

SUPREME COURT
COUNTY OF ONONDAGA

STATE OF NEW YORK

AMERICAN EXPRESS BANK, FSB

Plaintiff,

RJI NO: 33-18-2780

INDEX NO.: 2015EF3764

vs.

ORDERJAMES TOSCANO and
PERFECTLY PICKLED PRODUCTS, LLC
d/b/a PER PICKLED PROD, LLC

Defendant(s).

Plaintiff has moved this Court pursuant to *CPLR* § 3212 for an order granting summary judgment in favor of the Plaintiff and against the Defendants in action arising out of the breach of a credit agreement. In support of the motion, the Plaintiff has submitted the Notice of Motion dated August 10, 2018, the Affirmation of Virginia Grapensteter, Esq. dated August 10, 2018, and the Affidavit of Vivian Hinds dated July 13, 2018 with Exhibits annexed thereto. The Defendants submitted written Opposition to the Plaintiff's motion to which the Plaintiff submitted a written Reply

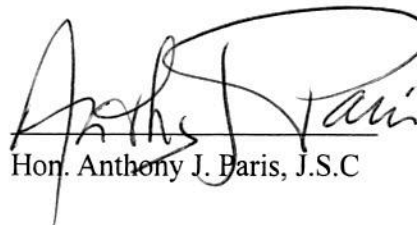
Both the Plaintiff and Defendant having appeared before me on December 12, 2018 and upon hearing Patrick Haber, Esq. on behalf of the Plaintiff and the Kevin O'Connell on behalf of the Defendants, and due deliberation having been had; it is hereby

ORDERED, that the Plaintiff's motion for summary judgment pursuant to *CPLR* § 3212 is decided as follows:

- 1) Plaintiff's motion for summary judgment against the Defendant James Toscano is denied; and
- 2) Plaintiff's motion for summary judgment against the Defendant Perfectly Pickled Products, LLC d/b/a Per Pickled Prod, LLC is granted and that the Plaintiff shall recover the sum of \$17,089.24 plus costs and disbursements.

DATED: _____

3/5/19


Hon. Anthony J. Paris, J.S.C.

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STATE OF NEW YORK
COUNTY OF ONONDAGA : SUPREME COURT

AMERICAN EXPRESS BANK, FSB,

Plaintiff,

- against -

**JAMES TOSCANO AND PERFECTLY PICKLED PRODUCTS, LLC, D/B/A PER
PICKLED PROD, LLC,**

Defendant.

INDEX #2015EF3764
RJI #33-18-2780

Motions
December 12, 2018

Onondaga County Courthouse
401 Montgomery Street
Syracuse, NY 13202

BEFORE:

HONORABLE ANTHONY J. PARIS,
SUPREME COURT JUSTICE

APPEARANCES:

Zwicker & Associates
100 Corporate Woods, Suite 230
Rochester, New York 14623
BY: PATRICK HABER, ESQ., Local Counsel

O'Connell Law Firm
3269 Fulton Ave
PO Box 567
Central Square, New York 13036
BY: KEVIN O'CONNELL, ESQ.

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1 THE CLERK: American Express versus Toscano, et
2 al.

3 MR. HABER: Patrick Haber appearing as local
4 counsel for Zwicker and Associates on behalf of
5 American Express.

6 MR. O'CONNELL: Kevin O'Connell appearing on
7 behalf of defendants Perfectly Pickled Products and
8 James Toscano.

9 THE COURT: Counsel want to be heard?

10 MR. HABER: Judge, I would rely on the papers
11 submitted, unless the Court has any questions.

12 THE COURT: Counsel?

13 MR. O'CONNELL: Judge, I just reiterate the
14 fact that there is clearly a genuine issue of
15 material fact relative to whether or not Mr. Toscano
16 authorized any member of the corporation or company,
17 which he was involved at the time, to secure a credit
18 card in his name, or whether or not he himself
19 applied for the credit card.

20 THE COURT: Before I render this decision, what
21 is Perfectly Pickled?

22 MR. O'CONNELL: They sell pickled eggs, pickled
23 beets.

24 THE COURT: Plaintiff has moved for summary
25 judgment against defendant Toscano and corporate

1 defendant Perfectly Pickled. Defendants have opposed
2 this motion. While plaintiff has come forth with
3 evidence in admissible form to show that the
4 corporate defendant entered into a credit card
5 agreement with plaintiff, there is no evidence that
6 defendant Toscano was a party to same. The address
7 on the account is not defendant's home address but
8 rather that of one Michael Trudell, who maybe the
9 corporate officer who bound the corporate defendant
10 but not defendant Toscano.

11 Also, plaintiff does not present any signatory
12 evidence or any contractual agreement executed by
13 defendant Toscano or any evidence that he signed for
14 any charges made in his name.

15 Therefore, plaintiff is granted partial summary
16 judgment against the corporation but not against the
17 individual defendant James Toscano. It is noted that
18 in his opposition to this motion, counsel for
19 defendant Toscano requested that the complaint be
20 dismissed, but that relief cannot be granted, as no
21 cross-motion was filed.

22 Mr. Haber, will you prepare the order, send it
23 to Mr. O'Connell for his approval. And if you are
24 going to proceed, we need a scheduling order. Okay.

25 MR. HABER: Thank you, Judge.

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THE COURT: Thank you very much.

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