

**Jungreis v Rubin & Rothman, LLC**

2023 NY Slip Op 34604(U)

December 12, 2023

Supreme Court, Kings County

Docket Number: Index No. 501188/22

Judge: Lawrence Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Consumer Part of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 12<sup>th</sup> day of December, 2023.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X  
JACOB JUNGREIS,

Plaintiff,

- against -

Index No. 501188/22

RUBIN & ROTHMAN, LLC,

Defendant.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion/Affidavits  
(Affirmations)/ memorandum of law \_\_\_\_\_

51-69

Opposing memorandum of law \_\_\_\_\_

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Reply memorandum of law \_\_\_\_\_

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Upon the foregoing papers in this action for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., defendant Rubin & Rothman, LLC (R&R) moves (in motion sequence [mot. seq.] three) for an order, pursuant to CPLR 2221 (d), granting it leave to reargue that branch of its motion for summary judgment regarding plaintiff Jacob Jungreis' standing to maintain this action and, upon reargument, holding that plaintiff lacks standing and dismissing the complaint.

### Background

On January 12, 2022, plaintiff commenced this action by filing a summons and a complaint annexing a collection letter as Exhibit A, and alleging that “[t]his action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (the ‘FDCPA’)” by plaintiff, “a natural person allegedly obligated to pay a debt” (NYSCEF Doc No. 1 at ¶¶ 1 and 14). The complaint does not describe the specific nature of the debt sought to be collected.

Instead, the complaint alleges that “[i]n its efforts to collect [an] alleged Debt, Defendant contacted Plaintiff in writing, including by letter dated January 12, 2021 (the ‘Letter’)” and “[t]he Letter is not signed by any attorney of the firm” but merely has the defendant law firm’s letterhead at the top of the Letter (*id.* at ¶¶ 27 and 33 and NYSCEF Doc No. 2). The complaint alleges that “[t]he least sophisticated consumer would read the Letter and be reasonably led to believe that an attorney has been meaningfully involved in the review of the alleged Debt prior to the letter being sent” and would likely feel “threatened” and “intimidated” (NYSCEF Doc No. 1 at ¶¶ 52-57 [emphasis added]). The complaint further alleges that “[t]he least sophisticated consumer, upon reading that her account was assigned to a law firm, and in the absence of any further explanation, would reasonably interpret the Letter to mean that even if s/he disputes the validity of the debt, s/he would nevertheless by sued . . .” (*id.* at ¶ 97 [emphasis added]).

On April 26, 2023, R&R moved for summary judgment dismissing the complaint (NYSCEF Doc No. 12). By a May 26, 2023 order, this court denied R&R’s summary

judgment motion “due to outstanding questions of fact including [the] ‘meaningful involvement’ of def[endan]t.” (NYSCEF Doc No. 25).

On June 21, 2023, R&R moved for leave to reargue its summary judgment motion (NYSCEF Doc No. 26), which was denied by this court’s August 7, 2023 decision and order “without prejudice to renewal on proper papers” (NYSCEF Doc No. 32). This court noted that “[w]hen moving to reargue, movant should annex decision upon which reargument is sought, as well as underlying motion papers” (*id.*).

On September 13, 2023, R&R filed the instant renewal of its motion for leave to reargue that branch of its summary judgment motion seeking dismissal based on plaintiff’s alleged lack of standing (NYSCEF Doc No. 51). With respect to the instant application, R&R submits a notice of motion, a memorandum of law and exhibits, including the underlying motion papers in which it moved for dismissal based, in part, on plaintiff’s failure to demonstrate the requisite “injury-in-fact” needed for standing to sue under the FDCPA (NYSCEF Doc No. 52 at 1). In its memorandum of law, R&R argues that “[a]s evidenced by the short-form order denying the motion for summary judgment, this Court did not address the Defendant’s standing argument, thus overlooking the same” (*id.* at 2).

### Discussion

“A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion” (CPLR 2221[d] [2]). “While the determination to grant leave to reargue a motion lies within the sound discretion of the

court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented” (*Salcedo v Demon Trucking, Inc.*, 146 AD3d 839, 840 [2017] [quoting *Ahmed v Pannone*, 116 AD3d 802, 805 (2014)]; *Mazinov v Rella*, 79 AD3d 979, 980 [2010] [same]; see also *Haque v Daddazio*, 84 AD3d 940, 942 [2011]).

Here, R&R correctly argued in the underlying dismissal motion that plaintiff lacks standing to maintain this lawsuit because plaintiff “has not suffered any injury-in-fact based upon the subject collection letter” (NYSCEF Doc No. 56 at 8-9). R&R cited Second Department and Court of Appeals authority admonishing that standing is an aspect of justiciability which must be considered at the outset of the litigation (*id.* at 9). Indeed, the Second Department has held that “[t]he Court of Appeals has defined the standard by which standing is measured, explaining that a plaintiff, in order to have standing in a particular dispute, *must demonstrate an injury in fact* that falls within the relevant zone of interests sought to be protected by law” (*Caprer v Nussbaum*, 36 AD3d 176, 183 [2006] [emphasis added]; see also *Matter of Fritz v Huntington Hosp.*, 39 NY2d 339, 346 [1976]).

Plaintiff’s complaint references “the least sophisticated consumer . . .” in many allegations, yet fails to allege anywhere in the complaint that Jungreis himself suffered any actual injury when he received the Letter from R&R. Plaintiff failed to demonstrate, or even allege, that he suffered any actual harm by the mere receipt of the Letter from R&R. Stated somewhat differently, receipt of a letter, standing alone, does not satisfy plaintiff’s obligation to allege actual damages in fact resulting therefrom. Consequently, R&R was

entitled to dismissal based on plaintiff's lack of standing because plaintiff failed to demonstrate any injury in fact. Accordingly, it is hereby

**ORDERED** that R&R's renewed motion for leave to reargue its summary judgment motion (mot. seq. three) is granted and, upon reargument, R&R's motion to dismiss the complaint based on plaintiff's lack of standing is granted and the complaint is hereby dismissed with prejudice.

This constitutes the decision, order and judgment of the court.

E N T E R,

J. S. C.

HON. LAWRENCE KNIPEL  
ADMINISTRATIVE JUDGE