street, New York, New York.

This constitutes the decision and order of the Court.



4/10/26
DATE

ASHLEE CRAWFORD, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE