SUPREME COURT OF THE STATE OF NEW YORK
I.A.S. PART 30 SUFFOLK COUNTY

PRESENT:
HON. DAVID T. REILLY, JSC

INDEX NO.: 608180/2022

HAROLD GREEN,

Plaintiff,

-against-

FORSTER & GARBUS, LLP,

Defendant.

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MOTION DATE:	05/28/22
SUBMITTED:	07/13/22
MOTION SEQ. NO.:	1
MOTION DEC.:	MG

Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by Defendant dated May 28, 2022 and supporting papers; (2) Plaintiff's Memorandum of Law in Opposition dated July 5, 2022; and (3) Defendant's Memorandum of Law in Reply dated July 12, 2022 (~~and after hearing counsel in support and in opposition to the motion~~) it is,

ORDERED that defendant's application for an Order dismissing plaintiff's complaint pursuant to CPLR 3211(a)(3) is granted and the complaint is dismissed.

Plaintiff commenced this action with the filing of a summons and complaint on April 27, 2022 asserting causes of action sounding in violations of 15 U.S.C. §1692, the Fair Debt Collection Practices Act (hereinafter, FDCPA). Plaintiff alleges, in sum and substance, that he received a letter from defendant dated July 8, 2019 indicating that he owed a debt and he could respond to defendant to make arrangements for payment. The letter outlined the debt amount, the original creditor, the judgment creditor and the current owner of the account. Plaintiff argues that the letter does not indicate which entity defendant represents and is materially misleading as to the identity of the owner of the debt. Based on the measure of the "least sophisticated consumer" (*see* ***Desantis v Consumer Credit, Inc.***, 988 F2d 1314 [2d Cir. 1993]), plaintiff contends that the letter is reasonably susceptible to more than one interpretation and, therefore, defendant is strictly liable for a violation of the FDCPA.

Defendant has now moved to dismiss the plaintiff's complaint pursuant to CPLR 3211(a)(3) and argues that plaintiff lacks standing and the capacity to sue (*see generally* ***Vil. of Islandia v County of Suffolk***, 162 AD3d 715, 79 NYS3d 188 [2d Dept 2018]). Specifically, defendant contends that plaintiff has failed to sufficiently allege an injury-in-fact. Plaintiff has submitted opposition to the motion which is determined as follows.

A party may move for judgment dismissing one or more causes of action on the ground that the party asserting the cause of action lacks legal capacity to sue (*see* CPLR 3211 [a] [3]; (. Standing is a threshold determination that a person should be allowed access to the courts to adjudicate the merits of a particular dispute (*see* ***Matter of Association for a Better Long Is., Inc. v New York State Dept. of Envtl. Conservation***, 23 NY3d 1, 988 N.Y.S.2d 115 [2014]; ***Society of Plastics Indus. v County of Suffolk***, 77 NY2d 761, 570 N.Y.S.2d 778 [1991]; ***Matter of CPD NY Energy Corp. v Town of Poughkeepsie Planning Bd.***, 139 AD3d 942, 32 NYS3d 275 [2d Dept 2016]). A party has the "burden of establishing both an injury-in-fact and that the asserted injury is within the zone of interests sought to be protected by the statute alleged to have been violated" (***Id.***, at 943). To confer standing, a claimed injury may not depend upon speculation about what might occur in the future, but must consist of cognizable harm, meaning that a plaintiff has been or will be injured (*see* ***New York State Assn. of Nurse Anesthetists v Novello***, 2 NY3d 207, 778 NYS2d 123 [2004]; ***Frankel v J.P. Morgan Chase & Co.***, 193 AD3d 689, 141 NYS3d 919 [2d Dept 2021]).

Here, a fair reading of the complaint fails to reveal what specific injury the plaintiff alleges to have suffered. Although plaintiff offers in broad terms that defendant's alleged violation of the FDCPA caused him to suffer uncertainty as to the owner of debt due, he has cited no authority for the proposition that confusion constitutes an injury-in-fact, particularly where, as here, plaintiff admits that the debt is actually owed. Further, even judged by the "least sophisticated consumer" standard, any uncertainty or confusion as to the owner of the debt could have easily been reconciled by following the simple instructions on the letter which state that plaintiff can contact defendant to dispute the debt owed.

Based on the sum of the foregoing, the Court finds that plaintiff has failed to establish the requisite standing to commence this action and, therefore, the complaint is dismissed.

This constitutes the decision and Order of the Court.

Dated: **January 9, 2023**
Riverhead, New York

David T. Reilly
Justice of the Supreme Court

__X__ **FINAL DISPOSITION** ______ **NON-FINAL DISPOSITION**