

Hernandez v LVNV Funding L.L.C.

2025 NY Slip Op 35129(U)

April 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 524342/2024

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 3rd day of April 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

FREDDY GIOVANNI HERNANDEZ,

Plaintiff,

-against-

LVNVFUNDING L.L.C., SUNRISE CREDIT SERVICES, INC., VERIZON COMMUNICATIONS INC., EQUIFAX INFORMATION SERVICES L.L.C., EXPERIAN INFORMATION SOLUTIONS, INC., and TRANS UNION INTERACTIVE, INC.,

Defendants.

DECISION & ORDER

Index No.: 524342/2024

Calendar No.: 16

Motion Seq.: 1

Recitation of the following papers as required by CPLR 2219(a):

**Papers
Numbered**

Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 3-12)	1, 2
Memorandum of Law in Opposition (NYSCEF 17)	3
Memorandum of Law in Reply (NYSCEF 20)	4

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

Defendants, LVNV FUNDING L.L.C.'s (LVNV), motion for an order pursuant to CPLR § 3211 [a] [8] based on lack of personal jurisdiction is granted.

LVNV is a special purpose entity ("SPE") that invests in charged-off receivables. As an SPE, LVNV has no employees and engages its Master Servicing Agent, RCS, to manage its assets, including providing the services of acting as a records custodian. (NYSCEF 6, ¶3).

LVNV acquired plaintiff's account from the Navy Federal Credit Union on or about 10/18/2022

(*id.* at ¶9 and NYSCEF 1, ¶29). Plaintiff's complaint alleges that LVNV inaccurately reported to Experian and TransUnion that his debt was open and in default (*id.*, ¶30).

A corporate defendant's registration with the Secretary of State does not constitute consent to the general jurisdiction of the New York courts to be sued upon causes of action that have no relation to New York (*Aybar v Aybar*, 169 AD3d 137, 147 [2d Dept 2019]). The defendant must be found to be present within the state to exercise personal jurisdiction (*id.* at p.149). The Court may not exercise jurisdiction based solely on registration (*id.* at p.151-152, citing *Daimler AG v Bauman*, 571 US 117, 137-138 [2014]).

Here, plaintiff resides in Florida and the purchased account that form the basis of this action was transacted in Florida. LVNV, a Delaware Corporation, has commenced a collection against plaintiff in Florida under Case # COCE-24050204 relating to the purchased account (NYSCEF 8). LVNV has not commenced collection proceedings against plaintiff or attempted to collect this debt in New York.

Defendant's argument that the Court lacks personal jurisdiction based on plaintiff's failure to file the affidavit of service is without merit. The Court may *sua sponte* overlook this procedural irregularity when there is proof that the defendant was properly served (*Khan v Hernandez*, 122 AD3d 802, 803 [2d Dept 2014] and *Deb v Hayut*, 171 AD3d 862, 863 [2d Dept 2019]). Here, LVNV offered as an exhibit the Notice of Service that it was served through the Secretary of State (NYSCEF 12). LVNV has not argued that this service was improper.

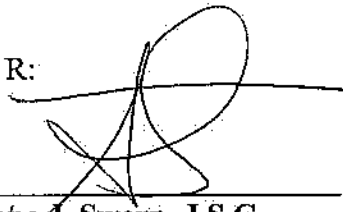
Plaintiff's argument that LVNV's license with the New York City Department of Consumer and Worker Protection subjects it to the general jurisdiction of this Court is without merit. New York City requires a license to collect debts from New York City residents (Title 20 of the New York Administrative Code, Subchapter 30, § 20-488 and § 20-490) in addition to New York State's requirement that LVNV must register with the Secretary of State as a foreign business corporation to have standing to sue within the State of New York (BCL § 1312 [a]).

Accordingly, it is hereby

ORDERED that defendant LVNV FUNDING L.L.C.'s motion to dismiss pursuant to CPLR § 3211 [a] [8] is granted, and this action is dismissed in its entirety against LVNV FUNDING L.L.C. only.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated: 4/3/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____