

Civil Court of the City of New York  
County of Queens

Part 32C

Index Number 63536/11

Motion Cal # 2.4a Motion Seq. #

Papers Submitted to Special Term on: 3/26/12

### DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

CACH, LLC,

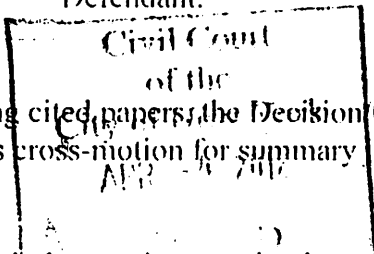
Plaintiff,

against

M A SALAM a/k/a MOHAMMAD SALAM,

Defendant.

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Notice of Cross-Motion and Affidavits	2
Opposing Affidavits	3
Replying Affidavits	4



Upon the foregoing cited papers, the Decision/Order on plaintiff's motion for summary judgment and defendant's cross-motion for summary judgment, leave to amend its answer and sanctions is as follows:

To grant summary judgment it must clearly appear that no triable issue of fact is presented (Miceli v Purex Corp., 84 AD2d 562; Moskowitz v Garlock, 23 AD2d 943). The court need not resolve issues of fact or determine matters of credibility, but must determine whether such issues exist. (Bronson v March, 127 AD2d 810; Bracie v Yeshiva Univ., 88 AD2d 823.)

In support of its motion, plaintiff attaches the affidavit of Melinda K. Stephenson, Bank Officer for FIA Card Services, N.A. and the affidavit of Peter Huber, custodian of records for plaintiff CACH, LLC. The affidavit of Ms. Stephenson establishes that the three account numbers that are the subject of this action (4888938993439132, 4888936088296086, and 4888603114705866) all refer to the same credit card account opened on 10/19/2004 by defendant. The affidavit also establishes that the account was sold to plaintiff on 6/16/2010. The affidavit of Mr. Huber attempts to establish that the account statements were mailed to defendant and accepted without objection, however he fails to establish the personal knowledge necessary to establish those facts and there is no mention of such facts in Ms. Stephenson's affidavit. As such, plaintiff has failed to make out a prima facie case of entitlement to summary judgment.

In support of its cross-motion based on the defense that defendant previously settled the subject account with a third party, Creditors Financial Group, LLC, defendant submits an affidavit, a letter from Creditors Financial Group and a Western Union receipt. The affidavit of Mr. Salam alleges that he struggled to make payments to Bank of America on the subject account in February of 2010 and began receiving letters and telephone calls from Bank of America shortly thereafter. Defendant's purported settlement letter from Creditors Financial Group makes no mention of any of the account numbers that are the subject of this action, containing an account number of 4888937996169662. Furthermore, the letter is dated 1/5/10, which is before the date that defendant claims to have struggled to pay the subject account. As such, defendant has also failed to establish a prima facie entitlement to summary judgment.

It is hereby ordered that plaintiff's motion for summary judgment is denied in its entirety. defendant's motion is granted only to the extent that the proposed amended answer and *counterclaims* is interposed as his answer. The portions of defendant's motion demanding summary judgment and sanctions are hereby denied. This constitutes the decision and order of the court.

\_\_\_\_\_  
April 3, 2012

Date



\_\_\_\_\_  
HON. BARRY A. SCHWARTZ  
Judge, Civil Court