

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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RUSHMORE RECOVERIES, XI, LLC,

Plaintiff,

-against-

Index No.:19884-06

ROBERT D. MORNINGSTAR,

Defendant.

-----X
Peter Moulton, J.

Defendant moves for an order pursuant to CPLR 3211(a)(7) dismissing the complaint. Plaintiff cross-moves for an order pursuant to CPLR 3212 granting summary judgment. Defendant also moves for a protective order striking plaintiff's notice to admit.¹

FACTS

In this consumer credit transaction case plaintiff, the assignee of the debt, seeks to recover \$20,058.54 for unpaid charges on a credit card. Plaintiff asserts that defendant may not maintain this action because it is a unlicensed debt collection agency. Citing Centurion Capital Corporation a/a/o Aspire Card v. Robert Druce, 14 Misc3d 564, defendant argues that plaintiff is required to allege as a part of its complaint that it is a duly licensed debt collection agency under the New York City Administrative Code 20-489(a), setting forth the name and number of the license and the

¹ In determining these motions, the court reviewed the following documents: 1) defendant's motion to dismiss, 2) plaintiff's affirmation in opposition, 3) plaintiff's cross-motion for summary judgment, 4) defendant's memorandum of law in opposition to plaintiff's summary judgment motion, 5) defendant's motion for a protective order striking plaintiff's Notice to Admit, 6) defendant's reply memorandum of law in support of motion to dismiss

governmental agency which issued the license. As plaintiff has not done so, defendant asserts that the complaint must be dismissed.

Plaintiff argues that it is not a debt collector, but merely an assignee of the debt and therefore not required to register with the Department of Consumer Affairs (DCA). Plaintiff asserts that it is a passive debt buyer who has no dealings with the public. Plaintiff claims that as soon as a debt is purchased, it is forwarded to its attorneys for collection activity. Therefore, plaintiff argues that it is exempt from the holding in Centurion Capital supra (See PRA III, LLC v. MacDowell, 15 Misc3d 1135[A]).

DISCUSSION

Defendant's motion to dismiss is granted. Under Centurion Capital supra plaintiff, as a assignee or purchaser of a defaulted debt, is a debt collection agency within the meaning of New York City Administrative Code § 20-489 because the debt acquired by plaintiff was in default at the time of the acquisition and because plaintiff's principal purpose is debt collection. A debt collection agency must be licensed and must allege its licensed status and include its licensing information in its complaint (CPLR 3015[e]). As plaintiff in this case is not licensed and therefore could not comply with the requirements of CPLR 3015[e]), the complaint must be dismissed pursuant to CPLR 3211(a)(7).

CONCLUSION

Defendant's motion to dismiss the complaint is granted. Plaintiff's cross motion is denied as moot as is defendant's motion for a protective order. This constitutes the decision and order of the court.

Dated: 7/17/07

Pat H. Milt

J.C.C.

HON. JEFFERSON MOULTON

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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RUSHMORE RECOVERIES XI, LLC.,

Plaintiff,

-against-

Index No.:19884/06

ROBERT D. MORNINGSTAR,

Defendant.
-----X

Peter Moulton, J.

Plaintiff moves for an order pursuant to CPLR 2221(d) and (e) renewing and rearguing the order of the court dated July 17, 2007.¹

DISCUSSION

A motion to reargue is addressed to the discretion of the court and may be granted upon a showing that the court overlooked or misapprehended the facts or misapplied the relevant law or for some other reason improperly decided the prior motion (Hoey-Kennedy v. Kennedy, 294 AD2d 573).

A motion to reargue is not a means by which the unsuccessful party can obtain a second opportunity to argue issues previously decided or to present new or different arguments relating to the issues previously decided (McGill v. Goldman, 261

Ad2d 593).

¹In determining this motion, the court reviewed the following documents: 1) plaintiff's motion to renew and reargue, 2) defendant's memorandum of law in opposition to the motion and, 3) plaintiff's reply memorandum in support of the motion.

A motion for leave to renew is intended to direct the court's attention to new or additional facts which, although in existence at the time the original motion was made, were unknown to the movant and were, therefore, not brought to the court's attention. This requirement, however, is not inflexible and the court, in its discretion, may also grant renewal, in the interest of justice, upon facts known to the movant at the time the original motion was made (Garner v. Latimer, 306 AD2d 209). However, pursuant to CPLR 221(e)(3), a motion to renew requires justification for the failure to present the newly discovered material to the court on the original motion.

Plaintiff argues that this court's prior decision was erroneous as a matter of law because it relied on Centurion Capital Corp., v Druce, 14 Misc3d 56. Plaintiff asserts that the Centurion case was clarified, partially eroded and distinguished by an opinion letter of the New York City Department of Consumer Affairs ("DCA"). Defendant argues that the DCA opinion letter does not override the Centurion case, as the opinion letter is a non-public missive sent to a collection industry member in response to a query. Defendant asserts that the letter is informed solely by "dialogues" with a credit industry trade association.

Plaintiff's motion is denied. This court did not overlook any matters of fact or law which would have caused it to render an opinion different from that which was rendered. Further, there is no new or additional evidence which has been presented by the movant which would serve to alter this court's decision.

Plaintiff has presented no evidence that this court's prior decision was erroneous due to an opinion letter of the DCA. Such letter is not sufficient to override, erode, or clarify a decision of a court of law. Plaintiff has failed to show that the opinion letter takes precedence over the court's decision or that the court should have deferred its jurisdiction to DCA in deciding the case at bar.

The case relied upon by this court in rendering its decision remains in tact and this court can find no reason why its decision should be disturbed.

CONCLUSION

Plaintiff's motion is denied in its entirety. This constitutes the decision and order of the court.

Dated: 11/9/07



J.C.C.

**HON. PETER H. MOULTON
JUDGE, CIVIL COURT**