

18-2743-cv (L)

Consumer Financial Protection Bureau, People of the State of New York v. RD Legal Funding, LLC, et al.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of October, two thousand twenty.

PRESENT: BARRINGTON D. PARKER,
DENNY CHIN,
Circuit Judges,
JANE A. RESTANI,
*Judge.**

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CONSUMER FINANCIAL PROTECTION
BUREAU,

Plaintiff-Appellant-Cross Appellee,

PEOPLE OF THE STATE OF NEW YORK, by
Letitia James, Attorney General for the State of
New York,

Plaintiff-Appellant-Cross Appellee,

-v-

18-2743, 18-3033,
18-2860, 18-3156

* Judge Jane A. Restani, of the United States Court of International Trade, sitting by designation.

RD LEGAL FUNDING, LLC, RD LEGAL
FUNDING PARTNERS, LP, RD LEGAL
FINANCE, LLC, RONI DERSOVITZ,

*Defendants-Third Party Plaintiffs-
Third Party Defendants-Appellees-
Cross Appellants.*

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FOR PLAINTIFFS-APPELLANTS-
CROSS APPELLEES:

CHRISTOPHER DEAL, Senior Counsel
(John R. Coleman, Deputy General Counsel,
Steven Y. Bressler, Assistant General Counsel,
Kristin Bateman, Senior Counsel, David A.
King Jr., Counsel, *on the brief*), for Mary
McLeod, General Counsel for the Consumer
Financial Protection Bureau, Washington, D.C.

CAROLINE A. OLSEN, Assistant Solicitor
General (Barbara D. Underwood, Solicitor
General, Steven C. Wu, Deputy Solicitor
General, and Andrew W. Amend, Senior
Assistant Solicitor General, *on the brief*), for
LETITIA JAMES, Attorney General for the
State of New York, New York, New York.

FOR DEFENDANTS-APPELLEES-
CROSS APPELLANTS:

MICHAEL D. ROTH (David K. Willingham,
Jeffrey M. Hammer, *on the brief*), King &
Spalding, LLP, Los Angeles, CA, and Scott E.
Gant, Boies, Schiller Flexner LLP, Washington,
D.C.

Appeal from the United States District Court for the Southern District of
New York (Preska, J.).

UPON DUE CONSIDERATION, IT IS ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **VACATED** and the case is **REMANDED** for further proceedings consistent with this Order.

Plaintiffs-appellants Consumer Financial Protection Bureau (the "CFPB") and the State of New York (the "State") appeal from a judgment of the United States District Court for the Southern District of New York entered October 29, 2018 dismissing their federal and state law claims against defendants-appellees RD Legal Funding, LLC; RD Legal Finance, LLC; RD Legal Funding Partners, LP (collectively, "RD"); and Roni Dersovitz (together with RD, "defendants"). By memorandum opinion and order entered June 21, 2018, as amended by its September 12, 2018 Order, the district court granted defendants' motion to dismiss. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review *de novo* a district court's grant of a motion to dismiss. See *Hernandez v. United States*, 939 F.3d 191, 198 (2d Cir. 2019). The CFPB is headed by a Director, who is appointed by the President with the advice and consent of the Senate for a five-year term, during which time "[t]he President may remove the Director for inefficiency, neglect of duty, or malfeasance in office." 12 U.S.C § 5491(b)-(c) (the "for-cause removal provision"). The district court held that this for-cause removal provision is unconstitutional, and that the removal provision is not severable from the remainder of the Consumer Financial Protection Act (the "CFPA") or Title X of the Dodd-Frank

Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). Accordingly, the district court struck the entirety of the CFPB. The district court also held that then-acting CFPB Director Mick Mulvaney's May 11, 2018 ratification of the CFPB's enforcement action against defendants failed to cure the constitutional deficiencies in the CFPB's structure or otherwise render defendants' arguments moot.

On June 29, 2020, the Supreme Court struck down the for-cause removal provision on the basis that it violates the separation of powers, but additionally held that the removal provision is severable from the remainder of the CFPB. *See Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S.Ct. 2183, 2192 (2020). Following *Seila*, now-acting CFPB Director Kathleen L. Kraninger ratified the enforcement action on July 8, 2020.


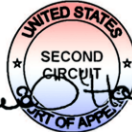
In light of these developments, we affirm the district court's holding that the for-cause removal provision is unconstitutional, we reverse the district court's holding that the for-cause removal provision is not severable from the remainder of the CFPB, and we remand for the district court to consider in the first instance the validity of Director Kraninger's ratification of this enforcement action. *See Seila*, 140 S. Ct. at 2208 n.12.¹

¹ We do not reach defendants' other arguments, including, for example, that RD Legal does not qualify as a "covered person" under the Dodd-Frank Act.

* * *

For the foregoing reasons, we **VACATE** the judgment of the district court and **REMAND** the case for further proceedings.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: October 30, 2020
Docket #: 18-2743cv
Short Title: Consumer Financial Protection v. RD
Legal Funding, LLC

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 17-cv-890
DC Court: SDNY (NEW YORK CITY)
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DC Judge: Preska

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
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VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature