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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 18-319

Filed: 18 December 2018

Chatham County, No. 14 CVD 427

AMERICAN EXPRESS BANK, FSB, Plaintiff,

v.

ROBERT VOYKSNER, Defendant.

Appeal by Defendant from judgment entered 6 September 2017 by Judge Beverly Scarlett in Chatham County Superior Court. Heard in the Court of Appeals 18 October 2018.

*Zwicker & Associates, PC, by Amanda K. Cutler, for plaintiff-appellee.*

*Sprague Law, PLLC, by Drew S. Sprague, for defendant-appellant.*

HUNTER, JR., Robert N., Judge.

Robert Voyksner (“Defendant”) appeals from an order granting summary judgment in favor of American Express Bank, FSB (“Plaintiff”) in an action for breach of contract and account stated. On appeal, Defendant contends the trial court erred by: (1) failing to determine the appropriate choice of law; and (2) granting summary

judgment because there is a genuine issue of material fact. For the following reasons, we affirm.

### **I. Factual and Procedural History**

Plaintiff is a banking institution with its principal place of business in Salt Lake City, Utah. Defendant is President of LCMS Limited (“LCMS”), founded in North Carolina in early 2000. On 17 June 2014, Plaintiff filed a complaint against Defendant for breach of contract and account stated. Plaintiff alleged Defendant had an open business account ending in 5008 and a credit agreement (the “Credit Account”). Defendant agreed to pay all charges on the account, including interest and fees. Plaintiff sent Defendant periodic statements on the account, detailing the purchases made and the balance owed. Plaintiff demanded payment of the amount due at the time, totaling \$41,023.26. Defendant failed to pay the minimum monthly balance he owed on the account and, thereby, breached the agreement.

On 8 July 2014, Defendant, *pro se*, answered Plaintiff’s complaint. Defendant denied entering into any credit agreement with Plaintiff and using any alleged credit card. He further denied receiving or retaining any periodic statements Plaintiff sent regarding the Credit Account, or receiving any demand for payment. Defendant alleged Plaintiff failed to submit documentation evidencing a credit card application and agreement with Defendant’s signature on them, or any proof showing the alleged

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account statements were ever delivered to him. In his answer, Defendant generally denied “each and every allegation” in Plaintiff’s complaint.

On 29 September 2014, Plaintiff filed a motion for summary judgment. Plaintiff attached an affidavit by Plaintiff’s Assistant of Custodian Records, Linda Salas (“Ms. Salas”). Ms. Salas averred the following facts. Defendant opened the Credit Account on 22 September 1999. Upon opening the account, Plaintiff mailed Defendant’s credit card and Cardmember Agreement to Defendant. The Cardmember Agreement specifically states Plaintiff can unilaterally amend the terms of the agreement. Plaintiff alerts cardholders of any changes in terms by sending them notices or including the changes in the monthly billing statements it sends to cardholders.

Ms. Salas further stated Plaintiff maintains computerized records of credit card accounts, detailing debits and credits to the account, and produces monthly statements for its cardholders showing the same debits and credits. She personally reviewed the records concerning Defendant’s account. According to those records, Plaintiff mailed Defendant the credit card at issue and a Cardmember Agreement. The Cardmember Agreement for Defendant’s account was revised multiple times. Defendant breached the Cardmember Agreement dated 13 June 2011. Plaintiff attached the 2011 version of the Cardmember Agreement, along with monthly statements for Defendant’s account for the period 18 June 2011 to 18 July 2012.

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Plaintiff also attached a balance matching statement dated 17 April 2014, showing the last payment Defendant made on the account and the final balance he owed as of the closing date.

On 18 October 2014, Defendant filed an affidavit, *pro se*, in response to Plaintiff's motion for summary judgment. In the affidavit, Defendant averred Plaintiff failed to produce documents Defendant requested for production, including the original signed Credit Account agreement. Defendant alleged the original agreement may have contained fixed interest rates favorable to Defendant to apply to any balance owed, including language providing that "zero interest was to apply on parts of the balances during the first 2 years and after." Defendant also contended "American Express Bank, FSB" was not the entity he signed a credit agreement with and, therefore, was not a proper party. In addition, he contested the balance Plaintiff alleged Defendant owed, arguing if Plaintiff had provided all of the account statements the balance would be different. Defendant further stated he did not receive all of the account statements by mail and "online access was not easy to see," so he was unable to see changes to the terms of the Cardmember Agreement. Defendant attached no documentary evidence to his affidavit.

