

**Big Bus Tours Ltd. v Twin Am., LLC**

2026 NY Slip Op 31233(U)

March 24, 2026

Supreme Court, New York County

Docket Number: Index No. 654028/2025

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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BIG BUS TOURS LIMITED, TAXI TOURS, INC.,

Plaintiff,

- v -

TWIN AMERICA, LLC, CSA TICKETS, LLC, SIGHTSEEING  
PASS, LLC

Defendant.

INDEX NO. 654028/2025

MOTION DATE 09/18/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. ANDREW BORROK:

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, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, Big Bus Tours Limited and Taxi Tours, Inc. (collectively, the **Plaintiffs**)’s motion (Mtn. Seq. No. 001) for summary judgment is GRANTED.

**THE RELEVANT FACTS AND CIRCUMSTANCES**

This is an action to recover damages for breach of contract and account stated arising from Twin America, LLC, CSA Tickets, LLC, and Sightseeing Pass, LLC (collectively, the **Defendants**) failure to remit payment for tickets sold pursuant to a ticket reseller agreement.

The parties entered into a Global Reseller Ticket Agreement (the **Agreement**; NYSCEF Doc. No. 14), pursuant to which the Plaintiffs permitted the Defendants to resell tickets for the Plaintiffs’ hop-on, hop-off bus tours. In exchange, the Defendants agreed to pay the Plaintiffs a predetermined “net rate” for each ticket sold (*id.* § 3.1). The Agreement (i) requires the Defendants to remit payment of the amount owed within 30 days following the end of each

calendar month and (ii) provides that (a) overdue payments accrue a late payment fee of 10% per annum, and (b) the prevailing party in any legal action shall be entitled to recover reasonable attorneys' fees and expenses:

4.1 For all Products sold hereunder that are redeemed by BBT (or its relevant Affiliate) for use by a Customer by means of an Electronic Voucher, TA shall pay to BBT (or its relevant Affiliate) within thirty (30) days of the end of each month of the Term the total amount owed to BBT (or its relevant Affiliate) determined based upon the Net Rate for such Products.

...

5.1 Any overdue payments shall bear a late payment fee of ten (10%) per annum, or, if lower, the maximum rate allowed by law.

...

14.10 Legal Fees. The prevailing party in any legal action shall be entitled to recover reasonable attorneys' fees and expenses in connection with such action.

(*id.* §§ 4.1, 5.1, 14.10).

Pursuant to the Agreement, the Defendants submitted periodic sales reports identifying the number of tickets sold for the Plaintiffs' tours (NYSCEF Doc. No. 13 ¶ 12). Based on those reports, the Plaintiffs issued corresponding account statements reflecting the amounts due at the agreed-upon net rates (NYSCEF Doc. Nos. 17, 19-20). The record before the Court demonstrates that, between August and October 2024, the Defendants sold thousands of tickets, resulting in substantial sums owed to the Plaintiffs (NYSCEF Doc. No. 13 ¶¶ 13-30; *see also* NYSCEF Doc. Nos. 15-20).

Although the Plaintiffs admitted the Defendants' customers onto their tours and issued statements reflecting the balances due, the Defendants failed to remit payment as required

pursuant to the Agreement (*see* NYSCEF Doc. No. 13 ¶¶ 31-36). The Defendants did not object to the account statements and, in fact, acknowledged the outstanding balance and made a partial payment of \$250,000 (*id.* ¶¶ 31-34; *see* NYSCEF Doc. Nos. 21-23). No further payments were made, leaving an undisputed principal balance due and owing of \$690,977, exclusive of the contractual late payment fees (NYSCEF Doc. No. 13 ¶ 36).

### DISCUSSION

On a motion for summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish the existence of material issues of fact requiring trial (*id.*).

To prevail upon a cause of action for breach of contract, a plaintiff must prove that: (i) a contract exists; (ii) plaintiff performed in accordance with the contract; (iii) the defendant breached its contractual obligations; and (iv) the defendant's breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

In support of their motion, the Plaintiffs adduce the Agreement, which is a valid enforceable contract. They also adduce the account statements, emails from the Defendants acknowledging the outstanding balance owed, and the partial payment of \$250,000, thus establishing their performance, the Defendants' breach, and that they were damaged in the principal amount of \$690,977, exclusive of contractual late payment fees. As such, they meet their *prima facie*

burden demonstrating their entitlement to judgment as a matter of law. In their opposition papers, the Defendants merely argue that in this motion the Plaintiff seeks less than what the complaint calls for in the way of damages and provides for alternative interest calculations. These arguments simply do not create an issue of fact warranting further proceedings because the Agreement provides for when the late interest payment is to be calculated. Late interest is to be calculated at 10% per annum from the date in which it was overdue – *i.e.*, for amounts due but unpaid following the 30th day of the end of each month of the Term.

An account stated is an agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and balance due (*Chisholm-Ryder Co. v Sommer Sommer*, 70 AD2d 429 [1980]). To establish an account stated claim, a plaintiff need only establish that it sent invoices to a defendant and that the defendant retained them without objection (*Weil v Newton*, 211 AD3d 516, 516 [1st Dept 2022]; *Unisol, Inc. v Kidron*, 180 AD3d 570, 571 [1st Dept 2020]). In support of their motion, the Plaintiffs adduce (i) account statements reflecting the amounts due based on the Defendants' own sales reports, and (ii) emails providing that the Defendants neither objected to those statements nor disputed their accuracy. To the contrary, the Defendants expressly acknowledged the correctness of the balances and made a partial payment. As such, the Plaintiffs are entitled to summary judgment on their account stated claim as well.

As discussed above, pursuant to Section 14.10 of the Agreement, the parties agreed that the prevailing party in any legal action is entitled to reasonable attorneys' fees and expenses. Thus, the Plaintiffs are also entitled to reasonable attorneys' fees.

Accordingly, it is hereby ORDERED that the Plaintiffs' motion for summary judgment is GRANTED; and it is further

ORDERED that the Plaintiffs shall submit judgment to Part 53 ([sfc-part53@nycourts.gov](mailto:sfc-part53@nycourts.gov)).



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3/24/2026  
DATE

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ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE