

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

BOSTON, MUN.COURT-CENTRAL

DIV.

CIVIL ACTION NO.

AMERICAN EXPRESS BANK, FSB,)
Plaintiff)

VS.)

THOMAS W. SMITH AKA THOMAS)
SMITH)
Defendant)

**DEFENDANT’S MOTION TO DISMISS WITH PREJUDICE
FOR FAILURE TO STATE A CLAIM**

1. Proof of representation by Dewey, Cheatem, & Howe, P.C. law firm corporate plaintiff under Rule 17 and all parts therein. It would appear that Dewey, Cheatem, & Howe, , P.C. law firm from statements in the alleged complaint is a third party debt buyer and has used the “alleged” corporate name” to have a seeming semblance of “standing”, where none is demonstrated to exist.
2. At all times and as not stated in complaint where is there an accounting of how the claim became in excess of \$10,000 and with proofs.
3. At all times and NOT STATED in the complaint is there not a copy of the contract with a link to purchases by invoice and event, for each and every item claimed. The COMPLAINT implies “you owe \$10,000” “because I claim it”, WITHOUT DEMONSTRATION, much less proof therefore this court has no justiciable controversy before it. Lacking provable standing by plaintiff, and lacking a justiciable matter in controversy this court has absolutely no case before it and therefore must dismiss under Rule 12 B (6) with prejudice.

4. It should be noted that for the record that the purported card member agreement is signed by American Express Assurance Company as such it is a "photo copy" exhibit of assured, insured, benefits to the putative card holder. It should be further noted that there is no statement as to the authenticity or why it is a copy. There is NO CONTRACT to prove that plaintiff has any business being claimed a plaintiff on any moving papers. Defendant prays that the court would be more careful in allowing this complaint to go forward for the above reasons. It further prays that this court dismiss under RULE 12 B (6) as there is a lack of justiciable content and standing.
5. It would seem that Dewey, Cheatem, & Howe, P.C. law firm to date is misleading this court by commission and omission contrary to Massachusetts Rules of Professional Conduct, Rule 3.3 and all parts therein, CANDOR TOWARDS THE TRIBUNAL. It must be remembered that the plaintiff has failed to meet his burden in any way. As an alleged complaint that fails to state a claim it is impossible to answer a claim that does not exist under this court's rules, as noted. Plaintiff has not met his burden even remotely therefore defendant moves and prays this court to dismiss with prejudice for the foregoing reasons.

The Defendant,

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