On 31 October 2014, Defendant requested the trial court to compel arbitration, pursuant to the Cardmember Agreement with Plaintiff. The trial court granted a continuance to allow the parties time to arbitrate the matter. Throughout

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arbitration, Defendant employed the legal services of World Law Group (“World Law”) to assist him with representing himself *pro se*. Pursuant to Defendant’s agreement with World Law, World Law provided Defendant with legal advice and prepared legal documents for Defendant to sign and submit on his own behalf. By assisting Defendant, World Law violated an injunction prohibiting World Law from representing or providing legal-type services to clients in North Carolina. Despite this, arbitration proceeded and the arbitrator ruled in favor of Plaintiff, awarding Plaintiff \$41,023.26.<sup>1</sup>

On 27 October 2015, Plaintiff filed a motion for judgment petitioning the trial court to confirm the arbitration award and enter judgment against Defendant. Defendant filed a brief in opposition to Plaintiff’s motion for judgment. On 18 November 2015, the trial court held a hearing on the motion. On 28 June 2016, the trial court signed an order denying Plaintiff’s motion; however, the order was not filed until 20 June 2017. During that time, Defendant and Plaintiff proceeded to discovery.

On 19 June 2017, Plaintiff re-noticed its 2014 motion for summary judgment. On 21 August 2017, Defendant filed a second affidavit. In the affidavit, Defendant disputed owing any money to Plaintiff. He did not recall opening a credit account with Plaintiff for which he can be held personally liable. He also had not seen his signature on any credit agreement with Plaintiff. Defendant maintained his

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<sup>1</sup> The Arbitration Award was not included in the Record.

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company, LCMS, is the corporation listed on the Credit Account and any debt incurred is solely the responsibility of LCMS. In addition, Defendant pointed to gaps and discrepancies in Plaintiff's documentation regarding the alleged amounts owed. He noted Plaintiff initially provided an account statement showing Defendant owed \$47,331.44, and then another showing Defendant owed \$42,813.98. However, the final statement Plaintiff provided showed a balance of \$41,023.26. Plaintiff also did not provide any documentation of account activity between 1999, when the account was opened, and July 2011.

On 23 August 2017, the trial court held a hearing on Plaintiff's motion and entered judgment in favor of Plaintiff on 6 September 2017. The trial court made the following findings of fact, in pertinent part:

1. That an American Express Business Platinum Card was issued bearing the name of Robert Voyksner and LCMS Limited.
2. American Express Bank, FSB was able to show that the cardholder agreement provided a definition of who would be bound, specifically referencing page 3 of the cardmember agreement which states in pertinent part, "Basic Cardmember means the person that applied for this Account or to whom we address billing statements. Company means the business for which the Account is established. You and your mean the Basic Cardmember and the Company. You agree, jointly and severally, to be bound by this agreement."
3. The Court is satisfied given the various account statements that the lower amount requested and provided to the Defendant to be paid, \$41,023.26, is the amount due

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and owing to the Plaintiff.

4. The Court finds that a printout of the various account statements bear the name of Robert Voyksner and LCMS Limited, show the charges that were made but also payments made by the Defendant.

5. Notice was given of changes to the agreement governing the account on July 2011, October 2011 and June 2012.

...

7. Changes to the cardmember agreement in 2012 explicitly stated, "These changes apply to future and existing balances on your account. Any terms in the cardmember agreement conflicting with these changes is replaced fully and completely. Terms not changed by this notice remain in full force and effect."

...

9. A gap exists in Plaintiff's documentation. There are no documents concerning the account from its opening in 1999 through June 13, 2011.

The trial court also made the following conclusions of law:

3. That Plaintiff has met its burden in showing that there are no genuine issues of material fact for trial.

4. That Defendant has failed to set forth specific facts to show a genuine issue of material fact for trial.

5. That Plaintiff is entitled to judgment as a matter of law.

On 7 September 2017, Defendant timely filed a notice of appeal.

## **II. Jurisdiction**

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Defendant's appeal is properly before this Court from a final judgment of a trial court, pursuant to N.C. Gen. Stat. § 7A-27(b) (2017).

**III. Standard of Review**

“Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (citation and quotation marks omitted). “On appeal of a trial court's allowance of a motion for summary judgment, we consider whether, on the basis of material supplied to the trial court, there was a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law.” *Summey v. Barker*, 357 N.C. 492, 496, 586 S.E.2d 247, 249 (2003). “Evidence presented by the parties is viewed in the light most favorable to the non-movant.” *Id.* at 496, 586 S.E.2d at 249 (citation omitted).

