

American Express Natl. Bank v Divine Leather Inc

2026 NY Slip Op 31732(U)

April 22, 2026

Supreme Court, New York County

Docket Number: Index No. 162460/2023

Judge: Ashlee Crawford

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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. ASHLEE CRAWFORD PART 38
Justice
INDEX NO. 162460/2023
MOTION DATE 05/09/2024
MOTION SEQ. NO. 001
AMERICAN EXPRESS NATIONAL BANK,
Plaintiff,
- v -
DIVINE LEATHER INC, ZONAIRA SAQIB
Defendant.
DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff American Express National Bank moves pursuant to CPLR 3212 for summary judgment on their breach of contract and account stated claims against defendants Divine Leather Inc. and Zonaira Saqib. Defendants oppose the motion.

In support of the motion, plaintiff attaches an affidavit of Gabriel J. Montano, an assistant custodian of records for plaintiff with personal knowledge of plaintiff's records (Montano Aff. [NYSCEF Doc. 14] ¶ 1). Montano affirms that "[d]efendant(s) applied for enrollment in [p]laintiff's Working Capital Terms program", which provides short-term commercial loans to eligible vendors (id. ¶ 4; see Loan Agreement, Montano Aff., Exhibit A at p. 6). Without providing any dates, or directly naming defendants, Montano states that plaintiff mailed the terms of the program and the loan agreement to "defendant(s)", who subsequently applied, and were approved, for loans (id. ¶¶ 4-5). Montano states that defendants owe \$67,967.99 as of March 26, 2024 (id. ¶ 9; see Account Statement, Montano Aff., Exhibit B at p. 20). While Montano states that plaintiff "made available" an online accounting, Montano is otherwise silent as to whether defendants received the statement of account, or other invoices (id. ¶ 8). Montano

affirms that the loan agreement and statement of account were created and maintained in the ordinary course of business (id. ¶ 1).

In opposition, defendants argue that plaintiff's proof is lacking because the loan agreement is unsigned; the loan statement names a different entity as the "Vendor"; and plaintiff fails to show how the purported \$67,967.99 debt accrued (Sioris Memo of Law in Opp. [NYSCEF Doc. 20] at pp. 1-2). Plaintiff has not submitted reply papers.

Summary Judgment

A party seeking summary judgment "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. Ctr., 64 NY2d 851, 853 [1985]). Once this showing is made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment (id.). Summary judgment is a drastic remedy and must be denied if there is any doubt as to the existence of a triable issue of material fact (Rotuba Extruders, Inc. v Ceppos, 46 NY2d 223, 231 [1978]).

Breach of Contract

"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" (Noto v Planck, LLC, 228 AD3d 516, 516 [1st Dept 2024] [internal quotation marks and citation omitted]). "[A]n unsigned contract may be enforceable, provided there is objective evidence establishing that the parties intended to be bound" (Flores v Lower E. Side Serv. Ctr., Inc., 4

NY3d 363, 369 [2005] [citation omitted]). Here, however, plaintiff fails to demonstrate that a contract exists between the parties. The unsigned agreement is between plaintiff and “Vendor” and defendants are not named in the agreement (Montano Aff., Exhibit A). Nor does the statement of account provide evidence of the parties’ intent to be bound. While the statement of account apparently includes defendants as address recipients, a separate entity, Shaf International Inc, is named as the vendor (Montano Aff., Exhibit B). Therefore, plaintiff’s motion for summary judgment on its breach of contract claim is denied.¹

Account Stated

To prevail on a claim for account stated, plaintiff must establish that defendant received plaintiff’s invoices, retained them without objecting in a reasonable amount of time, and failed to pay the invoices (Federal Express Corp. v Federal Jeans, Inc., 14 AD3d 424, 424 [1st Dept 2005]). “[A] claim for account stated may not be utilized simply as another means to attempt to collect under a disputed contract” (Sabre Intern. Sec., Ltd. v Vulcan Capital Management, Inc., 95 AD3d 434, 438 [1st Dept 2012][citation omitted]; accord Aronson Mayefsky & Sloan, LLP v Praeger, 228 AD3d 182, 185-86 [1st Dept 2024]).

Plaintiff simply states in a conclusory manner that it made the “online accounting” available to defendants, without demonstrating that defendants received an invoice.

Additionally, the existence of the account is disputed. Therefore, plaintiff fails to meet its *prima facie* burden on its account stated claim.

¹ While plaintiff contends that Utah law applies, plaintiff fails to show that defendants are bound by the agreement. Even if Utah law were to apply, plaintiff fails to demonstrate that defendants requested or otherwise used the credit offered (Utah Code Ann. § 25-5-4 [2] [e] [A credit agreement is binding and enforceable without any signature by the party to be charged if (i) the debtor is provided with a written copy of the terms of the agreement; (ii) the agreement provides that any use of the credit offered shall constitute acceptance of those terms; and (iii) after the debtor receives the agreement, the debtor, or a person authorized by the debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.]).

Accordingly, it is hereby

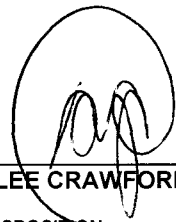
ORDERED that plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED that the parties shall appear for a preliminary conference on June 17, 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.

4/22/2026

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