When Might a Plaintiff Argue Against Their Own Article III Standing in a Consumer Protection Action?

Article III Standing

The U.S. Supreme Court's 2016 decision in *Spokeo Inc. v. Robins* was a game-changer. That decision single-handedly raised the bar for a plaintiff alleging a violation of a consumer protection statute such as the Fair Credit Reporting Act. The Supreme Court held that the standing principles of Article III mean that a plaintiff may not assert a bare, technical violation of a consumer protection statute unless an injury-in-fact exists – i.e., an injury or harm that is concrete and particularized.

However, defeating a matter on Article III standing grounds simply means that the federal courts lack jurisdiction. Because states maintain their own rules regarding standing or "standing-like" principles, defeating a federal court matter on Article III standing grounds could be a short-lived victory as the parties may subsequently find themselves in state court.

But, what happens when the *reverse* is the desired outcome? In other words, there are many times when a defendant in a state court matter may *want* to be in federal court instead of state court. For example, perhaps the defendant simply wants a federal court ruling on their federal law defenses. In such an instance, assuming the plaintiff has only asserted a bare-bones technical violation of the consumer protection statute, what happens if the defendant attempts to remove the matter to federal court?

Yaakov Y. Gross v. TransUnion, LLC

On June 13, 2022, the United States District Court for the Eastern District of New York answered this very question in *Yaakov Y. Gross v. TransUnion, LLC*, 2022 WL 2116669 (June 13, 2022).

In *Gross*, the plaintiff had a loan serviced by Pennymac Loan Services (PLS). The plaintiff alleged that TransUnion reported the loan as having been serviced by Private National Mortgage Acceptance Company, LLC (PNMAC), a wholly-owned subsidiary of PLS. In connection therewith, the plaintiff alleged that he suffered an "injury to credit worthiness," "increased difficulty obtaining credit" and "embarrassment, humiliation, and other emotional injuries."

TransUnion removed the matter to federal court, putting the plaintiff in the unusual position of having to argue against his own Article III standing. Oddly, he did just that. The plaintiff argued that he lacked proper standing, and even moved to amend to clarify that he merely suffered a risk of credit denial or a risk of embarrassment.

In a strongly worded opinion, the district court held that the plaintiff's alleged injury was insufficient to satisfy Article III standing requirements. Revealing its distaste for bare-bones cases premised upon nothing but technical violations, the district court noted "[w]e have to apply the law in the real world, not a hypothetical one, and there is no reason why a prospective lender or credit provider would care one whit whether plaintiff had defaulted on a PNMAC loan instead of a PLS loan."

The matter was remanded back to the Supreme Court of the State of New York, Kings County.

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