**IV. Analysis**

**A. Choice of Law**

Defendant first argues the trial court erred by inappropriately applying Utah law instead of North Carolina law. The Cardmember Agreement governing the Credit Account contains a choice of law clause requiring legal disputes arising from the Credit Account be resolved according to Utah law. Defendant contends this clause should not be enforced because Utah has “no substantial relationship” to the parties



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or the transaction, and “Plaintiff-Appellee cannot offer any [other] reasonable basis for the application of Utah law to this matter.” We agree.

Generally, “the interpretation of a contract is governed by the law of the place where the contract was made.” *Tanglewood Land Co. v. Byrd*, 299 N.C. 260, 262, 261 S.E.2d 655, 656 (1980) (citations omitted). However, this Court has held “where parties to a contract have agreed that a given jurisdiction's substantive law shall govern the interpretation of the contract, such a contractual provision will be given effect.” *Id.* at 262, 261 S.E.2d at 656. Thus, “the parties’ choice of law is generally binding on the interpreting court as long as they had a reasonable basis for their choice and the law of the chosen State does not violate a fundamental public policy of the state or otherwise applicable law.” *Sawyer v. Mkt. Am., Inc.*, 190 N.C. App. 791, 794, 661 S.E.2d 750, 752 (2008) (citations and quotation marks omitted). Nevertheless, there are some circumstances under which North Carolina courts will not enforce a choice of law provision even when parties contractually agreed to one. *See Cable Tel Servs., Inc. v. Overland Contracting, Inc.*, 154 N.C. App. 639, 642, 574 S.E.2d 31, 33 (2002).

A choice of law provision will not be enforced where “the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties’ choice.” *Id.* at 642-43, 574 S.E.2d. at 33-34 (quoting Restatement (Second) of Conflict of Laws § 187 (1971)); *see also Behr v. Behr*, 46 N.C.

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App. 694, 696, 266 S.E.2d 393, 395 (1980). In deciding whether to enforce a choice of law provision, this Court considers a number of factors, including: (1) in what state the plaintiff received and executed the contract; (2) in what state the defendant received the signed contract; (3) what state the plaintiff engaged in business or was licensed to conduct business; and (4) where the work the plaintiff was obligated to complete under the contract was performed. *Cable Tel Servs.*, 154 N.C. App. at 643-44, 574 S.E.2d at 34.

In *Cable Telephone Services*, we held a choice of law provision unenforceable. 154 N.C. App. at 644, 574 S.E.2d at 34. There, the parties entered into a contract, which included a choice of law provision stating Colorado law would govern any disputes. *Id.* at 641, 574 S.E.2d at 32. This Court noted the plaintiff received and executed the contract in North Carolina, and returned it to the defendant in Kansas. In addition, the plaintiff never knowingly engaged in any business in Colorado, and was not licensed to conduct business there. *Id.* at 644, 574 S.E.2d at 34. Moreover, the work the plaintiff agreed to perform under the contract was to be performed in Missouri, not Colorado. Thus, we held “Colorado has no relationship, let alone a ‘substantial relationship,’ to this transaction[.]” and there was no other reasonable basis to apply Colorado law to the contract. *Id.* at 644, 574 S.E.2d at 34.

This Court has held a “reasonable basis” existed where the parties to a contract included a choice of law provision in favor of: (1) the state in which they were both

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domiciled, *Torres v. McClain*, 140 N.C. App. 238, 535 S.E.2d 623 (2000), or (2) the state in which they entered into the contract. *Behr*, 46 N.C. App. at 696, 266 S.E.2d at 395.

In the case *sub judice*, we are unable to hold a reasonable basis exists. The parties' Cardmember Agreement contains a "Governing Law" provision providing, "Utah law and federal law govern this Agreement and the Account. They govern without regard to internal principles or conflicts of law. We are located in Utah. We hold the Account in Utah. We entered into this Agreement with you in Utah." Despite the language of the provision, there is no indication in the record the parties in fact entered into the agreement in Utah or the Credit Account was held in Utah. The account statements Plaintiff provided list return addresses for American Express' Customer Care and Billing Departments in Texas. In addition, both Defendant and LCMS are located in and operate out of North Carolina. Furthermore, the record is silent on whether Defendant engaged in or conducted any business in Utah. While the available account statements reflect Defendant made a number of transactions in numerous states across the United States, none of them appear to have occurred in Utah or been otherwise connected to Utah. Lastly, there is no indication in the record Defendant at any time performed his duties under the contract in Utah.

