

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,
Justice.

TRIAL/IAS PART 3
NASSAU COUNTY

AMERICAN EXPRESS CENTURION BANK,

Plaintiff,

ORIGINAL RETURN DATE: 11/30/10
SUBMISSION DATE: 11/30/10
Index No. 10591/09

-against-

KENDRICK HOYTE,

Defendant.

MOTION SEQUENCE #1

The following papers read on this motion:

Notice of Motion..... 1

Plaintiff's unopposed motion for an order granting it summary judgment is granted to the extent indicated below.

This action was brought by plaintiff to recover the sum of \$17,509.62, representing the amount allegedly due for credit card charges pursuant to a written credit card use agreement, together with interest and the costs and expenses of this action.

In support of its motion for summary judgment, plaintiff submits a copy of the master Optima Platinum Card Member Agreement, copies of statements and an affidavit of Jennifer Hartje, assistant custodian of the records for plaintiff. Ms. Hartje alleges that an outstanding balance of \$17,509.62 remains due and owing, together with interest thereon from April 13, 2009, and the costs and disbursements of this action.

"[P]laintiff established its entitlement to summary judgment as a matter of law on its cause of action for breach of the credit card agreement. Plaintiff proved that defendant used the credit card, by presenting the itemized transactions (citations omitted) . . . Moreover, plaintiff established its prima facie entitlement to summary judgment upon its cause of action for an account stated by showing that monthly statements were sent to defendant and retained by him without objection (citations omitted" (*Discover Bank v. Robinson*, 24 Misc.3d 126(A) (Sup. Ct. App. Term 2009)).

Submit Clerk's judgment, together with Bill of Costs.

This decision constitutes the order of the court.

Dated: 12-3-10

HON THOMAS P. PHELAN


THOMAS P. PHELAN, J.S.C.

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ENTERED

DEC 06 2010

NASSAU COUNTY
COUNTY CLERK'S OFFICE