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## The Proof is in the Delivery: Account Stated Claims in the Electronic Age

Clients are often surprised to learn that in New York if one receives a bill or invoice of any kind and fails to challenge it within a reasonable period of time, the client may be liable for the outstanding balance under an “account stated” theory. Traditionally, this kind of claim was relatively simple to prove – show that the bill was delivered to the defendant, the defendant did not contest the bill, and has not paid the amount due.

But how does this claim work in the new age of electronic billing, when invoices are emailed or posted to a portal and there is no hard copy to show proof of delivery? A recent decision from the Westchester County Supreme Court tells a cautionary tale to creditors who use electronic billing that they will need incontrovertible proof of receipt to succeed on an account stated claim.

### **The Case: *USC-Jenna LLC v. Titan Concrete Inc.***

In *USC-Jenna LLC v. Titan Concrete Inc.*, Judge Linda Jamieson considered the plaintiff’s motion for partial summary judgment on their account stated claim. The plaintiff claimed that it had billed the defendant through its billing software and that the invoices were sent to the defendant by email. The plaintiff submitted affidavits, including a table that displayed the date of the invoices, as well as, the email address to which they were sent, which was purportedly exported from a billing system. The affidavits supported that the defendant did not contest any of the billings and, indeed, agreed to pay the plaintiff.

### **The Decision**

Judge Jamieson determined that the billing table, the defendant’s promise to pay, and several prior partial payments from the defendant established a claim for the account stated, however, the court went on to consider the defendant’s opposition. The defendant stated that he did not recall receiving any emailed invoices and could not find the emails after searching through his account. He further claimed that his partial payments were not an assent to the invoices, rather they were made to keep materials flowing so the company could continue its work. Despite texts from the defendant suggesting that he had received at least one invoice and several emails that belied the defendant’s position, Judge Jamieson pointed specifically to the plaintiff’s failure to provide proof that the emailed invoices were received in holding that the defendant had rebutted the *prima facie* showing of an account stated. As a result, summary judgment on the claim was not granted and a determination was instead left to the jury.

### **Takeaway**

Companies should take this decision to heart when billing solely through electronic means and ensure they can prove receipt of the invoices sent. Counsel should be cautious when litigating account stated claims and should acquire proof of delivery and/or receipt of the invoices, if possible, prior to making a motion for summary judgment on the claim.