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Despite the lack of a substantial relationship between Utah and the parties or their transaction, Plaintiff insists Utah law should apply because Plaintiff has its principal place of business in Utah. This Court has never held this factor, alone, constitutes reasonable basis for the choice of law provision to be enforced. *See, e.g., Cable Tel Servs.*, 154 N.C. App. at 643-44, 574 S.E.2d at 34. Thus, the trial court erred if it applied Utah law. However, “it is unclear [from the record] what law, whether from North Carolina, Utah, or some other jurisdiction [the trial court] used in granting summary judgment . . . .” Defendant’s argument rests on the assumption the trial court applied Utah law. There is no need for us to determine whether the trial court did in fact apply Utah law, because its standards for breach of contract and account stated are similar to those of North Carolina.

Assuming, *arguendo*, the trial court applied Utah law, its error is not prejudicial because it would have reached the same legal conclusions under North Carolina law. *See Arnold v. Ray Charles Enters., Inc.*, 264 N.C. 92, 96-97, 141 S.E.2d 14, 17 (1965) (holding a choice of law provision is irrelevant where the law in both states is “no different with reference to the substantive question here involved”). Under Utah law, the elements of a breach of contract claim are “(1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages.” *Bair v. Axiom Design, L.L.C.*, 20 P.3d 388, 392 (2001) (citation omitted). In North Carolina, “[t]he elements of a claim for breach of contract

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are (1) existence of a valid contract and (2) breach of the terms of that contract.” *Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000) (citation omitted). Thus, both Utah and North Carolina require a plaintiff to prove the existence of a contract, and breach by the other party.

Utah and North Carolina also have similar elements for account stated claims. In Utah, an account stated is “an agreement between parties who have had previous transactions of a monetary character that all the items of the account representing such transactions, and the balance struck, are correct, together with a promise, express or implied, for the payment of such balance.” *Mentas v. Estate of Tallas*, 764 P.2d 628, 634 (1988) (citation and internal quotation marks omitted). In North Carolina, “[a]n account becomes stated and binding on both parties if after examination the party sought to be charged unqualifiedly approves of it and expresses [his] intention to pay it.” *Little v. Shores*, 220 N.C. 429, 431, 17 S.E.2d 503, 504 (1941) (citation omitted). Both states require the calculation of an amount due, the correctness of which is agreed upon by both parties, and the debtor’s express or implied promise to pay. Given the close similarities in legal standards, a finding of breach or account stated under Utah law would yield the same or substantially similar result under North Carolina law.

**B. Summary Judgment**

Defendant next argues the trial court erred in granting summary judgment

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because two genuine issues of material fact existed which must be resolved by a jury. First, Defendant contends the Credit Account is an open account, not an account stated, and the amount Defendant owes is a determination for the jury. Second, Defendant contends Plaintiff failed to produce conclusive evidence of a contract between Plaintiff and Defendant, thereby creating a triable issue of whether an agreement exists. We disagree.

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A–1, Rule 56(c) (2017). “A ‘genuine issue’ is one that can be maintained by substantial evidence.” *Dobson v. Harris*, 352 N.C. 77, 83, 530 S.E.2d 829, 835 (2000) (citation omitted). “The initial burden of showing that no issue exists for trial rests on the moving party.” *Self v. Yelton*, 201 N.C. App. 653, 658, 688 S.E.2d 34, 38 (2010) (citation omitted). Once the movant meets this burden, the burden shifts to the non-movant to present “specific facts establishing a triable issue.” *Id.* at 658, 688 S.E.2d at 38 (citation omitted). Moreover, “if the granting of summary judgment can be sustained on any grounds, it should be affirmed on appeal.” *Wells Fargo Bank, N.A. v. Arlington Hills of Mint Hill, LLC*, 226 N.C. App. 174, 176, 742 S.E.2d 201, 203 (2013) (citation and brackets omitted). Here, Plaintiff, as the moving party, met its burden for both of its claims

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for breach of contract and account stated because Plaintiff presented evidence showing there was no genuine issue of material fact and it satisfied all elements of its claims.

As stated above, breach of contract claims in North Carolina consist of two elements: “(1) existence of a valid contract, and (2) breach of the terms of that contract.” *Poor*, 138 N.C. App. at 26, 530 S.E.2d at 843. A valid contract exists where there has been an offer by one party, acceptance by the other, and adequate consideration for the agreement. *Lewis v. Lester*, 235 N.C. App. 84, 86, 760 S.E.2d 91, 92-93 (2014). In the instant case, Plaintiff provided evidence including an affidavit, numerous account statements, and the Cardmember Agreement in effect at the time of Defendant’s breach in support of its breach of contract claim. Even viewed in the light most favorable to Defendant, the evidence shows Plaintiff extended an offer to enter into a credit agreement with Defendant when it sent Defendant a credit card and a cardmember agreement. Pursuant to the terms of the Cardmember Agreement, Defendant accepted the terms when he used the credit card. *See MacEachern v. Rockwell International Corp.*, 41 N.C. App. 73, 76, 254 S.E.2d 263, 265 (1979) (“It is a fundamental concept of contract law that the offeror is the master of his offer. He is entitled to require acceptance in precise conformity with his offer before a contract is formed.” (citation omitted)). Plaintiff provided consideration for

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the agreement by paying vendors for the purchases Defendant made with the credit card. *See Lewis*, 235 N.C. App. 84, 760 S.E.2d 91.

Defendant argues he cannot be held personally liable for the debt incurred under this business credit account created for and used for the business purposes of LCMS. However, the terms of the Cardmember Agreement state Defendant and LCMS “agree, jointly and severally, to be bound by the terms of this [Cardmember] Agreement.” The terms of the Cardmember Agreement include a promise to pay any debt incurred on the Credit Account. Defendant assented to those terms when he used the credit card to make purchases for LCMS. Defendant was required to make minimum monthly payments to the Credit Account under the terms of the Cardmember Agreement. Defendant breached the Cardmember Agreement when he failed to make those payments. Because Plaintiff was able to show both elements of the breach of contract claim were met, we hold the trial court’s findings were supported by competent evidence.

Plaintiff also raised a claim for account stated. Defendant contends the limited evidence Plaintiff provided is not enough for the trial court to conclusively determine the amount owed. He further argues the Credit Account is better characterized as an “open account” rather than an “account stated.” In addition, he disputes he acknowledged the correctness of the account or promised to pay any alleged balance due on the account. We disagree.



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In North Carolina, “[a]n account becomes stated and binding on both parties if after examination the party sought to be charged unqualifiedly approves of it and expresses [his] intention to pay it.” *Little*, 220 N.C. at 431, 17 S.E.2d at 504 (citation omitted). A party must prove four elements to sustain a claim for account stated: “(1) a calculation of the balance due; (2) submission of a statement to [the opposing party]; (3) acknowledgment of the correctness of that statement by [the opposing party]; and (4) a promise, express or implied, by [the opposing party] to pay the balance due.” *Carroll v. McNeill Indus., Inc.*, 296 N.C. 205, 209, 250 S.E.2d 60, 62 (1978). A party’s failure to object within a reasonable time may satisfy the third element. *Mazda Motors of Am., Inc. v. S.W. Motors, Inc.*, 36 N.C. App. 1, 18, 243 S.E.2d 793, 804 (1978) (citation omitted). Generally, what constitutes a reasonable time is a question for the jury. *Teer Co. v. Dickerson, Inc.*, 257 N.C. 522, 532, 126 S.E.2d 500, 508 (1962). However, the issue may be decided without a jury when the party to be charged contractually agreed that account statements are binding if they fail to object within a certain time period. *Paine, Webber, Jackson & Curtis, Inc. v. Stanley*, 60 N.C. App. 511, 515, 299 S.E.2d 292, 295 (1983).

“An open account results where the parties intend that the individual transactions are to be considered as a connected series rather than as independent of each other, a balance is kept by adjustments of debits and credits, and further dealings between the parties are contemplated.” *Hudson v. Game World, Inc.*, 126

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N.C. App. 139, 144, 484 S.E.2d 435, 439 (1997) (citation omitted). An account stated arises when, “after examination [of the account,] the part[y] sought to be charged unqualifiedly approves of it and expresses [his] intention to pay it.” *Little v. Shores*, 220 N.C. at 431, 17 S.E.2d at 504 (citation omitted). For reasons stated earlier, we determined the Credit Account constitutes an account stated. We note, however, an open account can become an account stated once the parties agree on the amount due. *See Franklin Grading Co. v. Parham*, 104 N.C. App. 708, 713, 411 S.E.2d 389, 392 (1991).

Here, Plaintiff satisfied the first two elements of the account stated claim by calculating the balance Defendant owed and sending it to him via monthly account statements. Plaintiff also submitted a balance matching statement to Defendant, in which it calculated all of the payments Defendant made on its credit account to date, in addition to the remaining balance owed. Further, Plaintiff satisfied the third element because Defendant failed to object to or dispute any of the account statements Plaintiff sent detailing the balance owed. Pursuant to the Cardmember Agreement’s provision entitled “Billing Dispute Procedure,” Defendant had sixty days to object in writing to any account statement errors. However, Defendant failed to object within the given time period, thereby implicitly agreeing to the correctness of the statement. *See Paine, Webber, Jackson & Curtis, Inc.*, 60 N.C. App. at 515-17, 299 S.E.2d at 295 (holding summary judgment was appropriate on the grounds of an

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account stated when a party to be charged failed to object in writing in accordance with the terms of the Client Commodity Agreement governing the account at issue). Lastly, Defendant expressly promised to pay the amount due on the Credit Account when he accepted the Cardmember Agreement. Thus, Plaintiff satisfied all four elements of its account stated claim. Even if the account began as an open account, it became an account stated when Defendant impliedly agreed to the correctness of the balance by failing to object to the account and balance matching statements.

We hold Plaintiff met its burden in demonstrating Defendant breached the contract and owed the stated amount, and no other genuine issue of material fact existed for trial.

“If a moving party shows that no genuine issue of material fact exists for trial, the burden shifts to the nonmovant to adduce specific facts establishing a triable issue.” *Self*, 201 N.C. App. at 658-59, 688 S.E.2d at 38. The non-movant “cannot simply rely on the same allegations he made in his complaint or answer.” *Lexington State Bank v. Miller*, 137 N.C. App. 748, 752–53, 529 S.E.2d 454, 456 (2000) (citation omitted). The purpose of summary judgment is to “allow[ ] one party to force his opponent to produce a forecast of evidence which he has available for presentation at trial to support his claim or defense.” *Id.* at 753, 529 S.E.2d at 456.

In the case *sub judice*, Defendant contends Plaintiff failed to meet its burden as the moving party. Defendant argues because Plaintiff did not provide a full record

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of account statements from the time Defendant opened the account to 13 June 2011, genuine issues of material fact existed. Specifically, Defendant contends Plaintiff's failure to produce the original Cardmember Agreement and all account statements associated with Defendant's account created two issues which could not be resolved on summary judgment: (1) whether an agreement existed between the parties; and (2) what amount Defendant owes Plaintiff, if any.

In support of his arguments, Defendant filed two affidavits and a copy of the credit card for the credit account in dispute. Defendant stated in those affidavits he did not sign a credit agreement or remember opening a credit account with Plaintiff. In addition, he alleged the original signed credit agreement contained favorable fixed interest terms. He further stated if Plaintiff had submitted all of the account statements, the balance owed would be different. Moreover, he did not know how the amount owed was calculated or if he received a demand for payment from Plaintiff. Beyond these affidavits, Defendant did not produce or identify any specific evidence contradictory to Plaintiff's claims.

We are not persuaded Defendant set forth specific facts to create triable issues for a jury on either of the questions Defendant raises. Defendant's affidavits contain only general allegations and conclusions. This Court addressed a similar issue in *Miller, supra*. In *Miller*, the defendant submitted an affidavit in which she alleged: (1) there were payments made towards the loans in dispute, which were not credited

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by Lexington State Bank (“LSB”); (2) LSB intentionally purchased her foreclosed property at a price below its fair market value; and (3) LSB represented it would refinance the loan before it foreclosed. *Id.* at 752-54, 529 S.E.2d at 456-57. We held the defendant could not show a genuine issue of material fact existed because she failed to set forth specific facts, such as the dates of any uncredited payments, their amounts, the property’s fair market value, which LSB representative made representations and when, or any other relevant information. *Id.* at 753-54, 529 S.E.2d at 456-57.

Here, Defendant fails to set forth any specific facts or documentary evidence to support his factual contentions, such as the original 1999 Cardmember Agreement, proof of previously agreed upon favorable interest rates, dates and amounts of any uncredited payments, or any other relevant evidence. Defendant failed to set forth specific facts establishing the existence of a triable issue. Accordingly, Defendant did not meet its burden, and the trial court properly granted summary judgment in favor of Plaintiff.

**V. Conclusion**

For the foregoing reasons, we affirm the judgment of the trial court.

AFFIRMED.

Judges DAVIS and MURPHY concur.

Report per Rule 30(e).